



Green Legislative Update

Published Weekly During West Virginia's Legislative Session

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Under the Dome

By Donald S. Garvin, Jr.
WVEC Legislative Coordinator

Week 6 – The “All State Forests” Bill

Remember SB 460? You probably don't recognize the bill number, but it was the one we dubbed the “Kanawha State Forest Bill.”

Well, you can't call it that any more.

It has morphed.

Now we can call it the “All State Forests Bill.”

This bill was originally proposed to address serious problems that arose last year from oil and gas drilling operations in Kanawha State Forest.

More than 60 gas wells have been drilled over the years on this relatively small piece of prized public land. And last summer in drilling another well, Equitable Gas cut a new 60-foot wide well road that became a muddy mess and cut down a lot of beautiful old trees in the process – all unnecessarily. The company could have, and indeed should have, simply used already existing access roads.

So a group of concerned Kanawha State Forest users decided to do something about it. One of those users is Dave McMahon. Dave is a lawyer and a lobbyist (on other issues), and a long-time advocate for protecting the rights of surface owners against abusive oil and gas exploration practices.

The group drafted legislation that would have required oil and gas operators in Kanawha State Forest to consult more closely with DNR, and notify DNR officials and seek public comment before commencing operations, among other things (back in the 2000 legislative session, legislators outlawed timbering in Kanawha State Forest

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Selenium in Our In-Boxes

By Cindy Rank, West Virginia Highlands Conservancy

Persons who signed up to receive email notices from DEP about pending permitting actions were puzzled to have their in-boxes crammed full with over 100 public notices this past week.

Why?

DEP is proposing to extend the time they've allowed for mining companies to comply with selenium limits. That type of adjustment to permits must first go to public notice – hence the multitude of ads in local newspapers across the state and email notices from DEP.

Background:

Selenium is a toxic mineral that builds up in living organisms when levels in the water are elevated. The potential effects of excess selenium on aquatic life are severe and include reproductive failure, birth defects, damage to gills and internal organs, and ocular disease. In humans, while selenium is an essential nutrient at low levels (found in the foods we eat and in daily vitamin tablets), it can be extremely toxic at higher levels causing hair and fingernail loss, damage to kidneys and liver, and damage to nervous and circulatory systems. Ingesting high levels of selenium – from the water you drink or eating fish from streams where selenium is a problem – can be a serious problem.

Studies published in the 2002 Mountaintop Removal/Valley Fill Environmental Impact Statement identified streams located below several valley fills as selenium hot spots.

Once the problem was identified, and with the insistent prodding of folks like Margaret Janes (Appalachian Center), selenium limits and compliance

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E~Day at the Capitol

Friday, March 2nd

House & Senate Halls / Upper Rotunda (well) area
WV State Capitol, Charleston WV

Citizen Lobbying - Begins at 9:00 a.m. - meet at the WVEC Lobby Information table, located near the Robert C. Byrd statue and Senate side of the well.

Press Conference - Begins at 11:30 a.m. in the Gov. Conference room, located through the Secretary of State's office.

Displays - From 10:00 am until 3:00 pm:

WVEC Environmental Council Information

WVEC Citizen Lobby Information

Ohio Valley Environmental Coalition

WV Highlands Conservancy

Mountaineer Chapter Trout Unlimited

Coal River Mountain Watch

WV Rivers Coalition

Friends Of The Mountains

WV Citizen Action Group

Sludge Safety Project

Moondreamer Crafts

Clean Elections Coalition

WV Sierra Club

The Wilderness Coalition

Cleanbrier

Lapaix Herb Farm

Student Environmental Action Coalition (SEAC)

E-Day Reception & Benefit

E-Day evening, March 2nd ~ 5:30 pm - 11:00 pm

Perfater Law office lobby - 1311 Virginia St. East, Charleston

Highlights include: WVEC's 2007 awards' presentation,

dinner buffet, live music until 11:00 pm

Donation of \$10. per person at the door

Legislative Session 2007 Information Sources:

Legislative Reference & Information Center:

MB-27, Bld. 1 - State Capitol Complex, Charleston WV 25305

WV Legislative web-site: www.legis.state.wv.us

(For bill tracking, bulletin board (journals), legislators' e-mails.)

To Call Toll Free: 1-877-565-3447 or local Charleston area: (304) 347-4836

WV Environmental Council Web-site: www.wvecouncil.org

Ohio Valley Environmental Coalition: If you want to easily get the latest news during the legislative session, check

www.ohvec.org/ovec_news.html and www.ohvec.org/news_gen.html daily.

Every morning, OVEC checks scores of news sources and posts links to make it easier for you to stay informed.

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Legislative Update welcomes letters, articles, and art work from readers and reserves the right to edit or reject submissions. Please send materials to:

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and put the management in the hands of the Division of Natural Resources instead of the Division of Forestry).

The group got almost all of the Kanawha County legislative delegation to sponsor the bill. And I am sure that the thinking at the time was that it would be easier to get the Legislature to approve if it was aimed at only one forest and had the full support of delegates and senators from the area affected.

Well, you know the old saying about the best-laid plans.

When SB 460 was taken up this week by the Senate Natural Resources Committee, Chairman John Pat Fanning (D-McDowell) was more than supportive. It turns out that there are two state forests in Sen. Fanning's district that also contain oil and gas operations.

The next thing you know there was a committee substitute drafted that made the protective provisions of the bill apply to ALL state forests! The committee passed the bill for consideration by the full Senate, with only one drawback: the requirement for a public hearing was removed.

When I first heard about the possibility of legislation addressing the problems at Kanawha State Forest, my reaction was that any "fix" proposed ought to apply to all public lands owned by the state.

After all, there is an extensive public comment process for all federal public lands. That process is called the National Environmental Policy Act (NEPA), and it requires public hearings, public comment periods, and assessment of the environmental impacts of development projects on public lands.

The problems with the drilling operations in Kanawha State Forest might not have occurred at all, if West Virginia had a "SEPA" – a State Environmental Protection Act.

I am not the first WVEC member to suggest such a thing. Our very own president, Jim Kotcon, has been "lobbying" for a SEPA process for years now. Perhaps we can make it an E-Council priority in a future legislative session.

But for now, we'll just concentrate on getting SB 460 all the way through the legislative process.

The wintry blast continues, so please help out our fine-feathered friends and keep your bird feeders full this week.



Selenium in Our In-Boxes

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orders to meet those limits are now part of approximately 123 individual NPDES water discharge permits.

In November, the Highlands Conservancy and OVEC challenged two specific mining operations for failing to comply with these permit requirements. The companies had 60 days to clean up their acts or face Citizen Suit lawsuits over the ongoing violations.

In a bit of an end run, DEP decided to take action against those companies itself — essentially taking it out of our hands.

As for the larger universe of similar permits, DEP is retreating from its earlier actions and is now giving operations more time to come into compliance.

So while DEP waits, the selenium continues to flow into our streams.

Another Tortuous Week for Water Rules

The "water rule wars" continued this week in the Senate, as industry lobbyists tried their best to gut the Tier 2.5 "waters of special concern" stream list.

SB 255, the Antidegradation Rule containing the Tier 2.5 stream list (60-CSR-5), was assigned to a sub-committee of the Senate Natural Resources Committee on Monday. The sub-committee originally consisted of Senator Randy White (D-Webster) as chair, and Senator Walt Helmick (D-Pocahontas) and Senator Clark Barnes (R-Randolph). By the time it first met, two other senators had been added – Senator Karen Facemyer (R-Jackson) and Senator Ed Bowman (D-Hancock).

The first sub-committee meeting was fairly rancorous. But the group met again this morning, and after DEP Secretary Stephanie Timmermeyer answered a list of questions from the senators, the sub-committee voted to recommend that the full Natural Resources committee pass the bill on to the Senate Judiciary Committee, "without recommendation."

Senator Barnes cast the only "no" vote in the sub-committee.

It appears likely now that Senate Natural Resources Committee will pass the antideg rule on to Judiciary unchanged, and that Senate Judiciary Committee will begin consideration of SB 255 and SB 259, the Water Quality Standards rule (47-CSR-2) which contains the "Category B2" trout stream list early next week.

We hear that House committees will also begin to consider the DEP rules next week.

"Convenient Denial"

by John B. Christensen, *WVEC Lobbyist*

Listening to late-night radio on the AM dial yesterday, I realized how deep our countrymen and women are immersed in "convenient denial" when it comes to the environmental realities that face our nation and the world at large.

The announcer was chastising Al Gore for owning three houses, a jet air plane, and logging thousands of travel miles during his week to week activities promoting the realities of global warming, and that somehow that made him a hypocrite.

The talk-show host went on to say that there is **still no scientific evidence** that Americans are mired in global warming as a result of climate change due to greenhouse gasses. I'm still trying to figure out where the announcer was trying to go with this seemingly contradictory argument.

It has been proven beyond a reasonable doubt by many distinguished scientists that the greenhouse gas emission problem leads to climate change and that we are headed for the "Hot Age". The problem is international, but the U. S. A., as the most profligate greenhouse-gas emitter, has a responsibility to take the lead in the fight to curb it.

Unfortunately, our radio and television outlets are chock full of shows that purport these contrary arguments. It is apparent that the reasoning behind it is to confuse the public for the enrichment of coal companies, chemical companies, oil and gas interests and other extractive industries. They continue to improve company profits, give nice dividends to their shareholders and keep everyone guessing as to the urgent consequences of continued, unabated CO2 emissions; hence, my "convenient denial" theory!

This 78th legislative session is full of committee meetings where both bodies are debating the merits of passing laws that protect fish, air, water and people - yet these extractive industry types say that these laws are too confining to their business practices and hurt the future profitability of businesses to operate in West Virginia.

- The Chamber of Commerce has sponsored a bill that would fast-track the air pollution permitting process by our WV-DEP.
- King coal has come out against having a greenhouse gas inventory system in place to monitor the amounts emitted by our industries in the mountain state. A

greenhouse gas inventory system would enable us to be ready when EPA inevitably decides to regulate the emission of CO2 gases.

- Some state senators, and the Farm Bureau have come out against protecting a mere 4% of our streams by designating them Tier 2.5, saying that it represents a "taking" of private property rights.

I find these arguments very divisive in the overall scheme of things, but that is why I'm here in Charleston fighting the good fight. I'm figuring out ways to convince our countrymen and women in "convenient denial" to prepare the mountain state for a future with less dependence on coal-burning power plants and other CO2 emitting industries. We should be encouraging O2 producing organisms like old growth forests and protecting streams.

The earth may survive the coming "hot age" however, it remains to be seen whether humans will make the necessary changes to thrive and survive along with it.

I encourage all our readers to write and call their representatives in Charleston in the coming weeks and let them know how you feel about convenient denial with respect to their votes on these important bills and resolutions.

Really Bad Bill!!!

We just heard that the long awaited bill to permit the Mc Dowell County landfill to expand to 100,000 tons per month has been introduced. SB 629 would fly in the face of every thing we did to stop the flood of out of state garbage back in the early nineties. Nearly every ton of the proposed 100, 000 tons would be brought in on rail cars from the major eastern cities. We all should be watching this.

Committee to Act on Slurry Injection Study Resolution Next Week

SCR 15, the resolution establishing an official study of the injection of coal slurry into abandoned deep mines, is on the Wednesday agenda of the Senate Energy, Industry and Mining Committee next week.

We have been lobbying members of this committee hard for the last several weeks, and we are hopeful that the resolution will pass. We will keep you posted as this progresses.

Bottle Bill Latest

By Linda Frame, WV-CAG
linda@wvcag.org

Next week bills need to either get on a committee agenda or die and we are lobbying the House Judiciary Committee to take up the Bottle Bill so the former will happen. Key delegates to call, if you are in their district, are: Delegate Proudfoot (D-Randolph) - 340-3248, Delegate Ellem (R-Wood) - 340-3394, Delegate Mahan (D-Summers) - 340-3102, Delegate Pino (D-Fayette) - 340-3170, Delegate Lane (D-Kanawha) - 340-3275, Delegate Overington (R-Berkeley) - 340-3148. All can be reached toll-free at 1-877-565-3447.

The support, both new and existing, for the bottle bill this session has been amazing and I'd like to take a minute and thank some folks who have gone above and beyond.

Laura Phillips and Cyndi Bolton with the Phillips Group managed the returns of the Adopt-A-Highway surveys from start to finish. With their professional touches, we were able to present the governor and the media with an official compilation of what our survey respondents had to say.

Mark Blumenstein with Friends of the Lower Greenbrier River was the energy and outrage that created the survey idea in the first place. He is now following up with other equally angry AAH volunteers to decide on other actions to help keep a bottle bill on the front burner in West Virginia politics.

Fritz Boettner with Downstream Strategies developed and produced a GIS map plotting the statewide AAH survey results, creating a powerful visual we will use in so many ways to promote the Bottle Bill and publicize the survey results.

Many, many citizen lobbyists turned out on Bottle Bill Day last week and they deserve special thanks: Rosemary Lockhart, Kathy Lewis, Matt Tate, Mark Blumenstein, Don Garvin, John Christensen, Norm Steenstra III, Don Gasper, Owen and Kathy Stout, Denise Poole, Regina Hendrix, Kathryn Stone, Jay Bowen, Richie Robb, Paul Hamrick, Richard Barnett, Howland and Doris Sharpe, Sue Talbott, Jesse Johnson, Kevin & Samantha von der Heydt, the WVU Student Sierra Club Coalition including Carmen Borsa, Gibron Mancus, Christy Hartman, John Neubert, Charles Holden.

Carmen and Gibron delivered an empty soda can with an attached label stating bottle bill facts to each legislator, and Carmen did this despite having a broken foot! It was a busy, crazy good day and if I've left you off the list, I apologize.

And thanks, OF COURSE, to everyone who has made phone calls to legislators and the governor, asking for support for SB 370 and HB 2773.

Clean Elections Update

By Carrol Warren, WVEC Vice President

The Public Campaign Financing Act (S118) is now in the Senate Finance Committee, where our focus continues to be on prompting Senator Helmick to put the bill on the agenda. Rumor at the Capitol is that he will do so, but it needs to happen next week, and as soon as possible! The lobby team has been talking with members of the Finance Committee this week, and we are getting some help from supportive Senators in encouraging Senator Helmick to move the bill.

However, we must also focus on the other members of the committee. A delegation from the WV Education Association met with Senator Helmick on Friday morning. He told the WVEA group he would put the bill on the agenda, but said he did not think it had the votes necessary to pass in the committee. Our job is to change that!

Members of the Finance Committee and their contact information appear below. An asterisk (*) denotes a **sponsor** of the bill. Please thank sponsors for their support and ask them to encourage Senator Helmick to put the bill on the committee agenda quickly. Ask all members to support the bill when it is brought up in committee! Senators Bailey, Chafin, Plymale, Prezioso, and Unger are probably swing votes, so encouraging them to support the bill is particularly important.

Every West Virginian has one Senator on the Finance Committee. Please identify yourself as a constituent when contacting your own Senator – it does make a difference! Your calls and e-mails definitely helped in moving the bill through Judiciary Committee. Keep up the great work!!

Walt Helmick, Chair 357-7980	William Sharpe 357-7845
Billy Wayne Bailey 357-7807	Edwin Bowman 357-7918
Truman Chafin 357-7808	Larry Edgell* 357-7827
John Pat Fanning 357-7867	Shirley Love* 357-7849
Brooks McCabe* 357-7990	Robert Plymale* 357-7805
Roman Prezioso 357-7961	John Unger 357-7933
Donna Boley 357-7905	Karen Facemyer 357-7855
Jesse Guills* 357-7959	Vic Sprouse* 357-7854
Dave Sypolt 357-7914	Toll-free at 1-877-565-3447

We will also be in contact with the attorneys in the Secretary of State's office. They plan to offer an amendment authorizing the Secretary to delegate administration of the bill in some way – probably either to appointees on the Election Commission or to a staff position created for that purpose. We will be encouraging the attorneys to have their amendment ready to present when the bill is taken up, so it will not be put into a sub-committee (which would basically kill it because of the limited time remaining).

Bills We Are Tracking

<u>Bill Number</u>	<u>Title</u>	<u>Committee</u>
Senate Bills		
SB 19	Requiring jobs impact statement for certain proposed legislation	Econ Dev
SB 83	Restricting longwall mining	Nat Res
SB 86	Requiring verification of notice to adjoining landowners of timbering operations	Nat Res
SB 111	Determining ownership of real estate involved in surface mine application	EIM
SB 118	Creating WV Public Campaign Financing Act (Clean Elections)	Passed Judiciary – to Fin
SB 170	Prohibiting timbering operations near streams harboring brook trout	Nat Res
SB 177	Creating Division of Energy	Passed Finance – 1st Reading
SB 337	Establishing greenhouse gases inventory program (DEP bill)	EIM
SB 353	Reducing state vehicles’ petroleum-based fuel consumption	Finance
SB 370	Establishing returnable beverage container deposit program (Bottle Bill)	Nat Res
SB 396	Exempting site-specific data on certain rare plant or animal species from disclosure	Passed Senate – H A & N
SB 401	Requiring Public Service Commission promulgate wind power projects’ rules	Judiciary
SB 440	Establishing Voluntary Wetland Protection Programs	Nat Res
SB 441	Relating to wind power projects tax treatment	Finance
SB 460	Requiring DNR to promulgate rule applicable in Kanawha State Forest	Passed Nat Res – 1st Reading
SB 469	Relating to air pollution control permits (bad Chamber of Commerce bill)	Judiciary
SB 493	Providing managed timberland owners tax incentives	Nat Res
SB 499	Redefining “managed timberland” for certain tax reduction purposes	Nat Res
SB 509	Banning all-terrain vehicles from all paved roads	Trans & Infrastructure
SB 552	Modifying Water Pollution Control Act (bad DEP bill)	Nat Res
SB 558	Requiring Public Health Impact Assessment (WVEC bill)	Judiciary
SB 588	Removing tax expiration for coal syn fuel	EIM
<i>(SB 242 through SB 261 are the DEP “rules” bills).</i>		

House Bills

HB 2102	Prohibiting salvage yards from storing any salvage within two hundred yards of a stream	Judiciary
HB 2184	Prohibiting solid waste authorities competing with private recycling businesses	Judiciary
HB 2207	Tax credit to electric power generators for the use of West Virginia coal	Finance
HB 2212	Requiring DEP to adopt the federal regulations governing surface coal mining activities	Judiciary
HB 2222	Authorizing the Governor to appoint an additional member to the Surface Mine Board	Labor
HB 2258	Prohibiting DNR from approving or rejecting dredge and fill permits	Judiciary
HB 2260	Creating the “West Virginia Joint Coal Owners Trust and Conservation Act”	Judiciary
HB 2321	Increasing the penalties for discarding trash on land and in streams	Judiciary
HB 2341	Allowing harvesting of mature timber under the “Farmland Preservation Act”	Ag and Nat Res
HB 2367	Requiring DEP to remediate any waste tire pile with more than twenty-five tires	Finance
HB 2371	Creating WV Public Campaign Financing Act (Clean Elections)	Judiciary
HB 2385	Increasing the environmental protection advisory council membership	Gov Org
HB 2399	DNR license fees that may be used for capital improvements and land purchases	Ag and Nat Res
HB 2407	Natural Gas severance taxes	Ag and Nat Res
HB 2446	Creating the office of State Energy Coordinator in the Office of the Governor	Gov Org
HB 2474	Establishing a volunteer litter reporting program	Ag and Nat Res
HB 2492	Defining “fill material” in the Water Pollution Control Act (bad Coal bill)	Judiciary
HB 2719	Verifiable Science Act (bad “sound science” bill)	Education
HB 2769	Establishing a program to inventory greenhouse gases (DEP bill)	Judiciary
HB 2773	Establishing a returnable beverage container deposit program (Bottle Bill)	Judiciary
HB 2818	Wind Farm taxes	Judiciary
HB 2821	Relating to air pollution control (bad Chamber of Commerce bill)	Ag and Nat Res
HB 2848	Requiring DNR to promulgate rule applicable in Kanawha State Forest	Ag and Nat Res
HB 2854	Providing for removal and election of Public Service Commissioners	Judiciary
HB 2898	Banning all-terrain vehicles from all paved roads	Gov Org
HB 2946	Removing the five year coalbed methane severance tax exemption	Finance
HB 2953	Removing tax expiration for coal syn fuel	Finance
HB 2987	Providing proof of lawful disposal of solid waste as a defense to a violation of disposal law	Judiciary
HB 3019	Banning the use of nonorganic herbicides within state roads rights-of-way	Roads & Trans
HB 3041	Prohibiting oil and gas operators from “daylighting”	Ag and Nat Res
<i>(HB 2597-2602, 2630-2642, and HB 2694 are the DEP “rules” bills).</i>		



Calendar of Events



February 26: Buffalo Creek Disaster Remembrance - State Capitol - 3:00 pm, at the Upper Rotunda on the House Side. Join the Sludge Safety Project on this 25th anniversary of the 1972 Buffalo Creek disaster which left 4,000 homeless and caused 125 deaths. **Invited speakers include:** former Delegate Arley Johnson (a Buffalo Creek disaster survivor) and Rev. Dennis Sparks. The Bob Gates' film of the disaster is scheduled to be shown. Snacks provided.
For more information: (304) 234-2618 or info@sludgesafety.org

March 2: WVEC's annual E-Day at the Capitol! Located in the Senate & House halls and upper rotunda area. Environmental organizations and sustainable businesses will be represented with displays. This is YOUR day at the capitol! Visit your Senators and Delegates - we encourage citizen lobbying! A press conference is scheduled at 11:30 am.
For more information and to register your organization contact: Denise Poole at deniseap@earthlink.net or call the WVEC office: (304) 414-0143.

March 2: WVEC E-Day evening reception & benefit. Perfater Law office lobby, 1311 Virginia Street East, Charleston. From 5:30 pm till 11:00 pm. Highlights include: 2007 Environmental awards bestowed; live music; buffet dinner.

March 10: Last day of the 2007 regular Legislative Session.

March 21: WV Environmental Education Association Conference: 'Environmental Education Pathways: Gather, Share, & Collaborate.' Jackson's Mill, Weston WV. From 8:00 am - 4:00 pm.
 Registration fee: \$25 (Before March 2nd) \$35 after March 2nd). Includes: all conference materials, breakfast, lunch, and breaks. Highlights include: presentation on the National Project for Excellence in Environmental Education, Concurrent Sessions.
For more information contact: Valerie Reed at vreed@oionline.com or (304) 242-6855.

March 23-24: "Yes Fest". St. Marys grade school - West Pike Street, Clarksburg, WV. Renewable energy issues as a focus. Presentations, booths and more.
For more information contact: Sally Egan, (304) 842-9511

March 24: WV Environmental Council Board of Directors meeting. WVEC office, Charleston. 11:00 a.m. - 4:00 p.m.

June 22-24: WVEC Board of Directors June Retreat. Location to be announced.

June 30: 4th Annual "Lavender & More" Fair. La Paix Herb Farm, Alum Bridge WV (Lewis County). Highlights include: workshops, presentations, demonstrations, variety of booths, wood walks, garden tours, plants, gourmet lunch. Admission: \$5. per person or \$10. per family.
For more information contact: Myra Bonhage-Hale, steward: lapaix@westvirginia.net or visit the website: www.lapaixherbfarmproducts.com

Mid to Late September: WV Environmental Council's Fall Conference. Stay tuned for exact date, location and other details for our 19th annual Fall Conference, "Making A Difference - Creating A Sustainable World".

April 2008: Sustainable Fair. Davis & Elkins College - Elkins, WV. Highlights include: workshops, presentations, booths, local organically grown food, music and much more. Stay tuned as plans develop for a wonderful event featuring renewable energy and many aspects of sustainable living. Sponsored by Sustainable Living for West Virginia org.
For more information and to participate contact: Denise Poole, deniseap@earthlink.net or Myra Bonhage-Hale lapaix@westvirginia.net Co-Directors.

E~Day at the Capitol
Friday, March 2nd

Support the West Virginia Environmental Council

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Phone: (304) 414-0143 www.wvecouncil.org

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- _____ \$ 10 Student / Senior
- _____ \$ 25 Regular
- _____ \$ 50 Seedling
- _____ \$ 100 Sustaining
- _____ \$ 250 Enviro Steward
- _____ \$ 500 Canopy
- _____ \$ 1,000 Old Growth
- _____ \$ Other



E~Day at the Capitol

Friday, March 2nd

