



Center Report Hits the General Assembly

"By documenting in exhaustive detail the scope of boards, commissions, and councils in the executive branch of state government, the N.C. Center for Public Policy Research has dropped another issue in the lap of the General Assembly." Thus did *The News and Observer* of Raleigh, in a February 10, 1985, editorial, boil the Center's recent 618-page report down to the cauldron of politics.

And the pot has begun to bubble.

"I've already asked the State Government Committee to study the issue," Speaker of the House Liston Ramsey told *North Carolina Insight* on February 19. "We'll look at the [Center] report and do our own research, and then decide which [boards] we ought to try to abolish. We ought to be able to do away with 50 or 75."

On the Senate side, Lieutenant Governor Robert B. Jordan III plans to "clean up our own house first—to look at the boards established by the legislature," said Jordan in a February 27 interview. "The information [the Center] put out will be very useful."

Jordan said his legislative strategy will be to "target legislative boards that are non-controversial first and abolish them as quickly as possible. Then, for the controversial ones, there will be public hearings. We'll have to see what the public says."

After working through the boards created by the legislative branch, Jordan explained,

"we'll look at those in the executive branch. It would be helpful if the Governor would join with us to look at those."



Executive Summary

by Jim Bryan, Ran Coble,
and Lacy Maddox



A three-year study by the N.C. Center for Public Policy Research discloses that there are 320 boards, commissions, councils, committees, task forces,

panels, and authorities in the executive branch of North Carolina state government. These are all part-time groups to which citizens are appointed by the governor and other executive officials. Of these 320 groups, about two-thirds (205) were created by the legislature, and one-fourth by the governor or other executive branch officials. The remaining 24 groups were required to be established by federal law.

The Department of Human Resources has the most boards, with 52 citizen groups advising agencies or making state policy. The Department of Administration is second with 44 groups, and the Department of Cultural Resources third with 36 groups.

The Center's research has uncovered boards that work extremely well and whose contribution greatly outweighs their financial costs. The Center's research has also uncovered boards that are inactive, ineffective, or duplicative, and which should therefore be abolished or their functions consolidated under other groups. The sections below review the major conclusions of the report and offer recommendations that might hold promise for improvements in government service by state boards, commissions, and councils to the people of North Carolina.

Appointments

Governor James B. Hunt Jr. and his cabinet secretaries had over 84.1 percent (2,882) of the 3,425 appointments to state boards at the disposal of executive branch officials. The Super-

intendent of Public Instruction controls the next largest bloc of appointments, with 6.5 percent (223) of the total. The State Board of Education has 190 appointments (5.5 percent of the total), while all other elected officials combined only have 130 appointments, or 3.9 percent of the total.

Governor Hunt has improved upon the record of Governor James E. Holshouser Jr. in appointing blacks, women, and Indians, but there is room for greater improvement still. Only 28 percent of Hunt's appointments have gone to women, whereas women constitute 51.4 percent of the state's population. Appointments of blacks were 13 percent of the total in contrast to their level of 22.4 percent of the population. Indian appointments (1.4 percent) were slightly higher than their representation in the population (1.1 percent). In our study, there were 59 boards with no women members, 106 boards with no blacks, and 287 boards with no Indians.

Geographic representation was also a problem. Over one-fifth of Hunt's appointments were from the capital area—the Fourth Congressional District counties of Chatham, Franklin, Orange, Randolph, and Wake—an area which contains only 9.1 percent of the population. Other congressional districts were not as well represented, as the Tenth and Eighth districts (also each with 9.1 percent of the population) supplied only 4.3 percent and 5.5 percent of the appointments, respectively.

Separation of Powers

In February 1982, when the Center issued a preliminary report on separation of powers questions, there were 203 legislators crossing the constitutional line by serving on 90 executive branch boards. At least 36 of these boards, commissions, and councils had administrative or executive powers and were unquestionably violating the separation of powers provision in the state Constitution. The other 54 groups had powers to advise the executive branch, and legislative service on these boards was characterized as "arguably unconstitutional."

Two years later, the N.C. General Assembly has removed legislators from 32 boards, altered the role of the Advisory Budget Commission, and passed other measures to address many concerns raised by the attorney general, the N.C. Supreme Court, and the N.C. Center for Public Policy Research.

Problems still remain, however. As of August 24, 1984, legislators still hold 142 positions on 56 different boards, commissions, and councils in the executive branch. This includes 38

seats on 12 boards with administrative or executive functions and 104 seats on 44 boards which are mostly advisory in nature.

Costs

The 320 boards in the executive branch cost the state a total of \$4.7 million each year. Three-fourths of that amount is required for staff support; the rest is for per diem allowances or reimbursement of travel and lodging expenses associated with board meetings. The average cost of a state board is \$14,731, but the range varies from a reported low of \$0 to a high of \$332,482. Not all board members get per diem, subsistence, or travel payments, but all boards are staffed by agency employees. For this reason, the Center is skeptical of state agencies' explanations that 58 boards had no costs associated with their existence.

State funds supply almost two-thirds of the \$4.7 million total. Federal funds supply another 29.2 percent, while the remaining funds are generated from other sources, such as receipts or interest on earnings. The total cost of boards per department is strongly related to the number of boards within the department and the extent to which agency officials use them. Generally speaking, policymaking boards cost more than boards with purely advisory powers.

The cost of boards and commissions must be balanced against the contributions made by the groups and the amount of citizen participation purchased with this money. Overall, the *reported* cost of the 320 boards discussed in this report is less than one-tenth of one percent of the state's total budget.

Organization and Powers

The most important power given to state boards and commissions is the power to adopt, repeal, or amend rules. There are 88 groups with

rulemaking power. Most of these groups are commissions with specific grants of statutory authority to adopt rules.

Another important power of boards is the power to hear and decide contested cases in disputes between two parties. This quasi-judicial function is carried out by 45 different groups in the executive branch.

A third duty given to state boards is that of allocating funds to specific recipients or local governments once these funds are appropriated for general purposes by the legislature. Twenty-eight groups have the power to allocate funds.

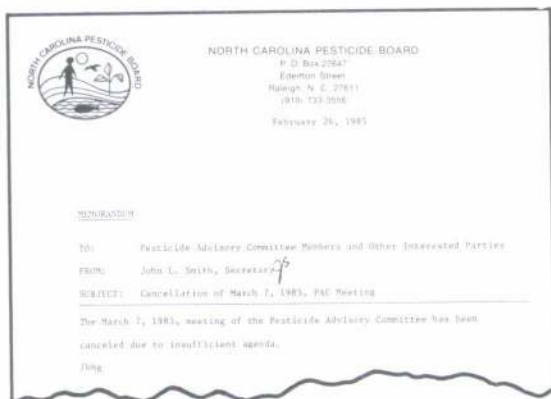
Over 100 groups exercise powers to set eligibility criteria for government services or standards under which those services are to be provided. Another 46 groups set rates or fees that must be paid by citizens for services or in order to raise revenue to help cover the cost of a related program.

Twenty-two boards have the power to license individuals, issue permits for certain activities, or oversee a certification process. These groups usually have other functions as well. There are 35 additional occupational and professional licensing boards which exist solely for licensing purposes.

Other functions exercised by state boards, commissions, and councils are the powers to advise the executive branch, hire staff, buy property, enter into contracts or lawsuits, and assist in planning or program implementation. The most prevalent activity of boards is the role of coordinating government activities, which is done by 164 groups. The second most frequent function listed is that of providing citizen advice.

The Center's research on the organization and powers of state boards uncovered three problems. First, there are too many boards in the executive branch with little thought given to the overall design as to where citizen advice is really needed. Part of this problem is due to the fact that the guidelines of the Executive Organization Act of 1973—as to what powers reside with a "board," what powers should be given to a "commission," a "council," a "committee," etc.—have been largely ignored. Part of this problem is also due to the fact that no sunset commission or similar group regularly reviews the need for each of the 320 different groups.

Second, there are too many (88) groups with rulemaking power, which leads to too many rules, which in turn has led legislators to overreact and repeal much of the state's Administrative Procedure Act (APA). A better solution would be for the legislature to exercise more careful oversight of the number of grants of rulemaking power given in statutes other than the APA.



Third, the present use of boards and commissions as hearing bodies which decide contested cases has serious flaws in its design. A system that allows a group of citizens first to adopt rules and then to decide contested cases involving those same rules is unlikely to produce the neutral decisionmaker required under American constitutional principles of due process. In addition, the citizens who sit on state boards are usually not trained well enough to provide the kind of written record, hearing, and fair procedural process that would ensure an adequate record for judicial review by the courts.

Oversight of the System of Boards, Commissions, and Councils

From 1977 to 1981, the Governmental Evaluation Commission, or "Sunset Commission," evaluated the system of boards in North Carolina. Although its purview was narrower than this report's definition of boards, its recommendations did lead the legislature to examine the statutory authority for many groups, increase fees to keep certain boards self-supporting, and add more public members to various boards.

In 1981, North Carolina became the first state to sunset, or abolish, its own Sunset Commission. In its place, the General Assembly set up a Legislative Committee on Agency Review. The Legislative Committee on Agency Review had a much better record of getting its recommendations enacted by the General Assembly, partly because of its all-legislator composition. With a smaller budget (less than 10 percent of the Governmental Evaluation Commission's) and fewer staff, it made an interim report in 1982 and a final report to the 1983 General Assembly.

The most recent attempt by the legislature to review the performance of state boards has been through the Legislative Study Commission on Executive Branch Boards, Commissions, and Councils. Created July 21, 1983, the legislative group set out to examine ways to limit the number and duration of executive branch boards. However, its \$5,000 budget and March 1984 deadline restricted the committee to review only inactive boards, or about 10 percent of the total.

That such systematic review is needed can be shown with a few illustrations. First, the number of groups in each department varies widely—from a high of 52 boards in one department (Human Resources) to a low of one per department (Revenue and State Auditor).

And so they made an industry out of government. State office buildings in the decaying downtowns. A proliferation of committees, surveys, advisory boards, commissions, legal actions, grants, welfare, zoning boards, road departments, health care groups . . .

John D. McDonald,
Cinnamon Skin (1982)

Departments of similar size in terms of budget and employees might have 7 boards (Crime Control and Public Safety, with 1,793 employees and a \$67 million budget), 24 boards (Commerce, with 2,362 employees and a \$92 million budget), or 44 boards (Administration, with 1,167 employees and a \$40 million budget).

Second, the placement of boards within departments is like a Dada poem—without rhyme or reason. Boards in the Department of Natural Resources and Community Development are relatively well organized, with rule-making and other powerful commissions largely confined to the division level and smaller, less powerful advisory councils spread evenly throughout the next lowest level in the department. On the other hand, boards in the Department of Human Resources (DHR) are found at the division level, section level, branch-level, and program level. They may have as narrow a charge as giving advice on a certain disease (the N.C. Arthritis Program Committee), a certain project (the N.C. Advisory Council on Health Statistics), or certain professions serving one type of disability (the Professional Advisory Committee to the Commission for the Blind). Some state institutions in DHR have their own boards (Board of Directors for the Governor Morehead School) while others share a board (the Board of Directors for the three Schools for the Deaf and the Mental Health, Mental Retardation, and Substance Abuse Services Commission, which oversees four mental hospitals, five retardation centers, three alcoholic rehabilitation centers, and several other residential institutions). Some divisions of DHR have more than 10 advisory groups (e.g., the Division of Health Services), while others (the Division of Youth Services) have none.

Strengths and Weaknesses of Boards and Commissions

If boards work well, the benefit is:

1. Boards are a major source of citizen participation and input.
2. Boards provide state agencies with advice they cannot normally get:
 - a. Citizens provide a statewide perspective.
 - b. Citizen appointments can provide technical expertise.
 - c. Citizens can act as sounding boards for proposed policies.

If boards do not work well, the liability is:

1. a. Some boards do not meet, thus losing all their potential benefits.
- b. Certain segments of the population—blacks, women, and Indians—are underrepresented on boards.
- c. Legislators still serve on many boards, thereby thwarting active participation by citizens.
2. a. The Research Triangle area is overrepresented on boards, and other areas of the state are underrepresented.
- b. Boards may degenerate into rubber stamp operations.
- c. Some boards try to administer executive branch programs.

If boards work well, the benefit is:

3. Board members can educate the public about state government.
4. Boards can highlight a problem or get a new program off the ground.
5. Boards can serve as vehicles for coordination.
6. Boards can provide consumer input and feedback on how governmental programs work.
7. Boards prevent concentrations of power in the executive branch and serve as pressure valves for citizen complaints.

If boards do not work well, the liability is:

3. Time constraints and other full-time occupations may prevent citizen appointees from learning enough to educate the public.
4. a. Boards may outlive the problems they were supposed to address.
- b. Boards can be a vehicle for deflecting public outcry about a problem without ever doing anything.
5. Complaints about lack of coordination have not declined as the number of boards has increased to 320 since state government reorganization.
6. The fox can be put in charge of the henhouse if more providers than consumers are appointed.
7. Boards can result in "government by committee" and a lack of accountability in state government.

Third, the system of boards and commissions presently lets some large government programs and serious problems go without citizen input, while giving other programs or problems an overdose. For example, heart disease and cancer rank as serious health problems in North Carolina, and government efforts to address these problems are properly overseen by the Health Services Commission and State Health Coordinating Council. Yet, less prevalent diseases like arthritis, sickle cell anemia, and sudden infant death syndrome rate their own advisory councils.

Other issue areas get multiple doses of advisory council input. For example, most citizens might agree that water supply and water quality problems are among the most significant issues facing North Carolina in the 1980s, but who would argue that we need all of the 11 water policy groups in the Department of Natural Resources and Community Development, including separate advisory councils for certain rivers and lakes (Chowan and Neuse Rivers and

Lake Phelps and Kerr Lake)? What is the reason for having an Annual Testing Commission and a Competency Test Commission? What is the rationale for six different library groups and nine different groups organized around school subjects, none of which is as significant a subject as English, math, or science?

The answer to these questions is that there has been a history of constant growth in the number of boards and duplicative and illogical placement of them within departments. Both of these trends have been caused by the fact that there is no comprehensive executive or legislative oversight for this system of boards, commissions, and councils. For these reasons, the N.C. Center for Public Policy Research makes the following recommendations, posed in the form of three alternatives:

Alternative One: Place a departmental ceiling on the number of boards. The N.C. General Assembly should pass legislation placing a ceiling on the number of boards, commissions, councils,

Having served on various committees, I have drawn up a list of rules: Never arrive on time; this stamps you as a beginner. Don't say anything until the meeting is half over; this stamps you as being wise. Be as vague as possible; this avoids irritating the others. When in doubt, suggest that a sub-committee be appointed. Be the first to move for adjournment; this will make you popular; it's what everyone is waiting for.

Harry Chapman, *Greater Kansas City Medical Bulletin*, 1963 issue.

committees, task forces, panels, and authorities in each department in the executive branch. Generally speaking, these limits should take into consideration the following three factors:

- the number of boards presently existing in the department;
- the number of employees in the department and the size of the departmental budget; and
- a general principle of no more than one group per division, although leaving some flexibility for the department head (secretary, commissioner, etc.) to establish a few groups to address problems of major statewide significance.

The total reduction in the number of boards in Alternative One is 132.

Alternative Two: Give the governor and other elected officials a ceiling on the number of boards they can maintain. The N.C. General Assembly should pass legislation placing a ceiling on the number of boards that could exist in the 10 departments under the control of the governor. The General Assembly should also limit the number of boards that could exist in the nine departments headed by other elected officials. The total reduction in the number of boards under Alternative Two is 135.

Alternative Three: Individually abolish specific groups.

1. The N.C. General Assembly should immediately abolish, in the 1984 short session, the 38 groups listed at the end of Chapter 7.* Many of these groups have not met during the last two years and all are ineffective or duplicate other groups' efforts. Some have completed the tasks they were created to accomplish. There was little or no objection to abolishing these groups by the parent state agency when each agency reviewed a draft copy of the Center's report, or in agency testimony before the Legislative Study Commission on Executive Branch Boards, Commissions, and Councils. In addition, the interim report of the study commission recommends that 24 of these 38 groups be abolished and the functions of two others consolidated under other groups.

2. In the 1985 legislative session, the N.C. General Assembly should abolish 60 other groups listed in Table 7.1. Reasons for each recommendation are given.

3. The N.C. General Assembly should also consider the actions recommended in Table 7.1 to transfer certain boards to other departments, to amend the statutory authority of some groups, to delete an inadvertent repeal of one group, and to place sunset dates on several task forces so that they will cease to exist when the task is completed.

The total reduction in number of boards under Alternative Three is 98. □

*In 1984, the General Assembly abolished 26 of these 38, Chapter 995 of the 1983 Session Laws, 2nd Session, 1984 (HB 1517). Chapter 7 of the full report includes Table 7.1, mentioned below.

Some appointees end up displeased with the group they're appointed to. Anne Gorsuch Burford, President Reagan's nominee to chair the National Advisory Committee on Oceans and Atmosphere, called the appointment "a nothing-burger." "They meet three times a year," she said. "They don't do anything. It's a joke."



Courtesy Duane Powell, *News & Observer*, 8/2/84

"He showed great zeal and ambition in municipal affairs, and was always acting on boards and committees and administrative bodies."

Thomas Mann,
Buddenbrooks (1924)

Gov. James G. Martin has formed his strategy as well. In a written response to the Center, Martin agreed "that there are too many boards in the executive branch with little thought given to their design or to how they best serve the citizens of North Carolina. One solution I have already implemented is the creation of the office of Special Counsel for State Boards, Commissions, and Agencies. It will be the responsibility of this office to act as a 'sunset' commission to review the current boards, commissions, and councils and make recommendations to consolidate or eliminate many of them."

The Governor said his first priority would be reviewing the boards created by executive order and taking steps to reduce their number. Then, he said, his administration would concentrate on working with the General Assembly to review those boards and commissions created by statute. Of the Center's three proposed alternative solutions to this bureaucratic kudzu, the Governor preferred the third—review and individually reform, consolidate, or abolish specific boards. And, Martin said, on those future occasions when he established a new board by executive order, he would make it an ad hoc entity "to be disbanded when its charge is completed."

News accounts in 48 papers and 21 supporting editorials from around the state pointed to the problems highlighted in the Center's study: boards that should be abolished, duplication among boards, violation of the state constitutional requirement of separation of powers between the legislative and executive branches, inefficiency in state government, and adequate representation of women and blacks. Most importantly, as Center Director Ran Coble said to the media, "The number of boards keeps growing like kudzu. Too much of this kudzu will choke off useful citizen participation."

The editorials challenged the legislature and the Governor to fight various tangles. "When Gov. Jim Martin was on the campaign trail, he

made a point of an efficiency study," begins the January 30 editorial in *The Enquirer-Journal* of Monroe. "Among the places the Governor can look for improved efficiency is the executive branch—a bastion with a healthy belief in establishing boards."

The Charlotte News chided the legislature on another point. "As the figures from the Center for Public Policy Research indicate, the General Assembly's actions have done little to un-muddy the waters of the separation of powers issue."

The General Assembly has a major job in abolishing unnecessary boards and prohibiting legislators from serving on executive branch boards. But what about future boards? A good pruning of kudzu doesn't necessarily keep it under control.

The Center's report recommends several alternative methods of setting ceilings on the number of boards that can be established in the executive branch. Asked if they supported the concept of a ceiling, the Speaker and Lieutenant Governor took different tacks.

"First we ought to abolish them, and then we ought to put a ceiling on the number," said Ramsey. "We need legislation that would not let departments create as many boards as they want."

Lt. Gov. Jordan approaches the idea cautiously. "I haven't made up my mind yet whether ceilings would be a good idea," said Jordan. "I want to avoid any sense that the legislature is trying to encroach on the Governor's power. I'm sensitive to putting a ceiling on the Governor or the executive branch. I'm more apt to want to put a ceiling on [executive-branch] boards created by the legislature."

The executive summary of the Center's report, reprinted below, summarizes the major points of the three-year study. The seven-chapter report elaborates on each point (costs, separation of powers, etc.). Then, for the "exhaustive detail," seven appendices span 482 pages, with data on each of the 320 boards, commissions, and councils in the executive branch as of April 1984.

After reading the fine print and pondering the political problems, any kudzu fighter must come back to the purpose of these boards. "A modern state government requires advisory and administrative councils," says *The News and Observer* editorial. "They are crucial to citizen participation in government."

Or as Lt. Gov. Jordan put it, "The underlying issue here is to determine how we can get the most effective citizen input." □

Copies of the full report are available for \$16.47 (\$15.00 plus \$1.47 postage) from the Center, P.O. Box 430, Raleigh, N.C. 27602, (919) 832-2839.