

# THE GOOD, THE BAD, & THE UGLY

## 2024 GENERAL ASSEMBLY REGULAR SESSION IN RETROSPECT

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During this legislative session, as we have since 1984, Kentucky Resources Council tracked, supported, and opposed numerous bills on the environment, conservation, energy, social justice, and general government issues. And with your help, we made an impact this year! We now present our annual report of the highs and lows of the 2024 General Assembly.

### THE GOOD

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When describing “the good,” KRC considers both those bills that advance our shared goals of environmental equity and justice, public health, and progressive energy and environmental policies; and those bills that would have taken us in the opposite direction but that did not become law - an overall “good” outcome. **In the first group, we have:**

#### **Petroleum Storage Tank Environmental Assurance Fund Extended; Waste Tire Fees Extended; and \$60 Annual Fee for Registering Hybrid Cars Removed**

HB 8, a revenue bill, includes several positive provisions related to environmental protection. It extends the deadlines for reimbursement for corrective actions taken under the petroleum storage tank assistance program. It also extends the collection of the \$2 fee on the purchase of a new vehicle tire, which funds the collection and management of waste tires. Finally, it eliminated the \$60 annual fee previously imposed on motor vehicle registration for hybrid vehicles.

#### **New Loan Resources for Struggling Water and Wastewater Systems Approved**

HB 563 establishes the Kentucky Water and Wastewater Assistance for Troubled or Economically Restrained Systems Program, a loan assistance program under the Kentucky Infrastructure Authority (KIA). KRC opposed the original bill because it gave a significant role in implementing the loan program to the Kentucky Rural Water Association (KRWA) – a non-governmental organization of water and wastewater utilities – since determinations regarding financial assistance using public monies should be undertaken by a state agency rather than a non-governmental entity. KRC successfully lobbied sponsors to remove the KRWA partnership from the bill. Now, the KIA is permitted to contract with outside entities for limited assistance in executing the program, and the General Assembly will approve the final applicants for the loans. KRC supports the final bill, but believes that to avoid delay in approval of loans, the bill should have allowed approval during the legislative interim by a standing committee. We will support that change next session, if necessary.

#### **Cabinet Directed to Advise on Strategies to Address “Forever” Chemicals**

SJR 149 requires the Energy and Environment Cabinet to advise entities that discharge into Kentucky waters on the best management practices for perfluoroalkyl and polyfluoroalkyl substances (PFAS). PFAS, known as “forever” chemicals, are often used in consumer goods and are known for enduring in the environment. Studies suggest that exposure to PFAS causes harmful health effects in humans and animals. Encouraging public and private cooperation to reduce PFAS in the environment is a crucial first step in safeguarding the health of Kentuckians. KRC continues our effort to hold cities accountable for PFAs in their sludges used for land application on farmland.

## **Local Officials to Be Notified of Environmental Emergency Declarations**

HB 583 will require the Energy and Environment Cabinet to notify chief executive officers of local governments when an environmental emergency is declared in their jurisdiction.

## **New Authority Created to Expand Regional Trail System On Ohio River**

HB 712 promotes outdoor recreation and tourism development by establishing the Kentucky Ohio River Regional Recreation Authority to promote a regional trail system!

### **In the second group, we highlight several troublesome bills that failed:**

#### **Bill Reducing the Number of Emergency Personnel In Underground Mines Fails**

Current safety laws require coal mines to hire and have two emergency medical or mine emergency technicians (METs) on shift, providing a safety net if one is injured or incapable of performing their duties. HB 85 would have reduced this required number of emergency personnel from two to one when less than 15 people are on shift, compromising worker safety in the event of a mining accident or health crisis. It did not exempt mines that report serious or fatal accidents. KRC worked with Appalachian Citizens Law Center in successfully opposing the bill.

#### **Bill Amending Kentucky Open Records Act and Reducing Government Transparency Fails**

HB 509, called an "unprecedented attack on the public's right to know" by the Kentucky Press Association, would have narrowed the definition of "public record" to exclude all deliberative and pre-decisional documents, among other items. KRC strongly opposed these exemptions, which were removed before the bill was sent to the House floor. The bill also addressed open records access to private email accounts used by public officials, but no consensus was reached between the sponsor and open-records advocates, and the bill died in the Senate.

#### **Bill To Preclude Frankfort Plant Board From Offering Broadband Services Fails**

HB 807 ran contrary to the idea of non-profit electric utility providers being able to offer services, including telecommunications and broadband. The bill would have resulted in reduced competition, which would benefit for-profit providers at an increased cost to customers.

## **THE BAD**

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Many bills were passed this session with negative impacts for social justice and local governance - from HB5, which will criminalize sleeping in public places by the unhoused, to HB 388, which interferes with Jefferson County's efforts to make housing more affordable and available by imposing a one-year moratorium on changes to Louisville's land development code intended to reform zoning regulations to encourage more affordable owner-occupied and rental properties. Below, we highlight several additional "lows" of the session, which weaken environmental laws and standards.

#### **Arbitrary Exemption of Smaller Construction And Demolition Debris Landfills Expanded**

HB 478 allows construction and demolition debris landfills (CDDs) that are less than one acre to be doubled in size. The construction standards for these smaller CDDs are significantly less protective of the environment than for larger landfills accepting the same types of wastes. This distinction is arbitrary and increases the risk of environmental contamination. All CDDs should be required to install liners, leachate collection systems, and ground water monitoring mechanisms.

## **Environmental Audit Privilege Extended to Jefferson County Air Pollution Program**

HB 136 expands the “statutory evidentiary environmental audit privilege,” currently available for state environmental regulatory programs, to the air pollution program of the Jefferson County Air Pollution Control District (APCD). This privilege protects the results of companies' internal environmental compliance audits, preventing a violation of an environmental law from being used against them, as long as the violation is corrected. KRC believes this privilege – in both the underlying law and its expansion – is inconsistent with Kentucky’s obligations under the Clean Air Act, to the extent it interferes with regulators’ authority to enforce violations. KRC has asked EPA for a determination of consistency. If EPA determines that this privilege is inconsistent with the Clean Air Act, then Kentucky could lose its ability to administer the Act’s programs for the state, with EPA taking over that role.

## **Legislative Efforts to Move Constitutional Challenges Out of Franklin County Continue**

HB 804 allows a party to force a change of venue, without any justification, in any case involving a constitutional challenge to a statute, regulation, or agency order. It is another effort to move cases filed in Franklin Circuit Court that challenge the constitutionality of state government actions to another court. This law suffers from many of the same constitutional infirmities as the 2023 venue statute struck by the Kentucky Supreme Court. KRC filed a “friend of the court” brief challenging the 2023 venue bill and intends to challenge the constitutionality of HB 804 as well.

## **Appropriation Could Support Further Obstruction of Needed Pollution Control Regulations**

SB 91 included an appropriation of \$3 million over two years to the Kentucky Attorney General to create an “electric reliability defense program.” The bill provided no guidance or definition on what such a program would entail. KRC believes that assuring the reliability and resiliency of the electric grid is of paramount importance. However, we are concerned that the funds will instead be used to continue the Attorney General’s pattern of obstruction of federal efforts to combat climate change and reduce air pollution, and as such, it is a waste of taxpayer dollars that could be put to much better use.

## **THE UGLY**

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Two new laws made the grade of being deemed truly “ugly” this session.

### **Law Jeopardizes Public Health by Criminalizing Worker and Neighbor Documentation of Environmental and Safety Violations at Food Plants and Animal Feeding Operations**

Existing law creates the crime of “criminal trespass upon key infrastructure assets,” which is defined as unauthorized drone overflights of certain businesses and infrastructure (such as prisons and water treatment plants) with an intent to cause harm, or to surveil from the air without permission. SB 16 adds animal feeding operation (AFO), concentrated animal feeding operation (CAFO), and commercial food manufacturing and processing facilities (CFMPF) to that list, but it goes far beyond preventing drone overflights of these operations. It also criminalizes the use of a recording device or camera on a property containing an AFO, CAFO, or CFMPF, and the documenting of any part, procedure, or action of one of these operations. SB 16’s overbroad language makes it a potential crime for a worker or state inspector to document workplace violations, for a neighboring landowner to take a photo or video of one these operations from their own property, and even for the unauthorized taking of family photos at an animal feeding operation – which includes any farm or other venue where even one pig, horse, or chicken is kept for 45 days a year. This bill creates unintended impacts on Kentuckians who rely on the General Assembly to articulate criminal conduct with such specificity that it doesn’t interfere with or chill otherwise benign and legal conduct. It subjects Kentuckians to an impermissibly overbroad and vague criminal statute and will result in unintended impacts on workers, neighbors, and the public interest in food safety. KRC intends to challenge the overbroad bill.

# THE UGLY

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## Utility Regulation of Reasonable Least Cost Electricity Placed At Risk

SB 349 imposes barriers and delays on retiring aging and uneconomic fossil-fuel electric utility plants and rigs the regulatory process against renewable energy, making the transition to a decarbonized energy future more chaotic and costly for Kentucky's ratepayers. The standard governing Public Service Commission (PSC) regulation of electric utilities has for many years required utilities to choose the most reasonable, least-cost option for delivering reliable and adequate electric service to ratepayers. This standard was fuel-neutral, although it historically favored the use of coal. Today, coal is no longer the lowest cost option, as the inherent public health costs of burning coal are internalized through federal regulation. Utilities are turning to other sources of energy to meet the state's electricity demand, and older, uneconomic fossil-fuel units are slated for retirement.

SB 349 "games" the energy planning process in several ways. First, it creates a new Energy Planning and Inventory Commission (EPIC) board stacked with fossil-fuel interest representatives who are charged with studying and annually reporting on the Commonwealth's energy future to the legislature, the Governor, and the PSC. Second, utilities must notify and report to EPIC on any intended retirement of a fossil fuel-fired plant before applying to the PSC, and an Executive Committee will make written findings and recommendations concerning the proposed retirement. The PSC must receive and consider these reports, without the opportunity for probing the validity of its findings, in any case where a utility seeks approval to decommission, demolish, or retire any existing coal, oil, or natural gas-fired electric generating plant. Third, it categorically disallows replacement of retiring fossil-fuel power plants with renewable wind or solar power. Finally, it imposes unworkable deadlines on decisions by the PSC in cases before it, which will abridge the ability of the PSC and interested parties to thoroughly review utility proposals to change rates or service.

The law rests on the questionable premise that retiring fossil fuel plants is not necessary for human protection, even though science demonstrates that their continued operation increases morbidity, mortality, and climate destabilization. It says this will promote the general welfare of Kentuckians, when in reality the continued operation of many fossil-fueled power plants is more costly and less healthy and safe than available alternatives, including energy efficiency, renewables, and demand management. It will saddle our ratepayers with significant costs associated with the maintenance of fossil-fueled units that must be upgraded or cannot be used because they are neither economic, nor environmentally compliant. The law also hinders economic development, as many companies seeking to locate or expand look for least-cost and *sustainable* energy solutions for their operations.

## BEYOND LEGISLATIVE ADVOCACY

KYRC continues to provide free legal services across the Commonwealth to individuals and communities impacted by pollution and environmental harm. We currently represent a landowner challenging an unlawfully-issued mining permit for her property, the Bernheim Foundation in its continued fight against LGE's "taking" of their conservation land to build a natural gas pipeline, and neighbors to an industrial hog operation with repeated odor violations. We are also working with several community and neighborhood groups concerned about the impacts of development projects in counties including Madison, Nelson, and Jefferson, helping to amplify local voices and seeking protective standards in conditional use permits.

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