North Carolina Sierra Club
Report on 2016 Legislative Session

North Carolina Chapter

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Introduction & Overview

This year, the North Carolina Legislature began the short session with a mission to do budget adjustments, avoid controversial issues, and then quickly adjourn in order to turn to the election season. Despite this pre-session understanding between the chambers, the Legislature nonetheless passed controversial bills and included major environmental policy changes in the budget. The worst environmental proposals all came from the Senate and while the House pushed back, the chambers ultimately compromised on a number of bad environmental bills. Looking at the big picture, the environmental themes of this legislative session were attacks on rules designed to protect water quality, continued unsuccessful efforts to thwart clean energy, and efforts to repeal wholesale environmental programs from recycling to energy efficiency.

This session was also characterized by a rush to push through bills without leaving sufficient time for substantive debate. Often there was not even enough time allowed for legislators to read or understand legislation before it was brought up for a vote. Throughout the 2016 session unneeded bills that had already passed one chamber were regularly gutted and revised with completely unrelated language, then sent around to committee members late at night - leaving legislators and advocates scrambling to analyze complicated proposals in a limited timeframe. A deliberative, inclusive legislative 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, major policy decisions were often debated and decided behind closed doors. Some measures included in this report went to the floor for a vote without a single member of the public being allowed to speak in committee.

For the first time in four legislative sessions, the governor and his administration left their imprint on major environmental legislation. The McCrory administration, along with Duke Energy, lobbied for weakening and removing key protections in the 2014 Coal Ash Management Act and supported abandoning the state’s rules to clean up Jordan and Falls Lakes. Leadership of the Department of Environmental Quality (DEQ) attacked nutrient management strategies in presentations to legislators during the interim, and it was revealed that senior management had revised DEQ reports to the Legislature so as to remove references to nutrient management and the Clean Water Act. And, although not successful on this front, DEQ also pushed to allow electronics in landfills by repealing the state’s free-to-the-public electronics recycling program.

One cannot summarize the 2016 session without noting HB2 - the “bathroom bill” passed by the Legislature in a special session March 23rd - which has received national and international scorn for discriminating against transgender people. Efforts to repeal or make changes to HB2 were reported to take up lots of legislators’ time and energy behind the scenes this session, which is likely part of the reason more bills than expected were left on the table at the end of the day. On the last day of session, the Legislature addressed one provision in HB2 by restoring workers’ right to use state courts to sue over employment discrimination, but did not repeal or fix the most controversial provisions of the bill.
As in recent 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 such as when the governor vetoed the Legislature’s proposed coal ash bill. Our focus, in general, was on working with House members to improve or stop bad environmental proposals.

Even in this 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 our statewide electronics recycling program;
- cutting mitigation requirements for when streams are destroyed;
- limiting when health authorities can tell people about contaminated wells;
- eliminating water permits for farmers in areas facing severe water supply issues;
- preventing onshore wind development in large swaths of the state;
- limiting solar farms by imposing excessive hurdles for siting; and
- elimination of an energy efficiency program for state buildings.

And there were some positive developments, such as:

- a provision to require water lines for people near coal ash ponds; and
- new requirements for Duke Energy to recycle more coal ash.

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

- a major rollback of the 2014 Coal Ash Management Act; and
- a fourth delay of the Jordan Lake cleanup rules and a new delay of Falls Lake cleanup rules.

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.
Budget - Funding for Conservation but Delay of Water Quality Measures

**House Bill 1030: 2016 Appropriations Act**

**Highlights:** Although in principle, policy provisions do not belong in the budget, a delay of the Jordan and Falls lakes cleanup plans was included in the budget and signed into law by the governor. These lakes provide drinking water for over 700,000 people in the Triangle area. In addition, over 2.6 million people visited the state parks at Jordan and Falls lakes last year for recreational purposes. On a more positive note, the budget included increased funding for the Clean Water Management Trust Fund which provides grants to counties, cities and nonprofit organizations to conserve land along waterways and protect or improve water quality.

**Sponsored by:** Representatives Dollar (R - Wake), L. Johnson (R - Cabarrus), Lambeth (R - Forsyth) and McGrady (R - Henderson). Note that the state budget is 209 pages and represents a compromise between House and Senate leadership.

**What the bill does:** On a positive note, the budget includes increased funding for the Clean Water Management Trust Fund and partially restores funding for the Natural Heritage program. But it also includes a policy provision that further delays implementation of water quality protections for Jordan Lake, and now also delays similar rules for Falls Lake. The provision, as originally proposed, would have set up a delay and then an automatic repeal of the Jordan Lake and Falls Lake cleanup plans and set up a repeal of buffer protections for the Neuse River watershed, Tar-Pamlico watershed, Catawba River and Randleman Reservoir. Science says that protecting our waters requires limiting pollution flowing in with strategies such as buffers. The proposed provision also included funding for a study of using mussels to clean up these lakes. Ultimately, the House succeeded in getting the automatic repeal of cleanup rules removed, the mussels study was turned into an algaecide study, and anything having to do with the Neuse, Tar-Pamlico, Catawba and Randleman watersheds was removed. The policy provision sets up a study at UNC-Chapel Hill to review the nutrient management strategies for Jordan and Falls Lakes and come up with recommendations that the Legislature will review and possibly adopt. Note that the Jordan Lake cleanup rules have never been fully implemented due to legislative delays (this is the fourth). Both Jordan and Falls are considered impaired under the US Clean Water Act, and both sets of rules are meant to address the impairments.

There is no question about whether the state must take actions to improve water quality in these lakes; North Carolina must do so to comply with federal law. But lately instead of addressing the inflow of pollution using science-based nutrient management, the state has diverted dollars and attention to in-lake treatment pilot projects. In this vein, Section 14.13 gives the DEQ the option to spend up to $1.3 million to study and run trials of in-lake technologies. This is surprising given the results of the failed SolarBee in-lake technology experiment that cost taxpayers over $1 million. The provision specifically requires consideration of “algaecide and phosphorus locking technologies.”

**Our position:** The Sierra Club opposed the nutrient management policy rider in the budget. Delaying the rules will only result in more preventable pollution flowing into the lakes and more
degradation of water quality over time as growth continues in these areas. While we are generally supportive of studying ways we can improve water quality programs, we oppose delaying cleanup rules while studying them. Additionally, funding another study of in-lake technologies is a distraction from the vital need to ensure impaired water bodies are cleaned up. We need real solutions, not another SolarBee fiasco.

**The story:** This attack on water quality was proposed by the Senate and pushed by Senators in leadership including Senator Trudy Wade (R - Guilford). During one of the Senate budget debates, Senator Mike Woodard (D - Durham) offered an amendment to delete the provision. He noted that in-lake treatments (like mussels or algaecides) are not likely to solve nutrient overload problems in reservoirs, and are not a substitute for nutrient management. Woodard also noted that creating another time-consuming stakeholder process doesn’t make sense when the state already had a stakeholder process to develop the existing cleanup rules that have never been fully implemented. Senator Woodard’s amendment was not allowed to be voted on.

Senator Jay Chaudhuri (D - Wake) also spoke against the provision, noting that Jordan Lake provides drinking water and is listed by the EPA as impaired, but for the last seven years implementation of the cleanup rules have been delayed. Senator Wade argued, in support of the provision, that upstream citizens are worried about the cost of the cleanup rules and, despite the fact that Jordan Lake is deemed impaired by the EPA, she argued that Jordan Lake is not polluted: “it has algae in it.” Both lakes are suffering from nutrient overload, which is caused by inflow of too much stormwater runoff and wastewater containing nutrients and can contribute to algae. Representatives Pricey Harrison (D - Guilford) and Gale Adcock (D - Wake) spoke against the provision when the budget was debated in the House.

**Result:** The Senate was reportedly dead set on delaying the Jordan Lake Rules for the fourth time - and succeeded. House members pushed back against the proposal to remove protections for so many waterbodies without first knowing what the protections would be replaced with. House members such as Rep. Chuck McGrady (R - Henderson) were able to fight off efforts by the Senate and certain House members to roll back buffer protections. The House was successful in getting the Senate to drop the buffers rollback for the river watersheds, the automatic repeal of protections, and the mussels study, but not the Jordan and Falls Lake cleanup delays. At the end of the day, many Republicans and Democrats in both chambers voted for the overall budget for various reasons and it passed overwhelmingly in both the Senate (36-14) and the House (91-22). The Governor signed the budget on July 14, 2016 so it is now law.
Backtracking on Coal Ash

House Bill 630: Drinking Water Protection/Coal Ash Cleanup

Highlights: H630 overturns the NC Department of Environmental Quality’s intermediate risk classifications of coal ash pits at half of Duke Energy’s sites. The DEQ risk classifications issued in May of this year would have required full excavation and removal of coal ash at all sites. Instead, at seven sites where full excavation is not required by law or by a court, Duke Energy will be allowed to leave coal ash in place. These seven sites also happen to host the largest coal ash pits. According to DEQ, currently every Duke Energy coal ash site is contaminating groundwater and surface water. Leaving coal ash in place and covering it up does not remove the source of the pollution. The bill also strikes the Coal Ash Management Commission and gives decision-making authority on coal ash issues to DEQ.

Sponsored by: Rep. Yarborough (R - Granville, Person)

What the bill does: Although DEQ professional staff previously rated all coal ash pits as high or intermediate risk, under H630, coal ash pits at seven sites would automatically be rated low risk after Duke Energy provides a permanent drinking water supply to households within a half-mile of coal ash pits and addresses dam repairs. The bill strikes many of the considerations that DEQ was required to evaluate under the 2014 Coal Ash Management Act including groundwater and surface water contamination, amount and characteristics of coal ash in the pits, and public health concerns. Further, H630 gives DEQ expanded authority to grant variances and extensions to deadlines in existing law, opening up possibilities for further delay of coal ash cleanup and less accountability for Duke Energy. On the positive side, the bill encourages more beneficial reuse of coal ash in concrete manufacturing. Currently, North Carolina imports coal ash from other states and countries for use in concrete even though Duke Energy is sitting on millions of tons of coal ash.

Our position: The Sierra Club opposed this bill overall even though the Chapter supports drinking water lines for people near coal ash ponds and safe, beneficial reuse of coal ash. The negatives of the bill - no oversight of DEQ decisionmaking, elimination of limits on variances for deadlines, deletion of environmental considerations in risk-classifications, longer timelines for Duke Energy to clean up coal ash, opening up the possibility for coal ash to be left in place at half the sites - outweighed the positives.

The story: In May 2016, the Legislature passed a coal ash bill - S71 - which would have reconstituted the Coal Ash Management Commission and given the governor more appointees in order to comply with a NC Supreme Court decision. S71 would also have provided drinking water to households near coal ash pits, and encouraged beneficial reuse of coal ash. But Governor McCrory vetoed that bill and, rather than overriding the governor’s veto in an election year, the Senate entered into negotiations with the administration to come to an agreement. The
Senate subsequently put forward a bill that eliminates the Coal Ash Commission, gives DEQ the ability to reclassify coal ash pits at half of the sites to low-risk, deletes surface and groundwater contamination considerations from current law and gives DEQ more latitude to grant variances to deadlines. The bill also includes some positives: water lines for residents near coal ash pits and requirements for Duke Energy to pursue more beneficial reuse of coal ash in concrete manufacturing. The Chapter opposed this bill as a giveaway to Duke Energy. The Legislature could have chosen to provide water lines and encourage beneficial reuse without also giving Duke Energy the option to potentially cap-in-place coal ash pits at half the sites in the state.

Representatives Pricey Harrison (D - Guilford) and Chuck McGrady (R - Henderson) made strong statements against the bill on the floor. But the rest of the debate was full of praise for H630 as a step forward, largely sticking to Duke Energy’s talking points. House members who spoke in support of the bill insisted that H630 gives up nothing from the 2014 Coal Ash Management Act, but rather represents progress. There were some truly remarkable moments during the debate, such as when Rep. Larry Yarborough (R - Person, Granville) stated that we needed to understand that “coal ash is a baby” that we will be raising for years to come (he voted for the bill). The Chapter’s outreach to members and supporters did get us a number of unlikely “no” votes from members who may not have voted “no”, had they not heard from constituents.

**Result:** The Senate passed H630 on a 44-4 vote and the House did so with a vote of 82-32. Senators Chaudhuri (D - Wake), Robinson (D - Guilford), Woodard (D - Durham) and Randleman (R - Stokes, Surry, Wilkes) were the only senators to vote against the coal ash bill. A bipartisan group of House members voted against the bill: Representatives Ager, Adcock, Baskerville, Bradford, Brockman, Cotham, Dollar, Fisher, Gill, D. Hall, K. Hall, L. Hall, Harrison, Insko, Jackson, Jeter, Jordan, Luebke, Malone, G. Martin, Meyer, McGrady, Michaux, Murphy, Pendleton, Queen, Reives, Salmon, Setzer, Sgro, Tine, and B. Turner. H630 has been sent to the governor who is expected to sign it, given the push for the bill from DEQ.
Senate Bill 779: Issuance of Advisories/Drinking Water Standards

**Highlight:** S779 was proposed early on in the 2016 session and generated a lot of outrage and concern across the state. This bill would have limited when health authorities can tell people about contamination in a well or drinking water supply. In this case, citizen advocacy and outreach worked to stop a bad proposal in its tracks.

**Sponsored by:** Senators Wade (R - Guilford), Brock (R - Davie, Iredell, Rowan), B. Jackson (R - Duplin, Johnston, Sampson) (primary sponsors) and Rabin (R - Harnett, Johnston, Lee).

**What the bill would have done:** This proposal would have limited when state agencies, local boards of health or local health departments may issue health advisories for contaminants in drinking water wells and public water systems. Health advisories are informational only - not regulatory. These advisories exist in order to let people know when levels of contaminants in their drinking water are known to be unsafe or approaching unsafe levels. S779 would have prohibited state and local agencies from letting residents know when their wells are testing just below a federal maximum contaminant level under the Safe Drinking Water Act, a sign of looming trouble.

**Our position:** The Sierra Club opposed this bill. The point of health advisories is not to create new regulations, but to warn people about drinking water contamination that can be harmful. Tying the hands of health authorities could keep North Carolinians in the dark about real risks. Regulatory standards for contaminants can take years or decades to be adopted. That means that, for many contaminants, standards lag far behind what science has firmly established about the risks posed. If S779 had become law, health authorities could run into the problem of knowing that contamination found in a well presents a health concern — and yet be prohibited from providing well users with that information so that they can take steps to protect themselves with filters or other approaches. The bill was not taken up by a committee, indicating either a lack of support or a lack of interest in trying to push this through in a short session.

**The story:** Since this bill was filed early on in the session it was the first environmental bill of the year that the Chapter and many other environmental groups opposed. The sponsors of S779 appeared to be motivated by a desire to react to the issuance of do-not-drink letters to households near coal ash ponds. As you may recall, the NC Department of Health and Human Services issued do-not-drink letters advising many households near coal ash ponds not to drink, bathe or cook with their well water due to contamination with carcinogens like hexavalent chromium and vanadium. These types of carcinogens are associated with coal ash, so some households were receiving bottled water from Duke Energy and avoiding drinking, washing or cooking with their well water. Then DEQ rescinded some of the letters leaving many households unsure about the safety of their water. At the same time, the state toxicologist went on paid leave and was not available to comment on the original letters. DEQ leadership claimed that
some city water has higher contamination levels than the wells, so communities near coal ash ponds should not worry - which did not stop anyone from worrying. The bill sponsors appeared to be seeking a solution to prevent future confusion about water contamination by limiting when health authorities can warn people about such contamination. Less information is not what most people want when it comes to knowing what is in their drinking water, so there was lots of outcry from public health advocates and environmentalists. Since legislators repeatedly said that they were trying to avoid doing anything controversial in the short session, the brakes may have been put on this bill to avoid controversy.

**Result:** S779 did not get a committee hearing and was never brought to a vote.

### Efforts to Stop Clean Energy

**Senate Bill 843: Renewable Energy Property Protection**

**Highlight:** S843 would have forced solar farms producing 10 megawatts of power or more to comply with the state wind energy permitting process plus additional new requirements, added fees for solar development and added burdensome siting restrictions. This bill did not get a hearing but illustrates the kind of anti-clean energy proposals we might expect to see again in 2017.

**Sponsored by:** Senators Cook (R - Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans) and Brock (R - Davie, Iredell, Rowan)

**What the bill does:** Currently, a state permit is not required to install or expand solar projects in North Carolina; this is the norm nationally. Local zoning and/or ordinances determine where such projects can be sited and any other requirements like setbacks. S843 would have, if passed, created a new state permitting scheme overlaying any local requirements. S843 would have expanded the current wind energy permitting statute to require all renewable energy facilities with a capacity of more than 10 megawatts to go through the permitting process. That means solar electric, solar thermal, wind, geothermal, and ocean current energy sources would have been subject to new state permitting requirements. The bill did not apply to solar on single-family residences; solar used for water heating, space heating or cooling; or biomass. S843 would have also created a new setback requirement that renewable energy facilities be sited no nearer than 1.5 miles (7,920 feet) from any adjacent property. That is totally out of line with other setback requirements in existing law, for example, the property line setback for hog lagoons is only 500 feet and the setback for hazardous waste landfills is only 200 feet.

Finally, this proposal would have made any person who owns, operates, or controls a wind or renewable energy facility strictly liable for damages caused by the construction, maintenance, operation, decommissioning, disassembly, or demolition of the facility. This liability would extend not just to the company that owns or operates the facility, but to the individuals working for the
company. This is unusual because companies are usually liable for the actions of their employees when they are on the job; strict liability is typically reserved for inherently dangerous activities. This legislation would essentially treat solar farms as a dangerous entity for liability purposes and for setbacks.

**Our position:** The Sierra Club opposed this bill because of all the potential negative impacts to clean energy it would cause. S843 would have drastically increased the regulatory burden associated with solar development and would have had a chilling effect on investment in solar energy in North Carolina. Additionally, the proposed 1.5 mile setback from adjacent properties would make it very difficult to site solar farms. S843 would also have impacted existing solar projects by limiting expansion opportunities. For example, Senator Cook’s district (Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank and Perquimans counties) hosts at least three large solar farms that would have been subject to the permitting requirements if S843 were law at the time they were built. These solar projects generate over 52 megawatts of energy, but any plans to expand them would be in jeopardy if this proposal had become law.

**The story:** S843 received a lot of criticism as soon as it was filed and the proposals were covered by a multitude of media outlets. It was immediately deemed controversial and was never taken up by a committee.

**Result:** This bill did not get taken up which indicates that there was not strong support in the Senate for these proposals. Nevertheless, it would not be surprising to see these or similar proposals pop up again in 2017.

**House Bill 763: Military Operations Protection Act of 2016**

**Highlights:** H763 would have banned wind energy projects in large swaths of North Carolina and would have needlessly complicated the wind energy approval process established in 2013 by adding several new layers of red tape. The bill, if passed, would essentially halt the growth of onshore wind energy in North Carolina by referencing a map (see Appendix) prepared by the state Military Affairs Commission (established within the Office of the Governor in 2013). The state-created map identifies large swaths of North Carolina as incompatible with military training but is reportedly inconsistent with maps used by the Department of Defense and Federal Aviation Administration. Proponents claim that the bill is about cooperating with the military, even though the military is already a part of the state wind farm approval process established in 2013.

**Sponsored by:** Representatives Millis (R - Onslow, Pender), J. Bell (R - Craven, Greene, Lenoir, Wayne) and Riddell (R - Alamance) were the original House sponsors of this bill - which, when filed, was called “Task Force on Regulatory Reform”. Senator Harry Brown (R-Jones, Onslow) took the short House bill and turned it into an anti-wind bill. Senator Brown has publicly promised to bring the bill forward again in 2017.
What the bill does: H763 would have added two new layers of state agency review to the permitting process for onshore wind. The federal government requires a number of layers of review already; and the Department of Defense essentially has veto power over wind farms in North Carolina as part of our permitting process. The House pushed back against the bill and no compromise was reached at the end of the day.

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

The story: North Carolina has some of the best wind resources in the eastern US and is home to over 32 companies that are involved in the wind power supply chain. Nonetheless, the NC Senate, led by Senator Brown, passed this anti-wind energy bill that would essentially prevent future onshore wind development in large swaths of North Carolina. Senator Smith-Ingram (D - Bertie, Chowan, Edgecombe, Hertford, Martin, Northampton, Tyrrell, Washington) spoke passionately against this bill in the Senate debate and spoke in defense of the benefits wind energy could bring to low-income communities in eastern North Carolina. She and and Senator Hartsell (R - Cabarrus, Union) proposed amendments to limit the impact of the bill - but both amendments failed. The bill passed the Senate 33-14 by a mostly party line vote; Senator Hartsell was the only Republican who voted against the bill. The House referred H763 to Rules Committee - from where it did not emerge.

Result: The House did not go along with the Senate and so H763 was left on the table at the end of session. Senator Brown has promised to make another effort at passing this bill in 2017.
Environmental Regulatory Repeal

Amongst leaders in the Legislature there is an ideological opposition against regulations in general (especially environmental) and it has become an annual tradition to pass an omnibus regulatory reform bill. We saw a number of regulatory rollback bills in 2016 but the worst environmental rollback ideas did not make it across the finish line due to a rush to end the session before the July 4th holiday. Most of the regulatory provisions proposed in 2016 were left on the table since a conference report (revised bill agreed to between House and Senate conferees) for H169 did not get brought to the floor for a vote. H169 was instead gutted and used as a vehicle for another bill. We can expect to see many of the same regulatory reform proposals that are described below revived in the 2017 long session.

House Bill 169: Regulatory Reduction Act of 2016

Highlight: Note that H169 has a tangled legislative history. The bill started out as a House bill to limit vehicle inspections, then the Senate revised it into a regulatory reform bill, then - on the last day of session - it was gutted and revised to “Restore State Claim for Wrongful Discharge” which repeals a part of HB2 (the “bathroom bill”) that limited workers’ ability to sue in state courts. The Sierra Club opposed the Senate’s regulatory reform bill (not the final version of H169). The regulatory repeal provisions proposed by the Senate included rollbacks of energy efficiency standards, a wholesale repeal of North Carolina’s electronic waste recycling program, and new restrictions and red tape for environmental rulemaking.

Sponsored by: Representative Mike Hager (R - Burke, Rutherford) was the original sponsor of the bill but Senator Trudy Wade (R - Guilford) shepherded H169 through the Senate.

What the bill would have done: The Senate’s regulatory reduction proposals included a variety of rollbacks of solid waste and energy regulations, as well as changes that would have complicated environmental rulemaking. Some examples:

- Rulemaking changes that would have sharply undercut the ability of agencies and commissions to adopt common-sense, much needed rules to protect public health and the environment.
- An exemption from energy efficiency standards for certain types of buildings. These exemptions would have been a give-away to big commercial building firms, and a disservice to the businesses that occupy factories and warehouses. The provision would have caused higher utility bills at those large structures that would no longer have energy efficiency building requirements while incentivizing commercial builders to build factories and warehouses on the cheap.
• Repeal all provisions requiring recycling of TVs, computer equipment and other electronic waste.
• A repeal of yard waste permitting requirements - part of a concerning trend to deregulate solid waste that can directly impact water quality and neighboring properties.

Our position: The Sierra Club opposed this bill in its entirety and especially worked to protect the state’s electronic waste recycling program. Electronic waste, including TVs and computers, is a unique and growing waste stream that often contains heavy metals such as lead that can cause long-term soil and water contamination. The 2010 Legislature responded to growing concerns regarding these harmful effects by passing S887, Amend Electronics Recycling Law. This culminated five years of legislative study and stakeholder meetings to put into place a statewide electronics recycling program that is comprehensive, free to the public and convenient. Electronics recycling has enabled North Carolina to prevent lead pollution; save valuable landfill space; help small businesses; and help local communities recycle, create jobs and generate revenue. As a result, today North Carolina has a robust electronics recycling infrastructure. Local recycling programs are funded by fees on TV and computer manufacturers. Unfortunately, DEQ released a report this spring recommending a repeal of the entire program and lifting the landfill ban on TVs and computers. As with all markets, the electronics recycling market fluctuates. The value of the recoverable components in electronics - such as copper, steel and aluminum - is lower now than it was when the program was created - but that does not mean that a successful program should be scrapped.

The story: This year the House regulatory reform bill - S303 - was not controversial, but the Senate’s bill (H169) was. After a number of committee meetings where the public expressed concerns about provisions in H169, the House and Senate formed a conference committee to negotiate a final bill behind closed doors. It appears that no ultimate agreement was reached because a bill was not passed by the end of the session.

Result: No regulatory reform bill was passed this legislative session, which was a big surprise. End-of-session fireworks over an unrelated bill led to the Senate adjourning before a regulatory reform bill could be passed. After the Senate adjourned there was no point in the House remaining in session, so all regulatory reform provisions were left on the table. We can surely expect to see many of these proposals again in 2017.
**Senate Bill 770: NC Farm Act of 2016**

**Highlight:** Several proposals in the Farm Act would have been bad for water supply and for water quality but the bill was revised in the House to be less offensive. One section would have created new exemptions to water use permitting in areas facing water shortages and saltwater intrusion. Another section created new exemptions to sedimentation pollution control laws - which require measures to reduce dirt and pollutants from flowing into our streams.

**Sponsored by:** Senators Jackson (R - Sampson), Brock (R - Iredell, Rowan) and Cook (R - Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans)

**What the bill does:** There is generally an omnibus Farm Act every year that contains a variety of proposals, often to exempt agriculture from requirements that other industries are required to meet. This year there were two provisions of the Farm Act that raised environmental concerns. The main provision the Chapter opposed would have created an exemption to water supply protections.

The backstory is that aquifers located in North Carolina’s Central Coastal Plain have been withdrawn from at a rate that is faster than they can recharge. This overuse has resulted in salt water encroachment and dewatering, among other problems. Because North Carolina is one of the few states that doesn’t have an overarching statute concerning water allocation rights, it relies on the Environmental Management Commission (EMC) to address such situations by establishing a capacity use area - in which major water users have to get permits. In 1999, the EMC created a 15-county capacity use area including Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson counties. This is the only capacity use area in the state. In these counties a permit is required for groundwater withdrawals exceeding 100,000 gallons per day. The Farm Act would have exempted withdrawals made by the agriculture and forestry industries from the permitting requirements. This is problematic because agriculture is traditionally a heavy user of water; the average water use for agriculture alone was 47 million gallons a day in North Carolina in 2014. Excluding agriculture and forestry from permitting would put the burden of reducing water use on local governments and industry.

The other section of concern in the Farm Act did pass - and will create a loophole in our sedimentation pollution control laws by exempting the horticultural industry. The purpose of the Sedimentation Pollution Control Act is to reduce the pollution impact that land-disturbing activities have on our waters. Horticultural operations create significant land disturbances and have major surface water pollution implications; mulching, for example, can create pollution from mulch pile leachate and mulch dye leachate. The leachate (liquid discharge) from mulch piles that enters waterways has resulted in impaired surface waters and fish kills due to its pollutants. Complying with the Sedimentation Pollution Control Act is a well understood, basic, and
cost-effective measure to prevent pollution of our waters. This section of the Farm Act was written broadly to exempt farms and even properties that were once considered farms. It was narrowed to some degree - but is still a step in the wrong direction.

Our position: The Sierra Club opposed two provisions of this bill and primarily worked with House members to try to remove or fix these parts of the proposed legislation, with some success. With more development and growth in North Carolina, we need to do more to protect our water supply and water quality - not create loopholes for certain industries.

The story: Although Senator Jackson was steadfast in his support for every provision of the Farm Act, he agreed to negotiate with the House and make changes in order to get his bill passed. Rep. Catlin (R - New Hanover) spoke to a House committee (even though he was not on the committee) against the capacity use area provision and about the need to protect our water supply, especially in eastern North Carolina. Opposition in the House led to that section being deleted. The Neuse Riverkeeper spoke in committee about the need to keep sedimentation pollution controls in place and not create new exemptions. Thereafter the section on sedimentation pollution control was narrowed. The bill passed the Senate and House the last week of session after these changes. Representatives Chuck McGrady (R-Henderson) and Rick Catlin (R-New Hanover) were key in securing the positive changes to this bill.

Result: Ultimately the Farm Act passed the Senate unanimously and passed the House 89-26. The bill was sent to the governor for signature. It is expected that Governor McCrory will sign the bill and it will become law. It would not be surprising to see the capacity use area proposal again in the future.
Onshore wind in any of the colored areas on the map, passed, prohibited construction, operation of expansion of military operations protection Act of 2016 would have, it shown to senators during the debate on H763. The