



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 2 – Rules, Rules, Rules

Most of the “rules” were introduced in both houses of the Legislature this week.

So it’s time for my annual legislative tutorial about “rules.” Here we go.

The Legislature passes laws (or statutes), and then they pass rules (or regulations).

Generally speaking, the laws or statutes set out the broad guidelines for government actions, and the rules set out the specific details or regulations. Generally speaking, the laws establish the authority for the government to act and create an agency to implement the action. Generally speaking, the agency then develops (or “promulgates”) the individual rules needed to enforce the laws.

Agency rules are not proposed by individual legislators. They are developed annually by the specific agency and are then presented to the Legislative Rule-Making Review Committee during the Interim sessions.

Usually, the Legislative Rule-Making Review Committee then simply approves the rules and passes them on for consideration by the full Legislature during the regular session.

There are normally more than a hundred of these rules. If you look at the legislative web site, you will see a long list of bills in both the House and the Senate with titles like, “Authorizing Commissioner of Agriculture promulgate legislative rule relating to shellfish” (that’s an actual rule title this year).

..... continued on page 3

The Great Debate

By Leslee McCarty, WVEC Lobbyist



Robert Kennedy Jr. during the "Forum on the Future of Energy" January 21st

Photograph by Gina Schrader

All that was missing from the debate at the University of Charleston on Thursday night was the red carpet and coverage by “E!”

Goldman award winners Judy Bonds and Maria Gunnoe were there, as was Larry Gibson, seated next to Ken Hechler, an icon of the anti-strip mine cause.

On the pro-mining side, Bill Raney and Chris Hamilton of the West Virginia Coal Association were there along with a host of supporters. And the tone was relatively civil among the audience, if not always from Mr. Blankenship.

For me the match-up of Don Blankenship and Robert Kennedy, Jr. was akin to watching Rush Limbaugh debate CNN’s Fareed Zakaria. Blankenship, like Rush, scored big points with his audience, with mockery and derision, while Kennedy made a host of rational points.

Probably his most persuasive points came in his discussion of the true cost of coal. Taxpayers are picking up the costs of coal in medical care, disease, roads, pollution and countless other ways, he said. If coal had to really account for the costs of mining and burning coal, it would not be so cheap.

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WVEC's Annual E-Day!

Wednesday, February 24th

At the Capitol:

9 am till 2 pm - Lower Rotunda

Environmental Lobby Day - Booths & more

E-Day Benefit Dinner & Award Ceremony

Charleston Women's Club

5:30 pm - 8:30 pm

Soup, Salad & Desert Bar

Cost: \$15 donation

E-Day After Party

The Empty Glass - 410 Elizabeth Street, Charleston

9:00 pm - 11:00

Live Music

Cost: \$5 donation



Live from the Capitol Well not exactly Saturday Night, but we do now have streaming audio of the House of Delegates' sessions and some committee meetings. Go to the West Virginia Legislature page <http://www.legis.state.wv.us/> and click on "listen live." Like a lot of other things we report on here, it is not everything we wanted, but it is a start. Who knows? Maybe the Senate will follow suit, maybe it will all be on camera someday. In the meantime, if you need to see some footage, you can go to YouTube and type in West Virginia Legislature. Nothing new on thereat this writing, but I am sure there will be some posts this session.

Legislative Session 2010 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

Listen Live: West Virginia Legislature page <http://www.legis.state.wv.us/> and click on "listen live."

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

WVEC Office: (304) 414-0143

CAPWIZ: <http://capwiz.com/catholicconferencewv/issues/alert/?alertid=10836991>

Ohio Valley Environmental Coalition:

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.

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But you can't find out what's in these rules on the legislative web site. Each agency files its rules with the Secretary of State's office, and that's where you have to go to read them (but only if you know the correct section of the state's legal codes to look under), unless you can get a copy from the specific agency.

It's not a particularly citizen friendly arrangement.

To make matters worse, when these agency rules are introduced they are assigned both a House bill number and a Senate bill number, and these are different than the numbers used by the Rule-Making Review Committee.

And then they are assigned to committees in both houses. The normal practice is that they are "double referenced" for consideration by two committees. For some strange reason, for the past couple of years, many of the rules have been "triple referenced," which makes it even more difficult for them to reach final approval.

On the Senate side almost all of the rules from the Department of Environmental Protection are first assigned to the Energy, Industry and Mining Committee. Almost all DEP rules are also referenced to the Senate Judiciary Committee, where they receive a more serious and even-handed treatment. Likewise, on the House side, almost all DEP rules are referred to the Judiciary Committee.

This year it was again decided that the rules bills would first be taken up on the Senate side. They will then be "bundled" and sent as a group – ***under a new bill number*** – to the House. It really is quite confusing!

So what DEP rules are we concerned about this year?

Thankfully, not many.

The rule we are most concerned about this year is 35CSR4, the Oil And Gas Well Drilling rule. This rule has not been introduced yet in either chamber, perhaps because it was only approved by Rule-Making Review on the morning the legislative session opened.

DEP's proposed changes to the rule are beneficial, such as *finally* requiring synthetic liners for drilling pits and new construction standards for waste pits and water storage impoundments.

However, as I pointed out in my Pre-Session column, environmental groups by and large feel the proposed changes fall far short of being protective of the threats to water and land resources and human health posed by the recent increased drilling of Marcellus Shale gas wells in the state.

And as I also pointed out, the oil and gas industry, of course, opposes even the modest rule changes proposed by DEP.

So, as this rule works it's way through the tortuous and very political legislative process, we will be fortunate if the minimal beneficial changes proposed by DEP are retained in the rule.

Well, that's the legislative tutorial for the week.

Next week maybe I will bless you with my annual rant about why West Virginia's rulemaking process ought to be taken out of the Legislature's hands altogether!

Please keep your bird feeders full this week. It's the "rule."

Debate continued from page 1

Moderator Edwin Welch, University of Charleston President, asked a question about the validity of global warming that sounded as if he, an academic, might not be convinced it is real. Blankenship, of course, believes global warming is not happening, and Kennedy's response was that 98% of the scientific community says it is happening, so he will go with that.

Many thought Blankenship was playing to the West Virginia audience, while Kennedy was perhaps reaching out to a national audience. Certainly, a large percentage of the audience came in with their opinions set, but viewers and listeners across the state and a wider audience on the internet might have a chance to weigh evidence and think about the practice of mountaintop removal more deeply.

At a post-debate party at E-Council headquarters, there were over a hundred people, some from as far away as California (documentary film makers), representing the breadth of support for not blowing up our Appalachian mountains.

As Kennedy pointed out in the debate, the corporations are lining their pockets (as in a \$15million bonus for Blankenship) at the expense of our present and future health and the future of the most biologically diverse temperate forest on the planet.

It's time we count the cost of coal.

**WV Environmental Council's
20th Annual E-Day! at the Capitol
Wednesday, February 24th
Lower Rotunda 9AM - 2PM**

Manypenny Bill Supports Plug-In Electric Vehicles

By John Christensen, WVEC Lobbyist

Delegate Mike Manypenny (D-Taylor) will soon introduce a bill that would provide tax credits for plug-in electric vehicles.

The bill would save taxpayers on the cost of both new and converted four-wheeled vehicles which will reduce our state's dependence on foreign oil while utilizing domestic electricity production to encourage improved air quality.

The tax credit allows for ten percent of the actual cost of the vehicle conversion up to \$4000 or in the case of a new electric vehicle, \$2500 plus \$417/KWH in excess of five KWH not to exceed \$7500 total. The credit has to be apportioned over a three-year period in equal installments.

We are excited about this bill, and other legislation proposed by Delegate Manypenny, as they represent the future of energy, transportation, and food production for consumers' benefit.

It's all green, sustainable and it even makes sense.



Awards to Our Friends

Carol Warren, WVEC board member and long-time advocate for the environment and social justice, who received the "Advocate of Peace" award last Saturday at the Martin Luther King, Jr. West Virginia Holiday Commission awards luncheon.

Carol was one of several West Virginians honored for "keeping Dr. King's dream alive."

And at a "unity breakfast" in Morgantown Monday, former Congressman and Secretary of State Ken Hechler was given West Virginia University's "Dr. Martin Luther King Jr. Achievement Award for 2010."

Hechler, now retired at 95, has been a longtime reform activist. Last summer, he was arrested briefly — along with movie actress Daryl Hannah, NASA scientist James Hansen and about 30 others — during a protest at a Raleigh County mountaintop mine.

And, of course, Ken is a long-time WVEC friend and supporter.

Congratulations to these two exceptional persons.

Timber Industry Hits Hard Times

Director of the state Division of Forestry Randy Dye told members of the House Finance Committee Monday that by nearly every measure, West Virginia's timber industry is hurting.

Production is down, a third of the state's mills have halted production or closed forever and hundreds of loggers have lost their jobs, according to Dye.

"Bright news?," Dye continued, "I think I can make this statement: We have hit bottom."

Five years ago, the West Virginia industry produced 1 billion board feet of lumber, according to state records. In 2009, it produced 670 million, a 38 percent decline.

Since 2005, about two-thirds of the state's mills have cut production or been closed or idled, according to state records.

Thirteen mills have been sold. Their equipment is gone and they are unlikely ever to reopen. Another 13 mills are idled and face an "uncertain future." And 31 mills have reduced work schedules, for instance by going from two shifts to one.

About 1,200 mill workers have lost their jobs since 2005, a 36 percent decline.

Licenses to logging crews have fallen from about 1,500 a year to 1,000 a year in the past five years. A crew is typically at least three people, meaning at least 1,500 loggers likely have lost their jobs.

The number of acres with logging activity also has dropped. In 2005, about 250,000 acres had activity. Last year, that number was 158,000 acres.

(From a longer article by Ry Rivard, Charleston *Daily Mail* Capitol Reporter)

Shameless Plea ... Week Two

Two weeks down, with six more ahead of us!

Our Legislative Kick Off Blast benefit held on Tuesday successfully brought in more funding, and we continue to receive donations in response to our December appeal letter.

Thanks to everyone who attended the benefit, and everyone sending in your hard earned \$\$\$ to date - please keep them coming in!

As you can imagine, we still need so much more. If you have not as yet contributed please send whatever you can afford.

The 2010 Lobby Team

PSC Quizzed at Budget Hearing

By John Christensen, WVEC Lobbyist

Public Service Commissioner Michael A. Alberts fielded a variety of tough questions from delegates this week at the agency's budget hearing in the House Finance Committee.

As is customary during each legislative session, the Finance Committees of both chambers hold hearings on every state agency budget. It is at these meetings that many issues are discussed, with legislators given the chance to ask questions regarding almost anything involving that particular agency.

PSC Commissioner Alberts was the only presenter at this hearing. I was hoping that PSC citizen advocate Byron Harris would also answer questions, but he wasn't called on.

Del Mitch Carmichael (R-Jackson) asked about the huge power outages that occurred as a result of the big snowstorm that hit our state before Christmas leaving tens of thousands of homes in the dark for weeks. Alberts reported that PSC is investigating the causes and the response efforts to see if anything else could have helped end the blackout sooner. The commissioner only addressed the tree limb problems and increasing utility right of ways instead of some other causes that will undoubtedly come out during PSC hearings on the issue scheduled to take place on March 11th in Clarksburg and March 16th in Mount Gay. Both meetings begin at 6:00 PM and are the only chances for the public to respond in person. Consult the WV PSC website for exact locations. If you can't attend in person you can always send a letter with your observations instead. I found it very ironic that the lights went out in coal country where they always profess to do otherwise.

Del Kevin Craig (D-Cabell) asked several questions about rate increases due to market fluctuations in the cost of coal. Alberts explained that the PSC's job is to average out those swings over time so as not to cause rates to go up and down frequently. Alberts added, prophetically, "As we switch from coal to other fuels the price will go up."

This segued into a discussion on carbon capture and storage (CCS) and whether or not the substantial costs of CCS will be passed on to consumers if AEP's Mountaineer Power Plant in Mason County pilot project becomes successful. Alberts responded that, yes, the ratepayers would pay those costs. He added that the

PSC would be taking a further look at the issue, since it is estimated that it will cost up to \$600 million to reach a 20% carbon reduction for only one coal-fired plant. The pilot project's goal is to capture and store just 1% of the carbon at the Mountaineer Plant.

Delegate Craig showed himself to be a global warming/climate change denier by arguing about the benefits of CO2 to plant life and wondered aloud if all this CO2 sequestering was even necessary, which brought some snickers from the audience.

Probably the best question of the meeting came from Del. Nancy Guthrie (D-Kanawha) who asked about the federal stimulus money allotted to the WV PSC to examine the benefits of net metering and smart grid technologies and to fund his agency to hire experts in those technologies. Alberts said his agency was in the process of hiring those experts to fulfill the obligation.

I certainly hope so. And I can't wait until the DEP budget hearings are held on the 9th and the 11th of February. Stay tuned.



Bills Introduced for Public Financing of Supreme Court Seats

*By Carol Warren,
WV Citizens for Clean Elections*

Coalition partners of WV Citizens for Clean Elections were very encouraged when Governor Manchin announced in his State of the State address that he planned to offer legislation to establish a public financing pilot project for both Supreme Court seats to be filled in 2012. The proposal is a result of recommendations by the Independent Commission on Judicial Reform appointed by the Governor last spring.

This week the promised bills have indeed been introduced, HB 4130 and SB 233. The proposal is similar to last year's Senate Bill 311, sponsored by Senator Jeff Kessler (D-Marshall), which we supported. Our legislative public financing bill, HB 2764 has also been re-introduced, and we hope that the interest in the judicial bill will be a catalyst for that proposal as well.

You can read all these bills online at the Legislature's web site at <http://www.legis.state.wv.us/>

\$6 Million For WV Green Jobs

By Eric Eyre, Gazette Staff Writer

West Virginia is receiving \$6 million in federal stimulus funds to promote clean energy jobs.

U.S. Labor Secretary Hilda Solis announced Wednesday that the money would go to the state's Workforce West Virginia office to train about 1,850 people.

The money is expected to help about 1,600 workers find employment in "green" jobs.

"These grants will help workers gain access to good jobs, while supporting the sort of statewide energy efficiency strategies that play a crucial role in building the green economy of the 21st century," Solis said during a media conference call.

The grants will directly benefit veterans and workers recently laid off in West Virginia, Solis said.

As part of the grant, about 70 people will receive certification for jobs at water and sewer plants, and 60 people will receive wind energy technology certificates across the state.

The money also will train current and future workers in construction and bio-mass/bio-power industries. Training will be offered in retrofitting and installation, and "green" entrepreneurship.

Two new community college programs focusing on clean energy jobs will be created.

Grant partners include the West Virginia Division of Energy, AFL-CIO, Mid-Atlantic Technology Research and Innovation Center in South Charleston, West Virginia University and the state Development Office.

West Virginia's "Green-Up" state energy partnership developed the plan for spending the grant money.

West Virginia's \$6 million grant is part of \$190 million in federal stimulus funds being distributed across the U.S. for clean-energy job training. Solis said. Thirty-four grants, ranging from \$2.5 million to \$6 million, were announced today.

"We've got to build the work-force before we build anything else," said Senator Patty Murray, D-Washington, who joined Solis on the conference call. "The grants will go to workers in our neighborhoods and help our families and put people back to work."

For more information about job training programs funded by grants, contact the Department of Labor's toll helpline at 1-866-487-2365.

(Re-Printed by permission from the "Charleston Gazette")

Green Legislative Update

Ethics Bill Passes House Unanimously

The House of Delegates on Wednesday unanimously passed legislation (HB 4016) that would make public officials and candidates disclose more details about their financial interests and employment. They also would have to reveal that same information about their spouses.

The bill also would ban certain officials, including legislators and employees of the legislative and executive branches, from lobbying for at least a year after leaving their public post.

Earlier this month, Larry Puccio — former chief of staff to Gov. Joe Manchin — registered as a lobbyist for coal, gambling and health companies, just a week after leaving the Governor's Office.

Last year, a report by the Center for Public Integrity in Washington, D.C., gave the Mountain State an F for its financial disclosure laws, spurring the WV Ethics Commission to ask legislators for tougher rules.

The bill now advances to the Senate for consideration.

(From a longer article by *Charleston Gazette* reporter Alison Knezevich).



Bills We Are NOT Watching!

HB 2424 — Repealing the Code of West Virginia and adopting in lieu thereof the Code of the Commonwealth of Virginia (By Delegates Overington, J. Miller, Blair Lane and Andes)

HB 2551 — Instituting a "Celebrate Freedom Week" and requiring the instruction in the study of the Declaration of Independence and other American historical documents (By Delegates Armstead, Schadler, Anderson and C. Miller)

HB 2580 — Directing the State Board of Education to develop a program of instruction on macroeconomics (By Delegates J. Miller, Andes, Carmichael, Porter, Blair, Ireland, Canterbury and Walters)

HB 3014 — Requiring all governmental documents to be printed in English (By Delegates Argento and Martin)



Calendar of Events



January 24: Gateway to the Refuge - Brook Trout, WV Native Trout. White Grass, 10 AM. This outing will explore the native habitat of this important bio-indicator of our headwater stream's health.

For more information: (304) 866-4114

February 16: Environmental Film Festival. Warner Theatre, 147 High Street, Morgantown. \$8. in advance or \$10 at the door. Hosted by WV Rivers Coalition.

For more information: (304) 637-7201

February 24: E-Day at the Capitol. 9 AM till 2 PM. Lower Rotunda. This is our Environmental Lobbying Day - a perfect opportunity to "go ye out and lobby" for everyone. Booth displays, announcements, press conference and more are planned.

For more information, or for table/booth reservations: contact Kevin Smith, a_clean_wv@yahoo.com

February 13: Winter Bird Walk. White Grass - 10 AM. Led by Refuge Wildlife Biologist Ken Sturm.

For more information: (304) 866-4114.

February 24: E-Day Benefit Dinner & Awards Ceremony. Woman's Club of Charleston. 5:30 PM - 8:30 PM. Join us as we celebrate our achievements and honor recipients of our WVEC awards. Enjoy our famous homemade Soup & Salad buffet. Admission is a donation of \$ 15 to WVEC.

E-Day After Party! Live music at the Empty Glass, 410 Elizabeth Street, Charleston. Admission only \$5. per person.

February 26: Anniversary of Buffalo Creek Disaster. Stay tuned for details of commemorating this 1972 disaster.

March 13: Session concludes.

April 16: WV CAG Spring Fundraiser. Charleston Women's Club. *Save this date - details to be announced.*

April 16 & 17: WV Sustainable Fair. Davis & Elkins College Elkins, WV. Speakers & Workshops on Energy, WV Agriculture & Organic Foods, Community Gardening. Green Booths . " A Sustainable Feast" Benefit Dinner Friday evening. Live Music throughout the event, culminating with a Saturday evening concert from 7 PM - 10 PM. Musicians include Mike Morningstar, The Ginsangers and the Hillbilly Gypsy's. Stay tuned for more details.

For more information, contact Denise Poole at deniseap@earthlink.net

May 22: Kanawha Valley Sustainability Fair. Habitat for Humanity ReStore, 301 Piedmont Rd., Charleston. 10 am - 4 pm.

July 11: Lavender Day - at LaPaix Herb Farm. Alum Bridge - Lewis County. Limited to 100 participants only. Includes workshops, guided walks, booths, gourmet lunch by Chef Dale Hawkins. Attendance by reservation only.

For more information: www.lapaixherbfarmproducts.com

Support the West Virginia Environmental Council

2206 Washington Street East, Charleston WV 25311

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

WVEC's Annual E-Day!

Wednesday, February 24th

Mark your calendars and save this date!

Join us at the capitol, in the evening for dinner & music

See inside for details