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CENTER SAYS 1998 LEGISLATURE CONTINUED ABUSE OF SPECIAL PROVISIONS IN BUDGET BILLS

North Carolina's budget bill for state government has grown so lengthy that some lawmakers don't have time to read it. Yet it's increasingly used to create new programs and change laws that have nothing to do with the budget, says the N.C. Center for Public Policy Research in a new report released today. The Center's research shows that the 1997 and 1998 budget bills contained a record 274 special provisions that are unrelated to the budget. The Center says such late-stage insertions deal with issues as volatile as welfare reform and criminal laws but get little or no public scrutiny. The Center called on the legislature to ban the use of special provisions in its budget bills.

"In the last two years, the budget bill has contained everything but the kitchen sink -- instead of just the nuts and bolts of a good budget," says Ran Coble, executive director of the Center and author of the report. "It's not fair to the rank-and-file legislators who are not in the final budget deliberations. It's not fair to the public. And it's not fair to the press trying to explain the budget to the public," he added.

Special Provisions Are Used To Amend Statutes Unrelated to the Budget

In 1998, the 348-page budget bill -- longer than Ernest Hemingway's novel, *A Farewell to Arms* -- contained 152 special provisions. The Center's research shows this included 17 pages of amendments to the Smart Start child care program, 16 pages of new Crime Victims' Rights amendments, 12 pages of amendments concerning governance of the UNC Hospital and health care system, 12 pages of welfare law changes, charter schools amendments, abolition of execution of prisoners by lethal gas, and six pages of changes in criminal law, including a ban on greyhound racing.

In 1997, the 468-page budget bill -- longer than William Faulkner's *The Sound and the Fury* -- contained 122 special provisions. This bill included 36 pages of welfare reform initiatives, 16 pages of changes in criminal penalties, 15 pages of laws on safe schools, eight pages of Smart Start program amendments, six pages of new laws on childhood lead safety exposure control, and 105 pages reorganizing, transferring, and renaming functions in the Department of Health and Human Services and the Department of Environment and Natural Resources. All of these examples involved substantive changes in the state's laws that should have been debated on their own merits in separate bills, says the Center.

This is the fourth report the nonpartisan, nonprofit group has issued on the use of special provisions in budget bills. Earlier reports and public pressure in the 1980s brought a decline in the practice, so that by 1988, there were only 12 special provisions. However, split party control of the House and Senate in 1995-98 caused the practice to increase once again.

"Like an alcoholic who's fallen off the wagon, the legislative budget leaders have gotten drunk on special provisions again," says Center director Coble. "Legislators swore off use of the tactic in the late 1980s, but last year's budget bill was once again loaded up with special provisions."

Definition of Special Provisions

Originally, special provisions were paragraphs added to budget bills to give instructions on how funds were to be spent. Thus, the Center was careful to point out that special provisions could be used in the following appropriate ways:

(1) to explain the purpose of an appropriation or express the intent of the General Assembly;
(2) to put limitations or restrictions on the use of funds;
(3) to amend the Executive Budget Act;
(4) to create reserves for funding contingencies that may occur between sessions;
(5) to increase or decrease salaries;
(6) to make funding transfers or revisions; or
(7) to require reporting on expenditures back to the Appropriations Committee.

However, in the last decade, special provisions have lost their link to appropriations and have been used for other purposes. Special provisions are defined in the Center's report as portions of budget bills which are used in any of the following inappropriate ways:

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

The Center's exhaustive research notes that both the size of budget bills and the use of special provisions have increased rapidly in the last six years. In the 1992 session, the two budget bills were only 62 pages long and contained only 19 special provisions. By 1994, there were 80 special provisions in 190 pages of appropriations bills, and in 1996, there were 101 special provisions in the 213-page budget bill. The 1998 budget contained a record-high 152 provisions in the 348-page bill.

Problems Caused by Special Provisions

The Center's report says that special provisions undermine the legislative process and the General Assembly as an institution when they are used to amend laws unrelated to the budget. The Center identified three additional problems. They include:

(A) Special provisions are used to create new government programs without a separate debate on their merits. In 1997, the budget bill includes a Work First welfare program, a new inspector general's office in the Department of Justice, an internal auditor's office in the Department of Health and Human Services, a new multi-campus community college to serve Anson and Union counties, a fire protection grant program, and a new planning program for safe schools in all local school districts.

In 1998, the budget bill included a new review team on child fatalities, a pilot program for healthy mothers/healthy children, and a pilot program on settlement procedures for alimony and other family disputes. The bill also transferred programs within the executive branch. The Charitable Solicitation Licensing Program was transferred from the Department of Health and Human Services to the Secretary of State, and the State Boxing Commission was transferred from the Secretary of State to the Department of Crime Control and Public Safety. All the new programs may be worthy initiatives, says the Center, but they should be debated -- and approved or rejected -- on their own merits.

(B) Special provisions are used to create new state boards, commissions, and councils. In 1997, the budget bill was used to create a new N.C. Osteoporosis Task Force, a Joint Legislative Health Care Oversight Committee, an Information Resources Management Commission, and an N.C. Postal History Commission. In 1998, legislators used special provisions to create a new Board of Directors for the UNC Health Care System and an N.C. Government

Competition Commission. Again, these boards and commissions may be appropriate and needed, but insufficient attention was given to the process of creating boards through special provisions.

(C) Special provisions are used to create new study commissions outside of the normal decision-making process. Some citizens are under the impression that all studies authorized between sessions are in a bill which is usually labeled "An Act Authorizing Studies by the Legislative Research Commission." The 1985 version of this bill authorized 44 such studies, and the 1997 version authorized 50 interim studies.

However, in 1997, the budget bill also included authorizations for studies of state psychiatric hospitals, job training programs, Oregon Inlet stabilization, the allocation of judicial resources, monitoring of adult care homes, and cooperative (agricultural) extension services. In 1998, the budget bill included authorizations for studies on community college tuition, the need for facilities in the university system, whether to increase the pay rate for physicians under the Medicaid program, public defender programs, legal counsel to indigent defendants, special education obligations of the Department of Correction, nursing home beds for veterans, and transportation finance.

Few Other States Allow Special Provisions

Former Lieutenant Governor Robert B. Jordan III tried to curb the use of inappropriate special provisions in 1985 and set up a legislative study commission to examine the practice. At the time, legislators were told by their staff attorneys that 31 other states entirely prohibit substantive legislation in special provisions from being included in appropriations bills. Most states do this through prohibitions in their state constitutions. Nine additional states have at least partial restrictions on special provisions. Thus, the North Carolina legislature is one of only 10 states that allow special provisions unrelated to the budget. In 1986, the state Senate passed a rule against special provisions in budget bills, but the House of Representatives did not follow suit.

Center Recommendations

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

Center director Coble praises the state Senate leadership for adopting a rule (Rule 42.4) recently that will curb special provisions if it is enforced by Senate budget leaders, but says the House leadership needs to follow suit. In addition, the Center says both houses of the General Assembly need to amend state statutes to prevent the practice from occurring in future sessions.

"The 1999 General Assembly has the opportunity to halt the use of special provisions in budget bills and restore confidence in the legislature's ability to draw up biennial budgets without piggybacking these special provisions," says Coble. "This could be accomplished with efforts by legislative leaders to allow only those items which pertain directly to the budget to be placed in budget bills."

The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public issues facing North Carolina and to evaluate state government programs. The Center receives general operating support from the Z. Smith Reynolds Foundation in Winston-Salem, 14 foundations, 190 corporate contributors, and almost 1,000 individual and organizational members across the state. In addition to publishing this follow-up report on special provisions in budget bills, the Center also publishes *North Carolina Insight* magazine, a citizens' guide to the legislature, and a textbook for teachers of state and local government. The Center currently is studying governance of public universities in North Carolina, health care issues affecting Hispanics, and wood chip mills and forestry management. Recent studies also have examined rural economic development, state job training programs, year-round schools, and children with special needs.

Copies of the report on *Special Provisions in Budget Bills: Pandora's Box Is Open Again* are available for $15, plus tax, postage, and handling. To order, write the Center at P.O. Box 430, Raleigh, N.C. 27602, call (919) 832-2839, fax (919) 832-2847, or order through the Center's Website at www.nando.net/insider/nccppr.

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For more information on special provisions in budget bills, contact Ran Coble, executive director of the Center, at (919) 832-2839.

TRENDS IN THE NUMBER OF SPECIAL PROVISIONS IN N.C. BUDGET BILLS, 1981-98

In Long Regular Sessions in Odd-Numbered Years

Year	# of Special Provisions		Length of Budget Bill(s) in Pages	
1981	29		90	
1983	65	in 3 budget bills	191	
1985	108	in 3 budget bills (SB 1, SB 182 and SB 489)	199	in 3 bills
1987	58	in 4 budget bills (HB 1514, HB 1515, HB 1516, and HB 2)	297	in 4 bills
1989	57	in 5 budget bills (SB 43, SB 44, SB 1042, SB 1124, and SB 1309)	244	in 5 bills
1991	81		230	
1993	94	in 2 budget bills (SB 27 and SB 1505)	250	in 2 bills
1995	125	in 2 budget bills (HB 229 and HB 230)	294	in 2 budget bills
1997	122		468	

In "Short" Sessions in Even-Numbered Years

Year	# of Special Provisions		Length of Budget Bill(s) in Pages	
1982	30		74	
1984	87	in 3 budget bills (HB 80, HB 1376, and HB 1496)	119	in 3 bills
1986	57		173	
1988	12	in 4 budget bills (HB 2641, HB 1859, HB 859, and SB 257)	137	in 4 bills
1990	29	in 2 budget bills (SB 1426 and SB 1427)	120	in 2 bills
1992	19	in 2 budget bills (HB 1245 and SB 1205)	62	in 2 bills
1994	80	in 2 budget bills (SB 1505 and SB 1504)	190	in 2 bills
1996	101		213	
1998	152		348	