



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2020-708
August 31, 2020

RELATING TO THE REORGANIZATION OF THE
PUBLIC PROTECTION CABINET

WHEREAS, it is the responsibility of state government to provide the citizens of this Commonwealth with an economical and efficient governmental structure, as well as regulatory practices that are administered in a consistent, ethical, and coordinated manner; and

WHEREAS, the efficiency and economy of government and more effective delivery of services by the Public Protection Cabinet to the citizens of the Commonwealth of Kentucky will be enhanced by establishing a reorganization plan for the agency; and

WHEREAS, KRS 12.020 and KRS 12.252 establish the Public Protection Cabinet and major organizational entities therein; and

WHEREAS, the Commonwealth has waived its sovereign immunity to the limited extent provided for in KRS Chapter 49 to allow a person to recover against the Commonwealth for any injury that results from the negligence of the Commonwealth, by and through any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth; and

WHEREAS, the Commonwealth should offer its care and support to crime victims by providing justly deserved payments in the most efficient and effective manner possible; and

WHEREAS, Kentucky's taxpayers, including Kentucky residents and other individuals, Kentucky corporations and other business entities engaged in business in Kentucky, and Kentucky's employers and other employers of Kentucky's citizens must have the ability to challenge revenue and taxation rulings that they may consider arbitrary, capricious, or unsupported, and receive timely decisions; and

WHEREAS, the Kentucky Claims Commission serves an important governmental function but has failed to do so in a way that promotes economy or efficiency; and

WHEREAS, it has been determined that immediate action can be taken to promote efficiency and improve administration by altering the structure of this commission to create separate boards with separate duties;

NOW, THEREFORE, I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution, Section 69 and 81, and KRS 12.028, do hereby Order and Direct the following to take effect immediately upon the filing of this Order:

1. The Kentucky Claims Commission, as established by KRS 49.010, is abolished, and the terms of the members serving on the commission, as it existed prior to the filing of this Order, shall expire immediately upon the filing of this Order.



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2. The Office of Claims and Appeals is created within the Public Protection Cabinet and shall constitute a statutory administrative office of the state government within the meaning of KRS Chapter 12.
 - a. The Office of Claims and Appeals shall consist of three separate and distinct administrative boards attached to the Office within the meaning of KRS 12.020: (1) the Board of Tax Appeals, (2) the Board of Claims, and (3) the Crime Victims Compensation Board.
 - b. The executive director of the Office of Claims and Appeals shall be appointed by the Secretary of the Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050. The Secretary of the Public Protection Cabinet is the appointing authority for the Office of Claims and Appeals and the executive director shall be directly responsible to the Secretary of the Public Protection Cabinet and shall perform the functions, powers, and duties provided by law and prescribed by the Secretary of the Public Protection Cabinet. The executive director shall (a) carry out the policy and program directives of the Boards; (b) be responsible for the day-to-day operations of the Office; (c) establish appropriate organizational structures and personnel policies; (e) prepare annual reports on the Office's and Boards' activities; (f) prepare budgets; and (g) perform all other duties as directed by the Secretary and the Boards and necessary for the operation of the Office.
3. The Board of Tax Appeals shall consist of three (3) members appointed by the Governor. One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. Each member may be reappointed for one (1) four (4) year term. Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced. The Governor shall designate one (1) of the members of the board to act as chairperson and if the chairpersonship becomes vacant, the Governor shall designate a new chairperson. The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provision of KRS 64.640.
 - a. Each member of the Board of Tax Appeals shall be a person at least thirty-five (35) years of age. One (1) member shall be an attorney with the qualifications required of candidates for Circuit Judge. The other two (2) members shall be persons with a general business background except that not all of the members shall be of the same occupation or profession. No member shall engage in any occupation or business inconsistent with his duties as such a member.
 - b. I appoint the following to serve as members of the Board of Tax Appeals with the following terms:



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- i. Melinda Karns, of Lexington, Kentucky, Chairperson of Board of Tax Appeals, initial term of three (3) years;
- ii. Lanola Parsons, of Harlan, Kentucky, initial term of four (4) years;
- iii. Tony Colyer, of Louisville, Kentucky, initial term of two (2) years.

Please issue commissions to them.

- c. The Board of Tax Appeals is hereby vested with exclusive jurisdiction to hear and determine appeals from final rulings, orders, and determinations of any agency of state or county government affecting revenue and taxation, including appeals currently pending before the Kentucky Claims Commission. Administrative hearings before the Board of Tax Appeals shall be de novo and conducted in accordance with KRS Chapter 13B.
- d. All appeals to the Board of Tax Appeals shall be heard by the full board, except one (1) member or hearing officer may be authorized to hear an appeal by an individual. In any appeal referred to a hearing officer or one (1) member, the hearing officer or member shall tender a recommended order to the full board. The final order in any appeal heard by a single member or hearing officer shall be made and entered by a majority of the board.
- e. The Board of Tax Appeals, in its discretion, may request a hearing officer to assist the board with cases presented to the full board. If requested, a hearing officer shall supervise the presentation of evidence and perform any other duties assigned by the chairperson, the board, or the Executive Director, except that no hearing officer shall render a final decision, opinion or order. However, a hearing officer may hear discovery issues and disputes prior to a scheduled hearing, receive evidence on behalf of the board during the prehearing phase in a particular case, and make interlocutory rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- f. Any party aggrieved by any final ruling of the Board of Tax Appeals, except on appeals from a county board of assessment appeals, may appeal to the Franklin Circuit Court or to the Circuit Court of the county in which the party aggrieved resides or conducts his place of business in accordance with KRS Chapter 13B. Any final orders entered on rulings of a county board of assessment appeals may be appealed in like manner to the Circuit Court of the county in which the appeal originated.
- g. If a judicial appeal or cross-appeal is filed by a taxpayer aggrieved by any final ruling of the Board of Tax Appeals, a state or county agency may move the



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circuit court to require the taxpayer to post a bond or other adequate security for the payment of any judgment of the Court if the agency believes its ability to obtain payment from the taxpayer of the taxes, penalties and interest in issue is jeopardized by its inability to proceed with collection, due to the filing of the appeal or cross-appeal by the taxpayer, or if the agency believes that the appeal or cross-appeal is being brought to delay payment of the taxes, penalties and interest in issue. If the Court determines a bond or other security is necessary to protect the interest of the state or county, collection may be stayed in the manner directed by the Rules of Civil Procedure for the filing of a supersedeas bond. To avoid the accruing of additional interest and penalty while an appeal is pending, a taxpayer appealing an order of the Board of Tax Appeals affirming a tax assessment may, prior to the filing of the appeal, pay the agency, under protest, the amount ordered by the Board of Tax Appeals to be paid and seek a refund of taxes, including accrued interest, at issue in the appeal as provided in KRS 134.580. The taxpayer shall pay to the agency any tax included in the assessment not contested prior to the expiration of sixty (60) days after filing the appeal. If the appeal is filed by the agency, the payment of the uncontested tax shall not bar the taxpayer from obtaining a reduction, abatement, and/or refund of any contested tax in the appeal and shall not result in the taxpayer's appeal or cross-appeal being dismissed or delayed or judgment.

4. The Crime Victims Compensation Board shall consist of three (3) members appointed by the Governor, not all of whom shall be engaged in the same occupation or profession, at least one (1) of whom shall be a victim as defined in KRS 421.500(1), the parent, spouse, sibling, or child of a victim as defined in KRS 421.500(1), whether or not the victim is deceased; or a victim's advocate as defined in KRS 421.570(1). One (1) member shall be appointed initially for a two (2) year term. One (1) member shall be appointed initially for a three (3) year term. One (1) member shall be appointed initially for a four (4) year term. Thereafter, all appointments to the board shall be for a four (4) year term. Each member may be reappointed for one (1) four (4) year term. Vacancies for unexpired terms shall be filled in the same manner as regular appointments, but the appointees shall hold office only to the end of the unexpired term of the member replaced. The Governor shall designate one (1) member of the board as chairperson. The Governor shall fill any vacancy in the chairpersonship. The Governor shall establish the compensation, not to include benefits, of the members of the board pursuant to the provisions of KRS 64.640.
 - a. The Crime Victims Compensation Board is hereby vested with exclusive jurisdiction to hear and determine all matters relating to claims for compensation, including claims currently pending before the Kentucky Claims Commission, and the power to reinvestigate or reopen claims without regard to statutes of limitations, and to hold hearings in accordance with the provisions of KRS Chapter 13B. The powers provided in this subsection may be delegated by the board to any member or employee of the Office or a hearing officer.



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b. I appoint the following to serve as members of the Crime Victims Compensation Board with the following terms:

- i. Dale Sights, of Henderson, Kentucky, Chairperson of Crime Victims Compensation Board, initial term of three (3) years;
- ii. Joseph Childers, of Lexington, Kentucky, Chairperson of Board of Claims, initial term of four (4) years;
- iii. Michael Plummer, of Fort Mitchell, Kentucky, initial term of two (2) years.

Please issue commissions to them.

5. The Board of Claims is vested with full power and authority to investigate, hear proof, and to compensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus, or agencies, or any of its officers, agents, or employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus, or agencies, including claims currently pending before the Kentucky Claims Commission. Any claim against the Commonwealth, its departments, agencies, officers, agents, or employees, or a school district board of education, its members, officers, agents, or employees for damages sustained as the result of exposure to asbestos before, during or after its removal from a facility owned, leased, occupied, or operated by the Commonwealth or a school district board of education shall be brought before the Board of Claims. Except as herein provided, the board shall be independent of all agencies, cabinets, and departments of the Commonwealth except as provided in KRS 49.040 to 49.170.

a. The board shall be composed of the members of the Crime Victims Compensation Board. The members shall not be entitled to additional compensation for their services on the Board of Claims. The Governor shall designate a member of the board to serve as chairperson for a term of four (4) years. The Governor shall fill any vacancy in the chairpersonship. No member shall serve as chairperson of the Crime Victims Compensation Board and as chairperson of the Board of Claims at the same time.

b. If an appointed board member has a conflict of interest, as defined by KRS chapter 11A, with respect to a matter scheduled before a full board or hearing officer, the Secretary of the Cabinet shall appoint a member of one of the other boards administered by the Office of Claims and Appeals as a substitute member. Following appointment, the substitute board member shall serve in place of the member who has a conflict for all actions and votes relevant to that matter.

6. Members of the Board of Tax Appeals, Board of Claims, and Crime Victims Compensation Board shall receive new member orientation and annual training to



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- discuss new legislation, pertinent court decisions, and board policies and procedures.
7. The principal office of the Office of Claims and Appeals shall be at Frankfort, Kentucky and shall be open during regular working hours for the conduct of its business. Any board may hold hearings outside of Frankfort with a view to securing the opportunity for citizens to appear before it with as little inconvenience and expense as practicable.
 8. In order to carry out the provisions and purposes of this Executive Order, the Office of Claims and Appeals shall be authorized to promulgate administrative regulations that are necessary.
 9. Except to the extent required by the differences between the Order and its application, and KRS Chapter 49, the provisions of law that apply to the Kentucky Claims Commission as contained in KRS Chapter 49, *et seq.*, shall remain in full force and effect and apply to the Office of Claims and Appeals, the Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board.
 10. The Public Protection Cabinet, the Finance and Administration Cabinet, Office of State Budget Director, and the Personnel Cabinet, shall take all necessary action to effectuate the provisions of this Order.
 11. This Order shall be effective September 1, 2020.

A blue ink signature of Andy Beshear, written in a cursive style.

ANDY BESHEAR, Governor
Commonwealth of Kentucky

MICHAEL G. ADAMS
Secretary of State



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REORGANIZATION PLAN

It is the policy of this Administration to provide the citizens of the Commonwealth with an economical and efficient governmental structure and to administer regulatory practices in a consistent, ethical, and coordinated manner. Therefore, pursuant to the provisions of KRS 12.028, the Governor implements the attached Executive Order to abolish the Kentucky Claims Commission and create the Office of Claims and Appeals, the Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board to provide for the more expeditious determination of tax appeals until subsequent ratification or non-ratification by the General Assembly.

EXPLANATION OF CHANGE

This Executive Order abolishes the Kentucky Claims Commission and creates the Office of Claims and Appeals, which includes the Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board. While the 2016 reorganization did provide greater efficiency for the Board of Claims and the Crime Victims Compensation Board, it created inefficiencies in the Board of Tax Appeals, which currently has a backlog of approximately 60 cases, some of which are two (2) years old.

The current reorganization promotes greater efficiency in the administration of tax appeals by separating the Board of Tax Appeals from the Board of Claims and the Crime Victims Compensation Board. These Boards hear different types of cases, and the expertise and experience needed to serve on the Boards are different. For example, one of the qualifications for membership on the Crime Victims Compensation Board is being a crime victim, the family member of a crime victim, or a victim's advocate. Membership on the Board of Tax Appeals, however, requires at least one (1) attorney, and two (2) individuals with a general business background. The differences in expertise needed is highlighted when the litigation involves complex questions of tax law before the Board of Tax Appeals.

BUDGET AND FISCAL IMPACT

The only increase in expenditures will be the addition of three (3) board members. Compensation and operating costs will be approximately \$45,000.

IMPROVEMENTS

In 2016, the Board of Tax Appeals, the Board of Claims, and the Crime Victims Compensation Board were consolidated into the Claims Commission, and the number of Board members was reduced from eight (8) to three (3). This consolidation assisted in resolving the backlog in the cases before the Board of Claims and the backlog in compensation to crime victims. It created, however, a backlog of appeals before the Board of Tax Appeals. There are now 151 cases pending before the Board including 43 from 2018 and 103 from 2019. The backlog of tax cases currently before the Board of Claims involves a significant sum, which negatively affects the State's ability to appropriate revenue and raises concerns with respect to the procedural due process rights of taxpayers.



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PERSONNEL IMPACT

The transition from the Claims Commission to the Office of Claims and Appeals will cause no changes to the number of current support staff. The number of board members will increase from three (3) to six (6). Three board members will serve on both the Crime Victims Compensation Board and the Board of Claims. The only increase in personnel is the three (3) additional Board members that will sit on the Board of Tax Appeals.