NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.

NEWS RELEASE

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# N.C. CENTER CRITICIZES USE OF SPECIAL PROVISIONS IN BUDGET BILLS

Special provisions in budget bills are like Pandora's Box -- they contain a variety of plagues that can undermine the legislative process, work against the public interest, and damage good relations between the governor and the legislature, says the N.C. Center for Public Policy Research.

The Center, in a special report released today, says these special provisions -- adopted by the legislature in the frenzied final days before adjournment of each session -- often are approved without adequate public debate and frequently without the knowledge of many members of the General Assembly. "Since the legislative sponsors of special provisions are not named, special provisions are like orphans nobody will claim," says Ran Coble, Center executive director and author of the report.

Coble says the practice of special provisions began years ago as a legitimate way to explain the purposes of an appropriation or limit the use of funds. "Special provisions once served as the narrative flesh on a skeleton of numbers appropriating certain amounts to each state agency," says Coble. "But in recent years, what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand. Now, the legislature is piggybacking changes in substantive laws onto budget bills."

For instance, special provisions in recent years were used to repeal parts of the Administrative Procedure Act, to attempt (unsuccessfully) to repeal the Coastal Area Management Act, to pass a major revision to the state's bingo laws, to allow overweight trucks on the state's highways, and to establish study commissions on such disparate subjects as the quality of water in the Pigeon River and a retirement plan for local sheriffs and registers of deeds.

To curb this undesirable practice of using special provisions to supplant the regular legislative process, the Center recommends that each house of the General Assembly adopt rules barring the use of special provisions to establish, amend, or repeal statutory law. It also recommends that the legislature amend the Executive Budget Act to empower citizens to petition the N.C. Attorney General to challenge any special provision establishing, amending, or repealing a law. If the Attorney General declined to pursue the case, the individual citizen would then have the right to sue in Superior Court.

Gov. James G. Martin also has been critical of special provisions. In a letter to the Center outlining his position, Martin states, "It is my opinion that, while an amendment to the rules of each House or an amendment to the Executive Budget Act would be the first step in eliminating special provisions, it is necessary for our Constitution to be amended to prohibit special provisions."

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State Sen. Kenneth Royall (D-Durham) introduced a bill on June 6 (SB 861) which would curb the use of special provisions by amending Senate rules. Coble said Royall and other Senators are to be commended for taking this initiative but pointed out that the House needs to take similar action in the short session.

Special provisions are not to be confused with special appropriations, usually called pork barrel bills. Pork barrel appropriations and special provisions may wind up in the same bill, but "pork barrel" refers specifically to money appropriated for legislators' pet projects, either statewide or local in nature. Special provisions, on the other hand, rarely involve the expenditure of money, but they directly affect state laws by amending, repealing, or creating new laws.

Special provisions are defined in the Center's report as portions of budget bills which are used in any of the following inappropriate ways:

(1) to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
(2) to establish new agency programs or to alter the powers and duties of existing programs;
(3) to establish new boards, commissions, and councils or to alter existing boards' powers;
(4) to grant special tax breaks or otherwise change the tax laws; or,
(5) to authorize new interim studies by the General Assembly or other groups.

The Center's research notes that the size of budget bills and the use of special provisions have increased rapidly in the past five years alone. In the 1981 regular session and the 1982 short sessions, there were but 29 and 30 special provisions, respectively. In 1983, there were 65 special provisions; in the 1984 short session, there were 87. In the 1985 regular session, there was a record high of 108 special provisions. The Center lists every special provision in every budget bill since 1981 -- a total of 319 -- in an appendix to the report, along with the 442 laws that were amended. "Not only is the number of special provisions on the rise," says Coble, "but they are also being used in an increasing number of inappropriate ways."

The Center report identifies three major problems resulting from the use of special provisions. They include:

-- Special provisions can undermine the legislative process and the General Assembly as an institution. Items are inserted in budget bills which might not pass on their own merits as separate bills. For example, a provision inserted into a 1984 budget bill created a "comparable worth," or pay equity, study of the state personnel system, but the study was later repealed when fully debated as a separate bill in the 1985 session. The report also notes that only 20 of the 170 legislators are usually involved in the special provisions process, and that a legislator's share of pork barrel money is guaranteed only if the legislator votes for special provisions. Special provisions can also undermine the legislative process when they are used to establish new study commissions outside the normal decision-making process.

-- Special provisions can work against the public interest. Through special provisions, major governmental decisions are being made without public debate. New government programs are created, new duties are assigned to state agencies, new boards and commissions are created, and special tax breaks are granted. The Center's report points out, for example, that special provisions have been used to create a new Homeownership Assistance Program, a Hazardous Waste Site Remedial Fund, and an Alcohol and Drug Defense Program. They have also been used to create new boards like the N.C. Farmworker Council, a Board of State Contract Appeals, and a Commission on Jobs and Economic Growth. "Many of these may be worthy initiatives," says Coble, "but they should be debated on their own merits and not hidden in a budget bill."

-- Special provisions can undermine the authority of other systems and institutions of governance. The Center says special provisions sometimes damage the state's relationship with local governments. For example, local school systems protested a special provision which mandated -- with little local input -- a centralized payroll system for all school systems in North Carolina. Special provisions also can damage the relationship between the legislative and executive branches of government. In 1981, former Gov. James B. Hunt Jr. obtained an advisory opinion from the N.C. Supreme Court that two special provisions were unconstitutional invasions of his power to administer the budget.

The report notes that 31 other states prohibit substantive legislation like special provisions from being included in appropriations bills. Nine additional states have at least partial restrictions on special provisions. "Thus, the North Carolina legislature is in the small minority of 10 states that allow special provisions," points out Coble. The report notes that the South Carolina Chamber of Commerce has recently sued the S.C. General Assembly over its practice of adding unrelated legislation to the annual appropriations bill.

"Because the use of special provisions can undermine the legislative process, result in legislation against the public interest, and be used to undermine other institutions of governance, the General Assembly should end the practice," says Coble. "The time has come to close this Pandora's Budget Box."

The Center for Public Policy Research says its report is designed to show the citizens of North Carolina what is being done with special provisions and to help the media better identify special provisions and explain their impact to the public. The report is also designed "to aid the legislators who are not part of the legislative leadership circle, for it is the rank and file of the General Assembly who are kept in the dark about special provisions."

The North Carolina Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to examine state government policies and practices. The Center is supported in part by grants from the Z. Smith Reynolds and Mary Reynolds Babcock Foundations, both in Winston-Salem. Other funding comes from 89 corporate contributors and 650 individual and organizational members. The N.C. Center publishes a quarterly magazine called North Carolina Insight and issues research reports. Past studies have been published on all the boards and commissions in the executive branch of state government, teacher certification, and regulation of credit insurance. The Center has also published a guide to all the foundations and corporate giving programs in North Carolina.

Copies of the report, entitled Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens are available for $10.00, plus $1.00 postage and handling if mailed. Write the N.C. Center, P.O. Box 430, Raleigh, NC 27602.

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