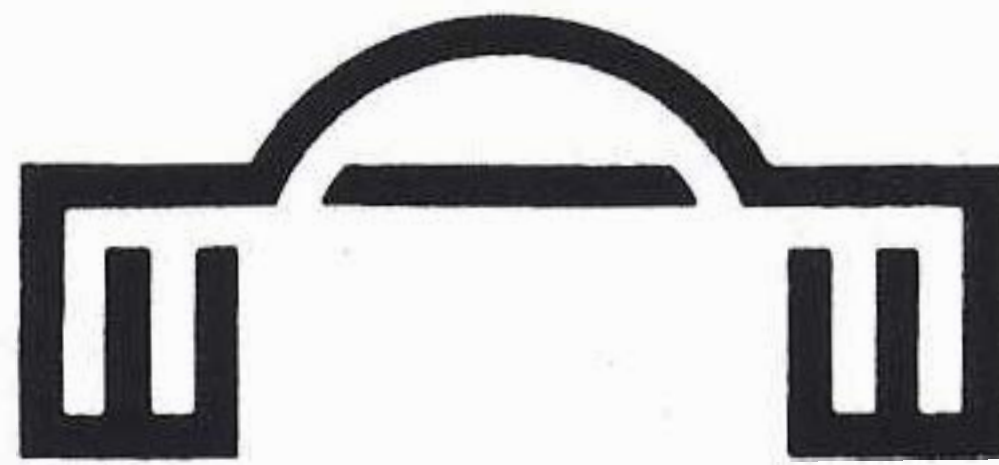




NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.

NEWS RELEASE

For Release on Monday, March 2, 1987: May be broadcast Monday a.m. and may appear in Monday morning newspapers

N.C. CENTER SAYS 1986 LEGISLATURE CONTINUED ABUSE OF SPECIAL PROVISIONS IN BUDGET BILLS

Despite much-ballyhooed reforms in 1986, the abuse of special provisions in budget bills remains a vexing problem that the 1987 General Assembly should address, reports the N.C. Center for Public Policy Research. The Center says the 1986 legislature continued to piggyback changes in state laws onto last year's budget bill. The Center released a list showing that the 1986 budget bill contained 57 special provisions.* This continued despite rules passed by the state Senate to curb the practice.

"In 1986, legislators made a good stab at reducing the piggybacking of special provisions onto the budget bill when the Senate, at the urging of the Lieutenant Governor, adopted rules aimed at curbing them," says Ran Coble, executive director of the N.C. Center. "But the House did not pass equivalent rules, and in the haste to adjourn, the final appropriations bill was once again loaded down with special provisions that few legislators knew anything about -- let alone what their ultimate impact would be."

Coble is the author of the Center's previous study, Special Provisions in Budget Bills: A Pandora's Box for N.C.'s Citizens. The Center released that report just prior to the 1986 legislative session. Today's release is a follow-up to that spring 1986 report. Special provisions change substantive law and do not pertain to the actual budget itself; they affect a wide range of state programs and statutes. The 1986 special provisions established nine new programs -- including ones for teacher recruitment and for youthful offenders, amended 65 laws, and created five new state boards.

In its earlier report, the Center explained how special provisions are often adopted by the legislature in the frenzied final days before adjournment of each session -- without adequate public debate and frequently without the knowledge of many members of the General Assembly. "And, because the legislative sponsors of special provisions are not named, special provisions are like orphans nobody will claim," says Coble.

The 57 special provisions in the 1986 appropriations bill brought to 376 the number of laws and amendments adopted by special provision since the 1981 legislature convened. That means that nearly 400 laws have been adopted in the last six years, with little, if any, debate and no chance for the public to comment on them. The problem has been growing. In the 1981 regular session and the 1982 short session, 59 special provisions were adopted. In the 1983 and 1984 sessions, 152 were adopted. And in the 1985-1986 sessions, 165 special provisions were tacked onto budget bills.

* See attached list of 57 special provisions.

Already, Lt. Gov. Robert B. Jordan III has promised to seek improvements in the appropriations process this session, including new efforts to limit special provisions. House Speaker Liston Ramsey, who with Jordan has pledged some measures to open up the budget process to more public scrutiny, has not said specifically whether he would seek to limit special provisions.

Special provisions are often confused with special appropriations, usually called pork barrel bills. Pork barrel appropriations and special provisions may wind up in the same bill, as they did in 1986. However, "pork barrel" refers specifically to money appropriated for legislators' pet projects, either state-wide or local in nature. Special provisions, on the other hand, rarely involve the expenditure of money, but they directly change state laws.

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

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

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

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

Gov. James G. Martin also has been critical of special provisions, particularly at a July 24, 1986 press conference. In a letter reproduced in the Center's report, Martin states, "It is my opinion that, while an amendment to the rules of each House or an amendment to the Executive Budget Act would be the first step in eliminating special provisions, it is necessary for our Constitution to be amended to prohibit special provisions."

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

(1) Special provisions can undermine the legislative process and the General Assembly as an institution. Items are inserted in budget bills which might not pass on their own merits as separate bills. For example, a provision inserted into a 1984 budget bill created a "comparable worth," or pay equity, study of the state personnel system, but the study was later repealed when fully debated as a separate bill in the 1985 session. In 1986, a provision was inserted to transfer the Boiler and Pressure Vessel Division from the Department of Labor. Objections by rank-and-file legislators caused the provision to be pulled out and introduced as a separate bill. That bill then failed.

The report also notes that only 20 of the 170 legislators are usually involved in the special provisions process, and that a legislator's share of pork barrel money is usually guaranteed only if the legislator votes for special provisions as part of the budget bill. Special provisions can also undermine the legislative process when they are used to establish new study commissions outside the normal decision-making process. Ten new study commissions were mandated in the 1986 budget bill but not included in a bill that set up most other study commissions. Special provisions were used, for example, to set up studies on school employee salaries and private, for-profit prisons.

(2) Special provisions can work against the public interest. Through special provisions, major governmental decisions are being made without public debate. **New government programs** are created, new duties are assigned to state agencies, new boards and commissions are created, and special tax breaks are granted. The Center's report points out, for example, that 1986 special provisions were used to create nine new programs including: a new Teacher Enhancement Program, a Museum of Art outreach program, an AFDC Emergency Assistance Program, and a Youthful Offenders Forestry Program.

They have also been used to create five **new state boards**. For example, the 1986 budget bill was used to create a new N.C. Teaching Fellows Commission, a Western N.C. Arboretum Board of Directors, a Nonpoint Source Pollution Control Committee, and new boards for southeastern and northeastern farmers markets. "Many of these may be worthy initiatives," says Coble "but they should be debated on their own merits and not hidden in a budget bill."

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

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

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

"The 1987 General Assembly has the opportunity to halt the overuse of special provisions in budget bills and restore confidence in the legislature's ability to draw up biennial budgets without piggybacking these special provisions," says Coble. "That could be accomplished by a commitment by legislative leaders to allow only those items which pertain directly to the budget to be placed in budget bills. All other changes in law should be handled as separate bills, voted upon on their own merits," he says.

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

The North Carolina Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to examine state government policies and practices. The Center is supported in part by grants from the Z. Smith Reynolds and Mary Reynolds Babcock Foundations, both in Winston-Salem. Other funding comes from 97 corporate contributors and 600 individual and organizational members. The N.C. Center publishes a quarterly magazine called North Carolina Insight and issues research reports. Past studies have been published on all the boards and commissions in the executive branch of state government, for-profit hospitals, and regulation of credit insurance. The Center has also published a guide to all the foundations and corporate giving programs in North Carolina.

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

For more information, call Ran Coble, executive director of the Center, at (919) 832-2839.

SPECIAL PROVISIONS, 1986 SHORT SESSION

Chapter 1014 (HB 2055) of the 1985 Session Laws (2nd Session, 1986):

An Act To Modify Current Operations and Capital Improvements Appropriations For North Carolina State Government for the 1986-87 Fiscal Year, To Appropriate Funds For Local Needs, and To Make Other Changes in the Budget Operation of the State

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of N.C. General Statutes Amended</u>
1.	47-48	None [Administrative Law Judges]	Notwithstanding 126-4(1)
2.	50	Teacher and State Employee Disability Benefits Study	NA
3.	51-52	State Law Enforcement Officers/Separation Allowances	143-166.41(a)(3) and (b)
4.	54	Teacher Effectiveness Program	None, but does order State Board of Education to conduct survey and make report
5.	58	Teacher Aides/Workweek and Compensation	new 115C-47(30)
6.	59	[new legislative commission] School Employee Salary Commission	NA
7.	60	Career Teacher Clarification	115C-325(p)
8.	61	Outside Evaluator Project	115C-362
9.	63	[new] Teacher Enhancement Program [and new N.C. Teaching Fellows Commission]	new Article 24C of Chpt. 115C (115C-363.15-- 115C-363.24) 143-47.21 105A-2(1)(o) new 105A-2(1)q new 120-123(45a)
10.	71	Physical Education Program Study	NA
11.	72	Study on Textbooks for Visually Impaired	NA
12.	74	Statewide Testing Program/ Testing Commission	Articles 11 and 12 of Chpt. 115C new Article 11A of Chpt. 115C (115C-174.1--115C- 174.14)
13.	76	Delay Change in the Law Regarding the Cost Allocation of Placement of Exceptional Children	Chpt. 465, Sec. 2 of of the 1985 Session Laws
14.	89	Conversion of Technical Colleges to Community Colleges	NA
15.	98-99	[new] Western N.C. Arboretum [and new board of directors]	new Article 30 of Chpt. 116 (116-240--116-244 new 120-123(46))
16.	112	South Central Deinstitutionalization Project Report	new report
17.	116	Use Liquor Tax for Substance Abuse	18B-805(b)(3) and (h)

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of N.C. General Statutes Amended</u>
18.	119	[new] AFDC Emergency Assistance Program	NA
19.	128(b)-(k)	Community Work Experience Program [standards]	NA
20.	129	Child Support Enforcement Administration	110-141
21.	130	Day Care Rates	Chpt. 479, Sec. 97 of 1985 Session Laws new report
22.	138, last sentence	Access, North Carolina	
23.	147	Marine Fisheries Seafood Development Program Transfer	NA
24.	149	Agriculture Cost Share Program for Nonpoint Source Pollution Control [new program and new committee]	new Part 9 of Article 21 of Chpt. 143 (new 143-215.74-- 215.74B)
25.	150	Hazardous Waste Regulation Study [new legislative study]	NA
26.	152	Coastal Water Quality Study [new legislative study]	NA
27.	153	Remove Restriction on Wildlife Resources Commission's Use of Sales Tax Funds	Chpt. 1116 of 1983 Session Laws, Sec. 88(c) 106-549.29(b) 106-549.52(b)
28.	155	Remove 50% Cap on Funding Meat and Poultry Inspection	
29.	158	Northeastern Farmers Market [new program and new commission]	new Article 59 of Chpt. 106 (new 106-719--106-721)
30.	159	Southeastern Farmers Market [new program and new commission]	new Article 60 of Chpt. 106 (new 106-726--106-728)
31.	161	Technological Development Authority Leases	143B-471.4(e)
32.	165	Hazardous Waste Treatment Commission/ Compensation of Members [different per diem from all other state commissions]	143B-470.3
33.	166	Hazardous Waste Treatment Commission Timetable Delayed	143B-470.4(b)
34.	168	Fire Insurance Tax Disbursement	118-5
35.	170	Museum of Art Outreach Programs	new programs
36.	171	No Departmental [DCR] Supervision of Direct Appropriations	121-11, 12, 12.1, and 12.2 143-31.2 143B-62 Notwithstanding 121-11, 12(c), (c1), and (d); 121-12.1; 121-12.2; 143-31.2; and 143B-62(2)(f) and (f1)
37.	174	Governor to Submit Plan To Decrease Reliance on the Highway Patrol for Security	NA

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of N.C. General Statutes Amended</u>
38.	185	Housing Finance Agency Investment Funds	Chpt. 479 of 1985 Session Laws, Sec. 149 new 122A-11 146-29.1 NA
39.	188	Sale or Lease of Real Property/Value	
40.	190	Coordination of State Labs [new legislative study]	NA
41.	194	State-Owned Property Study Committee/ Membership Increased	Chpt. 792 of 1985 Session Laws, Sec. 14.1
42.	197	Release of Inmates To Reduce Prison Population	148-4.1(c) 15A-1380.2(c)
43.	198	Local Reimbursement for State Confinement	162-39
44.	199	State Reimbursement for Local Confinement Costs	148-32.1(a)
45.	201	Authorize Judges To Order Work Release for Misdemeanants	15A-1351(f) new 15A-1352(d) new 15A-1353(f) 20-179(s) 148-32.1 (d) new 20-176(c1)
46.	202	Most Traffic Offenders Sentenced to Local Jail	
47.	203	Prison Canteen Fund Deposits	new 148-2(c) Notwithstanding 147-77 and Article 6A of Chpt. 147
48.	204	Privatization of Prisons Study	NA
49.	205	Evaluation of Community Programs [new legislative study]	NA
50.	209	Forestry Camp [Youthful Offenders Forestry Program]	new program
51.	222	Durham Magistrate Authorized	7A-133
52.	223	Magistrates' Salary Credit	new 7A-171.1(a)(4)
53.	224	Computation of Longevity for District Attorney Includes Service As An Assistant District Attorney	7A-65(c)
54.	227.1	Commercial Fishing	113-152(c)(4a)
55.	229	AFDC Two-Parent Eligibility	108A-28(a)(2) &28(b)
56.	230	Career Development Pilot Program Modifications	115C-363.2(g) 115C-363.3(a), (b),(c),(d), and new (e) 115C-363.10 115C-363.11a
57.	233	Utilities Commission/State Reimbursement Procedures	62-48(b)