

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 2003

Budget Crisis Set Tone of 2003 Session

Going into the 2003 session it was evident that the budget crisis was going to dominate everything. Reconciling expenses with revenue distracted many legislators from competing business. It gave others cover for special interest initiatives. Still others used it as an excuse to cut disfavored programs. Throw into this mix a lame duck, scandal-ridden Governor who appeared to be on an emotional roller coaster and we have the 2003 session.

With their second short session behind them, legislators have yet to get what they intended in creating them. They intended to not deal with budget issues, but instead complete unfinished business from the long session and deal with emergencies. Once the session opens, however, anything can happen. The first short session in 2001 saw a record number bills introduced, way more than could seriously be considered in a long session. Then, of course this year there was the budget.

If it seemed like a miserable session, the numbers would back that up (see the Scorecard below). While the numbers can be deceiving, this year's overall score of 43% is below par. Generally an overall score of 50% to 55% is typical. The session started out on a bad note when the Democrats caved into the Republicans on the issue of state funding for gubernatorial campaigns before the session even started. This is the issue that created the year without a budget. While them Democrat's capitulation may have allowed things to move forward, it is a backward step for good government in Kentucky.

Tennis Anyone?

As the 2003 session finished up, KCC was feverishly following the tennis match over funding the Environmental Quality Commission (EQC). The Commission is considered a thorn in the side by some legislators. The House budget originally continued funding for EQC's four staff people and operations (\$262,500). The Senate decided even this paltry sum was too much to pay for an environmental watchdog that provides essential services to the Natural Resources and Environmental Protection Cabinet (NREPC). The Senate's budget zeroed EQC funding. The plea went out to the environmental community to contact their legislators.

As the budget went to the House-Senate Conference Committee, the calls poured in. The final budget emerged from committee with funding for the EQC intact but moved to the NREPC budget. A change, but a victory nonetheless. Then out of left field, the Governor vetoed the EQC funding, proclaiming the NREPC could fund it out of its already reduced budget.

The plea went out again for contact with legislators to override the Governor's veto. The House did, but the Senate ultimately did not. The fate of the EQC is now in the Governor's and the NREPC's hands. Please contact the governor and express your disappointment over his Veto and ask him to support funding for the EQC as in his own budget proposal.

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KCC Annual Meeting

Plan Now to Attend!

**Shaker Village
(Near Harrodsburg)
Saturday, September 13
9:00 AM - 3:00 PM**

*Update of Current Issues
Planning & Priorities for the 2004
Session*

Lunch Provided

Scorecard

KCC Stance	House Action Favorable to KCC	Senate Action Favorable to KCC	Final Law Favorable to KCC
Strong Oppose	33%	66%	85%
Oppose	67%	0%	67%
Support	47%	70%	33%
Strong Support	20%	00%	0%
Overall	50%	45%	43%

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 below par.

2003 Session Review, Cont.**Gas Pains**

The other high pitched battle we faced as the session drew to a close was HB 458, the oil and gas industry's effort to preempt local control over industry abuse. To confuse matters, the day before the end of the session, the provisions of HB 458 were added to HB 524, a bill we weren't even tracking.

HB 458 was prompted by a Letcher County Fiscal Court proposal to control property rights abuses of the oil and gas industry in locating gathering lines. These are pipes that deliver oil and gas from the well to a central storage facility.

HB 524/458 will prohibit local communities from adopting ordinances that would in any manner regulate oil and gas exploration, production, development, gathering and transmission, unless the local community did so through planning and zoning. In a last minute compromise the Senate amended it to require the state Department of Mines and Minerals to develop regulations on gathering lines within 6 months of the effective date (nine months from now). It also requires them to develop regulations on other aspects of the industry, for which no deadline is provided.

The Governor signed HB 524 during the veto break and already interpretation problems have arisen. The law is not clear as to whether local preemption could occur before state standards are in place. The industry, of course, says no.

Good News

SB 137 became law, revising procedures for challenging county bond or note debt. This bill was the result of a challenge to a Warren County bond issue to finance the Tri-modal Transpark near Mammoth Cave. The new law subjects all requests for approval of a county's bond or note debt to a formal evidentiary hearing before a hearing officer and then to State Local Debt Officer, with appeal directly to Circuit Court (eliminating the appeal to the County Debt Commission). It also clarifies that the hearing proceedings

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.

will be in accordance with Kentucky's administrative hearings law – a matter disputed by the state in the Transpark case.

SB 162 was signed into law. It deals with the chemical weapons disposal at the Richmond Blue Grass Army Depot. The law creates of an Office of Liaison within the host community, funded by the permit applicant, to coordinate community oversight of the destruction of chemical weapons. It prohibits chemical agent destruction under a "research, development and demonstration" permit except for pilot scale operations to prove-out the technology. It also demands that emergency response plans, including necessary infrastructure improvements, be in place before operation of the chemical agent destruction facility.

The Governor's signing of SB 165 makes public the mine maps on mined-out areas that are in the possession of the Revenue Cabinet and the final or abandoned mine maps submitted to the Department of Mines and Minerals. Access to these maps will assist communities in scrutinizing new mining and waste impoundment proposals, and assist landowners whose property has suffered damage to determine whether damage to land and water resources is related to past underground mining.

SB 164, which allows controlled burns on lands leased and managed by state agencies, became law. Controlled burning is an important tool for the Nature Preserves Commission to maintain fire dependent communities.

The budget bill renewed provisions to block permits of surface coal mining applicants based on existing violations by owners and controllers of the applicant. This issue arises every budget cycle. These provisions keep permit violators from circumventing the law by closing down and starting up under a

cont. on pg 3**Hopefuls for Another Day**

As always, many good bills didn't make it out of committee, but with diligence and hard work, may one day have a chance of passage. Along with the funding of gubernatorial campaigns, good bills that didn't make it that we'd like to see again include:

SB 135, which would have required all sources of sewage connect to sanitary sewage systems or on-sight sewage systems statewide. It would have prohibited straight pipes, cesspools and sinkholes for sewage disposal. Also included was a prohibition on connecting storm sewers to sanitary sewers.

SB 147, which would have strengthened the Merchant Power Plant Siting Board by allowing it to hire consultants and enforce orders.

SB 148, which would have required electric utilities to sell power to the native load customers in their own territory before selling it on the merchant market, preventing utilities from selling power to the highest bidder that their base customers need.

SB 150, which would have given the Kentucky River Authority prime responsibility for water supply and drought response plans for the Kentucky River Basin. It would also give the KRA authority to assess a fee on water transferred into the Kentucky River Basin. This represents important recognition that water issues must be handled on a basin-wide basis.

HB 59, which would have created a pest plant board to coordinate a statewide response to invasive, exotic weeds that are overrunning the native plants

HB 345, which would have required Off Road Vehicle (OHV) riders to be 16 years old, carry no passengers, take a safe rider course, carry proof of training, and wear a helmet.

HB 382, which would have required utilities to purchase power from residential customers at the same rate that they sell it. The intent is to encourage the installation of solar power generation at the residential level by making it economically attractive.

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new name. As usual, the coal industry sought to have the language removed from this budget. Maybe someday, these provisions can be made permanent.

A Real Waste

HB 473 was one of three bills introduced by Clark County Legislators that sought to clarify that electric utility plants using imported municipal waste as a fuel, whether processed or not, must comply with local solid waste plan. The bill passed the House 94-1. Ernie Harris refused to hear it in the Senate Agriculture and Natural Resources Committee where it died.

This legislation was in response to a power plant proposed for Trapp, Kentucky (just outside Winchester) that would use an unproven combined cycle gasification process fueled by garbage and coal. The garbage would come from New Jersey and New York in pelletized form. The constituency of the pellets would not be controlled and is certain to contain toxic elements such as batteries. The toxicity of the process waste (called frit) is unknown. Power Gen, the plant owner, has obtained a \$60 million Federal grant to fund construction of this "experiment." They are uncertain how they will dispose of the waste but are hoping it finds use in road construction.

In 1991, passage of SB 2 promised localities they could control the importation of solid waste with recyclable content if they managed their own waste. In this case local control over the importation of massive amounts of potentially toxic waste has been denied the Hank List, NREPC Secretary.

The issue of whether processed garbage that has not had recyclable plastics and paper removed is exempt from state and local waste controls is pending in the case of *Walters v. NREPC and Kentucky Pioneer Energy*. The Hearing Officer's Report ruled that it is not exempt from local waste controls. The matter is pending before the Cabinet Secretary.

Good Riddance

Sen. Ernie Harris introduced SB 159. It would have required "takings" assessments for a broad range of rules and regulations and permitting actions intended to protect public health and the environment, regardless of how trivially they affect the use of property. Such rules slow government's ability to regulate in the public interest. Senate leadership fortunately recommitted the bill to die in the Appropriations & Revenue committee.

HJR 140 attempted to rescind the general coal wastewater discharge permit that requires coal mining operations and inspectable surface mining reclamation sites to test for oil and grease in the water. It would have then reinstated the general coal permit in effect prior to August 2002 that does not include the requirement to test for oil and grease. This resolution was recommitted to Appropriations and Revenue by House leadership, where it suffered a quiet death.

HB 108 would have required every state agency to develop a policy to allow reductions or waivers of civil penalties for businesses with up to 100 employees. The bill was not heard in committee. A committee substitute calling for a study of regulatory impact on "small" businesses also failed.

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!

HB 159 attempted to exempt petcoke from the definition of "special wastes," making utility waste from the combustion of petcoke a "solid waste" instead. "Special wastes" include fly and bottom ash from utility boilers and scrubber sludge from flue gas desulfurization equipment on electric power plants. Disposal of solid waste is more expensive than special waste, since it must go into a contained solid waste landfill.

Committee testimony claimed that petroleum coke, a waste by-product of petroleum refining, generates much less ash, and leaches lower levels of all hazardous metals than coal (with higher levels of vanadium and nickel). Requiring higher disposal standards, and hence cost, for petcoke suggests that this was an attempt to give a cost advantage to western Kentucky coal.

KCC opposed this bill because disposal requirements should be based on characterization that bears a reasonable relation to the risks posed by that waste. The bill was amended to only require a study of the use of petcoke. It passed the House but died in the Senate Agriculture and Natural Resources Committee.

HB 189 would have allowed billboard companies to remove trees and shrubs from public rights-of-way in order to create a 500 foot "viewing zone" on the public highways in Jefferson and Fayette counties. Majority Floor Leader Greg Stumbo indicated that he would not send the bill to the floor for a vote, and it remained in committee. When approached in the halls, even the bill's sponsor, Representative Paul Bather's support seemed lukewarm.

HB 534 attempted to exempt local governments from obtaining a stream construction permit when reconstructing, improving or replacing an existing road structure. This would have removed stream protections for bridge construction and channelization of streams. It died in committee.

HB 552 would have removed the requirement that the Cabinet issue an "abate and alleviate" order for violations found at mining operations. Instead the violator would be required to issue a statement that the mine would diligently pursue abatement of the violation. The bill died in committee.

Many thanks to Tom FitzGerald for help in some of the analysis. Many apologies for plagiarizing & mutilating the same.

2003 KCC Board of Directors

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Mark Your Calendar

Sat. Sept 13 9:00 - 3:00 KCC Annual meeting. Shaker Village, Ray Barry 859-223-0180

The Earth Needs a Friend in Frankfort

Please Check All that Apply

\$25 (individual) \$35 (family) \$15 (limited income) \$50 (contributor) \$100 (patron)

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