

the Democrats. "By moving it [the veto] to 1993, Senator Kaplan did something to assure it will be a Republican governor [Martin's successor] who will be the first to use it," said then-Sen. Laurence Cobb (R-Mecklenburg).

But the House of Representatives took a different view. In June and July, the House Judiciary Committee was considering legislation to combine the veto with several other proposed amendments affecting the balance of power between the executive and legislative branches. Veto power itself—and the veto override—are two of the chief tools of the system of checks and balances between these two branches of government. Concerned that granting veto power might cede too much power to the executive, the House committee wrestled with proposals to balance veto power for the governor with restrictions on how long the governor could serve and with measures increasing legislators' tenure (see box, page 12, for more).

Those measures included granting more power of incumbency to the legislature by lengthening terms from two to four years for representatives and senators; changing the dates of elections for governor, lieutenant governor, and council of state offices from presidential election years to mid-term elections; and slightly restricting the clout of the House by limiting the speaker of the House to no more than four consecutive years in that office. Other proposals included requiring the candidates for governor and lieutenant governor to run as a team, merit selection of judges, repeal of gubernatorial succession, and limiting the governor to a single, six-year term.

The House bill that emerged from committee on July 29, 1989, however, was unencumbered by these additions. It proposed giving the governor the veto in 1993 if voters approved it in a November 1992 referendum. That essentially was what Republicans had sought—a vote on veto without other issues on the ballot at the same time or

## *Demon Rum and Constitutional Revision*

In a way, it's all Demon Rum's fault that North Carolina's governor still doesn't have the veto after all these years. Had it not been for the state's traditional ambivalence over spirituous liquors, the Tar Heel chief executive might well have had the veto 55 years ago, saving the 1989 General Assembly and the general public the trouble of voting on it. But owing to an inadvertent mistake of the sort that the legislature seems to produce from time to time, the North Carolina voters were never able to vote on the proposal despite the General Assembly's having voted for them to be able to do so—in 1933.

In that year, the legislature approved the adoption of a new state constitution—one acceding the veto power to the governor—and

scheduled it for the public's approval at the next general election, as the existing constitution required.<sup>1</sup> General elections then, as now, are held in even-numbered years, and the question would be on the ballot in November 1934.

Almost simultaneously, the assembly was also dealing with another troublesome constitutional matter—whether to join the national movement to repeal the 18th Amendment to the U.S. Constitution, which prohibited the dispensing of liquor, wine, and beer in the United States. The legislature, after a series of fits and starts, approved a bill creating what it called a "general election" for November 1933 for "the sole and exclusive purpose of" voting on repeal of Prohibition.<sup>2</sup> That election was held at the

linked together. But that decision may have doomed veto in the 1989 session, because the House membership—still dominated by Democrats—was lukewarm to the idea of increasing the governor's powers without enhancing legislators' powers as well.

All the proposals for constitutional amendments raised yet another proposal—calling for a state constitutional convention to consider the overall balance of powers. Rep. Dan Blue (D-Wake) sponsored the call for a state constitutional convention because, he said, the magnitude of the proposed constitutional changes was such that only a convention could consider all the proposals at once. Such a convention could educate the public as to what the constitution currently provides and what it should provide in the future, said Blue, and it also would bring more people into the decision-making process. "If we pass all of them piecemeal, we'll have no idea until sometime down the road how they all fit together," Blue said

early in the session.

But there was little sentiment for such a session. Governor Martin was pushing for a vote on veto alone, and on Aug. 3, 1989, he got it. First the House amended the bill (SB 3) to schedule the ratification referendum for November 1990 and to make the veto effective in 1991—so Martin could have the veto his last two years. The House approved the 1990 referendum on a 59-45 vote and the 1991 effective date on a 54-47 vote. These amendments passed on simple majority votes after Speaker Mavretic ruled that amendments to proposed constitutional amendments do not require a three-fifths majority.

The debate on the merits of the bill, however, focused on which branch of the government would have more power. House Majority Leader Dennis Wicker, (D-Lee), an opponent of veto, said, "As people become more educated about what veto's effect is on state government and how much more power it will concentrate in one person, the less

appointed time (and dries voted overwhelmingly against wets in North Carolina to reject repeal of Prohibition, but the national vote brought liquor back in) while proponents of the revised state constitution prepared for the 1934 general election.

By the following year, Gov. J.C.B. Ehringhaus was worried enough to ask the state Supreme Court for an advisory opinion. Was the November 1933 election (in which the 18th Amendment repeal was the only item on the ballot) the "next general election" following the adjournment of the 1933 General Assembly? The five justices of the Supreme Court answered on Sept. 13, 1934, that indeed the 1933 election was the "next general election."<sup>3</sup> What did that mean? It meant that the N.C. Constitution revision had been sandbagged. It had missed its election, and could not go before the voters in the 1934 election. Constitutional revision was dead for the year, and it would be 55 years—until the 1989 General Assembly—before veto would once again be at the top of

the legislative agenda.

Old-timers in Raleigh still debate whether supporters of the proposed 1933 constitutional revisions, fearing defeat of the changes, pressed Governor Ehringhaus to ask for the advisory opinion in the belief that the Court's opinion would scuttle the election. Others believe that high-ranking officeholders who opposed veto for the governor also pressed for the advisory opinion in hopes that it would sink the veto. But all that is ancient history, and for the first time in the history of the state, voters at long last may get to decide for themselves whether the governor should have the veto.

— Jack Betts

#### FOOTNOTES

<sup>1</sup>Chapter 383 of the 1933 Session Laws.

<sup>2</sup>Chapter 403 of the 1933 Session Laws.

<sup>3</sup>In re General Election, 207 NC 879 (1934). For more on advisory opinions, see Katherine White, "Advisory Opinions: The 'Ghosts That Slay,'" *North Carolina Insight*, Vol. 8, No. 2, November 1985, p. 48.