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Cover: Former Mecklenburg County Courthouse, 1888 (N.C. Division of Archives & History)





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Local Governments Face Increasing Service Demands, Tighter Budgets

by Wade Rawlins

Local governments across North Carolina are trying to do more with less. They're facing increasing demands for services, while attempting to cut or hold the line on taxes. Such service demands range from desires for more police protection to needs for new schools, roads, landfills, and water-treatment plants. Much of the demand can be attributed to the state's rapid population growth, particularly in metropolitan areas. But even rural counties that are losing population can face new needs for services, such as expanded planning responsibility for balancing agricultural operations (like the state's growing hog-farming industry) with quality-of-life concerns. With the growing public resistance to taxes, cities and counties are trying to meet increasing service demands by shifting their priorities, thus cutting back spending on some programs while increasing it for others. Other actions being taken by local governments include: initiating user fees to help pay for services; laying off workers or reducing their benefits; relying more on seasonal or part-time employees; borrowing money through bond referendums; and privatizing or contracting out services such as transportation and garbage disposal.

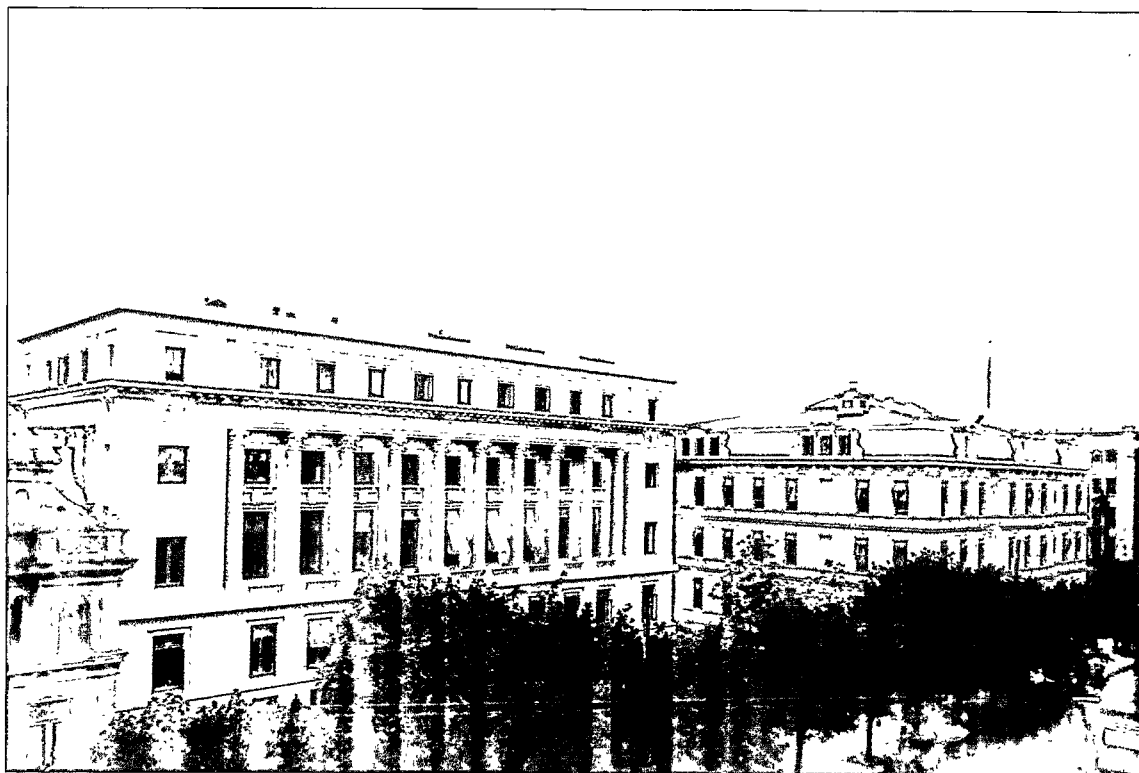
In 1994, two conflicting trends were sweeping across Wake County. Republican candidates for local offices, with pledges to reduce government spending, were on their way to gaining control of the board of county commissioners for the first time this century.¹ Meanwhile, new residents were moving to the county in near record numbers, drawn by the hope of jobs and bringing

with them demands for everything from housing to library books to classroom desks.

From the candidates, the refrain was one of scaling back: Property taxes were too high and taxpayers were fed up. They said the county government had grown too fat and needed to go on a diet.

Yet Wake County was experiencing its most rapid growth in years. In the early 1990s, Wake County was adding 5,000 more people a year than it did in during the high-growth 1980s. Permits to build single-family homes increased steadily from

Wade Rawlins is a reporter covering county government for The News & Observer of Raleigh.



Old Wake County Courthouse, which was torn down in 1968

3,558 in 1990 to 7,129 in 1994—the level of the mid-1980s boom years.² And demographers have forecasted that the growth will continue. Wake County is expected to attract one-fifth of the state's population growth over the next 25 years.³ (See Table 1 on p. 4 for a list of North Carolina's fastest growing counties.)

The forces of growth and contraction, the conflicting demands for new services and lower taxes, are converging like two trains on the same track. But Wake County is far from the only local government caught in this squeeze.

The political pressures to hold the line on taxes, increase efficiency, and meet new demands are forc-

ing many of North Carolina's city and county governments to re-examine what services they provide and how they operate. Local property taxes have been a big issue in recent elections, and many Republican candidates have gained seats on county boards of commissioners with pledges to cut back on spending. (See Table 2 on p. 5.) According to a 1995 survey by the N.C. League of Municipalities, 191 of the State's cities and towns (41 percent of the survey respondents) cut back on spending for new programs and only 37 (8 percent of respondents) raised property tax rates in the latest round of budget-making.⁴ (See Table 3 on p. 7 and Table 4 on p. 11.) Likewise, from 1993 to 1995, the number of counties raising property taxes dropped from 49 to 27, while the number lowering rates grew from three to nine.⁵

"The attitude of the citizenry is they don't want to pay any more taxes and they want excellent services," says Charlotte City Manager Wendell White. "It's 'Either do it or get out of the way.'"

Interestingly, the anti-tax fever may fly in the face of public opinion, some polls suggest. A December 1994 poll of 2,018 Wake County residents indicated that while about 40 percent said taxes were too high, only one in four people supported cutting taxes if it meant scaling back services.⁶

"The attitude of the citizenry is they don't want to pay any more taxes and they want excellent services. It's 'Either do it or get out of the way.'"

—WENDELL WHITE
CHARLOTTE CITY MANAGER

Similar results were found in a July 1995 poll of 643 Triangle residents commissioned by *The News & Observer* of Raleigh. On a range of services from parks to police to public libraries, three out of four residents said they'd rather keep the services they have than receive a \$100 tax cut, the *N&O* poll found.⁷ (See the related article, "What Polls Have Shown About Public Attitudes on the Division of Government Responsibilities," on p. 36 for the results of several nationwide surveys on taxes.)

Those findings were reinforced by a group calling itself Revenue Restoration Revolt that protested the Wake County tax cuts by returning \$3,874 in tax savings to the county board of commissioners at a meeting on Oct. 2, 1995. Members of the group said they would prefer that the county keep their money rather than cutting back on libraries, schools, and other services. "I believe that many of the cuts in public health and social services would not be supported by a majority of our citizens if their im-

pact were known," one protestor, Paul Humphrey of Raleigh, wrote in a letter accompanying his check to the county.⁸

Such sentiments notwithstanding, most elected officials are reluctant to raise taxes and are putting pressure on local government staffs. Employees have had to find ways to reduce spending without gutting services while finding money for new services and increasing demands for many programs, such as Medicaid and food stamps. (See Table 5 on p. 13.) These trends have caused many local governments to examine more closely the costs of their services and to install accounting practices that encourage better use of tax dollars.

"The challenge for most of us in local government is how to do more with less—the same challenge that businesses are facing," Wake County Manager Richard Stevens says. "It's causing us to rethink how we deliver and organize services and in the long term what services are provided." Asheville City Manager Jim Westbrook adds:

Table 1. North Carolina Counties with the Highest Population Growth in the 1980s and Their Projected Growth in the 1990s

Rank County	Population Change		Rank County	Population Change	
	1980's (actual)	1990s (projected)		1980's (actual)	1990s (projected)
1. Dare	+70.0	+42.5	11. Pitt	+19.7	+18.6
2. Brunswick	+42.5	+28.1	12. Union	+19.6	+18.4
3. Wake	+40.5	+29.7	13. Durham	+19.4	+19.2
4. Onslow	+32.9	+15.9	14. Lincoln	+18.8	+16.3
5. Pender	+29.6	+23.9	15. Henderson	+18.3	+13.5
6. Carteret	+27.9	+19.1	16. Moore	+16.8	+11.9
7. Mecklenburg	+26.5	+23.1	17. Randolph	+16.7	+14.4
8. Currituck	+23.9	+19.3	18. Watauga	+16.7	+7.4
9. Orange	+21.8	+18.8	19. Macon	+16.5	+11.2
10. Franklin	+21.2	+19.7	20. New Hanover	+16.2	+12.0

Source: Sheron K. Morgan and P. William Tillman Jr., *Population Projections: 1991–2020, North Carolina and Its Counties*, N.C. Office of State Planning, July 1992, pp. 14–17.

Table 2. Makeup of North Carolina Boards of County Commissioners by Party, 1992-94

	1992		1994	
	Number	Percent	Number	Percent
Democratic Commissioners	390	71%	343	61%
Republican Commissioners	161	29%	217	39%
Boards Controlled by Democrats	73	73%	58	58%
Boards Controlled by Republicans	27	27%	42	42%

Source: N.C. Association of County Commissioners, P.O. Box 1488, Raleigh, N.C., 27602; phone (919) 715-2893. There are 100 boards of county commissioners in North Carolina.

"We've got to continually reinvent the organization based on today's demands and the financial realities."

Local Governments Trying to Balance Traditional Services and New Demands

Historically, county governments were created by the N.C. General Assembly to administer certain state services locally, such as state courts, education, and health services. With increasing urbanization in recent decades, counties have taken on more city-type functions such as planning, water and sewer services, parks, and library systems.⁹ (See the related article, "Who's in Charge? How the Federal, State, and Local Governments Allocate Responsibilities," on p. 18.)

Now cities and counties alike are having to reassess their roles. How they respond depends on myriad factors: geography, tax base, population growth, and the leadership of policymakers. Areas with higher population growth are trying to meet demands for new schools, roads, and water treatment plants. Many are turning to user fees to pay for programs, while others are privatizing or contracting out services such as garbage collection and disposal. Some are considering economic development incentives to attract industries. Meanwhile, communities with declining populations are struggling to find ways to deliver basic services with stagnant tax bases.

To glimpse how the elected leaders are responding, consider Nags Head's three garbage col-

lection crews—which start work at midnight during the summer so they can move quickly from house to house when tourist traffic isn't clogging the roads. Or the 70 computer terminals in Charlotte's library system that offer users on-line access to parts of the Internet—a service not available five years ago.¹⁰ Or the Durham City Council's decision this year to drop a long-standing policy not to lay off employees. Or Gastonia's privatization of services such as commercial garbage pickup, landfill disposal, sewer line repairs, and some electrical line maintenance.¹¹ Or the Raleigh City Council's decision to postpone spending on improvements for streets and parks.

Taken together, these examples show that local governments are offering some new services, cutting or privatizing some others, and delaying spending on other needs. That's the big picture. Now let's consider some examples in more detail.

Wake County Tries to Cut Spending, Maintain Services

The months since the November 1994 elections have been a time of anxiety and adjustment within Wake County government. A new majority of five Republicans on the seven-member board of county commissioners adopted a 1995-96 budget that abolished 210 jobs and contained a 17 percent cut in the property tax—the largest percentage cut in Wake County since the Depression.¹² Commission Chairman Gary Pendleton said the 1994 election showed there was strong public support for lowering property taxes, and members of the Wake

Taxpayers Association and other conservative groups applauded the tax cuts at public hearings on the county's budget proposal.

"Government is designed to do for people what they can't do for themselves," said Jack Ragan, a Raleigh real-estate appraiser, at one hearing. "Personally I feel we have too much government at all levels."¹³

The tax cut would save \$130 a year for the owner of a house assessed at \$100,000, and even more for most Wake County businesses, which typically have higher assessed values than homes. For example, Carolina Power & Light, a public utility and the county's largest taxpayer, reaped an annual reduction worth \$2.5 million.¹⁴ To achieve those cuts, the Wake board of commissioners gave the county manager a nearly impossible task: cut spending county-wide without reducing any services.

"When you are in a situation of having to do

"When you are in a situation of having to do more with less, you get creative. There's a saying, 'Necessity is the mother of invention.' Maybe tight budgets are the mother of innovation."

—RICHARD STEVENS
WAKE COUNTY MANAGER

more with less, you get creative," says Stevens, the county manager. "There's a saying, 'Necessity is the mother of invention.' Maybe tight budgets are the mother of innovation."

One way in which Wake County is trying to innovate is by privatizing or contracting out services that previously had been handled by govern-

ment. For instance, the Wake Sheriff's Department in 1995 hired a private company to prepare meals for jail inmates, reducing food-service costs by more than \$400,000 a year. Wake County expects to save another \$30,000 a year by using a private company to manage the county's landfills, which previously had been operated by the city of Raleigh. Wake commissioners have set up a volunteer panel of citizens, nominated by local chambers of commerce, that will look for other ways to privatize government services.¹⁵

But the county's tax cuts were not painless.

Tom Moore, Wake County's library director, says members of his staff feel they are being asked to do more with less.

Library Administration Building



Jim Bounds, The News & Observer

**Table 3. Actions by North Carolina Municipalities to
Balance Their Budgets, FY1994–1996**

Budget Actions	Percent of N.C. Cities Taking Actions		
	FY 1993–94	FY 1994–95	FY 1995–96
Cut new spending	45%	39%	41%
Reduced spending growth	45%	32%	34%
Less capital outlay	42%	34%	33%
Raised fees, charges	41%	43%	35%
Cut spending from previous year	26%	25%	24%
New fees, charges	17%	16%	11%
Froze hiring	15%	10%	10%
Contracted services	14%	11%	11%
Raised tax rates	12%	14%	8%
Reduced number of employees	12%	7%	7%
Reduced services	10%	5%	5%
Reduced employee benefits	8%	4%	5%
Shifted services	7%	6%	6%
More impact fees	4%	4%	4%

Source: N.C. League of Municipalities, based on surveys of some 520 cities and towns in North Carolina for FY 1993–94 to FY 1995–96. The number of municipalities that responded to that section of the survey was: 488 of 519 in 1993; 461 of 520 in 1994; and 468 of 522 in 1995.

While businesses and homeowners saw lower tax bills, the poor who rely on many of the county's services may feel the brunt of the tax cut. For instance, the board of commissioners reduced the county's annual appropriation for indigent care at Wake Medical Center from \$6.7 million to \$5.2 million—a 22 percent cut. It remains to be seen whether the hospital will be able to provide the same level of indigent care, although administrators could offset the cutback by reducing its profit margins or shifting costs to paying patients.

The budget cutting also raised the caseloads of social workers who handle abused and foster children, lowered the number of poor children who received dental checkups from public health dentists, and reduced the hours available each week for mental patients to receive psychiatric counseling. Faced with shrinking budgets, Wake County agencies have had to change the way they deliver services.

As of July 1, 1995, the county Department of Mental Health dropped its sliding payment scale and began charging full cost to all clients—regardless of their ability to pay. For patients unable to pay in full immediately, the county spreads out the costs. Social workers say that charging clients full cost, even if they don't have to pay right away, tends to cause patients to stop seeking treatment for fear of running up large medical bills.

Frank Welles, a Wake County resident who has a mentally ill daughter, urged commissioners at a June 5, 1995, public hearing to maintain funding for mental health programs and to increase the number of caseworkers. Cutting the funding for mental health programs, he said, will leave many users of these services with nowhere to turn. "It's uncivilized to let these mentally ill people—who are ill through no fault of their own—rot in the alleys, and in the streets, and under the bridges," Welles said.¹⁶

"The bottom line is if you don't make the cuts, you'll never know. If you really hurt an area, you can always go back and give them more money."

—GARY PENDLETON

CHAIR, WAKE COUNTY BOARD OF COMMISSIONERS

No county agency has had to adapt more than Wake County's library system—the busiest in the state, with a total circulation of 4.6 million books and materials in 1994.¹⁷ As part of an expansion approved by voters in a 1993 bond referendum, the county is currently building two new libraries—a regional library in Apex and a small branch in Wake County Office Park—and is launching a bookmobile service.

While making these additions, the library reduced its staff size and absorbed an 11.7-percent budget cut. To accomplish those cuts, the library system eliminated six positions in its central administration and shifted more supervisory duties to regional branch managers.¹⁸ In other actions, the county has started thinning the staffs at existing libraries, has begun charging a \$25 fee for library card holders who live outside the county, and has reduced by 27 percent the library system's \$1.8-million budget for buying books and magazines.¹⁹ Furthermore, library administrators are considering putting an automated system in branches that would allow patrons to check out books themselves, reducing the demand for staff. The system would cost about \$200,000—about a third of the cost of the personnel who now provide the service.

"The staff really do feel like they are being asked to do more with much less," Library Director Tom Moore said during the process. "The staff is stressed. To say it any other way is not to acknowledge a true feeling."²⁰

The system also closed three small part-time branches that served public housing complexes, drawing criticism from people who lived there. Peter Rogers, a patron of the library branch in Glenwood Towers, urged the commissioners not to substitute bookmobile service for the library in the housing complex for the elderly. "Are we to hobble on our walkers or wheel out to the bookmobile?" Rogers asked at a public hearing on the county budget.²¹

Moore says the county did not eliminate, but merely changed the way, it provided services to the

housing complexes. The library system already had planned to serve the communities using bookmobiles, he says, before it was forced to cut back on spending. Plus, the library system is using volunteers to open the Glenwood Towers branch three days a week, while providing library materials through community centers at the other two complexes.

The new budgets show that "downsizing"—reducing the size of the work force and demanding more of employees—is the new buzzword for the public sector. For public workers, it can bring uncertainty about job security, lower morale, and sometimes reductions in benefits. Wake County commissioners didn't provide cost-of-living raises in 1995, and said workers hired henceforth would not be eligible for longevity bonuses that previously had been handed out to reward employees who remained with the county government 10 or more years.

"I don't think there is any question that morale has suffered," says Wally Hill, Wake County's management services director. "At the same time, I don't want to make it seem as if employees are all affected the same way. Some have responded with enthusiasm and eagerness. Others have taken it as a blow to their self-esteem."

Even the most ardent believers in the need for a change say that the downsizing process has been difficult. "It's stressful to know if you're doing the right thing, to make sure you're not hurting people," Pendleton says. "The bottom line is if you don't make the cuts, you'll never know. If you really hurt an area, you can always go back and give them more money."

Raleigh Adds Police, Cuts Back on Garbage Collection

While Wake County staffers wrestled with how to absorb a substantial tax rate cut without gutting services, their counterparts two blocks away at Raleigh City Hall have been doing much the

same. Republican Mayor Tom Fetzter campaigned on cutting taxes. And for the second consecutive year, the Raleigh City Council has passed property tax cuts. Although it increased spending slightly, the 1995-96 budget contained a 4.9-percent reduction in the tax rate and projected a more modest tax reduction for 1996-97.²² That's on top of a 4.5-percent cut for 1994-95.

To achieve those cuts, city leaders delayed some capital spending on road construction, streetside landscaping improvements, and appropriations for park construction. "We've had to be more prudent in capital project funding," City Manager Dempsey Benton says. "Our five-year CIP [Capital Improvement Plan] is less than it was. Our spending on capital improvements has moderated." Like Wake County, Raleigh is looking for ways to privatize or contract out services, and Benton has pledged to find 10 areas where the city can bid out programs to private companies during the next two years.²³

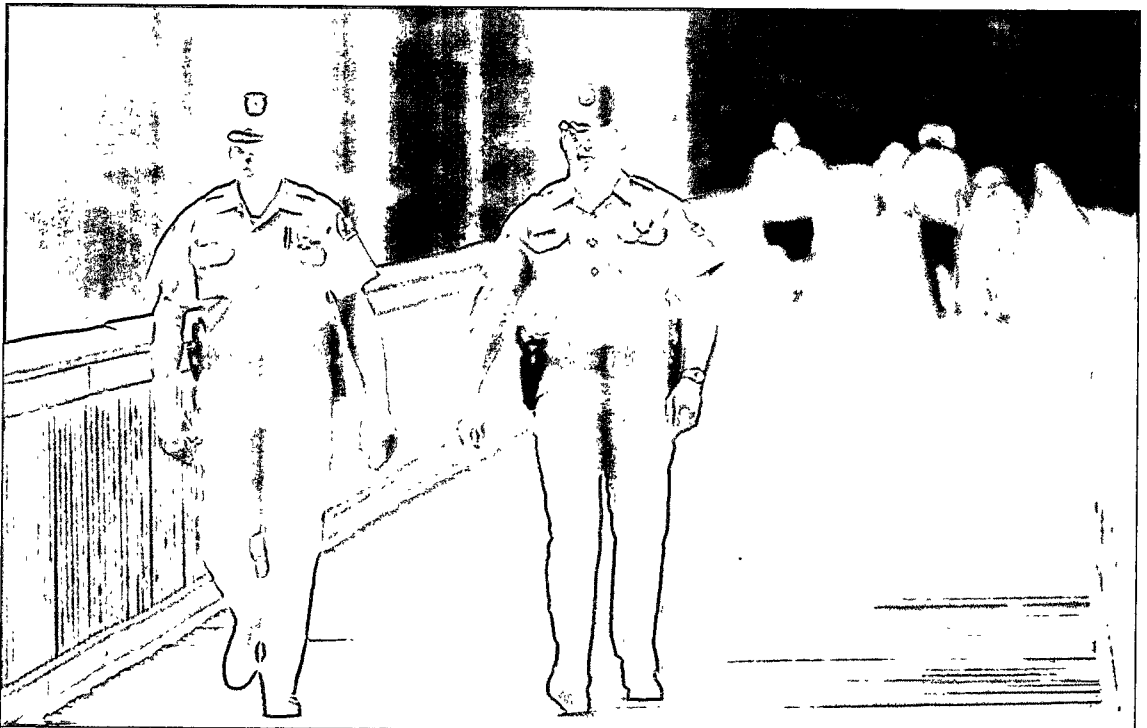
Meanwhile, the city has been increasing some basic services. The city has seen a dramatic increase in criminal drug activity in the 1990s, with the number of drug arrests increasing by 93 percent from 1990 to 1994.²⁴ Like many cities, Raleigh has been reallocating personnel to add police.

The city council has put 100 new officers on the streets during the last three years. Many were assigned to community policing teams to beef up police presence in higher crime neighborhoods and establish substations in public housing complexes. City Manager Benton said city leaders did not want to add police in trouble areas at the expense of reducing patrols in others. Instead, the city reduced non-public-safety personnel by 120 positions.

One area of city government that is feeling the pinch of personnel reductions is the public works department. The city stopped commercial garbage pickup service as of Jan. 1, 1995, eliminating 40 driver jobs. The city is in the second year of requiring higher output from the residential collection crews. Starting in 1994, garbage collectors who volunteered to work on smaller four-member crews rather than the usual five-member crews received an extra \$125 per week. All 40 of the city's residential garbage collection teams were being reduced to four members in 1995.

The changes didn't come without some drawbacks. It's harder for the crews to stay on schedule. "We may not finish the Monday route until sometime Tuesday," Benton says. "There is some slippage in the week, but we're still meeting our targets on a week-by-week basis."

The city of Raleigh has added 100 officers to its police force while cutting back spending in other areas, such as roads and parks.



Harry Lynch, The News & Observer

Seasonal Growth Strains Services in Coastal Towns

The town of Nags Head, like many of North Carolina's beach communities, has a split personality. Half the year, it is a quiet community along a 12-mile strip of Dare County coast line with a permanent population of 1,818 people. But from late April through September, vacationers flock to its beaches, swelling the population to around 40,000.

Although the seasonal tide of tourists may boost the town's revenues—through the sales taxes on money spent in restaurants, gift shops, and on rental cottages—accommodating all the visitors has its costs. In summer months, the town needs to hire seasonal staff to clean streets and pick up garbage.

More people also means heavier water demand, for everything from brushing teeth to scrubbing down boats. So the town must have higher production capacity in its water-treatment plants to meet peak demand in the tourist season, even though it's not needed during much of the year.

Permanent Nags Head residents use 200,000

gallons a day in January. But demand soars to more than 10 times that amount in the summer—2.6 million gallons on a typical day in August. To keep pace with the thirst for water, government leaders in Nags Head, Kill Devil Hills, and Dare County have jointly built a 3-million-gallon-per-day (mgd) desalination plant that can be expanded to 10 mgd.

Town leaders, rather than raising property taxes to pay for increased water production, have turned to a new revenue source—a water impact fee of \$3,000 per new single-family house that is used for upgrading water utility service. Nags Head has a water-billing system that increases rates in summer months and charges heavy water-users more per gallon to encourage conservation.

Webb Fuller, the Nags Head town manager, says the government feels constant pressure to reduce taxes. Financing the water improvements with increases in property taxes didn't seem entirely fair. "The policy leaders made a determination that we felt it was more equitable to place the burden on the people who are causing the expansion than on the people who were already here," Fuller says.

Cabarrus County Courthouse in Concord, 1944.



**Table 4. Property Tax Trends for Local Governments in
North Carolina, FY 1994-1996**

Property Tax Actions by Local Governments ¹	FY 1993-94 (Number/Percent)	FY 1994-95 (Number/Percent)	FY 1995-96 (Number/Percent)
Raised Rates			
Cities	59 (12%)	70 (14%)	37 (8%)
Counties	49 (49%)	21 (21%)	27 (27%)
Lowered Rates			
Cities	17 (3%)	21 (4%)	24 (5%)
Counties	3 (3%)	6 (6%)	9 (9%)
Rate Stayed the Same			
Cities	348 (68%)	318 (65%)	324 (66%)
Counties	32 (32%)	59 (59%)	43 (43%)
Revalued Property²			
Cities	87 (17%)	79 (16%)	103 (21%)
Counties	16 (16%)	14 (14%)	21 (21%)

¹ Sources: City results are from the N.C. League of Municipalities, based on surveys of some 520 municipalities in North Carolina, including 21 that do not levy property taxes. The number of municipalities that responded to surveys were: 511 of 519 in 1993; 488 of 520 in 1994; and 488 of 522 in 1995. County results are from the N.C. Association of County Commissioners, based on surveys of all 100 counties in North Carolina.

² Revaluations of property tend to increase the amount of taxes on owners because properties generally increase in value over time, and property taxes are not always lowered proportionately when property is revalued.

Suburban Sprawl Creates New Demands Near Urban Centers

While the demand for services in Nags Head is driven by the seasonal influx of tourists, the pressure in Cabarrus County is coming from an influx of suburbanites fleeing Mecklenburg County. Cabarrus County lies northeast of Charlotte, a quick drive up I-85. Thousands of people who drive to work in the Queen City each day call Cabarrus home. Real estate advertisements boast of the county's low taxes and good schools. The western

part of the county nearest Charlotte is sprouting new subdivisions.

Like other rural counties near urban centers, Cabarrus is feeling the effect of its proximity through sprawling growth and the conflicting expectations of newcomers and longtime residents. Gerald Newton is the Cabarrus County planning director, and he has watched the county's population grow more in the past five years than it did in the previous 10. The population of Cabarrus grew from 98,934 in 1990 to an estimated 116,700 in July 1995, according to the U.S. Census Bureau.

"...[T]wo years ago, 500 kids showed up on the first day of school who weren't expected. That is a pretty big wake-up call."

—GERALD NEWTON

PLANNING DIRECTOR, CABARRUS COUNTY

Newton says the No. 1 strain caused by the suburban growth is the demand for more classroom space in schools. Eighteen of Cabarrus County's 20 public schools are beyond capacity, and a fifth of the students are housed in portable classrooms. "For example, two years ago, 500 kids showed up on the first day of school who weren't expected," Newton says. "That is a pretty big wake-up call."

The county planning department has become intimately involved in school planning, providing local population estimates of school children. County planners even chose the location of the newest elementary school. "That is a completely different thrust than was here four years ago," Newton says. "It's a new function county government is playing because of growth."

School officials say they need \$100 million to build nine new schools, including seven in the western half of the county. But so far they've only been able to address the needs on a limited basis. In May 1994, voters rejected a bond referendum for \$81 million to finance a school construction program. Statewide, 10 of 29 local school bond referendums failed from January 1993 to December 1995. (See Table 2 on p. 29, in the article "Who's in Charge? How the Federal, State, and Local Governments Allocate Responsibilities.")

To relieve some of the crowded classrooms, the county is financing construction of an \$11-million middle school with a lease/purchase arrangement (through a private lender), and has raised the property tax rate by 2 cents to cover the cost. John Witherspoon, who served as Cabarrus County manager from 1992 to 1995, says politicians who take the long view are scarce in the current political environment.

"Most of them come in with the belief that you could cut back or at least they made a pledge that you would," Witherspoon says. "It's hard for them to come to grips with the reality that they are going to have to go back on their word or cut some service that is going to make people equally unhappy."

Meanwhile, the demand for services like those 500 or 600 new kids who show up on the school doorsteps each year is [generating a] demand for more money."

Demand for Services Not Limited to Areas With Growing Populations

Counties with rapidly growing populations are not the only areas with increasing demands for services. Consider Graham County, a scenic but poor county just south of the Great Smoky Mountain National Park. Graham is among a score of impoverished counties in the mountains and the Coastal Plain of North Carolina that lost population in the 1980s and are forecast to continue losing people in the 1990s. (See Table 6 on p. 15.) In the 1990 census, Graham ranked in the top 10 North Carolina counties in the percentage of residents in poverty and in the bottom 10 in per capita income.

More than two-thirds (113,000 acres) of the land in Graham County is owned by the U.S. Forest Service and therefore tax exempt. Much of the remaining terrain is too steep to provide sites needed by industries.

"We don't have much to tax, while the state mandates us to provide a certain amount of government," says Dale Wiggins, the county manager and a member of the Graham County board of commissioners. "It's not easy to do. We don't have the jobs here to keep people."

Wiggins, a Republican, says he pledged during the 1994 campaign to try to keep down spending, but didn't promise not to raise taxes. "We tried to be realistic," he says, noting that some of the county's public schools need replacing and the costs to dispose of solid waste are increasing since the county closed its landfill.

Young people tend to leave Graham County to find jobs, Wiggins says, but some (like him) eventually return because of the area's natural beauty. The spectacular scenery is expected to attract lots of tourists after the opening of a 46-mile highway from Graham County to Tellico Plains, Tenn., in August 1996. The "Over the Hill Skyway" is projected to attract 1 million people to the county in its first year.

"We're going to see a major influx of people like we've never seen before," Wiggins says. But lack of a growing tax base, he says, hinders the county's ability to build parks with hookups for recreational vehicles and other amenities that would prompt travelers to stay overnight. "We don't have the facilities to trap these people," he says. "We're lacking in restaurants and recreational areas."

**Table 5. Examples of Increased Service Demands
on Local Governments in North Carolina**

SERVICE PROVIDED	FY 1990-91	FY 1994-95	CHANGE
Aid to Families with Dependent Children¹			
Average Number of Monthly Recipients Per County	2,522	3,077	+22.0%
Average Monthly Payment Per County	\$242	\$228	-5.8%
Average Monthly Administrative Cost Per County	\$35,957	\$46,449	+29.2%
Medicaid²			
Average Number of Monthly Cases Per County	2,923	5,199	+77.9%
Average Monthly Payments to Vendors Per County	\$1,432,709	\$2,583,097	+80.3%
Average Monthly Administrative Cost Per County	\$43,406	\$57,516	+32.5%
Food Stamps³			
Average Number of Monthly Recipients Per County	4,882	6,180	+26.6%
Average Monthly Administrative Cost Per County	\$39,063	\$47,459	+21.5%
Law Enforcement⁴			
Number of Arrests, Violent Crimes	24,991	25,967	+3.9%
Number of Arrests, Property Crimes	56,093	58,394	+4.1%
Public School Enrollment⁵			
Final Statewide Average Daily Membership, K-12	1,070,297	1,131,090	+5.7%

¹ Division of Social Services, *Statistical Journal*, Table 1, pp. 1-2, State Fiscal Years 1991 and 1995, Planning and Information Section, N.C. Department of Human Resources, 325 N. Salisbury St., Raleigh, N.C., 27603. Counties are responsible for 50 percent of the AFDC administrative costs and about 16 percent of the AFDC payments. Preliminary data show that AFDC caseloads could decline substantially for the 1995-96 fiscal year. From July 1995 to February 1996, the average number of monthly recipients per county was \$2,815—a 9.5-percent drop from the previous year.

² *Ibid.*, Table 2, pp. 3-4. Counties are responsible for 50 percent of the administrative costs for Medicaid and 5.2 percent of the payments to vendors.

³ *Ibid.*, Table 3, pp. 5-6. Counties are responsible for 50 percent of the administrative costs for Food Stamps.

⁴ State Bureau of Investigation, *Crime in North Carolina*, N.C. Department of Justice, Division of Criminal Information, Raleigh, p. 189 in 1992 edition, p. 223 in 1995 edition. Arrest data are for calendar years 1990 and 1994, not fiscal years. Violent crime index includes arrests for murder, rape, robbery, and aggravated assault. Property crime index includes arrests for burglary, larceny, and motor vehicle theft.

⁵ Data from the N.C. Department of Public Instruction. Although public school attendance grew modestly statewide, many urban counties experienced substantial increases while some rural counties saw declines. For instance, membership increased 19.5-percent in Wake County, 19.0 percent in Davie County, 17.1 percent in Cabarrus County, and 11.6 percent in Mecklenburg County from 1990-91 to 1994-95. DPI projects that final average statewide daily membership will grow to 1,155,180 for the 1995-96 school year, a 2.1-percent increase from 1994-95.

"We don't have much to tax, while the state mandates us to provide a certain amount of government. It's not easy to do. We don't have the jobs here to keep people."

—DALE WIGGINS, COUNTY MANAGER
AND A GRAHAM COUNTY COMMISSIONER

Pigs, not people, are moving into Jones County. One of eastern North Carolina's small, rural counties, Jones County has been losing population for more than a decade and now has less than 10,000 people, according to the 1990 U.S. Census. But the county's swine population has exploded, growing by nearly tenfold from 1983 to 1993. Located in the heart of the state's rapidly growing hog industry, the county had 169,000 hogs in 1994.²⁵ Four of the county's 20 largest taxpayers now are commercial hog operations, led by Brown's of Carolina—which ranked second only to the Weyerhaeuser Company, which owns thousands of acres of pine forests there

and has long been the county's largest taxpayer. The county's other large hog operations include Neuhoft Farms, and farms owned by John Currin Howard and Bobby McLawhorn, according to tax records.

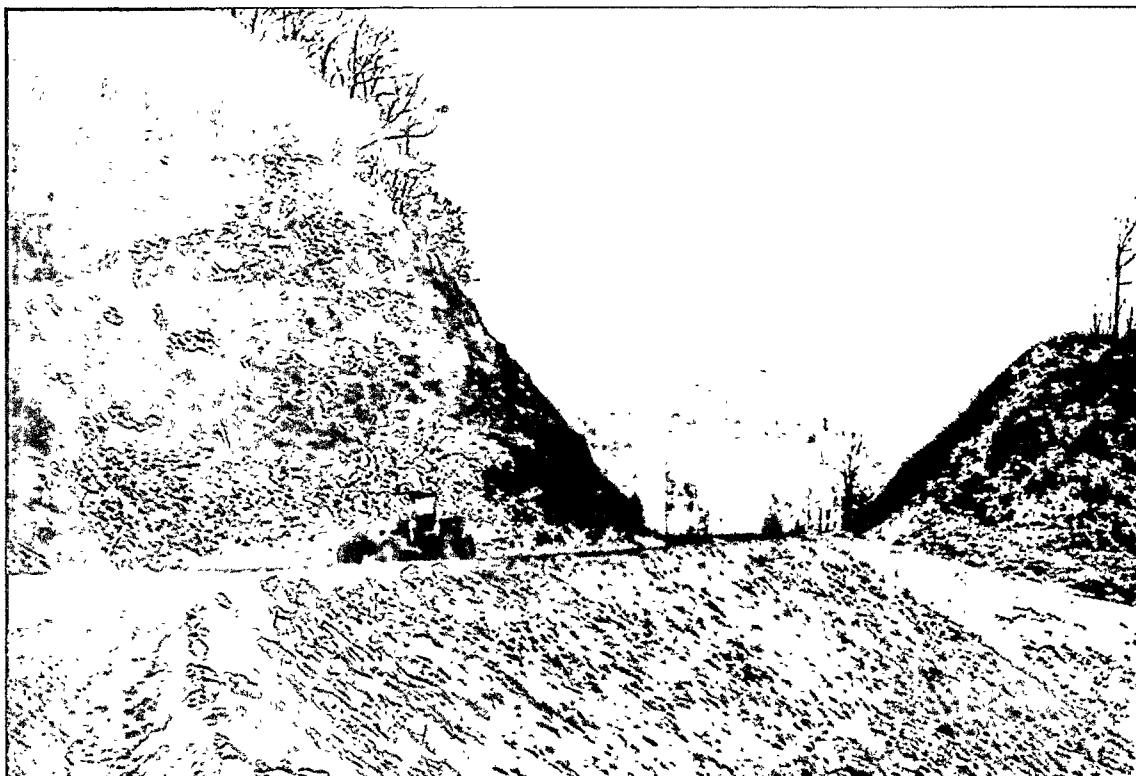
"Three years ago, we [had] never heard of them," says Wayne Vanderford, Jones County's tax supervisor. "That shows you how hogs are growing in eastern North Carolina."

Jones County was one of 19 counties that lost population in the 1980s. (See Table 6 on p. 15.) And it's among those projected to lose population this decade—9.8 percent, in fact.²⁶ Predominantly agricultural, the county ranks in the top fourth among North Carolina's counties in the percentage of people in poverty.²⁷ It is struggling to provide basic services such as garbage collection, ambulance service, and law enforcement.

"There is really pressure on both sides," Jones County Manager Larry Meadows says. "Demands for services, demands for schools, demands from different agencies. There is pressure on the other side from taxpayers not to increase taxes. I know we're being stretched like a rubber band."

Still, the county is providing some new services. In July 1995, it hired two emergency medical

The new "Over the Hill Skyway" being built between Tennessee and North Carolina is expected to bring a major influx of tourists to Graham County.



Kate Henry, The Graham Star

**Table 6. North Carolina Counties That Lost Population in the 1980s
or Are Projected to Lose Population in the 1990s**

County	Population Change		County	Population Change	
	Actual 1980s	Projected 1990s		Actual 1980s	Projected 1990s
1. Anson	-8.48%	-7.28%	11. Bertie	-3.03%	-2.43%
2. Hyde	-7.87%	-5.69%	12. Jones	-3.00%	-9.77%
3. Northampton	-6.29%	-5.72%	13. Tyrrell	-2.99%	-3.60%
4. Bladen	-6.00%	-5.06%	14. Columbus	-2.84%	-3.41%
5. Washington	-5.43%	-4.94%	15. Duplin	-2.34%	-1.50%
6. Sampson	-4.81%	-6.14%	16. Richmond	-1.42%	-0.18%
7. Greene	-4.55%	-5.41%	17. Ashe	-0.52%	-2.12%
8. Lenoir	-4.25%	-4.29%	18. Graham	-0.29%	-0.93%
9. Hertford	-3.62%	-1.73%	19. Caswell	-0.06%	+0.05%
10. Martin	-3.35%	-3.48%	20. Alleghany	+0.03%	-1.36%
			21. Mitchell	+0.03%	-1.37%

Sources: 1990 U.S. Census and N.C. Rural Economic Development Center for population losses in the 1980s, N.C. State Data Center for projected population losses in the 1990s.

technicians to handle ambulance calls Monday through Friday. The ambulance will be housed in a station built by a local high-school carpentry class—a choice county leaders made to save money.

The influx of the hog farms, while increasing the tax base, also has generated a lot of citizen complaints. That has made county leaders consider something unusual for a rural county—a land use plan to guide growth and head off future conflicts between farms and residents.

“We’re getting a lot of complaints,” says Meadows, who doubles as county manager and county planner. “We’re putting together a land-use plan. It could be a nightmare to get passed in a rural county like Jones. People feel like we regulate their land enough already.”

Conclusion

Population planners project that North Carolina will continue its uneven population growth pattern during the next decade, with urban centers gaining and some rural eastern and mountain coun-

ties actually losing people. That means poor counties such as Jones and Graham will continue having to stretch to meet their basic needs, while also facing new demands such as an increased need for waste disposal and treatment. Meanwhile, residents of metropolitan areas such as Charlotte and Raleigh will have to pay for their population growth. They’ll have to build new schools, recreational facilities, and infrastructure, and hire more police, garbage collectors, and other staff.

One thing is certain: all local governments will have to find new ways to meet the increasing demand for services. How they meet those demands will vary from county to county, and city to city. But unless the public changes its current anti-tax sentiments, local officials will be forced to make some tough decisions on shifting their spending priorities, compensating their employees, expanding their reliance on user fees, and cutting back on certain services. Local officials will have to take a more business-like approach to running government, searching for ways to pare expenses and operate more efficiently. They also will have to take

"There is really pressure on both sides. Demands for services, demands for schools, demands from different agencies. There is pressure on the other side from taxpayers not to increase taxes. I know we're being stretched like a rubber band."

—LARRY MEADOWS, JONES COUNTY MANAGER

a hard look at the services they offer, perhaps deciding that it's better to contract out or privatize certain government programs.

But many questions remain about the recent trend toward lower taxes. Will local governments be able to cut taxes without substantial reductions in services? Will the public continue to support tax cuts if popular services are reduced? What effects will the cutbacks have on long-range planning by local governments? Will the reductions lead to the deterioration of road, bridges, and other infrastructure? We won't know the answers to some of these questions, such as the effects on infrastructure, for many years. But the answers to other questions, such as the depth of public support for downsizing, may come as soon as this fall—when voters return to the polls. ■

FOOTNOTES

¹ Although elections are nonpartisan for school boards and most city councils in North Carolina, political parties have become much more active in supporting candidates in local campaigns in recent years—particularly in larger cities such as Charlotte and Raleigh. Elections are partisan for boards of county commissioners.

² Monthly reports of building permit activity, 1985–1995, Wake County Tax Assessor's Office, Raleigh, N.C. For a discussion of building activity in Wake County, see Steve Riley and Carrick Mollencamp, "Great expectations," *The News & Observer*, Raleigh, N.C., Oct. 23, 1994, p. 1A.

³ Office of Policy and Planning, *North Carolina Population Projections*, N.C. Department of Administration, Raleigh, N.C., 1994. For more discussion, see Sally Hicks, "Triangle forecast: big and bigger," *The News & Observer*, Raleigh, N.C., June 29, 1995, p. 1A.

⁴ Lee M. Mandell, "Results of the 1995 North Carolina Municipal Tax Rates and Budget Adjustments Survey," report published by the N.C. League of Municipalities, Raleigh, N.C., August, 1995. The league surveyed cities and towns during July and August of 1995, with responses received from 488 of the state's 522 municipalities (93.5 percent). The league received 468 responses to its question about budget actions.

⁵ N.C. Association of County Commissioners, *Comparison of Actual County General Property Tax Rates: FY 1988–FY 1995*, Vol. 15 (Aug. 21, 1995), p. 6.

⁶ Howard, Merrell & Partners and Ken Eudy Communications, *Wake County Customer Satisfaction Survey*, conducted for Wake County government, Raleigh, N.C., December 1994. The survey was based on interviews with 725 county residents between Feb. 23 and March 4, 1993, with a margin of error of +/- 3.6 percent.

⁷ FG*I Research, Chapel Hill, N.C., "Triangle Poll," conducted for *The News & Observer*, Raleigh, N.C., July 1995.

⁸ Debbi Sykes, "Tax cut protestors give money back to the county," *The News & Observer*, Raleigh, N.C., Oct. 3, 1995, p. 3B.

⁹ Donald A. Hayman, "The County Manager," essay in *County Government in North Carolina*, 3rd Edition, edited by A. Fleming Bell II, Institute of Government, University of North Carolina at Chapel Hill, 1989, p. 18.

¹⁰ Tim Vercellotti and Todd Silberman, "Continuing popularity, budget austerity impose new demands," *The News & Observer*, Raleigh, N.C., July 26, 1995, p. 1A.

¹¹ Margot Christensen, "Downsizing, rightsizing, cutback management, privatizing, re-engineering: Call it what you like, Tar Heel cities and towns are old hands at trimming the cost of government," *Southern City*, N.C. League of Municipalities, Vol. XLV, No. 2 (February 1995), pp. 6–7.

¹² Wake County, North Carolina, Annual Budget, 1995–96, p. IX. Also see Wade Rawlins, "Wake taxes could fall 17%," *The News & Observer*, Raleigh, N.C., May 23, 1995, p. 1A.

¹³ Wade Rawlins, "Residents put Wake tax cuts into human terms," *The News & Observer*, Raleigh, N.C., June 6, 1995, p. 1A.

¹⁴ Wake County Property Tax Records, 1995, Wake County Revenue Collector's Office, Raleigh, N.C. See Wade Rawlins, "Wake cuts are kindest to corporate taxpayers," *The News & Observer*, Raleigh, N.C., May 25, 1995, p. 1A.

¹⁵ Wade Rawlins, "Panel to study hiring businesses for county work," *The News & Observer*, Raleigh, N.C., Oct. 19, 1995, p. 3B.

¹⁶ Rawlins, note 13 above.

¹⁷ Vercellotti and Silberman, note 10 above.

¹⁸ *Ibid.*

¹⁹ Rawlins, note 13 above.

²⁰ Wade Rawlins, "3 libraries at risk in Wake County," *The News & Observer*, Raleigh, N.C., May 10, 1995, p. 1A.

²¹ Rawlins, note 13 above.

²² 1995–96 City of Raleigh budget.

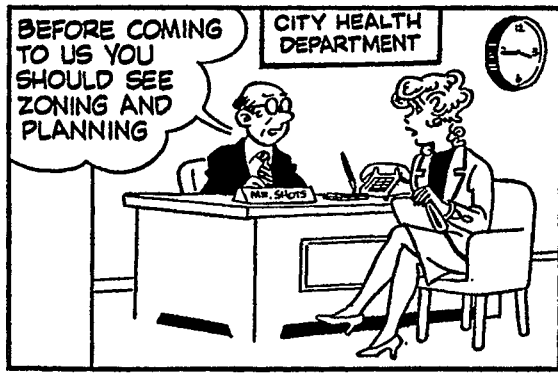
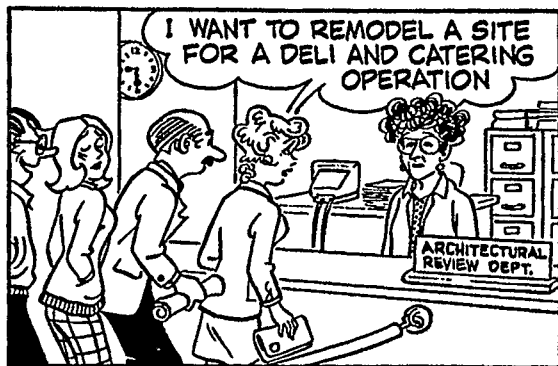
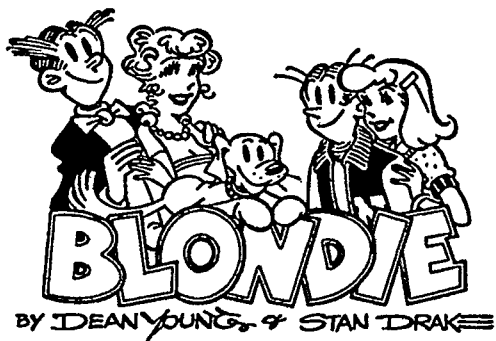
²³ Rawlins, note 15 above.

²⁴ Raleigh Police Department, Crime Analysis Section, *1994 Annual Summary*, pp. 4–9. According to the report, the number of drug arrests grew from 1051 in 1990 to 2025 in 1994, an increase of 92.6 percent, and the number of drug violation cases grew from 1182 in 1990 to 2273 in 1994, an increase of 92.3 percent. Those increases can be attributed to increased criminal activity as well as greater police surveillance and different reporting methods.

²⁵ Bob Murphy and Craig Hayes, *North Carolina Agricultural Statistics 1995*, published jointly by the North Carolina and United States Departments of Agriculture, 1995, p. 61. For a discussion of North Carolina's growing hog population, see Joby Warrick and Pat Stith, "The Power of Pork," a five-part series in *The News & Observer*, Raleigh, N.C., Feb. 19–26, 1995.

²⁶ Ken Otterbourg and Mike McLaughlin, "North Carolina's Demographic Destiny: The Policy Implications of the 1990 Census," *North Carolina Insight*, Vol. 14, No. 4 (August 1993), p. 6.

²⁷ *Ibid.*, p. 18.



Who's in Charge?

How the Federal, State, and Local Governments Allocate Responsibilities

by Art Eisenstadt

The administration of public schools is a good place to examine the question: Which level of government is best suited to handle certain responsibilities? In the case of the schools, North Carolina legislators have decided that local governments are most up to the task. The N.C. General Assembly passed legislation in 1995 that will shift dramatically the authority for managing public schools from the state Department of Public Instruction to local school boards. That change is an example of a broad movement toward the decentralization of federal and state governments. But such movements have come and gone in the past, as many citizens recognize that federal, state, and local governments each have advantages for handling different tasks. Meanwhile, even though the federal government is now shifting power to the states, the state of North Carolina still controls the purse strings for its 525 cities and 100 counties.

Reformers who advocate devolving or decentralizing the management of public schools from the state to the local level finally have prevailed in North Carolina education policy. Part of the reason is people like Nancy Farmer.

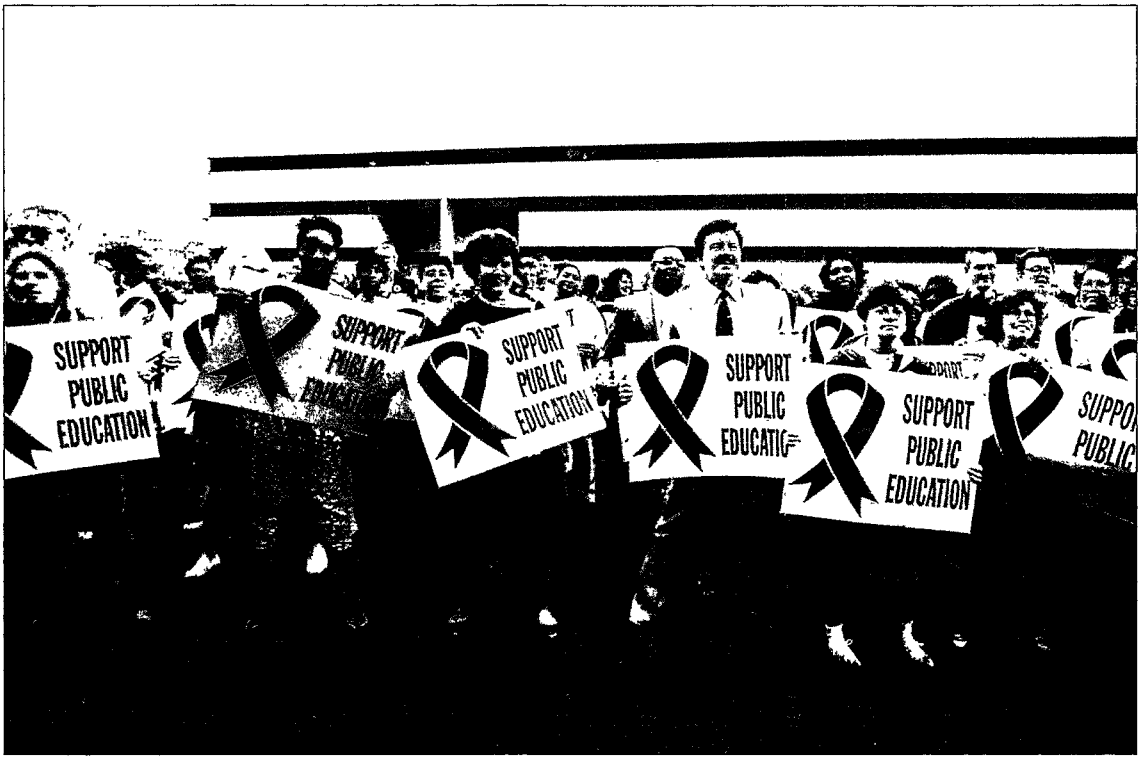
Farmer, a former teacher and principal, joined the staff of the N.C. Department of Public Instruction (DPI) in 1985. There she earned a statewide reputation among professional educators as an exceptionally competent and creative specialist in middle-school curricula. In 1991, Farmer left DPI to become associate superintendent for curriculum services in the Pitt County school system. She now holds a similar position with the Orange County

school system, and professes no doubt that the road that has taken her from Raleigh to Greenville to Hillsborough was the right professional path.

"If you're asking me whether I can make a greater difference at the state or the local level—right now, I don't think there's any question that it's at the local," Farmer says. "I belong at the local level. That's the role I want to play."

Farmer hastens to add that the state still has an essential role in setting education policy. But local educators like her soon will have greater authority in running the public schools under several new laws that the N.C. General Assembly enacted in 1995. The legislation requires the State Board of Education to examine the structure of public schools with the goal of increasing local flexibility and control of education. Under the laws, the decision-making authority for operating North

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Karen Tam

Demonstrators rally in support of funding for the public schools during the 1995 session of the General Assembly.

Carolina's nearly 2,000 public schools will begin to shift from the state Department of Public Instruction (DPI) to the local school systems.¹

The legislation also required the State Board of Education to reduce the DPI's staff and budget by 50 percent, with the goal of transforming it from a quintessentially *regulatory* to a primarily *service* agency. Another change vested the appointed State Board of Education—as opposed to the superintendent of public instruction, who is elected statewide—with the primary responsibility for setting public school policy in North Carolina. Taken together, the most significant aspect of the new laws was to give local educators—including the 100 county and the 19 remaining city boards of education—more authority to make autonomous decisions on how to reach designated state educational standards.²

The act makes perhaps the most dramatic change in official responsibility for school governance since the Great Depression, when the N.C. General Assembly passed a series of educational reforms in 1931 and 1933. Those laws made the state largely responsible for overseeing and funding school operations—including paying for most of teachers' salaries and personnel costs—while giv-

ing counties the responsibility for providing and paying for buildings and other physical needs. Today, public schools in North Carolina receive a much higher proportion of their funding (67 percent) from state tax revenues than in most states, where the norm is to fund education through local property taxes. (See Table 1 on p. 22.) The state of North Carolina also assumes more of the responsibility for roads and prisons than do most states.³

There were some significant exceptions to that division of responsibilities. Counties retained the right to supplement state appropriations, particularly for teachers' salaries. Plus, the legislature periodically has approved dedicated state taxes and bond issues for school construction, most recently with a statewide school construction fund that was expected to generate \$830 million over 10 years when it was enacted in 1987.⁴ The 1996 session of the N.C. General Assembly is likely to authorize a statewide school-bond referendum, due in part to the failure of 10 of the 29 local school-bond issues put before the voters since Jan. 1, 1993.⁵ (See Table 2 on p. 29.) Nevertheless, the fundamental division of fiscal and philosophical responsibilities for public education had remained unchanged for more than six decades—until 1995.

"Leave to private initiative all the functions that citizens can perform privately while encouraging a partnership between local governments and the business community in all possible ways. Use the level of government closest to the people for all the public functions possible. Utilize intergovernmental agreements where appropriate to attain economical performance and popular approval. Reserve national action for those areas where state and local governments are not adequate and where continuing national involvement is necessary."

—N.C. ASSOCIATION OF COUNTY COMMISSIONERS, POLICY STATEMENT ON BASIC GOVERNMENTAL PHILOSOPHY

Changes in School Administration Part of a Broad Decentralization Movement

In some respects, North Carolina's public schools are simply following a nationwide movement away from large, inflexible bureaucracies in an era of rapid technological, economic, and social change. The N.C. Department of Public Instruction faces downsizing pressures similar to those affecting many large corporations in the United States. But North Carolina educational policy also is caught up in a national political philosophy that maintains that states can govern more effectively (or at least no worse) than the federal government. By extension, under this belief, local governments ought to manage the public's business even more effectively than the states because they are closer to the people affected.

"We didn't have this in mind at all when we started in this direction," says Jay Robinson, chair of the State Board of Education, who began arguing for more local responsibility for governing schools when he became the superintendent of Charlotte-Mecklenburg system about 20 years ago. "But I think it's part of a trend across this country: pushing more [federal] government authority down to the state level, and more state government [authority] down to the city-county level."

The concept is as current as the views of U.S. Rep. Newt Gingrich (R-Ga.), the speaker of the U.S. House of Representatives, who has cap-

sulized his vision of the new federalism by saying, "We believe you can trust the 50 states and the 50 state legislatures to work together in behalf of the citizens of their states."⁶

Congressional candidates have had so much success selling the notion that the problem is Washington—the city they spend millions of dollars to reach—that some state legislative candidates began talking the same way about Raleigh during the 1994 campaign. The N.C. Republican Party's "New Contract" with the people of North Carolina, supported by most of its legislative candidates in the 1994 election, included planks calling for granting "effective control of public schools to local boards of education" and a prohibition on unfunded state mandates on local government.⁷ The latter provision foundered as part of a broader, more controversial budget-reform act that did not pass in the 1995 session.⁸ But the legislature did enact a law that requires fiscal notes providing cost estimates for all bills and executive rules affecting local governments.⁹ (For a more detailed discussion of how the N.C. Republican Party's state Contract fared in the 1995 legis-

lature, see the article, "Republican Lawmakers Work to Deliver on Their Contract," on p.102.)

The idea that lower levels of government are more responsive to the public, however faddish, is hardly new in our nation's history. Charles D. Liner of the Institute of Government at the University of North Carolina at Chapel Hill writes that the "decentralization of governmental responsibilities reflects

"What, one feels compelled to ask, gives the states a special connection to the people in an era when airlines and interstate highways mean that most Americans cross state borders without thinking about it? . . . Are states necessarily wiser? More efficient? More frugal?"

—R.W. APPLE JR.

COLUMNIST, *THE NEW YORK TIMES*

American history and our democratic traditions and ideals. . . . Governmental organization in all states was further influenced by the early nineteenth-century ideals of Jacksonian democracy—in particular the ideal that government, to be responsive to the people—should be as close as possible to the people and directly accountable to the people, and by the frontier values of self-reliance and independence.”¹⁰

Public Has Mixed Feelings on Federalism

But is the best government necessarily at the level that is closest to the people? Not always. Some political commentators question the logic behind claims that state governments always are more efficient than the federal government, or that local governments always are more efficient than the states. As *Business Week* states in a recent article, “those who now look to states for the answers to Washington’s problems should remember that many local bodies can be as bureaucratic and inefficient as the feds—and often far more corrupt. Few states can point with pride to their stewardship over public education, long under their purview.”¹¹ Columnist R.W. Apple Jr. of *The New York Times* has voiced similar views: “What, one feels compelled to ask, gives the states a special connection to the people in an era when airlines and interstate high-

ways mean that most Americans cross state borders without thinking about it? . . . Are states necessarily wiser? More efficient? More frugal?”¹²

Similar questions can be asked of local governments.¹³ A number of observers have questioned why there are so many county governments in many states. For example, North Carolina has nearly twice as many counties as California (100 to 58), yet less than one-third the population (6.6 million to 29.8 million, in the 1990 U.S. Census.) The large number of counties dates back to colonial days, when boundaries were established so that citizens could easily travel by horseback to their county seat. Yet the proliferation of counties has led to much duplication of government services, while improved transportation and communication in modern times could make it more efficient to decrease the number of counties. “We’ve got too darn many counties in North Carolina,” writes Rob Christensen in *The News & Observer* of Raleigh. “. . . Does this make sense in an era when government is downsizing, from Congress to the Wake County courthouse?”¹⁴

The public as well has mixed views on how responsibilities should be divided among the levels of government, according to a recent nationwide poll for the nonpartisan Council for Excellence in Government.¹⁵ The survey, conducted by Democratic pollster Peter Hart and Republican pollster Robert Teeter, found that a strong majority believes that

Orange County Courthouse, Hillsborough, circa 1925



**Table 1. Percentage of Public School Revenues from
State Government, FY 1992**

Rank	State	Percent of School Revenues from State	Rank	State	Percent of School Revenues from State
1.	Hawaii	92.4%	26.	Pennsylvania	46.9
2.	New Mexico	75.8	27.	Texas	44.8
3.	Washington	74.0	28.	Montana	44.5
4.	Kentucky	69.4	29.	Tennessee	44.4
5.	Delaware	67.6	30.	Ohio	42.7
6.	North Carolina	67.0	31.	Wisconsin	42.0
7.	West Virginia	66.9	32.	Arizona	41.6
8.	California	66.5	33.	Kansas	41.5
9.	Alabama	65.1	34.	Connecticut	40.4
10.	Alaska	63.6	35.	Rhode Island	40.0
11.	Idaho	63.5	36.	Colorado	39.5
12.	Oklahoma	62.9	37.	New Jersey	39.0
13.	Arkansas	62.8	38.	Maryland (tie)	38.7
14.	Utah	57.1		Nevada (tie)	38.7
15.	Indiana (tie)	56.1	40.	New York	38.4
	Louisiana (tie)	56.1	41.	Missouri	37.9
17.	Georgia	52.9	42.	Vermont	37.4
18.	Mississippi (tie)	52.5	43.	Michigan	35.5
	Wyoming (tie)	52.5	44.	Illinois	35.4
20.	Iowa	52.0	45.	Massachusetts	33.6
21.	Florida	51.8	46.	Virginia	33.2
22.	Minnesota	51.6	47.	Oregon	26.8
23.	South Carolina	51.5	48.	Nebraska	26.7
24.	Maine	48.3	49.	South Dakota	26.0
	United States (avg.)	48.3	50.	New Hampshire	7.6
25.	North Dakota	47.8			

*Source: "State Shares Dropping Again This Year,"
State Policy Reports, Vol. 10, No. 11 (June 1992),
p. 5.*

power generally should be concentrated in the states (64 percent) rather than the federal government (26 percent). Yet when asked which level should handle *specific* governmental functions, significant pluralities favored either the states or the federal government over local governments for: administering welfare (40 percent state; 38 percent federal; 17 percent local); providing opportunities for minorities (35 percent federal; 30 percent state; 28 percent local); and protecting air and water quality (40 percent state; 35 percent federal; 22 percent local). (See the related article, "What Polls Have Shown About Public Attitudes on the Division of Government Responsibilities," on p. 36.)

Notably, respondents had more confidence in the states than local governments for overseeing public education, although both levels ranked sig-

nificantly ahead of Washington (47 percent state; 30 percent local; 21 percent federal). More than twice as many favored a preeminent state role in employment and job-training policy over either local or federal primacy (59 percent state; 24 percent local; 15 percent federal). Only in law enforcement did even a plurality put local government first (45 percent local; 36 percent state; 15 percent federal).

Although the poll results did not entirely support the concept of decentralization, perhaps the people surveyed recognized that some public responsibilities are more appropriate for certain levels of government than for others. Indeed, a combination of political and practical reasons support the division of responsibilities among federal, state, and local governments.

An issue related to the downsizing or devolution of government is the privatization of public services.¹⁶ Many conservatives and libertarians argue that there are certain roles, such as promoting art, that are beyond the realm of government. Some also contend that there are many services—such as the collection, disposal and recycling of solid waste—that the private marketplace can handle better than government in many circumstances. As with decentralization, public opinion is mixed on privatization. In a recent nationwide poll by Luntz Research Companies, 55 percent of the respondents said that privatization was a good thing while only 24 percent said it was bad.¹⁷ The same poll, however, found that the public was divided nearly evenly on the question of government involvement: 46 percent said that state governments are trying to do too many things that should be left to individuals, while 42 percent said state governments

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Jay Robinson, chair of the State Board of Education.

The Federalism Debate: A Set of Principles

by Ran Coble

Public interest blows hot and cold regarding the concept of federalism. In the strictest sense, federalism deals with the division of powers between the federal and state governments, but the term is often used more broadly—as in this article—to include state relations with local governments as well. Federalism was a hot topic in the early days of the Republic in the 1780s, in the Reconstruction era following the Civil War, and in the Roosevelt Administration's response to the Great Depression of the 1930s. More recently, the debate was sparked by the Reagan Administration's new federalism of the 1980s. And now, the fires have rekindled in the aftermath of the 1994

elections that brought Republicans to power in Washington and Raleigh.

Once again, leaders have begun promoting federalism as a way to reduce federal spending and shift the balance of power from the federal level toward the state and local governments. In the current debate, both Congress and state legislatures are trying to unload their most expensive programs on each other. For example, many state officials advocate placing all of the ever-increasing Medicaid costs in the federal budget, while Congress contends that the states should take total fiscal responsibility for welfare programs such as food stamps and the Aid to Families with Dependent Children. Conspicuously absent from the federalism debate is a set of principles that can guide officials in allocating responsibilities among the levels of government. So, I pose the following questions as ways to illustrate such principles.

Ran Coble is the executive director of the North Carolina Center for Public Policy Research. This article is adapted from a piece originally published in North Carolina Insight, Vol. 5, No. 1 (May 1982), pp. 22–23.

A highway crew in Rocky Mount during the 1930s, when the state government assumed responsibility for most road construction.



N. C. Division of Archives & History

"It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country."

—LOUIS D. BRANDEIS,
FORMER U.S. SUPREME COURT JUSTICE

Principles in Favor of Programs Being Handled by the Federal Government

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

2 *Is the program one where national uniformity is important or where some national minimum of services is needed?* Groups such as the Advisory Commission on Intergovernmental Relations and the National Governors' Association have supported this principle in arguing that welfare programs should rest at the federal level in order to assure a minimum guaranteed income and to discourage recipients from crossing state lines to receive higher welfare benefits.

3 *Is the program one of protecting citizens' rights that are based in the United States Constitution?* This principle serves to protect certain rights, regardless of one's state or

county of residence, through the jurisdiction of the federal courts. Minority races, women, persons with disabilities, and others rely on this principle in seeking federal protection of their civil rights.

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

Principles in Favor of Programs Being Handled by the State Governments

5 *Is the program one in which using the states as laboratories for experimentation is especially applicable?* This principle is grounded in the fact that some programs are so new that part of the legislative debate concerns whether the program might work or how well. No-fault automobile insurance and state lotteries, for example, were tested first at the state level.

6 *Is the program particularly susceptible to regional differences or conditions?* For example, states seem better suited than the federal government to pursue economic development programs because governors are more likely to understand the changing industrial mix of their regions. (Consider the changing importance of tobacco, poultry, hogs, textiles, furniture, microelectronics, pharmaceuticals, and the Global TransPark in North Carolina.) Unemployment insurance is another program where federal responsibilities might shift to the state because regional and state employment conditions vary so much.

7 *Would the program be too expensive to run if it were offered by all local units?* In other words, do economies of scale argue against 100 universities or 100 rural health clinics in North

—continues

The Federalism Debate

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Carolina? In the same manner, the number of mentally retarded citizens may be too small in some areas to justify having mental health centers in each county, so North Carolina has opted for regional mental health programs and a few state institutions.

8 *Does the program need to be close to the people because it affects basic rights or property, but involves regulatory functions too big for counties to handle?* Coastal area management is a good example of this principle. Although strong local input is needed for this program, the state should assume primary responsibility to finance it as well as to guarantee uniform standards among the 20 coastal counties.

Principles in Favor of Programs Being Handled by Local Governments

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

10 *Is the program one where face-to-face contact or administration is necessary?* Job training is an example of such a program that has long been funded and administered at federal and state levels but perhaps is best suited to local government. Simply put, counties are most familiar with the industries in their area and the skills and educational levels of their citizens.

11 *Since the counties are saddled with the least popular revenue source (the property tax), should they be given programs that are either the most popular or the most likely to receive public scrutiny?* Water and sewer services, fire protection, and public health programs fall into this category and are mostly handled at the county level.

Conclusion

Before asking such questions, however, it might be best to consider the issue of privatization. That is, are there certain roles that are beyond the realm of government, or that the private marketplace can handle better or share with government? Warren J. Wicker of the Institute of Government at the University of North Carolina at Chapel Hill writes that before lawmakers allocate responsibilities among the levels of government, they first ought to consider the following questions: "Is the function one that should be performed by government?" and "Is the function one that should be performed exclusively by government, or is it one that may be performed properly by the private sector as well as by government?"¹

Another point to consider is that programs may shift from one level of government to another, as illustrated by the development of transportation systems in the United States. The federal government had the primary responsibility in the early years of each major mode of transportation in order to create a national network of railroads, interstate highways, and air travel. Now, however, these transportation systems largely have been deregulated, shifted from the public to the private sector, or transferred from the federal government to the states.

One may disagree with some of the principles or examples above. But without some set of guideposts, the latest federalism debate may be dictated by factors such as program costs and what one level of government wants to unload on another. The philosophical and economic issues underlying previous federalism debates, from the 1780s to the 1990s, can serve as a basis for establishing lasting principles for today's "new" federalism.

FOOTNOTES

¹ Warren J. Wicker, "Relationships between Counties and Municipalities," in *State and Local Government Relations in North Carolina*, edited by Charles D. Liner, Institute of Government, University of North Carolina at Chapel Hill, 1995, p. 42.

"What local governments may do is determined fundamentally by the General Assembly, through either general laws or local acts, not through constitutional procedures."

—JACK D. FLEER

WAKE FOREST UNIVERSITY

—continued from page 23

should do more to help solve the problems of communities. (See the article, "What Polls Have Shown About Public Attitudes on the Division of Government Responsibilities," on p. 36.)

Is There an Optimal Division of Responsibilities Among Levels of Government?

But in many cases where government involvement is necessary or customary, how do we determine which level of government should handle different functions and responsibilities? A federal role may be most appropriate for programs that have no internal borders (national defense is the most obvious example), require some degree of national uniformity, involve protection of citizens' constitutional rights, or are unusually costly. The states perhaps are best suited to administer programs that could benefit from experimentation or fulfill differing needs according to regional conditions, but are too broad and expensive to be handled efficiently or effectively by localities. (See Table 3 on p. 30 for a summary of how the U.S. Constitution has divided key powers between the federal government and the states.) Local governments perhaps are best able to handle activities that are heavily influenced by discrete community standards and priorities, require frequent face-to-face contact between citizens and officials, or are essential for daily living and community safety. (See Table 4 on p. 32 for a summary of how the N.C. General Assembly has allocated responsibilities to the counties and cities in North Carolina. Also see the related articles, "The Federalism Debate: A Set of Principles," on p. 24, and "Dillon's Rule and Home Rule: Two Models for

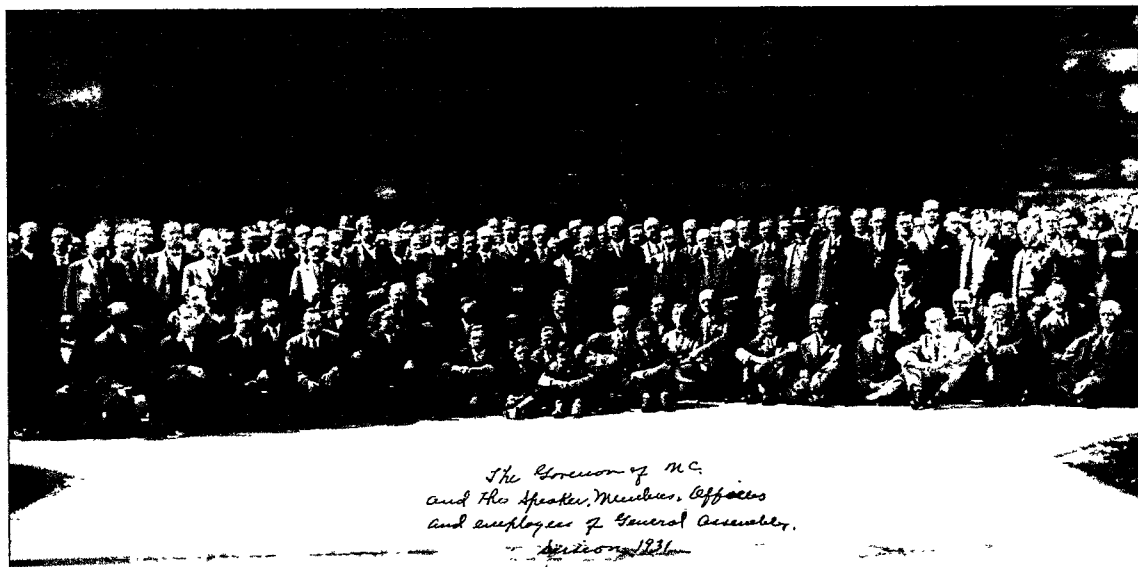
State-Local Government Relations," on p. 34.)

These distinctions—whether by design or through accidents of history—roughly approximate the division of responsibilities that has evolved among the levels of government in North Carolina. Tar Heels tend to have a love/hate relationship with the federal government. Politicians here of both parties often have attacked or resisted the massive expansion of federal programs since the Depression. They also have questioned the federal government's authority in areas such as civil rights, voting rights, welfare, education, and environmental protection—although a more benign view is surely taken by an unknown but presumably significant percentage of people who benefit from federal services. But virtually nonexistent is the officeholder who questions the importance of U.S. military bases or other federally funded programs that benefit North Carolina, such as the tobacco-support program, Medicare, Social Security, and the Agricultural Extension Service.

Relations among the state, county, and municipal governments are more complex but still based on enduring historical and political principles. North Carolina has had a tradition of unusually centralized state government since colonial days.¹⁸ Counties were formed by the legislature as administrative sub-units that could provide more efficiently selected services mandated by the state, such as schools, roads, public health, and jails. Municipal governments developed more slowly in this rural state, as growing urban populations gradually began to require such services as police and fire protection, sanitation, and recreation.¹⁹

The various drafts of the N.C. Constitution, including the 1868 edition that is still largely in effect, say very little about local government.²⁰ "What local governments may do is determined

... [V]irtually nonexistent is the officeholder who questions the importance of U.S. military bases or other federally funded programs that benefit North Carolina, such as the tobacco-support program, Medicare, Social Security, and the Agricultural Extension Service.



The 1931 session of the N. C. General Assembly, shown here in front of the State Capitol, greatly expanded the state's control over local governments.

fundamentally by the General Assembly, through either general laws or local acts, not through constitutional procedures," observes Jack D. Fleer, a political scientist at Wake Forest University.²¹

Nevertheless, the legislature has been rather generous in delegating power to its local governments. The national Advisory Commission on Intergovernmental Relations compiled an index in 1981 that ranked North Carolina behind only Oregon and Maine in the overall degree of autonomy it granted to cities and counties. Local governments in North Carolina had among the greatest amount of discretion in areas such as governmental structure, function, and personnel, but had less freedom in financial matters, according to the commission.²²

Depression Spurred a Shift in Power from Local Governments to the State

Yet the power of the purse is considerable. The state took over effective control of schools, roads, and prisons during those activist Depression-era sessions, and turned the tax structure almost on its head. Whereas two-thirds of combined state and local tax revenues were collected and allocated by cities and counties prior to 1931, two-thirds were collected and allocated by the state after 1933. The state's share today is about three-fourths.²³

"To say that North Carolina's system of governmental finance was revolutionized during the legislative sessions of 1931 and 1933 is no exaggeration," Charles Liner of the UNC Institute of

Government writes. "... No other state responded to the economic conditions of the depression with such sweeping, radical changes."²⁴

The transformation of the 1930s was largely driven by fiscal necessity and a popular mandate for greater uniformity in the provision of key services. When the Depression began, local governments perhaps were in worse financial shape in North Carolina than in any other state in the nation. More local governments defaulted in North Carolina than in any other state during the early 1930s. North Carolina also had the nation's second-highest rate of indebtedness—exceeded only by New York—in fiscal year 1930–31, when debt service totaled more than one-fourth of the state's budget.²⁵ The N.C. General Assembly responded to these problems in the 1931 and 1933 sessions with changes in the following areas:²⁶

- **Public Schools.** The state assumed responsibility for school operating expenses throughout the state, with local governments retaining authority for building and maintaining school buildings. The legislature abolished all local school taxes, but granted counties the authority to reenact supplemental local school taxes by popular vote.
- **Highways and Roads.** The legislature repealed all local taxes for roads, with the State Highway Commission assuming the responsibility for roads and highways outside municipal boundaries.
- **Prisons.** The state assumed much of the responsibility for financing and administering county

**Table 2. Results of School Bond Referendums in
North Carolina, 1993-95**

Election Date		Counties That <i>Passed</i> Bond Referendums and Amount		Counties That <i>Failed</i> to Pass Bond Referendums and Amount	
1.	March 16, 1993	Catawba	\$33,117,000		
2.	April 27, 1993	Buncombe	\$34,500,000		
3.	June 8, 1993	Wake	\$200,000,000		
4.	Aug. 31, 1993			Stanly	\$22,000,000
5.	Nov. 2, 1993	Currituck	\$16,000,000		
6.				Iredell	\$36,285,000
7.				Madison	\$10,200,000
8.		Mecklenburg	\$192,000,000		
9.		Rowan	\$44,000,000		
10.	Dec. 14, 1993	Chatham	\$15,000,000		
11.	March 8, 1994	New Hanover	\$39,900,000		
12.	March 29, 1994	Lincoln	\$20,100,000		
13.	May 3, 1994			Cabarrus	\$81,000,000
14.				Guilford	\$198,000,000
15.				Haywood	\$23,075,000
16.	Sept. 13, 1994			Nash	\$35,000,000
17.	Sept. 19, 1994			Cherokee	\$11,000,000
18.	Nov. 8, 1994	Carteret	\$29,000,000		
19.		Onslow	\$40,000,000		
20.		Union	\$18,000,000		
21.	March 14, 1995			Pitt	\$31,800,000
22.	May 23, 1995	Chatham	\$15,000,000		
23.	May 30, 1995			Mecklenburg	\$304,267,000
24.	July 31, 1995	Forsyth	\$4,180,000		
25.	Nov. 7, 1995	Craven	\$17,050,000		
26.		Davie	\$7,635,000		
27.		Forsyth	\$94,000,000		
28.		Johnston	\$50,000,000		
29.		Mecklenburg	\$217,000,000		
Totals:		Passed 19 referendums	\$1,086,482,000	Failed 10 referendums	\$752,627,000

Source: N.C. Department of State Treasurer

**Table 3. Distribution of Major Powers Between
the Federal and State Governments**

The U.S. Constitution mandates that certain powers be shared, allocated to the federal government or the states, or denied to either level of government. Following is a summary of how key responsibilities and powers are divided:

Powers Reserved to the Federal Government	Powers Reserved to the States	Concurrent Powers
Admitting new states	Conducting elections	Borrowing money
Coining money	Establishing local governments	Chartering banks
Conducting foreign relations	Exercising powers not granted to the federal government or denied to the states	Establishing courts
Declaring war		Levying and collecting taxes
Establishing post offices	Ratifying amendments to the U.S. Constitution	Making and enforcing laws
Making treaties	Regulating trade within states	
Protecting patents and copyrights		
Providing an army and navy		
Regulating foreign and interstate commerce		
Regulating weights and measures		

Sources: Adapted from Lewis Lipsitz and David Speak, *American Democracy*, 3rd ed., St. Martin's Press, New York, 1993, p. 123; Stephen Wayne, et al., *The Politics of American Government*, St. Martin's Press, New York, 1995, p. 52; and Peter Woll and Sidney Zimmerman, *American Government: The Core*, 2nd ed., McGraw-Hill Inc., New York, 1994, p. 72.

prisons because inmates at that time were used for road construction and maintenance.

- **Sales Tax.** In order to pay for the state's increased responsibilities, the legislature enacted a 3-percent state sales tax, one of the first in the nation.
- **Property Tax.** The fiscal actions taken by the legislature reduced property tax revenues by 43 percent from 1931 to 1934.
- **State Supervision of Local Finances.** The legislature created the Local Government Commission to review all proposed bond and note issues by local governments and to supervise local accounting and fiscal practices.

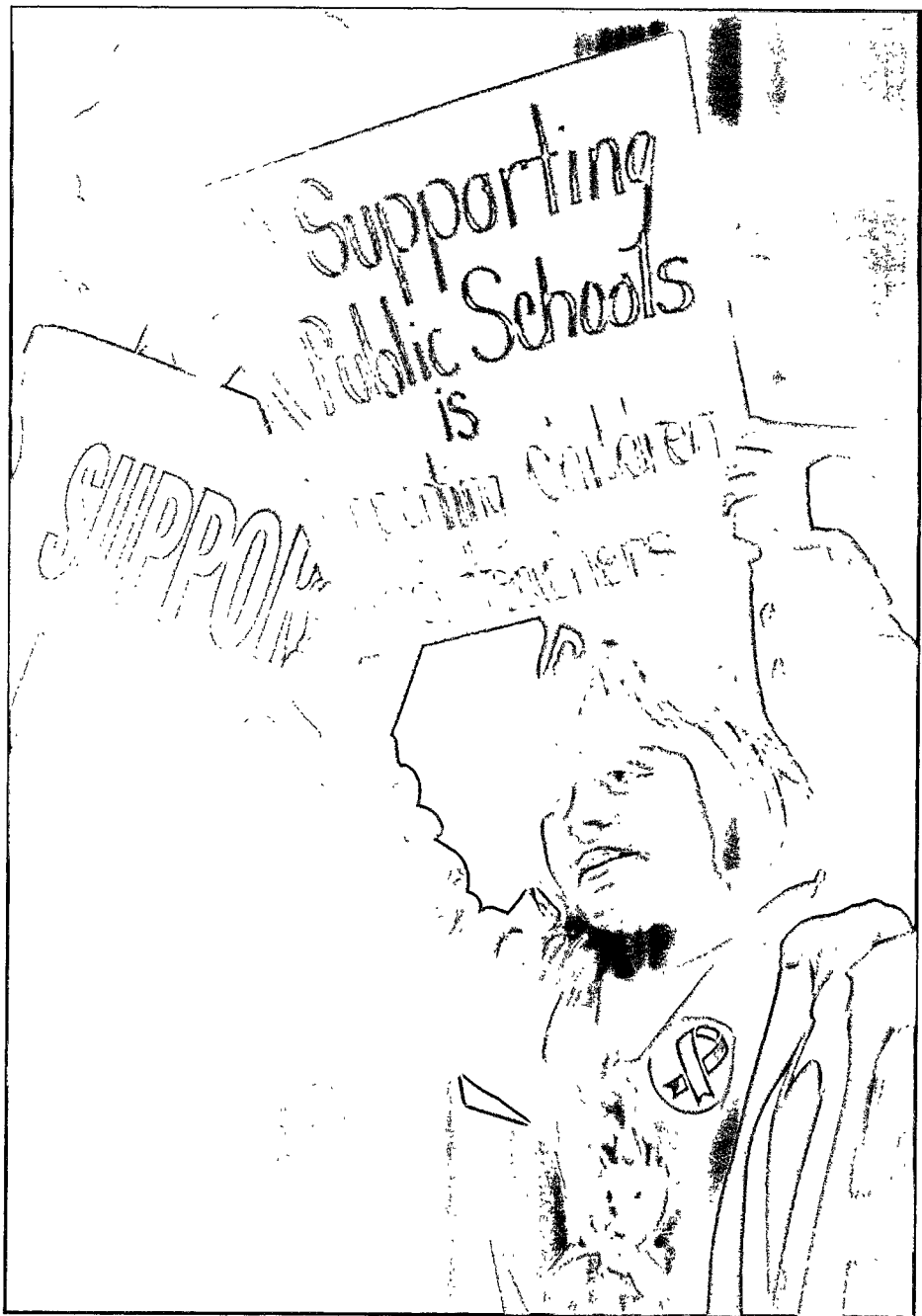
Further centralization occurred in the 1960s, when the state—driven by the need for legal and procedural reform—took over exclusive responsibility for the courts. Growth in environmental and non-federal social services programs over the last generation or so has been largely driven by state and federal mandates but administered by local governments.

Although almost every session of the General Assembly has its share of skirmishes and squabbles between legislators and the state's two major local government organizations—the N.C. Association of County Commissioners and the N.C. League of Municipalities—the executive directors of both

groups describe their members' relations with the state as generally good. Gov. Jim Hunt, both in his first two terms (1977–85) and his current administration (1993–present), has taken pains to reach out to cities and counties. "Our operating principle has been to work with local government, try to make things make sense to them, and don't jerk them around," says Stephanie Bass, a deputy policy adviser to the governor who works closely with the

Local Government Partnership Council, an advisory body created by executive order and put under the direction of Lt. Gov. Dennis Wicker.²⁷

Yet the state-local relationship is inevitably affected by timely political considerations that are sometimes contradictory. Despite the Republican legislators' contractual commitment to the concept of local governance, the Republican-controlled House produced legislation—stalled for now by the



Karen Tam

**Table 4. Primary Functions and Services Authorized for
County and City Governments in North Carolina**

Counties only are authorized to perform the following services and functions:

- | | |
|-------------------------------|---------------------------------|
| 1. Agricultural extension | 9. Mental health |
| 2. Community colleges | 10. Public health |
| 3. County homes | 11. Public schools |
| 4. County surveyors | 12. Railroad revitalization |
| 5. Drainage of land | 13. Registers of deeds |
| 6. Forest protection | 14. Social services |
| 7. Juvenile detention homes | 15. Soil and water conservation |
| 8. Medical examiners/coroners | |

Cities only are are authorized to perform the following services and functions:

- | | |
|---------------------|------------------------|
| 1. Cable television | 5. Sidewalks |
| 2. Cemeteries | 6. Street lighting |
| 3. Electric systems | 7. Streets |
| 4. Gas systems | 8. Traffic engineering |

Both counties and cities are authorized to perform the following services and functions:

- | | |
|---|--|
| 1. Aging programs | 23. Inspections |
| 2. Air pollution control | 24. Jails |
| 3. Airports | 25. Law enforcement |
| 4. Alcoholic rehabilitation | 26. Libraries |
| 5. Ambulance services | 27. Manpower |
| 6. Animal shelters | 28. National Guard |
| 7. Armories | 29. Off-street parking |
| 8. Art galleries and museums | 30. Open spaces |
| 9. Auditoriums and coliseums | 31. Parks |
| 10. Beach erosion control
and hurricane protection | 32. Planning, land use |
| 11. Buslines and public
transportation systems | 33. Ports and harbors |
| 12. Civil defense | 34. Public housing |
| 13. Community action | 35. Recreation |
| 14. Community appearance | 36. Rescue squads |
| 15. Community development | 37. Senior citizens programs |
| 16. Drug abuse programs | 38. Sewage collection and disposal |
| 17. Economic development | 39. Solid waste collection and
disposal |
| 18. Fire protection | 40. Storm drainage |
| 19. Historic preservation | 41. Urban redevelopment |
| 20. Hospitals | 42. Veterans' services |
| 21. Human relations | 43. Water |
| 22. Industrial promotion | 44. Watershed improvement |

Source: Warren J. Wicker, "Relationships between Counties and Municipalities," in *State and Local Government Relations in North Carolina*, Charles D. Liner, ed., Institute of Government, University of North Carolina at Chapel Hill, 1995, p. 37.

Senate—that would have restricted cities' and counties' authority to regulate billboards, guns, and land use. Republicans also pushed through a series of bills dictating requirements for local school systems. The 1995 legislature passed education bills that: require public schools to teach students abstinence from sex until marriage;²⁸ encourage students to recite the Pledge of Allegiance;²⁹ encourage public schools to provide a daily moment of silence;³⁰ and establish an "Eddie Eagle" gun-safety program sponsored by the National Rifle Association.³¹

State officials are waiting warily for Congress to decide how much more autonomy—and less money—they will get in block grants to administer welfare programs, leaving county officials understandably anxious about what bags they'll be left to hold. Ron Aycock, executive director of the county commissioners' association, notes: "It is too early to say how welfare is going to be adapted, but a central theme that I see is that there ought to be the same sort of devolution of authority to the county level from the General Assembly that we saw on the school issue."

State Still Has a Large Role in Public School Administration

The subject of schools offers a cautionary note. Notwithstanding the clear philosophical directive in the 1995 legislation that shifted power from the DPI to local school boards, the legislature left several critical issues unresolved.

Even as the state cedes more discretionary authority to local school officials, it will almost certainly have to take a more aggressive role in financing both educational and building expenses for schools in comparatively poor, rural counties.³² The Public School Forum of North Carolina, in its annual report on local school finance, warns: "The difference between financial resources of low wealth and high wealth counties, coupled with alarmingly low levels of student performance in most low wealth counties, provides strong arguments for the attorneys representing the five school

systems which contend that the State's finance system is unconstitutional."³³

John Dornan, the Forum's executive director, says legislators and others who want to increase local control over schools need to be careful about contending that state and local roles in school administration are an either/or proposition. "I think we're losing the balance point in the middle," Dornan says. "If the state says that we really want to be No. 1 in an area like math—if it decides that this is a priority—does the state relinquish to counties the decision to put money into teacher training in this area? Or does it retain some control over how that money is spent?"

Historically, politically and financially, the state-local government relationship in North Carolina has been most effective as a partnership. A strong endorsement of that view comes from Nancy Farmer, the school administrator who acknowledges that she found her professional calling in Orange County, rather than with the state Department of Public Instruction.

"We need both state initiative and state support to go with local initiative," Farmer says. "I personally think we're going to miss a great deal of the services that we had from the state department. The state can facilitate and bring a more diverse perspective—the Manteo-to-Murphy perspective—that we cannot do alone." ☐

FOOTNOTES

¹ The N.C. General Assembly passed several laws that shift authority for administering the public schools. Chapter 6 (Senate Bill 16) of the 1995 Session Laws directed the State Board of Education to reorganize the Department of Public Instruction, recommending a 50-percent reduction in DPI's staff and budget, while increasing local school systems' flexibility and control over public schools. Chapter 72 (House Bill 7) of the 1995 Session Laws clarified that the State Board of Education has authority over the Department of Public Instruction. Chapter 393 (Senate Bill 15) of the 1995 Session Laws transferred from the Superintendent of Public Instruction to the State Board of Education the power to designate DPI policy-making positions as exempt from the State Personnel Act. Chapter 450 (House Bill 6) of the 1995 Session Laws gave local school boards greater flexibility in how they spend state education funds.

² In exchange for broader authority and flexibility, local school systems now will be subject to strict accountability for reaching measurable goals to be set annually by the State Board of Education. Schools and school systems that consistently fall short and reject assistance from DPI specialists will be subject to sanctions up to and including state takeover and dismissal of administrators and school-board members. This movement toward more local control in exchange for more accountability in school systems perhaps began in the 1989 General Assembly with the passage of the Performance-Based Accountability

***Historically, politically, and financially,
the state-local government relationship
in North Carolina has been most
effective as a partnership.***

Program, or Senate Bill 2, now codified under N.C.G.S. 115C-238.

³ Charles D. Liner, ed., *State and Local Government Relations in North Carolina: Their Evolution and Current Status*, 2nd edition, Institute of Government, University of North Carolina at Chapel Hill, 1995, pp. 90 and 115. According to Liner, North Carolina has the largest state-maintained road system in the nation, totaling more than 78,000 miles in 1993. North Carolina also had more state prison units (91) than any other state in 1992.

⁴ The School Facilities Finance Act, Chapter 622 (House Bill 1155) as amended by Chapter 813 (House Bill 1142) of the 1987 Session Laws, generated funds for school construction by raising the corporate income tax from 6 percent to 7 percent, among other changes.

⁵ A bill (H.B. 389) that would schedule a statewide school bond referendum in 1996 passed the N.C. House and Senate in different versions during the 1995 session. The bond issue would total \$500 million under the House bill and \$1.8 billion under the Senate version. Leaders of the two chambers did not appoint conferees to resolve their differences regarding the size of the bond issue and the distribution formula for its revenues before adjourning, but they are expected to do so during the 1996 budget session. Meanwhile, the legislature's School Capital Construction Study Commission is examining the issue as a way of reaching a compromise.

⁶ R.W. Apple Jr., "States of Mind: You Say You Want a

Devolution," *The New York Times*, Jan. 29, 1995, Section 4, p.1.

⁷ For a reprint of the N.C. Republican Party's state-level "Contract," see Mebane Rash Whitman, "The Evolution of Party Politics: The March of the GOP Continues in North Carolina," *North Carolina Insight*, Vol. 16, No. 2 (September 1995), p. 90.

⁸ The Taxpayer Protection Act (House Bill 3) passed both the state House and Senate in 1995, but budget conferees did not develop a compromise bill during the session. The bill, which could be reconsidered in 1996, would: tie the growth of the state budget to inflation and population growth; impose a limit on the state income tax rate; require referendums for the issuance of all state and local bonds; and require legislative approval for the governor to spend money from the state's Rainy Day Fund.

⁹ Chapter 415 (House Bill 895) of the 1995 Session Laws. The act also directs the legislature's Fiscal Research Division to prepare an annual report on the fiscal effects of federal mandates upon the state and local governments.

¹⁰ Liner, note 3 above, p. xv.

¹¹ Kevin Kelly, et al., "Power To The States," *Business Week*, Aug. 7, 1995, p. 50. Also see "Are State Institutions Up To The Job?" *State Policy Reports*, Vol. 13 No. 19 (October 1995), pp. 7-8.

¹² Apple, note 6 above; also see Art Eisenstadt, "Is state government necessarily wiser than federal?" *Winston-Salem Jour-*

Dillon's Rule and Home Rule: Two Models for State-Local Government Relations

by Mebane Rash Whitman

In the United States, the two primary ways of allocating power between the state and local governments are Dillon's Rule and Home Rule. Dillon's Rule provides that local governments have only those powers and duties granted to them by the state legislature. Home Rule, on the other hand, provides that local governments have the authority to act on matters of local concern without seeking permission from the state.

The North Carolina Constitution defines the relationship that exists between the state and local governments in Article VII: "The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions and . . . may give such powers and duties to [them] as it may deem advisable."¹ Thus, the N.C. General Assembly—whose power is limited only by the state Constitution, the U.S. Constitution, and federal laws

and regulations—has almost complete control over local governments in the Tar Heel state.

The N.C. Supreme Court has supported this allocation of authority, ruling that the powers of local governments must be interpreted according to Dillon's Rule.² A common law doctrine, Dillon's Rule limits localities to exercising only those powers granted expressly, necessarily or fairly implied, or indispensable to the declared purpose of such governments. The Court has held further that any fair, reasonable doubt regarding whether a local government has a particular power must be resolved against the local government, thus denying it the power. "Under Dillon's rule, [municipalities] are 'mere creatures of the state, powerless in their own right and dependent on enabling legislation for every

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nal, Feb. 12, 1995, p. A15.

¹³For more on issues facing local governments in North Carolina, see the special issue of *North Carolina Insight* on local government, Vol. 7, No. 1 (June 1984), pp. 2-76.

¹⁴Rob Christensen, "A self-worth test for counties: What's playing at the movies?" *The News & Observer*, Raleigh, N.C., Feb. 27, 1995, p. 3A. Also see Charles Peters, "Tilting at Windmills," *The Washington Monthly*, April 1995, p. 6.

¹⁵Poll conducted by Peter D. Hart and Robert M. Teeter for the Council for Excellence in Government, March 16-18, 1995, in a random telephone survey of 1,003 registered voters nationwide; margin of error, +/-3 percent. Also see "The Dimming American Dream," *State Legislatures* magazine, National Conference of State Legislatures, Denver, Colo., Vol. 21, No. 7 (July/August 1995), p. 7.

¹⁶For more on privatization, see Bill Finger and George Frink, "Public or Private? Getting Down to Business in North Carolina," and related articles in *North Carolina Insight*, Vol. 8, No. 2 (November 1985), pp. 2-21.

¹⁷Luntz Research Companies, poll conducted for KPMG Peat Marwick, May 2-7, 1995. Survey of 1,000 adults nationwide; margin of error +/- 3 percent. As reported in "State Government," *The Polling Report*, Aug. 14, 1995, p. 2.

¹⁸Liner, note 3 above, pp. 3-12.

¹⁹*Ibid.*

²⁰The last substantial revision of the N.C. Constitution took effect on July 1, 1971. It was approved in a voter referendum

on Nov. 3, 1970.

²¹Jack D. Fleer, *North Carolina Government and Politics*, University of Nebraska Press, Lincoln, Neb., 1994, pp. 200-201.

²²U.S. Advisory Commission on Intergovernmental Relations, *Measuring Local Discretionary Authority*, Report M-131, ACIR, Washington, D.C., November 1981, Table 20, p. 59.

²³Liner, note 3 above, pp. 10-12.

²⁴*Ibid.*

²⁵*Ibid.*

²⁶*Ibid.*, p. 11.

²⁷Executive Order 21 (Aug. 12, 1993), as amended by Executive Order 65 (Oct. 20, 1994).

²⁸Chapter 534 (House Bill 834) of the 1995 Session Laws.

²⁹Chapter 455 (House Bill 65) of the 1995 Session Laws.

³⁰Chapter 497 (Senate Bill 140) of the 1995 Session Laws.

³¹Chapter 289 (House Bill 767) of the 1995 Session Laws.

³²Public School Forum of North Carolina, *North Carolina Local School Finance Study*, Raleigh, 1995, p. 2. The N.C. Center for Public Policy Research has examined public school financing in several studies. See Lanier Fonvielle, "Disparity in Public School Financing," *North Carolina Insight*, Vol. 7, No. 1 (June 1984), p. 30; Bill Finger, "Disparity in Public School Financing—An Update," *North Carolina Insight*, Vol. 7, No. 4 (April 1985), p. 44; and Ran Coble, "School Spending Disparities Persist," *North Carolina Insight*, Vol. 12, No. 1 (December 1989), p. 70.

move they make," writes one legal commentator in the *Washburn Law Journal*.³

By contrast, many states grant cities and counties more independence through Home Rule. "The principal characteristic of municipal home rule is the establishment of some degree of municipal autonomy through the vertical allocation of power between state and [municipalities]," writes George Vaubel, a law professor at Ohio Northern University.⁴ This decentralization of governmental powers is advantageous because local governments are more directly accountable to citizens, more responsive to needs and criticisms of constituents, more efficient, and better able to experiment with new approaches to local problems.

The disadvantage of Home Rule, as with any allocation of power, is the danger of abuse. For example, in North Carolina, many local school systems once made overly excessive assignments of teachers to instruct courses outside their field of certification due to a lack of oversight by the state.⁵ One possible solution to such threats in a state with Home Rule is to let the court system scrutinize questionable local

acts under the equal protection clause of the state constitution.⁶ Assuming there are some checks on the power of local governments, the key role they play in the democratic process makes it important to grant them broad authority to carry out their responsibilities.⁷

FOOTNOTES

¹N.C. Constitution, Article VII, Section 1.

²*State v. Gullede*, 208 N.C. 204, 179 S.E. 883 (1935). Also see Eugene McQuillin, 2 *The Law of Municipal Corporations*, Section 10.09 (Callaghan, 3rd Ed. 1988); and David M. Lawrence and Warren J. Wicker, *Municipal Government in North Carolina*, Institute of Government, University of North Carolina at Chapel Hill, 1982, p. 21.

³Tonya O'Hern, "Municipal Corporations: Home Rule—The Power of Local Self-Government and the Effect of State Enabling Legislation," *Washburn Law Journal*, Vol. 30, No. 3 (1991), p. 554, note 2.

⁴George D. Vaubel, "Democratic Government and Municipal Home Rule," *Stetson Law Review*, Vol. XIX (1990), p. 813.

⁵James Woolford, et al., *Teacher Certification: Out-of-Field Teaching in Grades 7-12 in N.C.*, report by the North Carolina Center for Public Policy Research, Raleigh, N.C., November 1982, pp. v-ix.

⁶Vaubel, note 4 above, p. 829. Also see N.C. Constitution, Article I, Section 19.

⁷*Ibid.*, p. 831.

What Polls Have Shown About Public Attitudes on the Division of Government Responsibilities

by Tom Mather

The central debate in federalism is how power, responsibilities, and taxing authority should be divided among the levels of government. (Although federalism in the strictest sense refers to the division of powers between the federal and state governments, the term is used more broadly here to include local governments as well.) That is, should the federal, state, or local governments take the preeminent role in governing? Should the federal government lead in some areas, such as defense, while taking a lesser or nonexistent role in issues such as public education? Should the government—at any level—refrain and let the marketplace rule on issues such as economic development?

The federalism debate dates back to our nation's founding years. Leaders such as

Alexander Hamilton, the first U.S. Secretary of the Treasury, argued for a strong federal government. Others, such as President Thomas Jefferson, argued for a concentration of power in the states and local governments. Such questions are still relevant today, and a number of polls have surveyed public opinion on them. Recent polls have shown that the public generally supports shifting more power from the federal government to the states, and from the states to local governments. But the public has mixed feelings when it gets down to particular issues. For instance, polls show that public supports strong federal and state roles in protecting the environment. Polls also show that property taxes—which are one of the key sources of revenue for local governments—are among the least popular taxes. Here are some examples of recent polls that have surveyed public opinion on questions related to federalism:

Tom Mather is the associate editor of North Carolina Insight.

- 1. The Gallup Poll, Aug. 11–14, 1995.** (Survey of 1,006 adults nationwide; margin of error +/- 3 percent.)¹

"As I read off each of the following, please tell me whether you think it has too much power in the United States today, about the right amount of power, or not enough power."

	Too Much	About Right	Not Enough	Don't Know
The IRS	63%	32%	3%	2%
The advertising industry	62%	33%	4%	1%
The federal government in Washington	60%	29%	8%	3%
Major corporations	58%	31%	7%	4%
Television news	56%	36%	7%	1%
The entertainment industry	55%	35%	8%	2%
The CIA	42%	37%	9%	12%
Banks and financial institutions	41%	49%	7%	3%
Newspapers	41%	48%	10%	1%
The federal Bureau of Alcohol, Tobacco and Firearms	39%	34%	23%	4%

	Too Much	About Right	Not Enough	Don't Know
The courts, the legal system, and judges	37%	34%	27%	2%
Labor unions	36%	35%	24%	5%
The FBI	32%	48%	16%	4%
The government in your state	27%	58%	13%	2%
Organized religion and churches	23%	46%	28%	3%
The United Nations	21%	35%	39%	5%
The military	17%	57%	23%	3%
The municipal or local government where you live	17%	62%	18%	3%
The local police in your community	13%	55%	31%	1%
The state police in your state	12%	61%	24%	3%

2. The Gallup Organization, for Phi Delta Kappa, May 25–June 15, 1995. (Survey of 1,311 adults nationwide; margin of error +/- 3 percent.)²

"Thinking about the future, would you like to see the federal government in Washington have more influence or less influence in determining the educational programs of the local public schools? . . . How about the state government? . . . How about the local government?"

	Federal	State	Local
More influence	28%	52%	64%
Less influence	64%	37%	24%
Same amount	5%	8%	8%
Don't know	3%	3%	4%

"In your opinion, should your state have more say in the way money from federal education programs is spent in your state, less say, or about the same as now?"

More say	48%
Less say	12%
About the same as now	37%
Don't know	3%

"Among those who answered 'more say' . . . What if giving your state more say means that less money from the federal government would be available to the state for education? Do you think your state should have more say in the way money from federal education programs is spent if it means less money would be available, or not?"

Yes, more say	64%
No	30%
Don't know	6%

—continues

3. The Luntz Research Companies, for KPMG Peat Marwick, May 2-7, 1995. (Survey of 1,000 adults nationwide; margin of error +/- 3 percent.)³

"Now I'm going to read you a list of issues and I want you to evaluate the job performance of your state government. Is your state government doing an excellent, good, or only fair or poor job...?"

	Excellent	Good	Only Fair	Poor	Don't Know
Attracting new jobs and industries to the state	8%	33%	30%	26%	4%
Maintaining and improving roads and highways	6%	37%	33%	22%	2%
Holding down state taxes	4%	26%	38%	28%	4%
Improving the quality of public education	4%	20%	33%	40%	4%
Slowing the growth of state government	3%	26%	47%	15%	9%
Managing state health care programs and facilities	3%	22%	37%	30%	9%
Reforming state welfare programs	3%	14%	33%	41%	9%

"In your view, which is the greater problem with your state government today, that it spends too much money or that it spends money on the wrong things?"

Spends too much	11%
Spends on wrong things	82%
Don't know	7%

"And, if your state governor could cut one tax, which would you cut first. . .?"

Property tax	36%
Income tax	22%
Sales tax	15%
Gas tax	10%
Business tax	8%
Cigarette and liquor taxes	4%
Other/ Don't know	6%

"Thinking specifically about state government for a moment: Some people think that state governments are trying to do things that should be left to individuals, communities and private companies. Other people think that the state government should do more to help solve the problems of our communities. Which do you agree with more?"

Trying to do too much	46%
Should do more	42%
Both	5%
Don't know	7%

"And which is the greater problem: that state government is too big and bureaucratic to provide quality and efficient service to the public, or that the state government is too small and overburdened to be able to provide quality and efficient service to the public?"

Too big and bureaucratic	64%
Too small and overburdened	23%
Don't know	14%

"In general, is privatization of government services a good thing or a bad thing?"

Good thing	55%
Bad thing	24%
Depends	11%
Don't know	10%

4. Peter D. Hart and Robert M. Teeter, for the Council for Excellence in Government, March 16-18, 1995. (Telephone survey of 1,003 adults nationwide; margin of error of +/-3 percent.)⁴

"I am going to read a list of institutions in American society. Would you tell me how much confidence you, yourself, have in each one—a great deal, quite a lot, some, or very little confidence?"

	Great Deal	Quite a Lot	Some	Very Little	Not Sure
The military	28%	31%	29%	9%	3%
The church or organized religion	32%	24%	27%	14%	3%
Your local government	11%	20%	46%	21%	2%
Your state government	6%	17%	53%	23%	1%
National news media	6%	13%	38%	41%	2%
The federal government	4%	11%	47%	37%	1%

"Which theory of government do you favor—concentration of power in the federal government or concentration of power in the state government?"

In the federal government	26%
In the state government	64%
Not sure	10%

—continues

"Now I'm going to read you a number of government programs. For each one, please tell me which level of government you think should be most responsible for running that program—federal government, state government, or local government?"

	Federal	State	Local	None/ Not Sure
The welfare system	38%	40%	17%	5%
Improving opportunities for racial and ethnic minorities	35%	30%	28%	7%
Air and water quality control	35%	40%	22%	3%
Public education	21%	47%	30%	3%
Employment and job training	15%	59%	24%	2%
Law enforcement	15%	36%	45%	4%
Cultural facilities, libraries, concerts, museums	9%	35%	53%	3%

"Which of the following levels of government do you think spends your tax money most wisely—the federal government, state government, or local government?"

Federal government	10%
State government	24%
Local government	50%
Not sure	16%

"Do you favor or oppose giving states more responsibility for programs currently managed and funded by the federal government?"

Favor	75%
Oppose	17%
Depends	4%
Not sure	4%

"Currently, Congress is considering giving states more responsibility for certain programs, such as welfare and law enforcement, and granting blocks of money to states for use in funding those programs. Keeping this in mind, which of the following statements do you agree with most?"

States know what they need better than the federal government does, and they should establish their own standards for how the block grants should be spent.	55%
The federal government should shift responsibility for operating these programs to the states, but should continue to set the standards for how the block grants can be spent.	30%
The federal government should not shift responsibilities for programs back to the states, but should continue to manage such programs at the federal level.	12%
None or not sure	3%

5. The Gallup Organization, for the U.S. Advisory Commission on Intergovernmental Relations (ACIR), June 17–July 6, 1994. (Survey based on personal interviews of 1,003 adults nationwide, weighted for demographic variables; margin of error +/- 3%.⁵)

“Which do you think is the worst tax—that is, the least fair: federal income tax, federal Social Security, state income tax, state sales tax, or local property tax?”

	1994	1992	1990	1988
Local property tax	28%	25%	28%	24%
Federal income tax	27%	25%	26%	26%
State sales tax	14%	16%	12%	15%
Social Security tax	12%	10%	15%	17%
State income tax	7%	9%	10%	9%
Don't know/No answer	11%	15%	9%	9%

“From which level of government do you feel you get the least for your money: federal, state, or local?”

	1994	1992	1990
Federal	46%	49%	41%
State	21%	16%	26%
Local	19%	18%	21%
Don't know/No answer	13%	16%	12%

FOOTNOTES

¹ “Power,” *The Polling Report*, Nov. 6, 1995, p. 8.

² “Report Card on the Nation’s Schools,” *The Polling Report*, Aug. 28, 1995, p. 7.

³ “State Government,” *The Polling Report*, Aug. 14, 1995, p. 2.

⁴ *A National Public Opinion Survey Conducted for the Council for Excellence in Government*, March 1995, Peter D. Hart and Robert M. Teeter, 1724 Connecticut Ave., NW, Washington, D.C., 20009. Also see “The Dimming American Dream,” *State Legislatures* magazine, National Conference of State Legislatures, Denver, Colo., Vol. 21, No. 7 (July/August 1995), p. 7.

⁵ *Changing Public Attitudes on Governments and Taxes: 1994*, Report S-23, ISSN 0272-6017, U.S. Advisory Commission on Intergovernmental Relations, Washington, D.C., pp. 1–7.

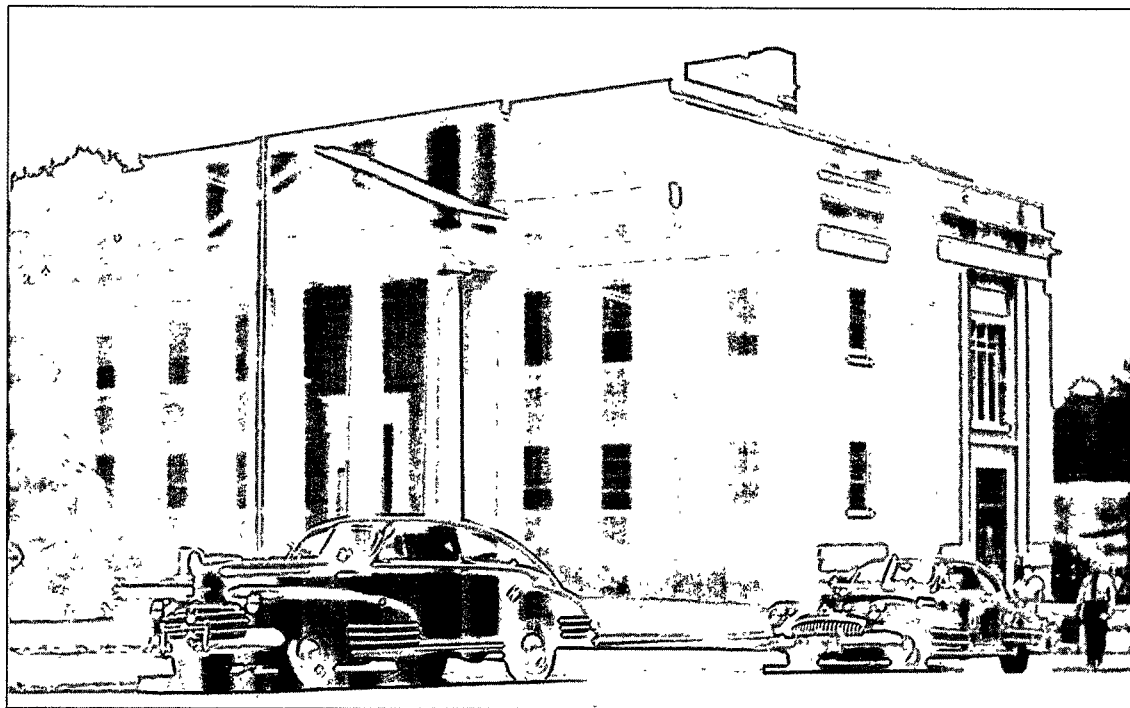
Mandates to Local Government: How Big a Problem?

by Mike McLaughlin and Jennifer Lehman

Local government officials have complained for years about the problem of unfunded mandates being handed down by higher levels of government. Their complaints finally appear to have caught the attention of both state and federal elected officials. In March 1995, Congress passed the Unfunded Mandates Reform Act in an attempt to address the issue. The N.C. General Assembly followed suit with mandate reforms of its own in the 1995 legislative session.

Unfunded mandates are program requirements handed down from a higher level of government to a lower level without providing the revenue to pay for implementing the requirements. How serious is the problem of unfunded mandates? Does the expense of unfunded mandates prevent local elected officials from implementing local programs with a higher priority? Are further reforms needed to prevent the state and federal government from passing unfunded mandates down to the local level? The Center attempts to address these questions by: (1) reviewing existing literature on unfunded mandates; (2) analyzing state statutes to gain a better understanding of what is required of local officials; and (3) interviewing officials on the receiving end of mandates to determine what they view as unfunded mandates and what impact these requirements have on the day-to-day business of running the government. The Center also follows up with state officials to determine whether state and local officials agree on what various mandates actually require.

Our conclusion: unfunded mandates are, in the horticulture vernacular, more crab grass than kudzu. Like weeds in a garden, they are a serious problem, but they are not so prolific that they choke off all other life forms at the local level. New state and federal laws promise to increase participation by local officials in the development of rules and regulations springing from mandates. And the laws may even keep a few new mandates from germinating. Given the hierarchical nature of our federalist system, that may be all the reform local government can legitimately expect on the topic of unfunded mandates.



Greene County Courthouse, Snow Hill, circa 1948

In Greensboro, population 188,976, city officials worry that closing a landfill before it is full will cost local taxpayers with no benefit to the environment. Across the state in tiny Marion, population 4,840, town leaders are concerned they will become a farm team for water plant operators who get expensive training at town expense, then move on to higher-paying jobs in bigger cities. In both municipalities, officials believe their problems stem from a similar source: mandates handed down from a higher level of government.

Indeed, local government officials have been complaining about mandates for years, culminating in National Unfunded Mandates Week in October 1994. The clamor in the months leading up to the event moved CBS News personality Charles Osgood to compose a poem called "Sing a Song of Mandates" commemorating the occasion.

"Washington tells them what they have to do,
What policy all of them have to pursue,
And even if they must go out of their way for it,
Gives them no money whatever to pay for it."

Mike McLaughlin is editor of North Carolina Insight. Jennifer Lehman, a law student at the University of North Carolina at Chapel Hill, was a 1995 summer intern at the N. C. Center for Public Policy Research.

Whether because of Osgood's poetry or the justice of their cause, it appears that the complaints of local government officials are finally being heard. In March 1995, Congress passed the Unfunded Mandates Reform Act,¹ which institutes a number of procedural reforms and erects procedural barriers to discourage Congress from imposing unfunded mandates with a fiscal impact of more than \$50 million. (See "Highlights of the Unfunded Federal Mandates Reform Act of 1995," p. 49, for further details.) Closer to home in Raleigh, the state legislature adopted a law that requires notice and a fiscal note when mandates are imposed on lower levels of government. The law also grants local government greater involvement in the development of rules flowing out of legislation.² At least 25 other states have enacted statutory or constitutional provisions to govern mandates, including a dozen that have prohibited mandates unless funded. (See Table 1, p. 44.)

Despite these advances, skepticism reigns regarding the likelihood of stemming the flow of mandates. "Experience shows . . . that a stringent state unfunded mandate law does not necessarily translate into fewer unfunded mandates," writes Susan Bush, a policy analyst with the Council of State Governments in Lexington, Ky. "The same

Table 1. State Mandate Relief Provisions

State	Constitutional Relief					Statutory Relief									Total	
	Prohibit Unless Funded	Require Reimbursement	Local Government Must Approve	State Authorize New Local Funding Source	Two-Thirds Vote to Impose Mandates	Governor May Suspend Mandate	State Must Reimburse	Authorize New Local Funding Source	Prohibit Unless Funded	Delay Effective Date	Local Government Must Approve	General: Waivers/Appeals/Fiscal Impact	Provides Specific Relief	Two-Thirds Vote of Legislature Required	Constitutional	Statutory
Alabama ¹			•												•	
Alaska ²			•												•	
California		•													•	
Colorado			•						•						•	•
Connecticut										•						•
Florida	•			•	•										•	
Hawaii		•													•	
Illinois							•		•							•
Louisiana			•												•	
Maine	•	•			•		•								•	•
Massachusetts	•		•		•		•								•	•
Michigan	•	•													•	
Minnesota												•				•
Missouri	•	•													•	
Montana							•	•	•							•
Nevada								•	•							•
New Hampshire	•		•				•				•				•	•
New Mexico		•		•											•	
New York													•			•
North Carolina ³												•				•
Pennsylvania		•													•	
Rhode Island							•									•
South Carolina								•	•					•		•
South Dakota							•	•								•
Tennessee ⁴	•														•	
Virginia						•						•				•
Totals	7	7	6	2	3	1	7	4	5	1	1	3	1	1	15	15

Source: 1994 survey data collected by Joseph F. Zimmerman, State University of New York, Albany.

Table reprinted from *Intergovernmental Perspective*, U.S. Advisory Commission on Intergovernmental Relations, Washington, DC, Spring, 1994, p. 29.

concern applies to legislation at the federal level.”³

But railing and rhetoric aside, how serious is the mandate problem at the local level? What services are local governments required to provide and where do the requirements come from? And how effective are laws likely to be that restrict the ability of higher levels of government to tell local government what to do? What, if anything, should be done to restrict state government’s ability to issue mandates to local government?

What Is a Mandate?

A good starting point for this discussion is to define the term mandate. At the simplest level, a mandate is a statute or requirement that a level of government provide a service or meet a particular standard. Most local government officials will concede that a certain number of mandates are appropriate or at least inevitable. They begin to grumble, however, when the requirements come with no funds to pay for their implementation. Thus, the debate is really not about mandates per se, but about *unfunded mandates*. And some local government officials concede that even an unfunded mandate may be acceptable if local government officials participate in the decision-making. In other words, a mandate may be OK if a local government agrees that it is needed.

But what if the legislature passed a law and then the rulemaking agency established unforeseen requirements that would be expensive to implement and politically unpopular at the local level? After

all, these things happen. Ask the local government officials who supported the seemingly innocuous Watershed Protection Act⁴ and wound up having to implement what amounted to state-mandated zoning in parts of North Carolina where the Z-word is hardly uttered in public. It is this type of mandate—passed along with little input from local officials and little or no money to pay for its implementation—that most arouses the ire of local government officials.

Are Mandates Good, Bad, or Something in Between?

With all the rhetoric surrounding mandates, it ought to be clear that they are terrible things that should be rooted from the federalist system, right? Well, not even the critics would go that far. “Most of our members recognize that some level of mandates is appropriate so maybe we can live in harmony,” says David Reynolds, executive director of the 509-city N.C. League of Municipalities. “But there has to be some balance.”

What possible good could there be in a mandate? It helps local elected officials give priority to problems that need to be solved or issues that need to be addressed but that may not be popular with local taxpayers. For example, standards imposed by the state may give county commissioners a reason to seek bond funding for a new jail instead of a softball complex.⁵ The Solid Waste Management Act of 1989 forced counties to spend money on recycling programs to help divert the flow of solid waste to landfills.⁶ And dollars counties are required to appropriate for food stamps and Aid to Families with Dependent Children (AFDC) provide at least some minimal level of financial sustenance that keeps local charities from being overwhelmed.⁷

Still, complaints about mandates seem to be rooted in more than just rhetoric. Local government officials interviewed for this article point to the following problems:

- **Lack of flexibility.** This is what local government officials bemoan as the “one size fits all” mentality that requires local officials to apply a uniform solution to a problem that may vary from place to place—if it exists at all in some localities.
- **Differing abilities to pay.** A requirement that is perfectly affordable for a mid-sized city may work a severe hardship on a small town or rural county with a limited tax base.
- **Lack of input.** Local officials would like some voice in decision-making before they are left

Notes to Table 1

¹ Alabama prohibits enforcement of a state law increasing expenditures or decreasing revenues in the current fiscal year, which ends on September 30, unless the law is approved by a governing body.

² Alaska provides that special acts necessitating appropriations by local governments do not become effective unless ratified by the concerned voters in a referendum.

³ North Carolina data by N.C. Center for Public Policy Research

⁴ The Tennessee General Assembly is authorized to impose mandates on cities and counties only if the state shares the cost.

holding the bag for an expensive new program. They also would like field technicians to have input to assure that mandates implemented actually work.

- **The cumulative effect of mandates.** Individual mandates may have merit, but cumulatively, they rob local government of resources that already are being used to address other local priorities.

To add insult to injury, certain revenue sources such as federal revenue sharing that might have helped pay for mandates have eroded or disappeared entirely. The state still shares a significant amount of revenue with local government with no program

requirements attached, although much of it is reimbursement for revenue lost due to legislative actions such as repeal of the inventory tax. David Crotts, the legislature's senior fiscal analyst, says there are two primary sources of unrestricted state tax revenue returned to local government: (1) the gross receipts tax on utilities, which generates \$130 million annually for municipalities; and (2) the excise tax on beer and wine, which returns about \$21.5 million of the revenue generated through this tax to units of government that allow alcoholic beverage sales. Other significant sources of state revenue returned to local government include: Powell Bill funds, which return more than \$100 million annually from the state gasoline tax for city street con-

Sing A Song Of Mandates

*It's National Unfunded Mandates Week,
You'll hear the city council speak
Relief from the UFM's they seek,
How do you like it so far?
Washington tells them what they have to do,
What policy all of them have to pursue,
And even if they must go out of their way for it,
Gives them no money whatever to pay for it.
The federal government doesn't in fact,
Do such a very good balancing act,
But it tells local government it has to pay,
Don't do what we do but just do what we say.
An unfunded mandate, you understand,
Is Congress' method of forcing the hand,
Of the state and the local by Capitol Hill,
And sticking the locals with paying the bill.
It's National Unfunded Mandates Week,
And local government's up the creek,
There are things that it cannot afford now to pay,
But that Washington tells us to do anyway.
With the hundreds of federal mandates there are,
There are now bumper stickers to put on your car,
It's National Unfunded Mandates Week,
And how do you like it so far?*

—CHARLES OSGOOD, "THE OSGOOD FILE,"
CBS RADIO, OCTOBER 24, 1994.



Energy costs for public schools—the sole totally unfunded mandate from the state to the counties?

struction and maintenance; and 0.5 percent of the 7.75 percent corporate income tax, which is earmarked for school facilities.

Indeed, when tax sharing, tax reimbursement, and local sales tax revenues are lumped together, the state will provide some \$1.8 billion dollars in tax aid to local government during the 1995–96 fiscal year, according to the legislature's Fiscal Research Division.⁸ By these calculations, growth in tax aid to local government has averaged 11 percent per year since 1973.

Yet many local officials consistently have claimed that mounting state and federal mandates outstrip the ability of local officials to pay for services, as evidenced by a 1993 letter sent to former House Speaker Dan Blue (D-Wake) by Parks Helms, then chairman of the Mecklenburg County Board of Commissioners. "As a former member of the House and now chairman of the Mecklenburg County commission, I am persuaded that among the most serious and far reaching problems facing state and local governments in North Carolina are the state and federal mandates that place increased fiscal responsibilities on local governments without providing for increased financial support or revenue generating authority," writes Helms.⁹

How serious is the mandate problem and what can be done about it? There, the issue becomes cloudy. Mandates are difficult to trace and hard to pin down. A committee of the N.C. Association of County Commissioners appointed by the association's president in 1993 to investigate unfunded state and federal mandates acknowledged as much up front. In fact, the committee noted that several of the most talked-about mandates had been adopted as association legislative goals before they ever were enacted by the General Assembly.¹⁰ These included mandates in solid waste management, watershed protection, and expanded AFDC and Medicaid eligibility.

In its deliberations, the committee focused on four major policy areas: public education; human services; environmental protection; and criminal justice. Within these four policy areas, the committee looked at 12 sources of local spending. Yet it could find few examples of purely unfunded state mandates on local government. "Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money," says Jim Blackburn, the association's general counsel and author of the committee's report on unfunded mandates. "Almost nothing is

"Largely because the counties participate in state initiatives, there is almost always some flow-through or matching money. Almost nothing is a purely unfunded mandate."

—JIM BLACKBURN, LEGAL COUNSEL, N.C.
ASSOCIATION OF COUNTY COMMISSIONERS

a purely unfunded mandate."¹¹

While some local officials would consider anything less than full funding an unfunded mandate, the committee could find only one mandate that was totally unfunded—energy costs for the public schools, required under the statutory provision that counties provide "adequate school buildings equipped with suitable school furniture and apparatus."¹² The state froze its contribution to local schools' energy costs in 1986–87 and by 1992–93 had eliminated it completely, "thus, creating a totally unfunded state mandate costing counties \$120 million in 1992–93," according to the committee.

In the *human services* policy area, a source of much local grumbling, the committee found no purely unfunded mandates. It did, however, lament that the local shares of public assistance programs are eating up increasing percentages of county budgets, creating particular stress on counties with smaller tax bases.¹³ Total spending for public assistance jumped 55.1 percent over a three-year period (1989–90 to 1992–93)—from \$200.7 million to \$311.3 million. And over the same time period, the share of property taxes going to pay for public assistance increased from 13.8 percent to 16.2 percent. (See "Local Governments Face Increasing Service Demands, Tighter Budgets," pp. 2–17 for a thorough discussion of the budgetary stress caused by such factors as increasing human services caseloads and population growth. See particularly Table 5, p. 13.)

Under *environmental* policy, the committee cited two legislative actions, the Solid Waste Management Act and the Watershed Protection Act, both passed in 1989, as "imposing added and expensive . . . responsibilities on county governments." The committee acknowledged that the Solid Waste Management Act was not entirely unfunded, since it gave local governments the right to charge solid waste disposal fees to pay for waste management programs.¹⁴ But it complained that technical assis-

tance and state funding lagged behind what had been hoped for when the bill was passed. As for the Watershed Protection Act, the committee noted that it created friction at the local level for a number of reasons: (1) it imposed the unfunded mandate of requiring that local governments prepare and approve watershed protection ordinances; (2) it foisted zoning-style restrictions upon citizens unused to having such controls placed upon their use of land; and (3) it left some local officials with the conclusion that the restrictions stunted the growth of their tax base by curtailing development, requiring them to raise taxes to meet increasing service demands, whether the services were mandated or not.

Under *criminal justice*, the committee examined jails and courts in the quest for the unfunded mandate. It cited a "historical mandate" for jails, since there is no direct requirement that counties authorize jails. If counties do operate jails, however, they are subject to expensive standards established by the state. In 1991, these standards were updated to include two requirements of particular concern to local budgets: single cells must be at least 50 square feet in size; and supervision rounds must be made at least every 30 minutes. The committee also cited medical care for inmates as another major mandated cost for counties operating local jails. District Court facilities also are mandated, although fees charged in civil and criminal cases are supposed to help offset the expense. The committee noted that cases are often dismissed and prisoners are often indigent, making court facility fees a limited source of revenue.

But if the committee found few smoking guns in its review of unfunded mandates from the state, there is still the matter of certain services being required. The counties, being subdivisions of the state, are in this sense a service-providing arm of state government. Cities, too, operate under the constraints of Dillon's Rule, which provides that local governments have only those powers and duties assigned to them by the state legislature. That's opposed to Home Rule, which grants greater independence to local government. (For more on this distinction, see "Dillon's Rule and Home Rule: Two Models for State-Local Government Relationships," p. 34.)

To gain a more thorough understanding of actual service and program requirements imposed by the legislature, the Center reviewed the North Carolina General Statutes. While the review produces a long list of requirements—everything from accounting procedures to staffing levels for the county register of deeds office—many of these requirements

Highlights of the Unfunded Federal Mandates Reform Act of 1995

- The Act took effect October 1, 1995.
- It creates a new procedural obstacle in the House and Senate against considering legislation with mandates of \$50 million or more to state and local governments or \$100 million or more to the private sector in the first fiscal year of effectiveness or any of the following four fiscal years unless funding is to be provided.
- The Congressional Budget Office must provide detailed cost estimates for each bill reported by an authorized committee that would have an impact of at least \$50 million to state and localities or at least \$100 million to the private sector in the first fiscal year of effectiveness or any of the following four fiscal years.
- Federal agencies must prepare statements assessing the costs and benefits of proposed or final rules expected to cost states and localities at least \$50 million or the private sector at least \$100 million in the first fiscal year of effectiveness or any of the following four years.
- Lawsuits are permitted against federal agencies that fail to conduct cost-benefit analyses of any significant unfunded mandate.
- Federal agencies must consider regulatory alternatives in the rulemaking process. If they do not select the least costly or most cost-effective option, they must explain why another option was selected.
- The act excludes legislation or regulations regarding civil and constitutional rights, auditing and accounting procedures, emergencies, national security, and Title II of the Social Security Act.
- It excludes unfunded mandates to the extent that such expenditures will be offset by any direct savings to the governmental unit or private sector as a result of compliance.
- The act is not retroactive. However, the U.S. Advisory Commission on Intergovernmental Relations is charged with reviewing and making recommendations to Congress and the President on existing mandates as well as examining interpretations by federal courts.

Summary reprinted from *State Trends Bulletin*, Council of State Governments, Lexington, Ky., Vol. 1, No. 3, April/May 1995, p. 2. Compiled by Susan Bush of the Council staff.

were structural in nature and fairly inexpensive. Moreover, since the counties exist largely to provide state services at the local level, it is entirely logical that the law require them to do so. And as the N.C. Association of County Commissioners readily admits, few—if any—of these service requirements could be labeled totally unfunded mandates. (For a list of selected required services for cities and counties, see Table 2, pp. 58–68).

Yet many of the complaints of local government officials spring not from the statutes but from regulations developed to implement them. In addition, the federal government often promulgates rules and requires the state to administer them, particularly in the environmental arena. These generally are adopted as state rules and included in the Code of Federal Regulations and the North Carolina Administrative Code. Thus, the counties also want a larger voice in rulemaking. “Rulemaking is fairly closed,” says Blackburn. “What we want to do is be looped in to the *development* of rules—not after they’re drafted and at the hearing stage.”

Through legislation passed by the 1995 General Assembly and an earlier executive order by Gov. James B. Hunt Jr.,¹⁵ the cities and counties have gained additional input into rulemaking, Blackburn says. Yet he doesn’t expect the tension between state and local officials to subside entirely. “I call it creative tension and sometimes there’s more tension than at others,” Blackburn says. “It’s always going to be a schizophrenic situation for the commissioner who wants to spend to fulfill local wishes. . . . It’s sort of understanding where you are on the government food chain, and that’s not easy. The miracle is it works as well as it does.”

North Carolina Municipalities Face Fewer State Mandates

Compared to the counties, North Carolina municipalities have fewer mandated services required by the state. In fact, the state absolutely requires only three services: fire inspection, building inspection, and watershed protection.¹⁶ Yet cities are organized to provide a higher level of service, says Margot Christensen, public affairs director for the N.C. League of Municipalities. Such services as water and sewer treatment, garbage pickup, and police protection are necessary to keep the local economy vital and protect the public health, she says. Plus, citizens demand these services, so there is a political mandate. It’s easier to start a service than to stop it, and once a city elects to provide a service, state and federal standards apply. “The ex-

pensive mandates tend to be in water and sewer,” says Christensen.

Of course, local property taxes are a major funding vehicle for providing such services, and the cities and counties have not approached the legal limits of this revenue source. State statutes allow both cities and counties to set tax rates of up to \$1.50 per \$100 of property valuation. Property tax levies used to pay for schools, social services, and certain other services do not count towards the total.¹⁷ So there is a source of funding. And in some instances there is a direct appropriation. The state has provided additional help with an array of new revenue sources, although some of these restrict how the money can be spent. These include the local option sales tax, hotel-motel taxes in some cities and counties (largely restricted to local tourism promotion), and fees for solid waste disposal and vehicle ownership. (See related article, pp. 76–89, for a thorough discussion of the revenue options available to local governments.)

Yet the property tax is the pack mule bearing much of the load for local government, and the property tax—along with the federal income tax—consistently has been found to be *the* least popular tax.¹⁸ (See “What Polls Have Shown about Public Attitudes on Federalism,” pp. 36–41, for more on what various polls have shown about the popularity of the property tax.) Meanwhile, service demands are outstripping local officials’ ability to pay. Mandates—unless there is an appropriation from the state tied directly to the program or service and paying the full cost—eat up discretionary funding that could be used for other local priorities. And they strap local elected officials with the powerless feeling that they are merely passing along dictates from above, with no real power and authority.

To get a picture of how mandates look from the receiving end, the Center discussed the topic with officials from two counties—an urban and a rural one, and three municipalities—small (< 5,000 residents), medium (about 10,000 residents), and large (>100,000 residents). The counties are Guilford in the Piedmont and Greene in the east. The municipalities: Marion in the west, Southern Pines in the Sandhills, and Greensboro in the Piedmont. Here’s what local officials in these units of government had to say on the topic:

Greensboro: Costs Mount for Mandates

While cities and counties across North Carolina have attempted to build the case against man-



dates by compiling lists and documenting costs, Greensboro has done one of the most thorough jobs. City officials came up with a list of 38 mandates, with estimated one-time and recurring costs totaling nearly \$38 million. Among the culprits: the Fair Labor Standards Act, which through a court ruling in the *Garcia* case, subjected public employees to the same wage and hour restrictions that apply to the private sector,¹⁹ and the Americans with Disabilities Act,²⁰ which required such adjustments as special van service for disabled citizens unable to use the bus service. Both mandates are of federal origin—the first from the U.S. Supreme Court and the second from Congress.

The city's greatest source of angst, however, has been a state requirement that landfills failing to meet tough new design standards be closed by Jan. 1, 1998.²¹ The requirement—adopted in anticipation of federal regulations to protect groundwater beneath landfills from pollution—forced public and private entities that wish to operate landfills to invest in expensive high-tech facilities.

Greensboro is developing a high-tech landfill that meets the new regulations, but city officials say they want to close the existing landfill properly. They maintain this cannot be accomplished in the time available. The city is mounding waste at the site, and needs enough garbage to build a hill with sufficient slope to shed rainwater. "We don't re-

ceive enough solid waste, based on projected volume, to meet a 5 percent slope [by the required closure date]," says Elizabeth Treadway, the city's Environmental Services Director. "Long term for us, that means the site fails. You end up with water infiltration that winds up contaminating the aquifer beneath the cell."

City officials say the state regulations affecting the landfill provide an example of a one-size-fits-all approach that doesn't make sense for Greensboro. But their fight for an extension has created a regulatory row in Raleigh, where public and private landfill operators have argued that Greensboro should not be excused from the deadline for closing its landfill while others comply.

But if Greensboro faces a crunch over its landfill, budget analyst Larry Davis acknowledges that the city's larger tax base gives it an advantage over neighbors in meeting the cost of mandates. As an example, he mentions the relative tax burden on Greensboro citizens if the city had to renovate its government complex to meet the requirements of the Americans with Disabilities Act. "If we have to retrofit this building [city hall] to meet ADA requirements, the cost would be similar to what it would be for smaller cities," says Davis. "We just have a lot of people to help pay that off."

Aside from funding, what kind of relief would Greensboro like to see from mandates? "Clearer

final goals and obvious steps that will get us there," says Davis. To achieve that objective, state and federal regulators would need more input from field technicians who must implement mandates. If the objective is cleaner streams and rivers, for example, the expensive stormwater control programs that cities with a population of more than 100,000 have been required to implement will not alone do the job, Davis says.²² Runoff from new homes and commercial development, he says, represents only a small percentage of the problem. "The rest is agriculture."

Guilford County: Hands Tied by Mandates

Guilford County's greatest blessing also is its biggest curse. The county is blessed with the tax bases of two of the seven largest cities in North Carolina—Greensboro and High Point. It is cursed with the need to provide two of everything to serve the populations of cities located at opposite ends of the county. "Most counties have one courthouse. We have two," says J.W. Rowland, county budget director. "Most counties have one public health department. We have two. We have two jails. Everything we have in Greensboro, we have in High Point." Of course, none of this duplication is mandated by the state or federal government. If anything, it would fall under the category of political mandate.

On the plus side of the ledger sheet: the burgeoning tax base allowed for a tax cut and \$13 million in new revenue for the 1995–96 fiscal year. On the minus side: "Before we considered anything at all," says Rowland, "70 percent [of the increase] had to go to support some mandate."

For Guilford, public assistance mandates gobble up much of the revenue growth—particularly Medicaid and AFDC. "That's where we feel the pressure much more than in any other area in terms of providing services," says Rowland. Rowland

believes the two urban centers increase the number of low-income citizens with a high need for public assistance in such areas as Medicaid, AFDC, foster care, and the Women, Infants, and Children (WIC) nutrition program for pregnant women and young children. "We've got to make sure those dollars are there before we even consider putting in dollars for a recreation facility."

And Rowland says these programs are encased in a regulatory straitjacket that frustrates their purpose. "We see the problems. We know the needs far exceed the resources to meet those needs, and we're somewhat stuck," says Rowland. "A social worker should be able to make sure you are receiving the services you need to be a productive citizen. But as a social worker, you spend more of your time doing paperwork. . . . It's eligibility and fraud prevention. . . . It should be about measuring outcomes, seeing if we're making a difference in a mother's life."

Rowland also cites public education as an area where the county provides the local funding but gets little control over policy. "We don't make a lot of decisions at the local level," says Rowland. "The county provides the local funds, but as a board of commissioners, they have no impact on curriculum and how the dollars are spent." The school board exercises most of the local authority for the public schools while the county controls the purse strings, as is the case throughout North Carolina.²³ "This creates inherent conflicts," says Rowland, although the current school board has a good working relationship with the county commissioners.

Solid waste disposal is less an issue for Guilford than for many North Carolina counties. Here again the two urban centers come into play. Guilford has ceded the landfill business to Greensboro and High Point, and the agreement with the two municipalities lasts until 1999.

Rowland's advice on the subject of mandates? "If you have a mandate, fund it. But that is only part of it. Even if the state provided all the funds, we still would like to have some flexibility as to how things are done at the local level."

Increased flexibility would allow the county to provide better service, says Rowland, particularly in the area of human services. For example, the county would like to have a single office where eligibility could be determined for a range of programs—from mental health to Medicaid. At present, the county must maintain three separate databases for three human services departments. That means three separate application processes and three separate intake offices, and it makes the

"Even if the state provided all the funds, we still would like to have some flexibility as to how things are done at the local level."

—J. W. ROWLAND,

GUILFORD COUNTY BUDGET DIRECTOR



Mike McLaughlin

Greene County Manager Allen Hardison, pictured here with Election Board Director June Monroe, says the federal Motor Voter Act forced the office to move from part-time to full-time with no additional funding.

process three times harder than it has to be.

To Rowland, getting approved for public assistance should be as easy as getting a building permit, which takes about 30 minutes. "If a contractor wants a building permit, he can get it all done in the same place," says Rowland. "He goes to the Planning and Development Department and he's in and out in 30 minutes. Can you imagine doing that in social services?"

Greene County: Little Things Mean A Lot

In the Coastal Plain of eastern North Carolina, the growth curve is as flat as the landscape. Greene County lies at the heart of this economically stagnant region. It is one of 19 North Carolina counties that lost population during the 1980s and one of 20 counties projected to lose population in the decade of the '90s.²⁴ Here, the poverty rate approaches 20 percent and the per capita income ranks in the bottom fourth of North Carolina counties.²⁵ The mandate problem gets magnified in small, low-wealth

counties like Greene, says County Manager Allen Hardison.

Consider the requirement that counties have a register of deeds office to catalogue land transactions.²⁶ Many of these offices generate enough revenue through fees charged on land transactions to pay their operating costs. Greene County must pay the \$23,500 net annual loss out of its operating budget. "It's a matter of economies of scale," says Hardison. "You've got to have a certain minimum staffing level to be open, whether you have the transactions or not."

And even programs with noble intent, such as the federal Motor Voter Act, have surprising consequences. A requirement that people be allowed to register to vote through public agencies such as social services departments tripled the workload in the county's elections office. This along with increased reporting requirements forced the office to move from a three-day work week to a five-day work week and increased costs. Hardison says when citizens seek social services benefits, for example, they must fill out a form indicating whether they would like to

"There's a great disparity between the more affluent counties and poor counties in the burden that mandated social services put on a county and what is left over to go to education and other services."

—ALLEN HARDISON,
GREENE COUNTY MANAGER

register to vote. The forms are sent to the elections office, and if the applicant checks yes, the elections office must follow up and process the necessary paperwork to get the person registered. In the first quarter of 1995, Hardison says, there were 373 voter registrations in Greene County. That compares to only 83 registrations for the same quarter in 1994—an election year when more registrations would have been expected.

But Hardison's chief complaint is the requirement that local governments share in the cost of funding for social services programs, such as Medicaid and Aid to Families with Dependent Children.²⁷ Poor counties that can least afford it often have to pay a larger share of their local budget because they have more eligible citizens. Greene County's tax rate is 83.5 cents per \$100 of property valuation for the 1995–96 fiscal year. Of that amount, 22.9 cents goes to pay the \$940,926 local social services bill. Only \$5,000 of the social services spending is discretionary for local officials, Hardison says. That \$5,000 is "a safety net type of account," says Hardison. The discretionary fund is used to help families in emergency situations who don't qualify for mandated programs. "We might spend \$200 at a time to help a family out of a bad situation," Hardison says. Other than that, he says, "We don't take on any optional services unless they take in as much as they cost."

To close the affordability gap for small rural counties, Hardison believes the state should assume the local share of social services costs. "There's a great disparity between the more affluent counties and poor counties in the burden that mandated social services put on a county and what is left over to go to education and other services," Hardison says. "The counties that can least afford to pay the matching share have to pay the largest [proportional] matching share." If the state picked up the local

share, he says, "the burden would be equal from one geographic part of the state to another."²⁸

Like Greensboro, Greene County shares the concern about rigid environmental rules, Hardison says. He says the county has a fairly new landfill dug into densely packed clay that does not allow leachate—the toxic soup that collects at the bottom of landfills—to seep into the groundwater. Yet it must be closed by Jan. 1, 1998, and the county plans to ship its waste elsewhere at twice the cost of burying it in the local landfill. That's a wasted resource brought about by inflexible rules, Hardison says. "We have a 77-acre site," says Hardison. "We'll have about eight acres covered when we have to close."

Hardison also provided insight on why some local government officials don't want to take matching funds or seed money to establish new programs. The higher level of government often provides a share of the initial funding, then pulls it away. To continue the program at the same level, the county must raise taxes. But if it raises taxes, the public expects expanded service. If it cuts back on the program to make up for the lost funds, citizens expect a tax cut. Thus, the higher level of government has created a mandate of citizen service expectations.

That's what occurred in Greene County several years back when the federal government decided to cut Comprehensive Employment and Training Act (CETA) funds that had allowed the county to take on extra workers in a number of agencies, including the library. "When the CETA program ceased, the public was used to having the library open on a certain time schedule," Hardison says. The county, he says, was faced with a dilemma. "Do we reduce back the hours of service or pick up the extra cost?" In this case, the county picked up the extra cost, Hardison says. But to avoid such dilemmas, some local officials would just as soon say no at the outset.

Southern Pines: Rankled by Recycling Requirement

Ask Southern Pines Town Manager Kyle Sonnenberg about mandates, and the first thing he mentions is the requirement that local governments recycle a portion of their waste, rather than disposing of it in the landfill. "It costs three times as much to recycle a ton of waste as it does dumping it in the landfill," says Sonnenberg. "That does not make economic sense for the town of Southern Pines. We have a [recycling] program with a fair amount of participation, but from an economic

sense, it would make much more sense to just pick up a minimal amount of additional garbage.”

Sonnenberg says the recycling requirement, which flowed from the Solid Waste Management Act of 1989,²⁹ was implemented based on the notion that the state has a dwindling amount of landfill space. That argument, he says, has been rendered moot by the amount of landfill space—much of it private—that has come on line since the passage of the act.

“It’s a ridiculous argument,” says Sonnenberg. “Since the law was passed, plenty of landfill space has opened up across the state. Many of these landfills are owned by private industry, but that doesn’t mean the supply is limited.”³⁰

And Sonnenberg is only beginning to warm to the subject of unfunded mandates. He ticks off a list of items, some of them seemingly worthwhile, that higher-ups in the federalist system have required of towns like Southern Pines. Take police retirement. A 1987 state law required local governments to set up a special retirement system for law enforcement officers and provide a separation allowance if they retire early.³¹ “We had an officer retire early a couple of years ago, and we’re paying him \$6,000 a year,” says Sonnenberg. “Why should we do that?”

This year, the town will pay more than \$39,000 into the special police retirement system. This amount is over and above what police officers receive as participants in the regular town employees’

retirement system. Each penny on the property tax rate generates about \$66,000 in revenue. So special police retirement costs the equivalent of two-thirds of a cent of the town’s 51 cent property tax rate. “It’s an insidious thing, these mandates,” says Sonnenberg. “They add a little one here and add a little one there, and it starts to add up to real money over time.”

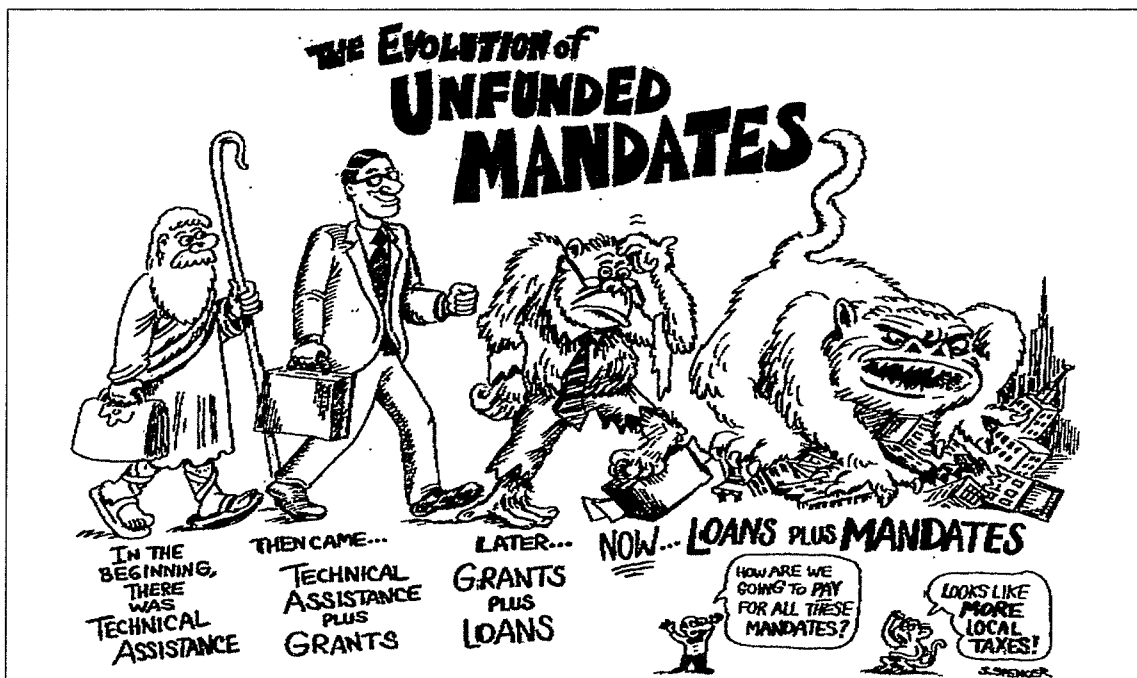
Sonnenberg’s list of troublesome mandates includes:

■ **Rules regulating underground storage tanks.**

“We spent \$80,000 replacing fuel tanks in Southern Pines because they changed the standard for protection from leaks.”³²

■ **The Americans with Disabilities Act.** “We spend thousands each year making buildings handicapped accessible, putting curb cuts in sidewalks.... It’s really, really costly.” Sonnenberg’s complaint is not so much about new construction but about retro-fitting—making 100-year-old buildings handicapped accessible and placing curb cuts in existing sidewalks. “It’s expensive because it’s almost all piecework,” he says.

■ **State regulations governing treatment of drinking water.** “A couple of years ago, a portion of our water treatment process had to change to meet a new state mandate. It cost us \$100,000.” Sonnenberg says the city had what is called a closed system, in which backwash—the liquid waste produced when filters are cleaned by reversing the flow of water through a treatment



plant—is recycled through the system and treated for drinking. The new rules required that certain conditions be met in order to recycle backwash. If these conditions cannot be met, the water must be discharged rather than recycled.³³

But Sonnenberg's chief complaint about mandates boils down to this: "The entity coming up with the idea isn't the one paying for it. If state government decides something is a wonderful idea, state government ought to pay for it. If the federal government thinks something is a wonderful idea, the federal government ought to pay for it. The federal government gets the credit for improving the environment, and we get the blame for increased cost. People at higher levels don't have the guts to pay for it, but they want the glory of having passed these laws."

Sonnenberg sees the unfunded mandate problem as of fairly recent vintage, brought on by the tight federal budget picture. In the 1960s and '70s, he says, new programs and requirements routinely were accompanied by grants to help pay for their implementation. "The flow of revenue has dried up," says Sonnenberg. "If the dollars were coming in, I don't know that most local governments would be complaining."

The City of Marion: Troubled by Wide Paint Brushes

The way town officials in Marion see it, higher levels of government try to micromanage affairs at the local level and wind up making mistakes. "They want to solve all these little problems, and they paint with too broad of a brush," says Marion Police Chief Tom Pruett. As one example, Pruett cites OSHA regulations requiring that "material safety data sheets" be placed at every work station.³⁴ "A police car is considered a work station," says Pruett. This means each car must have a safety data sheets for its shotgun and ammunition, its pepper spray, its fire extinguisher, and any other materials in the car that might be considered hazardous. "It's hard to put all these things in a police car," says Pruett. The sheets get crammed into the tire well in the trunks of the cruisers and never get read, he says. "It's just one example of where federal government bureaucrats have got too wide of a paintbrush."

In another example of OSHA overkill, Pruett says that to protect the ears of officers, speakers can no longer be mounted with the light bar that perches atop police cars. "We've had to disconnect these \$100-plus speakers and buy another \$100 plus

speaker and put it on the front of the car," says Pruett.³⁵

City Manager J. Earl Daniels says these are just a couple of the nettlesome mandates that make governing a small town like Marion an increasingly expensive and difficult task. Here are a few more of Daniels' complaints:

- **The Davis-Bacon Act.**³⁶ This federal law requires that if the city of Marion uses more than \$2,000 in federal funds for a project, it must pay the prevailing wage rates for the Atlanta region. "In most cases, those wage rates are higher than local wage rates," says Daniels. "It can drive the cost of a project out of sight by having to pay wages considerably higher because of that act."
- **Federal requirements that certain city employees holding commercial drivers licenses submit to random drug testing.**³⁷ "If you're a long-distance hauler, you may not see your boss once a week or even once a month," says Daniels. "Our employees are seen daily. If they've got a problem with drinking or even prescription medication, we're going to recognize it pretty quickly."

Daniels' chief complaint regarding the commercial drivers license requirement is with the town's garbage-packer truck drivers. The town has only two regular drivers. They report to work before dawn and are off by 2 p.m. If one gets called off for a drug test, the garbage won't get picked up without transferring another driver to drive the truck. That employee also must have a commercial drivers license. In addition, the town's larger trucks are fitted with snow plows when needed to clear streets in the winter. Employees must have commercial drivers licenses and submit to drug testing to operate these snow plows. The town must foot the bill for these licenses, and Daniels believes having such a license gives workers the impression they deserve higher pay.

"People at higher levels don't have the guts to pay for it, but they want the glory of having passed these laws."

—KYLE SONNENBERG,
SOUTHERN PINES TOWN MANAGER

■ **Police retirement.** The same requirement that rankled town leaders in Southern Pines ruffled feathers in Marion—special treatment of police retirees. Although it was not required to do so, the Marion City Council responded by awarding other town employees the same amount of extra retirement pay the state mandated they give police. That amounted to 3.6 percent of salary annually as a pension contribution. Still, the police pension contribution included a state match and Marion did not provide that for its other employees, nor were they eligible for the separation allowance mandated for police. Daniels says the mandate unfairly created an elite within the ranks of town employees. “It separates the classes of employment,” says Daniels. “Certain classes of

employees get better treatment than other classes of employees.” Daniels estimates that this mandate alone costs the town more than \$62,000 annually.

■ **Requirements governing water treatment.** Daniels says that because of the size of the town’s chlorine tanks, it is required to comply with certain OSHA safety standards. These require a Central Safety and Health Committee and nine different task groups or teams. Marion only has five employees in its water plant—too few to staff all these committees and fully implement the requirements.³⁸ “We can either violate the law or convert to smaller tanks that allow us to store less than 1500 pounds of chlorine on site,” says Daniels. “That means you have to change tanks more often, which creates more of a danger of a gas leak than using one large tank.” And it’s more expensive.

—continues on page 69



Marion Police Chief Tom Pruett takes issue with state OSHA requirements that safety data sheets be kept in patrol cars. The sheets get packed into already overstuffed trunks and forgotten, Pruett says. “At the station would suffice,” respond state OSHA officials.

**Table 2. Selected Local Government Services And Programs
Authorized Or Required In N.C. General Statutes¹**

CHAPTER 7A: JUDICIAL DEPARTMENT

Description	Citation	Mandate?
Requires the board of county commissioners to study youth needs in the county	N.C.G.S. 7A-289.16	Yes
Requires counties and municipalities to be responsible for physical facilities of the district court	N.C.G.S. 7A-302	Yes
Requires the Director of the Dept. of Social Services in each county to establish protective services for juveniles	N.C.G.S. 7A-542	Yes
Requires state assistance to counties for child protective services to be matched by counties at a rate of 25% effective July 1, 1993; allows use of federal or county funds	1993 Appropriations Act	Yes

CHAPTER 108A: SOCIAL SERVICES

Requires every county to have a board of social services	N.C.G.S. 108A-1	Yes
Requires county board of social services to meet at least once per month	N.C.G.S. 108A-7	Yes

¹ This table covers major subject areas such as social services, public health, education, cities, and counties. As a result, there are chapters of the N.C. General Statutes that were not consulted, some of which contain additional mandates or authorizations. In addition, the federal government often promulgates rules and requires the states to administer them, particularly in the environmental arena. These generally are adopted as state rules and included in the North Carolina Administrative Code. They also may appear in the state implementation plan but not in the statutes or code. Finally, many of local officials' complaints about mandates are directed at federal laws and regulations, which are not included in this table.

"Yes" indicates a mandate that is required regardless of funding.

"Yes*" indicates a mandate that is required as a condition of financial aid.

"Yes***" indicates a mandate that is required if a locality chooses to perform an optional activity.

Table researched and prepared by Jennifer Lehman

Table 2, continued**CHAPTER 108A: SOCIAL SERVICES, continued**

Description	Citation	Mandate?
Sets out duties of county board of social services	N.C.G.S. 108A-9	Yes
Requires the board of social services of every county to appoint a director of social services	N.C.G.S. 108A-12	Yes
Sets out duties of the director of social services	N.C.G.S. 108A-14	Yes
Sets out duties of the special county attorney for social service matters	N.C.G.S. 108A-18	Yes
Requires the following public assistance programs to be administered by the county department of social services or the state Dept. of Human Resources: Aid for Families with Dependent Children (AFDC); food stamps; special assistance; foster care payments; low income energy assistance. Requires Medicaid to be administered by county dept. of social services	N.C.G.S. 108A-25	Yes
Requires AFDC to be administered by the county depts. of social services under federal regulations	N.C.G.S. 108A-27	Yes
Specifies eligibility requirements for AFDC recipients	N.C.G.S. 108A-28	Yes
Requires compliance with federal regulations on work requirements for AFDC	N.C.G.S. 108A-29	Yes
Requires boards of county commissioners through the county departments of social services to be responsible for administration and operation of food stamp programs	N.C.G.S. 108A-51	Yes

Table 2, continued**CHAPTER 108A: SOCIAL SERVICES, continued**

Description	Citation	Mandate?
Gives the Secretary of Dept. of Human Resources power to promulgate rules and regulations for counties to follow in financing programs of public assistance and social services	N.C.G.S. 108A-86	No
Requires the nonfederal share of annual cost of public assistance and social services programs to be divided by state and counties as determined by the General Assembly	N.C.G.S. 108A-87	Yes
Requires board of commissioners of each county to levy and collect taxes required to meet county's share of public assistance expenses	N.C.G.S. 108A-90	Yes
Allows the state to withhold money from counties failing to pay public assistance costs	N.C.G.S. 108A-93	Yes*

CHAPTER 113A: POLLUTION CONTROL AND ENVIRONMENT

Requires local governments in coastal region to participate in cooperative state-local land use planning program	N.C.G.S. 113A-101	Yes
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CHAPTER 115C: ELEMENTARY AND SECONDARY EDUCATION

Requires that special education be provided by all local school administrative units	N.C.G.S. 115C-110	Yes
Requires county board of commissioners to pay school-related clothing and travel expenses for blind students who meet the eligibility requirements	N.C.G.S. 115C-133	Yes
Requires funding of garage and maintenance equipment for school buses	N.C.G.S. 115C-249(e)	Yes

Table 2, continued**CHAPTER 115C: ELEMENTARY AND SECONDARY EDUCATION, *continued***

Description	Citation	Mandate?
Sets out maximum class size and teaching load for various grade levels in the public schools	N.C.G.S. 115C-301	Yes
Requires schools to provide duty-free period for all full-time assigned classroom teachers	N.C.G.S. 115C-301.1	Yes
Requires children between ages 7 and 16 to attend school	N.C.G.S. 115C-378	Yes
Requires local boards of education to provide adequate classroom facilities, including furniture and equipment, and long-range plans for meeting school facility needs	N.C.G.S. 115C-521	Yes
Requires local boards of education to provide equipment and water for school buildings	N.C.G.S. 115C-522	Yes
Requires local boards of education to repair school property	N.C.G.S. 115C-524	Yes
Requires board of every local school administrative unit to insure school property	N.C.G.S. 115C-534	Yes

CHAPTER 115D: COMMUNITY COLLEGES

Requires county funding of land acquisition, building construction, vehicle purchases, and maintenance-related equipment for local community colleges	N.C.G.S. 115D-32	Yes
Requires county funding of operating and maintenance expenses for local community colleges	N.C.G.S. 115D-32	Yes

CHAPTER 122C: MENTAL HEALTH

Requires counties to provide mental health, developmental disability, and substance abuse services through area mental health authority	N.C.G.S. 122C-115	Yes
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Table 2, continued**CHAPTER 130A: PUBLIC HEALTH**

Description	Citation	Mandate?
Requires counties to provide public health services	N.C.G.S. 130A-34	Yes
Requires local health departments to provide sickle cell syndrome testing and counseling at no cost to persons requesting these services	N.C.G.S. 130A-130	Yes
Requires local health directors to report cases of disease, conditions, and laboratory findings to the Dept. of Environment, Health, and Natural Resources	N.C.G.S. 130A-140	Yes
Requires local health departments to provide immunizations and file monthly immunization reports to DEHNR	N.C.G.S. 130A-153	Yes
Requires physician or local health dept. administering a required vaccine to give a certificate of immunization to the person who presented the child for immunization	N.C.G.S. 130A-154	Yes
Requires counties to provide county rabies vaccination clinics	N.C.G.S. 130A-187	Yes
Establishes local solid waste reduction goals of 25% and 40%	N.C.G.S. 130A-309.04(c)	No
Requires development of comprehensive solid waste management plan, which shall address how to meet the state's waste reduction goals	N.C.G.S. 130A-309.04(e)	Yes
Requires determination by each county and municipality of cost of solid waste management, and requires users of services to be informed of cost	N.C.G.S. 130A-309.08	Yes
Requires each designated local government to initiate a recyclable materials recycling program by July 1, 1991; requires construction and demolition debris to be separated from the solid waste stream effective July 1, 1993	N.C.G.S. 130A-309.09B	Yes

Table 2, continued**CHAPTER 153A: COUNTIES**

Description	Citation	Mandate?
Requires county to have a Board of Commissioners	N.C.G.S. 153A-34	Yes
Sets out powers and duties of county manager, if appointed	N.C.G.S. 153A-82	Yes**
Requires elected register of deeds with minimum of two deputies to record real estate transactions, requires elected sheriff with minimum of two deputies	N.C.G.S. 153A-103	Yes
Requires county to have an attorney	N.C.G.S. 153A-114	Yes
Allows the county to plan and execute training and development programs for law enforcement agencies	N.C.G.S. 153A-211	No
Requires the Secretary of Human Resources to develop standards for operation of local jails	N.C.G.S. 153A-221	Yes**
Requires supervision of local jails; requires the unit operating the facility to pay the cost of emergency medical services	N.C.G.S. 153A-224	Yes**
Requires development of plan for providing medical care for prisoners in local jails	N.C.G.S. 153A-225	Yes**
Requires counties to meet certain standards for jail work release programs	N.C.G.S. 153A-230.3	Yes**
Allows counties to establish and support a fire department	N.C.G.S. 153A-233	No
Allows counties to appoint a fire marshal	N.C.G.S. 153A-234	No
Authorizes provision of public health services	N.C.G.S. 153A-247 through 153A-250	No
Requires counties to provide social service programs	N.C.G.S. 153A-255	Yes

Table 2, continued

CHAPTER 153A: COUNTIES, continued

Description	Citation	Mandate?
Requires counties to reimburse Department of Transportation for cost of labor and equipment for solid waste disposal facilities	N.C.G.S. 153A-291	Yes
Limits fee to no more than the cost of operating the solid waste collection and disposal facility	N.C.G.S. 153A-292	Yes**
Sets out required services for new, extended, and consolidated county service districts	N.C.G.S. 153A-305	Yes
Sets out duties and operating procedures for building inspection department	N.C.G.S. 153A-352 through 153A-375	Yes

CHAPTER 159: LOCAL GOVERNMENT FINANCE

Requires each local government to appoint a finance officer	N.C.G.S. 159-24	Yes
Requires each local government to use a modified accrual accounting system	N.C.G.S. 159-26	Yes
Requires each local government to conduct annual audit and submit annual financial information to Local Government Commission	N.C.G.S. 159-33.1, 34	Yes

CHAPTER 143: STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS

Requires county to adhere to bid procedures	N.C.G.S. 143-129, 131	Yes
Requires local watershed protection program	N.C.G.S. 143-214.5	Yes
Requires local governmental units to whom wastewater pretreatment program authority has been delegated to establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received	N.C.G.S. 143-215.1(d)(1)	Yes

Table 2, continued**CHAPTER 143: STATE DEPARTMENTS, INSTITUTIONS, & COMMISSIONS, continued**

Description	Citation	Mandate?
Requires municipalities that operate a wastewater treatment plant to meet certain notification requirements regarding release of untreated or partially treated wastewater	N.C.G.S. 143-215.6D	Yes**
Authorizes counties and municipalities to spend money for water resources development	N.C.G.S. 143-215.39	No
Allows resolutions concerning local cooperation for a federal water resources development project to bind counties and municipalities	N.C.G.S. 143-215.41	No
Empowers local governments to establish application forms and require information as necessary for the issuance of permits for use of floodways	N.C.G.S. 143-215.57	No
Requires DEHNR to make advances to the county, subject to repayment from proceeds of bonds or grants, for beach erosion control and hurricane flood protection projects	N.C.G.S. 143-215.62	Yes**
Allows air permit applicant to request determination from local government as to whether a facility is consistent with zoning ordinances; requires determination to be verified by affidavit	N.C.G.S. 143-215.108(f)	Yes
Authorizes administration of local air pollution control program	N.C.G.S. 143-215.112	No
Establishes Community Child Protection teams in every county	N.C.G.S. 143-576.1	Yes
Sets out duties of director of county dept. of social services	N.C.G.S. 143-576.4	Yes
Sets out duties of director of local dept. of health	N.C.G.S. 143-576.5	Yes

Table 2, continued**CHAPTER 163: ELECTIONS**

Description	Citation	Mandate?
Requires counties to establish local board of elections	N.C.G.S. 163-30	Yes

CHAPTER 160A: CITIES AND TOWNS

Requires powers, functions, rights, privileges, and immunities of the municipal corporation to be exercised by the city council	N.C.G.S. 160A-12	Yes
Requires the city council to appropriate sufficient funds for continuing contracts	N.C.G.S. 160A-17	Yes**
Requires current city boundaries to be drawn on a map	N.C.G.S. 160A-22	Yes
Requires electoral districts to be shown on map	N.C.G.S. 160A-23(a)	Yes**
Requires evaluation of existing district boundaries after the 1990 census	N.C.G.S. 160A-23.1	Yes
Requires cities and towns to follow strict guidelines when annexing property	N.C.G.S. 160A-29 through 160A-58.24	Yes**
Requires each city to be governed by a mayor and a council of three or more members	N.C.G.S. 160A-66	Yes
Requires management of city to be vested in the city council	N.C.G.S. 160A-67	Yes
Requires minutes of city council proceedings to be kept and open to public inspection	N.C.G.S. 160A-72	Yes
Requires each city having a population of 5,000 or more to adopt and issue a code of its ordinances	N.C.G.S. 160A-77	Yes**
Requires council to appoint a city manager in cities with a council-manager form of government	N.C.G.S. 160A-147	Yes**
Requires that there be a city clerk	N.C.G.S. 160A-171	Yes
Requires city council to appoint a city attorney	N.C.G.S. 160A-173	Yes

Table 2, continued

CHAPTER 160A: CITIES AND TOWNS, continued

Description	Citation	Mandate?
Requires city ordinances to be consistent with constitution and laws of N.C. and the U.S.	N.C.G.S. 160A-174(b)	Yes
Lays out requirements for financing projects by special assessments	N.C.G.S. 160A-223 through 160A-238	Yes**
Outlines procedures for sale of city-owned property to private entity	N.C.G.S. 160A-266 through 160A-279	Yes**
Authorizes city to appoint fire chief and maintain fire dept.	N.C.G.S. 160A-291	No
Requires annexing city to take certain steps if the annexation results in loss of rural fire dept. and fire dept. having to terminate a full-time employee	N.C.G.S. 160A-294	Yes**
Gives cities general authority and control over streets, sidewalks, bridges, etc., and includes duty to keep in proper repair	N.C.G.S. 160A-296	Yes
Outlines cost sharing requirements between cities and railroad companies for improvements and installation of safety equipment at railroad crossings	N.C.G.S. 160A-298	Yes**
Establishes notice requirements when a city proposes to permanently close any street or alley	N.C.G.S. 160A-299	Yes**
Requires governing board to consider alternative sites before choosing a new site located within one mile of an existing landfill	N.C.G.S. 160A-325	Yes**
Requires provision for affected residents to be represented on planning or zoning boards when a city elects to exercise extraterritorial zoning powers	N.C.G.S. 160A-362	Yes**
Requires city council to hold public hearing before adopting or amending ordinances addressing planning and regulation of development	N.C.G.S. 160A-364	Yes**

Table 2, continued**CHAPTER 160A: CITIES AND TOWNS, continued**

Description	Citation	Mandate?
Requires city council to designate a planning agency	N.C.G.S. 160A-387	Yes
Requires establishment of historic preservation commission before designating historic landmarks	N.C.G.S. 160A-400.7	Yes**
Requires cities to provide building inspections, outlines process for inspection, condemnation, etc.	N.C.G.S. 160A-411 through 160A-49	Yes
Authorizes creation of regional councils of governments, outlines powers	N.C.G.S. 160A-470 through 160A-478	No
Authorizes creation of Community Appearance Commission; outlines powers, duties, and responsibilities	N.C.G.S. 160A-454	Yes**
Authorizes creation of regional sports authority, outlines powers	N.C.G.S. 160A-479	Yes**
Authorizes cities to set up urban redevelopment commissions; outlines procedures and requirements for commission operations	N.C.G.S. 160A-508	Yes**
Authorizes establishment of municipal service districts, lays out service levels to be provided within districts, taxing authority, etc.	N.C.G.S. 160A-535 through 160A-544	Yes**
Authorizes cities to set up parking authorities, establishes purpose and powers of authorities, provides guidelines for operation	N.C.G.S. 160A-550 through 160A-565	Yes
Authorizes regional public transportation authorities; specifies organizational requirements; outlines purpose and powers	N.C.G.S. 160A-600 through 160A-625	Yes

CHAPTER 160B: CONSOLIDATED CITY-COUNTY ACT

Outlines service requirements for consolidated city-county governments	N.C.G.S. 160B-9	Yes**
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—continued from page 57

In addition, the town is required to have a certified water plant operator working at the plant at all times.³⁹ Marion currently has four certified operators, but a resignation could put the town in a bind. "Our chief operator can be there in a matter of minutes," says Daniels. "We would never have someone there who can't operate the water plant, and if there's a problem, they're instructed to shut it down and call." One problem with requiring all operators to be certified, Daniels says, is that it takes training, and there is heavy competition for certified workers. "There are a lot of people looking for operators, and there are only so many out there," says Daniels. The danger, he says, is that small towns like Marion will become the training ground for larger towns that can pay more.

Daniels despairs that the mounting mandates make it increasingly difficult to provide services while keeping the tax and utility rates at affordable levels. "How in the world are we going to pay for all this and continue to operate our city?" he asks. Even keeping up with what the mandates require, he says, is costly. "You don't have a place in the

"You don't have a place in the budget that says, 'administrative record keeping for mandates.' There is no such critter."

—J. EARL DANIELS,
MANAGER, CITY OF MARION

budget that says, 'administrative record keeping for mandates.' There is no such critter."

Are Recent Reforms Enough?

With federal legislation restricting Congress from imposing mandates with a fiscal impact of more than \$50 million, and state legislation giving local government a larger role in rulemaking, has the problem of unfunded mandates been solved? Local government officials say the answer probably is no. "It's more of a moral victory than anything

Marion City Manager J. Earl Daniels at the municipal water plant, where many mandates hit home



Mike McLaughlin

else,” says Terry Henderson, director of advocacy for the N.C. League of Municipalities. “Congress can do anything it wants, and there are escape hatches in [the law].”

Neither the state nor the federal legislation is retroactive. “Existing regulations are not affected, and there may be some existing regulations that need some help and work,” says Henderson. In addition, getting accurate estimates of the cost of implementing mandates is difficult, whether at the state or federal level. Both levels of government are depending on increased local government involvement in estimating program costs and crafting rules to implement legislation. To some extent, the success of these new efforts depends upon the quality of local government input.

At the state level, groups like the N.C. Association of County Commissioners and the N.C. League of Municipalities are focusing their attention on strengthening their relationship with people who make administrative rules. “We’re taking a much closer look at our relationship with the regulators,” says the League’s Margot Christensen. “We’re making sure they know what we’re doing, so they don’t just have blinders on with the science of regulation.”

Both the league and the association have developed advisory groups of city and county managers, finance officers, and field operations specialists such as wastewater treatment plant operators and landfill operators to help administrative rule makers develop regulations that are practical and workable.

Buck Byrd, chief water plant operator for the city of Marion, has decades of experience to offer in the production of clean drinking water. And he offers free samples to visitors at the plant. Field operators like Byrd represent a wellspring of common sense advice for regulators.



Mike McLaughlin

**Table 3. Top 10 Most Expensive State Mandates to
Local Government in North Carolina**

Rank	Mandate	Units Affected
1	Provide adequate facilities for public schools	counties
2	Pay local share of Medicaid costs	counties
3	Pay local share of Aid to Families with Dependent Children costs	counties
4	Various water testing requirements	primarily cities
5	Wastewater monitoring	cities
6	Comply with Solid Waste Management Act through recycling, land-fill construction regulations, and increased tipping fees	cities and counties
7	Provide certain pension benefits for law enforcement officers	cities and counties
8	Comply with federal Occupational Safety and Health Act (state administered)	cities and counties
9	Conduct fire inspections	cities and counties
10	Adopt watershed protection ordinance	cities and counties

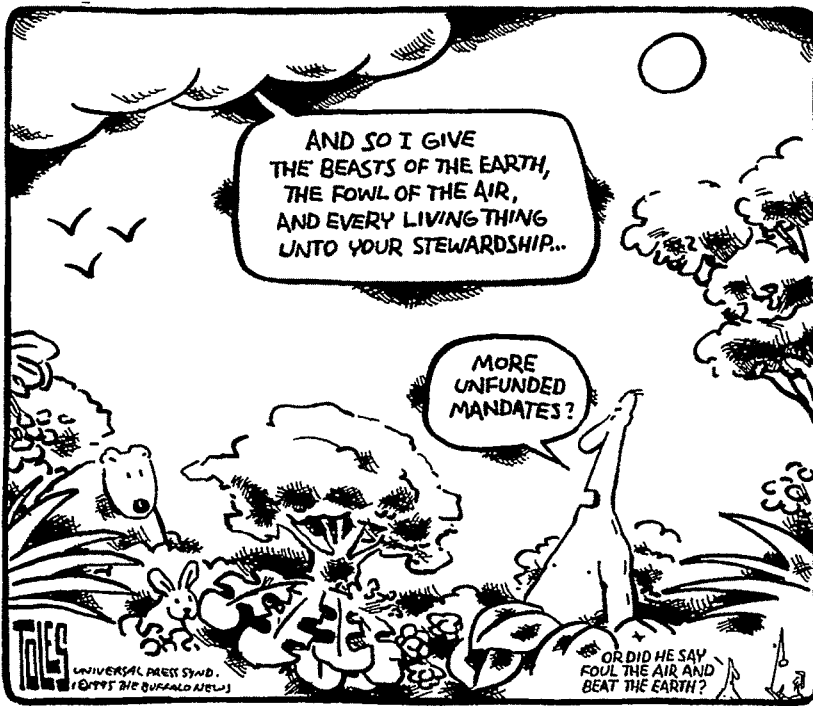
Source: Opinions of Jim Blackburn, legal counsel for the N.C. Association of County Commissioners and Terry Henderson, director of advocacy for the N.C. League of Municipalities

And local government officials are winning appointments to rule-making bodies such as the Environmental Management Commission, which is the chief state policy-making board on environmental issues.

Given that there is little sentiment for an outright ban on mandates, what else do local government officials want? A ranking state environmental official argues that local officials want laws and regulations that make sense. "The real reason these measures have generated such a hue and cry is that specific requirements imposed on local governments have too often been unreasonable—requiring local governments to spend a lot of money with little return to human health or environmental protection," says Steven J. Levitas, deputy secretary of the Department of Environment, Health and Natural Resources.

Levitas makes the distinction between unfunded versus "unfounded" mandates. "For example, under the federal Safe Drinking Water Act and regulations, our local governments were going to have to do expensive testing of their drinking water supplies every quarter, even if they had previously tested clean and were not threatened by any known source of contamination. Everyone agreed that imposing these costs on local governments did not make sense; our department was able to develop a streamlined waiver program approved by the EPA that has saved an estimated \$10 million in testing costs through reduced monitoring."

Levitas argues that complying with certain other mandates is simply a cost of doing business. "Most Americans would agree that local governments should not build landfills that contaminate groundwater or run drinking water systems that poi-



son their customers. When such mandates are imposed on local government, there is no reason why the federal or state government should pick up the cost of compliance, any more than they do for the many private parties that provide the same services—often in competition with local governments.”

The league’s Henderson takes a slightly different slant. “We want what’s reasonable and feasible,” he says. “And if it’s a major priority, we want some funding.” Like a number of local officials interviewed for this article, Henderson holds that the level of government that makes the policy should be the one that pays for it. “Who should pay for the state and federal government’s priorities?” he asks.

Conclusion

It is difficult to gauge the magnitude of the unfunded-mandate problem. Higher levels of government often pass along at least part of the funding, and when the funding isn’t forthcoming, local government has the authority to raise property taxes. Still, raising taxes to pay for new programs at any level of government is becoming increasingly difficult, and the property tax is among the least popular of all taxes. Local government officials make a compelling case that at least from a *political* standpoint, paying for mandated programs interferes with their ability to fund local priorities. That’s because even though the authority is there,

the political *will* is increasingly lacking to raise property taxes to pay for local priorities.

The result is a funding crunch for local government, and mandates may be a part of the problem. Yet as long as there is a federalist system, there will be instances when higher levels of government work their will on the next level down. And if local taxpayers must pick up some of the cost, they also receive such benefits as clean drinking water, safer workplaces, more accessible public facilities, and better public health. Local government officials resent being dictated to from above, and

they raise credible concerns about the need for flexibility in applying rules at the local level. But the evidence suggests that mandates—at least *unfunded* mandates—are less of a problem than the rhetoric might suggest.

That’s particularly the case with mandates handed down from the state. The N.C. Association of County Commissioners, for example, uncovered only one clear example of a totally *unfunded* mandate, despite a thoroughgoing search—that one created when the state withdrew financial assistance for the provision of energy in the public schools but left the mandate.⁴⁰ In fairness, there were plenty of programs in which the state picked up only part of the cost, but that should not be surprising in a system in which the counties are political subdivisions of the state responsible for direct service delivery. (See Table 3, p. 71, for a list of the top 10 most expensive state mandates to local government in North Carolina.) And in some cases, instead of mandating a program with no revenue, the state provides revenue with no mandate, such as utilities tax revenue returned to cities, as well as portions of beer and wine tax revenue returned to cities and counties that allow sale of these beverages.

Many of the complaints leveled by local officials interviewed for this article took issue with *federal* mandates, rather than those handed down by the state. This is particularly the case with cities, which are more likely to engage in water and sewer

treatment and thus get hit with expensive federal environmental mandates. (See Table 4 below for a list of selected federal mandates affecting state and local governments and their estimated cost.) Clearly, these requirements can have a cumulative impact that results in significant costs for cities, as Greensboro officials were able to document.

Yet the Center's research suggests that part of the problem has been poor communications between various levels of government. Local government officials are not always certain what is required of them when a higher level of government passes a new law, and it seems as important for the higher level of government to communicate what is required as it is for the lower level to receive the message.

State and federal legislation passed in 1995

will at least assure that communications improve. Local government officials will have a larger voice in the development of legislation and regulations that affect the way they do business. There also will be a stronger effort to assure that the cost has been weighed against the benefit, and that the dollars have been identified to pay the tab. If these reforms can be made to work—resulting in more reasonable regulation, a greater awareness of the cost of new programs versus the benefit, and increased attention to the need to make sure that local governments have the wherewithal to pay for new priorities—local governments will have achieved much in the way of mandate reform. A guarantee of full funding for every program requirement handed down by a higher level of government is probably too much to expect. ■

Table 4. Cost Estimates of Selected Federal Mandates to State and Local Governments

Title of legislation (Year passed)	Estimated cost (in millions)	
	1991	Multi-year*
Social Security Amendments (1983)	\$838	\$5,334
Medicare Coverage for New State and Local Employees—COBRA (1985)	306	1,382
Pipeline Safety Authorization (1986)	57	213
Water and Reclamation Projects (1986)	9	23
Water Resources Development (1986)	548	1,458
Employment for the Disabled (1986)	7	19
Education of the Handicapped (1986)	600	1,175
Veterans Benefits and Health (1986)	2	10
Lead Contamination Control Act (1988)	6	14
Medicare Catastrophic Coverage (1988)	190	780
Family Support Act (1988)	160	136
Ocean Dumping Ban Act (1988)	33	165
Medicare Catastrophic Repeal (1989)	460	1,115

* Estimates are generally for a five-year period.

Source: Congressional Budget Office

Table reprinted from *State Trends Bulletin*, Council of State Governments, Lexington, Ky., Vol. 1, No. 3, April/May, 1995, p. 3.

FOOTNOTES

¹ Public Law 104-4 (2 USC 1501).

² Chapter 415 of the 1995 Session Laws (HB 895), now codified as N.C.G.S. 150B-21 ff., 120-30.45 ff., and 120-36.8.

³ Susan Bush, "Mandate Relief: Reality or Rhetoric?" *State Government News*, Lexington, Ky., May 1995, pp. 6-10.

⁴ N.C.G.S. 143-214.5.

⁵ N.C.G.S. 153A-221.

⁶ For more on the solid waste disposal woes of local government, see Tom Mather, "Trying to Make Molehills out of Mountains of Trash," *North Carolina Insight*, Vol. 10, Nos. 2-3 (March 1988), pp. 40-52. See also Mike McLaughlin and Amy Carr, "Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste," *North Carolina Insight*, Vol. 12, No. 1 (December 1989) pp.2-39.

⁷ N.C.G.S. 108A-87.

⁸ "Local Government Tax Aid—Historical Data (table)," *Overview: Fiscal and Budgetary Actions*, Fiscal Research Division, N.C. General Assembly, 1995 session, p. 378.

⁹ As quoted in the editorial "Rusty Knife Surgery," *The Charlotte Observer*, May 26, 1993, p. 10A.

¹⁰ *Report of the Committee to Investigate Unfunded State and Federal Mandates*, N.C. Association of County Commissioners, April 1994, p. C-1.

¹¹ John Witherspoon, a long-time county manager in Guilford and Cabarrus counties, says many county commissioners would consider an unfunded mandate to be any program requirement that is only partially funded. "To them, unfunded simply means that the state forces counties to spend something for a program... whether 5 percent or 100 percent," Witherspoon says.

¹² N.C.G.S. 115C-521.

¹³ Public assistance included Medicaid, Aid to Families with Dependent Children, food stamps, and special assistance.

¹⁴ A number of local government officials, in reviewing this

article prior to publication, noted that providing authority to raise revenue—whether through a new tax or a fee—is not the same as providing funding. Therefore, they would consider any new requirement to be unfunded unless dollars were appropriated to pay for it.

¹⁵ Gov. James B. Hunt Jr., "Fiscal Notes on Administrative Rules Affecting Local Governments," Executive Order No. 49., May 17, 1994.

¹⁶ N.C.G.S. 160A-411.

¹⁷ For county authority to levy the property tax, see N.C.G.S. 153A-149. For cities, see N.C.G.S. 160A-209.

¹⁸ *Changing Public Attitudes on Governments and Taxes*, 1994, U.S. Advisory Commission on Intergovernmental Relations, p. 3.

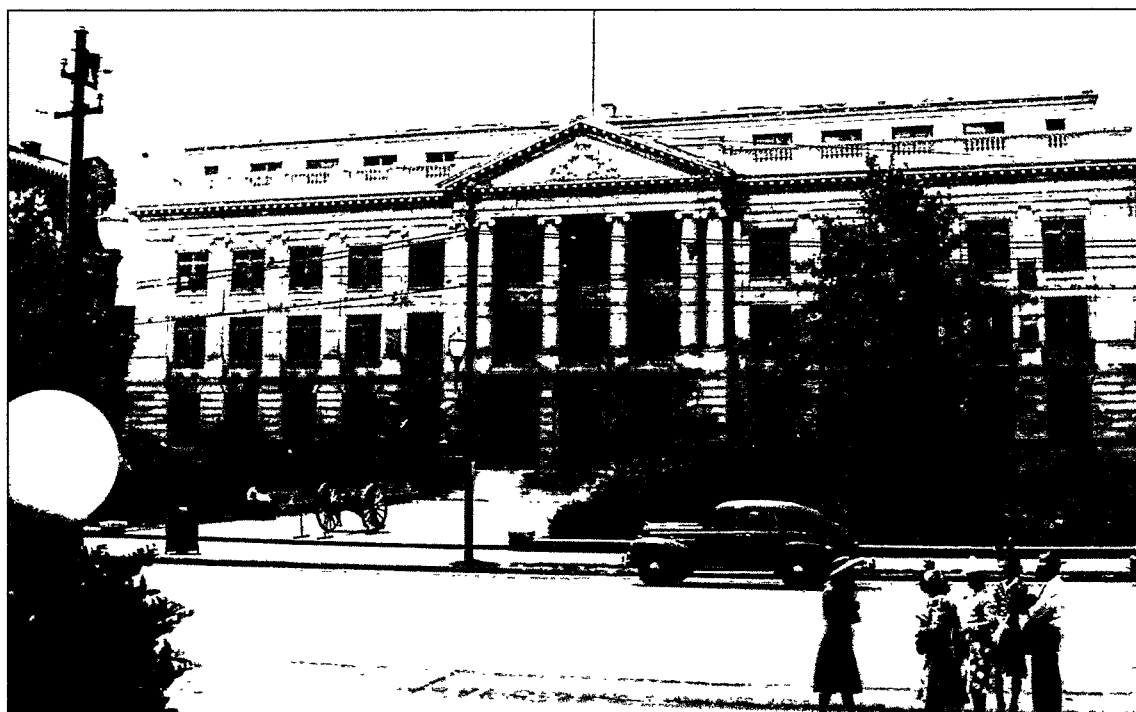
¹⁹ *Garcia v. San Antonio Metropolitan Transit Authority et al.*, 105 S. Ct. 1005 (Feb. 19, 1985).

²⁰ Americans with Disabilities Act of 1990 (Public Law 101-336). Ken Franklin, director of the state Office on the Americans with Disabilities Act in the Department of Administration, says there are some misconceptions among local government officials about what the act requires. For example, the act does not require local governments to make *buildings* accessible. Instead, *programs* must be accessible. If a program is operated in a building where there is a continual need for persons with disabilities to have access, the program must be moved or the building made accessible. If a person with a disability has a random or occasional need for a program or service in an inaccessible location, a temporary accessible location or other alternative provisions can be used to serve that person.

²¹ 15A NCAC 13B.1627(10)(A)

²² The requirements for removing pollutants from stormwater runoff flow from federal law— Sec. 402P of the Clean Water Act, 1987 Amendments (40 CFR 122.26)—and currently apply to cities with a population of more than 100,000. In North Carolina, these cities are Charlotte, Durham, Fayetteville, Greensboro, Raleigh, and Winston-Salem. Bradley

Guilford County Courthouse, circa 1950



Bennett, supervisor of the stormwater group in the Water Quality Section, N.C. Division of Environmental Management, says the emphasis of the program is on preventing pollution by reducing the flow of pollutants to be carried by stormwater runoff. The regulations require affected cities to "reduce pollutants from the storm system to the maximum extent possible," Bennett says.

²³ G.S. 115C-429.

²⁴ *Population Projections: 1991-2020, North Carolina and Its Counties*, N.C. Office of State Planning, July 1992, pp. 8-9.

²⁵ U.S. Census Bureau, 1990 data.

²⁶ N.C.G.S. 153A-103.

²⁷ According to the N.C. Division of Social Services, counties are responsible for 50 percent of AFDC administrative costs and about 16 percent of AFDC payments. As for Medicaid, the county share is 50 percent of administrative cost and 5.2 percent of payments to vendors.

²⁸ John Witherspoon, a former county manager in Guilford and Cabarrus counties, says that Hardison's suggestion that the state pick up the cost of social services programs is understandable but too expensive, since it would cost the state more than \$300 million. A more feasible approach, Witherspoon argues, would be to have the counties responsible for a maximum property tax rate—say 8 cents—for such programs. The rest would be raised from statewide taxes. "In this way, all taxpayers would have the same exposure for bearing the cost of the program," Witherspoon says.

²⁹ N.C.G.S. 130A-309.

³⁰ Paul Crissman, supervisor of the Special Wastes Branch, Solid Waste Section, DEHNR, acknowledges that landfill space has become widely available since the passage of the Solid Waste Management Act. But Crissman takes a broader view of the benefits of recycling. He notes that properly designed, recycling programs can be operated in a cost-effective manner. Constructing a new landfill, on the other hand, is "incredibly difficult politically, as well as financially expensive." Sonnenberg, however, says the town seeks competitive bids from private operators for both its recycling and solid waste disposal programs, and solid waste disposal in a landfill is cheaper. Crissman touts the conservation benefits of reusing a resource instead of burying it in the ground and notes that the recycling industry has become a major jobs creator in North Carolina since the passage of the act.

³¹ The separation allowance requirement is contained in G.S. 143-166.42, while the requirement for a special 401(K) plan for law officers is outlined in G.S. 143-166.50. The N.C. League of Municipalities estimates the statewide cumulative cost of special retirement benefits for local law enforcement officers at \$61.79 million from the 1987-88 fiscal year through 1993-94. Concord Police Chief Robert Cansler, chair of the N.C. Association of Police Chiefs legislative committee, says the legislation requiring 401(K) contributions and a separation allowance stemmed from a decision to disband the local N.C. Law Enforcement Officers Retirement System and cover law officers through the local government pension fund, a move which cost officers benefits. The legislation was intended to restore the benefits officers enjoyed under the old system. Nonetheless, Sonnenberg says towns didn't pay for the old police retirement system and wouldn't choose to pay for the new one without the mandate.

Cansler says there is a policy consideration behind encouraging older officers to retire early. "You don't want a 65-year-old man standing beside the road trying to wrestle with a drunk driver and an intoxicated passenger," says Cansler. "That's not going to work. You're going to be paying death benefits instead of retirement benefits." Sonnenberg says this policy decision should be made by policymakers who have to pay for it—not state legislators.

Finally, Cansler says local governments were granted additional sales tax authority during the same session in which the pension benefits were enacted, so the mandate wasn't truly unfunded. Local government officials disagree with this assertion, arguing that local governments already faced more costs than the additional sales tax authority could cover and that the move to add the optional penny to the local sales tax was unrelated to the pension issue.

³² Rules governing underground storage tanks are found in 15A NCAC 2 N. However, Jeanne Hartzell, a hydrogeological technician in the Department of Environment, Health, and Natural Resources, says there is nothing in the regulations that immediately requires that tanks be replaced. Regulated tanks must be monitored for leaks, she says, and will have to have corrosion protection by Dec. 22, 1998. If corrosion protection can't be added to an existing tank (i.e. because the tank is structurally unsound), it will have to be removed, closed in place, or replaced, she says. Sonnenberg says the monitoring requirement was a new requirement with its own implementation schedule. "Due to the mandated cost of monitoring, it was more cost effective to replace the tanks early than to pay the monitoring cost," Sonnenberg says.

³³ 15A NCAC 18C .0404 (k). Richard Durham, Section Chief in the Public Water Supply Section, Division of Environmental Health, says conditions governing recycling of backwash were established primarily to control the formation of organic compounds called trihalomethanes in public drinking water. These compounds are formed when chlorine reacts with organic matter in the treatment process. While microbial contaminants can cause immediate outbreaks of waterborne disease, long-term exposure to excessive levels of trihalomethanes also carries health risks, says Durham. Thus, water treatment is a balancing act. Backwash can be recycled if the conditions in the rules intended to control the formation of trihalomethanes can be met, Durham says, but not all cities can meet the conditions.

³⁴ Requirements for material safety data sheets are laid out in 29 CFR (Code of Federal Regulations) 1910.1200 (g) (9). Ed Geddie, health standards officer in the OSHA Division, N.C. Department of Labor, believes that in the case of police officers, material safety data sheets would not have to be in each car as long as police could have access to them by radio in an emergency. "At the station would suffice," he says.

³⁵ Geddie says that although OSHA does have standards regarding on-the-job noise exposure, they do not specify that speakers be removed from the tops of police cars. Robert Cansler, police chief for the town of Concord, offers a different perspective on speaker placement. "There's considerably less risk to the officer's ear to put it at the front of the car than to put it right over the top of his head within inches," says Cansler. "I don't know if it's an OSHA requirement or not, but it's the right thing to do, and we're doing it," he says of moving the speakers.

³⁶ Public Law 74-403.

³⁷ Omnibus Transportation Employee Testing Act of 1991 (regulations are in 49 CFR 382).

³⁸ Geddie says because Marion's chlorine tank holds more than 1,500 lbs., its operation is subjected to a federal process safety management standard (29 CFR 1910.119). However, he says the process safety management standard does not specifically require eight employees to implement. He does agree that switching chlorine tanks frequently creates a greater risk of leaks than having a large tank, but says the standard was developed following incidents such as an explosion in Texas caused by failure to follow adequate safety procedures.

³⁹ 15A NCAC 18D .0206(b).

⁴⁰ Former County Manager Witherspoon argues that use of the term "totally unfunded mandate" sets up a straw man. "I maintain that if the program is mandated and not 100 percent funded by the mandating authority, it's unfunded," he says.

The Property Tax and the Search for New Revenue Sources

by Charles D. Liner

Summary

The tension between increasing demands at the local level and the unpopularity of the property tax has forced elected officials to seek other means to pay for services. But the author, Charles D. Liner, a faculty member specializing in tax issues at the University of North Carolina at Chapel Hill's Institute of Government, argues that this move to alternative revenue sources is shifting the burden of paying for local services to those less able to pay. The worst case example is the uniform per household fee the General Assembly has authorized for such services as landfill operation. Such charges—often described as user fees—would more accurately be characterized as flat taxes. The author argues that such taxes are highly regressive. They have much in common with the poll tax, now unconstitutional in North Carolina, because they are applied uniformly on a per household basis. Other alternatives, while less regressive than the flat tax, attempt to shift the tax burden to citizens outside the jurisdiction where the bulk of local services are provided. Examples are the hotel-motel tax and the entertainment tax, authorized for some local jurisdictions, and the payroll tax, which so far has not been authorized in North Carolina.

The author argues that there are two generally recognized principles of tax fairness—assessment according to ability to pay and assessment according to level of benefits received. The alternative revenue sources being sought by local governments often violate one or both of these principles in a manner worse than the property tax. The author discusses the strengths and weaknesses of the property tax and considers some of the features that may make it less popular with the tax paying public. Yet he argues that the property tax is a true local tax in that local elected officials set the rate and can be held accountable by the taxpayers for spending decisions. Before the shift to alternative revenue

sources progresses much further, the author advocates more discussion of a fundamental issue: what kinds of revenue sources will assure that the costs of financing government services are distributed equitably among the people?

A companion piece by Mike McLaughlin, editor of North Carolina Insight, discusses various avenues the legislature could pursue to ease the fiscal stress on local governments in North Carolina. This stress is created in part by increased service demands at the local level and increased reluctance among local officials to raise the property tax to pay for services. In response, the N.C. League of Municipalities and the N.C. Association of County Commissioners have proposed broader local government taxing authority through a tax menu that would allow local government officials to choose from an array of additional revenue raising options. The article discusses the pros and cons of such a menu and explores other possibilities for easing the fiscal stress on local government.

In conclusion, the N.C. Center for Public Policy Research offers four options the General Assembly could pursue: (1) a tax menu for local government that includes authority to levy one or more of the following: a hotel/motel occupancy tax, a local land transfer tax, a prepared food and beverage tax, an amusement tax, a 1-cent increase in local sales tax authority, or a local option income tax; (2) authorization for a 1-cent increase in the local-option sales tax only; (3) relief for local government from the cost side through the state's assuming the local share of expenditures for Medicaid, Aid to Families with Dependent Children, and Special Assistance for Adults; or (4) take no action to relieve the fiscal needs of local government and let local government officials rely on further cost-cutting and privatization while paying less attention to rising service demands and capital needs.



This new water plant under construction in Johnston County illustrates increased service demands brought on by population growth, which, in turn, puts pressure on the property tax rate.

North Carolina's local government officials are searching for new revenue sources. For many years, they have called for the General Assembly to authorize a variety of new revenue sources that can be used instead of the property tax. Already they have sought and received authority, through both general and local legislation, to levy a number of new taxes. The increasing use of these new taxes is changing local taxation and the distribution of tax burdens among North Carolinians. So far these changes have been based largely on the simple rationale that local governments need more revenue and therefore they need new revenue sources. There has been little discussion of why people should be taxed under the new revenue sources rather than the existing property tax.

The revenue sources used by a state and local government determine how the costs of providing

government services are distributed among the people. The key issue for North Carolinians, therefore, is whether existing and proposed taxes, charges, and fees distribute the costs of government in a "just and equitable manner," as the state constitution requires.

Providing for Local Revenue Needs

North Carolina's constitution gives the General Assembly exclusive power to authorize taxes for local governments. The constitution vests legislative power with the General Assembly and specifies precise procedures for enacting taxes or allowing counties and cities to impose taxes. Further, the constitution requires that "the power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away."

Given the authority to raise revenue that the General Assembly already has granted, are local governments able to raise the revenues they need? Strictly in terms of *legal* authority, the answer is yes.

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"Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes."

—BENJAMIN FRANKLIN

North Carolina's cities and counties have authority to increase their revenues greatly by increasing rates on the property tax. Of course, where population and economic growth (and inflation) cause the property tax base to grow, revenues will increase without rate increases.

There are some *legal* limitations on property tax rates, but in fact they are not real constraints. There is no rate limit for property tax revenues used to pay for schools, social services, jails, and debt service, for example. To finance most other services, the combined property tax rate can equal as much as \$1.50 per hundred dollar valuation, and voters can approve increases above that rate.² North Carolina's cities and counties are not close to being constrained by these legal limitations.

But it's a different matter entirely when we consider *political* constraints on raising more revenue through the property tax. Elected local officials everywhere are under constant fiscal pressure for many reasons—population growth, school enrollment growth, inflation in medical care and other costs, costs imposed through federal and state mandates, and likely cutbacks in federal grants. At the same time, they are under constant, intense pressure to keep property tax rates from rising. Nowhere else in our system of governments is there such a direct link between the spending decisions of elected governing officials and the taxes that people pay. That link is so direct at the local level that spending decisions often are quantified not just by dollar amount but by the number of pennies of the tax rate that the spending represents.

This direct link is good in that it makes local officials highly accountable to local taxpayers. But it can have paralyzing effects on local governments that leave critical needs unmet. This is not a new problem, of course, for it has long been recognized that placing responsibility for financing services at the local level will result inevitably in disparities in spending and service levels and inadequate levels

of service in some units. The problem is especially critical when local governments are asked to raise taxes to pay for services that need to be provided uniformly across the state.

Since 1900, the state's solution to this problem has been to shift financial responsibility for certain critical services to the state level. Since 1931, the state has assumed primary financial responsibility for what were originally the major *county* responsibilities—public schools, roads and highways, prisons, and the judicial system. Altogether, about 70 percent of state spending goes to finance programs administered by local governments, such as public schools, public health programs, and social services programs (including such major programs as Aid to Families with Dependent Children and Medicaid).

State taxes now account for almost three-fourths of combined state and local taxes. The property tax, which financed over 90 percent of state and local spending in 1900, now finances only 12 percent of spending and accounts for only 20 percent of state and local tax revenue. North Carolina ranks 39th among the 50 states in per capita property tax revenues.³

But reduced reliance on the property tax has not eliminated pressure on the property tax. At least for the past three decades, and particularly during the past decade, local officials have searched for ways to keep property tax rates low by raising revenues through other means.

The Search for New Revenue Sources

The major changes have been: (1) an increased reliance on user charges and fees; (2) a major shift from the property tax to retail sales taxes; (3) an increased reliance by some units on specialized sales taxes authorized by local acts; and (4) an increasing reliance on flat taxes levied on households and other bases such as sales of new homes, telephone bills, and motor vehicles.

The search for alternative revenue sources has led local officials to become very aggressive in using charges and fees as a revenue source by increasing revenues from existing charges and by inventing new ones.

User charges and fees. User charges long have been used to finance certain services that directly benefit individuals and for which benefits to individuals can be assessed and charged, such as water and sewer services, parking, airports, bus transportation, ambulance service, recreation and cultural programs, and some public health and mental health programs. Fees typically are used to finance administrative costs incurred in regulatory programs. Some examples are fees charged for building inspections and health and sanitation inspections.

The search for alternative revenue sources has led local officials to become very aggressive in using charges and fees as a revenue source by increasing revenues from existing charges and by inventing new ones. Some units have adopted policies that certain services, such as building inspections, must be financed wholly from fees (though some benefits of these programs accrue to the community at large). Many recreation programs that once were offered free to encourage participation—such as children's baseball or basketball leagues—are now open only to those who can pay.

Local retail sales taxes. There has been a major shift from property taxes to retail sales taxes,

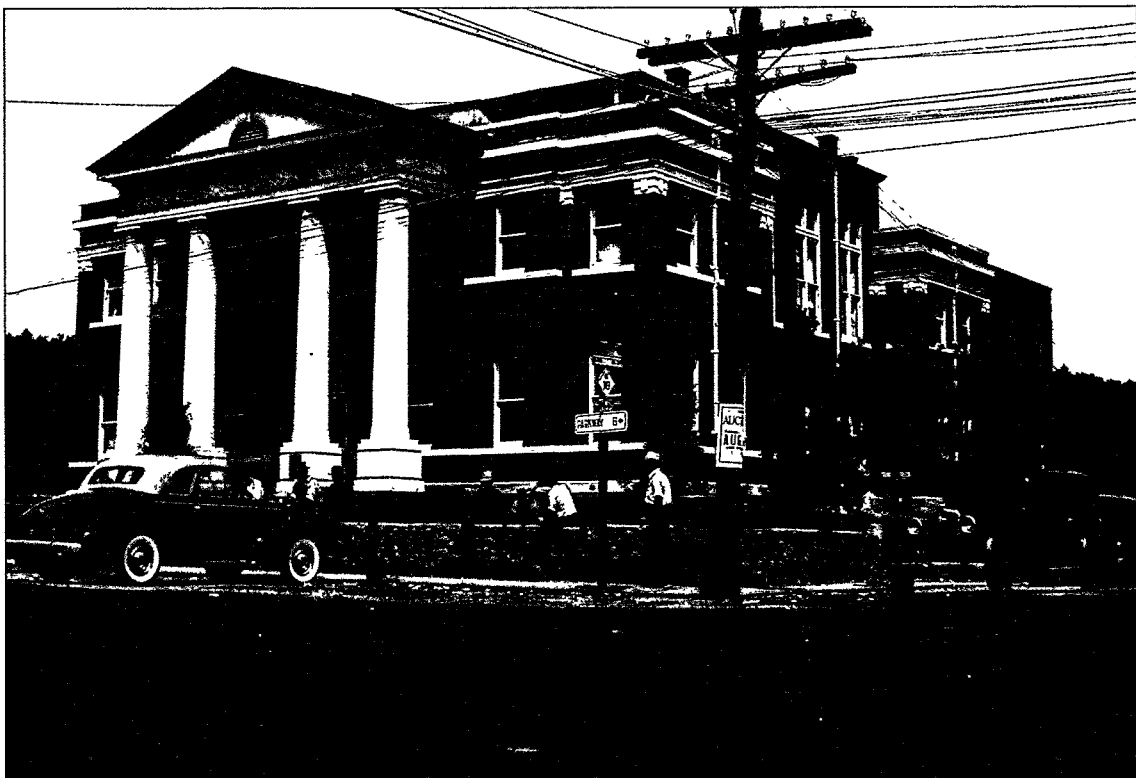
which now are equivalent to about one-third of total property tax revenue and account for about one-fourth of total local government tax revenue. In 1971, four years after Mecklenburg County received authority to levy a local retail sales tax, the General Assembly authorized all counties to levy a one-cent local retail sales tax,⁴ which is collected by the state and returned to the county and municipal governments in the county where it is collected. In 1983 and again in 1986, in response to calls for state financial assistance for water and sewer facilities and school construction, the General Assembly authorized two additional half-cent local retail sales taxes,⁵ the proceeds of which are distributed according to county population rather than county collections. Municipalities have been required to spend a portion of the proceeds only for water and sewer facilities for 10 years and counties have been required to spend a portion for school construction projects for 16 years.

Local authority for new special sales taxes. On their own, many local government units have sought and received authority to levy several taxes that fall on sales of various items. The most common of these is the **occupancy tax**, which is a sales

User charges and fees for services are on the increase in North Carolina, for example, in some public libraries.



Mike McLaughlin



Allegheny County Courthouse, circa 1945.

tax on rentals of hotel and motel rooms and other lodging. Several northeastern counties have received authority to levy what is called a **land transfer tax**, which is imposed as a percentage of the value of real property transfers. Greensboro has been authorized to levy an **admission tax**, which is imposed on events at the Greensboro Coliseum. In 1990, the General Assembly authorized a **"prepared meals" tax** for Charlotte and Mecklenburg County to support convention center facilities and convention promotion. This is an extra sales tax on the price of meals and prepared foods purchased in restaurants and other establishments that sell food. Municipalities that have since received authority to levy such a tax are Hillsborough and Raleigh. The counties of Cumberland, Dare, and Wake also have received this authority.

Flat household taxes. In trying to find ways to avoid property tax rate increases, local governments have invented a form of tax which might be considered new, except that this type of tax is very similar in nature and effect to highly regressive poll taxes (also called head or capitation taxes) that became unconstitutional after voters approved an amendment in 1969 ("No poll or capitation tax shall be levied. . .").⁶ These taxes are all similar in that they are levied as a flat amount on some base that

has no relationship to actual use of or benefits received from the services financed with the tax (unlike bona fide charges and fees), or to the value of the item taxed (unlike sales or property taxes), or to taxpayers' ability to pay (the rich pay the same amount as the poor).

The use of these flat taxes apparently began during the 1980s when some units began to impose a landfill or waste collection "user charge" or "user fee" that was billed to each household and collected through the property tax billing system. In the past, landfill costs have been financed primarily through the property tax except for tipping fees, and publicly operated waste-collection services usually have been financed from the property tax. Although they are usually called charges or fees, these exactions are taxes because the amount imposed does not vary with use of the landfill (as tipping fees do) or the amount of garbage collected (though a few units do charge for waste collection through volume-related charges).

In 1989 and 1990, some time after these taxes were first used, the General Assembly authorized certain units to collect them using the property tax billing and collection system (so their payment could be legally enforced), and in 1991, it granted general authorization for doing so.⁷ These taxes are

imposed on "improved" property—vacant land is not taxed. The taxes on apartments and mobile homes in rental spaces are collected through the landlord. The enabling law referred to these taxes as "availability charges," the inference being that residents are being charged not for use of the landfill but for its availability.⁸ Following that logic, any tax could be called a charge for the availability of government services.

In 1991, the General Assembly authorized local units to collect charges for stormwater facilities and public enterprise activities⁹ through water bills or other billing systems such as electricity billing.¹⁰ This authority could pave the way for additional flat taxes based on the same rationale as availability charges. However, such charges do not have to be flat taxes. The first use of stormwater charges, for example, has been to relate them to benefits by basing the charges on impervious coverage area such as buildings or pavement.

The N.C. Department of Revenue does not keep track of these flat household taxes, as it does other local taxes, because they are not officially designated as taxes. One unofficial and perhaps incomplete survey by the N.C. Association of County Commissioners from 1993–94 shows that about 40 counties are imposing annual flat "household disposal fees" for landfill costs that range from less than \$15 to \$75. In 25 counties, the amount exceeded \$30, and in 11 counties, the amount exceeded \$50. Only one county imposed the charge on businesses (perhaps because commercial waste disposal firms that serve businesses already pay disposal fees at the landfill). Some of these counties also impose a flat "household collection fee." For example, in one rural county, residents pay a \$60 collection fee and a \$40 disposal fee. Other counties included the fee for disposal in the collection fee. The collection fees typically ranged between \$30 and \$60, with a few exceeding \$90.

Though it might appear to some people that these amounts are low in relation to the property taxes they pay, for a great many North Carolinians these charges can be large in relation to their property taxes. Using 1994–95 tax rates and official assessment ratio surveys, it appears that in half the counties the county property tax on a home with a market value of \$50,000 would be less than \$300 (the estimated taxes fall in a range from \$165 to \$295). A household disposal fee of \$50 is equal to 17 percent of a property tax of \$300. The fee would be even more substantial in relation to property taxes on mobile homes.

Other flat taxes. If flat taxes can be rational-

ized as a way to charge households for the availability of the landfill, could not the same rationale be used to justify flat taxes for public schools, law enforcement, fire protection, and public health? In Orange County, a flat tax already is being used to pay for school construction. That county imposes a flat tax of \$750 on new homes, apartments, and mobile homes; the tax is \$1500 inside the Chapel Hill-Carrboro school unit boundaries. This exaction is called a **school construction impact fee** because it is intended to help pay for school construction needs resulting from population growth. But, of course, not all new homes are purchased by families with children. Orange County found that an average of one-third of a school-aged child lived in each new home, apartment, and mobile home in the county school district. And not all in-migrating children live in newly constructed homes and apartments. So this exaction is actually a tax imposed on the sale of new homes.

Another flat tax, authorized for all local government units in 1989, is a monthly charge of up to \$1 on each telephone bill to pay for **911 emergency telephone systems**.

Another form of flat tax is levied on **motor vehicles**. Municipalities have long been authorized to collect a license tax on each motor vehicle,¹¹ but because the authorized fee is only \$5 per vehicle, many of them have not found it worth the trouble to collect or enforce this tax. In recent years, however, a number of municipalities have requested and received authority to impose the tax at a higher rate. Two of them, Charlotte and Matthews, are authorized to charge \$30 per vehicle,¹² which is more than the state vehicle license tax (part of the proceeds can be designated for public transit). Unlike the state license tax, however, revenues from these taxes are not necessarily restricted to road-related spending. In fact, Alleghany County collects \$10 per vehicle and devotes the revenues to economic development programs.¹³

A similar flat tax on vehicles was created in 1991 when the General Assembly authorized a **vehicle registration tax** of \$5 per vehicle to be imposed by regional transportation authorities¹⁴ (it is in use in the Research Triangle area), and in 1993, it authorized a similar tax to be levied in counties comprising the Global TransPark Development Zone to support economic development and infrastructure projects within the zone.¹⁵

Other proposed taxes. Other new local taxes have been proposed but not authorized so far. Some local officials would like to have authority to levy **additional retail sales** taxes in their counties, and

"The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities."

—ADAM SMITH

THE WEALTH OF NATIONS

bills have been introduced to increase the authorized retail sales tax rate again to raise additional money for school construction. At least two counties have considered use of a **payroll tax**, which would be imposed as a percentage of the pay of all who work within a jurisdiction (including those who commute from other jurisdictions). The idea of having a **local income tax** tied to the state income tax has been mentioned occasionally, but there seems to be little interest in it. Such an income tax would fall only on those who live in the unit that levies it.

Issues Involving New Revenue Sources

The revenue sources that counties and cities use to finance government services determine how the burden of financing public services will be distributed among the people. The paramount issue in tax policy is whether the tax system distributes that burden in a way that is fair—or in the words of the state constitution, whether the power to tax is exercised in a "just and equitable manner."¹⁶

There are two commonly accepted principles of fairness in taxation, the *benefits principle* and the *ability to pay principle*. The benefits principle of taxation calls for the costs of government services to be distributed according to the benefits received from those services—and those who benefit more should pay more. Thus, charges, fees, and taxes (such as gasoline taxes used to finance streets and roads) that vary with actual use of a public service help to make the distribution of burdens fair.

There are fundamental problems that restrict the use of benefits-related revenue sources. First, the nature of many public services is such that the benefits accrue generally to the public and, therefore, cannot be assessed and charged to individuals. Water and sewer services can be metered and billed, and water can be shut off if bills are not paid. But there is no way to make individuals pay voluntarily for services that benefit the entire community.

For example, everyone in a community is benefitted when the police department makes streets

and homes safe and secure. Can we charge people for those benefits? If we billed every household for an equal share of the cost of supporting the police department, people could throw away their bills without paying them and still enjoy the general benefits of safety and security provided by the police department. If every household were forced by law to pay those bills (say, by collecting them through the property tax billing and collection system), we would not have a bona fide user charge because the amount paid would not vary with use or benefits received. Rather, we would have a flat household tax.

Because individuals cannot be charged or billed for services that provide general benefits to the community, we must impose taxes—we must force people to pay—according to some base that results in a fair distribution of tax burdens. The principle of fairness that applies to these general taxes is the ability-to-pay principle. This long-accepted principle (it dates back at least to 1776 and the writings of Adam Smith, the intellectual father of free market economics) calls for state and local revenue systems to distribute the burden of financing public services as nearly as possible based on people's ability to pay. "The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities. . .," wrote Smith.¹⁷

Many people would argue that those with higher incomes should pay a higher proportion of their income in taxes than lower income people—that taxes should be "progressive." But this principle does not necessarily call for progressive taxes, and certainly does not require that every single tax be progressive (for example, a progressive state income tax can offset the regressivity of other state or local taxes). It does not mean "soaking the rich" to pay for services for the poor or for redistributing income through taxation. It merely calls for overall tax burdens to be proportional to ability to pay.

Taxes that impose the same *absolute* burden on the poor as on the rich would certainly violate this principle. A tax that imposed a higher *relative* bur-

den on the poor than on the rich would also violate it. In that case, higher income people might pay more in absolute amount, but the tax as a proportion of income would be less than it would be for lower income people. When a tax imposes a higher relative burden on poorer people than on richer people, it is "regressive" with respect to ability to pay—tax burdens relative to ability to pay are highest for those with the least ability to pay. Almost everyone would agree that such taxes are unfair.

Yet almost all the local taxes that have been adopted in recent years are regressive taxes, and the new flat household taxes are as regressive as a tax can be. Almost any tax on sales will be regressive because poorer people spend a higher percentage of their income than others on most goods and services. There are some minor exceptions to this rule. A sales tax on luxury items bought only by the wealthy, such as airplanes, might be progressive. The occupancy tax on hotel and motel rentals might be substantially less regressive than other sales taxes. The prepared meals sales tax also might not be as regressive as some sales taxes, though it does fall on people who eat at fast-food restaurants as well as those who eat at fancy restaurants.

Genuine user charges and fees—those that are tied to use of services—are fair in accordance with the benefits received principle of fairness but nevertheless are regressive with respect to ability to pay. They are especially regressive when, as in the case of water and sewer bills, they include a flat administrative charge along with a volume-related charge. A payroll tax, unlike a general income tax, would be regressive because it falls only on wages, whereas higher income people tend to receive more of their income from non-wage sources. In addition, payroll taxes do not shelter subsistence levels of income through personal exemptions and standard deductions, as general income taxes do.

But the most regressive of the new revenue sources is the flat household tax. Purchases of items subject to a sales tax do increase with incomes so that those with higher incomes at least pay more taxes in dollar amount (though less as a percentage of income) than do those with lower incomes. But a flat household tax imposes the same dollar amount of tax on everyone. Thus, the richest household pays the same tax

as the poorest household, and that tax as a percentage of income is dramatically higher for lower income households. For example, a flat household tax of \$50 equals 1/200ths of the income of a family that earns \$10,000 (0.5 percent) but only 1/2000ths (0.05 percent) of the income of a family that earns \$100,000.

The Property Tax

Ironically, the current form of the property tax originally was intended to achieve tax fairness by replacing a regressive system of flat taxes. Although the property tax in various forms goes back to ancient times, the current form—a tax on the value of property—dates from 1776, when North Carolina became a state. During the colonial era, the principal taxes were the poll tax and a property tax on land acreage. Both these taxes were regressive with respect to ability to pay because they were imposed as a flat amount per person or per acre, respectively, without regard to income or value of land.

When the General Assembly first convened in 1776, the first law enacted authorized a state militia and the second law authorized a new tax system that would fall on the value of all forms of property.¹⁸ This reform was short-lived, but beginning early in the 19th century, the state again moved to replace the per-acre property tax with a property tax levied according to value. In doing so, the state was following a nationwide movement based on a concept of tax fairness that called for all forms of property—including land, improvements, and personal property such as household property, inventories, and intangible property like stocks and bonds—to be

taxed according to its value. Eventually this concept of "universal and uniform" property taxation was incorporated into the 1868 constitution. The concept that all forms of property should be taxed was followed in the main until the last decade, when the General Assembly ex-

empted personal property, business inventories, and intangible personal property (local governments have been reimbursed for the revenue they lost as a result of these exemptions but have lost some of the revenue growth that would have occurred.)

Thus, today's property tax is based on an early,

"The thing generally raised on city land is taxes."

—CHARLES DUDLEY WARNER

MY SUMMER IN A GARDEN

19th century, pre-industrial concept of taxation according to ability to pay, in which property, or wealth, was considered the proper measure of ability to pay. As the state began to shift from an agrarian economy to an industrial economy, the association of property ownership with economic well being and ability to pay became weaker. Income, not property or wealth, is regarded today as the appropriate measure of ability to pay, and income taxes are regarded as the most effective and equitable means of taxing people according to their ability to pay.

Another effect of the shift to an industrial economy was that incomes and property tax bases in the various counties became increasingly uneven. Until about 1900, county government was responsible for administering and financing most services, including public schools, public health, jails and prisons, public welfare programs, and roads. The ineffectiveness and inequity of supporting statewide services from local taxes became apparent at that time, mainly in the case of schools, and the state government began to assume a greater responsibility for financing such programs.

The ability to pay principle. The key issue regarding the property tax, as with any tax, is whether it is fair. How does it measure up in terms of the

benefits received and ability to pay principles of tax fairness? Let us consider first whether the tax is fair according to the ability to pay principle, because the tax was originally intended to achieve taxation according to ability to pay.

That turns out to be a very difficult question, so difficult in fact that we cannot simply label the property tax as regressive or progressive, fair or unfair. The answer depends upon the assumptions one must make about the final incidence of the tax. In the traditional analysis common before the 1970s, the property tax was assumed to fall in proportion to consumption—the portion of the tax that falls on housing is borne by the owners or renters, and most of the portion that falls on businesses is passed on to consumers. The conclusion therefore was that, like any tax that falls on consumption, the tax is regressive.

During the 1970s, economists began to use a different, more sophisticated analysis that takes into account the broad economic effects of the property tax and the implications for returns on property investment.¹⁹ Because investors in property cannot avoid paying some amount of property tax by shifting investments from one jurisdiction to another, at least some level of property taxes must be borne, through lower rates of return on investments, by

Mecklenburg County Courthouse, Charlotte, 1898



property investors and ultimately, after market adjustments, by owners of investment capital. That burden will be progressive, because ownership of capital is concentrated among upper income people (though part of the burden could still fall according to consumption).

Thus economic analysis of the tax's incidence is inconclusive or contradictory, and therefore we cannot judge the fairness of the property tax simply by applying the labels regressive or progressive. How then can we judge the fairness of the tax in relation to proposed alternative revenue sources? Two approaches are possible.

First, we can adopt the reasonable assumption that the burden of property taxes on family residences is borne by the families who own them. We can then estimate property taxes for families with different incomes based on surveys of family spending on housing. Such estimates suggest that the property tax is somewhat regressive for families in the mid-range of income. For example, estimated property taxes, assuming a rate of 1 percent of market value, would equal 1.6 percent of the income of a family with income of \$18,000 and 1.2 percent of income of a family with income of \$60,000. The degree of regressivity in this income range is about the same as that for retail sales taxes.

But this approach also has shortcomings. It does not take into account that property values are higher in urban areas than in rural areas, that municipal residents pay more in property taxes than non-municipal residents, that assessment accuracy varies, and a host of other problems. We do not have needed data on spending and property ownership of upper-income families, and this approach provides no help in estimating property and sales taxes paid by businesses and owners of commercial and agriculture property.

A second approach is the common-sense approach of examining, on the basis of hypothetical cases, how changes in taxes might affect different people and different businesses in the community. For example, what effect would the substitution of a flat household tax or additional retail sales tax for property taxes have on the taxes paid by a typical bricklayer, store clerk, bank manager, corporate executive, or brain surgeon? This approach may not give complete answers in all cases, but in some cases, such as the substitution of flat household taxes for property taxes, it gives very clear and credible results.

Before leaving the question of how property taxes are related to ability to pay, it is important to mention that the property tax has one critical draw-

back in this regard. Though property ownership might be correlated with income, there is no direct relationship of property tax liabilities to income. Income taxes increase only if one's income increases, and they fall if one's income falls. One pays more in retail sales taxes only if one can afford to spend more on taxed goods and services. But one's property taxes can increase substantially—either because tax rates increase or because property values increase—without regard to one's income. This aspect of the tax undoubtedly creates uncertainty, resentment, and even fear that contributes to public attitudes about the tax.

Some states have addressed this problem, at least for the elderly, by instituting a state-financed "circuit-breaker" system that prevents property taxes from exceeding a prescribed percentage of income. North Carolina authorizes use-value assessment of farmland and provides a homestead exemption for low-income elderly people, but those measures do not prevent the property tax from "overloading" income.

The benefits principle. The property tax is a general tax intended to finance the general, community-wide benefits of public services, and therefore it is imposed on the assessed value of property without regard to the specific benefits that accrue directly to owners of property. For example, one pays county property taxes to support the local share of school expenses even if one has no children in the public schools. Even so, there are a number of ways in which the property tax is associated with benefits received from public services. Many local services, such as fire and police protection, provide benefits directly related to property and perhaps to the value of property. A community that has excellent public services or excellent schools might see that excellence reflected in higher property values. A community that cares little for public service can enjoy a low tax rate, while another community that values public service can impose a higher tax rate. As discussed later, the property tax fits well into North Carolina's system of municipalities. Municipalities provide an additional level of services not provided to those who live outside municipal boundaries, and municipal residents must pay an additional property tax, in addition to the countywide property tax, in compensation for the extra benefits they receive.

Shifting Tax Burdens

How do tax burdens shift among residents when a flat household tax or an additional retail sales tax is substituted for the property tax? Those

who benefit most from such changes are those who own the most property—owners of expensive homes, large amounts of agricultural and forest land, or valuable commercial property.

In the case of flat household taxes, this conclusion follows from simple arithmetic. If, for example, a household disposal fee of \$50 permits a county to lower property tax rates by 5 cents per \$100 valuation (or, conversely, to prevent a rate increase of that amount), the owner of a residence assessed at \$100,000 will save \$50 in property taxes and the owner of a residence assessed at \$300,000 will save \$150 in property taxes, but both will pay the same \$50 disposal fee. The owner of a commercial building assessed at \$10 million will save \$5,000 in property taxes and will not have to pay the disposal fee if it is not imposed on businesses.

To illustrate how a shift from property taxes to sales taxes would benefit large property owners, we have to use simple logic rather than simple arithmetic, because we do not have data on property and sales taxes paid by wealthy families and businesses. An increased sales tax rate would produce a certain amount of revenue for a local government, which would enable it to lower the property tax rate or, conversely, to increase spending without raising the property tax rate. The benefits that accrue from the reduction in the property tax rate would, as in the former case, increase with the value of the property owned.

But how much would those taxpayers pay in additional sales taxes? We know from available spending data for families of moderate income that retail sales taxes fall as a percentage of income as incomes rise, and we can assume with confidence that percentage continues to decline as family incomes increase. Thus, wealthy taxpayers who own expensive property, such as expensive homes or commercial property, are likely to benefit more than taxpayers of moderate income from a reduction in the property tax rate, but the increased sales tax that they pay will be comparatively modest in relation to income.

Owners of commercial, industrial, and agricultural property also would benefit from property tax rate reductions in proportion to the assessed value of their property, and those benefits to owners of valuable property are likely in most cases to be greater than the resulting increase in local sales taxes. An owner of a large commercial office building, for example, is likely to get a substantial reduction in property taxes compared with modest increases in sales taxes on purchases of such items as office and maintenance supplies (sales of fuel are

The great advantage of the property tax in a state and local system of government is that it distributes the costs of government services mainly to those who live in, or do business in, the community that levies the tax and who enjoy the benefits of those government services.

not subject to the local sales tax). In addition, manufacturers and farmers pay a lower state sales tax on certain items, such as fuels used in production processes and certain equipment and therefore these purchases are not subject to local sales taxes (which fall only on items subject to the regular state sales tax rate).

Substituting flat household taxes for property taxes. Let's consider the hypothetical case of a bricklayer who earns \$25,000 and lives in a home assessed at its market value of \$50,000, and a bank manager who earns \$75,000 and lives in a home assessed at its market value of \$150,000. Let's suppose that a county's landfill costs are equivalent to revenue generated by five cents of its property tax rate, but it seeks to raise that amount of money instead through a new flat tax of \$50 per household (while keeping the property tax rate the same so that total revenues are increased).

The 5 cent property tax rate implies that the bricklayer pays \$25 in property taxes to support landfill costs, or 0.1 percent of his income. The bank manager pays \$75 in property taxes for that purpose, which also equals 0.1 percent of his income. Under the assumption used here that housing values are proportional to income, a property tax would have imposed tax burdens on these two households in proportion to their income. (In reality, housing values might decline slightly with income in this range of incomes.) On the other hand, the flat tax of \$50 represents two-tenths of one percent (0.2 percent) of the income of the bricklayer, but only seven-hundredths of one percent (0.067 percent) of the bank manager's income.

If we assume, for the sake of illustration, that the total property tax rate in the county is \$0.50 per hundred dollar valuation and that the property tax rate is not actually reduced when the flat tax is im-

posed, the additional flat tax represents a 20 percent tax increase for the bricklayer but only a 6.7 percent tax increase for the bank manager.

The shifts in tax burden demonstrated in this example become more striking if we extend the hypothetical case to include a store clerk who earns the minimum wage and owns a mobile home assessed at \$10,000, and a doctor who earns \$250,000 and owns a home assessed at \$500,000. The flat tax of \$50 on the store clerk represents a 100 percent tax increase for the store clerk and a two percent tax increase for the doctor.

Substituting retail sales taxes for property taxes. How do tax burdens shift when a retail sales tax is substituted for county and municipal property taxes? Though there would be significant shifts from large property owners to ordinary taxpayers, among ordinary taxpayers of moderate income, the shifts are not likely to be nearly as great as in the case of flat household taxes. Although the retail sales tax is a regressive tax, as a percentage of income the tax does not fall dramatically for people in the midrange of incomes. For example, the two percent local retail sales tax would represent an estimated 0.6 percent of the income of a family with income of \$20,000 and 0.4

percent for one with income of \$65,000.

Relative spending on housing and housing values are also likely to fall, if only slightly, with increases in incomes in this range, so the net burden of shifting from the property tax to a retail sales tax is likely to be relatively modest for taxpayers of moderate income. As noted before, the big gainers would be owners of large amounts of property. They stand to save substantially on property taxes relative to the modest increase in sales taxes.

Another factor must also be considered here. North Carolina has a two-tiered system of local government services. That is, *counties* provide certain services such as public schools, social services, and public health on behalf of everyone in the county, while *municipalities* provide additional services, or a higher level of services (such as fire and police protection), to those who live within municipal boundaries. This two-tiered service system is matched by a two-tiered property tax system. Everyone who lives in the county, including those who live in municipalities, pays the county property tax rate, and those who live in municipalities pay an additional municipal property tax in compensation for the additional benefits they derive from municipal services.

Demand for new infrastructure, like this water plant below, is one factor increasing costs for local government.



Missy Bello

When a retail sales tax is substituted for the property tax, as occurred in 1971, 1983, and 1986, this two-tiered tax system breaks down. That is, everyone in the county pays the same sales tax, according to his or her spending for taxable items. But municipal governments as well as the county government get a share of the proceeds, so municipal residents do not pay an extra tax to compensate for the extra benefits they receive from municipal services financed through the sales tax revenues. There are still two levels of service but only one level of sales taxes. The municipal residents of a county can benefit from additional municipal services financed by the municipal share of the sales tax while paying the same tax as a non-municipal resident of the county who does not receive those benefits.

Taxing Non-residents

A characteristic of many of the new revenue sources proposed by local officials is that they fall substantially on non-residents, as well as on residents. Are local governments justified in wanting to impose additional taxes on those who live elsewhere, or are the proposed taxes merely a way to export tax burdens to outsiders?

The great advantage of the property tax in a state and local system of government is that it distributes the costs of government services mainly to those who live in, or do business in, the community that levies the tax and who enjoy the benefits of those government services. But non-residents can also benefit from the services provided by a local government. For example, people commute to other towns and counties to work, shop, and do business, or to visit beaches, parks, museums, stadiums, and civic auditoriums. Should they not be taxed by the local government that provides services which benefit them?

The property tax already falls partly on non-residents, either directly or indirectly. Non-residents who own property in a community have to pay property taxes to the local government. Businesses in the community will attempt to pass their property taxes on to the consumers of their products and services through the prices they charge. In this way, the cost of providing services to businesses is passed on, at least partially, to those who purchase those products or services, whether or not they live in the community.

Communities that serve as regional employment, shopping, and entertainment centers also will be compensated at least in part for the services provided to non-residents through the revenues that

result from increased employment, income, and property tax base. Indeed, local governments actively seek to attract business firms to their communities and often provide financial subsidies and inducements to them, on grounds that the community as a whole will benefit from additional employment, income, and property tax base (which, other things being equal, reduces property tax rates for residents). Similarly, local governments often justify the use of public funds to subsidize civic auditoriums, stadiums, and museums on grounds that such projects will provide additional jobs, income, and tax base.

Still, many of the new revenue sources in use or proposed for use impose additional taxes on non-residents. The City of Hillsborough exports part of its taxes through the prepared meals tax to the travelers on Interstate 85 who stop to eat at its fast food restaurants. Part of Mecklenburg County's prepared meals tax (the part not paid by local residents) falls on outsiders who attend conventions there. Dare County keeps its property taxes low by levying a land transfer tax that falls mainly on outsiders who buy beach property. The occupancy tax falls mainly on outsiders, since local residents only seldom rent local hotel and motel rooms. An admission tax can collect revenues (in addition to revenue from user fees and ticket sales) from rock music fans or sports fans from miles around. A local retail sales tax whose proceeds are returned to the county where they are collected, such as the one-cent retail sales tax enacted in 1971, allows counties that serve as regional employment and shopping centers to collect sales taxes from shoppers who live elsewhere. A payroll tax would permit regional centers like Mecklenburg to impose a tax on wages of all who work there, including those who commute from South Carolina and surrounding North Carolina counties. (Unlike a payroll tax, a local income tax levied on state tax liability would fall only on local residents.)

A key issue in evaluating these revenue sources is whether they conform to the benefits received and ability to pay principles of tax fairness. Do commuters, non-resident shoppers, tourists, and visitors who travel to another city or county impose costs on the community that are not already compensated through the existing system of taxes, charges, and fees (such as fees imposed for use of civic auditoriums and even tickets)? The state maintains the highways, roads, and thoroughfares that non-residents mainly use, and cities receive a share of the gasoline taxes collected to defray their street costs. As noted, the owners of office buildings, ho-

tels, shopping centers, and factories pay property taxes in compensation for the costs of providing services enjoyed by the owners and the people who use these facilities, and the eagerness of local officials to encourage and even subsidize these facilities suggests that local communities get substantial net benefit from them.

A land transfer tax might conform to the benefits of tax fairness in a resort community where most of the services financed by the tax benefit the property on which the tax is imposed. But in non-resort communities, is it fair to impose taxes only on those people who purchase property, when other people also enjoy the benefits of government services? Is a payroll tax, which falls only on wage income and does not permit personal exemptions, fair in accordance with the ability to pay principle (as well as the benefits received principle) of tax fairness?

Conclusion

The search by North Carolina's local officials for new revenue sources is leading to fundamental changes in the state's system of local government taxation. These changes have been occurring in piecemeal fashion, with little public discussion or even public recognition of the substantial shifts in tax burdens that ensue from them. Before recent trends progress much further, it is important for the state to begin a discussion of a fundamental issue: what kinds of revenue sources will assure that the costs of financing government services are distributed equitably among the people?

Inherent in this issue is the question: what role should the property tax play in North Carolina's system of state and local government? Whatever its faults and however unpopular it might be, the property tax remains the only major tax, other than a local income tax tied to state income tax liabilities, that can serve as a truly local tax. It is a local tax because it makes local officials and local taxpayers accountable. Elected officials, who make spending decisions and set the tax rate, are accountable to local taxpayers. If local taxpayers want better services for their communities, they must be willing to pay for them, or if they want lower taxes they must be willing to accept the consequences for local services. Local sales taxes cannot serve this purpose, particularly as they relate to municipal government, because essentially they are a form of state revenue sharing—their rate is set in Raleigh and revenues come to local governments in the form of a check from Raleigh, not from local taxpayers—and

because they do not fall substantially on all who enjoy the benefits of local services (such as owners of commercial office buildings).

If the property tax is to serve as a local tax, however, it cannot also serve as a state revenue source—that is, as a means of financing services that should be the responsibility of all the state's taxpayers. If local governments are required to raise revenue to finance services and programs that need to be provided statewide according to some standard of uniformity (such as an adequate education program), the inevitable result will be disparities in the level of service and disparities in property tax burdens. Except for additional sales taxes that are distributed according to population (rather than point of collection), new revenue sources are not a solution to this problem because local units with poor tax bases will not benefit substantially from them. The need, then, is to define carefully what should be a state financial responsibility—what services should be provided without regard to the ability or willingness of local officials and taxpayers to support them—and what should be the responsibility of local governments in providing local services through local taxation. ■

FOOTNOTES

¹ Article V, Sec. 2 (1) of the North Carolina Constitution.

² These legal constraints are laid out in G.S. 153A-149 for counties and G.S. 160A-209 for municipalities.

³ U.S. Department of Commerce, Bureau of the Census, *Governmental Finances, 1991-92*.

⁴ G.S. 105-463-474.

⁵ G.S. 105-480-487 and G.S. 105-495-504.

⁶ Article V, Sec. 1 of the N.C. Constitution.

⁷ Chapter 652 of the 1991 Session Laws, now codified as G.S. 153A-292 and G.S. 160A-314.1.

⁸ G.S. 153A-292(b) and G.S. 160A-314.1(a).

⁹ Public enterprise activities could include such services and amenities as airports, bus service, and off-street parking.

¹⁰ Chapter 591 of the 1991 Session Laws, now codified as G.S. 160A-314(b) and G.S. 153A-277(b).

¹¹ G.S. 20-97.

¹² Chapter 345 of the 1993 Session Laws.

¹³ Chapter 456 of the 1993 Session Laws.

¹⁴ G.S. 160A-613(b).

¹⁵ G.S. 158-42.

¹⁶ Article V, Sec. 1 of the N.C. Constitution.

¹⁷ Adam Smith, *The Wealth of Nations*, The Modern Library Edition, Random House, Inc., 1937, p. 777.

¹⁸ Charles D. Liner, "The Evolution of North Carolina's State and Local Tax System," Charles D. Liner (ed.), *State and Local Government Relations in North Carolina*, Institute of Government, Chapel Hill, N.C., pp. 51-70, 1995.

¹⁹ See Henry J. Aaron, *Who Pays the Property Tax?: A New View*, The Brookings Institution, Washington, D.C., 1975.

A Tax Menu for Local Government: *Yes or No?*

by Mike McLaughlin

Local government officials face a dilemma. The one source of tax revenue they can control—the property tax—is also the one consistently cited as least popular in public opinion polls.¹ Yet local government officials face increasing service demands from every direction. Population growth forces the construction of new schools and increased investment in roads and other infrastructure. Increasing caseloads drive up county Medicaid costs. Citizens demand that service levels be maintained or enhanced while their property tax bills remain unchanged or go down. Industries wishing to expand want local offi-

cials to pick up part of the cost through low-cost loans, job training, or other incentives—waving the threat of taking their property tax payments and the jobs their industries provide out of the local economy.

These conflicting demands leave local officials with two choices. They can do more with less, or find a way to get more. Local officials are proving themselves adept at doing both. To do more with less, they are shaving operating costs and turning to privatization of services. To get more, they have in-

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Demand for new schools to accommodate population growth is one force putting pressure on property tax rates in North Carolina.



Missy Bello

creasingly turned to user fees as a revenue source. Yet both avenues have their limitations. Local officials can only go so far with cost-cutting and privatization before running head on into citizen service expectations and employee morale problems. And true user fees should be assessed in proportion to services rendered and benefits received. They are difficult to administer fairly, and inappropriate for certain services that provide for the general welfare of the population—such as general law enforcement and public education.

These limitations lead some local government officials to advocate for a third way—authority to pick and choose from a so-called menu of new local taxes to supplement the property tax. North Carolina local governments operate legally under Dillon's Rule rather than Home Rule, which means they have no authority other than that granted explicitly by the legislature. (For more on this issue, see "Dillon's Rule and Home Rule: Two Models for State-Local Government Relations, p. 34.) The property tax is the only general, broad-based taxing authority under the control of local officials,² and many local government officials would like to have more authority.

The tax menu approach has been backed both by the N.C. League of Municipalities and the Association of County Commissioners. It surfaced in 1991 legislation sponsored by Rep. Bill Hurley (D-Cumberland) in the House³ and Sen. Fountain Odom (D-Mecklenburg) in the Senate⁴ but quickly sank under the weight of opposition from groups that would have been affected. The 1991 legislation would have authorized four types of local-option taxes: an occupancy tax; a local land transfer tax; a prepared food and beverage tax; and an amusements tax. A fifth option—some type of local income tax—was recommended by a study committee but never made it into legislation, says Hurley.

Given the tension between increased service demands at the local level and resistance to property tax increases, the tax menu idea may well surface again in the General Assembly. Indeed, House Speaker Pro Tempore Carolyn Russell (R-Wayne) says the issue is likely to be considered by the State and Local Government Fiscal Relations and Trends Study Committee she chairs with Senate Appropriations Committee Co-Chair Beverly Perdue (D-Craven). "Additional revenue raising

***"Taxes are what we pay for
civilized society."***

—OLIVER WENDELL HOLMES JR.

authority—a potential tax menu—is on the table," says Russell.

Perdue agrees that the legislature should take a close look at additional taxing authority for local government. She says citizens in her district fiercely resist higher property taxes. As a

result, local officials are severely limited in their ability to raise funds for public needs such as water and sewer facilities and school buildings. "They can ignore their capital needs. . . float a bond issue—which is often turned down—or raise the property tax," says Perdue. One option for expanding the range of revenue choices for cities might be additional local sales tax authority in lieu of the property tax, says Perdue. "I just think there needs to be some discussion," she says.

That's music to the ears of local government officials like Ed Regan, deputy director of the N.C. Association of County Commissioners. "There's still very strong interest in a broader range of options for generating local revenue," says Regan. Lee Mandell, director of research and information technology for the N.C. League of Municipalities, adds that a tax menu would be of "tremendous benefit" to a number of municipalities, allowing them to tailor their tax structure to take into account the local economy and local politics.

But Mandell is quick to acknowledge that a tax menu—at least one as limited as the one laid out in the 1991 legislation—wouldn't help all municipalities. For example, a small town with only one restaurant could produce barely a burp in its revenue stream through a meals tax. An accommodations tax or an amusement tax would face similar limitations in revenue generating potential in small-town North Carolina, as would a real estate transfer tax. And unless a strong case could be made for the shortcomings of the present revenue-generating system, it's likely that a proposal for a tax menu would meet the same fate it did in 1991, when interest groups such as the N.C. Association of Realtors—which opposed the land transfer tax included in the menu—stopped it in its tracks.

Tim Minton, the association's lobbyist, notes that his trade group opposes the land transfer tax for three primary reasons: (1) it increases the cost of housing, which could be a burden for first time buyers; (2) it is an unstable revenue source that drops when the housing market cools; and (3) it targets a small portion of the population—those buying and



Johnston County Manager Richard Self at site of new county water plant.

selling real estate—instead of spreading the tax burden across the entire population.

And since the tax menu last was proposed, a new election in which the Republican Party picked up 39 seats in the 170-member General Assembly left the body even less amenable to any action that could be perceived as a tax increase. Authorizing a tax menu would not directly raise taxes, but it would grant local elected officials additional flexibility so that *they* could raise taxes.

What's Wrong with the Property Tax?

In the face of such opposition, why even consider granting additional revenue raising authority? To make the case for a tax menu, one must first make the case that the present revenue options are inadequate to meet the growing demands on local government. Advocates for increased revenue authority argue that the property tax—local government's primary source of tax revenue—is too subject to political pressure to bear the full weight of funding local services. Indeed, the property tax is consistently found to be the least popular tax in public opinion polls. Yet those same polls indicate local government is the most popular level of government and the one most trusted to provide serv-

ices. (See "What Polls Have Shown about Public Attitudes on Federalism," pp. 36–41, for more.) Thus, local governments face a whipsaw effect of increasing service demands and scarce tax dollars to provide those services. That problem will only worsen if state and federal officials deliver on their promise to return more responsibility to the local level.

Johnston County Manager Richard Self notes that legislative actions such as repeal of the inventory tax and exemption of household personal property such as furnishing and clothing have eroded the ability of the property tax to generate money. Meanwhile, service demands have mushroomed. Johnston County, for example, is increasingly becoming a bedroom community for neighboring Wake and the Research Triangle Park area. As a result, the county's population of school-aged children has exploded—requiring the equivalent of one new school every year to house all the new students. The county's share of Medicaid spending has grown from \$500,000 in the 1989–90 fiscal year to \$2.7 million in 1995–96.

Citizens opposed to tax increases in Johnston and elsewhere have become increasingly astute at bringing pressure to bear on the county commissioners and town council members who control the rates,

and the result has been increased reliance on fees and reluctance to raise taxes. In Johnston, county commissioners kept the property tax rate at the same level for seven years, then lowered it so the county would not receive a windfall when property was re-evaluated for tax purposes in 1995-96. Such hold-the-line attitudes are becoming more and more typical. Indeed, at least 52 of North Carolina's 100 counties held their tax rate steady or decreased it for the 1995-96 fiscal year, compared to only 35 counties in 1993-94. Municipalities exhibited a similar trend. (See "Local Governments Face Increasing Service Demands, Tighter Budgets," p. 2, for a more detailed discussion of this trend. See particularly Table 4, p. 11.)

Why the reluctance to raise taxes, even in the face of growing demands? Eager-to-please politicians find that holding the line on taxes plays well with the public, and pleasing the voting public is what makes the difference between a candidate and an elected official. And the 1994 Republican revolution filtered down to the local level as well, where the GOP gained 56 seats on county boards of commissioners.⁵ (See Table 2 on p. 5.)

Many of these local officials were elected on anti-tax themes that resonated with the public. Indeed, opinion polls indicate that the property tax ranks among the least popular taxes, rivaled only by the federal income tax.

So what don't people like about the property tax? David Crotts, the legislature's senior fiscal analyst, notes that one problem is the visibility of the tax. Property owners must list certain possessions in January, elected officials debate the rate in well-publicized meetings during May and June, property owners get their bills in late July, and the bills come due at the end of the year. Taxpayers are reminded of the tax at predictable intervals throughout the year.

And as Regan notes, the tax must be paid when many households are suffering a severe fiscal hang-over from the holidays. "A lot of people pay through their mortgage, but you still have a significant number who get one bill and have to pay it right after Christmas—and it's a big chunk of money."

Still, no tax should be expected to win a popularity contest, and the property tax does have positive features. It is a true local tax in that it is raised from local residents to pay for local services. Local elected officials control the rate and these officials are held directly accountable to the tax-paying public. Crotts notes that the rate is relatively low compared to many states. And Charles D. Liner, the tax expert at the University of North Carolina's

Institute of Government, argues that revenue sources local governments have been able to secure to supplement the property tax may shift the local tax burden from owners of large amounts of property to low- and moderate-income taxpayers. (See Charles D. Liner, "The Property Tax and the Search for New Revenue Sources," pp. 76-89, for more on this topic.)

Part of this phenomenon—as Liner discusses within these pages—could be described as user fee creep. Elected officials reluctant to take the heat for raising property tax rates turn to a broad range of user fees, some of which are actually regressive taxes that do not vary with the amount of services consumed. Examples Liner cites include solid waste disposal fees billed on a per-household basis, motor vehicle registration fees, impact fees charged on new home purchases, and a fee of up to \$1 per month local governments are authorized to bill all local residents on their phone bill for 911 service.

A positive feature of the property tax, Liner notes, is that it taxes most directly the people who receive local services. Most taxes that have been discussed for a tax menu would in some way export the tax burden to people outside the local community. And Liner argues that many supplemental taxes, such as the local option sales tax, are regressive.

But whether a tax is regressive is not the issue to local elected officials. "Our elected officials don't hear from the experts," says David Dear, Cleveland County Finance Officer. "They hear from the taxpayers who feel they're bearing an unfair share of the burden." Dear says elderly citizens and those who have no school-age children are particularly vocal in their opposition to the property tax. "They call it a school tax," Dear says, and they wonder why they have to pay it since they don't have any children in school.

Former Wake County Commissioner Jack Nichols says user fees that supplement the property tax are not always regressive. He says in some instances fees that vary according to benefits received and ability to pay represent a preferable alternative to increasing the property tax to pay for the service. Nichols offers several examples where fees may be appropriate: inspection of private water treatment facilities at subdivisions; excessive calls for false alarms due to a faulty burglar alarm; fees for cleanup of a spill of hazardous materials; and sliding-fee scales for public health, mental health, and substance abuse services. "I believe that the common denominator in these common sense forms of taxation is the close nexus between

"It is not a tax bill but a tax relief bill providing relief not for needy but for the greedy."

—FRANKLIN DELANO ROOSEVELT
1944 TAX BILL VETO MESSAGE

the service provided and the cost of the service," says Nichols. "In each case, the user is paying for his or her pro rata share of the service. In some cases, the payment is imposed as a consequence of their actions. . . . What could be more fair?"

Richard Self, Johnston County manager, argues that the property tax has a disparate impact on senior citizens, people with disabilities, and people on a fixed income. "I never have thought it was a fair tax," says Self. The Johnston County Commissioners sought additional taxing authority in the 1995 General Assembly to meet the county's mushrooming school needs. Self says the county wanted authority for a real estate transfer tax; an impact fee on new homes, mobile homes, and apartments; and an additional 1 percent local sales tax. "The bill never got out of committee," says Self.

Nevertheless, the N.C. League of Municipalities and the N.C. Association of County Commissioners make a strong case for a tax menu. A menu would ease some of the pressure on the property tax, and with the exception of a local income tax, all of the taxes these groups advocate have been authorized for at least some units of local government, according to a list maintained by the legislature's Bill Drafting Division. The groups argue that what is fair for the units that have won legislative approval for these taxes seems fair for the remainder. Local elected officials could pick and choose from the menu, and no one would be required to implement any tax against the wishes of their constituents.

The tax menu items advocated by the League and the Association include:

The hotel/motel occupancy tax. Already authorized for 66 counties and 33 municipalities across North Carolina, this tax is levied on overnight accommodations. The tax typically is limited to 3 percent of the cost of those accommodations, although it rises as high as 6 percent in some places. Revenue from the tax often is restricted to promotion of travel and tourism, although this isn't always the case. While both the League and the Association would include the tax on their menu, the organizations acknowledge that most local governments

that would benefit from the tax already have it in place.

The local land transfer tax. A total of seven counties have been authorized to implement a local land transfer tax—all located in the northeast corner of the state. These counties are Dare, Currituck, Chowan, Camden, Pasquotank, Perquimans, and Washington. Assessed at 1 percent of the value of any real estate conveyance, the tax is a proven revenue generator in high growth counties. Dare County, for example, raised \$2.2 million through the tax in the 1994–95 fiscal year. The county's general fund property tax produced about \$15 million in revenue during the same year, says Finance Director David Clawson, so the land transfer tax provided a hefty supplement. The tax has been authorized for Dare County since 1985 with little apparent impact on growth. The county led the state in population growth in the 1980s, with its population increasing by 70 percent. Its growth rate is projected to lead the state in the 1990s as well, with the increase pegged at 42.5 percent. Dare County is, however, a coastal county where growth rates are driven by desire to be near the ocean. This does not mean that a land transfer tax would have no impact on housing demand in a non-coastal county with a more typical growth rate.

The prepared food and beverage tax. Six units of government have been authorized to charge a 1 percent prepared food and beverage tax. They are: the city of Charlotte; the town of Hillsborough; and Cumberland, Dare, Mecklenburg, and Wake counties. This tax can be a significant revenue generator in urban areas, but many smaller towns and less populated counties do not have enough restaurants to see much benefit. Charlotte, the state's largest city, generated more than \$7 million in revenue through its prepared meals and beverage tax during the 1993–94 fiscal year, according to the Department of the State Treasurer. Hillsborough, on the other hand, produced just over \$29,000. Proceeds typically are restricted to tourism promotion or to capital projects that might encourage restaurant business, such as convention centers,

museums, and sports facilities.

Amusement. This is among the least tested of any of the taxes on the proposed tax menu. According to Martha Harris, a staff attorney in the legislature's Bill Drafting Division, only two amusement taxes have been authorized in North Carolina, and only one has been implemented. The one that has been implemented allows for a charge of up to \$1 a seat on events at the Greensboro Coliseum. Known locally as the ACC Tournament tax, the surcharge was authorized to help expand the coliseum and lure back the famed Atlantic Coast Conference Basketball Tournament, which had migrated down Interstate 85 to Charlotte. An amusement tax also is authorized for Cabarrus County, home of the Charlotte Motor Speedway, but the tax has never been implemented. Like the prepared food and beverage tax, the amusement tax has limited appeal for less populated counties and small towns with few amusements.

Additional sales tax authority. Counties already have the authority to levy a local option sales tax of two cents on the dollar, and all 100 counties

levy the full amount. Local government would like to have an additional penny. A primary reason is that the sales tax is a potent revenue raiser that generates fewer complaints by the taxpaying public than the property tax. David Crotts, the legislature's senior fiscal analyst, estimates that a penny increase in the sales tax would generate more than \$650 million in the 1996-97 fiscal year. If the revenue were distributed on a per capita basis, it would help counties with fewer resources and activities to tax, such as restaurants, amusements, and land transfers. According to Liner, the sales tax is somewhat regressive but less so than certain other fees and taxes that have been used to supplement the property tax, such as per household fees that do not vary with the amount of services consumed. Moreover, Liner notes that shifting from property taxes to sales taxes results in significant shifts in tax burdens from property owners and businesses to the public at large. Aside from these issues, a sales tax increase would push the North Carolina tax higher than that of neighboring states, potentially hurting sales in border counties.

Rocky Mount Mayor Fred Turnage advocates a local government tax menu before the State and Local Government Fiscal Relations and Trends Study Committee. Also pictured are the committee's co-chairs, Sen. Beverly Perdue (D-Craven) at left and Rep. Carolyn Russell (R-Wayne).



Mike McLaughlin

"I have only one thing to say to the tax increasers: Go ahead and make my day."

—RONALD REAGAN

The local income tax. No North Carolina unit of government has a local income tax. Proponents of a tax menu do not believe that is likely to change in the near future. Nevertheless, they put the local income tax on the list of taxes they'd like to see on a menu. Why? A local income tax could be structured so that it would be more progressive than many alternative local taxes. And it would provide some help for local governments that have relatively few amusements, restaurants, hotels, or real estate transfers, although such a tax would not solve the problems of North Carolina's poorest counties. (It would probably take direct revenue sharing by the state to achieve this end.)

To ease administration at the local level, a local income tax could be pegged as a percentage of the state income tax bill and collected by the state. Currently 7.75 percent at its highest rate, the N.C. Constitution limits the state income tax to no more than 10 percent of income.⁶ Regan and Mandell agree the legislature would be reluctant to share its authority to tax income, and local elected officials might be reluctant to implement the tax even if authorized. Nevertheless, they include the tax on the menu as a possible means of helping all of North Carolina's towns and counties—not just those with taxable amenities and pastimes.

What are the prospects for such a menu in the legislature? In the short term, probably not very good. "I can't see us doing anything in taxes now," says Senate President Pro Tempore Marc Basnight (D-Dare). The 1995 General Assembly, in fact, was more interested in cutting taxes than authorizing new ones, enacting a \$362.8-million tax cut package during the 1995 session. (For more on this session of the General Assembly, see "In the Legislature: Republican Lawmakers Work to Deliver on Their Contract," pp. 102–118.) A special 1996 session of the legislature convened to cut unemployment insurance taxes in late February, and the 1996 short session will consider roll-backs of both the sales tax on food and the corporate income tax. While Basnight supports some of the items on the tax menu for local gov-

ernments, he believes counties and municipalities can win additional authority on a case-by-case basis through local bills.

And every tax on the menu has constituents that could be aroused against it. Rep. Hurley notes that local real estate agents are still mad at him for sponsoring a 1991 bill that included the land transfer tax. William G. "Gerry" Hancock, a Raleigh lawyer who represents the N.C. Travel and Tourism Coalition, says the organization supports the hotel/motel tax only if the proceeds are used to promote a particular area as a tourist destination—not as a means to help pay for general government needs. Hancock opposes a tax menu because he believes it singles out only a few types of businesses and requires them to pay more for general government services than other types of businesses. "There may be and probably is a need for new revenue sources at the local level," says Hancock, "but it would be mindless to suggest that one industry ought to pay for it as opposed to society as a whole. If society as a whole benefits, society as a whole ought to pay for it."

Harris, the staff attorney in the legislature's Bill Drafting Division, notes that there are several issues for the General Assembly to consider regarding a tax menu. For example, would an array of local taxes that vary across county lines be difficult for business and hurt recruitment of new industry? Might citizens or businesses in one county that adopts a local-option tax flee to another jurisdiction that does not impose the tax? Would a menu make for more complexity in complying with tax laws and create extra bureaucracy? "These are issues that have to be dealt with," says Harris.

Yet North Carolina cities and counties face increasing service demands, and the trend toward returning responsibility to the local level is likely to continue.⁷ Rep. Carolyn Russell (R-Wayne), House speaker pro tem and the legislature's State and Local Government Fiscal Relations and Trends Study Committee co-chair, believes local government will need more resources to meet the demands. "I think local government is probably going to need additional sources of revenue," says Russell. "They're caught between a rock and a hard place. . . . I suspect that what they have is not adequate. I believe it would be prudent at this stage of the game to look at what options they have and give them some other revenue sources for their use."

Much of the discussion about counties has centered on their school construction needs. Cities are burdened by infrastructure needs such as street improvements and water and wastewater treatment plant expansions. Rep. Gene Arnold (R-Nash), co-



Local government officials consider testimony at a public hearing by the State and Local Government Fiscal Relations and Trends Study Committee.

chairman of the House Finance Committee, suggests creation of a trust fund to meet some of these needs. "The trust may be funded by a state bond issue, corporate taxes, and/or excess funds not allocated in the budget process," says Arnold. "Counties would then have funds made available from the trust for school construction on a loan or grant basis." Cities also could be included in such a trust, using loans or grants to pay for infrastructure needs such as street improvements and water and sewer plant expansion.

Rep. Leo Daughtry (R-Johnston), the House majority leader, is less enthusiastic about a tax menu than about other options for aiding cities and counties. Daughtry notes that some of the items on the menu—particularly the real estate transfer tax—would be difficult to sell to the General Assembly. Authorization for a 1-cent increase in the local option sales tax might have a better shot, Daughtry notes, particularly if part of the revenue were earmarked for school construction. Such an increase would be a hefty revenue generator, producing some \$650 million to meet local service needs. Yet Daughtry says the legislature could get bogged down on whether the revenue should be distributed based on where the sales occurred or on population.

In addition, the legislature may want to reserve the extra penny on the sales tax for its own revenue needs or move in the opposite direction and cut the sales tax on food.

Another option, and one Daughtry characterizes as more likely than increased revenue raising authority, would be to approach the local government funding crunch from the cost side by relieving counties of responsibility for expenditures for the local share of Medicaid, Aid to Families with Dependent Children (AFDC), and Special Assistance for Adults. This would relieve counties of some \$330 million in mandated expenses and would particularly benefit low-wealth counties with proportionately high social services caseloads. It also would help to assure uniform statewide delivery of these services in an era of decreased regulatory oversight.

"As majority leader, I'm looking for something with a consensus—that I can sell [to the legislature]," says Daughtry. Relieving mandated social service payments would sell better than increasing the taxing authority of local government, he notes. "It's a tax cut for the counties, rather than having it go straight down to the people," says Daughtry.

One obstacle to assuming full responsibility for

the non-federal share of Medicaid is that the state would be taking greater responsibility for one of the fastest growing areas in state and local budgets and one which already stretches the state's ability to pay. Sen. Perdue observes that with the federal government returning responsibility for social programs to the states, local governments are likely to end up with even higher social services costs and responsibilities. Granting local government additional sales tax authority might be a better bargain for the state, Perdue notes, although she says she does not be-

lieve the total tax burden should increase. "I'm a single mother," she says. "It doesn't matter if it's a federal tax, a local tax, or a state tax," she says. "Ultimately, it all comes out of my wallet."

But if the means are yet to be determined, a number of ranking lawmakers agree on the end: some type of aid for local government to ease a severe case of fiscal distress. "Clearly we've got to do something for the counties—take some responsibilities off or give them more money," says Daughtry. "I'm not sure how we're going to do it."

Table 1. Key Arguments For and Against a Tax Menu for Local Governments

Pros of a Tax Menu

1. Towns and counties could tailor their tax structure to the strengths of the local economy.
2. Many menu items already are in place in some cities and counties.
3. Granting additional flexibility would be consistent with the trend toward returning authority to the local level.
4. Local government is closest to the people so that voters can more easily hold elected officials accountable for taxing decisions.
5. Political constraints work against using property tax increases to meet rising service demands.
6. In lieu of raising the property tax, cities and counties are turning to user fees that are more regressive than the menu items in the way they distribute the tax burden.

Cons of a Tax Menu

1. Some of the menu items—such as the meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax—would not help some of the less populated and poorer rural counties that need help most.
2. The meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax target specific industries or types of businesses, which raises a fairness issue.
3. Some of the menu items—such as the local option sales tax—are regressive and would shift the tax burden away from wealthy individuals and businesses with large amounts of property.
4. The menu gives local officials additional authority to raise taxes at the local level, which flies in the face of anti-tax sentiments.
5. The state may be less willing to share revenue with local governments if it grants additional taxing authority, which could hurt poorer towns and counties that have fewer resources to tax.
6. Local officials already have broad constitutional authority to raise property taxes to meet their revenue needs.

Options for State Action

Local governments are groaning under increasing service demands while citizens moan about the chief means to pay—the property tax. Yet there is no easy answer to this dilemma. A tax menu such as that advocated by the N.C. League of Municipalities and the N.C. Association of County Commissioners would provide additional flexibility for raising funds at the local level, yet the political climate is largely one of considering tax cuts. There are clear pros and cons to adopting a tax menu for local governments.

Among the **pros** of a tax menu are these: towns and counties could tailor their tax structure to the strength of the local economy; many menu items already are in place in at least some cities and counties; additional flexibility would be consistent with the trend toward returning authority to the local level; local government is closest to the people so that voters can more easily hold elected officials accountable for taxing decisions; political constraints work against using property tax increases to meet rising service demands; and cities and counties—hamstrung in their ability to raise the property tax—are turning to user fees that are even more regressive than the menu items in the way they distribute the tax burden.

The **cons** of a tax menu include the following: some of the menu items—such as the meals tax, the hotel/motel tax, the amusements tax, and the land transfer tax—would not help some of the less populated and poorer rural counties that need help most; these same taxes target specific industries or types of businesses, which raises a fairness issue; some of the menu items—such as the local option sales tax—are regressive and would shift the tax burden away from wealthy individuals and businesses with large amounts of property; the menu gives local officials additional authority to raise taxes at the local level, which flies in the face of anti-tax sentiments; the state may be less willing to share revenue with local governments if it grants additional tax authority, which could hurt poorer towns and counties that have fewer resources to tax; and, finally, local officials already have broad constitutional authority to raise property taxes to meet their revenue needs.

While the case is less than clear for a tax menu, the N.C. Center for Public Policy Research believes the case *has* been made for a severe fiscal crunch at the local level brought on by tension between rising service demands and stable or declining property tax rates. Local governments are the most popular level of government in poll after poll, but their chief rev-

enue source, the property tax, is the least popular. And federal and state governments plan to send more responsibility to the local level, but little talk is heard about sending more revenue. The Center believes the General Assembly should consider the problem, and sees at least four clear options for addressing it.

Option 1. The N.C. General Assembly could authorize a tax menu for local government that includes authority to levy one or more of the following: a hotel/motel occupancy tax, a local land transfer tax, a prepared food and beverage tax, an amusement tax, a 1-cent increase in local sales tax authority, and a local option income tax. A broad tax menu could provide something for every unit of government in North Carolina. Poorer counties with fewer taxable amenities such as hotels and restaurants could turn to the local option sales tax or the local income tax. (This would not entirely solve their revenue needs since they also have relatively less sales and income.) The hotel-motel tax already is in place in 66 counties and 33 municipalities in North Carolina. Seven counties have the local land transfer tax. Nine units of government have a prepared food and beverage tax. Two units of government are authorized to levy an amusement tax. The menu would authorize these items for the remaining counties and municipalities. The more broad-based taxes on the menu—the local option sales tax and the local income tax—could provide significant additional revenue for local officials willing to implement them. And authorization for a local option income tax would give at least one option to local officials who want a progressive rather than a regressive local tax. The disadvantage of this option is that the current political climate is not conducive. The legislature might not be willing to authorize a menu, and, if it did, some units of government might find the additional revenue not worth the political fallout from enacting a new tax. For poor counties and municipalities, a tax menu could ease pressure on the state to share revenue without providing a full solution to their financial needs.

Option 2. The legislature could authorize a 1 cent increase in the local option sales tax and forgo the remainder of the tax menu. If adopted statewide, a 1 cent increase in the local option sales tax could provide more than \$650 million in annual revenue to local governments (1996–97 fiscal year estimate). That amount of revenue would go a long way toward addressing the revenue needs



of local governments. The legislature could earmark a portion of the proceeds for specific local needs—such as school construction for the counties and infrastructure improvements for municipalities—or it could allow local officials to make their own decisions about how best to use the money. While somewhat regressive, the sales tax is not as regressive as some of the user fees that are being used locally to supplement the property tax. One problem with granting additional sales tax authority to local governments, however, is that the state may want to reserve the extra penny for its own revenue needs, or it may want to grant sales tax relief through repeal or partial repeal of the sales tax on food.

Option 3. The N.C. General Assembly could approach the fiscal needs of local government from the cost side by relieving local government of expenditures for the local share of Medicaid, Aid to Families with Dependent Children, and Special Assistance for Adults. House Majority Leader Leo Daughtry (R-Johnston) characterizes the state's assuming responsibility for the local share of Medicaid, AFDC, and Special Assistance as a tax cut to the counties. Local spending for these pro-

grams totaled more than \$330 million in the 1994–95 fiscal year and likely will continue to increase.⁸ By assuming the local share, the state would be relieving counties of a significant cost—one which is one of the fastest rising parts of their budgets and a cost over which local government has virtually no control. Such a move would not, however, directly help municipalities with revenue needs for such services as street maintenance, waste disposal, and crime prevention. A further obstacle to this approach is that the state may be unwilling to absorb the additional cost of assuming the local share.

Option 4. The legislature could opt to do nothing to increase flexibility or decrease responsibility at the local level, leaving local officials the current options of property taxes, user fees, and privatization or ignoring increased service demands in favor of lower taxes or no increase in taxes. This option is likely to lead to greater reliance on regressive user fees, increased privatization of services, and curtailment of some services due to reluctance of local officials to raise property taxes to meet rising costs. Ultimately, citizen service expectations and citizen willingness to pay property taxes might find their balance.

Citizens could express at the ballot box their pleasure or displeasure with the course of events.

One disadvantage of this approach is that the current trend toward regressive user fees could unfairly shift the burden of who pays for local services to those less able

to pay. A further danger is that human needs could go unmet, schools go unbuilt, and public roads and buildings decline. In addition, the current desire to shift more responsibilities and decisions to the local level could be halted in its infancy.

The unpopularity of the property tax has placed clear constraints on the ability of local officials to raise revenues. County commissioners and city councils have found alternative ways to meet their needs through a combination of budget cuts, privatization of services, and increased reliance on user fees. Yet some services—such as crime prevention and police work—are not appropriate for fees, and fees that do not vary with either the level of service consumed or with ability to pay are probably the most unfair taxes of all. There may be a limit to how far citizens are willing to go with user fees, privatization, and the curtailment of services that continual budget-cutting ultimately requires. Whether to grant additional revenue-raising authority to local government or to assume some responsibility for local government costs ultimately is a dilemma for the legislature. And, as the complaints of local government officials wrestling with rising service demands and stagnant revenue sources make clear, the stakes are very high. ■

"When there is an income tax, the just man will pay more and the unjust less on the same amount of income."

—PLATO

¹Survey by the Gallup Organization, for the U.S. Advisory Commission on Intergovernmental Relations (ACIR), June 17–July 6, 1994. The survey was based on personal interviews with 1,003 adults nationwide. The results, weighted for demographic variables, carried a margin of error of +/- 3 percent. Participants responded to the question,

"Which do you think is the worst tax—that is, the least fair: federal income tax, federal Social Security, state income tax, state sales tax, or local property tax?" A plurality (28 percent) responded that the local property tax was the least fair. The biennial poll has consistently produced similar results, except that the federal income tax has sometimes supplanted the property tax as least favorite. See Tom Mather, "What Polls Have Shown about Public Attitudes on Federalism," pp. 36–41 for more.

²N.C.G.S. 153A-149(c) for counties and G.S. 160A-209(d) for municipalities.

³H.B. 1221 in the 1991 General Assembly.

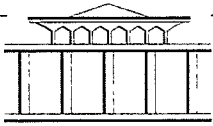
⁴S.B. 845 in the 1991 General Assembly.

⁵For more on this topic, see Mebane Rash Whitman, "The Evolution of Party Politics: The March of the GOP Continues in North Carolina," *North Carolina Insight*, Vol. 16, No. 2 (September 1995), pp. 81–97. See particularly Table 2, p. 89.

⁶Article V, Sec. 2 (6) of the N.C. Constitution.

⁷Whether this is a positive trend is a different issue. Charles D. Liner, the tax expert at the Institute of Government, notes that "returning responsibility to local governments and asking them to finance their responsibilities through local taxes of any kind will guarantee disparities in service levels and tax burdens, and that is counter to the trend of the past 100 years. It is important in principle and in practice that local taxes should be used to finance only local services. Asking local governments to finance statewide programs will guarantee disparities and inequalities."

⁸Counties are responsible for 50 percent of local Medicaid administrative costs and 5.2 percent of the cost of payments to vendors. For AFDC, counties are responsible for 50 percent of local administrative costs and 16 percent of payments to recipients. Special Assistance for Adults is split on a 50-50 basis between the state and the counties.



IN THE LEGISLATURE

The 1995 Legislature in Retrospect: Republican Lawmakers Work to Deliver on Their Contract

by Danny Lineberry

A new day dawned in January 1995, when the N.C. General Assembly convened with its strongest Republican presence this century. Thanks to their stunning sweep in the 1994 elections, Republicans captured the House by a 16-seat margin (68–52) and were only two seats shy of controlling the Senate (24–26). GOP lawmakers wasted little time in working to deliver on their “Contract,” an agenda they had pledged to pursue during the 1994 campaign. Republican legislators succeeded on several fronts, most notably by slashing taxes by \$413.8 million (including cuts in the income, intangibles, and unemployment insurance taxes) and approving a public referendum on whether to grant veto power to the governor. But other parts of the Contract stalled, including welfare reform and term limits for legislators and members of Congress. The following article looks back at the 1995 legislature’s successes and failures.

Yellow Dog Democrats no doubt hung their heads in defeat after the November 1994 elections in North Carolina. Republican candidates, who had not held a majority of seats in the state legislature since 1870, seized control of the House of Representatives and nearly captured the Senate. Many state employees—especially those who owed their jobs to Democratic Gov. Jim Hunt—almost certainly held their breath.

But despite fears to the contrary, the walls of the Legislative Building did not come tumbling

down on Jan. 25, 1995. That’s the date when Rep. Harold Brubaker (R-Randolph), a 48-year-old real estate appraiser, businessman, and cattle farmer from Asheboro, took the oath of office to become the first Republican speaker of the state House in the 20th century.¹

“It is the dawn of a new day in North Carolina,” Brubaker said during his brief speech on the first day of the 1995 General Assembly session. “It is the end of business as usual. For decades, business as usual has made government in North Carolina more and more remote from the people. Business as usual has made it too expensive. Business as usual has made it too intrusive. Business as usual has made it too unresponsive. By 1994, the people were ready for a change. And that’s what the 1994 election was all about.”

During the 186 days that followed—one of the longest legislative sessions in the state’s history—Brubaker and his GOP majority in the House, along with a modern-day record number of Republicans in the Senate, did indeed change the way the N.C. General Assembly does business.² Republican legislators pushed through some bills that previously had been dead on arrival. They killed other measures, such as the lottery, that previously had passed in one chamber or the other. And they set new priorities and procedures for budgeting the state’s finances.

Lobbyists and lawmakers who had been outsiders found doors magically opened. Others, used to sitting behind the closed doors when the deals were cut, were left out in the cold. And some things, such as the leadership’s use of rules and clout to control the flow of legislation, did not change much at all.

Danny Lineberry is a reporter covering the N.C. General Assembly and state politics for The Herald-Sun of Durham.

GOP Contract a Road Map for Legislative Action

Many of the changes were the result of a road map that the Republicans brought to Raleigh in January. The map—a “Contract” with the voters signed by dozens of state GOP legislative candidates in the fall of 1994—called for tax cuts, brakes on state spending, welfare reform, and initiatives that would give voters the power to make laws.³ (See Table 1 on p. 106.)

When the 1995 General Assembly session ended in late July, the GOP lawmakers—with help from Democratic sympathizers on selected issues—had achieved many of those goals. Taxpayers saw one result of the new GOP clout when they filled out their state income-tax forms in 1996. Early in

the session, the General Assembly passed a \$413.8-million tax cut package that will save \$290 a year—or 79 cents a day—for a typical middle-income family of four. That package included a \$235-million cut in income taxes and the repeal of the \$124.4-million tax on intangible property, such as stocks and bonds.⁴ In addition, the legislature cut unemployment insurance taxes by 23 percent, saving employers \$51 million a year.⁵

For teachers and state employees, the effect of the GOP gains was clear in their first paycheck for the 1995–96 fiscal year. They received an average 2 percent pay raise. That compares with salary increases in the 1994–95 budget that totaled: 4 percent with a 1 percent one-time bonus for state employees; 5 percent for teachers with one to three years experience; and 7 percent for teachers with

four or more years experience.⁶

Overall, the legislature increased the number of state employees in the 1995–96 budget by 1.3 percent, despite well-publicized cutbacks in the Department of Public Instruction’s administrative offices and the Department of Community Colleges.⁷

Poor women will see another result of the GOP’s new clout if they seek state money to pay for an abortion. Lawmakers slashed the state’s abortion fund from \$1.2 million to \$50,000 and tightened up the eligibility requirements.⁸

Voters will see yet another outcome of the Republican power when they go to the polls in November 1996. Three constitutional amendments—including a proposal to make North Carolina’s governor the last in the country to receive the power to veto legislation⁹—are scheduled to be on the ballot. The other two measures on the ballot are a constitutional amendment guaranteeing certain rights to crime victims¹⁰ and an amendment allowing certain punishments as alternatives to prison terms.¹¹

House Speaker Harold Brubaker (R-Randolph)



Karen Tam

"For decades, business as usual has made government in North Carolina more and more remote from the people. Business as usual has made it too expensive. Business as usual has made it too intrusive. Business as usual has made it too unresponsive. By 1994, the people were ready for a change. And that's what the 1994 election was all about."

—HAROLD BRUBAKER,
N.C. HOUSE SPEAKER

GOP leaders pronounced themselves pleased with their scorecard. "We came to town this session of the General Assembly with an agenda," House Speaker Brubaker told reporters minutes after the session ended. "We delivered on our agenda, and I think Mr. and Mrs. Middle-Income Taxpayers of North Carolina have been heard by this session of the General Assembly."

That agenda was the "Contract" that became the GOP's blueprint for change on Election Day 1994. The contract grew out of a request by the Republican National Committee, which had developed a similar document at the national level. Both contracts reflected traditional GOP themes such as limited government, reduced government spending, and lower taxes. But few of the Republican candidates who signed the contract on the steps of the State Capitol on a sun-splashed, autumn day in October 1994 expected the GOP to actually *win* a majority of either the state House or Senate.

"Sometimes you dream," Brubaker said in the days leading up to the 1995 session. "You dream about that, hoping that you will be in the majority within a few years."

House, Senate Respond Differently to GOP Contract

But with their unexpected majority in the House, Republicans were able to deliver more than the contract promised. The document—titled "A New Contract by the People, for the People"—simply said GOP legislators would *introduce* bills to imple-

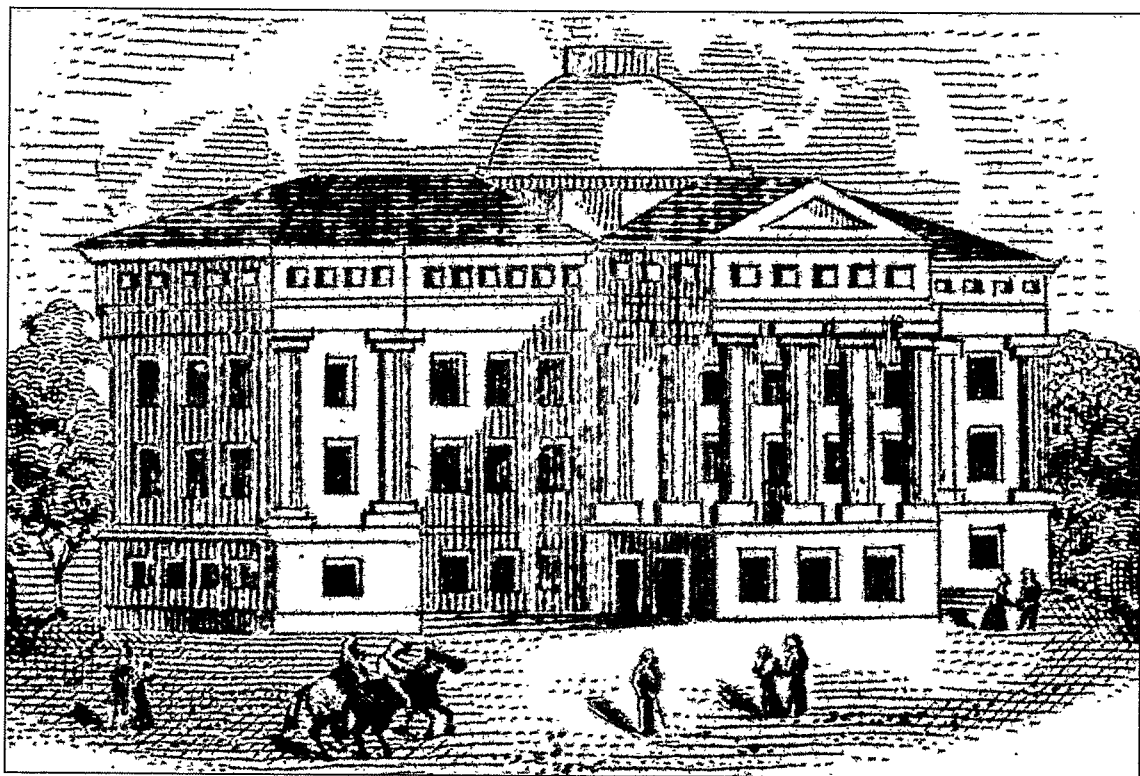
ment the contract's provisions. Republican lawmakers accomplished that goal and more. With the help of a dozen or so Democrats who consistently voted with the GOP, the Republicans were able to win House passage of all but two of the contract items. (See Table 1 on p. 106.) The only setbacks were bills that would change the state Constitution and require a super-majority of votes to pass, such as legislation that would allow voters to initiate legal changes by referendum¹² and establish term limits for legislators and members of Congress.¹³

With the "Contract" bills, the state House and Senate:

- Repealed the limit on the state's prison population, effective Jan. 1, 1996, and raised the cap during the interim period from 24,500 to 27,500 inmates.¹⁴ The prison cap had been a rallying cry for Republicans during the February–March 1994 special session on crime.
- Overhauled the state's governing structure for education with bills that shifted power away from the Superintendent of Public Instruction and the N.C. Department of Public Instruction to the State Board of Education and local school boards.¹⁵
- Put on the ballot a proposed constitutional amendment that would give the governor veto power.¹⁶ For years, veto measures had stalled in the House after passing the Senate.

Despite those successes, the Republicans were not able to win final approval of many contract items. The Senate, with its slim 26–24 Democratic majority, became a burial ground for several measures on the GOP's agenda, and the House itself killed others.

Term limits for *state legislators* died in the Senate after the Democratic leadership linked them with a sweeping campaign finance reform package that would have set voluntary spending limits for some campaigns.¹⁷ Democrats said they tied the two proposals together to create a comprehensive campaign reform package. But Republicans accused the Democrats of a cynical political ploy. The linkage prompted all 23 Republicans who were present to vote against the bill, depriving the Democrats of the 30 votes needed to approve the proposed constitutional amendment on term limits. Another bill that would have established term limits for members of North Carolina's *congressional delegation* died in the state House in early May.¹⁸ Shortly thereafter, the U.S. Supreme Court nullified a law establishing congressional term limits in Arkansas, ruling in a 5–4 decision that the U.S. Constitution prohibits the states from imposing



Engraving of the State Capitol, circa 1870

N.C. Division of Archives & History

such qualifications on members of Congress.¹⁹

A sweeping welfare reform package also foundered, in part because of disagreements between the House and Senate, as well as uncertainty about the effects of national welfare reform on the states. Legislators left town with plans to revisit that issue in the 1996 session, after the signals from Washington became more clear. Another bill, a “workfare” measure that would require food stamp recipients to work, also stalled in the Senate after passing the House.²⁰

Another major Contract item that stalled was the “Taxpayer Protection Act,” an effort to tie the growth of the state budget to inflation and population growth. Under the bill, any revenue revenues collected that exceeded the spending limit would be placed in a fund for future tax relief. The legislation also would impose a limit on the state income tax rate, require referendums for the issuance of state and local bonds, and require legislative approval for the governor to spend money from the state’s Rainy Day Fund. The House and the Senate passed substantially different versions of the bill, which was still in a conference committee when the 1995 session ended but could be reconsidered in 1996.²¹

Republican Changes Go Beyond the Contract

While the “Contract” gave the Republican leadership a road map, GOP-initiated bills aimed at shaking up the status quo were not limited to that document. The General Assembly passed education bills requiring public schools to teach students abstinence from sex until marriage,²² encouraging students to recite the Pledge of Allegiance,²³ encouraging a moment of silence every day in public schools,²⁴ and establishing an “Eddie Eagle” gun-safety program sponsored by the National Rifle Association.²⁵ The bills were ironic because one of the professed goals of the N.C. Republican Party has been to eliminate state mandates on local governments. Other GOP-sponsored bills that failed to pass would have mandated character education²⁶ and phonics instruction²⁷ in the public schools.

On the crime front, Republicans provided the push for a law that allows North Carolinians to legally carry concealed weapons.²⁸ In other crime-related bills, the legislature also appropriated \$74.6 million over two years to construct 2,048 more prison beds,²⁹ increased criminal penalties for

—continues on page 108

**Table 1. Outcome of Republican "Contract" Proposals
in the 1995 N.C. General Assembly**

Contract Proposal	Action in 1995 Session of Legislature
1. <u>Tax reform that includes:</u>	
(A) an income tax cut of at least \$200 million, and	(A) Passed a \$235-million income tax cut.
(B) no new taxes.	(B) Adopted no new taxes.
2. <u>Spending reform that includes:</u>	
(A) passage of a Taxpayers Protection Act that would limit growth in state spending to the rate of inflation, with an adjustment for population growth, and create an Emergency Reserve Fund; and	(A) House and Senate passed different versions, but conference committee failed to adopt a compromise bill. Pending for 1996 session.
(B) a prohibition on unfunded state mandates on local governments.	(B) Passed law requiring fiscal notes for state mandates; ban still pending for 1996 session.
3. <u>Criminal justice reform that:</u>	
(A) removes the cap on state's prison population;	(A) Passed
(B) requires construction of new no-frills prison units; and	(B) Passed
(C) examines limits on judicial appeals by death-row inmates.	(C) Passed House but not Senate. Pending for 1996 session.
4. <u>Welfare reform that:</u>	
(A) denies benefits to unwed mothers and fathers who fail to cooperate in establishing the parenthood of children born out of wedlock;	(A) Passed House but not Senate. Pending for 1996 session.
(B) extends Workfare programs to cover all able bodied adult recipients of social services benefits;	(B) Passed House but not Senate. Pending for 1996 session.
(C) and provides for a Learnfare program to encourage young welfare dependents to use public education opportunities so they can become productive adult citizens.	(C) Passed House but not Senate. Pending for 1996 session.

Table 1, continued

Contract Proposal

Action in 1995 Session of Legislature

5. Education reform that:

- (A) grants effective control of public schools to local boards of education;
- (B) reduces the responsibilities and size of the state Department of Public Instruction bureaucracy;
- (C) earmarks savings realized by DPI restructuring for use by local school boards to pay for textbooks, supplies and other classroom materials.

- (A) Passed law giving local school boards greater flexibility in spending state funds, but enacted laws mandating Pledge of Allegiance and gun-safety education.
- (B) Passed laws making State Board of Education the final authority in public schools and cutting staff by 50 percent in Department of Public Instruction's main office.
- (C) Reallocated savings from DPI cuts to local school units.

6. Empowerment reform that:

enables citizens of North Carolina, through voter initiatives, to place issues on the statewide ballot as constitutional amendments.

Failed.

7. Governance reform that:

- (A) calls for a 1995 popular referendum on granting veto power to the Governor; and
- (B) establishes term limits for members of the N.C. General Assembly and the state's congressional delegation.

- (A) Passed, with a statewide voter referendum to be held in November 1996.
- (B) Both measures failed.

8. Legislative reform that:

upon a discharge petition of a majority of state House or Senate members, requires that legislation held in committee be brought to the floor for a vote.

Passed a new House rule, but the majority party still stopped efforts by the minority party to bring legislation bottled up in committee to the House floor.

"In the 1995 session, I think North Carolina legislators really started listening to the needs of their constituents, in terms of wanting lower taxes and greater accountability from state government."

—REBECAH MOORE,
EXECUTIVE DIRECTOR,
N.C. TAXPAYERS UNITED

certain offenses,³⁰ and established a registration system for sexual offenders.³¹

Even when they could not muster the votes needed to pass legislation, the Republican majority provided a friendlier environment for some issues. For example, the House gave serious consideration, for the first time, to a tuition tax credit for children in private schools.³² The House also considered a so-called "takings" bill that would have required state and local governments to compensate property owners for environmental laws that lowered the value of their holdings or caused lower profits.³³

While the attention was focused on the House Republican majority, Senate Republicans also demonstrated their new clout. A bill requiring parental consent for a minor's abortion, an issue that had stalled for years in the Senate, cleared that chamber in 1995 and was enacted into law.³⁴ Both the Senate and the House killed bills that would have put a state lottery on the ballot for voters to decide.³⁵

Not all of the changes in the legislature were as obvious as bills that passed—or did not pass. In some cases, the new climate could be measured in issues that were not seriously discussed.

Health care reform, for example, all but faded from view—due in part to the lack of action at the federal level. No major reform measures were passed to increase access to health care in North Carolina or to control health-care costs. The Republican budget-writers in the House also tried to abolish the state's Health Care Planning Commission, which had spent months studying the issue in North Carolina. The group survived, but with its mission substantially changed and with four high-ranking state officials—the governor, lieutenant governor, speaker of the House, and Senate president pro tempore—no longer designated as members.

Repeal of the sales tax on food received less debate, despite repeated efforts by Rep. Toby Fitch (D-Wilson) and others to put the issue on the House's agenda. "The things that the little people have said they wanted to have done have been aborted," Fitch said.³⁶

Changing of the Guard Extends to Interest Groups

Another result of the GOP takeover of the House was that insiders became outsiders, and vice versa. Just one year after giving the General Assembly an A+ rating, the state's largest teacher's group graded the 1995 session as a C.

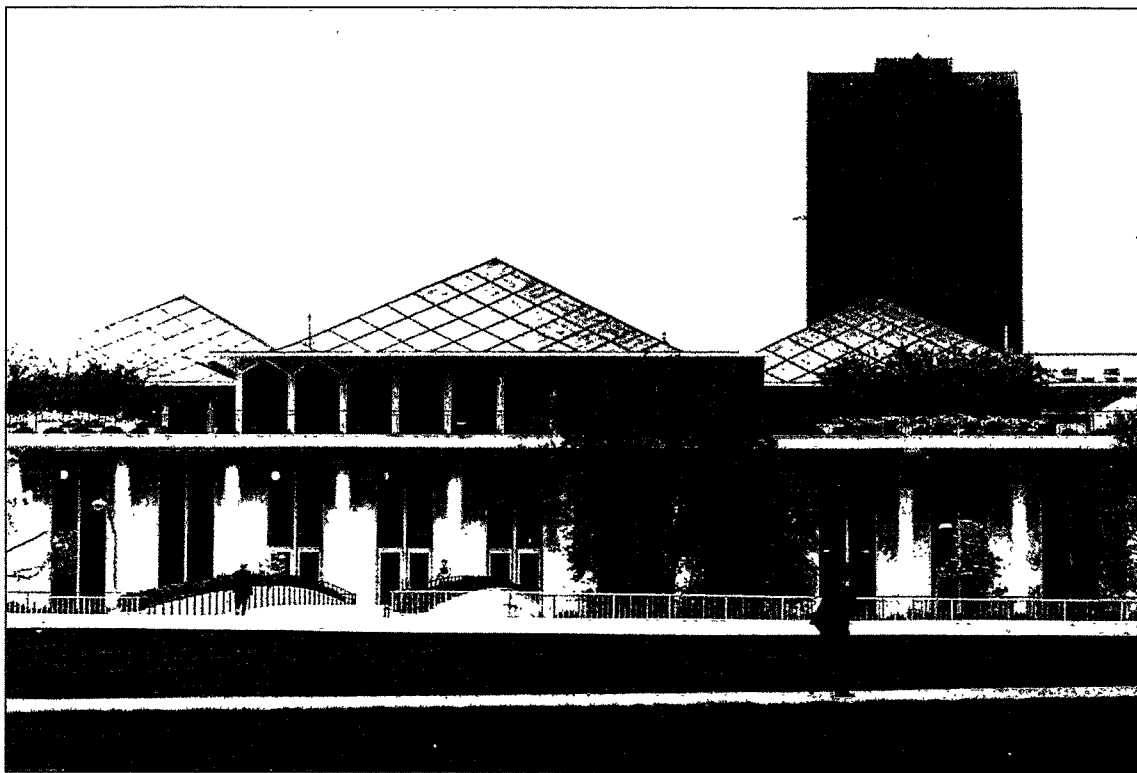
"With last year's General Assembly, the question was: How much do you support public education? It was simply a matter of degree," Rose Marie Lowry-Townsend, president of the N.C. Association of Educators, said at an August news conference in which the group announced its report card for the 1995 session. "This year, the question became: Do you support public education at all?"³⁷

Bill Holman, a lobbyist for several environmental groups, also found himself on the outside looking in. "The House and Senate have traditionally gotten all the interested parties at the table to try to negotiate out their differences," Holman said.³⁸ But under GOP rule in the House, he said, lawmakers and business interests cut the deals and did not invite environmental lobbyists.

Holman called the session the worst for the environment in 25 years, with one of the few bright spots being the passage of legislation establishing a stable funding source for the state parks. The bill, introduced by Republican Rep. Lyons Gray of Forsyth County, created a trust fund that will provide \$10 million to \$15 million annually for parks through the use of some of the tax on land transfers.³⁹

Some environmentalists cited the Hunt Administration's "Year of the Coast" agenda as another bright spot. That effort included a slate of bills aimed at improving water quality and land-use planning in coastal counties. Although the administration did not get everything it asked for, the legislature appropriated funds to hire 29 additional positions (three less than requested) for dealing with problems such as animal waste inspection, fisheries law enforcement, water pollution, and coastal land-use planning.⁴⁰

"It could've been a lot worse, but it should've been a lot better," said Todd Miller, executive director of the N.C. Coastal Federation. "The pros-



pect [for coastal bills] at the beginning of the session was really bleak. But the effort this year was relatively successful in terms of just maintaining the status quo. But that's not good enough, given the magnitude of the problems facing the coast."

Despite such successes, environmental regulators also found themselves on the defensive. Steve Levitas, deputy secretary of the N.C. Department of Environment, Health, and Natural Resources, said that he spent much of the session trying to block legislation that would have gutted the agency's programs. "There was a lot of frustration out there with

government in general and the environment in particular," said Levitas, who previously directed the N.C. Environmental Defense Fund, a nonprofit environmental group.⁴¹

Roz Savitt, a lobbyist whose clients include the N.C. Chapter of NOW (National Organization for Women), said she knew what to expect even before the session started. "Our success was going to be measured by holding the line," she said.⁴² Nevertheless, the legislature did enact several laws dealing with issues important to women, including bills that: authorize broader penalties for "deadbeat dads" who refuse to pay child support;⁴³ require insurance com-

"The legislature chose to put the election of 1996 ahead of the people of North Carolina, by focusing on popular issues rather than the things that help people who need the help. The leadership turned over the reins of government to the people who financed their campaigns—the wealthy and the corporations."

—CHRIS FITZSIMON, DIRECTOR, THE COMMON SENSE FOUNDATION

panies to cover hospital stays of at least 48 hours after childbirth;⁴⁴ give judges more options in trying to prevent domestic violence;⁴⁵ and make financial need instead of fault the primary criterion for determining whether divorced spouses qualify for alimony support.⁴⁶

Representatives of several interest groups vented their frustration during interviews with reporters on the last day of the session. In contrast to the almost giddy legislators who blew bubbles on the House floor before they blew town, lobbyists pushing for campaign finance reform, abortion rights, and other causes were glum.

"The legislature chose to put the election of 1996 ahead of the people of North Carolina, by focusing on popular issues rather than the things that help people who need the help," said Chris Fitzsimon, leader of the Common Sense Foundation, a liberal think tank based in Raleigh. "The leadership turned over the reins of government to the people who financed their campaigns—the wealthy and the corporations."⁴⁷

Brubaker had a quick retort for such complaints: "That's just the spin the liberal left is putting out," he said. "It's absolutely untrue." Senate Minority Leader Betsy Cochrane (R-Davie) had an even blunter response: "Bull!"

One group sharing the speaker's assessment is N.C. Taxpayers United, an organization that lobbies for tax relief. "The 1995 session was a progressive year for the average taxpayer in North Carolina," says Rebecah Moore, executive director of the group. "In the 1995 session, I think North Carolina legislators really started listening to the needs of their constituents, in terms of wanting lower taxes and greater accountability from state government." Moore credited the legislature for cutting the income and intangibles taxes, as well as nearly enacting the Taxpayer Protection Act. "We're hoping very much

that it has the highest chance of passage in the next session," she says. "I think the chances of compromise are very strong."

Some lobbyists with close ties to the new Republican leadership found themselves in high demand. Among those who saw their client lists expand was Don Beason, the anti-drug cabinet director under former Republican Lt. Gov. Jim Gardner. The changing of the guard also attracted some new blood into the lobbying field, including: Ward Purrington, a legislative liaison and secretary of revenue under former Gov. Jim Martin; and Jack Hawke, the former chairman of the state Republican Party, who became a partner with Southern Strategies Inc., a previously Democratic lobbying firm.⁴⁸

GOP Lays Out the Welcome Mat for Business

Business interests found a new attitude when they roamed the halls of the Legislative Building. That change prompted the head of N.C. Citizens for Business and Industry, the state's largest business-lobbying group, to comment that his team started playing offense instead of defense during the 1995 session.

There was very little 'let's punish business' or 'let's over-regulate business,'" Phil Kirk, president of the N.C. Citizens for Business and Industry, wrote in the group's legislative bulletin. "Rather, there was a prevailing attitude and desire to help the economic and education climate in our state."⁴⁹

A lobbyist for the National Rifle Association, which pushed hard for the concealed-weapons law, carried the sports analogy about playing offense and defense even further. "In 1994, I was an offensive lineman," Joe McClees said. "In 1995, I enjoyed playing quarterback. The November elections gave me some good re-



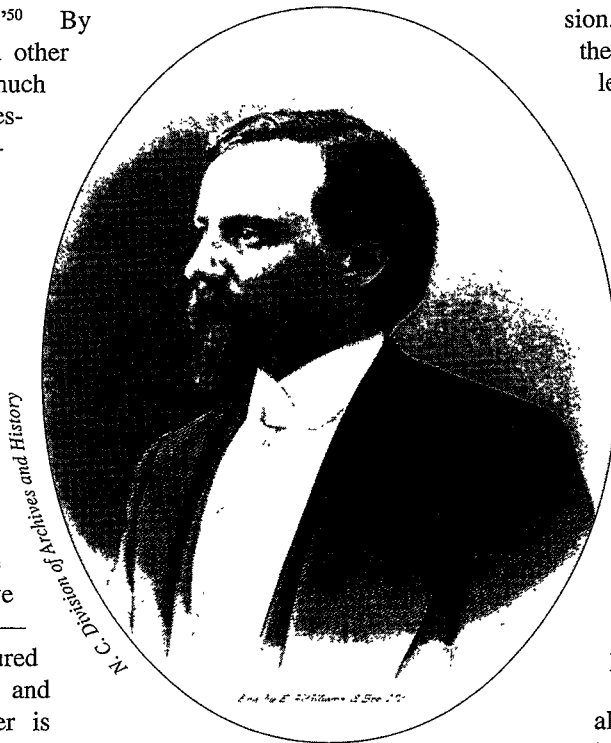
**Tod R. Caldwell, the last
Republican leader of the state
Senate in North Carolina,
circa 1870.**

ceivers to throw to.”⁵⁰ By contrast, McClees and other NRA lobbyists spent much of the previous two sessions beating back several gun-control measures, including proposals to ban “assault rifles.”

Business in general won several major victories during the 1995 session, including bills limiting the liability of companies against claims that their products injured some one and capping punitive damages at \$250,000—or three times an injured person’s medical bills and other costs, whichever is more.⁵¹ Kirk called those measures “landmark legislation, which is some of the toughest in the nation.”⁵²

Other big victories for the business community included a repeal of the state tax on intangible property⁵³ and further reductions in the unemployment insurance tax, which also had been cut in the 1992, 1993, and 1994 sessions.⁵⁴ The intangibles tax, which was based on a percentage (0.5%) of the market value of stocks, bonds, and other intangible property, had been unpopular with businesses, investors, and retirees. Its repeal amounted to a \$124.4-million tax cut, based on revenues generated by the tax in 1994. Likewise, the 23-percent cut in unemployment insurance taxes is expected to save employers an estimated \$275 million over the next five years.

In one area where business and the environment collided—the regulation of hog farms—business got the edge. Only bills approved by lobbyists for the pork industry found favor with the General Assembly, despite several major spills of hog and animal wastes late in the ses-



**Joseph W. Holden, the last
Republican Speaker of the house in
North Carolina, circa 1870.**

sion.⁵⁵ Despite those setbacks, the highly publicized problems with hog farms helped prompt the legislature to appropriate funds to hire more water-pollution specialists for the Department of Environment, Health, and Natural Resources. Legislators increased by six the department’s request for additional hog-waste inspectors and water-quality specialists, while reducing requests for more forestry personnel and coastal planners.⁵⁶

But business did not get all it wanted. Lawmakers balked at rolling back the corporate income tax from 7.75 percent to 7 percent—the latter level being the tax rate before it was increased

in 1991 to help close a budget shortfall. Both Gov. Jim Hunt and legislative leaders have promised to revisit this issue in the 1996 session, if state revenues look healthy.

Democratic Support in the Senate and Governor’s Office Aids Some Contract Items

Democratic leaders contended that they would have pushed many of the same items on the Republican agenda if they had remained in power.

“When the apple gets ripe, it will fall from the tree,” said Rep. David Redwine (D-Brunswick), one of two minority whips in the House. “Some of the issues were ripe and ready to fall. They [Republicans] just happened to be in the right place at the right time.”⁵⁷

On the Senate side of the Legislative Build-

“There was very little ‘let’s punish business’ or ‘let’s over-regulate business.’ Rather, there was a prevailing attitude and desire to help the economic and education climate in our state.”

—PHIL KIRK, PRESIDENT,
N.C. CITIZENS FOR BUSINESS & INDUSTRY

ing, President Pro Tem Marc Basnight (D-Dare) often reminded reporters and others that the intangibles tax repeal—one of two key elements in the tax-cut package—had passed majority Democratic Senates in prior sessions.

Republicans clearly received considerable help from Democrats in pushing their agenda. In the House, for example, 14 Democrats voted with the Republicans at least 50 percent of the time on major bills. These legislators included: Reps. Dewey Hill (D-Columbus), 84 percent; Edd Nye (D-Bladen), 76 percent; John W. "Bill" Hurley (D-Cumberland), 72 percent; Willis Brown (D-Harnett), 68 percent; Walter Church (D-Burke), 64 percent; Bill Culpepper (D-Chowan), 64 percent; Alex Warner (D-Cumberland), 64 percent; Jim Crawford (D-Granville), 60 percent; W.C. "Bill" Owens (D-Pasquotank), 60 percent; Richard "Gene" Rogers (D-Martin), 60 percent; L.W. Locke (D-Halifax), 56 percent; Linwood Mercer (D-Pitt), 56 percent; Billy Richardson (D-Cumberland), 56 percent; and Mike Wilkins (D-Person), 56 percent.⁵⁸

One of the Democrats who gave the most help to Republicans was Gov. Hunt. Thirty days after the November elections, Hunt proposed a \$483-million tax cut package—upping the ante from the \$200-million cut that Republicans had promised as a minimum in their contract. "Our North Carolina

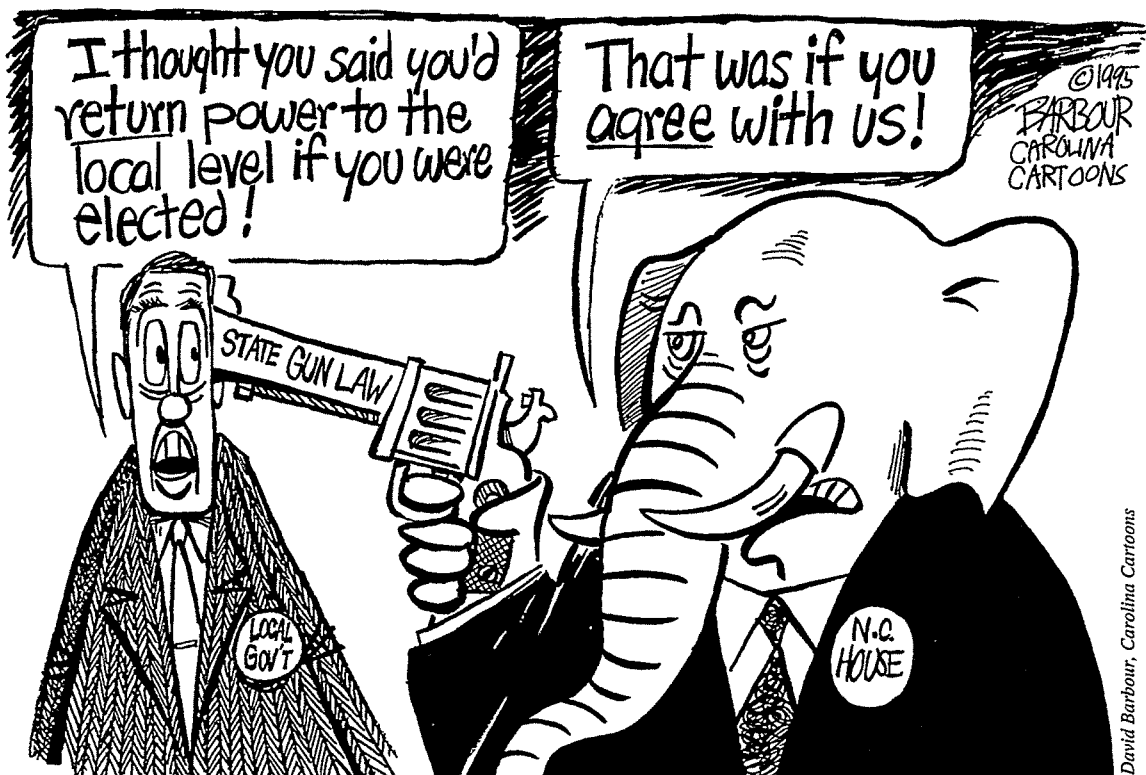
families need all they can get, and I believe that government can get by with less," Hunt said at a news conference in December 1994. "I believe that people ought to have a little more at the end of the day, and that is really what this is all about."⁵⁹

Hunt's early call for a tax cut guaranteed that issue top spot on the General Assembly's agenda, and lawmakers wrapped up work on the package on April 17—the 1995 deadline for filing state and federal income taxes. The final tax cut legislation was similar to Hunt's proposal.

The tax cut also played a large role in shaping the 1995–97 budget, because it gave budget-writers \$362.8 million less to spend.⁶⁰ For years, members of the tax-writing House and Senate Finance Committees have complained about the budget-writing Appropriations Committees dominating the process. The priorities in 1995 shifted toward making the tax cuts first and then letting the Appropriations Committees adjust accordingly. GOP leaders also wanted to enact a budget that was less than or equal to the 1994–95 budget.

"That's our bottom line," House Speaker Brubaker said in mid-July. "I informed the Senate leadership a couple of months ago that we would not agree to anything that spends more than last year."⁶¹

But some veteran Democratic Finance Committee members were not happy about the shift in



David Barbour, Carolina Cartoons

"With last year's General Assembly, the question was: How much do you support public education? It was simply a matter of degree. This year, the question became: Do you support public education at all?"

—ROSE MARIE LOWRY-TOWNSEND,
PRESIDENT, N.C. ASSOC. OF EDUCATORS

emphasis in 1995. "The view of the legislative process was so narrow that it did not encompass what I believe has to be done, and that is a consideration of all the issues facing the state," said Rep. George Miller (D-Durham), former co-chairman of the House Finance Committee from 1991–94.⁶²

In addition to firming up the priorities for legislators during the 1995 session, Hunt's budget provided the framework for the budget adopted by the General Assembly months later. The governor, for example, called for a 2-percent pay raise for teachers and state employees—the same increase later adopted by lawmakers.

Hunt, the state's ranking Democratic elected official and a candidate for re-election in 1996, did little publicly to oppose the Republican initiatives. Often—as with tax cuts and measures to get tough on crime—the governor seemed to be outbidding the Republicans. Whatever battles Hunt fought, he generally fought in private.

The notable exception was Smart Start, Hunt's initiative aimed at providing care for pre-school children, which is now operating in 32 counties. Hunt initially asked the legislature for \$51.2 million to expand the program to 24 more counties over a two-year period. After a standoff that lasted several weeks and several tentative agreements that fell apart, the governor, the GOP House leadership, and the Democrats who controlled the Senate cut a deal. The compromise included appropriating \$3.5 million in planning money for possible expansion of Smart Start into 12 additional counties, an independent audit of the program, and a requirement that state funding be matched by private money (at least 20 percent of state expenditures).⁶³

Some Things Never Change

For all the changes elsewhere in the Legislative Building, the GOP leadership had no better success than their Democratic predecessors at

wrapping up the session early in July. That had been the goal.

"As soon as we get this agenda dealt with, we are going to try to close the place up," House Majority Leader Leo Daughtry (R-Johnston) said before the session. Lawmakers adjourned on July 29, after 108 *working* days—close to the norm for the past few "long" sessions, which are held in odd-numbered years. However, in total *calendar* days, the 187-day session in 1995 ranked as the third longest over the past 20 years—following the 1989 (214 days) and 1983 (192 days) sessions, and tying with the 1987 session. (See Table 2 on p. 114.)

The Republicans' "Contract" helped get them off to a fast start in the early days of the 1995 session, setting a clear agenda for action and helping lawmakers make better use of their time.⁶⁴ But progress slowed later in the session when lawmakers began dealing with tougher budgetary matters. The session also was delayed by the emergence of rifts between Republican factions—religious right vs. moderates, coastal representatives vs. Piedmont—on issues such as abortion, welfare, and coastal fishing regulations.⁶⁵ Another factor was the standoff over the expansion of Smart Start.

Republican legislators also fell short in their pledge to roll back legislative salaries, expense allowances, and pensions—a big issue for GOP candidates in the 1994 campaign. Although lawmakers did exempt themselves from the 2-percent pay raise for state employees, legislators from both parties benefited in 1995 from perks adopted in previous sessions. These perks included: a 5-percent increase in salaries, from \$13,026 to \$13,951 a year for rank-and-file legislators; a 13-percent increase in legislators' allowance for food and lodging, from \$91 to \$104 a day; and an average increase of 50 percent in legislators' pensions.⁶⁶

Another pledge that Republicans failed to honor fully was their promise to stop the practice of interfering with or legislating mandates on local

"In 1994, I was an offensive lineman. In 1995, I enjoyed playing quarterback. The November elections gave me some good receivers to throw to."

—JOE MCCLEES,
LOBBYIST, NATIONAL RIFLE ASSOCIATION

**Table 2. Length of Long Sessions (Odd Years) of the
N.C. General Assembly Since 1975**

Year	Starting Date	Ending Date	Number of Calendar Days	Number of Working Days
1975	January 15	June 26	163	117
1977	January 12	July 1	170	123
1979	January 10	June 8	150	108
1981	January 14	July 10	178	127
1983	January 12	July 22	192	138
1985	February 5	July 18	164	118
1987	February 9	August 14	187	134
1989	January 11	August 12	214	137
1991	January 30	July 24	168	106
1993	January 27	July 24	179	110
1995	January 25	July 29	187	108

Average = 177 Average = 121

Source: N.C. General Assembly

governments. GOP legislators did succeed in passing a bill requiring fiscal notes for screening and reviewing the economic impacts of proposed legislation or agency rules on local governments, but the bill does not prohibit mandates outright.⁶⁷ Republicans also backtracked on the mandate issue by pushing through a series of bills dictating requirements for local school systems, although none of those would necessitate expenditures of local funds. (See discussion on p. 105.)

Republicans Change Procedural Rules

In their effort to reduce the session length, eliminate floor sessions that dragged on into the early-morning hours, and keep a firmer control on the agenda, the Republican leadership rammed through several changes in House rules on the first day of the 1995 session. The changes included rules limiting to 10 the number of bills each House member could sponsor⁶⁸ and prohibiting floor sessions from going past 9 p.m. (10 p.m. on Monday nights, when

lawmakers begin their week.)⁶⁹ The House also scheduled quick sessions on Monday nights to approve a "consent calendar," or a list of bills that had no opposition.⁷⁰

Another new rule made the majority leader and speaker pro tempore ex officio members—with voting power—of each of the House's 21 standing committees and 19 permanent subcommittees.⁷¹ More often than not, Majority Leader Daughtry, Speaker Pro Tem Carolyn Russell (R-Wayne), or both of them showed up in House committees where the leadership expected close votes. Those appearances prompted Rep. Anne Barnes (D-Orange) to dub the two "the paladins—have vote, will travel."

GOP leaders used another House rule to increase their control of the budgeting process.⁷² House Speaker Brubaker designated each of the House Appropriations Committee's three co-chairs as voting members of all six budget subcommittees. That action allowed Republican leaders to exert firm control on debate and voting in the appropriations

subcommittees, where most budget battles are settled.

The Republican leadership quickly learned the General Assembly equivalent of the Golden Rule: He who has the votes, rules. And the way the leadership used the rules sparked grumbling from Democrats and even some Republicans. Rep. Paul Luebke (D-Durham) accused the House leadership of "the same old, same old" after Brubaker seven times refused to recognize Luebke over several days. Luebke tried to gain the floor to make a motion to bring up a partial repeal of the sales tax on food.

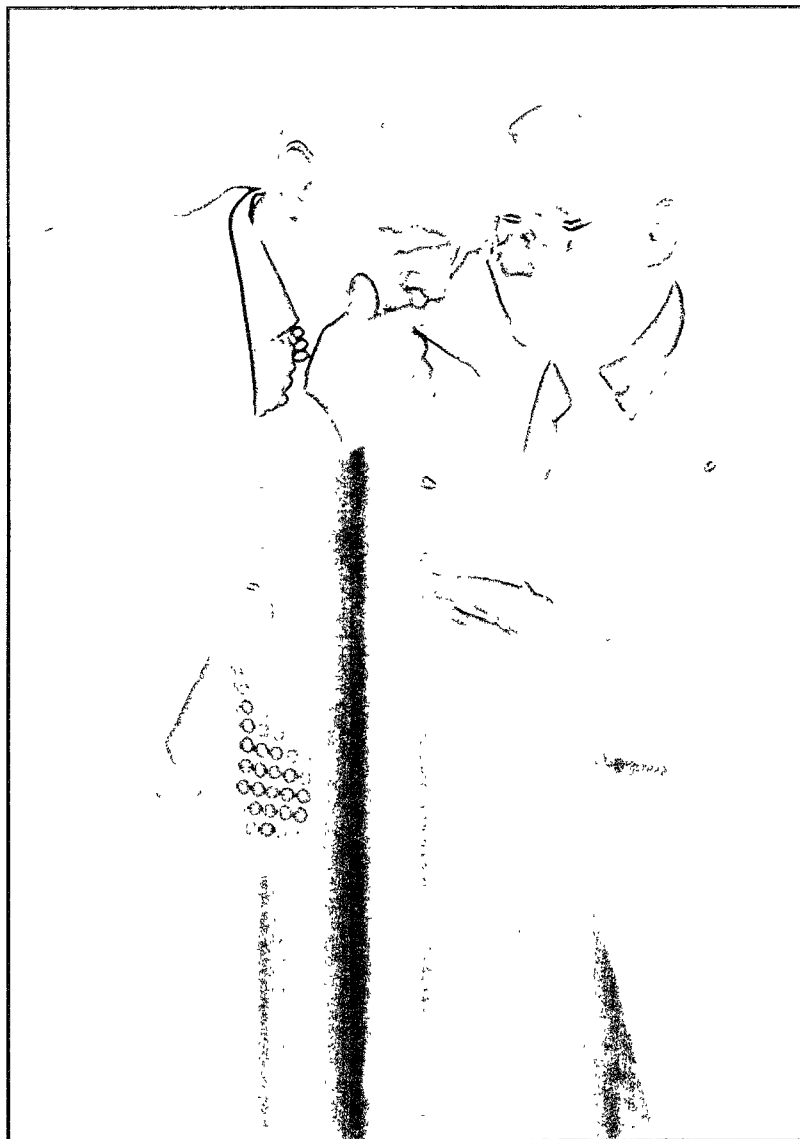
Brubaker's refusal to recognize members for certain motions boiled over on the last day of the session. Rep. Billy Richardson (D-Cumberland), who was one of the dozen or so Democrats who of-

ten voted with the Republicans on key issues, stood on his desk in an effort to be recognized by Brubaker. The speaker threatened to have him removed by the sergeant-at-arms. Richardson was allowed to stay when he sat down.

The speaker later apologized. "I was committed to banging that gavel and getting out of here, and there wasn't anybody going to get in the way," Brubaker said after the session.

Brubaker's tactic of refusing to recognize members for certain motions was one of several ways the Republican leadership controlled the agenda. They also:

- Exercised a kind of pocket veto with a new rule giving the chairman of the Committee on Rules and Operation of the House the power to schedule (or pocket) bills for a floor vote after they won commit-



House Speaker Harold Brubaker, (R-Randolph), right, and House Majority Leader Leo Daughtry (R-Johnston) confer during the 1995 session.

tee approval.⁷³ Rules chairman Richard Morgan (R-Moore) never scheduled 17 bills, effectively killing them for the 1995 session. The measures killed ranged from a bill giving optometrists more authority to prescribe drugs to proposals to name a state dance.

■ Repealed a House rule that had required fiscal notes which put a price tag on any legislative bill that lengthens prison sentences or puts more people behind bars.⁷⁴ Such notes had been used to estimate whether legislative changes would increase prison populations and costs. Republican leaders said fiscal notes weren't necessary because their bills would act as a deterrent on crime and eventually decrease prison populations. But Democrats charged that the repeal could result in bills that overload the prison system and cost too much money.⁷⁵

■ Dusted off a procedure allowing an entire committee to introduce a bill—a procedure that had not been used for 130 years—requiring the election of Superior Court judges by districts.⁷⁶ The House Judiciary I Committee, instead of an individual member, introduced the controversial proposal after Rep. H.M. "Mickey" Michaux (D-Durham) objected when the committee tried to hijack his bill dealing with judicial elections.

■ Leaned on several Republicans who had signed a discharge petition pulling out of committee and onto the House floor a bill to repeal the sales tax on food. Rep. Toby Fitch (D-Wilson) had circulated the petition and claimed that a majority of committee members had signed it, including at least eight Republicans.⁷⁷ But the House GOP leadership pressured Republicans to withdraw their names from the petition, depriving Fitch of the recorded floor vote he had sought.

■ Shut down debate much more often than the Democratic leadership in the 1993 session, according to an analysis by Rep. Joe Hackney (D-Orange). Hackney maintained that two Republican leaders, Reps. Daughtry and Morgan, had moved to cut off debate 72 times on the House floor during the 1995 session, and that the Republican majority in the House had moved to end debate 187 times. By comparison, only 65 motions to "call the previous question," or cut off debate, were made during the 1993 session, when Democrats controlled the chamber.

Brubaker defended the way he and his lieutenants ran the House. "Look what we did," Brubaker said, his voice rising, when he talked with reporters after the session adjourned. "Ladies and gentlemen of the press, this is the first time, at least in my 19 years, that we never had a session in the midnight hour, that we didn't sit there and write bills on the

"The view of the legislative process was so narrow that it did not encompass what I believe has to be done, and that is a consideration of all the issues facing the state,"

—REP. GEORGE MILLER,
(D-DURHAM)

floor of the House at 2 and 3 o'clock in the morning—major legislation. You know, that was one of our main points. Now if you are going to accomplish that goal of not being irresponsible and write legislation on the floor of the House at 2 or 3 o'clock in the morning, or adjourning at 7 o'clock in the morning and let the members drive home all night or early in the morning, then you have to have a mechanism to which you can run and operate the House. I think it was an absolutely delightful way to do it."

Moreover, Brubaker said, House Republicans had followed through on their 1994 promise to change the course of state government. "We showed the people that they spoke in November, and we delivered." GOP leaders also pledged to follow through in the 1996 legislative session on items in their contract that failed in 1995, while predicting the use of similar agendas in future sessions. "We'll probably work on some blueprint to follow," House Majority Leader Leo Daughtry (R-Johnston) said. ☐

FOOTNOTES

¹ For more on the Republican Party in North Carolina, see Jack Betts and Vanessa Goodman, *The Two-Party System in North Carolina: Do We Have One?*, N.C. Center for Public Policy Research, Raleigh, N.C., December 1987, 63 pp. The last time Republicans had the majority of seats in the state House and Senate was in the 1869–70 session, which was also the last date for a Republican House Speaker (Joseph Holden) and Senate President (Tod Caldwell). However, Republicans had effective control of the legislature in the 1897 session, when they allied with the Populists to outnumber Democrats. Republicans have had more success running for Governor. In 1972, Jim Holshouser (1973–1977) became the first Republican governor in North Carolina since Dan Russell (1897–1901), and Jim Martin later served two terms (1985–1993).

² The GOP brought its total strength to 92 after Republican candidates won subsequent, special elections for one House seat (Rep. Cynthia Watson, R-Duplin) and one Senate seat (Sen. Dan Page, R-Harnett), and one House member (Rep. Frances

Cummings, R-Robeson) switched her party affiliation from Democratic to Republican.

³ For more on the N.C. Republican Contract and the 1994 elections, see Mebane Rash Whitman, "The Evolution of Party Politics: The March of the GOP Continues in North Carolina," *North Carolina Insight*, Vol. 16, No. 2 (September 1995), pp. 81-97. The state-level Contract differed from the national Republican Party's "Contract With the People" popularized by U.S. Rep. Newt Gingrich (R-Ga.), now Speaker of the U.S. House of Representatives.

⁴ Chapter 507 (House Bill 230) of the 1995 Session Laws. In addition to the cuts in the income and intangibles taxes, the appropriations act also cut taxes by \$0.7 million with the ports tax credit (H.B. 396), \$0.1 million with the aquaculture sales tax exemption (H.B. 55), \$1.4 million with the nonprofit homes for the aging sales tax refund (H.B. 759), and \$1.2 million with the railroad diesel sales tax exemption (H.B. 360).

⁵ Chapter 4 (Senate Bill 13) of the 1995 Session Laws.

⁶ Fiscal Research Division, *Overview: Fiscal and Budgetary Actions*, North Carolina General Assembly, 1993 Session and 1994 Sessions, pp. 497-498. Salary increases for previous legislative sessions were: 2 percent with a 1 percent one-time bonus for state employees, and 3 percent average for teachers, in 1993-94; \$522 flat increase for state employees, and 2 percent average for teachers, in 1992-93; and no increases for all employees in 1991-92.

⁷ According to Bobby Griffith in the Office of State Budget, the total number of state employees is projected to increase from 227,741 in FY 1994-95 to 230,735 in FY 1995-96.

⁸ Chapter 324, Sec. 23.27 (House Bill 229) of the 1995 Session Laws reduced the State Abortion Fund from \$1.2 million to \$50,000 and stipulated that it only be used to pay for abortions that terminate pregnancies resulting from rape or incest or that endanger the mother's life. The law also limited payments to women whose family incomes fall below the federal poverty line. Those restrictions were drawn so narrowly, however, that they might prevent anyone from qualifying for assistance, according to John Tanner, the chief of the state's Adult and Family Services Section, which administers the fund. *The News & Observer* of Raleigh reported that the fund had not paid for a single abortion by late September 1995. See John Wagner, "N.C. abortion fund rules disqualify all applicants, officials fear," *The News & Observer*, Raleigh, N.C., Sept. 27, 1995, p. 1A.

⁹ Chapter 5 (Senate Bill 3) of the 1995 Session Laws.

¹⁰ Chapter 438 (Senate Bill 6) of the 1995 Session Laws.

¹¹ Chapter 429 (Senate Bill 4) of the 1995 Session Laws.

¹² House Bill 10, which would have given voters the right to amend the state Constitution through ballot initiatives, failed on second reading in the House on May 8, 1995.

¹³ House Bill 12 would have established term limits for state legislators, and House Bill 13 would have established term limits for North Carolina congressmen.

¹⁴ Chapter 324, Sec. 19.9 (House Bill 229) of the 1995 Session Laws.

¹⁵ Chapter 72 (House Bill 7) of the 1995 Session Laws clarified that the State Board of Education has authority over the Department of Public Instruction. Chapter 6 (Senate Bill 16) of the 1995 Session Laws directed the State Board of Education to reorganize the Department of Public Instruction, recommending a 50-percent reduction in DPI's staff and budget. Chapter 393 (Senate Bill 15) of the 1995 Session Laws transferred from the Superintendent of Public Instruction to the State Board of Education the power to designate DPI policy-making positions as exempt from the State Personnel Act. Chapter 450 (House Bill 6) of the 1995 Session Laws gave local school boards greater flexibility in how they spend state education funds.

¹⁶ Chapter 5 (Senate Bill 3) of the 1995 Session Laws will let voters decide in the Nov. 5, 1996, election whether to adopt a constitutional amendment giving the governor veto power. If adopted, it would take a three-fifths vote of the legislators present to override a veto.

¹⁷ House Bill 12, which would have established term limits for state legislators, failed on second reading in the Senate on June 27, 1995.

¹⁸ House Bill 13, which would have established term limits for North Carolina congressmen, failed on second reading in the Senate on May 9, 1995.

¹⁹ *U.S. Term Limits, Inc. v. Thornton*, 115 S.Ct. 1842 (1995). The case was decided on May 22, 1995.

²⁰ The N.C. House passed the Food Stamp Workfare bill (H.B. 24) on April 19, 1995, but the bill never got out of the state Senate Children and Human Resources Committee.

²¹ The Taxpayer Protection Act (House Bill 3) passed the House on March 2, 1995, and passed the Senate on July 19, 1995. Legislative leaders appointed a joint conference committee to discuss the bill on July 26, 1995, but the committee did not develop a compromise bill by the end of the session on July 29, 1995. The Senate bill changed the House bill by allowing additional spending to cover growth in public school and college enrollments, any increases in corrections spending, and the impact of federal budget cuts on state programs.

²² Chapter 534 (House Bill 834) of the 1995 Session Laws.

²³ Chapter 455 (House Bill 65) of the 1995 Session Laws.

²⁴ Chapter 497 (Senate Bill 140) of the 1995 Session Laws.

²⁵ Chapter 289 (House Bill 767) of the 1995 Session Laws.

²⁶ The House passed the character education bill (H.B. 908) on May 4, 1995, but the bill never got out of the Senate Education/Higher Education Committee.

²⁷ The House passed the phonics bill (H.B. 917) on May 10, 1995, but the bill never got out of the Senate Education/Higher Education Committee.

²⁸ Chapter 398 (House Bill 90) of the 1995 Session Laws.

²⁹ Chapter 507, Sec. 26A (House Bill 230) of the 1995 Session Laws appropriated \$33.7 million for FY 1995-96 and \$40.9 million for FY 1996-97 as matching funds for a federal grant to construct new prison beds. If the state does not get the federal grant, the money will still be spent on prison beds. In addition, the bill appropriated \$250,000 to provide reserve beds or "hot bunking" for inmates.

³⁰ *Ibid.*

³¹ Chapter 545 (Senate Bill 53) of the 1995 Session Laws.

³² The House considered two bills (H.B. 190 and H.B. 954) that would have provided tax credits for private-school tuition. For more on these and other school-choice bills in the General Assembly, see Tom Mather, "School Choice: A Simple Term Covers a Range of Options," and related pro/con articles in *North Carolina Insight*, Vol. 16, No. 2 (September 1995), pp. 2-50.

³³ The Property Rights Act (H.B. 597) stalled in the House Rules Committee.

³⁴ Chapter 462 (House Bill 481) of the 1995 Session Laws.

³⁵ The House lottery bill (H.B. 960) died in the House Finance Committee, while the Senate bill (S.B. 624) failed on second reading on the Senate floor on July 10, 1995.

³⁶ Kirsten Mitchell, "GOP leaves its mark on General Assembly," *Wilmington Star-News*, Wilmington, N.C., July 30, 1995, p. A1.

³⁷ Foon Rhee, "Legislators get a 'C' from teachers group," *The Charlotte Observer*, Charlotte, N.C., Aug. 8, 1995, p. 3C.

³⁸ Danny Lineberry, "GOP claims session changed govt.," *The Herald-Sun*, Durham, N.C., July 30, 1995, p. 1A.

³⁹ Chapter 456 (House Bill 718) of the 1995 Session Laws.

⁴⁰ Chapter 507 (House Bill 230) of the 1995 Session Laws. The legislature gave the administration 29 of the 32 total new

staff positions sought in the Year of the Coast agenda, but changed the priorities. For example, the final expansion budget funded: eight animal-waste inspectors, 3 more than requested; zero forest runoff specialists, five less than requested; 11 water-pollution specialists, three more than requested; three coastal land-use planners, four less than requested; and seven fisheries law-enforcement officers, the same as requested.

⁴¹ Terry Martin, "Legislature creates trust fund to provide money to state parks," *Winston-Salem Journal*, Winston-Salem, N.C., July 30, 1995, p. 4A.

⁴² Mark Stinneford, "GOP rules, despite a last stand," *Fayetteville Observer-Times*, Fayetteville, N.C., July 30, 1995, p. 4A.

⁴³ Chapter 538 (House Bill 168) of the 1995 Session Laws.

⁴⁴ Chapter 517 (Senate Bill 345) of the 1995 Session Laws.

⁴⁵ Chapter 527 (Senate Bill 402) of the 1995 Session Laws.

⁴⁶ Chapter 319 (House Bill 270) of the 1995 Session Laws.

⁴⁷ Carol D. Leonnig and Foon Rhee, "GOP: 'We delivered on our agenda,'" *The Charlotte Observer*, Charlotte, N.C., July 30, 1995, p. 1A.

⁴⁸ Foon Rhee, "In Raleigh, lobbyists gear up for a GOP day," *The Charlotte Observer*, Dec. 24, 1994, p. 1A. Also see Foon Rhee, "Lobbyists go to work on new order," *The Charlotte Observer*, Feb. 25, 1995, p. 1C; and Under the Dome, "Lobsters gather in Salisbury," *The News & Observer*, Raleigh, N.C., Nov. 23, 1994, p. 3A.

⁴⁹ Phillip J. Kirk Jr., "The Biggest Change in the Legislature Was One of Attitude," *NCCBI Legislative Bulletin*, Aug. 1, 1995, p. 15.

⁵⁰ Stinneford, note 42 above, pp. 1A and 4A.

⁵¹ Chapter 514 (House Bill 729) of the 1995 Session Laws.

⁵² *Ibid.*

⁵³ Chapter 41 (Senate Bill 8) of the 1995 Session Laws.

⁵⁴ Chapter 4 (Senate Bill 13) of the 1995 Session Laws. The N.C. General Assembly cut the unemployment insurance tax again during a special session in February 1996.

⁵⁵ There were five major spills of animal waste, including four from hog farms and one from a chicken farm, during June and July of 1995, according to the N.C. Department of Environment, Health, and Natural Resources. Another major spill from a hog farm occurred in early August, shortly after the legislative session ended.

⁵⁶ See note 40 above for a breakdown of environmental positions added in the expansion budget.

⁵⁷ Stinneford, note 42 above, p. 4A.

⁵⁸ The author conducted the tally of Democratic House members who voted with the Republicans at least half the time on major bills. See Danny Lineberry, "N.C. House Democrats break ranks," *The Herald-Sun*, Durham, N.C., July 23, 1995, p. 1A.

⁵⁹ Danny Lineberry, "Hunt's tax cut stems from Nov. 8 wake-up call," *The Herald-Sun*, Durham, N.C., Dec. 11, 1994, p. 12A.

⁶⁰ The \$362.8-million reduction in revenue includes \$235 million from cutting income taxes, \$124.4 million from repealing the intangibles tax, and \$3.4 million from cutting other taxes (not including unemployment insurance taxes). See note 4 above.

⁶¹ Dennis Patterson, "Splitting Budget Hair On Saving, Spending," *The Associated Press*, Raleigh, N.C., reprinted in the *Eden Daily News*, Eden, N.C., July 17, 1995.

⁶² Lineberry, note 38 above.

⁶³ Chapter 324, Secs. 27A and 27A.1 (House Bill 229) of the 1995 Session Laws.

⁶⁴ Joe Dew, "Off to a fast start, legislature tackles complex issues early," *The News & Observer*, Raleigh, N.C., Feb. 11, 1995, p. 3A.

⁶⁵ David Rice, "United GOP legislators unravel a bit,"

Winston-Salem Journal, April 9, 1995, p. 1B.

⁶⁶ Foon Rhee, "Legislators haven't addressed benefits," *The Charlotte Observer*, Feb. 7, 1995, p. 1C.

⁶⁷ Chapter 415 (House Bill 895) of the 1995 Session Laws.

⁶⁸ House Rules, 1995 N.C. General Assembly, Section VI, Rule 31.1(d1).

⁶⁹ House Rules, 1995 N.C. General Assembly, Section I, Rule 1.

⁷⁰ Under the Dome, "New views from the floor of the House," *The News & Observer*, Raleigh, N.C., Dec. 21, 1994, p. 3A.

⁷¹ House Rules, 1995 N.C. General Assembly, Section V, Rule 26(I).

⁷² House Rules, 1995 N.C. General Assembly, Section V, Rule 26(b). Also see, Under the Dome, "Turnabout is fair play in the House," *The News & Observer*, Raleigh, N.C., May 21, 1995, p. 3B.

⁷³ House Rules, 1995 N.C. General Assembly, Section VI, Rule 36(a).

⁷⁴ House Rules, 1993 N.C. General Assembly, Section VI, Rule 36.3.

⁷⁵ Under the Dome, "Price tags dropped from crime bills," *The News & Observer*, Raleigh, N.C., Feb. 3, 1995, p. 3A.

⁷⁶ The procedure, which is implied in House Rule 32(a), had not been used since the 1860s, according to Gerry Cohen, director of the Legislative Bill Drafting Section. The judicial elections bill (H.B. 195) passed the House in February 1995, but did not get out of the Senate Judiciary I Committee. The House Appropriations Committee also used the rule to introduce two fee bills that were later ratified as Chapter 178 (H.B. 993) and Chapter 360 (H.B. 994) of the 1995 Session Laws.

⁷⁷ Republicans who had signed the discharge petition and later requested that their names be withdrawn included Reps. Bobby Barbee (R-Stanly), C. Monroe Buchanan (R-Mitchell), Jim Carpenter (R-Macon), Debbie Clary (R-Cleveland), Arlene Pulley (R-Wake), Wayne Sexton (R-Rockingham), Cynthia Watson (R-Duplin), and Gene Wilson (R-Watauga).



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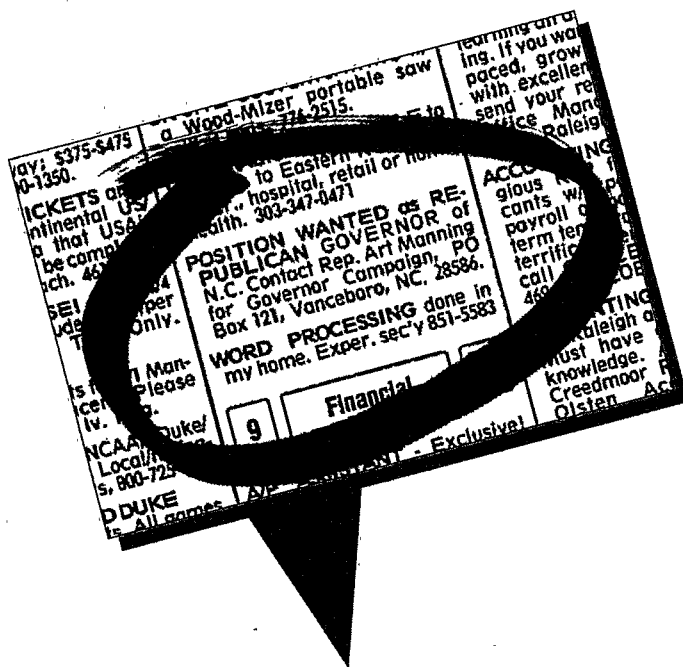
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