



COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR



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VETO MESSAGE FROM THE
GOVERNOR OF THE COMMONWEALTH OF KENTUCKY
REGARDING HOUSE BILL 394 OF THE
2021 REGULAR SESSION

I, Andy Beshear, Governor of the Commonwealth of Kentucky, pursuant to the authority granted under section 88 of the Kentucky Constitution, do hereby veto the following:

House Bill 394 of the 2021 Regular Session of the General Assembly in its entirety.

I am vetoing House Bill 394 because it gives the Kentucky Fish and Wildlife Commission unfettered and unchecked authority to choose the commissioner of the Kentucky Department of Fish and Wildlife Resources (even if the person is not qualified), to set the commissioner's salary (even if egregious), to enter into a contract with its commissioner on its own terms (for a set number of years that may violate state law), and to have the sole power over its contracts without any oversight. Oversight of the Fish and Wildlife Commission is critical. Fish and wildlife resources are important to Kentuckians, who have a constitutional right to hunt, fish, and harvest wildlife. The Kentucky Department of Fish and Wildlife Resources, which serves Kentucky Sportsmen and Sportswomen, is a significant part of state government.

Giving the Commission the unilateral power to enter into contracts with whomever it wants, at whatever amounts it wants, and under whatever terms it chooses is grossly irresponsible, especially given recent concerns over its operations.

In December of 2018, the Kentucky Auditor of Public Accounts called for "a change in culture" at the Department of Fish and Wildlife Resources after releasing a report that found the department had not complied with state and federal law in how it used public funds, including deliberately circumventing procurement laws. In his report, the auditor noted that all department funds are public funds that require the highest level of accountability and transparency, despite the Commissioner's and the department's claims that the department does not receive general fund tax dollars. The Auditor found that the department circumvented procurement policy by splitting purchase to remain under their delegated authority and avoid additional procurement conditions. For example, the department bought four used shipping containers between July and September of 2017, but did so as four separate purchases that kept each one below the departments fiscal year delegated authority. The Auditor found the identical purchases should have occurred through the Finance and Administration Cabinet as one combined purchase, and that the evidence showed the department was intentionally splitting purchases in order to

circumvent procurement requirements. As another example, the department entered into two separate contracts with identical descriptions for work at a wildlife management area performed by the same vendor a few months apart. The Auditor found that it appeared the department intentionally split the contracts to circumvent procurement requirements, which in turn limited competition by requiring only one quote. In addition, the department contracted with a vendor to repair flooring at a wildlife management area in an amount exceeding its small purchase authority without the approval of the Finance and Administration Cabinet, which the Auditor concluded violated the Kentucky Model Procurement Code and procurement policies and procedures. The report also noted that department contract descriptions did not always match the services provided.

The Auditor also found that the department had violated state and federal laws multiple times when spending taxpayer dollars, and that the department failed to properly monitor contracts to determine if public funds were spent efficiently and effectively. As an example, according to the report from 2008 to 2017 the department paid a conservation group a total of \$550,000 to study a breeding ground for ducks in Canada, but data from the conservation group found only 10 percent of the ducks that migrate to Kentucky come from Canada. The Auditor found that the department used public funds to cater an annual awards banquet with no apparent benefit to the Commonwealth. In addition, the report found that the department used the Kentucky Fish and Wildlife Foundation, a charitable organization that promotes wildlife education and wetlands preservation, to bypass state laws. The report noted that the agency previously violated state law by transferring \$1 million from the state wetland and stream mitigation fund to the fish and game fund. The Auditor questioned funds spent on alcohol, meals, pre-paid debit cards, and outside contracts that were poorly monitored.

Before the Auditor's report, the former commissioner admitted to multiple ethics violations. Those violations included receiving free passes to the Kentucky Derby, having department employees do chores and run errands for him on state time, and using department resources for his personal use. As examples, the former commissioner admitted to having department employees pump out the flooded basement or crawl space of his home, pick up building materials from Lexington and store them at the department's woodshop until delivering them to his home, repair holes in his personal canoe, and inspect a home he planned to buy. The former commissioner also admitted to using his position to acquire, for free, 15 pieces of artwork that were created by a department employee to be sold for fundraising purposes, to buy a gallon of the controlled chemical rotenone that the department originally bought through a department contract, and to use the department's FedEx account to have personal items shipped like the skin of alligator he had killed in Florida he had delivered to a taxidermist in Georgia.

The month after the Auditor's report, following a nationwide search for a new commissioner from outside of the department, the then-Chair of the Commission, Rich Storm, who had led the search, recommended that the Commission hire him as commissioner. Despite Kentucky Sportspersons objecting to the hiring of an insider, the Commission hired Mr. Storm – nearly the identical Commission as when the Auditor issued his report. In self-selecting one of its own, the Commission then set a \$140,000 annual salary, plus \$8,400 as a health insurance stipend.

When Mr. Storm refused to respond to the offer of the Tourism, Arts and Heritage Cabinet to renew his contract for one year, the Commission tried to hire him for two years under a contract it claimed it had sole authority to enter into. The Commission then sued to try to gain unilateral control of the department's contracts. The trial court upheld Kentucky law and dismissed the lawsuit, and the Commission appealed. Rather than try to operate under Kentucky law that provides oversight of contracts of the department and show Kentucky Sportsmen and Sportswomen it wants to be transparent and lawful, in House Bill 394 the Commission attempts to use the General Assembly to change the law it has repeatedly circumvented.

Giving the Commission complete and unilateral authority over procurement for the department would put taxpayers' money at risk and harm the interests of the Sportsmen and Sportswomen the Commission has a duty to protect.

This the 22nd day of March, 2021.



Andy Beshear
Governor