

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

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

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

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

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

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

1 and

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

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

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

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

24 NOW, THEREFORE,

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

26 ➔Section 1. It is the intent of the General Assembly that the Kentucky Board of
27 Radon Safety be the state entity to receive and administer EPA SIRG funding in

1 accordance with its statutory authority.

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

5 ➔Section 3. The Clerk of the House is directed to transmit a copy of this
6 Resolution to Governor Andy Beshear, State Capitol, Room 100, Frankfort, Kentucky
7 40601.