

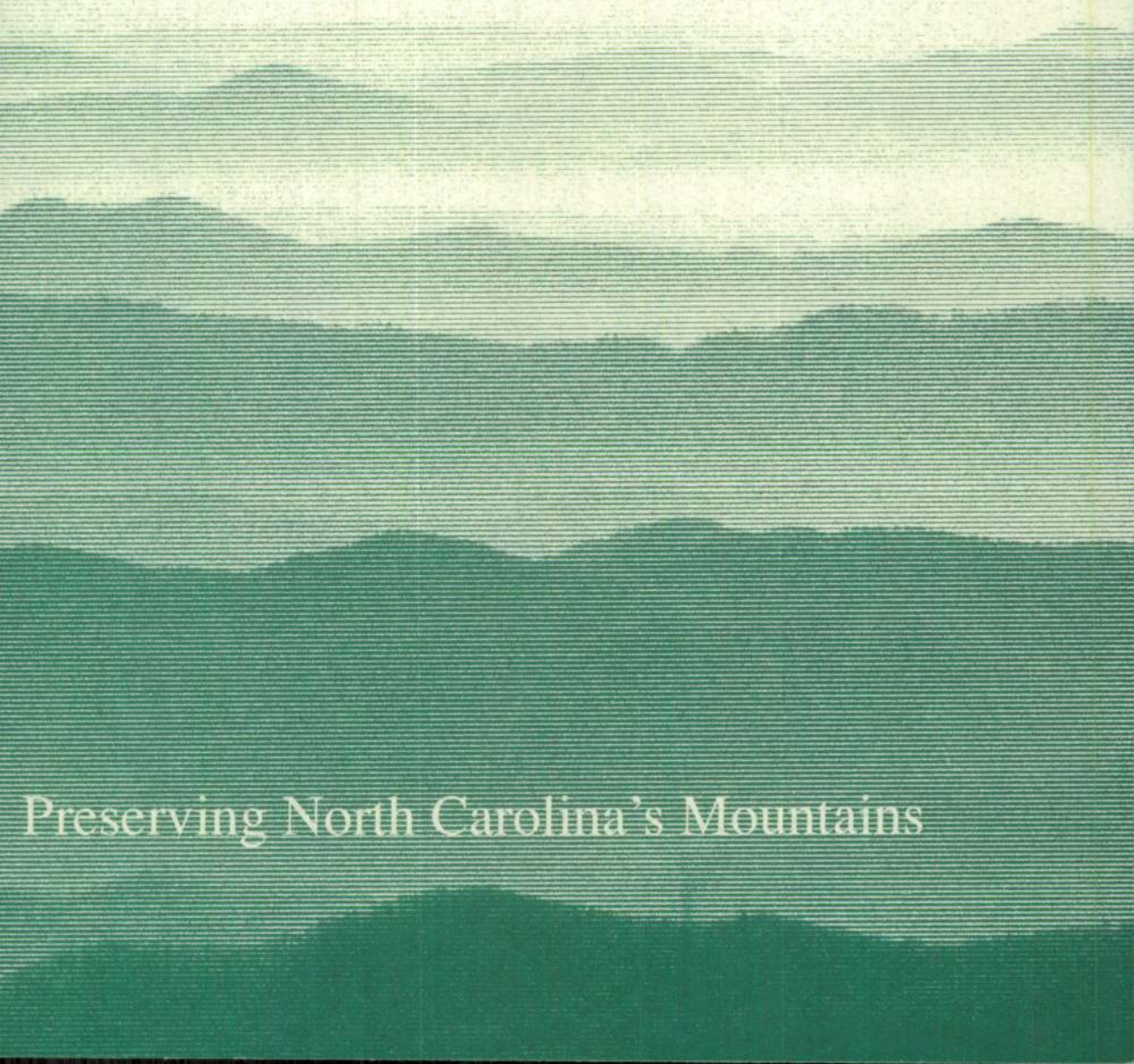
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Preserving North Carolina's Mountains



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A nonprofit, nonpartisan organization, the Center was formed in 1977 by a diverse group of private citizens "for the purpose of gathering, analyzing and disseminating information concerning North Carolina's institutions of government."

It is guided by a self-electing Board of Directors and has individual and corporate members across the state.

Center projects include the issuance of special reports on major policy questions; the publication of a quarterly magazine called *North Carolina Insight*; joint productions of public affairs television programs with the University of North Carolina Center for Public Television; and the regular participation of members of the staff and the Board in public affairs programs around the state. An attempt is made in the various projects undertaken by the Center to synthesize the integrity of scholarly research with the readability of good journalism. Each Center publication represents an effort to amplify conflicting ideas on the subject under study and to reach conclusions based on sound rationalization of these competing ideas. Whenever possible, Center publications advance recommendations for changes in governmental policies and practices that would seem, based on our research, to hold promise for the improvement of government service to the people of North Carolina.

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North Carolina Insight

Vol. 13, No. 1

December 1990

FEATURES



- 2 *Preserving the North Carolina Mountains: Time to Develop a Plan?* —Mike McLaughlin

- 7 *A Glossary of Selected Land-Use Planning Terms* —Mike McLaughlin and Dale McKeel

- 12 *How Foscoe-Grandfather and Valle Crucis Cope with Growth* —Mike McLaughlin

- 19 *This Mountain Farmer Favors Zoning* —Mike McLaughlin

- 27 *Land Use Planning: What Have Neighboring States Done?* —Dale McKeel

- 30 *Reapportionment and Redistricting: Redrawing the Political Landscape* —Paul T. O'Connor

- 43 *Landmark Dates and Events in Redistricting* —Paul T. O'Connor

- 45 *What Do Other States Do When It's Time to Redistrict?* —Paul T. O'Connor

- 47 *The Tools of Redistricting — From Crayons to Computers* —Paul T. O'Connor

- 50 *Leadership Development Programs in North Carolina: What Do They Do?* —Jack Betts



Editor
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Production
PUBLICATIONS
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DEPARTMENTS

- 64 *In The Executive Branch and In The Legislative Branch: Executive-Legislative Relations in North Carolina: Where We Are and Where We Are Headed* —Ran Coble

- 80 *Index to Volume 12 of North Carolina Insight*

- 83 *Memorable Memo*
-



Hugh Morton

Preserving the North Carolina Mountains: Time to Develop a Plan?

by Mike McLaughlin

Fifteen years have passed since the General Assembly last considered mandatory regional planning for the North Carolina mountains. Since then, a mountain top has been leveled for a high-rise condominium and mountain forests have given way to second-home subdivisions. Golf courses have been graded, billboards erected, and scenic vistas marred. And still the stream of newcomers flows, bringing new ideas but also altering the politics and the mountain culture. The Mountain Area Management Act—proposed in 1974 and again in 1975—died a quiet death in the 1975 General Assembly. The legislature, having exhausted itself in passing companion legislation to protect the North Carolina coast, was unwilling to tackle widespread opposition in the mountains.

A decade and a half later, research by the N.C. Center for Public Policy Research shows the mountain region trails the rest of the state in planning for and managing growth, despite a clear economic interest in protecting the beauty of the region for tourism. For example, fewer than one in three mountain counties has a subdivision ordinance, while 75 percent of the Piedmont and eastern counties have these ordinances. And only three of the 24 mountain counties (12 percent) have land-use plans to guide growth, compared to more than 50 percent of the counties across the rest of North Carolina. Center research also turned up less support for land-use planning in the mountains than in other regions of the state.

Georgia, Florida, and Virginia are among a number of states now mandating a measure of planning for growth at the local level. But what course should North Carolina take? The Center has identified four clear options. The state could: (1) require regional land-use planning for the mountains, as it has done for the coast; (2) mandate local land-use planning statewide; (3) avoid comprehensive strategies but attack specific environmental problems that would require some land-use controls; or (4) leave planning entirely up to local elected officials, who could adopt growth management strategies or leave it up to market forces to dictate how growth will occur. In this article, the Center lays out the pros and cons of each of these approaches as it addresses the question of the appropriate role of the state in local land-use planning.

S

hort of Murphy, Hayesville is about as far west as you can get and still be in North Carolina. Stoplights are still a novelty in this tiny town, the Clay County seat, population 600. One of the

town's more notable economic development coups came when County Manager Carl Moore coaxed a Hardee's fast food restaurant to locate on the bypass.

But Moore is fond of loading visitors taken with the town's slow pace into his dusty pickup truck for a preview of what he is certain is soon to come—the same sort of bustling development that is occurring just across the county line in north Georgia. There the grass has barely sprouted at a fancy stone hotel and marina on Lake Chatuge, and already the proprietors are adding on. Second homes march up the mountainsides while red clay erodes down them. The Georgia Mountain Fair, with its sprawling facilities and prefab music hall, waits like a ghost town for the thousands of visitors it attracts every summer.

The highway is being widened all the way to Atlanta, and Georgia is planning a state park resort by Brasstown Bald, complete with a lodge, campground, and golf course. "They're going to pump people into north Georgia," says Moore. The spillover, Moore is convinced, will wash across Hayesville and Clay County, which stand between the Georgians and the Great Smoky Mountains National Park. Like any leader of a small town facing big changes, Moore is by turns delighted and frightened.

"I see this area has the potential of becoming the next small Pinehurst," says Moore. Six different golf courses exist, are planned, or are under construction. "We have an abundance of trout and hiking trails. Our link to the outside world is that way," he says, flinging an arm in the direction of Atlanta. "It [the highway] puts 3.2 million people in ready access to us. Hell, this is sad, but we're going to be overrun with people."

Clay is one of the state's poorest counties. Growth will put money in people's pockets and boost the county's property tax base. But Moore fears that without proper planning, the county is

ill-prepared to manage the coming boom. "We have none," says Moore. "We have no land-use planning at this point."

Far across the mountains, in the northwest region of the state, the town of Blowing Rock confronts another kind of problem. Perched on the edge of the John's River Gorge, the town has long been a tourist mecca, boasting of the state's oldest travel attraction, Blowing Rock. There tourists plop down \$3 to gaze off into the vast emptiness of the gorge and wonder whether it really snows uphill, as the brochure claims.¹

The town has been a quaint oasis where summer residents rubbed shoulders with native mountaineers and Appalachian State University students looking for a cold beer. Now its popularity has

mushroomed. The sidewalks are jammed in summer with tourists lapping ice cream cones, examining high-dollar antiques and crafts, and nibbling Mackinac Island fudge.

Out on the bypass, near the entrance to the Blue Ridge Parkway, a strip shopping center of outlet stores beckons, promising "factory direct savings" in a resort setting. Another strip shopping center is

under construction across the highway. It will bring Blowing Rock its first chain grocery—a Food Lion. The bypass is becoming congested with chain motels and fast food eateries. The problem again is growth—and how to preserve what is good about Blowing Rock while keeping cash registers ringing. It's a problem every growing community must confront, but for a town depending on its aesthetic appeal to survive and thrive, the issue becomes more crucial.

But unlike Hayesville and Clay County, Blowing Rock has a full set of ordinances to manage growth. Zoning is restrictive and enforced, the town has a sign ordinance and a noise ordinance, and proposed new construction is reviewed for appearance and architectural appropriateness. "We want to maintain the charm of our little town," says Blowing Rock Town Council member J.B.

I make my living on Blue Ridge Lake. The water keeps giving whatever I take. Froglegs, minnows, and catfish steaks—I make my living on Blue Ridge Lake.

—MIKE CROSS

Mike McLaughlin is associate editor of North Carolina Insight. Center intern Dale McKeel did much of the research for this article.

Lawrence. "If we can keep it the way it is now for as long as we can, I think we can be proud of it. I think that's the main concern of our entire town council." Without these growth management tools in place, says Town Manager Chris May, the chances of preserving the character of Blowing Rock would be "next to none."

Old Customs and New Ideas

The stories of Clay County and Blowing Rock are microcosms for what is going on throughout the North Carolina mountains. There still are forgotten hollows, but towns and counties across the region are either poised to grow or struggling to manage growth that is almost beyond their control. Natives and newcomers are rubbing shoulders uneasily, eyeing each other suspiciously, and pitting old customs against new ideas.

And increasingly, the question is becoming not *whether* to manage growth but *how*. Local government officials across the region say this is a noteworthy change. "There seems to be a gradual but positive shift in Henderson County from the concept of 'each property owner may use his own

property for his own purposes' to that of 'one must balance individual land rights with development for the common good and concern for the environment,'" says Matt Matteson, Henderson County planner.

Leaders in the mountain region point to a number of examples that stand as monuments to poor planning, including the following:

- ▣ residential and commercial development that has gobbled up most of the land suitable for industrial development in some mountain counties, fostering dependency on the low-wage and seasonal tourist industry;

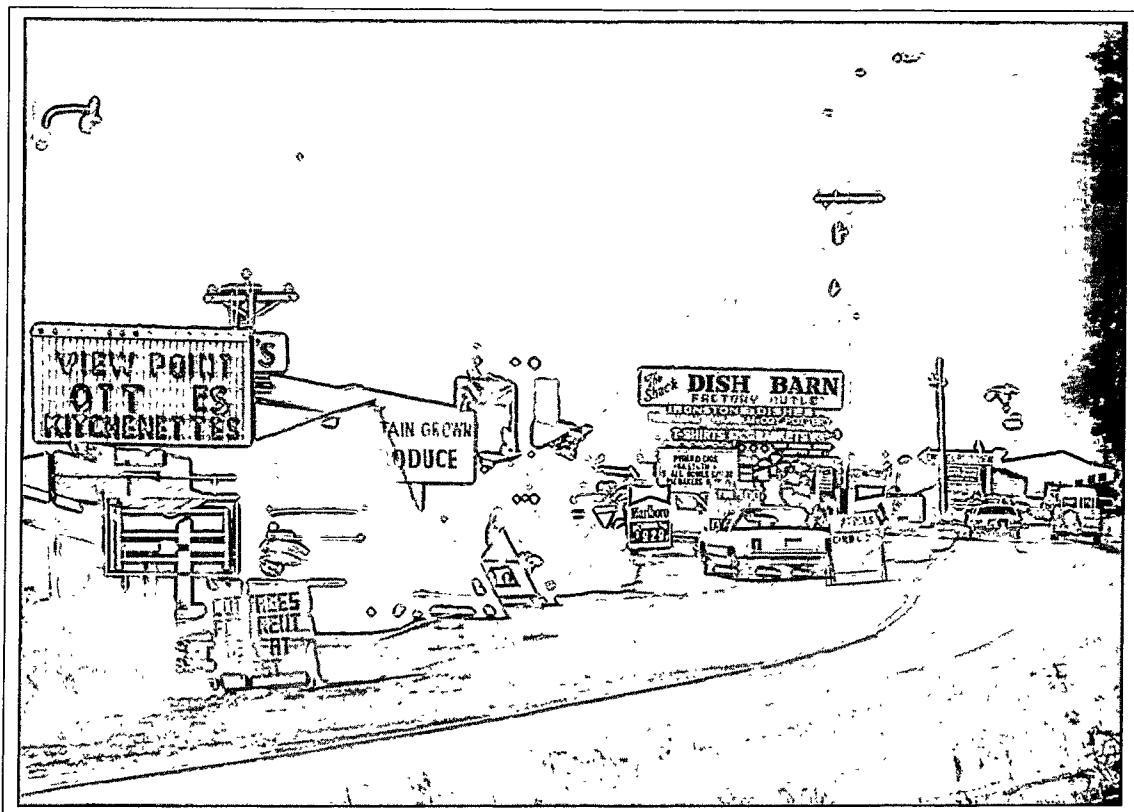
- ▣ unsightly commercial strip development along spectacularly scenic routes, a problem which likely will become worse as intrastate highways financed through the state's \$9 billion highway improvement package are built;

- ▣ a proliferation of billboards that blocks views and clutters the landscape;

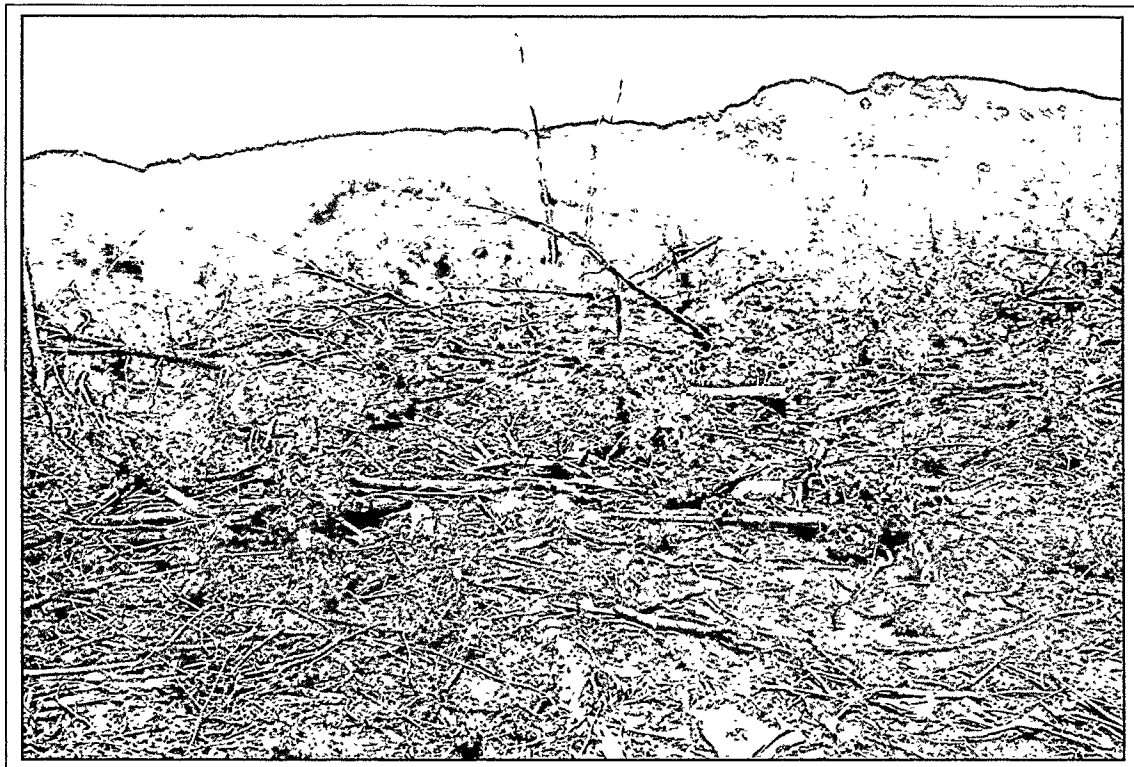
- ▣ extensive cutting of forests, which mars mountain scenery and threatens the environment;

- ▣ residential development in watersheds and along pristine mountain trout streams, which threatens water quality; and

The scenery along U.S. 19 near Maggie Valley.



Hugh Morton



Clear cutting in a national forest near Grandfather Mountain.

■ slap-dash second home developments with poorly designed gravel roads that erode away to the point of impassability and with rocky soil that will not accommodate a septic tank for sewage treatment or a well to supply water.

But despite these kinds of problems, many people worry that a region long resistant to any kind of land-use planning won't work through its differences about how to plan in time to preserve what is special about the North Carolina mountains. They worry that the fast buck artists and a handful of irresponsible developers will, as more than one person put it, "kill the goose that laid the golden egg." There is antipathy toward even minimal planning efforts, and there are communities across the region where, as the local politicians tell it, one dares not even mention the Z word—zoning. In fact, conventional wisdom holds that the quickest way out of elected office in western North Carolina is to become a strong advocate of land-use regulations. The theory goes that a Scotch-Irish heritage and decades of self-sufficient isolation in the hardscrabble mountains have fused to form a fierce resistance to anyone telling a native mountaineer what to do with a piece of land. Those who

would buck this tradition would be ridden out of office on a rail.

"Leave me alone and I'll leave you alone and don't tell me what to do," is how Asheville real estate developer Bill Johnson describes the attitude, which he agrees with wholeheartedly. "They've got brains enough to know that if you tie a noose around that guy's neck, you tie a noose around your own. You don't hang somebody without putting yourself in danger of hanging, too."

Not everyone subscribes to this theory. Madison County, in fact, adopted countywide zoning in 1971, although some question how vigorously the ordinance is enforced. To date, only one county, Caldwell, has joined Madison, which puzzles James T. Ledford, chairman of the Madison County Board of Commissioners when countywide zoning was enacted. "Zoning is the only way to go," says Ledford. "I have never understood why elected officials have been afraid to bring it before the people. Nobody is against zoning except the special interests."

But a survey of county managers of all 100 counties in June 1990 by the North Carolina Center for Public Policy Research shows that besides a

reluctance to zone, the mountains as a region have far fewer land-use regulations of any kind in place than either the Piedmont or the eastern and coastal counties.² Mountain counties have turned a cold shoulder to planning that might protect the region from irresponsible development. Even the most rudimentary of planning tools, county land-use plans, have languished on the shelves of government agencies because the commissioners who ordered them up have not seen fit to adopt them.

To get a clear look at regional differences in land-use planning efforts, the Center divided the 100 counties into three categories—the 24 mountain counties included in the Mountain Area Management Act proposed in 1974, 56 Piedmont and eastern counties, and the 20 coastal counties governed by the Coastal Area Management Act. Of these groups of counties, the mountains have far fewer controls on land use (see Table 1, page 9).

For example, 75 percent of the coastal and Piedmont and eastern counties have subdivision ordinances, while such ordinances are in place in only 29.2 percent of the mountain counties—seven of the 24. Subdivision ordinances generally require a developer who wants to subdivide to meet criteria covering lot size, road width, drainage, erosion control, and other standards. Zoning, which legally restricts property to specific uses and development densities, is even less pervasive. Of the 31 counties across North Carolina with countywide zoning, only two, Caldwell and Madison, are in the North Carolina mountains.

And mountain counties had far fewer billboard or sign ordinances than counties in other regions of the state, despite a strong interest in preserving scenic beauty for tourism. Only 29.2 percent of the mountain counties had such ordinances in place, compared to 40 percent of the

Glossary of Selected Land-Use Planning Terms

Land-Use Plan — A document developed after a series of public hearings that identifies preferred use for land within a community, such as agriculture, residential, industrial, and commercial. Such plans serve as a tool for guiding growth and can provide the legal underpinning for zoning ordinances.

Zoning Ordinance — An ordinance that governs how property will be used — such as for residential, commercial, or industrial purposes — and dictates the density at which development can occur. For example, a certain residential zone might allow only one housing unit per acre, while another zone might allow a mix of commercial and residential uses at a much higher density.

Capital Improvements Program — Identifies sites and sets out a timetable for constructing and a plan for financing such facilities as parks, schools, fire departments, and water and sewer systems.

Watershed Protection Ordinance — Governs development within a watershed, covering such criteria as what percentage of an acre of land can be covered with impermeable surfaces and how storm water runoff will be controlled.

Subdivision Ordinance — Sets minimum criteria for subdividing property for development, such as lot size, setbacks, road width, and erosion control.

Sign Ordinance — Controls size and placement of signs.

Planning Board — Performs planning duties as assigned by a board of county commissioners or a town council, such as reviewing development proposals for compliance with a subdivision ordinance.

Board of Adjustment — Considers requests for exceptions to or variances from ordinances, most commonly zoning changes.

—Mike McLaughlin and Dale McKeel

coastal counties and 57.1 percent of the Piedmont and eastern counties. Mountain counties also were less likely to use flood damage prevention ordinances to protect floodways or floodplains. Exactly two thirds of the mountain counties had adopted such ordinances, compared to 73.2 percent of the Piedmont and eastern counties and 90 percent of the coastal counties. Mountain counties were somewhat less likely to have passed watershed protection ordinances, although these were not predominant in any region of the state.

Besides imposing fewer restrictions, the mountain counties on the whole are doing less planning (see Table 2, page 10). Only three mountain

counties, for example, have adopted land-use plans to guide growth, compared to more than half of the Piedmont and eastern counties and all of the coastal counties, which are required under the Coastal Area Management Act to prepare such plans.³ One-fourth of the mountain counties require a site review for large developments such as shopping centers not subject to review under a subdivision ordinance, while 39.3 percent of the Piedmont and eastern counties and 45 percent of the coastal counties have such a requirement. Mountain counties also are trailing the rest of the state in incorporating planning boards and agencies into the workings of local government. (See Table 3, page 16, for a county-by-county breakdown of planning and growth management efforts across North Carolina.)

The General Assembly must share the blame for some of these regional discrepancies. A decade and a half ago, in rejecting the Mountain Area Management Act,⁴ the legislature elected not to require planning in the mountains. At the same time it imposed a mandatory planning program on the North Carolina coast. Since then, the Coastal Area Management Act has been cited time and again as a national model for planning to protect a fragile resource.⁵ Meanwhile, the mountains have languished without a regional plan and with fragmented and limited local planning efforts.

Johnson, the real estate developer, is among those who believe this dearth of land-use regula-

tions or planning is exactly as it should be. "Growth needs to go where it is economically mandated, not where some planner who can't even read a financial statement says it should go," he says. "If you want planning, go to Russia. They've been planning since 1920 and they can't even feed themselves."

The Center's research supports the notion that mountain citizens are less supportive of land-use planning than citizens of other regions of the state. In the mountains, only 29 percent of the county officials surveyed said their citizens would support or strongly support land-use planning (see Table 4, page 24). That compares to 50 percent of respondents in the Piedmont and

eastern counties and 60 percent of respondents in the coastal counties.

Officials from the mountain counties also were much more likely to describe their citizens as opposed to zoning. More than half the respondents in mountain counties, 54 percent, said their citizens oppose or strongly oppose zoning, compared to 40 percent in the coastal counties and only 23 percent in the Piedmont and eastern counties.

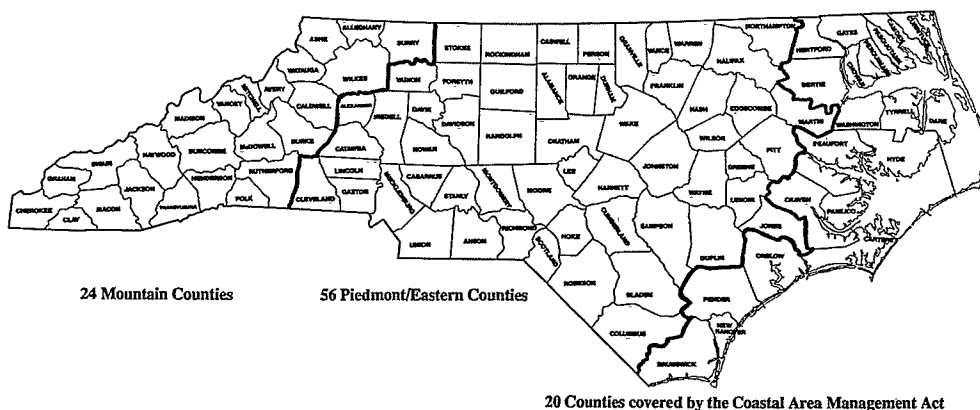
Most county officials in all three geographic categories thought their counties would have more interest in implementing land-use measures if more funds were available from the state. A clear majority of respondents in both the coastal and Piedmont and eastern categories favored the state's requiring county land-use plans, but again, mountain county officials lagged behind, with only 42 percent supporting or strongly supporting such a requirement.

Still, public officials and private citizens interviewed across the region offered a less extreme view than did Johnson, the real estate developer. They acknowledge that they trail the rest of the state in planning for growth and change, and point to local politics in assessing blame. They express concern that steady growth coupled with a relative lack of controls leaves precious natural resources vulnerable. The risk, they say, is that the very qualities that draw people to the North Carolina mountains—scenic beauty, clean air, and pristine mountain streams—will be

*Our mountain farmer, seeing
all arable land taken up, and
the free range ever narrowing,
has grown jealous and
distrustful, resenting the
encroachment of too many
sharers in what once he felt
was his own unfenced domain.*

—HORACE KEPHART

OUR SOUTHERN HIGHLANDERS



**Table 1. Summary of Land-Use Ordinances
in North Carolina Counties — June 1990**

Category	Coast	Mountains	Piedmont & East	State- wide
1. Counties with a flood damage prevention (floodway or floodplain) ordinance	18 90.0%	16 66.7%	41 73.2%	75 75.0%
2. Counties with a sedimentation and erosion control ordinance	*1 5.0%	5 20.8%	15 26.8%	21 21.0%
3. Counties with a watershed protection ordinance	2 10.0%	1 4.2%	14 25.0%	17 17.0%
4. Counties with a subdivision ordinance	15 75.0%	7 29.2%	42 75.0%	64 64.0%
5. Counties with a zoning ordinance	13 65.0%	8 33.3%	43 76.8%	64 64.0%
6. Counties which have zoning in all of the county	6 30.0%	2 8.3%	23 41.1%	31 31.0%
7. Counties which have zoning in only a portion of the county	7 35.0%	6 25.0%	21 37.5%	34 34.0%
8. Counties which have either a billboard or sign ordinance	8 40.0%	7 29.2%	32 57.1%	47 47.0%

*The state administers the sedimentation and erosion control program in counties that do not have a locally administered program.

Note: As defined for these tabulations, there are 20 coastal counties, 24 mountain counties, and 56 Piedmont or eastern counties.

—Dale McKeel

Table 2. Characteristics of Land-Use Planning in N.C. Counties

Category	Coast	Mountains	Piedmont & East	State- wide
1. Counties with an adopted land use plan	20 100.0%	3 12.5%	29 51.8%	52 52.0%
2. Counties that require site review for large developments not subject to review under a subdivision ordinance	9 45.0%	6 25.0%	22 39.3%	37 37.0%
3. Counties with a county planning board	18 90.0%	18 75.0%	44 78.6%	80 80.0%
4. Counties with a board of adjustment	11 55.0%	8 33.3%	40 71.4%	59 59.0%
5. Counties with a planning agency	13 65.0%	13 54.2%	44 78.6%	70 70.0%
6. Average number of persons on planning agency staff in those counties with a planning agency	3.5	3.2	6.8	5.5
7. Counties with a joint city-county planning board	0 0.0%	0 0.0%	6 10.7%	6 6.0%
8. Counties with a capital facilities or improvement program (CIP)	3 15.0%	6 25.0%	18 32.1%	27 27.0%
9. Counties with a defined policy on the extension of water and sewer lines	4 20.0%	4 16.7%	16 28.6%	24 24.0%
10. Average number of incorporated cities per county	4.7	3.5	6.1	5.2
11. Average number of incorporated cities per county that exercise extraterritorial planning/zoning jurisdiction	2.1	1.4	3.3	2.6
12. Counties with urban development standards in urban growth areas that are part of the county	0 0.0%	1 4.2%	10 17.9%	11 11.0%

Note: As defined for these tabulations, there are 20 coastal counties, 24 mountain counties, and 56 Piedmont or eastern counties.

—Dale McKeel

destroyed by rampant growth.

"The number of people moving in is beyond the scope of belief," says Jerry Sutton, chairman of the Macon County Board of Commissioners and a dairy farmer in the Clark's Chapel community. "This community had 100 families 20 years ago. Now we have 300. . . . We need some type of land development controls."

Sutton, who did not seek re-election in November 1990, says controls are needed to protect property values and water quality, but also to preserve scenic beauty. "If the mountains have anything to protect, it's the beauty," says Sutton, whose farm sits in a valley among rolling ridges. "I think it's the most pertinent thing we have to do."

State estimates show that at 7.8 percent, population growth for the mountain region from 1980 through 1989 was below the state average of 11.7 percent. But population growth equaled or exceeded the state average in five mountain counties—Cherokee, Henderson, Macon, Polk, and Transylvania. And the figures do not include second-home residents or tourists, who swell the populations of mountain counties on a seasonal basis and drive local building booms. Nor do they account for the difficulties presented by mountain terrain—steep slopes and poor access that make it impractical to build on some land.

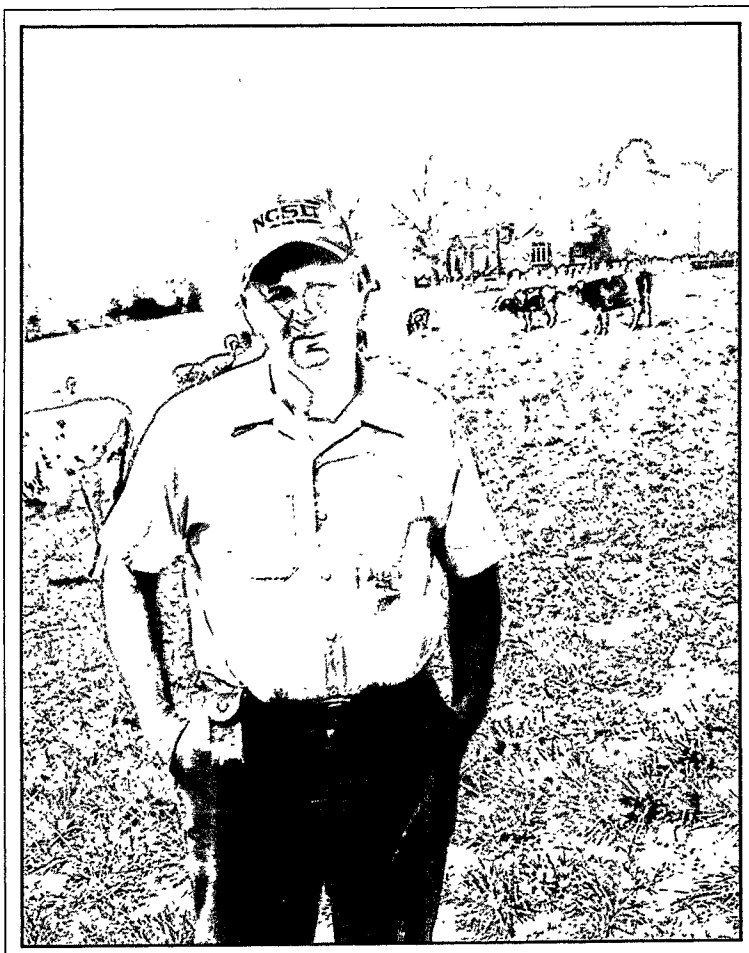
There appears to be broad agreement that the promises and pitfalls of growth are cause for concern in the North Carolina mountains. But what should be done to manage growth, and what is the appropriate role of the state? Here the consensus breaks down, but four clear options emerge from the debate. The state could: (1) step in and require regional land-use planning for the North Carolina mountains, as it has done at the coast; (2) require every county in the state to do land-use planning as part of a comprehensive growth management strategy; (3) attack specific environmental problems through legislation

and avoid comprehensive strategies; or (4) stay out of the picture entirely, rendering technical assistance as it now does. This approach leaves the decision up to local elected officials, who could engage in land-use planning or let the market dictate growth. A case can be made for each of these approaches.

Option 1: The Case for Mandatory Regional Planning in the Mountains

Advocates of mandatory regional planning point to the success of the Coastal Area Management Act in establishing a role for the state in regulating development along the North Carolina coast.⁶ "We feel that land-use planning is something that needs to be done if the mountain coun-

Jerry Sutton, dairy farmer and chairman of the Macon County Board of Commissioners, says his county needs stronger land use controls.



Mike McLaughlin

How Foscoe-Grandfather and Valle Crucis Cope with Growth

When a developer wanted to build a shopping center at the heart of the pastoral mountain village of Valle Crucis, residents rose up to fight it. In nearby Foscoe-Grandfather, residents were aroused to battle by the annexation aims of the ski resort town of Seven Devils.

These sorts of uprisings, while still unusual, appear to be on the upswing in unincorporated areas of the North Carolina mountains. Citizens are finding that the traditional mountain resistance to any kind of land-use restrictions leaves them defenseless in the face of development proposals that would change the fabric of their communities. And increasingly, they are doing something about their concerns.

Foscoe-Grandfather is attempting to incorporate and has adopted a zoning ordinance in the process. Valle Crucis, an unincorporated community of 19th century farmhouses and general stores, has chosen historic district status, which also entails zoning.

Foscoe-Grandfather lies along the Watauga River Valley and its roots go back to the 1700s, says Tom Foxx, a community resident and a leader in the incorporation effort. The trouble started when Seven Devils, incorporated since 1979 and centered on a ski resort on a ridge line above the community, began annexing land in what was considered by long-time residents to be Foscoe-Grandfather proper. The annexation ate into the Foscoe Volunteer Fire Department tax district, says Foxx, and gave some Foscoe-Grandfather residents the feeling that outsiders were trying to take over their community. Cultural differences between newcomers and old-line mountain residents only made matters worse. For example, some Foscoe-Grandfather residents were outraged that Seven Devils annexed a convenience store next to a Grandfather church so the store could sell beer and wine. "People just don't want to be controlled

by outside interests," says Foxx.

After one failed attempt at incorporation, Foscoe-Grandfather citizens tried a more deliberate approach. They asked their county commissioners to form a community council—a planning body for the community. The council settled on three goals: (1) locating property for a recreation facility; (2) developing a zoning ordinance; and (3) studying the feasibility of incorporating.

Incorporation, Foxx said, "turned out to be even more feasible than what we thought," and this time the county commissioners endorsed it. Incorporation still must win approval from the state, but Foxx is optimistic. The community council also has won approval from the county commissioners of a county administered zoning ordinance with four districts: (1) a rural district with residential uses only; (2) a highway commercial district; (3) a buffer zone at the boundary of Seven Devils; and (4) an industrial district to accommodate the community's only industry. Why zone? "Essentially to preserve our rural character," says Foxx.

In Valle Crucis, the goal is the same, but the means of getting there is quite different, and the historic district designation came only after a long and bitter fight. "We wore them out," says Howell Cook, president of the Valle Crucis Community Council. "Everybody got tired and we won."

Carroll Garland is among those Valle Crucis property owners who initially opposed zoning in the community. "I think the people who own the property should have the say-so, not the people who come to visit," says Garland. Garland, a Boone banker who owns about 60 acres in Valle Crucis, says the district started out too restrictive—which he feared would hurt property values—and wound up too loose. "Commercial property was zoned as commer-

— continued on next page

ties are going to have some control over our own destiny," says Bill Thomas, a Brevard resident and president of the North Carolina chapter of the Sierra Club, which has included enactment of a Mountain Area Management Act on its list of legislative priorities for 1990-91.⁷ "It could be modeled after CAMA," says Thomas. "CAMA appears to have been a reasonable success. It hasn't stopped development, but it has restricted it in areas that shouldn't be developed. I don't know how any forward-looking person could be opposed to land-use planning."

If the impact of CAMA is any indication, mandatory regional planning for the mountains clearly would not inhibit growth. Of North Carolina's five fastest growing counties during the 1980s, four—Brunswick, Carteret, Currituck, and Dare—were coastal counties covered by CAMA.⁸ The fifth was Wake County in the Piedmont.

A regional land-use plan based on CAMA would have two basic components: a process by which each county would develop and adopt a land-use plan and a means of designating "areas of environmental concern." A special state permit would be required before major development could

occur in areas of environmental concern. The act would be administered by a commission which represented various interests and would be supported by a professional staff. "It establishes a role for the state," says Bill Holman, who lobbies for the Conservation Council of North Carolina, the Sierra Club, and the N.C. Chapter of the American Planning Association.

And requiring the mountain counties to plan would take the heat off county commissioners, who could lay the blame for mandatory planning on the state. "Really, the situation is so political, I don't think many boards of commissioners can enact any land-use regulations or land-use restrictions and survive," says Ed Israel, executive director of Western North Carolina Tomorrow, a planning and economic development agency at Western Carolina University in Cullowhee. Israel points to several instances in which a firestorm of criticism forced local elected officials to reverse themselves on land-use planning decisions. "Back in the early 1970s, Buncombe County enacted a land-use plan and had a special session the next day and repealed it. Haywood County passed a subdivision ordinance, and it lasted three days."

Foscoe-Grandfather, *continued*

cial and nothing else could go commercial," says Garland. "That wasn't fair. Farmland was zoned for farming, and you couldn't use it for anything else. That wasn't fair either. If the land was not in use, it was zoned as farm use and you couldn't use it for anything else."

At one point, says Garland, opponents were removed from the heart of the district, giving it the shape of doughnut. Eventually, all restrictions on use were dropped within the district. That mollified the opposition, but Garland says the community swung from too much regulation to too little. "I think it went from one side to the other side," he says.

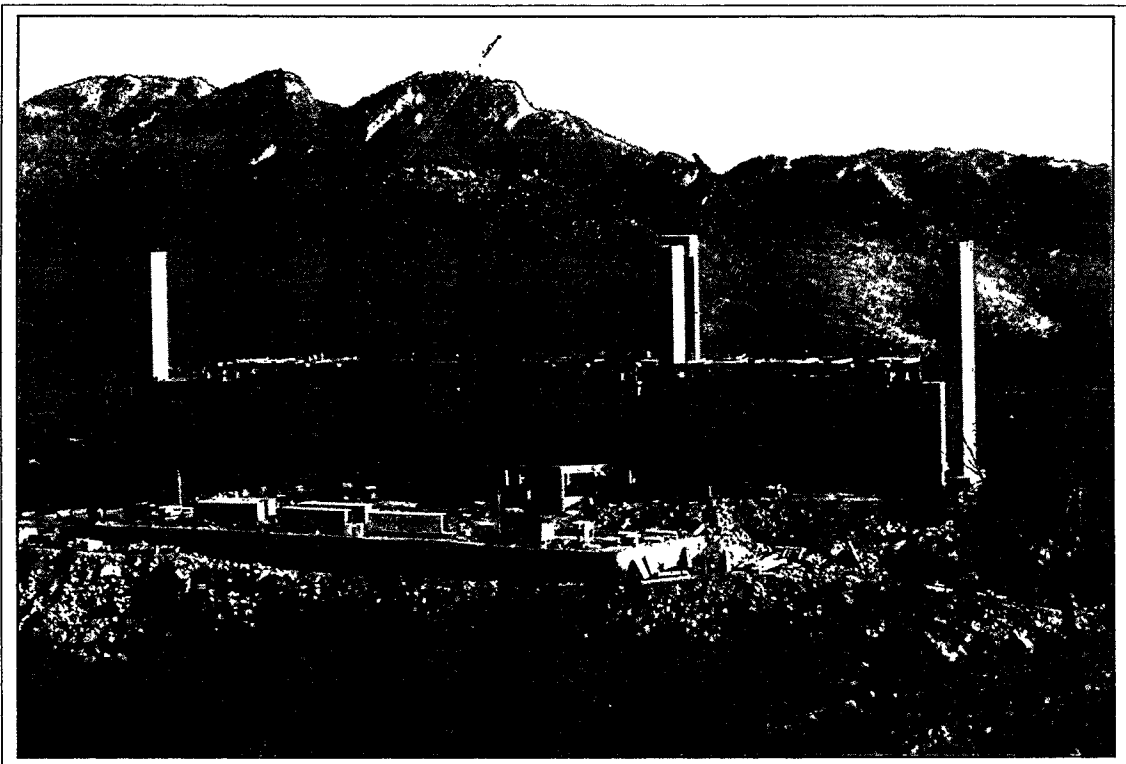
And winning the designation did not stop the shopping center. Completed in June 1989, it sits in the floodplain of the Watauga River, its parking lot boardwalks lending a North Myrtle Beach look to a community of old farm houses,

inns, and a general store dating to the 1880s.

But historic district supporters remain hopeful the regulations now in place can prevent a similar affront in the future. Although the zoning ordinance adopted and enforced by the county permits all uses, lots must be an acre in size, and there are landscaping, parking, buffering, and screening requirements. The historic district designation also means anyone wishing to alter the appearance of a building within the district must get the approval of a special committee. That, says Watauga County planner Joe Furman, will be a major change for a rural mountain community.

It remains to be seen how the historic district designation will sit with Valle Crucis citizens. "We'll have to get them used to coming in and having to ask permission to change a light fixture," says Furman. "That's not going to work in most rural areas."

—Mike McLaughlin



Hugh Morton

This high rise condominium project, shown under construction on Little Sugar Mountain near Banner Elk, led to a 1983 law governing ridgetop development.

Israel says a number of factors inhibit the development of land-use regulations in the mountains and necessitate the intervention of the state. Partly, it's tradition. "There's the old mountain attitude. 'This land was my granddaddy's and my daddy's, and now it's mine and I'll do with it as I please,'" he says. There is also a cultural clash. That newcomers push for more regulations only stiffens the resolve. "When new people from the north come in and start demanding these things, there is an automatic resistance on the part of the local people," says Israel. Intervention by the state would be one way to resolve the political impasse. "We certainly can't continue to drift," says Israel. "If it's done tomorrow, it will be too late in some instances."

Western North Carolina Tomorrow, which acts on behalf of 17 western North Carolina counties, passed a resolution Dec. 10, 1990, calling on the General Assembly to enact legislation mandating growth management planning in the North Carolina mountains. The resolution asks that the state provide money and other incentives to all of the mountain counties for planning and for developing

ordinances to regulate growth. It also seeks an opt-out provision so that counties can conduct a referendum on whether to participate. Few advocates of better growth management believe a carbon copy of the original Mountain Area Management Act would soar through the legislature and into the law books. "I agree that there's not much being done up here right now," says Hugh Morton, owner of Grandfather Mountain, a scenic attraction in Linville. "I don't know whether the mood has changed sufficiently to have such a thing meet with success. It [the Mountain Area Management Act] got killed last time because some opponents were able to say with some degree of truth in it that you couldn't build a hen house without getting a permit from Raleigh—and they killed it dead."

Morton says a Mountain Area Management Act might have a better chance of passing the General Assembly if it had an opt-out provision such as that included in the 1983 Ridge Law. That law—passed when a developer leveled the top of Little Sugar Mountain in Avery County and constructed a 10-story condominium complex—forbids construction of buildings more than three

stories tall on ridgetops above 3,000 feet.⁹ Morton, a chief proponent of the law, says a provision for an opt-out referendum insisted upon by then-Speaker of the House Liston Ramsey (D-Madison) assured its passage. Of the mountain counties, only Cherokee in the far west held a referendum, and the voters overwhelmingly endorsed the law. "That kind of more intelligent approach is going to have to be made if anybody is going to make headway," says Morton.

Option 2: The Case for Statewide Mandatory Land-Use Planning

Some planning advocates argue that the best way to make sure that land-use planning takes place in the mountains is to require it for the whole state, a path followed by a number of states, including Oregon, Vermont, Florida, Virginia, and most recently, Georgia (see page 27 for more on planning efforts in other states). Proponents say mandatory statewide planning would defuse the criticism that the mountain counties are being targeted unfairly for a higher level of regulation than the rest of the state. "Minimum standards for the whole state might fly," says Bob Shepherd, executive director of the Land of Sky Regional Council, which represents Buncombe, Henderson, Madison, and Transylvania counties. "You can't single out the mountains and say, 'Gee, we've got to protect those people up there.' They're too independent and too stubborn to let the people in Raleigh tell them what to do."

Holman, the environmental and planning lobbyist, has also come to support a statewide approach. "Politically, it's going to be very difficult to get the rest of the state to impose a Mountain Area Management Act on the mountains," says Holman. "It might even be easier to pass a statewide program." Holman says the idea would be to link state investment in infrastructure to local planning. "If you want a road, you've got to do the plan," he says. "The state could also encourage local planning and land-use regulation by acting consistently with local plans. For example, the state should deny a wastewater discharge or air quality or mining or whatever permit to a project that is inconsistent with a local plan or ordinance."

Holman has become a mild critic of CAMA, saying it has become increasingly difficult to protect environmentally sensitive areas under the act. "Regulation in areas of environmental concern has been helpful on the coast, but the state has been

reluctant to use those powers," says Holman. As evidence, he cites the fight to preserve maritime forests. "I think environmentalists may win that [regulatory] battle, but there may not be any maritime forests left by the time we do," Holman says.

Georgia's program establishes minimum standards and procedures for planning, requires state, regional, and local land-use plans, and establishes a critical areas program for protecting mountains, wetlands, and coastal areas.¹⁰ The state provides funding for planning at the regional level, but as Holman has suggested for North Carolina, local governments that do not comply with planning requirements are denied state funds for infrastructure such as water and sewer systems and roads. Such a program would be expensive to implement for North Carolina, and Holman says it would be difficult to adopt without strong executive branch support. "In other states where they have a policy, it took a strong push by the governor to get it," says Holman. "Until we have executive branch support, we have to take it one step at a time."

—continued on page 18

Nine years have passed since this book first came from the press. My log cabin on the Little Fork of Sugar Fork has fallen in ruin. The great forest wherein it nestled is falling, too, before the loggers' steel. A railroad has pierced the wilderness. A graded highway crosses the county. There are mill towns where newcomers dwell. An aeroplane has passed over the county seat. Mountain boys are listening, through instruments of their own construction, to concerts played a thousand miles away.

—HORACE KEPHART, *OUR SOUTHERN HIGHLANDERS*, PREFACE TO 1922 EDITION

Table 3. The Status of Land-Use Planning in North Carolina Counties, June 1990

	1	2	3	4	5	6	7	8	9	10
Alamance			Y		Y	Y	Y	4	7	7
Alexander	Y	Y			Y		Y	1	1	1
Alleghany									1	1
Anson			Y		Y	Y	Y	2	7	2
Ashe						Y			3	0
Avery						Y	Y	1*	4	1
Beaufort	Y								7	4
Bertie	Y	Y				Y	Y	1	8	3
Bladen		Y					Y	1	7	1
Brunswick	Y		Y			Y	Y	4	18	6
Buncombe		Y			Y		Y	9	6	2
Burke						Y	Y	3	10	4
Cabarrus	Y	Y	Y	Y		Y	Y	8	4	4
Caldwell	Y	Y	Y	Y		Y	Y	8	8	3
Camden	Y		Y	Y		Y			1	1
Carteret	Y		Y		Y	Y	Y	4	9	6
Caswell		Y	Y		Y	Y			2	0
Catawba	Y	Y	Y	Y		Y	Y	5	8	6
Chatham	Y		Y		Y	Y	Y	2	3	2
Cherokee									2	0
Chowan	Y		Y		Y	Y			1	1
Clay						Y			1	1
Cleveland		Y	Y		Y	Y	Y	2	15	3
Columbus					Y				8	6
Craven	Y	Y	Y		Y	Y	Y	3	8	6
Cumberland	Y		Y		Y	Y	Y	23**	8	0
Currituck	Y		Y	Y		Y	Y	4.5	0	0
Dare	Y		Y		Y	Y	Y	5	5	2
Davidson	Y		Y	Y		Y	Y	5	3	2
Davie	Y		Y	Y		Y	Y	1	2	1
Duplin	Y					Y	Y	2	10	2
Durham	Y		Y	Y		Y	Y	43**	1	0
Edgecombe			Y	Y		Y	Y	2	9	2
Forsyth	Y	Y	Y	Y		Y	Y	36**	5	1
Franklin	Y		Y	Y		Y	Y	1	5	5
Gaston	Y	Y	Y			Y	Y	4	15	13
Gates	Y		Y			Y			1	0
Graham									2	0
Granville	Y		Y	Y		Y	Y	3	4	2
Greene									3	1
Guilford	Y	Y	Y	Y		Y	Y	11	5	3
Halifax				Y		Y	Y	1	7	6
Harnett	Y	Y	Y	Y		Y	Y	5	5	5
Haywood						Y	Y	1	5	5

LEGEND FOR TABLE:

1. County has adopted a land use plan
2. County has adopted a capital facilities or capital improvements plan (CIP)
3. County has a subdivision ordinance
4. Zoning in all of county
5. Zoning in a portion of the county

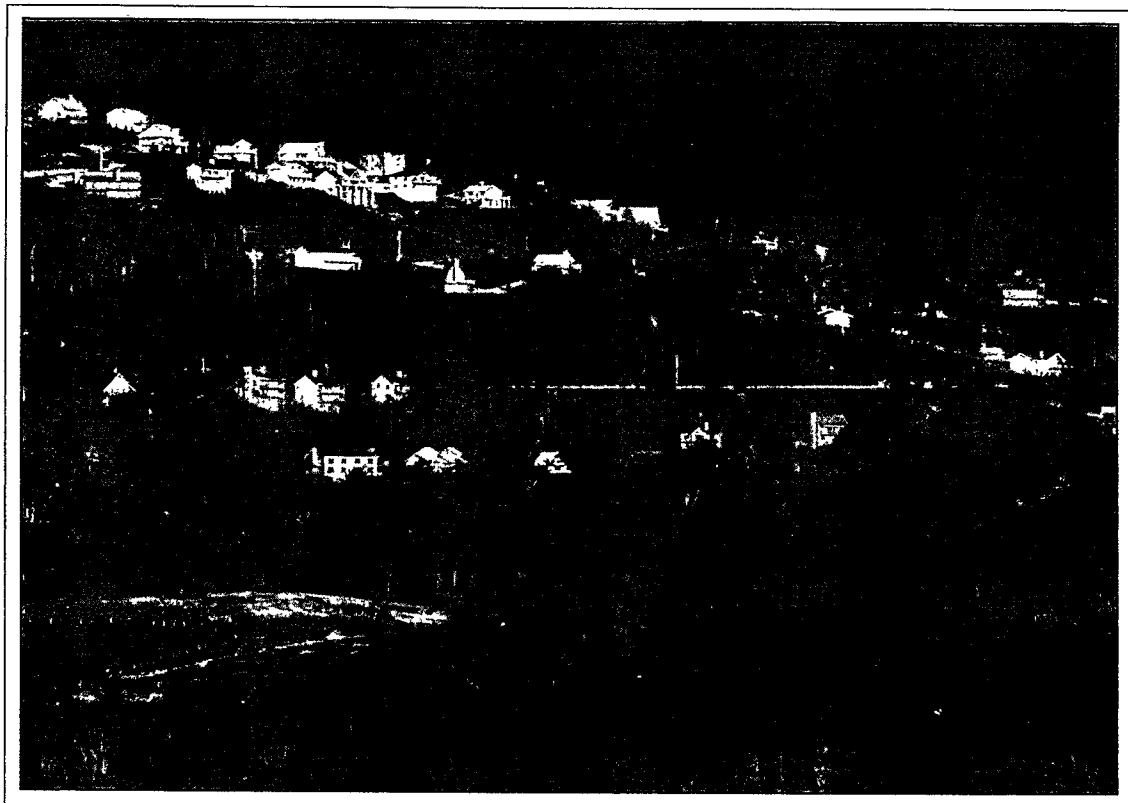
6. County has an active planning board/commission or a joint planning board/commission
7. County has a planning agency
8. Number of persons on agency staff
9. Number of active incorporated municipalities in the county
10. Number of municipalities that exercise extraterritorial planning/zoning

* A consultant from the state Division of Community Assistance is working full-time for two years on planning projects.

** Joint city-county planning department

—Dale McKeel

	1	2	3	4	5	6	7	8	9	10
Henderson			Y		Y	Y	Y	2	4	1
Hertford	Y		Y	Y		Y	Y	2	5	2
Hoke		Y	Y			Y	Y	2**	1	1
Hyde	Y				Y	Y	Y	1	0	0
Iredell	Y		Y	Y		Y	Y	3	5	3
Jackson						Y	Y	1	3	2
Johnston	Y		Y		Y	Y	Y	3	9	7
Jones			Y			Y			3	0
Lee	Y	Y	Y	Y		Y	Y	2	2	2
Lenoir						Y	Y	2	3	0
Lincoln	Y		Y		Y	Y	Y	3	1	1
Macon						Y			2	1
Madison				Y		Y			3	1
Martin									10	3
McDowell		Y							2	0
Mecklenburg	Y	Y	Y	Y		Y	Y	50**	7	3
Mitchell		Y				Y			2	0
Montgomery			Y		Y	Y			5	4
Moore			Y		Y	Y	Y	3	11	6
Nash			Y		Y	Y	Y	6	11	7
New Hanover	Y		Y	Y		Y	Y	10	4	2
Northampton			Y			Y			9	0
Onslow	Y		Y		Y	Y	Y	5	5	4
Orange	Y	Y	Y		Y	Y	Y	14	4	4
Pamlico	Y		Y	Y		Y			9	0
Pasquotank	Y		Y		Y	Y	Y	2	1	1
Pender	Y			Y		Y	Y	2	6	0
Perquimans	Y		Y			Y			2	1
Person			Y		Y	Y	Y	2	1	0
Pitt	Y		Y			Y	Y	3	10	6
Polk			Y		Y	Y	Y	1	3	1
Randolph	Y		Y	Y		Y	Y	5	8	5
Richmond									6	3
Robeson	Y		Y		Y	Y	Y	2	15	4
Rockingham	Y	Y	Y	Y		Y	Y	5	5	4
Rowan						Y			9	6
Rutherford		Y	Y			Y	Y	2	8	2
Sampson									7	6
Scotland			Y	Y		Y	Y	2	4	1
Stanly	Y		Y	Y		Y	Y	4	7	5
Stokes		Y		Y		Y	Y	2	3	2
Surry			Y		Y	Y	Y	2	4	3
Swain									1	0
Transylvania						Y	Y	2	2	1
Tyrrell	Y		Y			Y			1	1
Union	Y		Y	Y		Y	Y	5	7	1
Vance		Y			Y	Y			3	0
Wake	Y	Y	Y	Y		Y	Y	9	12	12
Warren			Y		Y	Y			3	1
Washington	Y	Y					Y	2	3	1
Watauga	Y	Y	Y		Y	Y	Y	6	4	2
Wayne			Y		Y	Y	Y	7	7	3
Wilkes	Y		Y		Y	Y	Y	3	3	2
Wilson	Y		Y		Y	Y	Y	1	6	4
Yadkin					Y	Y	Y	2	4	4
Yancey						Y			1	0
TOTAL	52	27	64	30	34	85	70	385.5	520	257



Hugh Morton

High-density construction along a ridge in Watauga County near Blowing Rock.

Holman points out that one of the goals of the Commission on the Future of North Carolina was that all of the state's 100 counties have a land-use plan by the year 2000. Mandatory land-use planning would be one way to accomplish that goal.¹¹

Still, there will be those who argue that a statewide program is unnecessary, like Grandfather Mountain's Hugh Morton, who believes the mountains are in need of special protection but is not convinced about the Piedmont. "We've already got CAMA for the coast," says Morton. "The main metropolitan areas of the Piedmont are implementing zoning on their own. I don't know that it's necessary to make it the whole state." The mountains, Morton argues, have certain characteristics that require a higher level of attention—like steep slopes that cause rapid runoff and stream-choking erosion when development isn't managed properly. And of course there is the scenic beauty that must be preserved if the region is to continue to attract the hordes of tourists and second-home settlers.

Morton believes there is a chance that the mountain region—properly approached—can be

nudged toward more management of growth. "Moderation is the key to everything," says Morton. "The people who want to build Rome in a day with zoning laws will get their ears pinned back. The people who are reasonable and moderate in their approach might get somewhere and might do some good."¹²

But Bill Gibson, director of the Southwestern North Carolina Planning and Economic Development Commission, believes efforts to encourage growth management in the mountain counties have failed. One way or another, he says, the time has come to require a stronger planning effort. What would Gibson, who works with the state's seven westernmost counties, see as minimum standards that every county should have in place to grapple with growth? "I think in general, pre-development ordinances are a good idea," Gibson says. "That way, the developer is forced to come in and touch all the right points—sedimentation and pollution control, water and sewer—before he ever begins developing the property. For a lot of governments here, the horse gets out of the barn before the

—continued on page 21

This Mountain Farmer Favors Zoning

There's nothing softheaded about Gene Gibson. To Gibson, a varmint is a varmint. He'd just as soon carve another notch on his shotgun as have a groundhog eat up his crops or tunnel up his precious Jackson County farmland. "They come in here one summer gonna eat up everything," says Gibson. "We killed 18. Of course, I don't bother them until they bother me."

Gibson does not extend that same courtesy to yellow jackets. These he will bother without provocation. Spying the creatures swarming from an egg-shaped hole in the ground near his equipment shed, Gibson instantly hatches a plan to douse them with gasoline and kill them "dead as a nit."

Such are the ways of a fourth generation mountain farmer. He is lord of the land and holds a birthright to rule it. Yet Gibson is far from the stereotyped backwoods hillbilly. He is acutely aware of environmental problems like the greenhouse effect, acid rain, and ozone depletion. He can stand in his fields and quote from memory figures on the amount of soil being washed into the Mississippi River every day because of erosion. "If we don't go to taking care of Mother Earth, there won't be nowhere to live," says Gibson. "I wish people would realize that, but it seems like nobody is taking the initiative."

And if some of his neighbors heard Gene
—continued on next page

Gene Gibson on his farm in rural Jackson County.



Mike McLaughlin

This Mountain Farmer, *continued*

Gibson's views about land-use planning and zoning, they might think he had gotten hold of the wrong kind of branch water. "I think they're going to start zoning," says Gibson in a matter-of-fact voice. What does he think of this? "I think it'd be good."

Gibson's chief interest is in making sure that rural lands like his Jackson County farm get preserved for future generations to enjoy. If it takes zoning to accomplish that, says Gibson, so be it. He worries that he may be the last Gibson to farm the hills and hollows on the other side of the ridge from where his great-grandfather—a Civil War veteran—lies buried. "I hope my boy will keep the brush knocked down enough and keep the bears out of it," says Gibson. "I don't know."

But Gibson's son Bill is not a farmer. Like so many young people, the younger Gibson has left the fields for an office job. When he thinks about it, Gibson feels fairly certain that Bill will not want to keep up the farm *and* meet the demands of his job as the director of the Southwestern North Carolina Planning and Economic Development Commission. Gibson can foresee the day when there might not be a Gibson farm, and it troubles him. "I'm talking about preserving some farmland," said Gibson. "I don't think everything ought to be urbanized."

At 63, Gibson is an ardent conservationist, and he's extremely self-sufficient. He plants one and a half acres of a three-acre tract in corn each year, rotating the corn with rye to replenish the soil. The corn he mixes with a supplement and feeds to his cattle. He does much of the planting and harvesting with a Belgian work horse, Dan. The paint is still perfect on his 1970 David Brown tractor, a British model with 1,500 hours on it.

A homemade, gravity-flow water system delivers water to Gibson's small frame house at 36 pounds of pressure. Gibson and his son hand mixed and poured the concrete for the 750-gallon vault that funnels spring water through a third of a mile of plastic pipe down the hillside to the house. The Gibsons heat with a woodstove using firewood cut on the farm. Each year they tend a good-sized garden, and a neighbor now leases the burley tobacco allotment.

Even with these efficiencies, the farm has never produced enough income to raise a family. Gibson spent 38 years working for the highway department—and put three children through college—before he retired to full-time farming. "A little old mountain farm like this, you can't make a good living," says Gibson. "I guess you'd just have to call me a hobby farmer."

But Gibson, a devoutly religious man, has devoted himself to being a good steward of the land, and he firmly believes that owning land carries certain responsibilities. "When God created Adam and Eve he put them in the garden and told them to keep it looking good," says Gibson. "That's stewardship. Even though there wasn't no sin, they still had to work."

Too many times, Gibson says, people don't live up to the responsibilities that come with owning property. "Everybody wants a little slice of land," says Gibson. "They ain't making any more of it. That's one reason people ought to take a little better care of it."

Like it or not, says Gibson, sometimes the government has to get involved. "A fellow ought to be able to have a little flexibility," says Gibson. "I think he ought to be able to do a few things without asking the government if it would be all right. But some of these conservation practices ought to be put in place. If we leave it to everybody doing what they think, things will be in a mess, so we need some restrictions."

Gibson recalls from his own experience practices that have now been outlawed to protect the environment. "No time ago people just turned raw sewage right out into these streams," says Gibson. "That's a no-no now. My uncle had a hog operation, the hog house was right on the stream. He would take a hose and wash it right into the stream. We've got restrictions on it now . . . which is good."

Restrictions on how people use the land may be next. "I just don't believe in raping the land like they are doing in places," Gibson says. Still, Gibson says there will be those who will oppose any regulations as unwarranted government interference. "I guess there are some diehards who don't want to be told anything," he says.

—Mike McLaughlin

developer understands what is required and before local government knows that development is occurring." Subdivision regulations for the mountain counties also are a must, Gibson says.

Mandatory zoning, Gibson says, would go too far. "We're a long way from getting, or perhaps even needing, a county-wide land-use plan that gets down into very specific countywide zoning. We need more overlay kinds of procedures and processes that steer development."

Like Morton, Gibson is convinced that a certain level of development and growth is healthy. Indeed, promoting orderly growth is one of the roles of regional councils of government. "I am not in any way suggesting that we stop development—roadblock it," says Gibson. "I just want it done properly. We need to properly steer and guide and shoehorn development, if you will, so that it fits properly."

Option 3: The Case for Legislation that Attacks Specific Environmental Problems

There are also those who believe that neither regional nor statewide mandatory land-use planning is appropriate; they think the better course is legislation and regulation that attacks specific environmental problems. Examples are the high-quality waters regulations that control development along 900 miles of North Carolina streams and rivers, including mountain trout streams, and the statewide Watershed Protection Act, which requires counties to control land use and density of development in watersheds.¹³ "We're interested in watershed protection," says Joe Furman, Watauga County planning director. "One of the major goals for Watauga is protection of our water supply. It's an issue that natives and newcomers can agree on." Broader land-use planning, on the other hand, is "a local government function," says Furman. "It's a choice that local governments have to make."

Yet these water quality protection laws have been described as "land-use management creeping up the rivers and creeks." Furman concedes that

*Any fool can destroy trees.
They cannot run away; and if
they could, they still would be
destroyed—chased and hunted
down as long as fun or a dollar
could be got out of their hides.*

—JOHN MUIR

he sees no other way to enforce the density requirements of the Watershed Protection Act except through zoning. And citizens and politicians across the region are complaining that the guidelines were developed with too little local input.

Virgil Odell, co-chairman of the Cherokee County Board of Commissioners, is deeply troubled by the high-

quality waters designation, which he says will block needed development. "It'll ruin us," says Odell. "It'll keep us from building new homes. We can't have no factories in here. . . . The Sierra Club out of California is what's got us all buffaloed. If you read the fine print, it's all in there. It's one of the zoning outfits." Odell is not flatly opposed to all land-use regulations, but he says mountain waters are as clean or cleaner than those of the Piedmont, and he resents outsiders coming in and dictating what Cherokee County citizens can do with their property.¹⁴

And Odell is not alone in bemoaning the impact of these water quality protection measures. Region D Council of Governments director Dick Fender says county officials in the northwest are in an uproar about the Watershed Protection Act. In Wilkes County, for example, watersheds make up 90 percent of the county. "That effectively makes it a no-growth county," says Fender. "With the initial regulations, obviously not a hell of a lot of thought was given to the expense and impact. It puts us in a defensive, aggressive posture." Adding mandatory land-use controls to the mix, says Fender, would be "a lot for people to swallow."¹⁵

Option 4: The Case for Doing Nothing

Fender says the timing is wrong for any kind of comprehensive land-use planning program. "We are experiencing problems, yes, as a result of growth, and we need regulation. But I'm not sure it's salable right now in our region and throughout the [mountain] region." Some, like Johnson, the real estate developer, say the best course is to let local land-use ordinances evolve at their own pace. "I am all for certain ordinances that control the use of land in a highly congested situation, like a

municipality," says Johnson, noting that two unincorporated Buncombe County communities—Limestone and Beaver Dam—have elected on their own to have zoning. "I think the only thing to do is leave it alone and let the local communities work it out."

Other communities across the mountain region are taking similar actions. Unincorporated Flat Rock in Henderson County has had zoning since 1967. Cashiers residents in Jackson County are debating whether they should incorporate in order to zone. Avery County has gotten a state grant so it can implement a planning program. Valle Crucis in Watauga County has made itself a historic district to preserve the community and protect it from unsightly development. Foscoe-Grandfather, a commercialized strip of Watauga River Valley along the main route to several ski resorts, is in the process of incorporating. (See page 12 for more on how Foscoe-Grandfather and Valle Crucis are grappling with growth.) The Foscoe-Grandfather Community Council has accomplished one major goal—zoning to protect what is left of the community's rural heritage. And there are other examples. But will these efforts be too little, too late? A number of mountain leaders fear the answer may be yes.

Dick Miller, a former Ashe County manager and now president of the local chamber of commerce, says efforts to establish land-use planning in that county have been futile despite a pressing need. The planning board saw a year and a half of work on it's subdivision regulations thwarted when the county commissioners—under heavy political pressure—repealed them after only six months on the books. "Everybody agrees that, 'Yeah, something ought to be done. We don't want to see Ashe County become another Watauga or Maggie Valley, but no, don't tell us what to do with our land,'" says Miller. "We've got a lot of rubber tire tourists coming this way, and we're doing our best to attract tourists, but the very beauty that attracts people to the area stands to be lost if we don't plan for growth."

Ashe County Manager Mike Dixon says the subdivi-

sion regulations were repealed because county residents worried that they could not divide their land and pass it to their children without getting approval from the county. He says he would rather have Ashe County implement regulations on its own than have the state require them, but he concedes that for the short term, any local land-use planning initiative is unlikely.

These kinds of political stalemates at the local level have caused some mountain leaders to conclude that prompting is needed from the state. "Somewhere along the line, we need to do something," says Bjorn Dahl, U.S. Forest Service supervisor for the national forests in North Carolina. "Government needs to take a leadership role." Dahl says he sees private forests being "logged, subdivided, and put into residential, commercial, and industrial use" at an alarming rate. He worries about what that will do to the ecosystem. Highway system improvement and expansion will only accelerate the trend. And Dahl sees a disturbing lack of forethought in local government decision making. "There is no county planning or zoning, no deliberate thinking about where this is going to go and where that is going to go. . . . There has to be a regional sense of how are we going to deal with all these things."

Tom Massie, Jackson County director of planning and economic development, agrees that the current hodge-podge of isolated local planning efforts is not enough. "We have to have something



Mike McLaughlin

on a regional basis to coordinate efforts in western North Carolina. Otherwise, the richer counties are going to make the investment to protect whatever their quality of life is, and the poorer counties are not going to be able to afford to do that." And Massie says the time to act is now. "We're where Florida was 20 years ago," he says. "They're one of the most restrictive states in the nation, but it doesn't do a whole lot of good because everything they can develop has been developed. It's a case of closing the barn door after the horse is out."

Adds Gibson of the Southwestern North Carolina Planning and Economic Development Commission, "You talk to folks privately who are county managers or commissioners and you will get general agreement that we are already behind the eight ball and need to get into growth management in a more functional way than we are now. To get that same thing said and supported in a public way is a different question."

Approaches for the State

Given the region's reluctance to plan for and manage growth on its own, how should the state approach the problem? The options for protecting mountain resources, again, are: (1) regional land-use planning; (2) statewide mandatory land-use planning; (3) more problem-specific laws like the Watershed Protection Act, or (4) voluntary local land-use planning with new incentives from the state. And of course there is always the option of doing nothing and letting "the market" decide. Here are a few avenues for putting any one of these options in place:

(1) *The legislature could enact a Mountain Area Management Act, revising the original proposal to assure adequate local input, perhaps even adding the opt-out provision included in the ridge law.* This would bring a minimum level of planning to the least regulated region of the state. Through the designation of areas of environmental concern, precious resources could be protected from exploitation, and mountain residents would have some assurance that their quality of life would be protected for future generations.

The pitfalls? The politics of imposing planning on a single region of the state could make this a difficult campaign from the start. There is precedent with the Coastal Area Management Act, but there is also precedent for a mandatory regional planning program going down in flames. Including an opt-out provision creates the potential that the law would be gutted, even if it were enacted.

Do not worry about sending money as I have sold off a little more land, we will get by fine.

—LEE SMITH, *FAIR AND TENDER LADIES*

The process for getting projects approved under the act would add a new set of administrative hoops for developers, and there would be added expense for taxpayers. The Coastal Resources Commission, which administers CAMA, has an annual budget of about \$3 million.¹⁶

(2) *The governor or the legislature could appoint a blue-ribbon task force to set about formulating a mandatory and comprehensive land-use planning program for the state of North Carolina.* Georgia did this with an umbrella panel known as the Governor's Growth Strategies Commission. Representatives of all interest groups—business, developers, environmentalists, government officials, and private concerned citizens—were brought into the deliberations, and the end result was a growth management package that everyone could support.¹⁷ The package included carrots for local government like money for water and sewer, highways, and planning, but it also carried two big sticks—withholding of state funds for local governments that did not participate and the promise that if appropriate land-use plans were not prepared on the local level, the state would step in and do the job.

Such an approach in North Carolina would be promising for a number of reasons. It would bring some uniformity to planning efforts across North Carolina. Although Piedmont and eastern counties are ahead of the mountains in planning at the county level, not all of these counties are doing the job. And there is a clear need for more regional planning and cooperation in such areas as land use, transportation, and waste management. The drawbacks are cost and the creation of another state bureaucracy. Georgia is spending \$3 to \$4 million on just the planning elements of its growth management program. The total package, including loans and grants to local government, comes to more than \$30 million. But as Holman puts it, planning for the future of North Carolina is an

—continued on page 26

Table 4. Opinions On Land-Use Planning in North Carolina, June 1990

Category	Coast	Mountains	Piedmont & East	State- wide
1. In respondent's opinion, what is attitude of citizens in the county toward land use planning?				
<i>Strongly support or support</i>	12 60%	7 29%	28 50%	47 47%
<i>Neutral</i>	2 10%	3 13%	10 18%	15 15%
<i>Strongly oppose or oppose</i>	4 20%	9 38%	9 16%	22 22%
<i>Don't Know</i>	1 5%	0 0%	4 7%	5 5%
<i>Opinions vary—cannot be categorized</i>	1 5%	5 21%	5 9%	11 11%
2. In respondent's opinion, what is attitude of citizens in the county toward zoning?				
<i>Strongly support or support</i>	6 30%	3 13%	23 41%	32 32%
<i>Neutral</i>	1 5%	4 17%	10 18%	15 15%
<i>Strongly oppose or oppose</i>	8 40%	13 54%	13 23%	34 34%
<i>Don't know</i>	4 20%	0 0%	5 9%	9 9%
<i>Opinions vary—cannot be categorized</i>	1 5%	4 17%	5 9%	10 10%
3. In respondent's opinion, would county have more interest in preparing land use plans and implementing land use measures if additional funds were available from the state?				
<i>Yes</i>	14 70%	17 71%	49 88%	80 80%
<i>No</i>	5 25%	5 21%	6 11%	16 16%
<i>No Answer</i>	1 5%	2 8%	1 2%	4 4%

Category	Coast	Mountains	Piedmont & East	State- wide
4. Should the state require each county to prepare a land use plan?				
<i>Strongly support or support</i>	13 65%	10 42%	43 77%	66 66%
<i>Neutral</i>	0 0%	7 29%	5 9%	12 12%
<i>Strongly oppose or oppose</i>	0 0%	3 13%	3 5%	6 6%
<i>Don't know</i>	0 0%	3 13%	2 4%	5 5%
<i>No answer</i>	7 35%	1 4%	3 5%	11 11%
5. In respondent's opinion, has the county within the past ten years been adversely affected by a large scale development in a neighboring town or county?				
<i>Yes</i>	4 20%	3 13%	13 23%	20 20%
<i>No</i>	16 80%	19 79%	42 75%	77 77%
<i>No Answer</i>	0 0%	2 8%	1 2%	3 3%
6. Would respondent support a system that would allow regional review and approval for development projects that, due to their size, character, or location, have an impact on the citizens of more than one county?				
<i>Yes</i>	10 50%	14 58%	31 55%	55 55%
<i>No</i>	9 45%	5 21%	18 32%	32 32%
<i>No Answer</i>	1 5%	5 21%	7 13%	13 13%

Note: As defined for these tabulations, there are 20 coastal counties, 24 mountain counties, and 56 Piedmont or eastern counties. These opinions represent the views of the county-level officials, in most cases county managers or planners, who filled out the Center survey. Percentages for each category may not add up to 100 due to rounding.

—Dale McKeel



Hugh Morton

A view of Looking Glass Rock in the Smoky Mountains southwest of Asheville.

appropriate and neglected role of state government. The nine-year Transportation Improvement Program for prioritizing highway needs is one of the few long-range efforts. "It's actually incredible how little planning is done by the state," says Holman.

(3) *The state could set minimum standards for county planning and regulation and force all 100 counties to comply.* Every county could be required to have a planning department; each county could be asked to enact a land-use plan and adopt subdivision regulations. The state could appropriate money to finance these new planning efforts, or it could use existing aid to local governments as leverage. "I bet if you told counties their state sales tax revenue would be denied unless they came up with certain things by a certain date, I bet they'd all be done," says Tom Foxx, a leader in the Watauga County community of Foscoe-Grandfather and a former state planner. Of course, local government officials would scream bloody murder about more regulations coming down from

Raleigh without the money to implement them. Local officials would say they are already strapped with expensive solid waste management programs, with new watershed protection expenses, and countless other burdens put upon them by state government.

But as Foxx puts it, why should citizens across North Carolina pay because a county hundreds of miles away with a relatively low property tax rate has failed to protect its resources? An example, he says, is Avery County, which has the lowest property tax rate in the state but has received a state grant to implement its planning program. "Is it fair for the citizens of New Hanover County to pay for Avery to have a planner because the commissioners won't pay for it themselves?" asks Foxx. The grant is for a two-year pilot project, but Foxx says the budget of the Department of Environment, Health, and Natural Resources will not be reduced by the amount of the grant at the end of the two-year period. Besides the fairness issue, it's another way that pork

barrel politics fuel growth in the overall state budget, says Foxx.

But Morton, one of Avery County's biggest landowners, strongly defends the state-funded planning program. "Having lived in New Hanover County, I know that there are many things peculiar to coastal communities that the state does for that county that it does not do for Avery," says Morton. "None of us who know the benefits of planning should undercut any responsible planning project, particularly when it deserves to be understood that the one in Avery is a pilot project on untilled soil designed to show the good that planning can do."

(4) *The state could make money or other incentives available for counties to do land-use planning, but not force them to do it.* "I would suggest that the implication that it is necessary to bypass the established and open decision-making processes of local governments made up of elected officials in order to make rational public policy bears some examination," says Jim Blackburn of the North Carolina Association of County Commissioners. "It is not unusual for groups to 'expand the scope of conflict' and seek satisfaction at one level of government when they receive an

unwanted answer at another." To justify "imposing policy from above," as Blackburn describes it, would require a clear showing of compelling need and a consensus on local government's inability to handle the problem on its own.

"I'd like to see incentives given for those kinds of plans, rather than have them made mandatory," says Furman, the Watauga County planner. "I believe if we presented our counties with the information, local support for some kind of planning would develop," adds Rep. David Diamont (D-Surry), who represents five western counties and was involved in legislative debate on the Mountain Area Management Act and the Ridge Law. "It has to be a bottom-up decision. The state should encourage planning, but local officials must be the leaders."

But a number of land-use plans were prepared for mountain counties during the 1970s, using mostly federal dollars, only to be rejected by county commissioners or to be adopted and ignored. To protect against this happening in the 1990s, the state could set out a process for preparing land-use plans that assures adequate public input and makes funds available, but requires the counties to reimburse the state if they fail to adopt a plan within a given time frame.

Land-Use Planning: What Have Neighboring States Done?

States that border North Carolina differ greatly in their approaches to land-use planning, from leaving it up to local governments to imposing a highly structured and comprehensive state planning process. In Tennessee and South Carolina, the system is much like North Carolina outside the 20 N.C. counties governed by the Coastal Area Management Act. Local governments decide whether they will create a planning commission, produce a land-use plan, or implement zoning and subdivision regulations. Virginia has moved one step further by requiring local planning, and Georgia, with its 1989 Growth Strategies Plan, has embraced one of the nation's more ambitious land-use planning programs.

The Code of Virginia was updated in the mid-1970s to require each county and independent city to have a local planning commission.¹ In turn, each planning commission is required to prepare a land-use plan and subdivision ordinance for adoption by the county or city government. Though the law lists elements to be included in land-use plans and subdivision ordinances, there is no regional or state review of these documents. Land-use plans must be updated and re-adopted by the local governing body every five years.

Georgia, however, has melded mandatory local land-use planning into a comprehensive economic development package, the Growth

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Additional incentives could be offered to counties that participate in regional planning.

Such an approach would leave gaps where counties chose not to participate, but making money available to address a recognized need may be all that is required to prompt counties to act,

If people in general could be got into the woods, even for once, to hear the trees speak for themselves, all difficulties in the way of forest preservation would vanish.

—JOHN MUIR

and local control would be preserved. The state could revisit the issue five years down the road and examine whether the response had been sufficient to protect mountain resources, or whether there was a need for stronger intervention.

The risk is that the people of the North Carolina mountains would sit

Land-Use Planning, *continued*

Strategies Plan. The plan was developed from recommendations made by the 35-member Governor's Growth Strategies Commission, a bipartisan public-private group formed in 1987 by Gov. Joe Frank Harris. The genius of the plan was that it linked the bitter pill of mandatory local planning with the sweet promise of sharing the wealth of economic development that gravitates mostly toward Atlanta.

"The Growth Strategies Plan came into being because of perceived disparities in economic prosperity and quality of life in the state—with one large city, Atlanta, a few medium-sized cities, and the rest of the state predominantly rural," said Michael Gleaton, assistant director of the state's Office of Coordinated Planning.

Georgia's growth plan assigns responsibilities to three levels of governments—local, regional, and state. Local governments, both cities and counties, prepare and adopt plans. Regional development centers—similar in some ways to North Carolina's regional councils of government—review and approve local plans and use them in preparing regional plans. State government defines the framework in which planning takes place and provides needed funding.

"I believe something approaching the Georgia system would be good for North Carolina," says Bob Shepherd, director of the Land of Sky Regional Council of Governments in Asheville. "I think that approach makes a lot of sense. You look at things on a regional basis

and the legislation spells out the role of the regional development centers."²

The growth plan recognizes the interrelationship between land use and numerous other factors. Local plans must be comprehensive, which means that they must address population and demographic changes, economic development, natural and historic resources, community facilities, housing, and land use. The planning process encourages local governments to evaluate their current situation and produce a statement of community needs and goals. The local government must then produce a short-term work program, a five-year plan of specific actions to address the stated needs and goals.³

"I visit many communities—and many of them are reluctant to plan their growth," says Gleaton. "But I tell them that if they don't plan their growth, someone will do it for them. . . . By getting involved in the planning process, communities can give the private sector a guide to the way growth should occur."


Local plans are to be disapproved by regional development centers if they do not meet the state's minimum standards and may be disapproved if they are inconsistent with plans from neighboring communities. The state can deny funding assistance for infrastructure to local governments that lack an approved plan. All communities must produce a plan by October 1995, and plans must be updated every 10 years.⁴

Nationally, the traditional leaders in state land-use planning have been Hawaii, Florida, Oregon, California, and Vermont.⁵ For instance, both Florida and Oregon, like Georgia,

—*continued*

on their hands and do nothing while haphazard growth worked its will on the region. There would have to be some trust—that people in small towns and rural counties could sit down and plot their own destinies. And it would take a willingness to accept that all wisdom does not reside in Raleigh or Washington. But it is at least conceivable that encouraging local people to protect their own back yards is the most efficient way to protect the North Carolina mountains. And it is clearly the least intrusive way.

Whatever the approach, the mountains are a

North Carolina treasure, and there is a clear state interest in preserving them for future generations to enjoy. How far the state needs to go in regulating growth across the region and what the state's role ultimately should be is a question that is yet to be resolved. But clearly it is a question that must be addressed—and soon. 

FOOTNOTES

¹A brochure handed to visitors at The Blowing Rock makes two references to snow that falls upside down,

—continued on page 63

Land-Use Planning, *continued*

require cities and counties to prepare and adopt comprehensive plans, and each state reviews these plans to ensure that they are consistent with plans of neighboring communities, and with regional and statewide plans. Public participation in preparing and implementing plans is an important part of the process in both states.

This spread of state mandated local land-use planning is being eyed warily in some quarters. "There is a certain amount of sharing of legislation on the part of national or regional groups, independent of whether the legislation matches the needs of other states," says Jim Blackburn of the North Carolina Association of County Commissioners, which represents more than 500 local elected officials. It is important that any kind of mandatory land-use planning program be tailored to the needs of North Carolina, Blackburn says, and that affected parties like local elected officials have a role in developing legislation to create such a program. "A certain number of local officials are reluctant to get too far out front of their constituents," says Blackburn. "If the bill were structured correctly, those folks would sign on."

And then there are the advocates of unfettered enterprise who equate these statewide planning efforts with creeping socialism. "The idea that some intellectual can plan how growth and development ought to be done is pure communism," says Bill Johnson, an Asheville real estate developer.

Still, land-use planning regulations seem to proliferate as population density increases,

and many states are stepping in to orchestrate. Florida, in trying to cope with surging population growth, has moved to make sure that infrastructure is in place to handle new development as it occurs, through what are known as concurrency requirements. These laws ensure that sufficient public facilities and services such as parks and water and sewer will be available before permits are issued to begin construction. Even road capacity is taken into account.

Florida also learned about the power of the purse in prompting local government to plan. The state's first law requiring every city and county to adopt a comprehensive plan was passed in 1975. The legislature did not allocate planning funds to local governments, however, and many cities and counties did not comply. The 1985 bill, recognizing this deficiency, initiated state funding for local planning. Since then more than \$22 million has been appropriated, and compliance has soared.⁶

—Dale McKeel

¹Code of Virginia, Title 15.1, Chapter 11, Article 1, as amended.

²Unlike the regional development centers in Georgia, the powers of North Carolina's regional councils of government are only advisory. For more on the role of COGs in North Carolina, see "Regionalism in North Carolina," a pro-con discussion in *North Carolina Insight*, Vol. 7, No. 2 (October 1984), pp. 42–51.

³Ga. Annotated Code 50–8–7.1(b)(1)

⁴*Ibid.*

⁵Ann O'M. Bowman, and Richard C. Kearney, *State & Local Government* (Boston: Houghton-Mifflin, 1990), p. 407.

⁶John M. DeGrove, "The Politics of Planning a Growth Management System: The Key Ingredients for Success," *Carolina Planning*, Vol. 16, No. 1 (Spring 1990), pp. 35–44.

Reapportionment and Redistricting: Redrawing the Political Landscape

by Paul T. O'Connor

The 1991 General Assembly will face many tough issues: education reform, tax increases, economic issues, prison construction and correction alternatives, environmental dilemmas, and the like. But no issue is likely to be more politically divisive and difficult to resolve than the redistricting of N.C. House and Senate seats and the state's 11 congressional districts—which may well expand to 12, thanks to the 1990 census. In the following pages, Insight examines the history of redistricting in the past 20 years in North Carolina and outlines the key political and legal issues facing the 1991 legislature. Insight also looks at landmark court decisions affecting redistricting, at how other states handle redistricting, and at what electronic tools will be available to help lawmakers draw new districts in 1991.



Daniel T. Blue entered the 1981 General Assembly in much the way a highly touted rookie joins a major league

baseball club out of spring training. The young, articulate lawyer, then 31, was the first black House member since the turn of the century to represent Wake County, and local Democrats knew they had a rising political star in their midst.

On Oct. 29, 1981, Blue brought forth a redistricting plan for the state House that, at first blush, had almost everyone believing the man was a miracle worker. The assembly had already spent most of the year unsuccessfully trying to redraw House, Senate, and congressional districts when

Blue proposed a plan that probably would have satisfied the federal courts and the U.S. Justice Department on the issues of population deviation and minority voting strength dilution. The plan did minimal damage to incumbents' districts and county lines. According to the computer printout, all the numbers were right, all the criteria were met. Rep. George Brannan (D-Johnston) was so tickled with Blue's plan that he first offered to buy him a steak dinner and then upped the offer to two.

But Dan and Earle Blue never got to eat those steaks because shortly after the House Committee on House Redistricting approved the plan on Oct.

Paul T. O'Connor has covered the N.C. General Assembly since 1979. He is the columnist for the 50-newspaper Capitol Press Association.

29, 1981, someone took the precaution of counting the number of seats, and therein lay the problem. Blue had only 119 seats for a 120-member House of Representatives.¹

Had Blue and other members of the House been able to foresee, that day, how long it would take to reapportion the state's legislative and congressional districts to comply with population shifts reflected in the 1980 census, they might have reacted differently. Rather than rescinding committee approval of the Blue plan, the committee might have proposed a constitutional amendment reducing the size of the House to 119 seats. That might have saved the House from a protracted redistricting battle that would take years to fight and would require a total of four extra legislative sessions and numerous court reviews which wouldn't be completed until July 1986. And even then, it was not until 1988 that the state had its first House of Representatives elected entirely from districts considered legal by the federal courts and the U.S. Department of Justice.

And now it is all about to happen again. Preliminary data from the 1990 U.S. Census have begun arriving in Raleigh and legislators are preparing to begin what Common Cause refers to as "decennial madness." Throughout North Carolina and the nation, those who follow reapportionment law view the process with trepidation, predicting that redistricting this time could create more litigation, cost more money, and take more time than ever before in the history of the country. As Rep. Howard Chapin (D-Beaufort) put it at a March 16, 1990, briefing for legislators, "These people don't know what they're in for."

To understand how protracted the redistricting wars of the 1990s may be in North Carolina, a look at the history of the process is in order.

A Short History of a Long Redistricting



The U.S. Constitution mandates *reapportionment*, the process of using census data to divide the 435 members of the

U.S. House of Representatives among the 50 states.² Reapportionment hasn't changed things in North Carolina in 30 years, but change is on the horizon this year. In 1961, North Carolina lost a congressional seat and the delegation was reduced in size from 12 to 11. But the census reapportionment applies only to U.S. House seats. Of the 435 House seats, each state gets one seat, and the remaining 385 are apportioned on the basis of that state's

population. Two U.S. Senators from each state are elected on an at-large basis, so the census does not affect the U.S. Senate races.

The census affects state legislative races in a different fashion, mandating the redrawing of legislative district lines based on population shifts. The redrawing of congressional and legislative districts is called *redistricting*. Until the 1960s, legislative redistricting was a matter of state concern alone, but that changed after two U.S. Supreme Court decisions—*Baker v. Carr* and *Reynolds v. Sims*. In *Baker*, the high court ruled that legislative districts with unequal populations can be challenged in federal court. In *Reynolds*, the court ruled that state legislative districts must be apportioned according to population, but that there could be more leeway on what constituted equal population.³

For nearly 300 years, the state House had been apportioned on a plan that guaranteed at least one representative to each county. With the Reconstruction Constitution of 1868, that meant that 100 counties each had one representative and that the other 20 seats were divided among the most populous counties on the basis of population.⁴ The 50 state Senate districts theoretically were designed to contain equal populations, but they did not because of a constitutional requirement that no county lines be broken in the drawing of Senate districts. The

When Gov. Elbridge Gerry of Massachusetts oversaw legislative redistricting in 1812, opponents said one district was so contrived it took the shape of a salamander—but others called it a gerrymander and the name stuck.



net effect of these two plans for the House and Senate was to create a system that provided rural areas with the overwhelming balance of power in the North Carolina General Assembly. It was a system that, in effect, had legislators representing land rather than people.

Those practices were to change in 1966. A series of lawsuits challenging the districting plans for many state legislatures (see sidebar, page 43, for more) and congressional delegations began to work their way to the U.S. Supreme Court by the early 1960s. Beginning with the high court's ruling in a 1962 Tennessee case⁵ that legislative apportionment was a proper subject for review by the federal courts, a series of court cases forced the redrawing of the American political map. The decisions were based on the Equal Protection Clause of the 14th Amendment to the U.S. Constitution, with the emerging principle that became known as one-person, one-vote.

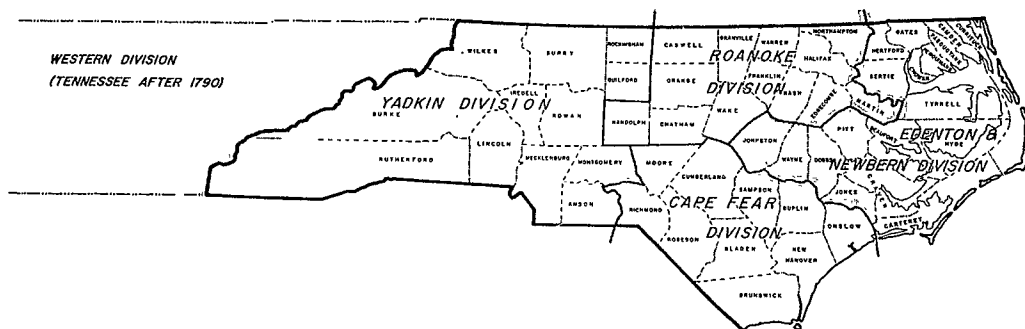
This new series of redistricting cases came home to North Carolina on Nov. 30, 1965, when a three-judge U.S. District Court panel declared invalid the state's Senate, House, and congressional district plans and the state constitution's provision guaranteeing to each county a representative in the House.⁶ The General Assembly was given until Jan. 31, 1966, to redistrict the state in a constitutional fashion.

At the time, the North Carolina House was so controlled by rural forces that a majority vote—61 members—could be assembled from members who represented only 27.09 percent of the state's population. The most populous district was 18.15 times larger than the smallest. These two statistics, previously not considered upon those rare occasions when the House redistricted itself—the House had skipped redistricting after the 1950 census, going from 1941 to 1961 without a change in district lines—were to become guiding principles in the

1989-90 House Speaker Joe Mavretic, left, chats with House Minority Leader Johnathan Rhyne. Mavretic and Rhyne prefer a special session on redistricting in 1991, following the regular session, but a new speaker will be elected when the legislature convenes Jan. 30, 1991.



Karen Tam



N.C. Congressional Districts 1789-1790

This map shows North Carolina's four congressional districts under the original U.S. Constitution.

future. The first is known as "minimum controlling percentage" and the second as "population deviation."

In 1966, the state Senate had a *minimum controlling percentage* (defined as the smallest percentage of the population needed to control a majority of legislative votes) of 47.06, which was close enough to acceptable (the ideal would be 51 percent) that the U.S. District Court did not take exception to it in its 1965 ruling. But the *population deviation*—the ratio of the population of the most populous district to that of the least—was 2.26 to 1. The District Court indicated that it would accept no more than a 1.3 to 1 deviation ratio. A deviation ratio of 1 to 1 would be best, of course, because districts would then be equal in population, but such an idea is all but impossible to achieve.

Given the enormity of the political task facing the assembly when it convened at the call of Gov. Dan Moore at noon on Monday, Jan. 10, 1966, it appears almost miraculous today that districts were redrawn and approved, and that the General Assembly adjourned on Friday, Jan. 14, at 12:49 p.m.—just in time for lunch. The assembly had been in session for only four days and 49 minutes.

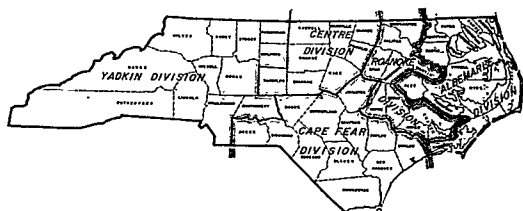
On February 18, the District Court accepted the House and Senate redistricting plans but rejected the congressional plan, though it did allow the 1966 congressional primaries and elections to proceed under the 1966 plan with the stipulation

that an acceptable plan be adopted by the 1967 General Assembly.

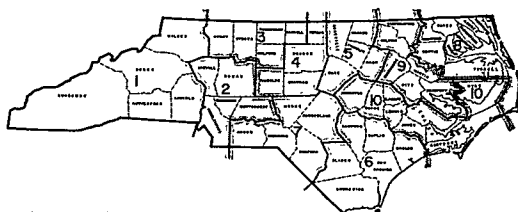
The state House plan adopted in 1966 had a minimum controlling percentage of 47.54 percent and a population deviation ratio of 1.33 to 1. The state Senate plan had a minimum controlling percentage of 48.8 percent and a population deviation ratio of 1.32 to 1. The District Court, citing the *Reynolds v. Sims* decision of the U.S. Supreme Court,⁷ said congressional plans would be held to a much tighter standard of one-person, one vote. Thus the congressional plan was closer to ideal than either the House or Senate plans. In 1967, when the legislature changed the congressional plan, it reached a population deviation ratio of 1.04 to 1, according to figures in the 1960 census.

But figures in the 1960 census did not reflect the real state of the population in 1967, or in 1971. The state had seen shifts in population among the counties and a growth of more than a half-million citizens. Therefore, when the 1971 General Assembly convened to draw districts for the state House and Senate and for the U.S. House, the deviations once again were far beyond the point where they would pass constitutional muster. The very definition of *muster* also had changed. The U.S. Supreme Court had signaled, in *Kirkpatrick v. Preisler*⁸ in 1969, that it would hold states to much more rigorous standards as they sought to meet the ideal district size.

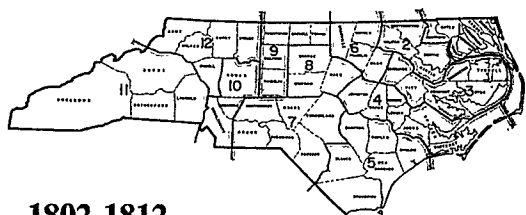
Congressional Districts in North Carolina 1790 - 1872



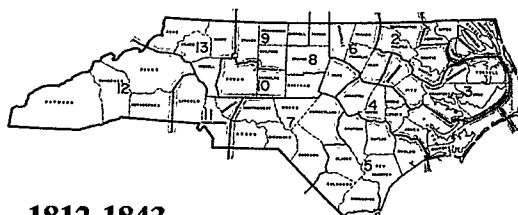
1790-1792



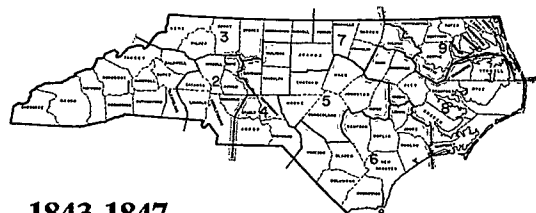
1792-1802



1802-1812



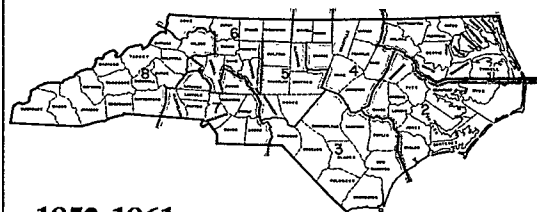
1812-1843



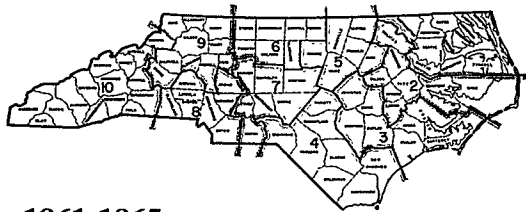
1843-1847



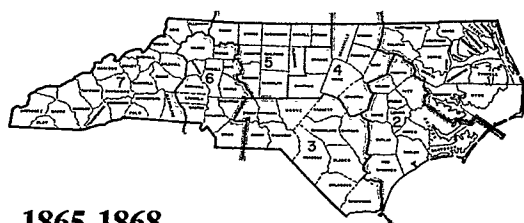
1847-1852



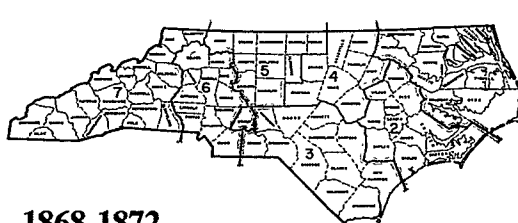
1852-1861



1861-1865



1865-1868



1868-1872

North Carolina Government 1585-1979

But fears that the 1971 session would drag on endlessly, with considerable political bloodletting, were groundless. Again, as in 1966, the assembly redrew legislative and congressional districts in a relatively short period with minimal acrimony. The 1971 state Senate plan brought the minimal controlling percentage over the halfway mark—to 50.46 percent—and the population deviation ratio down to 1.14 to 1. The state House plan created a 48.82 minimum controlling percentage and a population deviation ratio of 1.21 to 1. The congressional plan achieved a population deviation ratio of only 1.035 to 1 while not splitting counties, pitting incumbents against each other, or stripping any congressman of his base of support.⁹

When the General Assembly adjourned in 1971, it could look back at five years in which it had drastically redrawn its district lines to come into compliance with the Supreme Court's one-person, one-vote, mandate. A majority of votes in the Senate now required the votes of senators representing a majority of the population. The House still did not meet that standard, but its 48.8 percent

minimum control point was a major improvement over the 27.09 percent of only five years earlier. The state's congressmen all represented populations of between 454,275 (8th district) and 471,777 (10th).

Unfortunately, the resolve for change did not carry over for a full decade. The 1981 General Assembly would not carry forward significantly the effort to equalize districts, and it refused to address the new constitutional problem that had been injected into redistricting battles: minority representation.

Problems with the 1980s Redistricting Efforts



By 1981, black political forces were fed up with a system that restricted them to only three House seats and one Senate seat, although blacks were somewhat split on whether they preferred single-member districts to multi-member districts. Blacks faced a system that

*Rep. H. M. "Mickey" Michaux of Durham envisions
a new congressional district running from the Virginia border down
to New Bern on the coast—similar to one that existed from 1883 to 1891.*



Karen Tan

kept them out of power by diluting their voting strength within large, multi-member districts. If a concentrated core of black voters were surrounded in a large multi-member district by a much larger white population, then whites could cast enough votes to elect whites for all of the seats in the district. Republicans thought that the district worked in much the same way against them. Republican pockets were diluted in large multi-member districts which would elect slates of Democrats. Therefore, an unusual alliance was formed between blacks, who vote heavily Democratic, and Republicans. Both wanted a system of single-member districts in which both black House and Senate candidates would enjoy majority black populations.

Such a plan would split large, urban counties like Mecklenburg, Forsyth, Guilford, Cumberland, and Wake into single-member districts, some of which would hold a black majority. "For blacks, creating black majority districts is a simple way of ensuring the election of black representatives. For Republicans, packing blacks into a few districts means that the surrounding districts become whiter, less Democratic, and fertile soil for GOP candidates," Washington reporter Matthew Cooper wrote in *The Washington Monthly*.¹⁰

It's little wonder, then, that the white Democrats who controlled the assembly fought vigorously to oppose the creation of a single-member district plan. Some legislators, of course, believed they were hamstrung by the traditional practice of keeping county lines intact when drawing new districts, and creating single-member districts would require the fracturing of county lines in some cases. That practice would end in 1983 when a U.S. District Court in Raleigh struck down an N.C. constitutional ban on crossing county lines.¹¹

Former N.C. State Board of Elections Chairman Robert Hunter of Greensboro, a Republican, would later write of the redistricting battles of the early 1980s, "Despite continued appeals, the General Assembly would not draw single-member minority districts unless forced to do so by the Attorney General or the federal courts; and when this requirement was made, they would 'swallow the smallest pill.'"¹² Representative Blue says much the same. "The 1981 to 1984 process was an ongoing refusal to face facts that the courts and the U.S. Justice Department were going to demand single-member districts that enhanced the possibilities for election of minorities in heavily minority districts. The General Assembly tried to do as little as possible." (North Carolina is among the few

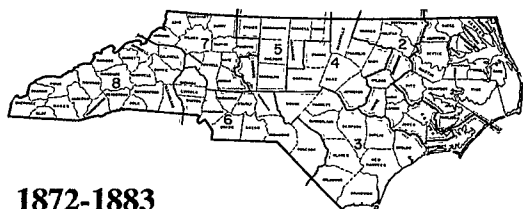
states nationally that permit multi-member districts. See Table 1, page 38, for more.)

Hunter was the original Republican intervenor's attorney in the case that eventually forced the assembly to draw single-member districts in counties not covered by the Voting Rights Act.¹³ In January 1984, *Gingles* (then *Gingles v. Edmisten*) was decided in favor of blacks and, indirectly, Republicans (the NAACP, ACLU, and Republican National Committee eventually wound up on the same side, while the Democratic attorney general of North Carolina and the Reagan Administration were on the other). The decision by the U.S. District Court in Raleigh forced the assembly to return to the capital and draw seven single-member House districts and two single-member Senate districts for blacks. These came in addition to four single-member House and two single-member Senate districts which the assembly had already drawn in 1982 in response to objections by the U.S. attorney general—after the *Gingles* case had been filed. By the time the courts were finished with *Gingles*, a majority black House district and a 48 percent black House district would be added in the Nash, Edgecombe, and Wilson counties area. The U.S. Supreme Court would permit the re-joining of the three single-member House districts in Durham County, however, on the basis that Durham had shown itself capable of electing blacks in a multi-member district.

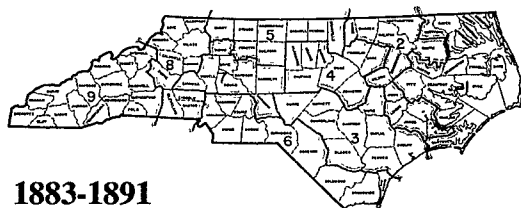
The *Gingles* suit was based on the U.S. Voting Rights Act of 1965, and specifically on 1982 amendments to the act.¹⁴ The act, Hunter explains, is designed "to ensure racial and language minority groups, primarily in the South, the right to register to vote in federal and state elections." Administrative rules which were written in support of the act, and later affirmed by the U.S. Supreme Court, allowed the U.S. Justice Department in effect to order broad changes in election practices, including changes in political district boundaries. (The Justice Department, of course, could not directly order such changes, but its signals were unmistakable when Justice Department officials clearly spelled out what would be acceptable under the Voting Rights Act.) Before 1982, someone alleging discrimination in an election law had to prove that the law contained an *intent* to discriminate.¹⁵ The 1982 amendments require only that a plaintiff meet a less rigid test of showing that a voting practice or law has the *result* of discriminating against that minority.

In the *Gingles* decision, the high court rendered an expansive interpretation of the amended

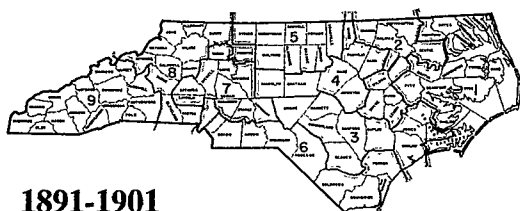
Congressional Districts in North Carolina **1872 – 1971**



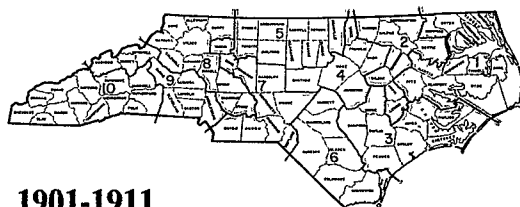
1872-1883



1883-1891



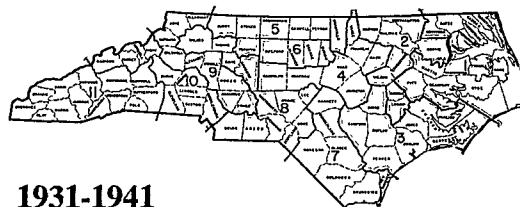
1891-1901



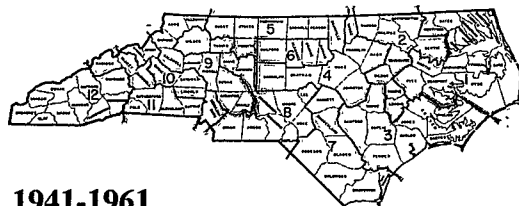
1901-1911



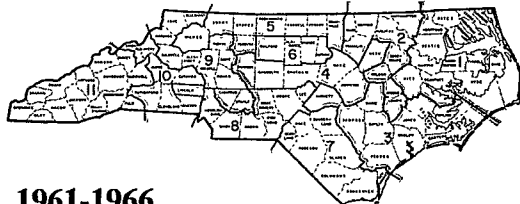
1911-1931



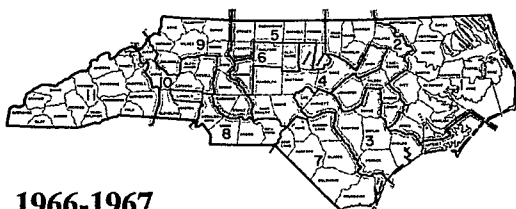
1931-1941



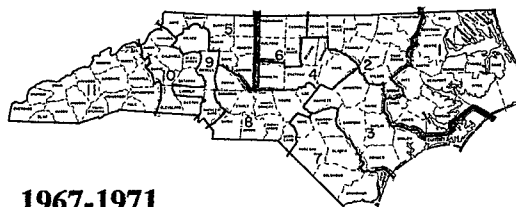
1941-1961



1961-1966



1966-1967



1967-1971

from *North Carolina Government 1585-1979*

act. Blue says that under the rule of *Gingles*, "If you have a population and you can reasonably draw a district that is majority minority, the law is that you have to draw it, unless you demonstrate that consistently since the last census, they have elected minority officials." Adds Charlotte attorney Leslie Winner, who represented plaintiffs in the 1980s redistricting battles, "The linchpin is to demonstrate that white voters fail to vote for black candidates in such numbers as usually to defeat the candidate of choice of the black community."

Some legislative observers believe the General Assembly in 1981 was already moving toward enacting single-member districts by the time the federal courts became involved, and that the final resolution of the *Gingles* case resulted only in a few more single-member seats. But the fact remains that *Gingles* was filed shortly after the 1981 legislature adjourned, that the U.S. Justice Department rejected the 1981 legislature's plans a short time later, and that not until 1982 did the N.C. General Assembly begin enacting single-member districts.

The 1982 election had a dramatic result. Eleven black House members were elected, including some from single-member districts and some from multi-member districts. The previous high number in the House had been four.

The 1991 Redistricting



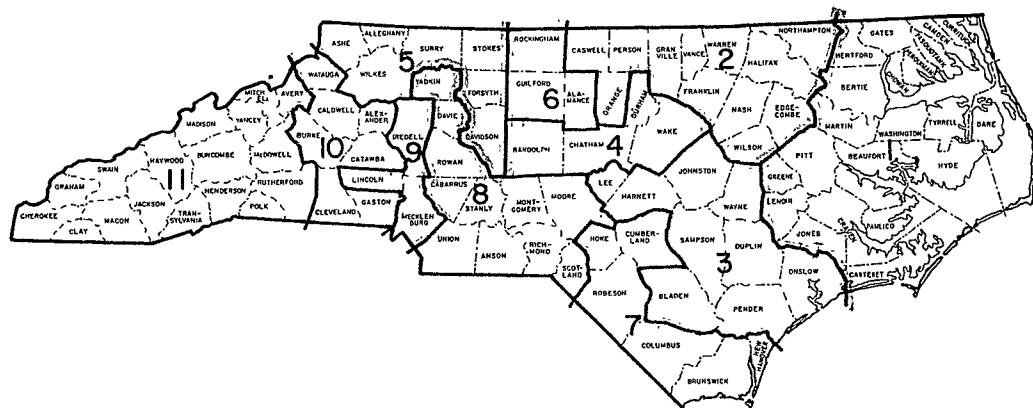
Despite the racial issues involved in the redistricting struggles of the 1980s, the 1991 General Assembly may not face a serious racial battle. "I think that battle is over," says Rep. H.M. "Mickey" Michaux (D-Durham), a veteran black legislator and former U.S. Attorney. "As long as they don't try to undo what has already been done." Population shifts will require some adjustments to legislative boundaries, says Gerry Cohen, chief of the assembly's bill drafting section and a key staff member for redistricting for more than a decade. Predominantly black districts may have lost or gained popu-

Table 1. States That Allow Multi-Member Legislative Districts

State	Senate	House	Summary
Alaska	6 of 14	13 of 27	States with multi-member districts in either House or Senate or both: 17
Arizona		30 of 30	
Arkansas		10 of 84	
Georgia		15 of 156	States with multi-member districts for House only: 9
Idaho	6 of 33	33 of 33	
Indiana		16 of 77	States with multi-member districts for Senate only: 1
Maryland		45 of 59	
Nevada	7 of 14		States with multi-member districts for both House and Senate: 7
New Hampshire		103 of 175	
New Jersey		40 of 40	Southern States with multi-member districts: (Georgia, North Carolina,* Maryland) 3
North Carolina	13 of 35	30 of 72	
North Dakota	2 of 53	53 of 53	States without multi-member legislative districts: 33
South Dakota		35 of 35	
Vermont	10 of 13	43 of 77	
Washington		47 of 51	(Chart denotes how many of chamber's total districts are multi-member districts. Alaska, for instance, has 14 House districts, and 6 of them are multi-member districts)
West Virginia	17 of 17	26 of 40	
Wyoming	5 of 18	15 of 23	

* Note: North Carolina is only southern state allowing multi-member districts in both the House and the Senate.

Source: *Redistricting Provisions: 50 State Profiles*, National Conference of State Legislatures



Congressional Districts 1971 – 1981

lation at rates faster than the state average. If so, their boundaries will have to be adjusted to comply with the one-person, one-vote standard. Or, the minority population in an area may have grown to such an extent that the area now allows a new district to be drawn with more than 50 percent of the voters belonging to that minority group—what the redistricting jargon means by a *majority minority* population. But for the most part, Cohen says, the racial question regarding legislative seats in 1991 will be a matter of fine-tuning.

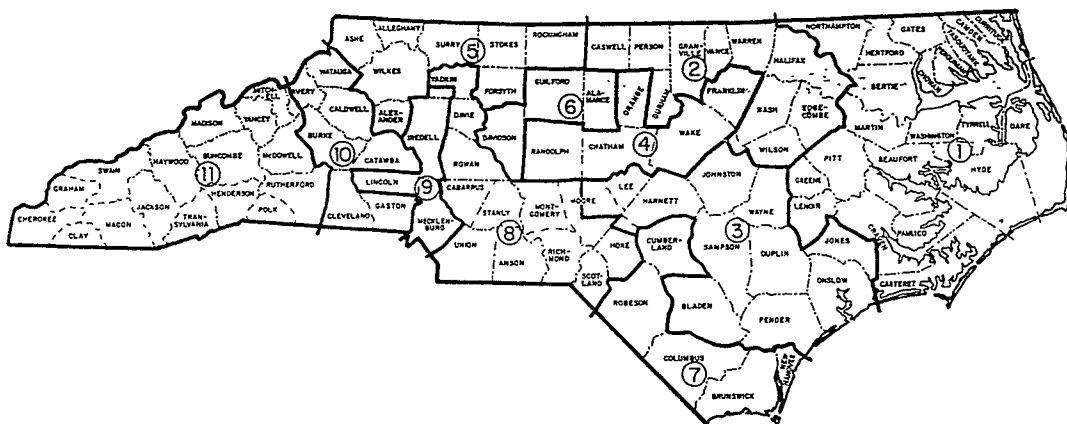
But that does not mean that race will not be an issue in 1991. Racial questions could hang over the 1991 session, guiding much of what the legislature does with regard to maps. In fact, race stands in the middle of the very first question North Carolina lawmakers must ask about redistricting: When do we get started? The 1991 General Assembly is set to convene on Jan. 30, 1991, and is tentatively scheduled to receive U.S. Census Bureau data as early as the latter part of February. But there are serious questions regarding the value of the information that will be sent at that time. Marshall Turner, chief of the Census Bureau's redistricting data office and a native of Gastonia, says the data "will carry the caveat that they are subject to change." The assembly, therefore, faces the possibility of beginning the time-consuming process of re-drawing district maps only to learn in mid-summer that all of the numbers must be changed, and that the process must start anew. That will occur if either U.S. Commerce Secretary Robert Mosbacher, who has ultimate responsibility for the Census Bureau, or the federal courts rule that mi-

nority populations have been undercounted in the 1990 census.

A number of minority advocacy groups contend that the census did not count all of the nation's minorities. Ruben Castillo, counsel to the Mexican American Legal Defense Fund in Chicago, said this contention is based on both historical and methodological evidence. The Census Bureau confirms that in the 1980 census it under-counted blacks by 5.9 percent and Hispanic Americans by 5 to 10 percent. Castillo said that methods used this year could lead to the same under-counting. In an interview after a redistricting seminar conducted by the National Conference of State Legislatures in Nashville, Tenn., Castillo said census-takers had inadequately canvassed both urban areas with minority populations and rural areas, like eastern North Carolina, with large populations of minority migrant workers.

The issue has been in court for several years and minority advocates like Castillo express confidence that the courts will order an adjustment to the final census figures. Castillo said the adjustment could come in the form of a mathematical formula which would increase the minority count across the nation. If that happens, it would most likely come in mid-summer, and the implications for North Carolina are clear.

"An adjustment would have a ripple effect for North Carolina," the legislature's Gerry Cohen says. "If an adjustment is ordered, it could throw off North Carolina's plan" if the General Assembly has one completed by then. That prospect has some legislative leaders, like 1989-90 House



Congressional Districts 1981 – 1991

Speaker Joe Mavretic (D-Edgecombe) and House Minority Leader Johnathan Rhyne (R-Lincoln), thinking about a special redistricting session later in 1991, perhaps not until late August or September. "The only thing worse than having to go through this process once," Rhyne says, "is having to go through it twice."

In an Oct. 4, 1990, letter to House members, Mavretic vowed that the House would avoid repeating "the expensive legacy of unnecessary partisanship and insensitivity to minority rights in 1981" and told House members that redistricting committees should work through the summer of 1991 to come up with proposals to be presented to the House "immediately after Labor Day." Mavretic also warned colleagues to avoid partisan bickering over plans. "The people who advocate partisanship over common sense will ensure that the federal courts will intervene. It is embarrassing to keep making the same mistake over and over. This will not advance either party."

State Democratic Chairman Lawrence Davis doesn't want a special session, though. Davis says Mavretic's proposal is "a terrible idea" and thought it was "very bad to have [a] special session."

A 12th Congressional Seat?



Based on population gains that have boosted the state to 10th in the nation with about 6.5 million citizens, North Carolina tentatively is slated to gain a 12th congressional seat beginning with the 1992 elections, and

the General Assembly must decide what goal it wants to accomplish with that seat. This will bring back to North Carolina the 12th seat it had from 1941-1961, but still puts the state one short of its largest House delegation ever—13 (see table, page 42, for more on the size of the state's congressional delegation over the last two centuries). There's plenty of speculation that, under the *Gingles* rule, the assembly will have to carve out a district with a large black population. "My best guess now is that a black district, or a district where a black can be elected, is a probability," said Minority Leader Rhyne. Representatives Blue and Michaux are both proceeding along the same presumption.

If the legislature does choose to use the 12th seat for that purpose, or if it simply chooses to adjust an existing district's boundaries to create such a district, it will have two basic choices. "We could probably create a 70 to 80 percent black district," Michaux says. Such a district would probably take heavily black areas of the 1st, 2nd and 3rd Congressional Districts to form a salamander-shaped district that runs along the Virginia border, down through Nash, Edgecombe, and Wilson counties and perhaps out to the Intracoastal Waterway and around Craven County near the city of New Bern. The district would have to embrace contiguous territory, but that could be accomplished by linking extremely narrow portions of rural eastern North Carolina. Shaping such a district would very nearly replicate the old 2nd District that existed from 1883-1891—the so-called "Black Second" because Henry Cheatham, born into a slave household in Vance County, defeated

then-U.S. Rep. Furnifold Simmons, who later would become U.S. Senator, in the 1888 elections. Cheatham was a black Republican. What is now the 1st District in northeastern North Carolina might have to use barrier island census tracts to link it with other portions of eastern North Carolina and thereby remain contiguous territory.

But a 70 percent or greater black population district isn't needed. The courts recognize 65 percent as the benchmark for recognizing a district as *majority minority*. And such a plan might be accused of violating the Voting Rights Act because it packs minority votes into one district. "Minorities won't be looking for a totally minority district," says Michaux. "They can't put us off in a corner and say now you have your district, don't bother us for anything else. I feel that a district of 40 to 45 percent [of minority voters] could do very well and give us the opportunity to be effective in more than one district." Michaux thus raises a second geographic option. A predominantly black district could begin with Durham County and proceed north and east, taking in the counties with substantial black populations—Granville and Vance with 43 percent non-white populations each and Warren

with nearly a 64 percent non-white population—that border Virginia. Such a district would be unlikely to reach the 65 percent minority concentration, but Michaux argues that such a district, especially if it included white Chapel Hill voters in nearby Orange County, who have shown a willingness to support black candidates, would be in the best interests of black North Carolinians.

State Republican Party Chairman Jack Hawke says the GOP is likely to support creation of a black district which would concentrate many of the traditionally Democratic voters in one district. "If you try to draw a strong black district, you dilute the black vote in the 11 other districts," Hawke said, "so if you look at the raw politics of it, it would be favorable to the Republican Party." Republicans believe that with the eastern black voters concentrated in one district, other eastern districts would have to be moved westward, into the more heavily Republican Piedmont, to fill out the total population of 546,077 which a district needs to be— $\frac{1}{12}$ of the state's estimated 6,552,927 population. Closely contested districts such as the 4th, 5th, and 8th, which had voted Democratic in recent years, might lose enough Democratic voters due to the ripple

These three leaders—Lt. Gov. Jim Gardner, left, Gov. Jim Martin, center, and 1989-90 Speaker Joe Mavretic, right, will seek to influence redistricting in 1991.



Karen Tam

Table 2. Number of U.S. House of Representatives Seats Allotted to North Carolina Since Adoption of the U.S. Constitution in 1789

Year	Number of Seats
1789-90	5*
1790-92	5
1792-02	10
1802-12	11
1812-43	13 (most ever)
1843-52	9
1852-61	8
1861-65	0 (10 seats in Confederate Congress)
1865-72	7
1872-83	8
1883-01	9
1901-31	10
1931-41	11
1941-61	12
1961-91	11
1991-	12 (?)

* In the original U.S. Constitution, effective on the first Wednesday in March 1789, North Carolina was allotted five representatives pending the first enumeration. But the original map of districts for North Carolina shows only four districts, including a combination "Edenton and Newbern Division." Until 1792, districts were named for regions or geographic features of the state. Since 1792, districts have been numbered—sometimes from west to east, but, since 1852, North Carolina's districts have been numbered from east to west.

Source: U.S. Constitution and *North Carolina Government 1585-1979*.

effect of such a black district that Republicans would begin winning those seats, Hawke said. "If they draw a black district, it will become increasingly difficult for the Democrats to hold their big delegation." In the 101st Congress, Democrats held eight of the state's 11 House seats, Republicans only three, but in the 102nd Congress, it will be seven Democrats and four Republicans.

Adds Hunter, "I think it very important to remember how the Voting Rights Act . . . will work on the 40 covered counties in North Carolina when it comes to drafting the 12th Congressional District. It appears to me that . . . it is required that at least a 65 percent district be drawn to reach pre-clearance. What happens to (Democratic U.S. Rep.) David Price if Orange County goes with Durham?"

But Democrats, who are likely to control the 1991 General Assembly, can do some packing of their own. There is some sentiment in Democratic circles to take the new 12th District and wind it through the most heavily Republican counties of the Piedmont. Such a district would almost certainly go to a new Republican congressman, but it might drain enough Republican votes that incumbent Democrats in the 4th, 5th, and 8th Districts might be far safer in the 1992 elections. It also might affect the 9th District and turn it into a Democratic seat. After all, the Democratic nominee twice carried Mecklenburg County on the Democratic ticket in the 1980s.

Political Gerrymandering and the Bandemer Decision



Such political manipulation of districts is not uncommon. It's called gerrymandering, a description coined in 1812 by the old *Boston Centinel* to describe Gov. Elbridge Gerry's salamander-looking proposal for a Massachusetts district. Political manipulation of districts pre-dates racial manipulation, but until recently there was little or nothing a minority party could do to protect itself from a majority party that wanted to draw district lines to its own advantage. The 1991 redistricting may indicate just how much recourse a minority party is to have.

The Voting Rights Act does not protect political minorities. Those wishing to pursue legal action on the grounds of political gerrymandering must use the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.¹⁶ In 1986, the U.S. Supreme Court may have opened what will be the proverbial can of salamanders in *Davis v. Bandemer*. That was an Indiana case brought by Democrats who felt that the Indiana legislature had unconstitutionally diluted their voting strength. The Supreme Court held that partisan gerrymandering was an issue for consideration by the federal courts. Justice Byron White, in the majority opinion, said, "Unconstitutional discrimination occurs only when

—continued on page 45

North
Carolina

Insight

The Quarterly Magazine
of the N. C. Center for Public Policy Research



Reader Survey

Dear Reader:

We are conducting a survey of North Carolina Insight readers to learn as much as we can about our readers, why you read Insight, and to seek ways to improve the magazine.

The survey questions were designed with three purposes in mind. First, we want to know what readers like or dislike about the magazine. Second, we hope you will help us identify what you think about the products and services of the N.C. Center for Public Policy Research. Finally, we believe that the survey results can help us with future fundraising and in defraying the costs of this magazine and of the Center's other research products.

Please take a few minutes to fill out the survey. Then just pull it out of the magazine, fold it as indicated, and mail it to us. We'll pay the postage -- unless you volunteer the stamp. That will help us, too.

Your answers will be kept in the strictest confidence and are not coded in any way. The information will be used only in combination with others from all over North Carolina.

This is the third time that we have conducted a reader survey. Your response is very important. Thank you for your help.

Sincerely,

Ran Coble

Ran Coble

Executive Director

N.C. Center for Public Policy Research

P.S. Please be sure to add, in the space provided, any additional suggestions you have for Insight.

SECTION I: This section will help us determine what you like and dislike about Insight.

How many of the last four issues of Insight have you had a chance to look through?

- ☐ 4 of the last 4 ☐ 1 of the last 4
☐ 3 of the last 4 ☐ 0 of the last 4
☐ 2 of the last 4 ☐ not applicable

How many of the last four issues do you still have?

- ☐ 4 of the last 4 ☐ 1 of the last 4
☐ 3 of the last 4 ☐ 0 of the last 4
☐ 2 of the last 4 ☐ not applicable

After you (and anyone else) have finished reading an issue of Insight, what do you usually do with it?

- ☐ Save entire issue ☐ Place in public area
☐ Clip or copy articles ☐ Discard
☐ Place in library ☐ Other (explain) _____

Does Insight devote too much, too little, or about the right amount of space to the following topics?

	Too Much	About Right	Too Little
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- | | | | |
|-------------------------|--------------------------|--------------------------|--------------------------|
| Campaigns and elections | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Courts and judiciary | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Criminal justice | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Economic development | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Education | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Environment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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| Housing | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Insurance | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Land use | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The legislature | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Local government | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| The Military | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| News media | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Poverty | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Prisons | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| State budget | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Taxation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Transportation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Women's issues | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

In the last three years, Insight has done thematic issues on poverty, the environment, and prisons.

Which of these was most helpful to you? Least helpful?

What subjects would you suggest for theme issues? _____

Do you use Insight as:

A source of news? _____

Reference material on a particular program? _____

Background knowledge on state government? _____

yes no

Do you read Insight for:

- ☐ Help in my job
☐ Learning about state government
☐ Pleasure
☐ Other (please specify): _____

Which of these Insight columns do you most enjoy reading?

- ☐ In The Executive Branch ☐ In The Mail
☐ In The Legislature ☐ From The Center Out
☐ In The Courts ☐ Memorable Memo
☐ On The Press ☐ Parting Shot

List the publications you read regularly:

Newspapers _____

Magazines _____

Please indicate to which (if any) of the following magazines you regularly subscribe:

- ☐ Atlantic ☐ North Carolina magazine
☐ Business N.C. ☐ Popular Government
☐ Conservative Digest ☐ The Progressive
☐ The Nation ☐ Southern Exposure

What is the source of most of your information about N.C. politics and public affairs?

- ☐ Newspaper ☐ Television ☐ Personal Contacts
☐ Radio ☐ Magazine ☐ Other

Are you satisfied with the news you get from this source of information?

- ☐ Fully satisfied ☐ Partially unsatisfied
☐ Partly satisfied ☐ Fully unsatisfied

If unsatisfied, why? _____

Do you regularly watch a local television news program?

- ☐ Yes ☐ No

If Yes, on which station or stations?

Channel _____ City _____

Are you served by cable television?

- ☐ Yes ☐ No

What do you like best about Insight? _____

What do you dislike most about Insight? _____

How would you describe Insight to a friend?

Have you used major reports by the N.C. Center?

() Yes () No

If yes, which have you found to be most useful?

	Read Thoroughly	Used as a Resource	Seen it Quoted	Heard of It	Never Heard of It
Article II: A Guide to the N.C. Legislature	()	()	()	()	()
Investor-Owned Hospital Movement in North Carolina	()	()	()	()	()
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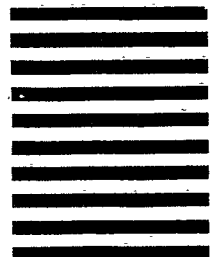


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Landmark Dates and Events in Redistricting

Here are several key dates, court cases, and congressional and legislative actions regarding redistricting and reapportionment in the United States and North Carolina:

- 1962:** *Baker v. Carr*. The U.S. Supreme Court says that legislative districts with unequal populations can be challenged in federal courts.
- 1963:** *Gray v. Sanders*. The U.S. Supreme Court sets the standard for challenges to unequal populations with one-person, one-vote ruling.
- 1964:** *Wesberry v. Sanders*. The U.S. Supreme Court holds that congressional districts must be equal or nearly equal in population.
- 1964:** *Reynolds v. Sims*. The U.S. Supreme Court says that state legislative bodies must be apportioned on the basis of population, but establishes a standard for equal population that is less stringent than for congressional districts.
- 1965:** Voting Rights Act. The U.S. Congress passes, and President Lyndon B. Johnson signs into law, the Voting Rights Act of 1965. The law removes many barriers that keep minorities from voting in North Carolina and gives the U.S. Department of Justice, in Section 5, the authority to declare void any subsequent changes to N.C. election laws in 40 N.C. counties which would impede minority citizens in their efforts to vote.
- 1965:** *Drum v. Seawell*. The U.S. District Court for the Middle District of North Carolina orders the N.C. General Assembly to comply with the one-person, one-vote standard.
- 1966:** The N.C. General Assembly, in special session, reapportions itself to bring N.C. House and Senate districts into compliance with the one-person, one-vote standard.
- 1967:** The N.C. General Assembly, meeting in regular session, rewrites the 1966 congressional district plan to comply with the one-person, one-vote standard.
- 1971:** The N.C. General Assembly, in regular session, draws new districts to comply with 1970 U.S. Census and does so in a way that reduces the population deviation and makes districts more nearly equal in numbers.
- 1980:** *City of Mobile v. Bolden*. The U.S. Supreme Court rules in Alabama case that Section 2 of the Voting Rights Act applies only when plaintiffs can show that election laws were written with the *intent* to discriminate against minorities.
- 1981:** The N.C. General Assembly refuses to create single-member districts for minorities in drafting House and Senate plans. Ralph Gingles of Gastonia, a black Democrat, files suit alleging that the plans violate the one-person, one-vote standard; dilute minority voting strength; and rely on provisions of the N.C. Constitution that were not pre-cleared as required under the Voting Rights Act. The U.S. Justice Department objects to first House plan, then the first Senate and congressional plans, and declares void a provision of the N.C. Constitution that prohibits the splitting of counties in the drawing of political districts. The legislature enacts a second House plan in special session in October, still with no single-member districts for minorities.
- 1982:** Congress amends the Voting Rights Act of 1965 to provide that plaintiffs no longer must prove that a law was written with the

—continued

intent to discriminate when a plaintiff charges an election law is discriminatory. In future cases, it will be sufficient only to show that a law has a discriminatory *result*. The U.S. Justice Department objects to N.C. General Assembly's second House plan. The General Assembly meets in February to enact a third N.C. House plan which creates, for the first time, four majority-black, single-member districts. Also, the legislature enacts a second Senate plan that creates two majority-black, single-member districts. The U.S. Justice Department rejects both plans in April. The legislature approves a fourth N.C. House and a third N.C. Senate plan in late April. The U.S. Justice Department approves both plans under Section 5 of the U.S. Voting Rights Act.

1983: *Cavanagh v. Brock*. The U.S. District Court in Raleigh strikes down an N.C. Constitution provision prohibiting the splitting of county lines when drawing districts.

1983: *Karcher v. Daggett*. The U.S. Supreme Court strikes down a congressional redistricting plan in New Jersey that has a population deviation of less than 1 percent because plaintiffs were able to show that they could draw another map that had a smaller range of deviation.

1984: The U.S. District Court in North Carolina's Eastern District rejects both N.C. House and N.C. Senate plans, demanding that urban House and Senate districts be split to create black single-member districts and that a predominantly black Senate district in northeastern North Carolina be drawn with a higher percentage of black citizens. A fourth N.C. Senate plan is enacted, creating a new single-member black district in Mecklenburg County and increasing the black majority in Senate District 2 in the northeastern part of the state. This Senate plan will pass U.S. Justice Department and judicial review. Further rulings in the *Gingles* case mandate changes in the Nash, Edgecombe, and Wilson counties area in House districts.

The U.S. District Court orders four single-member House districts, one of which is predominantly black and the other nearly half black. The state of North Carolina continues to appeal *Gingles* decisions.

1986: *Thornburg v. Gingles*. The U.S. Supreme Court upholds 1982 amendments to the Voting Rights Act and reverses its 1980 *City of Mobile v. Bolden* decision. The high court holds that if a legislative district can be created with a majority-minority population, and if that is in an area where minorities have been unable to win election when mixed with a larger white population, then that district must be drawn. North Carolina's Durham County, which had been split into three House districts, is rejoined into a three-member at-large district. The court says Durham has shown the ability to elect black officials.

1986: *Davis v. Bandemer*. The U.S. Supreme Court rules in an Indiana case that political gerrymandering in legislative districts is a matter for review by the federal courts. The court fails, however, to elaborate on what will constitute illegal political gerrymandering, and says Indiana's gerrymander was not bad enough.

1990: The U.S. Census is conducted on April 1. The N.C. General Assembly receives preliminary figures in September. President George Bush is to receive the Census Bureau report by New Year's Eve.

1991: The N.C. General Assembly is to convene on Jan. 30, 1991. North Carolina is tentatively scheduled to receive final 1990 census data in late February. The U.S. Secretary of Commerce is to validate figures by mid-July 1991 or institute an adjustment to compensate for what is expected to be an undercount of minorities.

2000: The U.S. Census Bureau is to conduct the decennial census on April 1, regardless of whether North Carolina or other states have completed 1991 redistricting based on 1990 figures.

—Paul T. O'Connor

Sources: State Legislatures magazine, National Conference of State Legislatures, and N.C. General Assembly General Research Division.

the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole."¹⁷ But, in what could be the cruelest blow to those who will be involved in redistricting this year, the high court did not say which arrangements "consistently degrade" voting influence.

The partisan political nature of the 1991 redistricting in North Carolina could be especially

fractious in light of the emerging strength of the Republican Party in the state. Never before in this century has the GOP entered a redistricting session with the strength it will have in 1991. In November, voters elected 39 GOP representatives and 14 *GOP senators to the 1991 legislature. In 1971, the breakdown was 31 Republicans and 139 Democrats. In the 1981 redistricting, the breakdown was 34 Republicans and 136 Democrats. Following the

What Do Other States Do When It's Time to Redistrict?

Reapportionment in neighboring states is much like North Carolina's, but there are important differences. The legislatures of Virginia, South Carolina, Georgia, and Tennessee, like North Carolina's, all draw new district lines for the state House, state Senate, and U.S. Congress districts following the release of the decennial census.

But these four states must involve the governor in redistricting, because the chief executive has the veto in those states and may reject plans. North Carolina, the only state in the nation without a veto, does not directly involve the governor in its redistricting process.

All legislative districts in the four neighboring states—with the lone exception of Georgia's state House districts—are drawn for single members. All five states suffered with various redistricting problems and rejections in the 1980s. The South Carolina legislature failed to enact a congressional plan and it was left to the courts to do so. An S.C. Senate plan was enacted but overturned by the courts. The Tennessee legislature saw both its House and Senate plans overturned by the courts in the 1980s. The Georgia congressional plan and the Virginia House plan also were overturned.

A survey of other states finds other approaches to the drawing of district lines. In Alaska, the governor appoints a redistricting board and then can accept or reject the proposal of the board. In Arkansas, a board draws lines for legislative districts, but the legislature draws

the congressional districts. This Arkansas board comprises the governor, the secretary of state, and the attorney general, and the governor has the power to veto the legislature's congressional plan.

Colorado, Ohio, New Jersey, and Missouri also split the job between reapportionment commissions for legislative districts and the legislature for the congressional plan. Washington, Hawaii, Maine, and Montana have commissions which draw both legislative and congressional plans.

The states that have redistricting commissions have made it easier for their legislatures, but they have a mixed record in withstanding legal challenges. Alaska, for instance, has a redistricting board, but spent much of the 1980s in federal court answering one challenge or another, so having a redistricting board does not guarantee any more success than not having one.

And some states have it relatively easy. Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming each have only one congressional seat, so they have no need for congressional redistricting. Nebraska has only three congressional seats and a unicameral legislature with 49 seats, so that state has to worry about redrawing a maximum of 52 new districts. North Carolina, with a 50-member Senate and a 120-member House and an 11-member congressional delegation that may expand to 12, has a total of 182 potential maps to draw in 1991.

—Paul T. O'Connor



Rep. Dan Blue (D-Wake) nearly pulled off a miracle in the 1981 redistricting until a staff member counted the number of districts. Blue will be a key player in the 1991 redistricting and may well be the next speaker.

1990 elections, the breakdown will be 53 Republicans and 117 Democrats. Thus, Democrats will be fighting to fashion a map which will protect their century-long domination of the assembly and congressional delegation.

Adding to the Democratic woes may be the shifting population of the state. Preliminary census figures released in September 1990 indicate that North Carolina metropolitan areas continue to grow far faster than does the rest of the state. The Research Triangle counties of Wake and Durham have grown the fastest, followed by the Charlotte area. Also growing fast are the southern coastal counties—Carteret, Craven, New Hanover, and Brunswick—which continue to attract large numbers of retirees. Areas which have either lost population, or failed to grow as fast as the state

average, are the far west, such as Madison County; the southeastern inland counties of Bladen, Robeson, and Columbus; the northeast counties bordering Virginia, such as Gates, Hertford, Pasquotank and Camden; and a broad stretch of territory running north from Gastonia, west of I-85 and east of Asheville, all the way to the Virginia line. Growth has been steady in much of this latter area, but it has been relatively small compared to the high growth rate in other parts of the state. For the most part, this translates into a population shift away from traditional areas of Democratic strength and into areas where Republicans are either a majority, or at least competitive with Democratic candidates.

Hawke, the GOP chairman, says he will encourage North Carolina Republican legislators to fight plans that would pack Republican incumbents into safe GOP districts. "I would like to see packing ended and the Republican vote spread out," he says. Republicans ought to be aggressive, he adds, and try to become competitive in as many legislative and congressional districts as possible. That is the only way that the GOP will ever gain control of the General Assembly and the states' congressional delegation, Hawke says.

Democrats will have many more tools this year than 10 years ago. The major difference is that, in fashioning a plan aimed at protecting their turf, they need to protect far fewer districts. Rather than 96 House and 40 Senate seats, which the party held when the 1981 redistricting began a decade ago, they must protect only 81 House and 36 Senate seats in 1991. They can also go after some Republican seats by carving up multi-member districts that were once solidly Democratic but are now solidly Republican. For example, the four-member 34th House District—embracing Cabarrus, Stanly, and Union counties—and the four-member 44th House District—comprising Gaston and Lincoln counties—are now solidly Republican. But by breaking each of those two districts into four single-member districts, Democrats probably could draw new districts that would improve their party's chances of winning a seat or two in each, while guaranteeing two or three seats to the Republicans.

This is a decision which could not have been made 10 years ago when Democrats worked to avoid drawing single-member districts.

Representative Rhyne, the minority leader who could be affected by a division of the 44th, says he expects the partisan fighting to become so ugly that it may be in the best interests of the state to delay the redistricting until late summer or fall, regardless of the availability of the final census figures. "Mixing something that is purely political with all the other policy decisions seems to me like a formula for making bad law."

One Person, One Vote



Whatever North Carolina does about a predominantly black congressional district and partisan gerrymandering, it will have to abide by ever-stricter standards regarding the equal division of population into districts. The federal courts will demand that legislative districts have a population deviation ratio of no more than 1.1 to one. That is, the largest district can be no more than 10 percent more populous than the

The Tools of Redistricting—From Crayons to Computers

When Gerry Cohen talks about drawing redistricting maps during the early 1980s, he evokes images of Prince Henry the Navigator. "The last time, it took us a full day to do a map," says Cohen, the legislature's bill-drafting expert and redistricting specialist. "Late at night, we'd be spread out on the floor to color in the districts." No more. In 1991, Cohen predicts, the legislative computer system will be able to spit out a new map every half hour. That ability to constantly refigure district numbers and boundaries will be the major difference between the redistricting process of the 1980s and this time around.

Redistricting in the 1990s will be driven by computers for the first time in North Carolina. The N.C. General Assembly, which in 1971 raised the prospect of purchasing a computer to help with redistricting only to dismiss the idea almost immediately, will amass computer files with more than 4.5 billion bits of information, says Glenn Newkirk, the legislature's computer guru and director of the Automated Systems Division. The assembly already operates a DEC VAX mainframe computer to which it will add what Newkirk describes as a large mini-computer just to run the redistricting program that it has purchased—at a tab of \$200,000—from Public Systems Associates of Denver, Col.

Newkirk first is loading TIGER, a 650-million character data base formally named Topologically Integrated Geographic Encoding and Referencing System, into the computers. TIGER essentially is an atlas of every census tract in the United States, with the names of almost every street, road, railroad, hilltop, and creek stored on compact discs and referenced by geographic coordinates. The programs will even include precinct boundaries for 48 of the state's largest counties. Legislators seeking to draw a map through the city of Lumberton, for example, would be able to pull up a multi-colored map on the computer screen which would show all the city's streets, the Lumber River, the railroad tracks, and I-95.

When the U.S. Census Bureau releases North Carolina's tract-by-tract 1990 census information in late February, Newkirk will then be responsible for integrating it with the TIGER files. Where TIGER recognized a city block in downtown Lumberton, for example, the census data will also recognize that block and provide census numbers for it. Thus, if legislators were hoping to draw a district boundary through the center of Lumberton along Water Street, they'd be able to keep track of the racial and partisan political compositions of the districts formed both to the south and north of the street. Then,

—continued on next page

The Tools, *continued*

by moving a city block one at a time, in one direction or the other, they could adjust these make-ups to serve their purposes.

Just loading the census data into the legislature's computers will take more than six weeks to complete, Newkirk predicts, because North Carolina is such a difficult state to map. With the state's three coastlines, and with its many mountain peaks and streams, the number of geographic coordinates needed is immense. In the end, the TIGER and census data bases will comprise more than 1.2 billion bits of information. Because of the huge loading process, Newkirk worries that if redistricting plans are enacted before July 1991, and if the court or the U.S. Commerce Department orders a population adjustment, it would take several months to reload the computers with adjusted data and require more legislative work to draw new districts.

The speed with which the computers can draw new maps is a blessing on one hand and a

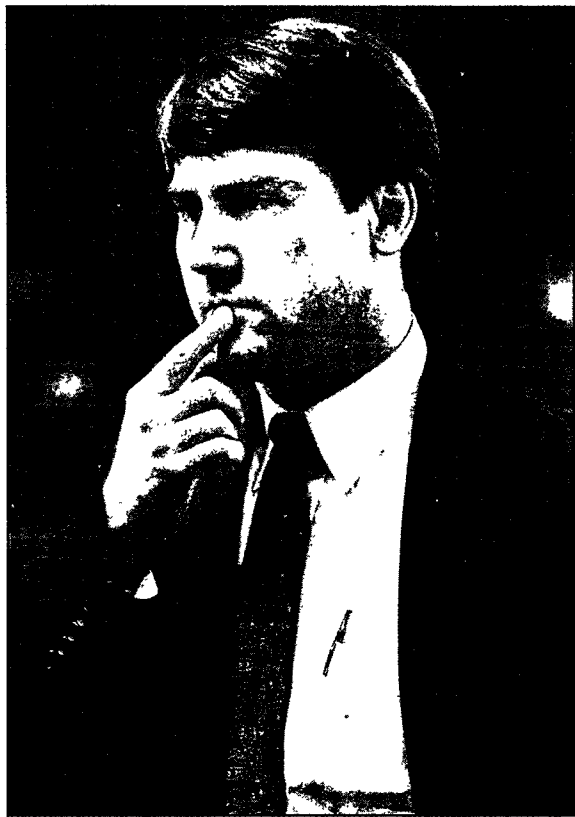
curse on the other. With nearly every legislator capable of drawing a map to suit individual interests, the legislature could be inundated by maps, buried in a blizzard of standard deviations, or swamped in a tidal wave of minority districts. And almost certain to add to the confusion will be the relative ease with which other entities, like the Democratic and Republican parties, key special interests, and minority advocacy groups will be able to draw their own maps using the same information the legislature has and some of the same kind of technologies.

In the 15th century, it took Prince Henry a long time to draw maps that contained many inaccuracies. But his sailors eventually mapped the east coast of Africa and circumnavigated the Cape of Good Hope in 1488. With high speed computers and precise census tract data, it remains to be seen if North Carolina legislators can draw three maps that create House, Senate and congressional districts.

—Paul T. O'Connor



Gerry Cohen, a legislative staff expert on redistricting, contemplates the 1991 task.



House Majority Leader Dennis Wicker (D-Lee), will be a key player in the 1991 redistricting.

smallest district. Put another way, this calls for a population deviation within a 5 percent plus-or-minus range. That's a target the General Assembly eventually achieved in redistricting in the 1980s.

The courts will not be as lenient, however, when it comes to congressional redistricting. "Any deviation—it could be as little as 25 votes—might be challenged," one legislative lawyer speculates. That's because of a New Jersey case decided in 1983 by the U.S. Supreme Court.¹⁸ In *Karcher v. Daggett*, the court struck down a congressional redistricting plan with an overall range of less than 1 percent when plaintiffs showed that they could produce a plan that had less deviation. Minnesota Senate Counsel Peter S. Wattson, writing in *State Legislatures* magazine, says that the lesson to be learned by legislators is that, "If you can't draw congressional districts that are mathematically equal in population, don't assume that others can't. Assume that you risk having your plan challenged in court and replaced by another with a lower overall range."¹⁹

Such potentially exacting standards, along with the uncertainties created by the lack of standards on what constitutes illegal political gerrymandering and the possible undercount of minorities nationwide, account for the trepidation among legislators who face redistricting. Jeffrey Wice, New York state assembly counsel, says redistricting in the 1990s is the equivalent of a "lawyers' full employment act." The Mexican-American Legal Defense Fund's Ruben Castillo warns, "The litigation [arising out of redistricting] will take a long time. . . . It may not be resolved until 1994 or 1995 with a Supreme Court decision. It is going to be a fiasco." ☐

FOOTNOTES

¹ For more on this and other redistricting difficulties, see Paul T. O'Connor, "Redistricting Plan Near Perfect, But Sacrifice Too Great," *The Raleigh Times*, Oct. 30, 1981, p. 1.

² Article 1, Section 2, Clause 3, United States Constitution.

³ *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964). For a further discussion of the pre-1966 districting scheme, and of the 1966 session, see John L. Sanders, "Legislative Representation in North Carolina: A Chapter Ends," *Popular Government* magazine, Institute of Government, UNC-Chapel Hill, Vol. 32, No. 5 (February 1966), pp. 1-10. Two other important redistricting cases are *Gray v. Sanders*, 372 U.S. 368 (1963) and *Wesberry v. Sanders*, 376 U.S. 1 (1964).

⁴ Article II, Sections 3-6, Constitution of North Carolina (1868).

⁵ *Baker v. Carr*, op. cit.

⁶ *Druan v. Seawell*, 249 F. Supp. 877 (M.D.N.C., 1965).

⁷ *Reynolds v. Sims*, op. cit., at 577.

⁸ *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969).

⁹ For a fuller discussion of the 1971 redistricting, see John L. Sanders, "Redistricting," *Popular Government* magazine, Institute of Government, UNC-Chapel Hill, Vol. 38, No. 1 (September 1971), pp. 3-13.

¹⁰ Matthew Cooper, "Beware of Republicans Bearing Voting Rights Suits," *The Washington Monthly*, February 1987, p. 11. See also Jack Betts, "When Black and Republican Interests Coincide, Does the Democratic Party Lose?," *North Carolina Insight*, Vol. 12, No. 1 (December 1989), p. 45.

¹¹ *Cavanagh v. Brock*, 577 F. Supp. 176 (E.D.N.C., 1983).

¹² Robert N. Hunter, "Racial Gerrymandering and the Voting Rights Act in North Carolina," *Campbell Law Review*, Vol. 9, No. 2 (Spring 1987), p. 272.

¹³ *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C., 1984). See also *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986).

¹⁴ U.S. Voting Rights Act of 1965, as amended on June 29, 1982, is found in 42 U.S.C. 1973.

¹⁵ *City of Mobile v. Bolden*, 446 U.S. 55, 66 (1980).

¹⁶ "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."—Article 14, Section 1, United States Constitution.

¹⁷ *Davis v. Bandemer*, 478 U.S. 109 at 110, 106 S. Ct. 2797 (1986).

¹⁸ *Karcher v. Daggett*, 462 U.S. 725, 103 S. Ct. 2653 (1983).

¹⁹ Peter S. Wattson, "Maps That Will Stand Up in Court," *State Legislatures* magazine, September 1990, p. 15.

Leadership Development Programs in North Carolina: What Do They Do?

by Jack Betts

A number of leadership programs exist in North Carolina, with broad goals of developing individual skills and improving the community, the state, and the region. But how do these programs work, and do they succeed? Do leadership development programs really develop new leaders, or do they simply recognize existing leaders? Do leadership programs reach all the people they should, and what are the advantages and disadvantages of leadership programs in North Carolina?

When Cole Campbell moved to Greensboro in 1983, he didn't know much about the city that he would cover as a reporter and an editor for the *Greensboro News & Record*. So when the opportunity came to learn more about the city, he took it. He signed up for Leadership Greensboro.

Shannon St. John runs a community foundation in the Research Triangle Park, and went through Leadership Durham, the town where she lives. Because she works with regional concerns, she went through the Leadership Raleigh program as well. She found the two useful enough to take on the job of designing a new regional leadership program.

Bob Northington grew up in Winston-Salem, spent most of his professional career in business there, and had been a Republican member of the Winston-Salem Board of Aldermen for nearly a decade when he decided a little training on the side might help. He went through Leadership Winston-Salem.

The year Dershie McDevitt was president of the Asheville Junior League and her husband Larry

was mayor, she didn't have much time for outside activities. She had been heavily involved in the community and public affairs for years, but it was tradition for the head of the Junior League to take some civic training in Leadership Asheville. She signed on and went through the program.

Jack Nichols was no stranger to Raleigh public life in 1989. He had long been active in Democratic Party affairs, in neighborhood groups, in Boy Scouts, and on a host of statewide issues. He was already an alumnus of the N.C. Institute of Political Leadership, and he had just started a new law firm the year before. Nichols was so involved as a community leader that he didn't have time for a community leadership program. But he enrolled in the Leadership Raleigh program anyway because, he says, he realized there were some facets of the community he didn't know as much about as he wanted to—business, local arts programs, and new community projects.

These five are just a handful of the hundreds of North Carolinians who each year devote a siz-

Jack Betts is editor of North Carolina Insight.

able chunk of their time and energy to enter programs designed to teach them about their communities, give them some leadership skills they may not have, and introduce them to people they may not know. The idea is to create a framework of knowledge and a network of community leaders who know how to solve problems and get things done.

"For me, it was very valuable because I came to Greensboro as a reporter and quickly became an editor, and I didn't know all these people other than having read about them in the paper," says Campbell, recently promoted to the paper's parent headquarters in Norfolk, Va. "So it was valuable to me in a number of ways."

McDevitt, on the other hand, had spent years in Asheville and knew the community well, but still found the Leadership Asheville experience a help to her and a benefit to the community. "It has succeeded in getting people involved at all different levels of our community," says McDevitt. "People work together in all sorts of places—at United Way, on school boards, on local water and sewer bond committees, in the arts—and they are able to do that much more effectively now."

Adds Nichols of Raleigh, "They were not trying to create a new political cadre. We did not address partisan issues, the nuances of elections, or how to run campaigns. But we were very heavily involved in learning more about public issues and the needs of Raleigh and Wake County."

What Is a Leadership Program?

The idea for local community leadership programs started in Philadelphia in 1959. Two years later, after Savannah, Ga., joined in, there still were only two in the nation. But the idea bloomed in 1969 after a planeload of community leaders in Atlanta crashed and wiped out a generation of that city's leaders. Leadership Atlanta was born in an effort to create a new corps of leaders for the city, and Atlanta's model has been adopted by scores of cities across the nation.

In the last decade, the idea has taken root in North Carolina. Leadership programs in North Carolina have been sponsored by local chambers of commerce, by local colleges and universities, by nonprofit groups and educational institutions, and by quasi-public agencies specializing in economic development. All the major cities, many of the medium-sized ones, and even largely rural counties have started leadership development programs of one sort or another. Each year they turn

out hundreds of graduates who have a stake in solving community, statewide, and regional problems.

Campbell, who has worked on Leadership Greensboro's program committee since his class completed the course in 1988, sees four main goals of programs such as Leadership Greensboro: (1) providing certain leadership skills that participants don't have; (2) familiarizing members of the program with pressing needs and events in the city; (3) getting up-and-coming leaders familiar with existing community leaders; and (4) creating a network of people from all over the community who know one another and who can cooperate to

ON BECOMING A LEADER—

I would argue that more leaders have been made by accident, circumstance, sheer grit, or will than have been made by all the leadership courses put together. Leadership courses can only teach skills. They can't teach character or vision—and indeed they don't even try. Developing character and vision is the way leaders invent themselves.

—WARREN BENNIS

solve community problems and decide on future public issues.

"The point is not to develop leadership from scratch, but to draw participants toward community service and leadership. It's not to take people and make leaders of them, but to take people and implant in them a sense of public service and obligation to do what they can," notes Campbell.

Prior to Greensboro's first leadership class in 1977, there was no formal leadership program. Community leaders rose through the ranks of organizations like the Greensboro Junior League and the Greensboro Jaycees, an unusually active service club that at one point produced four future mayors of Greensboro and a number of city council members. But these organizations are structures that *allow* talented individuals to rise to positions

of leadership, rather than machines that set out to develop leaders from the raw materials of citizens.

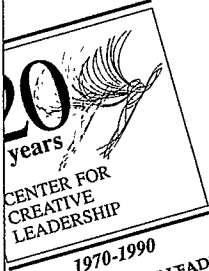
Tog Newman, who runs Leadership Winston-Salem, says that's not really the point of leadership programs. "Leadership Winston-Salem is not a leadership *development* program," she says. "We target established leaders, and there is no emphasis on training. We do emphasize discussion of community history and emerging problems, and we do emphasize networking." In fact, the networking element is a hallmark of the Winston-Salem program. Alumni of that group meet regularly to broaden their outlook and knowledge of the community.

Northington, the city alderman who had been on the board for years before he went through the program, says it was an eye-opener for him. "While I had been on the city council for nine years or so when I went through Leadership Winston-Salem, I met many people that perhaps I never would have known, and I learned a huge amount about Winston-Salem, things I thought I already knew but found out that I didn't. Some of these things [housing, hunger, race relations] were the sort of

things that you really didn't always want to know about, because they were difficult problems. There was a great deal of intensity, and a lot of conflict within the class as we learned about these things."

The sessions, which in most programs require at least one day per month over a nine-month period, involved frank discussion that was nearly always stimulating even if it wasn't always pleasant, says Northington. He values the knowledge gained in such programs as highly as he does the contacts with other leaders, particularly through the alumni programs of Leadership Winston-Salem. "Those understandings and contacts have made things better—sometimes easier, sometimes harder—but in all cases, I'm a better city councilman for having been a part of it," says Northington.

These leadership programs all are based on a recognition that neither government alone nor the private sector working in isolation can meet community needs and solve urban problems, notes H. Smith Richardson Jr., whose father's foundation created the nationally-acclaimed Center for Creative Leadership in Greensboro. "A number of communities are recognizing that problems com-




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Wilmington Leadership Institute



Leadership Winston Salem

WHAT IS OUR PURPOSE?

The mission of LEADERSHIP WINSTON-SALEM is the continued improvement of our community. We furnish opportunities for direct and personal communications among leaders and we promote awareness of our community's major current issues, understanding of our problems and of each other, and appreciation for our differing views and contributions to Winston-Salem. We advocate for a better community without taking a position on specific issues.

To achieve this mission LEADERSHIP WINSTON-SALEM:

1. Identifies and selects each year a class of 35 to 40 established leaders representing all segments of the community from applications received from throughout the community.
2. Educates and exposes these leaders to issues and differing points of view by means of an intensive program. This program explores major current issues in Winston-Salem, how our community functions, how decisions are being made, and who the decision makers are.
3. Motivates these leaders to adopt a community-wide perspective in their own leadership roles.
4. Builds an ongoing network of active alumni and furnishes them a program identifying current community issues and focuses on major topics of concern.

with people, places and issues in such topics as education, the economic environment, government and the political process health and human services, criminal justice, race relations and the quality of life.

The programs, planned by experts in the topic area, are designed to explore how the community functions, focusing on current decision-making and decision makers, and to expose the participants to widely differing points of view.

**WHO QUALIFIES
AS A PARTICIPANT?**

Anyone who has demonstrated leadership ability in civic, religious, community or professional endeavors. Each class of participants will represent a cross section of the community — business, labor, education, the professions, health care, human services, government, elected officials, nonprofit agencies, community volunteers, neighborhood leaders, black, white, male and female. LEADERSHIP WINSTON-SALEM will seek to represent all sectors of the Winston-Salem/Forsyth County community.

**HOW WILL THE PROGRAM HELP
PARTICIPANTS TO BE MORE EFFECTIVE
COMMUNITY LEADERS?**

It will offer a base of information and experience upon which participants can:

- heighten their awareness of community problems
- increase their capability to influence decision-making and

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The Greater Wilmington
Chamber of Commerce
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at
The University of North
Carolina at Wilmington

Leadership appears to be the art of getting others to want to do something you are convinced should be done.

— VANCE PACKARD

munities face today can only be dealt with by a joint citizen-government effort—whether it's the problems of drugs, or education, or anything else. And I think you'd call that a need for leadership more than anything else," says Richardson.

That need for leadership is one reason why there are a number of leadership programs or personal development programs with strong leadership elements to them at work in North Carolina. These programs go well beyond producing community leaders (see sidebar, pages 56-58, for a list). Some of these programs operate on the national scene, while others are statewide, some are regional, and some are strictly local.

For instance, the **Center for Creative Leadership**, with offices in Denver, Col., and San Diego, Cal., in addition to Greensboro, offers management and leadership training programs around the world. Its researchers are in the forefront internationally in studying and publishing on the subject. The Center has trained corporate leaders, military officials, government managers, and nonprofit leaders, for example, with a stated mission "to improve the practice of management in commerce, government, education and public service," says marketing manager Patricia A. Wegner. CCL's programs include special training for school principals, for executive women, for human service administrators, and for nonprofit managers, just to name a few of the center's offerings.

Another national program with strong North Carolina ties is the **W.K. Kellogg Foundation** of Battle Creek, Mich., which each year selects a group of up to 50 individuals from around the country to participate in three-year fellowships that emphasize learning in fields outside the participants' primary profession, leadership growth, and personal growth in fields of particular interest. In recent years, the foundation has named a number of North Carolinians to the fellowships, such as Delores Parker of Greensboro, who has worked

with the homeless in that city; Pam Silberman of Raleigh, a legal aid attorney working in the health care field; and Jane Kendall of Raleigh, a nonprofit executive who is developing a center to provide services to nonprofit organizations in North Carolina.

The North Carolina Institute of Political Leadership, located in Wilmington, is an unusual statewide program that offers specialized training in public issues, specific communication skills, and political strategies and skills, to rising political leaders of varying backgrounds. The institute, says Richardson, "is unique. They have a very concrete program to give information and the skills to participants to enter political life actively. It's the first and only attempt I know of to interest better people in being involved in state politics and state affairs." Recent graduates of the institute include Bob Hensley of Raleigh, a Democrat who knocked off Rep. Betty Wiser (D-Wake) in the 1990 Democratic primary and won a seat in the N.C. House of Representatives, and Larry Linney of Asheville, a Republican who ran for the state House but lost.

The Rural Economic Development Center, which is partly funded by North Carolina taxpayers, has developed a **Rural Leaders Program** held at regional universities and a **Rural Institute** at UNC-Chapel Hill to develop better-informed and trained rural leaders. The center began graduating rural leaders in 1989 after it developed a program with the Kenan Center at the University of North Carolina in Chapel Hill. Billy Ray Hall, the center's director, says the programs are pilots to test how well rural leaders can be trained, and observes, "It's harder to identify and train rural leaders than the urban leaders" because of a variety of factors including such problems for participants as distance, transportation, work hours, and other commitments.

The Kenan Center also conducts specialized management and training programs for business leaders and executives, working closely with the School of Business Administration. And the

I must follow the people. Am I not their leader?

— BENJAMIN DISRAELI

HOW LEADERS THEMSELVES VIEW WHAT IT IS THEY DO —

Leadership as Persuasion: *"A leader is a man who has the ability to get other people to do what they don't want to do, and like it."*
— HARRY TRUMAN

Leadership as Influence by Example: *"Clean examples have a curious method of multiplying themselves."*
— GANDHI

Leadership as Revolutionary Expression: *"The art of the politician . . . consists in the correct appraisal of the conditions and the moment when the vanguard of the proletariat can successfully seize power. . . ."*
— LENIN

Leadership as Master of Circumstance: *"If we do not win, we will blame neither heaven nor earth but only ourselves."*
— MAO

Institute of Government at UNC-Chapel Hill, while it does not conduct a leadership development program, does provide numerous specialized management training programs for municipal and county employees, officials, and elected leaders. Such training programs are designed for city and county managers and department heads, public school superintendents and principals, social services administrators, and others. Role-specific instruction is provided to many others, including mayors and council members, county commissioners, district attorneys, judges, and local government staff members specializing in finance, personnel administration, and planning. John Sanders, director of the Institute of Government, points out that "nearly all the people we teach are in public service, full-time or part-time," and that participation may not be voluntary because many local government managers may require their employees to attend an Institute of Government course.

There also are leadership programs designed for special audiences such as minority leaders (Focus on Leadership in Charlotte and Challenge Greensboro, for example), for women (such as the programs run by the N.C. Women's Political Caucus), and for leaders among senior citizens

(Leadership Asheville Seniors, for example, and a similar new program in Wilmington). And, of course, there are numerous programs at academic institutions that deal with leadership generally, including the N.C. Fellows Program at UNC-Chapel Hill, Davidson, and N.C. State, the Duke Leadership Program at Duke University, and a new leadership program at Appalachian State University, but this article mainly deals with leadership training for adults.

In addition, there are a number of local economic growth programs—like one called Wilmington Excellence or another called Greensboro Vision—that seek to promote healthy development in an orderly fashion. These programs also have leadership elements to them but are not leadership programs per se.

What Do Program Participants Do?

What these programs have in common is a goal of enabling new leaders to come up with solutions to problems, to develop community consensus on how it wants to grow or provide health care or build new roads, and generally to improve the economic, social, environmental, and cultural atmospheres of their communities. But

Leadership as Interpretation of "the Sense of the Community" and with a Moral Element: *"Practical leadership . . . must daily feel under its own feet the road that leads to the goal proposed, knowing that it is a slow, a very slow, evolution to wings, and that for the present, and for a very long future also, Society must walk. . . . In the words of the master Burke, 'to follow, not to force, the public inclination—to give direction, a form, a technical dress, and a specific sanction, to the general sense of the community, is the true end of legislation.' That general sense of the community may wait to be aroused, and the statesman must arouse it; may be inchoate and vague, and the statesman must formulate and make it explicit. But he cannot and he should not do more."*

— WOODROW WILSON

Source: Barbara Kellerman, "Leadership As A Political Act"
in *Leadership: Multidisciplinary Perspectives*

bringing together the diverse elements to accomplish those goals is difficult, whether you define "community" as local, state, national, or international. John Gardner, founding chairman of Common Cause and author of the 1989 book *On Leadership*, has pointed out that in many communities, the most prominent and most capable citizens may not have a broad view of the communities' needs, but instead focus their time and energies "tending the machinery" of their jobs.¹ That is, they spend most of their time and creative energy in their professions and on their families, and relatively little on public affairs and community or regional affairs.

This makes for dispersed leadership, with individuals who are very good at what they do, but not good at community leadership, says the National Civic League's Carl M. Moore. The irony is that "as the best and brightest individuals become better and better at what they do, they get farther and farther away from a sense of community—a feeling of connectedness—with either the community at large or each other."² And that's why many community leadership programs seek to create a network of knowledgeable leaders who can help each other. "Underlying these goals," says Moore, "is the assumption that increased

knowledge about the community, coupled with a network of affiliations, will enable the graduates to be more effective participants in the civic life of the community (i.e., serve effectively on the non-profit boards and commissions that are critical to the community's health)."

Nichols of Raleigh found this to be particularly true. Though he had been heavily involved in a number of community activities, Nichols realized that he didn't know many people in business or in economic development organizations. But midway through the Leadership Raleigh program, he realized the converse was true as well—that many business people didn't know that many people in the legal profession or in politics. "A lot of them were active in business, but not in public policy and political things," recalls Nichols. "They were just the opposite from me, so we were coming at it from opposite quarters. They [Leadership Raleigh] needed all of these people to make it work."

Where once there were but a handful of community leadership programs, there now are hundreds nationally and scores across North Carolina. The typical model for community leadership programs is a group of 25 to 30 rising community leaders, roughly between the ages of 25 and 50.

—continued on page 59

Leadership Programs at Work in North Carolina

A variety of leadership programs and institutes are at work in North Carolina and in the United States, helping train current and future leaders with a variety of programs, goals, and techniques. Here is a sampler of different types of programs and contacts for those programs, with emphasis on those operating in this state.

A. Community Leadership Programs. There are at least two different types of community leadership programs at work in the country. They have similarities but may belong to one of two national umbrella groups:

The American Leadership Forum (ALF), which works closely with the National Civic League, 1601 Grant Street, Suite 250, Denver, Col. 80203 (303-832-5615). The ALF has no current community programs in North Carolina, but operates in Denver and in several other cities.

The National Association for Community Leadership (NACL), which works closely with the American Chamber of Commerce Executives. The NACL is located at 525 S. Meridian Street, Suite 102, Indianapolis, Ind. 46225 (317-637-7408). A number of organizations in North Carolina are affiliated with this group. They include, but are not limited to:

Program	Contact
Leadership Asheville	UNC-Asheville
Leadership Asheville Seniors	Department of University
Leadership Haywood	Relations
Leadership Hendersonville	One University Heights
Leadership Madison	Asheville, NC 28804-3299
Leadership Transylvania	(704) 689-4599
Leadership Carteret	Carteret County Chamber of Commerce
	P.O. Box 1198
	Morehead City, NC 28557
	(919) 726-6350
Leadership Charlotte	UNC-Charlotte
	Urban Institute
	Charlotte, NC 28223
	(704) 547-2307
Focus on Leadership (Charlotte)	Johnson C. Smith University
	P.O. Box 1100
	Charlotte, NC 28216
	(704) 378-1015
Leadership Durham	Durham Chamber of Commerce
	P.O. Box 3829
	Durham, NC 27702
	(919) 682-2133
Challenge Greensboro	Greensboro Education and
	Development Council
	1010 Homeland Avenue, Suite 104
	Greensboro, NC 27402
	(919) 271-8124

—continued

Leadership Programs in North Carolina, *continued*

Leadership Greensboro	Greensboro Area Chamber of Commerce 330 South Greene Street Greensboro, NC 27401 (919) 275-8675
Leadership High Point	High Point Chamber of Commerce P.O. Box 5025 High Point, NC 27262 (919) 889-8151
Leadership Raleigh	Raleigh Chamber of Commerce P.O. Box 2978 Raleigh, NC 27602 (919) 833-3005
Leadership Triangle	Greater Triangle Community Foundation P.O. Box 12834 Research Triangle Park, NC 27709 (919) 549-9840
Wilmington Leadership Institute Adult Scholars Leadership Program	UNC-Wilmington Office of Special Programs Wilmington, NC 28403-3297 (919) 395-3193
Leadership Winston-Salem	Winston-Salem Chamber of Commerce P.O. Box 1408 Winston-Salem, NC 27102 (919) 725-4451

B. *Statewide Leadership Programs.* There are several private and public statewide programs operating in the leadership arena. They have varying purposes, some dealing with future political leaders, some with rural leaders, and some with giving specialized training to municipal and county leaders, both elected and appointed. These organizations include:

Governor's Executive Management Program	N.C. Department of Administration 116 W. Jones St. Raleigh, NC 27603-8003 (919) 733-7232
N.C. Agricultural Extension Service Leadership Development Institute Advisory Leadership Conference	N.C. State University Home Economics Extension P.O. Box 7605 Raleigh, NC 27695-7605 (919) 737-2770

—*continued*

Leadership Programs in North Carolina, *continued*

N.C. Institute of
Political Leadership

N.C. Institute of Political
Leadership
P.O. Box 5248
Wilmington, NC 28403
(919) 256-8511

N.C. Rural Economic
Development Institute
Rural Leaders Program
Rural Institute

N.C. Rural Economic Development
Center
201 New Bern Avenue
Raleigh, NC 27601
(919) 821-1154

Public Managers' Program

Office of State Personnel
116 W. Jones St.
Raleigh, NC 27603-8003
(919) 733-7108

University of North Carolina
at Chapel Hill
Executive Institute

The Kenan Center
UNC-Chapel Hill
Campus Box 3445
Chapel Hill, NC 27599
(919) 962-3243

University of North Carolina
at Chapel Hill
Institute of Government

Institute of Government
UNC-Chapel Hill
Knapp Building 059A
Chapel Hill, NC 27599
(919) 966-5381

C. Regional and National Leadership Programs with North Carolina Ties. While these organizations do not focus solely on leadership development in any one region, they have strong ties to the state or have had a large number of participants from North Carolina. These organizations include:

The Center for Creative Leadership

Center for Creative Leadership
5000 Laurinda Drive
P.O. Box 26301
Greensboro, NC 27438-6301
(919) 288-7210

The Kellogg National Fellowship
Program

W.K. Kellogg Foundation
400 North Avenue
Battle Creek, MI 49017-3398
(616) 969-0413

South LINK 2000
Leadership Development in the South

Southern Growth Policies Board
P.O. Box 12293
Research Triangle Park, NC 27709
(919) 941-5145

Particularly useful both as a training tool and as a service benefit in a number of North Carolina programs are class projects aimed at solving a problem or fulfilling a community need. For instance, Jack Nichols' Leadership Raleigh class examined transportation

The projects, the networking, and the training in community history and needs have had other results as well. For instance, alumni of the Leadership Asheville program recently resolved a problem over the local animal shelter, which had come under fire for its handling of animals and for its operating procedures. Graduates of the leadership program quietly made contacts with other alumni in a position to help, and collaborated on a proposal to provide a new source of funding and resolve disputes over how the shelter was run.

LEADERSHIP HENDERSONVILLE

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Nickname _____

Birthday _____

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Business _____

Business _____

Education _____

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The Network

the newsletter of Leadership Charlotte

VOLUME 7 ISSUE 3

PUBLISHED BY LEADERSHIP CHARLOTTE

MARCH 1990

Leadership Charlotte XII Begins Program

Leadership Charlotte XII, thus far blessed with much better weather than other recent classes, is off and running with a busy schedule of regular sessions, project committee meetings, networking lunches and a few after-hours socials.

Among this year's 50 participants are 28 men and 22 women (a reverse of Class XI's totals), with an average age of 38 (three years older than last year's group). Only five are Mecklenburg natives, while 17 have lived here five years or less.

As usual, the largest career concentrations are finance and health care, but there are also two school principals, an actor, an Episcopal priest, an engineer and an art gallery owner.

Among their many accomplishments are heading a 24,000-member national association, founding a local one, being a puppeteer, running a business, working as a railroad guard and coordinating a nursing internship program.

Sixteen percent share or names: Tom and Pat.

Nearly half chose a primarying education, children's most important issue for this marks the first transportation hasn't among issues discussed.

Presenting Leader

Pat Baker, president.
Mary D. G. Ba
Max Executive?
Nancy H. Black
Black, Inc.

Patrick Box, physician, The Arthritis Clinic
Jan M. public
Mar. J. unte
Jul' of
L. I.

...er, corporate

ment Councils, Inc.
David J. Guilford, executive vice president, Barclays American Mortgage.
Vivian L. (Vicki) Hamilton, principal, Williams Junior High School.
...ck, executive director,

Leadership Greensboro
1988-1989

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These programs have demonstrated their effectiveness in a variety of ways, and at least one program graduate thinks they can do more. Shannon St. John, executive director the Greater Triangle Community Foundation, is designing a new program for the Raleigh-Durham-Chapel Hill area aimed at solving *regional* problems and "to help bring together the three communities of the Triangle." St. John says the new program, called Leadership Triangle, will have two goals—to educate the future leaders of the Triangle area on emerging problems—transportation, the environment, land use, and the like—"because so many of the future issues will be regional in nature and not distinct to just one community;" and second, "to develop a network of ongoing relationships among our community leaders so that 10 years from now when we are facing an issue like water quality, we will have a network of people who will know one another, who will trust one another, and who will be able to pick up the phone and say, 'Let's talk.' We just don't have that now."

Strengths and Weaknesses of Leadership Programs

Leadership programs have had varying degrees of impact upon their communities and upon their region. Questions invariably arise as to their aims, as to the prospect for their success, and on how they go about what they seek to do. There are even questions about the nature of leadership.

■ *Are Leaders Born or Made?*

Can leaders be created or developed? And why is it important, anyway? Warren Bennis, a professor of business at the University of Southern California and a nationally-acclaimed expert on leadership, perceives a declining cadre of national leaders, "an endangered species, caught in the whirl of events and circumstances beyond rational control." He says this lack of leadership is among the world's top three problems. His short list of worldwide worries includes war or nuclear accidents, worldwide famine or disease, and finally the "quality of the management and leadership of our institutions."

Why is this such a problem? Because it's so difficult to produce successful leaders. He writes, "Billions of dollars are spent annually by and on would-be leaders. Many major corporations offer leadership development courses. . . . I would argue that more leaders have been made by acci-

Leadership is action, not position.

— DONALD H. MCGANNON

dent, circumstance, sheer grit, or will than have been made by all the leadership courses put together. Leadership courses can only teach skills. They can't teach character or vision—and indeed they don't even try. Developing character and vision is the way leaders invent themselves."⁴

John Gardner also has reservations about community leadership programs. "In these programs young potential leaders are exposed to experiences designed to increase their understanding of their own community and to enhance their leadership capabilities. Just bringing such groups together can be valuable in itself, particularly if they are truly representative of all segments of the community. Unfortunately, some of the programs use up the time of the young people with fairly low-grade show-and-tell activities of the sort that led one observer to describe them as 'meet the sheriff' programs."⁵

Other critics say leadership programs are little more than the baby boomer's version of the Lions or Kiwanis or Junior Women's Clubs or the Junior League, providing services to the community but not really aiming at developing leaders. Still others criticize the programs for being long on promise—developing leadership—and short on delivery—holding interminable seminars on community programs and problems that the average citizen ought to know about just by being attentive citizens and participating in public life.

Leadership program managers concede that may be one aspect to such programs, but they say it's still a useful introduction for many participants. "One of the things we try to do is create awareness of what is going on in the community," says Fulbright of Leadership Raleigh. "It lets us get participants to walk in other people's shoes—to sit at a table in a soup kitchen, to ride in a police car, to sit in a classroom." By bringing together a diverse group of existing leaders and potential leaders, the program opens the eyes of both to community problems and to possible solutions.

"Is the true leader the lady who runs a homeless shelter or someone else?" asks Fulbright. "It's amazing to me to see the number of people who can run a big company but who have not

really seen what is going on in the community in areas like law enforcement, or health care, or human needs, or education, or children's needs. A lot of these people have not worked the system and they don't know what the barriers are for people who need help but don't get it."

■ *How Diverse Are Participants?*

Most alumni of these programs feel they have been a positive experience, but that they need to improve certain aspects of their operations. For one thing, says Fulbright, involving minorities is a key element to the success of the programs, but recruiting blacks who can pay their way or who can take time off from their businesses has been difficult. The programs are not cheap—some cost up to \$1,500—and scholarships have been insufficient to involve as many blacks as the programs would prefer. This has been one reason for the creation of special leadership programs geared to rising leaders in the black community. Challenge Greensboro is a new program that attempts to involve minorities in that city, and Focus on Leadership is a Charlotte program that works with Johnson C. Smith University to identify potential minority leaders and give them leadership skills. In addition, a number of urban leadership programs, notably Leadership Winston-Salem, have developed seminars on race relations that are reputed to be stressful for participants but valuable in improving community relations and understanding among the races.

A recent national study shows how most community leadership programs don't get nearly enough minorities, but they do a little better at involving women. The study by the National Association of Community Leadership showed that the gender of participants *nationally* was 60 percent male and 40 percent female, but that 86.5 percent were white, only 10.3 percent were black, and the remaining 3.2 percent were Hispanic, Indian, or from other minority groups. (In North Carolina, about 22 percent of the populace is black

and about 52 percent female). In addition, 84 percent of participants had college degrees; 78.8 percent were married; and 69.7 percent made more than \$35,000 annually. In other words, community leadership programs are strongly populated by those who are already likely to be in leadership positions.⁶

St. John, who is designing a new leadership program for the Triangle area, believes that diversity among participants is the major problem of many programs. "It is extremely important because leadership needs to be defined extremely broadly. There has been a tendency in the past to define leadership in terms of business and the community power structure, but I think leadership exists also in the neighborhoods, in the churches, in nonprofit organizations, in government—elected and appointed and staff—and we are losing key elements of knowledge and energy by limiting leadership to the business community." Partly to make sure the new leadership program is more inclusive, NCNB and the Ford Foundation are underwriting some of the costs of Leadership Triangle to provide scholarships and guarantee access. And the Institute of Political Leadership in Wilmington pays all the costs for participants, so tuition costs are not a barrier for that program.

■ *What Results From Leadership Programs?*

Participants and alumni in these programs say there are a number of benefits to them, but that many results are often intangible. As Northington puts it, "I don't know how you can have a tangible result from an intangible program, but there are many benefits to the community."

Mary Hopper of Charlotte, a public relations consultant and a graduate of the Leadership Charlotte program, says, "If the program works well, it challenges all your beliefs about what is important in your state or community. If it works well, it opens your eyes to new ways to make improvements and new allies to accomplish them," and introduces new people to help get those things done. "You find bankers who probably never had a lot of friends from nonprofit or public sector jobs," adds Hopper. "It breaks down those barriers and opens up our eyes to the problems, and the strengths, of whatever the 'other' sector is."

The point is, things get done. A health clinic for the needy is established. A transit authority is set up. An animal shelter problem is solved. And perhaps more important, relationships are built up that will last for years and which will be instrumental in solving future problems—including problems as yet unidentified, and perhaps for

When the best leader's work is done, the people say, "We did it ourselves."

— LAO-TZU

goals as yet undetermined. That brings up another question.

■ *Leadership For What?*

What exactly do communities and sponsoring organizations and participants themselves want to come out of a leadership program? Do they seek to identify new leaders? If so, why do so many programs tap people who already are leaders? Miriam Clark and Frank Freeman, in a new book published by the Center for Creative Leadership, point out that leadership means different things to different people.⁷ For leadership program participants, the definition can fall into four categories: (1) leadership for civic participation; (2) leadership for self-development; (3) leadership for organizational change and vision; and (4) leadership for more effective organizations.

Suzanne Morse, a leadership expert with the Kettering Foundation, says that leadership programs can cross the lines of these goals, but that "clarity of purpose" is a key element in setting up and carrying out leadership programs.⁸ Above all, she writes, most leadership programs do not claim to be able to teach leadership, but "most do use words like 'enhance, develop and practice.'"

Walt DeVries, executive director of the N.C. Institute of Political Leadership, points out that there's a very tangible benefit to local governments. "One key reason for community leadership programs is to set up a cadre for appointments to boards and councils on a local level," he says. Graduates who have gone through a leadership program, and who already know one another and who are familiar with community programs and community problems, make for good appointments to such boards. But without leadership programs, there would be a lack of appointees from diverse backgrounds who already know one another. "You force people together who otherwise would never, never get together and communicate," notes DeVries.

■ *Leadership or Management?*

Another dimension of this same question is whether programs teach leadership or management. To many, there may be little distinction between the two terms, but to others the difference between the two is as wide as the Mississippi. Leadership may be the quality that allows individuals to motivate others to take action or solve problems or move in a certain direction, while management may be the technical and personal skills necessary to accomplish those ends once movement has be-

gun. For instance, the Institute of Government in Chapel Hill concentrates more on education and providing management information and less on leadership skills. Likewise, Leadership Winston-Salem does not emphasize leadership training at all, but seeks to educate and to build networks of leaders. On the other hand, the Center for Creative Leadership is heavily involved in research and training on how to develop leadership and how to use simulated conditions to develop the leadership skills of individuals going through its programs.

■ *Do Leadership Programs Create A New Elite?*

All leadership programs are elitist because they *choose* those who participate, writes Roberta Miller, a leadership program consultant and an editor of *National Civic Review*. "They create a network not unlike the traditional old boy network, with the essential difference being that the rules have changed—inclusion is not based on powerful family connections, political or corporate position, wealth, being white, male, and over 55. Traditional power brokers are integrated with minorities, women, representatives from many professions, small business interests, public sector employees, nonprofit professionals, and union interests. Creating an elite, even if it is diverse by traditional standards, is always dangerous and opens an organization to public criticism. Good programs take such questions seriously. They continue to ask, 'Who isn't here and why?'"

Still, it's apparent that North Carolina communities increasingly are finding community leadership programs to be useful. Leadership Asheville was helpful to Dershie McDevitt, who participated in the program the year she was head of the Junior League. She thinks the program has not produced as many political leaders as one might have expected, but believes it has succeeded in involving more people in community affairs and in developing personal relationships that have been effective in attacking local problems on countless occasions. "It was a wonderful opportunity to see trust grow between members of the business community, nonprofit agencies, and others in the community. It would have taken years and years to build these networks without the help of Leadership Asheville," says McDevitt. ☐☐

FOOTNOTES

¹ John Gardner, *No Easy Victories*, Harper Colophon Books, New York, 1968, pp. 126-127.

² Carl M. Moore, "The Anatomy, Roles, and History of Community Leadership Organizations," *National Civic Re-*

view, Vol. 77, No. 6 (November-December 1988), pp. 502-503.

³Chapter 740 (HB 694) of the 1989 Session Laws.

⁴Warren Bennis, *On Becoming a Leader*, Addison-Wesley Publishing Co., Reading, Mass., 1989, pp. 14 and 42.

⁵John Gardner, *On Leadership*, The Free Press, New York, 1990, p. 176.

⁶Carl M. Moore, "Who Participates In Community Leadership Programs And Why Are They So Motivated To Do So?", *Leadership News*, newsletter of the National Association for Community Leadership, Vol. 8 (Spring 1990), p. 4.

⁷For more information on what individual leadership programs are all about, see *Leadership Education 1990*, a new

source book by Miriam B. Clark and Frank H. Freeman, available from the Center for Creative Leadership. For a profile of 78 different leadership programs, see Jane Kendall, ed., *Combining Service and Learning*, National Society for Internships and Experiential Education, Raleigh, 1990, Vol. II, pp. 293-483.

⁸Suzanne W. Morse, Book Review of *Leadership Education 1990* in *Experiential Education*, National Society for Internships and Experiential Education, Vol. 15, No. 6 (Nov.-Dec. 1990), p. 8.

⁹Roberta Miller, "Business As Usual Is Not Enough," *National Civic Review*, Vol. 77, No. 6 (November-December 1988), pp. 543-556.

Preserving the North Carolina Mountains— *continued from page 29*

including the following: "The current of air flowing upward from The Rock prompted the Ripley 'Believe-It-Or-Not' cartoon about 'the only place in the world where snow falls upside down.'"

²County managers and administrators in all 100 counties were surveyed by mail in June 1990. Those who did not respond got a second mailing, and the Center followed up this mailing with telephone interviews for a response rate of 100 percent. In some cases, county managers channeled the questionnaire to appropriate staff persons, such as county planners.

³Chapter 1284 of the 1973 Session Laws (2nd Session), now codified as G.S.113A-100-128.

⁴HB 1374 of the 1973 session, H.B. 596 of the 1975 session.

⁵See, for example, John M. DeGrove, "The Politics of Planning a Growth Management System: The Key Ingredients for Success," *Carolina Planning*, Vol. 16, No. 1, Spring 1990.

⁶For an evaluation of the performance of the Coastal Area Management Act in regulating coastal development, see Bill Finger and Barry Jacobs, "Coastal Management A Planning Beachhead in North Carolina," *N.C. Insight*, Vol. 5, No. 1 (May 1982), pp. 2-13. For more on North Carolina's land resources and tensions between planning and development, see Larry Spohn, "Protecting the Land and Developing the Land: How Can We Do Both?" *North Carolina Insight*, Vol. 10, No. 2-3 (March 1988), pp. 94-106; and Bill Finger, "How Do We Gauge Progress or Decline in Land Resources?" *North Carolina Insight*, Vol. 11, No. 1 (October 1988), pp. 15-20.

⁷Randy Schenck, "North Carolina Conservation Issues," *Footnotes*, the newsletter of the North Carolina Chapter of the Sierra Club, March 1990, p. 8.

⁸"Provisional Estimate of the Population of North Carolina Counties as of July 1, 1989," North Carolina Office of State Budget and Management, Management and Information Services, July 1990, pp. 4-5. The five fastest growing counties and the percentage increase in their populations between 1980 and 1989 were: Dare, 70.4 percent; Brunswick, 44 percent; Wake, 32.8 percent; Currituck, 29 percent; and Carteret, 25.2 percent. Of these five counties, only Wake is not covered by the Coastal Area Management Act. Henderson was the fastest growing mountain county at 20.1 percent, followed closely by Macon County at 18.2 percent. Preliminary 1990 U.S. Census Bureau population counts were released to local governments for review in the fall of 1990. Final figures will

be released to state officials in early 1991.

⁹Chapter 676 of the 1983 Session Laws, now codified as G.S. 113A-205-214.

¹⁰Ga. Annotated Code 50-8-7.1(a)(1). See also Joel H. Cowan, "Quality Growth Partnership, The Bridge to Georgia's Future," final report of the Governor's Growth Strategies Commission, Nov. 2, 1988, pp. 13-15.

¹¹*The Future of North Carolina: Goals and Recommendations for the Year 2000*, report of the Commission on the Future of North Carolina, N.C. Department of Administration, 1983, p. 148.

¹²Morton has himself become the target of criticism because of plans to sell 900 acres on the lower slope of Grandfather Mountain for development. Morton says he is minority owner in a partnership and therefore cannot control the decision to sell the property. "The land in question is down in the valley from the high ground land that I own that is usually considered to be Grandfather Mountain," says Morton. "I have not offered for sale any Grandfather Mountain land that came to me in 1952 in the division of family property, other than to provide right of way and buffer zone for the Blue Ridge Parkway, so the high ground of Grandfather Mountain is thoroughly protected. That is land I control, and it is wrong for anyone to implicate me with regard to land I do not control."

¹³Chapter 426 (HB 156) of the 1989 Session Laws, now codified as GS 143-214.5.

¹⁴A spokesperson for the Division of Environmental Management in the Department of Environment, Health, and Natural Resources says the high quality waters regulations would not prevent industrial or residential construction along a designated stream but would hold development in these areas to higher standards. For example, an industry along a native trout stream would have to pre-treat any waste water and take it to a county or municipal treatment facility rather than discharging it directly into a stream. Residential construction beyond a density of one house per two acres would require a storm water detention system to control runoff.

¹⁵Bradley Bennett, an environmental engineer in the Division of Environmental Management, says restrictions will not necessarily apply to an entire watershed. He says it has not yet been determined how much acreage in Wilkes County will fall under the regulations.

¹⁶Chapter 1066 (SB 1426) of the 1989 session laws.

¹⁷Cowan, p. 4.



IN THE EXECUTIVE BRANCH & IN THE LEGISLATURE

Executive-Legislative Relations in North Carolina: Where We Are and Where We Are Headed

These regular departments of Insight examine policymaking in the executive and legislative branches of state government. The following article traces the history and the policymaking impact of relations between the executive and legislative branches of state government.

When Gov. James G. Martin testified before the N.C. House of Representatives in 1985 in favor of veto power for the office of the governor, a central part of his argument was that the worries about the evils of the Royal Governors in the 18th century were no longer relevant as we neared the end of the 20th century. "I understand the 18th century concern about Royal Governors," he said, "and how that carried over into the early 19th century: They are not coming back. We have not had a Royal Governor for 209 years. We won!"

The N.C. General Assembly has declined to grant Martin's request for veto power and has had major disagreements over his budget proposals. These differences continue a tradition that dates back to 1731-1734, the tenure of the first royal governor, George Burrington. As Lefler and Newsome wrote in their comprehensive history of North Carolina, "Many of the executive-legislative conflicts had to do with finance, and the assembly consistently and persistently used its 'power of the purse' to force concessions from the governor. . . ."

Burrington's lack of success in salary negotiations with the legislature caused him to write that

no governor could have kept peace with a people who were "subtle and crafty to admiration, who could be neither outwitted nor cajoled, who always behaved insolently to their Governors, who maintained that their money could not be taken from them save by appropriations made by their own House of Assembly, a body that had always usurped more power than they ought to be allowed."¹

Not voting the governor a salary and arguing over matters of taxation were certainly low points in executive-legislative relations, and it is no accident that the Revolutionary War followed 45 years of experience with Royal Governors. However, in the Reconstruction politics after the Civil War, North Carolina Gov. William W. Holden became the first governor of an American state to be impeached and removed from office. In 1871, the N.C. House of Representatives brought eight charges of "high crimes and misdemeanors" against Holden—including unlawfully declaring an insurrection, declaring martial law, raising troops illegally, illegally arresting and imprisoning citizens, and refusing to obey a writ of *habeas corpus*. After a trial in the state Senate, Holden was convicted and removed from office. Former wartime Gov. Zebulon B. Vance said, "It was the longest hunt after the poorest hide I ever saw."

With that kind of history, it is no surprise that

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in 1990, the N.C. governor is still the only one in the country without veto power and that the governor shares the executive powers with nine other officials elected statewide—the most of any state save North Dakota, Louisiana, and Mississippi.² Still, during the last several decades the governor has gained the power to reorganize the nine executive departments under his control and the right to succeed himself, and a key court decision has strengthened his budgetary powers.

The legislature has gained in stature and power also, as it has added four new staff divisions (Fiscal Research came first in 1971, then General Research in 1973, Bill Drafting in 1977, and Automated Systems in 1984), stripped the lieutenant governor of his traditional power to appoint Senate committees, allowed its officers (e.g., the speaker and president pro tem) and important committee chairs to succeed themselves, and increased the length of its time in sessions in Raleigh.

From the low points preceding the Revolutionary War and following the Civil War, both the executive and the legislature in North Carolina have improved their power bases and their relations with each other. Where are we now in 1990? And where are we likely to be by the beginning of the 21st century?

Where Are We Now?

The most momentous recent changes in executive relations came as a result of two main forces—the new power of a governor to succeed himself and the evolution of North Carolina into a two-party state. In 1977, the voters passed a constitutional amendment allowing the governor and lieutenant governor to succeed themselves to a second four-year term. This has altered the balance of powers in a number of key ways, including enhancing the governor's powers and slowing down the production of new leaders.

North Carolina has also become much more of a two-party state, and many observers ascribe the legislature's denial of veto power to Governor Martin to partisan motives—Democrats refusing to grant power to Republicans. Though that is

assuredly part of the current equation, such analysis ignores the fact that every governor since Luther Hodges (1954–61) has asked for, and been denied, veto power. This includes five Democrats and two

Republicans. Thus, some disputes between the branches rest more on institutional differences and would occur regardless of which party held the governorship and which party held the majority of seats in the legislature.

These two factors have exacerbated seven key tension points between the legislative and the executive branches. Those tension points are:

Tension Point #1:

A New Budget Process as a Bone of Contention

One of the common battlegrounds for executive-legislative skirmishes is adoption of the state budget. However, a key court decision (*State ex rel. Wallace v. Bone*)³ in 1982 changed the balance of power in formulating and enacting a state budget. The two branches spent much of the 1980s adjusting to this change, with some parts still unresolved.

Prior to 1982, the legislature held the upper hand in putting together a state budget. Though the state constitution said, "The Governor shall prepare and recommend to the General Assembly a comprehensive budget . . .,"⁴ in actual practice the Advisory Budget Commission (ABC) prepared the budget. At the time, the ABC had two gubernatorial appointees, to be sure, but it also had eight legislators on it, four appointed by the speaker and four by the lieutenant governor. These eight legislators also were usually chairs of the major appropriations committees or subcommittees. Thus, the actual balance of power in preparing a budget was heavily weighted toward the legislature.

The *Bone* decision entirely changed executive-legislative relations in the budgetary arena. As the ABC's real powers declined, the governor's powers ascended, albeit with a governor (James B. Hunt Jr.) who was very uncomfortable about the new arrangement and how it might affect his ability to get what he wanted. Since the 1983 statutory changes in the institutional powers of the ABC (in order to comply with the court decision), the budget is much more a governor's budget as proposed

From the low points preceding the Revolutionary War and following the Civil War, both the executive and the legislature in North Carolina have improved their power bases....

but a legislative budget as disposed.

During the seven years between the *Bone* decision in January 1982 and the beginning of the 1989 General Assembly, the General Assembly parried succession, loss of some of its budgetary power, and election of a Republican governor with the following five counterthrusts, of which two were on the budget battlefield, two on the appointments battlefield, and one on the rulemaking battlefield:

- increased use of special provisions within budget bills to direct the executive or limit the uses of state funds;

- restrictions on the executive's ability to settle lawsuits against the state;

- removing the powers of the lieutenant governor to appoint Senate committees, appoint chairpersons, and assign bills to committee;

- giving the speaker of the House, lieutenant governor, and lately the president pro tempore of the Senate increased appointments to boards in the executive branch; and

- increasing its oversight over executive agency rules and regulations.

Tension Point #2:

The Use of Special Provisions in Budget Bills

Prior to the 1980s, special provisions had been used in an appropriate fashion by the legislature to explain the purpose of an expenditure of funds or to limit the use of such funds to what the legislature intended. However, in the years following succession, the *Bone* decision, and election of a Republican governor, the legislature increasingly used special provisions in an inappropriate fashion to try to direct the executive branch. (For more on this, see the December 1990 issue of the *Wake Forest Law Review* or the two special reports by the N. C. Center in 1986 and 1987. Special provisions were used to amend state laws, create new programs, and change tax laws.)

Tension Point #3:

Settlement of Lawsuits by the Executive Branch

Just as the executive branch was distressed over what it viewed as a legislative incursion into executive territory by use of special provisions, so was the legislature angered over what it viewed as executive incursion into its appropriations powers.

Gov. Jim Martin, left, and Lt. Gov. Jim Gardner, who presides over the N.C. Senate, have found themselves increasingly at odds with the predominantly Democratic N.C. General Assembly.



Karen Tam

This occurred when executive agencies committed the state to an expenditure of funds by agreeing to settle lawsuits against state agencies, thereby committing the state to future expenditures.

If there's one area of legislative powers that the General Assembly guards jealously, it is its power of the purse strings. Three suits in particular are noteworthy here—the first involving treatment of emotionally disturbed youth, the second over conditions in state prisons, and the third concerning the mental hospital system.

The advent of class action suits raised the budgetary stakes and brought new sources of tension between all three branches of government. In September 1979, attorneys filed a class action lawsuit against the state⁵ in federal district court in Charlotte on behalf of all minors who “now or in the future will suffer from severe emotional, mental, or neurological handicaps” accompanied by violent or assaultive behavior and for whom the state provided no treatment. On the eve of what became known as the *Willie M.* case, the two sides reached a settlement, avoiding a prolonged court fight. The Attorney General's Office, representing the N.C. Departments of Human Resources and of Public Instruction, agreed that the state would provide individual medical and treatment plans in the least restrictive setting for all 18-year-old children in the class.

In fiscal year 1981-82—the first year of the program—the state spent \$4.6 million to set up a delivery system for this new program for emotionally disturbed youngsters. By FY 1990-91, the cost of the program was \$36.3 million a year. The state, when it settled the suit, anticipated a class of 200 to 800 children. The current program serves 1,000 children a year.

Ironically, the legislature's anger over what it viewed as an incursion upon its power over the purse strings surfaced in a special provision. In the 1982 short budget session, a special provision was inserted into a budget bill which limited the executive branch's ability to enter into such consent judgments in the future. However, a little more than a year later, an out-of-court settlement in a five-year-old lawsuit (*Hubert v. Ward*) committed the state to another large expenditure of funds—\$12.5 million to remedy constitutional deficiencies affecting inmates confined in 13 prison units in the south Piedmont area of the state prison system.⁶ On the heels of that agreement came another (*Small v. Martin*) in April 1989 costing \$29 million and covering 49 more prison units.⁷ These two suits and settlements have made corrections one of the

three fastest growing areas of expenditure in the state budget.

There are three ways such settlements create tension between the executive and legislative branches. First, no group of elected officials likes to be presented with a *fait accompli*. Yet Governor Hunt agreed to set up an expensive *Willie M.* program and “send the bill to the legislature,” said senior fiscal analyst Jim Johnson of the legislature's Fiscal Research Division at the time.⁸

The second way such situations increase inter-branch tension is that they heighten the suspicions about motives that already naturally exist between branches. Legislators regularly fulminate about empire-building and bureaucratic red tape by executives, while executive agencies lament the legislature being penny-wise-and-pound-foolish and its tendency to ignore problems, saying, “So sue me, then.” In the wake of the *Hubert* prison litigation, Lucien “Skip” Capone III, special deputy attorney general, said, “The consent judgement contained a great many things that the Department of Correction already wanted to do.”⁹ A few legislative observers have wondered whether the consent decree was a way for an executive department to get the legislature to do what it would not have otherwise done if the department had submitted the same reform package as part of its normal budget proposals.

The third way in which settlements increase tension is that legislators see them as a violation of their prerogatives to set the state's budget priorities. It is highly doubtful that the legislature would have voted to make prison reform one of the top three budget priorities in recent years, but that is indeed what the judicial and executive branches have forced upon them.

And these vignettes are not the end of the litigation scenario. Yet to be played out is a pending class action suit contesting the constitutional adequacy of the state mental hospital system,¹⁰ as well as a possible future challenge to the state's system of public school finance.¹¹

Tension Point #4:

Suits by One Branch of Government Against Another
Suits by outside parties against executive agencies do not exactly create warm and fuzzy feelings between the executive and the legislature. But in recent years, antagonism between the branches has become so strong that they are actually suing each other.

In a special session in October 1981, the legislature met to deal with the tidal wave of changes



Karen Tam

While tensions have been high between the legislative and executive branches, relations between the parties have been slightly warmer in the House, where House Minority Leader Johnathan Rhyne (R-Lincoln) and other Republicans helped Democrat Joe Mavretic (D-Edgecombe) win the speakership in 1989. A new speaker will preside in 1991.

occurring as a result of President Ronald Reagan's policy of New Federalism, which shifted major responsibilities from the federal government to state or local governments.

Both the governor and the legislature were quick to recognize these block grants as an opportunity to gain control over a new pot of money. The legislature established the Joint Legislative Committee to Review Federal Block Grant Funds and required the governor to get prior approval of any actions the executive proposed to take with block grant funds. The legislature also required the executive branch to get prior approval from the legislature's Joint Legislative Commission on Governmental Operations for transfers of more than 10 percent from one budget line item to another.

On Feb. 16, 1982, the N.C. Supreme Court issued an advisory opinion that both the limit on transfers and the new block grant committee were unconstitutional, as they violated the separation of

powers clause and the governor's power to administer the budget and represented an unlawful delegation of legislative power.¹²

That fight over the parameters of control of the budget was between a Democratic governor and lieutenant governor and Democratic leaders and majority in the legislature. The next legal skirmish was a square-off between a Republican governor (Martin) and a Democratic legislature. This subsequent fight also was a contest over the limits of the power of the governor, this time augmented by partisan differences.

In *State ex rel. Martin v. Melott*,¹³ the governor ostensibly sued the head of the Office of Administrative Hearings (OAH), but he was really in a contest with the Democratic majority in the legislature. The 1985 General Assembly passed a law providing that the director of the OAH be appointed by the chief justice of the N.C. Supreme Court. Governor Martin sued, saying that the legislation was an incursion on his appointment

powers.¹⁴ He also invoked the separation of powers clause, saying that because the OAH was in the executive branch, the General Assembly could not place the power to appoint the head of the OAH outside that branch. The General Assembly recognized that it was playing at the edge of constitutional limits because it included a provision in the law asking the Supreme Court for an advisory opinion on whether its action was constitutional. If unconstitutional, the appointment was to be made by the attorney general, also a Democrat.¹⁵

After earlier declining to issue an advisory opinion, the state Supreme Court could arrive only at a plurality decision in *Melott*, but the net effect was to uphold the right of the legislature to delegate the power to appoint the director of the OAH to the chief justice. The court also commented that the 1970 constitution had greatly reduced the governor's appointive powers.

... in recent years, antagonism between the branches has become so strong that they are actually suing each other.

Martin v. Melott is the first case interpreting the appointments clause of the 1970 constitution and thus is a significant case. Its importance may be diminished somewhat by the fact that it is only a plurality decision, and it has received some criticism that it is inconsistent with previous separation of powers decisions. As one writer concluded, "By concentrating on the power to appoint, which it views as neither legislative nor executive, the court permits the General Assembly to grant to any person, or to keep to itself, all appointments not provided for in the constitution. This power opens the door for legislative hegemony, threatening the integrity of the executive and judicial branches."¹⁶

In any event, tension between the actors is heightened both when branches of government sue each other—as was the case in the 1982 request for an advisory opinion and in *Martin v. Melott*—and when executive officials sue each other. The tension sometimes shows up in budget battles and sometimes in litigation, but the amount of such litigation has definitely increased in the 1980s.

Tension Point #5:

Conflicts Between the Governor and the Constitutionally-Hybrid Office of the Lieutenant Governor

One member of the Council of State who has consistently been a source of tension with governors of all parties at least since 1977 has been the lieutenant governor. This section will argue that this is due to a constitutional flaw which places the lieutenant governor in both the executive and legislative branches and a political system which has the lieutenant governor elected separately from the governor—rather than running under a team ticket arrangement.

The constitution places the lieutenant governor in the executive branch by declaring him or her a member of both the Council of State and the State Board of Education, giving him the right to succeed the governor, and allowing him to serve as acting governor in the governor's absence from the state or during the physical or mental incapacity of the governor. The lieutenant governor also has the power to perform such additional duties as the governor may assign—all of which places him or her squarely within the executive branch, which is what Article III of the constitution deals with and where the authority for most of these powers originates.

However, in Article II, the legislative article, the constitution outlines a legislative role for the same official. The lieutenant governor is given the power to preside over the Senate and vote in case of ties and has the duty to sign bills when presiding over the Senate. Prior to the 1989 session, the Senate also gave the lieutenant governor the power to appoint committees and committee chairs, as well as the power to assign bills to committee. These powers were based in Senate rules, however—not in the constitution—so when Republican James C. Gardner was elected in 1988, the 1989 Senate voted to shift these powers to the president pro tempore of the Senate, a Democrat.¹⁷

Depending on whether the lieutenant governor is considered an executive or legislative official, this power-stripping either increased tensions between the two branches or within the legislative branch. Regardless, the lieutenant governor has increasingly been a thorn in the governor's side. Lt. Gov. James C. Green was a continual burr in the saddle of Governor Hunt, though both were Democrats. Green opposed Hunt on gubernatorial succession, ratification of the Equal Rights Amendment, chairmanship of the State Board of Education, allocation of tax checkoff money for political parties, a bluebook plan for children's



Karen Tam

House Majority Leader Dennis Wicker (D-Lee), a potential future candidate for Speaker, with Rep. Harry Grimmer (R-Mecklenburg) in background. Wicker has insisted that measures to strengthen the executive branch not be at the expense of the legislative branch.

services, and countless other issues during Green's two terms as lieutenant governor.

Green's successor, Robert B. Jordan III, became the titular leader of the Democratic party in 1985 and opposed Republican Governor Martin on tax issues, education, and eventually in the 1988 gubernatorial election. Currently, Republican Lieutenant Governor Gardner is questioning fellow Republican Martin on the need for a hazardous waste incinerator and the need for an increase in the sales tax to fund education improvements. He may even have cost the governor-veto

power by running television ads criticizing legislative Democrats as spendthrifts in the weeks before they were to decide whether to give the governor veto power during the 1990 short session.

One reason for this tension is that the last six lieutenant governors (Gardner, Jordan, Green, Hunt, H. Pat Taylor Jr., and Robert W. Scott) became candidates for governor. Thus, as each governor approached the end of his term and took on more and more characteristics of a lame duck, each lieutenant governor began to differ with the governor in order to stake out his own territory. This heightens tension, and it is one of the chief reasons that many other states have gone to team elections (see discussion on page 75) or removed the lieutenant governor from the legislative arena. "Twelve states have now placed the lieutenant governor completely in the executive branch, and others have reduced the lieutenant governor's legislative roles,"¹⁸ reported Larry Sabato of the University of Virginia in 1983.

Tension Point #6:

Legislative IncurSION into the Executive Branch Power of Appointments

Most students of government assume that most of the appointment power lies with the governor. But by the time of the *Wallace v. Bone* case in 1982, 90 of the approximately 400 boards, commissions, and councils in the executive branch had legislators as members in a total of 203 positions. Even after the

legislature removed its members from 41 boards as a result of *Bone*, legislators still held 142 positions on 56 groups.¹⁹ Prior to *Bone*, the speaker of the House and the lieutenant governor made these appointments on their own. In order to get around the constitutional question *Bone* raised about an unlawful delegation of legislative power to these two officials, the legislature ostensibly began making these decisions in the body as a whole. Even now, however, the appointments come in bills in the form of recommendations by the speaker of the House and by the lieutenant governor and

president pro tem of the Senate (more frequently the latter official now that the Senate has stripped the lieutenant governor of some of his legislative powers). Though the full House votes on the recommended appointees from the speaker, and the full Senate on the appointees recommended by the lieutenant governor or president pro tem, the recommendations are merely rubber-stamped and *never* have been overturned.

Ignoring the fact that legislators still serve on *advisory* bodies in the executive branch (*Bone* removed them only from *policymaking* bodies) and ignoring the fact that the speaker and Senate officials still make appointments in actuality, the key point is the erosion of the governor's appointment power during the last decade. By 1989, the lieutenant governor controlled 195 appointments to 87 boards in the executive branch of state government, though 106 of those had to be approved by the General Assembly before becoming effective. The speaker also had 129 appointments to 62 executive boards.

By its very nature, this reduction of gubernatorial appointment power and increase in legislative officials' appointment powers increases tension between the branches. But it also creates tension on the boards themselves, as appointees loyal to the governor may follow one policy, while appointees of the lieutenant governor may follow another, and those of the speaker yet another.

An effort by the state Child Day Care Commission to ban corporal punishment provides a good example of this. In 1985, the commission passed rules banning corporal punishment when the membership comprised a majority of Democratic appointees forged from holdover appointments of Governor Hunt and Lieutenant Governor Jordan. These appointees outvoted those of Governor Martin. Since then, through appointments by Martin and Jordan's successor, the Republican Lieutenant Governor Gardner, Republicans gained a solid majority. When that occurred, the commission first retracted the ban and then voted in August 1990 to say it lacked even the authority to ban spanking in day care centers. And to make matters really testy within

the commission, 13 church day care centers who support corporal punishment filed suit against the commission. Two of the commission members were among the 13 plaintiffs, in effect suing themselves and the rest of the commission.

Thus, the decade of the 1980s was a time of *political* reduction of the executive's appointment powers coupled with a *legal* weakening of the governor's constitutional base for the power of appointment. Neither improved relations between the branches of government, nor did it slow down the trend of increased rivalry between the governor and lieutenant governor.

Tension Point #7:
Legislative Oversight of Executive Rulemaking

In 1974, the N.C. General Assembly enacted an Administrative Procedure Act (APA) for North Carolina.²⁰ In its broadest sense, the purpose of such acts is for the executive to provide the specifics in rules for the broad outlines of the bills passed by the legislature. As the Institute of Government's Robert Joyce put it, "Law-making is a legislative function, law-enforcing is executive. The delegation of rule-making and -enforcing

powers by the legislature to administrative agencies creates a gray area."²¹

From its infancy, the APA was a new source of tension between the executive agencies and the legislature. Though the act only went into effect on July 1, 1976, that same year, Sen. I.C. Crawford (D-Buncombe and chair of the Senate Government Operations

Committee) asked the state auditor to perform an operational audit on how the act was functioning. By the late 1970s, outright legislative opposition to the APA began to surface as legislators began to get calls from constituents complaining not about laws legislators had passed, but about rules the executive agencies had promulgated. By Jan. 1, 1985, there were more than 18,000 pages of rules on file at the state Department of Justice, the official repository of the APA rules.

By the 1981 session, legislators who opposed the APA process were demanding the right to veto administrative rules that members did not like. In 1977, the General Assembly established an Ad-

... the decade of the 1980s was a time of political reduction of the executive's appointment powers coupled with a legal weakening of the governor's constitutional base for the power of appointment.

ministrative Rules Review Committee (ARRC) to review all agency rules.²²

A 1985 debate is a good illustration of how the line between legislation and rulemaking is a source of tension between the legislative and executive branches. The late Rep. William T. Watkins (D-Granville), a vociferous opponent of the APA, would frequently cite two examples of bureaucratic poaching on the legislative preserve. The Division of State Parks had adopted a rule which prohibited consumption of beer in boats on Kerr Lake, which was in Watkins' district and caused constituents to complain to him. However, Watkins contended, there was no such prohibition in the state's alcoholic beverage control laws. In the second example, the Wildlife Resources Commission adopted a rule requiring hunting and fishing licenses to be filled out only with ball point pens. In both cases, violations of the rules amounted to misdemeanors, punishable by fines, jail terms, or both.

Watkins argued that such rulemaking was the equivalent of executive agencies writing criminal laws without the authority to do so. "This bill will stop these agencies from writing criminal law," he said of his legislation in 1985. "That is the legislature's function, not the executive branch's." Governor Martin replied, "This problem is not the result of the executive branch usurping the legislative branch. Rather it is the failure of the General Assembly to exercise appropriate care in delegating rulemaking authority."²³

The legislative interest in oversight of rulemaking continued in the 1986 short session with the fourth incarnation of the ARRC. Under provisions which largely continue in effect today, the ARRC's main duties are "to determine whether each rule reviewed is (1) within the statutory authority of the adopting agency, (2) clear and unambiguous, and (3) reasonably necessary (a) to enable the agency to perform a statutorily assigned function or (b) to enable or facilitate the implementation of a program or policy."²⁴ No newly adopted permanent rule may be filed until it is reviewed by the ARRC. If that body determines that the new rules do not meet the three tests above, the rules' effective dates are delayed, and the agency is notified and asked to submit revisions. The agency has 90 days in which it can either fix the rule to satisfy the ARRC's objections or it can file the rules with the Office of Administrative Hearings with a notation of the ARRC's objections. Ignoring such an objection is at the executive agency's peril, however. The General Assembly may by

statute disapprove and invalidate the objected-to rule. These provisions are sure to be a source of future tension between the legislative and executive branches.

Summary of Tension Points

Think of tension points in an anatomical sense. They might be described as points where bone, muscle, and nerve meet, much like the three branches of government. Over the last 20 years, both the legislature and the executive have tried to muscle in on each other's constitutional territory, and the judiciary has had to referee the wrestling matches. However, just like physical aches and pains, these tension points are likely to flare up at any time because of institutional differences or suspicions among the branches or because of partisan splits. The most likely flashpoints are the budget arena, the power of appointments, the line between rulemaking and lawmaking, the role of the lieutenant governor, or sometimes actual lawsuits between the branches of government. These tension points emphasize the *legal* concept of *separation* of powers and largely legal solutions to problems in the courts. However, as can be seen in the comments of the governors and legislative leaders in the sections above, the *political* concept of a *balance* of powers is also at work. It is in the political arena that future battles over the boundaries between the branches are more likely to be fought.

Where We May Be Headed

If one thing is clear from the extensive debate in the 1989-90 legislative session over whether to grant the governor veto power, it is that neither the legislature nor the governor are likely to give major increases in one branch's institutional powers without receiving a corresponding grant of power. Thus, in the horsetrading atmosphere of the final weeks of the 1990 session, the legislature was considering giving the governor veto power in exchange for the governor's support for four-year terms for legislators and subjecting more appointees to legislative confirmation.

One way of predicting the future of executive-legislative relations is to examine possible future power shifts in terms of gainers and losers. In that respect, the major balancing points are depicted in the table on page 73.

Possible Trades in the Balance of Power Between the Executive and Legislative Branches

A. Measures Which Would Increase the Governor's and Executive Branch's Powers

1. Veto power for the governor
2. Team elections with the lieutenant governor (which would remove a possible adversary in dealing with the General Assembly)
3. Merit selection of judges (which would increase the number of the governor's appointments and the governor's ability to affect the judicial branch)
4. Reducing the number of officials who are elected statewide as part of the 10-member Council of State (thereby putting more of the executive departments under the governor's control)
5. Limiting the speaker of the House of Representatives and/or the president pro tempore of the Senate to two terms (limiting the longevity and thereby the power of the legislative leadership)
6. Limiting the length of legislative sessions (the legislature is less a force when it is not in session)
7. Limiting the number of terms a legislator can serve (In 1990, Oklahoma, Colorado, and California limited the tenure of legislators)

B. Measures Which Would Increase the Legislative Branch's Powers

1. (a) Repealing succession, or (b) limiting the governor to one six-year term
2. Removal of all legislative functions from the office of the lieutenant governor (including presiding over the Senate and voting in case of ties)
3. Requiring legislative confirmation of judicial appointments by the governor
4. Placing the state auditor under the legislative branch or have the state auditor appointed by the legislature for a fixed term
5. Four-year terms for legislators
6. Making more of the governor's appointments subject to legislative confirmation or increasing the number of legislative appointments to boards and commissions in the executive branch

C. Other Measures Which Would Affect the Balance of Power

Moving state elections to non-presidential election years. (Removing the tie-in to presidential elections generally weakens the party holding the presidency, which can affect both the governor and the majority in the legislature)

Toward Veto Power For the Governor

North Carolina is the only state in the country where the governor has no veto power. Of the other 49 states, 43 allow their governor an item veto, while six states—Indiana, Maine, Nevada, New Hampshire, Rhode Island, and Vermont—allow a regular veto but not an item veto.

In the 1989–90 session, the N.C. Senate passed a measure granting the governor veto power, but the bill failed in the House by only 10 votes on July 5, 1990. The bill had been 12 votes shy of clearing the House in the 1989 session. The 1990 bill may be a harbinger of the future in that it attempted to grant new powers to both the executive and the legislative branches. The voters would have been faced with one yes-or-no-vote in November 1990 on a five-part measure that included: (a) veto power for the governor, with a 60 percent legislative majority required to override a veto; (b) a limit on the number of days in the legislative session; (c) four-year terms for legislators, instead of the current two-year terms; (d) legislative confirmation of some gubernatorial appointees; and (e) legislative elections coinciding with presidential elections. The bill also included a sixth provision by which voters would have faced a separate ballot question of whether to adopt a system of appointment of appellate court judges by the governor, with the advice and consent of the General Assembly.

The concept of balance of powers was in clear evidence in this package—a Republican governor gets veto power, the Democrat-controlled legislature gets longer terms and more appointment power, and the Republicans get to tie legislative elections to presidential elections, years in which the GOP historically does better. In this case, both parties accused each other of loading up the legislative horse with too many riders to parade before the voters. “They loaded it up and misled people,” said Rep. Frank Sizemore (R-Guilford). Rep. Johnathan Rhyne (R-Lincoln), the House minority leader, said the veto package was doomed when Lawrence Davis, chairman of the state Democratic Party, criticized the package because it lumped together veto and four-year terms. By contrast, the

Democrats criticized the Republicans for trying to tip the balance of power in their favor. “It got scrambled in rhetoric,” said House Speaker Josephus Mavretic (D-Edgecombe). “It became a partisan issue of who’s gonna win seats and who’s gonna lose seats in the House.” Ironically, Mavretic had been a supporter of veto power for the governor.

Toward Four-Year Terms for Legislators

Of the baseball cards likely to be traded in exchange for veto power, the governor is most likely to pitch the idea of support for four-year terms for legislators. The main reason for this is that it is easier for a governor to support an accompanying increase in the legislature’s power than it is to give up a power he or she already has, such as succession. In the 1989–90 session, at least four bills were introduced to repeal succession, two bills would have limited the governor to one six-year term, and three bills would have granted four-year legislative terms. Under this rationale, a governor is least likely to give up succession, moderately likely to agree to a six-year term

plus veto power, and more likely to agree to support longer legislative terms in exchange for the veto.

A second reason the veto-for-four-year-terms exchange is the most likely scenario is the recent history of voter actions on succession and four-year terms. It has been only 13 years since the voters *approved* a constitutional amendment granting succession²⁵ by a 52.5 percent to 47.5 percent margin, and it has been only eight years since the voters *turned down* an amendment granting four-year terms for legislators by a whopping 76 percent to 24 percent.²⁶ In this political equation, a governor can argue that the people have shown their support for increased gubernatorial powers, but not for increased legislative powers, and that the legislators need the governor’s support—to convince the voters of the need for four-year terms—more than the governor needs theirs to convince the voters of the need for veto power.

Though the voters have a shown strong disin-

North Carolina may also choose to make its lieutenant governor less a constitutional hybrid and more an official of the executive variety by peeling away the legislative duties.

clination to vote for four-year terms, such a measure could pass (a) if it had the governor's support and (b) if it were linked with a grant of veto power, though submitted as a separate measure on the ballot. The main reasons given for longer legislative terms are (1) to preserve the citizen legislature by countering the increased length of legislative sessions with a reduction in the number of times a legislator has run for office; (2) to reduce the cost of running for office by reducing the number of times one has to run; and (3) to make the terms of North Carolina's legislators consistent with the majority of other states.

Toward a Redefinition of the Office of Lieutenant Governor as an Executive Office

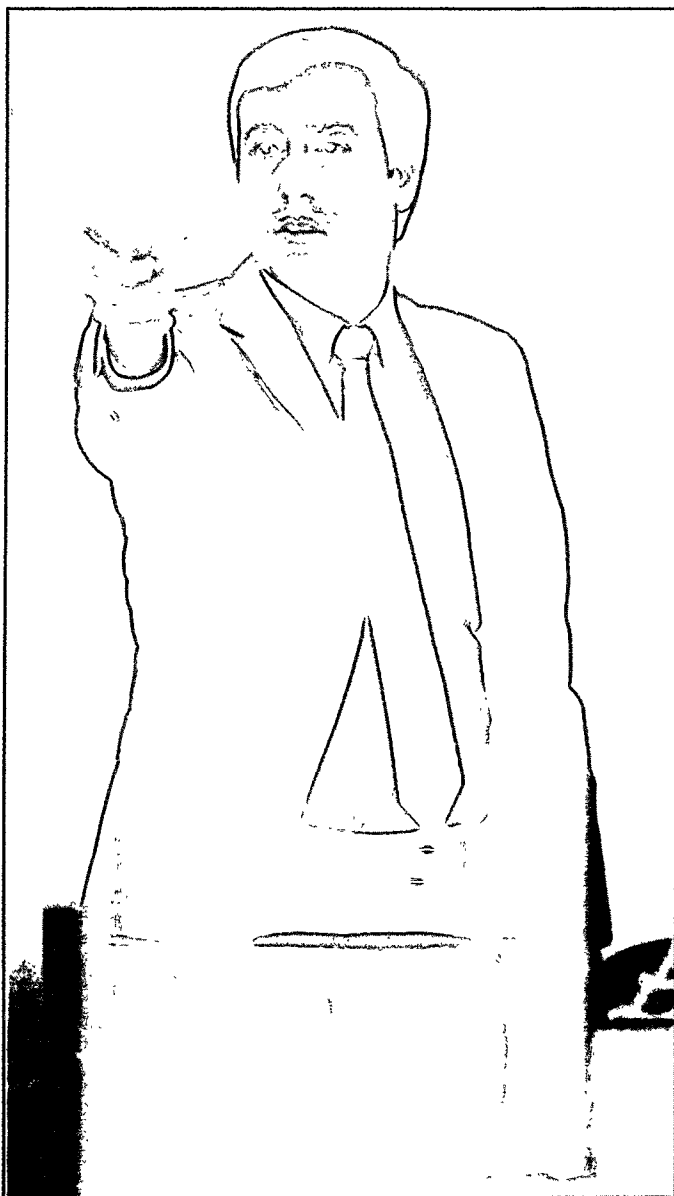
For the first time in recent memory, two bills were introduced in the 1989 General Assembly to provide that the governor and lieutenant governor run on a team ticket in the general election. Such team tickets are modeled after the federal system of having the president and vice-president elected as a team. Unlike the federal system, the state proposal would not give the governor power similar to the president's to name his or her running mate. It leaves to the parties the decision as to how a candidate for lieutenant governor is chosen. However, simply by tying the lieutenant governor and governor together as a team, the proposal would increase the power of the governor because the lieutenant governor would no longer have a separate electoral power base; instead, the lieutenant governor would owe his or her election to the governor.

North Carolina may also choose to make its lieutenant governor less a constitutional hybrid and more an official of the executive variety by peeling away the legislative duties. As discussed above, the state Senate has already stripped the lieutenant governor of the power to appoint committees and committee chairs, as well as the power to refer bills to committee. Those changes were made through simple changes to the Senate rules, however. Further changes would require traveling the more

difficult route of statutory changes or the very arduous journey of submitting a constitutional amendment to the voters. For these reasons, it is much less likely that the legislature would attempt to change the lieutenant governor's power to preside over the Senate or vote in case of ties, both of which are constitutionally based grants of power.

It is much more likely that the decade of the 1990s will see a slow rollback of the lieutenant

House Appropriations Committee Chairman David Diamont (D-Surry) was a key figure in the legislature's development of a state budget independent of the executive branch in recent years.



Karen Tam

governor's appointment powers. Many of the office's 195 appointments to 87 boards or commissions in the executive branch are likely to be given gradually to the president pro tempore of the Senate. This might occur for two reasons, one institutional and one political. Institutionally, the Senate is more likely to give such appointment powers to one of its own, since the president pro tem is a fellow senator. Politically, the likelihood of this increases if the lieutenant governor is a member of the opposite party. During the 1989–90 session, the Democrats in the Senate gradually gave more appointments to their fellow Democrat, President Pro Tempore Henson Barnes (D-Wayne), and may be likely eventually to reduce the number of appointments given to a Republican, Lt. Gov. James C. Gardner. This is particularly likely since Gardner has been highly critical of Democrats in the legislature.

Looking outside North Carolina, there is also a clear national trend toward reducing the legislative role of the lieutenant governor. Since 1953, 22 states have adopted measures requiring the governor and lieutenant governor to run as a team.²⁷ Though 28 of the 42 states with lieutenant governors allow the lieutenant governor to preside over the Senate, and 25 allow that official to vote in case of ties, only six allow him or her to make appointments to boards in the executive branch. And only seven states allow the lieutenant governor to appoint committees and committee chairs, while only 15 are allowed to assign bills to committee.

"Twelve states have now placed the lieutenant governor completely in the executive branch, and others have reduced the lieutenant governor's role," concludes political scientist Larry Sabato. While South Dakota voters recently rejected a proposal to strip the lieutenant governor of legislative duties, a legislative study committee in Kansas has considered abolishing the office. And in a suit brought by a state senator, a Mississippi state court struck down—on separation-of-powers grounds—the practice of the lieutenant governor acting as a legislative leader.²⁸

Toward Merit Selection of Judges

Nationally, 30 states have switched to a form of merit selection of judges since Missouri first enacted the idea in 1940. Seventeen states use the model most often proposed in North Carolina during the 1980s, a system that includes: (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a

list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term.

Institutionally, it could be argued that a move to merit selection dramatically increases the governor's appointment power. If all judges in North Carolina were to be appointed by the governor instead of elected by the people, legislators might argue that such a measure represents a sea change. However, in a study published in September 1990, the N.C. Center for Public Policy Research found that of the 261 judges sitting on the bench as of July 31, 1990, 61 percent first had been *appointed*, not elected, to their posts.²⁹ That is, though they may have won election since that first appointment, they got to their judgeship through an appointment by the governor. In actual practice, then, one can argue that the governor already is appointing three-fifths of North Carolina's judges.

Politically, however, Democrats in the legislature are wary of giving a Republican governor more judicial appointments without an offsetting curb on other executive appointments. Democrats have been bothered by two trends in judicial elections. First, they are starting to lose a few elections. In 1988, Judge Robert Orr was the first Republican to win a statewide appellate race for the N.C. Court of Appeals. In 1980, 99 percent of the judgeships on the Supreme Court, Court of Appeals, and Superior Court were held by Democrats. But as vacancies occur on the Supreme Court, Court of Appeals, Superior Court, and Special Superior Court, Governor Martin has been able to fill those posts with Republicans. As of July 31, 1990, almost 15 percent of the state's judges are Republicans, with the largest GOP gains having occurred on the Court of Appeals and on the District Court bench.

The second trend causing legislative Democrats to go slow on merit selection is the increase in partisanship in judicial races. In 1986, the two parties fought bitterly over five seats on the state Supreme Court. A group calling itself Citizens for a Conservative Court attacked Chief Justice James Exum's record, saying he was not sufficiently conservative, particularly on death penalty cases. As it turned out, Exum also had voted to uphold the death penalty in other cases. In any event, the Republican effort failed, but Democratic legislators and many lawyers were disturbed by campaigns which attempted to put the law to a popular vote. The 1990 judicial elections evidenced similar partisan spats.

If the proponents of merit selection expect to move this issue off square one, it likely will be due to what the governor is willing to give up in other appointment powers. There are two ways this could occur. One way is for the governor to agree to let the legislature continue to make inroads in the appointments area by appointing more officials to executive boards upon the recommendations of the speaker of the House and president pro tem of the Senate.

Another way is to agree to submit more of the governor's appointments for confirmation by one or both houses of the General Assembly. Already, the legislature votes to confirm or reject the governor's 11 appointees to the State Board of Education,³⁰ the seven members of the Utilities Commission, and the commissioner of banks.³¹ The legislature solely nominates and elects the 32 members of the 16-campus University of North Carolina Board of Governors.³² The veto package which finally failed on the House floor in July 1990 might be a forecast of the future for this kind of trading. In exchange for giving the governor veto power, the legislature would have gained four-year terms and confirmation by the House and Senate for 10 different boards and commissions and other state posts.

In any debate over shifts in appointment power, the concept of balancing power is likely to be in the forefront of the legislative debate. Rep. Harry Payne (D-New Hanover) objected to the 1990 veto-terms-appointments package using three vivid images of cats, buttons, and glasses of milk. Payne argued, "The cat is out of the bag, but the cat is not one which should be left alone in the house. This issue is about the governor having more buttons than anybody in the House or Senate [both houses vote by pushing buttons connected to an electronic voting machine]. When you have kids, you spend a lot of time balancing how much milk is in the glass of each child. You've got to be fair. What we're doing here is sloshing a lot of milk from one glass [the legislature's] to another [the executive's]." Future debates over merit selection may involve a trade—pouring a bit more milk in the governor's glass for appointing judges, but also filling up the legislature's glass for confirming more gubernatorial appointments.

Toward a Reduced Number of Officials Elected Statewide?

For years, there has been talk of reducing the long number of North Carolina officials elected on the statewide ballot. Proponents of reducing the list

point out that North Carolina elects a larger number of officials than all but three other states, and that shortening the list would reduce confusion in election years. Currently, a number of groups, headed by N.C. Citizens for Business and Industry, are pushing to make the superintendent of public instruction appointive. But the recent history of efforts to convert statewide elective positions into appointive posts is not encouraging for supporters of such measures. For more on this, see the pro/con discussion on whether to elect or appoint the superintendent of public instruction in the September 1990 issue of *North Carolina Insight*, pp. 2-22.

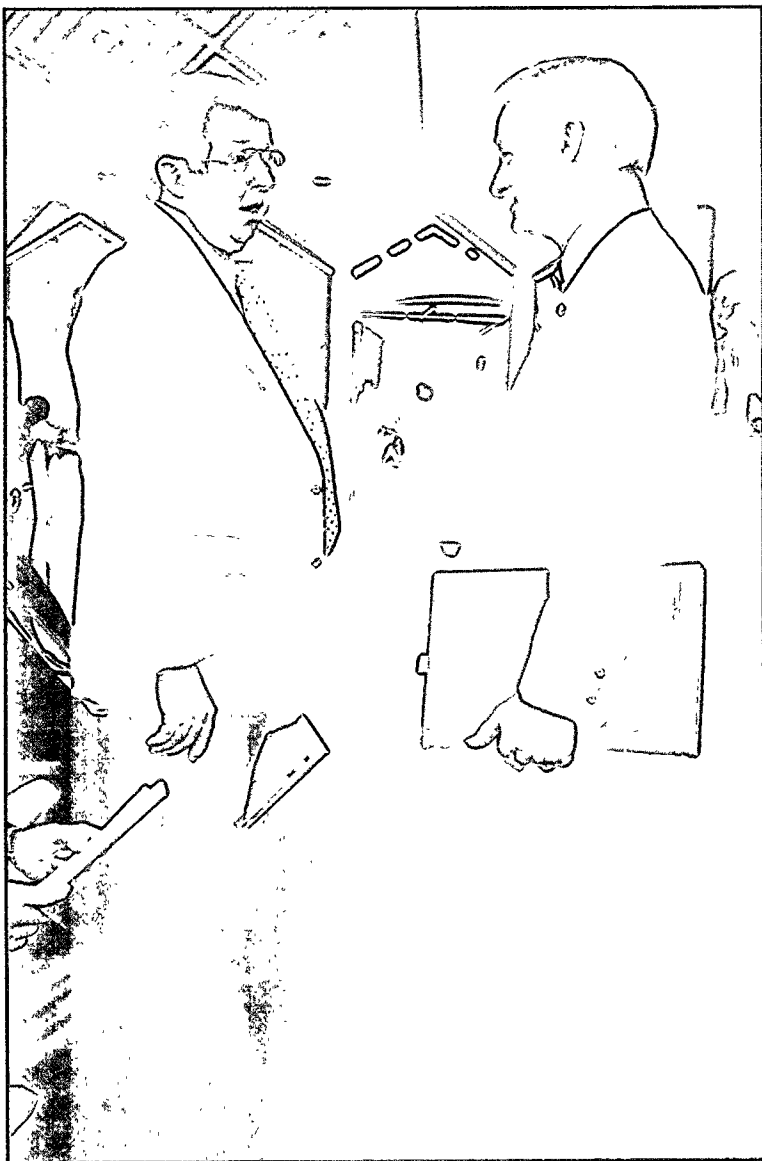
Conclusion

From the Royal Governors before the Revolutionary War to the rise of the Republican Party in the 1970s and 1980s, and from post-Civil War days to the era of succession, executive-legislative relations have had their ups and downs in North Carolina. Because public attention is usually focused on the protagonists themselves—the governor, the lieutenant governor, the speaker of the House, and the president pro tem of the Senate, this article has attempted to look at the institutional differences between the two branches. One primary theme running throughout is that the system of *separation of powers* has undergone a metamorphosis in the last two decades. The butterfly that emerges is not a kingly Monarch but a system which includes a greatly strengthened governor and a greatly strengthened legislature. Constitutional changes have given the executive the power to reorganize the nine executive departments under the governor's control and the power of succession, and an important court case has increased the executive's budgetary powers.

The executive branch also has had its wings clipped in the areas of appointment powers and in a reduced legislative role for the lieutenant governor. The legislature has gained in power through increases in staff and oversight of executive rulemaking.

Although many of the battles described here have a partisan element to them, one of this article's main contentions is that the many disputes between the governor and the legislature rest more on institutional differences and would occur regardless of which party held the governorship and which party held the majority of seats in the legislature. Veto power for the governor and merit selection of judges are two such issues where partisan elements

Two former governors each had their successes—and failures—in their relations with the N.C. legislature. Former Gov. James E. Holshouser, left, a Republican, chats with former Democratic Gov. James B. Hunt Jr., right, during lull in a legislative hearing on granting veto to the governor in 1989.



Karen Tam

further heat up the argument, but the argument has not and will not disappear—even if both the executive and the legislative majority are of the same party.

The judicial branch has played a key role in resolving disputes between the executive and legislature over the last decade. The 1980s saw the court hand down a major separation of powers case in *Bone*, a major appointment powers case in *Melott*, an important advisory opinion on budgetary powers, and the court even has had to resolve suits by one branch against another.

The 1990s are likely to see a further evolution

in relations between the branches. This evolution is likely to be characterized as a *balancing of powers*—sometimes between the governor and the legislature, other times between other statewide elected officials (such as the lieutenant governor or superintendent of public instruction) and the legislature. If the fortunes of the Republican Party continue to rise so that the Republicans approach the status of a majority in either house, the level of tension between the two branches is likely to rise also. For as Oliver Wendell Holmes once said, “The only prize much cared for by the powerful is power.”³³ The role of the courts as arbiter of these

disputes is likely to take on a higher profile.

The founders of our constitutional system foresaw those kinds of struggles, and the concept of separation of powers was their answer to the problem of a concentration of power. As James Madison saw it, they spread power among three branches under the theory that "the great security against a gradual concentration of the several powers in the same department [branch] consists in giving to those who administer each department [branch] the necessary constitutional means and personal motives to resist encroachments of the others. . . . Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place."³⁴ It's a beautiful system—and it still flies. ☐

FOOTNOTES

¹ Hugh T. Lefler and Albert R. Newsome, *North Carolina: The History of a Southern State*, 3rd edition, Univ. of N.C. Press (Chapel Hill, NC: 1973), pp. 150–151 and 498.

² Ferrel Guillory, "The Council of State and North Carolina's Long Ballot: A Tradition Hard to Change," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 10, No. 4 (June 1988), p. 43.

³ *State ex rel. Wallace v. Bone*, 301 N.C. 591, 286 SE 2d 79 (1982).

⁴ Article III, Section 5(2) of the Constitution of North Carolina.

⁵ *Willie M. et al. v. James B. Hunt Jr. et al.*, "Complaint for Declaration and Injunctive Relief," filed in the U.S. District Court for the Western District of North Carolina, Charlotte Division, October 1979, Civil Action #CC-79-0294, p.1.

⁶ *Hubert v. Ward et al.*, No. C-C-80-414-M (W.D.N.C.).

⁷ *Small v. Martin*, No. 85-987-CRT (E.D.N.C.).

⁸ As quoted in Kendall Guthrie and Bill Finger, "Willie M. Treatment for Disturbed Youngsters," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 6, No. 2–3 (October 1983), p. 59.

⁹ As quoted in Joel Rosch, "Litigation: Will the Federal Courts Run N.C.'s Prison System?" *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 9, No. 3 (March 1987), p. 33.

¹⁰ *Thomas S. v. Flaherty*, 699 F. Supp. 1178 (1988), 902 F.2d 250 (1990) is a class action suit on behalf of 400–1600 mentally retarded adults who have been in state psychiatric institutions. The plaintiffs prevailed at both the trial court level and in the 4th Circuit U.S. Court of Appeals. The state's petition for certiorari to the U.S. Supreme Court was denied on Oct. 29, 1990. The legislature has already appropriated \$4.5 million for fiscal years 1989–90 and 1990–91 to provide treatment for the plaintiffs.

¹¹ There are now 35 states which have faced suits or have litigation pending over the constitutionality of their systems of school finance. For more, see a forthcoming report by the N.C. Center for Public Policy Research describing this litigation and the potential for such a suit in North Carolina.

¹² *Advisory Opinion in re: Separation of Powers*, 305 N.C. 767 (Appendix, 1982).

¹³ 320 N.C. 518, 359 SE 2d 783 (1987).

¹⁴ Article III, Section 5(8) of the N.C. Constitution, the appointments clause, says "The Governor shall nominate and by and with the advice and consent of the majority of the

Senators appoint all officers whose appointments are not otherwise provided for."

¹⁵ Chapter 746 of the 1985 Session Laws, section 19. The Court declined to issue an advisory opinion, apparently having tired of this advisory role in an era of contesting branches. Interestingly enough, one of the reasons given was that "the members of the Supreme Court would have to place themselves directly in the stream of the legislative process." *In Re Response To Request for Advisory Opinion*, 314 N.C. 677 (Appendix, 1985).

¹⁶ Charles Herman Winfree, "State ex rel. Martin v. Melott: The Separation of Powers and the Power to Appoint," *N.C. Law Review*, Vol. 66 (1988), p. 1120.

¹⁷ Votes on these changes in the rules were taken in the N.C. Senate on Jan. 11, 1989. For a description of the evolution in this office, see Ran Coble, "The Lieutenant Governorship in North Carolina: An Office in Transition," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 11, No. 2–3 (April 1989), pp. 157–165.

¹⁸ Larry Sabato, *Goodbye to Goodtime Charlie—The American Governorship Transformed*, CQ Press (Washington, DC), 1983, p. 71.

¹⁹ Both statistics are from studies by the N.C. Center for Public Policy Research and reported in Lacy Maddox, "Separation of Powers in North Carolina," in *Boards, Commissions, and Councils in the Executive Branch of N.C. State Government*, N.C. Center for Public Policy Research, 1984, p. 43–44 and pp. 52–59.

²⁰ Chapter 1331 of the 1973 Session Laws (2d Session, 1974) which went into effect on July 1, 1976. Now codified as G.S. Chapter 150B.

²¹ Robert P. Joyce, "Overview of the 1983 General Assembly," *North Carolina Legislation 1983*, Institute of Government (UNC–Chapel Hill, 1983), p. 11.

²² Chapter 915 of the 1977 Session Laws.

²³ These examples and quotations are from Bill Finger, Jack Betts, Ran Coble, and Jack Nichols, *Assessing the Administrative Procedure Act*, N.C. Center for Public Policy Research, May 1985, pp. 6–7 and p. 4.

²⁴ For excellent summaries of the APA changes, see John L. Sanders, "Administrative Procedure," in *North Carolina Legislation 1985* and "State Government" in *North Carolina Legislation 1986*, Institute of Government (UNC–Chapel Hill), pp. 12–16 and 99–102, respectively. The quotation is from the latter publication, p. 100.

²⁵ Chapter 363 of the 1977 Session Laws, ratified by the voters on Nov. 8, 1977.

²⁶ Chapter 504 of the 1981 Session Laws, rejected by the voters on June 29, 1982.

²⁷ *The Lieutenant Governor*, Council of State Governments (Lexington, KY), 1987, p. 7. Although 22 states elect the two together, only eight nominate the candidates together.

²⁸ *The Book of the States 1988–89 Edition*, Council of State Governments (Lexington, KY), p. 28. The Mississippi case is *Dye v. State ex rel. Hale*, 507 So. 2d 332.

²⁹ Katherine White, Dale McKeel, and Jack Betts, "The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats," *North Carolina Insight*, North Carolina Center for Public Policy Research, Vol. 12, No. 4 (September 1990), pp. 45–46.

³⁰ Article III, Section 7(1) of the Constitution of North Carolina.

³¹ G.S. 62-10 and G.S. 53-92, respectively.

³² G.S. 116-5 and 116-6.

³³ Michael Jackman, *Crown's Book of Political Quotations* (Crown Publishers, Inc.: New York), 1982, p. 179.

³⁴ James Madison, *The Federalist Papers*, No. 51 (Mentor Books: New York), 1961, pp. 321–2.

INDEX TO VOLUME 12

Below is a subject index to *North Carolina Insight*, Volume 12 (1989-90). Following the subject heading is the article title, the author(s), the number of the issue in Volume 12 where it appeared, and the page number in the issue. Vol. 12, No. 1 was published in December 1989; Vol. 12, No. 2 was published in March 1990; Vol. 12, No. 3 was published in June 1990; and Vol. 12, No. 4 was published in September 1990.

CAMPAIGN FINANCE: Campaign Reporting Laws: The Inadequacies of Disclosure, by Kim Kebschull, No. 3, p. 35.

Political Campaign Financing Issues in North Carolina, No. 3, p. 34.

Public Financing of State Political Campaigns: How Well Does It Work?, by Ann McColl and Lori Ann Harris, No. 3, p. 47.

COURTS: The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats, by Katherine White, Dale McKeel, and Jack Betts, No. 4, p. 39.

The Judging Business: Does the Court of Appeals Follow Precedent?, by Katherine White, No. 1, p. 59.

The Ump Is Blind—and So Is Justice, by Jack Betts, No. 2, p. 66.

EDUCATION: Con: North Carolina Should Keep Its Elected Superintendent of Public Instruction, by J. Richard Conder, No. 4, p. 15.

Pro: North Carolina Needs an Appointed Superintendent of Public Instruction, by William S. Lee, No. 4, p. 5.

School Spending Disparities Persist, Center Reports in *New N.C. Focus*, by Ran Coble, No. 1, p. 70.

A Short Constitutional History of Public School Governance in North Carolina, 1776-1990, by Andy Baxter and E. Michael Latta, No. 4, p. 13.

The Superintendent of Public Instruction: Should North Carolina's Chief Public School Officer be Appointed or Elected?, by Jack Betts, No. 4, p. 2.

Work Force Preparedness: Training 21st Century Workers on a Mid-20th Century Budget, by Jack Betts, No. 4, p. 23.

ELECTIONS: Campaign Reporting Laws: The Inadequacies of Disclosure, by Kim Kebschull, No. 3, p. 35.

Con: North Carolina Does Not Need Four-Year Terms for Legislators, by Parks Helms, No. 2, p. 53.

Demon Rum and Constitutional Revision, by Jack Betts, No. 2, p. 8.

Four-Year Terms for Legislators?, No. 2, p. 46.

Political Campaign Financing Issues in North Carolina, No. 3, p. 34.

Pro: North Carolina Needs Four-Year Terms for Legislators, by Henson Barnes, No. 2, p. 47.

Public Financing of State Political Campaigns: How Well Does It Work?, by Ann McColl and Lori Ann Harris, No. 3, p. 47.

When Black and Republican Interests Coincide, Does the Democratic Party Lose?, by Jack Betts, No. 1, p. 45.

ENVIRONMENT: Chatham County: A Rural County with a Big Recycling Effort, by Amy Carr, No. 1, p. 18.

How *You* Can Cut Waste Production, No. 1, p. 8.

Mecklenburg County: An Urban County as a Model Manager of Waste, by Mike McLaughlin, No. 1, p. 15.

No Bottle Bill for North Carolina—Yet, by Amy Carr, No. 1, p. 34.

Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste, by Mike McLaughlin and Amy Carr, No. 1, p. 2.

- EXECUTIVE BRANCH:** Appointing Legislators to Other State Posts: Robbing Peter to Pay Paul?, by Mike McLaughlin, No. 2, p. 58.
 Con: North Carolina Should Keep Its Elected Superintendent of Public Instruction, by J. Richard Conder, No. 4, p. 15.
 Con: North Carolina Should Not Adopt a Gubernatorial Veto, by J. Allen Adams and Abraham Holtzman, No. 2, p. 21.
 Demon Rum and Constitutional Revision, by Jack Betts, No. 2, p. 8.
 The Item Veto: Partisan Advantage or Fiscal Restraint?, by Jack Betts, No. 2, p. 6.
 The Powers of the Governor in North Carolina: Where the Weak Grow Strong Except for the Governor, by Thad L. Beyle, No. 2, p. 27.
 Pro: North Carolina Needs an Appointed Superintendent of Public Instruction, by William S. Lee, No. 4, p. 5.
 Pro: North Carolina Should Adopt a Gubernatorial Veto, by Ran Coble, No. 2, p. 13.
 A Short Constitutional History of Public School Governance in North Carolina, 1776-1990, by Andy Baxter and E. Michael Latta, No. 4, p. 13.
 The Superintendent of Public Instruction: Should North Carolina's Chief Public School Officer be Appointed or Elected?, by Jack Betts, No. 4, p. 2.
 The Veto: After Half a Century of Debate, Still on the Public Calendar, by Jack Betts, No. 2, p. 2.
- HOMELESSNESS:** Facing Homelessness: The View from the Streets, by Mike McLaughlin, No. 3, pp. 5, 7, 13, 18, 26, and 31.
 North Carolina's Homeless: Whose Problem Are They?, by David Perkins and Mike McLaughlin, No. 3, p. 2.
- JOB TRAINING:** Work Force Preparedness: Training 21st Century Workers on a Mid-20th Century Budget, by Jack Betts, No. 4, p. 23.
- JUDICIAL BRANCH:** The Demographics of the Judiciary: No Longer a Bastion of White Male Democrats, by Katherine White, Dale McKeel, and Jack Betts, No. 4, p. 39.
 The Judging Business: Does the Court of Appeals Follow Precedent?, by Katherine White, No. 1, p. 59.
 The Ump Is Blind—and So Is Justice, by Jack Betts, No. 2, p. 66.
- LEGISLATURE:** Appointing Legislators to Other State Posts: Robbing Peter to Pay Paul?, by Mike McLaughlin, No. 2, p. 58.
 Assessing the Black Legislative Agenda After 20 Years, by Milton C. Jordan, No. 1, p. 55.
 Black Legislators: From Political Novelty to Political Force, by Milton Jordan, No. 1, p. 40.
 Con: North Carolina Does Not Need Four-Year Terms for Legislators, by Parks Helms, No. 2, p. 53.
 Con: North Carolina Should Not Adopt a Gubernatorial Veto, by J. Allen Adams and Abraham Holtzman, No. 2, p. 21.
 Demon Rum and Constitutional Revision, by Jack Betts, No. 2, p. 8.
 Former Legislators, Lawyers Dominate Lobbyist Rankings—Again, by Mike McLaughlin, No. 4, p. 49.
 Four-Year Terms for Legislators?, No. 2, p. 46.
 The Item Veto: Partisan Advantage or Fiscal Restraint?, by Jack Betts, No. 2, p. 6.
 Latest Legislative Effectiveness Rankings Reflect GOP Gains, by Jack Betts, No. 3, p. 58.
 Pro: North Carolina Needs Four-Year Terms for Legislators, by Henson Barnes, No. 2, p. 47.
 Pro: North Carolina Should Adopt a Gubernatorial Veto, by Ran Coble, No. 2, p. 13.
 The Veto: After Half a Century of Debate, Still on the Public Calendar, by Jack Betts, No. 2, p. 2.
 When Black and Republican Interests Coincide, Does the Democratic Party Lose?, by Jack Betts, No. 1, p. 45.
 When the Legislature's in Session, Does Other News Take a Back Seat?, by Jack Betts, No. 1, p. 63.
- LOBBYISTS:** Former Legislators, Lawyers Dominate Lobbyist Rankings—Again, by Mike McLaughlin, No. 4, p. 49.

- LOCAL GOVERNMENT:** Chatham County: A Rural County with a Big Recycling Effort, by Amy Carr, No. 1, p. 18.
Facing Homelessness: The View from the Streets, by Mike McLaughlin, No. 3, pp. 5, 7, 13, 18, 26, and 31.
Mecklenburg County: An Urban County as a Model Manager of Waste, by Mike McLaughlin, No. 1, p. 15.
North Carolina's Homeless: Whose Problem Are They?, by David Perkins and Mike McLaughlin, No. 3, p. 2.
Recycling North Carolina's Resources: The Long Campaign to Cut Tar Heel Waste, by Mike McLaughlin and Amy Carr, No. 1, p. 2.
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MEMORABLE MEMO

North Carolina
PACE

Political Action for
Candidate Election

October 11, 1990

RELEASE: Immediately

Contact: Roslyn Savitt
1-919-828-9650

CORRECTION CORRECTION CORRECTION CORRECTION CORRECTION

OCTOBER 11, 1990 NASW-NC-PACE PRESS RELEASE ENDORSEMENT ERROR

Raleigh The press release sent by NC-PACE, the political
action arm of the NC Chapter of the National Association of
Social Workers (NASW) contained one endorsement error.
On the attached list of endorsements for the NC General Assembly,
delete Senate District #09, Ed Warren and replace with Senate
District #15, L. Shelton Warren.

-30-

PACE, affiliated with the National Association of Social Workers - North Carolina Chapter, Wilburn Hayden, Jr., Treasurer. NC-PACE is not authorized by any
candidate and is solely responsible for the material herein. NC-PACE, P.O. Box 12082, Raleigh, NC 27605.

Now let's get this correct: The N.C. chapter of the National Association of Social Workers wanted to endorse Warren, and did. Then they decided not to endorse Warren, but to endorse Warren, right? Right. Okay. So who's on first? Right. Who? Right. What? He's on second. Who? No, he's on first. Who's on first? That's right. What? No, he's on second. What is? That's right. I don't know. Oh, he's on third.

Okey Dokey. And if you're not confused about who's running—for the Senate or for second base, don't blame us. We don't know. (He's on third, as it turns out.)

Meanwhile, if you've got any Memorable Memos out there just itching to steal second, send 'em on down. Anonymity guaranteed, from Bud and Lou and all the staff here at Election Central.

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