



N.C. Center Releases Report on Special Provisions—the Pandora's Box of Budget Bills

In June 1986, the N.C. Center for Public Policy will release a report called "Special Provisions in Budget Bills: A Pandora's Box for North Carolina's Citizens." The report, written by N.C. Center Executive Director Ran Coble, examines special provisions in budget bills passed by the N.C. General Assembly since 1971. Excerpts from the executive summary of the report appear below.

Special provisions in legislative appropriations bills are like Pandora's Box. They contain a variety of plagues that undermine the legislative process, work against the public interest, and erode the authority of existing systems and institutions of government. These special provisions—adopted by the legislature in the frenzied final days before adjournment of each session—often are approved without adequate public debate and frequently without the knowledge of many members of the General Assembly.

Years ago, the practice of special provisions began as a legitimate way to explain the purposes of an appropriation or limit the use of funds. Special provisions once served as the narrative flesh on a skeleton of columns of numbers appropriating certain amounts to each state agency. But in recent years, what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand.

For instance, special provisions in recent years were used to repeal parts of the Administrative Procedure Act, to attempt (unsuccessfully) to repeal the Coastal Area Management Act, to pass a major revision to the state's bingo laws, to allow overweight trucks on the state's highways, and to establish study commissions on such disparate subjects as the quality of water in the Pigeon River and a retirement plan for local sheriffs and registers of deeds.

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 that the legislature amend the Executive Budget Act and empower citizens to petition the N.C. Attorney General to challenge any special provision establishing, amending, or repealing a law. If the Attorney General declined to pursue the case, the individual citizen would then have the right to sue in Superior Court.

Special provisions are not to be confused with pork barrel bills. While pork barrel appropriations and special provisions may wind up in the same bill, they perform different legislative tasks. Special provisions rarely involve the expenditure of money, but they directly affect state laws by amending, repealing, or creating new laws. Pork barrel appropriations, on the other hand, refer specifically to special appropriations, either statewide or local in nature, for legislators' pet projects. This report identifies three major problems with special provisions, as summarized below.

Special Provisions Bypass the Normal Legislative Process

Some bills which might not pass on their own merits are often inserted into budget bills in the form of special provisions. This report, for example, describes a special provision which required a study of comparable worth, or pay equity, in the State Personnel System. This special provision passed as part of the main budget bill in 1984. But in 1985, after debating the merits of the proposal in a *separate bill*, the legislature repealed its 1984 action.

Special provisions undermine the legislative
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Table 1. Increase in Number of Special Provisions

Date and Type of Legislative Session	Number of Special Provisions
1981 regular long session	29 (SB 29)
1982 short budget session	30 (HB 61)
1983 regular long session	65 in three budget bills (SB 23, SB 313, and SB 22)
1984 short budget session	87 in three budget bills (HB 80, HB 1376, and HB 1496)
1985 regular long session	108 in three budget bills (SB 1, SB 182, and SB 489)

What Are Special Provisions?

• Special provisions, as defined in the Center's report, are portions of budget bills which are used in any of the following inappropriate ways:

(1) to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;

(2) to establish new agency programs or to alter the powers and duties of existing programs;

(3) to establish new boards, commissions, and councils or to alter existing boards' powers;

(4) to grant special tax breaks or otherwise change the tax laws; or,

(5) to authorize new interim studies by the General Assembly or other groups.

* * *

• An *inappropriate* special provision is in a budget bill but is unrelated to the budget and amends other state laws. For example:

"Effective July 1, 1985, Chapter 150A of the General Statutes [the Administrative Procedure Act] is repealed, with the exception of G.S. 150A-9 and G.S. 150A-11 through 17."

— Chapter 923 of the 1983 Session
Laws (SB 313), Section 52

• A *legitimate* special provision explains an expenditure of funds in the budget bill. For example:

"Of the funds appropriated to North Carolina State University at Raleigh...the sum of \$30,000 shall be used for research and related extension activities in turf grass. An additional \$40,000 shall be used for corn research, and \$60,000 shall be used for a swine specialist for a ten-county area in extension, which was inadvertently left out in a previous appropriation."

— Chapter 1034 of the 1983 Session
Laws (2nd Session, 1984, HB 80),
Section 53

process because too few legislators are involved in the special provisions process. When questioned about the secrecy of the process, legislative leaders will defend the technique by saying that the full House and Senate Appropriations Committees review all special provisions. However, contrast that explanation with a scene from one 1984 Appropriations Committee session.

Committee member Rep. Bruce Ethridge (D-Onslow) asked the Chairman, Rep. William T. Watkins (D-Granville), if he could submit an amendment to the appropriations bill. "I don't know," replied Watkins. "That depends on what it is." Ethridge did not send forth his amendment, even though committee rules allowed it.

One reason why rank-and-file legislators do not revolt, say legislative observers, is that votes for special provisions are implicitly tied to a legislator's share of pork barrel money for his or her district. If you don't vote for the main budget bill—special provisions and all—you may not take home the bacon, observers say. In 1985, for example, former Sen. John Jordan (D-Alamance) did not vote for the main appropriations bill *and* received no pork barrel money—a fact that did not go unnoticed in the press.

Special Provisions Can Work Against the Public Interest

Special provisions work against the public interest when they are used to create new programs, new boards and commissions, or assign new duties to state agencies. For example, in the last three sessions, special provisions have been used to establish a homeownership assistance program, a community college scholarship program, and an alcohol and drug defense program.

While these may all be worthy programs, they were established without the normal legislative scrutiny given to the need for new programs. The report identifies 11 new boards and commissions also established through special provisions. The taxpayers have a right to expect full legislative debate on the creation of new programs and new boards. These new programs can cost the taxpayers for years to come.

Special tax breaks are also granted in special provisions. One special provision in 1977 authorized foreign trade zones, which had the effect of creating tax breaks for certain types of property held in these zones. Another 1984 provision exempted certain trucks from penalties for being overweight.

Table 2. Increase in Length of Budget Bills

Date and Type of Legislative Session	Number of Pages in Bill to Fund "Current Operations" of State Agencies
A. Regular Long Sessions (usually 6 months)	
1971	31 pages
1973	32 pages
1975	53 pages
1977	79 pages
1979	89 pages
1981	90 pages
1983	191 pages
1985	214 pages ¹
B. Short Budget Sessions (usually 1 month)	
1974 ²	38 pages
1976	80 pages
1978	57 pages
1980	60 pages
1981 ³	66 pages
1982	74 pages
1984	164 pages ⁴

FOOTNOTES

¹This bill was actually 107 pages, but it was *single spaced*. All the preceding bills in this column were *double spaced*. When compared to the other bills in this column, the 1985 bill is the *equivalent* of a 214-page bill.

²The first such short session and the beginning of annual legislative sessions.

³Special October session.

⁴This bill was actually 82 pages, but it was *single spaced*. All the preceding bills in this column were *double spaced*. When compared to the other bills in this column, the 1984 bill is the *equivalent* of a 164-page bill.

Special Provisions Undermine the Authority of Other Governmental Institutions

Special provisions damage relationships between state and local governments and between the executive and legislative branches of government. For example, in 1984, many local school systems were surprised to hear at the last minute about a special provision enacting a centralized payroll system for all public school systems in North

Table 3. Prohibitions Against Substantive Legislation (Special Provisions) Being Included in Budget Bills, By State (1985)

A. Prohibit Special Provisions Through State Constitution (29)

Alabama	Missouri
Alaska	Montana (and joint rule)
Arizona	Nebraska
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Illinois	South Dakota
Indiana	Tennessee
Kansas	Texas
Louisiana	Utah
Maryland	West Virginia
Mississippi (and House rule)	

B. Prohibit Through Other Measures (2)

Connecticut (statute and rule)
Massachusetts (statute)

C. Regulate Special Provisions Through Constitution (8)

Idaho	Ohio
Iowa	South Carolina
Nevada	Virginia
New York	Washington

D. Regulate Special Provisions Through Other Measures (1)

North Dakota (Senate rule)

E. No Prohibitions Against Special Provisions (8)

Delaware	Rhode Island
Maine	Vermont
Minnesota	Wisconsin
North Carolina	Wyoming

F. Status Unclear (2)

Kentucky (court case pending)
Michigan (did not respond to survey)

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

Carolina. The Controller for the State Board of Education, James Barber, objected to the use of a special provision as the vehicle for such a change. "We could have worked out the problems during debate in the normal committee process," he explained at the time.

Special provisions can be a legislative thorn in the executive branch's side. In 1985, the Democratic leadership used special provisions to prohibit Republican Gov. James G. Martin from hiring private legal counsel or private investigators without the consent of the Attorney General, a Democrat. The thorns can pierce Democrats' skin as well. In 1981, Gov. James B. Hunt Jr. found two special provisions so objectionable that he asked for, and obtained, an opinion from the N.C. Supreme Court, which said they were unconstitutional invasions of his constitutional powers to administer the budget.

The report notes that 31 other states prohibit (either by statute or in their constitutions) substantive legislation similar to these special provisions

in their appropriations bills. Nine more states have at least partial restrictions on special provisions. Thus, the North Carolina legislature is in the small minority of states that allow special provisions. The South Carolina Chamber of Commerce has recently sued the S.C. General Assembly over its practice of adding non-germane legislation to the annual appropriations bill. A special provision authorizing a dues checkoff to the State Employees Association for state employees triggered the suit.

Conclusion

Because the use of special provisions bypasses the full legislative process, because it can result in legislation against the public interest, and because it undermines other institutions of government, the General Assembly should end the practice. The time has come to close this Pandora's box—before additional legislative plagues escape to wreak havoc on the orderly process of government. □◡□