

# North Carolina Sierra Club Report on the 2018 Legislative Session



# SIERRA CLUB

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NORTH CAROLINA

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## Introduction & Overview

The N.C. General Assembly 2018 short session came to a close on June 29, 2018, but legislators plan to return Nov. 27, 2018, after the election. That means that some of the environmental issues that the Chapter worked on this year, but which have not yet been resolved, could still come up in November.

The themes of this legislative session were continued giveaways to favored corporate interests at the expense of the environment and an ongoing crusade by legislative leaders to strip the governor's office of its powers.

In what is unfortunately becoming standard practice, in 2018 many bills were negotiated entirely behind closed doors by a small group of legislative leaders and brought before a committee only when considered final. This left out legislators in the minority party, legislators in the majority party who were not privy to negotiations, issue advocates, and the public. A deliberative, inclusive process would allow stakeholders to bring in experts to answer legislators' questions and would give the public an opportunity to weigh in on important policy decisions. Instead, major pieces of legislation were needlessly decided with no transparency and without a legitimate public process.

The Republican party continues to hold a supermajority in both chambers of the N.C. General Assembly. 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. Gov. Roy Cooper vetoed nine bills this year, some on environmental grounds, seven of which were overridden by the Republican supermajorities in the House and Senate.

Our focus, in general, was on working with our allies, environmental champions in the House and Senate, and sometimes state agencies to improve or stop environmentally harmful proposals, while educating and engaging Sierrans and the public about such legislation.

Even in this tough legislative atmosphere, environmental advocates had successes - though, again, these could change in the late November special session:

- A change in how solar farms are taxed that would have hurt the industry was not taken up;
- A bill to study using public funds for fracked gas infrastructure passed the House but was not taken up by the Senate; and
- There was no move by legislators to extend the existing 18-month wind energy

moratorium that runs until the end of 2018.

And there were some positive developments, such as:

- Improved funding for conservation trust funds like the Clean Water Management Trust Fund; and
- Some limited new funding for the Department of Environmental Quality to deal with emerging chemical contaminants such as GenX.

Unfortunately, we also saw the passage of bills that will have negative environmental implications, including:

- Another delay of the cleanup plans for Jordan and Falls lakes;
- A bill limiting the ability of neighbors of hog farms to seek redress in court for health and environmental problems such as bad odors and waste-spraying;
- A rollback of coastal stormwater rules that protect water quality;
- A restriction on how \$92 million in Volkswagen settlement funds may be used that puts the clean transportation funds at risk; and
- A restriction on light rail projects that threatens the planned Orange-Durham light rail project.

The N.C. Sierra Club appreciates the many legislators who stood up against unwise environmental proposals, as well as our members and supporters who contacted their representatives in support of good environmental policy.

## **Budget Policy Riders: Attacks on Water Quality & Clean Transportation**

**Highlight:** This year's budget, [Senate Bill 99, Appropriations Act of 2018](#), was developed behind closed doors without the normal committee process. The budget includes unrelated policy provisions, including another delay of the Jordan Lake and Falls Lake cleanup plans and attacks on clean transportation. On the upside, the legislature put additional funding towards land conservation

**What the bill does:** S 99 updates and adjusts the 2017-2018 budget. Environmental policy changes do not belong in a budget, but legislators often include unrelated provisions ("budget riders") to help their chances of passing and because this allows policy to become law without going before any germane committees. The normal process would allow committee debate on the policy proposals in the light of day. This year's budget includes delays of drinking water protections, a tepid response to the GenX contamination crisis, and several attacks on clean transportation.

**Our position:** Opposed.

**The story:** This year, the budget replaced the contents of a bill that had already passed both chambers ("in conference") but had not yet been sent to the governor's desk. This practice, which is known as "gut and amend" allowed the legislature to skip the public committee process. This, in turn, allowed for a shorter timeline for passage under parliamentary rules. The minority party opposed this process as secretive and undemocratic while majority party members said it was more efficient.

### **GenX and Emerging Contaminants**

The budget contains a section that begins to respond to the GenX contamination crisis experienced by people drinking water from the Lower Cape Fear River, but is insufficient to fully address the problem. The funding and policy provisions addressing GenX and per- and poly-fluoroalkyl substances (PFAS) are an improvement over similar provisions in companion bills filed by the House and Senate (House Bill 972/Senate Bill 724). The earlier proposals may have actually made it more difficult for the state to respond to the problem. Rep. Chuck McGrady (R - Henderson), along with other legislators, worked diligently to improve this section and ensure some funding for the Department of Environmental Quality (DEQ). But the amount of funding is far less than the \$14.5 million requested by Governor Cooper to begin addressing emerging contaminants across North Carolina.

The budget fails to provide DEQ with adequate resources to respond to chemical contamination across the state. The majority of funding allocated to address this issue (about \$5 million) will go to the N.C. Policy Collaboratory at UNC rather than to DEQ, the agency responsible under federal law for enforcement of water quality laws. Representatives Deb Butler (D - New Hanover, Brunswick) and Pricey Harrison (D - Guilford) were champions for a strong response to GenX as was Sen. Mike Woodard (D - Durham, Person).

In other water quality impacts, the budget further delays the Jordan Lake cleanup rules that were supposed to go into full effect in 2009 but have not to date. It also delays implementation of the Falls Lake cleanup rules. This is inconsistent with the demands of the Clean Water Act and the need to protect drinking water. These lakes provide drinking water to more than 750,000 people in the Triangle and are valuable recreational areas. Rep. Gale Adcock (D - Wake) highlighted this problematic provision in the House debate with a focus on public health.

### Conservation Funding

On a more positive note, conservation funding - including for the Clean Water Management Trust Fund, Parks and Recreation Trust Fund, and Agricultural Development and Farmland Preservation Trust Fund - was increased by more than \$22 million. Land conservation plays an important role in protecting water quality.

### Clean Transportation

Unfortunately the budget also includes attacks on clean transportation. The transportation sector is now the single largest contributor of climate change emissions in the United States. But some in the legislature seem determined to stymie North Carolina's transition to a clean transportation future.

A provision in the budget appeared intended to kill the planned Orange-Durham light rail project but then was somewhat fixed in a budget technical corrections bill. A provision in S 99 set up a "catch-22" by requiring that any light rail project secure federal funding before it could become eligible for state funding, even though the federal government requires state funding to be secured first. If the Orange-Durham project is killed, it could mean a loss of more than \$1.2 billion in federal funds. Senators Floyd McKissick (D - Durham, Granville) and Jeff Jackson (D - Mecklenburg) spoke against this. The fix in

the budget technical corrections bill creates a tight timeline for the light rail project but opens up a chance that the project will be able to go forward.

The budget also puts at risk \$92 million in Volkswagen (VW) settlement funds that are intended to compensate North Carolina for pollution caused by the VW emissions cheating scandal. The budget requires that the VW settlement funds go into the N.C. State Treasury and then be distributed via an appropriation by the N.C. General Assembly, rather than go directly from the official VW Settlement Trust to DEQ and then to third parties. There is no apparent reason for this process that would justify the risk of losing the funds, which DEQ plans to use for electric vehicle infrastructure and other clean transportation investments.

**Result:** The House and Senate votes on the budget were along party lines. Only one senator of the minority party voted for the bill. Governor Cooper vetoed the budget but the legislature voted to override the veto.

### **Legislation Affecting the Environment**

#### **Hog Farm Protection Act: [Senate Bill 711](#)**

**Highlight:** Section 10 of the N.C. Farm Act of 2018 limits access to the courts for 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. The Farm Act so narrowly restricts when a person may file a nuisance claim against a farm as to make it essentially impossible.

**Sponsored by:** Sen. Brent Jackson (R - Duplin, Johnston, Sampson) was the lead champion of the bill. Senators Bill Cook (R - Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans) and Norm Sanderson (R - Carteret, Craven, Pamlico) were also primary sponsors. Rep. Jimmy Dixon (R - Duplin, Wayne) carried the bill in the House.

**What the bill does:** S 711 limits the ability of a certain class of landowners to bring nuisance cases against all kinds of farming and forestry operations. The bill was in reaction to cases filed against Smithfield Foods, which have thus far resulted in two jury verdicts against the company, awarding sums to neighbors suffering nuisances due to nearby hog operations.

**Our position:** Opposed.

**The story:** House Bill 467, Agricultural and Forestry Nuisance Remedies, passed in 2017, limited 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. This year's Farm Act goes even further, limiting the ability of those same landowners to bring nuisance cases to begin with. The N.C. Department of Agriculture, led by Commissioner Steve Troxler, supported this bill along with the N.C. Pork Council while people from the impacted communities, environmental justice groups and environmental groups opposed it.

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 it can drift onto neighboring properties. Many North Carolina families, some of whose residences preceded a factory hog farm's construction on neighboring property, report suffering from foul odors despite regulations.

During Senate debates on the Farm Act, Senators Floyd McKissick (D - Durham, Granville), Paul Lowe (D - Forsyth) and Jeff Jackson (D - Mecklenburg) spoke against the bill. McKissick noted that the debate isn't about "farms versus neighbors" but about a need to balance rights and raise standards. Senators Brent Jackson, Harry Brown (R - Jones, Onslow), Tommy Tucker (R - Union), Tom McInnis (R - Anson, Richmond, Rowan, Scotland, Stanly), Ronald Rabin (R - Harnett, Johnston, Lee) and Ralph Hise (R - Madison, McDowell, Mitchell, Polk, Rutherford, Yancey) championed the Farm Act in debate. McInnis went so far in his defense of the proposal to say "dairy farmers sit next to Jesus" and Brent Jackson invoked Genesis and national security in one of his many speeches in support of the bill. The Farm Act passed with a vote of 33-13 in the Senate.

On the House side there was consternation on both sides of the aisle about rolling back property rights for a certain class of citizens. Rep. John Blust (R - Guilford) opposed the bill and spoke numerous times against it, warning that other industries would come to the General Assembly seeking special treatment if the Farm Act passed. Representatives Ted Davis (R - New Hanover) and Chuck McGrady (R - Henderson) also spoke against the bill and voted against it. Representatives Jimmy Dixon and John Bell (R - Craven, Greene, Lenoir, Wayne) were the biggest cheerleaders of the Farm Act on the House side. Rep. Robert Reives (D - Chatham, Lee) spoke eloquently about problems with the proposal including questioning whether it's Smithfield Foods that

needs protections or the neighbors of hog farms. In the House, the Farm Act passed with a vote of 65-42

**Result:** Governor Cooper vetoed S 711. His message explaining the veto stated: “While agriculture is vital to North Carolina’s economy, so property rights are vital to people’s homes and other businesses. North Carolina’s nuisance laws can help allow generations of families to enjoy their homes and land without fear for their health and safety. Those same laws stopped the Tennessee Valley Authority from pumping air pollution into our mountains. Our laws must balance the needs of businesses versus property rights. Giving one industry special treatment at the expense of its neighbors is unfair.”

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

A primary concern is that S 711 may open the door for other polluting industries to similarly seek legislative protection from nuisance suits or other kinds of lawsuits.

### **Chipping Away at Environmental Protections - Regulatory Reform: [House Bill 374](#)**

It has become an annual tradition for the N.C. General Assembly to pass a regulatory reform bill. These omnibus bills often contain giveaways to industry groups at the expense of state environmental protections. H 374 falls into this category.

**Highlight:** Section 16 of H 374 includes a provision that creates a new loophole in our state coastal stormwater rules, which are meant to protect water quality; as well as other unnecessary provisions affecting the environment.

**Sponsored by:** Representatives Pat McElraft (R - Carteret, Jones), Julia Howard (R - Davie, Forsyth), Linda Johnson (R - Cabarrus) and Pat Hurley (R - Randolph).

**What the bill does:** The coastal stormwater section of H 374 is basically a “get out of jail free card” for certain coastal subdivision residents who may have exceeded impervious surface limits in stormwater permits. The amount of impervious surface allowed in a development impacts how much stormwater runs off the property into waterways. The less impervious surface, the better for water quality. This change undermines the basis of coastal stormwater controls and rewards bad actors. The

provision would affect approximately 150 coastal subdivisions, which ultimately could have negative impacts on water quality in an area of the state already dealing with contamination issues such as GenX. Other provisions in the bill are simply unnecessary, such as Section 14, which requires the Environmental Management Commission (EMC) to check on local governments to make sure they aren't going over and above state water quality regulations.

**Our position:** Opposed.

**The story:** Representatives Deb Butler (D - New Hanover) and Pricey Harrison (D - Guilford) spoke against the coastal stormwater provision in the House debate. Representatives Jimmy Dixon and Scott Stone (R - Mecklenburg) defended it. H 374 passed the House with a vote of 62-35 and the Senate with a vote of 25-5.

**Result:** Governor Cooper vetoed H 374; his veto message stated: "Ending protections from pollution on the coast hurts the effort to make sure our water is clean. Other revisions to environmental protections are unnecessary, especially at a time when confidence in public water supplies needs to be stronger, not weaker." The legislature voted to override the veto.

### **Six Proposed Amendments to the N.C. State Constitution**

**Highlight:** The legislature passed six bills in June to add constitutional amendments to the November 2018 ballot. That means, when voters go to the polls, they will have the option to vote "yes" or "no" on whether to add amendments to the state constitution. Two of the proposed amendments would take power from the executive branch and give it to the legislative branch in various ways.

**Sponsored by:** The amendment bills as a group can be understood as proposals by the N.C. GOP or, more specifically, by House Speaker Tim Moore (R - Cleveland) and Senate President Pro Tem Phil Berger (R - Guilford, Rockingham).

**What the amendments would do:**

Note: The Sierra Club opposed [House Bill 913, Bipartisan Ethics and Elections Enforcement](#), sponsored by the House Rules Chair, Rep. David Lewis (R - Harnett) due to potential negative impacts on environmental boards and commissions. The Club did

not take a position on the other amendments during the legislative session but may do so before the November election.

H 913 puts a question on the ballot, that, if approved by voters, would further strip Governor Cooper of already-limited gubernatorial powers in order to maximize the legislature's ability to control executive branch functions. Sections 2 and 4 of H 913 would amend the N.C. Constitution in an attempt to give the legislature unlimited power to determine how members of boards and commissions are appointed, by classifying decisions about how appointments are made as a legislative power. The intent appears to be to counter the 2016 N.C. Supreme Court decision in *McCrary v. Berger* that held the legislature could not give itself the power to appoint a majority of the members of a board or commission that carries out state laws.

Currently, the legislature and the governor generally share appointments to more than 300 boards and commissions. These bodies are responsible for adopting regulations to enforce the laws passed by the General Assembly. For example, the Environmental Management Commission (EMC) is responsible for adopting rules to protect the state's air and water resources. Appointments to the EMC are now divided between the governor, who appoints a majority of the members, and the legislature.

While the intent of H 913 seems clear, it's unclear how N.C. courts would interpret the changes to the constitution, if approved, since the amendment may conflict with the constitutional requirement that legislative, executive and judicial powers must be separate.

[Senate Bill 814, Judicial Vacancy Sunshine Amendment](#), sponsored by Senators Warren Daniel (R - Burke, Cleveland), Paul Newton (R - Cabarrus, Union) and Shirley Randleman (R - Stokes, Surry, Wilkes), would change who fills vacant judicial seats by creating a non-partisan board that vets nominees, after which the General Assembly would select two nominees for each seat for the governor to choose between. The N.C. State Bar currently nominates judges to fill vacancies and the governor chooses the judges.

[House Bill 1092, Require Photo ID to Vote](#), sponsored by House Speaker Tim Moore (R - Cleveland), Representatives David Lewis, Michele Presnell (R - Haywood, Madison, Yancey), and John Sauls (R - Harnett, Lee) would, if approved, require N.C. voters to present a photo ID to vote. Speaker Moore carried this bill in the House, which is rare for a speaker to do and indicates that this is a high priority for the House leader. H 1092

says that the General Assembly will enact laws governing the requirements for voter ID at the polls, including exceptions, but there is no detail provided in the actual bill for any exceptions.

The American Civil Liberties Union (ACLU), Common Cause, Democracy N.C. and many other groups oppose this amendment on the grounds that it will limit access to voting for marginalized voters, including people of color, rural and low-income voters, the elderly and people with disabilities, all who disproportionately face challenges to getting a photo ID. This amendment has been compared to the 2013 voter ID legislation that was passed by the legislature but was thrown out by federal courts for targeting minority voters.

[Senate Bill 677, Protect Right to Hunt and Fish](#), sponsored by Senators Danny Britt (R - Columbus Robeson), Norm Sanderson (R - Carteret, Craven, Pamlico) and Tom McInnis (R - Anson, Richmond, Rowan, Scotland, Stanly), comes from a National Rifle Association (NRA) template and is described by supporters as a preemptive measure to stop any efforts to ban hunting or fishing. Critics such as Rep. Pricey Harrison (D - Guilford) have described it as unnecessary and possibly endangering regulations to protect wildlife and the environment. Harrison tried twice to amend the bill to ensure inhumane hunting methods couldn't be used and to make it clear that regulations to prevent Sunday hunting would remain. Both of her efforts to amend the bill failed along party line votes. The bill was amended just before it was passed to eliminate an exception for public safety, raising unanswered questions about whether gun laws to protect safety may be impacted.

[Senate Bill 75, Max Income Tax Rate of 7%](#), sponsored by Senators Tommy Tucker (R - Union) and Jerry Tillman (R - Moore, Randolph), would lower the state income tax cap from the current 10% to 7%. S 75 passed along party lines with supporters arguing that it will impose fiscal discipline on the state while opponents worry that it will unnecessarily restrict options for the state to respond to emergencies, economic crises and disasters. Opponents also argued that this would be better to do in statute rather than a constitutional amendment, so that it could more easily be adjusted if needed.

[House Bill 551, Strengthening Victims' Rights](#), sponsored by Representatives Nelson Dollar (R - Wake), Rena Turner (R - Iredell), Destin Hall (R - Caldwell) and Beverly Earle (D - Mecklenburg) also known as "Marsy's Law", would provide rights for victims of crimes in the state constitution, such as the right to be notified when the accused is released on bail, the right to be heard at sentencing hearings and the right to reasonable protection from the accused. This is part of a national campaign funded by

the brother of a murder victim named Marsy Nicholas, who was killed in California in 1983. The ACLU has argued that the proposal infringes on the presumption of innocence.

**The story:** The N.C. constitution has rarely been amended, so six amendments in one year would be unprecedented. The minority party argued in debates on these bills that all of these proposals could be done in the normal way, in statute. Constitutional amendments are more difficult to pass than bills, but also more difficult to remove from the constitution, so this appears to be an effort to solidify policies in the state constitution while the majority party enjoys a supermajority in both chambers. A supermajority means that the majority party has the numbers to override gubernatorial vetoes. Note that bills creating constitutional amendments for the ballot are not subject to veto so Governor Cooper did not have the opportunity to veto these proposals.

**Result:** If a majority of voters approve these amendments in November then they will be added to the N.C. Constitution.

#### **Addendum: Efforts to Promote Fossil Fuels and Stymie Clean Energy**

The good news is that no energy-related bills became law yet this year. But environmental advocates remain wary about the scheduled November session since the wind energy moratorium currently in place runs until the end of 2018. The Sierra Club opposes any extension of the moratorium. The House appeared interested in supporting fracked gas this year because the body passed a bill that would create a task force to research putting public funds towards fracked gas infrastructure.

And in the Senate, Sen. Bill Cook (R - Beaufort, Camden, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans) filed [Senate Bill 781](#) to phase out a solar property tax exclusion, which would essentially mean raising taxes on solar farms. But Cook's bill was not taken up.

**Highlight:** [House Bill 1073, "Establish Economic Development Energy Task Force."](#) would set up a task force to study expansion of gas pipelines and connections to pipelines, including using public funds to subsidize this fossil fuel infrastructure. The makeup of the task force would be unbalanced, with eight legislators appointed from the majority party and two from the minority party.

**Sponsored by:** Representatives Larry Strickland (R - Johnston), Jimmy Dixon, John Bell and Brenden Jones.

**What the bill does:** After years of objecting to taxpayer subsidies, including but not restricted to those for energy, the House passed legislation that would create a task force to explore ways to provide public funding to incentivize the expansion of fracked gas infrastructure in the state.

The task force would be charged with evaluating, among a long list of things, existing legal mechanisms to direct funds to support gas expansion, whether a new fund to do so should be created, whether local governments should be given authority to issue bonds for developing gas infrastructure, and whether liquified natural gas (LNG) projects should be eligible to receive such funds.

**Our position:** Opposed.

**The story:** Representative Strickland carried this bill in the House and faced very little substantive debate or questions, which is often the case with study bills. Rep. John Autry (D - Mecklenburg) raised questions about the idea of setting up a body that would consider incentives for pipelines when there is substantial private investment already occurring in this area. Rep. John Szoka (R - Cumberland) defended the task force idea, saying that the purpose would be to study how to get gas to rural communities.

**Result:** The bill passed the House 87-17 but was not taken up by the Senate. The Senate referred H 1073 to the Committee on Rules and Operations where it remains.