

# 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 2004

## Slow Session Produces a Few Small Gems

Long time legislature watchers have called the 2004 legislative session one of the slowest they can remember. Partisan gridlock and election year maneuvering seem to grip the legislature in a sleeper hold. Many bills that were posted in committee, generally a clear sign the bill would soon be heard, were never brought up. The start of the session seemed especially slow, with few environmental bills introduced early. Despite the seeming lack of action, 192 bills out of 1000 became laws. For KCC there were a few victories.

### Net Metering Passes

A bill requiring Utility companies to offer net metering to their customers became law (SB 247). KCC board member and solar expert for Appalachian Science in the Public Interest (ASPI) Joshua Bills spearheaded the effort on this bill. This was only the second attempt to pass such a bill. Usually such innovative legislation takes years. Net metering allows a customer generating electricity for their own use to sell their excess to the Power Company at the retail tariff.

The bill that became law, however, was a watered down version of the original bill. The final bill bore the heavy marks of the utility industry. It limited net metering to solar electric generation with a maximum capacity of 15 kW. The original bill would have encouraged other forms of green generation, and small entrepreneurs. Maryland recently upgraded a similar law to include small commercial operators and wind generation.

### Coal Bed Methane to be Regulated

Drilling for natural gas in coal fields is expected to be an increasing activity in Kentucky and will now be regulated under HB 577. Thanks to the tireless efforts of Kentucky Resources Council, the original bill was strengthened to protect the rights of surface landowners and require groundwater protection plans for nearby domestic wells.

### Hazardous Waste and Underground Storage Tank Programs Continued

The hazardous waste generator fees will continue for two more years under SB 222. This money goes to clean up superfund sites with toxic contamination. The underground storage tank program will also continue for two more years under SB 224. This program helps fund the replacement and clean-up of leaking underground petroleum storage tanks. Renewal of both programs was included in the various budget proposals, but separate bills to renew the programs were introduced when the possibility of not passing a budget arose. Fortunately, these programs will now continue, despite the lack of a budget. We will be keeping an eye on future budget proposals because there are some legislators that think these funds can be raided to balance the general fund.

### Big Sandy Trail to be Studied

A resolution creating a commission to study ways to complete the Big Sandy Trail passed both Houses and was signed by

Continued on pg 2

## Scorecard

| KCC Stance     | House Action Favorable to KCC | Senate Action Favorable to KCC | Final Law Favorable to KCC |
|----------------|-------------------------------|--------------------------------|----------------------------|
| Strong Oppose  | 67%                           | 67%                            | 78%                        |
| Oppose         | 80%                           | 90%                            | 90%                        |
| Support        | 27%                           | 19%                            | 15%                        |
| Strong Support | 36%                           | 18%                            | 18%                        |
| Overall        | 44%                           | 39%                            | 37%                        |

The table above attempts to evaluate the session numerically by the bills that we were tracking. These numbers indicate that not many bills moved.

**2004 Session Review, Cont.**

the Governor. The Big Sandy Trail is a rails to trails project converting an abandoned railroad into a foot/bike path extending from Lexington to Ashland. Lexington Parks and Recreation has started a small piece on the Lexington end. Volunteer groups have been working on pieces of the project for several years. Rails to trails projects promote tourism and local economic opportunities. The task force is to report its findings back to the Legislature.

**New Transmission Lines To Be Reviewed by PSC**

The siting of high voltage transmission lines will now require a certificate of public convenience and necessity from the Public Service Commission. Under SB 246 utilities can no longer construct long transmission lines without any public scrutiny. Details on the acceptance criteria will be set forth in a regulation written by the Public Service Commission.

**Non-Coal Mining Regulation to Continue**

Regulations governing the mining of non-coal rock and minerals will not sunset thanks to the passage of HCR 98. Governor Patton had established a temporary ban on non-coal mine permits while he unsuccessfully tried to implement stronger regulations. The Cabinet is now trying to reinstate the 1995 regulations.

In addition to these wins, KCC also counts as victories those unfriendly bills that were defeated.

**Poisonous Lead Bill Defeated**

Lead poisoning is a serious threat that needs to be dealt with responsibly. HB 349 attempted to create two categories of properties: "lead safe" and "lead free". Certifying a property as "lead safe" or "lead free" would immunize the owner from liability. The bill did not clearly set out, however, what these terms mean and by what mechanism they are to be "certified". The danger to human health was that these labels could mislead the public into believing that a property was safe or free of lead when, in fact, it is neither.

**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 labels would be misleading because the bill assumes the only threat from lead is paint on the surfaces of a dwelling. There is no consideration for lead in the soil around dwellings or dust arising from the soil that can contaminate the interior of a dwelling. There were many other troubling aspects of this seriously flawed bill.

The sponsors withdrew their support after several witnesses at its committee hearing seriously panned the bill.

**Triple Sign Billboards Draw a Blank**

A bill that would have allowed billboards with three rotating signs along federal highways for the first time, SB 114, cleared the Senate but was not heard in the House Transportation Committee. These billboards are very distracting because the human eye is sensitive to change. The bill would have also established a program to allow the billboard industry to cut down trees in the public right of way that block the view of their billboards. The industry has been trying to get this provision for years despite a huge public outcry against it.

**No Smoking Ban Bans**

Several efforts to prevent Lexington from implementing its indoor smoking ban went up in smoke. Meanwhile, the State Supreme Court ruled the smoking ban constitutional based on the local government's authority to protect public health. The ban is now in effect. This issue could re-emerge next session. Meanwhile, ban advocates hope the ban will have been in effect long enough for fears to evaporate and the smoke to clear.

**Takings Bill Not Taken**

The legislature would not know what to do without the traditional "takings" bill. SB 89, a bill to compensate property

**cont. on pg 3**

**Missed Opportunities Wait for Another Day**

As always, many good bills didn't make it, but with diligence and hard work, may one day have a chance of passage.

For the second year in a row, a bill to create a state **pest plant board** failed, but it got a bit farther than last year. HB 125 was nearly killed in committee when members of UK's Agriculture department asserted it was a means to stop corn and soybean farming, despite clear language to the contrary. The bill did finally pass out of committee but was recommitted to the committee by House leadership where it remained until the end of the session.

Two resolutions ordering the Environment and Public Protection Cabinet to require the submittal of emergency action plans by owners of **coal slurry impoundments** that could threaten life or property if they failed did not pass. HJR 196 never made it out of committee and SJR 127 was recommitted by Senate leadership to Agriculture and Natural Resources to die at the end of the session.

A plan to require **radon mitigation** in houses, daycare facilities and elementary schools located in high radon areas was never heard in committee. Another plan to add a radon disclosure to a seller's disclosure requirements in real estate transactions was withdrawn by the sponsor.

**Ethics standards and training requirements for planing and zoning** boards was passed by the House but was never heard in the Senate State and Local Government Committee. This is farther than Jim Wayne's common sense proposal went last year, so there is still hope this measure will pass one day, if it can get beyond partisanship.

A bill to Require education about prevention, detection, and remediation of toxic mold and other **indoor environmental toxins** for any person seeking licensure as a Heating, Ventilation and Air Conditioning contractor passed the House and stalled in the Senate State and Local Government Committee.

cont. from pg 2

owners for practically any government action was turned into a bill asking the Attorney General to clarify what constitutes a "taking". The bill did not pass.

Similarly, the annual "small business regulatory relief program", HB 649 was never heard in committee. This bill would have required state agencies to reduce or eliminate civil penalties for businesses with fewer than 100 employees. Such a law would exempt some of the biggest polluters from penalties and open loopholes for other polluters to slip through. Less than 100 employees does not equate to low pollution. A landfill is one example.

**Stream Crossing Bill Crossed Out**

An attempt to exempt local governments from obtaining construction permits when repairing, upgrading or replacing stream crossing structures ended when the sponsor withdrew support for HB 179. KCC argued that there is no good reason to exempt governments from water quality protections and regulations because the need for emergency post-flood reconstruction could better be handled administratively, rather than statutorily. In other words, we can cross that bridge when we get to it.

Finally, as in every session, there are a few unfavorable bills that pass, despite our best efforts.

**Find Another Way to Breathe Easy**

SJR 3 passed instructing the Environmental and Public Protection cabinet to close down the Vehicle Emission Testing Program in northern Kentucky. Instead the Cabinet must find other means to meet the new 8-hour ozone and particulate standards.

**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!

**2004 KCC Board of Directors**

- Russell Barnett**, President, Lawrenceburg
- Ray Barry**, Lexington
- Joshua Bills**, Berea
- Robin Fisher**, Louisville
- Joyce Fry**, Frankfort
- William Martin**, Lexington
- Brian Myres**, Carlisle
- Ramesh Bhatt**, Lexington
- Rosetta Fackler**, Louisville
- Wade Helm**, LaGrange
- Kazi Javed**, Frankfort
- Gary Michael**, Louisville
- Jack Wilson**, Lexington

**2004 KCC Lobbyists**

- Bruce Williams**, 502-863-5938
- Kristen Dunaway** 1-800-292-1862 x245

**Newsletter Editor** : Ray Barry

**The Anti-Bureaucracy Bureaucracy**

The Small Business Advocacy Commission will now review all new regulations under HB 609. Nothing currently precludes anyone, including the commission from reviewing and commenting on proposed regulations. This law creates new unnecessary bureaucracy. The strategy of those that hate the bureaucracy of regulations seems to be to stem regulations through bureaucracy.

***The Earth Needs a Friend in Frankfort***

**Please Check All that Apply**

\$25 (individual)  \$35 (family)  \$15 (limited income)  \$50 (contributor)  \$100 (patron)  
 \$100 (Organization)  \$365+ ("365 Club")

I am enclosing an extra \$10 to receive the Legislative Alert during sessions.

Other: \$ \_\_\_\_\_ (please specify amount) Total enclosed \$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP+4 \_\_\_\_\_

Home Phone: \_\_\_\_\_

Work Phone: \_\_\_\_\_

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.

My legislators are (if you know them):

KY Senator \_\_\_\_\_

KY Representative \_\_\_\_\_

US Representative \_\_\_\_\_

email \_\_\_\_\_

Kentucky Conservation Committee  
P.O. Box 1152  
Frankfort, KY 40602