

## **2017 TENNESSEE LEGISLATIVE REPORT**

**By Scott Banbury, Conservation Program Coordinator**

(Issues in no particular order)



### **Preempting Davidson County from Including Zoning in Clean Air Act State Implementation Plan**

The Sierra Club, Concerned Citizens for A Safe Environment, Keep Southeast Nashville Healthy and Southern Environmental Law Center's chief strategy to stop the siting of additional natural gas pipeline compressor stations in Davidson County was to make proper zoning compliance a requirement for construction and operation permits under Davidson County's Clean Air Act State Implementation Plan. The Clean Air Act is one of the few laws NOT preempted by the Natural Gas Act of 1928 and Dick Cheney's Energy Policy Act of 2005. Toward this end we passed Metro ordinances that limited the siting of compressor stations to industrial zoned areas and adding them to the list of facilities subject to review under the Clean Air Act. Davidson County then applied to have zoning compliance requirements added to their Clean Air Act State Implementation Plan and were denied by the State Air Quality Control Board. Anticipating further legal action, the oil and gas industry had Senator Jack Johnson (Williamson County) and Representative Kelly Keisling (Byrdstown) introduce legislation (SB 1371) which prohibits the TN Air Quality Control Board from ever allowing compliance with local zoning requirements to be included in any TN Clean Air Act State Implementation Plan. It passed the Senate with 23 ayes and 6 noes. It passed by the House with 69 ayes, 23 noes, and 2 present and not voting.

### **Attempt to Deregulate Concentrated Animal Feeding Operations in Tennessee**

Some sectors of the Concentrated Animal Feeding Operations (CAFOs) industry (most notably Beef and Dairy) attempted to limit the Tennessee Department of Environment and Conservation's (TDEC's) ability to regulate CAFOs by declaring that TDEC's requirements could be "no stricter than federal." This would effectively remove more than 270 CAFOs from any permitting requirements, leaving hundreds of thousands of tons of animal wastes totally unregulated and threatening Tennessee streams with nutrient pollution. Sierra Club and partners were able to create a rift among CAFO operators by pointing out their potential civil liabilities if no longer protected by permits. The result was that SB0899 was passed but with its effective date delayed until March of 2018 so that TDEC will have time to work out permitting differences with stakeholders, in which case the bill will be repealed.

### **Further Assaults on Our State Stormwater Mitigation Rules**

Following on last year's assault on Tennessee's post construction stormwater mitigation rules requiring developers to retain the first 1" of runoff from any storm event after a 72 hour period of no rain, the Tennessee Home Builders Association was back this year making it clear that that not only Phase II stormwater authorities (smaller communities) but also Phase I stormwater authorities would be forced to allow developers get away with passing their stormwater impacts on to landowners, industries and public utilities downstream by requiring every stormwater permit to be reviewed independently by the TN General Assembly's Joint Government Operations Review Committee. Fortunately, the bill stalled as Chairman Steve Southerland (Morristown) shutdown the Senate Energy and Natural Resources Committee early and refused to reopen it. Unfortunately, this bill (SB 0295) is sure to be back next year.

### **Attempted Resumption of Coal Surface Mining Permitting Primacy by TDEC**

For years, the Tennessee Mining Association has pressed to have the State of Tennessee resume primary permitting authority over surface coal mining (stripmining), which the state gave up decades ago. The idea is that it would increase coal stripmining in TN. The coal industry attempted to slip their bill through as a “caption” bill (SB 0686) that called for a special joint committee to study the issue but was then amended to require TDEC to apply for primacy. The Governor and the Finance Ways and Means committees rightly recognized that this would cost the state millions of dollars with little return.

### **Privatization of Tennessee State Parks**

Senators Sara Kyle and Lee Harris from Memphis, and Representatives Craig Fitzhugh and John Ray Clemmons took the lead on this at the beginning of the session, but others piled on, including Senator Janice Bowling and Representative Ron Lollar. This bill seeks to limit the extent to which the Tennessee Department of Environment and Conservation can privatize the maintenance and services provided to and by our State Parks. SB 1110 was recommended for passage unanimously by the Senate Energy, Ag and Natural Resources Committee but deferred by the House Ag and Natural Resources Committee the first calendar of 2018.

### **Wind Energy Siting Restrictions**

Do to a local fight over a proposed wind energy installation in Crossville, well meaning local opposition was hijacked by anti-renewable energy forces and SB 1336 morphed into a bill that would essentially end wind power investment in TN. The bill was “captioned” as a study of other states’ regulations, but as amended became a virtual prohibition on wind energy. We were eventually able to get this bill further amended, after numerous Republicans stated their desire for wind energy investment in their districts, to again be a study with a moratorium on siting wind projects in counties that don’t have their own regulations until July of 2018.

### **Creation of the Tennessee Energy Council**

SB 1250 created the Tennessee Energy Council which will make recommendations to the governor and general assembly on how to manage energy resources in this Tennessee. Since we have no State Public Service Utility Commission or anything equivalent, and the Tennessee Valley Authority oversees all energy policy in the state, we’re uncertain what role this new body will play but it will certainly could politicize such matters.

### **State Fund to Continue Recreational Water Releases on the Ocoee River**

SB 0466 created the Ocoee River Recreation and Economic Development Fund to continue funding to pay the TVA for its power generation losses when releasing water for whitewater recreation on the Ocoee.

### **PACE - Property assessed Clean Energy Bill**

We worked yet again to pass a Property Assessed Clean Energy Bill (SB 0794) that applied to both residential and commercial properties. Make Murphy and Elizabeth Murphy gave it their all but were again not able to overcome the opposition of the residential mortgage bankers. We are considering dialing back our efforts next year to commercial only legislation.

### **Tolls on Electric and Low-Emission Vehicles Bill**

SB 0299 sought to charge tolls on electric and inherently low-emission vehicles using high occupancy vehicle lanes. With the help of Sierra Club Transportation Chair, Dennis Lynch, we alerted legislators to the perils of renegeing on agreements with the Federal Department of Transportation and the bill failed 4 to 3 in the Senate Transportation and Safety Committee, and failed for lack of motion in the House Transportation Subcommittee.

### **Registration of Non-Motorized Watercraft Study**

Littering and disrespect of landowners along the Harpeth and Caney Fork Rivers led to complaints to the Tennessee Wildlife Resources Agency (TWRA) and requests for legislation to cure the problems. TWRA felt they did not have the revenues to enforce rules on non-motorized watercraft and suggested the creation of a study committee (SB 1335) to look at possible revenue/enforcement policies. This could lead to the implementation of registration fees on on personal non-motorized watercraft (kayaks, canoes and rafts), a fee applied to users of such watercraft or a launch fee on the commercial operators that provide the outfitting of such craft. While the bill passed the Senate, it was taken off notice in the House Finance and Ways Committees after much bipartisan concern about making non-motorized boat owners pay registration fees.

### **Forever Green Tennessee: House Budget Amendment #152 and Senate Budget Amendment #81**

Forever Green Tennessee is a \$35 million budget amendment has been introduced to conserve forested corridors to protect water quality, farmland protection, and historic preservation. Specifically, a \$25 million fund would be established to preserve forested corridors to protect water, a \$5 million fund to conserve farmland, and a \$5 million fund for preserving historical sites. While popular in the Assembly, the Governor did not include it in his budget, and the amendments failed to be funded. We'll be back with a similar proposal next year.

***Throughout the 2017 session Sierra Club Tennessee put out 14 action alerts and generated more than 7,000 emails and calls to TN Assembly members. Thank YOU for taking action!***

For more information, or to join our State Legislative Action Team, contact:

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