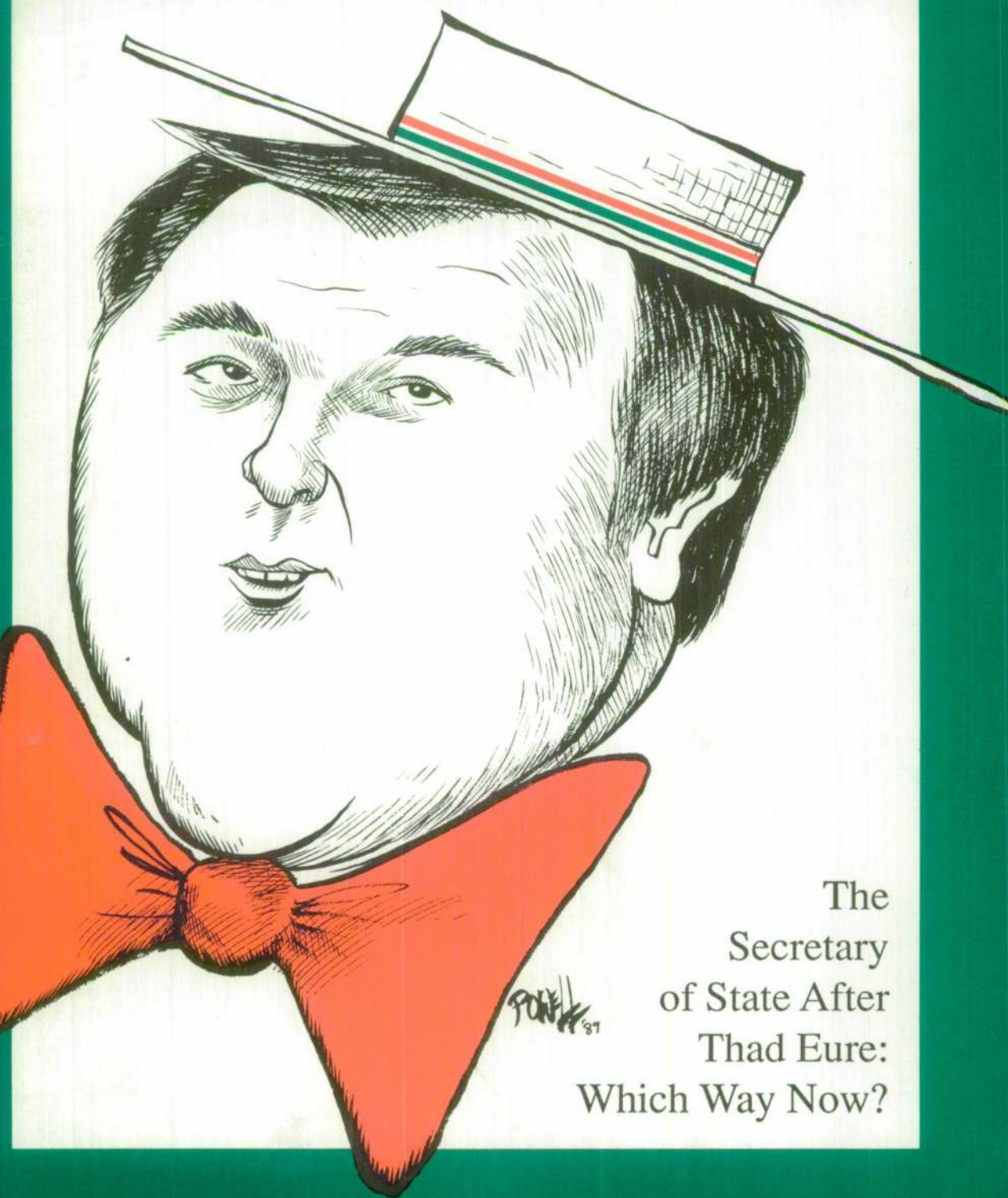


North  
Carolina

# Insight

Vol. 11 No. 4

August 1989



The  
Secretary  
of State After  
Thad Eure:  
Which Way Now?



# N.C. Center for Public Policy Research

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**NORTH CAROLINA INSIGHT** is a quarterly magazine published by the North Carolina Center for Public Policy Research, Inc. (a nonprofit, tax-exempt corporation), Suite 701, 5 W. Hargett St., P.O. Box 430, Raleigh, N.C. 27602. Telephone (919) 832-2839. Annual membership rates: Individual, \$36; Organizational, \$50; Supporting, \$100; Corporate, \$200; Full-Service, \$250; Supporting Corporate, \$500; Patron, \$1000; Benefactor, \$2000. Third class postage paid at Raleigh, N.C. Copyright 1989 by the North Carolina Center for Public Policy Research, Inc. Articles may not be reprinted without permission. Graphic design by Carol Majors. Production by PUBLICATIONS UNLIMITED. Printed by MasterPrint, Inc., Raleigh, N.C. The Center is supported in part by grants from the Mary Reynolds Babcock Foundation and the Z. Smith Reynolds Foundation, as well as by 111 corporate contributors and 700 individual members across the state. The views expressed in this publication are those of the authors and are not necessarily those of the Center's Board of Directors or staff. Published August 1989.

Cover: Dwane Powell

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August 1989



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# The Department of the Secretary of State: Which Way Now?

by Jack Betts

*North Carolina's Secretary of State is a relatively anemic state office—though few North Carolinians may realize it. The state's office has fewer than half the formal powers that most other such offices have, lacking such responsibilities as handling elections, publishing administrative rules, and policing campaign finance reports. In 1988, North Carolina elected the first new Secretary of State in more than half a century. With a new incumbent, is it time to consider whether the duties of the office should be expanded and upgraded? What duties, if any, ought to be grist for this mill?*

**F**or more than half a century, North Carolina's office of Secretary of State was symbolized by its well-known incumbent—bow-tied Thad Eure, the King of the Ramps, self-proclaimed Oldest Rat in the Democrat Barn, the ever-popular ceremonial signer of documents whose signature would have made John Hancock swoon in envy. Eure, a gentleman of the old school who sported a new straw boater each spring, would have been at home in a swallow-tailed coat and striped trousers. In large measure, he operated the department into the 1980s in much the same way as when he took the office in 1936—the old-fashioned way.

The staff was relatively small. The budget was low. A few key people ran things. And Thad Eure won the election, quadrennium in and quad-

rennium out, right up until 1988 when he chose to retire. Eure's decision to quit brought about the office's first new occupant in 52 years—Rufus L. Edmisten, a veteran politician and public figure who ran unsuccessfully for Governor in 1984 after a 10-year stint as Attorney General. Edmisten squeaked into office, winning 52 percent of the vote over Republican opponent John Carrington after demolishing four other Democrats in the primary with 64 percent of the vote.

Edmisten's accession to the office was marked by some immediate, if superficial, changes—most notably a change in the location of the main office of the Secretary of State. Eure had kept his office in the northeast corner of the

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*Jack Betts is editor of North Carolina Insight.*



Karen Tam

*Secretary of State Rufus L. Edmisten at his desk in his ceremonial office on the second floor of the State Capitol. The Seal of the Secretary of State sits on his desk.*

Capitol even during years when Govs. Robert W. Scott and James E. Holshouser had made their offices in the more modern confines of the Administration Building on Jones Street. But with the 1988 election of James C. Gardner as Lieutenant Governor, the first Republican to hold the office in a century, Republican Gov. James G. Martin gave Eure's old Capitol office to Gardner. Democrats in the legislature promptly gave Edmisten former Democratic Lt. Gov. Robert B. Jordan III's capacious offices in the Legislative Office Building—space Gardner thought he'd get. Ironically, Edmisten's new office was first occupied by then-Lt. Gov. James C. Green, a political enemy of Edmisten whose tacit support of Martin in the 1984 election helped defeat Edmisten and put Martin in the Capitol.

When Edmisten complained publicly about being tossed out of the Capitol, the Governor gave him a small suite on the second floor of the Capitol to use for ceremonial functions. For Edmisten, it was the best of both worlds—he finally had the Capitol office he always wanted but failed to get when he lost the Governor's race, yet he still got a

big office in the fairly new Legislative Office Building.

Edmisten's new second-floor office in the old Capitol was once known as "The Third House." Labeled a committee room, it was in this chamber that many legislative deals were worked out. And during Reconstruction, the office was perhaps the most popular room in the Capitol, legend has it. The bar was set up there, and many a deal was said to have been lubricated—and sealed—over a cup of grog in that office.

But those changes in location and office size were relatively inconsequential harbingers of questions to come—questions about the role of the Secretary of State and the scope of his duties. Edmisten himself is seeking to refit the office to the needs of its clients. "I'm trying to move the office into the 20th century business world without losing the traditional aspects of it—the ceremonial parts of applying the seal to many documents, the swearing of people into office, the cosigning of proclamations, the meeting with foreign dignitaries," says Edmisten. Others wonder whether Edmisten is on a power-grabbing binge

in anticipation of a run for higher office, possibly for Governor in 1992—an ambition Edmisten firmly denies having. “He (Edmisten) is as clear on this as I’ve ever heard him,” says longtime aide and campaign manager Richard Carlton. “He does not plan to run for Governor or any other office than the one he’s got.”

What new duties, if any, should be assigned to the office? Should the powers of the office be expanded, its responsibilities broadened? And isn’t it time for the North Carolina Secretary of State’s office to be planning for the 21st Century, even as it struggles to cope with the demands of the 20th Century? Such a look at the future of the Secretary of State first requires a look at the past—and how the office evolved.

## A Historical Holdover?

Unlike its federal counterpart, the North Carolina Office of Secretary of State concerns itself almost exclusively with things domestic, and mostly business things at that. From its earliest origins, in fact, the main business of the office has been maintaining the public record of transac-

tions. The current office traces its roots to the Proprietary Period, when the first Colonial Secretary, Richard Cobthrop, was appointed by the Lords Proprietors. Cobthrop never crossed the Atlantic, but most of the next 23 Colonial Secretaries did make it to the new world.<sup>1</sup> Among them was the second Colonial Secretary, Peter Carteret, a businessman who had high hopes for turning a tidy profit from the making of wine and production of whale oil from a plantation on Collington Island in Roanoke Sound. The venture failed utterly, thanks to a combination of devastating hurricanes, droughts, diseases, vermin, and undercapitalization.<sup>2</sup>

The office of Colonial Secretary lasted from about 1665 to the Revolutionary Period, when the General Assembly created the position of Secretary of State in 1777 and elected James Glasgow to the post. Glasgow may have had greater political skill than integrity; he served in office for more than 20 years, resigning only when he was accused of issuing fraudulent land warrants. The story is told that Glasgow plotted to burn the Capitol in 1799 to destroy the records upon which he would be prosecuted and convicted, but future



*After the 1988 election, Gov. Jim Martin gave Thad Eure’s old Capitol office to newly elected Lt. Gov. Jim Gardner. Later Edmisten got other quarters on the second floor, but for a while, he had no home in the Capitol.*

president Andrew Jackson foiled the scheme when he heard rumors of arson and conveyed his suspicions to Colonel William Polk, an old friend, former neighbor, and president of the State Bank.<sup>3</sup> Polk alerted the authorities and the records were saved, but Glasgow fled justice, according to one account. According to another, he was brought to trial and convicted on two relatively minor charges of dereliction of duty.

The Capitol eventually did burn, but not until 1831. There again, a Secretary of State was involved, but this time in saving the state's records. William Hill, who held the office from 1811 to 1857, had sufficient time to save the state's records before the building burned to the ground after it caught fire during repairs to the roof. Because the building began burning at the top and worked its way down, Hill had just enough time to gather most of his papers and carry them out onto Union Square. Hill is known for another fact. Prior to Eure's 52-year tour as Secretary of State, Hill held the record—for 46 years in office.

Because of the office's roots in the Proprietary Period, staff members like to claim it is "the second oldest government office in North Carolina." The office has continued to maintain land records from the 17th century—some critics say in the 1980s in much the same way as it had 300 years earlier, using paper copies in an age of microfilm and computer digitization (though a microfilm project to film the oldest records finally began in 1988). The office of Secretary of State was incorporated in the N.C. Constitution of 1776, and the General Assembly elected the next seven Secretaries of State until 1868. That year, a new state Constitution gave the right of election to the people, and extended the length of terms to four years, with no limits on the number of terms a Secretary can serve.<sup>4</sup>

Altogether, 44 different persons have served as secretary, but since the office of Secretary of State was created in 1777, 21 different individuals have served as Secretary, most of them from the coastal area of the state. Edmisten is the *first* Secretary of State from western North Carolina.

## Do We Need a Secretary of State?

**M**ost states (47) have a Secretary of State, but North Carolina's has not always been held in high esteem. In the mid-19th century, Gov. Charles Manly had this to say about it: "The office of the Secretary of State is a mere land

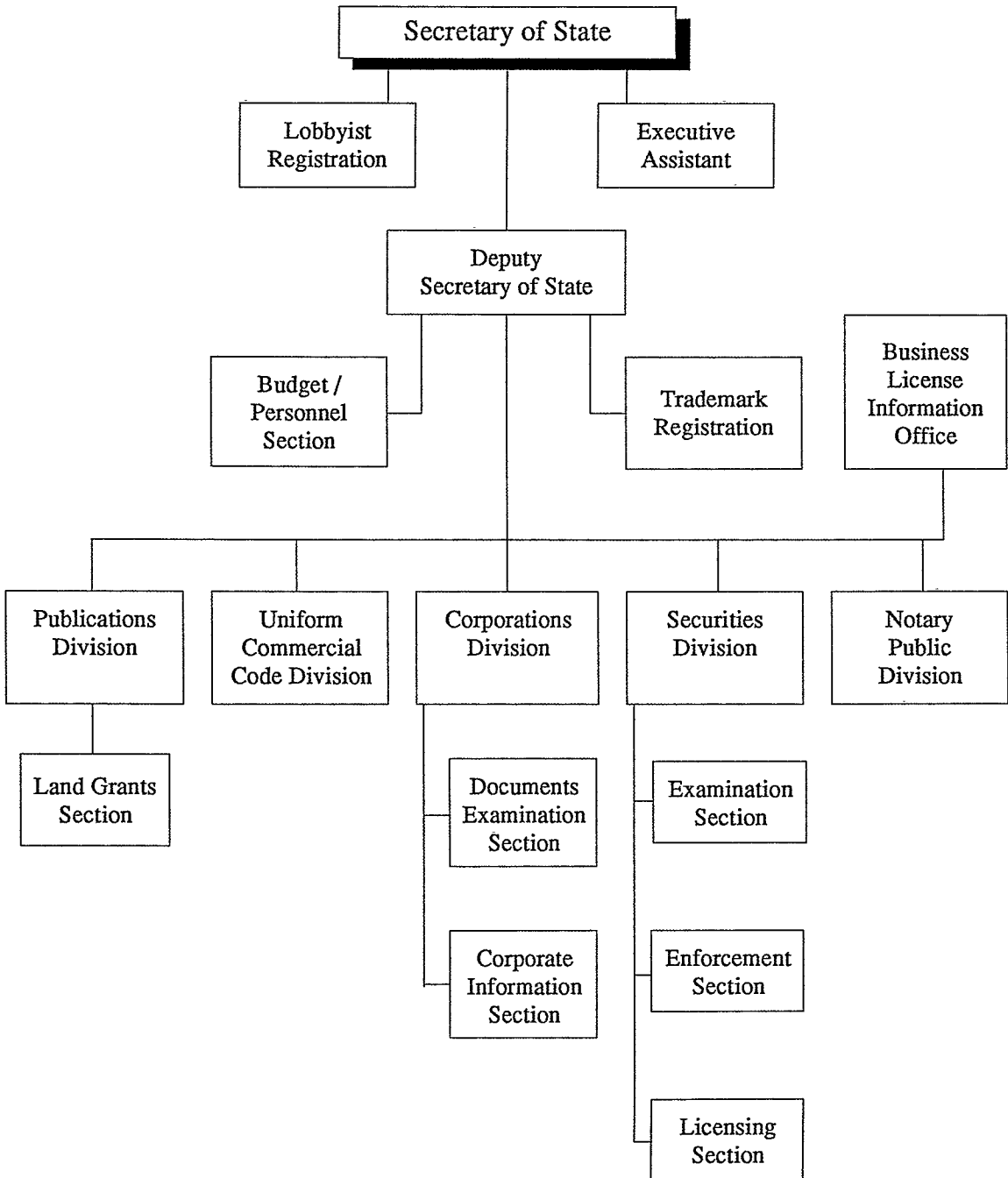
office. Almost the sole duty of its head is to issue grants and to certify copies, except the occasional employments of making contracts for printing and distributing the laws, and for the purchase of stationery and fire wood."<sup>5</sup> Manly proposed in 1851 that the office be remade into a Bureau of Statistics, but the idea went nowhere. Indeed, it is difficult in North Carolina to change, let alone abolish, a constitutional office. The only such change since Manly's proposal came in 1873, when the voters approved an amendment abolishing the office of Superintendent of Public Works.<sup>6</sup> Subsequent attempts to change the Council of State have failed—most recently, the attempt to make the Superintendent of Public Instruction an appointed rather than elected office.<sup>7</sup>

As the smallest of the departments with separately elected officials, the office of Secretary of State is frequently mentioned as the most logical one to be abolished if the number of separately elected state officials were to be reduced. However, no one has proposed abolishing the Secretary of State's office in North Carolina lately. For one thing, the duties of the office have to be handled somewhere, and merging it with another office might not save any money. Tom Covington, director of fiscal research for the N.C. General Assembly, notes that consolidation of agencies can achieve some economies of scale, "but normally you do not save money. You could conceivably have a consolidation that makes things more efficient for the people who use those agencies," such as the consolidation of state environmental agencies. But, Covington adds, "The environmental consolidation is a good example of not saving any money."

## Powers and Duties of the Secretary of State

**S**ince 1971, the Secretary of State has been head of the Department of the Secretary of State, though in practice it is still known as an office. He is fourth in line of succession to the Governor, behind the Lieutenant Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, in that order.<sup>8</sup> The Secretary is a member of the Council of State and an ex-officio member of the Local Government Commission and the Capital Planning Commission. He is supposed to attend sessions of the General Assembly to take possession of laws adopted by the legislature and preserve the

**Figure 1.**  
**Organizational Chart**  
**Department of the Secretary of State**





journals of the House and Senate. The Secretary is also empowered to swear in public officials as well as law enforcement officers.<sup>9</sup> Like other Council of State officers, he was paid \$66,972 in 1988-89—a wage the legislature is raising to \$70,992 in 1990 and \$75,252 in 1991.

The office has six operating divisions in addition to its administrative structure: a Publications Division, a Uniform Commercial Code Division, a Corporations Division, a Securities Division, a Notary Public Division, and a Business License Information Office. In addition, staff members in the office register trademarks and also handle the registration of legislative lobbyists and state agency lobbyists, known euphemistically in the General Statutes as “legislative agents” and “legislative liaison personnel.” (See Figure 1 for more on how the office is organized).

Among its peers in the 46 other states that have a Secretary of State, North Carolina’s office is one of the weakest in terms of common powers and duties. Most Secretary of State offices have far more of these powers than does North Carolina’s. In some states, for example, the Secretary of State has more responsibility because the Secretary serves as the chief elections officer; in North Carolina, the Secretary of State has little power in this area because North Carolina’s State Board of Elections is independent of any department. The National Association of Secretaries of State published a monograph in 1987 that compared the powers and duties of each of the Secretaries of State, including the principal state officer handling such duties in states where there is no Secretary of State; the volume required 26 different tables to list all the powers, responsibilities, functions, and details of each of the offices.<sup>10</sup> A condensed version of that comparison in the 1988-89 edition of *The Book of the States* shows North Carolina’s Secretary of State to have the fewest electoral duties and to be below average among all other duties.<sup>11</sup> Table 1, right, is an extract of that comparison, and shows how many Secretaries of State have a particular major power or responsibility, and whether North Carolina’s does as well.

This comparison shows that North Carolina’s Secretary of State has none of the major electoral duties; has four of the five main registration duties; has two of the three main custodial duties; has one of the two main publications duties; and has both of the main legislative duties listed. In other words, the Secretary of State in the N.C.

**Table 1. Number of States with Principal Duties of Secretary of State**

(\* Asterisk indicates North Carolina Secretary of State has this responsibility)

<b>Method of Selection</b>	
Elected by Voters:	36
Appointed by Governor:	8
Elected by Legislature:	<u>3</u>
Total Number of Secretaries of State:	47
<b>Elections Duties</b>	
Chief Election Officer:	37
Conducts Voter Education Programs:	34
Files Campaign Reports:	33
Files Campaign Expense Reports:	28
<b>Registration Duties</b>	
Commissions Notaries Public:	43 *
Registers Trade Names and Trademarks:	42 *
Registers Corporations:	38 *
Prepares Extraditions and Arrest Warrants:	17
Registers Securities:	12 *
<b>Custodial Duties</b>	
Administers Uniform Commercial Code:	42 *
Maintains State Records and Documents:	35 *
Maintains State Agency Rules and Regulations:	34
<b>Publications Duties</b>	
Produces State Manual or Directory:	34 *
Publishes State Register or Agency Rules:	17
<b>Legislative Duties</b>	
Retains Copies of Legislative Acts:	41 *
Registers Lobbyists:	29 *

Source: *The Book of the States* 1988-1989, pp. 68-70.

**Table 2. Budget and Staff Trends in  
The N.C. Secretary of State's Office, 1965-1990**

Year	Staff Budget Actual Dollars	Budget in 1988 Equivalent Dollars	Staff Size
1965	\$ 111,297	\$ 431,384	19
1970	218,246	675,684	23
1975	370,060	820,532	28
1980	646,981	922,940	32
1985	1,496,946	1,687,651	56
1989	3,441,936	3,441,936	91
1990 (requested)	\$5,710,083	NA	137
1990 (actual)	\$3,701,037	NA	98

NA: Not Applicable

Note: In 25 years, staff size will have increased 416%, and the budget will have increased 957%, correcting for the effects of inflation.

Source: Department of the Secretary of State

Capitol has nine of the 16 principal duties or responsibilities listed in Table 1.

Overall, however, North Carolina's Secretary of State has only 12 (or 46 percent) of the 26 duties and responsibilities listed by *The Book of the States*. This is a much broader listing of powers than in Table 1, and it includes electoral duties that North Carolina's Secretary of State does not have. This 12-of-26 figure is well below the average for Secretaries of State, and puts North Carolina's office among the lowest in the land, at least in terms of common duties and responsibilities. Nationally, the Secretaries of State have an average of 15.6 of the 26 major duties, or 60 percent.

This relative lack of duties and powers places North Carolina among the 13 least powerful Secretaries of State, in terms of common duties (see Table 3). Of course, some of these formal powers are broader and more significant than others, but they do represent a basis for comparison. Thirty-seven Secretaries have more powers than North Carolina's Secretary of State, while the other 13 have 12 or fewer. Four states—North Carolina,

Alaska, Washington and Utah—have 12 powers; the other nine have fewer than 12. They are Kentucky, with 11; New York, with 10; Maryland, with nine; Delaware, Hawaii, Oklahoma, South Carolina, and Wisconsin have eight; and Virginia has only six.

At the other end of the scale, the states with the most powerful Secretaries of State are Missouri, with 23 (88 percent) of the powers; Florida, Georgia, Massachusetts, Ohio, and South Dakota with 21 powers each (81 percent); and Montana, with 20 powers (77 percent).

Of course, in some previous years, the N.C. Secretary of State did hold some of these and other powers—proof that the department has changed throughout the years. For instance, the Department of Transportation's Division of Motor Vehicles, now a large bureaucracy, has its roots in the office of Secretary of State. So does the Department of Cultural Resources' Division of Archives, as well as the General Assembly's Legislative Services Office. And the State Board of Elections once was housed in the Department of the Secretary of State.

## A Small State Agency

One reason for the overall modest size of North Carolina's Department of the Secretary of State is its former occupant. Eure, perhaps the best-known state politician of his time, relished the ceremonial role of his post and likely made more speeches at public gatherings—political and nonpolitical, partisan and nonpartisan—than any other public figure in the state. But although Eure was the most entrenched politician in the United States (upon Eure's retirement, Gov. James G. Martin remarked that the only public servant who had stayed in office longer than Eure's 52 years had been Rameses the Great, with 65 years in office), he eschewed building a bureaucratic empire. When he took over the office in late 1936, the office had a handful of employees—just six—and an annual budget of just a few thousand dollars. Thirty years later, the office of Secretary of State was still among North Carolina's smallest state agencies, with just 19 employees in 1965 and still only 28 by 1975. But, as Table 2 on page 8 indicates, the office began growing rapidly in the 1980s to cope with the demands from business for the services provided by the office. These demands were heaviest in the Securities Division, which performs as a sort of state-level Securities and Exchange Commission, and in the Corporations Division, during a period of unparalleled economic development in North Carolina.

Just in the last few years alone, the Secretary of State's workload has risen steadily. For instance, from 1985 to 1988, the number of:

- lobbyists jumped from 777 to 828;
- trademarks registered went from 550 to 742;
- document authentications went from 650 to 1,000;
- telephone calls to the Corporation Division jumped from less than 129,000 to nearly 159,000;
- corporations registered declined slightly from 12,582 to 12,405;
- requests for information about liens against commercial and agricultural property rose from 19,675 to 22,607;
- complaints about securities rose from several hundred to 578;
- notaries public appointed went from 25,154 to 26,744.

Table 2 points out the rapid growth of the office over the past quarter-century as well as in recent years. The department's staff has more than trebled in the last decade, and during the

period from 1965 to 1990, the staff will have increased 416 percent, from 19 to 98 staff members. The size of the budget will have grown from \$111,297 to more than \$3.7 million—an increase of 957 percent (when corrected for inflation). That represents only a modest increase compared to what Edmisten had sought. Edmisten's 1990 budget request asked for 46 new staff members at a cost of an additional \$2.3 million over the 1987-88 budget. But because of funding limitations, the 1989 legislature agreed to give him only seven new positions at an increased annual cost of \$259,101.

Edmisten had hoped that his request for 46 new employees would be approved despite the constraints on the state budget and lack of revenues for new state employees. Why? Because the office is one of the few state agencies that's a money-maker. In 1987-88, the office took in more than \$7.2 million in fees for various services, while it cost around \$3 million to operate the office. "We take in two to three times what we spend," says departmental budget officer Stan Edwards.

The new Secretary hopes this ability to produce money ultimately will make it easier for Edmisten to promote what he sees as long-needed changes in the department. Edmisten is careful to avoid criticizing his predecessor, but he firmly believes the department has not kept up with demands or properly planned for the future. "I'm trying to modernize, to upgrade, to add more personnel, and to make it a department that does not just react, but which can be a leader for the business community," says Edmisten.

Former Deputy Secretary of State Clyde Smith, a Raleigh attorney, objects to any characterization of the office under Eure as old-fashioned. "The office of the Secretary of State has been constantly changing in the functions assigned to it since its creation and will continue to change regardless of who is in office," notes Smith. "Thad Eure, while not seeking to build a bureaucratic empire . . . responded to change in a positive manner and well deserved the trust of the people for 52 years. His guiding star was public service, and he demanded that it be rendered with efficiency and without regard to social or political standing."

Still, the office's critics believe that it has not kept up with technology available for such functions as records management. Former state Rep. Raymond Warren, a 1988 candidate for the Republican nomination, says, "Edmisten is abso-

lutely right to begin the process of bringing the office into the computer age. To a large extent, the Secretary of State's office is an information source. As a data processing and recording facility, it cannot continue to store and process data in the manner Thad Eure encountered in 1936."

## No Foreign Policy

**T**hose unfamiliar with the Secretary of State's office may think it has more to do with foreign affairs and diplomacy, but the fact is that the

department is much more concerned with business than with anything else, Edmisten contends. "I have come to discover that the Secretary of State's office is the heartbeat of the business community," he says. "I learned that when I went into private practice in 1985, I used this office more than the Attorney General's office. I now know that it's got more potential for the business community than any other department in state government. I don't mean to throw off on Commerce or any other department, but we really service the business world, like an IBM repairman coming around every day. And what I'm trying to

**Table 3. Number of the 26 Major Powers  
Held by Secretary of State**

State	Powers	State	Powers
Missouri	23	Michigan	16
Florida	21	Nebraska	16
Georgia	21	Nevada	16
Massachusetts	21	New Jersey *	16
Ohio	21	Oregon *	16
South Dakota	21	West Virginia *	16
Montana	20	National Average	15.6
Arizona *	19	California	15
Connecticut	19	Illinois	15
Kansas	19	Iowa	14
Louisiana	19	Indiana	13
Mississippi	19	Minnesota	13
New Mexico	19	Alaska	12
Vermont	19	North Carolina	12
Idaho	18	Utah	12
Maine *	18	Washington	12
New Hampshire *	18	Kentucky	11
North Dakota	18	New York	10
Tennessee *	18	Maryland	9
Texas	18	Delaware	8
Wyoming *	18	Hawaii	8
Alabama	17	Oklahoma	8
Pennsylvania	17	South Carolina	8
Rhode Island	17	Wisconsin	8
Arkansas	16	Virginia	6
Colorado	16		

\* The Secretary of State is first in line of succession to the governor in these 8 states.  
Source: The Book of the States 1988-1989

do is get the extra tools we need to do that."

Each of the department's operating segments has some responsibility for dealing with business. For instance:

- The Publications Division, which produces the biennial *North Carolina Manual* of state government, also oversees the land grants section, which maintains the state's land grants dating to the 1600s, as well as the original versions of all the state's laws and elections returns.

- The Uniform Commercial Code Division maintains records on security interests in personal property, the name and address of a property's debtor and the secured party, a description of the collateral, and data on tax liens.

- The Corporations Division issues corporate charters for businesses and prevents duplication of corporate names.

- The Securities Division acts as a sort of state-level Securities and Exchange Commission to protect investors from fraud and to regulate securities dealers and financial planners.

- The Notary Public Division commissions thousands of individuals to authenticate legal documents and verify signatures.

- The Business License Information Office dispenses information on obtaining required state licenses for new businesses.

- And individual department employees oversee the regulation of business and other legislative lobbyists and register trademarks.

## Legislation in the Hopper

Going into the 1989 General Assembly, Edmisten had high hopes of considerably expanding the policymaking duties of the office. A number of bills were introduced at Edmisten's request to expand the department's powers and give Edmisten more to do—including taking a greater role in the business of North Carolina. Other bills expanding the office came from different sources, but they all would have added to the power of the office. "The legislation would change the Secretary of State's relationship with the business community from an administrative role—such as filing licenses and liens—to more of a policymaking and agenda-setting function," observed *Triangle Business* news magazine in April 1989.<sup>12</sup>

Among the bills were proposals to:

- Create a Small Business Development Council, housed within the Secretary of State's

office, to stimulate small business. The Secretary of State would be chairman of the council under one proposal, a move the state Department of Commerce opposed. The bill (HB 698) stalled in the House Commerce Committee, but a different bill in the Senate (SB 451) with a rotating chairman is still alive in the Senate Appropriations Committee. (An existing Small Business Advisory Council already exists within the Department of Commerce).

- Establish an investor security fund to pay back investors swindled out of their money by fraud, and to give the Secretary of State's office the power to prosecute securities dealers—those who handle investment transactions—who are accused of violations of the securities or investment advisers laws. The bill (HB 719) is pending in the House Judiciary Committee for 1990.

- Create a statewide, computerized, voter registration system to replace the current decentralized system operated by the 100 county boards of elections under the direction of the independent State Board of Election. The bill (HB 1973) was defeated in the House Judiciary Committee.

- Transform the existing Publications Division into a new Information Services Division with several sections. Among other things, this change would allow the Secretary of State's office to join the long list of government agencies that have a public information officer on staff. The legislation (HB 734) is pending in the House Appropriations Committee for 1990.

- Regulate athletic agents and require them to register in North Carolina if they intend to represent athletes enrolled in North Carolina colleges. The bill (SB 463) passed the Senate and is pending in the House Judiciary Committee.

- Transfer the responsibility for compiling the North Carolina Administrative Code (administrative rules adopted by state agencies), and for publishing proposed rules in the *North Carolina Register*, from the Office of Administrative Hearings to the Secretary of State's office. This proposal (SB 535), recommended by the Office of the State Auditor in a critical audit of the three-year-old Office of Administrative Hearings,<sup>13</sup> is pending in the Senate Appropriations Committee and is thus alive in the Senate for 1990.

- Create a North Carolina Commodities Act to regulate commodity futures trading (*commodities* are agricultural products, minerals, metals, fuels, coins, timber, livestock, or artwork, and *futures* are contracts to deliver supplies of a commodity at a specific time in the future). This bill

was ratified into law on July 13, 1989 as Chapter 634 of the 1989 Session Laws.

■ Rewrite the 1955 Business Corporation Act (G.S. Chapter 55) to adopt national model legislation regulating corporations. This bill (SB 280) was ratified on June 8, 1989. Among other things, the new law requires corporations to file with the Secretary of State each year a list of their principal officers and members of boards of directors, a brief description of their businesses, and their addresses.<sup>14</sup> This sweeping rewrite was the result of two years of work by a study commission and predated Edmisten's decision to run for Secretary of State.

## Aggressive New Approach

Some of these changes were approved and others were not, but their scope points out the aggressive approach that Edmisten has brought to the office in his efforts to "upgrade the office and make it more efficient for the business world." In particular, Edmisten wants a piece of the industry-recruiting process. "We're not trying to replace the Commerce Department in recruiting industry, but this department ought to be used as an example of why you want to come to North Carolina . . . I think the Secretary of State's office is part of the process," he says.

Former Gov. James B. Hunt Jr., who made economic development a linchpin of his eight-year administration, has been urging Edmisten to go beyond ordinary industrial recruiting, based on touting the state's business climate, and take a new stance as a salesman for the state's corporate climate. "I think a role uniquely suited for Rufus Edmisten is to be an advocate for the corporate climate in this state," says Hunt. Citing the state's strong anti-hostile-takeover law and the passage of a new corporation act, Hunt said that Edmisten should become active in recruiting corporations to reincorporate in North Carolina and to incorporate their spinoff companies in this state.

Among the benefits, Hunt said, were board meetings and shareholder meetings held in this state and, eventually, the siting of new manufacturing plants, service facilities, computer centers, and corporate headquarters in North Carolina. "This would be a whole new thrust for North Carolina, and one that has tremendous potential," says Hunt. "I was always looking for an edge like this when I was Governor, and I wish I'd thought of it then."

Hunt said he thought the Secretary of State, with his familiarity with the corporation laws of the state, would be a natural choice to handle the recruiting, but Hunt said he wasn't suggesting that the state Department of Commerce, which falls under the aegis of the Governor, not be a part of the recruiting as well. "Certainly the Secretary of Commerce ought to be very involved in selling this," says Hunt, "but since Rufus Edmisten is administering the corporation laws, he obviously is very knowledgeable about them and ought to be sharing his knowledge with these corporate prospects."

Not surprisingly, state Commerce Secretary James T. Broyhill is wary of Edmisten's desire to be involved in attracting new businesses to North Carolina. Broyhill says there is "no way the Secretary of State can be talking up international trade and tourism." He added, "I'm for a partnership, but one that does not mix responsibilities. The fact is that the Department of Commerce is the lead economic development agency in the state. We want to avoid turf battles."<sup>15</sup> (For a listing of the Department of Commerce's responsibilities in industrial recruiting and economic development, see "North Carolina: An Economy in Transition," an April 1986 theme issue of *North Carolina Insight*, pp. 22-35.)

State Auditor Edward Renfrow agrees. "I don't see the Secretary of State's office as an economic development type of office, personally, because their role is a fiduciary responsibility activity," says Renfrow. "We wouldn't want to see any duplication or overlapping anywhere in government services."<sup>16</sup>

In an interview, Broyhill stops just short of accusing Edmisten of empire-building. "He's not talked with me about this," says Broyhill, "and I have no idea about what he really wants. But the statutes clearly give the Department of Commerce the lead authority for economic development in this state—for existing industry and for inviting new industry, for small business development, for travel and tourism, for film-making. He [Edmisten] does not have the staff or expertise to do that."

Broyhill is smarting over the 1987-88 General Assembly's decision to put the new Business License Information Office not in Commerce, where Governor Martin wanted it, but in the Department of the Secretary of State.<sup>17</sup> The legislature put the office in the Department of the Secretary of State, Broyhill says, "for political reasons at the time, to give Thad Eure something to do.



Karen Tam

*Edmisten poses in front of the fireplace in his Capitol office, where legislators are reputed to have gathered to seal state deals over a cup of grog in the 19th century.*

But it ought to be in the Department of Commerce."

But Edmisten has news for Broyhill. Not only does he plan to keep the Business License Information Office in his department, but he also hopes one day that office will have the authority to *issue* all of the licenses a business needs to operate in North Carolina. "One day I'd like to see us have a one-stop license issuing agency," says Edmisten.

Former Deputy Secretary of State Clyde Smith, who also opposes Edmisten's attempt to get into industry recruiting and developing small business, says that small business development is

already a crowded field with many state agencies given the duty of assisting the effort. "The General Assembly added the Secretary of State to the mix, and we went to great lengths to work out a cooperative relationship with these organizations based on a clear understanding of the function of each and mutual trust. Mr. Edmisten has jeopardized that relationship and taken the office in a direction which was not needed and which is perceived as a power grab."

Smith agreed that the Business License Information Office could help facilitate issuing licenses, but he says that office should not actually issue them. Instead, the office should develop a

**Table 4. Costs of Campaigns for Secretary of State in North Carolina, 1976-1988**

	Candidate	(Party)	Actual Expendi- tures	Expenditures Controlled for Inflation ***	Percentage of Vote	
					Primary Election	General Election
1976	Thad Eure*	(D)	\$ 27,624	\$ 57,074	52.8	67.0
	George Breece	(D)	163,628	338,074	47.2	
	Asa Spaulding Jr. **	(R)	5,112	10,562	63.1	33.0
	C.Y. Nanney	(R)	3,175	6,560	36.9	
	Total Spent:		\$199,829	\$412,270		
1980	Thad Eure*	(D)	\$ 47,169	\$ 65,695	59.8	58.1
	George Breece	(D)	12,907	17,976	40.2	
	David T. Flaherty	(R)	3,672	5,114	NP	41.9
	Total Spent:		\$ 63,748	\$ 88,785		
1984	Thad Eure*	(D)	\$ 9,035	\$ 10,314	59.1	56.2
	Betty Ann Knudsen	(D)	76,187	86,971	40.9	
	Patric Dorsey	(R)	5,505	6,284	NP	43.8
	Total Spent:		\$ 90,727	\$103,569		
1988	Rufus Edmisten*	(D)	\$234,457	\$234,457	64.2	51.7
	R. Bradley Miller	(D)	102,060	102,060	14.3	
	F. Daniel Bell	(D)	44,486	44,486	12.7	
	Wayne S. Hardin	(D)	3,284	3,284	8.7	
	Brenda H. Pollard	(D)	1,525	1,525	NR	
	John Carrington **	(R)	420,438	420,438	62.1	48.3
	Raymond A. Warren	(R)	13,184	13,184	37.9	
	Joe H. Miller		93	93	NR	
	Total Spent:		\$819,527	\$819,527		

\* Won party primary and general election

\*\* Won party primary

NP No primary opponent

NR No report

\*\*\* Figures in this column show what the actual expenditures would be (in 1988 dollars) when controlled for inflation.

Note: Figures in Actual Expenditures column represent total spending for campaign, including primary expenditures and general election expenditures, if applicable. The State Board of Elections reports that Edmisten spent a total of \$505,202 during 1988, but more than half that amount went to retire Edmisten's debt from his unsuccessful 1984 gubernatorial campaign.

Source: State Board of Elections



master application form that would be circulated to the individual state boards and agencies. Those agencies still would have the responsibility to actually issue the business license.

Edmisten also wants to expand his turf east and west. His 1990 budget request seeks money to open eastern and western North Carolina offices to provide easier access to departmental services to N.C. citizens in the eastern and western parts of the state. "If there ever was a department in state government that needs a regional office, it is this one," Edmisten says. "We need one in Asheville and Greenville, that sort of thing." Having a larger base of operations also would help Edmisten politically, whether he plans to seek higher office or stay in the Secretary of State's post. For his part, Edmisten says he's not running for higher office. "I have no plans to run for any other office," Edmisten says.

The 1988 race for Secretary of State was a tougher one than expected for Edmisten, who won the primary easily but faced a tough general election fight with Republican John Carrington, a contributor to Edmisten in other campaigns. Prior to 1988, the Secretary of State campaigns had been relatively inexpensive ones, with the 1976 race, when Eure received his stiffest challenge ever, costing less than \$200,000 in actual dollars and \$412,000 in equivalent 1988 dollars (that is, controlled for inflation). But the 1988 race cost nearly twice that much in equivalent dollars—more than \$819,000. As Table 4 points out, Edmisten spent more than \$234,000 to win that race, and Carrington spent more than \$420,000 in a losing effort (the remainder was spread among six other candidates). The most anyone had ever spent in the race prior to that was Fayetteville attorney George Breece's nearly \$164,000 in 1976—\$338,000 in 1988 dollars.

Edmisten's allies may view the Secretary of State's office as a stepping-stone to higher office. After all, other Secretaries of State—such as New York's Mario Cuomo and Indiana's Birch Bayh Jr.—have gone on to the governorship (see Table 5). But Thad Beyle, a UNC-Chapel Hill political science professor and an expert on the governorship, says that in the 20th century, there have been 1,087 Governors, and only 20 of them had served as Secretary of State prior to becoming Governor. That's a rate of 1.8 percent. "This is not a stampede," points out Beyle. Of the 20 Secretaries of State who did become Governor, 13 succeeded to the office when the governorship became vacant

and they were next in line constitutionally—most recently Rose Mofford in Arizona, who succeeded Gov. Evan Mecham after he was impeached and removed for taking bribes. Only five of the 20 Secretaries of State were able to use the office as an immediate stepping-stone to the governorship, while two of them first sought another office before running for and winning the governorship. Nationally, eight Secretaries of State are next in line of succession to the Governor (see Table 3, page 10).

Beyle notes that Edmisten is not in a strong position to succeed to the governorship, because in North Carolina the Secretary of State is fourth in line. Thus, three officeholders—the Governor, the President Pro Tempore of the Senate, and the Speaker of the House—would have to vacate their offices before Edmisten could move up. That's an extremely long jump. Edmisten "is on a track seldom used in the past but showing growth in the last 25 years—trying to jump directly from the Secretary of State position to the Governor's chair," observes Beyle, who added that in recent years, more Governors are coming from the Attorney General's office—which Edmisten previously held.

## New Elections Duties?

**T**he new Secretary also wants greater responsibility in registering voters and operating a statewide registration system to increase voter registration. "I believe very strongly we should be removing some of these barriers to registration," says Edmisten. That would include allowing voters to register up to seven days before an election rather than the current 30-day cutoff. "This is not a partisan or a racial matter," adds Edmisten. "I think there should be an [independent] elections board, but I think the Secretary of State has a role in educating the public and removing barriers to voting." Edmisten's office already has the authority to set up a central voter file system in his office, but because the 100 county boards of elections use different registration systems, creating that central file has been difficult.

Alex K. Brock, executive director of the State Board of Elections, is not thrilled by Edmisten's ideas. "As a private citizen and an elected official, he can educate the public all he wants," says Brock. "If I was shaping things, I'd let the Secretary of State do anything the General Assembly

would let him do except get involved in the election laws and the administration of elections . . . . He [Edmisten] ought to be worried more about getting things updated over there.” Brock said too many of the records maintained by the office were

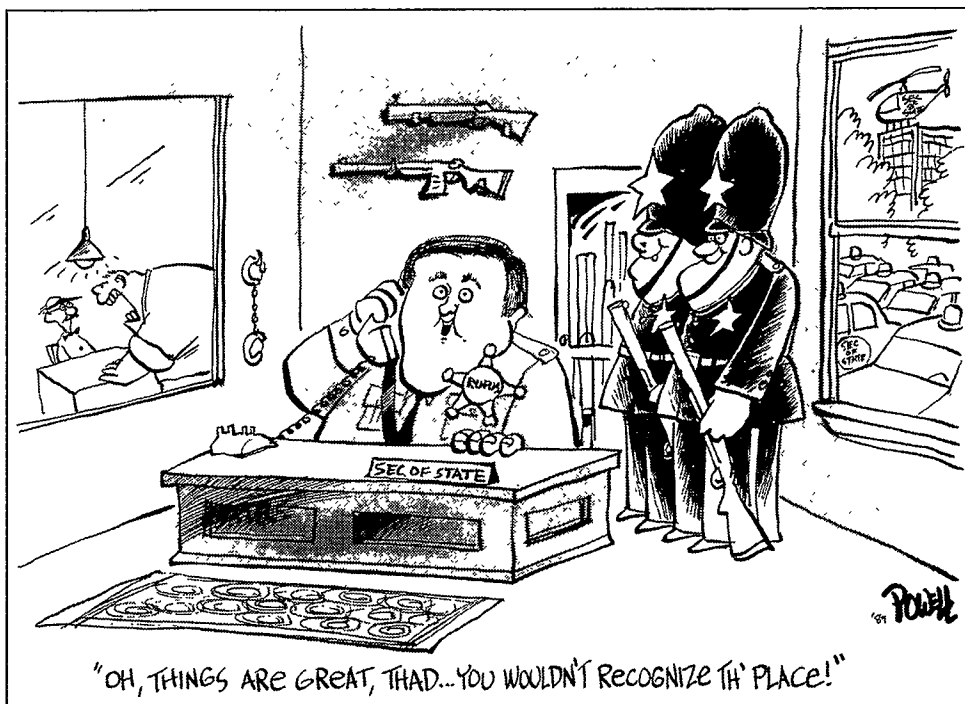
kept in stacks on the floor or in poorly-marked cardboard boxes in the department’s storerooms.

In many states, the Secretary of State has a strong role in supervising campaigns and particularly in requiring extensive disclosure of cam-

**Table 5. Secretaries of State Who Became Governor in the 1970s and 1980s**

1989: Birch Bayh Jr.	(D-Indiana), elected as the first Democratic Governor of Indiana since 1969. Bayh served as Secretary of State from 1985-1989 and still is Governor.
Rose Mofford	(D-Arizona), succeeded to office when Gov. Evan Mecham was impeached and removed from office. Mofford was Secretary of State from 1977-1988 and still is Governor.
1983: Mario Cuomo	(D-New York), elected Governor in 1982 and re-elected in 1986. Cuomo was Secretary of State from 1975-1979, and then served as Lieutenant Governor from 1979-1983 before running for Governor. He is still serving as Governor.
Mark White Jr.	(D-Texas), elected Governor in 1982, was appointed Secretary of State in 1973, was elected Attorney General in 1978, and was Governor from 1983-1987 before being defeated for re-election.
1977: Wesley Bolin	(D-Arizona), succeeded to governorship when incumbent Gov. Raul Castro was appointed to ambassadorship. Bolin was Secretary of State from 1949 to 1977, and served as Governor from 1977-1978. He died in office.
1976: John D. “Jay” Rockefeller IV	(D-West Virginia), was elected Governor in 1976 and re-elected in 1980 after serving as Secretary of State from 1969-1973. He is now a U.S. Senator.
1974: Edmund G. “Jerry” Brown	(D-California), son of a former Governor, elected Governor in 1974 and re-elected in 1978. Brown served as Secretary of State from 1971-1975. Brown left public office in 1983 and was recently elected chairman of the California Democratic Party.

*Table prepared by Thad Beyle*



Dwane Powell, The News and Observer

The News and Observer poked fun at Edmisten in this editorial cartoon, tweaking him for seeking law enforcement powers.

campaign finance matters. The Secretaries in Alaska, Missouri, Oregon and West Virginia each go beyond routine disclosure and require special reports detailing how money was raised and spent. Missouri requires the most extensive campaign finance disclosure, with annual reports, the dissemination of statistics and campaign finance summaries, and coding and cross-indexing of reports to make it easier for the public to understand more about the financing of elections.

Ironically, the North Carolina elections board once was under the aegis of the Secretary of State's office (in 1971 and 1972), but neither Eure nor Brock enjoyed the association, and both asked the General Assembly to restore independent status to the elections board. "There were many things proposed for over here that Mr. Eure didn't want—the *State Register*, the voting machinery, and so on," muses Edmisten. "He may have been right, but I think many of these things need to be here. If it relates to the business world,

other than economic development, we need to do it [in the Secretary of State's office]."

And there are those who believe that one day, the elections board will go back to the Secretary of State. Referring to "the brief marriage of the Secretary of State and the Board of Elections [that] ended in a quickie divorce," former Deputy Secretary of State Clyde Smith notes that the department still maintains many elections records. "Elections should be under the Secretary of State. For the most part we have a fair and honest election system in North Carolina, but there is very little standardization in the counties" and thus a fragmented system for registering, filing, and for voting. "In addition to making the system more uniform, there is a crying need for imaginative voter registration and education programs. . . . Perhaps after Alex Brock retires, the General Assembly will consider the transfer," says Smith.

The consumer protection issue represents a fertile field of expansion for the Secretary of

State's office. During the 1988 campaign for the Democratic nomination for the office, former departmental Securities Administrator F. Daniel Bell, who later lost to Edmisten, made several recommendations for strengthening this aspect of the office. Specifically, Bell recommended the use of telephone hotlines for reporting complaints, an education program through schools and universities to alert the public to potential fraudulent practices, and training for Better Business Bureau groups to detect fraud.

Bell also called for a special audit team to ensure compliance with ethical standards of securities dealers, and for tougher sanctions on insider trading—those who use special inside knowledge for gain at the expense of other customers. As Bell put it during the campaign, "Faith in our markets has once again been shaken by evidences of greed, insider trading, irresponsible borrowing by takeover artists, unreliable accounting, and not enough oversight and enforcement." Since the campaign, the state has adopted the Investment Advisers Act<sup>18</sup> to regulate such advisers and financial planners, a law that Bell helped author and which he said gives the Secretary of State "the necessary oversight authority to address financial planning fraud and abuses."

Edmisten, who served as state Attorney General from 1975-1985, foresees the department taking a stronger role in consumer protection, primarily through its securities division but in its other divisions as well. "We are asking for enforcement powers to become special prosecutors [in cases of investment fraud], and the Attorney General has no objection to that," says Edmisten. "We're asking for those prosecution powers because this is a technical area where other attorneys for the state don't have our expertise . . . . We're also trying to set up an investor's fund that regulated investment advisers would be required to contribute to so that when we have one of these horrible, massive frauds, we can get some money back for some of these poor people."

The new Secretary of State astonished some legislators when he asked for law enforcement powers that included armed agents, unmarked cars, and access to the Police Information Network, prompting *The News and Observer* to poke fun at Edmisten in an editorial cartoon (see page 17). Former state Rep. Raymond Warren (R-Mecklenburg), who ran unsuccessfully for the GOP nomination for Secretary of State in 1988, summed up the general reaction to Edmisten's proposal: "I disagree with Edmisten's attempts to

become a quasi-Attorney General for the same reasons I disagree with his attempts to raid the territory of the Commerce secretary. It would be duplicative and a cause for unnecessary conflict."

After a round of negotiations, legislators agreed to give Edmisten's staff jurisdiction in prosecuting securities and commodities cases, but declined to grant him general law enforcement powers.

Edmisten's consumer protection efforts have drawn at least one critical response. Shortly after taking office, Edmisten called a news conference to announce revocation of the license of a Colorado-based penny-stock securities dealer that, it turned out, had no clients in this state but had been accused of fraud elsewhere. *Business North Carolina*, a Charlotte-based magazine, responded acidly. "Just what our Secretary of State needs, another launcher for his PR missives," the magazine said, adding, "And he has always been good at mugging for the media."<sup>19</sup> A livid Edmisten says he was so angry at the article that he telephoned the writer and complained—something Edmisten rarely does.

## Other Avenues of Change

**B**rad Miller, a Raleigh lawyer and unsuccessful candidate for Secretary of State in 1988, has been considering the proper role of the Secretary of State for years. He got into the 1988 race out of concern over business practices and concluded that the Secretary of State should be a more active participant in the formation of public policy—both within the higher councils of government, and in proposing and drafting needed changes in the law.

North Carolina's relatively large executive cadre—the eight-member Council of State—is a peculiar institution, but it at least gives the state a large number of high-level executives, "and it makes sense for them to be policy advocates," Miller believes. The Secretary of State especially should be one of the advocates, particularly when it comes to viewing the economic changes of recent years and how the statutes ought to be amended to deal with those changes. "In the past, many of our corporate laws were written mostly by corporate lawyers, but there are broader questions than what those lawyers provide," says Miller. "For instance, what is the extent to which corporate directors should be indemnified? What are the fiduciary duties of corporate directors?

And what about the questions about what a corporation really is? Once a corporation was its stockholders, but now it seems to be the board of directors. These are some of the hard questions that ought to be considered, and it makes sense for the Secretary of State to provide some expertise on what the law should be in these areas."

Miller also suggested that the Secretary of State should become an advocate for open government, particularly a champion of the state open meetings law,<sup>20</sup> which requires all governmental meetings to be conducted in public, except for a certain few exemptions. Despite the law, abuses continue on both the state and local levels. As the Secretary of State of North Carolina, and as the most senior (in succession) of the Council of State officers, Edmisten could perhaps best mount a campaign for strict adherence to the spirit and the letter of the open meetings law. Such a stance would fit well with the office's 300-year tradition of maintaining open public records.

Another former candidate for Secretary of State, former Wake County Commissioner Betty Ann Knudsen, campaigned for the Secretary's post in 1984 on a platform of promoting more open government and calling for more teeth in the open meetings law. During the 1984 campaign, for instance, Knudsen called for amendments that would void any action taken by a public body in a closed meeting. Knudsen lost that race, but the General Assembly has since approved that sanction on closed meetings.<sup>21</sup> Advocates of open government continue to press for other improvements in the law.

## The Lobby Law

**Y**et another area that represents a fertile field for expansion is ethics in government. The Secretary of State's office already has responsibility for registering lobbyists and maintaining financial records, and the General Assembly could also give the department the job of regulating sports agents of college athletes. But critics say that North Carolina's lobbyist registration law is a relatively weak one with so many loopholes as to make the lobbyist financial disclosure law the laughingstock of the country.<sup>22</sup> That law requires lobbyists to report the fees they are paid for lobbying, but if they are on retainer or on salary, they do not have to report the income. Nor do lobbyists have to report in detail what they spend on lobbying, or name the individuals they may entertain in

the pursuit of legislative influence.

"Although special interest groups may have spent millions of dollars trying to influence the General Assembly this year, it would be hard to tell from their lobbying expense reports," reported *The News and Observer* of Raleigh in August 1985.<sup>23</sup> "The reports . . . show only a fraction of what most interest groups paid their lobbyists on such issues as a state lottery and phosphate detergent ban."

Obviously, one ripe area for the Secretary of State would be to examine what other states require in the way of lobbyist disclosure and make recommendations to the 1991 General Assembly for improvements in the state's lobby laws. Specifically, the disclosure reports could require lobbyists to indicate exactly on which bills they lobbied, who the clients were for each bill, how much money was spent to entertain each legislator, what those circumstances were, and how monies were spent on lobbying in addition to the fee, retainer, or salary paid each lobbyist. And to provide a better idea of what government agencies spend on lobbying, the Secretary of State might also devise a way to determine how much time government agency liaisons spend trying to influence the General Assembly.

But Edmisten does not want stronger lobbying laws in North Carolina. "Obviously, we don't require as much as other places do," says Edmisten, "but in my experience as Attorney General and (as an aide to U.S. Sen. Sam Ervin) during Watergate, you can require all the things in the world and if someone is intent on violating the law, the strictest requirement in the world won't make a difference. Senator Ervin felt that way, and I feel the same way. I'm often asked if we should have stricter disclosure laws, but I think we are doing okay . . . . If I thought some mischief was going on, I'd recommend changing the law."

Retorts former Representative Warren, "If Edmisten thinks that stricter lobbyist regulation is not needed, he is blind. . . . To allow special interests to spend virtually unlimited and unaccountable amounts of money to influence environmental protection, consumer rights, and tax policies is unconscionable. Protecting special interests and lobbyists from public scrutiny makes poor public policy, but it probably helps insure friendly PAC contributions in the future."

Still other areas that might be considered for the department are responsibility for publishing administrative rules and as an umbrella agency for the independent licensing boards of the state.

Smith, the former Deputy Secretary of State, says that filing of rules and regulations "should be returned to the Secretary of State along with publication of the North Carolina Administrative Code and the *Register*."

But if the department does get that responsibility, notes former legislator Warren, it must first make improvements in its publication section. "Nothing, and I do mean nothing, produced by that division is without numerous errors," he says. "The *North Carolina Manual* is full of errors each year. The other guides and books published by the division are also not reliable. As a result, I have been told by attorneys and others within state government that they cannot rely on the version of the state Constitution or any other fact contained in publications from the Secretary of State's office to be correct."

Smith also proposes that the department "be an umbrella agency for most of the licensing boards to provide administrative services. The recent flap over the board of cosmetology is a good illustration of why it is needed." In April 1989, the State Auditor said members of the state Board of Cosmetic Arts collected reimbursements for meals they were not entitled to claim, for excessive mileage, and for entertainment and other travel expenses that were not documented.<sup>24</sup> Smith also thought supervision of licensing board administration would help facilitate developing a one-stop business licensing function of the department.

## The 30-Hour Work Week— Time For an End?

All these potential changes in the duties and responsibilities of the Secretary of State would bring new powers to the office and involve the Secretary in new policymaking areas. By the same token, there may be existing requirements in the law that should be repealed. Consider the first responsibility listed for the Secretary of State in the N.C. General Statutes. Not many people know it, but an 1870 state law requires the Secretary to work a 30-hour work week, and to open his office six days a week.<sup>25</sup> That law, in its entirety, reads: "The Secretary of State shall attend at his office, in the City of Raleigh, between the hours of 10 o'clock A.M. and three o'clock P.M., on every day of the year, Sundays and legal holidays excepted."

If nothing else, perhaps it's time to change the

law requiring the Secretary of State to keep his office open on Saturday afternoons. After all, legislators usually manage to adjourn by noon on Friday, and that gives them a 24-hour head start over the Secretary of State for weekend politicking. ☐

## FOOTNOTES

<sup>1</sup>John Cheney, *North Carolina Government 1585-1979, A Narrative and Statistical History*, N.C. Department of Secretary of State, 1981, p. 78.

<sup>2</sup>William S. Powell, *Dictionary of North Carolina Biography*, Vol. 1 A-C, The University of North Carolina Press, 1979, pp. 335-336.

<sup>3</sup>Richard Walser, *The North Carolina Miscellany*, The University of North Carolina Press, 1962, pp. 99-101.

<sup>4</sup>Section 1, Article III, Constitution of North Carolina, adopted in convention, March 16, 1868.

<sup>5</sup>"Message of His Excellency Governor Manly, To The Legislature of North Carolina, At The Session of 1850-51," Legislature of N.C.—Document No. 1, Nov. 18, 1850.

<sup>6</sup>An Act to Alter the Constitution of North Carolina in Relation to the Office of Superintendent of Public Works, ratified in the N.C. General Assembly on Feb. 24, 1873 and approved by the people of North Carolina on Aug. 7, 1873.

<sup>7</sup>See Ferrel Guillory, "The Council of State and North Carolina's Long Ballot—A Tradition Hard to Change," *North Carolina Insight*, Vol. 10, No. 4, June 1988, pp. 40-44.

<sup>8</sup>G.S. 147-11.1(b)(3).

<sup>9</sup>G.S. 147-36.

<sup>10</sup>Joy Hart Seibert, "The Secretary of State: The Office and Duties," prepared for the National Association of Secretaries of State, published by the Council of State Governments, 1987.

<sup>11</sup>*The Book of the States, 1988-1989*, The Council of State Governments, Lexington, Ky., pp. 68-70.

<sup>12</sup>Allan Holmes, "Changes in office: Legislation would give secretary of state more clout, higher profile," *Triangle Business*, Vol. 4, No. 32, April 24-May 1, 1989, p. 3.

<sup>13</sup>"Performance Audit Report, Office of Administrative Hearings and the Administrative Rules Review Commission," Office of State Auditor, April 1989, pp. 42 and 81.

<sup>14</sup>Chapter 265 (SB 280) of the 1989 Session Laws.

<sup>15</sup>As quoted in Holmes, p. 3.

<sup>16</sup>*Ibid.*

<sup>17</sup>Chapter 808 of the 1987 Session Laws, now codified as G.S. 147-54.

<sup>18</sup>Chapter 1098 of the 1987 Session Laws (Second Session 1988), now codified as G.S. 78C.

<sup>19</sup>Martin Donsky, "Fax to the Max," *Business North Carolina*, Vol. 9, No. 4, April 1989, p. 15.

<sup>20</sup>G.S. 143-318.9—318.18.

<sup>21</sup>Chapter 932 of the 1985 Session Laws (Second Session 1986), now codified as G.S. 143-318.16A.

<sup>22</sup>G.S. 120-47.1—47.10.

<sup>23</sup>Rob Christensen, "Lobbying law lenient in N.C. compared to other states," *The News and Observer* of Raleigh, August 25, 1985, p. 1A.

<sup>24</sup>"Special Review, North Carolina State Board of Cosmetic Arts," Office of the State Auditor, April 1989, pp. 3-5.

<sup>25</sup>Chapter 111 of the 1870 Session Laws, now codified as G.S. 147-34.

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# North Carolina's Prison System: Is the Crisis Corrected?

by Mike McLaughlin

*In 1987, North Carolina Insight devoted a theme issue to correction policy and the problem of prison overcrowding. Since then, the state has adopted a prison population cap, embarked on an ambitious construction program, and expanded programs that would punish offenders outside traditional prisons. Yet these are just the first steps toward the creation of an efficient and effective criminal justice system. What will it take to finally cure the crisis in correction?*

Gov. James G. Martin began to speak a little faster as he surveyed the storm clouds gathering above the ridgetops surrounding the brand new Craggy Prison, promising to finish his dedication speech before his audience got drenched. Martin's theme was that the transition from the old Craggy Prison in Buncombe County to the campus setting of the new Craggy Prison was symbolic of the state's commitment to creating a constitutionally defensible prison system. But the storm clouds were symbolic too. The prison system's problems are far from solved. There are clouds on the horizon, and experts say only the dogged pursuit of a solution that encompasses the entire criminal justice system will hold the storm at bay.

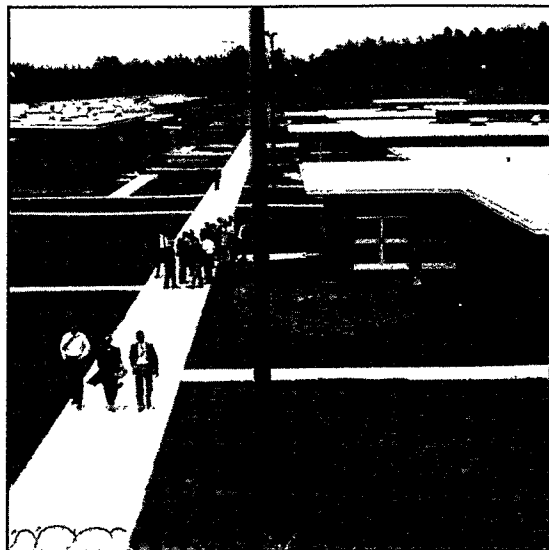
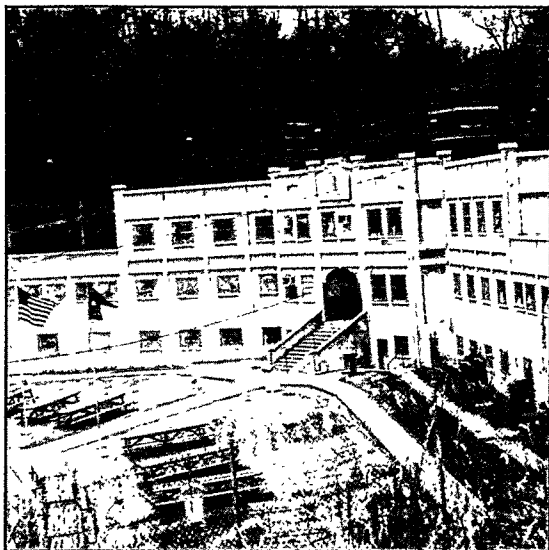
Although the threat of a federal takeover of the prison system has receded, the underlying causes of prison crowding remain. A real solution

will require several years of effort, hundreds of millions of dollars, and a new approach to criminal justice. This despite the millions of dollars already thrown at the problem and the lawsuit-fueled crisis atmosphere that pushed the correction system to the top of the agenda in the 1987 and 1989 General Assemblies.

As Deputy Correction Secretary Bill Crews describes the problem, the state's prisons are "full now and are going to be full for the foreseeable future." Crews uses the analogy of a hotel. "If the Holiday Inn is full and somebody shows up at the registration desk, the only way we can check them in is to check somebody else out," says Crews. "That's what we've been doing with the prison system. If you let somebody in the front door,

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*Mike McLaughlin is associate editor of North Carolina Insight.*



Mike McLaughlin

*Gov. James G. Martin says the transition from the old Craggy Prison to the new is symbolic of the state's effort to create a constitutionally defensible prison system.*

you've got to let somebody else out the back door."

When Crews says the system is full, he means the state is housing so many inmates it is at or above a statutory ceiling that triggers emergency release measures to cap the inmate population at 18,000.<sup>1</sup> That trigger is set at 17,640, well above the current 15,071 capacity that would afford each inmate 50 square feet of cell space, the standard recommended by the American Correctional Association. The state agreed in an April 1989 settlement of the *Small v. Martin* lawsuit to meet the 50-square-foot standard by 1994 for the 49 prison units that were covered by the suit.<sup>2</sup> The state also expressed its intent to bring the entire 89-unit system up to that standard, says Deputy Attorney General Lucien "Skip" Capone, who handles prison litigation on behalf of the Department of Correction.

All told, the committee agreed that the state should spend \$800 million over eight years to attack the prison overcrowding problem, says Capone. But all that spending would not increase prison capacity by a single bed above the current 18,000-inmate limit.

For the foreseeable future, the Department of Correction will be "improving conditions of confinement," according to Crews, not expanding capacity. In the face of rapid population growth and an increasing crime rate, the state will be

dependent on alternatives to incarceration and the cap to control population.

The General Assembly refined the so-called cap bill with its emergency actions during the early stages of the 1989 General Assembly. These changes included raising the expedited parole trigger by 180 inmates (from 17,460 to 17,640), broadening the Parole Commission's authority to parole misdemeanants, and disqualifying drug traffickers, sex offenders, and kidnappers from the process designed to turn inmates out fast when the prison population exceeds the ceiling.<sup>3</sup> Sam Wilson III, Parole Commission chairman, says although the General Assembly's actions improved the cap law, he is still uncomfortable with a parole system that spews out inmates who have served only a fraction of their sentences. "I have a real concern about what we are doing, long term, to the reputation of the criminal justice system," says Wilson. "That reputation is going to continue to be undermined because sentences are losing their meaning."

Even before the cap went into effect, inmates had been serving as little as one-third of their actual sentences, according to research by Stevens H. Clarke of the Institute of Government at the University of North Carolina at Chapel Hill. That's because under the provisions of the 1981 Fair Sentencing Act, inmates could automatically earn "good time" and "gain time" for behaving



and attending classes or working.<sup>4</sup> Much of the discretion of the Parole Commission was removed. The effect, Clarke found, was to make sentences both more predictable and shorter. But judges voiced the same complaints as Wilson—that the public was losing confidence in the criminal justice system because time served was so much shorter than the actual sentence.<sup>5</sup> To compensate, judges began handing down longer sentences. After a dramatic drop in length of sentences imposed on felons during the first two years after the Fair Sentencing Act took effect, sentence lengths began to increase again. Then came implementation of the cap bill, accelerating the parole process to further shorten actual time served and raising new concerns among judges that they had lost control of sentencing. “It’s important to retain the discretion of trial judges,” says Guilford Superior Court Judge Tom Ross. “Right now, much of that discretion is with the Parole Commission.”

Still, Correction officials have little choice but to depend on faster parole of nonviolent offenders to contain the prison population until the state can build to the 50-square-feet-per-inmate standard. But can conditions be improved while maintaining sentences that command the respect of criminals and the public? And what about alternative sentencing programs? Are there inmates who could or should be punished through alternatives to incarceration? How many people can these programs effectively serve? How can we encourage judges to use them? And can we really punish criminals without the iron bars? These are some of the questions yet to be resolved as policymakers wrestle with the long-running crisis in correction.

## Searching for Answers

**T**he legislature’s Special Committee on Prisons, which has pondered the problems of the prison system for more than three years, is positioning itself to chart a course for the future. The committee commissioned a study by Mark Corrigan of the National Institute for Sentencing Alternatives at Brandeis University. Corrigan found that as many as 5,000 inmates in the state prison system have criminal histories that are very much like a large group of convicted criminals who are on probation.<sup>6</sup> The report has important implications both for saving the state money and easing prison overcrowding. For each convicted criminal on probation, the state spends about \$1.29 a

day, or \$470 a year. The cost for incarcerating an inmate at a minimum security prison is nearly \$31, a day or \$11,300 a year. It runs more than twice that amount at the highest security levels.<sup>7</sup> And to the extent that new construction can be avoided, the savings is even more dramatic. The most recent Department of Correction cost estimates range from \$24,896 a bed for additions at existing minimum security prisons to nearly \$94,000 a bed for construction of a new maximum security or close custody prison (see figure 1). “In the data, there is a strong suggestion that there is a

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*“You can judge the degree of  
civilization of a society by  
entering its prisons.”*

—Fyodor Dostoyevsky

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pool of people of substantial size that could be punished in the community [rather than in prison],” says Corrigan. “Those are the people who steal. They keep stealing. Is it possible to be more consistent with crimes involving stealing?”

Corrigan says the differences between the offenders on probation and the offenders in prison are relatively minor: the probation group on average is a little older and has committed fewer offenses. He theorizes that there are two kinds of offenders: violent criminals who are a risk to public safety, and habitual thieves, who, although a public nuisance, represent virtually no physical threat. Corrigan says habitual thieves could be punished in the community cheaper and at little risk to public safety. A bonus would be the increased likelihood that the criminal could work and pay restitution to the victim, or repay society for his crimes through community service work.

With a clear-cut cost advantage, and with other apparent advantages such as the increased likelihood of restitution, what prevents a wholesale shift toward community sanctions for thieves and other criminals who do not represent a physical threat? One obstacle is the absence of a well-defined policy subscribed to by the executive, legislative, and judicial branches of state government that would channel these offenders into community-based sanctions and out of expensive prison beds. Symptomatic of this lack of guidance is what Corrigan calls the biggest weakness in the state’s criminal justice system—“a failure to dis-

tinguish the goal of public protection from punishment.” The criminal justice system, Corrigan says, has acquiesced in the public’s belief that the system should be concerned with punishing people and that the strongest punishment is imprisonment. But Corrigan says that with escalating construction costs and high recidivism (inmates who return to prison after committing another offense), such a stance is no longer prudent.<sup>8</sup> Prisons, he says, should be about “public protection through the management of risk.” In other words, expensive prison beds should be reserved for offenders who represent a threat to public safety. “Punishment of low-risk offenders should be through the community,” says Corrigan.

Three major steps remain, says Corrigan, if North Carolina is to establish a model of corrections efficiency, with resources allocated properly among offenders. The state must: 1) define the purpose of its correction system much more clearly; 2) develop broader and more precisely

defined types of sanctions; and 3) establish statutory controls to assure that judges use alternatives to incarceration for certain types of offenses.

But the Special Committee on Prisons may find even step one, developing a statement of purpose, to be a formidable task. It’s tough enough to reach agreement about a purpose for prisons within the committee, which, despite an influx of new members during the 1989 legislative session, has developed a relatively high level of expertise about the problems confronting the correction system. Next would come convincing the General Assembly, and then the general public. Elected officials, after all, must represent the public, and must be responsive to the wishes of their constituents if they want to remain elected officials. Sen. Fountain Odom (D-Mecklenburg) is among those committee members who are not convinced that the public will accept a broad movement toward community-based prison alternatives. Odom, a freshman lawmaker and a new-

**Figure 1. 1988 Costs of Prison and Selected Alternatives**

**Budget Cost Per Day Per Inmate**

\$37.47	(Overall average)
30.94	(Minimum security)
40.99	(Medium security)
51.35	(Close security)
62.32	(Maximum security)

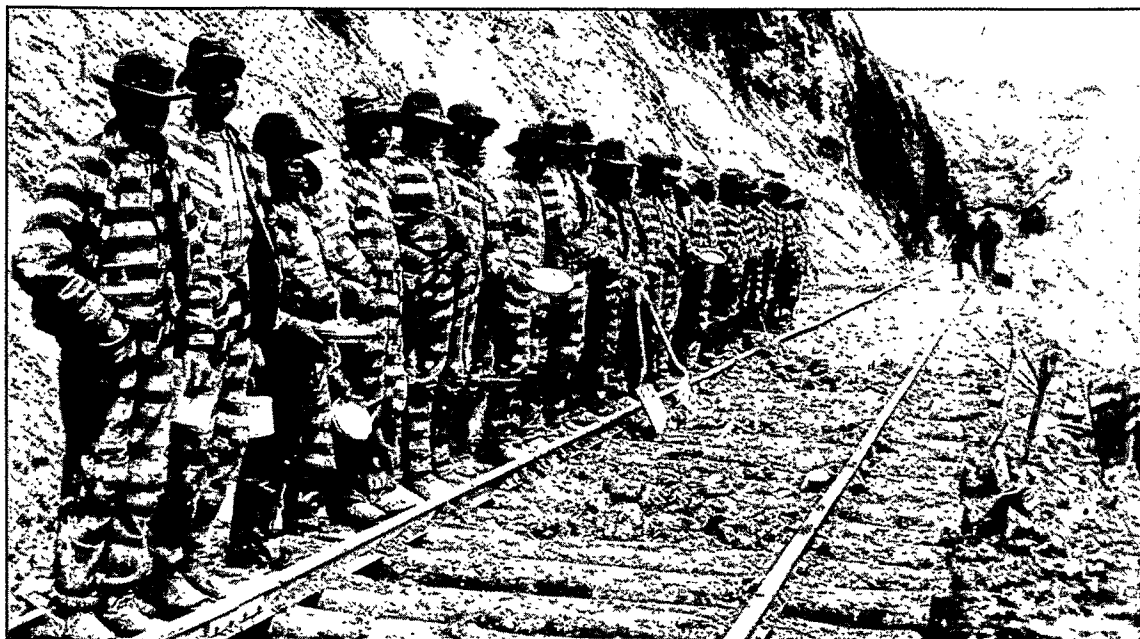
**Approximate Cost Per Day for Offender  
in Various Alternative-to-Prison Programs**

\$1.29	(Regular probation)
6.54	(Intensive probation)
5.27	(House arrest)

**Cost Per Cell of New Prison Construction**

\$93,819	(New maximum or close security prison)
27,961	(Addition to existing medium security prison)
24,896	(Addition to existing minimum security prison)

*Source:* 1988 Annual Report of the Department of Correction, p. 12



N.C. Department of Cultural Resources

*State prison labor often was contracted out to private industry around the turn of the century. These prisoners were working on a railroad in western North Carolina.*

comer to the committee, made that point forcefully in an exchange with Corrigan during a committee meeting. Odom said the victim of a break-in *feels* violated even if there has been no physical assault. He said his constituents want hefty prison sentences and are willing to pay the cost of more prison construction to accommodate them.

Odom seemed skeptical when Corrigan suggested that the public could be educated to accept community-based sanctions for such non-violent offenders as habitual thieves. "I'd like to turn my Presbyterian Sunday school class over to you then, because after several sessions they still say, 'Build more prisons and I don't care what the cost is. We'll pay more because we want more prisons.'"

Wilson, the Parole Commission chairman, shares this concern about lenient treatment of people who steal. "We have become more harsh with the most serious offenders—drug traffickers, sex offenders, and kidnappers—but at the cost of providing miniscule punishment to thieves and housebreakers," says Wilson. "By failure to fully prosecute and incarcerate criminals who break into others' homes and steal, we are slowly destroying the public's hope for victims' justice, and the public's, the victim's, and especially the

criminal's respect for our criminal justice institutions."

A number of studies, however, indicate the public in fact may be receptive to punishment options that do not include traditional imprisonment. The Fall 1982 North Carolina Citizens Survey, conducted for the state by the Center for Urban Affairs and Community Services at North Carolina State University, found 88 percent of respondents would favor placing offenders convicted of non-violent crimes in supervised community group homes with restitution programs. Only 39 percent of respondents favored spending more tax money for building more prisons to relieve what was even then a looming crowding crisis.<sup>9</sup>

A 1986 poll commissioned by the North Carolina Center on Crime and Punishment initially found nearly half the respondents thought community punishments were a good idea for non-violent repeat offenders. But that number increased to 85 percent when respondents were given a set of facts about prison overcrowding and community punishments, including cost comparisons of prisons versus alternatives.<sup>10</sup> This finding is similar to the conclusions of a Public Agenda Foundation study in Alabama—that participants



*Triple bunks have spilled over into the dayroom at Central Prison's K Dorm.*

would change their views "if they understood more about the issue."<sup>11</sup> In that study, participants were told of hypothetical crimes and asked to sentence 23 defendants either to prison or probation. The study participants then were given information about prison overcrowding and introduced to five new prison alternatives. In the first instance, participants sentenced 18 of the 23 defendants to prison. But after learning about alternatives, the participants sentenced only four of those same 23 defendants to prison.<sup>12</sup>

Corrigan says this shifting of opinion among study participants after they learn more about issues and programs provides an important cue for policymakers: the public can be educated to accept alternatives to prison. "In corrections, we are relying too much on raw public opinion to shape policy," says Corrigan. "We should be relying on informed public judgment."

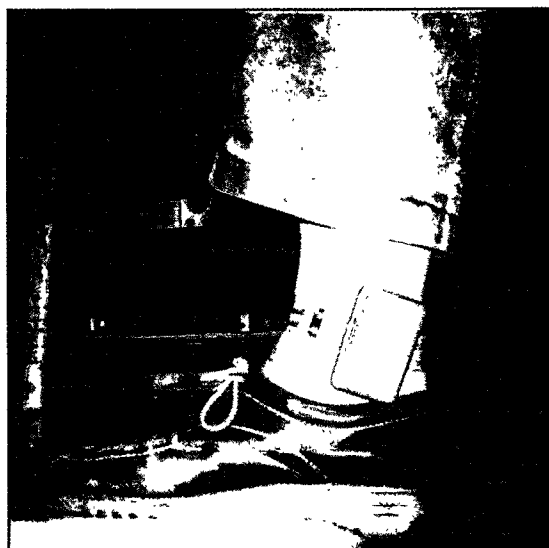
Despite such findings, some state lawmakers say their constituents demand tough sanctions against criminals, and they wonder whether alternatives are tough enough. "People are really concerned with crime and safety," says Rep. Frank J. Sizemore (R-Guilford), chairman of the House Judiciary Subcommittee on Corrections and a 1989 appointee to the Special Committee on Prisons. Sizemore says if community-based alternatives are to be expanded, criminals must know they are being punished. "If you lose respect for

law and the system of justice, we've done a disservice, not a service," says Sizemore. Prison alternatives must establish accountability and credibility with the public if they are to be broadly implemented as a relief valve for the crowded prisons, Sizemore says.

Corrigan agrees that accountability—measured by such standards as the number of inmates who complete a program of restitution to the victim without committing another crime, or who conquer substance abuse problems and rejoin productive society—is crucial to the public's acceptance of alternatives. "If these alternatives represent punishment, how do we make sure the payback occurs?" asks

Corrigan. "Unless we can be sure the agencies running programs are holding offenders accountable, they won't be widely accepted." Assuring accountability comes at a cost, Corrigan says. The General Assembly must allocate enough resources so that programs can handle heavy caseloads. "The programs themselves don't lack accountability," says Corrigan, "but in states where they are set up and don't have the re-

*Anklet used in Electronic House Arrest Program.*



sources, you can have that problem."

Still, Sen. David Parnell (D-Robeson), co-chairman of the Special Committee on Prisons, is among those who believe prison alternatives are a major piece of the answer to prison overcrowding. That's because a well-funded alternative program is still a bargain compared to building and operating a prison. "I don't think the average citizen realizes what it costs to keep an inmate in prison for a year," says Parnell. "I don't see why, in lieu of sentencing someone to prison who has not done any harm to anybody, who is not a danger to society, he could not serve in one of these alternative programs."

### A Watershed Year?

Supporters of alternatives say the 1989 legislative session marked a watershed year. That's because the emergency legislation that was part of the settlement of the *Small v. Martin* lawsuit included a substantial appropriation for community-based sanctions.<sup>13</sup> (For a full discussion of prison overcrowding and the potential role of alternatives in solving the problem, see Bill Finger, "Alternatives to Incarceration: Fledgling Programs Forced to Grow Up Fast," *North Carolina Insight*, March 1987, Vol. 9, No. 3, pp. 50-73.)

The Community Penalties program, for example, got a \$1.3 million budget boost for the 1989-1991 biennium that will pay for expanding from 13 to 18 judicial districts and lay the groundwork for making this alternative to prison available statewide. Under the Community Penalties program, a sentencing plan is drawn up calling for a range of sanctions that stop short of prison and placing the offender under the supervision of a probation officer. The program is designed for otherwise prison-bound offenders, so it has a direct impact on the overcrowding problem. Intensive probation and electronic house arrest programs also got a significant budget boost. Intensive probation provides for a higher level of supervision than traditional probation, and thus may be appropriate for some offenders who might otherwise wind up in prison. Electronic house arrest, in which offenders wear electronic anklets so their movements can be monitored by computer, could be a less expensive alternative to prison if used for technical violators of parole.

The emergency package also initiated two new programs: a boot camp for first offenders that uses education and military-style discipline to steer these offenders back toward the straight and narrow; and a treatment facility for drug and alcohol abusers imprisoned for driving while impaired. The emergency package calls for spending \$29 million on alternatives to incarceration out of the \$79.1 million appropriated, or about 37 percent.

"It's far more dollars than have ever been put to alternatives—a much larger proportion of the total bill," says Elizabeth Crowley, assistant director of the North Carolina Center on Crime and Punishment. "For the first time, a serious attempt has been made in the form of money appropriated to balance prison construction with alternatives."

Despite that promising first step, Crowley is among those who believe the state must take a comprehensive approach if it is ever to solve the crowding problem. "Regardless of what happens, if we don't get a comprehensive correction policy,

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*Correction officers Jay Newsome, James Fullwood (standing left to right), Virgil Mallard, and Tim Moose (seated left to right) operate computer used in Wake County electronic house arrest program.*



N.C. Department of Correction



*Cluttered ward at the old Craggy Prison.*

even if we do pass heroic bills, we are never likely to get to a true solution," Crowley says. "We need a comprehensive correction policy. Until we have that, we will continue to pour money into, maybe, a sinkhole. We need a sound policy, and a way of evaluating whether or not the legislature's efforts are doing any good."

Corrigan called for a statement of purpose, a broadening of sanctions so that community alternatives are available statewide, and statutory changes to assure that alternatives are used. A paper titled "A Corrections Policy for the '90s" that preceded the Corrigan report also advocates a comprehensive policy.<sup>14</sup> The paper, co-authored by four advocates of alternatives to incarceration, suggests that such a policy be hammered out by the Special Committee on Prisons. A working panel with representatives from the executive, legislative, and judicial branches of government would decide how to put the policy into practice. The ultimate vehicle for instituting alternatives to incarceration statewide, the paper suggests, is the Fair Sentencing Act.<sup>15</sup> Former Gov. James B. Hunt Jr. championed the Fair Sentencing Act in 1979 with the aim of making more predictable and uniform the amount of prison time actually served by offenders. This is accomplished through presumptive sentences that judges must hand down in the absence of aggravating or mitigating circumstances (although as Clarke's research indi-

cates, the act may need some adjustment to assure that the intended effects do not wear off over time).

Lao Rubert, a co-author of the paper and the director of the North Carolina Prisons and Jails Project, says the only way to assure that community-based sanctions are used is to make them presumptive sentences under the Fair Sentencing Act for certain nonviolent crimes. "It doesn't mean judges would become just like clerks," says Rubert, "but if the legislature is ever going to be a policymaking body on these kinds of issues, they've got to give some guidance."

But much groundwork remains before the legislature can tackle the kind of legisla-

tive reforms envisioned by proponents of alternatives to incarceration. Judges likely would resist any reforms that would tie their hands by sharply restricting the range of sanctions available in sentencing. "Any sentencing philosophy that ultimately takes discretion away from judges is a mistake," says Ross, the Superior Court judge from Guilford County. Ross says he would not object to the legislature's amending the Fair Sentencing Act to include alternatives to prison among a range of sentencing options for certain crimes. "I understand the need to tie available resources to any sentencing policy the state is going to have," says Ross.

Rep. Anne Barnes (D-Orange), co-chairman of the legislature's Special Committee on Prisons, says she anticipates the committee will work for perhaps a year developing a range of policy options to present to the 1990 General Assembly. The legislature, Barnes says, must approach the correction system like a puzzle and determine how it wants the pieces to fit together. "It's important for us to determine what we want to accomplish," says Barnes. When, for example, is prison appropriate, and when should probation be tried? How do rehabilitation and treatment for substance abuse problems fit into the picture? Are there times when prisons should be used purely for punishment? If so, when? "And where does public safety figure in?" asks Barnes. "Are we

putting people in prison for public safety, and if so, why are we putting people in prison who write bad checks?"

These tough questions ultimately must be addressed in the legislative arena, says Barnes. Once the General Assembly decides on a direction, she says, a panel representative of the three branches of government would need to consider how best to implement the policy. "There's a lot of value in having people other than legislators on that panel," says Barnes.

Such a long-range planning approach, if successful, would put the state's criminal justice system on a sound course for the future. Correction officials, however, must worry about the present. Some trouble spots, such as Craggy Prison, have been brought up to standard. Inmates once slept in bunk beds stacked three high within the pea-green walls of a damp, dark fortress along the banks of the French Broad River in Buncombe County. Now those old bunks are piled in a rusting heap below the old Craggy's recreation field. The inmates have been transferred five miles down the highway to an airy and relatively spacious new prison that provides 50 square feet of dorm space per inmate.

But problems remain throughout the correction system. Probation and parole programs arguably are as crowded as the prison system. Community service programs are swamped with participants. And then there are the prisons that are not subject to the terms of now-settled lawsuits. Correction officials, in releasing their 1988 annual report, publicized conditions at Central Prison in Raleigh by conducting a tour of the prison's older dorms. Triple bunks are still used in Central's crowded K Dorm, an intake facility where prisoners are housed until they can be assigned to prison units at which they will serve their sentences. Even the inmates' day room is jammed with bunks, so that the common area is reduced to a small space for tables and a television. The dorm, designed for 37, was housing 117 inmates on the day of the tour, about 13 square feet per inmate.



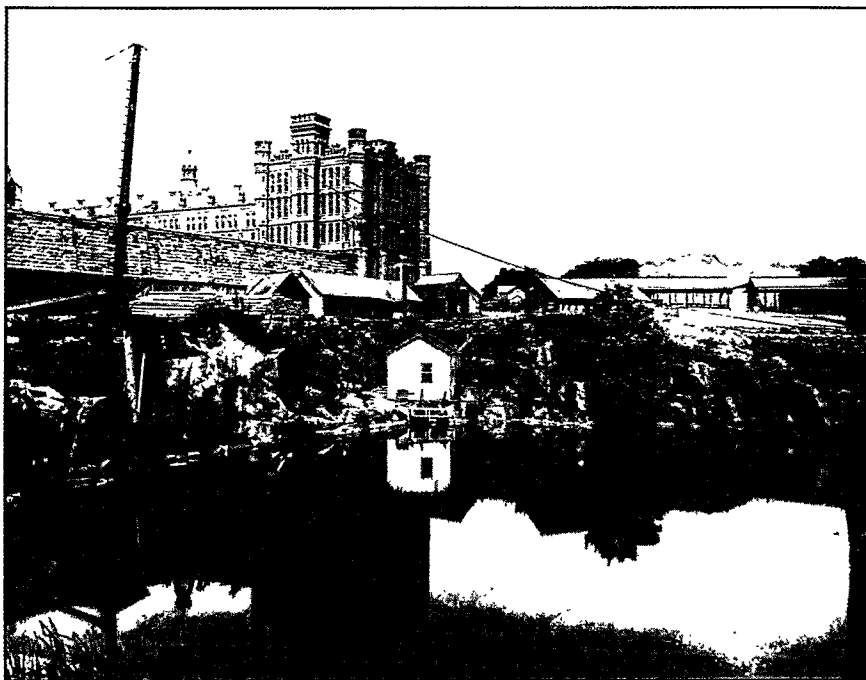
Jack Betts

*Inmate sleeps the morning away in Central Prison's K Dorm.*

## A Powder Keg Waiting to Explode

Correction officials say the crowded dorm is partly the product of successful lawsuits against the prison system. Because two other intake facilities are under consent agreements that control crowding<sup>16</sup> and Central is not under suit, more inmates are channeled into Central for processing. And because the system is essentially full, these inmates must be held at Central until bed space opens up in other units at the appropriate security level. This typically takes four to six weeks but can take months. "You've got to match a body with a bed," says Joseph Hamilton, director of the Division of Prisons. "We call it gridlock at times. It's the backing up of inmates in diagnostic centers because the right kind of beds aren't available."

Crowding at the level represented by K Dorm is a powder keg waiting to explode, say inmates who are housed there. "There is nothing to do but lay in bed," says Bobby Odell Stephens, 30, of Wilmington, who is serving a 30-year sentence for robbery with a firearm. "You get up and walk in a circle and go back to bed. With triple high bunks you can't sit in your bed." The dorm has four toilets and one urinal for the more than 100 inmates, most of whom try to crowd into these facilities in the few minutes before mealtime in the mornings. The result, says inmate Joe F.



N.C. Department of Cultural Resources

*The old Central Prison and rock quarry, pictured here in 1890, was razed for a more modern facility in 1980.*

Smith, 29, of Lillington, is a lot of jostling and tension and the potential for fistfights and even stabbings. "You can't live in there," says Smith, who is serving two life terms plus 28 years for a string of offenses, including first degree rape. "It's a death trap."

Correction officials say over the next several years they will try to expand to the 50-square-foot standard for 18,000 inmates, roughly the number now housed in the state prison system. Using that standard, the prisons now have a capacity of 15,071. The General Assembly has authorized construction to expand capacity to 16,395, and the Department of Correction is seeking funding during the 1989-1990 biennium to expand to 17,539. "There is still a gap," says Crews, the deputy secretary. "It will be the next biennium before we ask for the money to get to 18,000. For the next four to six years, the state will have to continue to stabilize at the current levels."

That means continued reliance on the cap as a pressure valve to relieve overcrowding. It also means the clock is ticking on serious policy reforms that would obviate the need for another round of expensive prison construction. Crews says the hope for holding the prison population at about 18,000 depends upon the aggressive im-

plementation of alternatives to incarceration. "As long as we have a broad enough base of alternatives, we can handle it," says Crews. "We can stabilize at 18,000."

### A More Permanent Solution

**B**ut the state must do more than just hope that judges will use alternatives to incarceration. A number of trends are putting upward pressure on the state's prison population, and affirmative steps must be taken to assure that substantial numbers of offenders are diverted. Although there is disagreement over whether the crime rate is actually increasing, citizens are reporting more crimes and law officers are apprehending more suspects.<sup>17</sup> That means more inmates are being channeled into the state's prisons and jails. Meanwhile lawmakers keep toughening sanctions for everything from driving while impaired to child abuse.

The prison population cap currently keeps the prison population in check, but the cap is at best a temporary measure. What must the state do to implement a more permanent solution? It must get used to the idea of viewing criminal justice as a system. Gone are the days when state lawmakers can pass a law mandating tough new prison



sanctions without giving a thought to whether there will be prison space to hold the offenders. The systems approach demands that the executive, legislative, and judicial branch of state government work together to assure that sanctions match available resources.

To work more cooperatively, the three branches of government must come to a consensus about what the aims of that system should be, which sanctions would be most appropriate to accomplish those aims, and how to assure that those sanctions are used appropriately. This will require statutory changes, and to implement those changes will require broad-based support.

To help achieve such a consensus, and to translate that consensus into action that will put the state's criminal justice system on a sound course for the future, the North Carolina Center for Public Policy Research recommends:

**(1) That the General Assembly enact legislation to establish a permanent Correction and Sentencing Policy Commission, with members drawn from the public and the executive, legislative, and judicial branches of government, to examine which offenders should be punished through imprisonment and which should be punished through alternatives to incarceration.** The commission could start by developing broad offender profiles from which the state's prison population should be drawn. The number of prior offenses, seriousness of the current offense, and whether the offender has a history of violence should be among the factors considered in determining who should go to prison.

**(2) Once the commission reaches a broad consensus on who should be in prison, it should examine the Fair Sentencing Act with the aim of translating that consensus into guidance for the judicial branch. Amending the Fair Sentencing Act so that alternatives to prison are the presumptive sentence for some offenders would be a step toward providing this kind of guidance.** The goal would be to provide a balance between expensive prison space and alternatives to incarceration. A more comprehensive approach would include adjusting the length of presumptive sentences for all crimes to provide a closer fit between admissions and available bed space. This approach would require constant monitoring and fine tuning to assure that sentencing and prison space remain in sync.

**(3) To aid in the task, the legislature should require, as Tennessee has done, a prison impact statement on any bill that would change**

**sentencing or create new mandatory prison sentences for a given crime.**<sup>18</sup> The new correction and sentencing commission would be assigned the task of preparing these prison impact statements. Such statements should include not only the projected effect on prison population and the cost of any construction required to accommodate new prisoners, but an opinion on how the revised penalties would fit with the state's overall sentencing structure—whether the punishment would really fit the crime. This would assure that state lawmakers consider the fiscal ramifications of any politically popular effort to crack down on crime by sending more offenders to prison.

**(4) More immediately, the state should move ahead aggressively in developing a state-wide network of alternatives to incarceration.** Even if the legislature chooses not to institutionalize alternatives through the Fair Sentencing Act, judges should have a broad range of options to choose among when deciding how to sentence an offender. In some parts of the state, the only choices are prison or probation, neither of which has proven particularly effective in deterring crime.

Alternatives to incarceration for non-violent offenders *must* take on a larger role in the state's correction system. The other options are continued reliance on exorbitantly expensive prison construction, or the back-door approach of relieving overcrowding by speeding up parole through an emergency cap on the prison population. At some point, the resultant erosion of respect for the state's criminal justice system through continued dependence on emergency parole procedures would cross the line from dangerous to disastrous. The more prudent approach is to turn some of these offenders away at the prison gate and, where possible, to channel them into more productive lives.

But a standing Correction and Sentencing Policy Commission—fully staffed and funded—ultimately will be required to see that the criminal justice system gets on track and stays on track with its effort to match appropriate offenders with available prison space. Such an approach seems to be working in Minnesota and is being tried in Louisiana, New Mexico, Oregon, Tennessee, and the District of Columbia.<sup>19</sup> With responsibilities for examining who should be in prison, overhauling the Fair Sentencing Act, and gauging the impact on the prison system of proposed sentencing changes, the commission would have an abundance of work to do.



Mike McLaughlin

*Inmate watches television in a ward at the old Craggy Prison.*

By creating such a commission, the legislature would be building in a mechanism through which the criminal justice system could address its problems before they reached a crisis. And with the state facing a \$600 million bill merely to accommodate the current prison population in a constitutionally defensible fashion, any investment that would help plot a fiscally sound course for the future should be embraced wholeheartedly. Only by allocating expensive prison space among the most appropriate offenders, and continually monitoring the criminal justice system to assure that it remains in balance, can the state finally hope to move beyond the crisis in correction. □

#### FOOTNOTES

<sup>1</sup>G.S. 148-4.1.

<sup>2</sup>*Small v. Martin*, No. 85-987-CRT, and *Thorne v. Martin*, No. 87-446-CRT, U.S. District Court, Eastern District of North Carolina, Raleigh Division, Dec. 20, 1988.

<sup>3</sup>Chapter 1 (SB 40) of the 1989 Session Laws.

<sup>4</sup>Stevens H. Clarke, "Felony Sentencing in North Carolina 1976-1986, Effects of Presumptive Sentencing Legislation," Institute of Government, University of North Carolina at Chapel Hill, May 1987, pp. 10-11.

<sup>5</sup>Dee Reid, "The Fair Sentencing Act: Setting the Record Straight," *North Carolina Insight*, Vol. 9, No. 3, March 1987, pp. 42-49.

<sup>6</sup>Mark Corrigan et al., "Phase I Consultant Report to the Special Committee on Prisons," March 1989, p. 1.

<sup>7</sup>"1988 Annual Report of the Department of Correction," Public Information Office, Department of Correction,

May 1, 1989, p. 12.

<sup>8</sup>Kenneth L. Parker, manager of research and planning for the North Carolina Department of Correction, says DOC figures show 33 percent of all inmates released from the state prison system are returned to prison within three years. See also Corrigan, p. 29, which shows that 48 percent of the state's inmate population in June 1988 had been in prison before for another offense.

<sup>9</sup>"North Carolina Citizens Survey Highlights, Fall 1982," survey conducted by the Center for Urban Affairs and Community Services at North Carolina State University for the Office of State Budget and Management, Fall 1982, p. 6.

<sup>10</sup>"Summary of Findings, Public Opinion Survey on Issues of Crime and Punishment," survey conducted by Hickman-Maslin Research for the North Carolina Center on Crime and Punishment, Raleigh, N.C., May 16, 1986, p. 3.

<sup>11</sup>John Doble and Josh Klein, "Prison Overcrowding and Alternative Sentences: The Views of the People of Alabama," The Public Agenda Foundation, February 1989, p. i.

<sup>12</sup>*Ibid.* at pp. 29-50.

<sup>13</sup>Chapter 8 (SB 38) of the 1989 Session Laws.

<sup>14</sup>Stephanie Bass et al., "A Corrections Policy for the '90s, A Comprehensive Approach," Winter 1988, pp. 11-13.

<sup>15</sup>*Ibid.* at pp. 20-23.

<sup>16</sup>Department of Correction officials say intake facilities at Piedmont and Guilford Correctional centers are under consent agreements that control crowding. There are four other intake facilities in the prison system, but of those four, only Central accepts felons sentenced to 20 or more years in prison. The Piedmont unit was included in *Hubert v. Ward et al.*, No. 85-987-CRT (E.D.N.C.). *Small v. Martin*, No. 85-987-CRT (E.D.N.C.) and No. 87-446-CRT (E.D.N.C.) covered the Guilford facility.

<sup>17</sup>Kenneth L. Parker, "History and Future of the Prison Population in North Carolina," North Carolina Department of Correction, January 1989, pp. 5-6.

<sup>18</sup>Fred Strasser, "Making the Punishment Fit the Crime ... and the Prison Budget," *Governing*, January 1989, p. 49.

<sup>19</sup>*Ibid.* at pp. 36-41. See also Clarke, pp. 28-30.

## *County Officials: Jails Are Crowded Too*

Officials who work on the county level say North Carolina's packed prisons aren't the only overcrowded facilities in the criminal justice system. They say the county jails are just as crowded, and when these officials look to the future, they see the problem getting worse.

"It's a problem with a capital P," says Union County Sheriff Frank McGuirt, president of the North Carolina Sheriffs' Association. "I would contend that prison overcrowding is nothing compared to jail overcrowding. I don't think their problem is anywhere near the magnitude of ours, and yet the state is requiring us to do more and more."

McGuirt says some officials at the state level believe returning more misdemeanants to the county jails is part of the solution to state prison crowding. He says the counties also lack the range of revenue raising options available to the state. To finance major capital projects such as prisons, most counties rely on bond issues and repay the bonds by raising property taxes. But issuing bonds requires voter approval, and most citizens are reluctant to vote a tax hike upon themselves to pay for more jail space.

Tom Ritter, head of the Department of Human Resources' Jails and Detention Branch in the Division of Facility Services, says the problem of financing new jails is almost insurmountable. "We're dealing with different counties right now trying to get them to build new cells because they have antiquated jails," says Ritter. "It's like hitting your head against a brick wall sometimes. We just had [a bond issue] defeated in Currituck County. Their own people defeated it."

Ritter says the Currituck jail is worn out and substandard. "It's just a little hole in the wall. It doesn't meet any square footage standards or anything else." The jail in Hertford County, Ritter says, is even worse. "It's just like a cage," says Ritter. "The last time the

inspector was down there, he told me he had to walk across people to inspect the jail."

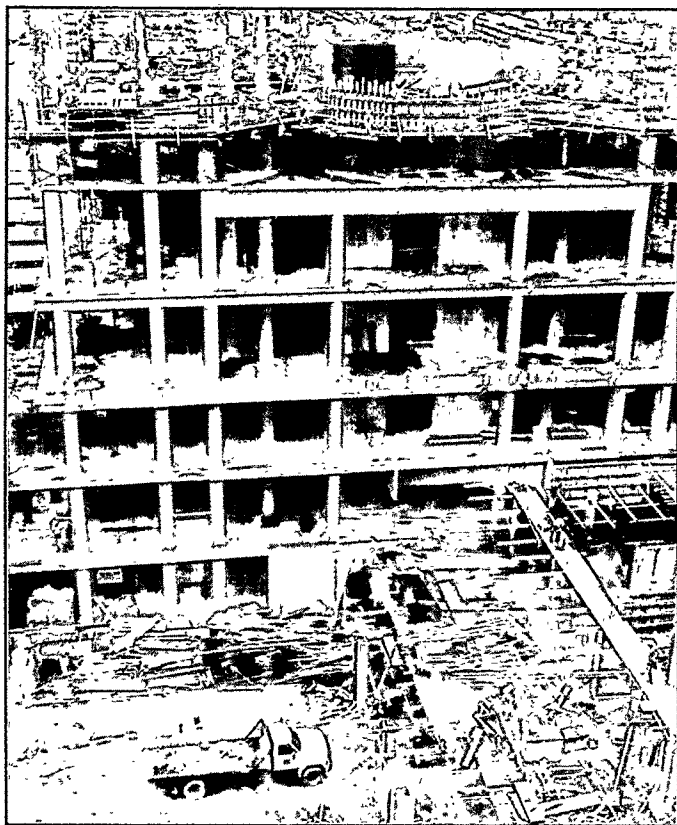
Such conditions are rife across the state, but despite repeated pleas, pestering, and warning letters from the Jails and Detention Branch, Ritter says he sees little movement in most counties toward improved conditions. Although the elected sheriffs who run the jails may want new facilities, they must go hat in hand to the county commissioners to get construction money, and that's where they often run into a stone wall. "Commissioners are politicians," says Ritter. "They do not want to spend the money when it's not a popular issue. Jails are not a popular issue, and they never will be."

Ritter should know about the deplorable conditions in many of the state's jails. He runs an inspection program that twice a year examines the jails for everything from the condition of the paint on the walls to the number of inmates packed into the cells. The inspection reports can be picky. For example, the file on the Lincoln County Jail included a report analyzing the nutritional value of meals served. That report criticized the county for serving slaw as a vegetable for six meals in a row. But the accounts of overcrowding within the agency's files are persistent and alarming.

An entry in the March 22, 1989, Mecklenburg County inspection report addressing the overcrowding problem is typical. On the day of the report, the jail housed 412 male inmates although it had only 329 bunks. Crowding in the women's ward was even worse—61 women incarcerated and only 37 bunks. Inmates who do not have bunks are issued mattresses and must sleep on the floor.

"Overcrowded at time of inspection," reads the report entry. "Overcrowding continues to increase. These conditions increase the possibility of assault, interfere with normal

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*New Wake County jail under construction  
in downtown Raleigh.*

day-to-day operations, increase security risks, and increase problems with fire safety plan in case of evacuation of the jail." Yet Ritter says Mecklenburg is one of the more progressive counties on the issue of jail crowding. The county opened the state's first satellite jail, a work release center for jail inmates,<sup>1</sup> and a special study committee is studying the need for jail expansion. But this process is fraught with conflict over who should be in jail, what kind of facility to build, and how to pay for it.

"North Carolina Jails in Crisis," a September 1988 report by the Governor's Crime Commission, found the scenario of overcrowded jails to be repeated in county after county across North Carolina. Using 1986 data collected by the Jails and Detention Branch, the commission found 15 of the state's 97 jails to have been overcrowded at some time during

the month for all 12 months of the year.<sup>2</sup> The problem since has gotten worse. In 1987, the number of jails operating at or above capacity increased to 19, according to Jails and Detention Branch figures, and during 1988 the number rose to 25, an increase of roughly 67 percent in only two years. But Ritter says he considers a jail effectively full when it is operating at about 85 percent of capacity. That's because a number of factors may prevent a jailer from using every bunk. If, for example, a jail has a women's ward and even one woman is incarcerated, none of the beds on that ward can be used for men. Using Ritter's standard, 34 jails—more than a third of North Carolina jails—were overcrowded on average at least one day of every month in 1988 (see Table 1).

What is driving this problem of overcrowded jails? David Jones, director of the Criminal Justice Analysis Center within the Governor's Crime Commis-

sion, cites a number of factors. Overall, jail admissions have increased, says Jones, and so has the average length of stay for each inmate. Counties are seeing more DWI offenders sentenced to jail by the courts as a result of the 1983 Safe Roads Act, and pre-trial detainees are staying in jail longer before their cases go to trial. But some of the problem can be traced directly to the state prison crowding crisis. The state has sharply curtailed the number of "safekeeper" inmates the counties can place in the state prisons for security or medical reasons before trial, and misdemeanants sentenced to less than 180 days now must serve their time in the county jails. That compares to 30 days under the old standard.

Jones says the jails are crowded as is, but if all misdemeanants were to be forced to serve their sentences in the county jails, as some

**Table 1. North Carolina Jails: Average Daily Population Versus Capacity**

County	Capacity		1987		1988	
	1987	1988	Average Peak Population*	Percentage of Capacity Used	Average Peak Population*	Percentage of Capacity Used
Alamance .....	120	— **	89	74%	102	85%
Albemarle						
District	44	—	35	80	42	95
Alexander	28	—	13	6	13	46
Alleghany .....	10	—	4	40	6	60
Anson	36	—	16	44	22	61
Ashe	16	—	10	63	13	81
Avery .....	21	—	9	43	7	33
Beaufort	38	54	35	92	37	69
Bertie-Martin	50	—	37	74	37	74
Bladen .....	64	—	23	36	21	33
Brunswick	44	—	31	70	40	91
Buncombe	211	—	143	68	153	73
Burke .....	52	—	26	50	27	52
Cabarrus	70	—	60	86	60	86
Caldwell	76	—	46	61	48	63
Carteret .....	40	—	20	50	29	73
Caswell	22	—	18	82	15	68
<b>Catawba***</b>	<b>83</b>	—	<b>91</b>	<b>110</b>	<b>91</b>	<b>110</b>
Chatham .....	51	—	26	51	34	67
Cherokee	29	—	19	66	19	66
Chowan	22	—	14	64	19	86
Clay .....	11	—	4	36	6	55
Cleveland	94	—	61	65	77	82
Columbus	44	70	35	80	37	53
Craven .....	99	—	65	66	69	70
<b>Cumberland</b>	<b>228</b>	—	<b>221</b>	<b>97</b>	<b>249</b>	<b>109</b>
Currituck	18	—	10	56	11	61
<b>Dare</b> .....	<b>16</b>	—	<b>23</b>	<b>144</b>	<b>30</b>	<b>188</b>
Davidson	149	—	100	67	97	65
Davie	19	—	12	63	13	68
Duplin .....	40	—	29	73	32	80
<b>Durham</b>	<b>164</b>	—	<b>203</b>	<b>124</b>	<b>235</b>	<b>143</b>
Edgecombe	92	—	66	72	62	67
<b>Forsyth</b> .....	<b>202</b>	<b>262</b>	<b>263</b>	<b>130</b>	<b>292</b>	<b>111</b>
Franklin	20	28	20	100	23	82
Gaston	151	—	120	79	135	89
<b>Graham****</b> .....	<b>6</b>	—	<b>3</b>	<b>50</b>	<b>6</b>	<b>100</b>
Granville	38	—	26	68	26	68

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\* Average peak population figures were compiled using monthly reports that show the highest jail population reached on any day of the month.

\*\* A dash in this column in this column indicates capacity did not increase for 1988.

\*\*\* Bold type indicates counties where the average peak population was equal to or greater than capacity in 1988, comparing columns 1 or 2 with 5.

\*\*\*\* Graham County Jail was closed in 1986 and reopened in June 1987.

County	1987				1988	
	Capacity		Average Peak Population*	Percentage of Capacity Used	Average Peak Population*	Percentage of Capacity Used
	1987	1988				
Greene	22	—	7	32	10	45
Guilford #1	288	—	316	110	346	120
Guilford #2	76	72	87	114	81	113
Guilford						
Prison Farm	100	—	34	34	33	33
Halifax	80	83	54	68	61	73
Harnett	84	—	38	45	65	77
Haywood	53	52	34	64	32	62
Henderson	55	83	44	80	50	60
Hertford	38	32	24	63	35	109
Hoke	31	—	19	61	23	74
Hyde	20	—	11	55	12	60
Iredell	60	—	47	78	60	100
Jackson	24	—	12	50	17	71
Johnston	39	—	64	164	55	141
Jones	18	—	4	22	5	28
Lee	44	—	39	89	45	102
Lenoir	85	—	60	71	71	84
Lincoln	35	—	36	103	39	111
Macon	6	—	6	100	9	150
Madison	21	—	10	48	9	43
McDowell	50	—	26	52	24	48
Mecklenburg	366	—	413	113	415	113
Mitchell	20	—	9	45	13	65
Montgomery	36	—	22	61	23	64
Moore	38	48	34	89	39	81
Nash	87	—	74	85	88	101
New Hanover	120	—	131	109	154	128
Northampton	33	—	17	52	18	55
Onslow	62	118	91	147	100	85
Orange	50	—	52	104	54	108
Pamlico	18	—	8	44	6	33
Pender	30	—	16	53	22	73
Person	36	—	22	61	23	64
Pitt	83	—	82	99	103	124
Polk	21	—	19	90	21	100
Randolph	70	74	54	77	55	74
Richmond	72	—	39	54	53	74
Robeson	107	—	139	130	141	132
Rockingham	76	—	64	84	68	89
Rowan	72	—	56	78	60	83
Rutherford	45	—	44	98	45	100
Sampson	63	—	43	68	43	68
Scotland	62	—	47	76	51	82
Stanly	52	—	27	52	28	54
Stokes	15	—	19	127	20	133

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County	1987				1988	
	Capacity		Average Peak Population*	Percentage of Capacity Used	Average Peak Population*	Percentage of Capacity Used
	1987	1988				
Surry	81	—	55	68	54	67
Swain	54	—	30	56	38	70
Transylvania	21	—	21	100	21	100
Tyrrell	4	—	2	50	3	75
Union	62	—	63	102	73	118
Vance	56	—	31	55	37	66
Wake	177	505 *****	243	137	331	66
Warren	20	—	14	70	15	75
Washington	17	—	5	29	9	53
Watauga	34	—	16	47	18	53
Wayne	100	—	64	64	78	78
Wilkes	52	—	36	69	40	77
Wilson	76	—	57	75	73	96
Yadkin	28	—	17	61	21	75
Yancey	11	—	7	64	7	64

\* Average peak population figures were compiled using monthly reports that show the highest jail population reached on any day of the month. The resulting 12-month average figures reported here have been rounded to represent a whole person. The percentage of capacity used was calculated using these rounded averages.

\*\* A dash in this column indicates capacity did not increase for 1988.

\*\*\* Bold type indicates counties where the average peak population was equal to or greater than capacity in 1988, comparing columns 1 or 2 with 5.

\*\*\*\* Graham County Jail was closed in 1986 and reopened in June 1987.

\*\*\*\*\* 1988 Wake County figures include Wake County Satellite (capacity: 178) and Wake County Annex (capacity: 150). 1987 figures represent only the Wake County Jail.

Source: Monthly jail population reports for 1987 and 1988 compiled by the Jails and Detention Branch, Division of Facility Services, Department of Human Resources.

Table prepared by Amy Carr, N.C. Center intern.

have suggested, the jails would be overwhelmed. "Basically, it's just a situation where the prisons are overcrowded, and it backs up down the line," says Jones. This is especially true, he says, when the emergency provisions of the prison cap bill are invoked and no admissions or transfers from local jails are allowed.

Is there a solution to the jail overcrowding problem? Jones says a major step would be to expedite the release of pre-trial detainees.

These inmates, after all, have not been convicted of a crime. Yet those who cannot afford to pay a bail bondsman are required to remain in jail until their trial dates roll around. Jones says pre-trial detainees make up the bulk of the jail population across the state and any action that gets them out of the jails in substantial numbers would reduce overcrowding. Satellite jails—or work release centers—also are

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part of the solution. The General Assembly has authorized the state to share in the expense of satellite jail construction on the condition that the counties that accept the money house all misdemeanants.<sup>3</sup> Legislation passed in the waning days of the 1989 session established an \$8.6 million fund for satellite jail construction, with a maximum of \$750,000 for any one facility.<sup>4</sup>

Rep. Anne Barnes (D-Orange), co-chairman of the legislature's Special Committee on Prisons and the principal House sponsor of both satellite jail bills, says counties can at least partially offset their operating costs by charging work release inmates a room-and-board fee. Barnes says counties may find the program particularly attractive if they can avoid construction of expensive new maximum security jails by building minimum security satellite jails or renovating existing buildings to use as satellite jails. The payoff for the state? "It would help to reserve precious state prison space" because the counties would take more misdemeanants, says Barnes.

McGuirt, the Union County sheriff, says he worries about both the headaches and the expense of operating such a jail and of accepting responsibility for all of the county's misdemeanants. But McGuirt says if the money becomes available, he has little option but to apply. "We're having to do something," says McGuirt, whose own jail is often packed to twice its capacity of 62 inmates. "It's better to expand than to continue to pack these people in. It's better to appropriately incarcerate these people so they can be managed and kept more secure. It's the reasonable and right thing to do, and it's the constitutional thing to do."

Yet McGuirt is among those who believes that unless the counties act aggressively, the ultimate arbiter of the jail crowding problem may be the courts. Lawsuits have driven state efforts to relieve prison overcrowding, and the counties face a similar situation.

Michael Hamden of North Carolina Prisoner Legal Services says the agency has filed lawsuits against nine North Carolina counties regarding jail conditions and is negotiating with several others. But with 97 jails across North Carolina and a limited budget, Hamden

says this approach is piecemeal at best. He says the real key to improving jail conditions statewide is for the responsible state agency to take a more active role in enforcing the state's minimum standards for local detention facilities. Hamden represents prisoners in a pending lawsuit brought to force the Department of Human Resources to take enforcement action against the Johnston County jail, where, the suit charges, conditions threaten the lives and safety of inmates. In that case, Hamden says, the plaintiffs argue that DHR has a legal responsibility under the federal Constitution to take corrective actions or close the facility.<sup>5</sup>

If the state were held legally accountable for jail crowding, Hamden says, it would police jail conditions more aggressively, using its powers to close down county jails that refuse to act to improve conditions. "The resources of the state would be brought to bear on these counties, rather than the limited resources of this office," says Hamden. "As it is now, enforcement action, as a practical matter, is never taken."

The state Jails and Detention Branch has thus far taken a conciliatory approach, urging counties to improve conditions through its inspection program and warning that they face a potential liability. But McGuirt says county commissioners slough off warnings about lawsuits because they have other pressing capital needs—such as school construction and water and sewer system expansion—that are more popular with voters. "We're just waiting for all the jail litigation to start," says McGuirt. "We're either going to have to decide to spend the money or wipe our hands of the problem."

—Mike McLaughlin

## FOOTNOTES

<sup>1</sup>For more on satellite jails, see "Overcrowded Jails—Are 'Satellite' Detention Centers an Answer?," *North Carolina Insight*, Vol. 9, March 1987, No. 3, pp. 68-69.

<sup>2</sup>"North Carolina Jails in Crisis, A Report to the Governor," Governor's Crime Commission, September 1988, pp. 47-49.

<sup>3</sup>G.S. 153A-230.

<sup>4</sup>Chapters 754 and 761 of the 1989 Session Laws.

<sup>5</sup>The plaintiffs in *Reid v. Johnston County*, U.S. District Court, Eastern District of North Carolina, are appealing an order dismissing the state as a defendant in the suit. The order is reported as 688 Federal Supp. 200 (1988).





# IN THE COURTS

## *The Public Trust Doctrine: The Bottom Line on Bottom Lands Is Yet To Be Written*

by Katherine White

*This regular Insight department examines policymaking in the judicial branch. In this column, Insight examines a little-noticed 1988 Supreme Court decision, State ex rel Rohrer v. Credle, which reaffirmed and expanded the doctrine that public waters are held for the benefit of the public.*

One man's losing court battle to keep his Swan Quarter Bay oyster beds private has opened hundreds of thousands of acres of North Carolina underwater land to the public for its use and protection.<sup>1</sup> And perhaps even more important, that case has broad policy implications for the way the state of North Carolina manages lands held in public trust.

For Sidney Credle, who with his father before him had tended 85 acres of Swan Quarter Bay bottom lands for nearly 70 years, the North Carolina Supreme Court decision means he can claim no ownership to the oyster beds he planted and nurtured. For the citizens of North Carolina, the decision puts in question whether anyone—even the government—can sell off or otherwise deprive the public of its rights in the submerged lands.<sup>2</sup>

The North Carolina Supreme Court's unanimous decision, issued in June 1988, reaffirms and expands the historic "public trust" doctrine, a concept that dates to an old, unwritten English law that the King owned the waters for the benefit of the public. The decision gives the doctrine constitutional protection, saying that a 1972 amendment to the North Carolina Constitution "mandates the conservation and protection of public lands and waters for the benefit of the

public," wrote Justice Louis Meyer.<sup>3</sup>

But the implications of the June 1988 opinion go beyond the use of the lands beneath the sounds and bays of coastal North Carolina. The decision raises significant questions about the way North Carolina government deals with its land. It makes it more difficult for the state to sell off its marshland as it did from the early 1800s to the 1960s, including a 683-acre open water and marshland area that now hosts the private resort known as Figure 8 Island, north of Wilmington and cut off from the public by a private drawbridge.<sup>4</sup> Although the public is blocked from the island, the *Credle* case reinforces the argument that the public can use the wet sand area (the beaches and tidal areas) of the island if it can get to it.

"It is a fundamental decision," says John Runkle, an attorney for the Conservation Council of North Carolina, which filed a friend-of-the-court brief in the case. "It goes to the heart of environmental protection, of protecting public lands, and in that sense, it is one of the most important environmental decisions handed down by the court, because it determines what can be done with public lands."

The distinction between *public lands* and *public trust resources* may not be widely understood. "The common law public trust doctrine applies only to those unique resources in which the public has an interest that is incompatible with private property rights," explains Assistant Attorney General Robin Smith. "For example, the

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public interest in unobstructed navigation is incompatible with a fundamental attribute of private ownership—the owner's right to exclude others. The same is simply not true of other publicly owned lands. The state could sell many of its lands without significantly impacting any public interest," notes Smith.

The decision raises questions about more than just submerged lands. For example, it could be argued "that you have public trust land in the rivers and forests," Justice Harry Martin says in an interview. "Suppose the state wanted to sell Mount Mitchell? There's a question of public trust. They can regulate it but can they convey it? Strong arguments can be made against [conveyance]," he says.

Other potential questions center on access to the public trust lands and the extent of public trust lands in tidal areas.<sup>5</sup> The North Carolina Supreme Court has not yet considered whether the public trust doctrine extends to access to public trust lands, such as access to the beach through the dune lines. At present, the state seeks donations of land or buys property on which ramps are built to give the public access to the beaches under statutes adopted by the General Assembly.<sup>6</sup> If the public trust doctrine were extended to public access to beaches, the legislature could not restrict access by changing the laws.<sup>7</sup>

"We are hoping that this decision will be expanded to all public lands," says the Conservation Council's Runkle. "The state doesn't own land. It is the trustee for the land, to protect the interests of the rightful owners—all of us. In *Credle*, the court is saying that an individual cannot claim a public land and try to keep other individuals out."

Not everyone agrees that public trusteeship is the best way of protecting environmentally sensitive waters. In the view of at least one environmental law expert, the expansion of the public trust doctrine can help destroy bottom lands, as well as eliminate a potential clean water lobby. "If you have public beds, there is no incentive to postpone gratification. The oystermen will grab as much as they can," warns University of Maryland Law School Professor Garrett Power, who has studied and written extensively on the problems of the Chesapeake Bay.

The issue of who owns the bottom lands is an old one, debated for the last two centuries in this state and others as economic interests in fishing and other coastal industries have competed for the riches that the waters and the earth beneath pro-

vide. "Most other states apply the public trust doctrine only to the water column or water surface, but would permit transfers of the beds," Professor Power says.

North Carolina's approach to the interests has shifted from granting private rights in the submerged lands during the 1800s to severely restricting them in the *Credle* case. It was more than 100 years ago that the North Carolina legislature adopted a plan to give private grants in bottom lands to fishermen through a registration system for leasing for the cultivation of shellfish.<sup>8</sup> It was 102 years ago that the legislature expanded its involvement with oyster bed grants in an effort to take the oyster market over from Maryland and Virginia, where declining water quality was polluting the oysters with raw sewage and making them unsafe to eat.<sup>9</sup> The justification, as the state Supreme Court quoted from a 1896 Board of Agriculture report, ran like this:

It happens that there remains one treasure-house not yet plundered, one great water granary whose doors are not yet thrown wide open. North Carolina, overlooked and despised in the Eldorado of the Chesapeake, now, when the glories of the latter are fading, is found to possess what, with prudence, patience, legislative wisdom and local self-control, may be converted into a field quite as prolific as the once teeming oyster waters of Maryland and Virginia.<sup>10</sup>

*Credle* argued to the court that the public trust doctrine could peacefully coexist with his private husbandry efforts. Oysters "do not need pens to keep them contained. It is feasible to raise oysters and at the same time to keep the waters above the bottom open to the public for fin fishing, navigation and other customary uses," said his lawyer, George Thomas Davis Jr. of Swan Quarter.<sup>11</sup>

Conversely, the Conservation Council of North Carolina, an environmental advocacy group, contended, "An exclusive fishery in many ways restricts all of the other uses of the waters. Our coastal waters are one of the great resources of North Carolina, and are held by all of us for the use of all of us. No one person should be permitted to impose on the common right of free enjoyment of our public trust."<sup>12</sup>

For Professor Power, a mix of private and public controls is the environmentally and economically sound way to protect the sounds and bays. Of the Chesapeake Bay oyster industry, he wrote: "The laws which in effect mandate public

oyster grounds created the basic economic problem—exploitation.”<sup>13</sup> He suggested then and continues to advocate limits on entry to some oyster lands and setting aside “some portions of the oyster bottom as a public ground to serve as a functioning oyster museum.”<sup>14</sup>

The North Carolina decision does not address potential exploitation of the submerged lands by watermen. The issue was not raised in the *Credle* case. But Assistant Attorney General J. Allen Jernigan says that the State Marine Fisheries Commission regulates the harvest of oysters and other shellfish in a way that protects future harvests and, therefore, reduces the risk of exploitation by the watermen.

Using Professor Power’s economic analysis, the North Carolina approach is a policy decision to regulate rather than let private interests conserve their own vested interests in shellfish beds. “The thing that rankles you about private use is that you’re devoting a public asset to a private person for his personal gain,” Justice Martin says.

And, according to the state’s highest court, the state has no choice as to what its policy shall be. “History and the law bestow the title of these submerged lands and their oysters upon the State to hold in trust for the people so that all may enjoy their beauty and bounty,” the court wrote.<sup>15</sup>

That admonition seems to satisfy Section 5, Article XIV of the North Carolina Constitution, at least in terms of policy. That section provides, in part:

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

The *Credle* decision, as Runkle notes, may be the key to making that policy work. “The next time there’s a case coming along involving public lands, this decision will be there for the court to rely upon,” notes Runkle.

Such a case could come along as early as 1991. The state is working against a Dec. 31, 1990 deadline, imposed earlier by the legislature,

to sort through thousands of claims of bottom land ownership to determine which ones are valid.<sup>16</sup> Only those claims for lands granted during a 22-year period from 1887-1909 (when granting such rights was legal in North Carolina) will be recognized. The *Credle* claim was turned down because the plaintiff could not prove the state granted such a right during the period. If *Credle* had produced documentation of his claim, it likely would have been recognized as valid.

The state’s Marine Fisheries Division has as many as 10,000 claims it must process to determine which claims might meet certain criteria, including claims of grants during the 22-year window of opportunity, and be recognized as valid. But since the *Credle* decision, the prospects for the state affirming a *private* right to a *public* water appear to be headed for stormy weather. ☐☐

## FOOTNOTES

<sup>1</sup> *State ex rel Rohrer v. Credle*, 322 NC 522, 369 SE 2d 825 (1988).

<sup>2</sup> North Carolina has about 2.2 million acres of submerged lands in its estuaries, bays, and sounds.

<sup>3</sup> *Credle*, *supra*, 322 N.C. at page 532, 369 S.E. 2d at page 831.

<sup>4</sup> See *This Land Is Your Land*, Chapter III, a report by the N.C. Center for Public Policy Research, 1977, pp. 20-26.

<sup>5</sup> In *Matthews v. Bay Head Improvement Assoc.*, 95 NJ 306, 471 A2d 335, cert. denied, 469 US 821, 105 SCt 93, 83 LEd 2d 9 (1984), the New Jersey Supreme Court held that the public trust doctrine gives the public the right to cross private property to reach the beach.

<sup>6</sup> G.S. 113A-134.

<sup>7</sup> The North Carolina Attorney General’s office takes the position that the North Carolina law includes the right to cross private property and to include the dry sand beaches above high tide so that people on the beach at high tide would not have to leave but, instead, could remain on the beach between the dunes and the high tide mark. See Joint Brief for the Plaintiff-Appellants and Intervenor Plaintiff-Appellant in *Concerned Citizens of Brunswick County Taxpayers Association, et al v. State of North Carolina ex rel S. Thomas Rhodes v. Holden Beach Enterprises, Inc.*, No. 8813SC1075, now pending in the North Carolina Court of Appeals.

<sup>8</sup> Chapter 33 of the 1858-59 N.C. Session Laws.

<sup>9</sup> Chapter 119 of the 1887 N.C. Session Laws.

<sup>10</sup> *Credle*, *supra*, 322 NC at pages 527-28, 369 SE 2d at page 828. For a history of the way Maryland dealt and continues to deal with its oyster and environmental problems, see *Chesapeake Waters Pollution, Public Health, and Public Opinion, 1607-1972*, Capper, Power and Shivers, Tidewater Publishers, 1983.

<sup>11</sup> Defendant Appellant Brief at page 6.

<sup>12</sup> Friend of the Court brief by the Conservation Council of North Carolina, at page 3.

<sup>13</sup> “More About Oysters Than You Wanted To Know,” *Maryland Law Review*, Vol. XXX (1970), pp. 198 and 224.

<sup>14</sup> *Ibid.*, page 225.

<sup>15</sup> *Credle*, *supra*, 322 NC at page 534, 369 SE 2d at 832.

<sup>16</sup> G.S. 113-206(f).



## Efficiency Study Commissions: Is an Old Idea a Bad Idea?

By Tim Funk

*This regular Insight feature focuses on how the executive branch of state government goes about making public policy. In this article, Insight examines the appointment of efficiency study commissions—in North Carolina a recent practice of Republican Governors—as a means of identifying and eliminating wasteful spending.*

When prim, scholarly Woodrow Wilson stepped before Cornell University's Historical and Political Science Association in late 1886, he threw out what was then a young idea. Government should be studied, the college professor and future president told the group, to determine how it can do its job "with the utmost possible efficiency and the least possible cost either of money or of energy."<sup>1</sup>

Edwin Siegelman, one of the editors of the then-new *Political Science Quarterly*, thought so much of Wilson's address that he asked to publish it in his magazine. The resulting article, "The Study of Administration," is noted today for establishing the confines of American public administration.<sup>2</sup> Wilson eventually left academia for Democratic politics, taking his ideas about government to New Jersey's executive mansion and later to the White House.

Today, Wilson's "efficiency" banner is still being hoisted in the political arena—but mostly, it seems, by Republicans. President Reagan's Grace Commission recommended cost-cutting measures on the federal level. And, in North

Carolina, GOP Govs. James E. Holshouser and James G. Martin launched "efficiency study commissions" shortly after taking office in 1973 and 1985. Both Governors charged groups of North Carolina business executives with ferreting out waste and proposing ways to run government more like a business.

Do such efforts work? Academics have become skeptical of politicians' highly publicized attempts to make government more efficient by eliminating waste. But politicians still trumpet startling results: millions upon millions of tax dollars saved by the volunteer efforts of a part-time panel of sharp eyed businessmen, guided by a team of consultants.

In April 1988, Martin—like Wilson, an academic-turned-politician—summoned reporters to the state Administration Building to deliver a status report on implementation of his commission's recommendations. "It should be remembered that the commission's study had two goals," said Martin, whose high-minded words sometimes echoed Wilson's. "The first was to pinpoint changes that could be made to save time and money. But the second goal was to infuse an overall attitude of efficiency into state government operations. It has done that, and this is one of the many reasons behind its great success."<sup>3</sup>

Of the 414 recommendations, state agencies agreed to implement 301, Martin said, although

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some of these would need legislative approval. Four others were to be given "further study." Some of the ideas implemented were small and amounted to little more than common sense; the Lieutenant Governor's office agreed to buy a \$900 "envelope imprinter" so a clerk didn't have to spend her time addressing the envelopes manually. Others were structural and ambitious, although in at least one case the Martin administration claimed credit for a major structural change that did not take place. The 1988 status report claims a savings of \$20.6 million for "reorganizing the office of chief engineer." Jim Sughrue, the department's assistant secretary for external affairs, says the chief engineer's office has not been reorganized. Sughrue says efficiency-related changes such as using private contractors to mow grass along highways and paying entry-level workers an hourly wage with limited benefits account for the \$20.6 million in savings. "We've instituted some of the spirit of the recommendations," says Sughrue. "I don't think it was the direct result of their recommendations."

And some of the recommendations were more like hidden tax increases than efficiency measures. The Revenue Department, which had been charging merchants a one-time registration fee of \$5, boosted the fee to \$20 to "cover related processing costs." The change was to bring in \$465,000.

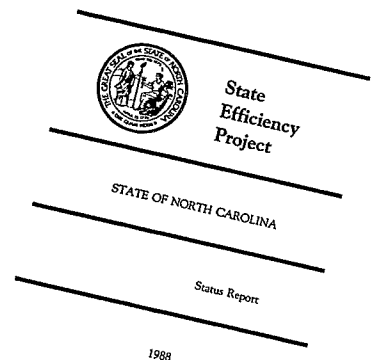
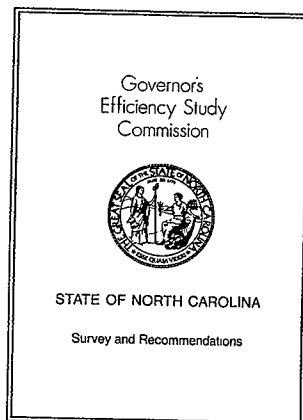
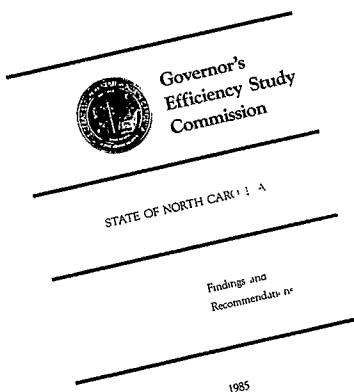
In his news conference, the Governor said implementing the 301 recommendations would save the taxpayers more than \$127 million a year. He also said there would be an additional one-

time savings of \$22 million—most of it from the sale of surplus property (See Table 1). This bonanza of savings came at minimal cost to the state, Martin administration officials said. Businesses donated the time of 73 loaned executives, and cash contributions covered the roughly \$500,000 in consultant fees and publication expenses. The only direct cost to the state was the time of State Budget Office employees who provided administrative support and other state employees who were interviewed during the course of the study.

Nobody has come forward to challenge Martin's figures. But according to prevailing opinion among political scientists and public administration professors, claims of saving significant sums of money through efficiency studies are questionable. "In sharp contrast to this optimistic political rhetoric, reorganization for economy and efficiency has been largely discredited in the contemporary academic literature," writes James Conant, an assistant professor in public administration at New York University, in a 1986 article, "Reorganization and the Bottom Line."<sup>4</sup> Indeed, Conant adds, "modern political scientists tend to think of reorganization as a political rather than an administrative tool."<sup>5</sup>

Efficiency commissions often advise reorganizing and consolidating government operations to save money. Martin's commission, like the Holshouser commission before it, was no different in this regard. But Les Garner, president of North Carolina Wesleyan College and a former business professor at the University of North

—continued on page 46



**Table 1. Administration Estimate of Financial Impact of Implemented Changes Recommended by Martin Efficiency Study Commission, by Department\***

Department/Agency	Savings Estimated in Study Commission Report		Actual or Estimated Savings Through Implemented Recommendations	
	Annual	One-Time	Annual	One-Time
** Administration	\$ 21,114,000	\$ 1,684,000	\$18,522,598	\$ -228,500
Agriculture	2,705,000	46,000	684,000	-450,000
** Commerce	2,214,000	-273,000	2,165,634	-740,000
Community Colleges	11,701,000	8,900,000	196,942	-77,000
** Correction	11,676,000	-16,317,000	3,918,132	-5,084,400
** Crime Control and Public Safety	1,154,000	-10,000	527,946	-12,000
** Cultural Resources	6,462,000	-1,000	265,474	-31,000
Education	10,569,000	-500,000	8,982,778	—
Education-Controller	-32,000	400,000	150,000	200,000
** Governor's Office	240,000	—	40,000	—
** Human Resources	52,240,844	5,346,000	20,495,367	29,832,667
Insurance	3,135,000	-25,000	2,810,083	—
Justice	1,300,000	-2,350,000	2,125,000	-2,505,000
Lieutenant Governor's Office	—	-50,000	—	-4,327
** Natural Resources and Community Development	5,339,000	-383,000	951,864	159,927
** Office of State Budget and Management	124,000	—	124,000	—
** Revenue	4,570,000	885,000	4,702,871	-689,100
Secretary of State	84,000	-121,000	-1,303	-52,675
State Auditor	78,000	3,000	—	—
** State Personnel	690,000	—	222,000	—
State Treasurer	4,376,000	-80,000	104,000	-30,000
** Transportation	38,198,000	11,702,000	39,896,359	2,278,200
University of North Carolina	40,980,000	-8,162,000	20,425,000	—
<b>Total</b>	<b>\$218,917,844</b>	<b>\$ 694,000</b>	<b>\$127,281,781</b>	<b>\$22,246,938</b>

\* This chart shows the estimated impact of the study commission's recommendations vs. actual or estimated savings through recommendations that were implemented. The study commission report's annual and one-time savings were adjusted for the 1988 status report from which this chart was taken, based on updated data and assumptions. Negative figures denote a net cost in implementing recommendations for a department.

\*\* Denotes Cabinet-level agencies and other Executive Branch offices under control of the Governor.

Source: *State Efficiency Project, Status Report*, Office of the Governor, March 1988, p. 22.

## *A Sampling of Savings Claimed by the Governor's Efficiency Study Commission*

—**Secretary of State's Office:** Upgrade the Corporation Division's incoming telephone system. Many of the 200 to 400 callers a day got a busy signal or had to wait a long time. "This creates a negative image to the caller," says the Governor's Efficiency Study Commission. The answer: a call sequencer. Cost: \$2,150. Annual savings: \$1,097. *Status:* in process of being implemented.

—**Insurance Department:** Issue insurance agent license renewals quarterly instead of annually. State to realize \$100,000 annually through interest income and savings from elimination of temporary staff expenses. *Status:* implemented.

—**Administration Department:** Decrease amount paid to state employees for using personal cars on state business, from 25 cents a mile to 20.5 cents a mile. State to save \$1.4 million a year. *Status:* rejected by the General Assembly.

—**Transportation Department:** Use contract housekeeping services at departmental facilities. DOT's General Services Section had been providing in-house cleaning services at the department's 162 buildings. Savings: \$225,000 a year. *Status:* implemented for most buildings.

—**Correction Department:** Raise the per diem paid by work release inmates. These per diems reimburse the state for inmate food and lodging during their participation in the work release program. Per diem was \$6. Commission recommended increase to \$10, picking up \$429,000 a year. *Status:* legislature increased per diem to \$8.

—**Commerce Department:** Sell two department helicopters. That would leave the department with one — all it needs, according to the commission. One-time savings to the state: \$87,000. *Status:* one helicopter transferred to Department of Crime Control and Public Safety; the other sold for \$100,000.

—**Department of Natural Resources and Community Development:** Reorganize department to focus on natural resources, not community development. No savings projected. The 1973 Holshouser study commission recommended that an Office of Community Development be added to what was then the Department of Natural and Economic Resources. *Status:* legislature passed bill creating new Department of Environment, Health, and Natural Resources with part of community development function going to Department of Commerce.

—**NRCD:** Permit credit card use in the North Carolina Zoological Park gift shops. State would gain \$20,000 a year through increased sales. *Status:* implemented.

—**Department of Human Resources:** Sell "several valuable tracts of land" near Cary. One-time gain of \$22.6 million. *Status:* proposal on hold due in part to rising land values.

—**University of North Carolina System:** Increase tuition and fees for out-of-state students. State gains \$13.2 million. *Status:* implemented.

Source: *Governor's Efficiency Study Commission, Findings and Recommendations*, September, 1985. Status of recommendations provided by James Newman, Office of State Budget and Management.

—continued from page 43

Carolina at Chapel Hill, concludes in a 1987 article that reorganization also can make government *less* efficient. He cites Florida's efforts in the mid-1970s to streamline its human services delivery system as an example. "Reorganization spawned confusion about program goals and work responsibilities," writes Garner, who served on a 1986 review team assembled by the Florida Governor's Constituency for Children. "It also sparked political brushfires, the resolution of which kept managers from getting back to those basic issues of responsibility and accountability."<sup>6</sup>

Conant argues that while efficiency studies may identify areas of potential savings, these dollars are generally applied toward other purposes rather than returned to the taxpayers.

So whom is one to believe about the latest North Carolina efficiency effort? Martin, who says his commission's ideas saved the state millions? Or the academics, whose articles suggest that such efforts are largely political?

Conant attempted an evaluation of an effort similar to Martin's in his article. Conant sought to calculate the real impact of New Jersey Gov. Thomas Kean's 1982 efficiency study—dubbed the Governor's Management Improvement Program. Kean, like Martin a Republican, claimed that implementation of his recommendations—produced by a corps of business executives—saved New Jersey \$102 million.

Conant sorted through conflicting claims of the Republican administration and the Democratic legislature and found both lacking. The Kean administration based its \$102 million figure on what it labeled "cost avoidance." The administration took a four-year average of department-by-department increases in the state budget to arrive at a projected need for fiscal year 1984. The actual 1984 appropriations then were subtracted from the projected need figures and the total difference was touted as the "cost" avoided by Kean's efficiency panel. Democratic lawmakers used a bottom-line argument; the overall actual budget increased by 5.9 percent in fiscal year 1984; therefore, Kean's commission produced no savings. Conant undertook what he considered to be a more objective review than either the Republican Kean administration or the Democratic legislature. He conducted exhaustive interviews to compile a series of "departmental inventories"—lists of actual savings in five of 20 departments, savings that could be documented.

Assuming the savings in the five departments were representative of savings throughout state government, Conant postulated that the New Jersey plan did produce some real savings—about half the amount claimed by the Governor. But he also found that these savings did not produce a net reduction in the bottom line because the money saved was used elsewhere in government. "The most important finding of this analysis is that no matter what the size of the savings increment . . . the bottom line will probably go up, not down," he writes. "New programs will be added, costs will increase, and the savings achieved through reorganization will be used to meet unfunded costs or be reinvested in higher priority areas. If government officials want to reverse this trend, if they really want to reduce the bottom line, they must resort to curtailment of public services and programs. Administrative reorganization will not provide the means to get a net reduction in the bottom line."<sup>7</sup>

What Conant said about New Jersey may hold for North Carolina. Martin's commission produced just over \$127 million in recurring, annual savings, or a little more than 1 percent of the overall state budget. This amount, cited by Martin at his 1988 news conference, represents money the Governor says otherwise would have been spent. But an inspection of Martin's own proposed budget for 1989-1990 shows that, if approved by the legislature, appropriations and the number of state employees would go up, not down. The Governor even proposed a 1-cent increase in the state sales tax to raise more money to spend.

Not counting money created from such a tax increase, appropriations would increase by 6.28 percent—from \$10.53 billion to \$11.06 billion—in 1989-1990. (The 1988 inflation rate, based on the Consumer Price Index, was 4.4 percent.) The number of teachers and state employees, meanwhile, would grow by 2.4 percent, from 202,717 to 207,633.<sup>8</sup> Martin's 1987-1988 budget also showed a modest increase over the preceding year. So it would appear that Martin took savings derived from implementation of his study commission's recommendations and plowed them back into other areas of government. Although many of the recommendations seemed solidly rooted in real savings (about a quarter of the 301 suggestions, for example, involved personnel reductions), the overall bottom line, as in New Jersey, was destined to go up, not down.

Neither Martin's original 1985 report nor a





John C. Brooks  
Commissioner

Department of Labor  
State of North Carolina  
214 West Jones Street  
Raleigh 27603

February 13, 1985

The Honorable James G. Martin  
Governor  
State Capitol  
Raleigh, North Carolina 27611

Re: Governor's Efficiency Study Commission

Dear Governor Martin:

It was a pleasure to meet with Tom I. Storrs and representatives from Warren King and Associates, Inc. from Chicago yesterday afternoon concerning the establishment of a Governor's Efficiency Study Commission in North Carolina. As a member of the Governor's Management Council which is charged with coordinating the various efficiency studies in North Carolina, I look forward to participating in this new study and in the Council's having an opportunity to learn more of the details of the plans for this study in the near future.

Since the last study made in 1973 by Warren King and Associates, Inc., left so much to be desired, I would strongly recommend that their work-product this time be submitted to the Governor's Management Council for review and approval prior to publication. This would give the managers in government who possess the real expertise about efficiency in government operations an opportunity to review and correct the tremendous oversimplification of projected savings set forth in the Warren King Associates-type study such as was exhibited in the 1973 work-product for North Carolina.

It may be that the new study might well be directed more helpfully toward reviewing the state budget-making process and personnel classification system rather than duplicating what was done in 1973. Working out the inefficiencies reflected in an inadequate budget system and a disorganized personnel classification "system" holds out tremendous opportunity to achieve real savings for the taxpayers of North Carolina. Such a focus could, indeed, provide something of value to the future management of state government.

Sincerely yours,

*John C. Brooks*  
John C. Brooks

JCB/dm



John C. Brooks  
Commissioner

Department of Labor  
State of North Carolina  
214 West Jones Street  
Raleigh 27603

May 22, 1985

Mr. William S. Fisher  
Team Leader  
Governor's Efficiency Study Commission  
Caswell Building, Room 110  
200 West Jones Street  
Raleigh, North Carolina 27611

Dear Mr. Fisher:

Thank you for your letter of May 21, 1985, which you hand-delivered to me on the occasion of your visit together today. I was glad that we again had an opportunity to review the work of the Governor's Efficiency Study Commission. In our conversation you indicated that there was insufficient time for the commission to refine its goals, purposes, agenda items, procedures, and processes in response to my requests for a better definition of what the commission wanted to pursue and what information from the North Carolina Department of Labor would be of value in carrying out the commission's work.

Unfortunately, the staff of the North Carolina Department of Labor is already greatly overextended as a result of having insufficient positions and budget with which to fulfill its statutory responsibilities to accommodate a request for purposeless interviews with more than a dozen staff members this week as is proposed in your letter of May 21st. Moreover, since I am charged with setting the agenda for the staff of the Department of Labor for the next three and a half years, I do not propose to follow an agenda-setting process in which I am not a partner.

Fortunately, however, the North Carolina Department of Labor, unlike any other agency in North Carolina's state government, has an outstanding "Inquiry Advisory Board" composed of persons in industry who have special familiarity with the activities of the department who serve on a standing board to review the administration of the department and to recommend ways in which improvements might be made. Nine other advisory boards in the North Carolina Department of Labor similarly aid in these efforts. Boards like the "OSHA Advisory Board" include members from industry and meet at least quarterly and apply their expertise to designated areas of the department's responsibilities.

So while the Governor may envision a need for a special commission to review those government activities under his jurisdiction once during his administration, the commissioner of labor has established a permanent board to do the very same thing with regard to the North Carolina Department of Labor.

I am glad to have talked extensively with several members of your staff and you and other commission members about the work of the North Carolina Department of Labor. Be assured that I stand ready to continue to talk with additional commission members and staff when requested to do so.

Sincerely yours,

John C. Brooks

March 1988 status report on implementation of the commission's recommendations indicates by what budget year all of the claimed savings will have occurred. A department-by-department comparison of savings claimed through the commission's work and Martin's 1989-1990 budget proposal shows Martin requested more money for almost every department. Martin had claimed efficiency-related savings in 15 of 20 departments and offices listed as separate entries in the summary volume of his proposed budget. These savings ranged from a high of \$50.4 million in the Department of Human Resources to a low of \$40,000 in the Governor's Office. Only in Correction, Justice, and the offices of Lieutenant Governor and Secretary of State did the commission recommend spending more than the savings Martin claimed through the efficiency measures. But in Martin's 1989-1990 budget proposal, he recommended *increased* appropriations for 16 of these 20 departments and offices. (See Table 2.) Martin administration officials caution these increases represent more than just expansion. They say inflation and federally mandated increases in state spending for various programs also contributed.

The Martin administration did not claim a savings for the one study commission recommen-

dation implemented by the State Auditor's Office. In addition, the commission maintained Democratic Labor Commissioner John Brooks would not cooperate in the study.<sup>9</sup> Brooks says he did offer to cooperate and in fact met with members and staff of the commission four times, but the Labor Department was not evaluated. In a Feb. 13, 1985, letter to Governor Martin on the study, Brooks blasted the "tremendous oversimplification of projected savings" claimed in the 1973 Holshouser efficiency study commission report and outlined what he thought might make for a more fruitful study. The same consulting firm, Warren King and Associates, directed both studies. Three months later, Brooks fired off another letter to William Fisher, a study commission member, in which Brooks balked at making Labor Department employees available for interviews and complained he was "not a partner" in the commission's agenda-setting process.

On the whole, however, the commission got the cooperation of Council of State agencies headed by Democratic elected officials and thus beyond the direct control of the Governor. And with one or two exceptions, these agencies were as likely to implement the recommendations as were agencies headed by Martin appointees. (See Table 3.) But Martin did not follow up on this

**Table 2. Efficiency Commission's Estimated Savings, Compared to  
1989-1990 Martin Budget Proposal**

Department/Agency	Total Savings Claimed	Proposed Martin Budget Increase/Decrease
* Administration	\$18,294,098	\$ 2,613,099 (+05.90%)
Agriculture	234,000	-382,481 (-00.98)
* Commerce	1,425,634	7,984,362 (+14.40)
Community Colleges	119,942	1,204,738 (+00.37)
* Correction	** -1,166,268	104,836,593 (+33.79)
* Crime Control and Public Safety	515,946	485,114 (+01.96)
* Cultural Resources	234,474	378,068 (+01.01)
Education	8,982,778	127,661,156 (+05.30)
Education-Controller	350,000	***
* Governor's Office	40,000	-27,209,863 (-77.00)
* Human Resources	50,328,034	94,719,354 (+09.90)
Insurance	2,810,083	67,118 (+00.50)
Justice	-380,000	467,860 (+01.04)
Lieutenant Governor's Office	-4,327	-57,711 (-09.30)
* Natural Resources and Community Development	791,937	7,328,584 (+09.84)
* Office of State Budget and Management	124,000	****
* Revenue	4,013,771	817,541 (+01.72)
Secretary of State	-53,978	198,406 (+06.30)
State Auditor	0	13,765 (+00.30)
* State Personnel	222,000	****
State Treasurer	74,000	-3,655 (-00.09)
* Transportation	42,147,595	35,394,277 (+03.87)
University of North Carolina	20,425,000	22,801,169 (+02.20)

\* Denotes cabinet-level agencies and other executive branch offices under control of the Governor.

\*\* Minus signs indicate commission recommended net spending increase.

\*\*\* This office is included in Martin's overall budget proposal for education.

\*\*\*\* These offices are included in Martin's overall budget proposal for the governor's office.

Sources: *North Carolina State Budget: Summary of Recommendations*, Gov. James G. Martin, January 1989, pp. 26-62, and *State Efficiency Project: Status Report*, Office of the Governor, March 1988, p. 22.

apparent across-the-board success in implementing the recommendations by pruning back agency budget requests. As noted above, he asked for *more* money for most departments and agencies, not less.

The closest correlation between savings identified by the commission and proposed spending came in the Department of Agriculture. The department agreed to changes that would save

\$234,000. Martin, in his budget proposal, recommended that Agriculture's budget be slashed by \$382,481 in 1989-1990. More typical was the Department of Human Resources. The efficiency commission identified savings of about \$50 million, but the department's 1989-1990 budget went up by about that much in Martin's recommendation to the legislature.

Still, no one would deny the merit of putting

**Table 3. Status of Recommendations from Efficiency Study Commission, by Department**

Department	Total Number of Recommendations	Total Number of Recommendations Accepted	Percent Accepted
* Administration	43	37	86 %
Agriculture	14	5	36
* Commerce	11	10	91
Community Colleges	24	18	75
* Correction	31	23	74
* Crime Control and Public Safety	17	13	76
* Cultural Resources	18	12	67
Education	8	6	75
Education-Controller	4	2	50
* Governor's Office	5	4	80
* Human Resources	58	41	71
Insurance	11	7	64
Justice	3	3	100
Lieutenant Governor's Office	3	3	100
* Natural Resources and Community Development	32	21	66
* Office of State Budget and Management	8	7	87
* Revenue	39	30	77
Secretary of State	6	6	100
State Auditor	4	1	25
* State Personnel	6	6	100
State Treasurer	6	4	67
* Transportation	53	33	62
University of North Carolina	10	9	90
<b>Total</b>	<b>414</b>	<b>301</b>	<b>73 %**</b>

\* Denotes cabinet-level agencies and other Executive Branch offices under control of the Governor.

\*\* Mean of percentage of recommendations accepted by departments.

Source: *State Efficiency Project: Status Report*, March, 1988, p. 21

wasteful spending to more productive use. And Administrative Deputy Attorney General John Simmons says the commission's endorsement may have helped the Justice Department win appropriations for efficiency-related changes the department already had intended to make. "They didn't suggest anything new," says Simmons. "Essentially, they agreed with our proposals for

changes."

But what about the 109 recommendations rejected as "not feasible" by state agencies? Some of the most publicized called for privatization of public entities. Proposals to turn traditional government functions over to the private sector have been on the upswing in recent years. The Martin administration's unsuccessful bid to initiate pri-

vate prisons is one example. A more recent example is a study recommending that the state sell its ports and railroads to private entities.<sup>10</sup> Such proposals produced a substantial pool of projected savings in the Martin efficiency commission report but also provoked an outcry from groups more interested in keeping public entities public than in saving the state money.<sup>11</sup> The arts community, for example, panned proposals to convert the state's art museum and symphony into private facilities, proposals that would have accounted for more than \$6 million in annual savings. A *Raleigh Times* editorial said the idea should be "laughed to oblivion," hardly the reception one seeks for a serious proposal to save money.<sup>12</sup> Even Secretary of Cultural Resources Patric Dorsey, a Martin appointee, joined the chorus of criticism. Today, the museum and symphony remain public entities.

Transportation Secretary Jim Harrington, another Martin appointee, ruled out another recommendation—which would have saved \$662,000—to end the free ferry service between Currituck County and Knotts Island. Such a move could sink the Governor's political standing in the coastal county, Harrington decided.

Proposals such as privatization of the museum and symphony and dry docking the free ferry ran into trouble in part because the commission drifted from issues of efficiency and into areas of policy. Clearly, the most efficient art museum is no public art museum at all. And providing a ferry for a rural coastal county likely would not meet the efficiency standards of business, where unprofitable services are eliminated. But, as the *Winston-Salem Journal* pointed out in an October 1985 editorial, "Whether or not North Carolina shall, for all its citizens, support an art museum and a symphony orchestra is a policy matter. The issue, it should be added, was settled in the affirmative years ago."<sup>13</sup> Government, after all, is not about efficiency in the business sense of the word. Government must concern itself with fairness, openness, and equitable or need-based distribution of services—all of which can hurt efficiency.

Then there was resistance by those most affected by the proposed changes—the bureaucrats. "It was no more than I expected," says Robert Brinson, chief of management in the State Budget Office and one of those who monitored implementation of the efficiency measures. "But anytime a consulting group goes into an agency—public or private—it's really taking a strike

against the way some people have been doing things. You naturally expect them to resist somewhat."

Take the efficiency recommendations that begin with those two words most dreaded by bureaucrats—"eliminate" and "transfer." Of the 25 proposals calling on agencies to "eliminate" something, almost half of them—12—were rejected as "not feasible." Nine of the 14 recommendations that called for transferring a division, office, or function were rejected. This compares to the overall 73 percent implementation rate claimed by the Martin administration.

Agriculture Secretary Jim Graham, a Democratic politician of the old school who favors Stetsons and cigars, rejected all but five of the 14 recommendations made about his department. He said no, for example, to a proposal to reorganize the department. The commission said the current setup "results in fragmented lines of authority and poor communications." Graham had heard such stuff before. He got the same recommendation to reorganize 12 years before—from Holshouser's efficiency study commission. ☐

## FOOTNOTES

<sup>1</sup>Woodrow Wilson, "The Study of Administration," *The Papers of Woodrow Wilson*, Vol. 5, p. 359. Appeared first in *Political Science Quarterly*, July 1887.

<sup>2</sup>The details of the Siegelman connection and how the speech became an article are explained in *The Papers of Woodrow Wilson*, Vol. 5, p. 358.

<sup>3</sup>Remarks prepared for Gov. James G. Martin, "Efficiency Study Status Report," delivered at April 29, 1988 news conference, p. 3.

<sup>4</sup>James Conant, "Reorganization and the Bottom Line," *Public Administration Review*, January/February 1986, p. 48.

<sup>5</sup>*Ibid.*

<sup>6</sup>Les Garner, "Managing Change Through Organization Structure," *State Government*, July/August, 1987, p. 194.

<sup>7</sup>Conant, p. 55.

<sup>8</sup>See Gov. James G. Martin's "Summary of Recommendations for the N.C. State Budget, 1989-1991," pages 14, 15, and 104.

<sup>9</sup>The Associated Press, "Panel Says Study Thwarted by Brooks," published in *The News and Observer* of Raleigh, p. 3C, Oct. 30, 1985.

<sup>10</sup>Philip E. Fixler Jr., "The Privatization of North Carolina's Ports and Railroads: A Bold Step for North Carolina's Future," *The Reason Foundation*, Santa Monica, Calif., Local Government Center Policy Study No. 103, April 1989, revised edition published in June 1989.

<sup>11</sup>For more on the issue of privatization of previously public functions, see Bill Finger, "Privatization," *North Carolina Insight*, Vol. 8, No. 2, November 1985, pp. 5-11.

<sup>12</sup>"Laugh It to Oblivion," *The Raleigh Times*, Oct. 14, 1985, p. 4A.

<sup>13</sup>"Policy Questions," the *Winston-Salem Journal*, Oct. 6, 1985, p. 12A.



## *Lawyers, Retirees, and Real Estate Practitioners Expand Ranks in Legislature*

Lawyers are making slow but steady gains in the N.C. General Assembly in the 1980s after a rapid decline from 1971-1981, the N.C. Center for Public Policy Research says in the 1989-90 edition of its guide to the N.C. General Assembly. The trend is one of several dramatic demographic differences in the legislature, say Center Researcher/Writers Lori Ann Harris and Marianne M. Kersey.

"From 1971 to 1981, the number of lawyers dropped from 68 to 36, but in the ensuing sessions, their numbers have risen steadily to 45 this session," says Harris, a co-author of the new guide. Harris also notes gains among retirees, women, blacks, Republicans, and real estate practitioners in the legislature.

This information about legislative demographics and trends in legislators' occupations can be found in the Center's latest publication, entitled *Article II: A Guide to the 1989-90 N.C. Legislature*. The book, which is the largest and most complete such guide ever published, contains pictures, biographical information, committee assignments, and voting records on all 170 members of the state House and Senate.

One reason for the decline in the number of lawyers serving in the legislature from 1971-81 is that it takes too much time away from their law practices, they say. Rep. Alex Hall (D-New Hanover) agrees: "The combination of campaigning and the time away from Wilmington has killed my law practice. I was in a group practice, now I'm practicing on my own. It's especially difficult for a lawyer who must spend time generating his or her own income." In the past four sessions, lawyers have gradually been rebuilding their numbers, though they are still far fewer than the

68 lawyers who served in 1971.

Accompanying this trend in the number of lawyers has been a decrease in the number of legislators in business and sales, as well as in farming. In 1971, there were 63 legislators who listed business and sales as their occupation. Now there are 52 legislators in that field.

The number of farmers has decreased from 21 in 1971 to 13 in 1989. "The decrease in the number of farmers is not surprising," says Harris, "because of the recent and rapid urbanization of the state's population and because the length of the legislative sessions now extends into the summer months."

The legislature has become a haven for retirees. The number of legislators who consider themselves retired now stands at 28, compared to 11 in 1971. "The average age of our state legislators this session is 54," reports Harris.

The number of legislators in real estate also has increased over the years. In 1971, seven legislators listed their occupation as real estate. Today there are 23, more than three times as many as in 1971, but fewer than in 1985 when 28 legislators listed real estate as their occupation. "Many of the legislators who listed real estate as their occupation are also employed in other occupations such as insurance, law, and business," adds Kersey, who co-authored the book with Harris.

"Three main factors account for these changes in legislative occupations," says Harris. "They are annual sessions, the length of sessions, and the increased cost of campaigns." Adds Kersey, "Being retired or having a flexible work schedule makes it easier to serve as a legislator."

In 1971, the number of legislative working days was 141. That was the last year the General

## Trends in Legislative Demographics

Number in General Assembly		
Category	1971	1989
Women	2	25
Blacks	2	17
Republicans	31	59

## Trends in Legislators' Occupations

Number in General Assembly		
Category	1971	1989
A. <i>Decreasing</i>		
Lawyers	68	45
Business and sales	66	52
Farming	21	13
B. <i>Increasing</i>		
Retirees	11	28
Real Estate	7	23

*Source: N.C. Center for Public Policy Research*

Assembly met for only one long session in the odd years. Since 1973, the General Assembly has been meeting annually—a long session in odd years and a short session in even years. There were 162 total legislative working days during the 1987-88 session. "This is a major time commitment for our lawmakers, and if the length of sessions continues to increase, North Carolina may progress to a full-time legislature, at least in practice," notes Kersey. Adds Harris, "If this trend continues, we may see more and more retirees serving in the legislature because they have the flexibility to spend more time in Raleigh, especially for interim activities such as legislative study commissions." Representative Hall says, "I'd hate to see it [the legislature] go full-time."

As Harris noted, the cost of running for legislative office has skyrocketed in recent years. The average candidate running for the state House in 1988 raised \$14,912, while Senate candidates raised \$21,812. Just two election cycles ago, House candidates raised an average of \$6,396 and Senate candidates \$12,756. This is an increase of 133 percent in House campaign costs and a 71 percent increase in the cost of Senate campaigns.

The most dramatic change in legislative demographics this session is the increase in the number of Republicans. The Grand Old Party picked up 13 seats in November 1988, increasing its numbers in the legislature to a record 59 (35 percent). This was the largest gain for Republi-

cans in any legislature in the country, according to the National Conference of State Legislatures. It was also a major factor that led to the House revolt against former Speaker of the House Liston Ramsey and the election of Speaker Josephus Mavretic, both Democrats.

Legislative turnover rates have stabilized at low levels during the last two sessions. In 1971, the turnover ratio in both the Senate and House was 36 percent. The ratios fluctuated in ensuing years, with highs of 42 percent turnover in the Senate in 1975 and in the House in 1973. However, says Kersey, the turnover ratio for the 1989 General Assembly is down to 10 percent in the Senate and 21 percent in the House. This compares to a 12 percent turnover in the Senate and a 21 percent turnover in the House in 1987. "As the Center predicted two years ago, there is a trend in favor of incumbents in North Carolina," says Kersey. "We're also seeing this decline in legislative turnover rates nationally."

This is the seventh edition of the guide. The Center began publishing these directories during the 1977-78 General Assembly, in a handy pocket-sized format.

"We publish the guide to provide information to the voters of North Carolina about their elected representatives," says Harris. "It is the best of the legislative directories available because it is the only one which contains three measures of performance—votes on 16 selected bills in the past

session, a record of how many bills each legislator sponsored and got enacted, and past rankings of legislators' effectiveness if they have served in prior sessions," adds Harris.

The effectiveness rankings are the most controversial feature of the guide. At the end of each regular legislative session, the Center surveys the legislators themselves, registered lobbyists, and capital news correspondents and asks them to rank the effectiveness of individual legislators. The Center then publishes the scores. "This was an evaluation of legislators by their peers and by people who saw them working every day," explains Kersey. The rankings contained in this edition of *Article II* were originally released in April 1988. Rankings for the current General Assembly will be released in April 1990.

### Average Cost of Running for the N.C. Legislature

Year	House	Senate
1984	\$ 6,396	\$ 12,756
1986	11,671	20,654
1988	14,912	21,812

Source: The Charlotte Observer

Article II: A Guide to the 1989-90 N.C. Legislature is available for \$20.00, plus \$1.00 tax, plus \$1.50 postage and handling from the N.C. Center for Public Policy Research at P.O. Box 430, 5 W. Hargett Street, Suite 701, Raleigh, NC 27602 (919) 832-2839. It is a handy reference book for news reporters, lobbyists, and citizens interested in the legislature. ☐☐

# County Government in North Carolina

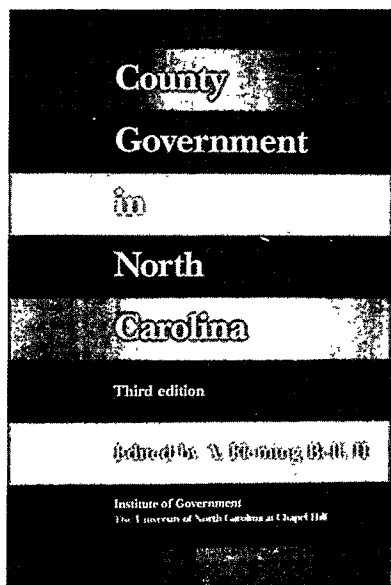
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## Letters to the Editor

Vol. 11, No. 2-3

Theme Issue on State Policy and the Poor

Congratulations on the poverty issue. It is a great treatment of a very complex subject. I am proud to have been associated with your effort even in a small way. Thanks again for your concern.

—William C. Crawford  
Director of Social Services  
Montgomery County  
Troy

Your double issue [on poverty in North Carolina] was quite timely, as well as informative and well-done.

In the area of state taxation and its impact on the poor, the North Carolina League of Women Voters published in June 1989 an extensive study of state taxation policy. *A Study of North Carolina Taxes and Their Impact On Taxpayers*, by Lucille Howard, is available from the League of Women Voters of North Carolina Education Fund, 215 North Dawson Street, Raleigh, N.C. 27603. The price is \$10 plus postage.

An Executive Summary in abbreviated form, entitled *North Carolina Taxes: Impact on Taxpayers*, also is available for \$5 from the League.

—Leah R. Karpen  
League of Women Voters of  
North Carolina  
Weaverville

Research Report

*Comparing the Performance of  
For-Profit and Not-For-Profit Hospitals  
in North Carolina*

Please accept my congratulations for your excellent report, *Comparing the Performance of For-Profit and Not-For-Profit Hospitals in North Carolina*. This is a well-done piece of research.

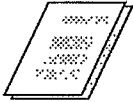
The report is excellent and I request that you send to me two additional copies so that I may share the report with my Board of Directors.

—S. Arnold Nunnery  
President  
Iredell Memorial Hospital  
Statesville

Thank you for sending a copy of your final product. It is very attractive. Already it has generated much-needed discussion at many levels in the state. Congratulations.

—James Bernstein  
Chief  
Health Resources  
Development Section  
Division of Facility Services  
N.C. Department of Human  
Resources  
Raleigh





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## North Carolina Milk Commission

April 4, 1989

Grady Cooper, Jr.  
Executive Secretary  
Noel B. Sinclair, Jr.  
Assistant Executive Secretary

### NOTICE OF SPECIAL MEETING

TO: COMMISSION MEMBERS AND INTERESTED PARTIES

The Milk Commission will hold a special meeting on Tuesday, April 11, 1989, at 9:00 a.m., by electronic means through the use of a telephone conference call, as provided for in G.S. 143-318.13.

This meeting is being called by the Commission for the purpose of considering a statement which the Commission would authorize Mr. Poisson to present in the federal order hearing for North and South Carolina which is scheduled to begin on April 17, 1989.

Any interested party, upon payment of a \$5.00 fee, may listen to this meeting in Room 4018, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Grady Cooper, Jr.  
Executive Secretary

cc: Mr. James T. Broyhill, Secretary  
Department of Commerce  
Mr. Ernest C. Pearson, Dept. of Commerce  
Mr. F. Stephen Glass, Poyner and Spruill  
Mr. W. C. Harris, Jr., Poyner and Spruill

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*Well, excuuuuuuuse us if we're less than mooved by the state Milk Commission's commitment to free and open government. C'mon guys, charging a fee for listening in on a public meeting? We always thought the farmers did the milking. Or is this just a case of skimming the cream? Whatever, we're udderly certain the commission could find a way to conduct its business without charge to farmers and other interested citizens.*

*Meanwhile, if you've got a beef with a memorable memorandum, don't be cowed. Just farm it out to Insight. Anonymity guaranteed, and that's no bull.*

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