



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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July 25, 2018

Re: Executive Order 2018-586, Abolishing the Kentucky Occupational Safety and Health Standards Board

Dear Legislators:

On July 17, 2018, Governor Matthew G. Bevin issued Executive Order 2018-586, abolishing the Occupational Safety and Health Standards Board that the General Assembly established at KRS 338.051. The Governor then transferred all of the Board's powers to the Secretary of the Labor Cabinet, who is an "at-will" employee of the Governor.

As you are aware, the General Assembly determined in KRS 338.051 and KRS 338.061 that the promulgation and adoption of occupational safety and health regulations for Kentucky workers should be vested in an independent board, and not with the Governor or his direct employees.

In those statutes, the General Assembly further determined that appropriate regulations required the input of board appointees with specific backgrounds. KRS 338.051(1) provides that the Board consist of "the secretary and twelve (12) members equally representing industry, labor, agriculture, and the safety and health profession." It requires that these 12 members be appointed by the Governor for three-year terms, from a list of nominees submitted by bona fide associations representative of industry, labor, agriculture, and the safety and health profession. KRS 338.051(1).

Abolishing the Board harms the comprehensive framework of the Kentucky Occupational Safety and Health Program. It further contradicts and conflicts with the Kentucky State Plan that the General Assembly adopted and the U.S. Department of Labor approved. That Plan specifically includes the creation of the Standards Board.

The Governor's unilateral abolishment of the Standards Board is also contrary to the letter, intent, and framework that you established for the Board in KRS 338.051 and KRS 338.061. Indeed, the Governor's reorganization eliminates KRS 338.051 in its entirety, suspending or repealing a duly enacted statute.

It is clear that the legislature does not support the Governor's move. In this past legislative session, the original version of HB 314 abolished the Standards Board. However, the General Assembly rejected this abolishment and amended KRS 338.061 to maintain the Board's authority to adopt, modify, or repeal occupational health and safety standards through administrative regulations under KRS Chapter 13A. The Governor's action reverses and overrides this policy decision.

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While the Secretary of the Kentucky Labor Cabinet heads the Standards Board, the remaining twelve (12) members mentioned above represent labor, the safety and health profession, management, and agriculture. These are the men and women who are most knowledgeable of the safety and health needs of the workers of the Commonwealth. Under the Executive Order, the Secretary of the Labor Cabinet has the sole authority to make determinations affecting the safety and health of Kentucky workers.

I urge all of you, on behalf of your constituents and Kentucky workers, to contact the Governor and demand that he rescind Executive Order 2018-586. Abolishing the Standards Board eviscerates the ability of the Kentucky Occupational Safety and Health Program to keep Kentucky's workers safe and healthy.

Sincerely,

A handwritten signature in blue ink that reads "Andy Beshear". The signature is fluid and cursive, with the first letters of "Andy" and "Beshear" being capitalized and prominent.

Andy Beshear
Attorney General