

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 2001

Turning up the Heat

The KCC board has been evaluating how to make the organization more effective and influential in protecting Kentucky's environment. Discussions have zeroed in on two obvious areas where we can make substantive improvements. The first is membership growth. Our membership is not close to what it can and should be in terms of numbers and in terms of geographic distribution.

Members and their geographic distribution are important for two reasons. The first is that it is the grass roots letters and phone calls that put our issues on the radar screen. If we can generate large numbers of calls to legislators, our lobbyist's stature is greatly elevated. Lobbyist contact is more productive with a constituency that the legislators can feel. We are strong in the major metropolitan areas, but we are weak in the rural areas and small towns.

The second reason membership is important is, of course, financial. We need the dues. With annual sessions our costs are nearly double what they have been in the past.

The board is looking for ways to recruit new members, especially in

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Kentucky's First "Odd" Year Session

With the first odd numbered year session now safely behind us, it's time to take a look at the results. As usual, we have a good news/bad news story. Starting first with the good news:

In the Plus Column

Senate Bill 2, a voluntary remediation/brownfields bill became law. Tough negotiation by Tom FitzGerald of the Kentucky Resources Council backed with constituent phone calls stopped a form of the bill that would have endangered neighbors and opened loopholes for polluters. Efforts were complicated by political bickering about who would get credit. Sen. Leeper ended up as the sponsor of the bill that looked more like Rep. Bather's committee substitute than the dangerous one that Leeper originally introduced.

Rep Jim Wayne's House Bill 55, establishing training requirements for planning commissioners and board of zoning adjustment members, and planning staff, was signed by the Governor. This is one part of Wayne's smart growth package of bills, and the only one to move out of committee.

House Bill 176 eliminating both setbacks and integrator liability for large swine and poultry operations died in committee.

Data obtained from voluntary environmental audits can now be used in criminal cases, closing a loophole in the law, thanks to the passage of HB 143. EPA had threatened to remove Kentucky's authority to implement the Clean Air Act because of the breadth of our former "audit privilege" law.

Three bills to limit or stop vehicle emissions testing programs designed to improve air quality in Louisville and Northern Kentucky were defeated.

Anti-regulation legislators were on the attack. They introduced three bills limiting the Governor's emergency regulation power, but none were approved. These bills would also have imposed "no more stringent than" provisions across-the-board in state regulations. The attack on "emergency regulations" has been fueled by Environmental Protection Cabinet's use of "emergency regulation" authority to impose

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KCC Annual Meeting

Plan Now to Attend!

Shaker Village

(Near Harrodsburg)

Saturday, September 15

9:00 AM - 3:00 PM

Learning from the 2001 Session

Planning for the 2002 Session

Lunch Provided

Scorecard

KCC Stance	Became Law	Died or Defeated	Percent Favorable
Strong Oppose	2	4	67%
Oppose	0	9	100%
Support	4	16	20%
Strong Support	3	2	60%
Overall			50%

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. As usual the numbers reflect that fact that a lot of bills just die in committee.

2001 Session Review, Cont.

regulations on Concentrated Animal Feeding Operations (CAFO's).

In another attack on this type of regulation, Senate Bill 172 proposed to amend the constitution to give legislators the power to veto regulations during the legislative interim. It did not emerge from committee. The amendment would have had a detrimental effect on environmental protection regulations like the CAFO regulations, among others.

The anti-regulators also put forth Senate Bill 144 requiring an unreasonable degree of precision in agency imposition of fees in their regulations. It failed to gain passage.

An effort to amend state law to include a definition of "gasification" that would have exempted a solid waste thermal slow-cooking technology from local solid waste plan review and local government approval was defeated.

A study for ways to protect Blackacre Nature Preserve from development impacts was initiated with the passage of Senate Concurrent Resolution 1.

The House unanimously approved House Resolution 133 supporting the designation of lands around Pine Mountain Settlement School as unsuitable for mining. The Natural Resources Cabinet has since approved the designation. Court challenges are possible. More detail below.

Joe Barrow's bill to allow industrial hemp research at state universities, HB 100, was signed by the governor.

Hopefuls for Another Day

The Governor's solid waste bill, HB 237, went down under the weight of political bickering. The intent was to reduce illegal dumping through statewide curbside garbage collection.

Rep. Greg Stumbo's container deposits reprise from last session never got heard in committee and the constitutional amendment allowing a referendum on a bottle bill was defeated in the House 45 to 45. Stumbo's half cent disposal fee to fund garbage cleanups and education was defeated on the House floor.

A bill to reform the right of eminent domain (condemnation) for major natural gas transmission lines, in order to improve the rights of persons against whom eminent domain is sought, was passed over.

House Bill 165 requiring public notice and hearings on certain state-authorized capital projects was not enacted.

House Bill 207, a bill to create public accountability in

reporting on applicants for state economic development assistance, was not enacted.

A bill to clarify the Public Service Commission's obligation to provide public notice where any antenna tower for cellular or PCS communication is proposed, HB 193, was not enacted.

House Bill 246, a bill addressing city/county codes of ethics, and to curtail political fundraising by planning commission and board of zoning adjustment officials, was not enacted.

A proposed Task Force on Home Energy Affordability was not created.

House Concurrent Resolution 92, which would have authorized the Interim Joint Committee on Agriculture to hear testimony and to conduct a study concerning agricultural contracting, did not pass, however the matter will be studied during the interim.

Tax credits for donation of land to public parks will not be available, since HB 252 was passed over.

Creation of an Organic Agriculture Product Certification program will have to wait for another chance as HB 321 never came up for a final vote on the House floor.

HB 385, requiring the state government to reduce energy usage by 10% in two years was introduced late in the session and was never heard in committee.

The Really Awful

A corporate welfare bill that encourages air pollution, House Bill 325, passed allowing additional tax credits for eligible coal mining companies that employ over 500 and produce over 4 million tons of coal.

Another corporate welfare bill, House Bill 238, amends tax increment financing laws. It is designed to facilitate the financing of the Bowling Green "Transpark," an "intermodal" airport/economic development project whose benefits have been disputed and which failed to pass a federal cost-benefit review for financing by the FAA. A Senate amendment at least requires that the state not approve the financing "unless there is a net positive economic impact." These types of developments are already net losers for local governments that must provide basic infrastructure. Allowing them to keep the increased tax revenues they generate only exacerbates the problem.

Thanks to Tom FitzGerald of the Kentucky Resources Council for much of the above analysis.

Pine Mountain Settlement School Protected from Mining

On April 27, 2001, Secretary James Bickford entered an Order declaring that 2,364 acres of land within the area north of the Pine Mountain Settlement School as unsuitable for all types of surface coal mining operations. The Secretary deleted areas in which coal resources are not located and declared that surface coal mining operations could result in significant damage to important historic, cultural or aesthetic values, reports Tom FitzGerald of Kentucky Resources Council and attorney representing the school in this matter.

Among the findings made by the Secretary were that "Pine Mountain Settlement School is a special place, with historical and cultural significance, and is deserving of protection from any hazards as a result of surface coal mining operations." The Secretary found that the viewshed of the School property, including the trails, would be adversely affected by mining north of the Pine Mountain Overthrust Fault, and that blasting could damage historic buildings and could threaten the safety of staff and students, as well as interfering with the use of the property for hiking, nature study and school curriculum purpose.

The cabinet received 2,274 letters in support of the petition to declare the area around the school as unsuitable for mining, and 76 letters opposing the petition. The overwhelming public support was mentioned in the Secretary's Order granting the petition.

No Rest for the Weary: Your Summer Homework Assignment

On the scene in Frankfort, we experience two types of bills. There are those that come up, are passed or defeated, and are never seen again. Then there are those same old issues that we see session after session. They come up as regularly as the sun.

At the end of the session, we breathe a sigh of relief that it's over for another year and ignore most of these issues until the next session. The interim is the perfect time, however, to address these reoccurring issues. Legislators are more relaxed and have more time (particularly in a non-election year) to listen to constituents. We want to encourage our members to contact their legislators between the sessions. To help you write a letter or arrange a visit to discuss some of these issues, we present here a summary of issues we expect to see in 2002, 2003, 2004,

Solid waste/recycling: The Governor had to be disappointed by the reception of his curbside garbage collection and we can count on Greg Stumbo introducing some sort of litter or recycling bill. These initiatives are supported by 60 to 70 percent of the population and have failed mainly due to political bickering and heavy industry lobbying. It would be good to remind the legislators that we haven't forgotten. In particular, we would like to see a bottle bill and statewide curbside collection to clean up our state.

Smart Growth: With the Governor's task force under way (see pg 4), some proposals are sure to make their way to the legislature. Rep. Jim Wayne is a bull dog on this issue. His modest proposal for planner education passed this year. A more complete package of bills introduced in the 2000 session will likely be the basis for future proposals. Incentives for historical preservation, downtown redevelopment, and urban infill would be a start. Regional planning, farmland preservation, limited service areas, and impact fees on new construction are important in directing growth. Alternative transportation planning, greenways, design standards, and efficient delivery of services are also important concepts to mention.

Merchant Power Plants: With 20 new power plants on the drawing board for Kentucky and the Bush Administration pushing "clean coal" technology, we can expect attempts to roll back air pollution standards and mining restrictions. Utility deregulation brings the opportunity to sell electricity out of state. These so-called "merchant" power plants are not regulated by the Public Service Commission because they don't sell electricity in Kentucky. Some legislators will be eager to pass any legislation that wreaks havoc to our landscape and air in the name of the coal industry. Even if standards are not rolled back we can expect dirtier air and more moonscapes. Coal is also the worst possible fuel for producing green house gasses. Tourism would employ far more people and generate far more dollars than coal fields and generating plants but tourists will not come to see our flattened mountains and breath our dirty air.

Cafos: Concentrated Animal Feeding Operations continue to plague Kentucky as we don't seem to have enough sense to not follow the example of North Carolina. The Patton Administration continues to file emergency regulations with modest to weak controls that are too strict for some of our key legislators. The legislature must approve these regulations to make them permanent. The scandal at the Eminence chicken

processing plant should be mentioned as a reason to not extend tax breaks or any other encouragement to this industry. We do not want to our tax dollars spent to create jobs for illegal aliens. We want to support the family farmer in sustainable agricultural practices that protect our streams.

Administrative Regulation Limits: In recent years attempts to stop the Governor's limited ability to regulate Cafos have come in the form of attempts to limit the governor's authority to issue emergency regulations. Under the current system, Emergency regulations give the Governor the ability to bypass the legislature and some legislators resent it. With an anti-regulation sentiment in the legislature, this type of change could be disastrous to the environment.

VET Testing: Vehicle emissions tests are an important tool in reducing ground level ozone are now required in Louisville and Northern Kentucky. Just a few vehicles spewing unburned gasoline into the air make a big difference, but because most cars pass the test, some legislators think the tests are nothing more than a personal inconvenience. We expect more attempts to kill these tests.

MTBE and Reformulated Gas: MTBE is a gasoline additive intended to reduce tailpipe emissions. It is toxic and water soluble, so if there is a leak an underground storage tank it can contaminate ground water and travel quickly in the water. While this is a threat, most storage tanks are new fiber glass tanks installed under a recent program to eliminate leaking tanks. There may be other paths for MTBE to get into ground or surface water. Some legislators are using these threats as an excuse to eliminate more expensive reformulated gasoline by making MTBE illegal. While it is a good idea to eliminate MTBE, a suitable replacement should be in place first.

Cell Phone Towers: Cell phone towers are regulated by the Public Service Commission which has a mission to assure reliable service. The PSC has no obligation to cell phone tower neighbors and often approves towers over the objections of local planning boards and staff. Neighbors need more say over cell phone tower siting.

Hazardous Waste Generator Fees: Fees are collected from generators of hazardous waste to help pay the clean up costs of state superfund sites. These fees were approved in 2000 for two years, so they will expire in 2002 unless the legislature renews them. The program should be made more permanent, so this battle isn't fought every two years. The fees are opposed by industry.

Economic Development: The Economic Development Cabinet negotiates in secret recruiting businesses to locate in Kentucky, promising tax breaks, roads and other incentives. These deals now remain secret, providing for no accountability to the public. There have been several bills in recent years to require reporting by the economic development cabinet so that they can be held accountable for public tax money. We encourage support for these efforts.

No More Stringent Than: This is a favorite ploy of the anti-regulation set: prohibit the state from setting standards higher than required by the Federal Government. The problem is that these are intended to be minimums, not ceilings.

Patton Creates Panels on Energy and Smart Growth

Energy Board Could Threaten Environment

Citing the need to maintain and maximize Kentucky's low-cost energy advantage, Governor Paul Patton signed an Executive Order creating the Kentucky State Energy Policy Advisory Board on May 16 to develop a coordinated statewide energy policy.

"Efforts in other states to deregulate electricity have led to shortages and domestic and global energy issues have resulted in recent dramatic price increases which have had a negative effect on the state and the national economy," Governor Patton said. "Kentucky enjoys some of the lowest electricity and energy costs in the nation and we need to find a way to preserve and promote that for our families and our businesses."

The Board will be made up of one representative from the Governor's office, the Natural Resources and Environmental Protection Cabinet, the Public Protection and Regulation Cabinet, the Economic Development Cabinet, the Public Service Commission, the Division of Energy, the Kentucky Center for Applied Energy and Research at the University of Kentucky, plus four gubernatorial appointees; one each from the Kentucky Coal Industry, the Kentucky Utility Industry, a consumer advocate, and an environmental advocate. The Board will be attached to the Kentucky Public Service Commission, which will hire an executive director and provide staffing assistance.

Governor Patton said the Board will study energy markets throughout the United States and internationally and devise a strategy for maximizing Kentucky's low cost advantages in supplying affordable and reliable power. The Board will also coordinate energy related programs throughout the state and recommend to the Governor and the General Assembly policies, programs and strategies to improve energy related efforts.

"I also expect this board to analyze methods, actions and market responses that will improve the utilization of Kentucky coal as an electricity generating source both nationally and internationally," Governor Patton added. "This board will provide a forum for state agencies to raise and discuss in a comprehensive manner issues that address, among other things, energy use, energy demand, energy technology, energy supply, energy price and the environmental impacts of energy and synchronize their various efforts to form a cohesive energy strategy for Kentucky's future."

With the current emphasis in the Bush administration on increasing power sources, we could see recommendations to promote the coal industry at the expense of our air quality, water quality and mountaintops. Our electric rates are low because most of our electricity is generated by Kentucky mined coal. The emphasis on low cost biases the output toward burning more coal. With 20 new power plants already planned the committee should be acting to protect our environment.

Smart Growth Task Force to Make Proposals on Managing Growth and Its Impacts

On May 17 the Governor announced the creation of a task force to study growth management with the purpose of enhancing prosperity "by improving quality of life and preserving our rich heritage."

The objectives of the task force are to elevate smart growth as a statewide public policy issue, assess public interest in addressing growth and conservation issues, review the impact of statutes, regulation, and programs related to growth, identify possible incentives to encourage local governments to implement smart growth principles, review smart growth initiatives of other states, and produce a report presenting options for incorporating smart growth principles within state and local government.

The task force comprises 35 members with diverse backgrounds from legislators, environmentalists, preservationists, developers and local government officials.

Much of the work of the task force will be accomplished in five work committees chaired by task force members. The committees will work through the summer and present their reports to the task force at its second meeting in September. Committee membership is open to volunteers, to volunteer for a committee contact the committee liaison listed below. Members must be willing to travel to meetings. Four to five meetings are anticipated between now and September.

Public input will be sought at community forums, in writing and via an internet site. A Smart Growth Best Practices Seminar will be conducted by a national organization. The University of Kentucky Center for Business and Economic Research will quantify the costs of unplanned growth.

The task force will meet with Shakertown Roundtable late this year to present its report to the Governor.

Smart Growth Working Committees

Agriculture, Wildlife and the Environment: farmland preservation, development rights, greenways, recreational and tourism resources, environmental preservation. Tom Bennett, Commissioner, Dept. of Fish and Wildlife. 502-564-3400.

Planning: local and integrated regional planning, model ordinances, and state/local planning tools. Jody Lassiter, Commissioner, Dept of local Government 502 573-2382

Transportation Corridor Management: State policies that influence how communities grow John Carr, Executive Director, Intermodal Planning, Transportation Cabinet 502-564-3730.

Community Development and Design: Design standards and guidelines, redevelopment and infill, downtown revitalization, affordable housing, adaptive re-use, historic preservation. David Morgan, Executive Director, Kentucky Heritage Council 502-564-7005

Economic Development: industrial and commercial development, utilities, new economy development, cost of sprawl, brownfields redevelopment Tom Dorman, Executive Director, Public Service Commission 502 564-4930

Dynamic Duo Take on Kentucky Legislature

Most of our members never get to meet our lobbyist or see them in action. To help acquaint you, here are short bios of Wade Helm and Dick Shore.

Wade Hampton Helm of Louisville is a past president of KCC. His roots, however, are much deeper than this. He earned his BA in politics in 1979 from Princeton University. Then in 1985, he achieved his JD (law degree) from the University of California at San Francisco—Hastings College of Law.

Wade's environmental background includes being an intern for the organization, Friends of the Earth in 1980, and being a staff attorney for the Kentucky Resource Council from 1990 – 1994. Since 1994, Wade has been an attorney in solo practice with most of his focus on planning and zoning.

His knowledge of law and command of environmental issues become evident from watching Wade in action but nothing is more pronounced than his passion for the job.

Wade now has two sessions under his belt as KCC lobbyist and knows that part of being an effective lobbyist is building relationships with the legislators. This is a long term activity that take a constant presence in Frankfort.

Dick Shore is a retired industrial engineer making his home in Lexington. Dick has a diverse background including work as a research biologist, college instructor, a thespian and now two terms as a KCC lobbyist.

He came to KCC with an amazing versatility, a knack for working with all types of people and an extensive knowledge of environmental issues. His most recent work experience includes environmental compliance officer at Fort Knox where he managed a hazardous waste reduction program, set up the Army's first fleet of low polluting natural gas vehicles, and installed a constructed wetland to treat waste water.

Many people know Dick from his alter-ego, John Muir. Dick performs a one-man show where he takes on the persona of Sierra Club founder John Muir to deliver a stirring environmental message.

Contacting Your Legislators

Who are my legislators? You can look up your legislators on the web at www.lrc.state.ky.us/whoswho/whoswho.htm or you can call your local county clerk. All they need is your address.

How do I communicate with them? There are several ways to communicate.

You can send a fax, the number is 502-564-6543. Faxes can be sent to multiple legislators, (all legislators must be listed individually).

Many legislators have email. They can be found from the web address listed above. Some legislators read it, some do not.

Regular mail can be sent to The Capitol Annex, Frankfort, KY 40601.

What do I say? Your message can be as simple as "Please support bill xyz." You don't have to be an expert. Personal experiences that relate can be effective.

Membership Update

This year KCC began the first major membership drive in as long as anyone on the board can remember. We have added 211 new members since January. Our long-term goal is to add 700 new members, so we have less than 500 more to go toward our goal. We also need a few more groups to join the ranks of our organizational supporters. We ask all members to recruit one new member to the cause and if you are a member of a group that currently is not a KCC supporter, consider asking them to become a member.

Board Nominees Needed

Are you interested in serving on the KCC board or know someone who would be a good addition to the board? Contact Ray Barry before July 1. 859-223-0180, ray.barry@prodigy.net. Terms run for two years and start in September.

Turning up the Heat, cont

areas outside of the major cities. Any ideas are welcome, contact Ray Barry with ideas. Contact information is above.

The second area where we can be more effective is having more contact with the legislators between sessions. This means more contact with the lobbyists and more contact from our members.

Between sessions, the legislators are more relaxed and can spend more time evaluating issues. Some times legislators have already made up their minds how they are going to vote on certain issues before the session starts and we find the boat left port before we knew it was sailing.

We would like to encourage our members to contact their legislators between now and the end of the year. Invite them to lunch or meet them in person or write them a letter. In a related article on page 3 we outline the issues we expect to be come up based on the last two sessions. Use this as a guide.

Having our lobbyists active between sessions is also part of this inter-session strategy. This means having them attend the interim committee meetings and calling on legislators to brief them before the session starts.

We have not been able to afford this luxury in the recent past. It gets back to the membership issue. We spend almost all of our funds paying the lobbyists and their expenses during the session. We need increased funding to increase our presence. If we want to be seen as one of the important players, we need a constant presence. We need to be recognizable and seen as a force with which to be reckoned.

The Earth Needs a Friend in Frankfort

Please Check All that Apply

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(patron)

\$100 (Organization) \$365+ (“365 Club”)

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Mark Your Calendar

June 15-17 -- Earth Spirit Rising, *Conference on Ecology Spirituality and The Great Work*, Bellermine University, Louisville
513-921-5124, www.imagoearth.com

September 15 -- KCC Annual Meeting Shaker Village (Near Harrodsburg) at 9:00 AM *Learning from the 2001 Session, Planning for the 2002 Session* Trash Talk, Smart Growth, Energy Supply, Environmental Education, Water Supply, KCC Priorities&Elections

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