

**North Carolina Sierra Club
Report on January - June 2017
Legislative Session**



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CLUB**

NORTH CAROLINA

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Contents

Introduction & Overview	2
Billboards	5
Clean Energy	6
Environmental Regulatory Repeal	11
Budget	19

Introduction & Overview

The NC General Assembly came to a close on June 30, 2017, but legislators plan to return in August, September and maybe November. That means that some of the environmentally harmful bills that the Chapter worked against this year remain unresolved and could come up for a vote. This report covers our work on environmental legislation that occurred January through June 2017.

Looking at the big picture, the environmental themes of this legislative session were continued attacks on water quality protections in the name of “regulatory reform,” giveaways to favored corporate interests, a big effort in the House to reach a consensus energy bill, and a relentless push by the Senate to stop wind energy development.

In what is unfortunately becoming normal practice, throughout 2017 many non-controversial bills passed the House, then were gutted and revised by the Senate to include completely unrelated language. These revised bills, called proposed committee substitutes (PCSs), were often sent to committee members late at night before morning committee meetings, leaving legislators and advocates scrambling to analyze complicated proposals within a limited time frame. Often, there was only one committee meeting on the revised bills before they headed to the floor. A deliberative, inclusive process would allow stakeholders to bring in issue experts to answer legislators’ technical questions and would give the public an opportunity to weigh in. Instead, as was the case in 2016, many major policy decisions were needlessly rushed and decided behind closed doors.

The makeup of the General Assembly did not change significantly after the 2016 elections, so the Republican party continues to hold a supermajority in both chambers. This means that it is not usually necessary for leadership to compromise with the minority party in order to pass legislation or override a veto. Nonetheless, it was helpful this year to have new leadership at the NC Department of Environmental Quality (DEQ) and other state agencies under Gov. Roy Cooper. This meant a stop to the steady stream of bad environmental proposals coming from DEQ that we saw under Gov. Pat McCrory. We also saw DEQ staff weigh in publicly in committee meetings and work with legislators and stakeholders to improve some problematic environmental proposals.

As always, there was tension between the House and Senate, with each chamber pushing bills that the other declined to take up. There was also tension between the Legislature and the Cooper administration, which was illustrated by eight gubernatorial vetoes (five have been overridden so far). Our focus, in general, was on working with

our allies, House members, and DEQ to improve or stop environmentally harmful proposals, while educating and engaging our members and the public about such legislation.

Even in this tough legislative atmosphere, environmental advocates had achievements. A number of unwise proposals were stopped, including (but not limited to):

- sweeping rollbacks of riparian buffers;
- excessive hurdles for siting solar farms;
- a four-year wind energy moratorium (though an 18-month moratorium passed); and
- a proposal to open up state highways to more and bigger digital billboards.

And there were some positive developments, such as:

- a budget provision that improves the state's lead surveillance program for young children and pregnant women;
- a bill that streamlines dam removals to ease restoration projects;
- improved funding for oyster reef restoration; and
- authorization for the state to begin the process of adding a new Black River State Park in Sampson, Bladen and Pender counties.

Unfortunately, we saw passage of legislative proposals that will have negative environmental implications, including:

- an 18-month wind energy moratorium that does not allow two projects already under way to move forward;
- a provision pushing DEQ to experimentally test chemical algaecides in major drinking water reservoirs, Jordan and Falls lakes;
- a bill limiting recovery options for neighbors of hog farms who bring nuisance cases forward for problems such as bad odors;
- rollbacks of stream mitigation and stormwater control rules that protect water quality; and
- a bill that requires DEQ to allow the spraying of landfill wastewater (vetoed by Governor Cooper).

Quite a few environmental proposals remain on the table and may be taken up in August or September, including:

- repeal of the popular Outer Banks plastic bag ban that protects endangered sea turtles and prevents litter;
- a provision that would limit citizen access to the courts to challenge environmental permits;
- several unnecessary exemptions to riparian buffer and stormwater control rules that protect water quality; and
- changes to mining permits to make them longer lasting with less opportunity for the public to weigh in.

The NC Sierra Club would like to express appreciation to the many legislators who stood up against bad environmental proposals, as well as to all our members and supporters who contacted their elected representatives in support of good environmental policy.

Billboards

House Bill 581 “Revisions to Outdoor Advertising Laws”

Highlights: House Bill 581 would have allowed more digital billboards, allowed more trees to be cut down along our highways, and taken away local government controls to determine where billboards may be located. Although sponsored by the powerful House Rules Chair, Rep. David Lewis, the bill was soundly defeated.

Sponsored by: Reps. David Lewis (R-Harnett), Jason Saine (R-Lincoln), Ken Goodman (D-Hoke, Montgomery, Richmond, Robeson, Scotland) and Edward Hanes (D-Forsyth)

What the bill would have done: Among many bad provisions, H 581 would have:

- allowed billboard companies to relocate billboards to new locations, even some areas where they are not currently allowed;
- allowed static billboards to be converted to digital regardless of local regulations;
- allowed billboard companies to cut down more trees around billboards to improve visibility at the expense of scenery; and
- slashed protections for dogwood and redbud trees.

Our position: The Sierra Club opposed this bill and four other billboard bills that included similar provisions. None of the other billboard bills reached the House for a vote.

The story: H 581, pushed by the outdoor advertising industry and big billboard companies, would have allowed more billboards to convert to digital - meaning more flashing, distracting lights on our roads. Furthermore, the bill would have authorized billboards to be to be relocated with more ease, which would have allowed unobtrusive billboards to be moved to locations where they would be more obtrusive and distracting to drivers.

Rep. Chuck McGrady (R-Henderson), a longtime opponent of overreach by billboard companies, led the effort against the bill with many Republicans and most Democrats ultimately lining up against H 581 for varying reasons. The most salient issue seemed to be concern with taking away local government authority to regulate the placement of billboards. Rep. Jay Adams (R-Catawba) spoke strongly against this aspect of the bill in committee and on the House floor. Democrats including Rep. Brian Turner (Buncombe) and Rep. Pricey Harrison (Guilford) also raised a variety of concerns in the House

debate including opposition to removing protections for dogwood and redbud trees. The final vote of 49-66 was a surprise to many, apparently including House Speaker Tim Moore, had who promised to allow more debate on the bill the next day before calling for a final vote, which was ultimately not needed.

Result: After a lengthy debate on the evening of July 26, 2017, the House voted down the billboard bill.

Clean Energy

[House Bill 470 "Responsible Wind Energy Implementation"](#)

Highlight: The proposed addition of unnecessary red tape to the wind energy permitting process didn't go anywhere.

Sponsored by: Rep. Chris Millis (R-Pender)

What the bill would have done: H 470 would have added such an elaborate process to our state wind permitting law that any new wind energy development would be next to impossible. For example, the bill would have required detailed health studies of potential impacts to residents within two miles, and massive setbacks from property lines (one mile) and from any military presence (thirty miles).

Our position: Opposed.

The story: The fact that H 470 did not get taken up in any committee is a positive indication of support for clean energy; it shows that many House members are not inclined to overregulate wind energy to death. Also helpful was the fact that Rep. Holly Grange (R-New Hanover) filed a more reasonable wind bill (H 574) to provide the NC Department of Military and Veterans Affairs more say in the state wind permitting process. Grange's bill eventually passed the House Energy Committee, but was not taken up by the House for a vote.

Result: H 470 was not taken up by a committee.

[House Bill 465/Senate Bill 331 “Military Operations Protection Act of 2017”](#)

Highlight: H 465 would have enacted a moratorium on any onshore and offshore wind energy development in North Carolina until the end of 2020 and required a study of wind energy and military compatibility. A version of this proposal was inserted into another bill - H 589 - and passed.

Sponsored by: Reps. John Bell (R-Craven, Greene, Lenoir, Wayne), Jimmy Dixon (R-Duplin, Wayne) and George Cleveland (R-Onslow). Senators Bill Cook (R-Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans), Norman Sanderson (R-Carteret, Craven, Pamlico) and Andrew Brock (R-Davie, Iredell, Rowan) sponsored the Senate version, while Senator Harry Brown (R-Jones, Onslow) was a champion in the Senate for this bill and all anti-wind proposals.

What the bill would have done: H 465 would have banned wind energy development in North Carolina until December 31, 2020.

Our position: The NC Sierra Club supports appropriately sited wind energy as part of our clean energy future and therefore opposed this unnecessarily restrictive proposal.

Result: H 465 did not move forward but a similar provision with an 18-month moratorium passed when the Senate added it to an omnibus energy bill (more on this below).

[House Bill 589: “Competitive Energy Solutions for NC”](#)

Highlights: This omnibus energy bill was passed nearly unanimously in the House but then the Senate added a wind energy moratorium to the bill, making it more controversial. The bill passed June 30, 2017, and at the time of this report, is awaiting action by Governor Cooper.

Sponsored by: Representatives John Szoka (R-Cumberland), Dean Arp (R-Union) and Sam Watford (R-Davidson)

What the bill does: H 589 has the potential to allow solar to grow to roughly 6,800 megawatts of installed capacity over the next four to five years, and create new distributed generation programs that could, if successful, increase access to solar. If H 589 becomes law, it would legalize third-party energy leasing and require Duke Energy

to create a community solar program, a solar rebate program, and a new green source rider program for large customers. These programs are all limited in terms of capacity in the proposed legislation. The Chapter advocated for these programs to be larger in scope and megawatts. At the same time, it is a step forward that the bill would require these options, previously unavailable, to be made available to North Carolinians.

Third-party solar leasing encourages rooftop solar by allowing customers to lease solar panels directly from solar companies rather than having to purchase panels up front. This can make going solar more affordable. The Sierra Club supports opening up third-party leasing and also supports third-party sales, which would not be authorized by H 589. North Carolina is an outlier nationally in disallowing these arrangements.

Community solar offers customers the opportunity to buy solar power even if they cannot or choose not to put solar panels on their own homes. Community solar programs can also be made available to renters. If structured well, community solar promotes equitable and affordable access to clean energy.

Solar rebates make installing solar more affordable. Unlike a tax credit, a rebate can be used even if the customer has no tax liability. North Carolina previously had a pilot green source rider program that was not widely used. A new green source rider program would allow certain big customers, including UNC universities and the military, to contract with Duke Energy for the purchase of clean energy.

H 589 would also significantly change North Carolina's interpretation of a federal law called Public Utility Regulatory Policies Act (PURPA), which was enacted in 1978 to promote energy conservation and greater use of domestic energy and renewable energy. States have interpreted PURPA differently: North Carolina has required standard 15-year contracts for renewable energy projects up to 5 megawatts. That would change, if this legislation becomes law, to 10-year standard contracts for projects up to 1 megawatt.

H 589 pairs the change to the state's interpretation of PURPA with a new, competitive process for renewable energy projects up to 80 megawatts. Projects already in the queue for interconnection would be grandfathered in (approximately 3,500 megawatts). And the competitive process obligates Duke to procure an additional 2,660 megawatts of renewable energy to be added to North Carolina's energy mix over 45 months, to be overseen by a third-party administrator. Duke Energy would be limited to contributing 30% of the megawatts in order to allow for competition within the renewable energy

market. In addition, Duke Energy would be obligated to deploy another 600 megawatts under the new green source rider program.

H 589 also addresses net metering. Net metering is a program often used by those who have rooftop solar but are still connected to the grid, allowing customers to accrue utility bill savings for excess energy that flows to the grid. There is a net metering study in H 589 which would allow consideration of extra fees on net metering customers. This is worrisome because the Sierra Club opposes charging net-metered customers extra fees and sees no justification for doing so. The risk is that, if the NC Utilities Commission changes the net metering program to add new charges or end net metering, it could render moot the parts of H 589 that encourage rooftop solar.

Our position: Neutral on the House version of H 589. Opposed to the wind moratorium that the Senate added to the bill.

The story: In late 2016, House leaders set up an energy stakeholder process in order to address solar-related issues that have been highly controversial within the Legislature in recent years. Stakeholders included solar developers, Duke Energy, electric cooperatives, industry, agricultural interests and some environmental groups. While North Carolina is second only to California in installed solar, the state only has one wind farm, so wind essentially was not part of the stakeholder discussion.

The stakeholder group was narrowed over time as an agreement became difficult to reach, but eventually Representatives Szoka and Arp pushed some stakeholders to the point where they agreed on an energy bill that was passed by the House on a 108-11 vote. The Chapter took a neutral position on H 589 because of the mix of proposals it included, some with potential to hinder solar and some that may expand access.

When the Senate took up H 589, Senator Brown renewed his push for a wind energy moratorium that he unsuccessfully sought in 2016 and again this year in his Senate Bill 331 and the Senate's proposed budget. Though none of Brown's previous efforts against wind energy succeeded, the House ultimately voted to concur with an energy bill that included an 18-month wind moratorium. The language that passed does not allow two wind projects that are being developed in Chowan and Tyrrell counties of northeastern North Carolina to continue, leaving their future uncertain. Senator Erica Smith-Ingram (D-Bertie, Chowan, Edgecombe, Hertford, Martin, Northampton, Tyrell, Washington) - who represents a district with great wind energy potential and the two planned projects - spoke out strongly against the moratorium in Senate debate. Rep.

Bob Steinburg (R-Camden, Chowan, Currituck, Pasquotank, Perquimans, Tyrrell) also spoke out strongly against the wind moratorium after passage of the bill.

Result: At the time of this report, H 589 is currently with Governor Cooper for consideration. The Governor could veto the bill, sign it or let it automatically become law after 30 days without his signature.

[House Bill 267 “Utilities/Amend REPS Requirements”](#)

Highlight: An effort to stifle renewable energy by freezing North Carolina’s Renewable Energy Portfolio Standard (REPS) did not move forward this year. Proposals like this have been repeatedly put forward over the past five years but have not succeeded.

Sponsored by: Reps. Jimmy Dixon (R-Duplin, Wayne) and John Bell (R-Craven, Greene, Lenoir, Wayne)

What the bill would have done: North Carolina’s REPS law requires utilities to source a percentage of energy from renewable sources (12.5% by 2021). H 267 would have frozen REPS at 8% instead of 12.5%. North Carolina is the only state in the Southeast with a REPS but other states have higher REPS goals than ours such as: Hawaii: 100% by 2045, Vermont: 75% by 2032 and Illinois: 25% by 2025.

Our position: Opposed.

Result: H 267 was assigned to the House Committee on Energy and was never taken up. The fact that an omnibus energy bill was being negotiated at the same time that this bill was filed likely helped stop it.

[House Bill 171 “Change Exclusion for Solar Energy Systems”](#)

Highlight: H 171 was one of a handful of legislative efforts that would have stifled solar development in North Carolina that did not move forward.

Sponsored by: Representatives Jimmy Dixon (R-Duplin, Wayne), John Bell (R-Craven, Greene, Lenoir, Wayne), Brenden Jones (R-Bladen, Columbus, Robeson) and Pat McElraft (R-Carteret, Jones). Senators Danny Britt (R-Columbus, Robeson) and

Norman Sanderson (R-Carteret, Crave, Pamlico) filed an identical bill in the Senate (S 279).

What the bill would have done: Raised property taxes on solar equipment, which would have increased the cost of solar development in North Carolina.

Our position: Opposed.

The story: If enacted, H 171 would have effectively doubled the “business property” taxes that solar companies pay on equipment. The overall property taxes paid by solar companies are significant and have benefitted rural NC counties. Making solar development more costly in North Carolina might have the unintended impact of hurting rural counties that are benefitting from clean energy development. This bill was referred to the House Energy Committee, where it was not taken up.

Result: When the same bill is filed in the House and Senate it often indicates some level of support in both chambers. However, this proposal was not taken up by any committee, likely due to the fact that an omnibus energy bill was being negotiated.

Environmental Regulatory Repeal

It has become an annual tradition at the NC General Assembly to pass at least one regulatory reform bill. We saw a number of regulatory rollback proposals in 2017, but most were left on the table at the end of June. We anticipate that legislators will consider these proposals again in August or September 2017.

[Senate Bill 131 “Regulatory Reform Act of 2016 - 2017”](#)

Highlight: S131 contains provisions that reduced stream protections and stormwater controls.

Sponsored by: Senators Andy Wells (R-Alexander, Catawba), Bill Cook (R-Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans) and Norman Sanderson (R-Alexander, Catawba)

What the bill does: Two provisions in this bill have the potential to negatively impact water quality: one has to do with control of stormwater runoff and another with stream protection.

Stormwater runoff is rainwater that does not immediately infiltrate into the ground and flows over ground, pavement and streets. When natural areas are converted to impervious surfaces such as buildings, parking lots and roads, the hydrology of the land is altered and can result in increased runoff that contains pollutants. It's important to correctly measure how much impervious surface is developed so that the impacts can be reduced or mitigated with measures such as rain gardens and retaining ponds. Limiting stormwater runoff is key to protecting streams and drinking water. A provision in S 131 excludes gravel and mulched areas "that will not receive the full weight of vehicular traffic" from the definition of "built-upon area." That means more areas may be built upon without proper stormwater controls. The cumulative impact of allowing more impervious surfaces with proper controls can result in degraded water quality.

Another section of S 131 doubled the length of stream that can be destroyed with no mitigation required, from 150 linear feet to 300 feet. Mitigation is required when a builder plans to impact or fill in streams. It can be a mix of restoration of nearby wetlands or streams, conservation or payment of fees. The idea is to steer development away from streams or to offset the destruction. Mitigation requirements do not ensure protection of streams but make developing on streams more difficult and expensive. The change in S 131 will increase the unmitigated loss of streams, which are critical for water quality, flood control, habitat and water supply.

Our position: Opposed.

The story: Some legislators were very disappointed that a regulatory reform bill was not passed at the end of the 2016 session. Therefore, in early 2017 it was a priority for them to pass such a bill. After many changes, this bill was deemed largely uncontroversial by many members of the General Assembly and passed on April 26, 2017

Result: Governor Cooper signed S 131 into law on May 4, 2017.

[House Bill 467 "Agriculture and Forestry Nuisance Remedies"](#)

Highlight: H 467 limits the discretion of the courts to compensate landowners who have suffered a loss of use or value of their property due to nuisances caused by neighboring

farming or forestry activities. This includes cases having to do with bad odors from industrial hog operations.

Sponsored by: Reps. Jimmy Dixon (R-Duplin, Wayne), Ted Davis (R-New Hanover), David Lewis (R-Harnett) and John Bell (R-Craven, Greene, Lenoir, Wayne). Senator Brent Jackson (R-Duplin, Johnston, Sampson) was the primary champion of the bill in the Senate.

What the bill does: H 467 will limit the discretion of judges to compensate a certain class of landowners in nuisance cases (those who live near farming and forestry operations).

Our position: The Sierra Club opposed this bill.

The story: H 467 limits the ability of some North Carolinians to be compensated for harm caused by nuisances at neighboring factory hog farms and other farming and forestry operations. The bill limits recovery to property value or rental value, even though properties near hog farms and similar operations are often reduced in value because of nuisances such as odor. The NC Department of Agriculture, led by Commissioner Steve Troxler, supported this bill along with the Pork Council.

Many of North Carolina's large-scale hog operations store millions of gallons of hog waste in open-air lagoons. As permitted by state regulations, the waste is periodically sprayed onto fields, but can drift onto neighboring properties. Many North Carolina families, some of whose residence preceded a factory hog farm's construction on neighboring property, report suffering from odors and fumes despite state regulations intended to address odor.

The original version of H 467 would have affected the outcome of a case pending in court having to do with Smithfield Foods, a big pork producer. After substantial debate, the House voted 59-56 in favor of an amendment to strike "pending" from the original House Bill 467, then passed the bill. This was dramatic because, prior to being amended, the bill would have greatly limited the potential damages that might be collected by citizens who are in the process of suing Smithfield Foods, should they win their lawsuit. It is rare for legislation to be designed specifically to affect the outcome of an ongoing lawsuit, and doing so raises constitutional issues. The helpful amendment was offered by Rep. John Blust (R-Guilford). During House debate on the Blust amendment, the bill sponsor, Rep. Jimmy Dixon (R-Duplin, Wayne), maligned the citizens suing Smithfield Foods, describing them variously as extreme environmentalists

and people who were "prostituting themselves for money." These tactics did not work since the amendment passed; so the bill does not impact pending litigation.

When H 467 was debated in a Senate committee, Senators Angela Bryant (D-Halifax, Nash, Vance, Warren, Wilson) and Floyd McKissick (D-Durham, Granville) challenged the need for the bill, and raised concerns about disproportionate impacts on minorities and the poor who are more likely to live near hog farms. Nonetheless, the Senate passed H 467 30-19.

Result: Governor Cooper vetoed H 467. His message explaining the veto stated: "The agriculture and forestry industries are vital to our economy and we should encourage them to thrive. But nuisance laws can be used to protect property rights and make changes for good. We used nuisance laws to force the Tennessee Valley Authority to stop air pollution from flowing into North Carolina and we won damages to improve air quality. Special protection for one industry opens the door to weakening our nuisance laws in other areas which can allow real harm to homeowners, the environment and everyday North Carolinians."

The Chapter and many allied groups worked to sustain the Governor's veto of H 467. It takes a 3/5 vote of both chambers to override a veto, which unfortunately occurred, allowing the bill to become law.

[House Bill 576 "Aerosolization of Leachate"](#)

Highlight: The idea behind aerosolizing leachate is that a high-velocity fan blasts landfill wastewater into the air, turning it into droplets that evaporate or blow away, thereby reducing leachate volume. Reducing leachate volume could be helpful to landfill operators because that would mean less contaminated wastewater to process. The environmental and health concern is that the aerosol droplets, containing toxins and bacteria, may threaten landfill workers, neighbors and downwind properties. This bill would make it mandatory for DEQ to allow this technology.

Sponsored by: Rep. Jimmy Dixon (R -Duplin, Wayne)

What the bill would do: H 576 would require DEQ to permit aerosolization of leachate over municipal landfills. The agency currently has discretion to permit the practice but is not required to do so.

Our position: Opposed.

The story: The inventor of the technology that this bill would require the state to permit is a major donor to the majority party, and lobbied legislators for this change after unsuccessfully trying to persuade DEQ to permit the technology.

DEQ succeeded in getting some minor changes to the legislation, then took a neutral position on the bill. Rep. Dixon repeatedly noted in committees and in House debate that the aerosolization technology is patented, although this has no bearing on its safety. He also referenced many studies of the technology which could not be confirmed, DEQ did not receive, and Rep. Dixon did not produce. Spraying leachate over landfills is a practice that is used in some dry climates, but North Carolina has a fairly wet climate and very high humidity so the impact of the technology may differ here. Landfill leachate can contain large amounts of harmful chemicals. Aeration of these liquids drives the chemicals into the air, which may present an exposure hazard to landfill workers and citizens. Basically, the technology needs to be tested and evaluated by scientists at DEQ before being permitted, but H 576 sidesteps this normal process.

Result: Governor Cooper vetoed H 576. His veto message stated: “In this bill, the legislature exempts particular technologies that could potentially better ensure the health and safety of people and the environment. Scientists, not the legislature, should decide whether a patented technology can safely dispose of contaminated liquids from landfills. With use of the word ‘shall,’ the legislature mandates a technology winner, limiting future advancements that may provide better protection.” The Legislature may seek to override the veto later this year.

House Bill 56 “Amend Environmental Laws”

Highlight: House Bill 56 contains many objectionable proposals, including a repeal of the Outer Banks plastic bag ban that was enacted to protect endangered sea turtles and prevent litter.

Sponsored by: Reps. Pat McElraft (R-Carteret, Jones) and Larry Yarborough (R-Granville, Person) are the House sponsors of the non-objectionable original House version of H 56. Senators Andy Wells (R-Alexander, Catawba), Bill Cook (R-Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans) and Rick Gunn (R-Alamance, Randolph) are the champions of the environmentally harmful Senate proposals added to the bill.

What the bill will do if passed: H 56 contains a long list of problematic provisions for the environment. One of the most controversial proposals is the repeal the popular Outer Banks plastic bag ban. This repeal was first proposed by Rep. Beverly Boswell (R-Beaufort, Dare, Hyde, Washington) in H 271, but her bill was never taken up by a committee. The ban, passed in 2009, made it illegal for large retailers on North Carolina's barrier islands to use plastic bags. In 2010, it was broadened to include all businesses in coastal Currituck, Dare and Hyde counties. The goal of the ban is to protect the environment and tourism.

Plastic bags pose a hazard to sea turtles, some of which are endangered. Leatherback sea turtles, for example, mistake plastic bags for jellyfish - their main food source - and ingest them, causing digestive blockage that can lead to death. North Carolina has some of the most important sea turtle nesting areas on the East Coast due to the closeness of the Outer Banks to the Gulf Stream.

The plastic bag ban has strong support in the Outer Banks. In fact, the Outer Banks Chamber of Commerce came out against the proposed repeal. The NC Retail Merchants Association - a trade group representing retail businesses - supports the repeal but had to issue a public apology to Outer Banks businesses after information the Association provided to legislators implied that Outer Banks businesses support the repeal, when they do not.

Another section of H 56 would remove the Coastal Area Management Act (CAMA) requirement for notice of a minor coastal development permit application to be posted at the site. This change would mean there would potentially be no notice to some adjacent property owners or to the public. Minor coastal development projects can be fairly large and posted notice at the site is often how neighbors learn of projects.

H 56 also contains a provision to exempt some coastal subdivisions (approximately 175 according to DEQ) from compliance with coastal stormwater rules. This change would be harmful to coastal water quality and sensitive marine ecosystems. Another section would unnecessarily amend riparian buffer rules to allow more cutting of vegetation supposedly to protect public safety, despite the fact that existing buffer rules already allow for maintenance of vegetation in the buffer.

Finally, H 56 would extend the duration of mining permits on private lands – currently 10 years – to life of site. This would lock in regulations in place at the time the facility is

first permitted, even if in the intervening years regulations change to better control environmental impacts.

Our position: Opposed.

The story: H 56 was a non-controversial regulatory reform bill as passed by the House. The Senate added 11 new sections to the bill: some were new, some had been passed by the Senate in S 434, and some were revised versions of S 434 provisions (more on S 434 below). Since the House declined to take up S 434, the Senate added provisions from it to H 56 in hopes that H 56 may pass.

Result: The House did not concur with the Senate's changes to this bill so the legislation is "in conference" and may be taken up later this year.

[Senate Bill 434 "Amend Environmental Laws 2"](#)

Highlight: This Senate bill contained so many extreme environmental rollbacks, such as completely eliminating the Catawba River riparian buffers, that the House declined to take it up.

Sponsored by: Senators Andy Wells (R-Alexander, Catawba), Norman Sanderson (R-Carteret, Craven, Pamlico) and Bill Cook (R-Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans).

What the bill would have done:

- Repealed the popular Outer Banks plastic bag ban that protects sea turtles (also in H 56, which is still being considered);
- Eliminated the Catawba River riparian buffer rules from Lake James to the South Carolina border that protect water quality (this provision was eventually removed by the Senate);
- Prevented local governments from having riparian buffers more strict than state or federal requirements to protect water quality;
- Delayed implementation of the Falls Lake cleanup rules meant to address nutrient pollution; and
- Created an odd "public safety" exemption to the Jordan Lake buffer rules. This proposal, championed by Senator Gunn (R-Burlington), was explained as an effort to address undocumented assertions of violent crime in buffers, even

though buffers can be mowed and managed. A version of this provision is still being considered as part of House Bill 56.

Our position: Opposed.

The story: The Senate passed S 434, which the Chapter dubbed “End Environmental Laws.” The proposals in S 434 were not supported by scientific studies, informed by stakeholder processes, or based on science.

Senators Angela Bryant (D-Halifax, Nash, Vance, Warren, Wilson), Terry Van Duyn (D-Buncombe), Floyd McKissick (D-Durham, Granville) and Erica Smith-Ingram (D-Bertie, Chowan, Edgecombe, Hertford, Martin, Tyrrell, Northampton, Washington) spoke up against the bill during the Senate debate. Senator Joel Ford (D-Mecklenburg) asked the sponsor of the bill, Senator Wells (R-Catawba, Alexander), to provide some kind of justification for elimination of the Catawba buffers that Ford could bring to his constituents, but Wells could only provide stories based on personal experience. Senator Wells is a real estate developer in Hickory, in the Catawba River Basin. All Democratic senators, along with Republican Senators Tamara Barringer (Wake) and Jeff Tarte (Mecklenburg), voted against S 434, but the bill passed the Senate.

Result: The House did not take up S 434 but some of the provisions were moved to H 56, which is in conference and may be taken up later this year.

[House Bill 374 “Business Freedom Act”](#)

Highlight: This bill is another example of a non-controversial technical bill that was passed by the House and then used as a vehicle by the Senate to insert a number of bad environmental provisions.

Sponsored by: Representatives Pat McElraft (R-Carteret, Jones), Julia Howard (R-Davie, Forsyth), Linda Johnson (R-Cabarrus) and Pat Hurley (R-Randolph) are the House sponsors of the original bill, which had to do with technical changes to labor laws. Senator Andy Wells (R-Alexander, Catawba) championed the controversial contested cases provision in the Senate.

What the bill will do if passed: The most problematic part of this bill is the contested cases provision that targets the public’s access to the courts to challenge environmental permits. The proposal would change contested case procedures for appeal of

environmental permits on which DEQ or the Environmental Management Commission (EMC) received public comment.

This bill also contains a coal ash provision that would require a study of coal ash demand, and might serve to eliminate one of three mandated coal ash recycling projects if the process is not shown to be profitable for Duke Energy. Because sufficient quantities of ash are not available to the concrete industry in NC, manufacturers have imported coal ash from China, Turkey and other countries in recent years. Concrete manufacturers say they can use the coal ash from Duke Energy's coal ash pits if it goes through a "beneficiation" process. At the time of this report,, Duke Energy had already announced the location of a third coal ash recycling plant, as required by law, so this provision may now be moot.

Our position: Opposed.

The story: This bill was passed by the Senate with very little debate. The House referred H 374 to House Rules committee. Since no conference committee was appointed to negotiate this bill, it would appear that H 374 is ineligible for consideration in upcoming legislative sessions. However, since the legislature makes its own rules of procedure, it's possible that this bill or parts of it could still be in play later this year.

Result: Yet to be determined.

Budget

Senate Bill 257 "Appropriations Act of 2017"

Highlight: The Senate's proposed budget would have dramatically slashed DEQ positions and programs. The House budget did not propose such draconian cuts to DEQ but, as is the practice, the final budget ended up in the middle. The final budget included cuts to DEQ and unexpected significant cuts to the Attorney General's office that were not debated by any committee or in any public forum. DEQ has seen annual cuts for at least the last six years; this cannot continue without eventually having a negative impact on environmental permitting and enforcement. The cuts to the Attorney General's office are significant for the environment because the office prosecutes environmental crimes.

Sponsored by: Senators Harry Brown (R-Jones, Onslow), Kathy Harrington (R-Gaston), and Brent Jackson (R-Duplin, Johnston, Sampson)

What the bill does: The state budget is a 438-page piece of legislation that is not primarily about the environment, but about allocating state funds for education, healthcare, state employees and agencies. The budget is clearly not the appropriate place to put environmental policy that should be vetted by legislative committees. Nevertheless, we continually see policy provisions of all kinds in the budget.

This year, the legislature included cuts to DEQ as well as massive cuts to the Attorney General's office; a provision requiring legislative approval of how the Volkswagen settlement funds (meant to reduce air pollution) are used; and a provision pushing DEQ to test the use of chemical algaecides in Jordan and Falls lakes.

Our position: Opposed to DEQ and Attorney General's office cuts, algaecide provision, Volkswagen provision and Senate-proposed wind moratorium.

The story: Governor Cooper put forward a proposed budget in February of this year that, for the most part, was not taken into consideration by the Legislature. The Legislature is entirely responsible for passing the state budget and so often does not adopt gubernatorial recommendations. And since the executive and legislative branches are currently controlled by opposing parties, this was even more the case this year.

In May, the Senate proposed and passed a 361-page budget with little time for review or public comment. Despite a projected \$580 million state budget surplus, the Senate proposed slashing significant positions and programs at DEQ. This continues a pattern in place since 2011. The DEQ water resources and water quality program budgets have been cut by 18% in the last six years, slowing issuance and renewal of Clean Water Act permits. The Chapter advocated that legislature should instead invest some of the surplus back into DEQ programs that protect water quality and ensure enforcement of environmental laws.

In addition, the Senate budget included controversial policy provisions. A few of the provisions of concern were:

- A four-year moratorium on wind energy development, long sought by Senate majority leader Harry Brown. This provision was ultimately removed from the budget but Brown succeeded in inserting a version of it into an energy bill, H 589.

- Provisions to direct how the Cooper administration spends an anticipated \$92 million in funds from the Volkswagen settlement (to be paid by the company to NC for cheating on emissions testing). These funds are intended to reduce air pollution. Although the first step in the process by which the settlement funds will be distributed has not yet been put into place, the Senate proposed constraining use of the funds. The Senate version was changed somewhat for the better by the House, and the House version ended up in the final budget.

The House added policy provisions to the budget as well, including:

- A provision pushing DEQ to study alternative technologies for in-lake approaches to nutrient management in Falls Lake and Jordan Lake. In the 2016 budget, the legislature required DEQ to consider “algaecide and phosphorus-locking technologies,” and provided the agency \$1.3 million to implement a trial of these technologies at its discretion. Reducing phosphorus is a good long-term goal, but phosphorus usually enters the lake from external sources. The 2017 budget pushes DEQ to do a trial, though the Army Corps of Engineers would also have to approve such a trial. Notably, the 2017 language removed a prior requirement to do a cost-benefit analysis of such an approach. The Chapter opposed the 2016 and 2017 provisions. Rep. Pricey Harrison (D-Guilford) proposed an amendment to the House budget that would have removed the provision entirely and instead reinstated the Jordan Lake cleanup rules that have been repeatedly delayed by the legislature.

Result: The Legislature passed the budget on June 22, 2017. Governor Cooper vetoed S 257 on June 27, 2017, saying it included insufficient education funding, too many tax breaks for the wealthy, and potential constitutional issues regarding separation of powers. The Legislature voted to override the veto on June 28, 2017.