



IN THE LEGISLATURE

The Legislative Rule Reforms of 1987— Of Paper Tigers and Will-Power

by Art Eisenstadt

This regular Insight feature focuses on the makeup and process of the N.C. General Assembly and how they affect public policy. This column examines whether the legislature's attempted reforms in the appropriations process succeeded in the 1987 regular session.

An hour or so before the 1987 General Assembly was expected to adjourn, freshman Sen. Franklin L. Block (D-New Hanover) spied what he considered to be an improper special provision in a House-passed state budget bill. The provision had to do with what language the state driver's test had to be given in, and Block knew that under Senate rules, special provisions were supposed to give only specific budget instructions. The Senate overwhelmingly approved Block's motion to remove the House-passed clause.

Within minutes, Block found himself summoned before House Speaker Liston B. Ramsey (D-Madison), who looked neither pleased nor amused. As Block desperately sought a compromise, Lt. Gov. Robert B. Jordan III sat impassively at the front of the Senate chamber, waiting for Block to return while the number of remaining senators dwindled perilously close to the minimum needed for a quorum.

It wasn't supposed to end that way. For one thing, a series of rules changes were supposed to have made the work flow smoother and quicker, pared non-germane special provisions from budget

bills, made the pork barrel process fairer, and the appropriations process more open. But what happened that day in the Senate was a prime example of how one reform can get in the way of another.

The legislature had expected to be long gone from Raleigh by August 14, the day the 1987 session finally ended. The art of forecasting when the General Assembly will adjourn is anything but an exact science, of course. But legislative leaders had hoped that an expanded and firmly enforced series of deadlines for introducing and handling different types of legislation would shorten the session's length.¹ Many had hoped to be home around July 4.

The 1987 session convened February 9, and adjourning by Independence Day would have shaved about two weeks off the corresponding length of the 1985 session. Instead, the 1987 legislature lurched, staggered, and stumbled to its latest adjournment date ever, shattering the old record (July 22, set in 1983) by more than three weeks. The 1987 session was also the third-longest in terms of legislative days—actual work days spent in session.²

And then there was the matter of special provisions. Budget bills since the early 1970s have included dozens of clauses ostensibly containing instructions to state agencies on how to spend (or, sometimes, not to spend) the monies appropriated to

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them. But influential legislators had become adept in recent years at slipping substantive changes in other state laws into the spending bills, where they would rarely receive much scrutiny and occasionally not even be noticed until months after the session ended.³

In response to criticism of this practice, the Senate adopted a rule in 1986 forbidding non-fiscal special provisions.⁴ The rule was readopted—in the form of a bill—by the Senate in 1987, but the House never passed similar rules or legislation either year.

As a result, adjournment was delayed on August 12 after the House and Senate squared off over a House-sponsored provision that would have extended an exemption from the State Personnel Act for certain employees of the Office of Administrative Hearings.⁵ That dispute was settled overnight following a telephone conversation between Jordan and Rep. William T. Watkins (D-Granville), chairman of the House Appropriations Expansion Budget Committee and the sponsor of the provision (as well as a potential rival in the 1988 gubernatorial primary). Watkins later decided not to run.

That was the setting when Block found the provision—sponsored by Rep. H.M. “Mickey” Michaux (D-Durham)—that would have required the state Division of Motor Vehicles to continue offering driver’s tests in Spanish and Korean, despite a new law passed earlier in the session making English the official language of North Carolina. That dispute was also solved when Ramsey drew up a fuzzily worded resolution allowing both sides to vote aye, declare victory, and bolt for home upon adjournment.⁶

The Best Laid Plans . . .

On the surface, at least, the appearance was that the rules changes and procedural reforms designed to make the session shorter, make the work flow smoother, and iron out kinks in the budget process didn’t work out as planned.

Bill deadlines that were intended to smooth out the normal backlog of legislation at the end of the session instead transferred the crunch to an earlier point in the session—the last week of May, when bills had to pass the chamber where they were introduced in order to remain eligible for consideration in 1987. Then, when high-level budget deliberations dragged on into late July and early August, rank-and-file legislators complained that they had too little to do while the money moguls were sorting out spending priorities.

Legislative leaders had also sought to have the 1987-89 budget passed before the start of the new fiscal biennium on July 1, in contrast with the practice of recent sessions. But that deadline came and went, and state government had to be funded for more than six weeks under a pair of continuing resolutions extending the previous budget’s spending authority until a new budget could be adopted.⁷ Shades of the U.S. Congress.

Perhaps the most dramatic shortfall between intent and reality came over Jordan’s and Ramsey’s vows last January to reform the “Supersub” committee, an unofficial but all-powerful panel of eight top legislative leaders (including Jordan and Ramsey) that traditionally has assembled behind closed doors at the end of every legislative session to draft the budget bills to be presented to the rest of the membership. Not only did the Supersub traditionally meet in secret, but its members customarily put strong pressure on other legislators to avoid debate over its bills.

Jordan and Ramsey said shortly before the 1987 session started that they would expand the Supersub to as many as 12 members apiece from both the House and Senate—a total of 24—and open its meetings to the public. They also pledged to see that budget bills received adequate debate starting at least through the subcommittee level.

Many legislators agree that the budget bills did receive better scrutiny in 1987, although the final bills differed little from the Democratic leadership’s proposals. But the bills were once again drafted by the compact Supersub, not the larger one. Ramsey never appointed the expanded House panel, and the larger Senate Supersub disappeared after meeting three times on its own.

Early meetings of the traditional Supersub went unannounced. After reporters and even a few legislators complained, Jordan ordered the Senate members to announce their meetings. But some of those supposedly open sessions were conducted in code—members referred to budget figures by page and line numbers on documents they refused to make available to anyone else. And at one point, a reporter who learned of a Supersub meeting being held on a Sunday afternoon was barred from entering the Legislative Office Building on the orders of a committee member whom the security guard would not identify.

Despite these hitches and jolts in the reform process, the leadership—and even some legislators in what Sen. Charles W. Hipps (D-Haywood) calls “the followership”—say the rules could work better with a little fine-tuning.

Fine-Tuning Would Help

"The rules definitely gave us more time to debate the majority of bills by having deadlines," says Jordan, a Democrat who invested considerable personal and political prestige in their success. "The session itself was considerably longer than we wanted it to be, but there were a lot of reasons for that."

One reason is that with the state budget close to \$10 billion annually, and state government operations becoming more complex, a six-month "long" session in odd-numbered years may well be the norm. But Jordan has also hinted on occasion that foot-dragging by the House leadership undercut reform efforts in 1987. Watkins and Jordan have a little-disguised personal distaste for each other, and relations between Ramsey and Jordan are polite but restrained.

Jordan concedes that the budget reforms didn't work out as well as he hoped, but compared the Supersub process to preliminary internal deliberations among the governor's budget advisers. "I think at some point, there's always a balancing act that you have to do between [informal] advisory and open meetings," Jordan says. "Whatever is decided, the

purpose is to try to get the right recommendation out in the open."

Nevertheless, Jordan says he hopes to discuss suggestions for reforming the reform rules with Ramsey before this summer's "short" session. "I'm satisfied we have ways to improve them," he says.

Ramsey, for his part, contends that the rules changes "have had some benefit. They haven't worked as smooth and as effectively as some members thought they would. . . . But that doesn't bother me."

The Speaker denied that the House leadership deliberately undercut reform efforts, although he did note that most major rules changes must be adopted and enforced by both chambers to be effective. And while he says he would welcome further suggestions from Jordan, he adds, "The system is working already. I don't hear complaints from the members. The Republicans are going to bellyache, because they're in the minority, and they don't run the show."

House minority leader Betsy L. Cochrane (R-Davie) has been a prominent critic, but Cochrane believes the reforms, while far from perfect, were an improvement from past sessions. "The jury's still out," Cochrane said. "I think the process was improved. The problem was the politics."



This News and Observer cartoon mocked the "code" spoken in a Budget Supersub meeting.

Dwayne Powell, The News and Observer of Raleigh

Table 1. Assessment of Reforms in the 1987 Legislative Budget Process

1987 Budget Process Reforms Announced	Actions Taken	
	Failures	Successes
1. To impose a series of deadlines for introduction and processing of bills to shorten the length of the legislative session.	1987 was the third longest legislative session in history (137 legislative days) and the adjournment date (August 14) was the latest ever.	
2. To prohibit insertion of special provisions into budget bills which amend state laws but which are unrelated to the budget.	The Senate passed a bill banning special provisions, but the House didn't. There still were more than 50 special provisions in three budget bills.	1987 budget bills contained the least number of special provisions in a regular session since 1981, and fewer special provisions contained major policy decisions unrelated to the budget.
3. To expand the "Supersub" budget committee in order to get more legislators involved in passage of the state budget.	However, the final budget bills were drafted by the small group of legislators that usually drafts the budget.	The Senate added 12 members to the "Supersub," the House none.

—table continued

Modest Success Stories

Hipps may have summed up the ambivalent review best: "I think the rules changes made for a significant change in the atmosphere. But I'm not sure we ultimately accomplished what we meant to change."

One set of rules that did provide a modest success involved the pork barrel process—the custom of distributing small appropriations for pet projects in the districts of legislators in good standing with the leadership. The barrel was anything but

sealed forever, as some critics would prefer. But its contents were ladled out more openly and fairly than in the past, many observers agree. The chief reform was a requirement, tested in 1986 and adopted permanently last year, that all pork barrel requests be submitted in separate bills, rather than in private memos to appropriations committee chairmen.⁸ As a result, there was more time for the public and the media to scrutinize what legislators asked for, and what they got.

Mostly as a result of the pork barrel bill requirement, the House and Senate processed an unprece-

Table 1. Assessment of Reforms in the 1987 Legislative Budget Process
continued

1987 Budget Process Reforms Announced	Actions Taken	
	Failures	Successes
4. To open the meetings of the "Supersub" budget committee to the public.	Early meetings of the "Supersub" were closed, with one meeting conducted in code so that only legislators knew what was going on.	Later in the process, full public access was granted.
5. To make the pork barrel process more open and fairer.		<p>A. The process was more open because all pork barrel requests had to be introduced early and in separate bills.</p> <p>B. The process was fairer in that nearly all 170 legislators—Democrats and Republicans—got a share.</p> <p>C. There were fewer constitutionally questionable projects.</p> <p>D. Allocations among the 100 counties became fairer.</p>

—Table prepared by *Ran Coble*

dented volume of legislation in 1987. Legislators dunked into the hopper 2,166 House bills and 1,557 Senate bills, compared with 1985's record totals of 1,424 and 854, respectively.

Despite the 63 percent increase in the number of bills filed, the number of ratified session laws rose only from 793 in 1985 to 879 in 1987, an 11 percent rise. But that statistic is somewhat misleading. Joseph S. Ferrell, who researches legislative issues at UNC's Institute of Government, has identified at least 673 House bills and 461 Senate bills that were incorporated into omnibus bills.⁹ If those were

counted as separate bills, the number of ratified laws would soar through the assembly's copper-topped roof.

And while the bill deadlines shifted the legislative staff's crunch period to an earlier date—from July to May—they also allowed time to do more careful work on the budget bills, according to Gerry F. Cohen, director of the legislature's Bill Drafting Division. "It was harder for us to give as much individual attention to each bill," Cohen says. "But the most important thing I found that having the bill introduction deadline did was to allow the legal staff

to spend more time on the budget process as a whole."

The legislature also appears to have begun to come to grips with the special provisions abuse problem. Although the General Assembly has not eliminated non-germane special budget provisions, it has limited them—to about 50 in the three main budget bills in the 1987 session. That is the fewest number of special provisions in a regular session of the legislature since 1981, and indicates that the leadership has made progress in limiting the number of special provisions unrelated to the budget. Hipps, who has carved a niche for himself as the scourge of special provisions, thinks the reforms have worked. "Before, I had to convince people not only that I had found these awful things but also that we shouldn't have them. Now, maybe we're keeping them from happening in the first place."

The challenge for the future seems to lie in how willing the legislative leadership is to enforce the rules already on the books, particularly in discretionary areas such as the operations of the Supersub. No formal rules apply to that body, because it technically does not exist, at least on paper.

But, then, paper is the only place any effort at legislative reform exists—unless the leadership of both houses has the political will-power to back it up.



FOOTNOTES

¹Rule 41, Permanent Rules of the 1987 Senate; and Rule 31.1, Rules of the 1987 House of Representatives.

²The 1971 regular session, which convened January 13 and adjourned July 21, had 160 legislative days, including 22 Saturday sessions where little or no legislation was handled. The 1983 regular session, which convened January 12 and adjourned July 22, had 137 legislative dates. The 1987 session had 135 legislative days.

³For more, see Ran Coble, "Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens," N.C. Center for Public Policy Research, June 1986; "N.C. Center Says 1986 Legislature Continued Abuse of Special Provisions in Budget Bills," press release, N.C. Center for Public Policy Research, March 2, 1987; and Paul T. O'Connor, "Reforming Pork Barrel, Special Provisions, and the Appropriations Process—Is There Less Than Meets the Eye?," *North Carolina Insight*, Vol. 9, No. 3, March 1987, pp. 96-99.

⁴Rule 42.4, Permanent Rules of the 1987 Senate.

⁵Chapter 830 (HB 1515) of the 1987 Session Laws.

⁶Chapter 480 (SB 115) of the 1987 Session Laws; and House Resolution 2166, adopted August 14, 1987.

⁷Chapter 524 (HB 1628) of the 1987 Session Laws continued general budget spending at constant levels; Chapter 703 (SB 1556) continued certain special provisions related to the budget.

⁸Rule 40.1, Permanent Rules of the 1987 Senate. See also Seth Effron, "Eating High on the Hog: How the Pork Barrel Spending Process Has Changed in the Last 10 Years," *North Carolina Insight*, Vol. 10, No. 1, October 1987, pp. 19-26.

⁹Chapter 830 (HB 1515) and Chapter 873 (HB 1) of the 1987 Session Laws.

IN THE COURTS

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refused to follow the *Leon* case and relied on their state constitutions to exclude evidence in criminal trials that was seized as the result of an invalid search warrant.

³*Miller v. California*, 413 U.S. 15, 37 L. Ed. 2d 419, 93 S.Ct. 2706 (1972). The Oregon Supreme Court rejected the *Miller* rule, reasoning that its state Constitution — written by "rugged and robust individuals dedicated to founding a free society unfettered by governmental imposition of some people's views of morality on the free expression of others" — allowed consenting adults to buy or see whatever they wanted. *Oregon v. Henry*, 302 Or. 510, 732 P2d 9 (1987).

⁴James G. Exum, "Dusting Off Our State Constitution," *The North Carolina State Bar Quarterly*, Spring 1986, pp. 6-9.

⁵William J. Brennan, "State Constitutions and the Protection of Individual Rights," 90 *Harvard Law Review* 503 (1977).

⁶320 N.C. 297, 357 S.E.2d 622 (1987).

⁷Justice Martin and Justice Henry Frye voted to support the opinion. Justices Meyer, Burley Mitchell and Willis Whichard concurred in the result but set forth different reasons. Justice John Webb dissented.

⁸320 N.C. at page 310.

⁹320 N.C. at page 311.

¹⁰"An Ordinance Regulating Businesses Providing Male or Female Companionship," enacted June 19, 1985, and amended July 1, 1985.

¹¹*Treants Enterprises, Inc. v. Onslow County*, 320 N.C. 776, 779 (1987), affirming 83 N.C. App. 345, 350 S.E.2d 365 (1986). Justice Webb did not participate in the decision.

¹²Article I, Section 1 gives the people the right to "life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness." Section 19 provides that no person shall be "deprived of his life, liberty, or property, but by the law of the land." To pass these requirements, a regulatory law must be rationally related to a substantial government purpose and cannot be overly broad.

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