

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 2002

Victories Highlight Contentious 2002 Session

Following in the wake of the first odd numbered year session, this year's session brought a few surprises. Although this session was longer, fewer bills were introduced than last time. The percentage of bills we supported was unusually high: we rated 40 support to 15 oppose. The power plant siting bill was probably the most significant environmental bill passed in recent memory. There were numerous other victories worth celebrating.

Overall, the session was marked significantly by partisan bickering and power struggles exacerbated by tight budget constraints. It began with a protracted redistricting battle, which may be responsible for the lower number of bills. It ended in an unfinished battle over public funding of gubernatorial races. The Republican controlled Senate was in no mood to pass anything coming out of the Democratic controlled House. Of the 14 House bills we supported that went to the Senate only 3 made it through and a couple already had Senate versions.

Advances

Solid Waste. Rep. Stumbo finally succeeded in passing a solid waste Bill. HB 174 was his third try in as many sessions to pass meaningful solid waste legislation. Disappointingly, the bill didn't include container deposits. We saw further disappointment when the advanced disposal fees on fast food and beverage containers were dropped in negotiations with the Senate, dramatically reducing funding.. Nevertheless, it is a positive step forward.

We now have a dedicated source of funding to deal with a limited set of solid waste issues. It is estimated that the \$1.75 per ton increase in tipping fees at the state's landfills will yield 8-9 million dollars a year starting January 2003.

This money will be used for the following purposes:

- To fund the environmental education master plan so it can finally begin implementation of the environmental education centers concept across the state. (This was one of our top ten priorities.)
- To finance a \$25 million bond issue to begin closing the highest priority abandoned or formerly permitted landfills.
- To prioritize the hundreds of abandoned and formerly permitted landfills for future cleanup.
- To provide matching funds for local efforts to clean up roadside dumps.
- To help local governments clean up roadside litter.

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KCC Annual Meeting

Plan Now to Attend!

Shaker Village

(Near Harrodsburg)

Saturday, September 14

9:00 AM –3:00 PM

*Update of Current Issues
Planning & Priorities for the 2003
Session*

Lunch Provided

Scorecard

KCC Stance	Passed House	Died in House	House Favorable	Passed Senate	Died in Senate	Senate Favorable	Became Law	Died or Defeated	Final Result
Strong Oppose	1	3	75%	1	1	50%	1	4	75%
Oppose	5	5	50%	1	6	85%	1	11	92%
Support	17	8	68%	9	9	50%	9	17	34%
Strong Support	3	6	33%	3	2	60%	3	8	25%
Overall			58%			59%			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. This is typical. More telling perhaps, are the actual new laws, there were 12 favorable to 2 unfavorable.

2002 Session Review, Cont.

Leadership of both political parties recognize the \$25 million bond issue as addressing only the top few most urgent landfill closures. Funding for closure of the majority of these sites will have to await future legislative action.

Power Plant Siting. As with the Brownfields bill last session, Kentucky Resources Council dogged the power plant siting legislation and can take credit for making the power plant siting bill one of the most comprehensive in the nation. At each step along the way, KRC was there to point out weaknesses and suggest strengthening measures.

The bill started life as HB540, introduced by Rep. Draud. It was strengthened by Ernie Harris in the Senate and returned to the House as SB 257. After further improvements in the House, it was passed and enrolled by the Governor.

It requires a siting review for all new power plants (with minor exceptions). The review will be done by a panel comprising permanent and ad hoc public membership. The law also authorizes the Natural Resources Cabinet to review and impose permit conditions addressing cumulative impacts of power plant permits.

Improvements made to the original bill include:

- Making the bill apply to all proposed sites where actual facility construction (not just earth-turning) has not commenced.
- Adding permanent public membership on the siting board.
- Removing special exemptions from setback protections.
- Removing special breaks in siting review that gave coal-fired plants special advantages.
- Assuring that merchant plants comply with any local planning and zoning.
- Defining when setbacks can be waived.
- Adding the requirement that the siting board consider the past environmental history of the company and its capability to manage a plant.
- Setting a two year time limit on siting approval. If the facility doesn't obtain all permits and begin construction within two years, the siting approval expires.
- Strengthening the siting and environmental analyses and the standards used to review proposed plants.

Tire Disposal and Hazardous Waste Fees: The state waste tire fee, set to expire this year, was renewed. This dollar per tire fee is used to clean up waste tire dumps.

Board Nominations Needed

KCC is currently accepting nominations for our board of directors. Terms last two years starting in Sept. If interested in helping with this exciting work call Russell Barnett 502-839-1227. Not sure? Come to a board meeting, Call Russ for sched.

The state hazardous waste assessment fee was also renewed for two more years. KCC had sought permanent authorization as opposed to the biennial battle for renewal that has been going on for years. The fees are imposed on generators of hazardous waste and are used to clean up state priority hazardous waste sites where the cleanup costs cannot be recovered from the responsible party.

Underground Storage Tanks: Senate Bill 193, extending the underground storage tank program for two more years was signed into law. This program helps fund the cleanup of sites with leaky underground storage tanks, generally former gas stations.

As originally introduced, the bill would have severely limited eligibility and created a study to be done by the University of Kentucky to set new cleanup standards. As improved and passed by the House, it retains the Environmental Protection Cabinet's authority to set appropriate cleanup standards.

Cell Tower Siting: The Passage of Rep. Steve Riggs' cell tower siting reform bill improves local control over the placement of cell phone towers. Under the old law, the Public Service Commission can override a decision by a local planning commission or zoning body denying a proposed cell tower. Now, any decision of a planning commission or a local legislative body approving or disapproving a proposed cell tower would have to be contested in state court.

Pine Mountain Trail State Park: The creation of the state's longest and narrowest state park was approved. HB556 creates a 120 mile long trail dedicated to non-motorized use as part of a state park atop the crest of Pine Mountain from Breaks Interstate Park to Cumberland Gap National Park.

The legislation started out to define a 1000 ft wide corridor but was limited to 250 ft between Bad Branch Nature Preserve and Pine Mountain State Resort Park and from 100 to 250 ft continuing from there to Cumberland Gap. The change was made in response to concerns from local land owners. It's important because, although it is designated as a scenic trail, the

Hopefuls for Another Day

As always, many bills don't make it out of committee, but with diligence and hard work, may one day have a chance of passage. Along with the disappointments of curbside garbage collection, container deposits and pre-disposal fees there was HCR 161, which would have created a task force to study the effect of off road vehicles on the environment.

HB 355 would have created voluntary public financing of state legislative races. While this was not expected to pass this time, it was a first step in a long term effort. The battle over funding gubernatorial races has certainly raised the profile of this issue.

None of the smart growth initiatives fared well. The Governor's modest smart growth Bill, HB600, would have imposed smart growth policies on state government land use. Jim Wayne' HB 465 would have required local governments to develop land use plans and designate areas for future growth in the name of encouraging more efficient delivery of government services. HB 606 and HB 72 would have encouraged the reuse of inner city and run down properties.

HB 738 would have removed an exemption that power plants now have from applying for water withdrawal permits from the Commonwealth's water ways. HB 864 would place a tax on merchant power plant output.

viewshed is defined to end at the park boundary. The legislation forbids using the actual viewshed from the trail to control activity outside the park boundaries. The Parks Dept. is not prohibited from purchasing, leasing or obtaining easements of land outside this corridor, however.

Other concerns of local landowners were addressed. For example, the law also allows for the Parks Dept. to establish side trails for access to the trail and points of interest, but prohibits the use of eminent domain to acquire the land. The use of eminent domain is limited to land inside the park borders that doesn't have an existing permit to mine or drill wells. Adjacent property owners are also assured access to their property and/or mineral rights. Regardless of how the property is obtained, the previous landowners retain the rights to hunt, fish, trap, and harvest natural plants unless they specifically waive them.

The Parks Dept. is given until July 2003 to define the borders of the Park and is instructed to avoid any cemeteries and private dwellings. The Dept of Fish and Wildlife will define hunting regulations in consultation with the Parks Dept.

Farms and Alternate Fuels: SB13 is intended to increase the use of KY grown agricultural products. It encourages public institutions to buy Kentucky grown products, primarily by giving them a 5% cost advantage in the competitive bidding process over other sources. It also sets up a pilot project within the State Parks to purchase Kentucky grown food and horticultural items.

At the eleventh hour, in House-Senate negotiations, provisions were added to this new law which ban the use of the additive MTBE in gasoline after January 1, 2006 and encourages the use of ethanol in its place. MTBE is an oxygenator that helps gasoline burn more completely, reducing the amount of unburned gasoline emitted by cars. Unburned gasoline combines with sunlight to create ground level ozone, a lung irritant. While it cleans the air, MTBE is very toxic and water-soluble so that when it escapes into the environment it travels quickly with rain or ground water movements. Leaking underground storage tanks are thought to be the primary source of contamination.

Last minute additions to HB13 also encourage the use of biodiesel fuel. Biodiesel is a mixture of petroleum based diesel fuel and vegetable fats. Both ethanol and biodeisel can be created from Kentucky agricultural products, which is perhaps why these alternative fuels were included in this bill. The bill also requires the vendors of imported agricultural products to identify the country of origin and label the products accordingly.

One of the barriers to diversification away from tobacco is the dearth of markets for other products. This bill takes a step to encourage the development of alternative markets.

Watershed Management: Approval of SCR17 creates the Kentucky Watershed Task Force to study the need for managing the state's water on a watershed basis; the necessity of seeking agreements with border states on the management of water in shared watersheds; and the possibility of seeking agreements with the owners of impounded waters to manage the impounded water to further state and local water management goals. While not earth shattering progress, it is a sign the importance of the watershed approach to managing water resources. is being recognized by the legislature.

Thanks!

The phone calls, faxes, citizen lobbying, and donations are extremely valuable in backing up the hard work of the lobbyists. Their efforts are more effective if legislators get a sense that our lobbyists represent a real contingency of people. Keep up the good work!

Big Sandy Trail: SCR92 creates a task force to study the Lexington/Big Sandy Rail Trail and suggest a strategy for its completion. The proposed trail would utilize 109 miles of abandoned rail corridor between Lexington and Ashland. The task force comprises judge executives from affected counties as well as representatives from appropriate state agencies and the Kentucky Rails to Trails Council. The report is due December 15, 2002 and must include: 1.) Solutions for overcoming existing barriers to the trail's development; 2.) Potential funding sources; 3.) Projected completion date; 4.) Recommendations on entities best suited to develop the trail and best suited to administer the trail, both short and long term.

Organic Certification: HB 350 requires the Office for Agricultural Marketing and Product Promotion to establish an Organic Agricultural Product Certification Program.

Unfinished Business.

Awaiting final action in the budget is the restoration of language that would continue blocking new mining permits to owners and controllers with unabated permit violations. The language was included in the House version of the budget but was removed in the Senate. Without this language, any violator can reenter the marketplace using a new corporate identity. **Call or fax Senators Richie Sanders and Dan Kelly** (fax 1-502-564-6543 or a phone message, 1-800-372-7181) asking that the language be restored when the budget conferees meet.

Retreats

Secret Pollution: Rep. Gooch's HB 367 makes documents submitted to any state agency under the Agricultural Water Quality Act confidential. Under the act, all farms must submit a water quality plan. These plans can now only be viewed by the Ag. Water Quality Authority, not the general public. Documents applying for financial assistance are exempted. The courts must decide to waive confidentiality where there is evidence of noncompliance.

Emissions Testing: HB 618 effectively eliminates Vehicle Emissions Testing (VET) in Jefferson County by Nov 2003. The VET program was initiated because Louisville was not meeting EPA established air quality standards. If Jefferson County falls out of compliance again, which is likely, the urban-county government must decide how best to attain compliance before reinstating the VET.

The immediate effect of the bill is unclear. The Federal Highway Administration indicates the lack of a VET program may cause an interruption in federal highway dollars.

Thanks to Tom FitzGerald for help in analyzing results.

Mark Your Calendar

June 4 -21 Watershed Classes (can receive graduate credit), Ellen Swallow Richards Ecology Learning Center, Louisville, Dr.Allan Dittmer, U of L, 502/852-0791.

Fri. June 14th 7 p.m. Contemplative dialogue on spirituality and the environment, 16 internationally known speakers., Brown Theater, Louisville, (502) 899-1952, www.mertonfoundation.org.

Sat. Sept 14 9:00 - 3:00 KCC Annual meeting. Shaker Village, Ray Barry 859-223-0180

The Earth Needs a Friend in Frankfort

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Ways I will help KCC include:

Telephone Tree Writing Letters Monitoring Interim Committees Lobbying during Session

Because one of KCC’s main activities is influencing legislation, contributions are not tax deductible. Please send your check and membership information to KCC, P. O. Box 1152, Frankfort, KY 40602.

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