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Industrial Revenue Bonds: The Key to Financing New Plants... Or Just a Source of Cheap Capital?

Also:

- Consumer Protection
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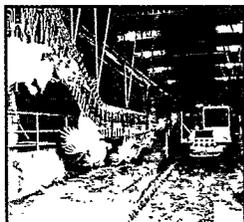
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Front cover: A truckload of turkeys pulls into the brand-new Carolina Turkeys plant in Duplin County, partially financed by a \$10 million industrial revenue bond. Photo by Jack Betts.

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Tax-Exempt Bonds for Manufacturers: How Effective in North Carolina?

by Bill Finger and Donald E. Horton Jr.

*For 10 years, North Carolina manufacturers have been able to use industrial **development** bonds (IDBs)—a tax-exempt financing tool—to reduce the cost of capital expenses. Advocates claim that these bonds, called industrial **revenue** bonds in North Carolina, have boosted the state's economy. Skeptics question whether these bonds have enhanced development, helped increase wages, and met the needs of depressed counties. From 1976 through fiscal year 1986, industrial revenue bonds provided \$1.8 **billion** in capital to manufacturers for construction and modernization of plants and equipment. Another \$904 million went for pollution control bonds.*

In the fall of 1986, Congress is expected to pass a sweeping tax-reform bill, which affects tax-exempt financing. The new tax law will limit the use of industrial revenue bonds in the future, but it will not eliminate these bonds immediately, as some analysts once anticipated. How will these limitations affect the state's economic development efforts? What does a decade of experience show about how these bonds are used in North Carolina?



In 1985, Combustion Engineering Inc. in Gaston County needed \$3.3 million to expand its operation. To get the capital, the company normally would have had to borrow at 100 percent of the prevailing prime lending rate. Instead, it got the \$3.3 million at 57 percent of the prime rate by using an industrial development bond. The company, which assembles industrial wire screens for sorting gravel, planned to hire 245 new employees and has 30 years to pay off the loan.

One hundred and seventy miles to the east, other corporate executives were seeking ways to cut capital expenses for their new venture, Carolina Turkeys. Duplin and Wayne counties wanted the new poultry processing facility, which announced it would create up to 1000 new jobs in three years.¹ Duplin County won the competition by piecing together a financial package that included a \$10 million industrial development bond at 66 percent of the prime rate. Carolina Turkeys has 12 years to pay off the bond.

Supporters of such bonds, usually called industrial revenue bonds (or IRBs) in North Carolina, claim these bonds are the best thing since pit-cooked barbecue. Unemployed textile workers in Gaston County and struggling hog farmers in Duplin County might agree. But critics make convincing arguments that IRBs subsidize the private sector at the expense of taxpayers and may not improve the overall economy in the process.

The importance of industrial revenue bonds to North Carolina has come under increased scrutiny recently because of the 1985-86 tax-reform efforts by Congress. In the fall of 1986, Congress is expected to pass a major tax-reform bill, and President Reagan is expected to sign the bill into law.² The new tax bill still allows industrial revenue bonds to be issued, but with some new restraints. "Despite the new tax bill, industrial revenue bonds will still be sold," says N.C. State Treasurer Harlan Boyles. "But with the implications of the bill, we may not see as many requests to use IRBs."

Bruce Strickland, director of the industrial financing group in the N.C. Department of Commerce, also sees the IRB program as alive and well. "We will still be able to do an IRB issue, but we'll have to seek new methods of marketing the program."

The new tax bill reduces the tax incentives for buying tax-exempt bonds, including IRBs. That is, the new law might have the effect of reducing the demand for tax-exempt bonds. The law also

puts constraints on the supply of tax-exempt bonds, through such provisions as placing a limit on the amount that can be issued in a state. "Thus the use of industrial development bonds might decline in North Carolina, as well as throughout the nation—an admitted objective of the proponents of the new tax-reform law," says Boyles.

For the first time in the 10-year-old North Carolina IRB program, officials now are preparing to cope with a major new federal tax law. If fewer manufacturers like Combustion Engineering and Carolina Turkeys can obtain below-market financing through IRBs, what will the state stand to lose in its economic development efforts?

North Carolina—Down the IRB Road

Industrial revenue bonds are part of a larger tax-exempt financing system affected by the new tax bill. To get capital for everything from school buildings and roads to hospitals and manufacturing facilities, government agencies traditionally have sold tax-exempt bonds on their own behalf or on behalf of a private company. Individual and institutional investors supply the capital by buying the tax-exempt bonds. Before the new bill, the interest on the bonds paid to the investors was exempt from federal income tax. The interest income is also exempt from state income tax, when the bond is issued by a North Carolina unit of government. Because the interest was tax-exempt, the investors were willing to accept a lower rate of return than they received from taxable investments. Hence, companies borrowing capital via tax-exempt bonds have been able to obtain financing well below the prevailing market rates, thus cutting their capital costs.

Over the years, tax-exempt bonds have provided financing "typically 30 percent below standard commercial rates," explains policy analyst Neal Peirce, who has studied the impact these bonds have on local economic development efforts.³

Analysts often refer to tax-exempt bonds as either "public purpose" or "private purpose" bonds. Public purpose bonds help finance schools, roads, and other capital projects benefiting the general population. When such bonds carry the full faith and credit, and the full taxing power, of a governmental unit behind them, they are called gener-

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al obligation bonds. Private purpose bonds provide funds for industrial plants, commercial ventures, pollution control, owner-occupied and multi-family housing, private hospitals, and convention centers, among other activities. (Some analysts object to the "private purpose" label, contending that if a tax-exempt bond is allowed under the law, by definition it serves a public purpose.)⁴

Bonds which finance community development projects, commercial ventures, manufacturing facilities, and other projects are called *industrial development bonds* under the federal tax code. Those IDBs with a face value of less than \$10 million are called "small-issue" IDBs. In North Carolina, small-issue IDBs are usually referred to as industrial *revenue* bonds.

Mississippi issued the first industrial development bonds in 1936. For nearly 30 years, southern states used these bonds more than other states, but the volume remained relatively low. By 1963, a total of only \$88 million in IDBs had been issued nationally. In the late Sixties and early Seventies, IDB volume increased dramatically as more and more states searched for new ways to enhance economic development.

In 1967, the N.C. General Assembly authorized industrial revenue bonds, but in 1968 the N.C. Supreme Court found the act unconstitutional.⁵ In 1973, the Court struck down a reformulation of the 1967 law.⁶ "Both cases were decided on the ground that the financing schemes were not within the constitutional definition of 'public purpose' because the benefits of the financing went directly to private industry and only indirectly to the public," wrote William H. McBride and David Dreifus in a legal analysis of the issue.⁷

In 1975, the General Assembly addressed the constitutional question. The lawmakers passed a new act authorizing IRBs but made it contingent on voter approval of a constitutional amendment. In 1976, the amendment passed by a 55 to 45 percent margin, a typical margin for an amendment involving money matters, says Alex Brock, longtime executive director of the State Board of Elections. Hence, the North Carolina Industrial and Pollution Control Facilities Financing Act became law, codified as Chapter 159C in the N.C. General Statutes. North Carolina was the last southern

"Despite the new tax bill, industrial revenue bonds will still be sold."

*—Harlan Boyles
State Treasurer*



state to authorize IDBs.

Some of the objections that were raised in 1976 to the constitutional amendment remain 10 years later. For example, John Sanders, director of the Institute of Government at the University of North Carolina at Chapel Hill (UNC-CH), explains that government involvement in bonds for private purposes may have set a dangerous precedent. "The more heavily we use the municipal revenue bond tax exemption for a wide variety of purposes, the greater we jeopardize its original function of financing essential government facilities—schools, water and sewer facilities, and other capital outlays," says Sanders.

By 1981, 48 states had IDB programs, and 24 of them allowed their use for almost any activity, from fast-food chains to nightclubs. Such uses prompted wide-scale criticisms, especially of the IDBs used for non-manufacturing purposes. "A prominent basis of criticism was the growing use of small-issue IDBs for the construction of such well-publicized projects as ski slopes, golf courses, and in one case a topless 'go-go' bar in a large eastern metropolis," reported a recent issue of *Cross Sections*, a publication of the Federal Reserve Bank.⁸ Such abuses became widely publicized and gave federal opponents of tax-exempt financing schemes the leverage they needed to get restrictions passed by Congress, first in 1982 and again in 1984.

In 1984, Congress made major adjustments to tax-exempt financing, limiting the volume of IDBs that an individual state could issue, among many other changes. The 1982 law established a Dec. 31, 1986 "sunset provision" for small-issue industrial development bonds; the 1984 law moved

the sunset provision for small-issue IDBs for *manufacturing facilities to Dec. 31, 1988*.⁹ This set the stage for the 1986 bill.

North Carolina differs from many states in its IRB law. In many states, small-issue IDBs have helped finance rest homes, office buildings, restaurants, and other nonmanufacturing facilities. But the North Carolina law, more restrictive than the federal law, allows IRBs to finance only pollution control and manufacturing projects.¹⁰ In North Carolina, IRBs are theoretically designed to attract industry, create and save jobs, raise wages, and protect the environment.

To qualify for an IRB in North Carolina, a manufacturer must meet three requirements: 1) create *new* jobs or maintain *existing* jobs (and not abandon another site); 2) pay wages above average for the county or at least 10 percent higher than the statewide average; and 3) not create any adverse environmental effects.¹¹ A manufacturer applies for the bond through an industrial financing authority in the county where the jobs are to be located.

The county board of commissioners must approve each bond issue, together with three state agencies — the departments of Commerce, Natural Resources and Community Development, and State Treasurer (see graphic on page 6). No voter approval is required. No state or county funds are involved (aside from staff time spent on the projects), but projects financed by industrial revenue bonds are subject to property tax. Neither the state nor the county is obligated for any defaulted bonds.¹²

Despite such restrictions, IRB's can be used by manufacturers in many different circumstances. Hence, critics question the extent to which these bonds 1) induce a company to invest in a specific area; 2) increase the wages of an area; and 3) meet the needs of depressed areas. An analysis of these three criticisms shows the pitfalls and payoffs of IRBs in North Carolina.

Do IRBs Induce Investment?

Proponents of IRBs call them one of the most important inducements for getting an industry to build or expand a facility. The N.C. Department of Commerce claims that from 1976-85, industrial projects using IRBs created 65,070 jobs and saved another 27,345. Some studies in other states reinforce this viewpoint. In 1981, for example, the Massachusetts Industrial Finance Agency surveyed the 768 projects it had financed with IDBs. One-third of those surveyed responded, and only 7 percent said they would have made the same investment without IDB financing.

Other studies have found, however, that industrial development bonds do not induce substantial investment. The Federal Reserve Bank of Philadelphia examined data from 3,000 counties throughout the country and found that "a 10 percent increase in the value of IDBs outstanding resulted in only a 0.2 percent increase in a county's total employment. This lack of response to IDBs might be explained by the fact that since so many states offered them, they were of little relative advantage to firms."¹³

Charles D. Liner of the UNC-CH Institute of Government questions the value of IRBs as an inducement for new investment. "The evidence from numerous studies suggests that taxes and financial inducements don't have much effect on companies' location decisions," says Liner.¹⁴ "Government's role is to provide to new industries the services it normally provides to individuals and businesses. Schools and roads are obviously going to be important to a company."

Companies must have sound credit ratings to qualify for IRBs. To get such a

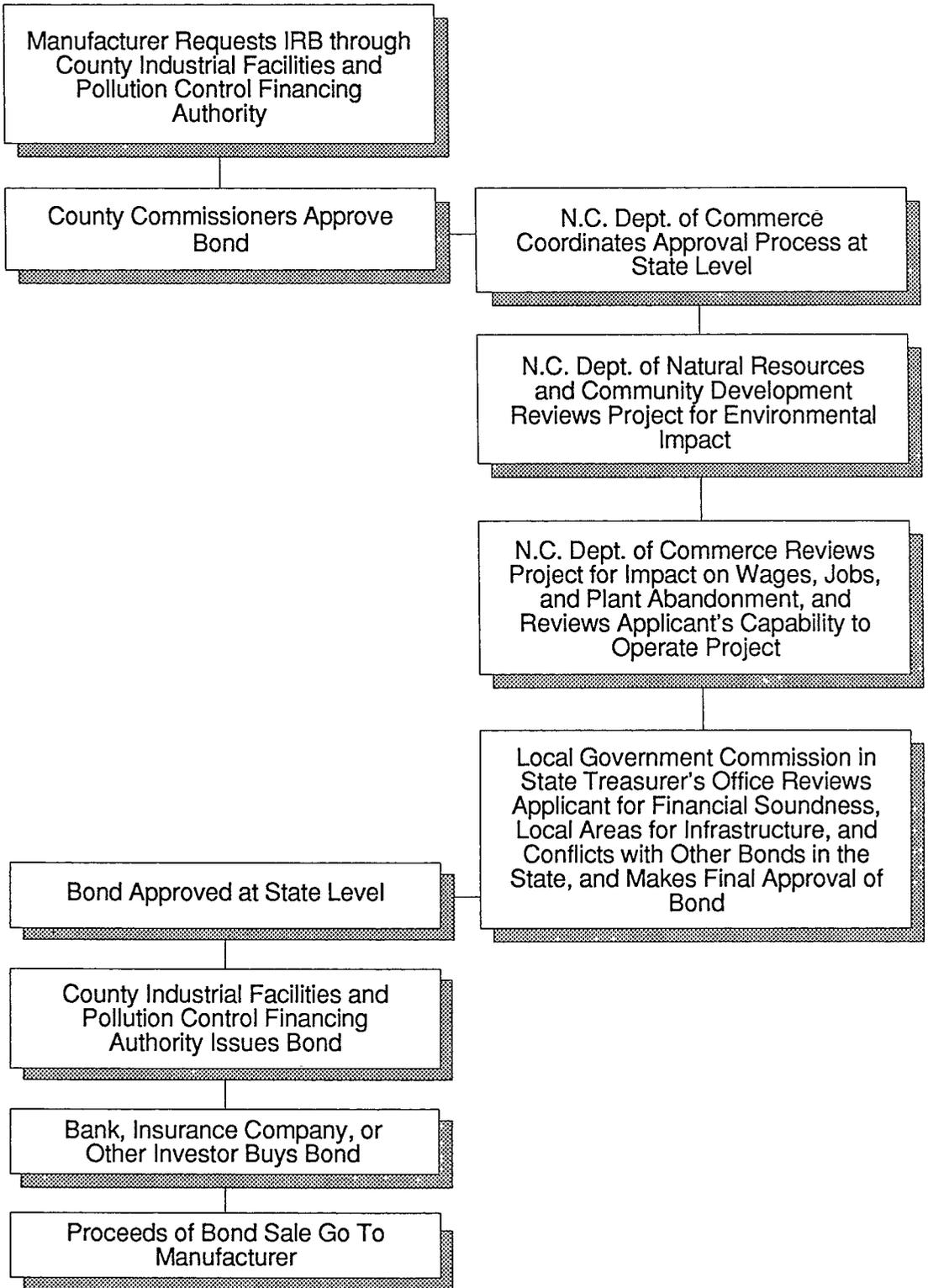
"The more heavily we use the municipal revenue bond tax exemption for a wide variety of purposes, the greater we jeopardize its original function of financing essential government facilities...."

— John Sanders

Director, Institute of Government



How Manufacturers Get Capital from Industrial Revenue Bonds



credit rating, a company must be reasonably prosperous. Hence, the companies approved for IRBs are often those that need tax-exempt financing the least, argue some economists. Dr. Thomas J. Leary, economist at the University of North Carolina at Greensboro, for example, found that such blue-chip manufacturers as Weyerhaeuser, Monsanto, International Paper, Georgia Pacific, and International Telephone & Telegraph made extensive use of industrial revenue bonds in the early years of the North Carolina program.

From 1976-82, reported Leary, 68 firms listed among Fortune's 1000 largest companies used 160 industrial revenue bonds in North Carolina. These 160 bonds had a total value of \$383 million, which was 42 percent of all IRBs sold for manufacturing firms during that period.¹⁵ It is unlikely that IRB financing alone would persuade such large, financially sound companies to make an investment they weren't already planning to make.

"The mechanism [for selling tax-exempt bonds] relies on the marketplace," says Richard Geltman, staff director of the committee on economic development and technological innovation for the National Governors' Association. "If a firm is marginal, it is less likely to be able to sell its bonds. The system is inherently structured toward profitable firms."

As large corporations took advantage of small-issue industrial development bonds nationwide, analysts became concerned about controlling this trend. Thus, in 1984, Congress established a \$40 million limit on the total amount of industrial development bonds a single corporation could have outstanding. This limit did not apply to pollution control bonds (see sidebar on page 8).

These new rules resulted in smaller companies becoming the predominant users of small-issue industrial development bonds nationwide, according to the Council of Industrial Development Bond Issuers, a consortium of 117 member agencies nationwide. "About 78 percent of the users of small issues are small and medium-sized businesses (i.e., with less than \$50 million in annual sales)," the council concluded in a report issued early in 1986.¹⁶

The report explains that, nationwide, these small-issue bonds are used primarily for in-state expansions, *not* in recruiting an industry from another state. Companies "rarely use small issues to finance interstate relocations from one labor market to another," the report found. "Almost 75 percent of all SIDB [small-issue industrial development bond] financings support expansion or im-

provements *at existing company sites*, and 20 percent of the bonds help finance activities at new locations within the same state" (emphasis added).¹⁷ The other 5 percent of the bonds involve an interstate expansion, the traditional economic development strategy of industrial recruitment. The council based its report on data from 1,401 businesses that have used small-issue industrial development bonds, issuing agencies in 40 states, and 50 institutional purchasers of these bonds.

Do IRBs Increase Wages?

North Carolina law requires a company applying for an IRB to offer wages above the county average or 10 percent above the state's average manufacturing wage. If a company does not meet these minimum wage standards, it must get what is known as a "wage waiver" from the N.C. Secretary of Commerce. When a low-paying company gets a wage waiver, the role of IRBs in raising wages becomes questionable.

A wage-waiver controversy in Alamance County erupted into the press on April 5, 1985. "County reiterates support for low-paying industry," read the headline that day in the *Burlington Daily Times News*. The story explained how NCA Inc., a Burlington auto parts manufacturer, had asked the county commissioners for a wage waiver for a \$1.5 million industrial revenue bond issue. The company, which planned to use the financing for acquisition and renovation of an old hosiery mill site, paid a top hourly wage of only \$4.80, according to the news reports, far below the county's average manufacturing wage of \$7.72 and the statewide average of \$7.29. Nevertheless, the county commissioners, on a 3 to 2 vote, approved a request for a wage waiver. The request then went to the Secretary of Commerce for approval.

To get a waiver from the statutory wage guidelines, a company must first get the county commissioners to request the waiver. The Secretary of Commerce may then grant the waiver on a discretionary basis, if unemployment in the county is especially severe.¹⁸ The key phrase in the statutes is "especially severe," which is defined in the North Carolina Administrative Code.¹⁹ The current rules allow a wage waiver through one of two routes, high unemployment rates or plant closings.

For the first route, a county must have an *average* unemployment rate of either 10 percent or 110 percent of the statewide rate (and at least 6

percent). The comparison is based on the most recent six months for which data is available from the Employment Security Commission. The Burlington auto parts manufacturer did not qualify here since the Alamance County unemployment rate in 1985 was only 5.1 percent, below the statewide rate of 5.2 percent.

The second route allows a wage waiver if a plant in the county has permanently closed in the last 12 months (or will close in the near future), and this closing resulted in the loss of either 300 jobs or 5 percent of the total labor force in the county. This rule opened the door for the Burlington company, because there had been several plant closings in Alamance County. The Department of Commerce has issued four different sets of rules regarding the waiver process—in February 1980, March 1983, November 1984, and March 1985. The November 1984 changes added the provision for plant closings “in reaction to the horrible number of plant closings,” explains Bruce

Strickland of the Department of Commerce.

Because the administrative rules defining “especially severe” are so flexible, the Secretary of Commerce can exercise some discretion in awarding wage waivers. Moreover, the *statutes* give the secretary the power to collect data regarding the waiver request and to call for a public hearing on the proposed project.²⁰

“If the local county commissioners ask for the waiver, we take a close look at that,” says Strickland. “We value the local decision process.” The department began considering the waiver for the Burlington auto parts manufacturer after receiving the request from the Alamance County commissioners. “But the application got involved in local controversy and, technically, it was withdrawn,” says Strickland.

Data available from the Department of Commerce show that 94 wage waivers have been granted since 1979. Textile firms had nearly half of these wage waivers (45 of 94, or 48 percent).

Pollution Control Bonds

Pollution control bonds are generally designed for environmental, rather than economic development, purposes. Utility companies are by far the largest user of pollution control bonds. Chemical firms and other companies that must meet environmental standards may also apply for pollution control bonds. In 1985, for example, Carolina Turkeys in Duplin County, obtained \$3 million from a pollution control bond, as well as \$10 million through an industrial revenue bond (see the beginning of the main article).

Carolina Power and Light (CP&L) has obtained \$603.8 million in capital through tax-exempt bonds issued under the 10-year-old N.C. Industrial and Pollution Control Facilities Financing Act. This is 22 percent of all the bonds issued under this act, far more than any other company.¹ All the CP&L bonds are pollution control bonds, which differ in many ways from small-issue IDBs for a manufacturer. One significant difference is that the federal \$40 million limit on the amount of industrial development bonds a single company may have outstanding does *not* apply to pollution control bonds.

Under the federal tax code, pollution control bonds are considered a type of industrial development bonds, but fall under a different section than do small-issue industrial development bonds.² The new tax law expected to pass Congress will no longer allow tax-exempt pollution control bonds to be issued (except for solid wastes). The same chapter of the North Carolina General Statutes covers pollution control and industrial revenue bonds (Chapter 159C). Since pollution control and revenue bonds are different types of bonds, various sections of NCGS 159C apply only to pollution control bonds.

—Bill Finger

FOOTNOTES

¹According to records in the State Treasurer's office, CP&L has obtained \$603.8 million from nine pollution control bonds. The amounts of each bond, with the date of issue, are: \$63 million (12/12/79), \$6 million (3/30/83), \$48.5 million (3/30/83), \$6.4 million (6/29/84), \$262.6 million (6/29/84), \$2.6 million (7/2/84), \$67.3 million (5/21/85), \$50 million (9/5/85), and \$97.4 million (10/10/85).

²Pollution control bonds fall under Section 103(b)(4)(F) of the Internal Revenue Code. Small-issue industrial development bonds come under Section 103(b)(6) of the Code; the industrial revenue bonds issued in North Carolina fall under this section.

Table 1. Number of Waivers Granted to N.C. Manufacturers from Wage Requirements in N.C. Industrial Revenue Bond Law, by Industry, 1979-85*

Industry Sector	Average Hourly Earnings, N.C. June, 1986	Number of Wage Waivers
All Manufacturing Sectors	\$ 7.50	
Textile mill products	6.54	45
Apparel and other finished goods	5.26	9
Food and kindred products	6.82	7
Lumber and wood products	6.56	6
Transportation equipment	8.37	4
Machinery, except electrical	8.43	4
Furniture and fixtures	6.87	4
Rubber and plastics products	9.27	4
Primary metal industries	8.89	3
Miscellaneous manufacturing industries	—	2
Electrical machinery, equipment, and supplies	8.53	2
Printing and publishing	8.59	2
Unclassified in data	—	2
Total Wage Waivers		94

Source: Business Assistance Division, Department of Commerce.

*The North Carolina statutes require that manufacturers using industrial revenue bonds pay wages above average for the county where the project is located or at least 10 percent above the statewide average wage; see NCGS 159C-7(1)a.

The apparel sector, in second place, had nine waivers (or 10 percent), and the food and kindred products sector had seven waivers (see Table 1). By far, then, the major portion of the waivers went to manufacturers in the lowest paying job sectors. As of June 1986, the textile sector paid \$6.54 an hour compared to a statewide average of \$7.50. The apparel sector was even lower, at \$5.26 an hour. Food and kindred products averaged \$6.82.

"Most of the waivers were granted when unemployment conditions were especially severe," says Strickland. "At that point in time, it's [more] important [just] to have a job rather than a high-paying job." Strickland says that the large portion of the waivers going to textile companies reflects the needs of that industry. Several wage waivers helped textile companies take over plants that were in the process of closing down, he adds. "So many of the textile employees displaced are older and have some severe trauma in going to other industries. I wish we could help them more," he adds.

Comparing the 94 wage waivers shown in the Department of Commerce data with county unemployment rates suggests that some waivers—while they might have met the administrative guidelines—went to areas where unemployment was not severe. In 1979, a firm in Lenoir County was approved for a wage waiver when the county had an unemployment rate of 5.2 percent (the lowest rate among the 94 waiver cases). This met the 1979 guidelines because the administrative rules then called for a comparison over five quarters; the waiver would not meet the current standards.

"Without that wage waiver, 175 people would have lost their jobs," explains Strickland. "A company was going to have to close because of [low] profitability due to competition from imports. A [second] company came forward and said, 'We will buy and operate this company if we can get financing.'" This waiver, contends Strickland, thus helped to save jobs—a valid purpose for the program.

In 1983, discretion was again important.

With the statewide unemployment rate at 8.9 percent, wage waivers went to companies in Catawba County (which had an 8.0 percent unemployment rate), Stanly County (8.6 percent), Randolph County (8.5 percent), and Granville County (8.4 percent). Again, these waivers appear to have satisfied administrative rules *then in effect*, but none was over the current 10 percent minimum or 110 percent of the statewide average.

The discretion is important, says Strickland, because of the cyclical nature of unemployment. "I do believe that our safeguards are sufficient and effective," says Strickland. With so many waivers going to the textile industry, Strickland and others contend that IRBs can be used to help traditional industries facing problems with imports and displaced workers. But were IRBs designed for that purpose? Is this what the voters had in mind in passing a constitutional amendment 10 years ago?

The legislation establishing IRBs in North Carolina defines the act's purposes in general—not specific—language. "[T]here exists in the State a critical condition of unemployment and a scarcity of employment opportunities," begins the statute. After several paragraphs about the "safety, morals and general welfare of the entire State," the section concludes with the call for industrial revenue bonds to help finance manufacturing facilities "which provide job opportunities or pay better wages than those prevalent in the area . . ." ²¹

To Strickland, the legislative purpose is "to save and create jobs." The wage waiver helps promote that purpose, he says.

The statutes do not define clearly *which* jobs IRBs should help to save or create. Therein lies the rub. Should IRBs, which are subsidized by taxpayers, be used for *any* manufacturing jobs, even

when assisting a low-paying manufacturer? Or should IRBs be used only to boost the overall wage rate in this low-wage state? After a decade of IRB experience, the legislature should now clarify the purpose of IRBs regarding wage rates. There is now enough experience with IRBs in the state to refine the purposes of the law.

Do IRBs Help Depressed Areas?

In 1982, the U.S. Advisory Commission on Intergovernmental Relations found that 12 states have special vehicles for targeting small-issue IDBs to depressed areas. Connecticut, for example, gives businesses seeking an IDB the choice of locating in a more restricted area and receiving a tax rebate. Tennessee uses tax relief in addition to IDB financing as an inducement for companies to locate in central business improvement districts. ²²

The Council of Industrial Development Bond Issuers reported in 1986 that "at least 16 states have developed area revitalization programs which target the issuances of SIDBs to economically depressed areas." Of these 16 states, most "require recipients of bonds for commercial purposes to locate in designated depressed areas; bond recipients with *manufacturing projects*, however, are not required to locate in target areas" (emphasis added). ²³

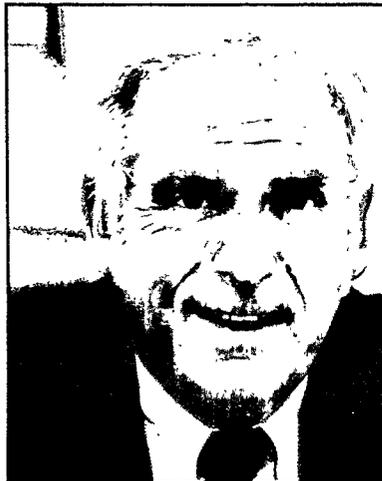
North Carolina law does not target IRBs to areas of special need. By the end of 1985, 20 counties—mostly in the far east and far west—had never issued an IRB. ²⁴ Of those 20 counties, 11 had 1985 unemployment rates exceeding the statewide average of 5.4 percent. ²⁵ Three of the 20—Camden, Currituck, and Gates counties (adjacent and sparsely populated)—had not formed the

local industrial financing authority necessary to issue an IRB. The Currituck County Commissioners voted in February 1986 to establish the required financing authority, although the authority is not yet functioning. County commissioners appoint the members to this authority.

"Once our move is publicized, I feel that the other two counties will follow suit," says Frances Walker, a Currituck County Commissioner. "We're the last frontier [in North Carolina]

"Without that wage waiver, 175 people would have lost their jobs."

—*Bruce Strickland*
Department of Commerce



**Table 2. Industrial Revenue Bonds Issued,
Jan. 1, 1976 - June 30, 1985
Top Ten Counties (By Number Issued)**

County	Industrial Revenue Bonds		Pollution Control Bonds		Total	
	No.	Amount (in 1000s)	No.	Amount (in 1000s)	No.	Amount (in 1000s)
1. Wake	37	\$106,978	6	\$434,950	43	\$541,928
2. Catawba (tie)	30	94,670	1	4,270	31	98,940
Mecklenburg (tie)	30	90,730	1	3,000	31	93,730
4. Alamance	22	58,800			22	58,800
5. Iredell (tie)	21	72,075			21	72,075
Guilford (tie)	21	49,580			21	49,580
7. Gaston	17	41,500			17	41,500
8. New Hanover	9	34,700	7	37,555	16	72,255
9. Rutherford	14	32,300			14	32,300
10. Buncombe (tie)	13	43,775			13	43,755
Wayne (tie)	13	35,777			13	35,777
Stanly (tie)	13	35,300			13	35,300
Granville (tie)	13	32,250			13	32,250
Robeson (tie)	13	27,850			13	27,850
Total (Top 14 Counties)	266	\$756,285	15	\$479,775	281	\$1,236,040
Total for all Counties	589	\$1,584,188	29	\$689,275	618	\$2,273,463
Top 14 Counties —						
Percent of Total	45%	48%	52%	70%	45%	54%

Source: "Industrial and Pollution Control Facilities County Summary," State and Local Government Finance Division, Department of State Treasurer, June 30, 1985.

in regards to industrial growth. Industrial growth will come if we encourage it."

From 1976 through June 1985, Wake County had issued more bonds—IRBs plus pollution control bonds—than any other county (43); Catawba and Mecklenburg counties tied for second (31). In ranking the top 10 counties, five counties tied for 10th place, resulting in a "top 14." Among these 14, the Piedmont had nine counties, the mountains had two, and the coastal plain had three (see Table 2).

To concentrate on areas in great need, the Department of Commerce could mount an IRB promotion program to counties with high unemployment. "Rural development is tough," says Strickland. "Everyone involved has to work harder

to achieve meaningful results in remote areas."

Such a development campaign might be enhanced by issuing IRBs through a statewide—rather than a county—agency. Statutory authority exists for such an effort (NCGS 159D), but this vehicle has never been used. This section of the law authorizes bond issues that would affect more than one county.

Currently, Department of Commerce officials view NCGS 159D primarily as a potential means for what they call an "umbrella issue." Under such a bond issue, businesses with relatively small capital needs, of say \$350,000 each, join together for a single bond issue large enough to make the IRB process feasible. "We see it as a tool to help small businesses," explains Strickland. To qualify

under NCGS 159D, these small businesses would have to be located in more than one county.

The statute authorizes any two counties to form a political subdivision called "The *North Carolina Industrial Facilities and Pollution Control Financing Authority*" (emphasis added), which has the power to issue tax-exempt bonds in a manner similar to that used by a single-county financing authority. After the statewide financing authority has been formed, any other county may become a member through a process specified in the statute.²⁶

Conclusion and Recommendations

The industrial revenue bond program has left an important mark on North Carolina. From its beginning in 1976 through fiscal year 1986, industrial revenue bonds provided \$1.8 billion in capital to manufacturers for construction and modernization of plants and equipment. Another \$904 million went for pollution control bonds. These bonds have helped to save and create jobs.

National studies have found, however, that IDBs do not make much difference as to whether a firm relocates to a new state. As pointed out earlier, the Council of Industrial Development Bond Issuers, a major trade association, found that only 5 percent of small-issue IDBs nationwide go toward interstate investments. In addition, the analysis of the North Carolina experience shows that IRBs have not helped many areas of special need because no targeting of such areas has taken place. Finally, the wage waiver provision allows state assistance to companies that pay wages *below* the state average, which is still one of the lowest hourly rates in the country.²⁷

Despite these findings, Bruce Strickland of the Department of Commerce says that industrial revenue bonds have been a very important economic development tool for the state. Maryland, South Carolina, Tennessee, Virginia, and other states use public credit for the benefit of private companies, where North Carolina does not, explains Strickland. "In Maryland, for example, local and state governments have guaranteed loans made by private lenders to help employees buy out a company that was going to close," he says.

The IRB program in North Carolina now has a 10-year track record. Enough time has elapsed for state officials to take stock of strengths and weaknesses of its operation. Moreover, state officials are preparing to cope with a major new federal tax law that will affect both the supply and

the demand for the IRBs that can be issued (see article on page 14). The constraints of the new tax law will probably limit the uses of IRBs in the future. "North Carolina has used IRBs to compete with other states," says Strickland. "If we can't use revenue bonds as effectively, we face a sharp competitive disadvantage, because these other states have programs that offer subsidies with state funds."

Nevertheless, the small-issue IDB program will continue under the new federal tax law. The legislature, the State Treasurer's office, and the Department of Commerce should consider fine-tuning the way that industrial revenue bonds will operate in the state. The analysis in this article of the first 10 years of IRBs in North Carolina leads to three specific recommendations.

1. *The N.C. Department of Commerce should use the wage waiver provision more conservatively.* Currently, the statute gives the Secretary of Commerce extensive flexibility in granting a waiver from the statutory requirement that a company pay above-average wages. With this flexibility, the Department of Commerce has used the wage waiver, in effect, to subsidize low-paying companies. But the General Assembly designed the statute to use IRBs to attract companies paying *above-average* wages. Through its use of the wage waiver, the Department of Commerce has put a high priority on saving jobs, even low-paying ones. The department has thus used its wage-waiver rules to undercut the statute.

To alleviate this problem, the General Assembly should consider altering the statutory language to limit the Secretary of Commerce's discretion to approve an IRB project that involves a low-wage company (NCGS 159C-7, paragraphs 3-5). Alternatively, the Department of Commerce should consider amending its rules to limit more seriously those situations where an IRB can be approved for a low-wage company (see 4 NCAC 1E .0303). Finally, the department should articulate how wage waivers—now made on a case-by-case method, with no apparent larger purpose—are tied to a broader economic development policy for the state. For example, the wage waiver might be tied explicitly to a rural development policy, a priority area for the administration of Gov. James G. Martin.²⁸

2. *The N.C. Department of Commerce should target IRBs to areas of high need.* This could be done through a technical assistance effort from the Department of Commerce, seeking out areas where IRBs might allow the expansion of an existing firm or even bring in a new company. Currently,

the department plays too passive and reactive a role regarding IRBs, approving what comes to them from the counties. The county economic development officers now play the lead in using IRBs. "High need" might be defined as counties with an unemployment rate exceeding 10 percent, or 4 percent higher than the statewide unemployment rate.

3. *The county commissioners in Camden and Gates counties should form the financing authority necessary to issue an industrial revenue bond.* All other counties in the state either have, or have begun to form, these financing authorities. These agricultural counties can attract some types of industry and need to use all the economic development tools at their disposal. But no firm could use an IRB in these two counties until the commissioners approve the formation of the financing authority.

Industrial revenue bonds may have been the deciding factor for some companies in expanding or building a new facility in North Carolina, especially for those companies at the lower end of the wage structure. However, at the present time, IRBs in North Carolina seem to function more like a subsidy to these industries, making construction costs lower, than as a way to enhance high-wage industry in a low-wage state. Is that what the voters wanted when they approved IRBs in 1976? □◡□

FOOTNOTES

¹For more discussion on the number of *announced* jobs and *actual* jobs that come to North Carolina in a given year, see "Phantom Jobs: Studies Find State Data Misleading," in *North Carolina Insight*, April 1986, p. 50.

²As of September 10, Congress had not yet passed the bill, but a conference committee had reached agreement.

³Neal R. Peirce, "Industrial Revenue Bonds: A Big Mac Attack on the Taxpayers," *Southern City*, March 30, 1981, p. 12.

⁴The tax bill establishes new categories for tax-exempt bonds, dividing them into bonds for "essential" and "non-essential" purposes. The definitions are extremely complicated. Generally, "essential" function bonds are for traditional public purposes (schools, roads, etc.). Bonds for "non-essential" functions help finance privately owned facilities, including housing, airports, water and sewer facilities, industrial facilities, and other projects.

⁵*Mitchell v. North Carolina Industrial Development Financing Authority*, 273 N.C. 137, 159 S.E.2d 745 (1968).

⁶*Stanley v. Department of Conservation and Development*, 284 N.C. 15, 199 S.E.2d 641 (1973).

⁷William H. McBride and David Dreifus, "Industrial Development and Pollution Control Financing in North Carolina," 61 *North Carolina Law Review*, March 1983, p. 420.

⁸James F. Tucker, "A Perspective on Industrial Development Bond Financing," *Cross Sections*, Spring 1985, p. 9.

⁹For more on these Congressional actions, see J. Allen Adams and R. William Ide III, "Industrial Development Bonds—Still Alive and Relatively Well in North Carolina," *Popular Government*, Fall 1985, pp. 2-5, and "Private Purpose Tax-Exempt Bonds," *State Policy Reports*, Vol. 2, Issue 22, Nov. 29, 1984, pp. 13-22.

¹⁰NCGS 159C-2(c).

¹¹NCGS 159C-7(1) and (3).

¹²For more on how a bond issuance actually works, step by step, see "North Carolina Business Climate," Industrial Development Division, N.C. Department of Commerce, undated, pp. S-29 to S-31. This also explains some exceptions to the three conditions listed in the text.

¹³Gerald Carlino and Edwin S. Mills, "Do Public Policies Affect County Growth?," *Business Review*, Federal Reserve Bank of Philadelphia, July-August 1985, p. 12.

¹⁴For a review of studies on this topic, see Michael Kieschnick, *Taxes and Growth: Business Incentives and Economic Development*, Chapter 3, The Council of State Planning Agencies, 1981; and Roger J. Vaughan, *State Taxation and Economic Development*, bibliography (p. 140), The Council of State Planning Agencies, 1979.

¹⁵Thomas J. Leary, "Industrial Revenue Bonds in North Carolina 1976-1982," *tread softly: Carolina Conservation Quarterly*, Vol. 1, No. 1, Winter 1983, pp. 27-32.

¹⁶*Small Issue Industrial Development Bonds and the U.S. Economy*, prepared by the Developing Systems, Limited (DSL) Consortium for the Council of Industrial Development Bond Issuers, March 1986, p. 5.

¹⁷*Ibid.*, p. 8 and pp. 32-34.

¹⁸NCGS 159C-7. See especially the last sentence in the first paragraph after section (3): ". . . the Secretary may, in his discretion, approve the proposed project if he shall have received (i) a resolution of the governing body of the county requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe."

¹⁹NCAC 1E .0303(2).

²⁰NCGS 159C-7, fourth paragraph.

²¹NCGS 159C-2(a) and (c).

²²Neal M. Cohen, "Community Assistance: The States' Challenge," *Intergovernmental Perspective*, Vol. 8, No. 3, Summer 1982, pp. 14-21. This article summarizes a 1982 report, *States and the Distressed Communities*, by Cohen and others, published by the U.S. Advisory Commission on Intergovernmental Relations.

²³*Small Issue Industrial Development Bonds and the U.S. Economy*, p. 28.

²⁴The 20 counties are: Alleghany, Anson, Avery, Camden, Clay, Currituck, Dare, Gates, Graham, Hyde, Jones, Madison, Pamlico, Pender, Perquimans, Polk, Transylvania, Tyrrell, Washington, and Watauga.

²⁵The 11 counties are: Alleghany, Anson, Avery, Clay, Graham, Hyde, Madison, Pender, Transylvania, Tyrrell, and Washington.

²⁶NCGS 159D-4(a) and (b).

²⁷In April 1986, the North Carolina average manufacturing wage of \$7.48 ranked 49th among the 50 states (Mississippi ranked 50th). The national average was \$9.70.

²⁸For more on economic development, see "North Carolina: An Economy in Transition," *North Carolina Insight*, April 1986, especially pp. 29-32, regarding the Martin administration, and pp. 42-82, regarding economic development strategies in general.

Impact of Congressional Action on Tax-Exempt Bonds

by Bill Finger

Tax-exempt bonds are an integral part of the federal tax code. In the fall of 1986, President Reagan is expected to sign a major new tax law with the most sweeping changes in a generation. But before 1985, when Congress began considering this tax-reform package seriously, industrial development bonds were part of a more narrow Congressional debate.

The debate focused on whether industrial development bonds adversely affected the overall tax-exempt bond market by increasing the cost of municipal bonds for such public purposes as schools and roads. Critics of industrial development bonds contended that IDBs increased the overall volume of tax-exempt municipal securities, which in turn caused the interest rate for all tax-exempt paper to increase.

"The removal of tax exemption from private purpose municipal bonds would reduce significantly the cost of financing traditional public services," wrote Thomas R. Dye, a professor of government and policy sciences at Florida State University in an article published early in 1985.¹ Dye calculated that 62 percent of new municipal bonds are for private purposes (small-issue IDBs, pollution control, housing, private hospitals, and student loans), and only 38 percent for traditional public purposes (water and sewer, schools, police, fire, etc.). "The effect of removing 62 percent of the supply of new municipal bonds from the market would have a drastic effect in lowering yields," wrote Dye.

Others disagree, emphasizing that the biggest impact on the sale of tax-exempt bonds comes from the *demand* side, not from the *supply* side. In other words, the interest rate hinges more on who wants to buy the bonds than on competition in the supply between industrial development bonds and general obligation bonds. Three key factors determine the demand for tax-exempt bonds, says Richard Geltman, staff director of the committee on economic development and technological innovation for the National Governors' Association: 1) the entire bond market, including *taxable*

bonds, 2) the sharp increase in recent years in the amount of borrowing by the federal government, and 3) the availability of other tax shelters.

The Council of Industrial Bond Issuers, a trade association promoting IDBs, takes Geltman's point a step further. "Fears that small issues will 'crowd out' traditional state and local borrowing are not sustained by the evidence," concluded the council in a 1986 report. "The market for tax-exempt bonds generally has become dominated by private individuals who in recent years have purchased up to 81 percent of new bond issuances. In contrast, the survey found that over 90 percent of small issues are bought by commercial banks, S&Ls, insurance companies, and institutional investors who, in turn, hold virtually all the bonds to maturity."²

Tax Reform Takes Center Stage

In 1985, such questions as whether IDBs compete with general obligation bonds in the market began to be absorbed into the much larger tax-reform debate in Congress. In December 1985, the U.S. House passed HR 3838, which had an immediate effect on the bond market—even though final passage into law still appeared uncertain.

"HR 3838 has had a chilling effect on issuing even the most traditional public purpose bonds for such items as schools or prisons or water and sewer, much less industrial revenue bonds," said Geltman in an interview, before the U.S. Senate Finance Committee approved its version of HR 3838. "If HR 3838 becomes law, it would severely limit the ability of municipalities to issue many kinds of municipal bonds," added Geltman.

In North Carolina, State Treasurer Harlan Boyles and others expressed similar concerns over how the House-passed bill would affect *general obligation bonds*. At the Feb. 20, 1986 meeting of the N.C. Association of County Commissioners Board of Directors, Boyles warned of the potential impact that Congressional action could have on counties and municipalities. "Basically, this bill (HR 3838) would take our feet out from under us,"

Boyles told the group. "It would make it almost impossible for local governments to qualify for tax-exempt bonds."

Then on March 12, 1986, the N.C. Association of County Commissioners ran an editorial in its newspaper, *County Lines*, called, "Tax Reform Act May Finish Counties' Use of Bond Issues." The editorial discussed six components of HR 3838 that could limit the issuance of general obligation, or public purpose, bonds. "The Association joins with the National Association of Counties in opposing these (six) provisions of HR 3838," said the *County Lines* editorial. "Much of the public building needs in the state have traditionally been financed by tax-exempt bonds, including highways and schools. The state needs the option of funding highways with bonds, just as counties must have the option of funding schools, water-sewer facilities, hospitals, and jails with bond issues. A pay-as-you-go plan simply is not feasible for those counties with immediate building needs."

In the April issue of "The State Treasurer's Quarterly," a newsletter sent to all counties, municipalities, and state agencies, Boyles explained the provisions and ramifications of HR 3838. The bill "would have a very negative effect upon North Carolina and, of course, upon all of the other states as well," explained the newsletter. "From the philosophical standpoint, passage of such a law as HR 3838 would upset, and drastically change, the principle of mutual accommodation between the federal and state government in the matter of revenues for the public benefit. The bill would make the most significant and adverse changes ever enacted in the area of state and local government finance."

Tax Reform Passes With Surprising Ease

The commentary in North Carolina reflected the strident tone of the national debate. "Municipalities, counties, and states are all against the changes (regarding tax-exempt bonds)," said Geltman before the Senate Finance Committee took action. "Nobody's for these changes." But the overall tax reform legislation must be "revenue neutral" in order to float politically, Geltman pointed out. Private sector interests—from timber to oil—lobbied hard in the Senate Finance Committee to get tax breaks put into the bill. To

make up for the revenues *lost* to the tax breaks, the private interests pointed to the limitations on tax-exempt bonds as a place to gain revenues. "It came down to state and local governments versus the private interests," said Geltman.

As the various interests began staking out their turf in the Senate Finance Committee, the traditional location for securing special tax breaks, the committee chairman, Sen. Bob Packwood (R-Ore.), surprised the competing parties by getting a bill out of committee quickly with relatively few special-interest concessions. Then in June 1986, the full Senate passed the bill with little debate, and the bill was highballing down the tracks towards final adoption.

Before the House-Senate conference committee even went to work in mid-July, a compromise appeared to be in the works among the House and Senate leaders and the Reagan administration. With the Labor Day recess approaching and November elections ahead, all parties seemed eager to get a consensus bill back to both chambers as early as possible. With such a complex bill, attention inevitably centered on the individual and corporate income taxes, not on tax-exempt bonds. The House and Senate bills had several critical differences concerning tax-exempt bonds, but they were addressed primarily through the negotiation process over the higher-profile changes in corporate and individual income taxes.

On August 17, as Congress adjourned for a three-week recess, the committee agreed to a final tax-reform bill, including provisions concerning tax-exempt bonds. The agreement puts constraints on both traditional public purpose bonds (for schools, roads, etc.) and on industrial development bonds. But the initial fears that general obligation bonds could no longer be issued were alleviated somewhat. Some of the severest restrictions on general obligation bonds—which State Treasurer Boyles and others identified early in 1986—were relaxed (especially the strict reporting requirements), but the overall demand for tax-exempt bonds may still be reduced by the law.

The changes in the tax laws in the agreement are complex. Accountants, economists, bond counsels, and other financial experts will spend months analyzing all its ramifications. Highlighted below are the most important features of the bill—as it stood on September 10, 1986—concerning industrial revenue bonds in North Carolina:

- *There is a lower limit on overall volume for*

most types of non-essential bonds, including industrial revenue bonds.³ The conference committee agreed on a limit of \$75 per capita for each state, or \$250 million—whichever is higher—through December 31, 1987, for certain types of tax-exempt bonds. In North Carolina, that limit would be about \$484 million.

As of September 1, the exact types of bonds covered by this cap were not clear from the conference committee agreement, says Everett Chalk of the State Treasurer's Office. "The cap will probably result in a lower volume of IRBs being issued in North Carolina," says Chalk. "We'll probably have to pick and choose which projects we will approve." Because North Carolina does not allow industrial revenue bonds for non-industrial uses, "we will not experience nearly as much of a change as will other states," adds Boyles.

• *The incentives for buying tax-exempt bonds are reduced, for two reasons.* First, banks use borrowed money to buy tax-exempt bonds; under the old law, they were able to deduct most of the interest they paid on that borrowed money. Under the new bill, banks can no longer deduct this interest. Second, under the old law, those who bought bonds—and hence earned interest on that investment—did not have to pay federal taxes on that interest income. Under the new bill, this interest income may be taxable for individuals and corporations under new alternative minimum taxes. If a company or individual must calculate taxes under

these provisions, bond interest income must be included. Put another way, if an individual or company is going to pay federal taxes under the alternative minimum tax, the individual or company will not be able to use tax-exempt bonds as a tax shelter.

While these provisions do reduce incentives for investors to buy tax-exempt bonds, the incentives for many other investments have also been reduced. Hence, some analysts believe that tax-exempt bonds could remain an attractive investment.

• *The sunset provision for small-issue industrial development bonds used for manufacturing and agricultural purposes is Dec. 31, 1989.* There is a sunset provision of Dec. 31, 1986 for IDBs used for commercial, wholesale distribution, and pollution-control bonds (for air and water). Before this tax bill, Congress had passed a Dec. 31, 1988 sunset for small-issue IDBs for manufacturing projects. By delaying this sunset provision one year, proponents of small issue IDBs have an additional year to try to save the program in Congress. □ □

FOOTNOTES

¹Thomas R. Dye, "Tax Reform and Municipal Financing: Dramatic Transformation Possible," *National Civic Review*, June 1985, pp. 266-269.

²*Small Issue Industrial Development Bonds and the U.S. Economy*, prepared by the Developing Systems, Limited (DSL) Consortium for the Council of Industrial Development Bond Issuers, March 1986, pp. 6-7.

³The new tax bill establishes categories for essential and non-essential bonds. For more, see footnote 4, p. 13.

Exterior view of new \$30 million Carolina Turkeys plant, financed partially with a \$10 million industrial revenue bond, located in Duplin County.



Jack Beits

THE INVESTOR-OWNED HOSPITAL MOVEMENT IN NORTH CAROLINA

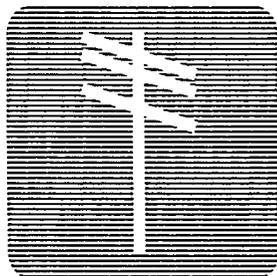
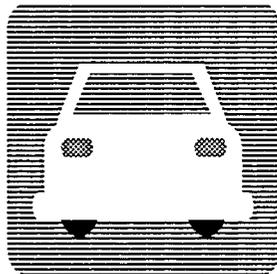
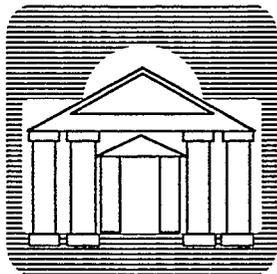
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Consumer Protection in North Carolina

No Longer a Radical Notion

by

Jack Betts and Amy Butterworth

Mention the words consumer protection, and most folks probably think of the Consumer Protection Division set up in the state Department of Justice in 1969 by then-Attorney General Robert B. Morgan. But the fact is that consumer protection reaches much farther in state government today. For instance, the Consumer Services Division of the state Department of Insurance is much larger than the Justice Department operation, with a 50 percent bigger staff (32) and more than twice as large a budget (\$1 million). And Insurance handles many more complaints each year. The Attorney General's Consumer Protection operation is also handling far more complaints than it did when it was set up, but today's budget is just about the same (\$450,000 in actual dollars, and when you figure in the rate of inflation, the budget has declined) as it was in the early 1970s. And, the state has nine of the 12 major types of consumer protection laws on the books. Here's a who's who and a what's what of consumer protection programs and laws in North Carolina that shows how consumer protection—once almost a radical notion in North Carolina—has come to be part of the mainstream of government services.

Bought a used car but discovered someone had monkeyed around with the odometer? Received a shipment of photocopy paper—and a bill—that you never ordered for your small business? Getting the runaround with your health insurance company on the reimbursement for your double-hernia operation? Promised a Mediterranean cruise for visiting a coastal resort, but got tickets for a bus trip to Monck's Corner instead?

Some consumers who encounter problems like these don't know where to turn, but tens of thousands of North Carolinians find out each year that state government has gradually gotten into the consumer protection business in a big way. In fact, the state spends more than \$5 million each year to respond to consumer complaints, resolve problems, and represent consumers in regulatory proceedings for such consumer services as electricity and telephones. There's even a state office consumers can call to find out where to go to resolve a specific consumer complaint—the Office of Citizen Affairs in the Governor's office (919-733-5017).

Consumers' complaints have increased enormously in the past 15 years, and the record shows that consumers have far more questions and complaints about their insurance policies than any other single kind of product or service. In 1972, for instance, the Consumer Protection Division at the Department of Justice handled 3,230 consumer

complaints; in 1973, the newly created consumer services staff at the Department of Insurance received 4,497 complaints on almost every type of problem. By 1985, the number of insurance consumer complaints and telephone inquiries had grown enormously, to more than 34,600, while the number of formal consumer complaints received at Justice had climbed steadily to nearly 10,000. (The Justice Department, like the Insurance Department, also handles thousands of telephone inquiries each year, but unlike Insurance, Justice does not include the number of inquiries in its total of 10,000 complaints). Yet the consumer advocacy agency with the biggest budget and largest staff is a third office, the Utilities Commission's Public Staff, located nominally in the Department of Commerce, which spends more than \$3.2 million a year to do its job of representing consumers in rate and other cases.

Almost every state agency considers itself a consumer-oriented agency. The Department of Transportation, for instance, concerns itself with the roads that consumers use to travel about. The Department of Public Education supervises the education that our younger consumers receive in public schools. The Department of Agriculture manages programs aimed at enhancing agriculture

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in the state so that consumers will have a plentiful supply of food and fiber, and so on. Arguably, then, every state agency is consumer-oriented. But a relatively few agencies are more directly involved in consumer protection and consumer advocacy. These agencies include the state Departments of Justice, Insurance, Commerce, and Agriculture.

What gives state agencies the legal authority to represent a consumer in a squabble, and how do they go about it? And with consumer service programs spread over a variety of agencies, where does a consumer go first when he needs help? And, for that matter, what constitutes a consumer protection program in the first place?



What Role for Government?

The consumer movement has existed for ages, more often in the form of folk wisdom than in formal government programs. Typical was the quaint wisdom of a 16th century English writer named John Fitzherbert. In his 1547 *The Boke of Husbandry*, Fitzherbert warned his readers that some unscrupulous horse dealers would hide warts under a blanket at the time of the sale, and only later would the seller realize he had been duped—and perhaps dumped unceremoniously in the middle of a dusty road. Fitzherbert admonished, “If he be tame, and haue ben rydden vpon, than *caveat emptor!* beware the buyer.”

Popular support for a government role in protecting consumers has not always been so strong as it is now. In the years following American independence, for example, consumers had just freed themselves from what they considered to be unfair restrictions and were not interested in government protection, at least at first. Gradually, though, attitudes began to change, and consumer protection evolved as a government service. Today, business markets are larger and more specialized, and the old phrase “caveat emptor” requires more expertise from the consumer—and regular help from government. In the United States, consumption accounts for about two-thirds of the Gross National Product, and state governments have intervened to protect consumers out of a recognition that normal market forces may be insufficient to protect the public.

Consumer protection by government is difficult to define, partly because the term “consumer” includes everyone, and partly because state govern-

ment provides many services to consumers which, under a broad interpretation, can be labeled as “protection.” In addition, consumer protection covers a wide variety of problems. Because of the mind-boggling array of products, services, and goods available in every color, size, and description, consumers often don’t know how to cope when they have complaints or questions. For that reason, effective state consumer protection services usually offer three basic functions: (1) complaint processing, which includes investigation, mediation, and litigation; (2) regulation, to ensure quality, safety, and reasonable rates; and (3) education, as a preventive self-help measure. These functions need not be housed under the same agency or directed by one official, but together they represent a comprehensive approach to consumer protection. North Carolina’s state government addresses all three areas and has traditionally been a leader in consumer protection.

The first consumer program in North Carolina, like those in other states, developed largely in response to a wave of consumer awareness nationwide in the 1960s and 1970s. Through catalysts like Ralph Nader and Rachel Carson, consumer concerns eventually received presidential support. In recognition of the growing influence of consumerism, President John F. Kennedy said in 1963, “What is new is the concern for the total interest of the consumer, the recognition of certain basic consumer rights. The right to safety, the right to be informed, the right to choose, the right to be heard.”¹

These basic rights were not being recognized

Table 1. Consumer Protection Programs in N.C. State Government¹

Department/ Division ²	Address and phone #	Activities	Statutory authority	# of Full- Time Staff FY 85-86	Budget, N.C. FY 85-86 (7/1/85-6/30/86) (State Funds)
DEPARTMENT OF COMMERCE					
N.C. Utilities Commission					
Public Staff	Dobbs Building 430 N. Salisbury P.O. Box 29520 Raleigh, N.C. 27626 (919)733-2435	Represents the using and consuming public before the Utilities Commission in all proceedings involving the rates and service of regulated utilities	N.C.G.S. 62-15	78	\$3,219,418
DEPARTMENT OF INSURANCE					
Consumer Services Division					
	Dobbs Bldg. 430 N. Salisbury P.O. Box 26387 Raleigh, N.C. 27611 (919)733-2032	Provides information on insurance matters to consumers Resolves consumer complaints Investigates insurance agents and agencies in conjunction with other divisions	N.C.G.S. 58-9	32	\$1,071,000
Manufactured Housing Division					
	410 N. Boylan Raleigh, N.C. 27611 (919)733-3901	Investigates and resolves consumer complaints Licenses all segments of the manufactured housing industry	N.C.G.S. 143-143.8	10	\$ 341,855
DEPARTMENT OF JUSTICE					
Consumer Protection Section					
	Justice Building 1 West Morgan St. P.O. Box 629 Raleigh, N.C. 27602 (919)733-7741	Enforces State Consumer Fraud Laws Handles consumer inquiries and complaints Investigates and settles cases in or out of court Promotes consumer education	N.C.G.S. Chapter 75	20	\$ 449,297
Antitrust Section	Same address (Merged with the Consumer Protection Section, April 1986)	Investigates complaints of monop- olization, price fixing, and other practices which constitute illegal restraints of trade	N.C.G.S. Chapter 75	5	\$ 174,270
Utilities Section	Same address (919)733-7214	Represents the consuming public concerning public utility services	N.C.G.S. 75-9, 75-15	4	\$ 130,000
TOTAL STATE SPENDING FOR PROGRAMS ON CONSUMER PROTECTION:					\$5,385,840

FOOTNOTES

¹For the purposes of this chart, "programs on consumer protection" refers to programs which respond to complaints about a product, service or business practice from the general, consuming public, not from special groups by race, sex, age or handicap.

²This chart covers programs in N.C. state government only.

Table prepared by Amy Butterworth based on budget figures supplied by the state agencies.

*What's good for General Motors
is good for the country.*

—Henry Ford II

in most states at that time. Even as late as 1969, the Federal Trade Commission (FTC) lacked enforcement powers, jurisdiction, and investigative resources to deal with misleading advertising and fraudulent business activities. Because of the inability of the FTC to act, particularly in response to certain deceptive advertising practices, N.C. Attorney General Robert B. Morgan created the Consumer Protection Division to respond to these problems at the state level.

North Carolina's and Kentucky's consumer protection offices, among the first in the nation, were set up under a directive from their attorneys general based on common law enforcement responsibilities rather than specific legislation. After setting up the Consumer Protection Division in 1969, Morgan asked for and won legislation incorporating consumer protection responsibilities into the antitrust section of Chapter 75 in the North Carolina General Statutes—giving his office prime consumer protection responsibilities.² Kentucky's then-Attorney General, Robert B. Matthews, noted

Former Attorney General
Robert B. Morgan, who set up the
consumer protection division in 1969



in 1966 that, "As soon as we showed interest in this field of activity, we found that not only did we have the fundamental law, but also the important thing, the big stick of public opinion and the business community."³ As a result, the Attorney General's power to establish a consumer protection program was not challenged.

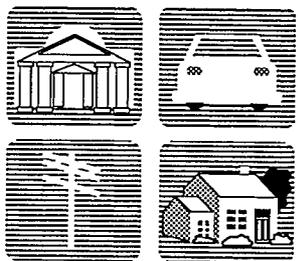
As Morgan put it in 1973, "When I first became Attorney General of North Carolina. . . we had almost no consumer protection activity at all. We quickly changed this, for to me, this is one of the most important areas to be dealt with by any Attorney General's Office. I believe if we do not deal with it quickly and effectively the Federal government is going to. . . . If we want to preserve states' rights—and I do—we must act responsibly to represent the interests of the consuming public before the state and federal regulatory bodies. In this day, consumers throughout America demand such representation and have every right to receive it."⁴

In a recent interview, Morgan recalls there was some hostility to his Consumer Protection Division at first. "There was a lot of suspicion from the business community," Morgan told *Insight*. "They thought I was a nut, anti-business, some sort of a socialist. But when they realized that we were also working to help legitimate businesses, many of whom were also getting hurt by unscrupulous operators, they came around to be very supportive."

Since those days, consumer protection programs have become part of the mainstream of government services. This article examines the state of the consumer protection movement in eight segments: the Department of Justice, the Department of Insurance, the Public Staff of the Utilities Commission, the Department of Agriculture, non-government consumer groups, consumer protection laws and legislative action, an interview with Attorney General Lacy Thornburg, and a short section that illustrates what protecting consumers was like when Morgan first began pursuing class action lawsuits.

*I am responsible for my actions,
but who is responsible for
those of General Motors?*

—Ralph Nader



The Department of Justice

Before Morgan created the Consumer Protection Division in 1969, there had been limited action on behalf of consumers in both the public and private sectors. North Carolina has had the equivalent of the federal Sherman Antitrust Act⁵ in G.S. 75-1 (entitled "Combinations in restraint of trade illegal") of the General Statutes since 1913.⁶ But the first broad consumer protection legislation, adopted in 1969, was G.S. 75-1.17 (entitled "Methods of competition, acts and practices regulated"), which prohibited the "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." This language, borrowed from section 5 of the Federal Trade Commission Act,⁸ is commonly referred to in North Carolina law as the "little FTC Act." Other amendments to Chapter 75 have strengthened the agency's authority but G.S. 75-1.1 remains the core legislation for its actions.

The *Consumer Protection Section* (so renamed in 1975), directed by James Gulick, a special deputy attorney general, has the authority to investigate complaints, seek injunctive relief, obtain restitution after a mandatory order, and to exact civil penalties for willful violations. "The focus of the division," says Gulick, "is to carry out the Attorney General's duty to see if businesses are engaged in unfair trade practices prohibited by G.S. 75-1.1. We have a strong arm in that we don't have to go to court and get an injunction." G.S. 75-10⁹ (entitled, "Power to compel examination") compels people to be examined (that is, to produce business records and other materials) without a lawsuit—which makes it a lot easier for the section to determine fraud and deception quickly and without protracted litigation.

Gulick says his office currently handles nearly 10,000 formal complaints and thousands of information calls—more than double the workload of just 14 years ago, but with a smaller staff. In 1972 the Consumer Protection office, with a bud-

get of \$416,126 and an authorized staff of 23, was the fifth largest of all the states' consumer protection offices. The section now operates with a staff of only 20, and a budget of less than \$450,000 (see Table 1, p. 21). In other words, in terms of staff and of actual budget dollars adjusted for inflation, the Consumer Protection Section is handling a much larger workload with about the same resources as it was in 1972.

Both Gulick and his boss, Attorney General Lacy H. Thornburg, say more staff members, including attorneys and support staff, are needed. In an interview with *Insight*, (see p. 37), Thornburg says the need for additional help is critical. "Certainly we would like to have some right now as a matter of fact because the workload has increased tremendously. The number of people who are handling it—it boggles the mind that they are able to handle it as well as they do."

The section's complement of staff members includes six consumer protection specialists and five attorneys. Together they handle some 10,000 complaints each year. Motor vehicle purchases and repairs represent the largest number of complaints, more than 12 percent of the total. Other major sources of complaints are mail orders (10.5 percent), credit and lending problems (9.2 percent), miscellaneous products and services (6.2 percent), land and land development (5.9 percent), home furnishings (5.5 percent), and health spas and dance studios (4.8 percent). A very small percentage of consumer complaints result in legal action, while approximately 70 percent are settled informally, usually by an exchange of letters. Gulick says the knowledge that a suit can be brought is usually effective in achieving voluntary settlement, and in most cases a letter from the Attorney General's office will get a prompt response.

Gulick says his office has become more litigious recently. For instance, in 1984, the section filed or intervened in six lawsuits. In 1985—

Thornburg's first year in office—the section filed or intervened in 10 lawsuits.

The section has a system of specialization among the attorneys and investigators based on the subject matter of the complaints received. Incoming complaints are categorized under broad subject headings such as housing (landlord-tenant relations, rent, and ownership), banking (credit, truth-in-lending), and automobiles (new and used car sales, repairs). "Some types of complaints," says Gulick, "can be resolved vis-à-vis the individual and the company through letters and receipt of complaint. If someone didn't receive their mail order, for example, a letter from the Attorney General usually resolves the problem."

Sometimes it takes more than a letter. For instance, a Reidsville woman purchased a used, low-mileage 1982 Buick from a dealer in 1984. When she took it in to the repair shop a short while later, though, she was hit with a big bill—and she complained to the Consumer Protection Section in March 1985 because she didn't think a car with such low mileage should have such problems. The Consumer Protection Section ran a title search on the car in North Carolina and found nothing out of the ordinary, but on a hunch the section also checked the car's odometer statements in two other states where the car had been registered—Illinois and South Carolina. Bingo. The car's odometer, it turned out, had been turned back to much lower mileage at a shop in South Carolina—completely unbeknownst to the Reidsville dealer. After a series of negotiations, the dealer agreed to buy back the Buick for \$6,400—more than the purchase price of the car, which allowed the woman to recoup her original investment, minus a sum for the use of the car while she was driving it, plus attorney's fees. The Reidsville dealer, meanwhile, was able to pursue his own damages from the South Carolina shop where the odometer was rolled back.

The section keeps a record of all complaints filed, as a method of spotting illegal business conduct. If investigation reveals that a business is systematically or blatantly violating the consumer protection laws and that legal action would be in the public interest, a formal lawsuit may be started. Such a lawsuit, however, must be brought

If business leaders had channeled one tenth of the energy they devoted to fighting this bill (consumer protection) into improving their products and services they would not find themselves in this fix.

—James J. Kilpatrick

in the name of the state of North Carolina and not on behalf of any private individual (for more on this point, see Thornburg interview, p. 37). "We have to be bureaucratic," Gulick says. "The number of people filing complaints requires a system of organization. We try to be responsive individually but we are not authorized to represent an individual consumer in court. Our goal is to stop unfair and deceptive practices through formal agreements or court injunctions." Adds Thornburg, "We try not to get into the private practice of law by representing an individual consumer. . . . What we can do if we are representing a class of complainants is to bring class actions."

As a practical matter, however, the department does represent individuals as it goes about protecting consumers as a class and enforcing state consumer protection laws. And individual complaints sometimes are the vehicle for a bigger deal. If an individual's case is important generally, it might be taken up by the Attorney General's office. "We serve individual consumers, but we don't represent them," says Gulick. "Our court authority is only for the public at large." However, under GS 75-15.1,¹⁰ (entitled "Restoration of property and cancellation of contract"), which was adopted in 1973, the Attorney General can seek restitution money for consumers. Civil penalties up to \$5,000 can be sought for willful violations. In this way, consumers who are victims of unfair and deceptive acts may benefit from the formal action through monetary recovery. For example, in another recent rollback case, the president and vice president of Poole's Used Cars in the Iredell County community of Troutman were charged with altering odometers and providing false statements of low mileage on the cars they sold. They were sentenced to two years in prison, plus five years on probation, and were fined nearly \$20,000, which was used as restitution to 12 buyers who were cheated in the odometer rollback scheme.

Gulick concedes that the section does not make every consumer happy. He says consumers' expectations are high, and they are sometimes disappointed by the section's efforts. "We like to be able to collect for people," says Gulick, "We try to do it, but it is not our first task." The section's first priority is to put a stop to unlawful

business practices, then to punish the offenders, and finally to seek restitution if possible. Although the agency cannot find everyone who may have been injured by an illegal business practice, the section can squelch the operation and thus protect others from possible injury.

According to Gulick, "The ability to seek restitution is a powerful collection device. We would not now accept a criminal sentence without restitution," and the Poole's Used Cars case is an example where the section got a conviction *and* restitution, because it involved violations of criminal law (G.S. 20-347, "The North Carolina Vehicle Mileage Act," and G.S. 20-71, "Altering or forging certificate of title, registration card or application, a felony..."). However, the extra leverage of *criminal* sanctions is not available for violations of G.S. 75-1.1, which provides only *civil* penalties, unless there are also violations of crim-

inal law. (In normal practice, the Justice Department does not pursue criminal charges, which are usually the province of the district attorney in each judicial district. However, the department may handle special prosecutions, as in the Poole case.)

Approximately 50 percent of the consumers who complain will get positive personal benefits—a sense of justice having been done, restitution, or a problem otherwise solved—but the section's efforts cannot guarantee satisfaction as often as it would like. "Businesses may run, or there may be no money," says Gulick. "Sometimes we can get access to their tax refunds, sometimes the money will come in late, or sometimes it will come in slowly."

Gulick says his office estimates that it helped consumers recover \$1.6 million through mediation and court action in 1984, and more than \$1.4 million in 1985. These figures represent direct res-

Class Actions Lawsuits: "I will not be able to attend . . ."

Sometimes, being a consumer advocate is a lonely job, especially when those you're trying to help don't know it—or understand what you're doing. Consider what happened in 1970, when then-Attorney General Robert B. Morgan, who had developed the state's model consumer protection program, filed a class action lawsuit against five drug companies, seeking treble damages for violations of anti-trust laws. Morgan wanted to locate all North Carolinians who had purchased certain antibiotics from these companies from 1954-1966, so that they could be compensated if the state won the case. The most practical way to reach them was to send a notice of the lawsuit on their behalf to all two million persons who had filed North Carolina income tax returns in 1969.

The mass mailing brought a huge outpouring of responses, most of which indicated how few understood that Morgan was trying to help them by winning jury awards for damages. Here's a sampling of the responses:

"Dear Sir: I received this paper from you. I guess I really don't understand it. But if I have been given one of these's drugs I was not told why. If it means what I think it means though, I have not been with a man in nine

years if that answers your question."

"Dear Mr. Clerk: I have your notice that I owe you \$300 for selling drugs. I have never sold any drugs, especially those that you have listed. I have sold a little whiskey once in a while though."

"Dear Sir: I have not bouth none of tat stuff from nobody and I don't know notin about it."

"Dear Sir: Due to circumstances beyond my control I will not be able to attend this class at the time prescribed on your letter due to the fact that my working hours are from 7:00 until 4:30."

"Dear Sir: This is a request to be excluded from the class. Whatever gave you the belief that I was a member of such a class. I never take drugs. Maybe an aspirin once in a while, but I can't even take but one of them at a time."

"To Whom This May Concern: . . . About this lawsuit, I can't see how you or anyone can build a case after something I know nothing about, I can't imagine what it's all about, and about some kind of class I'm suppose to be in. I'm sorry, I'm in no kind of class, I'm only a mother and housewife, I do not have any kind of trade or class."
— Jack Betts

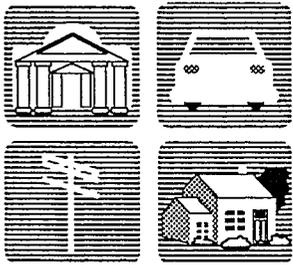
tution to consumers.

If the section cannot directly assist with a complaint, it may direct the consumer to another agency which could solve or mediate the complaint, advise the consumer of his rights to bring a lawsuit to seek treble damages (G.S. 75-16, "Civil action by person injured; treble damages")¹¹ or suggest filing a claim in Small Claims Court. Consumers may pursue claims of \$1,500 or less in small claims courts without having to hire a lawyer. It generally takes about a month to get a case heard in small claims courts—far faster than filing lawsuits in the higher courts. Small claims courts are located in each of the state's 33 judicial districts.

The Consumer Protection Section is not the only agency within the Department of Justice to work on behalf of the consumer. *The Antitrust Section*, with a staff of five, and the *Utilities Section*, with four workers, also labor in the consumer protection vineyards. The Antitrust Sec-

tion—merged into the Consumer Protection Section in May 1986—investigates complaints of monopolization, price fixing, and other antitrust allegations that under the law constitute illegal restraints of trade. The Antitrust Section, for instance, investigates the 1980 highway bid rigging scandal—first uncovered by federal authorities—and negotiated restitution and penalty payments to the state of North Carolina.

The Utilities Section also represents consumers by intervening in utility rate cases before the N.C. Utilities Commission. In the past, it has petitioned the commission to lower electric power rates, for example, and has opposed requiring ratepayers to foot the bill for abandoned power plants—a position that Thornburg says was "a matter of fairness." Thornburg in 1985 sought authority to merge the Public Staff of the Utilities Commission with the Utilities Section in his department, but legislative support never materialized.



Ensuring a Fair Shake

The Department of Insurance

In *Insight's* examination of state consumer protection programs made it evident that even consumer protection professionals are not generally aware of the *Consumer Services Division's* work at the Department of Insurance. Yet, on the third floor of the Dobbs Building in downtown Raleigh, a large staff is at work assisting consumers with their inquiries, questions, and complaints about insurance. With an extensive computer system, a staff of 32 persons and a budget of \$1,071,000 for 1985-86, the section handles more than 34,000 insurance complaints on a yearly basis, says Don Wright, deputy commissioner of the Department of Insurance. "Approximately 10 percent of a family budget goes for insurance, and directly or indirectly, everyone in North Carolina has a connection to some type of insurance," explains Wright.¹²

A typical consumer complaint, departmental officials say, is collecting on an insurance claim.

In February 1986, for instance, the \$150,000 home of a Greenville couple burned to the ground. A few weeks later, the estimate of damage was forwarded to their insurance company, and for the next few months there was no reply until they received a conflicting—and lesser—estimate of damage from their insurer. Finally, in June 1986 the couple asked the Consumer Services Division for help. Division specialists summoned a claims representative from the insurance company and set up a meeting with the Greenville couple. Within seven days, the couple got their check for \$150,000.

The Consumer Services Division was set up by former Insurance Commissioner John R. Ingram in 1973. Prior to this, consumer services were handled through the department's legal office. Insurance Commissioner James E. Long, who built a reputation as a consumer advocate when he was a member of the General Assembly from

1971-76, beefed up the division when he took office in January 1985, raising its authorized complement of staffers from 29 to 36. The division's staff now comprises 11 clerical and 21 professional consumer protection workers. The modern offices, the computer network, and large staff is in stark contrast to the crowded, overburdened consumer protection operation of the Department of Justice.

The division's purpose is to provide information on insurance matters to consumers, investigate consumer complaints, conduct outreach programs for consumers, and promote consumer education. Working with other divisions, Consumer Services also investigates insurance agents and agencies. The division maintains a toll-free number and a WATS line and handles about 132 new complaints each day. Questions which can't be immediately answered are referred to specialists in one of five categories: life, health, homeowners/property, auto insurance, and miscellaneous. The division will contact or meet with insurance company representatives to obtain information. Most complaints, like those in the Attorney General's office, are solved through direct communication with the parties involved, but also, like the Justice Department, the division cannot act as a legal representative of a consumer in or out of court or interfere in a pending lawsuit.

But, if the division finds that an insurance company or representative appears to be involved in an unlawful or illegal activity, the division may, in accordance with G.S. 58-9¹³ (the statute establishing the department's consumer section and regulatory powers), revoke the license and, subject to court approval, levy civil penalties or restitution of violations. The commissioner may order the payment of a penalty ranging from \$500 to \$40,000 and may also order restitution to compensate the victim of a violation, subject to a court's approval.

In addition to Consumer Services, the Department of Insurance has under its wing the *Manufactured Housing Division*, which has the explicit authority to investigate and resolve consumer complaints about mobile homes. It operates as the staff for the Manufactured Housing Board, which serves as a licensing board with certain regulatory functions, including some consumer protection services such as maintaining

quality standards. Although some licensing boards do receive consumer complaints, the Manufactured Housing Board is unique in that it was created in response to a high volume of consumer complaints. In 1976, mobile homes outranked automobiles and mail fraud as the number one source of consumer complaints. A 1974 study found that the problem was partly due to a "lack of a single government agency with power to help mobile home dwellers. Any government regulation was through branches of state government."¹⁴ Since the Manufactured Housing Board was established in 1982 by G.S. 143-143.10,¹⁵ mobile home complaints have continued to increase, but the number of complaints resolved has also risen.

That law authorizes the Manufactured Housing Board to receive and resolve complaints from buyers of manufactured homes and from the manufactured housing industry itself. The board also is responsible for licensing and bonding all segments of the manufactured housing industry. All new homes must have a 12-month warranty, which the division enforces. The division has a budget of \$341,855 a year and handles an average of 80 complaints a month, primarily concerning roof and floor leaks and mobile homes that have not been set up properly and are not level. The division has five field inspectors who investigate complaints. If a problem is not fixed within 45 days of notification, a formal administrative hearing is held. Suspension or revocation of a license, or civil penalties of up to \$250 for each violation, may be ordered.

Insurance Commissioner James E. Long



Jack Betts



Utilities: Consumer Protection and Regulation

The Public Staff of the Utilities Commission represents the public before the Utilities Commission in all proceedings involving rates and service of regulated utilities. If a customer has difficulties with a utility service and the company does not respond to his satisfaction, he may write, call, or visit the Consumer Services Division of the Public Staff.¹⁶ For example, if a utility decides to terminate a customer's services, the customer may appeal to the Public Staff, which can ask the Utilities Commission to order the utility to restore and continue the service until the appeal has been resolved.

The Public Staff also handles billing complaints. For instance, a few years ago, a man moved into a new, all-electric residence, and was amazed to receive electric bills that were much lower than he expected. He called his power company numerous times, and sent extra money with his payments, but the power company merely credited the excess to his account and continued the low billings. When the company finally realized that it had under-billed the consumer by \$1,000 over a year's time, the utility demanded the remaining balance. The consumer, however, filed a complaint with the Public Staff contending that because he had tried to alert the company of its mistake, he should not have to pay. The Public Staff investigated informally and assisted in presenting his argument to the Utilities Commission, which then ordered the company to drop the additional charges.

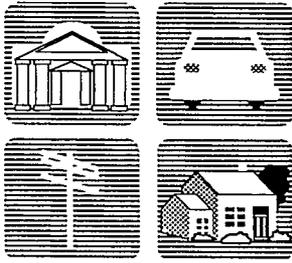
The Public Staff, established in 1977, was proposed by former Gov. James B. Hunt Jr., who campaigned on a platform of giving consumers a greater voice in Utilities Commission deliberations. The agency handles about 6,000 calls annually reporting utility service problems, and the Consumer Services Division has three staff mem-

bers who process complaints. If necessary, a complaint will eventually receive a formal hearing before the Utilities Commission. According to Robert Gruber, the executive director of the Public Staff, fewer than 100 complaints go to a formal hearing each year. The agency has a contact person with each utility in the state, and most complaints can be solved informally through cooperation and agreement. The Public Staff employs 78 persons, including attorneys and engineers who provide professional and technical assistance in cases which do reach a hearing.

The Public Staff also represents consumers in a direct fashion by examining proposals for changes in utility rates and levels of service. The staff often argues against rate increases, and sometimes proposes that not only should utility rates not be increased, but that they should be reduced by the Utilities Commission. The commission has all the powers and jurisdiction of a court of general jurisdiction. (Other commissions with similar authority include, for instance, the N.C. Savings and Loan Commission, the N.C. Banking Commission, and the N.C. Alcoholic Beverage Control Commission.)

*If the government was as afraid
of disturbing the consumer as it
is of disturbing business, this
would be some democracy.*

—Kin Hubbard



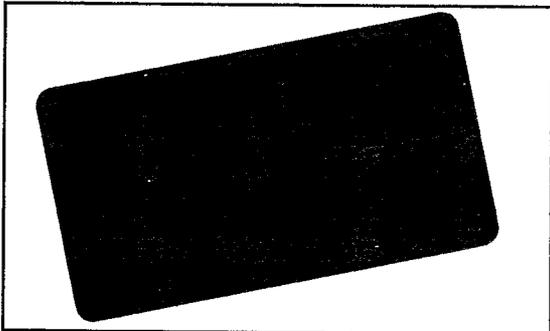
Agriculture: Monitoring, Inspections, & Education

Never buy a pig in a poke.

—Anonymous

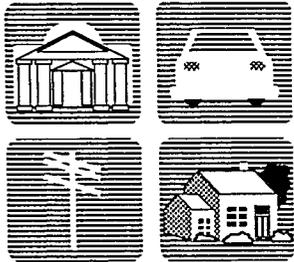
The regulatory aspects of consumer protection are far-reaching, and they involve much more than questions of law resolved in hearings and in formal decisions by state government commissions. For example, a major part of North Carolina's consumer protection duties are the day-to-day inspections and monitoring procedures required to uphold statutory responsibilities assigned to various departments. Consumers take for granted that they will get a full tank of gas or that the food they eat will be free of harmful additives. But the *N.C. Department of Agriculture* has the actual task of making sure gas pumps record the right amount of fuel and that farm produce is not contaminated with DDT. It's also responsible for the regulation of food, drugs, weights, and measures.

The department has 15 separate divisions, some of which are regulatory in nature. The Food and Drug Protection Division, for example, regulates the production and sale of foods, animal feeds, pesticides, drugs, cosmetics, and automotive antifreezes. The division monitors products for harmful bacterial contamination and proper labels. Inspectors also check production premises for sanitary conditions and conduct chemical analyses.



Among other duties, the Standards Division determines whether scales, meters, and fuel pumps are accurate. Its inspectors check retail stores to ensure that cereal boxes and other packaged products contain the amount they claim. If not, they remove the package. The Gasoline and Oil Section of the Standards Division tests petroleum products to determine octane levels and lead content. These services are vital to consumer safety and represent areas in which the average consumer would not be able to make an accurate assessment of quality on his own initiative.

One final aspect of consumer protection that should not be overlooked is consumer education. The N.C. Agricultural Extension Service, a part of the land-grant universities (N.C. State and A&T State) has the only comprehensive state government program that is specifically geared towards educating consumers on their rights and responsibilities under current legislation, regulation, and common business practice. Extension home economics agents in each county present programs and materials that range from general information on consumer protection and recommended procedures for handling complaints to such specifics as family money management during crises or Small Claims Court procedures. "We provide non-biased information and make referrals to complaint-handling agencies," says Jan Lloyd, home economics and family resource management specialist. The main emphasis of the program is individual responsibility for informed decision-making. The service is funded by federal, state, and local governments, and estimates that it commits the equivalent of 10.5 full-time staff members to education and consumer protection in the course of a year.



Other Consumer Organizations

Other organizations that provide information to consumers are the Better Business Bureau, the North Carolina Consumers Council, and the various chapters of the North Carolina Public Interest Research Group (see p. 31). The *Better Business Bureau of Eastern North Carolina, Inc.*, offers consumer information on a variety of products and services, provides information on companies and charitable organizations, handles and resolves some consumer complaints, and monitors advertising and sales practices. For instance, the Better Business Bureau (BBB) publishes in its monthly newsletter a list of local businesses that fail to respond to written complaints consumers file with the BBB. The newsletter also publishes exposés of misleading or fraudulent promotions, such as a recent article on so-called "free prizes" offered to consumers which aren't free at all—and which don't work as advertised.

The *North Carolina Consumers Council* examines and speaks out on legislation affecting consumers and taxpayers, compiles information on consumer issues, and provides educational mate-

rials on a broad variety of consumer interests. For instance, in the 1983 General Assembly, the Consumers Council testified before legislative committees that credit insurance rates in North Carolina were unfair and that the legislature should adopt a bill that would have the effect of reducing rates, but the bill died in the face of heavy lobbying (see *North Carolina Insight*, Vol. 8, No. 2, p. 42, for more on this subject).

And the *North Carolina Public Interest Research Groups*, an outgrowth of the activist consumer movement stimulated by Ralph Nader in the 1970s, has had chapters located at Duke University, Elon College, and Davidson College. The groups examine consumer and other public issues and occasionally speak out on the impact of proposed legislation and government policies, but have not been as active on the state level in recent years.

Finally, *private mediation services*, such as the nonprofit Guilford Dispute Settlement Center in Greensboro (which has received state "pork barrel" funds in the past), help resolve disputes between consumers. About 10 such dispute centers exist in North Carolina, resolving all sorts of disputes, including many consumer complaints. Most of them are members of the N.C. Association of Community Mediation Programs, based in Pittsboro.

One other source of consumer complaint resolution has had notable success—the so-called "Hotline" features that appear in a number of North Carolina newspapers, including *The Raleigh Times* and the *Greensboro News & Record*. Typically, "Hotline" writers attempt to resolve consumer complaints, such as auto repairs, mail orders, or retail sales problems, and then report how the "Hotline" was able to help the reader. Some television stations, including WRAL in Raleigh and WFMY in Greensboro, have had similar features.

BusinessLine

The official publication of the Better Business Bureau of Eastern North Carolina, Inc.

JUNE 1986

SO YOU'VE WON A SPA? CONGRATULATIONS, BUT . . .

Before you start renovating your patio or deck in anticipation of receiving your "free" spa, you might want to know more about the spa. For several years now area businesses have been plagued by calls and letters from companies across the country telling them they've won a free prize. All you have to do to get your prize is to pay shipping and handling charges of \$100-\$150. Some companies use the "free gift" as an incentive to get you to buy some type of specialty product such as pens, calendars, key chains, etc.

Here is a picture of the "spa" won by a local company. The picture failed to make it look like a hot tub. We had to accept our own factory to make it hot.

This photo shows the spa's hydro pump and water system. If you're having trouble seeing the water system, we did too.

In case you forgot what the "free prize" looks like, here is a picture of the Super Sport Motorboat on its maiden voyage in early 1985. It developed a leak early in the cruise.

In 1985 the prize was a Super Sport Motorboat. In 1986 the prize appears to be a "Makou Spa". The prizes may have changed but the basic scam hasn't. Though the company offers the prize make generous claims that it will be the best of the best, the fact is...

Don't forget what the "free prize" looks like, we've given you a second look.

Keep in mind that until the law is changed, prizes sent to you C.O.D. cannot be examined before purchase and your money cannot be refunded by the Postal Ser...

Other Consumer Protection Organizations

Organization	Address or Phone #	Activities
Better Business Bureau of Eastern N.C., Inc.	3120 Poplarwood Court G-1 Raleigh, N.C. 27604 Raleigh: (919) 872-9240 Durham: (919) 688-6143 Chapel Hill: (919) 967-0296 Auto Line: 1-800-558-3122	Offers consumer education programs and materials Provides information on companies and charitable organizations Handles consumer inquiries Monitors advertising and shop sales
N.C. Consumers Council	P.O. Box 3401 Chapel Hill, N.C. 27514 (919) 942-1080	Monitors legislation affecting consumers Compiles information on consumer issues Functions as an information resource on consumer interests
N.C. Public Interest Research Group	704-1/2 Ninth Street P.O. Box 2901 Durham, N.C. 27705 (919) 286-2275	Participates in public education efforts concerning consumer protection Monitors and appeals utility rate increases Publishes manuals for citizen education Conducts research on a variety of issues Provides speakers on request Has chapters at Elon College, Davidson College, and Duke University
Small Claims Court	Courts are located in each judicial district Clerks of court in each county have forms	Settles consumer disagreements over amounts of money or property that are worth \$1,500 or less Resolves cases at low cost to the consumer
N.C. Association of Community Mediation Programs	P.O. Box 217 Pittsboro, N.C. 27312	Private, nonprofit mediation groups operate in at least 10 North Carolina communities — Pittsboro, Asheville, Charlotte, Durham, Greensboro, Raleigh, Hendersonville, Winston-Salem, High Point, and Chapel Hill. Most are members of the N.C. Association of Community Mediation Programs. The centers offer trained mediators who can resolve various types of disputes including consumer complaints.

* The Better Business Bureau has 10 employees and 70 part-time volunteer arbitrators who are available to serve as judge and jury in business-related disputes which cannot be mediated and which are brought to arbitration by request and consent of the parties involved.

Chart compiled by Amy Butterworth



Are There Enough Laws? And Will the Legislature Act?

*You pays your money and
you takes your choice.*

—Punch

Through education, licensing and regulation, and complaint processing, the consumer in North Carolina is fairly well equipped to deal with typical consumer problems. And North Carolina law includes a number of provisions designed not only to protect the consumer, but also to allow the consumer to recover damages. According to a survey conducted by the National Association of Attorneys General (NAAG), North Carolina law embodies nine of the 12 major types of consumer protection statutes (see Table 2, pp. 34-35, for more). Seventeen states have more extensive legal protections on the books, and 10 other states have an equal number of statutes, though not in all the same categories. Twenty-two states have fewer consumer protection statutes than North Carolina. Only New York and Maryland have all of the statutes, and Arkansas has the fewest—just two.

North Carolina lacks three of what the NAAG describes as major types of consumer protection statutes. The state *does not have*: (1) a truth in lending statute, which requires the disclosure of interest and interest rates on sales and installment sales (but state consumer protection officials point out that the federal Truth in Lending Act applies in the absence of a strong state statute); (2) a credit reporting act, which controls the accuracy and issuance of credit reports; or (3) a creditor billings errors act, which requires a creditor to rectify any error in billing within a specified period of time upon a consumer complaint.

The nine types of statutes the state *does have* include the following:

(1) a small loan act, governing rates and terms of loans of less than \$3,000 for personal use (G.S. 53-164);

(2) an installment loan act, governing rates and terms for personal or consumer loans of

\$5,000 or less (G.S. 24-2.1);

(3) a revolving sales credit act, governing the rates and terms of consumer credit sales where charge accounts are used (G.S. 24-11 and G.S. 25A-11);

(4) a home solicitation act, which governs sales made at home, and permits cancellation of the contract within a few days' time (G.S. 25A-14; G.S. 25A-38 through G.S. 25A-42; See also G.S. 14-401.13[5]);

(5) a home improvement loan act, governing the terms of contracts for home improvements which are financed, and including a cancellation clause (G.S. 25A);

(6) an unfair trade act, protecting the consumer against unfair or deceptive advertising or business practices (G.S. Chapter 75, especially G.S. 75-1.1);

(7) an insurance premium financing act, governing the rates and terms of financing insurance premiums (G.S. 58-55);

(8) an unsolicited merchandise act, providing that unsolicited merchandise may be retained by the recipient as a gift (G.S. 75-27); and

(9) a consumer defense law, allowing a purchaser to assert against a subsequent business or manufacturer any rights or defenses he might have against the original seller of the goods or services (G.S. 25A-25).

This list, prepared as a comparison of states by the National Association of Attorneys General, does not include all the consumer protection statutes in the North Carolina General Statutes. Among the N.C. statutes are laws aimed at preventing deceptive sweepstake sales promotions (G.S. 75-32 through G.S. 75-34); pyramid sales schemes (G.S. 75-31); unfair debt collection practices (G.S. 75-50 through G.S. 75-56); and work

at home schemes (G.S. 75-31). Other consumer protection statutes include laws governing business opportunity sales (General Statutes Chapter 66, Article 19); loan brokers (Chapter 66, Article 20); pre-paid entertainment contracts (Chapter 66, Article 21); discount buying clubs (Chapter 66, Article 22); and rental referral agencies (Chapter 66, Article 23).

Despite the number of statutes on the books, consumer representation in the General Assembly is not always evident. Consumer advocates point to an apparent decline in the number of private and volunteer consumer advocates willing to spend the time and effort to lobby in the legislature. In 1983, for example, the legislature gave consumers the right to directly revoke an automobile purchase directly from the manufacturer through the Manufacturer's Responsibility Act¹⁷ (better known as the Lemon Law), as an expansion of the rights the consumer has against the dealer from whom the car was bought. However, North Carolina's version of the Lemon Law does not offer consumers the remedies available to citizens in other states that have a tougher Lemon law. Consumer advocates originally sought legislation that would entitle the consumer to revoke acceptance of a new car if repairs have not been made within 30 days. But strong lobbying from the N.C. Automobile Dealers Association scuttled that proposal.¹⁸ Thus, due to the lack of specific standards for revocation, North Carolina consumers may have difficulties negotiating with dealers and manufacturers, unless they take the matter directly to court.

In past sessions of the General Assembly, notably in the 1970s, consumer advocates had strong voices. Representatives from Legal Services of North Carolina, the N.C. Consumers Council, the N.C. Public Interest Research Groups, and occasionally other groups such as the N.C. League of Women Voters, N.C. AFL-CIO, the State Council for Social Legislation, and the N.C. Council of Churches, would speak in concert on consumer issues.¹⁹

But in the latter half of the 1980s, those strong voices have diminished. Margot Roten, who handles legislative relations for Legal Services of North Carolina, acknowledges the lack of consumer advocates at the General Assembly. "There really isn't anyone who is doing it effectively on a daily basis," Roten says.

Her comments echo those of N.C. Utilities Commissioner Ruth Cook, a one-time lobbyist for the State Council for Social Legislation and later an effective consumer advocate when she was a member of the N.C. House of Representatives.

"The visibility of consumer issues has been overshadowed by other issues," Cook observes. "In some ways, consumer protection has been institutionalized. A number of laws correcting some of the worst abuses were adopted, and some very bad legislation was stopped before it could harm the consumer. But I'm not going to sit here and say that we took care of all the problems. There still are many abuses that need to be corrected, and I don't know who would be willing to take them on."

For instance, says Cook, credit insurance

The novice realtor asked his manager if he could refund the money to an irate customer who discovered that the lot he had bought was underwater. "What kind of a salesman are you, anyway?" demanded the manager. "Go sell him a motorboat."

remains a "horrendous" problem, one that state Rep. Harry Payne (D-New Hanover) has worked to resolve with little success. (Commissioner Long told *Insight* he intended to press in the 1987 General Assembly for regulatory powers over credit insurance that would bring down the price substantially.) Other consumer issues, including housing and other forms of insurance, need the close examination of consumer champions, she says.

Without a strong corps of consumer advocates in the legislature, the Attorney General's office could provide a valuable voice for consumer interests in the General Assembly. In an interview, Thornburg said he wanted to put the prestige of his office on the line for consumers. "I don't see any other agency doing that," Thornburg notes, "and since there isn't, we feel that responsibility."

In the 1986 short session of the General Assembly, Thornburg testified before legislative committees that legislation to limit the amount of jury awards in tort claims cases was not in the public interest, especially if there were no promise from the insurance industry that liability premiums would be reduced or coverage expanded. Yet Thornburg's enthusiasm for speaking out for

— continued page 36

Table 2. State Consumer Protection Legislation

KEY:

1 Credit Reporting Act	7 Unfair Trade or Consumer Protection Act
2 Small Loan Act	8 Insurance Premium Financing Act
3 Consumer or Installment Loan Act	9 Unsolicited Merchandise Act
4 Revolving Sales Credit Act	10 Consumer Defenses Against Assignee
5 Home Solicitation Act	11 Creditor Billings Error
6 Home Improvement Loan Act	12 Truth in Lending Act

State	1	2	3	4	5	6	7	8	9	10	11	12
Ala.		X	X	X	X	X		X		X		
Alaska		X	X	X	X		X	X	X	X		
Ariz.	X	X	X	X	X	X	X			X		
Ark.					X		X					
Cal.	X	X		X	X	X	X	X		X		X
Colo.		X	X	X	X	X	X		X	X		X
Conn.	X	X	X	X	X		X	X	X	X	X	X
Del.		X	X	X	X		X			X		X
Fla.	X	X	X	X	X	X	X	X	X	X		X
Ga.		X		X	X		X	X	X	X		X
Hawaii		X	X	X	X	X	X		X	X		X
Idaho**		X	X	X	X	X	X	X	X	X		X
Ill.		X	X	X	X	X	X	X	X	X	X	X
Ind.**		X	X	X	X	X	X	X	X	X		X
Iowa**		X	X	X	X		X	*	X	X		X
Kan.	X	X	X	X	X		X	X		X		X
Ky.	X	X	X	X	X		X	X		X		X
La.		X	X	X	X		X		X	X		
Maine	X	X	X	X	X	X	X	X	X	X		X
Md.	X	X	X	X	X	X	X	X	X	X	X	X
Mass.	X	X	X	X	X		X	X	X	X	X	X
Mich.		X	X	X	X	X	X	X	X	X		X
Minn.		X	X	X	X		X	X	X	X		X
Miss.		X	X	X	X		X	X				
Mo.		X		X	X		X		X	X		
Mont.	X	X	X	X	X		X			X		
Neb.	X	X	X	X	X	*	X					
Nev.		X		X	X	*	X		X	X		

Table 2. State Consumer Protection Legislation, *continued*

KEY:

- | | |
|------------------------------------|---|
| 1 Credit Reporting Act | 7 Unfair Trade or Consumer Protection Act |
| 2 Small Loan Act | 8 Insurance Premium Financing Act |
| 3 Consumer or Installment Loan Act | 9 Unsolicited Merchandise Act |
| 4 Revolving Sales Credit Act | 10 Consumer Defenses Against Assignee |
| 5 Home Solicitation Act | 11 Creditor Billings Error |
| 6 Home Improvement Loan Act | 12 Truth in Lending Act |

State	1	2	3	4	5	6	7	8	9	10	11	12
N.H.	X	X			X	X	X	X	X	X		
N.J.		X	X	X	X	X	X	X	X	X	X	X
New Mex.	X	X	X	X			X	X		X		X
New York	X	X	X	X	X	X	X	X	X	X	X	X
N.C.		X	X	X	X	X	X	X	X	X		
N.D.		X		X	X		X	X		X		X
Ohio		X	X	X	X		X	X		X		
Okla.**	X	X	X	X	X	X	X	X	X	X		X
Ore.		X	X	X	X	X	X	X		X		X
Pa.	X	X	X	X	X	X	X		X	X		
R.I.		X	X	X	X		X		X	X		
S.C.		X	X	X	X	X	X	X	X			X
S.D.		X	X	X	X		X		X	X		
Tenn.		X	X	X	X	*	X	X	X	X		X
Tex.	X	X	X	X	X		X	X	X	X		X
Utah**		X	X	X	X	X	X	X		X	X	X
Vt.		X	X	X	X		X		X	X		
Va.		X	X	X	X	X	X	X				
Wash.		X		X	X		X	X		X		X
W.Va.		X	X		X		X					
Wis.		X	X	X	X	X	X	X	X	X		X
Wyo.**		X	X	X	X	X	X	X	X	X		X

* These states include revolving credit legislation, insurance premium financing legislation, home improvement loan legislation, or legislation on consumer defense as part of Retail Installment Act or other laws.

** The Uniform Consumer Credit Code (UCCC) has, for the most part, supplanted the acts listed in the chart, but the reader is cautioned to check both the UCCC and the statute in question in specific states. Some of the states adopting the UCCC have not repealed a number of the statutes under consideration, but rather have maintained them to be interpreted and applied along with the UCCC.

Source: National Association of Attorneys General, 1986

the consumer is tempered, he says, by the fact that his department has other constituencies. And, says Thornburg, the sheer weight and volume of legislation necessarily limits how much he can do.

Brad Lamb, president of the N.C. Consumers Council, acknowledges Thornburg's role in helping scuttle the tort claims bill, but says the Attorney General's "higher profile has been on utility issues." Lamb says the Consumers Council was hopeful that Thornburg would speak out earlier and more often in the 1987 General Assembly.

State Sen. Timothy H. McDowell (D-Alamance) suggests that "the Attorney General's Office should not be seen as advocates but as protectors. Their role is to interpret the laws." While McDowell concedes that the legislature "is not real famous for representing the consumer's side," he adds, "I think we're doing a very good job. I can't think of many specific instances when the consumer has been done in."

Even pro-consumer legislators like McDowell and Sen. Russell Walker (D-Randolph) concede that the number of legislators who are consumer advocates is dwindling. "We are losing the younger members who are consumer oriented, and the new younger members are far more conservative," says McDowell. Adds Walker, "We've still got a lot of members who are interested in consumer issues, but we just don't have those folks like (former state Sen.) McNeill Smith (D-Guilford) and (former state Sen.) Bill Smith (D-New Hanover) who were fiery orators and who could make effective cases on behalf of the consumer."

Lamb himself concedes that consumer protection is no longer the cause célèbre it once was. "When I first got interested in it in 1974," says Lamb, "it was more in vogue to be a consumer activist, to stand up and be counted." In the mid-1980s, legislators are "less consumer-oriented than they once were. It's part of a national trend, and it's more low-key."

The Consumers Council itself has maintained a somewhat lower profile in recent years. Lamb has been the group's principal spokesman at the assembly, but he holds down a full-time job elsewhere to make a living. Years ago, the council had a full-time lobbyist, but found that hiring someone for a complete session depleted the organization's coffers. In the 1987 General Assembly, says Lamb, his group will explore retaining a full-time lobbyist, perhaps in conjunction with another public interest group with similar views. "Maybe next year, we'll get some consumer stuff started early."

McDowell, who leaves the Senate at the end

of this year, says that would help even up the odds. "When you walk the halls of the General Assembly, the lobbyists you see are primarily from business groups. The consumer groups need to hire a full-time lobbyist."

A strong consumer group with cooperation and support from a more active Attorney General's office in speaking out on consumer issues, at least in the legislative halls, could make all the difference in future legislation—and restore a sense of mission to an entrenched consumer movement.



FOOTNOTES

¹John F. Kennedy, *Public Papers of the President*, U.S. Government Printing Office, 1963, p. 235.

²"Consumer Protection and Unfair Competition in North Carolina—the 1969 Legislation," 40 *N.C. Law Review*, June 1970, pp. 896 and 911.

³National Association of Attorneys General, *1966 Conference of Attorneys General*, 1966, p. 66.

⁴Committee on the Office of the Attorney General (COAG), Attorney General Robert B. Morgan, Remarks to the Committee on the Office of Attorney General, 1970, p. 8.

⁵Sherman Antitrust Act, adopted July 2, 1890, 26 Stat. 209, 15 U.S.C. pp. 1-7.

⁶N.C.G.S. 75-1, enacted as Chapter 41, Section 1 of the 1913 Session Laws. Revised, Chapter 764, Section 2 of the 1981 Session Laws.

⁷N.C.G.S. 75-1.1, enacted as Chapter 833 of the 1969 Session Laws. Revised, Chapter 747, Sections 1 and 2 of the 1977 Session Laws.

⁸Section 5(a)(1) of the Federal Trade Commission Act. 15 U.S.C. 45 (1951).

⁹N.C.G.S. 75-10, enacted as Chapter 41, Section 9 of the 1913 Session Laws. Revised, Chapter 44 of the 1969 Session Laws, and Chapter 833 of the 1969 Session Laws.

¹⁰N.C.G.S. 75-15.1, enacted as Chapter 614, Section 2 of the 1973 Session Laws.

¹¹N.C.G.S. 75-16, enacted as Chapter 41, Section 14 of the 1913 Session Laws. Revised, Chapter 833 of the 1969 Session Laws, and Chapter 707 of the 1977 Session Laws.

¹²See *North Carolina Insight*, Vol. 7, No. 4, Feb. 1985, which dealt entirely with state insurance programs and policy questions.

¹³N.C.G.S. 58-9, enacted as Chapter 54, Section 8 of the 1899 Session Laws. Revised extensively, most recently in Chapter 846, Section 2, 1981 Session Laws.

¹⁴"Mobile Home Study", by James L. Blackburn, Consumer Protection Division, N.C. Department of Justice, 1974.

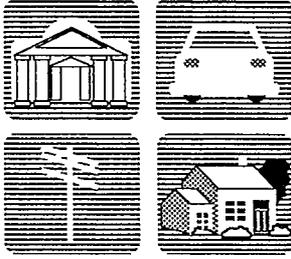
¹⁵N.C.G.S. 143-143.10, enacted as Chapter 952, Section 2 of the 1981 Session Laws.

¹⁶N.C.G.S. 62-15, enacted as Chapter 1165, Section 1, of the 1977 Session Laws.

¹⁷N.C.G.S. 25-2-608, enacted as Chapter 598, of the 1983 Session Laws.

¹⁸Every other year, the N.C. Center for Public Policy Research asks legislators, the capital press corps and lobbyists to rank the "most influential lobbyists" in the General Assembly. The new rankings, released on July 21, 1986 (and reported on page 52 of this issue), ranked Sam Johnson as the most influential lobbyist. Among Johnson's clients are the N.C. Automobile Dealers Association.

¹⁹See "Lobbying for the Public Interest," *N.C. Insight*, Fall 1980, pp. 22-29.



An Interview with Lacy H. Thornburg

Lacy H. Thornburg, 55, became North Carolina's Attorney General on January 7, 1985, having been elected in the 1984 general election to succeed Rufus L. Edmisten as head of the N.C. Department of Justice. Thornburg, a native of Mecklenburg County who has spent most of his adult life as a resident of Sylva in Jackson County, has been a Superior Court judge (1967-83), a member of the N.C. House of Representatives (1961-65), and once served as an aide to former U.S. Rep. David Hall (D-N.C.).

A Democrat, Thornburg is a former member of the board of directors of the Oxford Orphanage and a member of the Tryon Palace Commission and the Capital Planning Commission. He also has served on the N.C. Courts Commission, the N.C. Criminal Code Commission, and the N.C. Judicial Council. He is a U.S. Army veteran. *Insight* Associate Editor Jack Betts and N.C. Center Intern Amy Butterworth conducted this interview on June 30, 1986.

What is the state's role and responsibility in protecting individual consumers?

The Department of Justice represents the state's consumers in a broad variety of ways to ensure that their interests are protected. That includes representing consumers before the North Carolina Utilities Commission, responding to complaints about deceptive advertising, making sure that North Carolina's laws against fraud and

deception are enforced, and representing the using and consuming public in class action lawsuits that we file. We receive thousands upon thousands of consumer complaints each year, and we try to help resolve them.

However, we try not to get into the private practice of law by representing an individual consumer in court or in other legal forums. We seek to represent all consumers, but we do not and cannot represent taxpayers on an individual basis. The average consumer may think we're splitting hairs there, but obviously we can't bring a lawsuit on every individual complaint. What we can do if we are representing a class of complainants is to bring class actions. And even though we may have had very few complaints, we can step in, particularly in the deceptive advertising area, and bring actions. We have become much more litigious in the consumer protection area in the last 18 months. (See pp. 23-24 for more).

We keep records on all the complaints that come in. If what may start out as a single complaint becomes a pattern, then we step in as the consumer advocate and bring the suit to stop the practice. We have been handling somewhere around 10,000 complaints a year in our Consumer Protection Section of the Justice Department. Thanks to some increased funding from the General Assembly, we're upgrading our automation, and that should make us more effective. Certainly it makes us more efficient and it enables fewer people to take a heavier load, which we've been



Jack Betts

very successful in doing. But the range of what we do is phenomenal.

Did your office make a conscious decision to become more litigious, to see how much more you could accomplish on behalf of consumers?

From my experience in the court system over a period of about 30 years, I was fully aware that you can't run a bluff but so far. You have to be ready to step in and back your bluff if it's called. So one of the first things I did was to say to the Consumer Protection Section, as well as to our attorneys in other areas of the law, that we're going to handle these matters in the same way as a private lawyer. That is, don't run a bluff. When you say you're going to do something, then if you don't get the desired result, or if you don't feel you are getting the compromise you are seeking to protect the rights of these people, then you go into court and get the court's help. I have every confidence in our court system, having been a part of it as long as I have.

Do you try to choose cases that will have the broadest application on behalf of consumers?

Yes. We try to choose cases that affect a lot of people. We have to, because as I indicated earlier, we can't really become private counsel. We have to become counsel generally to represent classes of people or groups of people as well. A good example of that is the automobile field. We have pursued a number of prosecutions in odometer rollbacks. We have pursued deceptive advertising in home construction, plumbing, and that type of thing.

I might point out that a lot of these complaints come from legitimate businesses. They don't all come from individuals by any means. These unfair trade practices hit them too.

Do you find that the state's statutes give you all the ammunition you need? Are there any changes in the law that would make your agency more effective?

Right now we have some of the best statutory

provisions in the country in terms of protecting consumers. And we have been very satisfied with the authority that we have under that law, and that law, used in connection with what we call our long arm statute, enables us to reach across state lines.¹ In addition, our cooperative efforts with attorneys general in other states has enabled us to do a good job. There may be an area or two that we may ask for some changes in the future, but we feel we have a good statutory scheme and that it's working well for North Carolina.

Are the consumers who have been harmed financially usually able to get a financial settlement?

Yes, we frequently get money back for these people. Settlements range from a few dollars to several thousand dollars, depending upon the type of case and the amount of financial injury. We frequently are able to get the consumer the relief they are seeking. Now, we handle a lot of individual claims that are very small, and we write a letter and say, "Look, this is what our complainant says is wrong with your product. Will you do so and so, and make this right?" A goodly number of those are handled in that manner. For example, in automobile cases, the dealer often will go ahead and take care of whatever the complaint is, or the manufacturing company will do it. Complaints from businesses can be resolved in the same way. We'll have some small businessman call up to say he's gotten a shipment of several hundred dollars worth of pencils he didn't order, or some inferior photocopying toner, and when we file a complaint, they'll often say, "Ship it back and we'll pay the cost and send you your check"—that type of thing. As a general rule, yes, we do get relief.

The suggestion has been made that the little antitrust act² should have criminal penalties as well as civil penalties. Wouldn't that be of particular help to your staff as you seek to help the victims of consumer fraud?

I would say generally that we are able to get them help in other ways. When you get into the criminal area, say with people across state lines,



you can involve the federal government. If there were a minor criminal penalty involved, you couldn't get them here anyway. There also are some criminal penalties already on the books that we can use in conjunction with the act. So we think we've been pretty effective so far with the penalties that we have on the books.

Is your workload increasing because consumer fraud is more prevalent today? Or do you think it's because people are complaining more?

Probably a little of both. But generally speaking I would think that a large part of it results from the fact that people are more aware of their rights now than they have been in the past, and more aware of where to go for help. Though, no matter what we do, every time we devise a statutory scheme to give us some help, the guys on the other end respond by working around it. Still, I think the consumer is now better protected than ever before in the history of the state or nation because the federal government has taken a lot more active role in consumer protection in recent years.

Your office has some consumer protection functions representing consumers before the Utilities Commission. In 1985, you suggested that the Public Staff of the commission be transferred to your office. Do you still think the two should be combined and that your office should handle all consumer representation before the commission? Could you do a better job?

Well, we had discussed that at one time, and were unable really to be successful in getting the group moved to the Attorney General's office. Primarily our complaint has been their close relationship with the Utilities Commission itself, and that perhaps they could function more adequately for the using and consuming public if they functioned entirely as a separate group. That's a luxury that we have that they don't have. We do not have to answer to the Utilities Commission in any respect. We can take the position that we feel is most beneficial to the using and

consuming public, and have done so. And by virtue of that, we have several times disagreed with the Public Staff. A good example of that came shortly after I became Attorney General. I took the position that it was improper to flow through the cost of an abandoned plant to the ratepayers as an operating expense. Now, neither the Public Staff nor the Attorney General's Office prior to that time had taken that position. So, that was an entirely new position. It was based on my reading and understanding of the law, and it was a matter of fairness too. That case involves hundreds of millions of dollars over a period of time. It's still pending before the N.C. Supreme Court.

We have also taken the position that the power companies should reduce their rates instead of getting a rate increase. Now they're after a second increase. The Public Staff contended that they should have a substantial increase. So we don't have anybody except our own assessment, our own appraisal, our own witnesses, our own analysis, and so on, to worry about, whereas the Public Staff is tied in to the Utilities Commission.

Can you recall any instances where the Public Staff has not been as independent as it could have been, where it made a difference? Or are you talking more about appearances, of being "tied" to the Utilities Commission?

I really don't know. I don't have a feel for that. We just disagree on some of those matters. The State Auditor did an operations analysis of the Utilities Commission, and the analysis found that there was some overlapping.³ The report said that it was good to have two groups representing the consumers, and that's pretty much what some of the utility commissioners themselves said.

There seems to be a lack of consumer advocacy groups in North Carolina that can voice their concern before the General Assembly and other state agencies. Do you see it as the role of your office to represent the consumer on issues that come up before the legislature?



We do that, from time to time. We go over and express opinions on various legislation, though the tremendous volume of bills involved there limits us to some extent. We have to pick and choose. But we do from time to time go over and take a position on legislation if we think it adversely affects the using and consuming public. A good example of that would be the position we took last year on a bill dealing with the small loan industry, and we were able to work out legislation that ultimately was very beneficial to the small borrower.⁴ We'd like to be able to do more. But then, we have such a major responsibility, for example, to law enforcement and other groups where we logically are the spokesman, that we don't have the personnel or the time to devote to scanning each of these bills and giving them the in-depth analysis that we would like.

Are you comfortable with your department being cast in that role, of spokesman for the consumers?

Yes. I don't see any other agency doing that, and since there isn't, we feel that responsibility. So far, I think the legislature has been pretty understanding with us. So far they don't seem to have visited upon us any retribution by virtue of our disagreements. For instance, we recently urged the legislature to reconsider whether limits should be adopted for jury awards in accident cases unless the insurance industry was willing to promise either greater coverage or lesser premiums. I felt like in that regard that we were speaking for those people out there who were caught up in the crisis and are paying the bills and are really grasping for straws. Our position primarily was to point out to them [the members of the legislature] that the industry has given you no promise of changing anything, either coverage or premiums, and that we need to do an in-depth analysis to find out what

can and should be done and then come back with structuring legislation that can be helpful for everyone.

And I think we were successful in that to some extent.⁵ Certainly the snowball was slowed somewhat, not just by my efforts but by a lot of people who were all singing pretty much the same tune, though some of them were more specific in their criticism and had positions that were somewhat more narrowly defined than ours. Ours was basically a consumer protection approach.

Consumer protection is a real responsible part of this office's work and it has been one of the most active parts, clearly. We constantly are trying to improve what we're doing and the manner in which we are doing it, so we aren't resting on our laurels and I'm sure it will get better as time goes by. There are just so many times where we're the only folks that step up out there and say, "Wait a minute, we want to talk to you about this." □◡□

FOOTNOTES

¹N.C.G.S. 1-75.4, enacted as Chapter 954, 1967 Session Laws, used in conjunction with Rule 4(j) or 4(j1) of the Rules of Civil Procedure.

²N.C.G.S. 75-1, enacted as Chapter 41, Section 1 of the 1913 Session Laws.

³"North Carolina Department of Justice—A Limited Scope Review of the Interrelationship Between the Attorney General and the Public Staff in Matters Before the State Utilities Commission," Preliminary Operational Audit, Office of State Auditor, February 1985.

⁴N.C.G.S. 53-172, enacted as Chapter 154, Section 9, 1985 Session Laws.

⁵The 1986 General Assembly adjourned without approving legislation sought by the insurance industry to place a cap of \$500,000 on jury awards to individuals in tort claims cases. The legislature did give the Commissioner of Insurance more regulatory powers, which the industry had opposed, in Chapter 1027 of the 1985 Session Laws (2nd Session, 1986).

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Cameras in the Courtroom: An Experiment Continues

by Katherine White

This regular Insight feature focuses on how the judicial system affects public policy-making. This column examines the N.C. judicial branch's four-year-old experiment allowing cameras in the courtroom.

North Carolinians watching the evening news one day in February 1983 were treated to a most remarkable vision: their lieutenant governor for the past six years, James C. Green, sitting in the dock as he went on trial on charges of bribery and corruption. It was not just that the state's second-ranking executive had been indicted and was on trial. What was equally important was that viewers could see and hear Green on television as he testified in his trial, and that they could see published photographs of Green on the witness stand in the next day's newspapers. That trial, more than any other, brought home to North Carolinians what the cameras-in-court issue was all about—and it helped them see that prosecutors *did not* have a solid case to convict Green.

But had the Lieutenant Governor been tried just a few years earlier, his trial never would have hit the airwaves. For it was not until October 1982 that the N.C. Supreme Court cautiously allowed the microchip technology of radio and television to record court proceedings—the first time in decades that such media coverage in state courts was permitted. (Cameras in courtrooms generally means more than cameras alone. The phrase includes still and motion picture cameras, microphones and tape recorders, and television video cameras and recorders.) Still cautious after four years of what it calls an “experiment,” the Court has yet to give photographic coverage rules a permanent place on the books. The Court has approved temporary rules which have been extended

three times. A decision on whether to make the rules final could come later this year, when the current extension expires on December 31, 1986.

Introducing video cameras and sound equipment to the state's trial courts in 1982 was not easy. The N.C. Association of Broadcasters and the Radio-Television News Directors Association of the Carolinas petitioned the Supreme Court in October 1981 to allow recording equipment into courtrooms for broadcasting trials and other court proceedings. The broadcasters and press groups argued that it would help the public understand the judicial system and open up the judicial process for those who otherwise would never be able to witness trial proceedings firsthand. During a year of court review, trial and appellate judges alike expressed fears that they would lose control of their courtrooms and that the pressure of cameras would intimidate jurors and witnesses. They also questioned whether criminal defendants could get a fair trial if the public were exposed to daily coverage. As a compromise, the Supreme Court approved rules that allowed coverage for a two-year period.

Generally, according to an informal, unpublished survey of trial judges by the N.C. Supreme Court,¹ those judges who have allowed radio, television and press photographers into their domains support the continuation of the rules. “I feel that electronic and photographic media coverage assists the public in understanding the courts and particularly the results of a specific trial,” said Superior Court Judge Donald L. Smith in his survey response. Judge Smith has presided at several trials covered by electronic and photographic media.

Katherine White is a Raleigh lawyer who has reported for The Baltimore Sun and The Charlotte Observer.

However, the survey also shows that judges who have refused such access continue to believe that the publicity will undermine the court system. "I don't think the television media has a thing to offer the judiciary," said Superior Court Judge Frank Snapp in the survey. As senior resident judge for his district, which includes Mecklenburg County, Snapp has banned live coverage. Allowing it, Snapp said, would give "a distorted idea of what goes on in court because [reporters] only have three seconds to tell the story. [Reporters] are not going to go in depth."

The national trend allowing cameras and radio equipment to record proceedings began in 1976 after more than 40 years of a virtual blackout. The American Bar Association House of Delegates first adopted a canon of judicial ethics barring photographers in 1937—largely in response to the circus-like press coverage of the 1935 trial of Bruno Hauptmann, accused of kidnapping the child of famed aviator Charles Lindbergh. The Hauptmann trial judge allowed 141 newspaper reporters and photographers, 125 telegraph operators and 40 press messengers to accompany the defendant to court.² Reporters chased witnesses in the aisles of the courtroom for interviews, and cameras flashed and disrupted testimony.

The distaste of state courts for cameras and microphones in courts was bolstered in the mid-1960s when the U.S. Supreme Court ordered new trials for defendants who were convicted in criminal proceedings during which the press and television media loomed like vultures in the the courtrooms.³ By 1965, most states had adopted the ABA proscription on cameras, and North Carolina courts officially banned cameras and sound equipment in 1970.

A trend relaxing the ban on cameras began with technological advances in television and radio that made equipment less obtrusive and that allowed pooled coverage where one microphone or camera can serve any number of news gathering agencies. Then, in 1981, the U.S. Supreme Court ruled that trials could be broadcast without necessarily impairing a defendant's right to a fair trial.⁴ With the 1981 decision—and a 1982 relaxation of the ABA canon—the North Carolina justices approved rules for television, newspaper, and magazine photographers and radio reporters on an experimental basis. The guidelines, similar to those in the 40 other states (see chart above) that allow electronic media in trial or appellate courts, restrict the media to a single, unobtrusive area of the courtroom. In Wake County, a black booth in the middle of a trial courtroom conceals all equip-

Number of States Allowing Cameras in the Courtroom

Approved for Trial and for Appellate Courts	22
Approved for Appellate Courts only	6
Experimental, for Trial or for Trial and for Appellate Courts (including North Carolina)	8
Experimental, for Appellate Courts only	5
Considering allowing cameras in courts	1
Do not allow cameras in courtroom	8
<hr/> Total	<hr/> 50

Source: National Center for State Courts,
May 1986

ment and its operators. In Guilford County, a conference room at the rear of a courtroom has a newly installed glass panel through which cameras can record proceedings.

The senior resident Superior Court Judge of each judicial district decides whether to allow cameras and microphones and, where no booth is available, some judges have allowed photographers to shoot pictures as long as they maintain a low profile. At the heart of the North Carolina experiment's rules is the basic tenet that the judge must retain full control of his court. Certain cases, such as child custody hearings, and certain witnesses, including informants and victims of sex crimes, cannot be recorded or photographed under the North Carolina rules.

In September 1984, the UNC Institute of Government in Chapel Hill prepared a report⁵ for the News Media-Administration of Justice Council of North Carolina (a group of judicial and news media officials) in an attempt to gauge the effect of cameras in the courts. The report examined the trials of Green, who was found not guilty of misconduct charges, and Navas Villabona Evangelista, a Colombian who was convicted of taking hos-

tages and murder aboard an Amtrak train in Raleigh.

The Institute found that 48 jurors and alternates in the two cases were aware of cameras but were not concerned about them. Only one potential juror acknowledged apprehension, saying the presence of cameras made her "a little nervous." Of 29 witnesses interviewed, two said that cameras added to their tension before taking the stand but not after they began their testimony. The other 27 witnesses said they were unfazed by the presence of electronic equipment. Said one witness, "The cameras, no. The people, they're the ones that scared me." And one federal agent said he had opposed cameras until he testified. "After this trial, I saw no dramatics or other effects. The real theatrics come on the steps of the courthouse," he said.

Similar results are found in other studies in other states.⁶ A California study concluded that "although witnesses may be aware of the presence of the videotape apparatus, this awareness is of little consequence when compared to the pressures and demands made upon witnesses as a part of the normal testimony process."⁷ An Alabama judge has said that cameras in the courtrooms there tend to keep "all the personnel in the courtroom on their toes."⁸

Although the N.C. Supreme Court has not decided whether to make cameras and sound equipment permanent fixtures in the state's courtrooms, the Court has sanctioned a pilot project that will begin this fall in Wake County to use video equipment to record trials. The tapes, instead of the usual transcript, will serve as the official court record for appeals. Dallas Cameron, assistant director of the N.C. Administrative Office of the Courts, believes that the new technology will be cheaper than the present system of using court reporters. The court equipment might obviate the need for news reporters to bring their equipment because videotapes could be reproduced easily and cheaply for the evening news, he added. Whether the project will succeed, however, is unclear. Kentucky has used videotapes as court records for about two years, but with mixed results, Cameron says. And even the most zealous judicial supporters of allowing the electronic media in courtrooms don't want to lose the court reporters who have doubled as their secretaries from time to time. Judge Smith predicts, "It will not be successful."

Studies show that electronic media coverage—if handled properly—does not infringe upon the rights of parties, witnesses and jurors. Why,

then, does the judiciary remain reluctant to make the rules permanent? Perhaps Superior Court Judge D. Marsh McLelland detects in his colleagues a basic human concern rather than a legal objection. The objections raised [to cameras in court] are prompted not by intellectual or legal reservations, but by a "reluctance to expose one's gaffes . . . to wide dissemination and, even worse, relatively permanent recording," says McLelland. "I suspect that judges, trial and appellate, fear that the all-seeing eye will be edited on projection on television to nose-blowings, drowsiness, mutterings, incomprehensible utterings and the like."

For Mark J. Prak, a lawyer for the N.C. Association of Broadcasters, the state's four-year experiment shows that early concerns "have proved to be largely unfounded." Technology now makes it possible to bring the courts to the public, he says, "when in today's society, very few citizens have time to go observe trials in person. It's up to the press to bring it home to the people." ☐☐☐

FOOTNOTES

¹Former Chief Justice Joseph Branch, who retired September 1, 1986, periodically requested comments from trial judges on their experience with electronic or photographic media coverage. Most of the state's 72 Superior Court judges have had no experience because they have received no requests or because the resident chief judges of their judicial district refuse to allow cameras and microphones. The trial judges' comments are not available from the Supreme Court for public review. Judges who have conducted court proceedings with electronic or photographic media present include Judges C. Walter Allen, Napoleon B. Barefoot, F. Gordon Battle, Wiley F. Bowen, Coy E. Brewer Jr., C. Preston Cornelius, B. Craig Ellis, William H. Freeman, William H. Helms, Robert H. Hobgood Jr., D. Marsh McLelland, James M. Long, Mary Pope, Edwin S. Preston, Hollis M. Owens Jr., Claude S. Sitton, and Donald L. Smith. This list was compiled partly from the Administrative Office of the Courts' records and partly from news clippings.

²*State v. Hauptmann*, 115 NJL 412, 180 A 809, cert. denied 296 U.S. 649 (1935).

³*Estes v. Texas*, 381 U.S. 532, 85 S. Ct. 1628 (1965); *Sheppard v. Maxwell*, 384 U.S. 330, 86 S. Ct. 1507 (1966).

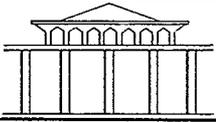
⁴*Chandler v. Florida*, 449 U.S. 560, 101 S. Ct. 1802 (1981).

⁵"Report on Experiences with Courtroom Cameras," Institute of Government, UNC-Chapel Hill, September 24, 1984.

⁶Among these studies are: *Lyles v. State*, 330 P2d 734, 742 (Okla. Crim. 1958); Colorado See Simonberg, TV In Court: The Wild World of Torts, 1 *Juris Doctor* 41 (April 1977); *In Re Post-Newsweek Stations, Florida, Inc.*, 370 So. 2d 764 (Fla. 1979); Wisconsin See Hoyt, Courtroom Coverage: The Effects of Being Televised, 21 *J. of Broadcasting* 487 (1977).

⁷Ernest H. Short & Associates, Inc., "A Report to the Judicial Council on Videotape Recording in the Criminal Justice Systems: Second Year Findings and Recommendations" 30 (1976, California).

⁸Judge Robert Hodnette Jr., *Broadcasting Magazine* at 30 (Dec. 20, 1976).



IN THE LEGISLATURE

Legislative Demographics: Where Have All the Lawyers Gone?

by Paul T. O'Connor

This regular Insight feature focuses on the makeup and process of the N.C. General Assembly and how they affect public policy-making. This column examines how the membership of the General Assembly has changed in the past 15 years.

If a time-traveler from 1971 could have visited the 1986 short session of the General Assembly, he would have been amazed by the striking changes that have occurred in the racial, sexual, political, and occupational makeup of the legislature. And the record (see Tables 1 and 2) confirms that there has been something of an interstellar explosion in legislative demographics in the past 15 years.

Over the course of the last eight assemblies, sizable delegations of blacks and women have joined the assembly while the number of lawyer-legislators has dropped dramatically—from 40 percent of the total membership in 1971 to only 24 percent in 1985. In the same period, the number of Republicans has grown dramatically, and so has the number of legislators who are elderly and retired.

Does the trend tell us that legislatures 15 years in the future will have more contributions from women and blacks, but less legal expertise? Or that the membership will continue to age, and that its members will generally be wealthier because they are the only ones who can afford to run? We won't know, of course, until the year 2001, and by that time, no doubt, new trends will be identifiable.

But we do know what the past has held. In 1971, lawyers held 22 of the Senate's 50 seats and 46 of the House's 120 seats. By 1981, the total number of lawyer-legislators had dropped 47 percent, from 68 to only 36 in the two chambers. From 1981 to 1985, the number inched back up to 41—17 in the Senate, 24 in the House—but there

still were 40 percent fewer lawyers than there had been in 1971.

This precipitous drop in the number of lawyer-legislators concerns the attorneys who continue to serve. "The N.C. Bar Association is concerned about the drop and is encouraging young lawyers to run for public office," says Sen. R. C. Soles (D-Columbus), a lawyer and chairman of the Senate Judiciary IV Committee. "We need a good balance of all professions [in the legislature], but having fewer and fewer lawyers is a problem because we [lawyers] do see things from a different perspective. We are trained to deal with the technical issues that come before the General Assembly."

Sen. Dennis Winner (D-Buncombe), a former Superior Court judge, adds, "You need at least one lawyer on each committee. The legislative staff [which employs 20 lawyers] is good, but they don't have much experience."

Lawyer-legislators are unanimous in their appraisals of the reason for the drop in their numbers: money.¹ Lawyers say they can't afford to serve in the legislature anymore. "I was talking to one lawyer who left the General Assembly and he said—and I don't think this is a figure that is out of line for most lawyer-legislators—that he was losing \$25,000 a year to serve in the legislature," Winner explains.

Rep. Paul Pulley (D-Durham), a lawyer and chairman of the House Judiciary IV Committee who is retiring from the statehouse after four terms, says, "Your clients expect your service. You see clients you used to serve on the street and they say, 'I would have called you, but I thought you were in Raleigh.'"

Paul T. O'Connor is the columnist for the 50-member N.C. Association of Afternoon Newspapers. This column was based on research prepared by Center Intern Kim Kebschull.

J. Allen Adams, a Raleigh lawyer and lobbyist and a former five-term representative, says he retired from the legislature because he couldn't ask his law partners to subsidize his service any longer. He says most large law firms have been discouraging their law partners from serving in the legislature. "The main reason for lawyers not being in this body is the urbanization of law firms," Adams contends. These firms represent many business clients and they are concerned that a lawyer in their firm could "offend the interests of one of those clients" by the actions the legislator took in the assembly. Adams still is in the legislature frequently, but this time he is a lobby-

ist for a number of major corporate and institutional clients. (For more on the link between former legislators and effective lobbyists, see "From the Center Out," p. 52).

Rep. Dwight Quinn (D-Cabarrus), a legislative veteran, scoffs at the lawyers' laments. He says the voters, not the lawyers, are responsible for the drop in the number of lawyer-legislators. "It's not that lawyers are not running, it's the mood of the people out there. The courts have handed down positions the mass of people haven't agreed with. . . . The people think the lawyers come to the General Assembly just to look after the legal profession," charges Quinn.

**Table 1. Changes in Occupations of Members of
The North Carolina General Assembly**

Occupation	Year and Number of Members per Category							
	1971	1973	1975	1977	1979	1981	1983	1985
Senate								
Banking	1	1	2	2	2	3	1	2
Business and sales	17	13	14	18	13	20	19	21
Construction and contracting	1	0	0	0	2	3	3	2
Education	1	1	3	5	4	4	4	3
Farming	4	3	2	4	3	5	6	6
Homemaker	0	1	1	0	2	0	4	2
Insurance	2	5	5	5	6	7	6	4
Law	22	19	15	14	13	10	14	17
Manufacturing	2	3	4	2	3	3	3	2
Health care	1	1	1	1	1	0	0	0
Minister	1	1	1	1	1	0	0	0
Real estate	1	2	5	5	7	12	8	8
Retired	4	2	2	0	3	4	6	6
House of Representatives								
Banking	3	2	3	3	2	3	3	3
Business and sales	49	28	35	41	37	43	45	45
Construction and contracting	2	0	2	2	2	3	1	2
Education	6	11	16	16	10	11	10	15
Farming	17	14	20	22	22	18	24	16
Homemaker	1	2	3	4	4	4	4	3
Insurance	7	7	12	11	13	10	6	10
Law	46	37	36	26	25	26	26	24
Manufacturing	3	3	1	0	4	2	2	2
Health care	0	2	3	3	6	3	5	4
Minister	3	3	1	1	0	1	3	7
Real estate	6	5	9	7	10	15	19	20
Retired	7	4	5	8	6	15	12	13

(Note: Some legislators list more than one occupation; thus, the total number of occupations may be higher than the actual number of members.)

Chart prepared by Kim Keschull, an intern at the N.C. Center for Public Policy Research

The verdict is still out on whether Adams or Quinn has identified the real trend. While the number of lawyers in the legislature is down markedly from 1971, that number has grown slightly in the past two elections, and Winner says there is a good chance that the 1987 Senate will have 20 lawyer members, up three from the current number. A similar gain was made in the Senate in 1985 over the 1983 Senate, which itself was a gain from the low of 10 lawyer-senators in 1981.

Other Occupational Shifts

Concurrent with the drop in lawyer-legislators has been a rise in the number of legislators describing themselves as retired or in the field of education. "You didn't see this 30 years ago because their retirement systems then weren't adequate," Quinn says of educators and retired people. "Now you can retire at a reasonable age and serve in the General Assembly as part of the enjoyment of retirement."

The number of legislators listing themselves as retired has increased from 11 in 1971 to 19 in 1985, although the number actually retired appears to be higher. Many retired legislators still list their pre-retirement professions. For example, the majority of the 18 legislators who call themselves educators have actually retired from the occupation.

At least one retired legislator is concerned that people in his age bracket hold so many legislative seats. Rep. Vernon James (D-Pasquotank) is 76. He says, "I think it is unfortunate that our legislature is being made up of retired people," and he points out that the economics of serving in the legislature discourage service by younger people unless they are rich. The result is an aging of the assembly. "You look down the list [of candidates for the 1987 assembly] and you will see very few people under 50 who are coming to the legislature," James says. "I don't think we have a good cross-section."

In 1971, there were seven legislators who listed education as their occupation. The election of 1976 brought in a peak load of 21 educator-legislators. Now there are 18, still more than twice as many as in 1971. But of all those, only Rep. Dave Diamont (D-Surry), a history and civics teacher, actually makes his living teaching in public schools. Most of the rest are retired teachers and administrators. True, they can relate to the impact a new law may have on classroom operations, but only Diamont actually experiences it.

Another trend in legislative demographics is the emergence of the lawmaker who makes his liv-

ing in real estate. Since 1971, the number of legislators listing real estate as their occupation has jumped from seven to 28, a fourfold increase. "It's one of those endeavors where you can be involved in public affairs and maintain some semblance of a livelihood," says Rep. Joe Hege (R-Davidson), a Lexington broker. Also, the number of farmers in the assembly has grown slightly from 21 in 1971 to 22 in 1986, despite the marked decrease in farm population and the rapid urbanization of the state's population.

Number of Blacks Increasing, But Women at a Plateau

Much more obvious changes in the General Assembly have come in the areas of gender and race. Women made their big inroads into the legislature in the mid-70s, during the height of the Equal Rights Amendment drive. The number of black legislators has increased markedly after the redistricting of the 1981 and 1983 assemblies.

In 1971, there were two women in the House, while the Senate was all-male. But in the next three elections, women took nine, 15, and 23 legislative seats, respectively. Since that time, female representation in the assembly has hovered at that level, though it reached a high of 24 in 1983 before dipping to 20 in 1985.

"I really can't explain it," Sen. Helen Marvin (D-Gaston) says of the leveling off of female representation since 1977. "I've wondered about it myself. It could be that the success of the women's movement in efforts that affect women and children. . . has somewhat depressed the motivation of some women to run for public office. Or it could be that the movement for ERA began to stall in the mid-70's. When ERA finally failed, a lot of women lost their momentum, not their interest."

Marvin says future growth in the female delegation might come from the Republican side. There are now seven Republican women in the House, and both Marvin and Rep. Betsy Cochrane (R-Davie), House minority leader, say the GOP has, in some ways, been more open to female candidates than has the Democratic Party. "Republicans in many areas of the country did not have the entrenched good old boys against which women were reluctant to run," Marvin says. With the GOP in North Carolina beginning to grow, women have more opportunities to run and win, she says.

Blacks, on the other hand, never held more than six legislative seats until the 1981 assembly

— continued page 51

**Table 2. Changes in the Elected Composition* of
the North Carolina General Assembly**

Category	Year and Number of Members per Category							
	1971	1973	1975	1977	1979	1981	1983	1985
Blacks								
Senate	0	0	2	2	1	1	1	3
House	2	3	4	4	3	3	11	13
Total number	2	3	6	6	4	4	12	16
Total percent	1%	2%	4%	4%	3%	3%	7%	9%
Women								
Senate	0	1	2	4	5	3	5	4
House	2	8	13	19	17	19	19	16
Total number	2	9	15	23	22	22	24	20
Total percent	1%	5%	9%	14%	13%	13%	14%	12%
Indian								
Senate	0	0	0	0	0	0	0	0
House	0	1	1	1	1	1	0	0
Total number	0	1	1	1	1	1	0	0
Total percent	0%	1%	1%	1%	1%	1%	0%	0%
Democrats								
Senate	43	35	49	46	45	40	44	38
House	96	85	111	114	105	96	102	82
Total number	139	120	160	160	150	136	146	120
Total percent	82%	71%	94%	94%	88%	80%	86%	71%
Republicans								
Senate	7	15	1	4	5	10	6	12
House	24	35	9	6	15	24	18	38
Total number	31	50	10	10	20	34	24	50
Total percent	18%	29%	6%	6%	12%	20%	14%	29%
Turnover Ratios								
Senate								
Number New Members Elected	18	15	21	11	7	8	9	18
Percent New Members Elected	36%	30%	42%	22%	14%	16%	18%	36%
House								
Number New Members Elected	43	50	49	24	30	33	31	39
Percent New Members Elected	36%	42%	41%	20%	25%	28%	26%	33%

(Note: If a member had served in the House during the immediate past session, he or she is not considered a new member. If a member had served in either chamber during sessions prior to the immediate past session, however, he or she is considered a new member.)

*This research was drawn largely from editions of the North Carolina Manual, and does not reflect members who first reached the General Assembly by appointment to legislative vacancies caused by death or resignations.

Chart prepared by Kim Kebschull, an intern at the N.C. Center for Public Policy Research



ON THE PRESS

The Capital Press Corps: When Being There Isn't Enough

by Jack Betts

With this article, North Carolina Insight launches its newest regular feature, which will examine the North Carolina news media and how they go about covering state government and public policy issues. The column will describe the process of how the press covers state government; evaluate its performance; and seek to enhance and improve the coverage of the various news media. This initial column examines changes in the last decade in the way the press has covered the N.C. General Assembly.

The wheels of change grind exceedingly fine in Raleigh, and so it is with the Capital Press Corps—an unstructured, free-form group of reporters and video technicians who cover state government in general and the Governor's Office and the General Assembly in particular. Tradition among reporters is held dear, and certain rituals are observed without fail each year in the press corps: annual end of session parties to which certain legislators are invited; the writing of bogus bills twitting certain members; and the election of a new press corps president and passage of a crudely fashioned wooden gavel as a symbol of the office. The gavel is really a sycamore mallet with the bark left on, a fitting reminder that the president has only two duties: saying "Thank you, Governor" at the end of gubernatorial press conferences, and organizing the annual end-of-session press party. That's about it.

Beyond that, the press corps covers the news pretty much as it always has, usually complying with Hundley's Rules. These rules constitute the advice dispensed by then-WPTF Radio reporter Keith Hundley (now Public Affairs Manager and a lobbyist for Weyerhaeuser Company) in the 1960s to novice reporters. Hundley's Rules of Raleigh

Reportage, then as now, hold: "(1) Don't fall down; (2) Don't get sick; and (3) Don't ever look like you don't know what you are doing." Almost all reporters, after the first week or so among the Honorables in Raleigh, manage to obey at least two out of three of these rules consistently, and with the passage of time, comply with all three.

But while the press corps itself performs more or less in the same fashion year in and year out, the makeup of the press corps as a body (press corps?) has undergone two dramatic changes in recent years: The press corps as a whole is more inexperienced in covering state government than it used to be, and there aren't as many television reporters covering state government as there used to be. Both of these developments affect the way that newspaper readers and television watchers get their news about public policy issues and what their government is doing in Raleigh.

The Press Corps: Younger, More Inexperienced

Time was when the Capital Press Corps in Raleigh was a collection of middle-aged, experienced reporters who were likely to hold the same job for 25 years or more. The last of these, the venerable Arthur Johnsey of the Greensboro Daily News, retired in the early 1970s, and the press corps then went through a long period when

Jack Betts is Associate Editor of North Carolina Insight, and has been a Washington correspondent and Raleigh Bureau Chief for the Greensboro News & Record. He is a former president of the Capital Press Corps, and appears as a regular panelist on UNC Television's "North Carolina This Week" program.

reporters were relatively young (in their 20s and early 30s) and, thanks to the emphasis on Water-gate-style investigative reporting, more suspicious of government than their elders had been. By the latter part of the 1970s, this group, though still fairly young, had several sessions of legislative and state government coverage under its collective belt and was producing generally thorough coverage of state government in the papers and on radio and television newscasts.

During the 1979 and 1981 sessions of the General Assembly, competition for stories among the members of the press corps was keen. All the major state newspapers—those in Raleigh, Charlotte, Greensboro, and Winston-Salem—had at least two reporters, and sometimes more, assigned to the legislature, and several other daily papers—in Durham, Asheville, and Fayetteville—had at least one reporter assigned full-time to the legislature. So did television stations in Charlotte, Winston-Salem, Greensboro, Durham, and Raleigh. In addition, television stations in Asheville, High Point, Washington, and Greenville also had “stringers”—part-time correspondents who worked regularly covering the legislature and who could file daily stories for the 6 o’clock and 11 o’clock news.

But in 1982 and 1983, the most experienced of these reporters left Raleigh for other jobs or other assignments. Some, like Chief Capital Correspondent A. L. May of the *The News & Observer*, Dennis Whittington of the *Winston-Salem Journal*, and William A. Welch of the Associated Press, were promoted to their respective Washington bureaus. One, Stephen Kelly of *The Charlotte Observer*, even joined the Foreign Service.

By 1985, a relatively new cadre of statehouse reporters was assembled in Raleigh. There were some veterans, to be sure: Paul T. O’Connor of the N.C. Association of Afternoon Dailies, Rob Christensen of *The News & Observer*, back from a tour in the Washington Bureau, Art Eisenstadt of the *Winston-Salem Journal*, and Chuck Alston of the *Greensboro News & Record*, to name a few, but there were more new faces than there had been for a while. The wire services, the smaller newspapers (and some of the big ones, too), and the broadcast media had relatively inexperienced reporters covering the legislature.¹

There is no comprehensive roster of the Capital Press Corps over the years, but an examination of the list of regular statehouse reporters, printed every two years in the House and Senate rule books, makes the point. In 1977, 1979, and 1981, about two-thirds of the reporters (newspaper,

radio, and television) had covered at least one previous session, and thus were experienced enough to know their way around. But by 1985, there were so many new faces that *fewer than half* the reporters had covered a previous session of the General Assembly.

Experience is not the sole factor in determining whether one is a competent reporter, but inexperience can lead to the sort of gaffe that appeared in one newspaper. In a story by one of the inexperienced reporters on efforts by legislators to repeal the constitutional amendment allowing governors to succeed themselves,² the newspaper reported that the amendment had been supported in 1977 by both Gov. James B. Hunt Jr. and Lt. Gov. James C. Green. In fact, Green had strongly opposed succession because it would allow Hunt to run again, thus delaying Green’s own bid for the governorship. Green tried unsuccessfully to fight Hunt behind the scenes on succession. The bitter squabble was to contaminate relations between Hunt and Green for the next seven and a half years while both were in office, and continues between followers of the two.

However, those types of factual *faux pas* were tempered by an aggressive attitude that led, late in the session, to generally excellent coverage of two major abuses—the proliferation of special provisions in budget bills,³ and the disgorgement of pork barrel funds for every conceivable use that legislators could conjure. When stories appeared day after day reporting new horrors—such as substantive changes in laws adopted without debate through special provisions hidden in budget bills, and state tax funds going to private groups with no evident public purpose, Lt. Gov. Robert B. Jordan III was moved to appoint an *ad hoc* committee to come up with suggestions for improving the legislative process.

Unfortunately, the lessons of 1985 didn’t stick. When the Senate revised its own rules⁴ on pork barrel funds and special provisions at the start of the 1986 short session, reporters were too busy following other issues—including the insurance standoff and proposals to raise gas taxes to fund highway programs—to research and report on the latest abuses of the budget process, especially special provisions. Even a cursory examination of the 1986 budget bill, for example, would turn up scores of special provisions that should have been debated in normal legislative channels. So the abuses reporters turned up in the 1985 session went mostly unreported in 1986, at least partly because there simply weren’t enough reporters to go around.

Where Have All The TVs Gone?

The other major trend in Capital Press Corps coverage has been the apparent loss of interest in public policy issues by commercial television stations. Even up through the 1981 session of the General Assembly, at least nine of North Carolina's major television stations⁵ either had full-time bureaus operating year-round in Raleigh, or they assigned reporters full-time to cover the legislature while it was in session. In this way, television newscast viewers in Charlotte, Asheville, Winston-Salem, High Point, Greensboro, Durham, Raleigh, Washington, and Greenville saw regular reports of what was happening in Raleigh, and in particular saw how legislators in those areas voted on major bills and what they were up to in the capital city.

In the 1985 and 1986 sessions, however, commercial television nearly abandoned the General Assembly and Raleigh for all but the barest schedule of events. Two notable exceptions were WRAL in Raleigh, which assigned reporters in 1985 and 1986 fairly regularly to cover major events at the legislature, and WBTV in Charlotte, which still assigns a reporter regularly to daily or near-daily coverage in the General Assembly. WRAL's Tim Kent (who covered the 1986 session) and WBTV's Graham Wilson (a veteran legislative reporter) are well-regarded newsmen who know how to handle any story the legislature can throw at them. But the remainder of the state's major TV stations no longer maintain Raleigh bureaus or assign reporters full-time to Raleigh during legislative sessions, and their reporters rarely are equipped with the knowledge and background of public policy issues and their legislative nuances. In other words, the regular corps of television reporters has dropped enormously, from at least nine in previous sessions to only two regulars in the 1986 short session. "The commitment of the broadcast media to covering state government just isn't there anymore," notes one former television reporter who left the business for another job at the beginning of the 1985 session.

Television stations do, of course, send reporters on occasion to Raleigh for major events, such as the opening day of the session, a major speech by the governor, a weekly press conference, or a crucial vote on the floor of the House or Senate. And some stations swap news reports (through the Carolina News Network, for example) with Raleigh-area stations to pick up a story on what transpired in the General Assembly that day. But such spotty coverage can be relatively superficial,

and may not indicate exactly what is happening in Raleigh and who's behind it. Thus, even the best reporter who visits the legislature perhaps one or two days a week cannot possibly keep up with what is going on, and as a result can provide viewers with little more than a headline service.

This is not to say that good television coverage of the General Assembly does not exist. In fact, the UNC Center for Public Television, through its four-times-a-week "Legislative Report" program, provides first-rate television coverage of the General Assembly—and most of the state's television viewers can pick up the program. The public television station, which is funded partly by state taxpayers, commits major resources to government coverage, unlike the state's commercial stations. UNC-TV employs experienced reporters, producers, and technicians, and posts them full-time at the legislative building to produce four half-hour programs each week. These reports, again unlike commercial television news programs, are generally lengthy and seek to report not only what is happening, but also why, who's behind it, and what its effects may be. Still, even UNC-TV cannot cover everything in the four programs it airs each week. ("Legislative Report" goes off the air following legislative sessions, and another public affairs program, "Stateline", airs once a week from October until the start of the next legislative session.) What makes the UNC-TV coverage stand out is the experience of its top reporters, Ted Harrison (who has covered the assembly since the mid-1960s), Audrey Kates Bailey, and Marc Finlayson. No other news organization can boast of assigning that much experience to cover the legislature.

The reluctance of commercial television stations to commit full-time resources to covering the N.C. General Assembly is not an isolated case. Thanks to advances in video technology, television stations across the country have found it possible to send their own reporters for spot coverage of Washington, D.C., the state capital, and other, more far-flung places, without going to the expense of posting a reporter in one place all the time. Now, nearly any local station can dispatch a reporter and video technician to the capital, tape a couple of quick stories, beam them back (with a live report from Raleigh, yet) and still be back home to cover a five-car fatal on the bypass and the local school board meeting. That does allow a station's news operation to stretch its resources.

Yet what new technology allows a station to do in getting a quick report from Raleigh still may leave viewers in the dark and wondering what

really goes on in Raleigh. Those viewers may be reaching for the morning paper to find out—and having to read it in stories filed by inexperienced reporters. ☐☐☐

FOOTNOTES

¹For a fuller discussion of the problems of covering state government with small bureaus, see "Improving News Coverage," *State Legislatures* magazine, March 1985, pps. 29-31.

²Article III, Section 3, The Constitution of North Carolina.

³For more on this issue, see *Special Provisions in Budget Bills: A Pandora's Box for North Carolina's Citizens* by Ran Coble, N.C. Center for Public Policy Research, June 1986.

⁴Senate Resolution 861, "To Amend the Permanent Rules of the Senate," adopted June 11, 1986.

⁵Stations which had full-time reporters or stringers in Raleigh included WBTV in Charlotte, WLOS in Asheville, WXII in Winston-Salem, WGHP in High Point, WFMY in Greensboro, WTVD in Durham, WRAL in Raleigh, WNCT in Greenville, and WITN in Washington.

IN THE LEGISLATURE

— continued from page 46

engaged in a marathon redistricting battle. Forced by the courts and the U.S. Justice Department to end the dilution of black voting strength, and, in some cases to carve out predominantly black districts, the 1981 assembly set the stage for 1982 elections in which 12 blacks won seats. By 1985, 16 blacks were in the legislature—three in the Senate, 13 in the House.

Rep. H. M. "Mickey" Michaux (D-Durham), a black, says redistricting made the big difference, and adds that black leaders in the mid-70s were also partly to blame for the paucity of black legislators at that time. Much black political effort went into the election of a Democratic president in 1976 and towards the attainment of goals like affirmative action through the executive branch of government, he says.

Michaux, the leader of a legislative movement to do away with primary runoffs,² says even the attainment of that goal will not significantly boost black numbers in the assembly. Any increase of blacks beyond the current plateau of 16 seats, or 9 percent of total representation, depends on three factors. "We need greater black voter participation, more acceptance of black candidates by whites, and the diminution of race as an issue," Michaux says. As an indication that blacks are gaining white acceptance and that race is diminishing as an issue, Michaux points to the election of Harvey Gantt as a two-term mayor of Charlotte and the nomination of William Freeman as a Democratic House candidate from rural, and very conservative, southern Wake County. Both Gantt and Freeman are black.

A Partisan Roller-Coaster

The partisan make-up of the General Assembly remains on a roller-coaster. Generally, Republicans gain seats in presidential election years, and they lose them two years later. If the Jimmy Carter election of 1976 is put aside, that pattern holds true for every election since 1970. Republicans had a nadir of 10 legislative victories in 1974 (when 40 GOP seats were lost in the post-Watergate election) and zeniths of 50 seats in both 1972 and 1984. In recent years, the Republican lows have been 20 and 24 seats in the non-presidential election years of 1978 and 1982.

But Republicans are hoping they won't drop back again in the 1986 election. Sen. Donald Kincaid (R-Caldwell), who was the lone Republican in the 1975 Senate, does not expect the GOP to hold all 50 seats it won in 1984, but says that party efforts at candidate recruitment, and the popularity of Republican Gov. James G. Martin, should help the party to one of its best showings in a non-presidential election this fall.

As legislators look ahead 15 years, they wonder about the makeup of future General Assemblies. Will there be continued change, through a greater diversity of occupations, gender, race, and political parties? Or will the elements of economics and aging dominate to the extent that the General Assembly of 2001 might be comprised mostly, or even solely, of the wealthy and the elderly? ☐☐☐

FOOTNOTE

¹For more on this point, see "Survey: Lawmakers Wealthier, Whiter Than Constituents," by Tim Funk, *The Charlotte Observer*, March 2, 1985.

²See "The Runoff Primary—A Path to Victory," *North Carolina Insight*, Vol. 6, No. 1, June 1983, p. 18.



Of Legislators and Lobbyists: The Biennial Rankings of Effectiveness and Influence

Do the names Royall, Ramsey, Johnson, and Jordan ring a bell? If they do, it's no wonder. The N.C. Center's biennial rankings of the most effective legislators and most influential lobbyists keep turning up those names at the head of the lists. State Sen. Kenneth Royall (D-Durham), for instance, has been rated most effective member of the Senate since 1977. Speaker of the House Liston Ramsey (D-Madison) has won the most effective designation in the House since 1981, his first term as speaker. And former legislators Sam Johnson and John Jordan, both of Raleigh, keep topping the list of most influential lobbyists.

The 1985-86 rankings—the fifth such survey conducted by the Center since 1978—were compiled from surveys evaluating legislators' effectiveness on specific criteria. The surveys were filled out by the legislators themselves, registered lobbyists, and capital news correspondents after the 1985 session had adjourned, and were released this year. The effectiveness rankings were obtained by averaging the raw scores for these three respondent groups. The response rate to the 1985-86 survey was the highest ever. Eighty-three of the 120 House members responded, as did 34 of the 50 Senators, 127 of the 311 registered lobbyists who were surveyed, and 21 of 39 capital news correspondents. Thus, the overall rate of response was 51 percent, which is far above standards of statistical reliability.

For a rundown of the top 25 Representatives and top 20 Senators in legislative effectiveness, with a listing of their previous effectiveness scores, see Table 1 and Table 2, pp. 54-55.

"We think the survey is a fair measure of a legislator's effectiveness in the General Assembly," says Ran Coble, executive director of the Center. "The people who did the ratings were the people who are best able to judge performance—the legislators themselves, lobbyists, and capital news correspondents. We also hope it provides

information that will be useful to the voting public."

Chairing a major money committee seemed to guarantee a legislator a ranking in the top four or five of his chamber. "That's the golden rule," one legislator explained. "Him who's got the gold, he gets to make the rules, and that's what I'd call effectiveness."

The legislators, lobbyists, and capital correspondents were asked to rate each legislator's effectiveness on the basis of participation in committee work, skill at guiding bills through floor debate, and general knowledge or expertise in special fields. The respondents were also asked to consider the respect the legislators command from their peers, the political power they hold, and their ability to sway the opinions of fellow legislators. "Effectiveness' is a neutral concept," said Coble. "You can be an 'effective conservative' or an 'effective liberal.'"

The Center notes that first-term legislators and Republicans usually have lower effectiveness rankings. First termers usually are less experienced and move up in the rankings over time. For example, House members who had served one full previous term moved up an average of 30 notches in the 1985-86 survey, while second-term Senators moved up an average of 10 slots in the rankings. Republicans are in a minority in both houses and thus receive no appointments to committee chairmanships. However, with increased numbers of Republicans in the legislature in 1985, most Republicans with legislative service prior to the 1985 session moved up in the latest rankings.

Just as legislative experience translates into higher effectiveness rankings, former legislative experience also helps lobbyists in the rankings of most influential lobbyists. The Center's surveys show that you don't have to be a lawyer or an ex-legislator to be an influential lobbyist, but it sure helps. In its biennial ranking of the most influ-

ential lobbyists—conducted as a part of the biennial rankings of legislators, the Center found that the top five lobbyists are lawyers and former legislators. Ten of the top 20 lobbyists are former members of the General Assembly, and 11 of them are lawyers.

“This latest ranking confirms what previous rankings have indicated—that the most accomplished lobbyists are those who have worked with the legislature first as members and who are lawyers and can draft bills themselves,” says Coble.

The survey asked respondents to list the top lobbyists in terms of knowledge, expertise, and effectiveness. As usual, the top-ranked lobbyists represent business and industrial clients, as well as health care organizations and trade associations.

“There are several ingredients that go into making a good lobbyist,” Coble adds. “First, they don’t lie. They may present only the facts that argue for their side, but nothing will kill a lobbyist faster than giving misleading or wrong information. Second, they know the legislative process and when that information can make a difference. And third, they know the players; they learn what each individual legislator cares about.”

According to the survey, the most influential lobbyists and their main clients are as follows:

1. **Samuel H. Johnson** of the Raleigh law firm of Johnson, Gamble, Hearn, and Vinegar, representing 21 clients with business/industry interests, including N.C. Associated Industries, N.C. Automobile Dealers Association, N.C. Association of Certified Public Accountants, and the Soap and Detergent Association. He was a key figure in persuading the legislature not to adopt a ban on phosphate detergents.

2. **John R. Jordan Jr.** of the Raleigh law firm of Jordan, Price, Wall, Gray & Jones, representing 19 clients with business/industry and health care interests, including the N.C. Bankers Association, Association of N.C. Life Insurance Companies, N.C. Day Care Association, American Express Company, and the N.C. Association of ABC Boards.

3. **J. Allen Adams** of the Raleigh law firm of Sanford, Adams, McCullough, and Beard, representing 18 clients with business/industry, arts, and health care interests, including Arts Advocates of N.C., Seatbelts for Safety, the N.C. Cemetery Association, N.C. Association of Electric Cooperatives, and Scientific Games Inc.

4. **Zebulon D. Alley** of the Raleigh office of the Waynesville law firm of Alley, Killian, and Kersten, representing 13 clients with business/industry, health care, and utility interests, includ-

ing the Microelectronics Center of N.C., N.C. Vending Association, Kaiser Foundation Health Plan of N.C., and Seatbelts for Safety. Both Adams and Alley played major roles in getting a mandatory seat belt law passed in 1985.

5. **J. Ruffin Bailey** of the Raleigh law firm of Bailey, Dixon, Wooten, McDonald, Fountain, and Walker representing the N.C. Credit Union League, American Insurance Association, and N.C. Beer Wholesalers Association. Bailey was heavily involved in various pieces of insurance legislation considered in the 1986 session.

6. **William E. Holman** of the Sierra Club (N.C. Chapter), Conservation Council of N.C., and American Planning Association (N.C. Chapter). Holman is the chief environmental lobbyist and moved up the most of any lobbyist previously ranked. He was ranked in a tie for tenth last session.

7. **R. D. McMillan Jr.** of the University of North Carolina General Administration, representing the UNC System. McMillan retired on July 31.

8. **William C. Rustin Jr.** of the N.C. Retail Merchants Association.

9. **Alan D. Briggs**, then with the N.C. Academy of Trial Lawyers, and now Deputy Attorney General for Policy and Planning in the N.C. Department of Justice.

10. **John T. Henley** of the N.C. Association of Independent Colleges and Universities.

11. **Lindsay C. Warren Jr.** of the Goldsboro law firm of Warren, Kerr, Walston and Hollowell, representing the Mortgage Bankers Association of the Carolinas, N.C. Bus Association, and N.C. Motor Carriers Association.

12. **John D. Hicks** of Duke Power Company. (tie) 13. **William C. Friday**, then President of the University of North Carolina, representing the UNC System. Friday retired on June 30.

William Bobbitt “Bob” Jenkins of the N.C. Farm Bureau Federation.

15. **Robert R. Harris** of Carolina Power and Light Company.

16. **Virgil L. McBride** of RJR Nabisco Inc.

17. **C. Ronald Aycock** of the N.C. Association of County Commissioners.

18. **JoAnn Norris** of the N.C. Association of Educators.

19. **Russell Swindell** of the N.C. Railroad Association.

20. **I. Beverly Lake Jr.**, then with the Governor’s Office and representing Gov. James G. Martin and his administration. Lake was appointed a

— continued page 56

**Table 1. Rankings of Effectiveness of the Top 25 Members of the
1985 N.C. House of Representatives**

Name of Representative	Effectiveness Ranking in 1985	Previous Effectiveness Rankings (Where Applicable)			
		1983	1981	1979	1977
RAMSEY, LISTON B. (D-Madison)	1	1	1	3	2
WATKINS, WILLIAM T. (D-Granville)	2	3	2	20	12 (tie)
ETHERIDGE, BOBBY R. (D-Harnett)	3	16	32 (tie)	64	NA
MILLER, GEORGE W., JR. (D-Durham)	4	4	4	9	5 (tie)
LANCASTER, H. MARTIN (D-Wayne)	5	5	17	36 (tie)	NA
QUINN, DWIGHT W. (D-Cabarrus)	6	6	6	25 (tie)	21
BLUE, DANIEL T., JR. (D-Wake)	7	8	30	NA	NA
WRIGHT, RICHARD (D-Columbus)	8	11	15	23 (tie)	37 (tie)
PULLEY, W. PAUL, JR. (D-Durham)	9	12 (tie)	20 (tie)	51 (tie)	NA
HACKNEY, JOE (D-Orange)	10	15	60	NA	NA
LILLEY, DANIEL T. (D-Lenoir)	11	9	8	12 (tie)	24 (tie)
HUNT, JOHN J. (D-Cleveland)	12	12 (tie)	12	57 (tie)	NA
NESBITT, MARTIN L., JR. (D-Buncombe)	13	21 (tie)	65	NA	NA
PAYNE, HARRY E., JR. (D-New Hanover)	14	28	69 (tie)	NA	NA
WICKER, DENNIS A. (D-Lee)	15	24	48	NA	NA
DIAMONT, DAVID H. (D-Surry)	16 (tie)	18 (tie)	39	23 (tie)	50 (tie)
EVANS, CHARLES D. (D-Dare)	16 (tie)	21 (tie)	29	73 (tie)	NA
MAVRETIC, JOSEPHUS L. (D-Edgecombe)	18	18 (tie)	64	NA	NA
JAMES, VERNON G. (D-Pasquotank)	19	17	23	32 (tie)	37 (tie)
HUNTER, ROBERT C. (D-McDowell)	20	25	56	NA	NA
BUMGARDNER, DAVID W., JR. (D-Gaston)	21	29	20 (tie)	21	27 (tie)
COCHRANE, BETSY L. (R-Davie)	22	103	95	NA	NA
WARREN, EDWARD N. (D-Pitt)	23	52	90 (tie)	NA	NA
MICHAUX, H.M., JR. (D-Durham)	24	NA	NA	NA	NA
CHURCH, JOHN T. (D-Vance)	25	31	25	36 (tie)	22 (tie)

**Table 2. Rankings of Effectiveness of the Top 20 Members of the
1985 N.C. Senate**

Name of Senator	Effectiveness Ranking in 1985	Previous Effectiveness Rankings (Where Applicable)			
		1983	1981	1979	1977
ROYALL, KENNETH C., JR. (D-Durham)	1	1	1	1	1
RAUCH, MARSHALL A. (D-Gaston)	2	3	4	3	6 (tie)
PLYLER, AARON W. (D-Union)	3 (tie)	25	(18) *	(28 tie)*	(30 tie)*
RAND, ANTHONY E. (D-Cumberland)	3 (tie)	13	NA	NA	NA
HARDISON, HAROLD W. (D-Lenoir)	5	2	2	2	2
BARNES, HENSON P. (D-Wayne)	6	5	7	7 (tie)	27
HARRINGTON, J. J. (D-Bertie)	7	7 (tie)	6	7 (tie)	3 (tie)
HARRIS, OLLIE (D-Cleveland)	8	11	10	16 (tie)	29 (tie)
HIPPS, CHARLES W. (D-Haywood)	9	19	NA	NA	NA
SOLES, R. C., JR. (D-Columbus)	10	17	14	25 (tie)	24 (tie)
WALKER, RUSSELL G. (D-Randolph)	11	9	9	13	17 (tie)
SWAIN, ROBERT S. (D-Buncombe)	12	10	12	16 (tie)	33 (tie)
THOMAS, R. P. (D-Henderson)	13	36	42	NA	NA
WARREN, ROBERT D. (D-Johnston)	14	29	43	NA	NA
REDMAN, WILLIAM W., JR. (R-Iredell)	15	26	39	45 (tie)	NA
WINNER, DENNIS J. (D-Buncombe)	16	30	NA	NA	NA
WARD, MARVIN (D-Forsyth)	17	27	32	39 (tie)	NA
STATON, WILLIAM W. (D-Lee)	18	20 (tie)	NA	NA	NA
BALLENGER, T. CASS (R-Catawba)	19	20 (tie)	28 (tie)	29 (tie)	40 (tie)
THOMAS, JOSEPH E. (D-Craven)	20	34	34	44	NA

* Parentheses around ranking and accompanying asterisk indicate Effectiveness Ranking while in the N.C. House of Representatives

FROM THE CENTER OUT

Special Superior Court Judge by Gov. Martin on December 1, 1985 and was succeeded by Ward Purrington, himself a former legislator and Raleigh attorney.

The former legislators in the top 20 lobbyists are Johnson, Jordan, Adams, Alley, Bailey, McMillan, Henley, Warren, Swindell, and Lake. The 11 top lobbyists who are lawyers are Johnson, Jordan, Adams, Alley, Bailey, Briggs, Warren, Hicks, Friday, Aycock, and Lake. All of the top 20 lobbyists are white, and all but Norris are male.

For the second time, the list of top lobbyists includes persons who represent clients other than business or professional interests or governmental agencies. For example, Bill Holman, a lobbyist for environmental interests, and JoAnn Norris, representing public school teachers, were both ranked in the top 20.

And the new rankings show that the top lobbyists remain at the top year after year. In both the 1981 and the 1983 rankings, Jordan, Johnson, Bailey, and Alley were among the elite group, and remained in the top five in 1985. However, some changes may be in store in the future, since at least four of the top 20 have left their positions or retired.

During the 1985 session, there were 412 lobbyists registered with the Secretary of State's office who represented 370 different companies or organizations. There were also 202 legislative liaisons representing 50 different agencies in the executive branch of state government. By the end of the 1986 short session, there were 467 registered lobbyists.

The effectiveness rankings of legislators and lobbyists are published as a supplement to a larger publication called *Article II: A Guide to the N.C. Legislature*, which is released every other year. This book contains biographical and voting information on each legislator. Also included are legislators' business and home addresses; party affiliation, district number, counties represented, and number of terms served; occupation and education; committee assignments; bills introduced; individual votes on important bills in the previous session; and past effectiveness rankings.

Copies of *Article II: A Guide to the N.C. Legislature* and the supplements containing the new effectiveness and lobbyist rankings are available from the Center for \$10 a set, plus \$1 postage and handling if mailed, P.O. Box 430, Raleigh, N.C. 27602. ☐☐

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Letters to the Editor

Vol. 8, Nos. 3-4 Economic Development Policy

I enjoyed your article, "The Job Training Spectrum: From the Classroom to the Boardroom," in the April 1986 issue of *North Carolina Insight*. I think you did an excellent job of reporting what we are trying to accomplish in new industry training. In fact, I enjoyed all the articles because of my deep interest in economic development and the future of our state.

J. Reid Parrott, Jr.
President
Nash Technical College
Nashville, N.C.

Congratulations on the excellent April issue of *Insight* magazine. The articles on transitions taking place in our economy, economic development strategies, and job training were right on target. They not only pointed out key issues facing our state, but also provided a valuable guide for public policy discussions.

In fact, our Commission on Jobs and Economic Growth is now using that issue of *Insight* as a reference document in its deliberations. We share the concern over how our state is making the transition to more capital intensive agriculture and manufacturing production, as well as the shift to more employment in services and trade. We realize that our state faces real challenges in pursuing continued economic growth in the face of unprecedented competition from abroad and from other states. And we agree that our labor force should be the primary focus for state economic development strategies. To be competitive in the new labor markets our major asset—our people—must be equally or better trained than our competitors. The old days of low wage, labor intensive production have given way to higher wage, more capital intensive production, and for our labor force that means attention to training.

Another key to economic development is the

need to invest in infrastructure—especially transportation, water and sewer, and schools and others. Estimated to need upwards of \$25 billion by the year 2000, infrastructure investments are also critical to our future economy. Combining our attention on labor force and infrastructure with jobs creation strategies will provide the basis for a comprehensive economic development strategy for our state.

Again, congratulations on an excellent issue.

Billy Ray Hall
Executive Director
N.C. Commission on Jobs and
Economic Growth
Raleigh

I would like to commend the Center for its April 1986 [issue of *Insight*] on economic development in North Carolina. You present a good review of some of the basic issues facing North Carolina's economy, and you raise a number of important questions concerning the role of state government in providing both leadership and support for private development initiatives.

However, I am troubled by your easy generalizations about rural and urban growth in North Carolina. Not all of our rural counties are depressed and not all of our metropolitan counties are doing very well when compared to the norm for the Southeast and the nation. Nor is the phenomenon of urban/rural disparity a new one. It dates back to agricultural revolution in the 16th century. Nonetheless, the fact remains, we know very little about what has been happening recently in our local economies across the state. You are correct in pointing out that some far-reaching changes are taking place. But we need to know much more about what contributes to the economic stability and well-being of both rural and urban counties before we can presume to frame a comprehensive development strategy.

We also need to take a hard look at what the role of state government *ought* to be in fostering eco-

conomic growth and well-being. Automatically stepping onto the void left by the federal government—as you seem to suggest—is a formula for disaster. We need to begin by recognizing that the power of state government to affect the economy—for good or for ill—is very limited.

The North Carolina economy, and thus economic development, is at a crossroads. The national movement of branch plants to the Sunbelt and North Carolina in particular is slowing down. The almost automatic attraction of new industry to our state cannot continue with the change in national trends. Coupled with the potential of fewer new industries moving to North Carolina is the potential for a decline of employment in some of our traditional industries—agriculture, textiles, and apparels.

It is obvious that our industrial recruitment efforts must become more sophisticated. We must target industries that are well suited to our state and concentrate our efforts to maximize the strengths of North Carolina. At the same time we cannot expect to improve our income gap relative to the nation as a whole by putting all of our effort into chasing Fortune 500 investments. Much of the economic growth of the future will come from helping existing business expand, adopt a new technology, find seed capital to put a new product into production, or adopt improved personnel and management techniques to help make it more profitable.

Since small businesses generate proportionally more jobs, pay higher taxes, realize higher after tax profits, and are more likely to innovate than large corporations, we must realize the importance of small business to economic growth. As we develop an economic strategy for the future, small business must become a focal point.

I say again, the April 1986 issue of *Insight* raised a number of important questions. I think it is clear that we have only begun to search for workable answers. Virtually all the departments of state government have some responsibility for improving the economic well-being of North Carolinians. Moreover, state government shares with local governments and the private sector this enormous responsibility. The April *Insight* is a good beginning to this important dialogue.

R. Jack Hawke
Director
Division of Policy and Planning
N.C. Department of
Administration
Raleigh

Congratulations on your April issue of *Insight*, "North Carolina: An Economy in Transition." I found it both useful and timely, a valuable resource to North Carolina policymakers as they re-examine the state's approach to economic development.

The timing of the issue was particularly advantageous, coming between the release of the Southern Growth Policies Board's study, *After the Factories*, and our report, *Shadows in the Sunbelt*. Together these publications have focused considerable attention on the implications of structural economic change on the people of North Carolina—particularly for the many rural communities which are being left behind.

Today these issues are being studied intensively at the upper reaches of state government. In the Department of Commerce, Governor Martin's team is working to create an "Economic Blue Print" for the state. Likewise, the Lieutenant Governor's Commission on Jobs and Economic Growth has also been looking to devise a forward-looking plan for the state's economy.

Both groups should benefit from *Insight's* comprehensive inventory of current development activities and its insightful look into our needs for the future.

George B. Austry
President
MDC Inc.
Chapel Hill

Vol. 9, No. 1 In the Courts

I enjoyed reading your article entitled "Opening Courtroom Doors to Lawsuits Involving Latent Diseases" that appeared in the most recent issue of *North Carolina Insight*. I thought the article well [and] accurately stated the considerations underlying, and the effects of, the cases discussed. Keep up the good work.

Charles D. Case
Moore, Van Allen, Allen &
Thigpen, Attorneys at Law
Raleigh

N.C. Center Report on Special Provisions in Budget Bills

I have been informed of your recent request for my position on special provisions in appropri-

ations bills. I am opposed to such provisions in appropriations bills, for many of the reasons set forth in your [report], but I believe the following are the most significant problems:

1. Special provisions are used to enact substantive legislation without debate or public hearing.

2. Legislators are inhibited from challenging special provisions because the same leadership that allocates Pork Barrel appropriations inserts special provisions.

3. Legislators are often not even aware that such provisions are in an appropriation bill.

4. Special provisions, because of the nature of the procedure in which they are enacted, are much more likely than other legislation to be unconstitutional, create unnecessary new commissions and programs, and diminish the integrity of the Executive Branch.

5. The lack of a gubernatorial veto prevents any check on inappropriate special provisions. In this regard I note that 31 other states prohibit substantive legislation in appropriation bills.

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. Perhaps the General Assembly would consider submitting to the people a constitutional amendment prohibiting special provisions in appropriations bills at the same time as the people are allowed to vote on a gubernatorial veto.

James G. Martin
Governor of North Carolina
Raleigh

Editor's note: At his weekly press conference on July 24, 1986, Governor Martin reiterated his opposition to special provisions in budget bills and criticized the General Assembly for extensive abuse of special provisions in the short legislative session. The Governor, citing the Center's report, Special Provisions in Budget Bills: A Pandora's Box for North Carolina's Citizens, announced he would seek a constitutional amendment in the 1987 regular session of the General Assembly to prohibit special provisions in appropriations bills. Such amendments must receive a three-fifths majority vote in each chamber of the legislature and must be ratified by a majority vote of the people in a statewide referendum.

Thank you for the report on *Special Provisions in Budget Bills* prepared by the Center. The report provides a good review of the impact of special provisions in appropriations bills.

Sherwood H. Smith Jr.
Chairman/President
Carolina Power & Light
Company
Raleigh

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*How can you tell who's who
in the legislature?*

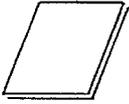
By reading ...

ARTICLE II

A Guide to the N.C. Legislature

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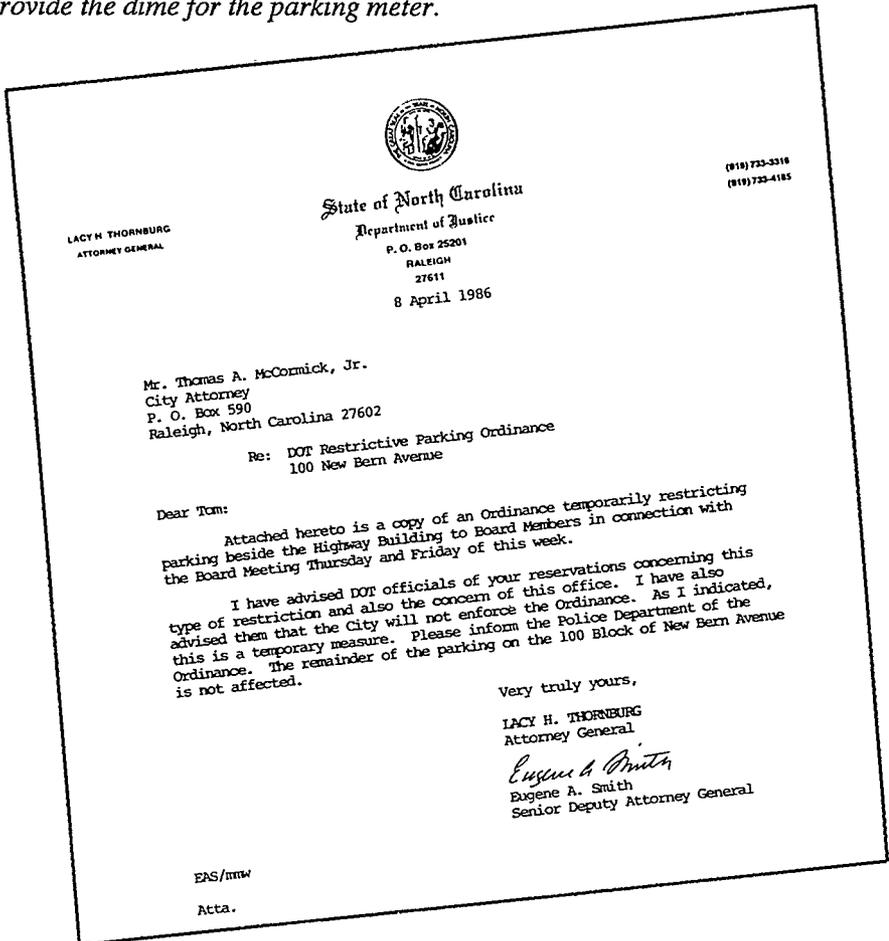
So give us a call at 832-2839, and ask for a copy of our who's who — Article II



MEMORABLE MEMO

Ever have trouble finding a parking space in downtown Raleigh? No problem — just get yourself appointed to the state Board of Transportation, and the accommodating folks at the state Department of Transportation will fix you up with your very own space in no time. Of course, as Senior Deputy Attorney General Eugene A. Smith advises in the April 8, 1986 memo, there are legal questions about the practice, and the City of Raleigh won't enforce special parking favors for board members. And as Harley Mudge of DOT's Productivity Management office admits in the April 23 memo, the "department is on very thin ice" in reserving spaces. But what the heck. The final decision reflected in Deputy Secretary John Q. Burnette's memo is that rank and file DOT employees should not take up parking places near the Highway Building on board meeting days, because "spaces for Board Members on Board Meeting Dates will be assigned." See? No problem. After all, we wouldn't want board members to go lame walking two or three blocks from some commercial parking lot, would we?

Meanwhile, if you come across a memo that tells how to provide special privileges for a special few, please pass it along to Insight. Anonymity guaranteed, and we'll provide the dime for the parking meter.





STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
P. O. BOX 25201
RALEIGH 27611



JAMES E. HARRINGTON
SECRETARY

JAMES G. MARTIN
GOVERNOR

April 23, 1986

MEMORANDUM TO: John Q. Burnette, Deputy Secretary
FROM: Harley Mudge
Productivity Management *Harley*
SUBJECT: ASSIGNED PARKING ON NEW BERN AVENUE

I have discussed the possibilities of assigning spaces on the first block of New Bern Avenue with Gene Smith at some length. It appears that there is no Constitutional way in which we can assign parking on this block, or collect revenues, or reserve certain areas for specific groups (i.e.; the first 10 spaces for visitors). As mentioned in Gene's letter to you concerning the reservation of spaces for the Board Members and his letter to the City Attorney which was attached, we are on very thin ice even doing that.

For these reasons, I see no clear way for us to pursue the plan to use New Bern as a solution to our need for additional parking for visitors or to provide additional spaces to be assigned to our employees.

On the other hand, it seems that "bagging" meters on certain days for Board Members may be worthwhile if we accept the "risk" and reservations in the paragraph of Gene's letter.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION
RALEIGH 27611

JAMES G. MARTIN
GOVERNOR

July 17, 1986

JAMES E. HARRINGTON
SECRETARY

MEMORANDUM TO: All Highway Building Employees
FROM: John Q. Burnette, Deputy Secretary *John Q. Burnette*
SUBJECT: Parking - 100 Block of New Bern Avenue

During the week of July 21, we will begin a project to landscape and improve the appearance of the 100 block of New Bern Avenue. These improvements will include planter islands, underground utilities, and new light standards similar to those used in the 200 block of New Bern Avenue.

We expect the construction to take approximately three months. During the construction, it will be necessary to periodically close a portion of the street to parking and alternate the use of the connecting driveways. We plan to phase the work by alternating sides of the street so some parking will remain available.

We will be assigning slots for official parking only. Also, spaces for Board Members on Board Meeting dates will be assigned. Consequently, it will be in your best interest to look for other parking rather than in this area.

We will appreciate your cooperation and indulgence.

JQB/c1

cc: Secretary James E. Harrington
Jim Peden, Member, Board of Transportation
Jake Alexander
Bill Deal
Cameron Lee

GRANT- SEEKING IN NORTH CAROLINA

A Guide to Foundation and
Corporate Giving

by Anita Gunn Shirley

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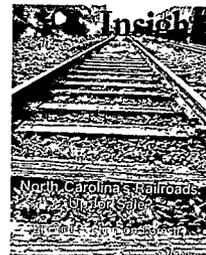
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Fire Sale

Of course, we haven't had a fire at the Center for Public Policy Research. But it's still hot outside, and *Insight* has back issues on some of the hottest topics still facing the state. For instance, taxation and lotteries. Tobacco and the problems it faces. The state's railroads and forestry management. The state of the arts in North Carolina. Chemical wastes and policies affecting farmworkers.

We'd like to place these issues in your hands. And to light the fires of interest, we're willing to make a hot deal: five back issues of *North Carolina Insight* for the bargain-basement price of just \$10. Or the whole package *free* with one new annual membership (\$24)—for yourself or as a gift for a friend—in the North Carolina Center for Public Policy Research. Just call us at 919-832-2839, or drop your check in the mail to Fire Sale, P.O. Box 430, Raleigh, N.C. 27602. And get 'em while they're hot!

VOLUME 1
INSIGHT



Insight



The tax debate of 1985
■ Lotteries

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