North Carolina Sierra Club
Report on 2015 Legislative Session

North Carolina Chapter

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Introduction & Overview

This year the North Carolina legislature began the long session with a new House Speaker and expectations for a budget surplus. Despite one party control of the House, Senate and Governorship, the 2015 session ended up being the longest “long session” in the past fourteen years. The biggest source of debate between the chambers was the budget. Long-running negotiations forced several continuing resolutions to keep the state government funded while House and Senate leaders worked out their differences. The Senate included major policy changes (including environmental) in their proposed budget and the House pushed back. Unfortunately, many of the Senate’s harmful environmental proposals were eventually agreed to and passed. Looking at the big picture, the themes of this legislative session were attacks on clean energy, environmental protections, and local government authority.

As in the previous few years, there was tension between the House and Senate leadership, with the Senate pushing many hardline bills and the House often declining to take up or tempering Senate proposals. And there was tension between the legislature and the Governor with the Governor pushing for some things that received tepid support from the legislature such as a transportation bond and historic tax credits. Our focus, in general, was on working with House members to improve or stop bad environmental proposals.

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

- Sweeping rollbacks of riparian buffers;
- Repealing the funding mechanism for local electronics recycling programs;
- Freezing North Carolina’s renewable energy portfolio standard;
- Repealing the local property tax reduction for solar farms;
- Chilling environmental citizen lawsuits; and
- Lifting the cap on terminal groins at the coast without restriction.

Unfortunately quite a few legislative proposals that will have negative environmental implications passed and became law, including:

- a provision to allow polluters to self-monitor and self-report violations to get
out fines;
- a budget provision to put public funds towards exploratory test wells for fracking;
- a provision raising the cap on the number of terminal groins allowed at the coast;
- a provision reducing state protection for seasonal streams; and,
- a major rollback of our State Environmental Policy Act.

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

“Regulatory reform” has become the catch-all phrase for rolling back regulations of all kinds, especially environmental. It should more appropriately be named “regulatory repeal”. Amongst leaders in the legislature there is a current ideological slant against regulations of all kind and it has become a yearly tradition to bring an omnibus regulatory reform bill forward at the end of each session. The 2015 session saw a slew of regulatory rollback bills and sometimes legislators added the same provisions to more than one bill in an effort to ensure their proposals made it across the legislative finish line.

House Bill 795 - “SEPA Reform”

**Highlight:** The landmark State Environmental Policy Act (SEPA), which became law in 1971, requires an environmental review of public projects using public funds or public lands, to ensure that the full impact to communities and the environment is taken into consideration. HB 795 is effectively a repeal of SEPA since very few projects will any longer have to go through the SEPA review process.

**Sponsored by:** Representatives Torbett (R - Gaston), Hager (R - Burke, Rutherford) and Millis (R - Onslow, Pender) and co-sponsored by Rep. John Bell (R - Craven, Greene, Lenoir, Wayne).

**What the bill does:** HB 795 set new thresholds for when SEPA will apply, so that moving forward only projects that impact more than 10 acres of public lands or use more than $10 million of public funds will have to do a review under SEPA (with some limited exceptions). This change will result in less environmental review of projects using public funds or public lands.

**Our position:** The Sierra Club opposed this bill.

**The story:** SEPA has historically served as the state and local government counterpart to the National Environmental Policy Act (NEPA). SEPA is not duplicative; where a federal environmental impact statement is required, SEPA is not triggered. Further, SEPA is not a regulatory program and does not affect private companies. Passage of HB 795 was a top priority this session for the NC Chamber of Commerce. The SEPA rollback received brief consideration in legislative committees and was not the result
of any study or analysis of the program as currently constructed or proposed. There was no evaluation of how many projects would be affected and the new thresholds were chosen arbitrarily.

An exception was carved out in the new law for controversial interbasin transfers (moving water from one river basin to another). These proposals will still have to go through the SEPA review process no matter the cost or size. There was also a last-minute addition to the bill requiring DENR to create a new environmental review program for projects under the Clean Water Revolving Loan Fund and the Drinking Water Revolving Loan Fund so that these don’t have to go through the more onerous federal review process that would have been required if the SEPA review was simply eliminated without any replacement.

SEPA offered North Carolinians the assurance that when public funds were spent or public lands affected, the environmental impact of a project must be assessed, and alternatives considered. With the new high thresholds there will be few, if any, projects that will ever need to do an environmental assessment under SEPA.

The House walked back the thresholds originally proposed by the bill sponsors from $20 million to $10 million in public funds and from 20 acres to 5 acres of public lands thanks to an amendment by Rep. Pricey Harrison (D - Guilford). Then a Senate Committee raised the thresholds back to $20 million and 20 acres with the acquiescence of the bill sponsor, Rep. Torbett (R - Gaston). Thanks to an amendment from Senator Angela Bryant (D - Nash), the Senate’s final version of the bill restored the monetary threshold adopted by the House ($10 million). Senator Hartsell (R - Cabarrus, Union) tried to add a helpful amendment to protect the cumulative impacts analysis aspect of SEPA but that change did not survive the legislative process.

The House, at first, voted to not concur with Senate changes to the bill and appointed Reps. Torbett, Hager (R - Burke, Rutherford), Wray (D - Halifax, Northampton) and Millis (R - Onslow, Pender) as House conferees. That vote was not a statement against the overall bill, but a way for the House and Senate to work out differences. When a revised version of HB 795 came back before the House, Representative Harrison defended SEPA, noting that the law exists to safeguard public lands and public funds. Nonetheless, the House passed the bill with a vote of 74-40. Most Democrats and four Republicans, Reps. Jeter (R - Mecklenburg), McGrady (R - Henderson), Catlin (R - New Hanover) and Dollar (R - Wake), voted against the bill. The Senate voted 41-8 in favor
of the final bill with some supporting the revised version because of the lower threshold than the earlier version.

**Result:** HB 795 became law when it was signed by the Governor on June 19, 2015.

**House Bill 44 - “Local Government Regulatory Reform Act of 2015”**

**Highlight:** The inclusion of good proposals in bills with bad environmental provisions make it more difficult for legislators to vote against them. This year there was a handful of regulatory reform bills that fit this profile; HB 44 was one of them. This bill was tempered over the session - for example the wholesale rollback of riparian buffers proposed in the original bill did not end up in the final bill. But the final bill still included some bad environmental policy changes.

**Sponsored by:** Representatives Conrad (R - Forsyth), Lambeth (R - Forsyth), Hanes (D - Forsyth) and Terry (D - Forsyth) were the sponsors of the original House Bill 44, a one-page non-controversial bill about overgrown vegetation but it was the Senate, led by Senate President Pro Tem Phil Berger (R - Guilford, Rockingham) that revised this bill entirely. Senator Trudy Wade (R - Guilford) was in charge of all the Regulatory Reform bills in the Senate. Rep. Millis (R - Pender) pressed for inclusion of riparian buffer rollbacks in this bill and in other bills.

**What the bill does:** HB 44 started out as an innocuous House bill but, after being passed by the House as such, it went to the Senate where it was changed into a lengthy regulatory repeal bill with major riparian buffer rollbacks and a provision that would have made it more difficult for cities to put in bike lanes. The House, to its credit, voted to not concur with these major changes and the bill underwent months of negotiation behind closed doors. In the end, the bike lane provision was removed and the riparian buffer provision was tempered significantly. One part remained essentially the same throughout, a provision that prohibits local governments from enforcing rules that have been delayed. This provision seems aimed at local government efforts to enforce the long-delayed Jordan Lake cleanup rules.
**Our position:** The Chapter opposed the unwise environmental provisions in this bill, such as rolling back protections for our rivers and making it tougher for towns to add bike lanes.

**The story:** Protecting North Carolina’s network of riparian buffers was one of the key focuses of the Chapter’s legislative advocacy work this session because buffers protect water quality and drinking water resources across the state. Current buffer requirements were the result of years of stakeholder meetings and scientific study to come up with the fairest, most economical and scientifically valid way of protecting water quality. Buffers are intended to allow for infiltration and filtration of stormwater so that pollutants do not flow directly to surface waters. Federal law requires North Carolina to address unhealthy rivers by adopting management tools and strategies to reduce pollution. Compromising buffers to support developers only shifts the burden of cleanup to taxpayers who would, without buffers, bear the increased cost of upgrading expensive water treatment infrastructure.

The Senate approved gutting these landmark water quality protections for the entire state. In addition, the Senate voted to limit local government efforts to create bike lanes. Thankfully, the House voted to “not concur” with the Senate’s vast changes to HB 44. Following the House vote of non-concurrence this bill went into conference where it was negotiated by conferees behind closed doors for months. Representative McGrady (R - Henderson) deserves credit for working very hard to improve the buffer provisions and remove the bike lane provision.

A section of HB 44 that became law prohibits local governments from enforcing state rules that have been repealed or suspended, and rules not yet in effect. This provision appears aimed at local efforts to comply with the Jordan Lake cleanup rules. This provision seems to penalize local governments who have acted early to get on top of threats to water quality. For example, in the Jordan Lake watershed, a number of local governments have already adopted strong stormwater ordinances to limit pollution from new development. When the General Assembly suspended state enforcement of the rules previously, local governments that had already put stormwater ordinances in place to comply with the Jordan Lake rules were allowed to continue with the enforcement of those. This section could be interpreted to stop local enforcement of those stormwater rules since the state rules have delayed. This could potentially force local governments who were ahead of the game to repeal their ordinances.
At the end of the day, the HB 44 riparian buffer provision ended up as a restriction on local government ability to have any buffer requirement stricter than what is required by the state unless approved by the Environmental Management Commission (EMC). The EMC may approve more stringent buffers after a showing of scientific evidence that the buffer is needed to protect water quality. HB 44 establishes a default sunset for local riparian buffer protections that are stricter than state-required buffers unless local governments convince the EMC to allow them to retain these protections. A responsible approach would have been to allow existing local rules to stay in place, requiring EMC review only if they are changed.

**Result:** Governor McCrory signed this bill into law on September 23, 2015.

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**House Bill 760 - “Regulatory Reform Act of 2015”**

**Highlight:** This bill, which included another major attack on riparian buffers and attacks on solar energy, passed in the House but was never considered by the Senate. May be pushed again in 2016.

**Sponsored by:** Representatives Millis (R - Pender, Onslow), John Bell (R - Craven, Greene, Lenoir, Wayne) and Riddell (R - Alamance).

**What the bill would do:** HB 760 would freeze the NC Renewable Energy Portfolio Standard (REPS) and roll back riparian buffer rules that protect water quality. Various versions of this bill considered by committees also included a repeal of the local property tax reduction for solar farms and a reduction in size of a solar farm that could qualify for a standard contract with North Carolina utilities (a Duke Energy effort that was lost at the Utilities Commission in January 2015).

**Our position:** The Sierra Club strongly opposed every version of this bill.

**The story:** HB 760 would have rolled back protections for water quality which have been in place since the late 1990’s by weakening the buffer rules that protect our rivers and streams. These changes were pushed by the bill sponsor, Representative Millis (R - Pender, Onslow). Buffers are the vegetated or forested strips along side of our
streams, creeks, and rivers that act as filters, keeping nutrients and other pollution out of our waters. HB 760 would have been a giveaway to developers at the expense of taxpayers and would have been particularly damaging to coastal areas.

In addition to the damaging buffer proposals HB 760 also contained anti-renewable energy provisions that would have frozen North Carolina’s Renewable Energy Portfolio Standard (REPS) and removed state and local policies friendly to solar energy.

HB 760, if it had passed, would have dramatically shifted state policy to tilt the energy landscape away from solar energy. The bill would have frozen the REPS at its current level of 6%. The 2007 landmark law that enacted the REPS requires public utilities to gradually add renewable energy to our state’s energy mix to reach 12.5% by 2021. A recent study published by RTI International and ScottMadden Consultants shows that the REPS has saved ratepayers $162 million since adopted and will save ratepayers an additional $489 million by 2029. In addition, North Carolina’s REPS has built-in consumer protections. Residential costs, for example, are capped at approximately $3 per month; actual costs to date have been less than $1 per month.

HB 760 also contained provisions that would have dramatically limited the growth of ground level solar projects in North Carolina. With the exception of projects generating energy from swine and poultry waste, HB 760 would have disqualified renewable facilities over 100 kilowatts from eligibility for a standard contract with a public utility. Current law allows projects up to 5 megawatts to be eligible for the standard contract. This change would have essentially nullified an order made by the Utilities Commission in December 2014 after a year of study. The Utilities Commission concluded that the 5 megawatt threshold should be maintained because it resulted in widespread renewable energy development without an adverse impacts to ratepayers.

The freeze-the-REPS amendment added to HB 760 on the House floor was sponsored by Representatives Hager (R - Burke, Rutherford) and Jeter (R - Mecklenburg). Rep. Hager previously sponsored several bills that would have entirely repealed the REPS. Representative Jeter has traditionally been a clean energy supporter. The anti-solar provisions added to HB 760 in the House were apparently negotiated between these two Republican House leaders. Not only is the REPS important for providing support to NC’s growing renewables sector, but it is key to North Carolina’s ability to meet the federal Clean Power Plan’s requirement to reduce carbon emissions in the state. The Senate declined to take up this bill so far.
Result: The Senate did not take up HB 760. Some parts of the riparian buffer proposals (but not the wholesale rollback) were passed in another bill, HB 44. The anti-solar energy provisions proposed in HB 760 did not go forward in any bill thanks to lots of pushback from solar companies, local governments, citizens and legislators with job-creating solar investments in their districts. The proponents of the anti-solar provisions, Reps. Hager and Millis, will likely push this bill in the 2016 short session.

Senate Bill 320: Revisions to Outdoor Advertising Laws

Highlight: The billboard industry regularly lobbies for regulatory repeal. Each session the industry mounts an effort to repeal certain regulations affecting it, such as requirements to protect trees around signs or limitations on digital displays. This year's billboard wish list, SB 320, was so over the top that it was never taken up by a committee.

Sponsored by: Senators Brown (R - Jones, Onslow), Tarte (R - Mecklenburg) and Rabon (R - Bladen, Brunswick, New Hanover, Pender). And Representatives Hager (R - Burke, Rutherford), Collins (R - Franklin, Nash), J. Bell (R - Craven, Greene, Lenoir, Wayne) and Hanes (D - Forsyth) sponsored a twin bill in the House, HB 304.

What the bill would have done: SB 320 contained unprecedented new giveaways to the billboard industry at the expense of North Carolina taxpayers. The bill would have stripped local communities' ability to enforce local ordinances (such as tree ordinances) that impact the appearance of roadways. It would have prevented the NCDOT from refusing a billboard permit for being inconsistent with a local government rule and allowed thousands of grandfathered billboards to be relocated and enlarged. SB 320 would have allowed billboard companies - not local governments or the NCDOT -- to make the decisions about where and when billboards can be converted to digital signs. This bill would have had a negative impact on the aesthetic beauty of our state if passed and could have added to the the cost of improving roadways. SB 320, if passed, would have enabled the billboard industry to convert an estimated 8,000 billboards on Federal Aid Primary roadways in North Carolina into bright, distracting digital billboards -- without any ability by local governments or NCDOT to restrict the change. Many drivers find digital billboards to be like giant television
screens, distracting to drivers, a nuisance to residents, and an eyesore. SB 320 also had significant negative implications for taxpayers because it would have added costs to public road and infrastructure projects.

**Our position:** The Chapter strongly opposed this bill.

**The story:** Representative McGrady (R - Henderson) was instrumental in stopping SB 320. Due to push back from a number of legislators and many citizens neither the Senate or House version of this bill saw a committee hearing this session.

**Result:** Senate Bill 320 was an overreach by the billboard industry and that’s likely why it did not gain traction - but we can likely expect similar future proposals.

**House Bill 765 – “Regulatory Reform Act of 2015”**

**Highlight:** HB 765 is being called the “Polluter Protection Act” because it provides new protections for polluters by giving them immunity from fines and penalties in certain cases. The bill also weakens protections for nearly half of our state’s streams and allows polluters to avoid full cleanup of contamination not just on their own properties, but also on neighboring properties.

**Sponsored by:** Representative McElraft (R - Carteret, Jones). Senator Wade (R - Guilford) was not a sponsor but took the lead on this bill in the Senate.

**What the bill does:** HB 765 includes a long list of environmentally detrimental provisions including the following:

- **Environmental Self-Audit.** Excuses companies that violate environmental laws from penalties and fines in certain cases if they self-report violations, and it makes a company’s internal investigations privileged, inaccessible to the public or a civil court. It also denies communities the information they may need to establish a claim of damages or a request for injunctive relief against a polluter.
• **Risk Remediation.** Expands an existing risk based cleanup program to most kinds of soil and groundwater contamination, past, present, and future, allowing responsible parties to leave contamination in the ground instead of cleaning it up and allows reliance on land use controls instead. The bill excludes sites contaminated by coal ash pits and hog lagoons, two of the highest profile sources of groundwater contamination. The risk-based approach isn't good enough for these kinds of contamination and isn't good enough for lower profile but equally dangerous sources of soil and groundwater pollution.

• **Stream protection.** Half of North Carolina's stream miles are intermittent (or seasonal), meaning that they only flow during wet parts of the year. The rest are perennial and flow all year long. HB 765 prohibits the state from requiring restoration to offset destruction of intermittent streams, which are crucial for downstream drinking water quality, and are only partially protected by federal law. This is a net loss for North Carolina's water quality and a win for developers.

• **Coastal Stormwater.** This provision weakens controls on stormwater pollution along our coasts, putting at risk the water quality that sustains our fishing and tourism industries.

• **Truck Idling Rules.** HB 765 repeals a state rule that limits heavy duty truck idling to five minutes at a time. Left running, these heavy duty engines emit particulate pollution that is especially harmful to people with asthma, children, and seniors.

• **Air Quality Monitors.** HB 765 will result in a significant reduction of the number of state air quality monitors, which are vital for detecting unexpected declines in air quality as North Carolina continues to grow rapidly.

**Our position:** The Chapter strongly opposed this bill in the legislature and asked Governor McCrory to veto it.

**The story:** One of the final acts of the 2015 General Assembly was to pass what is arguably the worst environmental bill of the session - HB 765. Regulatory reform has, lately, come to mean regulatory repeal and the regulations most often repealed or cut back are environmental. That was, unfortunately, the case again this year. As initially passed by the House in April 2015, HB 765 was a one-provision, non-controversial bill about transporting gravel. The Senate overhauled the bill and turned it into a 58-page
omnibus regulatory reform bill with many provisions that would be harmful to the environment if they become law. The final bill contains many of the provisions added by the Senate which have had no study of their impacts, costs or benefits. The House Environment Committee, to its credit, held a no-vote public hearing on the bill in July, where opponents voiced many concerns, but afterwards the process went back behind closed doors. Some bad provisions were moderated or removed by the conference committee but the final bill remains full of environmental rollbacks.

During the Senate debate on HB 765, Senator Jeff Jackson (D - Mecklenburg) spoke against the bill, noting that it was a defining bill of the session and a gift to everyone looking to do a little less for the environment for future generations. The Senate vote on HB 765 was mostly party line; all Democrats voted against the bill and all Republicans except for Senator Alexander (R - Wake) voted for it.

The House took up HB 765 on the last night of session after midnight. Rep. McElraft (R - Carteret, Jones), the bill sponsor, took ownership of the final conference report describing it as “clean, green and not extreme” and a jobs bill. Unfortunately, the NC Chamber of Commerce threw their support behind the bill (as they did with the rollback of our State Environmental Policy Act - SEPA Reform - earlier in the session).

Rep. McElraft noted that the attorney’s fees provision, which the Chapter opposed, was removed and the proposed elimination of electronics recycling funding was turned into a study. Despite these positive changes, HB 765 remains a major rollback of environmental protections. There was some debate about the self-audit privilege and immunity provision by House members. Rep. Millis (R - Pender) defended this provision, which the Chapter has cited as a giveaway to polluters. Rep. Harrison (D - Guilford) opposed HB 765 on the floor noting the closed-door process that led to the final conference report and raising questions about whether the bill would lead to less cleanup of contaminated sites. Rep. Meyer (D - Orange, Durham) also spoke against the bill noting that there are over 2,000 contaminated sites in North Carolina and passage of HB 765 would mean that these sites could be cleaned up to lower standards. “Dirty air and water are not a jobs plan” said Meyer in closing. Rep. Luebke, (D - Durham) also made good points about how North Carolina has long been a business-friendly state despite our environmental regulations and weakening them is against the public interest.
The House ultimately passed HB 765 by a vote of 73-39 with some Democrats voting for the bill and some Republicans voting against. The House members who voted against House Bill 765 are: Representatives Brawley; Horn; Jeter; Jordan; McGrady; Setzer; Adcock; Ager; Alexander; B. Richardson; B. Turner; Baskerville; Brockman; C. Graham; Cotham; Cunningham; D. Hall; Farmer-Butterfield; Floyd; G. Martin; Gill; Hanes; Harrison; Holley; Hunter; Insko; Jackson; L. Bell; L. Hall; Luebke; Meyer; Michaux; Pierce; Queen; R. Johnson; Reives; Salmon; Terry and Willingham.

Result: The Sierra Club and fourteen other environmental groups immediately called on Governor McCrory for a veto of House Bill 765. Nonetheless, the Governor signed the bill October 23, 2015 with little fanfare or explanation for his support of the bill.

Energy

House Bill 332: Energy Policy Amendments

Highlight: Representative Hager (R - Burke, Rutherford) made efforts to insert anti-solar provisions into numerous bills this session, including HB 332 and HB 760. None of the provisions became law). Had the energy provisions in HB 332 or HB 760 had become law, North Carolina's solar industry would have been severely restricted. The proposals to freeze North Carolina's Renewable Energy Portfolio Standard (REPS) and to reduce the size of solar farms that qualify for standard contracts with utilities got tied up in the broader clean energy debate and the issue of whether to extend the Renewable Energy Investment Tax Credit (REITC) or not. The legislature did not extend the REITC but opted to keep other solar-friendly policies like the REPS in place.

Sponsored by: Representatives Hager (R - Burke, Rutherford), Collins (R - Franklin, Nash), McElraft (R - Carteret, Jones) and Saine (R - Lincoln).

What the bill does: HB 332 started out as a non-controversial bill about natural gas infrastructure but anti-solar amendments were added in the House.

Our position: The Sierra Club strongly opposed HB 332 and similar provisions in HB 760.

The story: HB 332 proposed to freeze the Renewable Energy and Energy Efficiency Portfolio Standard (REPS) at the current level of 6%. Currently, the 2007 landmark
REPS law requires public utilities to gradually add renewable energy to our state’s energy mix to reach 12.5% by 2021. Legislators in support of the REPS freeze argued that it is needed based on the premise that renewable energy and energy efficiency hurts ratepayers. But a recent study published by RTI International and ScottMadden Consultants shows that the REPS has, in fact, saved North Carolina ratepayers $162 million since it was adopted and will save ratepayers an additional $489 million by 2029. In addition, North Carolina’s REPS has built-in consumer protections. Residential costs, for example, are capped at approximately $3 per month; actual costs to date have been less than $1 per month. Basically, the REPS in North Carolina is a success; renewable energy is providing jobs and economic development to all parts of North Carolina, including rural areas that were hit particularly hard by the economic downturn. In North Carolina, the solar industry supports over 4,000 jobs, and represents at least $2 billion of direct investment in the state.

HB 332 would also have changed the rules for solar farms to make it more difficult to bring utility-scale solar projects online. In total, HB 332 contained a suite of provisions that, if passed, would have dramatically limited the growth of ground level solar projects in North Carolina. With the exception of projects generating energy from swine and poultry waste, HB 332 would have disqualified renewable facilities over 100 kilowatts from eligibility for a standard contract with a public utility. Current law allows projects up to 5 megawatts to be eligible for the standard contract. This change would have essentially nullified an order made by the Utilities Commission in December 2014 after a year of study. The North Carolina Utilities Commission concluded that the 5 megawatt threshold should be maintained because it had resulted in widespread renewable energy development without an adverse impact to ratepayers. Utilities are granted a regulated monopoly in NC. In the absence of a free market, the REPS and the standard contract allow renewable energy to compete on a more level playing field with heavily subsidized energy resources like coal and nuclear.

**Result:** The House passed HB 332 but the Senate declined to take up the bill. It was referred to the Senate Committee on Finance where it could be taken up in 2016 if support for the proposals grow. Representative Hager has said he will continue seeking the changes proposed in HB 332 and HB 760 in 2016.
Senate Bill 716: Mountain Energy Act of 2015

**Highlight:** SB 716 sets up a process to fast-track Duke Energy’s Asheville coal plant’s transition to natural gas.

**Sponsored by:** Senator Tom Apodaca (R - Buncombe, Transylvania, Henderson)

**What the bill does:** SB 716 creates an expedited process for the Utilities Commission’s review of the proposed natural gas plant and solar farm to take the place of the soon-to-be-shuttered Asheville coal plant. The bill also relieves Duke Energy of the requirement to convert to dry coal ash handling since the coal plant will be closing.

**Our position:** The Chapter supports the move away from burning coal and therefore supported the thrust of this bill. The Chapter did not support language in the original version that would have done away with the public process normally required by the Utilities Commission. SB 716 was revised to keep a truncated public process in place, so the Chapter was able to be neutral on the final version of the bill.

**The story:** Rep. McGrady (R - Henderson) carried the bill in the House and successfully saved the public notice and hearing requirements that would have been removed in the original bill. While the Sierra Club would like to see a transition away from coal and directly to clean energy rather than to natural gas – the closure of a dirty coal plant is a positive step.

**Result:** SB 716 passed unanimously and was signed into law by the Governor on June 24, 2015.

Senate Bill 372 - Renewable Energy Safe Harbor

**Highlight:** There were quite a few bills filed in the House and Senate to extend the Renewable Energy Investment Tax Credit (REITC) in some way or another. Senate Bills 329, 447 and 562 were efforts to extend the tax credit that has spurred solar investment throughout North Carolina and especially in rural counties - but these bills were not brought to a vote due to lack of support from leadership in the Senate. The only bill relating to the renewable energy tax credit that did pass was SB 372 which didn’t extend the credit - but created a program for projects already under
construction in 2015 to still get the credit even if not entirely completed by the end of the year.

**Sponsored by:** Senators Rucho (R - Mecklenburg), Tillman (R - Moore, Randolph) and Rabon (R - Bladen, Brunswick, New Hanover, Pender).

**What the bill does:** Allows solar projects already substantially underway but not yet complete in 2015 to use the renewable energy tax credit in 2016.

**Our position:** The Chapter supported SB 372.

**The story:** SB 372 extends the renewable energy tax credit through 2016 for projects that are substantially completed in 2015. The bill passed the Senate with only seven (7) “no” votes. All Democrats and a majority of Republicans voted in favor of the bill. Senator Tillman (R - Moore, Randolph) made a vigorous defense of the safe harbor proposal during the Senate’s debate of the bill.

**Result:** SB 372 was signed into law by the Governor on April 30, 2015.

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**House Bill 245 - Energy Freedom Act**

**Highlight:** Representative Szoka (R - Cumberland) filed HB 245 with much fanfare from clean energy groups and businesses. This proposal would open the door to third party sales and leasing of energy from companies directly to consumers - a big business in other states - primarily giving businesses and individuals an easy pathway to putting solar panels on rooftops. Unfortunately, HB 245 did not get a committee hearing in the House this session despite the many (and bipartisan) list of sponsors and co-sponsors. This indicates a lack of support from leadership. Also, Duke Energy opposed this bill. HB 245 is eligible for consideration in the 2016 short session.

**Sponsored by:** Representatives Szoka, McGrady (R - Henderson), L. Johnson (R - Cabarrus) and Dollar (R - Wake) and twenty-six bipartisan co-sponsors.

**What the bill does:** Currently, North Carolina law appears to prohibit solar and other renewable energy companies from selling electricity directly to their customers.
Instead, clean energy developers must enter into contracts (power purchase agreements - PPAs) with utilities, like Duke Energy, in which the utility buys the power from the developer, then sells it back to the person or company hosting the system. HB 245 would allow entities other than the utilities to see energy directly to consumers, opening up a new energy marketplace friendlier to clean energy options. Many other states allow third party energy sales without negative impacts to reliability of the grid or rates.

**Our position:** Sierra Club supported this bill and supports efforts throughout the country to allow and protect third party energy sales.

**The story:** Early in 2015, Representative Szoka announced his support for third party energy sales because of his interest in helping North Carolina military bases secure low-cost energy. North Carolina law prohibits solar and other renewable energy companies from selling electricity directly to their customers. This unfair practice creates barriers to bringing clean energy online. Legalizing third party energy sales would allow consumers of energy to purchase energy directly from energy producers.

Early in the session it appeared that solar energy enjoyed bipartisan support in the legislature; and clean energy advocates had high hopes for the legalization of third party sales in North Carolina and for the extension of the renewable energy tax credit. Unfortunately both of these efforts were stymied due to continued efforts led by Representative Hager (R - Rutherford) to roll back all policies supporting clean energy and Duke Energy opposition to HB 245. The fight for clean energy went from a proactive effort to legalize third party sales to a defensive effort to protect the clean energy friendly policies that North Carolina already has in place.

**Result:** HB 245 did not move forward this session though it is eligible for consideration in 2016. Clearly, more support needs to be built for third party sales in the House and Senate before this proposal could be expected to become law.
Coal Ash

House Bill 448: Extend Coal Ash Structural Fill Moratorium

**Highlight:** The Coal Ash Management Act of 2014 addressed coal ash pond closures following the Dan River spill in early 2014. One of the things that law did was enact a one-year moratorium on the use of coal ash as structural fill (to build up land for development or for landscaping) with the promise that state standards would be created for structural fill during that time. That moratorium expired in August 2015 but new state standards for using coal ash as structural fill were not enacted. The Chapter asked legislators to either extend the moratorium or enact new standards. HB 448 would have, if passed, extended the coal ash structural fill moratorium for another year to allow time for state standards to be developed and adopted.

**Sponsored by:** Representatives Brian Turner (D - Buncombe), Harrison (D - Guilford) and Glazier (D - Cumberland).

**What the bill would have done:** HB 448 would have extended the coal ash structural fill moratorium for one more year to give DEQ the opportunity to create state rules for this use of coal ash or to allow time for the legislature to pass a bill with new standards. Since the Coal Ash Management Act of 2014 was passed, the EPA created new coal ash rules - which now regulate very large structural fill projects over 12,400 tons or more of coal ash. There are not special state standards for coal ash structural fill projects under 12,400 tons.

**Our position:** The Chapter supported HB 448.

**The story:** HB 448 received lots of support from the Democratic caucus with twenty co-sponsors but did not receive support from House leadership so was not brought to committee for consideration. The bill was referred to the House Committee on Rules in April 2015 and there it remained.

**Result:** The moratorium on coal ash structural fill expired in August 2015. The EPA coal ash rule filled some of the regulatory gap in that it created standards for very large coal ash structural fill use - but at this time there remains a loophole for smaller projects that could be taken advantage of in the future to get rid of tons of coal ash without standards to sufficiently protect water quality. Although HB 448 will not be the vehicle
for new coal ash structural fill standards - the Chapter will continue to advocate for standards to cover the existing loophole. The legislature could adopt additional coal ash structural fill standards or direct the EMC to do so.

Climate Change

House Bill 571: Implement Clean Power Plan

**Highlight**: HB 571 started out as a positive surprise from the House. The House proposed to require the Department of Environmental Quality (DEQ) to undertake a stakeholder process to seek input on how North Carolina should implement the federal Clean Power Plan. The bill does not indicate that the House supports the EPA Clean Power Plan - but rather that House sponsors recognize the federal rule is coming and wish to direct DEQ to consult with stakeholders rather than develop a state plan in isolation.

**Sponsored by**: Representatives McGrady (R - Henderson), Hager (R - Burke, Rutherford) and Robinson (R - Caldwell).

**What the bill would have done**: The House version of the bill directed the Department of Environmental Quality to develop a state compliance plan for the Clean Power Plan, to establish a State Advisory Board of stakeholders including environmental groups, to hold three regional public hearings to gather input for the state plan and report on the progress of the state plan to the Environmental Review Commission. The Senate turned this proposal on its head and amended the bill to require the state to sue the EPA on the Clean Power Plan. The Senate bill also would have forbidden state agencies from expending any resources to develop a state plan, or to comply with a federal plan, or to adopt a carbon dioxide emissions reduction plan.

**Our position**: The Chapter supported the House version of the bill and strongly opposed the Senate version.
The story: The House bill was deemed necessary because DEQ did not plan to hold a stakeholder process to develop a comprehensive state plan to meet the EPA Clean Power Plan carbon dioxide emissions reductions goals. The Senate proposal would have required DEQ to submit a specific type of plan that would not succeed in the carbon dioxide emissions reductions called for by the EPA (which is what DEQ plans to do). Secretary of DEQ, Don van der Vaart, worked with Senate leaders to get the language the agency wished for in the bill. Senator Wade led the effort in the Senate to revise the bill.

Result: When the Senate’s version of the bill was sent to the House for concurrence the House declined to take it up. No legislative requirements were placed on DEQ as for how to deal with the Clean Power Plan, so the Governor is in the driver’s seat for how North Carolina’s state plan to comply with the EPA Clean Power Plan will work. DEQ recently filed suit challenging the EPA Clean Power Plan and the administration is set to propose a state plan that will not meet Clean Power Plan goals, a missed opportunity to harness North Carolina’s clean energy potential.

Fracking

House Bill 157: Amend Environmental Laws

Highlight: The first bill of the session to be signed into law by Governor McCrory in 2015 included a provision that relieved the Environmental Management Commission (EMC) of its obligation to create rules to regulate toxic air emissions from fracking. Representative Hager (R - Rutherford) was responsible for getting this provision added to an otherwise non-controversial bill.

Sponsored by: Representatives McElraft (R - Carteret, Jones) and Catlin (R - New Hanover).

What the bill does: Relieves the Environmental Management Commission (EMC) of its obligation to create rules to regulate toxic air emissions from fracking.
Our position: The Chapter opposed this bill due to our opposition to fracking in North Carolina and our interest in having strong, protective rules to regulate fracking in case the industry does come to our state.

The Story: Representative Hager proposed adding a fracking provision to an unrelated bill early in the session via an amendment on the House floor. That amendment was voted down because legislators had not been given the opportunity to review the language ahead of time. But then Rep. Hager later succeeded in adding the same language to HB 157 (another unrelated bill) in a House committee. When HB 157 came to the House floor, Rep. Reives (D - Chatham) offered an amendment to remove the fracking provision; but it did not pass. The fracking provision was debated vociferously in the House but HB 157 ultimately passed. Reps. Reives, Harrison (D - Guilford), Glazier (D - Cumberland) and Luebke (D - Durham) spoke eloquently against removing the requirement for the EMC to adopt rules to regulate toxic air emissions from fracking. There was clearly a push to pass HB 157 before the moratorium on issuing fracking permits for fracking expired. But then the moratorium was reinstated by the courts in connection with a lawsuit about the constitutionality of the Mining and Energy Commission; so it remains in place until resolution of that case.

Result: Governor McCrory signed HB 157 into law on March 16, 2015.

Senate Bill 119: Technical Corrections (with a dash of fracking)

Highlight: In one of the legislature’s last acts of the session, after midnight on the last night, a pro-fracking provision was inserted into the technical corrections bill (meant to be corrections to errors in previously passed legislation, not a major policy vehicle). The provision appears aimed at removing what little local authority was left for towns and counties to regulate fracking with ordinances.

Sponsored by: Senator Hartsell (R - Cabarrus, Union). Note that since the pro-fracking, anti-local control provision was added in the final hours of session with no public process it is unknown who in House or Senate leadership demanded it.
**What the bill does:** SB 119 makes legitimate technical corrections but also further undermines local government authority to regulate fracking in addition to existing limits passed in previous legislative sessions.

**Our position:** Neither the Chapter nor most legislators knew about this provision before it was added to the omnibus technical corrections bill. While there was no opportunity for anyone to oppose this in the legislature, the Chapter opposes both the power grab away from local governments and the lack of public process in passing this proposal.

**The story:** The 2014 legislature passed a bill preventing local governments from banning fracking, but towns could still use ordinances to regulate all kinds of development, possibly including fracking. The 2014 law gave the Mining and Energy Commission authority to review and override local ordinances that had the effect of banning fracking. SB 119 goes further, in that it automatically deems ordinances that may impact fracking pre-empted by state law. The bill also gives fracking companies the right to challenge local ordinances by bringing them before the Oil and Gas Commission. The Oil and Gas Commission is given broad power to preempt local ordinances deemed to impact fracking. This is a step backwards for local government control over resources and a giveaway to the oil and gas industry without any public process.

**Result:** Governor McCrory signed this bill the same day he received it on October 1, 2015.

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**Budget**

**House Bill 97: 2015 Appropriations Act**

**Highlight:** The state budget is a giant document (429 pages) that sets out spending for the next two years. It is not meant to be the vehicle for environmental policy decisions. However, policy proposals often get slipped into the budget during long negotiations. This year was no different in that regard. Although House leadership railed against the Senate putting policy provisions in the budget, in the end, the House
ended up agreeing to a number of bad environmental proposals that the Senate wanted in the budget. On the positive side, the budget included a respectable and increased level of funding for conservation, such as for the Clean Water Management Trust Fund.

**Sponsored by:** Representative Dollar (R - Wake), Linda Johnson (R - Cabarrus), McGrady (R - Henderson), and Lambeth (R - Forsyth).

**What the bill does:** The budget had a number of detrimental environmental policy changes in it and a big missing piece - which was no extension of the Renewable Energy Investment Tax Credit that has helped to grow the solar industry in North Carolina.

**Our position:** The Chapter opposed the environmental policy changes in the budget and supported an extension of the Renewable Energy Investment Tax Credit.

**The story:** Two policy provisions in the $21.74 billion budget deal alter longstanding state environmental policies. The first is yet another delay in the implementation of the Jordan Lake cleanup plan. The second is an increase in the number of terminal groins allowed on North Carolina’s coast. The terminal groins provision was not part of the House or Senate budgets but appeared near the end of budget negotiations.

Yet another delay of the Jordan Lake cleanup plan.

The budget will delay the Jordan Lake rules for the fourth time. Previous delays were implemented in 2011, 2012 and 2013. Since the 2009 passage of the Jordan Lake cleanup plan, the rules have never been fully been implemented, and this year’s budget provision may well mark a de facto repeal of the rules. Also, a provision in HB 44, Local Government Regulatory Reform 2015, appears aimed at stopping local governments from enforcing local ordinances they have adopted to comply with the Jordan Lake rules while the rules are on hold - as the Jordan Lake rules will be due to the budget.

Terminal groins in the budget? Yes.

The budget raises the allowed number of terminal groins on our coast from four to six. That initial cap of four projects was instituted with the idea that the terminal groins would be pilot projects and, after construction, would be studied
to ascertain costs and benefits before allowing more. The budget raises the cap before any pilot projects are completed and impacts reviewed.

Renewable Energy Investment Tax Credit:

Most notably missing from the budget is an extension of the Renewable Energy Investment Tax Credit (REITC), often referred to as the solar tax credit. The REITC has been a driving force in North Carolina’s clean energy boom. Allowing the tax credit to sunset may make it more difficult for North Carolina to meet the EPA’s carbon reduction goals under the Clean Power Plan by hampering the growth of solar energy.

Improved Conservation Funding:

The budget contains an approximate $8.4 million increase in funding for conservation over the biennium. Among other grant recipients, North Carolina’s land trusts have protected hundreds of thousands of acres for parks, trails and water quality with help from the Clean Water Management Trust Fund and the Agricultural Development and Farmland Preservation Trust Fund. Both important programs received a funding increase. Appropriations Co-Chair Representative McGrady (R - Henderson) was instrumental in securing an increase in conservation funding.

Additionally the budget included $500,000 for DEQ to put towards geologic testing for shale gas (fracking) - something the oil and gas industry could certainly afford to pay for on its own.

Result: The Governor received and signed the budget on the same day - September 18, 2015
**Conservation**

**Senate Bill 705: Ensure Fair Sale of Dorothea Dix Property**

**Highlight:** You may recall that the 2013 legislature inserted itself into negotiations between the Governor and the City of Raleigh for the sale of the Dorothea Dix property, which Raleigh plans to turn into a park. As a result, the parties were forced to re-negotiate a signed contract because some legislators didn’t like the original deal.

**Sponsored by:** Senators Pate (R - Lenoir, Pitt, Wayne), Tucker (R - Union) and Hise (R - Madison, Mitchell, McDowell, Yancey, Polk, Rutherford).

**What the bill would have done:** SB 705 would have set a minimum price for the contract between the state and the City of Raleigh for the Dix purchase and would have dictated how the funds from sale could be used by the state.

**Our position:** The Chapter opposed this bill and supported allowing the Governor and the Mayor of Raleigh work out a negotiated contract.

**The story:** In 2015, Governor McCrory and Raleigh Mayor McFarlane came to an agreement on the sale of the Dorothea Dix property at a purchase price of $50 million. The agreement was later approved by the Council of State, a body that must okay state property transfers. There was broad public support for the negotiated deal so SB 705 did not move forward.

**Result:** The land for the park was transferred from the state to the City of Raleigh. Raleigh Mayor McFarlane called the acquisition of the 306-acre Dix property a “once-in-a-lifetime opportunity” that will generate economic development for years to come. In June 2015 the Raleigh City Council approved a financing plan for the purchase price of $50 million for the Dorothea Dix land. Plans are in development for the future park site.