



West Virginia Environmental Council's

Green Legislative Update

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Under the Dome

*By Donald S. Garvin, Jr.
WVEC Legislative Coordinator*

Week 7 – Whine, whine, whine . . . this week's Whiner of the Week Award goes to the legislature itself, which is complaining that it is unable to find the funds necessary to comply with certain recent court decisions.

It came to us in the form of S.B. 667, which was introduced on Monday, the last day bills could be introduced on the Senate side this session. The short title on Tuesday morning's bill list described it simply as "authorizing legislative intervention in certain actions." At first blush, it didn't sound like an environmental bill to me. But the sponsor list was from the Who's Who List of Senate leadership, from the Senate President on down, so I decided I should take a look at it.

Good thing I did. What the bill actually does is authorize the President of the Senate or the Speaker of the House to intervene "in any court of this state" in lawsuits against any state agency, including cases that could "declare an act of the Legislature unconstitutional and therefore unenforceable."

Whether intentional or not, the end result of this legislation would be to further politicize legitimate lawsuits brought by the environmental community that are filed for legitimate purposes, such as forcing state agencies to enforce the law (I surely don't need to point out how much of a history and struggle this has been for the citizens of this state).

Among other things, this bill would allow "the president and speaker" to file pleadings, conduct discovery, present evidence, subpoena witnesses, examine and cross-examine witnesses, file briefs, and make arguments – all without becoming "parties" to the litigation themselves (i.e., they could NOT be subject to discovery or called as witnesses themselves!).

Now, I'm not a lawyer. So I immediately ran this bill past some attorney friends and an expert on state constitutional law at the WVU Law School. In all cases the response was that this bill was "constitutionally dead in the water," and that it was fraught with serious "separation of powers" problems: the legislature enacts laws, the Governor administers and enforces laws, and the judiciary rules on and interprets those laws – this bill would allow the legislature to have a role in all of these processes.

The bill itself acknowledges these constitutional problems, but dismisses them with arguments that the protections provided by this system of checks and balances "impair or impede the legislative independence, discretion and judgment that is necessary to protect the interests of the public the Legislature has been elected to serve."

Well, as I said, I'm not a lawyer, but it appears to me that "the interests of the public the Legislature has been elected to serve" are best protected by the time-honored and time-tested system of checks and balances built into our state constitution, with each branch of the government filling its proper role, rather than one branch assuming all three.

While this bill came out of the chute on a fast track, it has been slowed down for now, thanks in large part to the willingness by some in the Senate leadership to listen to our concerns. Perhaps on further consideration, the bill will die a quiet death.

Hell Must Have Frozen Over!!

Believe it or not, the WV Forestry Association and the State Division of Forestry have agreed to legislation that would actually make it a misdemeanor to "violate" certain provisions of the Logging and Sediment Control Act, with fines ranging from \$250 to \$500 per violation. The bill number is HB 4542, and is pending in the House Judiciary Committee. It's not a perfect bill, but it definitely feels like our persistence is paying off. We'll keep you posted.

Sustainable Development - What's Love Got To Do With it?

By John Taylor

(jaytay1939@hotmail.com)

In most societies and cultures the concept of land is a feminine concept. That's why we commonly use the term "Mother Earth". There is also a distinction between "loving" and "caring" although love contains a commitment to care. Elderly persons in nursing homes are cared for but not necessarily loved by their caregivers. Farmers care for their livestock, but don't necessarily love them. In contrast, all of us probably agree that acts of destruction, degradation and domination, for example, rape, are not loving or caring acts.

Most likely any West Virginian who fishes in our waters or who hikes, camps or hunts in our woods, fields and mountains loves them. But are we committed to caring for them? This brings us to the subject of Sustainable Development of our natural resources.

Current timbering and logging practices, commercial or otherwise, help illustrate the theme of sustainable development. The uncaring removal of thousands of square acres of trees in the process of mountain top removal coal mining resulted in last July's devastating floods. Irresponsible logging and timbering has resulted in the siltation and ruin of hundreds of miles of our streams. Removal of our trees like this can only be described as a rape. What else can you call the taking, on our terms and on our terms only, of essential parts of the Mother of us all?

Nurturance and sustenance, loving and caring, are entirely absent from the scenes of degradation and destruction on our mountains and in our forests that presently confront us. There are bills before the legislature that would help correct these abuses.

WVEC and C.O.R.L. have had bills introduced for us by Senator Mitchell (D-Kanawha) that mandate planning prior to logging. (SB 88, 87, 564). As previously mentioned in these pages, and in the Governor's "Vision 2001" document, Planned Land Use is one of the necessities for Sustainable Development.

The provisions of these bills would help greatly in achieving a more loving, nurturing and replenishing relationship to the Earth and her forests and streams.

These bills would also bring about more effective enforcement by allowing the understaffed Division Of Forestry to get enforcement assistance from the D.N.R. and the D.E.P.

What's love got to do with it?

Everything! We strongly support these bills and urge all to let our legislators know it.

West Virginia— On the Road to Clean Elections!

By Janet Fout (ohvec@ohvec.org)

West Virginians have the opportunity to change the landscape of politics as we know it! We're pleased that the West Virginia Clean Elections Act was introduced this week in both the Senate and House!

The WV Clean Elections Act is a voluntary, constitutional alternative to our current special interest driven campaigns. Candidates qualify for public funding by agreeing not to accept any private or special interest money and demonstrating public support by collecting a certain number of signatures along with \$5 contributions, which go to the state's Clean Elections Fund. Costs in other states with Clean Elections (Maine, Arizona, Vermont, Massachusetts) range from \$3-\$5 per voter per election cycle.

Most importantly, public funding of elections allows a candidate to focus on important public interest issues rather than chasing campaign donations.

Many feel this public investment in the election of our representatives will actually save taxpayers' money. Clean Election lawmakers will find it easier to eliminate unneeded tax breaks and other "favors" to special interest that at present have a virtual monopoly on the financing of elections. (The People's Election Reform Coalition-WV reported that during the 2000 election cycle in West Virginia, only 1/2 of one percent of all voting age West Virginians contributed to gubernatorial or legislative candidates).

The timing of this legislation couldn't be much better. The introduction of this bill comes on the heels of the passage by the House of Representatives of the federal Shays-Meehan campaign finance reform bill on Valentines Day and the Enron scandal with its lavish campaign contributions to the Bush administration from Enron executives and other Enron associates. The general public is learning the hard lessons about the corrupting influence of huge contributions to "our" politicians. (Thanks, Ken Lay!!)

The lead sponsor in the state Senate of the West Virginia Clean Elections Act (S.B. 654) is Sen. John Mitchell. Other co-sponsors include Sen. Jon Hunter, Sen. Larry Rowe, Sen. Mike Oliverio, and Sen. Mark Burnette. Delegate Susan Hubbard is the lead sponsor of the companion House bill (H.B. 4532). Other co-sponsors in the House include Del. Don Perdue, Del. Mary Pearl Compton, Del. Randy White, Del. Charlene Marshall, Del. Tracy Dempsey, and Del. Dale Manuel. If you see one of these legislators, be sure and thank them for their support! West Virginia is on the road to Clean Elections!

Please contact your legislators and tell them:

Clean, publicly financed elections mean a cleaner environment. Big special interest dollars from polluters the coal industry are fouling the democratic process in West Virginia. Let them know that public financing of elections is a small price to pay to have the voices of regular citizens heard above the din of money from fat cats who buy access and influence—and only look out for their own bottom lines. Tell them to support the WV Clean Elections Act (S.B. 654 or H.B. 4532). Call them toll free at: 1-877-565-3447 or write: The Honorable (member's name), Member, WV Senate/ House of Delegates, State Capitol Complex, Charleston, WV 25305.

A public education campaign is now underway. If your organization would like to presentation on the WV Clean Elections Act call OVEC at 304-522-0246 or WV Citizen Action Group at 304-346-5891.

Democracy Trumps Legislative Grease

By Amy Strege

There are a lot of things at the West Virginia State Capitol that will make you sick - from the miles and miles of walking in dress shoes to the Capitol Cafeteria's renowned heart-clogging breakfasts, to the behind-closed door deal making, there is always something to turn the stomach, affect the brain's capacity, or just plain wear you out.

This Monday was a good example of why WVEC continues to fight - because sometimes, we do make a difference.

Up for third reading, HB 4322 had all the makings of the perfect example of the typical slimy bill: it is sponsored by the Speaker, none of the delegates know the particulars of the bill, the delegates from the areas that are most affected seem to know the least about it. Above all, however, it is a bad bill in that the language is so loose that it not only allows, but also entices misuse.

Originating in House Education, this bill gives state colleges and universities the right to "provide and transfer funding and property, both real and personal, to corporations." The only restriction is that the property or funds must be used for research and development, and as soon as they stop being used for research and development, then they must revert to the institution.

What exactly is meant by research? The bill is mute as to the parameters that "research" must fall under. How about marketing research? Then they can build a shopping mall, and if and when the "research" stops, it can revert to WVU- who will do nothing with it because it is totally useless.

This is dumb in and of itself, but the real kicker comes in on page 16 of the bill. "The corporation has the right to receive, purchase, hold, lease, use, sell, and dispose of real and personal property of all classes." This clause flies in the face of the reversion clause that provides for remedy if the research and development stops.

So, naturally, freaking out in a way only I can do, I grab Chuck Wyrostok and we hand out copies of the bill to all of the delegates from Monongalia County, where WVU is located. WVU is the main college to benefit from the bill.

Chuck and I tracked down a few delegates, including Mary Pearl Compton (D-Monroe), who became our champions and got the bill held until today (Thursday). This upset Sheryl Fletcher (R- Monongalia), another delegate we contacted, because she felt as if our "behind the scenes" meddling was the thing that stopped the freight train that this bill had become.

Fanny Seiler wrote an article about the issue that appeared on page 2A of Wednesday's Gazette that read Fletcher said the best way to deter or stop economic development was through public comment and public opinion.

So why did we only catch it the day of it's third reading in the house? Why is nobody else fighting it? The answer is simple folks- WVEC is the last bastion of hope in a political system coated with grease. The politicians are greasy, the food is greasy, and the bills are coated with a thick smattering of the greasiest grease so that they can be passed faster. Speed counts with this bill, *because it is effective upon passage.*

Green Legislative Update

Yep. You heard right. Essentially WVU and others can turn around the next day and give away large tracts of land they've owned for decades and used for the good of the community, and all they have to prove is that there is some research being done there. So, theoretically, all they need is a pimply-faced college student (like myself) to sit there on their laptop with an internet connection and look up something. And this only has to be done a short while, because then that company can turn around and sell the property outright to anyone for any purpose.

Coming from a legal perspective, the law is supposed to create life estates contingent upon research and development. Knowing contract law the way I do, I know that in no life estate can you ever sell the land, and you can only lease the land for the same period as your life estate. Because of the page 16 clause allowing the sale, lease or deposition in any form of this public land, these are no longer life estates at all and the research requirement is moot (meaningless).

Coal Trucks

By Julie Archer

The House Judiciary sub-committee on coal truck legislation met Wed. and passed two bills to the full committee. Delegate Caputo's bill, HB 4014 was amended to apply only to coal trucks and maintains current weight limits. The new version of the bill also contains a section that cites damage to roads and bridges and public safety as reasons to legally mandate a special enforcement program for coal trucks. A review by WV-CAG of overweight violations issued over the last five months revealed that 50% of those violations were issued to coal trucks.

The committee also passed a modified version of the industry bill that was introduced earlier this week by Delegates Steve Kominar (D-Mingo) and Eustace Frederick (D-Mercer). Kominar, who has ties to the trucking industry, received nearly \$12,000 in campaign contributions from the coal industry in 2000, according to the WV-PERC. HB 4529 would allow natural resource haulers to obtain permits to haul up to 132,000 pounds. The sub-committee amended to the bill to temporarily raise the weight limit to 120,000 and gradually return to current weight limits by 2006. The bill calls for reduced speed limits, semi-annual inspections, and would require loads to be covered with a tarp. The bill also requires the highway commissioner to study the impact coal trucks are having on our roads and bridges.

Although the committee was seeking to appease the coal industry, by providing them with a temporary increase and giving them time to come into compliance with the current limits, the industry is continuing to push for a 132,000 pound limit. CAG research revealed that 62% of overweight coal trucks issued citations were carrying in excess of 132,000 pounds. The average weight of these trucks was 158,767 pounds.

House Jud. Chair Jon Amores (D-Kan.), who previously stated, "Any bill increasing enforcement would also have to raise weight limits to keep from putting haulers out of business," has said his committee is not likely to run anything unless stakeholders come to a compromise. We need to keep the pressure on Amores to put HB4014 before the full committee. Tell him that citizens shouldn't have to compromise where public safety is a concern. The phone number for Amores' office is 340-3252. Also please keep calls coming to members of both the House Judiciary and House Finance committees.

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Hemp Bill Stalls)))))))

By Chuck Wyrostok (*chuckwyro@hotmail.com*)

Although the Industrial Hemp Development Act (SB447) has all the right environmental, economic and legal legs to move forward, it seems bogged down in the Senate Agriculture Committee after three weeks. Behind the scenes activity indicates that it still has a pulse, though. Senator Karen Facemyer (R-Jackson), the courageous sole sponsor of the bill, is hopeful that key senators will realize the eventual financial boost hemp production would give West Virginia farmers.

But with just a little over two weeks left in the legislative session, it would be good to contact your senator now and ask them to support SB447 so that the state can move forward doing agricultural and marketing research on hemp. A call to the WV Department of Agriculture to raise their enthusiasm wouldn't hurt.

The State Department of Agriculture, the WVU rep, the Farm Bureau rep and some senators seem to have a hard time accepting the premise that it would be perfectly legal to set up research plots and marketing studies allowed by a DEA (federal Drug Enforcement Agency) permit. Hawaii was the first state to begin cultivating under this federal permitting scheme. Rep. Cynthia Thielen (R) was the state legislator responsible for making that happen.

The folks at VoteHemp.com are a great source of information on the hemp movement in the U.S. You'll find disturbing news on their website, such as the fact that the U.S. is the only industrialized country in the WORLD that prohibits hemp cultivation due to its refusal to distinguish between hemp and marijuana. And fun facts like news that a Mercedes Benz has crossed North America running on 100% hemp fuel. Check it out.

More on our stalled state officials next week.

News Flash!....Thurs., 1:30....Chuck called the office to let us know that the Hemp bill just passed out of Senate Agri. - without recommendation - to Senate Jud., and may be taken up in committee this afternoon!

Feature Lobby Team Member, Gary Zuckett

I always cringe when asked to write about myself, but here goes.....My first job when I moved to West Virginia in 1974 was planting tree seedlings for the Soil Conservation Service. Living in Ritchie Co, one must be creative to find employment and over the years I've operated a shoe repair shop, painted houses, and sold country real estate among other things.

In 1985 my farm and garden were sprayed with toxic herbicides by a Monongahela Power helicopter treating their line right-of-way. My tomatoes grew their leaves upside down and we got sick when we tried to eat them. After that episode, I became active with the Greens on both a local and national level, which led to my eventual connection with the E-Council in the early nineties.

After several years on the Council board, I served as president for two years between 1994 and 1996 when I also began editing our newsletter and continued serving in this position until 1999.

I first began volunteering during the lobby sessions of the early 90's. Those were heady days when the progressive ground water protection and solid waste laws were passed. After several years on the lobby team, we figured out I wasn't going away so they began to cover my mileage and a few expenses. This is my tenth year of showing up at the Capitol to work at least part of the legislative session. It's exciting, sobering, frustrating, rewarding, boring, and tiresome among other things.

I highly recommend those who haven't exposed themselves to the process to come on down for a day or two anytime the last two weeks of the session and volunteer to monitor a committee or floor session. Its a real education in how government happens - that is *nothing* like what you learned in civics class.

In closing I want to thank all of you who can't come to Charleston but support the Council's efforts with your memberships and donations. Keep 'um coming, and we'll continue representing your interests to the best of our ability.

Bills this week

Senate Bills:

Bill	Sponsor	Committee	Topic
518	Rowe	Gov Org, Fin	Creating flood control board
545	Prezioso & Plymale	Ed, Fin	WVU land disposal for research
667	Tomblin, Wooton..	Jud	Auth. leg. to intervene in law suits
626	Establishing stormwater systems and associated stormwater management programs		
640	Relating to beneficial use of sludge		
644	Increasing bus. & occupation tax for elec. pwr businesses		
654	Establishing Clean Elections Act		
665	Relating to air quality in schools		
698	Relating to duties of office of coalfield comm. development		
701	Relating to powers of director of DNR to preserve Cass		

House Bills:

Bill	Sponsor	Committee	Topic
4322	Kiss, Varner...	Floor (org: Ed)	WVU land disposal for research
4529	Kominar, Frederick	Jud, Fin	Road Kill Bill (Industry's coal truck bill)
4532	Hubbard, Compton...	Jud, Fin	Clean Elections Act
4542	Amores, Manuel...	Jud	Criminalizing logging without proper license

Calendar of Events

February 25: The Last Great Wilderness Project multimedia presentation on the Arctic National Wildlife Refuge. 7:30-9:00 p.m. - Don Morris Room, Marshall University Student Center (Huntington, WV). Presented by film-maker and Arctic activist Jeff Barrie. *For more info: OVEC office 304-522-0246, or Judy Rodd, 304-345-7663.*

February 26: 30th Anniversary of the Buffalo Creek Disaster. Showing of two films by Mimi Pickering of Appalshop: "The Buffalo Creek Flood: An Act of Man" and "Buffalo Creek Revisited", 7:00 p.m. - Alumni Lounge, Student Center, Marshall Univ. Huntington, WV.

February 27: Greenspace Planning Workshop. South Charleston Library, 312 4th Avenue - 12:15 to 3:30 p.m. *For more information: West Virginia Trails Coalition - 304-755-4878 or visit info@wvlandtrust.org or wvtrails.org.*

March 9: "Propagation of Lavender, Cultivation & Harvesting" workshop. LaPaix Herb Farm, Alum Bridge WV. 1:00 - 5:00 p.m. Cost: \$15. *For more information: Myra Bonhage-Hale, lapaix@iolinc.net*

March 9: Legislative Session 2002 ends at stroke of midnight! Stay in touch with WVEC Update for all the up to the minute scoop on active bills. Visit www.wvecouncil.org also!

March 22: OVEC's Annual "Tree Huggers Ball", Calamity Cafe' located on Hal Greer Blvd. & 3rd Ave., Huntington. 9:30 till ? *For more info: 304-522-0246.*

March 26: UC Speakers Series: Erin Brockovich, speaker. University of Charleston - Geary Auditorium, 6:30 p.m. Free and open to the public.

April 13-14: West Virginia/Pennsylvania Wilderness and National Forest Planning Training & Volunteer Weekend. *For more information: contact Dave at WV Highlands Conservancy: 304-284-9548, or e-mail: daves@labyrinth.net.*

April 26: WV-CAG Annual Earth Day Fundraiser. Coonskin Park. Music, great food & drink and an auction. *To donate to the auction or for more information: Linda Mallet, 304-346-5891 or e-mail: linda@wvcag.org.*

April 29-30: Sustainable Tourism Conference. Flatwoods Days Inn. *For more information: Dave Bassage or Candice Shrewsbury - 304-926-3647.*

May 4: "Propagation of Culinary Herbs, Cultivation & Uses" workshop. LaPaix Herb Farm, Alum Bridge, WV. 1:00 - 5:00 p.m. Cost: \$15. *For more information: Myra Bonhage-Hale, lapaix@iolinc.net.*

May 24: Dr. Kevin Danaher with Global Exchange, speaks about the global economy. Charleston Unitarian Univ. Church, 7:00 p.m. *For more info: Linda at WV-CAG, 304-346-5891.*

Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

Phone: 304-346-5905

_____ Renewed Membership

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Membership Levels

_____ Change of Address

_____ Donation

Name: _____

_____ \$ 10 Student / Senior

_____ \$ 25 Regular

_____ \$ 50 Seedling

Address: _____

_____ \$ 100 Sustaining

_____ \$ 250 Enviro Steward

City, State, Zip: _____

_____ \$ 500 Canopy

_____ \$ 1,000 Old Growth

Phone: _____ e-mail _____

_____ \$ Other



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