

2020 GENERAL ASSEMBLY REGULAR SESSION:  
THE GOOD, THE BAD, AND THE UGLY

As we have for each legislative session since 1984, we look back on the bills and resolutions that KRC supported and opposed during the recently ended 2020 General Assembly Regular Session. With apologies to Clint Eastwood, here is *The Good, The Bad, And The Ugly*.

**THE GOOD**

**The legislative session saw passage of several bills relating to environmental health and protection that have a positive effect:**

**House Bill 351** extends the waste tire fund fee collection and underground storage tank fee and program eligibility for four years and allows local governments to issue bonds for solar-generating facilities, which should result in an increased in solar projects in Kentucky.

**House Bill 362** creates a broadband deployment fund to provide infrastructure construction assistance for deployment of broadband service to under- and unserved areas of Kentucky.

**Senate Bill 21** allows veterinarian to report abuse and provide immunity for good faith report.

**Senate Bill 157** amends executive branch lobbyist laws to include real parties in interest in the engagement of an executive agency lobbyist in the report of compensation paid or received. KRC believes that disclosure of those paying for efforts to influence the executive branch of state government for financial gain is important for transparency.

**Several bills that KRC opposed didn't become law - a "good" result:**

**House Bill 68** would have created a new process for review of regulations constituting a major economic action. KRC believed the new process would slow the adoption of regulations that affect public health and safety, and that sufficient analysis of regulatory impact already occurs.

**House Bill 379** would have allowed electronic advertising billboards located on the premises of a business or organization to advertise or promote activities and products offered both on the property and by charitable nonprofit organizations or groups. KRC does not support expansion of the use of electronic billboards, particularly multi-message electronic boards.

**House Bill 574** would have weakened zoning overlay district laws by requiring signatures of 75% of the property owners within the area that is sought to be under the jurisdiction of the overlay district and allow such landowners to opt out of district even after it is created.

**House Bill 580** would have revised transportation funding, including imposing a nonhybrid electric vehicle fee of \$200 and establishing an annual highway preservation fee of \$5-\$40 on all noncommercial vehicles based on the EPA mileage rating of the vehicle. Ironically, the proposed "highway preservation fee" would impose a higher fee on automobiles with higher fuel efficiency. A rational system of funding transportation infrastructure would be based on vehicle miles traveled and vehicle weight and would not be regressive in imposing higher taxes on electric and more fuel-efficient vehicles.

**Senate Bill 51** would have proposed a state constitutional amendment to allow the General Assembly to limit noneconomic damages for injuries resulting in death or for injuries to persons or property. Redress for injury is among the bedrock rights in Kentucky's constitution, and cannot be infringed upon by constitutional amendments seeking to limit the recovery of pain and suffering and for punitive damages. Access to the courts for redress of injuries is a legitimate tool for redress of environmental and workplace safety and health-related injuries, and for deterrence from future negligence and gross negligence.

**Senate Bill 86** would have allowed local governments and special districts to void implementation of water fluoridation programs by the Cabinet for Health and Family Services.

**Other bills for which KRC was able to secure positive amendments, didn't become law.**

**House Bill 247**, which would have allowed local public agencies to engage in noncompetitive negotiation for purchase or sale of wholesale natural gas or electric power and exempt those contracts from newspaper advertisement for bids. KRC was concerned with the loss of transparency and accountability in allowing municipal utilities to bypass competitive negotiation. KRC negotiated language that provided benchmarks against which any such contracts will be measured, requiring that the entity provide a detailed explanation of how the purchase or sale provides for stable and competitive rates for utility customers while providing for reliable, affordable, and sustainable energy services. The bill was not heard in committee.

**House Bill 365**, a comprehensive revision to pesticide regulation statutes that failed to pass this session. KRC was concerned that the bill proposed to eliminate the statutory mandate for lawn care application posting that has been the law for 20 years, and the sponsor agreed to an amendment to restore the obligation for the agency to maintain a lawn care application and mosquito control application and notice regulation.

**House Bill 505** would have required that solar electric generating facilities with rated capacities of 5 megawatts or greater be built at least 100 feet from adjoining residential

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properties and allow local planning units to establish superseding setback requirements. KRC assisted in drafting amendments to the bill, but the bill did not make it through the process.

**House Bill 575**, which was obliquely intended to preclude local governments from adopting policies or code preventing natural gas utility services for new construction. KRC sought language clarifying that nothing in the bill affects the authority of the PSC over utilities.

**KRC was able to secure changes to bills that had been problematic - also a "good" result:**

**House Bill 44** amends existing law to include additional facilities as "key infrastructure assets," makes tampering with, impeding, or inhibiting operations of a key infrastructure asset a Class D felony; and allows a civil action against a person that compensates or remunerates a person who committed criminal mischief. The initial bill was overbroad and would have had a chilling effect on the legitimate exercise of protected speech and assembly. KRC negotiated revisions that were incorporated that significantly narrowed the scope and effect of the bill.

**House Bill 352**, the one-year Executive Branch Budget. At the request of KRC, Senate A&R Chair McDaniel restored Restricted Fund levels for Office of Nature Preserves to 2020 levels, and included language allowing expenditure of unbudgeted restricted funds by the Public Service Commission for the Electric Transmission and Siting Board, which is now considering two utility-scale independent solar power projects. His support is much appreciated.

**House Bill 195** allows large communities to use web-based posting and fewer newspaper legal ads, for local government legal notices. KRC sought an amendment that the newspaper ad would have to include the web address where the legal notices could be read.

**House Bill 570** addresses interlocal government agreements, presented two concerns – first, the need for transparency in the creation of "public agencies" by interlocal agreement by assuring that the records and meetings of such agencies are in **all** cases subject to Kentucky's Open Meetings and Open Records law. The second concern was with the inclusion of "electric" and "gas" as subjects for interlocal agreements which would allow a new agencies to engage in significant capital expenditures for "construction" and "operation" of new gas or electric generating plants **without** any oversight by the Kentucky Public Service Commission (such as would be the case for a PSC-regulated utility) and without any direct accountability to ratepayers in participating municipalities. Amendments were adopted to clarify that interlocal agencies created by agreement **are** subject to Kentucky Open Meetings / Open Records laws.

**House Joint Resolution 8** directs the Energy and Environment Cabinet and the Louisville Metro Air Pollution Control District to determine the environmental benefits, related costs, and potential alternatives to the federal reformulated gasoline requirements currently imposed in Jefferson County and partial areas in Bullitt and Oldham Counties. In testimony before the House Committee, KRC requested that **health** as well as environmental benefits be evaluated, since elevated ground-level ozone is associated with pulmonary and respiratory injury, particularly to sensitive populations. That change was made.

**Senate Bill 251** as originally introduced would have broadly excluded excavations into refuse fills from state mine safety laws. KRC drafted a revision that restricts the operation of the bill to sites with coarse refuse (not fine refuse impoundments), which are under a mine permit and bond and be regulated by MSHA.

### THE BAD

**The legislative session saw the passage of no bills that KRC had actively opposed.**

Rather, the “bad” of the 2020 Session was the failure of the General Assembly to advance many positive bills that could have advanced a healthier economy, and environment for the Commonwealth of Kentucky. Among them were bills to: create tax credit for airport noise mitigation, reduce plastic waste, require affordability to be considered in approving utility rates, curbing SLAPP suits, strengthen state Open Records laws, extend grandfathering of 1:1 compensatory credits for net metering; create a constitutional right to a clean environment, add soil health as an agricultural priority, establish education and accountability requirements for water and wastewater associations, expand types of physicians who can diagnose black lung disease, require evaluation of economic impacts of utility renewable energy portfolio requirements, tighten local regulation of off-site industrial “residual” landfills, and others.

A number of other positive bills were not approved, including bills to: increase the state minimum wage, restore voting rights, expand voting opportunities, require net neutrality for users of the KentuckyWired network, expand protections against workplace harassment and discrimination, expand tax credits for charitable contributions, strengthen penalties for animal abuse and neglect, enhance punishment for hate crimes, and to address miners’ unpaid wages.

### THE UGLY

**The legislative session saw one bill relating to general governance that was “ugly.”**

**Senate Bill 2**, a “voter-ID” bill that will likely chill voter participation and is a solution in search of a non-existent problem of in-person voter fraud. The bill will likely be challenged.