

CHAPTER 145**(HJR 69)**

A JOINT RESOLUTION directing the Governor or his designee to certify to the Environmental Protection Agency that the Kentucky Board of Radon Safety has legal and administrative authority to enter into a grant with the EPA, including specifically the receipt and administration of EPA State Indoor Radon Grant funding.

WHEREAS, during the 2022 Regular Session of the Kentucky General Assembly, the General Assembly passed House Bill 77, which became law on July 14, 2022, and is codified as KRS 309.430 to 309.454; and

WHEREAS, House Bill 77 eliminated the state Radon Program under the Department for Public Health and created a new, independent board in the Public Protection Cabinet attached to the Department for Professional Licensing; and

WHEREAS, the General Assembly through House Bill 77 created the Kentucky Board of Radon Safety to, among other duties, "[e]nter into agreements with any federal or state agency, political subdivision, postsecondary educational institution, nonprofit organization, or other person or entity to assist with and administer grants received by the board, including but not limited to the Environmental Protection Agency State Indoor Radon Grant (SIRG) program"; and

WHEREAS, the General Assembly granted the Kentucky Board of Radon Safety the authority to promote the control of radon in Kentucky, including the development and implementation of programs for the evaluation and control of radon activities, and promulgate administrative regulations and conduct administrative hearings in accordance with KRS Chapters 13A and 13B, respectively, and transferred the responsibility for the radon contractor registration program from the Cabinet for Health and Family Services to the board; and

WHEREAS, on June 1, 2022, the EPA senior general law attorney corresponded with the secretary of the Public Protection Cabinet, to acknowledge the EPA's awareness of the passage of House Bill 77 and outline the requirements for the Governor to certify that "the board has legal and administrative authority to enter into a grant with the EPA"; and

WHEREAS, the EPA asked for a response to the certification within 14 calendar days of receipt of the letter, and 119 days later on September 27, 2022, the secretary of the Governor's executive cabinet responded to the EPA letter, stating the Cabinet for Health and Family Services remains the "lead state agency" for the SIRG funding, rather than recognizing the new board as designee, as now statutorily required by enacted legislation; and

WHEREAS, the Constitution of the Commonwealth of Kentucky divides the Commonwealth's power into three distinct branches of government. Section 29 vests the legislative power in the General Assembly, and the Kentucky Supreme Court has established that the shaping of public policy is the exclusive domain of the legislature. Section 69 vests the executive power in the Governor, who is required by Section 81 to "take care that the laws be faithfully executed" and, therefore, duty bound to follow Kentucky law as enacted by the General Assembly; and

WHEREAS, the General Assembly duly enacted House Bill 77, the Governor signed the bill into law on March 31, 2022, and KRS 309.434 clearly establishes the Kentucky Board of Radon Safety as the entity responsible for the regulation of all radon health and safety efforts within the state, including, specifically, the receipt and administration of EPA SIRG funding; and

WHEREAS, by writing the EPA on September 27, 2022, that the Cabinet for Health and Family Services remains the lead agency responsible for SIRG funding, the Governor has acted contrary to his constitutional duty to take care that KRS 309.434 be faithfully executed;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. It is the intent of the General Assembly that the Kentucky Board of Radon Safety be the state entity to receive and administer EPA SIRG funding in accordance with its statutory authority.

➔Section 2. The Governor or his designee is hereby directed to certify to the EPA that the Kentucky Board of Radon Safety has legal and administrative authority to enter into a grant with the EPA.

➔Section 3. The Clerk of the House is directed to transmit a copy of this Resolution to Governor Andy Beshear, State Capitol, Room 100, Frankfort, Kentucky 40601.

Veto Overridden March 30, 2023.