

Kentucky Conservation Committee



2014 Legislative Session Review



A Note from KCC President, Andy McDonald

Our work to conserve and protect Kentucky's land, air, and water suffered significant setbacks in this legislative session. The short-sighted budget cuts to environmental programs within state government will make it more and more difficult to ensure that we will leave a healthy, diverse, productive, and safe environment for Kentucky's children. This will have negative impacts on Kentucky's economy, quality of life, and the health of our communities for years to come. In the face of these setbacks, KCC will continue to work to impress upon legislators, the Governor, and state officials the wisdom of land conservation and responsible stewardship of our natural resources.

Amidst the setbacks there were rays of hope, however. A citizen's movement has arisen in Kentucky to stop the imposition of a dangerous natural gas liquids pipeline upon the people and land of our state. While none of the "anti-pipeline/ eminent domain" bills were passed into law, the numerous bills that were filed on this issue, and the fact that one of these passed through the House, reflects that our legislators heard the voices of their constituents. While we did not pass legislation on this issue, a suit brought by the Kentucky Resources Council won in the courts this spring and for now, at least, the Bluegrass Pipeline's investors have backed away from the project. The people made this an issue that the legislature could not ignore and it has been inspiring to see an environmental conservation movement galvanize people into action and win significant victories.



Anglin Falls in the John B. Stephenson Memorial Forest State Nature Preserve in Rockcastle County, near Berea. This cathedral-like grotto sits at the end of a short hike which provides one of the richest wildflower walks in Kentucky.
May 4, 2014
Photo Credit: Vicki Holmberg



Amur Honeysuckle is native to China, South Korea, and parts of Japan. This year, the KCC strongly supported Senate Bill 170, which calls for better management of invasives such as amur honeysuckle, allowing a better chance for native species to survive and flourish. That bill was signed into law. Fall, 2013.

Photo Credit: Vicki Holmberg

INTRODUCTION

The 2014 60-day legislative session has come to an end. The extended session every two years allows for the legislature to consider and pass a state budget for the following two years. As this was an even year, the state budget dominated the headlines. However, over 500 other bills were introduced, with the KCC closely monitoring over 50 of these bills. The good news is most of the bills that the KCC opposed or strongly opposed did not become law. Even a few bills that we supported or strongly supported did become law. The bad news is that a few bad bills did become law and will have an impact on our conservation efforts, including a state budget that once again slashes the state's environmental and conservation budgets. The following gives a rundown of the good and the bad in each of our program areas: conservation, biodiversity, energy, and education. For a full chart of the bills we paid close attention to throughout the session, and the outcome of those bills, please visit www.kyconservation.org.

BILLS THAT BECAME LAW

ENERGY

While a few beneficial bills were adopted this year, Kentucky has still failed to make any attempts to transition to cleaner and sustainable energy systems. In addition, a few bills were passed that will have a detrimental impact on Kentucky's economy and its ability to regulate itself. For example, one of the more egregious bills passed this session was [House Bill 388](#). HB 338, seeks to preempt EPA's greenhouse gas rulemaking by addressing the establishment of state performance standards for the regulation of carbon dioxide emissions from existing fossil fuel electric generating units. KCC strongly opposed the bill, since we support the U.S. EPA's efforts to reduce GHG emissions and this bill has the potential to undermine those efforts and create unintended consequences. HB 338 could also potentially subject Kentucky to a federal implementation plan.

Still, there were some bright spots on the energy front this session. [House](#)

[Bill 291](#) provides for additional public involvement for projects that fall under the jurisdiction of the merchant electric facility siting board. The bill also clarifies that property boundary and other setbacks apply to all structures, and are not limited solely to exhaust stacks. In addition, the bill makes clear that a project with an aggregate capacity of less than 10 MW is not subject to the siting board, which would exempt small facilities such as roof-top solar panels. The KCC supported the bill, which became law. Another bill that the KCC supported was [Senate Bill 153](#). SB 153 would authorize the use of Pollution Prevention Fund dollars to match federal funds for the purpose of providing energy efficiency technical assistance.

A few other bills that the KCC monitored and became law are: [House Bill 336](#), which requires a mining permittee to provide for the removal of electric distribution installations in its reclamation plan and [Senate Bill 70](#), which clarifies that definitions related to energy efficiency in state buildings include conservation measures.

CONSERVATION & BIODIVERSITY

While several bills relating to conservation and biodiversity were filed this session (including the KCC's bill, filed by Sen. Carroll, to adopt the pawpaw tree as Kentucky's state fruit tree), only a few were signed into law. [House Bill 488](#) amended KRS 150.170 to allow landowners, their spouses, dependent children, or designee approved by the Commissioner to kill or trap on their lands any wildlife causing damage to the lands or personal property without a tag. HB 488 also requires disposal of the carcass on-site and inedible parts from wildlife be destroyed or left afield. Even with the disposal and handling requirements, this bill could allow widespread, unregulated killing of wildlife, greatly complicate management of state wildlife populations, and create a "designee" cottage industry. This bill could also present new risks to migratory birds and other threatened wildlife populations. KCC calls on the Department of Fish & Wildlife Resources to implement this new law with great care to prevent these unintended consequences.

[House Bill 493](#) was also signed into law by the Governor. HB 493 amended KRS 148.853 to reduce the amount of a tourism project's eligible costs to \$500,000. These projects previously included lodging, entertainment destinations like 4th St. Live in Louisville, restaurants and historical sites. HB 493 also allows a tourism project in an enhanced incentive county to receive a sales tax incentive equal to the lesser of the amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs not to exceed 30%, and limits new applications for the incentives to be received before August 1, 2014 or after July 31, 2018. Rep. Adkins argued that this bill was necessary to help incentivize the smaller tourism projects that otherwise were not eligible for incentives, as the previous minimum amount for eligible costs was \$1,000,000. The KCC believes that this bill could enhance and benefit tourism of Kentucky's many natural areas, parks, and other eco-tourism locations. However, the KCC also recognizes that the incentives can be used for forms of "tourism" that can harm its conservation

efforts. We will continue to monitor the implementation of this law.

The KCC also commends the Legislature and the Governor for the passage of an important conservation bill. The KCC strongly supported [Senate Bill 170](#), sponsored by Sen. Parrett, which was signed into law by the Governor. SB 170 substantially amends the state's noxious weed and invasive plant program to allow the Department to revise the list of noxious weed and invasive plant list itself, instead of the Kentucky legislature. SB 170 also establishes a program to promote awareness and eradication through the use of electronic media and the Cooperative Extension Service. SB 170 also establishes factors the Department may consider in making a determination regarding the addition or deletion of a plant and that the department shall review the regulation at least once every four years.

THE STATE BUDGET - HOUSE BILL 235

As expected, the [budget](#) for the next biennium (fiscal years 2015 and 2016) continued to cut funding for environmental programs.

The budget for the general fund for the Department of Natural Resources was reduced by 5%. In addition, funding for the Kentucky Heritage Land Fund will be reduced by \$5 million in 2015 and by another \$3 million in 2016, which will greatly hamper the program. Funding for the Office of Mine Safety and Licensing will be reduced by over \$4 million, which will result in reduced inspections and could have a potential safety impact on miners. The budget for the entire Energy and Environment Cabinet will be reduced by \$5 million from 2015 to 2016. That makes a total reduction of 27% of the Cabinet's budget since 2008. The Energy and Environment Cabinet predicts that cuts will force it to consider eliminating its wildfire fighting program and will jeopardize its ability to respond to other types of environmental emergencies such as chemical leaks and natural gas spills.

Another victim to the budget cuts is the [Environmental Quality Commission](#). The EQC was transferred to the Energy and Environment Cabinet and its entire budget is subject to transfer to the general

Hummingbird on coral honeysuckle, which is native to the southeastern United States. KCC programming and advocacy supports biodiversity throughout the Commonwealth. Photo Credit: Vicki Holmberg



fund in both fiscal years. This means that the Cabinet Secretary can defund the EQC if he so chooses, effectively eliminating the EQC's independent role as a government oversight body. The EQC was established in 1972 as an independent agency, advising the governor and cabinet secretary on environmental matters and acting as an ombudsman. The budget of the EQC, like the rest of the state environmental agencies, has been slashed in recent years, going from four full time employees six years ago to one full time and one temporary employee today.

BILLS THAT DID NOT BECOME LAW

There were several bills the KCC both supported and opposed that received at least some attention by the legislature throughout the session, yet failed to become law. The following highlights many of those bills.

ENERGY

Outside of the budget, one of the most political and publicly debated issues of the session was the saga of eminent domain and natural gas liquids pipelines. In March, Kentucky's Franklin Circuit Court ruled that the Bluegrass Pipe-

line Company does not have eminent domain authority to build a natural gas liquids pipeline under current Kentucky law. While that decision was being made, several bills were filed in both the House and Senate making it clear that eminent domain power does not extend to natural gas liquids pipelines. Those included [House Bills 31](#) and [60](#) and [Senate Bills 14](#) and [21](#). The KCC eventually preferred House Bill 31, as it proved to be the strongest among the bunch. This bill would have clarified that the power of eminent domain granted to pipelines carrying oil and gas products do not include natural gas liquids pipelines. Amendment 8 slightly weakened the bill to exempt incidental NGL production. The bill passed the House, but died in the Senate. KCC supported the bill without the amendment.

Then, in a few political moves toward the end of the session, a similar "pipeline" bill, was added to [House Bill 474](#), originally a bill that would potentially allow coal mining and processing companies to qualify for sales and use tax and income tax incentives. KCC originally opposed the bill since it would provide an incentive to use coal over renewable energy sources, but then supported the bill with the pipeline amendment since restricting the power of eminent do-

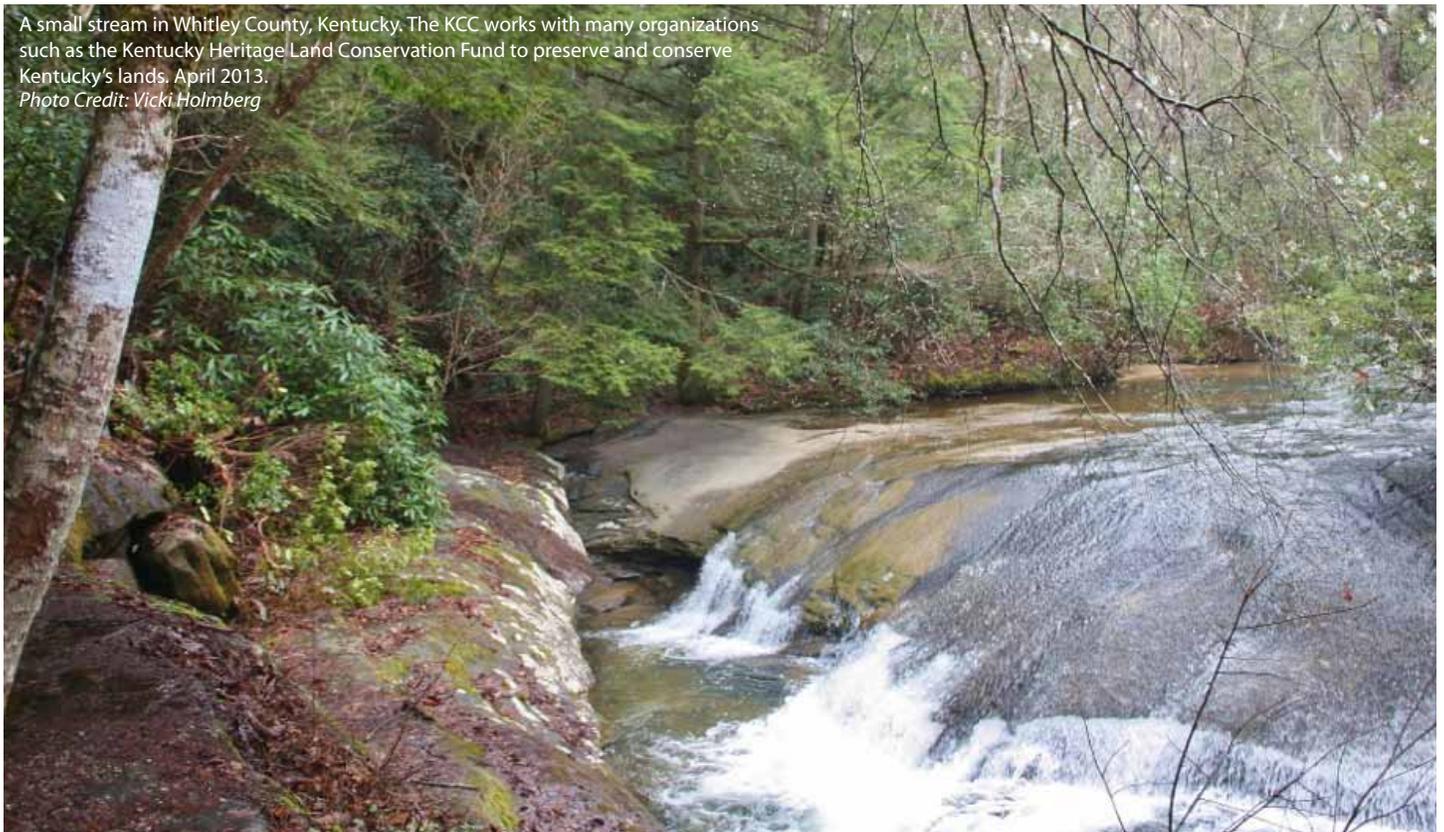
main for NGL pipelines was a top priority for the organization this session. The bill passed the House but did not make it out of the Senate Appropriations and Revenue Committee.

In addition, [House Bill 573](#), originally a bill designed to allow the Public Service Commission to reopen the case involving the Big Sandy Power Plant, was also amended late in the session floor to add another "pipeline" bill, which would have disallowed natural gas liquids pipeline companies not regulated by the Public Service Commission to condemn property. Although the bill did not pass the Senate, KCC supported the bill with the amendment because of its strong position on eminent domain for natural gas liquids pipeline companies.

Nevertheless, as a result of legislative action and citizen opposition to the Bluegrass Pipeline project, the Bluegrass Pipeline Co. has stated publicly that it is no longer pursuing the project at this time. Still, several other NGL pipeline are being proposed.

Related to the eminent domain NGL pipeline bills, [House Bill 387](#) would have created a permitting process requiring anyone constructing a natural gas liquids pipeline to apply for a construction certificate from the Kentucky State Board

A small stream in Whitley County, Kentucky. The KCC works with many organizations such as the Kentucky Heritage Land Conservation Fund to preserve and conserve Kentucky's lands. April 2013.
Photo Credit: Vicki Holmberg



on Electric Generation and Transmission. The bill, which KCC strongly supported, died in the House Natural Resources and Environment Committee.

Another well-covered issue this session was the weakening of Kentucky's ban on new nuclear power facilities. [Senate Bill 67](#) (its House equivalent, [HB 52](#), died in the House) was Senator Leeper's bill that would have removed the ban on the construction of nuclear power facilities in the state. KCC strongly opposed the bill, which passed the Senate, but did not pass the House. However, towards the end of the session, Senator Leeper managed to piggyback his nuclear bill onto [House Bill 483](#), a bill that originally allowed companies to qualify for incentives under the Kentucky Industrial Revitalization Act. Sen. Leeper was able to file and pass a Senate Committee Substitute to HB 483, adding provisions to the bill that would allow for the construction of nuclear generation facilities in Kentucky as long as they had a plan for the storage of nuclear waste. KCC strongly opposed the bill with the committee substitute. The bill did not become law.

The KCC also followed and opposed a few bills that were aimed to promote the fossil fuel industry in Kentucky. These bills did not become law. [House Bill 63](#) would have required retail electric suppliers to maintain a 30-day supply of fuel for electricity generation. KCC opposed the bill as it would have limited Kentucky's ability to diversify its energy portfolio by restricting certain electricity sources, including many renewables. The bill died in the Tourism, Development & Energy Committee. [House Bill 466](#) would have directed that petroleum environmental assurance fees be deposited into the Kentucky Alternative Fuel and Renewable Energy Fund, which would provide funding to companies based in Kentucky that aim to develop and expand the market for using natural gas as an alternative transportation fuel. KCC opposed the bill, which passed the House, but died in the Senate.

The KCC also supported several bills that promoted renewable energy and energy conservation. [House Bill 195](#), the Clean Energy Opportunity Act, which has been refiled consistently over the past several years, creates a renewable energy and energy efficiency portfolio standard and



A brilliant floral display of the pawpaw fruit. The KCC was instrumental in the filing of a bill to adopt the pawpaw tree as the official native fruit tree of Kentucky, Fayette County, Kentucky, 2014. Photo Credit: Vicki Holmberg

a feed-in tariff. KCC lobbied on behalf of the bill and the bill was given a hearing, but no vote, in the Tourism, Development, and Energy Committee. Related to HB 195 is [House Bill 535](#), which increases the cap on electricity generation facilities eligible for net metering from 30 kilowatts to 500 kilowatts. KCC strongly supported the bill, which would have promoted an increase in distributed generation renewable energy production in the state. The bill died in the House Tourism Development and Energy Committee. However, the KCC is in talks to hold an interim committee meeting on the bill prior to the 2015 legislative session.

The KCC also supported several other clean energy bills that unfortunately did not become law including: [House Bill 241](#), which would have revamped and strengthened regulations regarding the disposal of coal combustion; [House Bill 356](#), which sought to create a Conservation Builder certification program; and [House Bill 486](#), which would have provided individual income tax credits for the purchase of Energy Star manufactured homes.

Another bill, [House Bill 520](#), would have modified the building performance standards for new and renovated state-

owned and rented facilities by removing benchmarks related to LEED, Energy Star, and Green Globes and replacing these with standards relevant to the American Society of Heating, Refrigerating, and Air Conditioning Engineers. KCC monitored the bill, which did not make it out of the Tourism, Development and Energy Committee.

The KCC also opposed [Senate Bill 35](#). SB 35 would have increased the membership of the Public Service Commission from 3 to 7 and required the commissioners to be elected. The PSC is the entity that regulates utilities in Kentucky. KCC opposed the bill, which did not pass out of committee.

CONSERVATION & BIODIVERSITY

The KCC, with the support of Kentucky State University, was instrumental in filing [Senate Bill 154](#), which would establish the pawpaw tree as the official native fruit tree of Kentucky. The KCC met with the [Kentucky State University Pawpaw Program](#), the only full time pawpaw research program in the world, the Kentucky Department of Agriculture, and various Senators and Representatives to have the bill filed and heard. Unfortunately, Senator Bowen, the Chair of the Senate State and Local Government Committee, did not make it a priority,

and the bill was never heard. However, we garnered interest from a few other Representatives and Senators that have expressed interest in pushing the bill forward next year. The KCC will continue to push for the recognition that pawpaw growers, KSU's program, and the pawpaw tree deserve.

The KCC followed several other bills that impact conservation and biodiversity and that ultimately did not become law. These include bills like the streamsaver bill ([HB 288](#)) and statewide smoking ban bill ([HB 173/SB 117](#)) that are regularly filed but rarely move. This year, the KCC supported and opposed several bills that may not have become law, but did make significant movements through the legislative process.

For example, the KCC strongly supported the [HB 376](#), sponsored by Rep. Kay, which would establish a qualified conservation contribution income tax credit. This means that the state would create a state income tax credit for landowners who make permanent gifts of land or agree to restrict the use of their lands for public benefit. This type of tax credit has been proven successful in states surrounding Kentucky. In Virginia, a similar conservation program was enacted that allowed every dollar of lost tax revenue under the program to result in as much as \$24 worth of land conserved for public benefit. [HB 376](#) passed the House, but died in the Senate. Representative Kay also sponsored [HB 491](#), also strongly supported by the KCC. [HB 491](#) would have established a program to better account for and regulate the illegal damage or harm to or taking of endangered or threatened plant species throughout the state. The bill called for the State Nature Preserve Commission to promulgate

regulations to administer the program. Again, this bill passed the House, but died in the Senate.

The KCC strongly supported [HCR 93](#), which directs the Legislative Research Commission to establish a Timber Theft and Trespass Reduction Task Force to study issues regarding timber theft and trespass and to develop consensus recommendations to address those issues. The House passed this Resolution, but it died in the Senate.

The KCC also opposed several bills impacting conservation and biodiversity that failed to become law. One bill that has been re-filed year after year in some form was [House Bill 203](#), sponsored by Rep. Bell. This bill would create a permitting and licensing program to allow advertisers to cut trees in public rights-of-way to improve billboard visibility. This bill failed to make it out of committee. The KCC also strongly opposed [House Bill 380](#), sponsored by Rep. Gooch. This bill requires the collection of the unmined minerals tax only when a permit is issued to mine, drill or otherwise extract the mineral resource. The unmined mineral tax is one of the major funding sources of the [Kentucky Heritage Land Conservation Fund](#) (KHLCF), Kentucky's primary resource for land conservation. The KHLCF's budget was already considerably defunded in the state's budget. This bill also failed to pass the House.

[Senate Bill 31](#) (which may qualify as the legislature's most uninformed bill of the year), sponsored by Sen. Schickel, attempted to prohibit state agencies or political subdivisions of the state from implementing any part of the United Nations Agenda 21 that is contrary to

the United States or Kentucky Constitution. For a quick background on Agenda 21 – it is a voluntary agreement that demonstrates how all levels of government—especially in the developing world—can take voluntary action to combat poverty and pollution, conserve natural resources and develop in a sustainable manner. Agenda 21 is not a treaty or legally binding document and does not infringe upon the sovereignty of any state or local government. Agenda 21 was negotiated and written by national governments, including the United States under the first Bush Administration, at the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, more commonly known as the Rio Earth Summit. The United States along with 177 other countries adopted Agenda 21. The Senate passed [SB 31](#), but the House did not. More than likely, the same bill will be introduced again next year.

EDUCATION

[Senate Bill 1](#) creates a new section of the Constitution of Kentucky to permit the General Assembly to prohibit the adoption of administrative regulations that it has found to be deficient while the General Assembly was not in session. The Republican party made this a priority bill in response to the Executive's implementation of provisions of the Affordable Care Act in Kentucky and the adoption of the Common Core educational standards in Kentucky, standards that the KCC supports. KCC is primarily concerned that the General Assembly will be bypassing the Judiciary violating the separation of powers when the Executive Branch implements environmental regulation and policy.



The view from Pine Mountain, Kentucky, March 2013.
Photo Credit: Vicki Holmberg

The KCC depends on contributions, both large and small, to fund our educational programs, legislative programs, and public policy campaigns. To donate, become a member, or for more information, please visit www.kyconservation.org or our facebook page at www.facebook.com/kyconservation.

Kentucky Conservation Committee

P.O. Box 1152

Frankfort Kentucky 40602

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Front Cover: Although the Monarch butterfly does not live in Kentucky year round, Kentucky plays an important role in its migration to and from Mexico and the southern United States. Deforestation in Mexico and intensive farming in the United States are pressuring them on both legs of this epic migration. August 2014.

Photo credit: Vicki Holmberg

Back Cover: Backlit oval pawpaw leaves in golden hues of autumn demonstrate the scale of the tree as an important species in the understory. Its utility as a small landscaping tree is being rediscovered by gardeners who are moving away from non-native choices. Garrard County, Kentucky, November 2013.

Photo credit: Vicki Holmberg

