



**NORTH CAROLINA CENTER FOR
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CENTER SAYS LEGISLATURE SHOULD BAN BLANK BILLS PERMANENTLY

The North Carolina Center for Public Policy Research released a study today recommending that the legislature permanently ban the use of blank bills. The Center says blank bills do not provide adequate notice of legislators' intended changes in law, and they curb the opportunity for citizen input. The study shows that the North Carolina General Assembly has increased its use of blank bills since 1995, with as many as 805 bills starting out blank, and many of these turn into significant legislation by the end of the session. Bills that started out as blank have suddenly turned into legislation that revised the state budget, banned video poker, and expanded occupancy taxes.

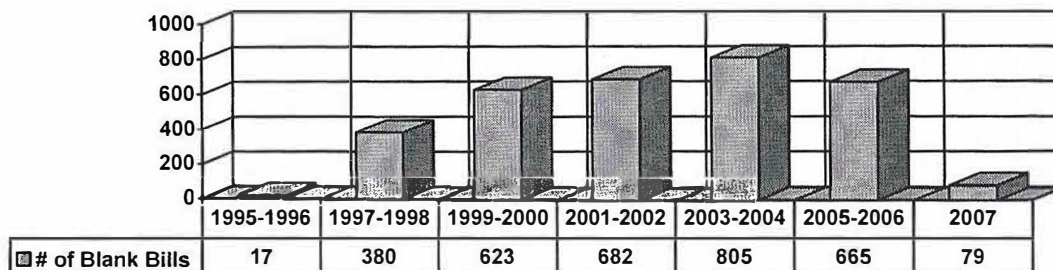
When blank bills are introduced, they contain no description of the laws to be changed. They have a title, often vague, but no text. Then these bills are held in committee, and the content is not added until later in the session. This means there is much less opportunity for public debate or analysis by the media.

Ran Coble, the Center's director, says, "The public has a right to know the content of all bills when they are *first* introduced in the legislature. Blank bills don't give adequate notice to the public of what a legislator is proposing, they're not transparent in their content and purpose, and sometimes they are used to rush passage of significant legislation. We commend the 2007 legislature for adopting rules that limit blank bills this session. But the public deserves a legislative process that will permanently ban them."

The Use of Blank Bills in North Carolina

Traditionally, the rules of each house in the General Assembly have governed the use of blank bills. In the 1990s, as the General Assembly became more evenly divided between the two political parties, more legislators began to introduce blank bills. The number of blank bills increased from 17 in the 1995-96 session, to 380 in 1997-98, to 623 in 1999-2000, to 682 in 2001-02, to a high of 805 in 2003-04, to 665 in 2005-06.

Number of Blank Bills Introduced Each Session in the N.C. General Assembly, 1995-2007



In the 2007 session, new House rules have prohibited the introduction of blank bills, and the 2007 Senate rules prohibit members from introducing more than two blank bills. As a result, only 79 blank bills (all in the Senate) have been introduced in 2007. The Center commends legislative leaders for these limits but says the General Assembly should now ban them permanently.

Blank Bills Used To Pass Significant Legislation

The Center says the problem with the rise in the number of blank bills over the last decade is compounded because blank bills are being used to shortcut the legislative process, and then they morph into significant changes in law and policy. In the 2001-02 session, 65 blank bills became law, and 49 blank bills became law in 2003-04.

For example, a follow-up bill that revised the 2006 state budget was first filed on February 25, 2005, by Senator Linda Garrou (D-Forsyth) as a one-page blank appropriations bill. On July 19, 2006, the bill was withdrawn from the Senate Committee on Rules and Operations and re-referred to the Senate Appropriations/Base Budget Committee. Language was inserted into the bill, and the committee gave a favorable report to what had become an 18-page bill. It was placed immediately on the Senate calendar, and the bill passed both second and third readings in the Senate – all on that same day.

The purpose of blank bills also sometimes changes completely from its original title. For example, Senate Bill 912 was introduced in 2005 as a blank bill by Senators Kay Hagan (D-Guilford), Robert Atwater (D-Chatham), and Stan Bingham (R-Davidson) with a title indicating that it would direct the public schools to teach personal financial literacy to high school students. When it was ratified, however, the bill phased out video poker instead.

In another example, Senate Bill 369 was introduced in the 2005 session by Senator Doug Berger (D-Franklin) as a blank bill entitled “7th Senatorial District Local Act-1.” On first reading, this blank bill did not have any content, and the title did not indicate that it would involve a tax. The Senate Finance Committee adopted a committee substitute which would impose a room occupancy tax in Franklin County, and this version of the bill passed second reading and third readings in the Senate. The House Finance Committee adopted a committee substitute, and the bill ended up including multiple occupancy taxes – authorizing Franklin County and the cities of Eden and Reidsville to levy a room occupancy and tourism development tax and also amending the Durham occupancy tax.

Blank Bills Criticized by Leading Associations

Some leading associations in the state also have criticized blank bills and described the problems they create in shortcutting the normal legislative process.

In May 2003, a legislative bulletin of the North Carolina League of Municipalities said, “[B]lank bills can be dangerous. They are filed with a generic title (such as Amend Laws 3) and contain no substantive provisions, so they provide no notice of intended content. They can pop up in committee at any time and be filled in with provisions that we have not had a chance to read, analyze, or discuss with legislators.”

In February 2005, the North Carolina Association of Realtors’ *Legislative & Regulatory Update* said, “Most of these [blank bills] are filed as placeholders for potential local legislation wanted by local governments in lawmakers’ districts. This process makes it more difficult to monitor and track bills that overnight turn into significant pieces of legislation.”

In March 2005, the *Legislative Bulletin* of the North Carolina Association of County Commissioners noted that a large number of blank bills had been introduced and warned of the problems associated with their use. “Whether intentional or not, the result of this process is to shortcut the normal process for review and analysis of the legislation. When these blank bills suddenly acquire substance, it will be when they are

presented as committee substitute proposals in committee. Whether there is an opportunity to review these new substantive provisions before they are presented, or within a reasonable time thereafter, will be of a matter of chance or willingness on the part of the introducers. We will be on the lookout for surprises, but will be playing 'catch-up.'"

Conclusions and Recommendation

The Center finds four problems with blank bills, as follows:

(1) Blank bills **do not provide the public or the news media with adequate notice** of the intended changes in law from the moment of introduction.

(2) Blank bills undermine the democratic process in their **lack of transparency** through a failure to reveal the purpose and content of proposed legislation.

(3) Blank bills severely **curtail the time available for deliberative debate** and analysis of each bill and its strengths and weaknesses. Instead of the contents being revealed at the moment of introduction, the purpose and intent are not known until a committee substitute for the bill is brought up later in committee.

(4) In some cases, the use of blank bills **may even be unconstitutional** if legislators seek to meet the state constitutional requirement to have three separate readings of each bill. The problem occurs when they count the introduction of a blank bill as an adequate first reading. And, when blank bills become *revenue* bills, the state constitutional requirement of three separate readings on three separate days may also be violated by the legislature's current practice of considering a conference report as the first reading.

The Center recommends that the legislature enact a permanent statute that would ban the use of blank bills in future sessions of the General Assembly. As part of this statute, the Center said the General Assembly could allow legislators to introduce two *local* bills after the deadlines agreed upon in a chamber's rules only if a majority of the chamber votes to allow introduction of the blank local bill. This would give legislators a way to respond to last-minute needs of constituents and local governments in their districts.

The Center praises legislative leaders for adopting rules to limit blank bills in the 2007 legislative session. Currently, only House and Senate rules govern blank bills, and these rules can be changed during every session with relative ease.

Gerry Cohen, director of bill drafting for the legislature, says, "A permanent statute banning blank bills is only a statement of purpose. Statutes cannot make binding rules on the internal procedures of one house or the other." However, Cohen adds, "You could certainly say that such a law would be an important political statement guiding each session in adopting its rules."

The Center's Mebane Rash Whitman says, "Based on the evidence of legislative practice over the last 10 years, banning blank bills is a statement that needs to be made in order to give the public adequate notice of legislation that is introduced and to make the legislative process more transparent from the time every bill is introduced."

The Center's New Series of Working Papers

The Center's study of blank bills is the first in its new series of working papers. In an ongoing effort to respond quickly to legislative trends and emerging policy issues, papers will be researched and written by Center staff, drafts will be available for prior review online, and the papers will be published on the Center's website at <http://www.nccppr.org>.

About the Center

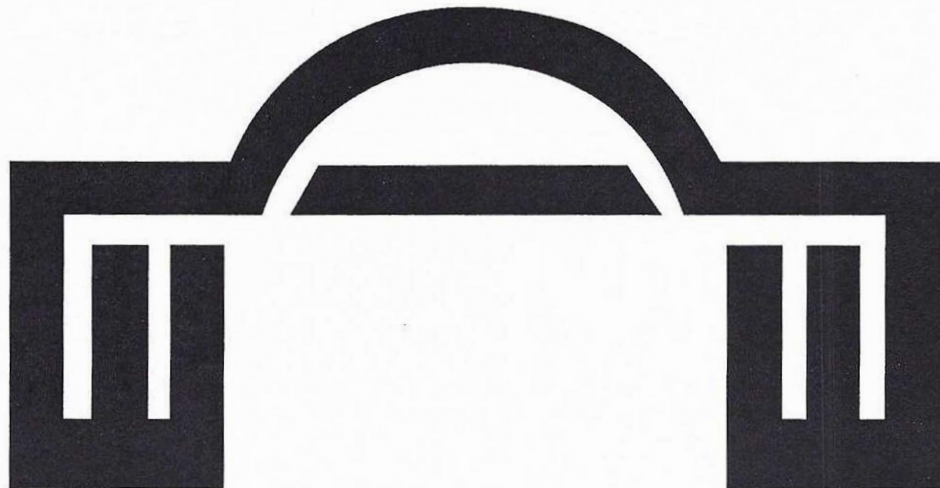
The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit research corporation created in 1977 to evaluate state government programs and to study public policy issues facing North Carolina. The Center is supported in part by a grant from the Z. Smith Reynolds Foundation in Winston-

Salem, with additional support from nine other private foundations, 150 corporate contributors, and about 600 individual and organizational members. The Center publishes a journal called *North Carolina Insight*, a citizens' guide to the legislature, and in-depth research reports. The Center recently has conducted studies on charter schools, ways to prevent high school dropouts, governance of North Carolina's public universities, the shortage of public school teachers in North Carolina, domestic violence, and the pros and cons of state lotteries. Copies of the working paper on blank bills are available on the Center's website at <http://www.nccppr.org>.

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For more information, contact Ran Coble, the Center's executive director, or Mebane Rash Whitman, attorney and editor of *North Carolina Insight*, or policy analyst Sam Watts at the N.C. Center for Public Policy Research at (919) 832-2839.

Working Papers
by the
North Carolina Center for Public Policy Research



**Shooting Blanks:
Blank Bills in the Legislature Loaded with Issues
Later**

by Mebane Rash Whitman, Sam Watts, and Ran Coble

July 2007

SHOOTING BLANKS: BLANK BILLS IN THE LEGISLATURE LOADED WITH ISSUES LATER

In each session of the North Carolina General Assembly, some of the bills introduced by legislators are blank. Blank bills – also called shell bills or dummy bills – contain no substantive provisions upon introduction. They have a title, often vague, but no text. For instance, a blank bill in its entirety might read “A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS, The General Assembly of North Carolina enacts: SECTION 1. This act appropriates funds. SECTION 2. This act becomes effective July 1, 2007.” Such a bill gives no indication of the amount of state funds to be appropriated or how the money would be spent. Another blank bill might be entitled “Amend Laws,” with no indication of which laws are to be amended.

Normally, when a bill is introduced in the legislature, the House or Senate clerk reads aloud the name of the legislator who is introducing the bill, the bill number, and the bill title. Printed copies of the bill are provided to all legislators, and the full text is available online. This is called **first reading** of the bill. The purpose and substance of the bill is thus immediately available to the media and the public, and those who are interested can immediately begin to analyze the bill’s strengths and weaknesses. No action will be taken on most bills for several weeks – sometime months – until the bill is heard in committee, giving another opportunity for public input and time to analyze its strengths and weaknesses.

At some point, the committee will consider the bill, possibly amend it, and give it a favorable or unfavorable report. If the bill receives a favorable report, it goes to the floor of the House or Senate – usually within a day or two – and the full House or Senate votes on it. The first vote on the floor is called **second reading**. Then, to encourage further thought and deliberation, the full House or Senate vote again, and this is called **third reading**. On bills not

involving the state budget or taxes, this vote on third reading may take place immediately. If it is a revenue bill, the vote must take place on a separate day.

For blank bills, however, the purpose and substance of the bill are not known until the bill is heard in committee where the sponsor will walk in with a committee substitute unveiling the bill's provisions. A vote may be taken immediately, thereby considerably curtailing the time for analysis and debate. In a good democratic process, a bill's purpose and contents will be known upon introduction and first reading so that the media and the public receive notice of what the proposed legislation intends. This ensures transparency on all changes in laws, budgets, or revenues that are being proposed. These standards also are a matter of fairness to other legislators so that they are not surprised by news of what is behind the opaque veil of blank bills.

Sometimes the motivations behind blank bills are good, such as when they are used as placeholders for local legislation addressing a need that was unknown at the deadline for filing bills. But sometimes blank bills are bad, such as when they are used to rush through significant legislation. Still other times, blank bills may even be unconstitutional. For example, this happens when a blank bill is used to enact a tax increase without three separate readings of the complete bill on three separate days. Whether good or bad, blank bills never provide adequate notice to the public of what is being proposed.

Introduction of blank bills is controlled by the rules that the state Senate and the House of Representatives adopt at the beginning of each session. While the 2007-08 N.C. General Assembly has limited its use of blank bills, the public needs some assurance that the use of blank bills by the legislature will continue to be limited in future sessions.

For more than a decade, the N.C. Center for Public Policy Research has monitored the use of blank bills in the legislature. Part of our mission is to examine the legislative process,

suggest improvements, and make state government more transparent to our citizens. As one way of fulfilling this part of our mission, the Center produces *Article II*, a citizens' guide to the legislature. *Article II* provides five different indicators of legislators' performance – rankings of their effectiveness, attendance, and roll call voting participation, as well as data on their rates of success in getting bills passed. We also publish votes for all 170 legislators on what legislators said were the 12 most significant bills in the last session.

The Center also has researched and published information about abuses of the legislative process, such as the use of special provisions in the budget bill.¹ Special provisions are defined by the Center 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 State Budget Act; (2) to establish new government 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; or (4) 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. 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 believes blank bills represent another abuse of the legislative process. Ran Coble, executive director of the Center, says, "The public has a right to know the content of all bills when they are *first* introduced in the legislature. Blank bills don't give adequate notice to the public of what a legislator is proposing, they're not transparent in their content and purpose, and they sometimes are used to rush consideration of significant legislation. We do have

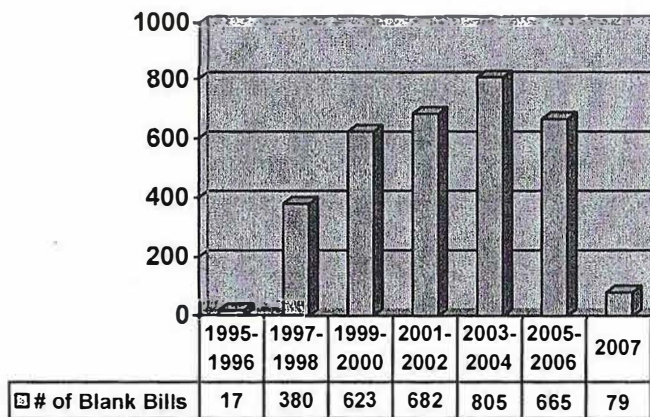
¹ See Ran Coble, The North Carolina Center for Public Policy Research, Special Provisions in Budget Bills: Pandora's Box Is Open Again, Raleigh, N.C., February 1999. The Center has updated this research each session of the General Assembly. For example, the 2006 budget bill, Session Law 2006-66 (Senate Bill 1741), contained 76 special provisions. A new Center report on special provisions is forthcoming.

sympathy for legislators that use some blank bills as placeholders for local legislation involving last minute requests from constituents after deadlines for introduction of bills. And, we commend the 2007 legislature for adopting rules that limit blank bills this session. But, the public deserves a legislative process that will permanently ban blank bills.”

Use of Blank Bills Increases

The use of blank bills has been governed traditionally by the rules of the N.C. Senate and the N.C. House of Representatives. In the 1990s, as the General Assembly became more evenly divided between the two political parties,² more legislators began to use blank bills. The number of blank bills increased from 17 in the 1995-96 session to 380 in the 1997-98 session to an all-time high of 805 in the 2005-06 session. Also, as the length of sessions increased, bill deadlines began to be enforced more rigorously, so blank bills were used as placeholders in case a vehicle was needed to move legislation later in the session.

Number of Blank Bills Introduced Each Session in the N.C. General Assembly, 1995-2007³



² Sam Watts, “Trends in Legislative Demographics,” Article II: A Guide to the 2007-2008 North Carolina Legislature, Raleigh, N.C., May 2007, p. 238. The number of Republicans in the General Assembly has risen from 31 of 170 legislators in 1971, to 34 in 1981, to 53 in 1991, and to 71 in 2007.

³ The total number of blank bills for 2007 is 79 as of June 30, 2007.

Although there was a decline in the number of blank bills introduced in the 2005-06 General Assembly, over the last 12 years, the rise in the number of blank bills is clear. In the 1995-06 session, 17 blank bills were filed; in the 1997-98 session, 380 blank bills were filed; in the 1999-2000 session, 623 blank bills were filed; and in the 2001-02 session, 682 bills were filed. By the 2003-04 session, a total of 3,253 bills were filed, and 805 of them, or almost 25%, were blank bills on introduction. In the 2005-06 session, 665 blank bills were filed.

Regardless of whether a bill contains substantive provisions, it must be logged into the legislature's bill system, carried on legislative bill tracking, and accounted for on legislative agendas. Blank bills are mostly sheets of nearly blank paper. "But they took up staff time," says Gerry Cohen, director of the General Assembly's Bill Drafting division.⁴

When proposed legislation with no substantive provisions is introduced, the legislative staff assigns the electronically searchable index term "Blank Bill" within the General Assembly's publicly accessible computer system. For the purposes of our research, the Center defined a blank bill as a bill designated as a blank bill by the legislative staff upon introduction.

In the 2007 session, new House rules prohibit the introduction of blank bills,⁵ and the 2007 Senate rules prohibit members from introducing more than two blank bills.⁶ Attempts to limit the use of blank bills are not new. Since 1999, the House has not allowed blank bills to be introduced in "short" sessions held in even-numbered years. This restriction can be found in the joint resolution of adjournment for the long sessions in odd-numbered years.⁷

⁴ As quoted in Mark Schreiner, "House members getting rid of that blank look," *Wilmington Star News*, Wilmington, N.C., January 29, 2007, online at <http://www.wilmingtonstar.com/apps/pbcs.dll/article?AID=/20070129/COLUMNIST20/701290364&SearchID=73279250706231>

⁵ See Rule 31.1(c1) of House Resolution 423 (2007), Permanent Rules of the House of Representatives for the 2007 Session.

⁶ See Rule 40(c) of Senate Resolution 1 (2007), Permanent Rules of the Senate for the 2007 Session.

The Senate has been more reluctant to limit or prohibit the use of blank bills. In 2003, when more blank bills were introduced than ever before, Senator Tony Rand (D-Cumberland), Majority Leader in the Senate, told The News & Observer of Raleigh that blank bills are “part of the gamesmanship in the way the legislation is created.”⁸ The Legislative Review for ElectriCities of North Carolina in April 2003 said, “A blank bill gives Legislators leverage later in the session.”⁹

Blank Bills: No Notice of What Is Intended

Whether the rise in blank bills was by necessity as legislators struggled to meet local constituent needs or whether the rise was prompted by gamesmanship in a more partisan legislative body, blank bills are difficult for citizens and lobbyists to track. In March 2005, the Legislative Bulletin of the North Carolina Association of County Commissioners noted that a large number of blank bills had been introduced and warned of the problems associated with their use. “Whether intentional or not,” noted the bulletin, “the result of this process is to shortcut the normal process for review and analysis of the legislation. When these blank bills suddenly acquire substance, it will be when they are presented as committee substitute proposals in committee. Whether there is an opportunity to review these new substantive provisions before they are presented, or within a reasonable time thereafter, will be of a matter of chance or

⁷ See Session Law 2005-58 (section 3 of Senate Joint Resolution 1184), Session Law 2003-31 (section 2 of House Joint Resolution 1335), Session Law 2001-36 (section 2 of Senate Joint Resolution 1109), and Session Law 1999-22 (section 2 of House Bill 1489).

⁸ As quoted in Lynn Bonner, “Legislators file bills now, write them later,” The News & Observer, Raleigh, N.C., March 3, 2003, p. A1.

⁹ Legislative Review, ElectriCities of North Carolina, Inc., Vol. 14, No. 9, Raleigh, N.C. April 4, 2003, p. 2.

willingness on the part of the introducers. We will be on the lookout for surprises, but will be playing ‘catch-up.’”¹⁰

The 2007-08 legislature is on a record pace for the total number of bills introduced in a session. As of June 30, 2007, a total of 3,629 bills had been introduced, 79 of which were blank bills (all in the Senate, and no more than two by each Senator, in accordance with their rules).¹¹ The previous high for total bills introduced in a single year was in 1987 when 3,723 were introduced. The number of Senate Bills in the 2007 session – 1,568 – is the highest number since 1927 when 1,629 were introduced, according to the legislature’s Cohen.¹²

“The sheer volume of bills at the legislature makes it difficult for the public to follow issues in the legislature,” says Sam Watts, policy analyst at the Center. “The large number of bills makes it difficult for even the most seasoned pros to keep tabs on legislation, especially when you consider that in addition to the issues *on* the table, you have to track all of the blank bills to learn about the issues coming up *under* the table.”

A Dangerous Trend: Blank Bills Used To Pass Significant Legislation

The problem with the rise in the number of blank bills over the last decade is compounded because significant legislation is now starting out as blank bills. In 2001, there were 65 blank bills that were subsequently adopted or ratified. In 2005, there were still 29 blank

¹⁰ Legislative Bulletin, North Carolina Association of County Commissioners, Bulletin #05-08, Raleigh, N.C., March 18, 2005. See <http://www.ncacc.org/bulletins/2005/bulletin031805.html>

¹¹ As of July 3, 2007, two of the 79 blank Senate bills had passed the Senate and are being considered in House committees – Senate Bill 227: Wilmington/New Hanover Violator Notice and Senate Bill 373: Street Construction/Developer Responsibility.

¹² Gerry Cohen, “2007 Senate bill total highest since 1927; 1,558 filed,” Blog: NC Bill Drafting: 30 Years on Jones Street, March 28, 2007, <http://ncbilldrafting.wordpress.com>

bills that were subsequently adopted or ratified. Many of these were significant pieces of legislation.

“Most of these [blank bills] are filed as placeholders for potential local legislation wanted by local governments in lawmakers’ districts,” noted the Legislative & Regulatory Update for the North Carolina Association of Realtors in February 2005.¹³ “This process makes it more difficult to monitor and track bills that overnight turn into significant pieces of legislation.”

For example, the bill that ultimately revised the 2006 state budget was first filed on February 25, 2005, by Senator Linda Garrou (D-Forsyth) as a one-page blank appropriations bill.¹⁴ On July 19, 2006, the bill was withdrawn from the Senate Committee on Rules and Operations and re-referred to the Senate Appropriations/Base Budget Committee. Language was inserted into the bill, and the committee gave a favorable report to what had become an 18-page bill. It was placed on the Senate calendar, and the bill passed both second and third readings in the Senate – all on that same day.¹⁵

In a second example, Senate Bill 912 was introduced in 2005 as a blank bill by Senators Kay Hagan (D-Guilford), Robert Atwater (D-Chatham), and Stan Bingham (R-Davidson) with a title indicating that it would direct the public schools to teach personal financial literacy to high school students. When it was ratified, however, the bill phased out video poker.

“[B]lank bills can be dangerous,” said a legislative bulletin of the North Carolina League of Municipalities in May 2003. “They are filed with a generic title (such as Amend Laws 3) and contain no substantive provisions, so they provide no notice of intended content. They can pop

¹³ Legislative & Regulatory Update, North Carolina Association of Realtors, Inc., Volume IV, Issue Four, Greensboro, N.C., February 22, 2005. See <https://ncrealtors.org/searchpubs/legislativeupdate/022205legupdate.htm>

¹⁴ Session Law 2006-221 (Senate Bill 198, entitled Revise 2006 Budget Act).

¹⁵ Bill history is available online at <http://www.ncga.state.nc.us/>

up in committee at any time and be filled in with provisions that we have not had a chance to read, analyze, or discuss with legislators.”¹⁶

Blank Bills: Unconstitutional As Well?

In some cases, blank bills may involve more than just a dangerous legislative practice. Article II, section 22 of the Constitution of North Carolina says, “All bills and resolutions of a legislative nature shall be read three times in each house before they become laws....” In practice, a bill passes its first reading after introduction when the Senate or House clerk reads aloud the name of the introducer, the bill number, and the bill title. Second and third readings take place after the bill is reported out of committee. “The requirement of the three readings comes from English parliamentary procedure, anciently designed to prevent spur-of-the-moment legislation.”¹⁷

The requirements for revenue bills are different. Governed by section 23 of Article II of the State Constitution, bills to raise money are supposed to be read three times in each house, and they must pass three readings on three *separate* days, with yea and nay votes required on the second and third readings.¹⁸ “As U.S. Supreme Court Chief Justice John Marshall long ago reminded Americans, ‘the power to tax involves the power to destroy.’ Even in the hands of the people’s representatives, this awesome power must be carefully hedged so this section prescribes

¹⁶ Legislative Bulletin, North Carolina League of Municipalities, Bulletin #16, Raleigh, N.C., May 15, 2003. See <http://www.nclm.org/Legal/bulletin/2003/05-15-03.htm>

¹⁷ John V. Orth, The North Carolina State Constitution: A Reference Guide, Greenwood Press, Westport, Conn., 2003, p. 87.

¹⁸ N.C. Constitution Article II, § 23.

special procedures for the enactment of revenue bills,” notes John Orth, a law professor at the University of North Carolina School of Law.¹⁹

While director of the UNC-Chapel Hill Institute of Government, John Sanders helped write the current North Carolina Constitution that was ratified in 1970. According to Sanders, the requirement for three readings was first included in the 1776 state constitution. A carryover of parliamentary practice, there were two primary reasons for the requirement. At the time, few bills were printed, especially local bills, and the oral readings were how members of the General Assembly learned the content of the bills that had been introduced. Also, reading the bills aloud was necessary because not all of the legislators were fully literate. Thus, the purpose of the requirement was to give notice to the members themselves and any notice provided the general public was incidental. The reasons for the requirements are vestiges of earlier conditions which no longer prevail, he says.²⁰ Sanders notes that the delay required for revenue bills was for “safety’s sake” because public money was involved.

¹⁹ Orth, note 17 above at p. 88, citing McCulloch v. Maryland, 17 U.S. 316 (1819).

²⁰ The 1776 Constitution requiring three readings was forged at a time when there were limited facilities to produce printed documents in the state. During the American Revolution that began in 1776, there were only four active presses in North Carolina. One accompanied the British army, another accompanied the Colonial army, and the other two were at New Bern and Halifax, according to D. L. Corbitt, “The North Carolina Gazette,” North Carolina Historical Review, Volume II Raleigh, N.C., 1925, pp. 84-85.

Over the years, state courts have allowed the purpose of constitutional provisions to evolve. For instance, according to Sanders, the “open courts” provision of Article I, section 18 was initially intended to ensure that the court system was accessible to litigants without excessive fees or other barriers that might limit access to the legal system. This constitutional guarantee is now interpreted also to ensure that the courts are open to the public and the media to allow public observation of the judicial process.²¹

Similarly, the purpose of the requirement of three readings was always to give notice of bills and their content. While initially the need was to inform legislators, the need now is to inform the public and the media. Blank bills frustrate the three readings

requirement of our state constitution because bills without content do not give notice to the

Is the Lottery a Tax? Another Example of the Relevance of the Requirement of Three Readings on Three Separate Days for Revenue Bills

On May 22, 2007, the N.C. Court of Appeals heard oral arguments in a case questioning whether the lottery was passed unconstitutionally. The Lottery Act, House Bill 1023 of the 2005 N.C. General Assembly, passed its second and third readings in the House on April 6, 2005. The yeas and nays on second reading were recorded in the House Journal, but the yeas and nays on third reading were not recorded. On August 30, 2005, the Senate took up House Bill 1023. It passed second and third readings that same day, but the yeas and nays of the votes were not recorded.

The plaintiffs in Heatherly et al. v. State of North Carolina contend that the lottery is a tax and subject to the provisions of Article II, section 23 of the N.C. State Constitution. That provision requires three separate readings on three different days for revenue bills in each house and also requires yeas and nays on the roll call votes on both second and third readings of the bill recorded in the chamber’s journal. The central question of the case is whether the lottery is a tax and therefore is a revenue bill.

The state contends that buying a lottery ticket is voluntary, that purchasers receive a benefit from the purchase of the ticket, and thus it is not a tax. The plaintiffs contend that with each ticket purchased there is an assessment that raises revenue for the state. Wake County Superior Court Judge Henry Hight dismissed the plaintiffs’ case on February 15, 2006.

Though this is a different Constitutional question from that presented by blank bills, the good government principles are the same – three separate readings to provide notice to the public; time to research, deliberate, and debate the issue; and roll call votes to provide accountability to the public for the decision made.

²¹ Orth, note 17 above at p. 55 (“originally aimed at ensuring that courts were open to civil plaintiffs, this section has been interpreted by the state supreme court to mean that their proceedings must be open to the public generally.”)

public of the substance of the legislation. Blank bills also frustrate the purpose of having enforceable bill deadlines which is to prevent legislation from being introduced at the last minute and pushed through quickly in a way that provides less time for debate and keeps the public from being able to participate in the legislative process.

When revenue bills are involved, the stakes are even higher. In Glenn v. Wray, the N.C. Supreme Court settled the legislative procedure required for revenue bills that have been materially amended. “If the amendment were in a material matter, it would be necessary that the amended bill should be read over again three times in each House, with the yea and the nay vote on the second and third readings entered on the Journals. It is the bill in its final shape, not in another and different form, which requires these preliminaries to its validity. . . . [A]ny substantial material amendment requires the passage of the amended bill in the prescribed manner, *de novo*.”²²

For example, Senate Bill 369 was introduced in the 2005 session by Senator Doug Berger (D-Franklin) as a blank bill entitled “7th Senatorial District Local Act-1.” On first reading, this blank bill did not have any content nor did the title indicate that it would involve a tax. The Senate Finance Committee adopted a committee substitute which would impose a room occupancy tax in Franklin County, and this version of the bill passed second reading and third readings in the Senate. The House Finance Committee adopted a committee substitute, and the bill ended up as an omnibus occupancy tax – authorizing Franklin County and the cities of Eden and Reidsville to levy a room occupancy and tourism development tax and to amend the Durham

²² Glenn v. Wray, 126 N.C. 467, 469, 36 S.E. 167, 169 (1900).

occupancy tax. The legislative fiscal note attached to the bill notes the following revenues that would accrue in 2005-06 because of the bill: Franklin County would receive \$77,609; the City of Eden would receive \$44,348; and the City of Reidsville would receive \$53,217.²⁴ Durham, Eden, and Reidsville are not even in Senator Berger's district.

The Senate failed to concur in the House committee substitute, and a conference committee was appointed. In the House journal, it notes, "The Speaker rules the Conference Report to be material, thus constituting its first reading." For its second reading in the House, the journal says, "Delete the entire House Committee Substitute Favorable 7/7/05, and substitute the attached Proposed Conference Committee Substitute S369-PCCS55264-MBx-2." Second and third readings were held in the House on separate days with the yea and nay votes recorded in the journal. In the Senate, the text of the Proposed Conference Committee Substitute is included in the journal for first reading. Second and third readings were then held on separate days with the yea and nay votes recorded in the journal. Unless section 23 of the Constitution is followed, the North Carolina Supreme Court has ruled that the act is void and confers no authority to impose the tax.²⁶

Gerry Cohen, director of legislative bill drafting, says, "Legislative procedures are clear, if a blank bill is turned into a tax increase bill by a committee, the committee report on the substitute when read in is the first reading as required by the constitution (the title is read by the clerk, just like a new bill filed). Up until the mid-1800s, most bills were introduced by

²⁴ The restrictions of section 23 of Article II of the Constitution of North Carolina are by necessary implication applicable to townships. See Wittkowsky v. Board of Comm'rs, 150 N.C. 90, 63 S.E. 275 (1908); Township Road Comm'n v. Board of Comm'rs, 178 N.C. 61, 100 S.E. 122 (1919).

²⁶ City of Charlotte v. E.D. Shepard & Co., 122 N.C. 602, 29 S.E. 842 (1898); Glenn v. Wray, 126 N.C. 730, 36 S.E. 167 (1900); Cottrell v. Town of Lenoir, 173 N.C. 138, 91 S.E. 827 (1917).

committees, that was the first reading, and then the bill appeared on the calendar later for second and third reading. Here, if a blank bill is turned into a tax bill, with the committee report being first reading, having second and third readings on two later dates satisfies the constitutional requirements. We have always done that. . . . If we tried to have second roll call reading the same day as the committee report, that would violate the constitution.”

Even if the bill was difficult to follow in the N.C. General Assembly, Senator Berger insists that there was plenty of public notice for Senate Bill 369, at least in his county. “The Franklin County occupancy tax was well covered by the local news media in Franklin County. In particular, the Franklin Times adamantly opposed the bill. There was much news coverage locally prior to the vote in the Senate,” says Berger.

Mebane Rash Whitman, an attorney at the Center, and editor of *North Carolina Insight*, questions whether treating conference committee reports as a first reading meets the state constitutional requirements. “When used as placeholders for local legislation, blank bills are relatively innocuous; they are not good legislative practice, but they are fairly harmless,” says Whitman. “But when used as placeholders for significant pieces of legislation – especially bills to raise taxes, the problem becomes more serious. Citizens and lobbyists need to be given notice of the content and purpose of these bills. They need time to analyze the bills and comment on them. And, when blank bills are used to pass tax increases, the legislature might be setting itself up for a lawsuit testing the constitutionality of its practice and of these bills. The average citizen has no idea that conference committee reports are being treated as first reading of revenue bills, and they do not know how to track these bills or how to participate in the process.”

Orth, a UNC law professor, says, “It is possible to imagine a court holding the blank bill procedure an illusory compliance, but it is also fairly easy to imagine a creative legislative leader devising some other method complying with the decision, whatever it is...”

Conclusions and Recommendation

The Center finds four problems with blank bills, as follows:

- (1) Blank bills do not provide the public or the news media with adequate notice of the intended changes in law from the moment of introduction.
- (2) Blank bills undermine the democratic process in their lack of transparency and failure to reveal the purpose and content of the proposed legislation.
- (3) Blank bills severely curtail the time available for deliberative debate and analysis of each bill and its strengths and weaknesses. Instead of the contents being revealed at the moment of introduction, the purpose and intent are not known until a committee substitute for the bill is brought up later in committee.
- (4) In some cases, blank bills may even be unconstitutional if legislators seek to meet the state constitutional requirement of three separate readings of every bill by counting the introduction of a blank bill as an adequate first reading. And, when blank bills become *revenue* bills, the state constitutional requirement of three separate readings on three separate days may also be violated by the legislature’s current practice of considering a conference report as the first reading.

The rules adopted in the House and Senate to limit blank bills in the 2007 legislative session are commendable and indicate that legislative leaders are willing to curtail this practice. But, it is even more important that the legislature permanently limit the use of blank bills.

Currently, only House and Senate rules govern blank bills, and the rules can be changed easily in every session.

Thus, the N.C. Center for Public Policy Research recommends that the legislature enact a permanent statute that would ban the use of blank bills in future sessions of the General Assembly, putting an end to a bad legislative practice that also may be unconstitutional. As part of the statute banning the use of blank bills, the N.C. General Assembly could allow legislators to introduce two *local* bills after the deadlines agreed upon in each chamber's rules only if a majority of the chamber votes to allow introduction of the local bill. This would allow legislators to respond to last-minute needs of constituents and local governments in their districts.

Gerry Cohen, director of bill drafting for the legislature, says, "A permanent statute banning blank bills is only a statement of purpose. Statutes cannot make binding rules on the internal procedures of one house or the other." However, Cohen adds, "You could certainly say that such a law would be an important political statement guiding each session in adopting its rules." The Center believes – based on the evidence of legislative practice over the last 10 years – that banning blank bills is a statement that needs to be made in order to give the public adequate notice of legislation that is introduced and to make the legislative process more transparent.

APPENDIX: Summary Statistics About Total Bills Introduced and Blank Bills Introduced in the N.C. General Assembly, 1993-2007

<i>Biennial Regular Session</i>	<i>Number of All Bills</i>	<i>Number of Blank Bills</i>	<i>Number of House Blank Bills</i>	<i>Number of Senate Blank Bills</i>	<i>Percentage of Bills That Were Blank Bills</i>	<i>Number of Blank Bills That Were Ratified/Adopted</i>	<i>Percentage of Blank Bills That Were Ratified/Adopted</i>	<i>Total Number of Bills That Were Ratified/Adopted</i>	<i>Percentage of All Bills That Were Ratified/Adopted</i>
2007-2008*	3,631	79	0	79	2.2%				
2005-2006	4,961	665	334	331	13.4%	29	4.4%	810	16.3%
2003-2004	3,253	805	411	394	24.7%	49	6.1%	683	21.0%
2001-2002	3,295	682	280	402	20.7%	65	9.5%	761	23.1%
1999-2000	3,424	623	323	300	18.2%	33	5.3%	680	19.9%
1997-1998	3,370	380	215	165	11.3%	44	11.6%	804	23.9%
1995-1996	2,954	17	2	15	0.6%	0	0.0%	786	26.6%
1993-1994	3,860	53	29	24	1.4%	11	20.8%	819	21.2%

*As of 7/11/2007