

Energy and Environmental Law Issues in the 2026 General Assembly

Updates from the Capitol: Part II

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The Saga of Fitz's Shoes

These shoes have been worn by Tom FitzGerald while lobbying for environmental issues at every Kentucky legislative session since 1978. Not long after receiving the shoes, Fitz ran into Rep. Herbie Deskins, chair of the House Natural Resources Committee. Deskins said "FitzGerald, when are you going to shine those shoes?" And Fitz replied: "When are you going to pass a good bill?" And so a challenge began.

Since 1978, the shoes have been resoled once and shined about six times. Each shine marked the passage of significant bills to improve the environment of the Commonwealth. The results of these bills include, reforms in solid waste management, funding for solid waste reforms, incentives for investment in renewable energy, and creating a board to regulate electrical facilities.



House Bill 398 (Rep. Williams)

- [HB 398](#)
- Amends KRS 278.264
- Kentucky Senate Bill 4 in 2023 and Senate Bill 349 in 2024. PSC approval needed to retire any fossil fuel-fired electric generating unit (EGU), and there is now a “rebuttable presumption” against retiring such units.
- Senate Bill 4 - PSC “shall not...authorize a surcharge for the decommissioning of [a]unit, or take any other action which authorizes or allows for the recovery of costs for the retirement of an electric generating unit.”
- Since 2023, after Senate Bill 4, the PSC has been denying utility recovery of terminal net salvage costs for future decommissionings as being inconsistent with the language of Section 2 of SB 4. This denial has helped mitigate the impact of rate increase requests.
- HB 398 allows utilities to seek approval to recover decommissioning, removal, salvage, and depreciation costs *before* a generating unit is authorized for retirement under SB 4. It protects utilities from stranded costs by allowing advance cost recovery over the unit’s depreciable life, risk shift to ratepayers.
- The bill reverses the effect of the current language to allow recovery of retirement costs.

HB 677 (Rep. Gooch)

- Framework under KRS Chapter 353 to govern the permitting, operation, financial responsibility, long-term stewardship, and oversight of geologic carbon dioxide sequestration facilities in Kentucky.
- Details requirements for a Class VI underground injection control permit.
- Requires operators to demonstrate and annually maintain financial responsibility sufficient to cover monitoring, well integrity, emergency and remedial response, and post-injection site care and facility closure.
- Supported by application fees and per-ton sequestration fees, to ensure operating funds for Cabinet program and for long-term oversight and stewardship.
- Establishes procedures for owners of the pore space to consent and pooling orders. *This was one of the most difficult issues in the negotiations.*
- Sets out requirements for plugging and abandonment.
- Provides for the transfer of ownership to the Commonwealth after a defined post-injection monitoring period, generally 50 years or another period designated by the Cabinet, upon demonstration of compliance and subject to public notice and hearing.
- Repeals prior geologic storage statutes.
- The bill was developed by the Oil and Gas Working Group, a collaborative process. KRC was represented by Tom FitzGerald.

HB 677 Picked Up A Passenger En Route To Enactment – Revisions to KRS 278

- New provisions revising the laws governing the siting and construction of “merchant” power plants (KRS 278.700-718) to provide these changes, in part in response to proposed wind facility interest in Kentucky.
- New decommissioning requirements. Property owner at the time of decommissioning decides whether any below-ground structures and conduit can remain, otherwise it all must be removed – a change from current law allows anything below 3 feet to stay.
- Current landowner *at the time of decommissioning* who can request interconnection facilities must be removed.
- Disallows reductions in bond amounts for salvage value. Any salvage value actually recovered can stay with the generator.
- New 1,000-foot setback from property lines and individual residences (rather than merely neighborhoods) for **utility**-constructed solar and wind projects.
- For merchant facilities, height limit on wind turbines of 350 feet, from natural slope to the turbine hub. Wind turbines are not to be lighted other than as required by law and are to be sited to minimize flicker or shadow effect through siting and mitigation.
- Local governments cannot legislate a lower minimum decommissioning bond than established in law.
- HB 869 undid several changes that HB 677 had made to the siting statutes.



And now for
something
completely
different...

Local Control, Zoning, And State Siting Law

Ongoing litigation regarding a solar siting ordinance in a county without planning and zoning. Among the issues under consideration:

- Is a local ordinance that regulates commercial /industrial activity such as a non-utility solar array or a data center, but does not prescribe *where* that use can occur, constitute unlawful planning and zoning?
- Or is it a proper exercise of “home rule” powers under KRS 67.083(3) even if it uses setbacks?
- Does KRS 278.418 defer to any local government ordinances establishing setbacks and decommissioning, or only those adopted pursuant to KRS Chapter 100 (planning and zoning)?
- More broadly, when does local government regulation of commerce through a permitting or licensing program regulating the manner of the exercise of the activity, cross the line into “zoning?”
- *Clover Creek Solar Project, LLC v. Breckinridge County Fiscal Court*, 2025-CA-0983-MR. 2025 County Ordinance regulating large-scale solar energy facilities determined to be unlawful zoning ordinance because it “regulated land-use” without complying with KRS Chapter 100. Also held that only setbacks and decommissioning requirements established by zoning regulation was entitled to deference by the siting board.



We now return to
our regularly
scheduled
programming...

House Bill 757 (Rep. Petrie)

Creates new category of “municipal interlocal gas utility,” defined as “an interlocal agency whose membership is only composed of city governments formed for the purpose of constructing and operating a system that is capable of acquiring, distributing, transmitting, furnishing, or selling natural gas to a federal military installation and other customers.”

Intended to support the efforts of two western Kentucky cities that formed the **Pennyryle Regional Energy Agency** in order to construct and operate a natural gas pipeline through several Kentucky counties primarily to serve Fort Campbell.

- Exempts from the definition of “utility,” authorizing them to acquire and extend natural gas systems beyond municipal boundaries.
- Exempts the agency from PSC jurisdiction and creates a governing board for the agency with representation from affected counties.
- **Allows** the new agency to service residential customers from the pipeline but does not assure that those customers be guaranteed service that is dependable and reliable. Rates charged under KRS 278.485 are subject to PSC review, but unlike regular gas utility customers, property owners within ½ mile of a natural gas well or gathering line have the right to a tap a well or gathering line for service but no right to reliable supply of gas.
- The unintended effect is that the General Assembly may have granted the right of any landowner along the proposed pipeline route to demand access to gas service from the pipeline even though the Agency may not desire to provide such service.

Senate Bill 8 (Sen. Smith)

SB 8 restructures the Public Service Commission (PSC).

- Expands the Commission from three (3) to five (5) members appointed by the Governor.
- Broadens conflict-of-interest restrictions.
- Changes how cases are decided, with the chair of the Commission empowered to assign three commissioners to hear and decide a matter, with no more than two from the same political party or to assign all five commissioners to hear case.

Senate Bill 29 (Sen. Elkins)

SB 29 relieves a solid waste management facility from being subject to any assessment, fee, permitting requirement, or other authorization requirement imposed by another county or waste management district where the solid waste being managed was generated.

The House Committee Substitute to SB 29 clarified that any franchise agreement approved by a county government is not covered by SB 29.

House Floor Amendment 3 attached the core of House Bill 108 which would narrow the current exception from solid waste planning and consistency determinations for permitting for landfills that accept only industrial solid waste generated by the generator, another facility owned by the generator, or by a wholly owned subsidiary, to those landfills located on or adjacent to the property where the waste is generated.

Senate Bill 57 (Sen. Carroll)

Expands Kentucky's nuclear energy development framework by:

Creates a Nuclear Reactor Site Readiness Pilot Program to support and partially fund utilities' efforts to obtain federal permits and licenses for new nuclear power plants, grants covering up to one-third of application costs capped at \$25 million for early-stage federal permitting activities.

Establishes a dedicated fund for nuclear site readiness grants

Expands the role, responsibilities, and membership of the Kentucky Nuclear Energy Development Authority to promote nuclear energy development, workforce preparation, and related economic activity.

Allows Public Service Commission-regulated electric utilities to seek recovery from ratepayers of costs of site permits and licenses from the Nuclear Regulatory Commission. Impact on IRPs and CPCNs unclear.

Senate Bill 100 (Mills)

Enacted over a veto, restructures the Energy Planning and Inventory Commission (EPIC):

Administratively attaching it to the University of Kentucky Center for Applied Energy Research

Granting EPIC broad operational independence, with authority over its own hiring, compensation, procurement, and contracting; requires it to maintain separate accounts.

Limiting board membership to no more than two out-of-state members.

Revising the executive committee to include two appointees from the Attorney General

Granting the executive director full authority to act on behalf of the commission.

Restructuring EPIC's governance and creating a dedicated fund to support its activities.

Senate Bill 199 (Howell and Richardson)

Enacted over veto

Limits manufacturer's "duty to warn" users about risks for any pesticide product registered for agricultural use to EPA-approved label.

Applies to chronic or long-term health impacts, such as cancer even though labels are not required to include warnings about certain.

Part of a broader national effort by pesticide manufacturers to limit liability for failure-to-warn at the state level.

Ongoing litigation concerning glyphosate-containing pesticides and a case currently before the U.S. Supreme Court.

SB 52 (Rawlings and others)

Would have restructured permitting and licensing by public agencies.

Restricting permitting decisions to criteria that are clearly and unambiguously established in statute or regulation; prohibited denials based on unauthorized factors.

Directing courts to resolve statutory or regulatory ambiguity without deference to agency interpretation, codifying one reading of *Loper Bright Enterprises v. Raimondo*, raising separation of powers issues.

Establishing a default deadline for agency action where no other timeframe exists and provides that applications are deemed approved if an agency fails to act within the applicable deadline, unless identified deficiencies remain uncured.

SB 178 (Elkins)

Would have limited Kentucky agencies' ability to adopt environmental protections that exceed federal baselines and imposed heightened evidentiary and technological feasibility standards for new state-level environmental requirements.

Categorical "no more stringent" requirement.

New hurdle for any regulation setting and environmental requirement in absence of a federal law or regulation on same or "a substantially similar topic" - all scientific and technical information relied on to support the admin reg is based on the "best available science" and the "weight of scientific evidence," and the administrative regulation is "technologically achievable at an applicable scale."

Key terms such as "best available science" and "weight of scientific evidence" are defined to require peer-reviewed, reproducible, and independently verified research and to limit sources.

In the case of human health protections, evidence required demonstrating a clear causal relationship between exposure and actual manifested bodily harm.

Agencies would be required to demonstrate that any proposed requirement can be implemented using technology that is commercially available and feasible at scale.

Broad effect on virtually all major environmental programs.

Might have application to regulations undergoing mandatory periodic review under existing law.

Any questions?

