

Environmental issues in S257, Appropriations Act of 2017, conference report

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The NC General Assembly posted the conference report for **S257, Appropriations Act of 2017**, shortly before midnight on June 19/20. While notably better than the original Senate budget, the conference report nonetheless underfunds environmental protection and conservation.

The conference budget:

- Makes additional large tax cuts, at a cost of \$521M in FY18-19 and rising above \$1B (billion) annually thereafter. If allowed to take effect, these will translate directly to an inability to fund basic environmental protections in future biennial budgets.
- Slashes the Department of Environmental Quality (DEQ), which has already suffered in recent years:
 - Imposes a ‘management flexibility’ cut of \$828K in the first year, rising to \$1M in the second year.
 - Cuts specific positions in the leadership team: Legislative Affairs, Public Information Officer
 - Eliminates 7 administrative positions in the regional offices; these cuts will make the agency less responsive to permittees and other external contacts.
 - Eliminates funding for the energy center at NC State University.
- Fails to fund positions needed to keep up with permit demand in DEMLR stormwater, DEMLR sediment control, and DWR water permit programs.
- Cuts Clean Water Management Trust Fund (CWMTF) and Parts & Recreation Trust Fund (PARTF) funding by 18% and 13% from FY16-17 funding levels.

The conference report includes several harmful or wasteful special provisions:

- **WOTUS litigation [12.2]**. Earmarks \$250K for the NC Department of Agriculture to join national litigation against the 2012 federal Waters of the United States rule. This is a waste of money that should have gone to rural grants.
- **Pre-reg landfills/ assumption of risk [13.4]**. Directs DEQ to develop a program to let property owners suspend further application of the program if they assume all liability for future on- and off-site impacts and post financial assurances. No financial assurances are required for old municipal landfills. This provision essentially abandons neighbors to ineffective tort law remedies, and undercuts other flexible-cleanup programs that require landowners to have an actual plan to protect their neighbors and the environment.
- **Son of SolarBee [13.24]**. Directs DEQ to study ‘in-lake’ treatment of nutrient pollution at a cost of \$1.3M, even though the agency said in 2016 that these technologies are not practical and pollution needs to be controlled upstream at the source. Directs agency to report to the legislative ERC by December 31, 2020.
- **Biomass facility tax credit [38.13]**. Removes a January 2017 sunset and extends – apparently indefinitely – a tax break for a biomass facility that filed documentation with the state by March 2016.

The conference report also includes these provisions:

- **Lead Poisoning Response [11E.6]**. The conference report includes an excellent provision lowering the blood level threshold for lead poisoning identification in children and pregnant women, and provides funding and authority for DHHS staff to respond to protect child and maternal health.

- **Swine farm floodplain buyout [12.9].** This provision allows the NC Department of Agriculture to reprogram leftover forestry disaster recovery funds to support the buyout of swine farms in the floodplains in eastern NC.
- **Volkswagen Settlement funds [13.2].** This provision directs the agency that manages funds from the national VW Settlement to consult with other state agencies, and bars spending of funds until the NCGA approves a plan and appropriate funds in line with that plan. This is an improvement from the Senate and House versions of the provision, which listed narrow purposes for state uses of the funds, and ran the risk of making the state ineligible for our full share.
- **Collaboratory study/ digital data [13.7].** The provision directs the UNC Collaboratory to develop a plan for housing 'environmental monitoring and natural resources data' in a database hosted by the UNC system.
- **UNC Collaboratory seed money extension [10.4(a)].** This provision extends last year's grant of seed money – available only if the Collaboratory raises a match, which it hasn't yet – from June 2017 to June 2019.
- **Study of Sediment Control Commission [13.6].** This special provision actually includes two concepts for study: merging sediment and stormwater programs, and merging the Sediment Control Commission into the Environmental Management Commission. Eliminating the SCC would place far too much work on the EMC's agenda, and would undermine the effectiveness of the program.
- Funding for oyster restoration, shellfish rehabilitation, and collection of stray crab pots, as well as creation of a shellfish/mariculture plan through a broad stakeholder process [13.13].

The conference budget omits a number of other provisions from the Senate budget:

- Coastal Storm Damage Mitigation Fund [13.11]. This provision would have established a Coastal Storm Damage Mitigation Fund that could receive appropriations and private gifts to support beach engineering and 'damage mitigation' projects along the coast.
- Marine Fisheries Commission [13.7]. The conference report wisely omits a proposal to reduce the Marine Fisheries Commission (MFC) by two seats.
- Hazardous materials emergency costs [16E.1]. Current law makes a person who causes a hazardous release liable for 'all reasonable costs' of emergency response. The Senate budget would have reduced that to 50% of costs for 'the result of an accident' while still imposing 100% of costs for the result of 'negligence or intentional acts.' That would have created a confusing conflict of legal standards, and has been dropped.
- Transfer of On-site Wastewater [11E.10]. The Senate budget would have moved the state's program to oversee regulation of septic systems from DHHS to DEQ. The conference report instead directs the two departments to study whether the transfer would 'increase program effectiveness' and to report back to the NCGA before the 2018 short session.
- Wind energy moratorium [24.2]. The Senate budget called for a moratorium on wind energy while consultants prepared maps of 'conflict free' zones. The conference report does not include that.