Vol. 5 No. 1 May 1982

NCINSIGHT

Coastal Carolina — 2000? . . . and more

- Targeting "Desirable" Industries
- Four-Year Legislative Terms?
- Separation of Powers
- "New" Federalism

N.C. Center for Public Policy Research

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N.C. Insight

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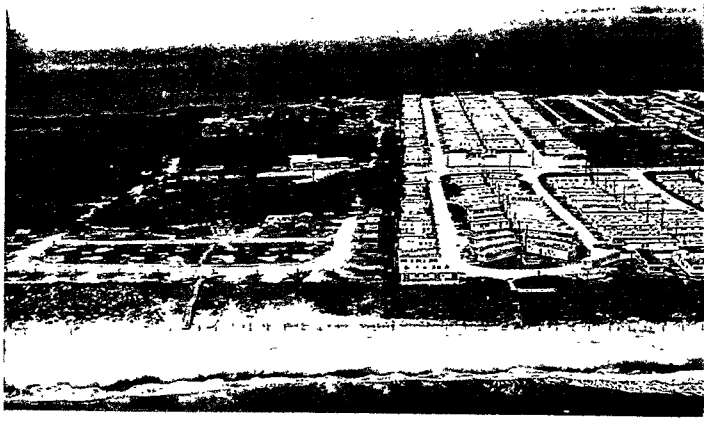
A Planning Beachhead in North Carolina



Coastal Management

by Bill Finger and Barry Jacobs

The unique, fragile, and irreplaceable nature of the coastal zone and its significance to the public welfare amply justify the reasonableness of special legislative treatment.

– N.C. Supreme Court Justice J. Frank Huskins
Adams v. Dept. of NER (1978)[1]

Since it was first introduced in the General Assembly in 1973, the Coastal Area Management Act (CAMA) has been both a force for orderly change and a lightning rod for controversy. In 1974, after one of the longest and most heated legislative debates in North Carolina history, CAMA emerged as an experiment in land-use planning for 20 coastal counties.[2] Four years later, CAMA survived a major judicial test when the N.C. Supreme Court upheld the act's constitutionality against the claims of several coastal landowners.[3] Then, in the October 1981 "budget" session of the General Assembly, the coastal act narrowly avoided extinction via a "special provisions" route, an amendment to the general appropriations bill.[4]

In attempting to balance "the often-conflicting needs," as the act's preamble states, "of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens," CAMA has stirred strong opposition every step of the way. After coastal legislators failed to defeat CAMA in the General Assembly and judicial efforts to block its implementation proved unsuccessful, Carteret County officials conspicuously resisted compliance with a 1976 deadline for developing a land-use plan. But six years later, even Carteret County – the bastion of local opposition to interference from Raleigh – is now completing an update to its land-use plan. And this time, Carteret County landowners and officials – not state officials – are spearheading the planning process.

"I think that the hostility that was at first engendered is gone," says Mary Sue Noe, chairman of the Carteret County Commissioners and formerly a local realtor. "None of the paper dragons materialized." Noe, who was not a commissioner when CAMA was enacted, continues, "I don't believe that CAMA was arbitrarily born. I think its intent was to protect the land along the theory of highest and best use."

While local officials in the 20-county area have increasingly come to understand the various ways CAMA can assist them, some state officials continue to question the value of the law. Budgetary and politcal preparations for the 1983 session of the General Assembly indicate that CAMA once again may face two serious threats to its existence, one from a legislative review committee and another from federal budget reductions. The ability of CAMA proponents to explain clearly how the program works may determine to what extent CAMA survives this next round of challenges.

"CAMA is political in nature," says David Owens, assistant director of the Office of Coastal Management, the state agency that administers CAMA. "We can only go as far in management as there is political support. As people get more educated about the natural coastal systems, a broader consensus develops for an appropriate governmental role in managing those systems." But even as a base of support for CAMA expands, a fundamental philosophical question will persist: What is the appropriate role for governmental management of private land?

"CAMA functions on the principle that it is appropriate for government to operate in the best

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Bill Finger is editor of N.C. Insight. *Barry Jacobs is a free-lance writer. Photos courtesy of N.C. Office of Coastal Management.*

interests of all people in the state by placing reasonable restrictions on coastal development," says Owens. "We're not prohibiting development; we're managing it. We operate from a long-term, public perspective in dealing with landowners who sometimes have a short-term, private perspective."

Some coastal residents disagree with Owens' assessment of how CAMA functions. "We're restrained [by CAMA] from using our minds," protests Alva Ward, Jr., builder of more than 600 houses in the Topsail Beach area since the 1940s. State Sen. Melvin Daniels (D-Pasquotank), a longtime CAMA opponent, puts it this way: "The poor people of eastern North Carolina are burdened with rules and regulations."

To determine whether these disagreements stem from fundamental philosophical differences, or from a lack of understanding of how CAMA functions, requires first a thorough sorting out of the structures and programs through which CAMA works. An analysis of CAMA's strengths and weaknesses and a forecast for its future can then follow.

The CAMA Structure

A 15-member Coastal Resources Commission (CRC) serves as the primary policymaking and regulatory body under CAMA. The CRC members are appointed to staggered, four-year terms by the governor and must by statute include representatives from various interest groups such as agriculture, marine biology, forestry, and commercial fishing; all but one of the 15 CRC members live in the 20-county area covered by CAMA (see box on page 10). The CRC meets every six weeks in a formal session. Commission members receive minimal compensation – travel, overnight expenses, and $15 per diem (except for state employees and legislators) – during CRC activity. Dr. J. Parker Chesson, president of the College of Albemarle, a community college in Elizabeth City, has chaired the CRC since 1978.

A 47-person Coastal Resources Advisory Council (CRAC) advises the CRC. Composed mostly of coastal residents appointed by county commissioners and municipal officials in the 20-county area, the CRAC meets quarterly to make recommendations to the CRC. The 12 members of the CRAC Executive Board participate in a voting capacity in all CRC committee and task force meetings. The CRAC members serve at the will of the appointing person or group. William B. Gardner, former city manager of Edenton, has chaired the CRAC since 1979.

The Office of Coastal Management (OCM), a state agency within the Department of Natural Resources and Community Development (NRCD), administers CRC decisions and works with local government officials and landowners on a day-to-day basis. Headed by Ken Stewart, OCM has a thirty-eight person staff, half headquartered in Raleigh and half based in four coastal offices (Elizabeth City, Morehead City, Washington, and Wilmington).

The extensive involvement of local officials in these structures "was viewed as a watering down of the act at the time it passed," says OCM Director Stewart. "But we view that as a real strength now. We have integrated the CRAC into the decision process far beyond what the law calls for."

Working together, these three structures – the CRC, CRAC, and OCM – implement six distinct, yet interrelated, programs: land-use plans; regulating "areas of environmental concern"; coordination and review of state permits; review of federal regulations; the federal Coastal Energy Impact Program; and beach access. The chart on page 5 provides a visual guide to this process. The sections of the article that follow explain how each program works.

Land-Use Plans

When CAMA passed in 1974, only four counties and seven municipalities in the 20-county area had land-use plans – that is, any systematized, documented process to guide a local government in dealing with housing density, water and sewerage patterns, and all other development issues. CRAC Executive Board member Rosetta Short, referring to her town of Long Beach where she served on the Planning Board from 1974-77, says, "We had no zoning ordinances or permit letting officers. We got our planning department from CAMA."

CAMA mandated all 20 counties – and allowed any municipality within their borders – to develop a land-use plan by 1976 through a public hearing process conducted within the county (or municipality) by local officials. All of the counties but

Secretary of Natural Resources and Community Development Joseph Grimsley addresses the Coastal Resources Commission.

Development along estuarine shorelines is now required to meet minimum standards, including leaving at least 70 percent of the immediate shoreline area open.

Carteret, as well as 32 municipalities, developed plans by the 1976 deadline. By 1981 all 20 counties and 48 municipalities had developed plans. CAMA regulations also require that these plans be updated by the local government unit and approved by the CRC every five years; the first round of this process is nearing conclusion now.

The CRC establishes guidelines defining how land-use plans must be developed.[5] Each plan, for example, must include a data summary, some policy discussion, and a land classification map which divides land into at least five types: developed, transition, community, rural, or conservation (a plan may subdivide some of the classifications). OCM makes funds available to counties to hire planners and to undertake the planning process. About 80 percent of these funds are federal, about 20 percent state. In many cases, counties have now absorbed planning positions originally funded by CAMA into their ongoing budgets.

While the CRC has final approval over a local land-use plan, it only establishes guidelines and defines the issues which local governments must address in developing their own plans. At times, the local hearing process does not produce what some CRC members want, but if it satisfies CRC guidelines it must be approved. "You can't judge a plan on intent or morals," says Rosetta Short. "You have to judge it as a tool of implementation."

Brunswick County, for example, in its updated plan, reclassified an area west of Wilmington from "rural" to "developed/industrial" to accommodate the needs of a proposed oil refinery. "The purpose of the rural class is to provide for agriculture, forest management, mineral extraction, and other low intensity uses," explains the land-use guidelines. "The purpose of the developed class is to provide for continued intensive development and redevelopment of existing cities."[6]

The change from rural to developed, leaping over the transition and community classification categories entirely, upset some Brunswick County residents, including Rosetta Short. While Short disagreed with her home county's reclassification decision, she voted with the majority when the CRC approved the plan. "You have to go by the rules the legislature gave us," says Short. As it turned out, the oil refinery canceled its plans to build in Brunswick County. The county could amend the plan before the next five-year review if it wishes, but until it does, that area along Highway 17 west of Wilmington can legally be developed according to industrial/development guidelines, so long as all permit requirements are met (see following section).

Regulating Areas of Environmental Concern

CAMA provides that the CRC "shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof."[7] After consultation with state agencies and local governments, the CRC identified four primary areas of environmental concern (AECs): estuarine systems, ocean hazard areas, public water supplies, and historically or culturally unique areas. To regulate development in these areas – which make up *only three percent of the land area* and most of the coastal waters within the 20-county area – the CRC implemented a permit system.

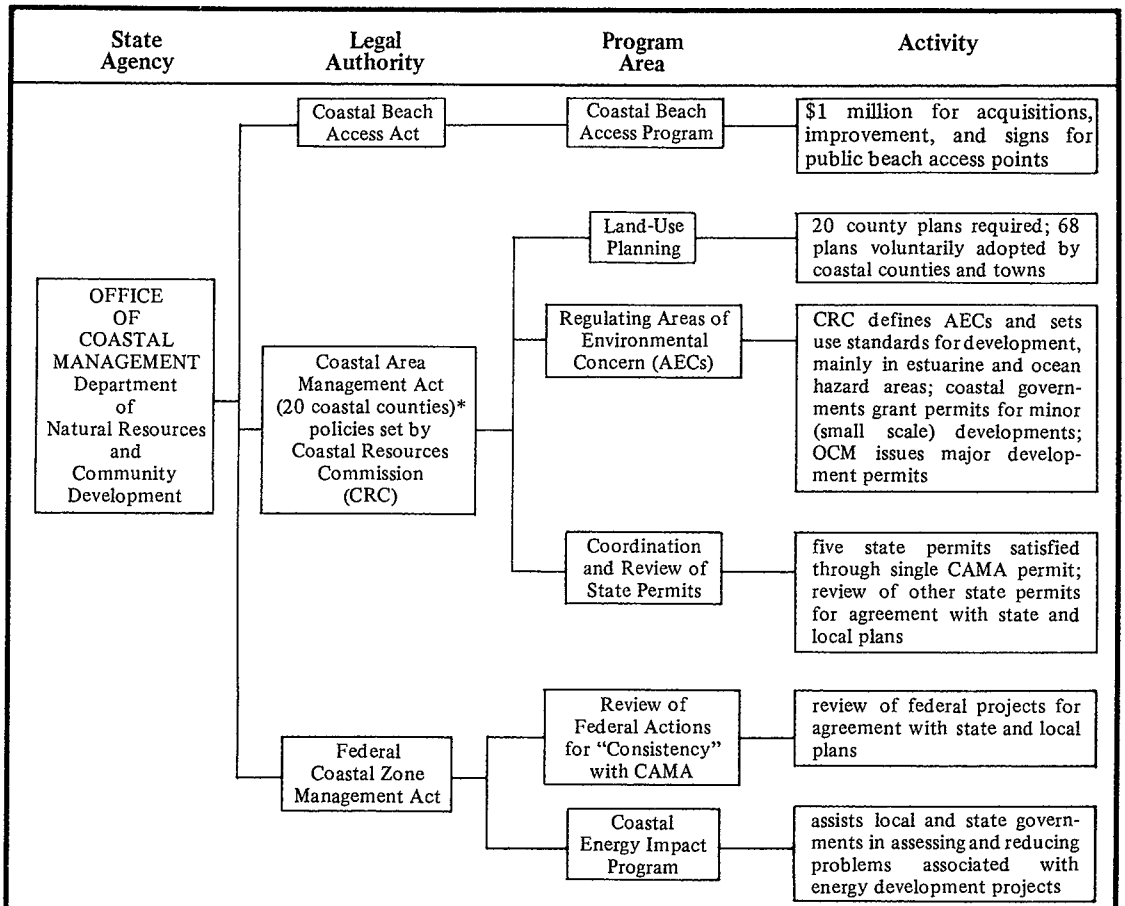
This system, which functions only in areas designated as AECs, began in March of 1978 and hence has just a four-year track record. Through a five-to-eight month process, the CRC develops standards which speak to the particular needs of an AEC. Most standards apply to ocean-front areas and to the estuarine system – the area between the barrier islands and the mainland – perhaps the two most environmentally sensitive areas in the entire state. These standards establish criteria for whether a particular type of development can be undertaken.

According to geologists, the barrier islands along North Carolina's 320-mile coast are moving inexorably inland: On the ocean side they are losing sand, and along the sounds and marshes they are gaining it. Even developers like Alva Ward speak of the beach coming and going "like an accordion," as the sea dictates. Consequently, the islands have to remain to some extent flexible parts of the shifting coastal environment. To that end, and to minimize the risk of injury and property lost during storms, the CRC imposes various limits on oceanside construction. Basing their regulations on a study of historical records and statisti-

cal probabilities, the commission, for example, required any new beach construction to be built at a minimum "setback" from the ocean. The actual setback distance is determined by a group of technical measurements, including past erosion rates, sand dune formation, and a minimum of 60 feet from the "vegetation line," which generally lies on the seaward side of the sand dune closest to the ocean.[8] The CRC also required that beach buildings be constructed to withstand a "once-in-a-100-years storm" like Hurricane Hazel, which flattened virtually every beach house from Calabash to Southport on the state's southern coast and did extensive damage elsewhere in 1954.

The North Carolina estuarine system, second largest among the lower 48 states behind that of Louisiana, is composed of some 4,500 square miles of shallow sounds, bays, tidal creeks, and salt marshes between the barrier islands and the mainland. Salt and fresh water mix in this area, providing a fertile ecological system for plant and sea life. Altering the natural patterns of this system can create severe problems. Uncontrolled dredging and water discharge, for example, can spoil rich spawning and fishing grounds for crabs, shrimp, shad, striped bass, and other types of fish. The unique North Carolina estuarine system has produced a variety of wetlands – shallow marsh areas which historically have played an invaluable role in the ecological system. Now these marshy areas are also being mined for peat, drained for farms, and filled for residential and commercial development. The CRC has developed a number of standards to regulate development in the estuarine

North Carolina's Coastal Management Plan



*The 20 counties covered by CAMA are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

– Source: N.C. Office of Coastal Management

Bulkheads can be designed in ways that will preserve natural features, such as these cypress trees, and still effectively control erosion.

AEC, particularly relating to erosion control, marina construction, and water discharge.

CAMA provides that development in the AECs be regulated through a "major" and "minor" permit system. Major permits are required when a development in an AEC covers more than 20 acres of land or water, over 60,000 square feet of ground area, or requires another type of state permit.[9] Condominium developments and boat marinas usually require major permits. OCM staff perform the on-site review for major permits, coordinate the process of getting other necessary state or federal permits (see the next section of the article), and issue a decision from Raleigh in 60-65 days. The OCM staff prides itself on working with permit applicants *before* the actual permit is filed, modifying any construction plans which might otherwise fail to receive approval. This approach to the permit system has meant that most permits get approved. From July 1980 through December 1981, the OCM staff processed 335 major permit requests and approved all but 13. In 12 of these denials, at least four different state agencies objected to the permit request; the CRC did not overturn any of these 12 on appeal. In the 13th case, OCM denial resulted from the objections of adjacent landowners; the CRC overturned this denial and issued a modified permit.

Minor permits are required for all development in AECs which do not require a major permit. Along with granting building, electrical, septic tank, and zoning permits, local government officials routinely administer the CAMA minor permit system. Single-family, ocean-front houses usually require a minor permit. The Office of Coastal Management reimburses the counties on a permit-by-permit basis for having local inspectors administer the minor permit system. Requests do not go through Raleigh (except for Gates County and the towns of Kitty Hawk and Beaufort).[10] From July 1980 through November 1981, 1227 minor permits were processed and only 24 were denied; processing time averaged 18 days. Three-fourths of all permits processed during this 17-month period were minor; one-fourth were major.

Permit applicants, adjacent property owners, or the state may appeal a permit denial or permit conditions to the Coastal Resources Commission. A CRC decision may then be appealed into the North Carolina Superior Court system. Due to efforts of OCM field staff and local permit officials to help modify projects to meet AEC standards, landowners have not used the appeal process extensively. And, unlike other states with far-reaching coastal management plans such as California, the judicial system has not been required to settle disagreements. Thus far, no permit denial in North Carolina has ever had to be adjudicated. (Two denials have been appealed to the court system; one plaintiff dropped his appeal and the other appeal was settled prior to its reaching the judge for trial.)

Coordination and Review of State and Federal Permits

Under CAMA, the CRC is required to study and attempt to provide a more simplified, coordinated system of permits for the coastal area. The CRC and OCM have attempted to accomplish this

through the AEC regulatory program. The CAMA permit required for development in the AECs now functions as a single application form for five separate state and federal reviews: 1) the CAMA AEC permit; 2) the Division of Environmental Management (within NRCD) "401" water quality certification; 3) an easement required by the Department of Administration for placing fill material on state-owned, water-bottom land; 4) a dredge-and-fill and coastal wetlands permit formerly required by the Marine Fisheries Commission (within NRCD); and 5) the U.S. Army Corps of Engineers general "404" permit required by the federal Clean Water Act pertaining to discharge of dredge-and-fill material. A CAMA "major" permit now satisfies all the above review requirements.

Incorporating the Army Corps of Engineers 404 permit into the CAMA application process is a particularly noteworthy achievement. "This is the only general permit of its type in the nation," explains Charles Hollis, chief of the Army Corps Regulatory Functions Branch in North Carolina. "We knew when we started that no one had ever tried it. Now we are sending it out as far away as Alaska." In April of this year, Army Corps regulatory officials from California visited North Carolina. "After seeing our procedures in the coastal area," says Hollis, "they hope to reorganize their procedures and pattern them after what we have in North Carolina."

While permit coordination efforts under CAMA have simplified the process for undertaking major development projects in the 20-county area, some still require other state permits or state agency review. "It's a pipe dream to put all environmental permits under one program," says OCM Director Stewart. "It's simply too complex." Major developments require approval by the Division of Environmental Management, Division of Health Services (within the Department of Human Resources), and other state agencies.

The OCM staff, working out of the four field offices, provide the on-site assistance to enable applicants to complete all necessary state permits. The OCM staff in Raleigh then coordinate the review process with appropriate state agencies to insure that any major project is consistent with state environmental requirements. While an applicant may have to complete more than one permit, most landowners only have to work with one agency, the Office of Coastal Management. Consequently, CAMA is the most visible target for developers' complaints about any limitations that the state may impose on their project. "We've coordinated the permit process so well that we're more visible than other agencies," Short told the Coastal Resources Commission at its April meeting, during a discussion on public relations. "I would like to see all the agencies' names posted on the permit signs, not just CAMA."

Review of Federal Actions for "Consistency" with CAMA

This aspect of the CAMA program, similar to the review process described above for state permits, stems from the federal Coastal Zone Management Act (CZMA) passed by Congress in 1972.[11] The CZMA provides funds to states as an incentive to establish their own coastal program. North Carolina was the first southern state to meet the CZMA requirements for developing a plan, and hence, beginning in 1974, federal funds for developing the CAMA programs described above began flowing into North Carolina.

A central feature of the CZMA is what has become known as "federal consistency." The law requires that federal actions in coastal areas be consonant with state standards if a state's coastal plan has federal approval. After the North Carolina coastal management program had met federal implementation standards in 1978, the state's Office of Coastal Management acquired the power to review any federal action in the 20-county coastal area to insure that the action did not violate state and local coastal plans and regulations. OCM reviews actions of 13 federal agencies – from the Farmers Home Administration (housing subdivisions) to the National Park Service (National Seashore), from the Federal Highway Administration to the Environmental Protection Agency. If the OCM prohibits a certain kind of activity, a federal agency cannot proceed without demonstrating an overriding national interest.

Controversy over the national interest question surfaced in 1981 regarding oil exploration on the outer continental shelf. The U.S. Department of

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Prior to CAMA and the Dredge and Fill law, many landowners undertook environmentally unsound means of trying to control erosion.

Interior opened competitive bidding on leases for over 100 offshore tracts, including six in an environmentally-sensitive area just 13 miles east of Cape Lookout, near Morehead City. When the Interior Department refused to remove the six sites from the bidding process, North Carolina filed suit to block drilling in all the tracts. Secretary of the Interior James Watt and N.C. Governor James B. Hunt, Jr. appeared to have reached a compromise last year when no one bid on leases in the six sensitive sites. But the controversy resurfaced in early 1982 when the Interior Department initiated a new plan for auctioning leases for the tracts. This issue appeared to be heading for the courts when Sec. Watt in March 1982 withdrew the new lease plan, thus making the federal-state confrontation a moot point, for the time being at least. The sequence of events over the offshore leases shows the power North Carolina has in relationship to the federal government as a result of the federal consistency dimension of its coastal management program.

Federal Coastal Energy Impact Program

In 1976, Congress passed a number of amendments to the Coastal Zone Management Act, many of which were in response to the "energy crisis" of that time.[12] One amendment created the Coastal Energy Impact Program, which has provided about $1.5 million to North Carolina in the last five years for planning and research activities related to energy development. The OCM, which has access to these funds because CAMA is a nationally-approved coastal management plan, has used them to study how major energy-related development projects – such as oil refinery locations, peat mining, coal shipment facilities, and outer continental shelf drilling – will affect the coastal area.

Beach Access

In 1981, the General Assembly appropriated $1 million for a "beach access" program to be administered by the OCM. While this is not a program prescribed by CAMA, it did result from controversies over the CAMA regulatory program.

Because of ocean-front AEC standards and other state and local ordinances, about 500 ocean lots, mostly in the Kitty Hawk-Kill Devil Hills area and at West Onslow Beach and Long Beach, cannot be built upon. These lots may still be used for camping, parking, launching boats, and for other purposes not involving permanent structures. "It's not true that regulations stop people from doing things," notes Dr. Arthur Cooper, a CRC member and former assistant secretary of the Department of Natural and Economic Resources (NRCD's predecessor). "They stop people from doing things the way they want to do them." And that, says Glenn Dunn, former chief of regulatory coordination and enforcement for OCM, is precisely what CAMA is designed to do – rein in "unfettered development," as Dunn puts it, while remaining "not at all totally prohibitive."

But other officials, such as state Sen. Daniels, say the state must do more for landowners prevented from building by CAMA. In 1981, Daniels sponsored a bill appropriating $1 million for this purpose called the Coastal Lands Acquisition Fund (S 232). Meanwhile, Rep. Charles Evans (D-Dare), generally a CAMA supporter, introduced a bill to improve beach access for the public through state purchase of lands (including, but not limited to, areas adversely affected by CAMA). The Evans bill (H 1173) was substituted for the Daniels bill. After being amended in the Senate by Daniels, the Evans bill was enacted.[13]

The beach access program is designed to identify, acquire, improve, and maintain public access to the ocean beaches. In recent years, increased development has tended to reduce easy public access to beaches. OCM has the responsibility for coordinating this program with local governments in accordance with a county's land-use plan and the AEC standards for ocean-front development. OCM staff are working now to identify suitable lots for purchase, determine if local governments are willing to maintain a new public facility (such as a parking lot), and oversee the purchase process through the Advisory Budget Commission and the state property office within the Department of Administration. OCM is giving priority to lots suitable for permanent beach access.

What CAMA Has Accomplished

As the above discussion makes clear, CAMA programs work in a complex, interrelated fashion. Spelling out the various details leads to six conclusions about the impact CAMA has had in the first eight years of its life.

1. **CAMA affects a small part of North Carolina.** Only 20 counties are covered by the act, an area which contains about 10 percent of the state's population, and the permit system affects only three percent of the land within this area. CAMA has become a highly-visible law throughout the state primarily because many people *who live outside these 20 counties* own beach-front property or use the beaches on a regular basis.

2. **CAMA has fostered a major effort in land-use planning.** Through this process local areas *are determining their own future* in a thoughtful, deliberative, and public process. Before CAMA, only four

counties and seven municipalities in the 20-county area had land-use plans. By 1981, all 20 coastal counties and 48 municipalities had state-approved land-use plans. While the initial plans engendered opposition from local government officials and citizens, and were more the product of planners' efforts than of broad-based community input, subsequent planning has stimulated extensive public debates over the kind of future development local citizens desire. New Hanover County, for example, has just completed a hotly-contested, two-year effort to revise its plan. "It's been a long struggle, turning the rest of my hair gray," CRC member Karen Gottovi, a New Hanover County Commissioner, reported with a bittersweet smile to the full commission in April. "Lawyers were hired, fingers pointed, you name it," she continued. "But we worked out a compromise that we can all live with."

The New Hanover debate focused on housing density levels and water and sewerage service for lands bordering the undeveloped marshlands south of Wrightsville Beach. A group of residents formed the "Quality of Life Alliance" while developers worked through a "Coalition for Orderly Development."

In a pro-and-con newspaper feature, "Should zoning ordinances be revised to encourage multi-

How CAMA Was Born

by Barry Jacobs

As early as 1969, the General Assembly initiated legislative studies on reconciling the demands of development with the desire to protect the North Carolina coast's natural resources. Political prompting by members of the state's scientific community and "the rising tide of environmentalism at that time" spurred the effort, according to Dr. Arthur Cooper, a strong advocate of resource management during the Scott (1969-73) and Holshouser (1973-77) administrations.

In 1971, the legislature charged a 25-member "Comprehensive Estuarine Plan Blue Ribbon Committee," under the auspices of the Commissioner of Commercial and Sports Fisheries, to develop a coastal management proposal. Out of its deliberations came the outlines for the Coastal Area Management Act (CAMA), proposing far-reaching state intervention in coastal management. "I don't think it would be fair to say legislators were asking for CAMA, but that's what they got," Cooper commented.

In 1973, a joint House-Senate committee, headed by then Rep. Willis Whichard (D-Durham) and then Sen. William Staton (D-Lee) held a series of public hearings throughout the coastal area in which local residents called for more local control in planning and implementing coastal management, concerns subsequently incorporated into the act. Particularly significant in placating some critics was the establishment of a 47-member Coastal Resources Advisory Council with representatives from each of the affected coastal counties, plus coastal cities and councils of government, the marine science community, and state agencies having coastal responsibilities.

Yet even after the CAMA bill was rewritten, most coastal legislators remained against it. But here incentives from the federal level came to the supporters' aid. In 1972, the Coastal Zone Management Act became federal law, providing both a challenge and an inducement for what a 1981 position paper by the Coastal States Organization called "the development and implementation of programs aimed at the more rational management of coastal resources" in 36 states and American territories. North Carolina was of course included.

Simultaneously Gov. Holshouser, a Boone native, decided to champion statewide land-use planning. CAMA was to be but the first step in that direction; Holshouser had Cooper draw up a Mountain Area Management Act (MAMA) which was also placed before the 1974 session of the legislature. Holshouser hoped to gain land-use planning legislation first for the coast, then for the mountains, and finally state-wide.

Before winning passage through an alliance of Piedmont Democrats and Holshouser Republicans, the CAMA bill became one of the most amended in state history. (Twelve of 19 proposed amendments were adopted by the Senate, 22 of 51 by the House.) But because the controversy dominated legislative activity, time ran out on attempts to extend regional resource management to other parts of the state.* □

*For more detail on this history, see "A Legislative History of the North Carolina Coastal Area Management Act" by Milton Heath, 53 N.C.L. Rev. 345 (1974) and "So You Want a Land-Use Bill" by Joyce Lamm, *Southern Exposure*, Vol. II, No. 2-3 (fall, 1974).

family housing?," the *Wilmington Morning Star* asked developers and sound residents for their positions. "This development is a poison," said Quality of Life Alliance spokesman Algernon L. Butler, Jr. "The slightest introduction will kill the sound-side lifestyle." But Wilmington real estate agent James Grice saw the issue differently. "The public is going to demand multi-family development," said Grice. "It's the wave of the future, unfortunately." The two-page *Morning Star* spread included a color-coded county map highlighting the different CAMA land classification areas.

The New Hanover debate dramatized the strength of the CAMA land-use planning process. Both sides had reasonable positions, based on complex housing and ecological trends. By providing that a public decision-making process take place, CAMA causes the county officials to hear and respond to citizen concerns. A court battle over the plan was avoided when the county devised a compromise classification for the disputed area – a procedure allowed by the CRC land-use guide-

N.C. COASTAL RESOURCES COMMISSION[1]

Name	Hometown	Represents	Term[2]
1. Dr. J. Parker Chesson Chairperson	Elizabeth City	Marine Ecology	1978-82
2. Charles Wells Vice Chairperson	Hampstead	Financing	1980-84
3. Dr. Arthur W. Cooper	Raleigh	At-Large	1980-84
4. Dewitt Darden	New Bern	Forestry	1978-82
5. Mayme W. Davenport	Creswell	Local Government	1978-82
6. Frank Furlough, Jr.	Columbia	Commercial Fishing	1978-82
7. William Gibbs	Oriental	At-Large	1978-82
8. Karen Gottovi	Wilmington	Local Government	1980-84
9. Jerry Hardesty	Currituck	Agriculture	1980-84
10. T. Erie Haste, Jr.	Hertford	Marine Related Business	1980-84
11. Dr. Gene R. Huntsman	Beaufort	State or National	1978-82
12. James E. Sykes	Morehead City	Wildlife or Sports Fishing	1978-82
13. W. Randolph Thomas	Jacksonville	Local Government	1980-84
14. Eugene B. Tomlinson	Southport	Engineering	1980-84

N.C. COASTAL RESOURCES ADVISORY COUNCIL[3]
Executive Committee

Name	Hometown	Represents	Term[4]
1. William B. Gardner Chairperson	Edenton	Coastal Cities	1976-
2. Cecil Sewell Vice Chairperson	Morehead City	Coastal Cities	1976-
3. Albert H. Calloway	Raleigh	State Agency	1976-
4. Webb Fuller	Currituck	Currituck County	1976-
5. Paul S. Denison	Wilmington	Marine Technologist	1978-
6. Don Eggert	New Bern	Neuse River Council of Governments	1981-
7. Jack Cahoon	Manteo	Dare County	1981-
8. Doug Powell	Wilmington	Coastal Cities	1981-
9. Riley S. Monds, Jr.	Hertford	Perquimans County	1974-
10. Bradford Rice	Arapahoe	Pamlico County	1978-
11. Rosetta Short	Long Beach	Coastal Cities	1976-
12. Wanda Stahel	Currituck	Coastal Cities	1978-

[1] All appointed by the governor. There is currently one vacancy.

[2] All terms expire on June 30 of the year listed.

[3] CRAC appointments made by the county commissioners in the 20-county area, by coastal towns and councils of government, the marine sciences community, and state agencies having coastal responsibilities.

[4] Terms run indefinitely, at the will of the appointing group.

lines – keeping the marshland area classified at rural-density levels but permitting water and sewerage service, a step normally allowed only under the "developed" classification. "The New Hanover experience illustrates one of the best things CAMA has done," says CRC member Art Cooper. "It's a vehicle that allows people in a local area the opportunity to talk things out."

3. **The CAMA permit system has prohibited very little development.** The CAMA regulatory program applies only to the Areas of Environmental Concern. Within the AECs, only large projects (over 20 acres, 60,000 sq. ft. of ground area, or requiring another state permit) must have a CAMA major permit, which is processed through Raleigh. Local officials, usually building inspectors, process minor permits. From the middle of 1980 to the end of 1981, more than 97 percent of all permits were approved, 322 of 335 major permit requests and 1203 of 1227 minor permit requests.

Those who feel CAMA is overly restrictive contend that some landowners, aware of certain CAMA prohibitions, do not pursue the permit appeal process, thus inflating the permit approval percentage. Those critics who feel CAMA is not restrictive enough point out that this act rarely limits development outside the AECs and that pursuits such as agriculture and forestry are explicitly omitted from the CAMA regulatory processes.

The Office of Coastal Management comes down in the middle. "We try to do everything we can to help a person undertake a project without it doing environmental damage," says OCM Director Stewart. But Stewart says OCM also addresses controversial areas, like agriculture. "If a farmer's drainage project goes into the estuarine waters, agriculture is not exempt."

Analyzing the financial impact of the permit sytem is a complicated enterprise that depends upon one's research assumptions. To date, the only independent, major analysis of this subject on a permit-by-permit basis was undertaken by Charles D. Liner at the Institute of Government at the University of North Carolina at Chapel Hill. His 111-page study reviewed all CAMA regulations and the restrictive effect of the permit process. "The analysis of permit decisions in the areas selected for study suggests," Liner concluded, "that, although they may have altered construction standards and methods of development, in general, regulations under CAMA and the Dredge and Fill Law [now part of the CAMA permit] have not substantially restricted the ability of landowners to use their land."[14]

4. **The CAMA permit coordination and review process streamlines the permit procedure for developers.** The permit system for developing property on the coast is complex, but CAMA simplifies that process rather than complicating it.

Through CAMA, five permits have been consolidated into one CAMA form, and OCM coordinates the review process for other required state permits. North Carolina has the only coastal permit system in the country which incorporates the U.S. Army Corps dredge-and-fill permit. CAMA is the most visible – and vulnerable – law to a skeptical public, but without CAMA, coastal development would have a far more complex, multi-faceted permit process with which to deal. "North Carolina is ahead of the other coastal programs in this area," says John Phillips, regional manager for the South Atlantic Region of the Federal Office of Coastal Zone Management. "Other states have attempted to do what North Carolina has done but not as successfully."

5. **CAMA has brought $5.6 million in federal funds to North Carolina.** Since CAMA is a federally-approved coastal management plan, federal funds appropriated for administering the federal Coastal Zone Management Act have come to North Carolina. (Other federal funds, through such programs as Energy Impact Program and the Estuarine Sanctuary Program, are also available to the state.) The state Office of Coastal Management has channeled some $2.5 million – almost one-half of the federal total – to local governments, which have used the money in many cases to begin county and municipal planning departments.

6. **The CAMA permit coordination and review process safeguards the state and 20 counties against undesired federal actions.** CAMA is a federally-approved coastal management plan. Consequently, the state can monitor all federal actions affecting coastal areas for "consistency" with CAMA land-use plans and regulations. For example, without CAMA the federal oil leases on the outer continen-

Coastal Resources Commission member Karen Gottovi.

tal shelf could have gone through with no mechanism for state objection.

Philosophical Issues Remain

Conclusions about how CAMA functions bring into focus two important philosophical issues inherent in the CAMA program: restricting uses of private land for the greater public good and balancing the value of large economic development against protections of a fragile ecological system.

CAMA opponents claim the setback policy and associated ocean-front regulations amount to taking away people's land, or "condemning without remuneration" in Sen. Daniel's words.[15] CAMA does not take land from anyone but does limit property uses where the public welfare is affected, as in places where buildings will be washed away by the sea, a principle supported by years of legal precedent. Sen. Daniels made one effort to compensate coastal landowners who cannot build what they wish by introducing legislation to have the state purchase land deemed unsuitable for new buildings. A far more comprehensive approach to this question would be a mandatory tax reassessment system based on the acceptable uses of the land. Under current law, a local government must reassess land every eight years. The CRC could explore methods of requiring a county to reassess any property after a permit procedure for that property has been followed. David Owens, the OCM assistant director, explains that "we're working on that issue now."

Even if CAMA can somehow require a county to reassess the value of a plot of land, a fundamental issue of public policy remains. Can a government restrict how a person uses his or her land? "Individual choices versus the collective good is a valid public debate," says OCM Director Stewart. "If we can debate CAMA on this issue, the people will make a good decision."

CAMA raises a second, equally profound philosophical question: how can policymakers weigh the value of economic development against that of maintaining a fragile ecological system? Some economic development benefits, such as jobs at an oil refinery, are more visible than others, such as the portion of the state's commercial shrimp population sustained by the tidal patterns in the estuarine system.

In its infancy, CAMA played a limited role in regulating major economic developments. In 1979, for example, the Currituck County Commissioners, with OCM's help, commissioned a fiscal impact assessment of development on the outer banks area in that county. This effort, says Currituck County Manager Webb Fuller, a member of the CRAC executive board, helped resolve severe differences among county residents regarding the potential value and problems of future development.

The CRC and OCM are becoming increasingly involved in major development projects. When Alla-Ohio Valley Coals, Inc., which operates a small coal-shipping facility in Morehead City, proposed building a much larger terminal across the harbor on Radio Island, local residents and officials became concerned about potential environmental problems. Under the auspices of the county's land-use plan, OCM has been coordinating a diverse set of interests – the port developers, Department of Transportation officials, landowners, local officials, and others – through a series of "Radio Island" meetings. This group is evaluating, for example, alternative rail lines for shipping the coal through Carteret County. Through this Radio Island effort, CAMA has gained a wider respect for its capacity to bring diverse perspectives together as well as to guide development in a way that damages the environment the least.

Despite such efforts as those concerning Radio Island and Currituck County, environmental critics contend that CAMA's weak regulatory authority, combined with a reluctance of the CRC to take politically inexpedient stands, have hamstrung effective review of superfarms, clear-cut forestry practices, refineries, and such proposed projects as a $250 million peat mining-to-methanol production operation. CRC's jurisdiction "is not clear cut in dealing with the large scale development," says Art Cooper. "And there are a lot of politics."

Another Political Juncture: An Endangered Species?

Since the CAMA debate began in the early 1970s, coastal management officials have walked a tightrope between developer interests and environmentalists (see box on legislative history on page 9). The political debate around CAMA resurfaced in 1981, a debate that will reach a crossroads when the 1983 session of the General Assembly convenes. Last year, the General Assembly authorized two reviews of CAMA, one through the Legislative Committee on Agency Review and another through the Legislative Research Commission (LRC), the legislature's research arm.

The Committee on Agency Review is authorized to review over 60 different programs about which it "may develop legislative recommendations" before it disbands on June 30, 1983.[16] The committee has made a tentative decision to recommend to the full General Assembly some small, procedural changes in CAMA which Secretary of

Natural Resources and Community Development (NRCD) Joseph Grimsley proposed to the panel.

In addition to the Committee on Agency Review, the General Assembly at the request of Sen. Daniels authorized the Legislative Research Commission (LRC) to "study rules and regulations pertaining to CAMA" and to file an interim report in the June 1982 session or a final report to the 1983 session, or to do both. The Speaker of the House and President Pro Tempore of the Senate (the LRC co-chairmen) established a 12-person study commission co-chaired by Sen. Daniels and Rep. Evans. The study commission, which includes powerful legislators like Sen. Kenneth Royall (D-Durham) and Rep. Al Adams (D-Wake), held its first meeting January 12, 1982, and has postponed subsequent sessions until it can schedule three field hearings on the coast. Such hearings require additional funding, which could be forthcoming either from unallocated funds in the LRC budget or from the full General Assembly when it meets in June.

While the technical charge to the commission is "to study rules and regulations," coastal field hearings would allow a far-wider public debate on CAMA. The course of this study commission might well be decided by its co-chairmen. Sen. Daniels, an Elizabeth City resident, said recently, "I think, as one coastal senator told me a few days ago, CAMA wouldn't be in the trouble it's in if it had more reasonable people making its regulations." Rep. Evans of Nags Head, who has been a member of the CRC, has quite a different perspective: "The commission has strived to be reasonable in its approach. I think that the CRC has bent over backwards to work for the public interest and to accommodate concerns that have arisen over the implementation of the act." In late April, Sen. Daniels said that the commission was including in its review the permit process, the appeal process, and tax concessions or other assistance in AEC areas.

As this legislative oversight process was getting underway, the Reagan administration launched its drive to reduce federal spending. Two of the federal programs scheduled for the Reagan ax in 1983 are the Coastal Zone Management Act's implementation funding and the Coastal Energy Impact Program which together supplied $5.6 of the $7.4 million spent through the state's coastal management program from July 1974 through June 1981.

The state legislative reviews and the federal funding cutbacks have prompted a spate of paper and presentations between NRCD and legislative officials. NRCD Sec. Grimsley addressed the LRC study commission in February and underscored the firm support of Gov. James B. Hunt, Jr. for CAMA. Gov. Hunt himself, in a review of NRCD priorities with Grimsley and other NRCD officials, stressed the importance of the proposed study commission hearings. And legislative leaders have requested and obtained from Grimsley extensive documentation and explanations on CAMA.

The outcome of this latest challenge to coastal management in North Carolina depends first upon a clear explanation of how CAMA works. If philosophical differences remain, then government leaders – incorporating the wishes of coastal residents – will have to judge how great a role government will play in regulating coastal development. But throughout any complex legislative and administrative debates, policymakers and landowners must keep before them an image of what the coastal area will become. Are the development patterns now firmly implanted in New Jersey, Delaware, Maryland, and Florida going to become a part of North Carolina? NRCD Sec. Grimsley answers that question simply: "I view CAMA as being responsible for seeing that the coast survives." □

FOOTNOTES

[1]295 N.C. 693 (1978).

[2]N.C.G.S. 113A-100 through 113A-128.

[3]*Adams v. Dept. of NER*, 295 N.C. 683, 279 S.E. 2d 402 (1978).

[4]See "The Coming of Age of the N.C. General Assembly" in *N.C. Insight* Vol. 4, No. 4, December 1981, pp. 15-16.

[5]15 N.C.A.C. Chapter 7B.

[6]15 N.C.A.C. 7B .0200.

[7]N.C.G.S. 113A-113.

[8]15 N.C.A.C. 7H .0306(a).

[9]N.C.G.S. 113A-118(d).

[10]Gates County has so few minor permits that "it was not practical to train local permit officers there," says OCM Assistant Director David Owens. Kitty Hawk, a recently incorporated town, has not yet developed the permitting capability and requested OCM to perform this function. The town of Beaufort is the single area that has not agreed to administer the CAMA minor permit itself and thus by law has that function performed by the CRC.

[11]P.L. 92-583, 16 U.S.C. 1451 *et seq.*

[12] P.L.94-370 (1976).

[13]Chapter 925 of the 1981 Session Laws (HB 1173), N.C.G.S. 113A-134.2.

[14]*The Impact of State Regulation of Coastal Land in North Carolina* by Charles D. Liner, Institute of Government, the University of North Carolina at Chapel Hill, May 1980, p. 108. In a review of this article prior to publication, Liner adds: "My statement was based on a finding that many of the ocean-front lots could not be developed even in the absence of CAMA because of local ordinances or other state and federal regulations."

[15]Based on Article I, Section 19 of the N.C. Constitution.

[16]N.C.G.S. 143-34.26.

PRO

by Henson Barnes

In 1935, a great debate arose in North Carolina over whether to switch from annual legislative sessions to a biennial system. The issue centered on whether annual sessions were costing the state too much money and resulting in a full-time legislature. After a spirited legislative debate and a close vote by the people, the call for a part-time "citizen" legislature – as opposed to a "professional" body – won the day. North Carolina, in contrast to most other states at the time, switched to biennial sessions, conducted by a band of citizens who served as part-time legislators.

In 1982, nearly 150 years later, the concept of a citizen legislature is again endangered. And once again the state's voters can do something about it. While the nature of the vote has shifted from the frequency of legislative sessions to the length of time a legislator serves, the heart of the debate is the same: What can we do to insure that North Carolina continues to have a citizen legislature?

There are only two choices: limit the time demands placed on a legislator who is conscientiously performing his or her duties; *or* reduce the burdens of running for office every two years. The work load of the General Assembly is increasing rapidly and is not likely to slow down. The only alternative then is to decrease the time spent running for office. The proposed constitutional amendment accomplishes this goal.

Going to four-year terms is the trend for all elective offices. At one time, every state had two-year terms for its legislators. Now, 38 states have four-year terms for at least one house. Four states have four-year terms for both houses (see box at end). Two-year terms were once the norm for every county commissioner in North Carolina. Of the 100 counties, 96 have now gone to four-year terms for their commissioners. And today, more than half of our cities – about 190 – have four-year terms for their governing boards or councils.

Citizen Legislator Faces Extinction

In recent years, the General Assembly has increasingly begun to resemble a full-time body. The sessions run longer and occur more frequently. In 1981, the session began in January and

Four Year
The

In the 1982 primary, North Carolina voters will determine whether the term of office for state legislators will be extended from two to four years. Such a change requires voter approval of an amendment to the state constitution.

The General Assembly itself is responsible for putting this question before the voters. On April 15, 1981, the state Senate voted 35-12, with three members absent, to place the four-year-term issue on the 1982 primary ballot. The state House of Representatives followed suit on June 4, 1981, by a vote of 72 to 42, with six members absent. The N.C. Constitution requires that three-fifths of all members of each house approve a proposed constitutional amendment before it goes before the state's voters.

Proponents contend that four-year terms will strengthen the legislature, specifically its nature as a "citizen" rather than a "professional" body. Opponents insist the measure will make the legislature less accountable to voters and will not stem the loss of citizen legislators.

Since November 1968, there have been 24 constitutional amendments on state ballots, and only two have been defeated – in 1970, an amendment to abolish the state's literacy requirement for voting; and in 1974, an amendment designed to allow the issuance of bonds to finance industrial and pollution control facilities. Perhaps the most memorable amendment of recent years is the 1977 action which allows the governor and lieutenant governor to succeed themselves.

While proposed constitutional amendments usually have passed, the one creating four-year

Terms? Voters Decide

terms for legislators faces strong opposition. No organized campaign promoting four-year terms has developed. But a strong opposition drive has emerged. Thomas O. Gilmore, who has been the deputy secretary of the Department of Human Resources and a state representative from Guilford County, has formed the "Keep the Two-Year-Term Committee." This group has gained the bi-partisan support of former governors James E. Holshouser, Jr., Terry Sanford, and Robert W. Scott. Several of the state's major newspapers, including the Greensboro Daily News *and the* Fayetteville Observer, *have also editorialized against the four-year terms.*

Moreover, the amendment opponents have gained some extra time to mobilize their forces. Originally, the 1982 primary was scheduled for early May. But the U.S. Department of Justice required the legislature to adjust the legislative and Congressional redistricting plans passed in 1981. The Justice Department must give final approval to the new redistricting plans passed in April 1982 before the primary date can be set.

The North Carolina Center for Public Policy Research asked two legislators to present their reasons for supporting or opposing four-year terms. Sen. Henson P. Barnes, Democrat representing Wayne and Greene Counties, favors four-year terms; he sponsored the 1981 bill which placed the issue on the ballot. Rep. Parks Helms, Democrat from Mecklenburg County, has been a leading opponent of four-year terms. In the following articles, Sen. Barnes and Rep. Helms argue their cases.

CON

by Parks Helms

Those who propose four-year terms for legislators do so with a legitimate concern: maintenance of a "citizen" legislature, which has served the people of North Carolina with distinction and ability. Over the last ten years, our General Assembly has lost many of its most capable and respected members. Some have gone on to offices such as judgeships and executive appointments, while others have returned to private life. Why this "drop-out" rate among legislators? Among other factors, it stems from the time-consuming job of serving in the General Assembly, the relatively low pay legislators receive, and the tremendous increase in campaign costs. These factors have combined to make legislative service an activity few working men and women can afford. The danger in allowing this trend to continue is that our General Assembly could become dominated by very wealthy or retired persons and lose its character as a citizen legislature.

A four-year term, however, does not solve the problem of getting and keeping competent "citizen" representatives and senators. It ignores the issue of legislator responsiveness and accountability to the people. It would reinforce the existing imbalance of power between the executive and legislative branches. And paradoxically, it would not even solve the problem it is supposed to correct. For philosophical and practical reasons, the four-year term should be defeated.

Philosophical Issues

Our state and federal governments were designed so that elected officials in at least one branch would have to face the voters every few years. Frequent elections serve to reflect the current mood of the people. In North Carolina, this proposition took formal shape in Article I, Section 9 of the constitution: "For redress of grievances and for amending and strengthening the law, elections shall be often held."

The desirability of frequent elections is no less important today than it was when our constitution was adopted. The people we elect to our General Assembly should represent our present views on how government should be conducted.

PRO

lasted until July. Then in the fall, the legislature reconvened on two occasions, for a "budget" session and a "redistricting" session. In addition, a legislator on the Appropriations Committee (about half of the 170 representatives and senators) went to Raleigh to prepare the budget, and members of the Redistricting Committee had to meet prior to the opening of the redistricting session. Meanwhile, many legislators serve on several study commissions or boards, some of which meet monthly. Even when the legislature was not in session in 1981, a legislator often spent at least one day a week in Raleigh on official business.

In 1982, a "short session" year, legislators have already gone to Raleigh in February and April for redistricting sessions, and they will return in the summer for a "budget session of some six weeks. Moreover, legislators will have to campaign in a primary and a general election during the year. During the 1981-82 biennium, legislators will spend as much as 20 of the 24 months either in session or running for office.

Historically, a citizen legislator has had a full-time job at home and a part-time job as a legislator. A legislator's pay remains at the part-time level, $578 a month plus expenses for food and lodging ($50 per day) and travel during sessions. But the nature of a legislator's responsibilities have changed to such an extent that few lawmakers can maintain a full-time job at home. While many good people serve in the legislature, few can stay long. The only people who can afford to serve as legislators for any length of time are the wealthy, the retired, or those whose employer views the time spent in Raleigh as a public service or as good public relations.

There is no longer a part-time legislator. Consider your own situation. Should a member of your occupation or profession be represented in the General Assembly? If the answer is "yes," then ask yourself if your employer would allow you or a colleague to take 16 to 20 of the next 24 months to serve as a legislator. If your answer is "no," then you have effectively eliminated your occupation or profession from serving in the General Assembly.

CON

The immediate dissemination of information through the electronic media has made the average citizen prone to change his stance on important issues much more often than once every four years. Thus, a legislature which is isolated from the voters for four years is a legislature that does not reflect the true sense of the times in which it functions.

A legislator with a four-year term is less accountable to his constitutents than one with a two-year term. Some members may be tempted with a four-year term to pay more attention to the well-heeled special interest groups and less attention to the needs and wishes of the constituents in their districts, hoping that time will cause the people they represent to forget what they have or have not done. By creating a legislature which insulates its members from challenge for four years, the proposed constitutional amendment contradicts representative government as we have come to know it in North Carolina.

At a time when the credibility of government at every level is in question, any change in constitutional principles should be carefully studied. In addition, the legislative districts have just undergone a great change in the redistricting process that takes place at the beginning of every decade; the effects of this process remain uncertain. Meanwhile, federal budget cuts and President Reagan's proposed "new federalism" are forcing the General Assembly to assume an increased policymaking role. Now more than ever, it is important that constituents' views be reflected in the state's public policy decisions. It is not a time to move to four-year terms.

Practical Issues

Proponents of four-year terms argue that the majority of states already have precedents for such a system. At best, this is a half-argument. North Carolina, along with eleven other states, has a legislature in which both representatives and senators serve two-year terms. But should voters approve this proposed amendment, North Carolina would become one of only five states which grant four-year terms to *all lawmakers* (see box at end). The proposal, then, takes our state from one

In addition to working part-time, a citizen legislator cannot be tied to any special-interest group. A true citizen legislator runs for office and raises sufficient funds from family and friends to run a casual campaign. That theory worked when you could call most people in a district by first name. Now, there are so many people in each district it is necessary to go to the media to reach them. A one page advertisement in a newspaper costs from $200 to $3000. One minute on the radio can run from $30 to $90.

If the average person in North Carolina is going to be able to run for the legislature, we must do something about the increasing cost of campaigns. A person must raise several thousand dollars for each campaign. The easiest way to do that is from large donors, especially special-interest groups. The election system is forcing more and more legislators to accept – even depend upon – large contributions from special-interest donors. Regardless of how well you serve in the General Assembly, if your opponent has an ad in the newspaper, you had better have an ad that is bigger and better. If you don't, your friends and supporters will feel your campaign is "losing steam." Four-year terms would tend to bring the staggering cost of campaigns under some control.

Fears of Opponents

Opponents of four-year terms have expressed fears of this change. I intentionally use the word "fears" because the opponents generally do not cite facts to support their allegations. The most-often expressed concern is that a legislator will be less responsive to the people if he or she is elected for four rather than two years. That is hogwash. A person is responsive if he or she is a conscientious and hard-working legislator. If he or she is not conscientious, the length of the term doesn't matter. If the fear of less responsiveness is valid, we should be making every effort to go to annual sessions. I have heard no one suggest that. Has anyone complained that county commissioners or city aldermen are less responsive now than they were when they served two-year terms?

minority category to an even more isolated one. The argument that we should adopt a four-year system because other states have done it does not examine the whole statistical picture.

For government to be truly responsive, it must permit voters to participate often in the electoral process. The state constitution speaks to this necessity, and it is too important a principle to be abandoned. In terms of voter participation, the four-year term would undoubtedly reduce the number of people participating in election of our legislators. The elections would be in "off years" – when a governor and President are not being elected. Absent any prominent statewide or national races, off-year elections have less press coverage, less public interest, and not surprisingly, significantly lower voter turnout. One could argue that people who do not vote deserve the government they get, but that position overlooks the fact that those of us who do vote get that same government.

Aside from its effect on the General Assembly, the four-year term would have a significant impact on the executive branch as well. North Carolina's governor is already the only chief executive in the nation without veto power. And, in recent years, the General Assembly has sought to encroach more and more on duties traditionally performed by the governor and the executive branch. The North Carolina Supreme Court recently ruled that the legislature had overstepped its constitutional bounds by placing some of its members on the state Environmental Management Commission *(State ex rel. Wallace v. Bone,* see article on page 36). A four-year term would increase such intrusions into the executive branch and would make relations between the governor's office and the legislature even more difficult.

In a recent issue of *N.C. Insight,* Thad Beyle, a political science professor at the University of North Carolina and an expert on state government, rated North Carolina's governor as one of the five weakest chief executives in the nation, primarily because he lacks exclusive authority over the budget, shares power with other elected officials, and does not have veto power.* Gov. James B.

* "How Powerful is the North Carolina Governor?" Vol. 4, No. 4, December 1981.

PRO

Opponents also fear that legislators will run for other offices – such as governor or a Council of State seat – without having to resign, since a four-year legislative term would overlap the term of those offices. County commissioners in 96 counties and elected municipal officials throughout the state currently are serving four-year terms. Their terms overlap each other as well as the terms of legislators. But rarely does a person run for another office while serving as a commissioner or alderman. That pattern suggests that few legislators, while serving a four-year term, would run for another office. But even if they do, what is the problem? Certainly we don't want to build a fence around any particular office.

Opponents fear that a lower percentage of people would vote for four-year-term legislators because elections would be held in "off years," those even-numbered years such as 1986 when a president and governor are not elected. But legislators, now elected every two years, are presently elected in off-year elections. The fact that the legislators would be running for a four-year term might create more interest in the election; the turnout could be better in the off years than it is now. Presently, when the legislature is elected at the same time as the president, governor and Council of State offices, the legislative races attract little attention. An off-year election would make the legislator's records subject to closer review, which could result in better performance.

Opponents claim that having four-year terms will upset the balance of power between the legislature and the governor. North Carolinians are historically concerned about concentrating too much power in the executive branch. That is why our governor does not have a veto. In 1977, the voters approved a constitutional amendment which allows the governor and lieutenant governor to succeed themselves. Prior to 1977, a legislator had to be elected only twice to be in office for the same period as the governor. But now a legislator must be elected four times – he or she must serve eight years – to be in office the same length as the governor. Four-year terms will strengthen the legislature and restore the balance between the legislative and executive branches.

Finally, opponents fear that four-year terms are self-serving to legislators. If the people of this state must vote on the question, how can the

CON

Hunt, Jr. has been very succesful in getting programs passed by the General Assembly, but this success stems more from the "informal" strengths exercised by Hunt than from the formal powers granted to the office of governor. We have no guarantee that our future governors will have Hunt's extraordinary political ability. They could find themselves severely impaired when dealing with the entrenched legislature that would result from four-year terms. Gubernatorial succession, approved by the voters in 1977 and won by Hunt in 1980, has served a useful purpose in balancing the powers of the executive and legislative branches. But we must not approve "legislative succession," which would swing too much power back to the legislative side.

The final practical twist to the four-year-term debate is that longer terms will not accomplish what the proponents claim it will do – make it easier for men and women to serve in the General Assembly. This proposal does not raise the salary of a legislator, now about $7,000 annually. A man or woman supporting a family would be just as hard-pressed to serve for four years at such low pay as he or she would be for two years. More importantly, if the length of sessions continues to increase – the 1981 session took almost seven months – it will be just as difficult for legislators to find time to serve, no matter how long the term of office is.

Regarding campaign costs, it may be true that a four-year term would result in a legislator spending less on a re-election campaign. But if an incumbent would have to spend less in campaign costs, a challenger would have to spend more to run. A four-year incumbent would have more name identity in the home district than would a two-year incumbent. Generally speaking, the longer a legislator stays in office the more formidable opponent he or she becomes for a challenger. Hence a challenger would have to spend more against a legislator serving a four-year term. It is an unpleasant fact of political life that some talented legislators are defeated for re-election. But defeat is a risk that each person in public office assumes. No legislator, no matter how proficient he or she may be, deserves to be insulated from the voters of this state for a period of four years.

outcome be self-serving? In fact, four-year terms will serve the people of North Carolina. Four-year terms will preserve the independence of the legislative branch.

Conclusion

Historically, North Carolinians have tried to keep the General Assembly a citizen body. We have established study commissions to do legislative work between sessions and have attempted to limit the so-called "short" session in the even-numbered years to budgetary matters. But such efforts have not worked in reducing demands on legislators. If we go to a full-time legislature, we will need full-time salaries for the legislators and their staff. I want to avoid that. The cost of the General Assembly is now the third lowest among all states.

The people of North Carolina will need to decide whether they want to make some changes in the present legislative system or go to a full-time legislature. Hopefully, some changes can be made and we can continue with the citizen legislature. A four-year term is a step in that direction and should be approved by the people. □

TERMS OF OFFICE FOR STATE LEGISLATURES

Unicameral 4-Year Term (1)

Nebraska

4-Year Term House and Senate (4)*

Alabama	Maryland
Louisiana	Mississippi

4-Year Term House and 2-Year Term Senate (0)

2-Year Term House and Senate (12)

Arizona	Maine	North Carolina
Connecticut	Massachusetts	Rhode Island
Georgia	New Hampshire	South Dakota
Idaho	New York	Vermont

4-Year Term Senate and 2-Year Term House (33)

Alaska	Kentucky	Oregon
Arkansas	Michigan	Pennsylvania
California	Minnesota	South Carolina
Colorado	Missouri	Tennessee
Delaware	Montana	Texas
Florida	Nevada	Utah
Hawaii	New Jersey	Virginia
Illinois	New Mexico	Washington
Indiana	North Dakota	West Virginia
Iowa	Ohio	Wisconsin
Kansas	Oklahoma	Wyoming

SOURCE: *The Book of the States 1980-81*, Council of State Governments, 1980. The Council reports that no changes have occurred since 1980.

*Legislative and gubernatorial elections occur during the same year: 1978 and every four years thereafter for Alabama and Louisiana; 1979 and every four years thereafter for Maryland and Mississippi.

Conclusion

Encouraging qualified men and women to run for office and serve on the General Assembly can be accomplished by means other than changing the term of office to four years. Increasing salaries for legislators would do more to encourage service in the General Assembly than would the four-year term. And attracting qualified persons to stay in the legislature might well produce more frugal policies, actually saving the state more than the cost of increased salaries.

Changes less drastic than going to four-year terms can preserve the historical character of our legislature. More efficient management of legislative sessions could reduce meeting time. For instance, by adopting a system under which committee work on bills would be done before a session – as is the case in Florida and other states – the General Assembly could transact the same amount of business while requiring legislators to spend less time in Raleigh. Standing committees could be given the authority to meet between sessions to study bills and resolutions. And we could formally limit the length of a session. Several states have in their constitutions limited the length of legislative sessions to 60, 90 or 120 days. These types of measures would produce more positive results than would four-year terms.

The N.C. General Assembly is often characterized as the most powerful legislative body in America in relation to the executive branch. After all, short of judicial reprimand, the only check on our legislature comes from the voters. The loss of many of our competent legislators is a disturbing trend that concerns all of us who treasure our status as citizen legislators. But implementing four-year terms for all legislators repudiates in a wholesale manner our long-established principle of representative government. Four-year terms will do little to make good legislators better and may go a long way toward making bad legislators worse. □

Dateline Raleigh

Assessing the "New" Federalism

by Ferrel Guillory

"The question can be posed very simply. Do we want a single national government, or a federal government which combines a national government with governments of the several states?"

This quotation does not come from Ronald Reagan's 1982 State of the Union address, where he formally proposed his "new federalism." It appeared, instead, 15 years ago in *Storm Over the States*, an analysis of the changing function of state governments by Terry Sanford.[1] In his book, written during a two-year research project that followed his gubernatorial term in North Carolina (1961-65), Sanford argued for a revitalization of state governments as a fundamental step in restoring order and balance to the federal system.

During the 1950s and 1960s, the Sanford group, funded by the Ford Foundation and the Carnegie Corporation, and others such as the Joint Federal-State Advisory Commission examined a growing trend in intergovernmental relations. Since the establishment of the New Deal programs of the 1930s, the nation's problem-solving functions had increasingly become centralized in Washington. The federal government set more and more of the rules of government, requiring in many cases that the states and local governments execute these rules. In short, by the 1960s, the states and municipalities were starting to become "branch offices" for the federal government, administering and helping to pay for programs mandated from Washington.

As this pattern accelerated, a growing number of researchers continued the mission of Sanford and the others. In the largest study to date, the Advisory Commission on Intergovernmental Relations (ACIR) reported that from 1960 to 1981 the number of federal grant-in-aid programs to the states jumped fourfold, from 130 to 534.[2] By 1981, the national government had become so overextended, the ACIR study concluded, that a "fanciful form of federalism" had emerged in which the federal government set the rules and state and local governments carried them out.

Analyzing the interrelationship among the three levels of government does not date, of course, from the 1930s. The tenth amendment to the U.S. Constitution, part of the Bill of Rights, addressed the issue this way: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

In 1982, President Reagan proposed, as he put it, to "take the country back to the Constitution," by transferring responsibilities for most welfare and social services programs from the federal government to the states. But while the Constitution enumerates the powers of Congress, it does not say with precision which government programs should be federal, which state, and which local. Such arrangements stem from the interpretation of the

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"States are laboratories for testing ideas..."

— Terry Sanford

tenth amendment and from congressional debates and court rulings over what should be proper federal functions.

Coming on the heels of his first round of federal budget cuts, President Reagan's new federalism has stimulated primarily a debate over the fiscal nature of the proposals. Most states already faced fiscal difficulties even before the federal budget cuts exacerbated their financial pressures. Consequently, the type of question most often asked about the President's proposed federalism concerns the cost of a specific program. For example: Can the states afford to absorb the cost of the Aid to Families with Dependent Children and food stamp programs even if the federal government takes over Medicaid?

While such questions demand close attention, they represent primarily a reaction to the President's proposals. They do not go to the root of the problem, which might be framed like this: What criteria should determine which level of government administers which government program? Generating such criteria independently from the current wave of Reagan proposals not only can provide some thoughtful means for reacting to the 1982 brand of federalism but also can suggest some lasting basis for analysis.

Establishing Criteria for Federalism

Applying the tenth amendment of the U.S. Constitution to today's governmental structures requires policymakers to assess at least three things: 1) the capabilities of each level of government; 2) the nature of the different tax bases of each level of government; and 3) the importance of overriding national values and the best level of government for protecting these values. These three standards of measurement, viewed as separate yet closely intertwined, provide a backdrop for understanding any federalism proposal.

The relative capabilities of these three levels of government have shifted in recent years. Since the 1930s, government analysts have increasingly gauged the states and their local divisions as less capable than the federal government of performing complex functions. Hence, rules for administering services tended to accumulate in Washington rather than in state capitals.

In *Storm Over the States*, Sanford pointed out the weakness in this assumption. "To abandon the states, to seek answers to social questions without them, is to misunderstand our system and undermine it. To build them up, to involve them to their utmost capacity, is to strengthen our system." States conduct essential government business in building highways, operating universities, and administering civil and criminal law, Sanford explained. And citizens depend on local governments for the most fundamental, eyeball-to-eyeball services: police and fire protection, libraries, water and sewer, building inspections, and neighborhood preservation through zoning. Indeed, as Sanford put it, states are laboratories for testing ideas; they stand "in the warp and woof of our national political fabric."

Recent assessments of the states' capabilities reinforce the Sanford judgment. The ACIR, the National Governors' Association, and others contend that legislative reapportionment, the growth

in state bureaucracies, the expansion of state tax bases, and improved administrative structures have upgraded the skills and sophistication of state governments. North Carolina's Gov. James B. Hunt, Jr. agrees that the states have developed a new level of self-assurance. "A lot of people in this city [Washington] don't know what's going on in the states," Hunt said recently, testifying before the U.S. Senate Committee on Labor and Human Resources. "Give the states a chance to run these programs."

Political leaders from Jim Hunt to Ronald Reagan want the states to direct more government programs. But a wide range of opinions exist on which programs the states should actually run. A careful analysis of the different tax bases is a critical step in sorting out the different functions that each level of government should perform. The federal government is a superior revenue collector, and its income tax, for all its faults, is a flexible, progressive tax that expands as the nation's economy grows. The states, on the other hand, depend

The Debate on Federalism: A Set of Principles

by Ran Coble

Public interest in the concept of federalism – the proper roles of the federal, state, and local governments – blows hot and cold. It was a hot topic in the early days of the Republic in the 1780s, in the Reconstruction decade following the Civil War, in the Roosevelt Administration's response to the Great Depression of the 1930s, and now in the Reagan Administration's "new federalism."

President Reagan has adopted federalism as a vehicle to reduce federal spending and to shift the balance of power and program responsibility from the federal level back toward the state and local governments. In the current federalism debate, President Reagan and state officials are each trying to unload their most expensive programs on the other. North Carolina officials, for example, advocate placing all of the ever-increasing Medicaid costs in the federal budget while the President contends that the states should take total fiscal responsibility for the Aid to Families with Dependent Children and food stamp programs. Conspicuously absent from this debate is a set of principles that can guide government officials in allocating responsibilities among the three levels of government.

Principles That Argue in Favor of a Program Being Handled By the Federal Government

Principle 1. Is this a program which knows no borders and thus cannot be provided in the varying amounts the states and counties would offer? This principle has consistently dictated that defense be a federal program because the United States cannot take the chance that defense expenditures – and protections – might stop, for example, at the South Carolina line. Environmental protection also would seem to be more properly a federal concern since the air and water in Tennessee today are the air and water in North Carolina tomorrow.

Principle 2. Is the program one where national uniformity is important or where some national minimum of services is needed? The Advisory Commission on Intergovernmental Relations and the National Governors' Association reflect this principle in arguing that welfare programs should rest at the federal level in order to assure a minimum guaranteed income and to retard the practice of interstate flight toward the highest welfare benefits.

Principle 3. Is the program one of protection of citizens' rights that is based in the United States Constitution? This principle serves to protect certain citizen rights, regardless of a person's state or county of residence, through the jurisdiction of the federal courts. Minority races, women, the handicapped, and others rely on this principle in arguing for federal protections of their rights.

Principle 4. Is the program such a costly one that the ability to raise revenue is a primary consideration? Since the federal income tax is so much more productive and flexible than state and local sources of revenue, many programs automatically get elevated to national stature because that is the only level of government that can pay for them. National health insurance seems to be one such proposal.

Principles That Argue in Favor of a Program Being Handled by the State Governments

Principle 5. Is the program one where the idea of using the states as laboratories for experimentation is especially applicable? This

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much less on the income tax and must rely extensively on sales and other excise taxes. And municipalities rely heavily on the property tax.

After a policymaker determines which programs are best handled at which level of government, he or she must then determine if that level of government has the revenue capability to perform that task. For example, virtually every thoughtful analyst agrees the federal government must provide for the national defense. Two aspects of the federal revenue system allow the federal government to perform this function. First, unlike the state budgets, the federal budget can run a deficit; and second, the progressive income tax, the primary base of the federal revenue system, tends to grow as the economy grows.

If the federal tax structure makes national defense possible, then the same tax system should allow the federal government to support all programs demanding steadily increasing revenues and national uniformity. But here lies a major point of contention. Agreeing that a certain governmental principle is grounded in the fact that some programs are so new that part of the legislative debate concerns whether or how well the program might work. No-fault automobile insurance and state lotteries, for example, were tested first at the state level.

Principle 6. Is the program particularly susceptible to regional differences or conditions? For example, economic development programs seem to be better suited for governors to pursue than presidents because a governor is more likely to be sensitive to future needs of a state's changing industrial mix (i.e., among tobacco, textiles, furniture, and microelectronics). Unemployment insurance is another program where federal responsibilities might shift to the state since regional and state employment rates and conditions vary so much.

Principle 7. Would the program be too expensive to run if it were offered by all local units? In other words, do economies of scale argue against 100 universities or 100 rural health clinics in North Carolina? In the same manner, the number of mentally retarded citizens in a county may be too small to justify having county-by-county centers, so North Carolina has opted for regional programs and a few state institutions.

Principle 8. Does the program affect basic rights or property such that it needs to be close to the people but involves regulatory functions too big for counties to handle? Coastal area management is a good example. Though strong local input is needed for this program, the primary responsibility should lie at the state level for financial reasons and for guaranteeing uniform standards along the entire coastline.

Principles That Argue in Favor of a Program Being Handled by Local Governments

Principle 9. Is the program one which is particularly susceptible to different community standards or priorities? Law enforcement and libraries are two examples of programs that should be based with the counties under this principle.

Principle 10. Is the program one where face-to-face contact or administration is necessary? Manpower training is an example of just such a program that has long been paid for and administered at federal and state levels but perhaps is best suited to local government — simply because counties are most familiar with the industry and the skills of the people in the area.

Principle 11. Since the counties have been saddled with the worst tax base (the property tax), should they be given programs that are either the most popular or which are likely to receive the most public scrutiny? Water and sewer, fire protection, and public health programs fall into this category, and, for the most part, presently reside at the county level.

Conclusion

A program may shift from one level of government to another. Transportation is an excellent example of this federalist shift of purpose and allocation of responsibilities. In order to create a national system of railroads, interstate highways, and air travel, the federal government had the primary role in the early years of each of these transportation systems. Now, however, these programs either have been deregulated and shifted from the public to the private sector or shifted from the federal government to the states.

One may disagree with some of the principles or examples above. Without some set of guideposts, however, the latest debate in federalism will be governed solely by program costs and by what one level of government wants to unload on the other. The philosophical and economic dimensions of previous federalism debates, from the 1780s to the 1930s, can serve as a basis for establishing lasting principles for today's "new" federalism.□

Photo by Paul Cooper

North Carolina social worker reviews application form for Aid to Families with Dependent Children.

function – such as national defense – demands "national uniformity" requires a political and fiscal commitment to the overriding national value represented by that governmental function. While many contest the level of the defense budget, few argue over its location at the federal level. But arguments are intense indeed over more controversial functions.

Author and political analyst Jack Bass contends in his book *Unlikely Heroes*, that from the civil rights movement in the South emerged "a concept of federalism that finally recognized the full role of the federal courts as the primary guardians of constitutional rights." Bass, who covered the civil rights movement as a reporter and later co-authored a major study called *The Transformation of Southern Politics*, alludes in this single sentence to a complex array of governmental functions – from school busing to equal housing opportunity – that have to be sorted out in any system of federalism. (See box on pages 22-23 for an outline of what types of functions might be handled by each level of government.)

The Reagan Proposal

After establishing criteria for rearranging the federal system, three different, though related, means might be employed: 1) block grants in which the federal government gives states money in broad categories; 2) "turnbacks" of tax sources from one government to another in which, for example, the federal government cuts its gasoline tax so that states can raise theirs; and 3) a sorting out and exchange of actual programs.

In undertaking his new federalism, Reagan has chosen a combination of all three methods. First, he has proposed six new block grants for fiscal 1983, which follow the nine already established in 1982 (see "Federal Budget Cuts," *N.C. Insight*, Vol. IV, No. 4). Second, the President's plan provides for a $28 billion trust fund composed of certain excise taxes, including a portion of the gasoline tax and the oil windfall profits tax; the trust fund and the taxes are to be phased out by 1991, when states could enact those taxes for themselves (see box on page 25 for an analysis of this shift in tax structures). And third, at the core of the Reagan plan, is the *"big swap"* between the federal and state governments.

In his State of the Union message, Reagan proposed that the federal government take over Medicaid completely; in return, states would assume full responsibility for Aid to Families with Dependent Children (AFDC) and food stamps. In addition, the federal government would transfer 43 social programs, consisting of 124 grants-in-aid, to the states. The White House later modified the swap and suggested that states run medical, food, and income programs for the younger poor, while the federal government assumes responsibility for the aged and severely disabled. Whatever the details, the fulcrum upon which federalism turns finds expression in one word: welfare. Is it a state or a national responsibility?

Reagan contends that welfare belongs mostly to state and local governments. "The problems of a welfare client in New York City are far different from those from out in some small town in the rural areas of the Middle West," said the President. "I believe that there is much more chance of waste and of fraud in trying to run it from the national level than there is in running it at the local level."

But, among proponents of "federalism," Reagan stands almost alone in suggesting that states run welfare. The ACIR and National Governors' Association contend that only through federal administration can the nation achieve an equitable and uniform level of benefits in assistance for basic human needs. The President's proposal to shift AFDC and food stamps to the states has threatened the potential for wide acceptance of his overall plan.

By mid-April, negotiations between the Reagan administration and state and local government officials had bogged down with little movement toward a package agreeable to all sides. On April 7, *The New York Times* reported that the administration had suspended efforts to submit legislation to Congress enabling the federal government to shift responsibilities for AFDC and food stamps to the states in exchange for taking over all Medicaid costs. The White House denied *The Times* story, although officials acknowledged that time for legislation was running short. On April 15, *The Washington Post* reported that the administration, in an effort to keep its "new federalism" alive, had offered to retain food stamps as a federal responsibility but intended to pursue the "turnback" of

New Federalism: Tax Base Falls Short

by Jim Newlin

Since the 1930s, the federal government has redistributed income from those citizens able to maintain living standards above minimum levels to those unable to support themselves – the disabled, elderly, unemployed, and children. The basic funding mechanism for this redistribution has been the progressive income tax, which is based on an "ability to pay" principle in an effort to equalize the relative sacrifices taxpayers must make.

The decision of the federal government to use the personal and corporate income taxes to fund the majority share of federal expenditures has effectively preempted that revenue source for the federal government. While most states and a few local government units use the income tax as a major revenue source, the rates are kept quite low because the federal government extracts its own high percentage. The federal preemption of the income tax is not necessarily unfair, as the federal government uses income taxes to finance income redistribution programs and its other major function, national defense.

Reagan's "new federalism" plan would change this arrangement drastically. The federal government would turn back a large proportion of cash and in-kind income redistribution programs to the state and local government units (AFDC, food stamps, community development, CETA, etc.)

Initially, the federal government would share revenues with the states through a federal "trust fund." However, the revenues to be shared are not the income taxes that distribute the tax burden of funding income redistribution programs. Instead, Reagan proposes to share flat-rate or small percentage excise taxes that apply to specific users (telephone, alcohol, tobacco, and motor fuel). None of these taxes is as responsive to economic growth and inflation as is the income tax; in fact, some of the taxes are declining.

In 1991, the trust fund would expire, and the federal government would then turn these flat-rate, user-oriented tax bases back to the states to decide whether to continue their use. One of the major revenue-producing taxes to be turned back is the oil windfall profits tax, which could only be used by a handful of states.

The tax sources proposed for the states depend on the purchase of products in which society is trying to reduce consumption either for foreign policy (motor fuel) or health reasons (alcohol, tobacco). The states and local governments would still be unable to tap income redistribution programs because the federal government would continue to preempt income taxes, in spite of recent tax cuts.

This proposal would have an adverse impact on two levels of society: the needy who require direct assistance, and all people in lower-income or economically depressed states or regions. Because of the disparity in the relative wealth of the states, Congress has recognized the need for national responsibility in financing and setting of standards for minimum income security for the poor. These standards would be endangered by forcing the states to fund the programs from flat-rate revenue sources.

While Reagan seems to call for the continuation of some minimum standards for income redistribution programs, the abilities of the states to fund programs with current or proposed "turnback" revenue sources vary widely. Consequently, unless taxpayers in low-income states pay higher taxes than do those taxpayers in high-income states, lower-income citizens in the less wealthy states will suffer disproportionately. Economic differences among the states would then be exacerbated.

If the inflation rate continues to fall and the national economy recovers, the real income of people able to participate in the work force will increase. But under the Reagan proposals the states would still have to rely on flat-rate, no-growth revenue sources to fund income redistribution programs. Consequently, the income gaps between wage earners and those unable to work will increase at a rate equal to overall income growth. The truly needy will become worse off relative to the rest of the population.

Finally, the Reagan proposals would require the states to finance most economic development programs primarily from flat-rate, often regressive taxes, from either traditional sources such as property taxes or proposed sources such as telephone excise taxes. But those states and regions most in need of economic development can least afford to fund the necessities for economic growth (job training, education, transportation, water and sewer). The federal government, through the Reagan tax and program reorganization proposal, would in effect be abandoning its traditional national commitment to persons of all incomes in low-income regions and states. □

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more than 40 social programs to states. In any case, the President's federalism plan, just three months after he proposed it, appears to be in political trouble, particularly the big swap. Yet, the debate over federalism continues.

Alternative proposals also seek to balance the federal system but without jeopardizing the progress the nation has made in ensuring that no one goes without a basic minimum subsistence. The Advisory Commission on Intergovernmental Relations, a bi-partisan panel created by Congress whose members include N.C. Congressman L.H. Fountain, has produced the most detailed alternative. The ACIR, in an 11-volume study released in 1980 and 1981, proposed that the federal government assume full financial responsibility for welfare, income security, employment security, nutrition, and health and housing for the poor.[3] It proposed that state and local governments assume from the federal government such programs as aid to education, libraries, fire protection, police and corrections, health and hospitals, natural resources, and airports.

At its February meeting, the National Governors' Association supported the federal assumption of Medicaid but voted to negotiate other elements of the swap. Gov. Hunt's position roughly parallels that of the governors' association. He favors federal assumption of AFDC, food stamps, and Medicaid and supports state takeover of law enforcement, transportation, and most federal aid to education.

In particular, Hunt has expressed concern that the President's proposed swap would not be an even trade financially. The N.C. Office of State Budget and Management has found that maintaining AFDC and food stamps at current levels after the swap would cost North Carolina $193 million more than the state would save by the shift of Medicaid to the federal government. And in 1991, when the federal trust fund ends, the program swap would cost North Carolina about $1 billion a year, according to Hunt.

Conclusion

When he wrote his book on the states, Sanford did not advocate an actual exchange of programs but opted instead for block grants and revenue turnbacks. He called for the establishment of a national policy that would ensure that all federal programs would be designed to enhance, rather than hurt, state governments, and he envisioned a role for states as a coordinator of programs for local government. The federal system is not a "layer cake" in which each level of government acts in its own sphere, Sanford contended. Federalism is more intermingling like a marble cake, a system of joint responsibilities and partnerships in solving problems.

"The debate should not be defined in terms of state government versus national government," wrote Sanford 15 years ago. "The citizens constitute both and ultimately the citizens must control both. The question is not whether national government will triumph, or state government will triumph; but whether the citizen will triumph in protecting his liberties while broadening his opportunities."

The Reagan advisors do not seem to have read Sanford's book, or perhaps they simply discarded his advice. Reagan's plan envisions a shift of some three-fourths of current federal domestic responsibilities to state and local governments. And this new federalism rides on the back of the President's continuing efforts to cut deeply into federal domestic programs – AFDC by $1.1 billion, food stamps by $2.2 billion, and the 43 other social programs by a total of $5.2 billion.

Because of their high cost and controversial nature, such programs as AFDC and food stamps are the least likely to be assumed by the states. Since the states have neither the tax-power nor the historical commitment to operating welfare programs, the Reagan plan almost assuredly will mean a shrinking of the nation's assistance to its least fortunate citizens. In combination with his domestic budget cuts, Reagan's brand of federalism looks suspiciously like an attempt to dismantle substantially the programs of aid to the needy erected by the New Deal and Great Society. It is right to propose a swap, but Reagan has proposed the wrong one.

James Madison described the hybrid government established by the Constitution as "neither wholly federal nor wholly national." If it is true that the founding fathers could not have imagined a national government managing 500 grant-in-aid programs, it is also true that certain "federalism" issues were settled at Appomattox and in the Great Depression. This was not to be a nation in which states were sovereign to ignore human rights and human poverty.□

FOOTNOTES

[1] *Storm Over the States*, Terry Sanford, McGraw-Hill, 1967, p. 8.

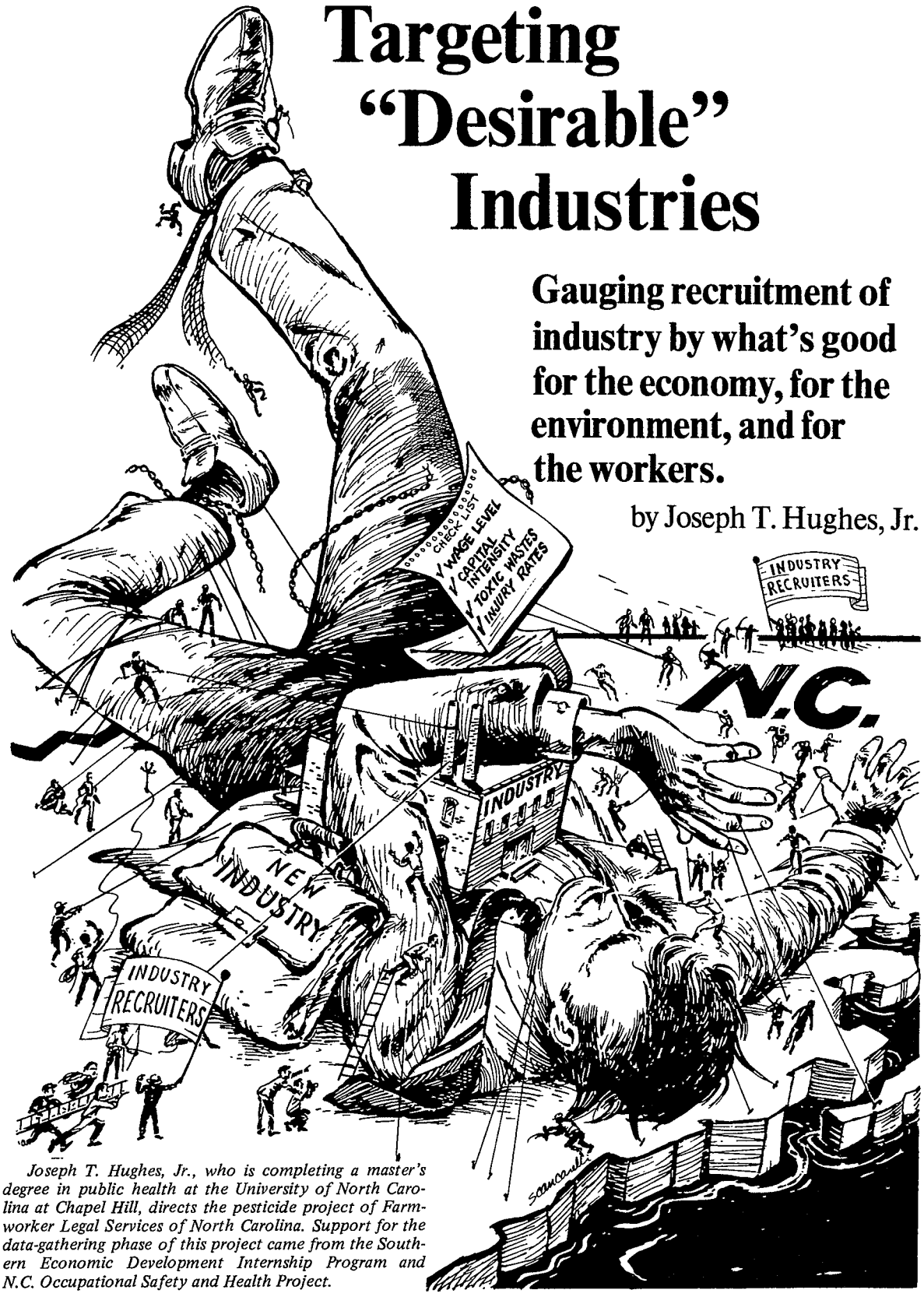
[2] *A Catalogue of Federal Grant-In-Aid Programs to State and Local Governments: Grants Funded FY 1981*, Advisory Commission on Intergovernmental Relations, February 1982.

[3] *The Federal Role in the Federal System: The Dynamics of Growth*, Advisory Commission on Intergovernmental Relations, eleven volumes, 1980-1981. In *An Agenda for American Federalism: Restoring Confidence and Competence*, Vol. X, released in June 1981, the ACIR outlines its version of federalism.

Targeting "Desirable" Industries

Gauging recruitment of industry by what's good for the economy, for the environment, and for the workers.

by Joseph T. Hughes, Jr.



Joseph T. Hughes, Jr., who is completing a master's degree in public health at the University of North Carolina at Chapel Hill, directs the pesticide project of Farmworker Legal Services of North Carolina. *Support for the data-gathering phase of this project came from the Southern Economic Development Internship Program and N.C. Occupational Safety and Health Project.*

Throughout the 1970s, every gubernatorial administration in North Carolina made industrial recruitment a major priority. Indeed, some $6.6 billion in new industry came to the state during the decade, two-thirds of it since 1977.[1] The focus in this recruitment campaign was to raise the state's average industrial wage and per capita income and to "balance" industrial growth throughout the state.

Historically, North Carolina has ranked very low in wages and income in national indices, primarily because of the large number of farms and the concentration of the lower-paying textile, apparel, and furniture industries. To improve the economic condition of the state, administrations during the 1970s searched for more capital-intensive, higher-paying industry. They used whatever lures were available to land coveted companies in industrial sectors like electronics, machinery, and transportation. The highly-publicized campaign of Gov. James B. Hunt, Jr. to attract the microelectronics industry to the state perhaps best illustrates this trend.[2]

As industry hunters rushed to broaden the state's industry base and improve wages and incomes, other policymakers began to consider the effects that a large influx of new industry would have on the state's environment. In 1971, the N.C. General Assembly passed a law that directed the Department of Conservation and Development to "conduct an evaluation...of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina."[3] (In 1977, following reorganization of the executive branch, industrial recruitment functions shifted to the Department of Commerce and this statute was recodified and changed to read: "The Department of Commerce shall conduct an evaluation in conjunction with the Department of Natural Resources and Community Development...") In 1980, the Governor's office established the Toxic Substances Project within the N.C. Board of Science and Technology. And in 1981, the General Assembly passed the Waste Management Act,[4] one of Gov. Hunt's top legislative priorities for the session.

These actions indicate a growing awareness of the role of environmental concerns in the industrial recruitment matrix, but they have not been strong enough to influence in a major way the character of the state's industrial recruitment policy. "No in-depth environmental evaluation [of new industry] is conducted by the Department of Commerce," reported the Legislative Research Commission's Study Committee on the Management of Waste Disposal, Hazardous and Toxic Substances, Air Quality, Noise Pollution, and Pesticides in 1980.[5] The report went on to say, "The Department of Commerce recommended that the current statute [143B-437] be repealed or clarified."[6] A review of the Department of Commerce (DoC) annual reports on new industry for the past decade reveals no evaluation of the issues of environmental soundness or worker health. But the functions of the Department, as delineated in state law, include "the expansion and recruitment of environmentally sound industry" and "labor force development."[7]

Department of Commerce officials state that the Department does exhibit concern for environmental issues. They point to a two-person staff that works entirely on environmental concerns of new companies. These two persons explain various environmental standards to potential new companies and work to fit an industry's needs into the best possible state location (i.e., if a company is a major water discharger, DoC urges it to avoid river areas with pollution problems). As an overall policy, Department officials say that regulatory methods – permits, legal standards, etc. – are the best means of considering environmental questions.

The Department's explanation for how it considers environmental issues in industrial recruitment raises questions of major importance. DoC officials say, for example, that its annual reports do not address environmental issues because companies have to abide by existing environmental permit requirements, which are enforced primarily by the Department of Natural Resources and Community Development. Relying on a permit system that goes into effect only *after* new industry arrive represents a limited view of DoC responsibility for the environmental impact of new industry. Secondly, how can a two-person staff adequately cope with the complex range of environmental issues for the more than 500 new companies that approach North Carolina each year regarding possible location in the state. A staff of this size in a department with an $18 million annual budget – $2.7 million of which is allocated for two divisions primarily responsible for industrial recruitment (Industrial Development and International Development) – represents a modest commitment indeed to environmental concerns. Finally, DoC officials acknowledge that the Department incorporates virtually no efforts concerning worker health issues into its industrial recruitment program. All of these factors indicate a major gap in the state's industrial recruitment strategy: *Criteria for seeking new industry do not include environmental factors to a significant degree and ignore worker health factors entirely.*

Considering economic criteria exclusively in industrial recruitment efforts is a natural inclination, for the historical character of the state

"No in-depth environmental evaluation is conducted by the Department of Commerce."

demands attention to improving the low average industrial wage, the low per capita income, and the industrial mix. But the impact of new industry on the environment and on workers' health must also concern policy planners, for the state must retain a commitment to protecting its human and natural resources. While industrial recruiters and environmentalists often view their goals as incompatible, some types of industry offer great economic rewards with minimal environmental and health threats. These industries need to be identified and encouraged to come to the state.

This article represents an initial effort to incorporate economic *and* environmental/health factors in developing an overall industrial "desirability" index. Because little attention has been given to environmental issues and none at all to worker health issues in recruiting new industry, this study assigns equal weight to economic and to environmental/health factors. This method serves to emphasize the point that environmental and worker health concerns can be incorporated as more than just a mitigating factor for an otherwise attractive type of company. They can be built into the recruitment criteria from the outset. Indeed, as this study shows, some types of industry are attractive both for economic and for environmental and health reasons.

This study examines the 20 national industrial sectors, as established by the U.S. Department of Labor, in order to develop rankings by industry sector for "economic desirability" and for "environmental/health desirability." Combined, these two rankings serve as the basis for locating each of the industrial sectors into an overall "industry desirability" grouping. This ranking process incorporates primarily national data for all the possible types of industry. The study also ranks by industry sector the new companies recruited to the state during the 1977-80 period for number of new jobs and for amount of new dollar investment.

Table 1 summarizes the study data (see pages 30-31. The industry sectors are grouped in the far left column into four categories: very desirable, desirable, moderately desirable, and less desirable. Moving from left to right, the chart is divided into three major sections: Section A, the data and rankings on industry recruited to North Carolina (1977-80); Section B, the data and rankings on economic factors and the summary ranking for economic desirability; and Section C, the rankings for environmental and health factors and the summary ranking for environmental/health desirability. The last column with overall industry desirability scores completes the chart. The sections of the article below and the footnotes to Table 1 explain the methodologies and sources used for developing each part of the table. They also serve as the references for Tables 2 through 6, which are incorporated into the article text.

Table 1 provides the basis for comparison of economic and environmental/health desirability to new industry recruited to North Carolina from 1977-80. And the very structure of the table indicates which industry sectors have the most overall desirability, as measured in this study.

New Industry to North Carolina, 1977-80

This study analyzes new industry recruited to North Carolina during the 1977-80 period. Data were collected on all new companies listed as coming to the state during this period by the N.C. Department of Commerce (DoC).[8] For the new plant listings that included specific information on number of new jobs and amount of expected new investment, the data were grouped and analyzed according to the Standard Industrial Classification (SIC) codes of the U.S. Department of Labor.

This study includes data only on new companies; it does not include expansion of industry already within the state, such as a new Burlington Industries plant. This is an important distinction to understand. Companies already located in the state might consider state industrial recruitment strategies in deciding whether to expand their investment and number of jobs in North Carolina. But making such an assessment is beyond the scope of this analysis. This study concentrates on the clear and self-evident relationship between the state's recruitment criteria and the influx of new companies to the state.

Examining even the "new industry" data published by DoC has some built-in statistical problems. The Department of Commerce compiles data on new industry by the year the new plant is announced, not by the year in which it begins operations. Consequently, the number of jobs and amount of investment listed by DoC might change by the time the plant actually begins operations.

Other statistical issues result from the choice of

TABLE 1. Comparative Analysis: Industry Recruit

	Industry Group (SIC Code)[1]	A. New Industry to N.C. (1977-1980)[2]							
		No. of Jobs	Percent of Total	Rank	Amount of Investment (in $1,000)	Percent of Total	Rank	Capital Intensity (dollars per job)[3]	Rank
Very Desirable	Printing (27)	445	1%	17	65,625	3%	9	$147,471	2
Desirable	Transportation (37)	4,875	11%	3	216,750	10%	3	44,460	10
	Machinery (35)	8,450	19%	1	744,950	33%	1	88,150	3
	Petroleum (29)	183	0%	19	61,000	3%	11	333,333	1
	Tobacco (21)	2,300	5%	9	100,075	4%	8	43,510	11
	Electronics (36)	6,020	14%	2	190,200	8%	4	31,590	13
	Measuring Instru. (38)	1,105	3%	10	18,500	1%	15	16,742	18
	Food (20)	4,045	9%	4	246,950	11%	2	61,050	5
Moderately Desirable	Stone/Clay/Glass (32)	687	2%	16	33,300	1%	14	48,471	6
	Apparel (23)	834	2%	13	9,450	0%	18	11,330	20
	Primary Metals (33)	595	1%	15	51,000	2%	12	85,714	4
	Chemicals (28)	2,358	5%	7	63,450	3%	10	27,000	14
	Textiles (22)	3,704	8%	5	123,325	5%	6	33,290	12
	Fabricating Metals (34)	3,056	7%	6	137,050	6%	5	44,840	9
	Furniture (25)	795	2%	14	18,000	1%	16	22,641	16
	Misc. Mfg. (39)	30	0%	20	700	0%	20	23,333	15
	Lumber/Wood (24)	962	2%	11	45,250	2%	13	47,037	7
Less Desirable	Paper/Pulp (26)	842	2%	12	17,700	1%	17	21,021	17
	Rubber/Plastic (30)	2,220	5%	8	100,700	4%	7	45,360	8
	Leather (31)	200	0%	18	2,500	0%	19	12,500	19
	Totals[11]	43,706	100%		$2,246,475	100%			

FOOTNOTES TO TABLE

[1]The U.S.Department of Commerce divides all manufacturing industries into 20 Standard Industrial Classifications (SIC) which are listed here in two-digit SIC codes. In some studies, each code can be broken down to a four-digit number for detailed analysis of each industry group; this was not possible for all the economic and health factors of this study. If future studies of this type could get data at the four-digit level, the results would provide helpful distinctions of different sections of the same industry group. The industry groups are listed from most to least "desirable," according to the ranking in the last column.

[2]Source: *New and Proposed Industries Announced for North Carolina,* an annual listing by the Industrial Development Division, N.C. Department of Commerce, categorized according to two-digit SIC codes. By study definition, data includes only new industry which reported the number of jobs created and the amount of new investment.

[3]Total dollar investment by industry group divided by the number of jobs created results in an index for capital intensity – dollars invested per job created.

[4]Source: *Survey of Manufacturing 1979,* Bureau of Labor Statistics, U.S. Department of Labor. Because new industries come to the state from various parts of the country and because wage levels of the jobs resulting from this new North Carolina industry cannot be determined (some plants are still under construction), national wage averages were used.

[5]The Economic Desirability Ranking was determined by adding the capital intensity ranking and the average hourly wage ranking for each industry group. The industry with the lowest sum (petroleum) ranked first; the industry with the highest sum (apparel) ranked last. Some industry groups had the same score and hence got the same ranking. For example, both food and fabricating metals had a score of 17, tying them for ranking number 7. Where ties occurred, no sector got the subsequent rank; i.e., no sector ranked number 8.

[6]Source: *Projected Input-Output Tables of Economic Growth Project: Volume 1,* Bureau of Labor Statistics, U.S. Department of Labor, February, 1980. For each SIC code, this report calculates direct requirements of chemical use per dollar of resulting gross domestic output. This measurement describes the relative importance of

o North Carolina and Industry Desirability Rankings

B. Economic Factors			C. Environmental/Health Factors					
J.S erage urly age[4]	Rank	Economic Desirability Ranking[5]	Lowest Intensity of Chemical Use (Rank)[6]	Lowest Hazardous Waste Generation (Rank)[7]	Lowest Occupational Illness and Injury Incidence (Rank)[8]	Lowest Occupational Illness and Injury Severity (Rank)[8]	Environmental/ Health Desirability Ranking [9]	Industry Desirability Score[10]
6.94	7	4	12	8	3	3	4	8.0
8.53	3	5	2	15	9	12	6	11.0
7.32	5	3	3	12	13	11	7 (tie)	11.5
9.36	1	1	16	18	5	6	11	12.0
6.67	10	10 (tie)	5	2	6	7	2	12.5
6.32	11	14	7	14	7	4	5	19.0
6.17	13	16	13	7	2	2	3	19.0
6.27	12	7 (tie)	9	1	19	19	12	19.5
5.85	9	6	15	4	14	18	14 (tie)	20.5
4.23	19	20	1	3	1	1	1	21.0
8.98	2	2	11	19	15	16	19	21.0
7.60	4	9	20	20	4	5	13	22.0
4.66	18	15	14	9	8	8	7 (tie)	23.5
5.85	8	7 (tie)	6	17	18	15	16 (tie)	24.0
5.06	16	17 (tie)	4	5	17	13	7 (tie)	26.0
5.03	17	17 (tie)	8	11	11	9	7 (tie)	26.0
5.07	14	10 (tie)	10	6	20	20	16 (tie)	27.0
7.13	6	12 (tie)	17	16	12	14	18	30.5
5.97	15	12 (tie)	19	10	16	17	20	32.5
4.22	20	19	18	13	10	10	14 (tie)	33.5

chemicals in producing the final product – i.e., the intensity of chemical use – not the gross amount of usage. The number one industry ranking indicates the *least* intensity of chemicals used.

[7]Source: *Assessment of Hazardous Waste Generation and Commercial Hazardous Waste Management Capacity,* U.S. Environmental Protection Agency (EPA), December, 1980. EPA collected much of this data in implementing the Resource Conservation and Recovery Act of 1976. This report estimates that 60 percent of total off-site toxic waste volume is generated by five industry groups: fabricated metals (17%), primary metals (14%), chemicals (12%), electronics (9%), and petroleum (8%). The number one ranking indicates the *least* amount of hazardous wastes generated.

[8]Source: *Occupational Illnesses and Injuries in the United States by Industry,* Bureau of Labor Statistics, U.S. Department of Labor, August, 1980. (Data based on industry surveys conducted in 1978.) Number one rankings indicate the *lowest* incidence and *lowest* severity of work-related illnesses and injuries.

[9]The Environmental/Health Desirability Ranking was determined by adding the rankings of the four environmental/health factors – intensity of chemical use, hazardous waste generation, and occupational illness and injury incidence and severity – for each group. The industry with the lowest sum (apparel) ranked first; the industry with the highest sum (rubber/plastic) ranked last. As with the economic desirability ranking, ties occurred. The procedure explained in footnote 5 was also followed here.

[10]The overall Industry Desirability Ranking was determined by adding the economic and health desirability rankings. This method gives equal weight to economic and to environmental/health factors. Where ties occurred in the economic or the environmental/health rankings, the number used in the overall score was determined in the following manner: The positions affected by the tie were first added and then divided by the number of sectors tying. For example, four sectors tied for ranking 7 in environmental/health desirability. Hence, those sectors covered rankings 7, 8, 9, and 10. Totaling these four numbers and dividing by four yields a score of 8.5, which was used in computing the overall desirability score for these four sectors. This method avoided tilting a score in the more desirable direction because of ties.

[11]The percentage totals do not add to 100 because of rounding, all done to the nearest whole percent.

the primary data source for new industry. This study relied on DoC listings of individual plant openings (see footnote 8) rather than DoC aggregate data by industry sector, which is published in the DoC annual reports.[9] The aggregate data has two severe limitations: 1) it includes new plants which were announced but later canceled; and 2) it precludes the summarizing of individual company data into an aggregate data base from a research perspective independent of the Department of Commerce viewpoint.

Working from the individual company sources, this study omits data on new plants listed by the DoC but later canceled, such as the proposed $400 million oil refinery in Brunswick County. Also, the study does not include new plants for which the DoC does not provide data on jobs and investment; in almost all cases, these were small operations in lower-paying industries like textiles and apparel. Consequently, the industry data included in this study are primarily large-plant investments. The study sample accounted for two-thirds of the new jobs recruited during the 1977-80 period and almost half of the total new investment ($2.2 of the $4.8 billion), yet it included only 10 percent of the total plant openings.

Section A of Table 1 shows the number of new jobs and amount of new investment recruited from 1977-80 by industrial sector. This section of the table also ranks the sectors according to the most new jobs and investment. Since the data base omits numerous small plant openings in labor-intensive sectors such as textiles and apparel, these rankings might somewhat understate the positions of some sectors and overstate the positions of others. Due to the statistical problems outlined above, the DoC aggregate source is not very helpful in testing the representativeness of this study sample; but, *it is the best publicly-available source.* A comparison of the study sample with the aggregate DoC data for 1980 produced very similar rankings.

Using the study sample data for new industry recruited from 1977-80, rankings for number of new jobs and amount of new investment were compiled. Table 2 below shows the top five sectors in jobs and investment:

Table 2. Top Five Sectors: Jobs and Investment

Sector	% of New Jobs	Sector	% of New Investment
Machinery	19	Machinery	33
Electronics	14	Food	11
Transportation	11	Transportation	10
Food	9	Electronics	8
Textiles	8	Fabricating Metals	6

Machinery easily ranked first in both areas, accounting for almost one of every five new jobs produced and a whopping one-third of new investment in North Carolina. Electronics, which includes the intensely recruited microelectronics sector, ranked second in new jobs (14 percent) and fourth in new investment (8 percent). Traditional North Carolina industry leaders such as textiles and cigarette manufacturing also ranked high in new jobs and in new investment as did more recently recruited sectors like transportation, chemicals, and fabricated metals.

Economic Factors

Because of the state's historical reliance on low-paying, labor-intensive industries, wage level and degree of capital intensity are the two most important measurements of economic attractiveness for most industrial recruiters in North Carolina. Consequently, these are the two economic criteria used in this study to determine an economic desirability ranking for the 20 industry sectors.

Section B of Table 1 includes a capital-intensity measurement by industry sector (amount of new investment divided by number of new jobs); this computation serves as the basis for the ranking for capital intensity. Similarly, the average hourly wage for each sector, using national data, is recorded in Section B of Table 1; this listing serves as the basis for the wage-level rankings. The capital-intensity and wage level rankings were combined to determine the overall economic desirability ranking (see the last column in Section B). Table 3 below shows the top five sectors for capital intensity, wage level, and economic desirabiltity:

Table 3. Top Five Sectors: Capital Intensity, Wage Level and Economic Desirability

Capital Intensity	Wage Level	Economic Desirability
Petroleum	Petroleum	Petroleum
Printing	Primary Metals	Primary Metals
Machinery	Transportation	Machinery
Primary Metals	Chemicals	Printing
Food	Machinery	Transportation

From 1977 to 1980, the state successfully recruited a great deal of industry which is both capital intensive and high paying. Fifty-seven percent of the new jobs created were in the top ten industry sectors in terms of capital intensity. Fifty-three percent of the new jobs were in the top ten sectors in national wage level. See Table 4 below.

Table 4. Comparison of Capital Intensity and Wage Level Rankings to Percentage of New Jobs Created 1977-80.

Top Ten in Capital Intensity		Top Ten in U.S. Wage Level	
Sector	% of New Jobs	Sector	% of New Jobs
Petroleum	0	Petroleum	0
Printing	1	Primary Metals	1
Machinery	19	Transportation	11
Primary Metals	1	Chemicals	5
Food	9	Machinery	19
Stone/Clay/Glass	2	Paper/Pulp	2
Lumber/Wood	2	Printing	1
Rubber/Plastic	5	Fabricating Metals	7
Fabricating Metals	7	Stone/Clay/Glass	2
Transportation	11	Tobacco	5
Total	57%	Total	53%

As Table 4 shows, the state did not score well with the sectors ranking at the top of either the capital intensity or wage level category. Printing and petroleum led in capital intensity, but neither sector accounted for more than one percent of the new jobs created between 1977-80. Similarly, primary metals and petroleum, the sectors with the highest average hourly wages, each accounted for only one percent of new jobs.

The most successfully recruited sector, machinery, ranked third in capital intensity and fifth in wage levels. Electronics, second in number of new jobs, ranked only 13th in capital intensity and 11th in wage levels. Textiles, which ranked 5th in new jobs created, rated 18th out of 20 industry sectors in hourly wage level ($4.66, 30 percent below the national manufacturing average).

Environmental and Health Factors

Just as the economic factors for this study were chosen because of their particular importance to North Carolina, the environmental and health criteria relate to widely-recognized problems in the state. The state's Water Quality Management Plan of 1980 reported that over 30,000 chemicals are used in commercial production of goods in this state, with some 1,000 compounds being introduced annually.[10] Only a small portion of these chemicals have ever been tested for their carcinogenicity (cancer-causing capability) or for other negative health effects. Consequently, the intensity of chemical use was chosen as a criteria for evaluating the various industrial sectors.

In 1980, North Carolina ranked eleventh among the 50 states in total volume of hazardous wastes produced, according to the U.S. Environmental Protection Agency, and in 1979, the state ranked fourth in volume of low-level radioactive wastes produced.[11] Moreover, the wastes being generated by industries already located in the state are not being adequately managed. "Only a very small percentage of the total volume of hazardous waste generated in North Carolina can be accounted for in known disposal sites," reported the Governor's Technical Advisory Committee on Hazardous Wastes.[12] Due to the above factors, the relative level of hazardous waste generation was selected as a criticial environmental measurement for desirable industry.

During the past decade, the problems of workplace-caused injuries and illnesses in North Carolina have received increasing attention. In 1980, *The Charlotte Observer* won a Pulitzer Prize for a series of articles on byssinosis or brown lung, a respiratory disease afflicting workers in the textile industry. The extent of worker health hazards in the highly-recruited microelectronics industry surfaced in 1981 when the General Assembly funded a microelectronics center.[13] The N.C. Department of Labor reported over 71,000 work-related illnesses and injuries in the state's manufacturing sectors during 1976 and an annual incidence rate that equaled 10 percent of the state's manufacturing workforce.[14] These events and reports reflect the growing awareness of the importance of workplace illness and injury in the state. Consequently, these two measurements were included as the worker health criteria for this study.

Section C to Table 1 shows the rankings for the four indices: intensity of chemical use, hazardous waste generation, occupational illness and injury incidence, and occupational illness and injury severity. Those industrial sectors with the worst records for each of the four indices received the *worst* – i.e., the *lowest* – rankings. The chemical sector, for example, generated the most toxic wastes and ranked 20th in this category while the food sector produced the least toxic wastes and hence ranked first. Table 1 provides rankings for all four categories. (The raw data for each category can be obtained from the sources listed in footnotes 6-8 to Table 1). Combining the results of these four categories yields an environmental/health "desirability" ranking, as shown in the last column of Section C.

A review of two of the categories indicates that many of the industries recruited most successfully during the 1977-80 period have low environmental/health desirability ratings. Fifty-nine percent of the new jobs in the study sample were in the ten sectors producing the highest toxic waste volumes (sectors ranked 11-20). Sixty percent of the new jobs fell in the ten sectors with the worst injury/illness severity records (sectors ranked 11-20). See Table 5 below.

Table 5. Comparison of Hazardous Waste Generation and Occupational Illness/ Injury Severity Rankings to Percentage of New Jobs Created 1977-80.

Worst Ten in Hazardous Wastes Generation*		Worst Ten in Illness/Injury Severity*	
Sector	% of New Jobs	Sector	% of New Jobs
Chemicals	5	Lumber/Wood	2
Primary Metals	1	Food	9
Petroleum	0	Stone/Clay/Glass	2
Fabricating Metals	7	Rubber/Plastic	5
Paper/Pulp	2	Primary Metals	1
Transportation	11	Fabricating Metals	7
Electronics	14	Paper/Pulp	2
Leather	0	Furniture	2
Machinery	19	Transportation	11
Misc. Manufact.	0	Machinery	19
Totals	59%	Totals	60%

*The sectors are listed from number 20 ranking through number 11. Chemicals, for example, ranked 20 in volume of hazardous waste generation, and miscellaneous manufacturing ranked 11.

As Table 5 indicates, six sectors which ranked high in numbers of new jobs – machinery (1), electronics (2), transportation (3), fabricating metals (6), and chemicals (7) – placed in the ten sectors producing the most hazardous wastes. North Carolina's traditional industries – tobacco, apparel, textiles, furniture, and lumber – generate low volumes of toxic wastes and hence placed in sectors ranked 1-10 in this category.

As Table 5 also shows, six sectors ranking high in number of new jobs – machinery (1), transportation (3), food (4), fabricating metals (6), and rubber/plastic (8) – placed in the ten sectors recording the greatest severity of occupational illnesses and injuries.

Industry Desirability Index

The economic and environmental/health rankings served as the basis for dividing the 20 industrial sectors into four industry desirability groups: very desirable, desirable, moderately desirable, and less desirable. For each industry sector, the two rankings were totaled, a process yielding scores from 8.0 (printing) to 33.5 (leather) (see footnote 10 to Table 1 for further information on the process). If a sector scored from 2.0 to 10.0, it had an average score in the top five rankings for economic and environmental/health factors and hence was "very desirable"; sectors scoring from 10.5 to 20.0 averaged in the second five and were "desirable"; sectors scoring from 20.5 to 30.0 averaged in the third five and were "moderately desirable"; sectors scoring from 30.5 to 40 averaged in the bottom five and were "less desirable."

Between 1977 and 1980, over 60 percent of the new jobs and almost three-fourths of new investment fell among the "very desirable" or "desirable" sectors (see Table 6 below).

Table 6. Comparison of "Very Desirable" and "Desirable" Industry Sectors to Percentage of New Jobs and New Investment

Sector	% of New Jobs	% of New Investment
Very Desirable		
1. Printing	1	3
Desirable		
2. Transportation	11	10
3. Machinery	19	33
4. Petroleum	0	3
5. Tobacco	5	4
6. Electronics	14	8
7. Measuring Instruments	3	1
8. Food	9	11
Totals	62%	73%

As Table 6 shows, the only "very desirable" sector, printing, notably accounted for very few new jobs (ranked 17th). But machinery and transportation, the leaders in the "desirable" group, ranked first and third, respectively, in both the number of new jobs and amount of new investment. Textiles and apparel, traditionally important industries to the state, fell in the "moderately desirable" range because of low wages and low capital intensity. Among the "less desirable" sectors was the rubber/plastics sector, which ranked eighth in number of new jobs in North Carolina during the last four-year period.

Conclusions

Economic desirability in a new industry sometimes stands sharply at odds with environmental and health attractiveness. In this study, five of the six sectors with the highest wage levels – chemicals, primary metals, petroleum, paper, and transportation – are also five of the six that produce the most toxic wastes. On the other hand, some types of industry are highly desirable both for economic reasons and for environmental/ health factors. The printing, machinery, and transportation sectors, for example, ranked among the most desirable in both categories.

This was an exploratory study, not meant as a definitive statement for setting criteria to guide North Carolina's industrial recruitment efforts. Hopefully, these preliminary findings will spur further research and policymaking efforts by the N.C. Board of Science and Technology, the Department of Commerce, and the Department of Natural Resources and Community Development

to ensure that the state's work force and natural resources will not be unduly harmed by newly-recruited industry. More in-depth studies could review individual company performance, rather than relying on national data sources, and could consider numerous other variables including impact on air and water resources, types of products and their safety, and potential for continued industrial expansion.

As the state continues to pursue new industry, the "desirability" of incoming companies must be monitored more closely. Between 1977 and 1980, the state appears to have successfully recruited primarily desirable industry, as measured by economic and environmental/health factors. As Table 6 shows, about six of every ten new jobs and over 70 cents of every dollar of new investment recruited during this period were in industrial sectors which this study found to be "very desirable" or "desirable." But these figures appear to have resulted more from good fortune than from good policy. Three major areas of concern emerged from this study regarding how state officials design recruitment strategies and report on the degree of their success.

First, in judging which industry to recruit, the Department of Commerce does not seem to employ any major criteria concerning the environment or worker health. This study represents a first effort to fill that gap. The Department should take the next step and gather information on past performance of potential new companies. Publicly-available sources now exist which could provide the state with data on individual companies for most of the criteria used in this study. For example, each year all companies must submit data on worker illness and injury to the U.S. Department of Labor.[15]

Second, the Department of Commerce and the Department of Natural Resources and Community Development do not appear to be complying with the statutory requirement *"to conduct an evaluation . . . of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina."*[16] This mandate should affect not only the criteria in seeking new industry but also the monitoring of the new industry once it has begun operation.

Third, in evaluating newly recruited industry to the state, any researcher must depend upon Department of Commerce data which report the industry announcing they will come to the state for a given year. Some of these industries eventually cancel their plans and others adjust the size of the projected operation either upward or downward. The Department of Commerce should provide the public with a far more accurate measuring tool regarding recruitment of industry by reporting for a given year on the amount of new industry which actually began operations in the state for that year.

High-paying, high-technology industries affect non-renewable human and natural resources to greatly differing degrees. Careful targeting of desirable industry – as measured by economic and environmental/health standards – can help both to upgrade the state's low economic indices and to preserve the state's much cherished environment and highly productive work force. Planning at the front-end of industrial recruiting can avoid the mistakes that other states have made. Criteria to guide future industrial recruitment efforts must be developed in order to determine which industry is truly most desirable to all North Carolinians. □

FOOTNOTES

[1]*1980 Annual Report,* N.C. Department of Commerce, Economic Development Division, Figure 4, p. 12 (see "New" industry column).

[2]Researchers disagree over the extent to which the microelectronics campaign will improve the state's economy. See "Microelectronics – The New Wave," *N.C. Insight,* Vol. 4, No. 3, fall 1981.

[3]Chapter 824 of the 1981 Session Laws of N.C., now codified as G.S. 143B-437.

[4]N.C.G.S. Chapter 143B, Article 3, Part 27.

[5]*Management of Waste and Other Environmental Programs,* Legislative Research Commission, Interim Report to the 1979 General Assembly of North Carolina, Second Session, 1980, June 5, 1980, Appendix I, p. I-1.

[6]*Ibid.*

[7]N.C.G.S. 143B-431.

[8]"New and Proposed Industries Announced for North Carolina – Year of 1977" and report by the same name for 1978, 1979, and 1980, Industrial Development Division, N.C. Department of Commerce (entire report used).

[9]*1980 Annual Report,* Economic Development Divisions, N.C. Department of Commerce, p.10. See similar chart in annual reports for 1977, 1978, and 1979.

[10]*N.C. Water Quality Management Plan, 1980,* Department of Natural Resources and Community Development, p. 8.

[11]*Report of the Governor's Task Force on Waste Management,* February 1981, p. 3. Also see "Chemical Wastes . . . ," *N.C. Insight,* Vol. 4, No. 1, April 1981.

[12]*Final Report, Technical Advisory Committee on Hazardous Wastes,* Governor's Task Force on Hazardous Waste Management, September 1980.

[13]See "Microelectronics – The New Wave," *N.C. Insight,* Vol. 4, No. 1, spring 1981.

[14]*Occupational Illnesses and Injuries for 1976,* N.C. Department of Labor, 1978.

[15]Occupational Safety and Health Act (OSHA) Form 200. Even though some states, such as North Carolina, administer OSHA themselves, the Form 200 data is publicly available through the Management Information System (MIS) of the U.S. Department of Labor.

[16]N.C.G.S. 143B-437.

Separation of Powers:
An Old Doctrine Triggers a New Crisis
by John V. Orth

"The only prize much cared for by the powerful is power."

– Oliver Wendell Holmes

On January 12, 1982, the N.C. Supreme Court handed down a decision that has triggered a virtual constitutional crisis in state government. The state's highest judicial panel ruled that the legislature cannot appoint its own members to the Environmental Management Commission (EMC), a regulatory body in the executive branch, because such appointments violate the separation of powers provision of the North Carolina Constitution. "It is crystal clear to us," the landmark decision read, "that the duties of the EMC are administrative or executive in character and have no relation to the function of the legislative branch of government, which is to make laws."[1]

In rapid-fire sequence, the Governor, the legislative leadership, the Attorney General, and the Supreme Court Justices themselves issued a series of memos, letters, opinions, and position statements on how the separation-of-powers concept affects the day-to-day functioning of state government. The various documents, of both an official and informal nature, questioned the very existence of the most fundamental bodies in state government – from the Advisory Budget Commission, the principal budgetary vehicle for governors and legislators since 1925, to the Joint Legislative Committee to Review Block Grant Funds, a group created just last October to deal with the Reagan Administration initiative in consolidating federally-funded programs.

The first three months of 1982 may well be recorded as the period that permanently altered the way in which North Carolina's government is organized (see chronology of events on pages 38-43). In their June 1982 fiscal session, the lawmakers will begin to sort out the various legal and administrative questions. Related court cases, administrative rulings, and legislative actions are sure to follow.

What exactly did take place during this period regarding the separation of powers of the three branches of government? And why are the various events interrelated? Most importantly, how will these events affect the future of North Carolina's government?

An American Tradition

America's founding fathers, having just led a violent revolution against the excesses of the British king and parliament, feared concentrations of power. Consequently, in the U.S. and state Constitutions, they limited the powers of government and divided them among the executive, legislative, and judicial branches. This separation of powers took two forms: a "vertical" separation between the federal and state levels of government; and a "horizontal" separation on both the state and federal levels among the legislative, executive, and judicial branches.

Not only were the powers separated among the three branches, but the individuals exercising them were separated as well. The N.C. Constitution, for instance, prohibits a person from holding a federal and state office at the same time. Within the state, no person may fill two elective offices, such as a legislative seat and a judgeship, at the same time. Finally, no one in the state may hold two or more appointive offices or any combination of elective and appointive offices, unless the legislature specifically authorizes it.

To provide an effective mechanism for regulating disputes over which branch should control which governmental powers, the founding fathers set one branch against another through a system of "checks and balances." Within this system, the three branches of government operate in a permanent and profound interdependence. Consider these examples in North Carolina:

- the legislature enacts laws which the executive branch must administer;
- the lieutenant governor is second-in-command of the executive branch and also presides over the state Senate;
- the governor and the Advisory Budget Commission (which by law has at least eight legislative members) propose a budget to the legislature; the legislature adopts a budget which is administered by the governor;
- the attorney general, elected directly by the voters, serves as counsel for both the executive and legislative branches; the legislature funds the De-

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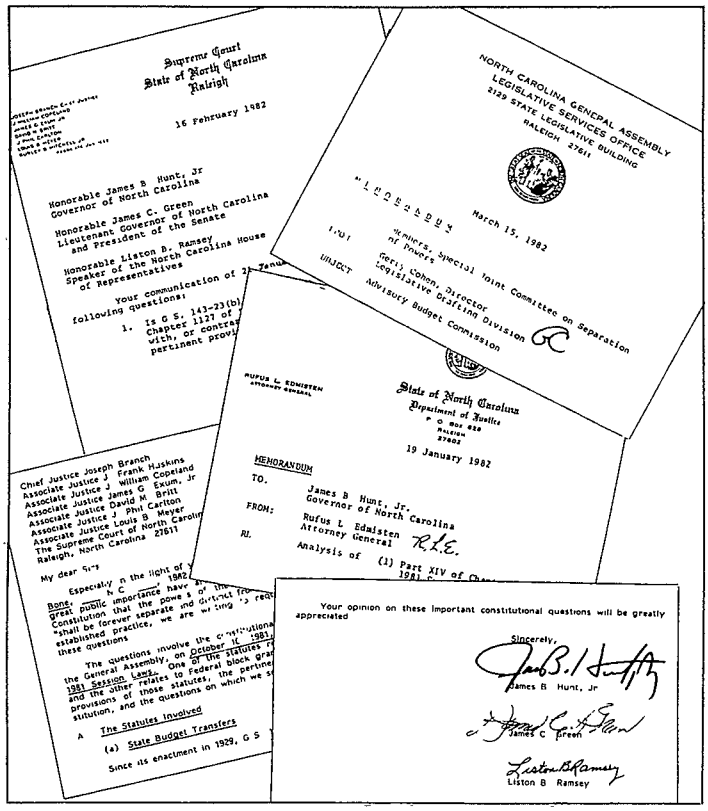

partment of Justice, headed by the attorney general;

- the judiciary has the power to review the acts of the legislative and executive branches; the legislature determines the structure and budget of the judiciary and creates new judgeships; the governor fills judicial vacancies and appoints persons to new judgeships.

As the size and scope of state government has grown in recent years, the interdependence of the three branches has increased. For example, legislators now hold more than 200 positions on 90 boards, commissions, and councils in the executive branch; 50 of these groups have been created in the last eight years.[2]

Even as government grows and interdependence increases, the 18th-century philosophy of the founding fathers retains a powerful influence. Throughout the history of the republic, the wisdom of the framers of the federal and state constitutions has reasserted itself as the rationale for landmark judicial decisions. The recent ruling by the N.C. Supreme Court regarding the Environmental Management Commission (*Wallace v. Bone*) has dramatized once again the power of longstanding constitutional principles. In its declaration, the high court relied on language in the N.C. Constitution that could hardly be more plain: "The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other."[3]

The Judiciary Breaks a Logjam

The EMC decision illustrates a critically important fact about the tripartite nature of both the federal and state governments: The buck often stops at the courthouse. Relying on judicial precedents and constitutional principles, the appellate courts often interpret legislative and executive actions. This process catapults the judiciary into a policymaking role, a role that can break logjams of controversy (see "The Role of the Judiciary in Making Public Policy," *N.C. Insight*, Vol. 3, No. 1).

When the controversy concerns the respective powers of the different branches of government, the judiciary functions as a kind of policeman, "checking and balancing" the other two branches. Before the EMC decision, a series of legislative and executive assertions of power had built into a logjam of interdependence, burying beneath it the constitutional requirement of "forever separate and distinct" branches of government. When the Supreme Court issued the *Wallace v. Bone* opinion in January, it unleashed a torrent of questions that had lain unanswered behind the logjam. At least

six legislative and executive trends are now under scrutiny because of the clarity of the *Bone* decision.

1. **Legislative Incursion in Executive-Branch Boards, Commissions, and Councils.** In 1980, the legislature enlarged the membership of the Environmental Management Commission (EMC) from 13 to 17 and required that two House members be chosen by the speaker of the House and two Senators be selected by the lieutenant governor (in his capacity as president of the Senate); the governor appoints the other 13. Placing four legislators on the EMC by statute, the legislature gave itself a say in the day-to-day operations of the EMC, a regulatory body in the Department of Natural Resources and Community Development which makes decisions on everything from pollution standards to dam-building.

In February 1981, four of the non-legislative members of the EMC challenged the constitutionality of the statute. Eleven months later, the N.C. Supreme Court ruled in their favor, striking down the part of the statute adding legislators to the EMC. The *Bone* decision affects all other similarly constituted commissions. Consequently, actions of some 90 groups, including powerful bodies like the Advisory Budget Commission and the Board of Transportation, could be challenged if legislators continue participating as voting members of these executive-branch groups (see box on page 46 for a list of the 36 groups most affected by the ruling).

The ruling might also affect other types of legislative appointments. The governor has chosen to appoint legislators to 45 positions on 32 groups with functions similar to those of the EMC; does the Constitution prohibit this form of dual office holding (as legislator and board member)? A number of statutes provide for various legislative leaders to make appointments to boards, commissions, and councils; are appointments of non-legislators made by legislative leaders now under question? Finally, must judges serving on state commissions resign their appointive posts?

On January 26, 1982, Speaker of the House Liston B. Ramsey asked Attorney General Rufus L. Edmisten for an opinion on whether legislators can serve on executive-branch boards and commissions in an *ex officio*, non-voting capacity. On February 1, Edmisten wrote Ramsey that "where the board or commission exercises a part of the administrative or executive sovereign power of the State, a legislator may not serve in any capacity on that board or commission."[4] On February 19, Edmisten sent a five-page letter to all legislators outlining his opinion regarding the impact of the *Bone* decision and including a list of 41 boards and commissions. He suggested that all legislators — "regardless of how or by whom appointed" — should *resign* from those 41 groups. "Should you continue to remain on the board or commission," Edmisten went on to say, "it is my opinion that any action taken by that board or commission will be subject to question." Edmisten also advised five judges to remove themselves from three state commissions (Governor's Crime Commission,

Separation of Powers — Landmark Events in North Carolina

Compiled by Lacy Maddox

1925 — General Assembly creates the Advisory Budget Commission (ABC) (G.S. 143-1 *et seq.).*

1929 — General Assembly authorizes governor to transfer budgeted funds within departments (G.S. 143-23).

1970 — Voters ratify third North Carolina constitution. First two said the three branches of government "*ought to be* forever separate and distinct." The 1970 constitution changes this provision to "*shall be* forever separate and distinct" and strengthens the governor's powers regarding administering the state's budget (emphasis added in both sentences).

1975 — General Assembly creates Joint Legislative Commission on Governmental Operations "which shall conduct evaluative studies of the programs, policies, practices and procedures of the various departments, agencies and institutions of State government" (G.S. 120-73).

1977 — General Assembly establishes the Administrative Rules Review Committee (ARRC) and empowers it to consider all regulations promulgated by state agencies under the N.C. Administrative Procedures Act. Under this statute, if the ARRC finds that a regulation is beyond an agency's statutory authority, the ARRC must report its objection to the Legislative Research Commission, which may report back to the full legislature

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N.C. Criminal Justice and Education Training Standard Commission, and Art Museum Building Commission).

In taking such an aggressive stance, Edmisten has brought bristles to the backs of some powerful legislators. Sen. Kenneth C. Royall, Jr., chairman of the Advisory Budget Commission and Senate majority leader, charged that "Edmisten has 'gone crazy' in his efforts to get legislators to comply with recent Supreme Court rulings," reported the *News and Observer* of Raleigh on February 28. The *News and Observer* went on to say that Gov. Hunt "has carefully left the dirty work of interpreting [the court decisions] to Edmisten." While Edmisten has taken the lead on requesting that the legislators resign, Hunt says that "if the Attorney General recommends that the legislators resign, I certainly think that's what we ought to do."

2. **Legislative Incursion into the Executive Budget Powers.** In its budget session in October 1981, the General Assembly took two actions in an effort to broaden its control over budgetary matters. First, it required the executive branch to gain prior approval from the Joint Legislative Commission on Governmental Operations — a committee of 13 legislators and the president of the Senate — for any executive transfer of more than 10 percent of the money from one budget line item to another.[5] Since 1929, the governor had been authorized by statute to transfer budgeted money within departments.[6] The legislature had created the Commission on Governmental Operations in 1975 to provide for "the continuing review of operations of State government."[7] In 1975, James E. Holshouser, Jr. — the first Republican to be elected governor in the 20th century — headed the executive branch and the Democrats controlled the legislature. This committee thus became a valuable check for legislators during a time of political partisanship between the executive and legislative branches.

Second, the legislature established the Joint Legislative Committee to Review Federal Block Grant Funds. As part of President Reagan's "new federalism," Congress had enacted a federal budget that consolidated large sums of money available to the states in the form of block grants. The legislature claimed control over the money and granted its new Block Grant Review Committee the power (when the full legislature was not in session) of prior approval of any actions proposed to be taken by the governor with respect to the block grants.[8] Historically, state executive branches generally had administered federal funds that came into a state. But the large new source of funds to be distributed at the state level — the new block grants — stimulated legislative interest throughout the country. In North Carolina, the legislature went a step further than did many states, not only establishing a committee to review all block grant actions but also giving that committee the power of prior approval of any executive action.

After the October session, Gov. Hunt asked the Attorney General to review the two legislative

with recommendations for action (G.S. 120-30.26 *et seq.*).

June 1979 — Sen Julian Allsbrook (D-Halifax) files a bill to abolish the ABC on the grounds that it violates the N.C. Constitution's separation of powers provison. No action taken on bill.

Aug. 1979 — Sen. I. Beverly Lake, Jr. (D-Wake) files a lawsuit challenging the constitutionality of the ABC. Lake later withdrew the suit.

March 1980 — "The Advisory Budget Commission — Not as Simple as ABC" by Mercer Doty is released by N.C. Center for Public Policy Research. It states that the ABC violates two constitutional provisions — separation of powers and governor's responsibility for the preparation and administration of the budget.

June 1980 — General Assembly increases the membership of the Environmental Management Commission (EMC) from 13 to 17, adding two members each from both the state House of Representatives and the state Senate [G.S. 143B-283(d)].

Feb. 18, 1981 — Two lawsuits, filed in Wake County Superior Court (consolidated for trial into *State ex rel. Wallace v. Bone*), challenge the constitutionality of the 1980 action of the General Assembly adding four legislators to the EMC.

March 18, 1981 — Wake County Superior Court Judge James H. Pou Bailey, ruling on *State ex rel. Wallace v. Bone,* finds that legislative membership on EMC is constitutional; Bailey reasons that since legislators are a minority of the EMC, no legislative attempt was made to usurp executive functions.

June 2, 1981 — The N.C. Supreme Court allows a direct appeal of Judge Bailey's ruling, bypassing the N.C. Court of Appeals.

June 25, 1981 — General Assembly increases the powers of its Administrative Rules Review Committee to review executive rules and regulations (G.S. 120-30.28).

July 8, 1981 — General Assembly establishes the Committee on Employee Hospital and Medical Benefits and empowers it to adopt a hospitalization and medical insurance plan for the state's employees, teachers, retired workers, and their dependents, a power formerly exercised by the Board of Trustees of the Teachers' and State Employees' Retirement System (G.S. 135-33).

Oct. 10, 1981 — General Assembly creates a Joint Legislative Committee to Review Block Grant

actions, and various legal analysts questioned their constitutionality (see "Legislators and Governor Clash over Budget Provisions – The Legal Issues at Stake," *N.C. Insight*, Vol. 4, No. 4). Edmisten provided the Governor with an informal (and therefore unpublished) opinion regarding the actions. But in the wake of the EMC decision, these two budget actions took on added legal significance.

On January 19, a week after the *Bone* decision was released, the Attorney General sent a 38-page legal memorandum to the Governor, Speaker of the House Ramsey, and Lt. Gov. James C. Green advising them that both the Block Grant Review Committee's powers and the Commission on Governmental Operation's new authority over executive transfers of appropriated funds violate the state constitution. Two days later, Gov. Hunt, Speaker of the House Ramsey, and Lt. Gov. Green sent a formal request for an "advisory opinion" to the N.C. Supreme Court about the statutes in question. (See conclusion section for an explanation of such advisory opinions.)

On February 16, 1982, the seven Supreme Court justices sent an eight-page advisory opinion to Hunt, Green, and Ramsey which said that the legislative actions violated both the separation of powers language in the Constitution (Article I, Section 6), as well as Article III, Section 5(3), which "explicitly provides that 'the Governor shall administer the budget as enacted by the General Assembly.'"[9]

Finally, the justices found that the Block Grant Review Committee would in some cases be "exercising legislative functions. In those instances there would be an unlawful delegation of legislative power."[10] This finding – that the legislature cannot delegate full legislative authority to a group of its members – could affect a broad range of groups, from the Advisory Budget Commission to the Governmental Operations Commission.

The question regarding the budget matters was easier for the justices to answer than the issue raised in the EMC case. The executive branch's powers in respect to the budget are spelled out in the Constitution. The justices did not have to rely solely on the theory of separation of powers but could be guided as well by the specific constitutional provision on the budget.

3. **Legislative Incursions into the Judicial Branch.** In 1981, the legislature gave the Joint Legislative Commission on Governmental Operations (the same committee discussed above regarding executive transfer of funds) control over a restricted reserve fund which may affect the expenditure of funds for judicial personnel.[11] This action may conflict with General Statute 7A-102(a) which gives the Administrative Office of the Courts authority to set the number of employees and salaries of personnel in the judicial branch and to perform other fiscal functions. In the November/December 1981 issue of the N.C. Bar Association's *Barnotes*, N.C. Superior Court Judge

Funds (G.S. 120-84.1) and empowers Joint Legislative Commission on Governmental Operations to give prior approval to executive transfer of more than 10 percent of appropriated funds in any budget line item [G.S. 143-23(b)].

Oct. 1981 – Gov. James B. Hunt, Jr. asks Attorney General Rufus L. Edmisten for opinion on constitutionality of legislative actions taken on October 10, 1981 (see above).

Jan. 12, 1982 – N.C. Supreme Court rules on EMC case, *State ex rel. Wallace v. Bone*, stating that the "challenged enactment of the General Assembly violates [separation of powers] section of the state constitution."

Jan. 18, 1982 – Director of Legislative Bill Drafting Gerry Cohen submits a memorandum to Speaker of the House Liston B. Ramsey regarding *Bone* decision, which said: "Specific problems may exist for the Advisory Budget Commission, the Joint Legislative Committee to Review Federal Block Grant Funds, the Joint Legislative Commission on Governmental Operations, and the Committee on Employee Hospital and Medical Benefits." The memorandum outlines problems on various types of legislative appointments and presents six alternative methods of legislative control over executive-branch boards and commissions and the budget.

Jan. 19, 1982 – In a 38-page, legal memorandum, Att. Gen. Edmisten advises Gov. Hunt, Speaker of the House Ramsey, and Lt. Gov. James C. Green that the Joint Legislative Commission on Governmental Operations' authority over executive transfers of funds violates three provisions of the N.C. Constitution, as Edmisten put it: "Separation of Powers," "Governor's budget power," and "impermissible legislative delegations of authority by the General Assembly to legislative committees" (p. 38).

Jan. 21, 1982 – Gov. Hunt, Lt. Gov. Green, and Speaker of the House Ramsey request an advisory opinion from the N.C. Supreme Court regarding the constitutionality of Joint Legislative Committee to Review Federal Block Grant Funds and Joint Legislative Commission on Governmental Operations' authority over executive transfer of appropriated funds.

Jan. 21, 1982 – Donald B. Hunt, staff counsel to the Governmental Operations Commission, sends a memo to that committee regarding executive branch power to settle suits which commit the state to actions (that

Frank W. Snepp expressed alarm over such actions: "The independence and integrity of the judicial branch have come under increasing assaults from the General Assembly.... This trend must be reversed if the separation of powers between the legislative and judicial branches of government is to be maintained."

In finding that the Block Grant Review Committee cannot perform the functions granted it, the Supreme Court might well have taken a major step towards reversing the trend to which Judge Snepp refers. In issuing a formal opinion regarding administration of block grants – an area of conflict between the legislative and executive branches – the Supreme Court may also have provided a "check and balance" on the legislature as it affects the functioning of the judicial branch. Because the Supreme Court found "an unlawful delegation of legislative power" to the Block Grant Committee,[12] the Court might find a similar unconstitutional delegation of power to the Governmental Operations Commission in its authority to control some aspects of a restricted reserve fund affecting judicial personnel.

4. **Legislative Committee Taking Over an Executive Agency Program.** In July 1981, the General Assembly established its Committee on Employee Hospital and Medical Benefits and empowered it to adopt a hospitalization and medical insurance plan for the state's employees, teachers, retired workers, and their dependents.[13] Formerly, the Board of Trustees of the Teachers' and State Employees' Retirement System, a board within the Department of the State Treasurer chaired by state Treasurer Harlan Boyles, had exercised this function. The legislative committee took quick action, freezing the benefit levels (effective September 30, 1981) available under the current insurance contract between Blue Cross/Blue Shield of North Carolina and the N.C. Teachers' and State Employees' Retirement System, thereby greatly affecting benefits after October 1, 1981.

Following the *Bone* decision in January 1982, the constitutionality of this committee began to be questioned. "Specific problems may exist for... the Committee on Employee Hospital and Medical Benefits," Director of Legislative Bill Drafting Gerry Cohen wrote Speaker of the House Ramsey on January 18, 1982. On February 1, Treasurer Boyles wrote the Attorney General, asking whether the legislative committee is unconstitutional. Edmisten responded on February 23 that the statute creating the Committee on Employee Hospital and Medical Benefits is unconstitutional on two grounds – separation of powers and delegation of the full legislature's functions to a committee.

On February 25, the Board of Trustees of the Teachers' and State Employees' Retirement System met, and Treasurer Boyles told the group that the legislative committee would probably return powers for negotiating a new contract to the executive branch board. But the same day, Rep. Billy Watkins (D-Granville), co-chairman of the committee, and other legislative leaders decided

usually cost money) without legislative approval.

Jan. 26, 1982 – Speaker of the House Ramsey asks Att. Gen. Edmisten for an opinion on whether legislators can serve on executive branch boards and commissions in an *ex officio*, non-voting capacity.

Feb. 1, 1982 – Att. Gen. Edmisten, in a six-page legal memorandum, advises Speaker of the House Ramsey that: "Where the board or commission exercises a part of the administrative or executive sovereign power of the State, a legislator may not serve in any capacity on that board or commission."

Feb. 1, 1982 – State Treasurer Harlan Boyles asks the Attorney General how the *Bone* decision affects the Board of Trustees of the Teachers' and State Employees' Retirement System, which Boyles chairs, and whether the Committee on Employee Hospital and Medical Benefits is constitutional (see July 8, 1981).

Feb. 2, 1982 – Joint Legislative Committee to Review Federal Block Grant Funds meets. Committee Co-Chairman, Rep. Al Adams (D-Wake), says the delegation of the legislature's power to this committee is probably unconstitutional but that the committee could make recommendations to the full legislature.

Feb. 3, 1982 – In wake of *Bone* decision, a group of farmers sue Board of Transportation, alleging that legislative membership invalidates the Board's decision to run Interstate Highway 95 through their land. (*Citizens for Preserving Farm Land, Inc. v. N.C. Dept. of Transportation, N.C. Board of Transportation).*

Feb. 11, 1982 – N.C. Center for Public Policy Research releases "Separating the Executive and Legislative Branches: Boards, Commissions, and Councils with Legislative Members." It lists 90 boards and commissions with legislative members, and says 36 of them violate the separation of powers provision of the state constitution (see box on page 46).

Feb. 16, 1982 – In response to Hunt/Green/Ramsey letter of January 21, N.C. Supreme Court issues an "advisory opinion" finding that the Joint Legislative Commission on Governmental Operations' authority over executive transfer of funds and the Joint Legislative Committee to Review Federal Block Grant Funds are unconstitutional under Article I, Section 6 (separation of powers) and Article III,

that control of the new health insurance contract would remain with the legislative committee. In an interview on April 5, Ed Barnes, director of the Division of Retirement and Health Benefits put it this way: "Our current mode of operation is acting strictly as an administrative staff to the legislative committee."

Rep. Watkins says the committee will review bids from insurance companies and recommend an action to the full legislature. This process might accommodate any constitutional questions over delegating full legislative authority to a committee. However, it may not resolve the separation of powers questions. Furthermore, the full legislature cannot act on a new health insurance contract until it meets in June; under that timetable, the new contract would not go into effect until October 1, 1982.

The current $160 million contract (half of which is paid by the state and half by employees and retirees) covers some 400,000 people (including dependents) and is scheduled to expire June 30. As of early April, the *old* contract had not been extended for the three months – July, August, and September – during which the *new* contract will not be in effect. The separation of powers issue has thus contributed to a degree of uncertainty regarding proper administration of one of the largest contracts in state government. "It's a hell of a way to run a railroad," Boyles told the Board of Trustees of the Teachers' and State Employees' Retirement System at their February 25 meeting.

5. Executive Infringement on the Legislature's Constitutional Authority to Appropriate Funds. In February 1981, the executive branch settled a highly controversial suit in federal district court (*Willie M. v. Hunt*), agreeing that the state would identify violent juveniles who are emotionally disturbed and would design and operate programs appropriate for this group of youngsters. While the settlement in federal court carried no promise of a specific amount of money with it (except attorneys' fees, which are still being appealed), it did require the executive branch of the state to undertake substantial new programs – even though the legislature had not appropriated money for those programs.

In the spring of 1981, the Department of Human Resources (DHR) and Department of Public Instruction submitted supplemental budget requests to the legislature covering "Willie M." services for almost $2 million. In October 1981, DHR returned to the General Assembly with a request of $2.2 million for Willie M. services. The $4.2 million thus far appropriated by the legislature represents only the beginning of the full amount necessary to meet the timetable agreed upon between executive agencies, the plaintiffs, and the court. Legislative analysts have estimated that the amount could reach $15 million before the services are all in place.

Executive agencies have been entering into consent judgments for a number of years but

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Section 5(3) (governor's power to administer the budget). And where the Block Grant Review Committee exercised legislative functions, the Justices determined there "would be an unlawful delegation of legislative power."

Feb. 19, 1982 – Edmisten writes to all legislators, suggesting that those serving on 41 executive branch boards and commissions resign from them. The letter also asks those legislators on the ABC to act in an advisory capacity only and states that the statute creating the Committee on Employee Hospital and Medical Benefits (see July 8, 1981) is an unconstitutional encroachment on executive branch powers and, therefore, "null and void."

Feb. 20, 1982 – Gov. Hunt says he will comply with the Attorney General's request that the Governor ask the legislators whom he appointed to about 40 boards and commissions to resign.

Feb. 23, 1982 – Att. Gen. Edmisten writes to Treasurer Boyles (in response to the Boyles' request of February 1) that the statute creating the Committee on Employee Hospital and Medical Benefits is unconstitutional on separation of powers and delegation grounds.

Feb. 23, 1982 – Attorney General writes judges suggesting they resign from executive branch boards and commissions.

Feb. 25, 1982 – Director of Legislative Bill Drafting Cohen, at the request of Speaker of the House Ramsey, reviews the Attorney Generals's opinion regarding the 41 boards and commissions and recommends that Ramsey ask legislative members to resign from 37 of the 41.

Feb. 25, 1982 – The Board of Trustees of the Teachers' and State Employees' Retirement System meets. Board chairman, State Treasurer Boyles, says the legislature's newly created Committee on Employee Hospital and Medical Benefits would probably return control over the contracting procedures to the Board in February. The Board's two legislative members do not attend.

Feb. 25, 1982 – Rep. Billy Watkins (D-Granville), co-chairman of Committee on Employee Hospital and Medical Benefits, and other legislative leaders decide the committee will retain control of developing a new health insurance plan for state employees and teachers and will make recommendations in the June session for

usually for much smaller amounts of money. In *Huntley v. Morrow,* for example, a case also settled in federal court, the consent decree required DHR to meet the schedule for appeals established by federal regulations on certain public assistance rulings. The consent decree necessitated hiring a new hearing officer, a position for which DHR previously had no funds.

Because of the amount of money involved, the *Willie M.* case began attracting a lot of attention in 1981. After the *Bone* decision of January 1982, the funding process triggered by an executive consent decree came under further scrutiny. On January 21, 1982, Donald B. Hunt, counsel to the Governmental Operations Committee, sent that committee a memo regarding such executive-branch court settlements. Because of the *Bone* decision, Hunt wrote, "the General Assembly cannot establish a committee with legislative members to decide whether the State will compromise a particular suit." But Hunt went on to suggest how the legislature could become involved in the court settlement at an earlier phase of the process, for example: "filing on behalf of the General Assembly friend of the court briefs in institutional cases to put before the court the legislature's view of the impact of the litigation upon the legislature's power to allocate resources."

The ongoing appropriations process necessary to meet the *Willie M.* settlement, taken in the context of the *Bone* decision, dramatizes a dilemma state officials must face because of the separation of powers doctrine. Following the signing of a consent decree in court, the executive branch in effect presents the legislature with a *fait accompli,* giving the legislature little choice but to fund the new programs required by the court settlement. If the legislature chooses not to appropriate the required funds, the federal court could find the state executive departments involved in contempt of the consent decree.

The Pennsylvania legislature, for example, has recently cut off funds to carry out two federal court orders, one to implement an automobile emissions inspection program and another to create an office overseeing court-ordered transfers of residents from a state home for the retarded. Pennsylvania legislators, according to *State Legislatures* magazine,[14] claim exclusive authority to raise state funds and decide how to spend them. "There is a strong body of thought here that the courts have stepped across constitutional boundaries," Assembly Majority Leader Samuel E. Hayes told *The New York Times.*[15]

6. **Legislative Committee Exercising a Form of Veto Over Executive Decisions.** In 1981, the legislature empowered its Administrative Rules Review Committee to suspend rules that exceed the statutory authority of the departments issuing them.[16] Appeals from the committee's decisions may be taken to the top of the executive branch, either to the governor (by departments under his direction) or to the Council of State, a body composed of the persons heading executive departments

action by the full General Assembly.

Feb. 26, 1982 – ABC begins to function by making "recommendations to the Governor;" formerly, the ABC took direct action on budget requests. Also, the Board of Awards, a subsidiary panel of the ABC which had been responsible for awarding most state contracts, begins acting in an advisory capacity.

March 3, 1982 – Gov. Hunt says he will assume full authority over state budget decisions which had previously been made by the ABC, now acting only in an advisory capacity.

March 5, 1982 – Speaker of the House Ramsey and President Pro Tempore of the Senate Craig Lawing establish a joint House-Senate Committee on Separation of Powers to address constitutional questions regarding separation of powers between the legislative and executive branches of government.

March 10, 1982 – Attorney General Edmisten issues an advisory opinion to Speaker of the House Ramsey responding to two questions: (1) May the General Assembly appoint non-legislative members to executive-branch boards and commissions? Yes. (2) May the General Assembly delegate that authority to the speaker of the House and the president of the Senate? Probably.

March 17, 1982 – The Committee on Separation of Powers, co-chaired by Speaker of the House Ramsey and President Pro Tempore of the Senate Lawing, holds its first meeting and agrees that the legislature has some constitutional problems as pointed out in the *Bone* decision, the Supreme Court advisory opinion (see Feb. 16, 1982) and several Attorney General opinions (see Jan. 19, Feb. 1, and Feb. 23, 1982). They decide to address the 41 boards and commissions questioned by Edmisten one at a time, in four subcommittees, and to report to the full General Assembly in June with recommendations. The Committee also plans to ask the Supreme Court for a further advisory opinion addressing several related issues.

March 18, 1982 – The Administrative Rules Review Committee meets in executive session where Senior Deputy Att. Gen. Andrew A. Vanore, Jr. gives his opinion that the Committee's power to suspend regulations issued by state agencies and departments is probably unconstitutional.

who are elected officials. If either the governor or Council of State does not overturn the rule suspension within a time specified by the new 1981 legislation, the legislative committee action – the repeal of a rule – automatically goes into effect. Given this appeal procedure, the executive branch can still have the last say. Nonetheless, the Attorney General's office notified the committee on March 18, 1982, that the suspending power is probably unconstitutional. Like the questions about legislative membership on the EMC and the block grant committee dispute, this conflict also may end up in front of the state Supreme Court.

This North Carolina dispute parallels a current national clash between Congress and the President. For 50 years, the Congress has claimed a veto power over executive actions far in excess of the type of veto power recently asserted by the N.C. General Assembly. This congressional veto has taken many forms. Some executive actions may be blocked by either house; others may be blocked by both houses acting together. In certain cases the veto may even be exercised by a congressional committee. The most recent example of the congressional veto that attracted national attention involved the sale of five radar planes to Saudi Arabia. By statute the President was empowered to sell the planes to Saudi Arabia unless both houses of Congress disapproved the sale. The U.S. House of Representatives promptly voted against it, and for weeks the nation awaited the vote in the Senate, which finally voted in favor of the sale.

The President has recently decided to challenge the congressional veto power in the courts. Unlike the N.C. Supreme Court, the Supreme Court of the United States does not offer advisory opinions; consequently, the President has been waiting for situations in which to raise the issue. One case is now before the U.S. Supreme Court,[17] and others seem to be on their way up.[18] The U.S. Attorney General, who normally defends the constitutionality of federal statutes, is in these cases attacking it. The two houses of Congress, each represented by its own counsel, are arguing in favor of their claimed powers.

At this writing, the U.S. Supreme Court has not resolved the dispute. The cases raise many issues in addition to the legislative veto, and each may be decided on other grounds. But if the issue is ever decided on the national level, it could indirectly affect the North Carolina dispute. The effect would only be indirect because of the differences between the North Carolina and the federal constitutions. But it could be real nonetheless. In the EMC case the state Supreme Court looked to the federal Constitution for guidance in interpreting the N.C. Constitution.[19] The same process could occur in the litigation on the legislative veto issue.

Judicial Common Ground

As the six trends discussed above show, the constitutional crisis in state government has spread very far in a very short time. These six areas of concern, despite their many differences, share much in common because of the far-reaching power of the judicial branch as it assumes its policymaking role. In turning to the separation of powers concept in the *Bone* decision, the judicial branch drew clear lines between the functions of the legislative and executive branches. While the "jury is still out" on many of the questions discussed in the section above, several judicial characteristics affecting the outcomes are clear.

• *A statute is presumed constitutional until challenged through litigation.* Thus, statutes authorizing legislators to serve on other boards and commissions in the executive branch – while questionable under the *Bone* decision – are presumed to be constitutional until challenged. Similarly, while the Attorney General has said the legislative Committee on Employee Hospital and Medical Benefits is unconstitutional, the committee may well continue to function until challenged in court.

• *Because of the legal rule of following prior decisions in similar cases, the EMC decision also could apply to all similarly constituted commissions.* This doctrine prompted the Attorney General to advise legislators to resign from some 41 executive branch boards and commissions. But legislators continue to function on some very powerful bodies – such as the Advisory Budget Commission – which may be constituted like the EMC. On February 26, the ABC began to function by making "recommendations to the Governor" rather than by taking direct action on budget requirements. If someone challenges an ABC action taken even in this manner, the *Bone* decision is a legal precedent on which to stand.

• *The EMC case or similar cases cannot go into the federal court system.* When a state supreme court interprets the state constitution on a matter solely of significance to the state, there is no basis for an appeal to the Supreme Court of the United States.

• *When the N.C. Supreme Court issues an advisory opinion, it is not binding in the same way that a decision in litigation is binding.* Even so, an advisory opinion indicates how that same group of judges would adjudicate a similar question. Since the earliest days of the republic, the U.S. Supreme Court has refused to issue advisory opinions. Only a handful of state courts issue such opinions, and the N.C. Supreme Court has not issued one since 1969. Moreover, perhaps alone among American state courts, the N.C. Supreme Court issues advisory opinions without

express constitutional or statutory authorization. Ironically, one of the major arguments in other states against advisory opinions is that they violate the separation of powers doctrine. Judicial power, it is said, should be limited to deciding litigated cases. When justices issue opinions on contentions that have not yet been the subject of legal dispute, these justices approach the status of lawmakers.

Conclusion

Because the N.C. Supreme Court took an active policymaking role in issuing an advisory opinion of far-reaching influence on February 16 (regarding the two budgetary matters), those seven justices may be called upon once again to wade into uncharted separation-of-powers territory. On March 5, Speaker of the House Ramsey and President Pro Tempore of the Senate Craig Lawing established a joint House-Senate Committee on Separation of Powers. The committee held its first meeting on March 17 and agreed that the legislature has some constitutional problems as pointed out in the *Bone* decision, the Supreme Court's advisory opinion, and several Attorney General's opinions.

The Committee decided to examine the 41 executive-branch boards and commissions questioned by Edmisten one at a time, through four subcommittees, and to report to the full General Assembly in its June session with recommendations. In addition, the committee planned to ask the Supreme Court for another advisory opinion on a variety of separation of powers questions, including the following:

- Can executive branch officials (like the governor and lieutenant governor) appoint legislators to executive-branch boards instead of having legislative officials (like the speaker of the House and president pro tempore of the Senate) make the appointments?
- Can the legislature appoint non-legislators to executive boards and commissions, and if so, can it also delegate that power to its presiding officers?
- How far can the legislature go in restricting the use of state money without treading on the power of the governor?
- Must someone resign his or her seat on a board or commission if he or she is elected to the legislature?

Whatever the Special Committee on Separation of Powers may decide to do and whatever any future Supreme Court advisory opinions may finally say, the sorting out process triggered by the *Bone* decision is just beginning. The business of state government in North Carolina has grown so rapidly – the state budget has more than doubled since 1973 – that separation-of-powers questions have been obscured under a sweeping tide of government programs and actions. The contests for power among the executive, legislative, and judicial branches signal not a breakdown of the system but a return to health.

The founding fathers were pessimistic about the ability of the powerful to exercise self-restraint. But they were optimistic about their own ability to construct a constitutional order in which one power would restrain another. As James Madison put it in No. 51 of *The Federalist:*

> The great security against a gradual concentration of the several powers in the same [branch] consists in giving to those who administer each [branch] the necessary constitutional means and personal motives to resist encroachments of the others.

The experience of the last two centuries seems to confirm that Madison and his colleagues understood the value of restraints in keeping men and women free. In the coming months and years, the N.C. Supreme Court, the legislature, and executive officials will have to separate some of their powers, even as their work becomes more intertwined and interdependent. Against such a difficult task, the words of James Madison might well assist them in discovering exactly what "constitutional means and personal motives" can best "resist encroachments of the others." □

FOOTNOTES

[1] *State ex rel. Wallace v. Bone,* 304 N.C. 591, 286 S.E.2d 79 (1982).

[2] The North Carolina Center for Public Policy Research will publish this summer a comprehensive analysis of the more than 400 boards, commissions, and councils that exist.

[3] N.C. Constitution, Art. 1, Section 6.

[4] Memorandum from Rufus L. Edmisten, Attorney General, to Liston B. Ramsey, Speaker, House of Representatives, February 1, 1982, page 1.

[5] N.C.G.S. 143-23(b).

[6] N.C.G.S. 143-23.

[7] N.C.G.S. 120-71.

[8] N.C.G.S. 120-84.5

[9] Advisory Opinion *in re* N.C.G.S. 143-23(b) and 120-84.1 through 120-84.5, 305 N.C. ____ (1982), p. 7.

[10] *Ibid.*

[11] Chapter 964 of the 1981 Session Laws (HB 42), Section 20.

[12] Advisory Opinion, *op. cit.*

[13] N.C.G.S. 135-33.

[14] *State Legislatures,* January 1982, p. 5.

[15] *Ibid.*

[16] N.C.G.S. 120-30.28.

[17] *Immigration and Naturalization Service v. Chadha*, 634 F.2d 408 (9th Cir., 1980), *cert. granted*, 102 S.Ct. 87 (1981).

[18] For example, *Consumer Energy Council of America v. Federal Energy Regulatory Commission*, ____ F.2d ____ (D.C. Cir., 1982). In a vigorous opinion, the U.S. Court of Appeals for the District of Columbia held that the legislative veto violates the federal Constitution.

[19] "While the federal constitution contains no explicit provision regarding separation of powers, the principle is clearly implied. Article I, Section 1, provides that '[a]ll legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a

Legislators Serve on Ninety Executive Boards — Oversight or Overkill?

by Lacy Maddox

In the summer of 1981, the N.C. Center for Public Policy Research began a 12-month project surveying and analyzing the approximately 400 boards, commissions, and councils functioning in state government. Because the number of these groups has increased so rapidly in recent years, few persons in the state understand the growing and complex role that boards, commissions, and councils play. Yet no compendium of this unwieldy collection of groups exists.

On February 11, 1982, as a first installment of the year-long project, the Center released "Separating the Executive and Legislative Branches: Boards, Commissions, and Councils with Legislative Members." Only weeks before, the N.C. Supreme Court had ruled that having four legislators on the Environmental Management Commission (EMC) violated the separation of powers provision in the N.C. Constitution. A series of high-level consultations followed this ruling, including an official advisory opinion from the Attorney General, regarding the legal status of all boards and commissions with legislative members. As staff attorneys in the legislature and the Attorney General's office were furiously researching the N.C. General Statutes for references to boards and commissions, the Center released its February report.

"The N.C. Center for Public Policy Research has found that in addition to legislative membership on 36 boards with executive functions, legislators serve on 54 other boards that are advisory in nature," *The News and Observer* of Raleigh summarized in its editorial of February 17, 1982. "Their legal status is unclear. But it is obvious that the legislature must review, with an eye toward repealing or amending, all statutes mandating legislative membership on non-legislative boards and commissions."

The Center's report had gone a step further: "Unless prompt attention is given to this matter, many of the decisions made by executive branch boards with legislators on them will be suspect.... Some farmers recently sued the Board of Transportation, alleging that having legislators among its membership invalidates the Board's decision to run Interstate Highway 95 through their land.... We think the best solution is to remove legislators from all 90 of these boards, commissions, and councils and replace that practice with strong legislative oversight committees."

The report further recommended that the legislature establish a study committee to review legislative membership on executive-branch boards, commissions and councils, and that this committee report to the full General Assembly in its June 1982 session. In early March, the Speaker of the House and the President Pro Tempore of the Senate formed such a committee.

In preparing its report, the Center applied the N.C. Supreme Court ruling on the EMC, as well as similar decisions in Kansas and Colorado, to the 90 groups in question, finding that 36 groups "probably violate the separation of powers provision." Staffs in both the executive branch (Attorney General) and the legislative branch (General Assembly's Bill Drafting Division) subsequently came up with similar lists; all three lists agree that these 36 boards, commissions, and councils have executive or administrative functions and are unconstitutional under the EMC decision.

The 36 groups identified by the Center are listed below by executive department. The Attorney General's staff identified the following six additional groups (a total of 42) with executive or administrative functions:

1. Child and Family Services Interagency Committee;
2. Governor's Advocacy Council on Children and Youth;
3. Education Commission of the States;
4. Southern Growth Policies Board;
5. N.C. Alcoholism Research Authority; and
6. Commission on Indian Affairs.

The legislative staff agreed on 37 of these 42 groups, but said that the first four of those

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senate and house of representatives.' Article II, Section 1, provides that '[t]he executive power shall be vested in a president of the United States of America.' Article III, Section 1, provides that '[t]he judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. . . .'

"There is abundant evidence that the drafters of the federal constitution had the separation of powers principle in mind, and, for the most part, the principle has been championed and adhered to throughout the history of our republic." *State ex rel. Wallace v. Bone,* 304 N.C. 591, 286 S.E.2d 79 (1982). See also text relating to footnote 3 above.

listed above were only advisory in nature. The Center found 54 additional groups, including the six above, that are advisory in nature but which have legislative members. The N.C. Supreme Court has not said whether it sees a constitutional distinction between administrative and advisory functions in executive-branch boards, commissions, and councils. The Court could say that any executive-branch board with legislative members (even though the group's functions are advisory) violates the separation of powers provision.

The full report by the Center includes a listing of all 90 groups with legislative members by executive-branch department, and for each group, the statute authorizing the appointment of legislators, the number of House and Senate members, and the number of legislators appointed by the Governor. The report is available from the Center for $1.00. The results of the year-long study of all 400 groups will be released later this year. □

EXECUTIVE-BRANCH GROUPS VIOLATING SEPARATION OF POWERS PROVISION

DEPARTMENT OF ADMINISTRATION

1. Board of Public Telecommunications Commissioners
2. Capital Building Authority
3. Capital Planning Commission
4. Governor's Advocacy Council for Persons with Disabilities
5. Housing Finance Agency, Board of Directors
6. Incentive Pay Review Commission
7. Land Conservancy Corporation, Board of Trustees
8. N.C. Council on the Status of Women
9. Public Officers' and Employees' Liability Insurance Commission
10. School of Science and Mathematics, Board of Trustees

DEPARTMENT OF AGRICULTURE

11. Board of Agriculture
12. Farm Operations Commission

DEPARTMENT OF COMMERCE

13. Economic Development Board
14. N.C. Board of Science and Technology
15. Seafood Industrial Park Authority
16. State Ports Authority

DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

17. Governor's Crime Commission
18. State Fire Commission

DEPARTMENT OF CULTURAL RESOURCES

19. Art Museum Building Commission
20. Museum of Art, Board of Trustees

DEPARTMENT OF HUMAN RESOURCES

21. Commission for Mental Health, Mental Retardation, and Substance Abuse Services
22. Social Services Commission
23. Waste Management Board

DEPARTMENT OF JUSTICE

24. Criminal Justice Education and Training Standards Commission

DEPARTMENT OF LABOR

25. Apprenticeship Council

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

26. Coastal Resources Commission
27. Environmental Management Commission
28. Wildlife Resources Commission

DEPARTMENT OF REVENUE

29. Property Tax Commission

DEPARTMENT OF TRANSPORTATION

30. Board of Transportation

DEPARTMENT OF TREASURER

31. Law Enforcement Officers Benefit and Retirement Fund, Board of Commissioners
32. Municipal Board of Control
33. Teachers' and State Employees' Retirement System, Board of Trustees

INDEPENDENT GROUPS

34. Advisory Budget Commission
35. Ports Railway Commission Board of Directors
36. UNC Center for Public Television, Board of Trustees

North Carolina Copes with Cuts

by Bill Finger

The following article appeared on the "op-ed" page of The New York Times, *February 1, 1982. Following its publication, calls from Boston to Florida came into the N.C. Center for Public Policy Research requesting more information. One caller, Eve Kryzanowski of NBC Nightly News, scheduled a special report on budget cuts in North Carolina as a result of this article. The news story aired on the Saturday, March 6, 1982, edition of NBC Nightly News.*

As a part of the Center's ongoing efforts to monitor budget cuts in North Carolina, this spring the Center sponsored a series of seven seminars for the media across the state where it released "Federal Budget Cuts in North Carolina – Part II." Copies of this 332-page report are available from the Center for $10.00. The Center also focused a recent issue of its quarterly magazine, N.C. Insight *(Vol. 4, No. 4), on federal budget cuts. Free copies of the magazine are available.*

Bill Finger is editor of N.C. Insight.

RALEIGH, N.C. – North Carolina officials, like those in other states, have gained the unenviable power of deciding which services to deliver and which to cut. And choose they must. New federal budget reductions, begun in the current, 1982 fiscal year, will increase in fiscal 1983.

To cope with the first wave of federal budget cuts, state officials are not appropriating additional state funds but, instead, are reducing services.

This is happening in the 10th most populous state, where 3 of every 20 persons in the population of 5.9 million live at the poverty level.

The North Carolina General Assembly, in a special session in October 1981 held to adjust the state budget to the federal cuts, relied on this rule of thumb: Reduce the funding levels for state- and federally-supported programs at the same rate that Congress and the Reagan Administration have reduced federal support. And when constituents start complaining, make sure that the Republicans in Washington, not the Democrats in Raleigh, get the blame for the damage.

This refusal to use state funds to absorb federal cuts is resulting in significant losses to the poor, especially in the Medicaid program.

Effective last October 1, the beginning of the federal government's 1982 fiscal year, Washington's share of North Carolina's Medicaid budget was reduced by three percent. Even after the federal cut, however, about two federal dollars come to North Carolina for every state dollar allocated for Medicaid. Hence, an additional state appropriation in October of $8.7 million would have avoided the loss of some $25 million in Medicaid services for the state's 1982 fiscal year. The legislature, faced with a possible choice of voting new funds or losing $25 million, considered only one course of action: Reduce Medicaid services enough to cover the federal cuts.

"I was asked to present all the possible options to cut costs," said Barbara Matula, director of the North Carolina Division of Medical Assistance and a nationally recognized Medicaid expert. "At no point did they say to me, 'How much money do we need to bail out the feds?'"

The state has generally adopted the same strategy toward the new block grants that it did toward Medicaid.

As in other states, there is a growing struggle between the legislative and executive branches over the administration of block-grant funds. As it happens, in North Carolina the political maneuverings have attracted more attention than have the reductions in services.

Pharmacist fills a prescription. In 1981, the N.C. General Assembly reduced this Medicaid service because of the federal budget cuts.

Photo by Paul Cooper

In October, the legislature included a provision in the budget bill creating a block-grant supervisory committee with the power "to review all aspects of the acceptance and use of Federal block grant funds."

James B. Hunt Jr., the well-entrenched, second-term governor and a leading actor in the national Democratic Party, strongly objected to the measure, citing a passage from the state constitution: "The budget as enacted by the General Assembly shall be administered by the Governor." At its first meeting, December 3, the block-grant supervisory committee questioned several unilateral cuts made by Hunt officials. The legislative leaders and the State Budget Officer, the Governor's top fiscal official – all of them close colleagues in the state Democratic Party – sparred in a polite, if not chummy, fashion. Because of a common enemy, they contained their tensions. Both sides concurred, as the Budget Officer put it: "The problem is not between this committee and state government. The problem is in Washington, D.C."

But Raleigh faces severe problems, too. If the state legislature adopts the same approach toward the fiscal 1983 federal Medicaid cut, for example, North Carolinians will lose some $50 million in services. And if the proposals made in President Reagan's State of the Union Message survive Congressional review, the states will have even greater responsibilities to bear.

The lessons from North Carolina's experience seem clear. State officials have been trained to administer federal branch offices even while surviving the vagaries of local politics. In their initial, instinctive responses to the federal budget cuts, they are reducing services at rates determined in Washington while concentrating on gaining control of new administrative powers at home.

The fundamental transformation of government that is under way is becoming less of a mystery and more of a reality. The poor, the middle class, county commissioners, and municipal officials have begun to feel the funding pinch. State leaders must begin making very difficult policy choices, for the branch offices have gotten a promotion, of sorts: They have to continue delivering most of the nation's domestic services even as they receive fewer dollars with which to do the work. □

Legislative Study Comissions

The General Assembly Between Sessions

by Ran Coble

Between regular and special sessions of the N.C. General Assembly, the work of reviewing existing law and preparing future legislation continues through legislative study commissions. In 1982, this interim work is taking place in 53 commissions of four different forms:

(1) twenty-eight studies to be conducted under the auspices of the Legislative Research Commission;

(2) ten *ad hoc* independent study commissions;

(3) two standing committees (the Banking Committee and Utility Review Committee) with specific study assignments; and

(4) thirteen studies to be done by executive branch agencies.

The General Assembly most often sanctions an interim study through the Legislative Research Commission (LRC), a 12-member group with six representatives from both the House and Senate. Speaker of the House Liston Ramsey and President Pro Tempore of the Senate Craig Lawing currently chair the group; the other ten members are Representatives Chris Barker, John Church, Gordon Greenwood, John P. Hunt, and Lura Tally, and Senators Henson Barnes, Carolyn Mathis, William D. Mills, Russell Walker, and Robert W. Wynne. The LRC co-chairpersons may appoint additional legislators or citizens to a particular study, and then the investigative work begins. A study commission may conduct public hearings, invite experts to testify, and examine how other states handle similar problems. Because legislative study commissions are both a source of important future legislation and a vehicle for burying or slowing down unpopular ideas, the Center for Public Policy Research has monitored such groups closely. See Vol. 3, No. 4 (Fall, 1980) of *N.C. Insight*, for example, where Susan M. Presti reviewed the study commissions functioning during the 1979-81 biennium.

Resolution 61 of the 1981 Session Laws authorized the Legislative Research Commission to study topics ranging from revenues to railroads, from milk to obscenity, and from computers to coastal management (see article on pp. 2-13). But the resolution does not compel the review of each area; it only says the LRC "may study" such topics. The LRC co-chairpersons, in conjunction with the full Commission, have the power to choose which topics will receive attention, leaving other matters to die aborning. In 1982, no subcommittees were created to study such issues as milk inspection, school food service, and state funding of libraries — even though legislation authorized the LRC to examine these areas.

All legislative study commissions, both those within the LRC and the other types of structures described in the first paragraph, share some similar problems — competition for funds, a prescribed life, and a varying degree of legislators' attention. With inadequate funds, for example, a study commission is less likely to produce significant results. As of March, 1982, the amount of money available to groups for the 1982-83 biennium ranges from the $2,500 for studying the feasibility of a sports arena in North Carolina to the $142,000 for the Mental Health Study Commission for all of its studies, including reviews of the involuntary commitment laws and residential

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group care facilities for children and youth.* In cases where a state agency was assigned to do the study, the agency usually got no additional appropriation. For example, the General Assembly directed the Department of Transportation to conduct a "highway cost allocation" study and budgeted no new money for the study. The wide range in allocations results from a number of factors: the number of commission members, the amount of built-in (i.e., "free") support services from existing agencies, the scope of a commission's report, and the degree of political support for a particular topic.

Most legislative study commissions have the option of submitting an interim report to the June 1982 "short" session of the General Assembly or a final report to the 1983 General Assembly, or both. The most controversial reports tend to be saved for the 1983 session. Several *ad hoc* study commissions have taken on an air of permanency and thus may have life beyond the bewitching date of January 1983 when study commissions end and the regular session begins. The Mental Health Study Commission, Courts Commission, and Commission on Children with Special Needs have all survived several sessions of the General Assembly.

The accompanying chart identifies the fifty-three legislative studies that are currently being conducted. Reading from left to right, an alphabetical listing of study subjects is followed by information on the legislative chairpersons (usually a representative and a senator) and the staff for each commission. The Legislative Services Office staffs most studies of the Legislative Research Commission, using persons from the General Research, Fiscal Research, or Bill Drafting Divisions. Later columns contain the funding allocations for the biennium, the date(s) a report is due, and a brief description of the topics to be researched and discussed. For more information about a particular study, contact the staff person listed or the legislative co-chairpersons. For copies of interim and final study commission reports, contact the Legislative Library, State Legislative Building, Raleigh, North Carolina 27611 (919-733-7778).□

* It should be noted that the Sports Arena Study budget allows for one meeting – per diem, travel, and 40 hours secretarial support – for seven members, all other costs being absorbed in the Legislative Services budget. On the other hand, the Mental Health Study Commission budget includes professional staff, secretarial support, all office expenses, telephone, and per diem and travel costs for 42 members attending an average of five committee and four commission meetings per year. Comparison can also be made regarding the results of these study groups. During the 1979-81 biennium, the Sports Arena Study Group elected not to prepare a final report and developed no legislation. The Mental Health Study Commission developed a full report which included administrative recommendations and 14 pieces of legislation, 12 of which were ratified.

Legislative Study Commissions

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
AGING					
1. Aging Problems (LRC)	Economos/ Gray	John Young 732-2578	$5,000	1982 or 1983 G.A.	Continue study of problems and needs of adults over 60.
2. Long Term Care for Elderly[1]	NA	Donna Nixon 733-3983		1/1/82	Implementation of rules on long term care and in-home services for elderly.
AGRICULTURE					
3. Alien Ownership of Land (LRC)	James/ White	Bill Hale 733-2578	$3,000	1982 or 1983 G.A.	Ownership of land in North Carolina by aliens and alien corporations.
4. Forestry, Soil, and Water Agency and Boards Transfer (LRC)	Taylor/ Hardison	Don Hunt 733-2578	$4,000	1982 or 1983 G.A.	Whether to transfer Division of Forest Resources and Division of Soil and Water Conservation from Dept. of Natural Resources and Community Development to Dept. of Agriculture.

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
BANKING AND THRIFT INSTITUTIONS					
5. Banking Law Changes [2]	Bone/ Mills	–		1982 G.A.	Impact of changes in banking laws enacted by 1981 General Assembly and legislation pending.
CHILDREN WITH SPECIAL NEEDS					
6. Child Screening Program [3]	Sen. Walker	Jim Johnson 733-4910	$28,000	1983 G.A.	Feasibility of establishing a statewide child screening program for pre-kindergarten children to detect special learning needs of children.
COURTS					
7. Judicial Divisions and Districts Boundaries [4]	Rep. Helms	Jim Drennan 966-5381		1983 G.A.	Current boundaries of judicial divisions and districts, prosecutorial districts, and personnel needs.
8. Money Judgments Collection [4]	Rep. Helms	Joan Brannon 966-5381		1982 and 1983 G.A.	Collection of money judgments and court fees; 1981 legislation.
DAY CARE					
9. Day Care (LRC)	Brennan/ Creech	Susan Sabre 733-6660	$5,000	1982 or 1983 G.A.	Problems in enforcing day care laws, cost of care in different facilities, and comparisons with other states.
EDUCATION					
10. College Science Equipment (LRC)	Enloe/ Mills	Susan Sabre 733-6660	$4,000	1982 or 1983 G.A.	Scientific and technical training equipment needs in institutions of higher education.
11. High Cost Specialized Technical Institute Program Study [5]	NA	Thomas King 733-7051		1982 G.A.	High cost of specialized programs in heavy equipment operation, marine technology, wood products, and truck driver training.
12. Teacher Tenure Law (LRC)	Fussell/ Royall	Jim Blackburn 733-2578	$6,000	1982 or 1983 G.A.	Teacher tenure procedures and amendments to statutes.
13. Twelfth Grade Optional (LRC)	Greenwood/ Ward	Sarah Fuerst 733-6660	$4,000	1982 or 1983 G.A.	Feasibility of making 12th grade optional in the public schools and study vocational education program.
ELECTIONS					
14. Campaign Financing and Reporting (LRC)	D. Clark/ McDuffie	Jim Blackburn 733-2578	$4,000	1982 or 1983 G.A.	Laws regarding campaign financing and reporting.

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
ENERGY					
15. Electric Power[6]	Huskins/ Johnson	Don Hunt 733-2578		1983 G.A.	Assess adequacy, reliability, and cost of generating electric power in North Carolina.
ENVIRONMENT					
16. Beverage Container Regulation (LRC)	Diamont/ Speed	Ann Christian 733-2578	$4,000	1982 or 1983 G A.	Impact of beverage container deposit regulation on the economy, environment, and energy resources of North Carolina.
17. Coastal Area Management (LRC)	Evans/ Daniels	Sarah Fuerst 733-6660	$6,000	1982 or 1983 G.A.	Necessity, efficacy, and equity of current rules and regulations under Coastal Area Management Act.
18. Water Pollution	Gillam/ Daniels	Fred Aikens 733-4910	$5,000	1/1/83	Water pollution problems and water resources needs in Chowan River and Albemarle Sound basins.
FIRE & RESCUE TRAINING					
19. Fire and Rescue Training Academy[7]	NA	Horace Hodges 733-7343	None	1982 G.A.	Availability of state-owned property and construction cost of a statewide fire and rescue training academy.
HEALTH					
20. Public Health Law Recodification[1]	NA	Sandy Moulton 733-2173	None	1983 G.A.	Recodification of public health and public hospital laws.
21. Midwifery[1]	NA	Richard Nugent 733-2973	None	1983 G.A.	Safety and efficacy of out-of-hospital delivery of babies and state's role in licensing midwives.
HOUSING					
22. Housing Programs	Rep. Cook	Bob Brinson 733-7061		1983 G.A.	State policies on housing and effect of housing program on state's economy.
HUNTING					
23. Fox management	NA	Vernon Bevill 733-3391		1982 G.A.	Fox management.
INSURANCE					
24. Insurance Regulation (LRC)	Seymour/ Wynne	Bill Hale 733-2578	$10,000	1982 or 1983 G.A.	Feasibility of establishing a risk and rate equity board within Dept. of Insurance; how state should cover risks of liability for personal injury and property damage; and credit insurance.

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
LEGAL					
25. Annexation (LRC)	Plyler/ Garrison	Gerry Cohen 733-6660	$6,000	1982 or 1983 G.A.	Annexation laws and procedures.
26. Evidence Laws (LRC)	Pulley/ Barnes	Don Hunt 733-2578	$6,000	1982 or 1983 G.A.	Laws of evidence, directing efforts toward a proposed Evidence Code.
27. Obscenity Laws (LRC)	Miller/ Warren	Susan Frost 733-2578	$4,000	1982 or 1983 G.A.	Laws relating to obscene literature and exhibitions.
LICENSING BOARDS					
28. New Health Licensing Boards (LRC)	Lancaster/ Jenkins	John Young 733-2578	$3,000	1982 or 1983 G.A.	Need for new health occupational licensing boards for radiation technology, social workers, athletic trainers, occupational therapists, sanitarians, and counselors.
MARINE FISHERIES					
29. Marine Fisheries Study Commission	Guy/ J.E. Thomas	Fred Aikens 733-4910	$8,000	4/1/82	Licensing of commercial marine fisheries and leasing of state-owned, submerged lands for shellfish production.
MENTAL HEALTH					
30. Residential Group Care Programs	Sen. Royall	Lynn Gunn 733-6077	Mental Health Study Comm. has $71,000/yr. for all its studies, including these two.	Interim: 1982 G.A.; Final: 1983 G.A.	Licensing of residential group care facilities for children and youth.
31. Involuntary Commitment to Mental Hospitals	Sen. Royall	Lynn Gunn 733-6077		Interim: 1982 G.A.; Final: 1983 G.A.	Impact of 1979 changes in involuntary commitment law, policies for release of involuntarily committed persons, and laws regarding persons found "not guilty by reason of insanity."
MIGRANTS					
32. Migrant Workers (LRC)	Fulcher/ Soles	John Young 733-2578	$7,500	1982 or 1983 G.A.	State and federal statutes and local government regulations relating to migrant farmworkers.
PRISONS					
33. Inmate Population[8]	NA	Ben Irons 733-4926	None	None stated	Policies and procedures to determine need for modification in response to increasing inmate population.

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
RECREATION					
34. Sports Arena (LRC)	Barbee/ Allsbrook	Conrad Airall 733-2578	$2,500	1982 or 1983 G.A.	Feasibility of constructing and financing a sports arena in North Carolina.
STATE GOVERNMENT					
35. Arbitration and Small Contractors' Bonding Requirements (LRC)	Hunter/ Duncan	Dennis Bryan 733-2578	$4,000	1982 or 1983 G.A.	Arbitration for disputes under state construction and procurement contracts; bonding requirements on small contractors bidding on government contracts.
36. Civil Rights Compliance (LRC)	Spaulding/ Walker	A.W. Turner 733-6660	$4,000	1982 or 1983 G.A.	Determine if non-state institutions receiving state funds are in compliance with civil rights laws protecting minorities and handicapped.
37. Computer Systems Consolidation (LRC)	Parnell/ Alford	Sabra Faires 733-6660	$5,000	1982 or 1983 G.A.	Feasibility of consolidating the computer systems operated, used, or maintained by the state.
38. Construction, State Rules & Coordination[9]	NA	Rob Nelson 733-7061	None	1982 or 1983 G.A.	Rules covering state construction and ways to expedite construction process.
39. Construction of State Office Buildings and Design & Inspection of Public Facilities	Nye/ Duncan	Dennis Bryan 733-2578	$4,000	1982 or 1983 G.A.	Development of policy on state office building construction and continue study of design, construction, and inspection of public facilities.
40. Credit Cards[9]	NA	Bob Brinson 733-7061	None	5/1/82	State credit cards and telephones in state vehicles.
41. Investment of Public Funds (LRC)	Beard/ Palmer	Genie Rogers 733-2122	$4,000	1982 or 1983 G.A.	State investment and maximum earning productivity of all public funds.
42. Leasing of State Land (LRC)	Hux/ Swain	Conrad Airall 733-2578	$4,000	1982 or 1983 G.A.	Whether leasing of state land should be by competitive bidding.
43. Motor Vehicles Owned by State[10]	NA	a) Rilla Moran Woods 733-6540 b) Carl Byrd 733-2566	a) None b) 7,000	a) 2/1/83 b) 2/1/83	a) State-owned motor vehicles. b) Operation of maintenance garages and feasibility of state making major vehicle repairs to school buses and state-owned vehicles.
44. Regional State Offices (LRC)	Tennille/ Noble	Sarah Fuerst 733-6660	$3,000	1982 or 1983 G.A.	Regional offices operated by state agencies.

STUDY SUBJECT	CO-CHAIRPERSONS (Rep./Sen.)	STAFF	FUNDS ALLOCATED DURING BIENNIUM 1981-1983	REPORT DUE	TOPICS TO BE CONSIDERED
TAXATION					
45. Alcoholic Beverage Taxation (LRC)	Edwards/ Mathis	A.W. Turner 733-6660	$4,000	1982 or 1983 G.A.	Laws pertaining to taxation of alcoholic beverages and designation of revenues for alcoholism education, rehabilitation, and research.
46. Property Tax System Study Committee	McAlister/ Vickery	David Crotts 733-4910 Bill Campbell 966-5381	Tentative budget $75,000	Discretionary interim: 1982 G.A.; Final: 1983 G.A.	Efficiency, effectiveness, and fairness of property tax system; review current listing procedures; and examine octennial revaluation system.
47. Revenue Laws (LRC)	Lilley/ Rauch	Sabra Faires 733-6660	$8,000	1982 or 1983 G.A.	Continue study of revenue laws.
TRANSPORTATION					
48. Special Committee to Study the Department of Transportation	Ramsey/ Lt. Gov. Green	Jim Newlin 733-4910	None	none stated	Review Dept. of Transportation, attention on efficiency and reducing personnel and expenditures.
49. Highway Construction Program[11]	NA	W.F. Caddell 733-6348	None	3/1/82	Review highway construction program, cost estimates, and need for projects.
50. Highway Cost Allocation[11]	NA	Charles Adkins 733-3141	None	Interim: 5/1/82	Consider costs of right of way, construction and maintenance attributable to various vehicular classes of highway users.
51. Motor Vehicles Inspection and Registration[11]	NA	James Penny 733-2403	None	1/15/82	Feasibility of having motor vehicles inspected and registered simultaneously.
52. Railroad Operations (LRC)	Hunt/ Jordan	Gerry Cohen 733-6660	$5,000	1982 or 1983 G.A.	State's interest in railroad companies and railroad operations.
WOMEN					
53. Women's Needs (LRC)	Easterling/ Marvin	Ann Christian 733-2578	$5,000	1982 or 1983 G.A.	Economic, social, legal and other needs of women in North Carolina.

FOOTNOTES TO TABLE

LRC = Legislative Research Commission Study

[1] To be conducted by the Department of Human Resources.
[2] To be conducted by the House and Senate Banking Committees.
[3] To be conducted by the Legislative Commission on Children with Special Needs.
[4] To be conducted by the Courts Commission.
[5] To be conducted by the State Board of Community Colleges.
[6] To be conducted by the Utility Review Committee of the General Assembly.
[7] To be conducted by the Department of Insurance.
[8] To be conducted by the Department of Correction.
[9] To be conducted by the Office of State Budget and Management in the Governor's Office.
[10] To be conducted by the Department of Administration.
[11] To be conducted by the Department of Transportation.

Recording the Legislators' Votes for the Public

by Jim Bryan

The North Carolina General Assembly installed an electronic voting system – in the Senate in 1975 and the House in 1977 – capable of recording all roll-call votes. This step toward modernization allowed newspapers to publish occasional key votes on a few controversial bills and helped citizen and corporate lobbyists to report selected votes to their members. But neither reporters nor lobbyists had the time to wade laboriously through the files of the House and Senate principal clerks or the Legislative Library and review the hundreds of recorded votes in each session. And even though the legislature's rules required that all recorded votes "shall be open to public inspection,"* interested citizens faced numerous obstacles in tracking down a specific vote, not to mention understanding the code-like jargon of "second readings," "motions to table," and "committee substitutes."

For the first time in North Carolina, reporters, lobbyists, and citizens now have a place to turn for help. In January of this year, the North Carolina Center for Public Policy Research released the first issue of "How the Legislators Voted," which reported votes in the General Assembly during the 1981 budget session (October 5-10) and the 1981 first redistricting session (October 29-30). In February 1982, the Center followed with the second issue of "How the Legislators Voted," which covered the 1982 second redistricting session (February 9-11). Modeled after similar services in the *Congressional Quarterly* and other state and regional publications like the *California Journal* and *Focus Midwest*, the N.C. Center's voting report service attempts to fill an important void.

"In the tight and clubby little world of North Carolina's legislature, accountability to the home folks is hard to come by," said *The Raleigh Times* editorial entitled "On the Record at Last." That comment followed the Center's January release, which reported the votes for each of the 170 legislators on almost 200 public bills taken during the two October sessions. The Center hopes to continue the voting report service during the third redistricting session in April and the June 1982 budget session, and on a timely basis during the regular 1983 session. As *The Raleigh Times* put it, "We hope public interest will make this venture in accountability succeed."

To understand how the report works, see the chart that follows. Six sample votes are included to show how every legislator voted and to illustrate several important steps in the legislative process. To read the chart, first see the explanation of the bill, amendment, or motion on which the vote was taken; then find the legislator's name on the alphabetical list of the House or Senate members; and finally, if the symbol in the voting columns is not self-explanatory, refer to the "Key to Symbols" above the member list.

Before becoming law, each bill must pass three separate "readings" in both the House and Senate. The first reading occurs when the bill is introduced and sent to a committee. If the committee reports the bill "favorably," it then goes to the floor of the chamber where it was introduced for a second reading. Amendments may be offered at this point. Reading 3 occurs after a bill has passed the second reading.

Each bill *usually* faces an electronically recorded vote on the second reading (R2). Amendments offered prior to the second reading may also face a recorded vote. While the R2 vote is usually the most important vote on a given bill, it is not always the most telling. For example, look in the chart at House Bill 1392 (H 1392), the revised Appropriations Act. The division within the House and Senate on such key decisions as funding for horse arena facilities and a microelectronics center is evident only through the votes on amendments offered in each chamber *prior to* the second reading. Consequently, the legislators' votes on certain amendments to H 1392 reveal their positions on more specific issues than do their votes on the bill as a whole. Likewise, the sample redistricting votes presented here cover significant amendments to the final bills that passed in February, not the R2 vote on the bills.

Citizens and legislative analysts now have a single reference document available for roll-call votes taken in the General Assembly. "How the Legislators Voted" provides the public with a new tool for retrieving and understanding the very useful data now available in this electronic age. □

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* Rule 20 (f) of the 1981 House Rules and Rule 25 (f) of the 1981 Senate Rules.

Jim Bryan, a research associate at the North Carolina Center for Public Policy Research, co-authored the first two editions of "How the Legislators Voted." Copies of Number 1 (January 1982) and Number 2 (February 1982) are available for $3.00 and $1.00 respectively. Number 3 (on the April redistricting session) and Number 4 (on the 1982 budget session) will be released in May and July, respectively. Depending on the interest expressed in these four issues – and the cost involved – the service may be offered on a subscription basis throughout the regular 1983 session.

Explanation of Votes

KEY TO SYMBOLS
Y – Voted for (aye)
N – Voted against (no)
A – Absent
X – Excused absence
R2 – Second reading
H – House of Representatives
S – Senate

OCTOBER 5-10, 1981 ("BUDGET") SESSION

1. H 1390 – **To Authorize the issuance of $300 million in Clean Water Bonds** for construction and improvements of wastewater treatment, collection, and water supply facilities. A statewide referendum is required before the bonds could be issued. House passed on Reading 2 (R2) 100-10. Senate passed on R2, 37-10.

H 1392 – To amend 1981-82 state budget on current operations and capital improvements. After considering nine amendments, the House passed H 1392 on R2, 106-3; the Senate considered five amendments before passing H 1392 on R2 47-0. Some key votes on Amendments (A) were:

2. **House A 2/Senate A 5 – To delete funds for horse show arena facilities.** House motion to table (kill) amendment passed 75-37. Senate motion to table passed 31-15.
3. **House A 3 – To delete funds for Microelectronics Center.** House motion to table passed 82-30. (There was no comparable Senate vote.)
4. **House A 5/Senate A 3 – To allow reimbursement for six Medicaid drug prescriptions per month** instead of the four-prescription limit in the bill. Effective October 1, the federal share of Medicaid costs has been reduced. Consequently, the legislature reduced several kinds of Medicaid services, including prescription drugs, as a part of the Appropriations bill (H 1392). House rejected amendment 34-78. Senate rejected amendment 10-36.

FEBRUARY 9-11, 1982 ("SECOND REDISTRICTING") SESSION

H 1 – To reapportion the North Carolina House of Representatives. This reapportionment plan had received tentative approval from the U.S. Department of Justice regarding minority representation. H 1 divided a number of counties, placing parts of a single county in separate districts.

5. **House A 2/Senate A 2 – To adjust the northeast House district numbers 3, 6, 7, 9, and 22** to mimimize the process of dividing counties and placing parts of a county in more than one district. House rejected amendment 32-82; Senate rejected amendment 3-38.

S 2 – To reapportion the 11 Congressional districts in North Carolina. This reapportionment plan had received tentative approval from the U.S. Department of Justice regarding minority representation. The Justice Department had rejected the Congressional plan enacted by the General Assembly in 1981.

6. **House A 2 – To submit the previously-enacted 1981 House Congressional redistricting plan** to the Justice Department for reconsideration, and to use the 1982 plan only if the Justice Department again rejected the 1981 plan. House adopted 54-51. A 2 was then reconsidered and deleted. (No Senate vote on this amendment.)

SENATE	1	2	3	4	5	6
ALFORD (D)	Y	Y		N	N	
ALLRED (R)	Y	N		A	A	
ALLSBROOK (D)	Y	Y		N	Y	
BAKER (R)	Y	N		N	N	
BALLENGER (R)	N	N		N	N	
BARNES (D)	Y	Y		N	N	
BOGER (R)	N	N		Y	N	
CAVANAGH (R)	N	N		Y	A	
CLARKE (D)	Y	N		N	N	
COCKERHAM (R)	N	Y		Y	A	
CREECH (D)	Y	Y		N	N	
DANIELS (D)	Y	A		A	N	
DUNCAN (D)	Y	Y		N	N	
FRYE (D)	Y	Y		N	N	
GARRISON (D)	Y	Y		N	N	
GRAY (D)	Y	N		N	A	
HANCOCK (D)	Y	Y		N	N	
HARDISON (D)	A	Y		N	N	
HARRINGTON (D)	Y	Y		N	N	
HARRIS (D)	Y	Y		N	A	
JENKINS (D)	Y	Y		N	N	
*JERNIGAN (D)	Y	Y		N	*	
JOHNSON (D)	Y	N		N	N	
JORDAN (D)	Y	Y		Y	A	
KINCAID (R)	N	N		N	N	
LAWING (D)	N	Y		N	N	
MARION (D)	Y	N		N	N	
MARVIN (D)	Y	N		N	N	
MATHIS (D)	X	X		X	N	
McDUFFIE (D)	Y	Y		Y	N	
MILLS (D)	Y	Y		N	Y	
NOBLE (D)	N	Y		N	A	
PALMER (D)	Y	Y		Y	N	
*RAND (D)	*	*		*	N	
RAUCH (D)	X	X		X	N	
RAYNOR (D)	Y	A		Y	N	
REDMAN (R)	N	N		N	A	
ROYALL (D)	Y	Y		N	N	
SMITH (R)	N	N		N	N	
SOLES (D)	Y	Y		Y	N	
SPEED (D)	Y	Y		N	N	
SWAIN (D)	Y	Y		N	N	
THOMAS, J. (D)	Y	Y		N	N	
THOMAS, R. (D)	Y	Y		Y	A	
VICKERY (D)	Y	Y		Y	N	
WALKER (D)	Y	Y		N	N	
WARD (D)	Y	Y		N	N	
WARREN (D)	Y	Y		N	N	
WHITE (D)	Y	Y		N	Y	
WRIGHT (R)	N	N		N	N	
WYNNE (D)	Y	N		N	N	

*Jernigan replaced by Rand, A. (D) on Jan. 6, 1982

HOUSE	1	2	3	4	5	6
ADAMS (D)	Y	Y	Y	N	N	N
ALLRAN (R)	N	N	N	Y	N	Y
ALMOND (R)	Y	N	N	Y	N	Y
ANDERSON (D)	Y	Y	Y	N	N	Y
BARBEE (D)	Y	Y	Y	N	N	Y
BARKER (D)	Y	Y	Y	N	N	N
†BARNES, A. (D)	†	†	†	†	N	N
BARNES, R. (D)	Y	Y	Y	Y	N	N
+BEALL (D)	+	+	+	+	N	N
BEAM (D)	Y	Y	Y	N	N	Y
BEARD (D)	Y	Y	Y	N	A	Y
BELL (D)	Y	Y	Y	N	N	A
BLACK (D)	Y	Y	Y	N	N	A
BLUE (D)	Y	Y	Y	Y	N	N
BONE (D)	Y	Y	Y	N	N	Y
BRANNAN (D)	Y	Y	Y	N	N	Y
BRAWLEY (R)	Y	N	N	Y	Y	Y
BRENNAN (D)	A	Y	Y	Y	N	N
BROWN (R)	Y	N	N	N	Y	Y
BRUBAKER (R)	Y	N	N	Y	N	Y
BUMGARDNER (D)	Y	N	Y	N	Y	Y
BUNDY (D)	Y	Y	Y	N	Y	Y
BURNLEY (R)	Y	N	N	Y	N	Y
CHAPIN (D)	Y	Y	Y	N	Y	Y
CHURCH (D)	Y	Y	Y	N	Y	Y
CLARK, D. (D)	Y	Y	Y	N	N	Y
CLARK, W. (D)	A	N	N	N	N	A
COBLE (R)	Y	N	N	Y	N	Y
COCHRANE (R)	N	N	N	Y	N	Y
COLTON (D)	A	Y	Y	N	N	N
COOK (D)	Y	Y	Y	N	N	N
CRAVEN (R)	Y	N	N	Y	N	A
CRAWFORD (D)	Y	Y	Y	N	A	N
CREECY (D)	Y	Y	A	A	N	N
DIAMONT (D)	Y	Y	Y	N	N	N
EASTERLING (D)	Y	Y	Y	Y	N	N
ECONOMOS (D)	Y	Y	Y	N	N	N
EDWARDS (D)	Y	N	N	N	N	N
ELLIS (D)	Y	Y	Y	N	Y	Y
ENLOE (D)	Y	Y	Y	N	N	N
ETHERIDGE (D)	Y	Y	Y	N	Y	Y
ETHRIDGE (D)	Y	Y	Y	N	N	N
EVANS (D)	Y	X	X	N	Y	N
FENNER (D)	Y	Y	Y	N	N	Y
FOSTER (D)	Y	Y	Y	Y	N	N
FULCHER (D)	Y	N	Y	N	Y	Y
FUSSELL (D)	Y	A	Y	N	N	N
GAY (D)	Y	Y	Y	N	Y	Y
GILLAM (D)	Y	Y	Y	Y	Y	Y
GRADY (D)	N	Y	Y	N	Y	N
GREENWOOD (D)	Y	Y	Y	N	N	N
GUY (D)	Y	Y	Y	N	N	N
HACKNEY (D)	Y	Y	Y	N	N	N
HARRISON (D)	Y	Y	N	Y	Y	Y
HAWORTH (D)	Y	N	Y	N	N	N
HAYDEN (D)	Y	Y	Y	Y	N	N
HEGE (R)	N	N	N	Y	N	Y
HELMS (D)	Y	Y	Y	N	N	N
HIATT (R)	Y	N	N	Y	N	Y
HIGHTOWER (D)	Y	Y	Y	N	N	A
HOLMES (R)	Y	N	N	N	N	Y
HOLT, B. (D)	Y	Y	Y	N	N	N
HOLT, C. (D)	Y	N	Y	N	Y	A
HUGHES, C. (R)	Y	N	N	N	Y	Y
HUGHES, J. (R)	N	N	N	Y	N	Y

HOUSE	1	2	3	4	5	6
HUNT, J. (D)	Y	N	Y	N	N	Y
†HUNT, P. (D)	Y	Y	Y	N	†	†
HUNTER, R. (D)	X	Y	Y	N	N	N
HUNTER, T. (D)	A	A	A	A	Y	Y
HUSKINS (D)	Y	Y	Y	N	N	N
HUX (D)	Y	Y	A	N	Y	Y
JAMES (D)	Y	Y	A	N	Y	Y
JONES (D)	Y	Y	Y	N	N	A
JORDAN (D)	Y	Y	N	N	Y	Y
KAPLAN (D)	Y	X	X	X	N	A
KEESEE (R)	Y	N	N	Y	N	Y
LACEY (R)	Y	N	N	N	Y	Y
LANCASTER (D)	N	N	Y	Y	Y	N
LIGON (R)	N	N	N	Y	N	Y
LILLEY (D)	Y	Y	Y	N	N	N
LOCKLEAR (D)	A	Y	Y	A	N	A
LUTZ (D)	Y	N	Y	N	N	N
McALISTER (D)	Y	Y	Y	A	N	N
McDOWELL (D)	Y	Y	Y	N	N	N
MAUNEY (D)	Y	Y	Y	Y	N	N
MAVRETIC (D)	Y	Y	Y	N	N	Y
+MESSER (D)	Y	Y	Y	N	+	+
MILLER (D)	A	N	Y	N	N	Y
MORGAN (D)	Y	N	N	N	N	N
MUSSELWHITE (D)	Y	Y	Y	N	N	N
NASH (D)	Y	Y	Y	N	Y	N
NESBITT (D)	Y	Y	Y	N	A	Y
NYE (D)	Y	A	Y	Y	Y	Y
PARNELL (D)	Y	Y	Y	N	N	Y
PAYNE (D)	Y	Y	Y	N	N	X
PLYLER (D)	Y	Y	Y	N	N	N
POOVEY (R)	N	N	N	Y	Y	Y
PULLEY (D)	Y	N	Y	N	Y	N
QUINN (D)	Y	Y	Y	N	N	A
RABON (D)	Y	Y	Y	Y	Y	N
RADFORD (D)	Y	Y	Y	N	N	Y
RAMSEY (D)	Speaker					
REDDING (R)	Y	N	N	Y	N	Y
RHODES, F. (R)	N	N	N	Y	N	Y
RHODES, T. (R)	Y	N	N	Y	A	A
ROBINSON (R)	Y	N	N	N	Y	A
SEYMOUR (D)	Y	Y	Y	N	N	N
SMITH (D)	X	X	X	X	N	N
SPAULDING (D)	Y	N	Y	Y	N	N
SPOON (R)	A	A	N	A	N	Y
STAMEY (R)	Y	N	N	Y	N	Y
TALLY (D)	Y	Y	Y	N	N	N
TAYLOR (D)	N	Y	Y	Y	Y	Y
TENNILLE (D)	Y	Y	Y	N	N	N
THOMAS (D)	Y	Y	Y	N	A	Y
TISON, B. (D)	Y	Y	Y	N	N	N
TYSON, H.(D)	Y	Y	Y	Y	Y	A
WARREN (D)	Y	Y	N	N	Y	N
WATKINS (D)	Y	Y	Y	N	Y	Y
WICKER (D)	Y	Y	Y	N	N	Y
WOODARD (D)	Y	Y	Y	N	N	N
WRIGHT (D)	Y	N	Y	Y	N	N

†Hunt, P. replaced by Barnes, A. (D) on December 21, 1981

+Messer replaced by Beall, C. (D) on December 12, 1981

FROM THE CENTER OUT

Budget Cuts

Thank you for sending a copy of the preliminary report on the effect of federal budget cuts on North Carolina as prepared by your organization.

We've had a difficult time in trying to obtain this information from sources here, and in this regard, your study is greatly needed and appreciated. I will look forward to receiving your second report and hope that you will contact our office if we can provide you with any specific or pertinent information.

I also received the copy of *The Tobacco Industry in Transition: Policies for the 1980s.* This, too, was most interesting and helpful to me, particularly in light of the recent debate and vote on the tobacco program.

Please keep us informed on issues of importance to North Carolina.

Sincerely yours,
Ike Andrews
Member of Congress

Thank you for your Preliminary Report on the Federal Budget Cuts in North Carolina.

Your summation of the budget cuts is in such a form that it will be easy to use and already I have found that it serves a great purpose in trying to interpret what might be happening in North Carolina in our state budget. I like the comprehensive form which you have used to describe these block grants and budget cuts.

I am grateful to you for preparing this report and will await the second report in 1982 on the impact of these budgetary changes on the individual counties and by income group, occupation, race, and sex.

Thank you again for this information.

Sincerely,
Bertha (B) Merrill Holt
N.C. Representative
Alamance and Rockingham Counties

My congratulations on the excellence of your publication [*N.C. Insight*], and especially on the article by Leslie Winner in Volume 4, No. 4 ["Axing Entitlement Programs – Focus on Medicaid"].

Ms. Winner indicated that "at some point doctors and hospitals will opt not to participate in the program." Any hospital that received Hill-Burton funds for construction is committed to performing a "community service obligation" and as part of that is required to participate in both Medicare and Medicaid. Even more important is the inherent commitment to community service that lives and breathes in all community hospitals. Far from picking and choosing their patients, nearly all of our hospitals respond promptly and thoroughly to provide needed services to all who present themselves for care.

Very truly yours,
William Oviatt
Vice President
N.C. Hospital Association

Tobacco

Thank you for the extra copies of *N.C. Insight* with excerpts from the book, *The Tobacco Industry in Transition: Policies for the 1980s. . . .*

This letter is really to say "thank you" for being there, for doing an *excellent* job with the information provided in *N.C. Insight,* and for making the publication available to small newspapers like *The Times.* You perform a very valuable service for our state I think.

Sincerely,
Stella A. Trapp, Publisher
The Transylvania Times of Brevard

Microelectronics

I finally arrived on board last Thursday [October 1, 1982], and by coincidence Volume 4, No. 3 of *N.C. Insight* arrived in the previous afternoon's mail, so I was well briefed for my first day at work. My background is not a technical one so the diverse viewpoints about MCNC [Microelectronics Center of North Carolina] were helpful to me in understanding what are the objections to the Center. I did spend a major part of my previous work experience in the industrial development area and from that exposure I have formed expectations about North Carolina's potential and future which make it an ideal candidate for this rapidly expanding high technology industry. I have no doubts that companies which are attracted to North Carolina will behave responsibly and as good citizens and neighbors.

Sincerely yours,
W. Holt Anderson
Secretary/Treasurer
Microelectronics Center of N.C.

Indian Conference

I wish to express my sincere appreciation for your sensitive recording and editing of the first [conference on] North Carolina Public Policy and Native Americans. I have received many positive comments from the general education population because the document is so complete.

Please convey my thanks to the board for their support in looking at a selected racial population.

Sincerely,
Betty Oxendine Mangum, Director
Division of Indian Education
Department of Public Instruction

Article IV

The South Carolina Bar is presently considering the implementation of a system of Judicial Evaluation. I have recently learned of your organization's Judicial Evaluation Survey and have received copies of several news articles about it [*Article IV: A Guide to the N.C. Judiciary,* $4.00]. I would be most appreciative if you could send me a copy of the form which you asked the lawyers to complete together with a copy of the most recent results of the evaluation.

Very truly yours,
Thomas S. Tisdale, Jr.
President
South Carolina Bar

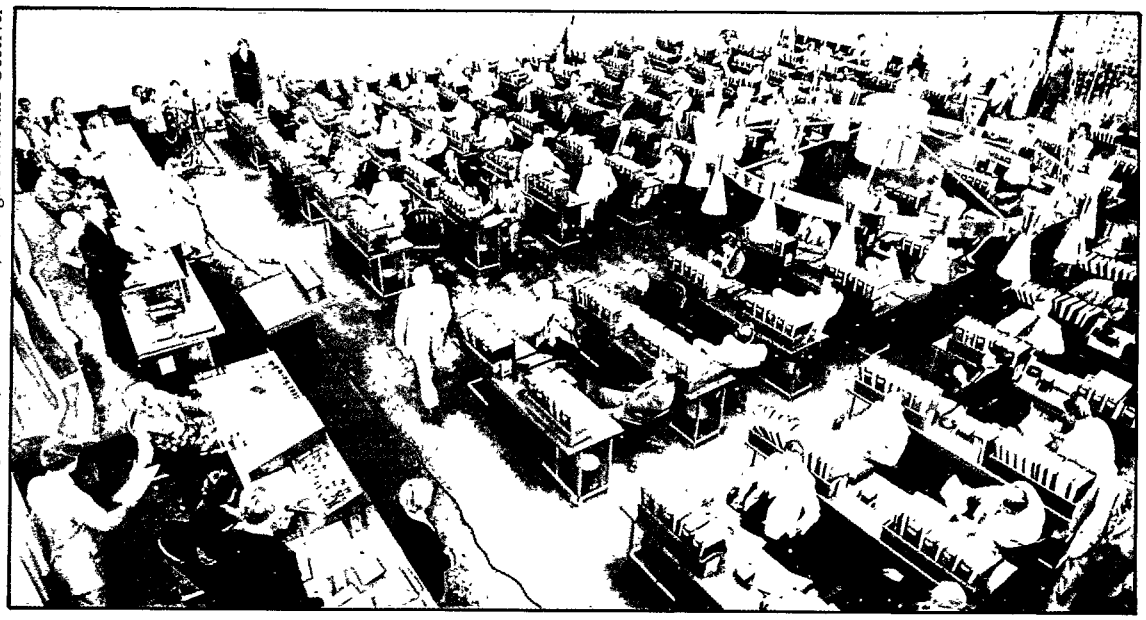

photo by Jim Erickson, Raleigh News and Observer

ARTICLE II

A Guide to the North Carolina Legislature . . .

The third edition, for the 1981-82 sessions

"The cross section of sources used — legislators, lobbyists, and the media — makes *Article II* a valuable and creditable resource. I refer to it frequently."

— *Rep. J. Howard Coble (R-Guilford)*

"A guide to the jungle."

— *The Raleigh Times*

"The handbook was invaluable to me as a lobbyist."

— *Charles Case, Raleigh attorney*

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Index

Below is a subject index to Volume 4 (1981). Following the subject heading is the article title, the number of the issue in which it appeared, and the page number of the issue.

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