



Special Provisions in Budget Bills: Pandora's Box Is Open Again

by Ran Coble

North Carolina's budget bill for state government has grown so lengthy that some lawmakers don't have time to read it. Yet it is increasingly used to change laws that have nothing to do with the budget. Research by the N.C. Center for Public Policy Research shows that the 1997 and 1998 budget bills contained a record 274 special provisions that are unrelated to the budget. Such late-stage insertions deal with issues as volatile as welfare reform and criminal laws but get little or no public scrutiny. The use of special provisions in the 1999 budget bill plummeted in the wake of the Center's February 1999 report, but the Center recommends that the legislature enact special legislation banning the use of special provisions in its budget bills to prevent a return to old bad habits.

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 bill 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.

This is the fourth report the Center 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 Ran Coble. "Legislators swore off the use of the tactic in the late 1980s, but the 1997 and 1998 budget bills once again were loaded up with special provisions."

Editors note: Much of this article is excerpted from the executive summary of *Special Provisions in Budget Bills: Pandora's Box Is Open Again*, a special follow-up report by Ran Coble, executive director of the North Carolina Center for Public Policy Research. The report was published by the Center in February 1999.

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 is 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* that 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 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

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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 identifies 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 included 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 these new programs may be worthy initiatives, but they should be debated—and approved or rejected—on their own merits.

**Table 1. Trends in the Number of Special Provisions in
N.C. Budget Bills, 1981-98**

In Long Regular Sessions in Odd-Numbered Years			In "Short" Sessions in Even-Numbered Years		
Year	# of Special Provisions	Length of Budget Bill(s) in Pages	Year	# of Special Provisions	Length of Budget Bill(s) in Pages
1981	29	90	1982	30	74
1983	65 in 3 budget bills	191	1984	87 in 3 budget bills (HB 80, HB 1376, and HB 1496)	119 in 3 bills
1985	108 in 3 budget bills (SB 1, SB 182, and SB 489)	199 in 3 bills	1986	57	173
1987	58 in 4 budget bills (HB 1514, HB 1515, HB 1516, and HB 2)	297 in 4 bills	1988	12 in 4 budget bills (HB 2641, HB 1859, HB 859, and SB 257)	137 in 4 bills
1989	57 in 5 budget bills (SB 43, SB 44, SB 1042, SB 1124, and SB 1309)	244 in 5 bills	1990	29 in 2 budget bills (SB 1426 and SB 1427)	120 in 2 bills
1991	81	230	1992	19 in 2 budget bills (HB 1245 and SB 1205)	62 in 2 bills
1993	94 in 2 budget bills (SB 27 and SB 1505)	250 in 2 bills	1994	80 in 2 budget bills (SB 1505 and SB 1504)	190 in 2 bills
1995	125 in 2 budget bills (HB 229 and HB 230)	294 in 2 budget bills	1996	101	213
1997	122	468	1998	152	348

(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 adopted a rule against special provisions in budget bills, but the House of Representatives did not follow suit.

In the last few years, new developments in the political scene—split-party control and a governor with veto power—have led to an increase in the use of special provisions. First, with the Senate being controlled by the Democrats and the House controlled by Republicans in 1995–1998, each house used special provisions to force the other's hand. That is, by inserting controversial changes in law into the budget, each chamber got the other chamber (and party) to consider and enact bills that probably would not have passed on their own. Second, by loading up the budget with special provisions, the legislature probably got some laws

enacted that might have been vetoed, had Governor James B. Hunt Jr. been able to consider them on their own. For example, it is doubtful that the welfare law changes allowing county-level welfare experiments—which were inserted into the 1997 budget bill by the Republican House—would have escaped a gubernatorial veto if they had somehow made it through the Senate.

Finally, with so many controversial legislative proposals in budget bills, special provisions probably have lengthened the session and delayed adjournment. In order to adjourn within a reasonable time, the legislature has to spread out its work and tough decisions over the months that it is in session. By postponing many of these tough decisions until the final budget negotiations and making these changes in statutory law part of the budget battle, the legislature is keeping itself in town longer than it has to. It is no accident that the latest adjournment dates in the last decade coincided with the budget bills with record numbers of special provisions.

Legislators should not get all the blame for the increase in special provisions, however. Interviews with legislators and other legislative observers also revealed two other sources of special provisions—lobbyists and the executive branch. Lobbyists sometimes like to use special provisions because they are more easily hidden within a lengthy budget bill. Legislative observers note that executive agencies also send over special provisions as a way to secure last-minute changes in law.

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.

The Center commends the 1999 state Senate leadership for adopting a rule (Rule 42.4) at the start of the session that will curb special provisions if it is enforced by Senate budget leaders. The Center also commends House Speaker Jim Black (D-Mecklenburg) and the three co-chairs of the

Table 2. Prohibitions Against Substantive Legislation (Special Provisions) Being Included in Budget Bills, By State

	Forbid Special Provisions	Regulate Special Provisions	Sources of Prohibition or Regulating Measure
1. Alabama	Yes	N/A	Constitution
2. Alaska	Yes	N/A	Constitution
3. Arizona	Yes	N/A	Constitution
4. Arkansas	Yes	N/A	Constitution
5. California	Yes	N/A	Constitution
6. Colorado	Yes	N/A	Constitution
7. Connecticut	Yes	N/A	Statute and rule
8. Delaware	No	No	N/A
9. Florida	Yes	N/A	Constitution
10. Georgia	Yes	N/A	Constitution
11. Hawaii	Yes	N/A	Constitution
12. Idaho	No	Yes	Constitution
13. Illinois	Yes	N/A	Constitution
14. Indiana	Yes	N/A	Constitution
15. Iowa	No	Yes	Constitution
16. Kansas	Yes	N/A	Constitution
17. Kentucky	?	N/A	Constitution, with court case pending at the time
18. Louisiana	Yes	N/A	Constitution
19. Maine	No	No	N/A
20. Maryland	Yes	N/A	Constitution
21. Massachusetts	Yes	N/A	Statute
22. Michigan	—	—	No response to survey
23. Minnesota	No	No	N/A
24. Mississippi	Yes	N/A	Constitution and House rule
25. Missouri	Yes	N/A	Constitution
26. Montana	Yes	N/A	Constitution and joint rule
27. Nebraska	Yes	N/A	Constitution
28. Nevada	No	Yes	Constitution
29. New Hampshire	Yes	N/A	Constitution

Table 2, *continued*

	Forbid Special Provisions	Regulate Special Provisions	Sources of Prohibition or Regulating Measure
30. New Jersey	Yes	N/A	Constitution
31. New Mexico	Yes	N/A	Constitution
32. New York	No	Yes	Constitution
33. North Carolina	No	No	N/A
34. North Dakota	?	Yes	Senate rule, though state does not use a general appropriation bill
35. Ohio	No	Yes	Constitution
36. Oklahoma	Yes	N/A	Constitution
37. Oregon	Yes	N/A	Constitution
38. Pennsylvania	Yes	N/A	Constitution
39. Rhode Island	No	No	N/A
40. South Carolina	?	Yes	Constitution, court case pending at the time
41. South Dakota	Yes	N/A	Constitution
42. Tennessee	Yes	N/A	Constitution
43. Texas	Yes	N/A	Constitution
44. Utah	Yes	N/A	Constitution
45. Vermont	No	N/A	N/A
46. Virginia	No	Yes	Constitution
47. Washington	No	Yes	Constitution
48. West Virginia	Yes	N/A	Constitution
49. Wisconsin	No	No	N/A
50. Wyoming	No	No	N/A

Source: Gerry F. Cohen, "Survey of Other States Concerning Appropriations Process," Memorandum to the N.C. Senate Select Committee on the Appropriations Process (October 31, 1985), pp. 5-6.

House Appropriations Committee—Representatives David Redwine (D-Brunswick), Ruth Easterling (D-Mecklenburg), and Thomas Hardaway (D-Halifax)—for significantly reducing the number of special provisions in the budget passed by the House in early June. Still, the Center recommends that both houses of the General Assembly amend state statutes to prevent the practice

from occurring in future sessions. A bill (Senate Bill 135) filed by Sen. Virginia Foxx (R-Watauga) in the 1999 session would amend state statutes to prohibit use of special provisions in the budget bill for non-budgetary purposes. The Appropriations Committee on Base Budget did not act on her proposal before adjournment.

"The General Assembly has the opportunity

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—D.G. MARTIN

INTERIM VICE CHANCELLOR OF UNC-
PEMBROKE AND FORMER LEGISLATIVE
LIAISON FOR THE UNC SYSTEM

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 by amending state statutes to allow only those items which pertain directly to the budget to be placed in budget bills."

While the House did not change its rules to prohibit special provisions that don't pertain to spending, Jane Gray, legal counsel to Speaker Jim Black, says the 1999 House budget was compiled as though the rules had been changed. "There were no criminal law changes, no welfare reform law changes—none of those things in there that held us up last year." Yet despite the admirable effort on the part of House leadership to limit special provisions in the budget bill, the Center believes the ultimate remedy to prevent a relapse of over-reliance on special provisions is to amend state statutes to prohibit their use.

Reaction to the Center's Report

Media reaction to the Center's report and its recommendations to prohibit non-budgetary special provisions from the state budget was swift and favorable. A total of 42 newspapers published 52 articles and 34 editorials or columns on the subject. In addition, 91 radio stations across North Carolina and at least four television stations

covered the report. Among the advocates of reform of the use of special provisions in budget bills was D.G. Martin, interim vice chancellor of the University of North Carolina at Pembroke and former legislative liaison for the University of North Carolina system. "This report shines a spotlight on special provisions," wrote Martin in a column published in more than 20 North Carolina newspapers.¹ "It tells everybody in North Carolina what they are and why they are dangerous for representative government. . . . [T]he Center for Public Policy Research cast a bright light on the process in a detailed and damning report that is getting attention from legislators and others who follow government."

In an editorial titled, "Budget flimflammy," *The News & Observer* of Raleigh, N.C., had this to say: "The provisions—outright laws that legislators slip into the massive budget—are an insult to open government. The practice ought to be stopped, with the provisions going through the normal legislative process of full review."² Similar editorials appeared in the *News & Record* of Greensboro,³ the *Charlotte Observer*,⁴ the *Observer-Times* of Fayetteville,⁵ and eight other newspapers. As the *News & Record* put it, "Too often, lawmakers craft their bills behind closed doors, then slip them quietly into the thick and densely worded state budget. . . . That's bad government. It subverts the democratic process. And it's happening more and more, as a recent report from the N.C. Center for Public Policy Research reveals. . . . The practice has to stop. Legislators must ban it. Budget bills should deal with the budget, and nothing else."

Copies of the Center's 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.ncinsider.com/nccppr.

FOOTNOTES

¹ D.G. Martin, "Special provision legislators' shibboleth," *Elkin Tribune*, March 3, 1999, p. 4A.

² "Budget flimflammy," unsigned editorial, *The News & Observer*, Raleigh, N.C., February 24, 1999, p. 14A.

³ "Back-room politics subvert democracy," unsigned editorial, *News & Record*, Greensboro, N.C., p. 12A.

⁴ "Bloated budget—1998 lawmakers went on another special provisions binge," unsigned editorial, *The Charlotte Observer*, Charlotte, N.C., Feb. 22, 1999, p. 10A.

⁵ "A Poisonous Delicacy—Special provisions escape scrutiny," unsigned editorial, the *Observer-Times*, Fayetteville, N.C., Feb. 22, 1999, p. 6A.