



COMMONWEALTH OF KENTUCKY
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VETO MESSAGE FROM THE
GOVERNOR OF THE COMMONWEALTH OF KENTUCKY
REGARDING HOUSE BILL 334 OF THE
2022 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 334 of the 2022 Regular Session of the General Assembly in its entirety.

House Bill 334 is yet another attempt at a power grab by the General Assembly that violates the Kentucky Constitution. House Bill 334 reorganizes the Executive Branch Ethics Commission, stripping the Governor's appointment authority of a majority of members of the commission and limiting his power to remove commission members. Under the bill, the Governor no longer appoints all members of the commission, but appoints only two of the seven members. The Treasurer, the Auditor of Public Accounts, the Commissioner of Agriculture and the Attorney General each appoint one member – all officers who are not the Chief Magistrate with the supreme executive power of the Commonwealth and who do not have the duty to take care that the laws are faithfully executed. House Bill 334 eliminates the existing board when it becomes effective. The Governor then appoints two of the seven new initial members, with the power to remove only those two members he or she appoints.

House Bill 334 infringes on the Governor's power as Chief Magistrate with the supreme executive power of the Commonwealth under Section 69 of the Kentucky Constitution by not providing the Governor with the majority of the appointments to the commission. The bill also prevents the Governor from carrying out his duty to take care that the laws are faithfully executed, violating Section 81 of the Kentucky Constitution. Just last year, the Jefferson Circuit Court held unconstitutional a bill reorganizing the Kentucky State Fair Board that took away the Governor's appointments and gave the majority of them to the Commissioner of Agriculture. In Beshear v. Stivers, Case No. 21-CI-002234, the court found:

"... the General Assembly's conferring to the Commissioner of Agriculture authority to appoint a majority of the KFSB's voting members places the Governor's power under a Section 91 executive officer and effectively prevents him from overseeing faithful execution of the law."

The court went on to rule:

“... instead of the legislature giving itself the power to determine how to execute laws relating to the KSFB, it gave it to an inferior Section 91 executive officer. Either way, the Governor suffered the same diminution to his power.

... HB 518's provisions that give the Commissioner of Agriculture exclusive authority to appoint a majority of the KSFB's voting members violates Sections 69 and 81 of the Kentucky Constitution. Similarly, HB 518's prohibition against the Governor making any appointments in 2021, even in the event of vacancy, is unconstitutional because it can lead to a scenario wherein a minority of his appointments are serving during 2021. While the legislature can transfer appointment powers between constitutional executive officers, at some point such transfer becomes unconstitutional when it infringes upon the Governor's power as chief magistrate. HB 518 does just that. It relegates the Governor's power as secondary to the Commissioner of Agriculture, and, to this end, inhibits his ability to ensure that the laws relating to the KSFB are faithfully executed. Indeed, taken to its logical conclusion, under the Defendants perspective, the legislature could (1) virtually eliminate all appointment authority of the Governor by granting it to other executive officers and (2) diminish his oversight to such a limited a degree that he is chief magistrate in name only. While this could be politically expedient, it is unconstitutional.”

The court noted that “the Governor cannot be placed in a position inferior to that of a Section 91 officer.”

House Bill 334 violates the Kentucky Constitution in the same ways.

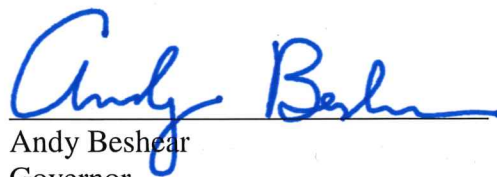
Further, the stated purpose of House Bill 334 of providing more input from other constitutional officers into the commission is misguided. In Executive Order 2008-454, former Governor Steve Beshear followed the commission's recommendation by making two appointments to the commission come from nominations made by the Attorney General and the Auditor of Public Accounts to increase and strengthen the commission's independence. Former Governor Matt Bevin rescinded those provisions of that executive order. After supporting statutory changes to again make two appointments come from nominations made by the Attorney General and Auditor – which the General Assembly refused to pass – I issued Executive Order 2020-423 to require that two members be chosen from nominees submitted by the Attorney General and Auditor. The General Assembly chose not to ratify that executive order.

Instead, in House Bill 334 the General Assembly erases the entire commission and recreates it with five of its seven members appointed by officers other than the Governor. The bill also purposefully gives every constitutional officer but the Lieutenant Governor an appointment to the commission. Intentionally excluding the Lieutenant Governor from making appointments shows the clear intent of the General Assembly in passing the bill, which is to ensure the majority of appointments to the commission are made by the same political party as the majority party of the legislature. House Bill 334 is yet another example of the General Assembly attempting to take away the Governor's powers and give them to officers who are not

the Chief Magistrate of the Commonwealth and who do not have the duty to ensure the laws are faithfully executed.

For these reasons, I am vetoing House Bill 334.

This, the 6th day of April, 2022.


Andy Beshear
Governor