



Under the Microscope

KY Energy & Environmental Cabinet Reorganization

SB 249

By Scott R. Smith

During the course of a legislative session, a few Bills are important enough or complicated enough to require a closer look. SB 249 is a reorganization effort for the Energy and Environment Cabinet sponsored by Senator Jared Carpenter. A reorganization bill reflects the management priorities of an incoming administration as they related to the operation, organization and administration of various Cabinets in State Government. This Bill is a good first step in the elimination of some antiquated statutes that were either nonfunctional or whose functions have been taken over by either the regulating agency, private sector, universities or other state or federal agencies.

One of the major provisions in this Bill was to eliminate environmental noise provisions under KRS 224.30. This Bill eliminates things such as noise emission prohibitions, the certification of products, granting of noise variances, requirements for noise control plans. Two noise statutes were left intact. KRS 224.30-175 which allows local communities to regulate the issue and KRS 224.30-190 Motor Vehicle Noise.

Kentucky's noise statutes followed EPA's model in the 1970's and have never really been updated. Under the Clean Air Act, the Office of Noise Abatement and Control (ONAC) was established to carry out investigations and studies on noise and its effect on the public health and welfare. Through ONAC, the EPA coordinated all Federal noise control activities, but in 1981 the Administration concluded that noise issues were best handled at the State and local level. As a result, ONAC was closed and primary responsibility of addressing noise issues was transferred to State and local governments. However, EPA retains authority to investigate and study noise and its effect, disseminate information to the public regarding noise pollution and its adverse health effects, respond to inquiries on matters related to noise, and evaluate the effectiveness of existing regulations for protecting the public health and welfare, pursuant to the Noise Control Act of 1972 and the Quiet Communities Act of 1978.

Most noise issues in Kentucky will be managed by local communities. Many communities have already been in the lead on noise through ordinances and nuisance law. It will be important to see if there are changes or additional communities who will address this issue. Certainly, there could be several different approaches to this issue and companies with multiple locations will need to understand the differences between communities.

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Statutes related to the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board, established in 1984, found at KRS 224.46-810-KRS 224.46-870, have been repealed. This siting board represented an additional and redundant layer of approval over and above the regulatory authority of the Cabinet to approve or deny permit applications.

Changes to other statutes contained in this Bill included:

- KRS 151.293 (14) The ability of the owner of a dam who has requested a variance and the request has not been granted or has not been granted in the manner requested, to petition the cabinet to have the variance reviewed and a final determination made by the cabinet has been simplified.
- KRS 152.713. The Center for Renewable Energy Research and Environmental Stewardship at the University of Louisville's attachment to the Energy and Environment Cabinet has ended.
- KRS 224.70-120 (20). The Cabinet will no longer accept a 20% application filing fee for KPDES permits. Applicants will be required to submit the full amount of the permit fee with the application. The permit fees have not changed and are still the amount called out in the statute.
- KRS 224.73-110 (25). Individual households will no longer have to be certified by the Cabinet for sewage system operation at their residence.

The Environmental Quality Commission was eliminated. The Commission was established when the citizens of the Commonwealth lacked direct access to the Environmental Cabinet. Today there are many organizations providing information and assistance to interested parties. During portions of its history, the Commission prepared reports that were helpful to the Cabinet and Legislature. However, the Commission has become unnecessary due to the rise of active engagement of groups and individuals with the Cabinet. The Legislature hasn't funded this organization for several Administrations.

The Environmental Trust Fund has been eliminated in this Bill. The enabling Statute basically set up a funding bucket for environmental research, development and environmental education. Clarification of the uses of the Fund was added in 2010 following a temporary influx of funds resulting from the settlement of several major environmental cases. The clarification was added to get those funds to where they could benefit the environment. This reorganization eliminated the trust fund and its board.

It is likely that budget limitations and the Cabinet's staffing priorities resulted in the elimination of the Kentucky Recycling and Marketing Assistance Program (224.10-660). Its function was very broad and, from a practical standpoint, unmanageable. Additionally,

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other organizations outside of state government and local governments could provide the information that the Cabinet was required to track. The intent of the original legislation was to encourage the collection, processing, and marketing of recovered materials; aid with the development of community and regional recycling; identify resources to help market recyclables; and promote the development of the market for recyclables.

The Department of Natural Resources rolled back some of its mining boards, councils and review panels as part of this legislation. The Small Coal Operators Advisory Council provided input from small and medium sized operators to the Cabinet. Current economic conditions in the coal fields have all but eliminated small and medium sized coal operations, eliminating the need for this Council. The Council also managed a bond pool for the small and mid-sized operations. This fund a subject of controversy when in 2002 the General Assembly issued a legislative directive requiring the transfer of \$3.84 million from the Bond Pool to the state's General Fund. Governor Fletcher and Secretary Lajuana Wilcher restored the funding to the Bond Pool to avert sanctions by the federal Office of Surface Mining.

Other organizations eliminated by the Department of Natural Resources included the Mining Board (KRS 351.105) and the Mine Equipment Review Panel (KRS 351.1055).

Another redundant and/or no longer needed advisory group, the Advisory Committee for Agricultural Chemical and Chemical Container Disposal Program, was eliminated. Established in the 1990's, this advisory committee was supposed to assist the Division of Waste Management in the development of a comprehensive, cost-effective program for the statewide collection and disposal of agricultural chemicals and containers. The University of Kentucky and other organizations stepped in over the years and made this organization unnecessary.

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