



West Virginia Environmental Council's

# Green Legislative Wrap Up

Published After Each Regular West Virginia Legislative Session

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## Under the Dome

By Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

### The Final Hours – What a Zoo!

When the clock struck the hour of midnight on the last night of the 2004 session of the West Virginia Legislature, Senate President Earl Ray Tomblin banged the gavel.

The session was over.

I was sitting in the Senate gallery, and my jaw must have dropped all the way to the floor as I watched that gavel come down.

The session was over. I couldn't believe it. Surely I missed something, I thought. Is this really happening, I asked?

I had been sitting in the Senate gallery for about an hour, in a most gloomy and foul mood, because I thought the Senate was about to pass SB 724, the bill that would have transferred the setting of our water quality standards from the Environmental Quality Board to the Division of Environmental Protection.

In fact, it is likely that at 11:59:59 p.m. the next bill up for consideration was SB 724.

But the gavel came down and the session was over. The Environmental Quality Board had survived, at least for another year.

It took a few seconds for all of this to sink in. And then my brain and my body responded in a purely reflex reaction. I jumped to my feet, raised my fist in the air, and shouted a great big "Yesss!"

I am told that folks heard my shout as far away as Clarksburg (which is not a surprise to those of you who know my voice).

In the month and a half since the session ended I have heard a variety of explanations from a variety of friends, colleagues and behind-the-scene sources as to why

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## Legislative Interim Studies for 2004

By Conni Gratop Lewis  
WVEC Lobbyist

Sixty days is not long enough to address the issues facing the state. So we have legislative interim committees meeting during the year. They study issues that are complicated, or that weren't ripe, or that are the subject of dispute between the two houses. The water quantity study bill (SB 163) is an example of the last. The hope is that bills will be generated to address the issues. Some committees also receive monthly reports from agencies on topics such as Medicaid spending or prison populations.

So every year the legislature passes study resolutions on the topics to be studied. The list is fairly long and varied this year. One surprise to many observers was the small workload given to Judiciary, traditionally one of the busier interim committees.

In any event these are the interim studies of interest to the WVEC:

- Select Committee A will study the causes of flooding in southern West Virginia (HCR 11).
- Select Committee D will study the implementation of SB 163, the water quantity study.
- Select Committee F will study campaign finance reform.
- Joint Rulemaking Committee will take up both of the EQB resolutions (HCR 52 and SCR 39), which call for a select committee to study water quality standards, with an advisory committee of specialists.
- Forest Management Review Committee has no specific studies this year, but I anticipate they will continue to study forest health and the economic status of the forest industry. Last year produced some interesting studies, including West Virginia's failure to profit from forest product industries even compared to Ohio.

Four studies that may become interesting to the Environmental Council are:

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# 2004 Legislative Recap

(Compiled by the WVEC Lobby Team)

The session ended about a month and a half ago, and the WVEC lobby team has still not fully recovered. It was a particularly stressful session, with so much happening the final two weeks. So we hope you will forgive us for being so tardy in getting this final wrap-up put together.

Here is a quick run-down of how some environmental issues fared in this year's session.

## Water Quantity

With the Governor on board, both houses passed SB 163, a bill that finally claims sovereignty over the state's waters for the citizens of West Virginia, provides for a study of water usage in the state, and contains a mechanism for DEP to step in and regulate in cases where water shortages are threatened. This is a good first step, and a long overdue tribute to Rick Eades and his insightful and dogged leadership on this issue. This is one of the most important new pieces of environmental policy adopted by the legislature in recent years. We should all thank Liz Garland (WV Rivers Coalition), Helen Gibbins (WV League of Women Voters), and our own Conni Gratop Lewis for their participation in the legislative interim working group that grappled with all the details of this legislation.

## Water Quality

Years of constant and incessant whining have finally paid off for the water polluters in West Virginia.

The judiciary committees in both the House and Senate caved in to the "whines" of the various industry lobbyists that make up the Dirty Water Coalition and stripped almost all of the new protective standards from SB 353, the EQB water quality rule.

One of the winning whiners was the Chamber of Commerce, who succeeded in getting protective standards for 69 new toxins stripped from the rule – in spite of the fact that the federal EPA recommended the standards and said many of these toxins cause cancer.

Another winning whiner was the Independent Oil and Gas Association, who succeeded in getting some 350 trout streams from being added to the state's list of protected trout waters – in spite of the fact that DNR has documented that these streams are, in fact, trout streams.

The WV Coal Association was also a winning whiner (they are, after all, the top-dog whiners in the state, hands down) who after years of whining finally succeeded in getting water quality standards reduced for manganese and aluminum – in spite of the fact that EPA has twice disapproved these lower standards. Persistence pays off, apparently.

What we are left with is another yearlong legislative study that will look into how the EQB develops water quality standards, how the EQB determines what is a trout stream, and why on earth a recent court decision would question the Legislature's authority to amend rules promulgated by the EQB.

We are also left with the EPA questioning whether or not the water quality rule as amended by the Legislature fulfills the Triennial Review requirements of the federal Clean Water Act.

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**Legislative Wrap Up** welcomes letters, articles, and art work from readers and reserves the right to edit or reject submissions. Please send materials (preferably on disk) to:

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## Under the Dome ..... *Cont. from page 1*

all this happened the way it did. And I am still not sure there is a definitive reason.

What I can tell you is this:

Industry's agenda for EQB began to unravel the last two days of the session. Even though some at DEP really wanted to take rulemaking away from the EQB, others were uncomfortable with the provisions of the companion bill, SB 616 (see story on Pg. 4), and with just two days left DEP said there was no "deal" on that bill. That's when the "regulated community" got really greedy – everybody it seems wanted a seat on the DEP Advisory Council. This resulted in a Friday late-night negotiating meeting with lobbyists (including WVEC) and senate staff in an attempt to restore "balance" to the Advisory Council bill.

The next day industry lobbyists took their greed a step further and turned it into revenge, when they convinced enough of their friendly senators to vote NOT to confirm the reappointment of Ted Armbrrecht to the EQB. That move so pissed off the governor's staff that the administration finally got involved and threatened to veto SB 724. Industry lobbyists then had to spend the final hours of the evening convincing those same friendly senators to reverse themselves on the Armbrrecht nomination.

All this culminated at about 9:00 p.m. with all the industry lobbyists gathered around the columns outside the rotunda engaging in what can only be described as a yelling and shouting match with each other. They couldn't even come to agreement amongst themselves on how to handle the EQB situation.

This scene of the industry brouhaha on the capitol steps on the final night of the session will be indelibly etched in my legislative memory bank.

What a zoo!

There is one final element to all this that deserves our consideration, and that is the simple fact that if leadership in both the House and Senate had really wanted SB 724 to pass, there is nothing we could have done to prevent it. We also know that at least one member of leadership on the House side worked actively to kill this bill that final night. That person knows who we are talking about, and that person deserves our sincere gratitude.

And so, in the final minute of the final hour of the final night, the good guys won one.

In the past I have frequently complained about the legislature taking up important environmental issues so late in the session. Well, I have learned my lesson and you won't hear me gripe about that again – at least for another year!

And even though it is almost summer, remember to keep your bird feeders full. Your fine-feathered friends will love you for it.

Time for me to go fishing.

*Green Legislative Update*

## Select Committee to Study Clean Elections During Interims

*Julie Archer*

Although we did not get the Clean Elections Act passed this session, we are getting closer to making the option of public financing available to candidates in the Mountain State. With your help we had some victories during both the 2003 interims and the regular session, and at the April 6 meeting of the Joint Committee on Government and Finance learned that Clean Elections will be the subject of further study during the upcoming interims. A Select Committee whose members are yet to be appointed will conduct the study.

Members of both the House and Senate Judiciary Committees have examined many of the policy issues involved with implementing a system of public financing however, further study of the projected costs and potential sources of funding is needed to continue to move this much needed reform forward. In the meantime Citizens for Clean

..... *continued on page 5*

## Legislative Interim Studies for 2004

*Continued from page 1*

- Agriculture's study of ginseng growing (which is apparently a dispute between the DNR and Agriculture).
- Government Organization's study of the administrative law judge system.
- Finance Committee's study of the property tax system, and
- Finance Committee's study of how to pay to cleaning up underground storage tank sites. The existing insurance program did not have enough money to do the job.

Listed below are the 2004 Interim Committee meeting dates. Unless otherwise noted, the meetings are held at the Capitol in Charleston. The meetings are open to the public, and it is almost always beneficial for members of the environmental community to attend:

May 16-18

June 13-15

July 25 - 27

August 22-24 - Beckley

September 19-21

October 10-12 - Shepherdstown

November 7-9

December 5-7

January (2005) 9-11

February (2005) 6-8

# Deposit Day Part II

## Over 2,750 Cans Redeemed!

By Linda Mallet - [linda@wvcag.org](mailto:linda@wvcag.org)

On Saturday, April 17 in conjunction with the Wood County Solid Waste Authority's Recycling Day and Earth Day, Parkersburg residents got paid for recycling their beverage containers. When they visited our booth, recyclers received 10-cent "refunds" for beverage containers that day, up to 50 containers.

**Over 2,750 containers were collected!** All containers (almost all were aluminum cans) were donated to the Parkersburg Recycling Center at the end of the day.

Deposit Days are a great way to illustrate how a deposit on containers can increase recycling rates and reduce litters - the same benefits we can get from a West Virginia Bottle Bill. A similar event held at the state Capitol in February brought in over 4,000 containers.

### Want to help out?

- Join us at the **West Virginia State Fair**. **If you can help please let us know! Over 100,000 people visit the Fair EVERY DAY** and this is an opportunity we can't pass up! **The Fair will held from August 13-22 this year.**
- Hold your own Deposit Day and attend summer festivals and other events to get the word out on the Bottle Bill. **Please put a list together of similar events in your community** and send them to me so we can coordinate a presence there.
- Visit your city councils and tell them about the bottle bill legislation. Resolutions of support are available at [www.wvbottlebill.org](http://www.wvbottlebill.org).
- Contact Farm Bureau members in your community. They are natural allies on this effort and may be willing to attend meetings and help collect petition signatures. For a list of county presidents, visit <http://www.wvfarm.org/COUNTY.html>.
- Hand out bumper stickers. (E-mail me if you'd like me to mail you some ~ [linda@wvcag.org](mailto:linda@wvcag.org)). Pre-view the bumper sticker at [www.wvbottlebill.org](http://www.wvbottlebill.org).
- Take pictures of litter in your local community. The visual impact of trash lining familiar streets or park trails brings our message home and makes it hard to deny the need for a Bottle Bill. We can post your pictures on the website.
- Visit the website to read the bottle bill legislation.
- Write a letter to the editor supporting the Bottle Bill. Include the website in your letter so people can find out more.
- Attend meetings in your areas (4-H, Boy Scouts, Garden Clubs, etc.) and talk about the need for a

WV Bottle Bill.

- Mark your calendars – our next **Bottle Bill meeting** will be held during the Fall Solid Waste Authority Conference at Stonewall (in Roanoke, WV) on **October 31** (more details to follow).

Thanks, everyone, for your continued support.

Please drop me an e-mail and let me know what is happening in your area and how we can help out. This is the time of year to attend outdoor festivals and other events, raise awareness and educate folks on the benefits of a WV Bottle Bill!

## Governor Vetoes SB 616

By Conni Gratop Lewis, WVEC Lobbyist

One of the more gratifying experiences of the session happened in April, when Governor Wise vetoed SB 616, the coal industry's attempt to pack a state advisory panel. This bill would have expanded the powers of the DEP Advisory Council and then added members from various interest groups.

This bill was the "companion" bill to SB 724, which would have transferred water quality rulemaking authority from EQB to DEP. SB 616 originally was intended to be merely a fig leaf offering to the Farm Bureau lobby, to give agriculture interests (who don't have many DEP permits in the first place) a voice on the Advisory Council. It soon became much more than that, expanding the Advisory Council's powers so that industry could control the agenda for setting the state's water quality standards.

The flaws in the bill included the constitutional problem of a defective title, specifying which organizations would be represented (not just which industries), and unbalancing the membership. It goes without saying that the imbalance favored industries that are concerned that environmental regulations are too strict. These were among the flaws pointed out in WVEC's letter to the governor requesting the veto. And they were among the flaws pointed out in the Governor's veto message.

Then there is also the question of whether an advisory committee should even be allowed to propose rules that the DEP professionals (already understaffed) would have to address. This is not good public policy, particularly when the committee membership is "stacked."

The bill also would have enshrined in statute the quality assurance and compliance advisory committee that was established by the Bragg decision. Whether or not the state should make that committee permanent is a separate policy discussion.

We thank Governor Wise for vetoing this bad piece of legislation. And we thank the Governor for taking a strong stance against weakening West Virginia's water quality standards.



# Leff Moore's Words

Donald S. Garvin, Jr.  
WVEC Legislative Coordinator

Long-time legislative lobbyist Leff Moore died last month after an extended illness. In recent years Leff lobbied hard for strong legislation to regulate ATV use. In the past, Leff and enviro lobbyists were sometimes at odds. But Leff was always a gentleman with a strong sense of integrity. Personally, I liked Leff and I will miss him.

What follows here are Leff Moore's words – perhaps his last public words – his comments on January 12, 2004, at the legislative public hearing on proposed water quantity legislation.

Leff Moore: “Mr. Chairman, congratulations to you and the committee and Delegate Houston for your leadership.

I represent my family, both past, present and future. I would like to talk with you very briefly about my past family. My name is Moore, but my grandfather's name on my mother's side of the family was Peyton. Some of you may recognize that term as it deals with Peytona, West Virginia. His name was William Madison Peyton, and the town of Madison in Boone County was named for my great-grandfather. He knew something about water. He built the locks and dams on the Coal River to extract coal from the headwaters of the Coal River, float it down the river and participate in what became the industrial revolution of this country.

Grandfather was not only a coal operator and a water developer, but he was also somewhat of a politician, and he stood before legislative bodies, both in Virginia and subsequently in West Virginia, and he and his family and his corporate interests said, “We don't need to do anything. Everything's fine. Leave us alone. We're providing jobs and everything is okay and besides, the King of England set it up this way.” I heard people today sound like my grandfather. They spoke the same topic, only the difference was it wasn't just coal and water or gas, it was just water today.

Now my great-great grandfather was not a visionary, but he was able to convince legislative bodies back in his day that nothing was the right thing to do. And I will tell you that West Virginia has not benefited from his vision and his wisdom. But I will tell you that you as legislators today are faced with the same crossroads as the legislators were back in my great great grandfather's time. And you have an opportunity today to make a crossroads decision.

Coal is a moot point now, and who owns the mountains, and absentee landlord and ownership issues get debated and have been debated before this legislature during my entire life and will probably be debated a long time further. But who owns the water of the state of West Virginia is before you now. And your vote and your partici-

pation in this process will make history. Never before has the legislature had an opportunity to make a decision on this matter. The first vote, the first step is on the bill before you today. It is only a first step. But it is a vital first step. You know, my great-great grandfather was absolutely dead wrong for West Virginia. I hope you won't follow his example and that you will vote right for West Virginia and establish the bill without amendment as it is drafted by the Committee. Thank you very much Mr. Chairman, Madam Chairman.”

Leff Moore received a strong ovation for his comments, an ovation well deserved.

## Select Committee to Study Clean Elections During Interims

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Elections will be continuing its public education campaign. You can help by hosting or organizing a Clean Elections presentation in your hometown. Speakers are available. For more information contact Janet Fout at 304-522-0246 or [ohvec@ezwv.com](mailto:ohvec@ezwv.com).

### Things You Can Do To Support Clean Elections:

- \* Contact your delegate(s) and senators and ask them to support the WV Clean Elections Act (WV Public Campaign Financing Act). You can do this from [www.wvecouncil.org](http://www.wvecouncil.org) or by visiting the website of the West Virginia Legislature.
- \* Write and submit a letter or op-ed to the editor of your local newspaper expressing support for Clean Elections. (Visit [www.ohvec.org](http://www.ohvec.org) or [www.wvcag.org](http://www.wvcag.org) for fact sheets and other useful information.)
- \* Attend “meet the candidates” events during the 2004 campaigns and ask candidates where they stand on Clean Elections.
- \* Host a house party and show your friends and neighbors The Road to Clean Elections video. Copies are available. Call (304) 346-5891 or e-mail [julie@wvcag.org](mailto:julie@wvcag.org).
- \* Contact groups who might host and organize a Clean Elections presentation. Speakers are available. Call Citizens for Clean Elections Outreach Coordinator, Janet Fout at (304) 522-0246 or e-mail [ohvec@ohvec.org](mailto:ohvec@ohvec.org).
- \* Help us grow our coalition by recruiting groups that you are a member of to join Citizens for Clean Elections, and then let us know.
- \* Get a resolution passed at your city or town council supporting Clean Elections.
- \* **Vote!**

# 2004 Legislative Recap

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## All-Terrain Vehicles

The Legislature finally passed an ATV safety bill this session. It only took seven years for our lawmakers to insist that children riding these machines wear helmets.

However, this is a very weak bill in other regards. The bill does not ban ATV use on all paved roads, a provision that was pushed even by the lobbyists for the ATV manufacturers.

The bill does include a provision that allows counties with "comprehensive plans" to ban ATV use on roads within those counties (there are maybe three counties with comprehensive land use plans).

This essentially leaves 21,000 miles of the state's 34,000 miles of roads open to ATV operators. There is a problem with ATV's running illegally and destructively on our public lands such as the Monongahela National Forest, our national park lands, and our state parks and forests. ATV's don't drop in to these places from thin air – they reach them in large part by using paved roads that are outside the official boundaries of these special places.

Perhaps in another seven years we can convince legislators to ban ATV's on all state roads. The machines are not designed to run safely on these roads in the first place.

## Garbage

Approximately half way through the session, HB 4462 was introduced. It was a bill sponsored by southern WV delegates to permit certain solid waste facilities to accept solid waste up to 100,000 tons per month.

For those who remember the garbage wars of the early 1990s, this brought back bad memories.

Fortunately, the bill had some major flaws and it was way too late in the session to fix them. And there were too many legislators uncomfortable with the proposal.

This bill did not make it out of committee. But don't be surprised if it returns next year.

## Bottle Bill

The West Virginia Bottle Bill was introduced in both the House (HB 4147) and Senate (SB 293). The bill would have created a 10-cent refundable deposit on glass, aluminum and plastic beverage containers. Similar bills in other states have resulted in a tremendous reduction in the tonnage of garbage collected in those states.

Committees in both houses failed to move the bill this year. However, supporters held a very successful "Deposit Day" in conjunction with this year's Environmental Council E-Day at the Capitol. Organizers paid folks 10

cents for every beverage container they brought to the Capitol.

Linda Mallet who was the lead lobbyist on the bill for WV Citizen Action Group reported that they collected about 1,000 containers per hour during the effort!

## Clean Elections

Supporters of campaign finance reform in West Virginia had a couple of major victories this session, as the Public Campaign Financing Act (SB 270 and HB 4260) was advanced in both houses. This bill would create a system of public financing for election campaigns in West Virginia.

The Senate Judiciary Committee passed out its version of the bill by a 10-4 vote, and a House Judiciary subcommittee passed out a pared-down version of its own.

While the bill did not advance further this session, it is heartening to see legislators recognizing the importance of reducing the need to raise mega-bucks in order to run for office, as well as reducing the obvious influence big money has on politics.

While OVEC and WV CAG have taken the lead on this bill, the effort is supported by an unusually large coalition of interest groups, including labor and the environment.

## The "Fill" Bill

And finally, there was SB 728, which would have added the federal definition of "fill material" to the Water Pollution Control Act. Now this was just a little bill that supposedly only conformed state law to federal law. But the bill was proposed by the coal industry and not by DEP. Think something's up here? Can you say, "Overburden"?

The bill died in House Judiciary Committee.

The coal boys really took it on the chin this session.

But, then there's always the next session to look forward to.

*(This article was composed with assistance from the entire WVEC lobby team, including Conni Lewis, Allan Tweddle, Denise Poole, and Don Alexander).*

## "Artists For the Environment" Spring Palooza!

**Saturday, May 15, 2004**  
~ *Perfater Law Office building* ~  
**1311 Virginia Street East, Charleston WV**

**Noon till 8 pm!**

**Music, Visual Art, Silent Auction, Poetry, Cafe' !**



# Calendar of Events



**May 13:** Charleston Sierra Club Meeting. See the roadshow that coalfield residents have been taking across the country to educate folks about Mountaintop Removal - find out what you can do to help protect Appalachian communities.

**For more information:** Call the Charleston Sierra Club office at 342-3182.

**May 15:** 2nd Annual "Artists for the Environment" WVEC Spring Benefit. Perfater Law office building. Begins at noon and goes till 8 pm! Experience a beautiful day with the arts! Opening Drum Circle at 12:15; Visual arts, Music, Poetry, Performance, Artists Booths, Silent Auction, yummy edibles & drinks - and more!

**For more information:** Contact Denise Poole, deniseap@earthlink.net or call the WVEC office: (304) 346-5905.

**May 28, 29, 30:** Vandalia Festival. Division of Culture & History. Three days of music, artisan booths, famous "liars contest" and lots more.

**For more information:** (304) 558-0162. ext. 130

**June 11-13:** WVEC June Retreat! Southern Folk Life Center. Friday 4:00 pm. until Sunday at noon. This is a great opportunity to gather with environmentalists from across the state. Have fun. Attend workshops. Dorm bunks and camping available. WVEC Board of Directors meeting will follow the Retreat from 1:00 till 3:00.

**For more information & to Register:** Contact Fred or Denise at the WVEC office - (304) 346-5905 or mail us your registration form!

**June 19 & 20:** Lavender & More Fair! La Paix Herb Farm, Alum Bridge, WV. Celebrate and learn about the many properties and uses for lavender, and sustainable projects in West Virginia. Spend WV Day in a great way! Week-end includes workshops, demonstrations, booths, garden tours, gourmet lunch using lavender, music and slide shows. Admission \$5.

**For more information:** (304) 269-7681, lapaix@iolinc.net, www.lapaixherbfarm.com

**July 17:** Hydrosols, Essential Oils and Distillation Workshop. La Paix Herb Farm, Alum Bridge, WV. Complimentary Lunch. Cost is \$55, pre-registration required.

**For more information and to register:** (304) 269-7681 or lapaix@iolinc.net, www.lapaixherbfarm.com

**September 10-12:** Annual WVEC Annual Fall Conference! The Mountain Institute - Spruce Knob Mountain Center. Begins Friday at 4:00 and goes until Sunday at 1:00. This is the biggest gathering of the year! Early registration is encouraged. Stay tuned to all WVEC newsletters and Action Alert messages for more agenda details and Registration Forms. Please visit our website: www.wvecouncil.org.

**For further information:** Call the WVEC office, (304) 346-5905 or e-mail deniseap@earthlink.net

**To have your organizations events included in the WVEC calendar, please contact Denise Poole, editor, at: deniseap@earthlink.net or mail information to WVEC office - 1324 Virginia Street East, Charleston WV 25301 - "attention editor"**

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## Support the West Virginia Environmental Council

1324 Virginia Street East, Charleston WV 25301

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\_\_\_\_\_ \$ 10 Student / Senior

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

\_\_\_\_\_ \$ 25 Regular

\_\_\_\_\_ \$ 50 Seedling

City, State, Zip: \_\_\_\_\_

\_\_\_\_\_ \$ 100 Sustaining

\_\_\_\_\_ \$ 250 Enviro Steward

Phone: \_\_\_\_\_ e-mail \_\_\_\_\_

\_\_\_\_\_ \$ 500 Canopy

\_\_\_\_\_ \$ 1,000 Old Growth

\_\_\_\_\_ \$ Other

*First Class ~ Time Sensitive  
Please Rush! Thanks!*

*Join WVEC for our .....*

***"Artists For the Environment"  
Spring Palooza!***

***Saturday, May 15, 2004  
~ Perfater Law Office building ~  
1311 Virginia St. East, Charleston WV***

***Noon till 8 pm!***

***Music, Visual Art, Silent Auction,  
Poetry, Cafe' & More!***

***Annual WVEC June Retreat***

***June 11 ~ 13, 2004***

***Southern Folk Life Center***

***Workshops, Nature Walks & More***

***See inside for more details .....***