



IN THE LEGISLATURE

Reforming Pork Barrel, Special Provisions, and the Appropriations Process: Is There Less Than Meets the Eye?

by Paul T. O'Connor

This regular Insight feature focuses on the makeup and process of the N.C. General Assembly and how they affect public policy-making. This column examines the results of reform measures in the budget process, in pork barrel spending, and in tying special provisions to budget bills.

Russell Walker was angry and he was taking it out on his banana pudding.

Sen. Walker (D-Randolph), chairman of the Senate Appropriations Committee on Human Resources, had just learned that his committee's proposals had been changed considerably in a closed meeting of the legislative leadership. Six weeks of hard work by his committee—and six months of promises by the leadership that the budget process was to be reformed—had all been wiped out, so far as Walker was concerned.

So Walker sat in the cafeteria of the Legislative Building and, wielding a spoon, neatly but forcefully cleaved and scooped up the banana slices and vanilla wafers that make up the assembly's favorite dessert. Four other legislators sat with Walker on that day near the end of the 1986 session. All shared his frustration about the appropriations process. Even the presence of a news reporter didn't halt the griping and fuming.

The reason? For one thing, the 1986 session of the General Assembly was supposed to see the end of budget-making abuses that had soiled the reputation of the legislature. The Senate had adopted new rules for the operation of the appropriations committee and, the previous winter, the leadership of both houses had announced that in the future, more legislators would have a

significant impact on the final state budget. The aims of these reforms were to tidy up the disarray surrounding three aspects of the budget process: the operation of the appropriations committees and subcommittees themselves; the allocation of "pork barrel" funds for local projects; and the practice of enacting substantive legislation through the guise of special provisions hidden in budget bills.

The Appropriations Powwow

Much of the work which Walker's committee had done during the six-week session was pre-empted when the Super Subcommittee, an informal group of eight, consisting of the budget committee chairmen, the House Speaker, and the Lieutenant Governor, met behind closed doors to put the final version of the budget together—despite assurances from legislative leaders earlier in the year that more legislators would be involved in the budget process, not fewer.¹

"We had been asked to cut our budget," Walker said. "In our meeting with the Super Sub, we had been told the size of our budget. [In numerous meetings] we almost made that goal, and we presented it to them, but when they got through with it, there were things in there which we had not recommended, and some things which had not even been discussed." Walker said his committee had decided against recommending, among other things, a \$125,000 appropriation for a North Carolina Cancer Registry, but the "Super Sub"

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"put it back in."² Walker said that \$1,140,000 for additional Adult Developmental Activity Program workers in mental health facilities was also added to the budget, even though that appropriation had never been discussed by the committee.³

Although other budget committee chairmen contacted for this article were reluctant to speak as forthrightly as Walker, several said the lack of influence they had on the new fiscal 1987 budget frustrated them. "We made some improvements but we have a long way to go," said former Sen. Wilma Woodard (D-Wake), then-chairman of the Senate Appropriations Committee on General Government. Rep. Bruce Ethridge (D-Onslow), chairman of the House Expansion Budget Committee on Natural and Economic Resources, said, "I was disappointed in some of the things that took place."

State employees close to the budget process told of budget committee chairmen who were furious at their lack of input. "Nothing went through the committees. It all went through the Super Sub," one budget analyst ventured.

The Special Provisions Express

The budget bill that emerges from the Super Subcommittee is often likened to a fast-moving train that is "on the tracks." That is, once blessed by the legislative leadership, it is not to be changed by the membership. The leadership rushes the budget bill through committee and to the floor so quickly that many legislators can't even read it before they must vote on it. When the train leaves the station, however, it is carrying more than the budget. In the secret meetings of the Super Subcommittee, the budget not only is altered without consultation with subcommittee chairmen, it is also loaded up with special provisions.⁴ Some of those provisions do relate directly to the budget and provide needed instructions to executive branch agencies as to how budgeted money will be spent.

But other special provisions have nothing to do with the budget. They are substantive changes in law, and they hop the budget train as legislative riders. In recent years, for example, special provisions were used to repeal major parts of the Administrative Procedure Act⁵ and create a new N.C. Commission on Jobs and Economic Growth.⁶

A special study commission created by Lt. Gov. Robert B. Jordan III following the 1985 session was set up to curb the abuse of special provisions. Its result was Senate Resolution 861, adopted on June 11, 1986, declaring that no special provision could be included in the budget unless it

Number of Special Provisions in Budget Bills, 1981-1986

| | |
|---|------------|
| 1981 Regular Session | 29 |
| 1982 Short Session | 30 |
| 1983 Regular Session | 65 |
| 1984 Short Session | 87 |
| 1985 Regular Session | 108 |
| 1986 Short Session | 57 |
| Total Special Provisions 1981-86 | 376 |

Source: N.C. Center for Public Policy Research

related to current operations or capital improvements funded in the budget bill.⁷ That resolution did provide certain exceptions, such as salary changes, program funding changes due to federal budget changes, and for modifications of an agency's functions when its funding has been transferred from one department to another.

But did the new Senate rule clean up special provisions abuses? You be the judge:

- A procedure for the early release of prison inmates was created in response to demands for a way to cope with prison overcrowding.⁸

- New regulations concerning work release for inmates were written.⁹

- A new state Office of Teacher Recruitment was created.¹⁰

- A new program for controlling nonpoint source pollution was created.¹¹

- A loophole exempting certain pork barrel expenditures for cultural activities from supervision by the Department of Cultural Resources—and thus allowing direct legislative grants to local arts groups—was approved.¹² The effect was to amend six other statutes and to override the normal departmental grant allocation criteria.

No one contends that all special provisions are evil. They often accomplish desirable ends. But because they are hidden away in budget bills, and because there usually is scant if any debate, too often no one realizes that scores and even hundreds of new laws can be adopted through undebated special provisions. In the 1986 session alone, 57 special provisions were tucked away in the main appropriations bill.

Asked if the Senate resolution had stemmed the abuse of special provisions, Lt. Gov. Jordan conceded that they had not solved the problem. "We improved," he insisted, "but we still have a long way to go." Added House Speaker Liston Ramsey, "That kind of special provision was cut back sharply in 1986 as opposed to 1985."

Rank-and-file members were not so sure. One legislator who asked not to be identified said that special provisions were abused almost as much in 1986 as in 1985, so the "reforms" had little impact. But, the legislator admitted, "I got one of mine (special provisions) in there. So I really can't complain."

The Pork Barrel Pollyanna

Legislators often complain about the special provisions and the way that special local appropriations—better known as "pork barrel"—are handled. But those complaints, and complainers, are controlled by a leadership that knows how to play Santa Claus. There's always an extra goody in the legislative stocking to help keep good little legislators in line.

That's the way the pork barrel process has worked in the past. All good senators get about \$70,000 to spend on their pet projects back home, and good House members—who represent fewer constituents than senators—get about half that amount. Naughty legislators, such as most Republicans and a few Democrats who buck the leadership, don't even get sticks and ashes. However, good Republicans, such as former state Sen. Cass Ballenger (now a member of Congress from the state's 10th Congressional District), who supported Democrat Jordan in the 1984 election, do share in this pork barrel pollyanna.

But that's not the only thing that galls serious students of the legislative process. Another is the fact that the legislative leadership brings home more of the bacon—a lot more—than the average legislator. When the special appropriations bill for statewide projects was unveiled during the 1986 session, *Charlotte Observer* reporter Tim Funk sat down with his calculator to see who was eating highest on the hog. Funk found that the members of the Super Subcommittee had channeled nearly \$24 million worth of state tax spending into their legislative districts.¹³ On the morning that bill was released to the public, members of the Super Sub gamely fielded reporters' questions. Remarkably, the Super Subbers maintained straight faces as they argued that the massive spending in their home districts was for *statewide* projects, not sim-

ple local pork barrel projects. The projects, they contended, just happened to be located back home in their own districts.

Both Ramsey and the Appropriations Expansion Budget Committee Chairman, William T. Watkins (D-Granville), object to any characterization of such spending as porcine. They point out that it was a *statewide* capital spending bill—not just funding for local organizations—with projects for educational institutions and agricultural stations among other things. And, they say, districts with Republican representation also got a number of projects. Says Ramsey, "It is obvious to me that a lot of our people, including certain members of the press, regard capital money for our university system, our community college system, and our Department of Agriculture, as pork barrel. I do not share their views."

Still, this disparity between the pork barrel which budget leaders brought home, and that which the average legislator received, was duly noted by Republican Gov. James G. Martin during last fall's legislative campaign. In a stump speech in Smithfield, for example, Martin accused Democrats of "selling out to the Gang of Eight." For \$25,000 worth of pork, Martin charged, Democrats allowed the leadership to each claim several million dollars' worth of special money. That criticism followed his earlier questioning of Democratic pork barrel spending on the basis that many such projects were unconstitutional. Martin had charged that some spending projects benefited only private groups, and thus did not meet the test of spending only for public purposes. Only one project was disapproved on that ground by Martin's budget office, however, and Martin's subsequent campaign to reform these legislative excesses met with limited success. The Governor asked voters to "Give me strength" by electing more GOP lawmakers, but when the ballots were tallied in November 1986, voters had instead taken away some of the Governor's strength, reducing the number of his legislative allies from 50 in the 1985 session to 46 for the 1987 session.

Still, legislators interviewed for this story felt that the General Assembly did make some progress in 1986 in cleaning up the pork barrel process. Sens. Aaron Plyler (D-Union) and Anthony Rand (D-Cumberland) were careful, Jordan said, to make sure "that all special appropriations met the public purpose test" [the state Constitution requires that public monies be spent for a public purpose in Article 5, Section 2, subsections 1 and 7] when drawing up the pork barrel bill. And, at the start of the 1987 session, both Jordan and Ramsey are

talking about reforms to correct the problems described in this column. In January, the two told reporters they had agreed to major revisions in the appropriations process in an effort to let in the sunshine.

Jordan and Ramsey said they would recommend that all meetings of the Super Sub be held in public, and that the membership be expanded to as many as 23 members, including subcommittee chairmen. The two also promised to make some changes in the pork barrel process. Jordan said that he would push to limit special provisions in appropriations bills, but that he had not yet reached agreement with Ramsey on this. The Lieutenant Governor also said he had hoped to persuade Ramsey and then both the House and Senate to prevent consideration of bills after a certain date—perhaps June 1—unless they had already been approved by one of the chambers. All these reforms would shed more light on the legislative process and enhance public confidence in the legislature.

Individual budget chairmen, like Senator Walker, are optimistic that things will get better. But then, they were optimistic in March 1986, too, when the reforms were announced—and they

were severely disappointed just a few months later. So the question facing the 1987 General Assembly is not just what reforms the lawmakers will adopt, but whether those reforms will stick. □ □

FOOTNOTES

¹For more, see "Budget Committee Chairmen Sharing New Wealth—Of Knowledge," by Paul T. O'Connor, *North Carolina Insight*, Vol. 9, No. 1, June 1986, p. 44.

²Section 141, Chapter 1014, 1985 Session Laws (2nd Session, 1986).

³Section 125, Chapter 1014.

⁴For more, see *Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens*, by Ran Coble, N.C. Center for Public Policy Research, June 1986.

⁵Section 52, Chapter 923, 1983 Session Laws.

⁶Section 52, Chapter 757, 1985 Session Laws.

⁷"A Senate Resolution to Amend the Permanent Rules of the Senate," Senate Resolution 861, adopted by the North Carolina Senate on June 11, 1986, limiting special provisions in appropriation bills.

⁸Section 197, Chapter 1014.

⁹Section 201, Chapter 1014.

¹⁰Section 63, Chapter 1014.

¹¹Section 149, Chapter 1014.

¹²Section 171, Chapter 1014.

¹³"Budget Authors Look After Their Districts," by Tim Funk, *The Charlotte Observer*, July 13, 1986, p. 1A. See also "N.C.'s Supersub: Hated, Envied Subcommittee Wields Mighty Budgetary Power," by Tim Funk, *The Charlotte Observer*, June 22, 1986, p. 1A.

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policy decisions." Later, after achieving his goal of becoming a lawyer, Whichard clerked for Chief Justice William Bobbitt—and the seed for subsequent service on the Supreme Court was planted that year. □ □

FOOTNOTES

¹UNC-Chapel Hill, A.B., 1957, Morehead Scholar, Phi Beta Kappa; New York University School of Law, LL.B., 1960.

²This material, as well as evaluations of other judges, appears in *Article IV: A Guide to the N.C. Judiciary*, which rated judges in the trial and appellate divisions of the state court system, published by the N.C. Center in April 1980. Copies of the guide are available for \$6 each.

³Arthur Larson, *Workmen's Compensation Law*, Section 41. 64(d), citing *Rutledge v. Tultex Corp.*, 308 N.C. 85, 301 SE2d 359 (1983).

⁴Wake Forest University, B.A., 1955; Wake Forest University School of Law, J.D., 1960.

⁵*State v. Grier*, 307 N.C. 628, 300 SE 2d 351 (1983).

⁶*Wildier v. Amatex Corporation, et al.*, 314 N.C. 563, 336 SE 2d 74 (1985). See also "In The Courts: Opening Courtroom Doors to Lawsuits Involving Latent Diseases,"

North Carolina Insight, Vol. 9, No. 1, June 1986, pp. 42-47.

⁷N.C. State University, B.A., 1967; UNC-Chapel Hill School of Law, J.D., 1969.

⁸*Azzolino v. Dingfelder*, 315 N.C. 103, 337 SE2d 528 (1985). See also "In The Courts: Giving Birth to a New Political Issue," *North Carolina Insight*, Vol. 8, No. 3-4, April 1986, pp. 98-102.

⁹UNC-Chapel Hill, A.B., 1942; Harvard Law School, LL.B., 1948; University of Virginia School of Law, LL.M., 1982.

¹⁰Since the Court was created in 1819, there have been 82 justices of the Supreme Court.

¹¹N.C. A&T State University, B.S., 1953 with Highest Honors; UNC-Chapel Hill School of Law, J.D. with Honors, 1959.

¹²*Meiselman v. Meiselman*, 309 N.C. 279, 307 SE2d 551 (1983).

¹³UNC-Chapel Hill, 1946-1949, Phi Beta Kappa; Columbia University School of Law, LL.B., 1952.

¹⁴UNC-Chapel Hill, A.B., 1962, Phi Beta Kappa; UNC-Chapel Hill School of Law, J.D., 1965; University of Virginia School of Law, LL.M., 1984.

¹⁵*Bolick v. American Barnag Corp.*, 54 N.C. App. 589, 284 SE2d 188 (1981), interpreting G.S. 1-50(6).

¹⁶*Bolick v. American Barnag Corp.*, 306 N.C. 364, 293 SE2d 415 (1982); *Lamb v. Wedgewood South Corp.*, 308 N.C. 419, 302 SE2d 868 (1983).