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# IN THE EXECUTIVE BRANCH

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## *The Council of State and North Carolina's Long Ballot: A Tradition Hard to Change*

by Ferrel Guillory

*This regular Insight feature focuses on how the executive branch of state government goes about making public policy. In this article, Insight examines the impact of North Carolina's "long ballot" on the executive branch, and the prospects for change.*

As Commissioner of Agriculture, James A. Graham runs a department of state government with a \$52.2 million budget and nearly 1,400 employees. Graham was *elected* by the people.

As Secretary of Natural Resources and Community Development, S. Thomas Rhodes runs a department with a \$198.7 million budget and 2,122 employees. Rhodes was *appointed* by Gov. James G. Martin.

As Commissioner of Labor, John C. Brooks controls one of the smallest departments of state government. The Labor Department has a \$10.8 million budget and 298 employees. Brooks was *elected* by the people.

As the Secretary of Human Resources, David T. Flaherty sits atop a huge governmental structure, largest in the state, not counting the Department of Education and its statewide network of teachers. The Department of Human Resources has a \$2.5 billion budget and 17,800 employees. Flaherty is an *appointee* of Governor Martin.

Why, in this remainder of the 20th Century, do we still elect some state cabinet-level officials, yet appoint others? Tradition, more than anything else. An observation made in 1968 by the North Carolina State Constitution Study Commission remains true two decades later: "Thus whether one of the state executive offices is filled today by vote of the people or by appointment appears to have more to do with the age of the office than with the nature and weight of its responsibilities."<sup>1</sup>

More than most states, and certainly far more than the federal government, North Carolina has a fractionalized executive branch. Although the power of the Governor has been steadily broadened over time, the state's laws and its programs are carried out not only by the chief executive and his Cabinet but also by several independently elected officials.

The Governor has the power to appoint the overseers of the state's prisons; its transportation system; its economic development efforts; its highway patrol; its health, welfare, and social services; its environmental protection units; its cultural assets; and its tax collectors. But the state Constitution gives the people the power to elect, in addition to the Governor and the Lieutenant Governor, the Auditor, the Attorney General, the Treasurer, the Secretary of State, the Commissioner of Agriculture, the Commissioner of Labor, the Commissioner of Insurance, and the Superintendent of Public Instruction.

This long list of public offices, combined with a complete slate of Superior Court judges elected statewide, gives North Carolina its traditional long ballot. And together, the 10 statewide elected officials serve on an unusual and long-lasting unit of state government. It's called the Council of State.

Over the past two years, a series of unrelated developments has focused attention on the Council of State—on how its members are chosen and how its members relate to the Governor. In 1987, the General Assembly debated and then turned down legislation to convert the Superintendent of Public Instruction from an elective to an appointive position.<sup>2</sup> Moreover, two members of the Council of

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State have decided not to seek re-election: Thad Eure, after 52 years as Secretary of State, and A. Craig Phillips, after 20 years as Superintendent of Public Instruction. Thus, with Lt. Gov. Robert B. Jordan III running for Governor instead of re-election, voters will fill three vacancies on the council in the 1988 election. And an important lawsuit (see box on p. 38) has been part of the debate.

The Council of State has its origins in the Proprietary and Colonial periods, as John Sanders, director of the Institute of Government at the University of North Carolina at Chapel Hill, explains in a history of this unusual institution. The Governor's Council, appointed by the Crown from among residents of the colony, not only advised the Royal Governor but also served as the upper house of the General Assembly.

When North Carolina declared its independence in 1776 and set up its own government, the Governor was given little power and a seven-member Council of State was created. Members of the council were elected by the legislature for a term of one year. "The council had no authority to act except in conjunction with the Governor," Sanders writes. "Its members had no governmental authority as individuals and could hold no other state office."<sup>3</sup>

The Convention of 1868 provided for a popularly elected Governor and Lieutenant Governor, as well as six other executive offices. Under this 1868

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Constitution, the Council of State consisted of the Auditor, Secretary of State, Treasurer, Superintendent of Public Works, and Superintendent of Public Instruction. The Governor called and presided over its meetings and the Attorney General was its legal adviser, though neither was a Council member. The office of Superintendent of Public Works was abolished in 1873. And the Commissioners of Agriculture, Labor, and Insurance, as elected officials, were added to the state Constitution in 1944, although these offices already existed as elective positions by statute.<sup>4</sup> The Council must approve the Governor's actions in convening extra sessions of the General

Assembly, acquiring and disposing of land for the state, and borrowing money.

The 1968 Constitution study commission report, which set the stage for the constitutional revisions of 1971, proposed a much shorter ballot of statewide elected officials. The commission wanted to retain the Governor, Lieutenant Governor, Auditor, Treasurer, and Attorney General as statewide elected officials. It proposed having the Secretary of State and the Commissioners of Labor, Insurance, and Agriculture appointed by the Governor, and the Superintendent of Public Instruction appointed by the State Board of Education.

The commission offered this critique of the consequences of having 10 statewide elected officials:

"Relatively few of the State's two million voters have more than a faint idea of the duties of most of these offices; still fewer are in a position to know the qualities of the occupants of and candidates for most of those posts. Thus the vast majority of voters are poorly prepared to make an understanding selection of the men who are to fill those posts. The fact is that for many decades, nearly all of these officers (other than the Governor and Lieutenant Governor) have reached their places by appointment by the Governor to fill a vacancy, have won nomination in the party primary without significant opposition, and have shared the success of the Democratic state ticket in the general election.

"From the constitutional standpoint, these officers nevertheless hold their offices by gift of the voters, and so are only indirectly subject to supervision by the Governor. Thus the Governor's ability to coordinate the activities of state government and to mount a comprehensive response to the problems of the day are handicapped if the elected department heads choose not to cooperate with him."<sup>5</sup>

North Carolina now has more than three million voters, and no commission today would write only of "men" who hold government jobs. Still, the arguments for a shorter ballot made by the study commission have echoed across the state for the last 20 years.

Neither the 1968 commission nor its echoes swayed the General Assembly to reduce the number of statewide elected officials. In 1987, both Governor Martin and Lieutenant Governor Jordan backed legislation to make the Superintendent of Public Instruction appointive. That office was singled out for two reasons: First, a change seemed feasible with Phillips retiring. And second, the structure of

education governance—an elected superintendent reporting to an appointed board, with the Governor having a key role as agenda-setter and budget maker—strikes many people as leaving the lines of accountability blurred.

The Senate approved a proposed constitutional amendment to make the superintendent an appointee of the education board, but the measure was rejected in a House committee. Other members of the Council of State opposed it.

“You take one off the ballot and then the question is which one’s next,” says Commissioner of Insurance Jim Long, explaining in part why the Council of State opposed the constitutional amendment.

In separate interviews, Long and Commissioner of Labor John C. Brooks discussed why they favor retaining their jobs as elected positions. The principal issues, both said, are continuity and independence.

“The complexities of the job are such that you don’t want what you have in other states—a rapid turnover of commissioners,” Long says. While

some appointed commissioners stay in office no more than 18 months, he says, North Carolina’s elected insurance commissioner is assured of a four-year term.

Brooks notes that the federal government has had three Secretaries of Labor during the last eight years. “The continuity that our system offers is very valuable,” he says. “But it also has a safety valve—that if someone is doing a bad job, the voters can do something about it.” An appointed commissioner, adds Long, “is beholden to the appointive authority, usually the Governor. I have independence.”

Candidates for Council of State offices regularly receive much of their campaign financing from persons and groups with a special interest in the affairs of their particular post. Long, for instance, acknowledges accepting campaign contributions from insurance agents, representatives of insurance companies, engineers, architects, and others with an interest in the insurance-regulation and fire-code duties of his office. “I take it from anybody who will give it to me, and I report it,” says Long.

But, Long says, if the Governor appointed the commissioner, special-interest groups would shower gubernatorial candidates with campaign contributions in hopes of influencing the winner’s choice of the insurance regulator. In terms of special-interest groups trying to influence government policy through campaign contributions, says Long, “You’ve got the same risk if the Governor appoints me.”

Unless some major event changes official attitudes, it is not likely that another attempt at shortening the ballot with regard to the Council of State will be made soon. What might spark such a change?

“I suppose if you have a scandal or two or three in those offices,” Sanders muses in an interview. “Otherwise, a Governor is not likely to tear his shirt over it.”

Perhaps not, but the stimulus might come from outside candidates for office. A few years ago, a Colorado politician campaigned—albeit unsuccessfully—for abolition of the office of Secretary of State. And in this year’s election, Republican Richard Levy of Greensboro is running for Commissioner of Labor on a platform of promising to abolish the office, though Levy’s bid may be a long shot. But one candidate who succeeded was William F. Winter of Mississippi, who managed to get the statewide elected office of State Tax Commissioner abolished while he held the post. Voters evidently didn’t hold it against him, because Winter later was elected Governor.

Opponents of the long ballot might argue that

**Table 1**  
**N.C. Council of State Officers and**  
**Number of States Which Elect**  
**the Same Officials**

Governor	50
Attorney General	43 *
Lieutenant Governor	42 *
Treasurer	38 *
Secretary of State	36 *
Auditor**	22 *
Superintendent of Public Instruction	16 *
Commissioner of Agriculture	12 *
Commissioner of Insurance***	11 *
Commissioner of Labor	4 *

\* Includes states in which the office is established by statute as well as by the constitution.

\*\* Includes some comptrollers, pre-auditors, and post-auditors.

\*\*\* As counted by the National Association of Insurance Commissioners.

Source: Book of the States, 1986-1987 Edition

**Table 2. Number of Offices Headed by Elected Officials, by State, and Rank Among All States (*Exclusive of Office of Governor*)**

State	Number of Offices	Rank	State	Number of Offices	Rank
Alaska	0	1	Illinois	6	22
Maine	0	1	Indiana	6	22
New Jersey	0	1	Iowa	6	22
New Hampshire	1	4	Kansas	6	22
Tennessee	1	4	Massachusetts	6	22
Hawaii	2	6	Montana	6	22
Virginia	2	6	Ohio	6	22
Maryland	3	8	California	7	33
New York	3	8	Florida	7	33
Pennsylvania	4	10	Michigan	7	33
Rhode Island	4	10	Nevada	7	33
Utah	4	10	Oklahoma	7	33
Wyoming	4	10	South Dakota	7	33
Connecticut	5	14	Alabama	8	39
Delaware	5	14	Georgia	8	39
Minnesota	5	14	Kentucky	8	39
Missouri	5	14	Nebraska	8	39
Oregon	5	14	New Mexico	8	39
Vermont	5	14	South Carolina	8	39
West Virginia	5	14	Texas	8	39
Wisconsin	5	14	Washington	8	39
Arizona	6	22	Mississippi	9	47
Arkansas	6	22	North Carolina	9	47
Colorado	6	22	Louisiana	10	49
Idaho	6	22	North Dakota	11	50

Source: Council of State Governments

the state is not well served by electing so many officials. They would contend that "accountability in principle is not matched by accountability in fact," notes *State Policy Reports*, a national state policy newsletter, because "it is so difficult for the public to measure performance in some of these jobs that, as a practical matter, elections are decided by such factors as name recognition . . . rather than judgment of competence or issue orientation. They would contend that the governor makes a better judge of competence and performance than the public at large."<sup>6</sup>

The trend in recent years is toward fewer statewide elected officials, according to the 1986-87 *Book of the States*. In 1956, states had 709 elected statewide officials in offices other than the Govern-

nor, but 30 years later, in 1986, that number had dropped to 509.

Despite this national trend, state legislators, who would have to pass a constitutional amendment before sending it to the voters for their approval, have little political incentive to alter the system. After all, they themselves are elected officials, and many find themselves unwilling to risk asking their constituents to give up the right to vote on who would fill a position that long had been subject to election. Many of them may reason that North Carolina's long ballot is a symbol of Jacksonian democracy, and that a long ballot is indeed the best way to select the state's leaders.

And some of them, as UNC-CH Political Scientist Thad Beyle points out, may wish to keep these

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offices intact "so they can move up politically." For instance, state Rep. Bobby Etheridge (D-Harnett) is running for Phillips' soon-to-be-vacant seat as Superintendent of Public Instruction.

North Carolina could have a shorter ballot, Human Resources Secretary David Flaherty points out, "if the merit selection of judges would be implemented. Eliminating the judges on the ballot would reduce the number of slots and heighten public awareness of the Council of State offices." (See "Selecting Judges," *North Carolina Insight*, June 1987, for more on this subject.)

Not everyone agrees that's a good idea. As State Treasurer Harlan Boyles puts it, "Shortening the ballot would make it easier to vote, but would it give the people better government?" Boyles believes North Carolina's system of government has worked well, and he says a proper balance of powers exists among the three branches of government. "To curtail the Council of State and give the Governor more appointive power would certainly alter this balance in favor of the executive branch. Would this be desirable? North Carolina's Governor already has appointive power exceeding that in most states."

Another Council of State member, Auditor Edward Renfrow, suggests departments headed by appointees of the Governor may be inappropriate places for many new duties—and that the Council of State departments might be better agencies for these responsibilities. "I believe that, over the years, many programs or functions were placed in various offices appointed by the Governor rather than a more appropriate organizational setting under an elected Council of State office," says Renfrow. Examples he mentioned are the Employment Security Commission under Commerce

rather than the Labor Department, and the Public Staff of the Utilities Commission rather than the Attorney General's office. "Such 'misplacements,' in my opinion, often result in duplication of services and inefficient operations," says Renfrow.

Shortly after the House committee quashed the Senate-passed legislation on the Superintendent of Public Instruction, Lt. Gov. Jordan declared, "I feel this was our best opportunity in the last half of the 20th century to cause this reform to come about. I think it is, for all practical purposes, a moot issue until you have major constitutional reforms of North Carolina state government sometime in the future, as you did in the early 70s."

If Jordan is right—and there's no evidence to the contrary—this long-ballot tradition will continue to give North Carolinians an extensive list of decisions to make at the ballot box every fourth November. □□

#### FOOTNOTES

<sup>1</sup> *Report of the North Carolina State Constitution Study Commission* to the North Carolina State Bar and the North Carolina Bar Association, Dec. 16, 1968, pp. 118.

<sup>2</sup> Senate Bill 149 ("State Schools Superintendent Appointed"), sponsored by Sen. Robert D. Warren (D-Johnston), passed the Senate but received an unfavorable report on June 3, 1987, in the House Committee on Constitutional Amendments.

<sup>3</sup> John Sanders, "The Governor and Council of State: Constitutional Relationships, 1663-1985," unpublished paper dated Jan. 29, 1986.

<sup>4</sup> Article III, Section 1, Constitution of North Carolina.

<sup>5</sup> *Report of the North Carolina State Constitution Study Commission*, p. 118.

<sup>6</sup> *State Policy Reports*, Vol. II, Issue 15, Aug. 14, 1984, p. 17.

## *Court Rules in Martin v. Thornburg*

In a case called *Martin et al. v. Thornburg et al.*, the Republican Governor and the other members of the Council of State, all Democrats, vied over whether a majority of the council could take certain actions regardless of the Governor's position. The case dealt with who would be landlord for an Employment Security Commission office in Lumberton. The Martin administration had asked the council to approve one bidder, but the council voted to order renegotiation with the original landlord. The Supreme Court ruled that the Council of State could approve or disapprove real estate transactions, although it appears that only the Governor could initiate an action.\* That decision has sparked further debate on relations between the Governor and the Council of State.

\**Martin et al. v. Thornburg et al.*, 320 N.C. 533, SE2d (1987).