

The Kentucky Conservation Committee

Guardian



**A Review of Kentucky's Commitment to Protecting
Its Environment and Conserving Its Natural Resources**

P.O. Box 1152, Frankfort, KY 40602

Spring 2000

How We Did on Our Priority Issues

Before each session, we establish our priorities based on what we anticipate to be the major environmental issues. Of course, many unanticipated issues arise each session, and we spend a lot of energy on them. In this article we examine the activity on our priority issues. On page 5, we look at important activity generally not related to our preset priorities.

Priority 1. (Tie) "CAFOs" and "Smart Growth"

Smart Growth-A package of legislation comprising House Bills 521, 522, 523 and 524 was introduced by Reps. Jim Wayne, John Adams, Joni Jenkins and Steve Riggs.

HB 522 would have provided for training and ethics requirements for planning commission members as well as staff. It passed the House with a Committee Substitute deleting provisions of the bill relating to planning commissioners, providing for staff training only. The bill died in the Senate State and Local Government Committee.

HB 521 implemented tax incentives to preserve historic structures. It had additional sponsorship from Robert Damron and Mary Lou Marzian. The bill was never voted on in the House Appropriations and Revenue Committee.

HB 523 providing a tax exclusion for first time farmers and a program for the promotion of farmers' markets was never voted on in the House Agriculture and small business committee.

Rep. Wayne spent a tremendous amount of time and energy drafting, redrafting and amending but still could not satisfy the critics of HB 524. It required planning and zoning in all counties. The Committee Substitute removed the definition of scenic, deleted "limited" service area, substituted "coordinated service area", and removed all incentives. HB 524 made it out of the House Local Government Committee and was then reassigned to House Appropriations and Revenue too late for further consideration.

Future Action: The Governor's staff has indicated that he might be inclined to back an initiative for statewide planning in the 2002 Session. Ideally, a bill would be pre-filed so that additional sponsors can get on board early. Financial incentives are required to garner support of cities and counties.

Related Action: HB 539 would have broadened citizen membership on the Jefferson County Planning Commission and HB 938 would have allowed zoning variances to be heard by Planning Commission rather than the Board of Zoning Adjustment. KCC partner Community Leadership Alliance (CLA) requested KCC keep a close tab on these bills as anti-neighbor amendments were anticipated and eventually surfaced. Both bills, opposed by KCC in their final form, were held up in Senate State and Local Government.

Opposed by KCC, HB 957, overriding the local floodplain ordinance in Jefferson County that a citizen panel (including CLA) had developed after the 1997 flood, became law.

Continued on pg 2

KCC Annual Meeting

**Shaker Village (Near Harrodsburg)
Saturday, September 16
9:00 AM - 3:00 PM**

*Learning from the 2000 Session
Planning for the 2002 Session*

Strategy Session
On

Bottle Bill
Smart Growth
Brownfields

Environmental Education Centers
CAFOs

Scorecard

KCC Stance	Became Law	Died or Defeated	Percent Favorable
Strong Oppose	3	8	73%
Oppose	11	20	65%
Support	18	29	38%
Strong Support	3	10	23%
Overall			52%

The table above attempts to evaluate the session numerically by the bills that we were tracking. In terms of results we considered favorable, the session was about even. Numbers don't show the whole picture, as there were some very bad bills that were defeated.

CAFOs-Confined Animal Feeding Operations were the subject of the session's longest committee meeting after the introduction of the emergency regulations by the Governor. Kentuckians for the Commonwealth (KFTC), Community Farm Alliance (CFA), and Democracy Resource Center (DRC) mobilized a small army of farmers and concerned citizens to defeat House Bills 665, 666, 940 and 948.

HB 665 and 666, sponsored by Reps. Tom Mckee and Carolyn Belcher, appeared to be simple bills defining "agriculture". According to Tom FitzGerald, "HB 666 would have broadened agricultural and domestic use exemptions to state water withdrawal permitting laws to include commercial nurseries and industrial agriculture operations". HB 665 would have also broadened the definition of agriculture.

HB 940 would have limited the state regulations on CAFOs to comply with the federal law or regulation, but would have not allowed the NREPC to impose stricter requirements than that imposed by the federal law or regulation. Federal standards are still being developed and they do not require "integrator liability" as in the state emergency regulations.

HB 948 specifically exempted integrators of CAFOs from liability. House Leadership recommitted HB 665, which had been amended to incorporate HB 940, to House Appropriations and Revenue at the end of the Session, which effectively killed the bill. HB 666 and 948 did not make it out of Committee.

Future Action: The public hearings on the CAFO regulations continue on June 29th at 6:30 PM CST at the Madisonville Technology Center's Byrnes Auditorium, 750 North Lafoon Drive, Madisonville, Kentucky. The subject of this next public hearing will be the recently announced ordinary regulations, which differ from the emergency regulations by giving poultry concentrated animal feeding operations until October, 2001 to provide permanent litter storage structures. The proposed rule clarifies that siting criteria do not apply to permanent litter storage structures on poultry CAFOs in existence prior to February 14, 2000.

Related Action: As the Governor stated in his Veto message, "Senate Bill 207 continues recent legislative efforts to assume the traditional executive authority of interpreting and enforcing the laws of the Commonwealth. If allowed to become law ...[SB 207] would attempt to prohibit the executive branch from imposing fines for violations of emergency regulations....[and] vest the regulations compiler with the discretion to refuse an emergency regulation....Such authority is...unconstitutional ... for an unelected employee of the legislative branch." The Governor's veto held up.

Priority 3: Litter Control

House Bill 1, introduced by Reps. Greg Stumbo, Harry Moberly and Paul Bather, provided for mandatory collection, an advance disposal fee on fast-food packaging and a container deposit program. HB 1 was defeated 41-54 on the floor of the House but it had received a full and fair hearing before the House A& R Committee. Numerous stump speeches and maneuvering of amendments occurred on the floor (primarily courtesy of Rep. Hoby Anderson).

House Bill 745, which called for a constitutional

amendment on a statewide container deposit program, passed the House 62-27 with 11 abstentions. The Senate Agriculture and Natural Resources Committee did not post HB 745 for a vote.

Future Action: Mr. Stumbo has committed to pre-filing both HB 1 and HB 745 for 2002. Mandatory collection is supported by the Governor. Rep. Stumbo should be thanked for his leadership on this issue. His office number is (502-564-7460). When calling ask Barbara Rhoads how your legislator voted on HB 1 and HB 745 or call Wade at 502-569-1541 and he will look it up for you. The Container Recycling Institute needs help paying for the advertising campaign in support of HB 1. Send checks to Pat Franklin at the Container Recycling Institute, 1911 North Fort Myer Drive, Suite 900, Arlington, Virginia 22209-1603.

Related Action: The Executive branch budget, House Bill 502, contained an additional \$300,000 each year to continue the Cabinet's anti-litter and illegal dumping campaign.

The Budget also included new language allowing acceptance of private donations of money, goods and labor for the Adopt-a-Highway program. Executive branch ethics law currently prohibits this. Rep. Fred Nesler introduced HB 818 to create an Adopt-A-Highway advisory committee and Adopt-A-Highway Fund under the Transportation Cabinet with \$500,000 budgeted in each year for roadside litter cleanup promotion. It died in the Senate Rules Committee.

Rep. Tom Riner introduced HB 1013 to help those communities negotiating host agreements with landfill companies. The bill would have required the state to provide communities copies of all other host agreements, would have required negotiations to be held in public and would have required a public hearing on any draft host agreement. It died in the House Natural Resource and Environment Committee.

Sen. Marshall Long and Sen. Ernie Harris introduced SB 179 that would have clarified that noise, light and traffic congestion are among the conditions that may pose a nuisance from landfills. It too died in the House Natural Resource and Environment Committee.

Priority 4: Campaign Finance Reform

Numerous bills were introduced and closely followed by our friends from League of Women Voters, KFTC, Clean Money KY and Common Cause. The issue of Campaign Finance Reform heated up after a firestorm of protest over a Republican Party fund-raiser held during the early part of the Session on the grounds of the Old Capitol.

SB 2, introduced by Sen. David Williams with much fanfare, would have required state contractors to certify they had not contributed to statewide candidates or parties. Like many bills (HB 339, HB 512, HB 750) this was caught in partisan bickering and passed one chamber but not the other.

HB 339 would have made it illegal to use state property to raise campaign money. HB 512 dealt with gifts, conflicts of interest, and financial disclosure in the executive branch.

House Leadership introduced HB 750 to clarify the definition of independent expenditure and coordinated expenditure because of court rulings that existing campaign law was vague and unclear.

HB 280 was introduced to specifically prohibit

legislators from soliciting lobbyists during the legislative session but died in the House State Government Committee.

Bills that did pass included HB 2, HB 510, HB 511, HB 712 and HB 939.

HB 2, introduced by Reps. John Vincent, Sheldon Baugh, Paul Marcotte and Charles Walton, prohibits the giving of anything of value to a person signing a petition to put a public question on an election ballot.

HB 510, introduced by Rep. Wayne, prohibits gifts from state contractors to state agency employees with exemptions for family members and disclosure of gifts that do not create appearance of impropriety.

HB 511, also introduced by Rep. Wayne, amends the executive branch ethics code; streamlines reporting for executive branch lobbyists, and allows for state employees to accept tickets to sporting events as long as state employee pays the face value for the ticket.

HB 712, introduced by Reps Robert Buckingham and Charles Geveden, amended the legislative ethics code to insure an alleged violator may not be fined without an opportunity to be heard before the commission.

HB 939, introduced by Rep. Bob Heleringer, provides for electronic filing of campaign finance reports and public availability of campaign reports electronically. Electronic compliance is encouraged but not mandated until funds and formats become available.

Related Action: SB 64, to reorganize the Legislative Ethics Commission, was introduced by several minority members and did not advance very far in the process. Nor did HB 513, introduced by Rep. Wayne, it would have prohibited the promotion or recruitment of family members by state employees to executive branch positions that the state employee supervises or manages but would allow family member to be employed by the same agency as state employee.

Priority 5: Funding for Environmental Education Centers

Although the development of environmental education centers was mandated by prior legislative enactment and universities have complied with this mandate, no funding was included in the budget. Several legislators including Rep Buckingham and Rep. Gippy Graham were very supportive of the need for this funding. Former Deputy Secretary Greg Higdon, who is now a lobbyist with Associated Industries of Kentucky, also spent considerable time attempting to get funding added to the budget for this item. The Environmental Quality Commission was called upon to provide a forum on the need for funding the environmental education centers. The forum provided an opportunity for the Kentucky Association of Environmental Educators to organize a rally on the Capitol steps.

Future Action: The report "LAND, LEGACY and LEARNING" is available from the Kentucky Environmental Education Council at 800-882-5271. Contact Jane Eller, Director or Jo Carol Roberts, Admin Asst. Make sure your legislator has a copy and get them to read it!

Priority 6: Economic Accountability-HB 490 would have required that companies that receive public subsidies pay a

living wage, provide health care benefits, have clean environmental, worker safety and fair employment records, and not be relocating jobs from another plant. Job subsidies would have been capped at \$35,000 per job, and more public disclosure would have been required. It never made it out of the House Economic Development Committee.

HB 983, introduced by Rep. Wayne, also required reporting from companies applying for economic development assistance. Reports would have included the lowest hourly wage to be paid to new employees, the nature of health insurance for new employees, whether the company has been in violation of any environmental, occupational health and safety, or equal employment opportunity laws in the last five or ten years, and progress reports on gains (or losses) in employment, wages paid, health, safety, and environment. The reports would have been public under open-records law. In addition, the Cabinet for Economic Development would have had the goal of creating jobs that pay a minimum wage of at least 125% of the federal poverty level for a family of four with employee benefits, including health insurance. They would also be required to protect the environment. KFTC, DRC and Jobs with Justice had an overwhelming presence at the hearings for these bills and were appropriately disappointed that neither made it out of committee.

Related Action: A recent state court ruling says the Cabinet for Economic Development must reveal details on how public moneys are used.

Priority 7: Enhance the Kentucky River Authority

HB 543, introduced by Rep. Harry Moberly and a host of co-sponsors, reinforces the independent decision making status of the KRA, allows the KRA to establish water use fees, requires coordinated planning with the Natural Resources and Environmental Protection Cabinet, requires the long-range water resources plan to be implemented over a six year period with those plan elements authorized during the 2000 General Assembly to be reported on during the interim. It also allows the KRA to review and comment on requests for transfers between water utilities within or into the Kentucky River Watershed. Former Board member Chetan Talwalkar helped KCC stay on top of this issue as it moved through the process. Mr. Moberly offered an amendment to broaden the exemption from the water use fees at the request of Boyle County delegation but that amendment failed. This bill was passed by both House and Senate unanimously. Senate Companion, SB 192, introduced by Sen. Ed Worley, also passed both House and Senate unanimously.

Related Action: The budget included \$156,000 in new money for debt service on bonds totaling \$1.5 million to be used for design and environmental analysis of improvements to Kentucky River Dam 10 and for geotechnical evaluation of Dam 9. These improvements aim to shore up the crumbling dams and increasing water storage on the Kentucky River. Expansion funds were also included for debt service on a \$2 million bond issue to repair other state-owned dams.

Priority 8: Control of Exotic Species

No specific legislation was proposed although noxious weeds have been of concern to legislators in the past. There was

some discussion about encouraging native species planting but that was very limited as it related to reclamation.

Related Action: SB 216 introduced by Sen. Joey Pendleton and Sen. David Boswell creates a Natural History Museum for Kentucky. Dr. Bill Martin, ECU Director of the Division of Natural Area, personally shepherded this through all the committees to a successful passage. The bill included the creation of a repository of specimens of the state's flora, fauna, fossils, minerals, archeological remains and other natural features. A survey of our existing flora and fauna would ideally become a tool to demonstrate how exotic species are out-competing our native species and thereby provide further awareness of the issue. The museum also has an educational mission which would in the long term enhance awareness of Kentucky's environment and the need for its protection.

Priority 9: Mountain Top Removal

A variety of bills were introduced that concern the future development of coal resources, but the most important action has come from the U.S. Office of Surface Mining (OSM). In its directive to the Kentucky Department of Surface Mining and Reclamation (DSMRE), OSM declared DSMRE failed in its role as permitting authority when it approved post-mining land to be used as fish and wildlife habitat and did not require its return to approximate original contour as per federal law. Further court action is awaiting the appeal of a decision in West Virginia that has declared filling streams with debris to be against federal law as well.

Related Action: HB 599 became law. It allows a mining reclamation violation to be terminated if a landowner refuses to allow a coal company onto land to correct a violation and preserves all legal rights of the landowner.

HB 642 broadens the exemption for non-commercial removal of coal incidental to construction from 250 tons to 2000 tons. Unlike other exemptions from mining laws, which require individual Cabinet approval of an exemption from the mining laws and place the burden on the applicant to demonstrate entitlement to an exemption, this legislation does not. This bill passed even though Tom FitzGerald testified before committee that this law will likely be set aside as being inconsistent with federal law.

HB 792 passed, affecting the practice of constructing roads above mine highwalls in steep-sloped mining areas. The law and regulations prohibit disturbances above the highwalls

unless necessary to accomplish reclamation. Testimony by OSM at the committee hearings indicated that frequently these roads did not necessarily lead anywhere, contrary to coal industry testimony that landowners requested these roads. The bill leaves approval of these roads to the discretion of NREPC under specified conditions demonstrating environmental improvement.

HB 805 and HB 806 provide incentives and tax credits for use of Kentucky coal and the development of coal-fired electric generation in coal producing counties. It remains to be seen what effect this type of legislation, which many other states have, will have on the development of Kentucky coal resources.

HB 872, which did not pass and needs to be reintroduced, would have closed a loophole in Kentucky law that allows the owner of a little as 1/20th of an interest in undivided property to strip mine that land without the permission of, and over the objections of the other (majority) owners. Ironically, HB 616 passed and closed this legal loophole with respect to oil and gas drilling.

Priority 10: (Tie) Defend Forestry Regulations and Fund Farmer's Markets

Forest Regs: The anticipated attack on the Forest Conservation Act never materialized. The budget included funds for assistance with best management plans under the Forest Conservation Act.

Related Action: New funding of \$600,000 for the acquisition of lands by the Kentucky Nature Preserves Commission was provided to add to Blanton Forest. Funds were provided to pay the debt service on the acquisition of the timber and coal rights to the Black Mountain summit forested ecosystem. \$416,000 was provided to support a bond issue of \$1.5 million for a new VHF radio system to help the Division of Forestry fight forest fires. An additional \$400,000 was included each year of the budget to support operating expenses for reforestation programs. Special thanks to Rep. Rocky Adkins who bird-dogged this issue throughout the budget process.

Farmer's Markets-HB 523 introduced by Reps. Jim Wayne, John Adams, Joni Jenkins and Steve Riggs would have provided grants for community farmer markets. Existing funding with the Department of Agriculture is limited to unexpended end-of-the-year money. This system does not provide any lead time to the groups planning the development of farmer markets. It is possible some tobacco settlement money could be used to develop farmer markets.

From the President

As we put together this issue of the *KCC Guardian*, suddenly the number of bills we dealt with this session seems overwhelming. Just how do we get a handle on whether it was a good or a bad session? The numerical analysis on page 1 would say it was even, but I come away from the session with a sense that it was better than just even. No, we didn't get a bottle bill, but we got a bottle bill farther than ever in 24 years of trying, and we did it against the strongest, most highly financed opposition ever. All but a few of the outrageously bad bills died. There were some nice little surprises like establishing a Kentucky Natural History Museum and setting up a Rails to Trails office in State Government. We didn't get funding for environmental education centers, but the hazardous waste generator fee stays intact for two more years and we didn't see the Forest Stewardship Act torn down either. The details are all here for you to read.

The biggest impression I come away from the session with is what a small number of dedicated people can accomplish. The level of support from KCC's members was incredible both financially and in contacting legislators. You can take the credit for making this the great organization that it is. --Ray Barry

Other Important Legislative Action

Land Preservation/Protection: On the plus side: SB 147 passed, allowing Department of Fish and Wildlife to establish a wetland mitigation bank. Senator Sanders and KDFWR included an amendment drafted by Kentucky Resources Council to clarify that preservation of wetlands is not eligible for banking.

The "ownership and control" language that blocks outlaw coal companies that own or control other companies from getting new permits by creating dummy corporate applicants was re-enacted.

The Heritage Land Conservation Fund received \$101,000 for additional staff and a vehicle.

On the minus side: no funding was provided for positions at the Nature Preserves Commission.

Good Government: HB 417 became law, requiring cell tower applicants to provide notice to contiguous property owners in unincorporated areas, including rural service areas of urban counties.

Fortunately HB 481, which would have proposed a constitutional amendment that would grant the legislature the power to veto administrative regulations during the interim between legislative sessions, failed to pass the House.

Jefferson County was the big loser as the County Judge actively encouraged legislative intrusion into the county management of both the vehicle emissions testing program and the floodplain insurance program. Legislative enactments weakened both programs:

Pollution Control: SB 197 passed, expanding allowable Local Match Participation Program projects to include straight sewage pipe removal and mitigation, in addition to flood control planning and mitigation.

SB 300 passed, strengthening penalties and registration requirements for pesticide applicators and sales agents. After negotiation by Kentucky Resources Council with the Department of Agriculture, they agreed not to include a preemption of local government regulation of pest control pesticides and lawn care pesticides.

HB 643, the state hazardous site cleanup fund was reauthorized for two years with no new exemptions. Rep. Harry Moberly turned back attempts by big hazardous waste generators to reduce their fees, and by the steel industry to exempt their arc furnace dust from the fee.

The West Louisville Environmental Justice/Air Pollution project was reauthorized for \$300,000 to support continued air toxics monitoring:

HB 306, a bill intended to facilitate northern Kentucky counties doing away with the vehicle emissions testing program for the northern Kentucky air quality region, died in committee

HB 391, which would have exempted gravel operations from state mining laws, resulting in the exemption of thousands of acres of gravel mines from any regulation for water pollution, reclamation, or blasting, died in Committee.

SB 290, the so-called hazardous waste "voluntary cleanup" bill, died because the sponsor wouldn't accept a proposed amendment to assure that mistakes made in approving closure plans would cause the site closure decision to be reopened in order to keep the mistakes from harming people.

SB 14 exempts not only motorcycles, but also 20,000 commuter vehicles, private buses, and pre-1970 cars from Jefferson county's Vehicle Emissions Testing program. The effect is to further jeopardize Jefferson County's attempt to achieve clean air. The House counterpart, HB 236, which exempts only motorcycles, was signed into law as well.

Parks/Recreation: HB 221, a bill establishing a state Government position to be the central coordinating point for information on abandoned railroads, and their status was signed into law. \$422,000 was appropriated to rails to trails in the budget for the next two years. The Kentucky Rails to Trails Conservancy worked very hard on shepherding this through the legislative process.

Public Health/Safety: HB 579 contains the negotiated changes sought by various interests in order to modify the statute addressing disposal of chemical agents stored at the Blue Grass Depot in Richmond.

Nature/Wildlife: HB 722 will make easier the prosecution of "spotlighting" of animals.

Environmental Justice: So-called "takings" bills, HB 446 and SB 239, were stopped by House leadership and House Judiciary Chair Gross Lindsay. The bill would have allowed any permit applicant to challenge any permit conditions that would even trivially affect their "property" and would have allowed them to demand a takings assessment. Regulation in the public interest would have been severely impeded by requiring "takings assessments" for government actions to control pollution, or to protect children, workers, and others. The Senate version of the bill, sponsored by Sen. Ernie Harris, died in House Judiciary Committee; the House version, sponsored by Perry Clark, was killed in House Rules by the House leadership.

\$20 million needed to accelerate the buyout of thousands of families now suffering daily the noise of the newly expanded Louisville Airport was not authorized.

Scenic: SB 172, co-sponsored by Sens. Harris and Boswell, would have allowed cutting and removal of public trees and shrubs in highway rights-of-way if they interfered with billboard visibility. Thanks to Rep. Greg Stumbo and Scenic Kentucky, public trees in highway rights-of-way won a reprieve. Rep. Stumbo explained his decision to send the bill back to committee to die, by quoting former Rep. Paul Mason as saying that "laws are made by fools like me but only God can make a tree."

Kentucky Conservation Committee
PO Box 1152
Frankfort, KY 40602

Mark Your Calendar

June 17 -- Kentucky River Clean Sweep - *To find your county contact, call Sue Ann Elliston, KRA, (502)563-2866.*

June 17 -- Ohio River Sweep

June 27 -- Public Meetings on the EIS for Jackson County Lake - Jackson County Middle School on US 421 10:00 AM and 7:00 PM. EIS is available at <http://www.usda.gov/rus/water/ees/deis-ic.htm>.

June 29 -- The public hearings on the CAFO regulations continue at 6:30 PM CST at the Madisonville Technology Center's Byrnes Auditorium, 750 North Lafoon Drive, Madisonville, Kentucky. Comments due July 10.

June -- (date Unknown) KYDOT announces preferred route of I66 between London and Somerset.

September 16 -- KCC Annual Meeting Shaker Village (Near Harrodsburg) at 9:00 AM *Learning from the 2000 Session, Planning for the 2002 Session* Strategies for Bottle Bill, Smart Growth, Brownfields, Environmental Education Centers, and CAFOs.

The Earth Needs a Friend in Frankfort

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\$100 (Organization) \$365+ ("365 Club")

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