



COMMONWEALTH OF KENTUCKY
OFFICE OF THE GOVERNOR

Andy Beshear
GOVERNOR

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VETO MESSAGE FROM THE
GOVERNOR OF THE COMMONWEALTH OF KENTUCKY
REGARDING HOUSE BILL 388 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 388 of the 2022 Regular Session of the General Assembly in its entirety.

I am vetoing House Bill 388 because it violates at least four sections of the Kentucky Constitution.

First, House Bill 388 violates Kentucky's strict separation of powers, set forth in sections 27 and 28 of the Kentucky Constitution. Under House Bill 388, the Government Contract Review Committee (GCRC) – a legislative body – has final say over personal service contracts, tax incentive agreements, and memoranda of agreement entered into by the executive branch. While current law provides that the GCRC's votes are recommendations only, House Bill 388 gives GCRC disapprovals final and binding legal effect. As the Kentucky Supreme Court has made clear, the General Assembly "ceases to exist at the moment of its adjournment," and "may not bestow upon its agent, the LRC, ... the power to legislate." Legislative Rsch. Comm'n By & Through Prather v. Brown, 664 S.W.2d 907, 915-16 (Ky. 1984). Like the power to veto regulations that the Supreme Court struck down in Brown, House Bill 388 is unconstitutional under sections 27 and 28 of the Kentucky Constitution.

Second, House Bill 388 violates section 81 of the Kentucky Constitution, because it prevents the Governor from fulfilling his duty to take care that the laws be faithfully executed. The General Assembly passes many laws that must be carried out by contractual agreements, and the Governor executes his constitutional duty by exercising his administrative power to contract through his appointed Secretary of the Finance and Administration Cabinet. Because House Bill 388 places the power of the Governor and his designees to enter into such contracts under the control of the GCRC and the Treasurer, it is unconstitutional.

Third, House Bill 388 violates section 69 of the Kentucky Constitution, which vests the Governor with the "supreme executive power." House Bill 388 provides that decisions of the GCRC to cancel contracts can only be set aside by the Treasurer, an independent constitutional officer who does not possess "supreme executive power." By providing this appellate power to the

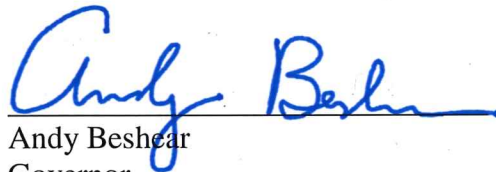
Treasurer, House Bill 388 places ultimate contracting authority with the Treasurer, rendering the Governor no longer "supreme."

House Bill 388 is even more unconstitutional than the version of it the legislature passed last year. Section 1.(6)(b) of the bill states that the provision allowing the Finance Secretary to appeal the decision of GCRC to the State Treasurer shall not apply to contracts, agreements, or memoranda of agreements based on the Governor's powers under Sections 75, 76, 77, 78, 79 and 80 of the Kentucky Constitution. As a result, the Finance Secretary must revise the contract or agreement to comply with the GCRC's objections or cancel the contract if the GCRC disapproved the contract. This gives final decision-making to the GCRC, even when the General Assembly is not in session and does not exist.

Finally, House Bill 388 also reflects poor fiscal policy. Under KRS 42.012, the Finance Secretary is the Commonwealth's chief financial officer who must at all times protect the financial interests of the state. Taking ultimate authority over these contracts away from the Secretary thus prevents the Secretary from fulfilling her statutory duties. Accordingly, House Bill 388 is inappropriate under Kentucky law.

For these reasons, I am vetoing House Bill 388.

This, the 1st day of April, 2022.


Andy Beshear
Governor