



**MATTHEW G. BEVIN**  
GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
Frankfort  
Kentucky

**2016-849**  
**November 29, 2016**

**RELATING TO THE CREATION OF THE HOUSING, BUILDINGS AND CONSTRUCTION ADVISORY COMMITTEE AND THE ABOLISHMENT OF THE KENTUCKY BOARD OF HOUSING, BUILDINGS AND CONSTRUCTION; KENTUCKY BOARD OF HEATING, VENTILATION, AND AIR CONDITIONING CONTRACTORS; THE BOARD OF BOILER AND PRESSURE VESSEL RULES; THE MANUFACTURED HOME CERTIFICATION AND LICENSURE BOARD; THE KENTUCKY SINGLE FAMILY DWELLINGS ADVISORY COMMITTEE; THE ELECTRICAL ADVISORY COMMITTEE; THE ELEVATOR ADVISORY COMMITTEE; AND THE STATE PLUMBING CODE COMMITTEE.**

**WHEREAS**, it is the responsibility of state government to provide the citizens of this Commonwealth with a state government organizational structure that promotes economy and efficiency, and conducts regulatory practices in a consistent, ethical, and coordinated manner; and

**WHEREAS**, the regulation and enforcement of building, construction, and inspection standards and codes serves the public interest by providing for the protection of life and property in the Commonwealth; and

**WHEREAS**, the Kentucky Department of Housing, Buildings and Construction (“Department”) was created to administer and enforce laws related to the housing, building, and construction industries and to further the public interest; and

**WHEREAS**, the Department is currently burdened with duplicative layers of committees and boards, all of which review, comment on, or promulgate administrative regulations for their respective industry; and

**WHEREAS**, the Department’s staff serves as the staff to all of the various boards and committees and has been authorized by the boards and committees to act on their behalf; and

**WHEREAS**, the statutory procedure in KRS Chapter 13A for promulgating, revising, or repealing regulations provides a meaningful mechanism for the public,



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industry professionals, and interested trade groups to review and comment upon the Department's proposals, negating the need for duplicative review and comment by overlapping committees and boards; and

**WHEREAS**, the construction of homes, apartments, offices, and other buildings in a free market system requires the efficient and coordinated efforts of architects; plumbers; electricians; heating, ventilation, and air conditioning contractors; and other skilled tradesmen, developers, and business people; and

**WHEREAS**, the regulation and enforcement of building and construction standards should be informed by the same efficient and coordinated skill, expertise, and effort of those tradesmen, developers, and business people who strive to provide quality homes, apartments, offices, and other buildings; and

**WHEREAS**, it is in the public interest to create a new committee that brings tradesmen, developers, business people, and regulators together in a central forum to advise the Department on regulatory and enforcement matters; and

**WHEREAS**, it has been determined that a new Housing, Buildings and Construction Advisory Committee should be created and structured with a focused vision to assist the Department with innovative regulatory and enforcement ideas that govern the housing, building, and construction industries; and

**WHEREAS**, this focused and comprehensive vision shall be informed by the skill and expertise of industry professionals whose commitment to excellence in their trades dovetails with the very purposes served by the Housing, Buildings and Construction Advisory Committee; and

**WHEREAS**, the Department and the Housing, Buildings and Construction Advisory Committee should partner with tradesman, developers, and business people to



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**2016-849**  
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create a regulatory framework that may serve as a blueprint for the buildings that form the Commonwealth's communities, towns, and cities; and

**WHEREAS**, it has been determined that the Kentucky Board of Housing, Buildings and Construction; Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors; the Board of Boiler and Pressure Vessel Rules; the Manufactured Home Certification and Licensure Board; the Single Family Dwellings Advisory Committee; the State Plumbing Code Committee; the Elevator Advisory Committee; and the Electrical Advisory Committee should be abolished to promote greater economy, efficiency, and improved administration; and

**WHEREAS**, this reorganized structure will create a streamlined, cost-effective, and efficient method for administering regulatory legislation relating to housing, buildings, and construction, and will result in one advisory committee that is singularly positioned to deliver a regulatory environment that ensures the safety of the public while simultaneously fostering job creation and sound construction projects; and

**WHEREAS**, this reorganized structure meets the requirements of the United States Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101 (2015), in which the Court held that state government policy makers must actively supervise state boards for the state board to enjoy state-action antitrust immunity if the board is composed of active market participants, such as those licensed in the field a board regulates; and

**WHEREAS**, without this reorganized structure, members of the abolished boards could potentially be held personally liable for money damages for antitrust violations.



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**NOW, THEREFORE**, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution, Sections 69 and 81, and KRS 12.028, do hereby Order and Direct the following to be effective on December 1, 2016:

- I. The Kentucky Board of Housing, Buildings and Construction as established by KRS 198B.020 is abolished. The terms of the members serving on the Kentucky Board of Housing, Buildings and Construction as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- II. The Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors as established by KRS 198B.652 is abolished. The terms of the members serving on the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- III. The Board of Boiler and Pressure Vessel Rules as established by KRS 236.020 is abolished. The terms of the members serving on the Board of Boiler and Pressure Vessel Rules as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- IV. The Manufactured Home Certification and Licensure Board as established by KRS 227.560 is abolished. The terms of the members serving on the Manufactured Home Certification and Licensure Board as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- V. The Kentucky Single Family Dwellings Advisory Committee as established by KRS 198B.200 is abolished. The terms of the members serving on the Kentucky Single Family Dwellings Advisory Committee as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- VI. The State Plumbing Code Committee as established by KRS 318.071 is abolished. The terms of the members serving on the State Plumbing Code Committee as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- VII. The Elevator Advisory Committee as established by KRS 198B.4005 is abolished. The terms of the members serving on the Elevator Advisory Committee as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.
- VIII. The Electrical Advisory Committee as established by KRS 227.530 is abolished. The terms of the members serving on the Electrical Advisory



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**November 29, 2016**

Committee as it existed prior to the filing of this Order shall expire immediately upon the filing of this Order.

- IX. All duties, functions, rights, responsibilities, powers, obligations, records, equipment, staff, and supporting budgets of the Kentucky Board of Housing, Buildings and Construction; the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors; the Board of Boiler and Pressure Vessel Rules; the Manufactured Home Certification and Licensure Board; the Kentucky Single Family Dwellings Advisory Committee; the State Plumbing Code Committee; the Elevator Advisory Committee; and the Electrical Advisory Committee, as these boards and committees existed prior to this Order and including the right to promulgate regulations, to determine whether to issue, suspend, or revoke a license, and to determine whether to issue a penalty to a licensee, shall be transferred to the Department. This shall include all duties, functions, rights, responsibilities, powers, and obligations of these boards and committees as found in KRS Chapter 198B, KRS Chapter 227, KRS Chapter 236, KRS Chapter 318, and any other law.
- X. All administrative regulations promulgated under the authority of the Kentucky Board of Housing, Buildings and Construction; Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors; the Board of Boiler and Pressure Vessel Rules; the Manufactured Home Certification and Licensure Board; the Kentucky Single Family Dwellings Advisory Committee; the State Plumbing Code Committee; the Elevator Advisory Committee; and the Electrical Advisory Committee prior to the filing of this Order shall remain in full force and effect, shall be deemed promulgated by the Department, and shall be administered by the Department.
- XI. The Housing, Buildings and Construction Advisory Committee (“Committee”) is created and established within the Department. The Committee shall be comprised of seventeen (17) voting members. The Commissioner of the Kentucky Department of Housing, Buildings and Construction or the Commissioner’s designee, the State Fire Marshal or a representative of the Office of the State Fire Marshal, and the Director of the Building Code Enforcement Division of the Kentucky Department of Housing, Buildings and Construction shall serve as ex officio voting members. The remaining members shall be appointed by the Governor for a term of three years, except that the members first appointed shall serve as set forth below. At least one (1) member shall be a licensed heating, ventilation, and air conditioning contractor. At least one (1) member shall be a licensed plumber. At least one (1) member shall be a licensed elevator mechanic or elevator contractor. At least one (1) member shall be a licensed electrician. At least one (1) member shall be a licensed engineer. At least one (1) member shall be a licensed architect. At least one (1) member shall be a manufactured or mobile home retailer or certified installer. The remaining seven (7) members shall have experience in the housing, building, or construction industries. Any member appointed to fill a vacancy occurring other than by



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**EXECUTIVE ORDER**

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Kentucky

**2016-849**  
**November 29, 2016**

expiration of a term shall be appointed for the remainder of the unexpired term.

- XII. The Committee shall meet at least quarterly. A majority of the members of the Committee shall constitute a quorum for the transaction of business. The Commissioner of the Department or the Commissioner's designee shall serve as chair of the Committee. The Committee shall annually elect a member to serve as vice chair. In the event that a vote on a matter before the Committee results in a tie, the Commissioner or the Commissioner's designee shall cast an additional deciding vote.
- XIII. Committee members who are not full-time state government employees shall be compensated for their time when attending Committee meetings or performing official duties as directed by the Committee at the rate of fifty dollars (\$50) per day. Members of the Committee shall be reimbursed for all expenses paid or incurred in the discharge of official business consistent with the reimbursement policy for state employees.
- XIV. The Committee shall provide ongoing advice and input to the Department but shall not become directly involved in the licensing and regulation of housing, buildings, and construction matters by the Department. The Committee shall be given thirty (30) days to review and comment on a proposed regulation before the regulation is promulgated, amended, or repealed, except in the case of an emergency regulation.
- XV. The Public Protection Cabinet, the Personnel Cabinet, the Finance and Administration Cabinet, the Office of the State Budget Director, and all other agencies necessary to effectuate this Order shall take all necessary action to do so.
- XVI. I hereby appoint the following to serve as members of the Committee:

For a term ending November 30, 2017:

James Gibson, Benton, Kentucky  
James Piper, Lexington, Kentucky  
Sherry Redmon, Russell Springs, Kentucky  
Ricky Russ, Louisville, Kentucky

For a term ending November 30, 2018:

James Bowlds, Lexington, Kentucky  
Leonard Heuser, Louisville, Kentucky  
Keith Legge, Versailles, Kentucky  
Anthony Senninger, Louisville, Kentucky  
Jordan Yeiser, Lexington, Kentucky



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GOVERNOR

**EXECUTIVE ORDER**

**Secretary of State**  
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Kentucky

**2016-849**  
**November 29, 2016**

For a term ending November 30, 2019:  
Adam Harlow, Glasgow, Kentucky  
Karen Pannell, Owensboro, Kentucky  
Charles Mosley, Bowling Green, Kentucky  
John Simms, Bowling Green, Kentucky  
Johnathan Thomas, Louisville, Kentucky

Please issue commissions to them.



MATTHEW G. BEVIN, Governor  
Commonwealth of Kentucky

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ALISON LUNDERGAN GRIMES  
Secretary of State



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**2016-849**  
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**REORGANIZATION PLAN**

It is this Administration's policy 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 following Executive Order to temporarily reorganize and consolidate eight administrative boards and committees into one advisory committee until subsequent ratification or non-ratification by the General Assembly.

**EXPLANATION OF CHANGE**

This reorganization abolishes eight administrative boards and committees—the Kentucky Board of Housing, Buildings and Construction; the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors; the Board of Boiler and Pressure Vessel Rules; the Manufactured Home Certification and Licensure Board; the Kentucky Single Family Dwellings Advisory Committee; the State Plumbing Code Committee; the Elevator Advisory Committee; and the Electrical Advisory Committee (collectively, the "Former Boards").

The Former Boards were comprised of eighty-one members. The former Board of Housing, Buildings and Construction had twenty-one members. The former Manufactured Home Certification and Licensure Board consisted of ten members. The former Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors, the former Elevator Advisory Committee, and the former Kentucky Single Family Dwellings Advisory Committee each had eight members. The former Board of Boiler and Pressure Vessel Rules and the former State Plumbing Code Committee had seven members each. The former Electrical Advisory Committee consisted of twelve members.

This reorganization promotes greater economy, efficiency, and improved administration of state government. The functions of the Former Boards have been consolidated and transferred to the Department of Housing, Buildings and Construction (the "Department"). Consolidating the functions of the Former Boards and transferring them to the Department will provide enhanced delivery of constituent services, improve timely adjudications of licensing and permitting disputes, create cost savings for the Commonwealth, and improve the administration of government.

The new Housing, Buildings and Construction Advisory Committee (the "Committee") is created within the Department and consists of seventeen members drawn from the industries previously represented by the Former Boards. The Committee consists of the Commissioner of the Department of Housing, Buildings and Construction, the State Fire Marshal or a representative of the Office of the State Fire Marshal, and the Director of the Building Code Enforcement Division at the Department of Housing, Buildings and Construction, seven citizen members with experience in the housing, building, and construction industries, and at least one architect, one engineer, one mobile or manufactured home retailer or certified installer, and one expert from the heating, ventilation, and air conditioning, plumbing, elevator, and electrical trades.





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The abolishment of the Former Boards and the creation of the new Committee structure is also necessitated by the United States Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101 (2015). In that case, the Supreme Court held that state boards composed of market participants (*i.e.*, licensees in that respective field) may be subject to antitrust liability unless the state actively supervises the board. This reorganization meets the requirements of the Supreme Court's decision by transferring the final authority to promulgate administrative regulations, issue, suspend, or revoke licenses, and issue penalties from the Former Boards (in some instances) to the Department.

### REDUCTION IN EXPENDITURES

This reorganization will result in cost savings to the Commonwealth in the form of reduced expenditures for salaries and travel expenses of board members. Prior to this reorganization, the Commonwealth reimbursed members of the Former Boards who were not full-time state employees for the expenses they incurred to attend meetings. In fiscal year 2016, this expenditure totaled more than \$13,000. Prior to this reorganization, the Commonwealth also paid a per meeting salary to the Former Board members. In fiscal year 2016, this expenditure totaled more than \$5,000. In total, the Commonwealth paid nearly \$19,000 to members of the Former Boards for salaries and travel expenses in fiscal year 2016.

This reorganization is expected to reduce the cost for *per diem* salaries and travel expenses paid to members by approximately eighty percent. This reorganization is anticipated to save the Commonwealth approximately \$15,000 annually.

### IMPROVEMENT

This Reorganization will improve management and increase efficiency by vesting regulatory, licensing, and enforcement authority in a single administrative body—the Department. The Department will oversee the Commonwealth's housing, building, and construction industries, which were previously regulated by eight decentralized, and sometimes duplicative, administrative bodies that met at different times of the year. This reorganization will also create a single administrative advisory committee, comprised of industry experts and trade representatives, to collaboratively work with the Department to develop regulatory and enforcement mechanisms that govern the Commonwealth's housing, building, and construction industries. The Committee will gather stakeholders from the industries at least each quarter to collectively address the issues and concerns facing the industries.

This reorganization will also facilitate communication among the various industry trade groups and professional associations. Engineers, architects, and tradesman will now have a unified forum to come together to consider how best to regulate this field. The Committee will provide a forum where, for example, a plumber can explain to an engineer, electrician, or architect how a regulatory change in a different profession impacts his or her work as a plumber, and more importantly, how it ultimately affects the public. This will increase understanding and collaboration among the various groups and produce regulations informed by a broad cross-section of stakeholders.



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Kentucky

**2016-849**  
**November 29, 2016**

Previously, the Department of Housing, Buildings and Construction's employees were required to expend valuable time and energy to prepare for and attend the meetings of the Former Boards. This reorganization will permit these public servants to make more efficient use of their time and energy in serving the Department's mission and to better serve the taxpaying public.

Finally, this reorganization should eliminate the potential for personal antitrust liability for members of the abolished boards and the new Committee. States across the country are reviewing and changing board requirements and composition in light of the United States Supreme Court's decision in the *North Carolina State Board of Dental Examiners* case. These changes are necessary to protect board members and so that the Commonwealth may continue to recruit qualified individuals to serve in board capacities.

PERSONNEL IMPACT

This reorganization will reduce the number of board members from eighty-one to seventeen. This reorganization will not result in a reduction in force for any KRS Chapter 18A merit employee.

The Former Boards had no full-time personnel. Rather, staff of the Department of Housing, Buildings and Construction provided administrative support to the Former Boards, which they will continue to do for the Committee.

This reorganization will, however, allow Department staff to achieve significant time savings and efficiencies. The staff acted as the Former Boards' designees on a day-to-day basis to carry out the Former Boards' regulatory and enforcement authority. Employees who were previously required to devote considerable time and energy to prepare for and attend the meetings of the Former Boards will now be able to more efficiently use their time and energy to serve the Department's mission, the Committee, and the taxpaying public.