
Special Provisions in Budget Bills: A Pandora's Box for North Carolina Citizens

A Special Report
by Ran Coble

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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.

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EXECUTIVE SUMMARY

Special provisions in legislative appropriations bills are like Pandora's Box. They contain a variety of plagues that undermine the legislative process, work against the public interest, and erode the authority of existing systems and institutions of government. These special provisions -- adopted by the legislature in the frenzied final days before adjournment of each session -- often are approved without adequate public debate and frequently without the knowledge of many members of the General Assembly.

Years ago, the practice of special provisions began as a legitimate way to explain the purposes of an appropriation or limit the use of funds. Special provisions once served as the narrative flesh on a skeleton of columns of numbers appropriating certain amounts to each state agency. But in recent years, what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand.

For instance, special provisions in recent years were used to repeal parts of the Administrative Procedure Act, to attempt (unsuccessfully) to repeal the Coastal Area Management Act, to pass a major revision to the state's bingo laws, to allow overweight trucks on the state's highways, and to establish study commissions on such disparate subjects as the quality of water in the Pigeon River and a retirement plan for local sheriffs and registers of deeds.

To curb this undesirable practice of using special provisions to supplant the regular legislative process, the Center recommends that each house of the General Assembly adopt rules barring the use of special provisions to establish, amend, or repeal statutory law. It also recommends that the legislature amend the Executive Budget Act and empower citizens to petition the N.C. Attorney General to challenge any special provision establishing, amending, or repealing a law. If the Attorney General declined to pursue the case, the individual citizen would then have the right to sue in Superior Court.

Special provisions are not to be confused with pork barrel bills. While pork barrel appropriations and special provisions may wind up in the same bill, they perform different legislative tasks. Special provisions rarely involve the expenditure of money, but they directly affect state laws by amending, repealing, or creating new laws. Pork barrel appropriations, on the other hand, refer specifically to special appropriations, either statewide or local in nature, for legislators' pet projects. This report identifies three major problems with special provisions, as summarized below.

WHAT ARE SPECIAL PROVISIONS?

Special provisions, as defined in the Center's report, are portions of budget bills which are used in any of the following inappropriate ways:

- (1) to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
- (2) to establish new agency programs or to alter the powers and duties of existing programs;
- (3) to establish new boards, commissions, and councils or to alter existing boards' powers;
- (4) to grant special tax breaks or otherwise change the tax laws; or,
- (5) to authorize new interim studies by the General Assembly or other groups.

* * *

An inappropriate special provision is in a budget bill but is unrelated to the budget and amends other state laws. For example,

"Effective July 1, 1985, Chapter 150A of the General Statutes [the Administrative Procedure Act] is repealed, with the exception of G.S. 150A-9 and G.S. 150A-11 through 17."

A legitimate special provision explains an expenditure of funds in the budget bill. For example:

"Of the funds appropriated to North Carolina State University at Raleigh...the sum of \$30,000 shall be used for research and related extension activities in turf grass. An additional \$40,000 shall be used for corn research, and \$60,000 shall be used for a swine specialist for a ten-county area in extension, which was inadvertently left out in a previous appropriation."

* * *

DISTINGUISHING SPECIAL PROVISIONS FROM PORK BARREL LEGISLATION

This bringing home of the bacon, known in legislative halls everywhere as "pork barrel," is often confused with special provisions, partly because both pork barrel appropriations and special provisions sometimes wind up in the same bill and are considered -- to use the term loosely -- during the last-minute frenzy to adjourn for the year. Yet the two perform distinctly separate functions. (In 1985, the local pork barrel bill [HB 922] contained no special provisions.)

Pork barrel, for the uninitiated, refers specifically to special appropriations for pet projects. Some of these are statewide in nature, such as the \$4.1 million horse arenas in Asheville and Raleigh funded by the 1981 General Assembly. However, most are of a more local nature, such as the \$200,000 appropriation for a fire plow and related equipment for Stanly County approved by the 1985 General Assembly. (See Chapter 757 of the 1985 Session Laws [SB 182], section 133.)

By contrast, special provisions, as defined in this report, rarely involve the expenditure of money, but directly affect state laws by amending, repealing or even creating new laws.

by Jack Betts

Special Provisions Bypass the Normal Legislative Process

Some bills which might not pass on their own merits are often inserted into budget bills in the form of special provisions. This report, for example, describes a special provision which required a study of comparable worth, or pay equity, in the State Personnel System. This special provision passed as part of the main budget bill in 1984. But in 1985, after debating the merits of the proposal in a separate bill, the legislature repealed its 1984 action.

Special provisions undermine the legislative process because too few legislators are involved in the special provisions process. When questioned about the secrecy of the process, legislative leaders will defend the technique by saying that the full House and Senate Appropriations Committees review all special provisions. However, contrast that explanation with a scene from one 1984 Appropriations Committee session.

Committee member Rep. Bruce Ethridge (D-Onslow) asked the Chairman, Rep. William T. Watkins (D-Granville), if he could submit an amendment to the appropriations bill. "I don't know," replied Watkins. "That depends on what it is." Ethridge did not send forth his amendment, even though committee rules allowed it.

One reason why rank-and-file legislators do not revolt, say legislative observers, is that votes for special provisions are implicitly tied to a legislator's share of pork barrel money for his or her district. If you don't vote for the main budget bill -- special provisions and all -- you may not take home the bacon, observers say. In 1985, for example, former Sen. John Jordan (D-Alamance) did not vote for the main appropriations bill and received no pork barrel money -- a fact that did not go unnoticed in the press.

Special Provisions Can Work Against the Public Interest

Special provisions work against the public interest when they are used to create new programs, new boards and commissions, or assign new duties to state agencies. For example, in the last three sessions, special provisions have been used to establish a homeownership assistance program, a community college scholarship program, and an alcohol and drug defense program.

While these may all be worthy programs, they were established without the normal legislative scrutiny given to the need for new programs. This report identifies 11 new boards and commissions also established through special provisions. The taxpayers have a right to expect full legislative debate on the creation of new programs and new boards. These new programs can cost the taxpayers for years to come.

Special tax breaks are also granted in special provisions. One special provision in 1977 authorized foreign trade zones, which had the effect of creating tax breaks for certain types of property held in these zones. Another 1984 provision exempted certain trucks from penalties for being overweight.

Increase in Number of Special Provisions

<u>Date and Type of Legislative Session</u>	<u>Number of Special Provisions</u>
1981 regular long session	29 (SB 29)
1982 short budget session	30 (HB 61)
1983 regular long session	65 in three budget bills (SB 23, SB 313, and SB 22)
1984 short budget session	87 in three budget bills (HB 80, HB 1376, and HB 1496)
1985 regular long session	108 in three budget bills (SB 1, SB 182, and SB 489)

Special Provisions Can Undermine the Authority of Other Governmental Institutions

Special provisions damage relationships between state and local governments and between the executive and legislative branches of government. For example, in 1984, many local school systems were surprised to hear at the last minute about a special provision enacting a centralized payroll system for all public school systems in North Carolina. The Controller for the State Board of Education, James Barber, objected to the use of a special provision as the vehicle for such a change. "We could have worked out the problems during debate in the normal committee process," he explained at the time.

Special provisions can be a legislative thorn in the executive branch's side. In 1985, the Democratic leadership used special provisions to prohibit Republican Gov. James G. Martin from hiring private legal counsel or private investigators without the consent of the Attorney General, a Democrat. The thorns can pierce Democrats' skin as well. In 1981, Gov. James B. Hunt Jr. found two special provisions so objectionable that he asked for, and obtained, an advisory opinion from the N.C. Supreme Court, which said they were unconstitutional invasions of his constitutional powers to administer the budget.

This report notes that 31 other states prohibit (either by statute or in their constitutions) substantive legislation similar to these special provisions in their appropriations bills. Nine more states have at least partial restrictions on special provisions. Thus, the North Carolina legislature is in the small minority of states that allow special provisions. The South Carolina Chamber of Commerce has recently sued the S.C. General Assembly over its practice of adding non-germane legislation to the annual appropriations bill. A special provision authorizing a dues checkoff to the State Employees Association for state employees triggered the suit.

Prohibitions Against Substantive Legislation (Special Provisions)
Being Included in Budget Bills, By State (1985)

A. Prohibit Special Provisions Through State Constitution (29)

Alabama	Missouri
Alaska	Montana (and joint rule)
Arizona	Nebraska
Arkansas	New Hampshire
California	New Jersey
Colorado	New Mexico
Florida	Oklahoma
Georgia	Oregon
Hawaii	Pennsylvania
Illinois	South Dakota
Indiana	Tennessee
Kansas	Texas
Louisiana	Utah
Maryland	West Virginia
Mississippi (and House rule)	

B. Prohibit Through Other Measures (2)

Connecticut (statute and rule)
Massachusetts (statute)

C. Regulate Special Provisions Through Constitution (8)

Idaho	Ohio
Iowa	South Carolina
Nevada	Virginia
New York	Washington

D. Regulate Special Provisions Through Other Measures (1)

North Dakota (Senate rule)

E. No Prohibitions Against Special Provisions (8)

Delaware	Rhode Island
Maine	Vermont
Minnesota	Wisconsin
North Carolina	Wyoming

F. Status Unclear (2)

Kentucky (court case pending)
Michigan (did not respond to survey)

Source: Gerry F. Cohen, "Survey of Other States Concerning Appropriation Process," Memorandum to the N.C. Senate Select Committee on the Appropriation Process (October 31, 1985), pp. 5-6.

Conclusion

Because the use of special provisions bypasses the full legislative process, because it can result in legislation against the public interest, and because it undermines other institutions of government, the General Assembly should end the practice. To curb the use of special provisions, the N.C. Center for Public Policy Research offers the following three-part recommendation involving changes in legislative rules, statutory language, and legislative committee procedures:

(1) Each house of the N.C. General Assembly should adopt the following language in its rules each session:

"Bills for appropriations shall be confined to appropriations. No section of any appropriations bill shall contain any provision which establishes, amends, or repeals statutory law, other than provisions establishing, amending, or repealing operating and capital expenses for the executive, legislative, and judicial branches of government."

(2) The General Assembly should enact statutory language identical to the preceding paragraph in an amendment to the Executive Budget Act with this additional proviso: "Any person who is a resident of North Carolina shall have the right to petition the Attorney General to sue to invalidate any special provision enacted as part of an appropriations bill. If the Attorney General declines to act within 60 days, a right of private Attorney General is created to allow the resident to pursue the case in Superior Court of North Carolina."

(3) These changes affect the legislative route that bills take, and the following road map should apply:

(a) Any proposed legislation which would amend a statute, is unrelated to the budget, and does not require an appropriation should be in a bill separate from the appropriations bill and subject to the normal legislative route to passage. Such a bill should not be referred to the Appropriations Committee by the presiding officers of the House or Senate. The requirements of separate bills and separate votes would open up the legislative process.

Examples: Under the definition of special provisions contained on page 3, the Center recommends that the following types of legislation be contained in separate bills and referred to substantive committees other than the Appropriations Committee:

1. Bills to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
2. Bills to establish new boards, commissions, and councils or to alter existing boards' powers (because the legislature usually does not appropriate money for this purpose);
3. Bills to grant special tax breaks or otherwise change the tax laws (These should be referred to the Finance Committees.); and
4. Bills to authorize new interim studies by the General Assembly, executive agencies, or other groups, which do not require funding.

(b) Any proposed legislation which amends other laws but is related to the budget and which appropriates funds should be in a bill separate from the appropriations bill. However, after first being referred to a substantive committee, it also may be referred to the Appropriations Committee by the presiding officers of the House and Senate, but the Appropriations Committee should take a separate vote on the matter. Again, these requirements of separate bills and separate votes would open up the legislative process.

Examples: Bills to establish new agency programs belong in this category (because funds usually are appropriated for a new program but authorizing legislation must also be passed). Often, the presiding officer may wish to refer the bill initially to a substantive committee to consider the need for the new program, and then to the Appropriations Committee to determine the level of funding. The new Basic Education Plan, for example, was first referred to the Education Committees in 1985 and then to the Appropriations Committees.

(c) Salary changes for state officials and amendments to retirement or state employee benefits packages are normally budgetary matters and can properly be contained in appropriations bills and considered by the Appropriations Committees.

Example: Many state officials' salaries (e.g., for the governor, Council of State, and judges) are set by statute, and salary increases which amend those existing statutes are properly contained in budget bills.

Each of these recommendations is important because without the vigilance of the presiding officers in both the House and Senate, the rules to limit special provisions would become merely paper tigers. And, without the possibility of outside enforcement by the citizens who could exercise power as private attorneys general, the General Assembly might leave open Pandora's Budget Box of Special Provisions. The time has come to close the box -- before additional plagues escape to wreak havoc on the orderly process of government.

I. INTRODUCTION

Pandora: In Greek legend, the first mortal woman, fashioned from clay. Zeus gave her a beautiful box which he forbade her to open. When she opened the box, the plagues of mankind escaped and all that remained in the box was hope.

During each session of the N.C. General Assembly, the budget bills for current operations of state government are usually passed in the last hurried weeks. Those bills are lengthy -- 191 pages in the 1983 regular session, 82 pages in the 1984 short session, and 107 pages in the 1985 regular session. Yet, tucked away in the crevices and corners of these bills are what legislators call "special provisions."

At first, special provisions served as the narrative flesh on a skeleton of columns of numbers appropriating certain amounts to each state agency. These special provisions were used to explain the purpose of an appropriation or limit the use of funds. In the last decade, however, when that beautiful box labeled "Appropriations" was opened, out tumbled the modern day "special provisions" -- items unrelated to the budget bill. A modern-day Pandora might find language which established new programs, granted special tax breaks, set up new boards and commissions, or amended existing laws other than the Executive Budget Act. In the last 10 years, special provisions have been used to do everything from establishing a new legislative retirement system to attempting to set up a study of "comparable worth" in the state personnel system. Somewhere in the budget bills, one might also find a partial repeal of the state's Administrative Procedure Act, a bingo reform law, a new Council on the Holocaust, or a centralized payroll for N.C. school systems.

But finding these plagues (or blessings, as some surely are) which are about to be visited on Tar Heel mankind is like trying to concentrate on answering questions during the hoopla on a TV game show. One must endure the bells and lights of the end of the legislative session going off, with the clamor of a boisterous audience distracting one's attention and an avalanche of last-minute legislation flowing over one's desk. To do anything about special provisions, a legislator also would have to figure out a way to separate these provisions from all the other things -- good and bad -- that are being done in budget bills. Thus, what once was a justifiable method of providing budget instructions to state agencies has gotten out of hand.

This report by the N.C. Center for Public Policy Research is designed to show the citizens of North Carolina what is being done with special provisions. The report is also designed to help the media identify special provisions and explain their impact to the public, because this is not just a report about the legislative process. In the case of special provisions, the process actually affects the legislative product. Finally, this report is designed to aid the legislators who are not part of the legislative leadership circle, for it is the rank and file of the General Assembly who are kept in the dark about whether Pandora's Budget Box holds plague or providence.

II. BACKGROUND ON SPECIAL PROVISIONS

A. Definition

What are special provisions? Special provisions are paragraphs added to budget bills to give instructions on how funds are to be spent. They do not include the names of their legislative sponsors. Much of the text in budget, or appropriations bills can be characterized as "general provisions" -- "boilerplate statements of law on compliance with the Executive Budget Act, transfer of funds, and so on that appear in each year's budget."¹ An example of such a general provision is the following section from the 1983 appropriations bill for current operations of state departments:

"The appropriations made herein are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or as hereinafter provided, the savings shall revert to the appropriate fund at the end of the biennium."²

Then there may also be language unique to that year's budget bills called "special provisions." The Handbook for Legislators, published by the UNC-CH Institute of Government says these special provisions may be used "...to set the rate of disbursal for a particular activity, to limit the authority of the Governor to transfer funds, or to do almost anything else associated with the expenditure of funds" [emphasis added].³ An example of such a traditional special provision is the following:

"Of the funds appropriated to North Carolina State University at Raleigh...the sum of \$30,000 shall be used for research and related extension activities in turf grass. An additional \$40,000 shall be used for corn research, and \$60,000 shall be used for a swine specialist for a ten-county area in extension, which was inadvertently left out in a previous appropriation."⁴

Defined in this manner, special provisions are a necessary public good in that they (a) give guidance to state agencies spending public funds and (b) help explain the rationale for appropriations to the citizenry.

However, in the last decade, special provisions have sometimes lost their link to appropriations and have been used for other purposes, which the Center

¹Michael Crowell, The General Assembly of North Carolina, A Handbook for Legislators, Institute of Government (Chapel Hill, NC), 1985, p. 95.

²Chapter 761 of the 1983 Session Laws (SB 23), section 1.

³Crowell, footnote 1 above.

⁴Chapter 1034 (HB 80) of the 1983 Session Laws, (2nd Session, 1984), section 53.

believes are not in the best interest of the public. Therefore, for the rest of this report, the term "special provisions" will have a negative connotation and be defined as follows:

Thus, "special provisions," as used in this report, are defined as portions of budget bills which are used in any of the following inappropriate ways:

- (1) to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
- (2) to establish new agency programs or to alter the powers and duties of existing programs;
- (3) to establish new boards, commissions, and councils or to alter existing boards' powers;
- (4) to grant special tax breaks or otherwise change the tax laws; or,
- (5) to authorize new interim studies by the General Assembly or other groups.

These special substantive provisions are approved by the Appropriations Committee as part of the budget bills package. While they may be discussed in one or two committee meetings (at most), the provisions are rarely debated on the floor of the House and Senate. More importantly, were these special provisions not incorporated into budget bills, each provision would have to receive separate approval by the appropriate committees of the legislature as well as be subject to normal House and Senate floor debates. Thus linking special provisions to appropriations bills is like coupling a special caboose to a railroad train labeled, "Let's pass the budget bill; it's late in the session and I'm tired."

B. History

The increased use of special provisions can be traced to 1972 and the election of the first Republican governor in North Carolina since the turn of the century, James E. Holshouser Jr. In reacting to this phenomenon, the heavily Democratic majority in the 1973 General Assembly adopted a series of measures designed to grant greater legislative oversight of the executive branch. In order to keep a more constant eye on this creature of a different political persuasion (and because the 1973-74 world oil crisis had created an uncertain economy), the legislature began meeting every year rather than biennially.

And, in order to make sure Governor Holshouser administered the budget the way the legislature intended, the leadership began to insert more explicit instructions on how funds were to be spent. The lawmakers could do this because in 1971, the legislature had established its first in-house staff for the Appropriations Committee, the Fiscal Research Division. With the advent of this new staff, the legislators now had assistance in writing their own budget rather than always having to rely on the governor's budget office.⁵ The length of the budget bills began to increase accordingly (See Table 1).

⁵There are several reasons why there were fewer special provisions prior to 1971. The Office of State Budget and Management (as it is now called), then served several masters -- as executive staff to the staff to the governor and Advisory Budget Commission, and as legislative staff during the session. Because they shared the same budget staff and were of the same political party, both the governor and the legislature knew what the numbers in the budget meant. However, with the change from one-party to two-party governance in 1973 and the maturation of the General Assembly's Fiscal Research Division, the legislature's attitude became "Let's make sure they do what we say."

Table 1. Increase in Length of Budget Bills

<u>Year and Length of Legislative Session</u>	<u>Number of Pages in Bill to Fund "Current Operations" of State Agencies</u>
A. Regular Long (usually six months) Sessions	
1971	31 pages
1973	32 pages
1975	53 pages
1977	79 pages
1979	89 pages
1981	90 pages
1983	191 pages
1985	214 pages - This bill was actually 107 pages, but it was <u>single spaced</u> . All the preceding bills in this column were <u>double spaced</u> . When compared to the other bills in this column, the 1985 bill is the <u>equivalent</u> of a 214-page bill.
B. Short (usually one month) Budget Sessions	
1974 - the first such short session and the beginning of annual legislative sessions	38 pages
1976	80 pages
1978	57 pages
1980	60 pages
1981 - Special October session	66 pages
1982	74 pages
1984	164 pages - This bill was actually 82 pages, but it was <u>double spaced</u> . When compared to the other bills in this column, the 1984 bill is the <u>equivalent</u> of a 164-page bill.

By 1976, state Sen. McNeill Smith (D-Guilford) was questioning whether the General Assembly should "change the substantive law...by the appropriations route."⁶ And by the 1981 session, the appropriations bill contained 36 special provisions unrelated to budgeting purposes. Legislative leaders -- particularly those who served both on the Advisory Budget Commission (and thus helped prepare the budget) and chaired Appropriations Committees (and thus enacted the budget) -- began putting more and more of their own policy directives into budget bills.

By the October 1981 special "budget" session, the legislative leaders had become expert at this technique, skilled enough to ratify 20 special provisions, two of which then-Gov. James B. Hunt Jr. questioned as unconstitutional encroachments on his power. One provision in the October 1981 budget bill created a special committee to review and approve shifts of the block-grant funds that the state would get as a result of federal budget cuts. Hunt asked the Attorney General for an informal (and therefore not published) advisory opinion on whether this new committee, as formed, infringed upon the executive's powers as defined by the N.C. Constitution.

The other matter in question would have limited the governor's authority to transfer money within the state budget and to use unspent funds for other purposes. If the Hunt administration wanted to transfer more than one-tenth of the money from one budget line item to another, the matter, according to this budget-bill provision, would have to go before the legislature's Governmental Operations Commission for review and approval.⁷ In a February 16, 1982 advisory opinion, the N.C. Supreme Court said both provisions were unconstitutional.

Thus, what began in the Holshouser administration with a taste of partisan politics between a Democratic legislature and Republican governor took on the bitter flavor of a more serious joust between branches of government in the Hunt administration. With the return of the governor's mansion to a Republican in January 1985, the element of partisanship made the increased use of special provisions inevitable in the 1985 session.

C. Growth in the Number of Special Provisions

The evolution of special provisions has not been limited to growth in the number of uses beyond explaining expenditures, however. The total number of special provisions has also grown. Recent growth is summarized as follows:

⁶As reported in Ferrel Guillory, "State budget weighted down with riders," The News and Observer (Raleigh, NC), July 10, 1981, p. 4A.

⁷Much of the two preceding paragraphs are taken from a previous Center article by Jack Betts, "The Coming of Age of the N.C. General Assembly," N.C. Insight, N.C. Center for Public Policy Research (December 1981), pp. 15-16. See also Chapter 1127 of the 1981 Session Laws (October session, HB 1392), sections 63 and 82, for the special provisions in question, as well as Advisory Opinion in re Separation of Powers, 305 N.C. 767 (Appendix, 1982).

Table 2. Increase in Number of Special Provisions

<u>Date and Type of Legislative Session</u>	<u>Number of Special Provisions*</u>
1981 regular long session	29 (SB 29)
1982 short budget session	30 (HB 61)
1983 regular long session	65 in three budget bills (54 in SB 23, 10 in SB 313, and 1 in SB 22)
1984 short budget session	87 in three budget bills (65 in HB 80, 21 in HB 1376, and 1 in HB 1496)
1985 regular long session	108 in three budget bills (64 in SB 1, 35 in SB 182, and 9 in SB 489)

*See Appendix A for documentation of these numbers.

The technique of using special provisions to amend other laws is not without its proponents. "Now it's gotten to be a convenient way to get things done," said Rep. William T. Watkins (D-Granville) in a 1981 interview.⁸ Watkins has been Chairman of the House Expansion Budget Appropriations Committee since 1981. Former Rep. Al Adams (D-Wake), who chaired the House Appropriations Base Budget Committee in the 1981 and 1983 sessions, said special provisions are useful tools, not only for lawmakers but for taxpayers as well. "The trend in my opinion is to give the legislature more oversight over the administration of the budget itself, like Congress," he said.⁹ "We're the ones that levy the taxes and take money out of the taxpayers' pockets. It's not only a good practice, I think it's our duty to do that."¹⁰

But opponents of special provisions are wary of those arguments. Rep. Martin Lancaster (D-Wayne), who will retire from the legislature after the 1986 session to run for Congress, points out, "There is legislation being passed as a special provision...which does not receive the kind of scrutiny other bills do that are referred to a subject matter committee."¹¹ And, the sponsor of a 1985 bill that would have limited special provisions, Sen. Anthony E. Rand (D-Cumberland), said simply, "Budgetary matters should be budgetary matters."¹²

⁸As reported by Guillory, footnote 6 above.

⁹Adams failed to mention, however, that the rules of the U.S. House of Representatives, unlike those of the N.C. General Assembly, do not allow legislative riders which change existing law. See Rule XXI, clause 2(b) of the Rules of the U.S. House of Representatives, which states, "No provision changing existing law shall be reported in any general appropriation bill except germane provisions which retrench expenditures by the reduction of amounts of money covered by the bill...." The U.S. Senate has a similar germaneness rule, but it is not strictly enforced.

¹⁰As reported in Sherry Johnson, "Special bills sometimes are lawmakers' best friends," The News and Observer (Raleigh, NC), June 27, 1982, p. 34A.

¹¹Johnson, footnote 10 above.

¹²"Senate approves ban on use of budget bills to enact laws," The Raleigh Times, July 11, 1985.

Rand's bill would ban special provisions that change existing law unless the provisions reduced expenditures, altered salaries, or made changes in a program required because of changes in funding."¹³ It unanimously passed the Senate but remained in a House committee at the end of the session. It can be considered in the 1986 short session.

If the legislators were split in their opinions of the virtues of special provisions, the state's media were not. When the Center first called statewide attention to this practice in 1981 and again in 1983 and 1984,¹⁴ the editorial reaction was swift. In the west, a Hickory Record editorial began, "The General Assembly is quickly establishing an undesirable practice...amending state laws via the budget bill....It is government by default and a sneaky way to conduct the public's business."¹⁵ In the Piedmont, the Winston-Salem Sentinel opined, "The practice ought to be stopped." Noting that a Center study had pointed out that special provisions escape debate because they are hidden in the budget bill, the paper went on to say, "The leadership is exactly where the blame rests. Special provisions wouldn't have a chance of getting into the budget bill without a nod from House and Senate presiding officers and their allies. The plain fact is that the process is used in order to pass questionable measures without public scrutiny."¹⁶

The News and Observer's columnist Ferrel Guillory, who wrote in objection to special provisions as early as 1981,¹⁷ renewed his criticism in 1984. He wrote:

"The Center...makes an important contribution by calling attention to the use of "special provisions" as a legislative technique, and its observations ought not to be dismissed, as one legislative leader sought to do, by calling them 'simplistic.' The simple fact is that for the past decade, the legislature has been mixing budgetary and non-budgetary matters in the appropriations bill."¹⁸

In the east, the Fayetteville Observer recently concluded, "One problem with these provisions is that in the last, hectic days of legislative sessions, they

¹³Senate Bill 851, "An Act to Restrict Substantive Legislative Changes in Appropriations Bills," 1985 Session. The bill is reprinted as Appendix B.

¹⁴In 1981 in an article by Jack Betts, "The Coming of Age of the N.C. General Assembly," N.C. Insight, Vol. 4, No. 4 (December 1981), p. 15; in 1983 at a February 14, 1983 symposium on the state budget sponsored by the Center; and in 1984 in a report on The 1983-85 North Carolina Budget, N.C. Center for Public Policy Research (February 1984), pp. 17, 61-62. Also see Fred Harwell, "A Surprise Package Called Appropriations," N.C. Insight, Vol. 1, No. 2 (Spring 1978), pp. 8-9.

¹⁵"Mixing Bills Sneaky," Hickory Record, February 21, 1984.

¹⁶"Unload the Express," Winston-Salem Sentinel, February 16, 1984.

¹⁷Guillory, footnote 6 above.

¹⁸Ferrel Guillory, "N.C. budget ripe for campaign debate," The News and Observer (Raleigh, NC), February 17, 1984, p. 4A.

often slip through unseen. This means there is no debate, no committee deliberation, no public attention given to them."¹⁹

Even the insiders in the legislature, who have so often used special provisions to their advantage, are beginning to see the mischief that can occur. Sen. Harold Hardison (D-Lenoir), who in 1982 said there's "no hanky panky" associated with the budget provision tactics,²⁰ may have had second thoughts in 1983, when he found that a bingo reform measure had been inserted into the budget bill by fellow Sen. Craig Lawing (D-Mecklenburg). Sen. Kenneth Royall -- who in 1982 was quoted as saying, "Everybody has an opportunity to put one in, but it doesn't mean it'll pass"²¹ -- joined Hardison and 47 other Senators in 1985 as co-sponsors of Rand's bill to limit special provisions. The reasons for this change of heart? Perhaps it was a new Senate leader, Lt. Gov. Robert B. Jordan III, who promised in his 1984 campaign to discourage the use of special provisions. Or perhaps it was the experience of having the technique used against the leaders, rather than by them, for a change.

Why should there be limits on special provisions? To answer that question, one must dare the fates and look inside Pandora's Box.

¹⁹"Legislation By Stealth," Fayetteville Observer, July 16, 1985, p. 4A.

²⁰Johnson, footnote 10 above.

²¹Johnson, footnote 10 above.

III. ADVERSE CONSEQUENCES OF USING SPECIAL PROVISIONS IN BUDGET BILLS

There are consequences of using special provisions that harm the legislative process, undermine other systems of governance within state agencies, and which ultimately work against the public interest. All of these consequences can result from amending other statutes in the budget bills. A discussion of these follows.

A. Special Provisions Undermine the Legislative Process and the General Assembly As an Institution

1. Items Are Inserted in Budget Bills Which Might Not Pass on Their Own Merits as Separate Bills

One reason legislative leaders use special provisions is that the technique enables them to pass legislation that might not pass if debated on its own merits. When hidden within a 191-page budget bill, some provisions can sometimes slip through unnoticed. And, if by chance, attention is drawn to a particular provision, there is no way to trace its origins because, unlike a normal bill which names its sponsor(s), special provisions are orphans. As Gov. James G. Martin complained, "Some of these things just sort of crop up and you don't know who's behind them or why, because there's no names on these special provisions."²² Thus, there is a loss of accountability to the public.

This lack of accountability and public scrutiny is one of the worst consequences of special provisions. It undermines both the legislative process and the legislature as an institution. Use of this technique allows laws to be enacted within the shadow of the budget bill -- laws which might not withstand the light of open debate if they were separate bills. This closed process has adverse consequences regardless of the inherent wisdom of any particular special provision.

Recent examples can be found in special provisions which attempted to repeal the Coastal Area Management Act, enacted a pay equity study, enacted a legislative retirement system, placed a sunset date on the state Administrative Procedure Act, and defined the responsibilities of producers and carriers of hazardous waste. The first three examples are especially instructive because they culminated in differing legislative outcomes when comparing the special provisions process with the normal legislative process.

At one point during the October 1981 session, the legislative leadership overreached itself with a special provision attempt that backfired. Legislative staff were requested to draft a provision for the budget bill which would have effectively gutted the Coastal Area Management Act (CAMA), a controversial land-management law passed in 1974 which has had a great impact on coastal development policies. Aware of the implications of the draft provision, CAMA advocates alerted the press. Newspapers picked up the story -- some placing it on the front page -- and focused on the legislative effort to kill CAMA and the fact that a prominent Senator owned coastal property affected by CAMA. The provision

²²"Martin pleased by limits on budget bills," The News and Observer (Raleigh, NC), July 12, 1985, p. 32C.

went nowhere. Without such a highly-charged atmosphere, however, the General Assembly might well have used a simple amendment to a budget bill to wipe out a major state program that had been in place for seven years -- with little or no debate on the land-use policies in question.

The CAMA incident in October 1981 epitomizes the dangers of using special provisions within the budget bill to recast state policy. Legislators tend not to analyze and question such bills in the same way they do other pieces of legislation. Moreover, the Appropriations Committees, through which the special provisions are added to the budget bill, may not have the proper jurisdiction to add non-budget-related items to the appropriations bills.²³ Two years later, in 1983, the Legislative Committee on Agency Review recommended reauthorization of the Coastal Area Management Act. This Committee and a Legislative Research Commission also recommended a series of amendments to CAMA, but neither voted to dismantle the Act itself.²⁴ Thus, a program which was almost repealed by a few legislators in a special provision in actuality enjoyed widespread support among legislators.

The pay equity study offered another kind of example -- a special provision which did pass as part of a budget bill but which was later repealed as a separate bill by a majority vote of both houses. Both examples show that the will of the majority was frustrated by use of special provisions. In 1984, a special provision was slipped in the main budget bill to require the State Budget Officer to engage a consulting firm "to study the State Personnel System so it can identify wage policies that inhibit pay equity and develop a job evaluation and pay system."²⁵ An attempt by Republicans to dislodge this special provision on the House floor was unsuccessful when their amendment to the budget bill failed 15-81.²⁶ No Senate vote was taken. Only a year later, however, after news of the pay equity study spread and the idea of comparable worth had been more widely debated, the 1985 legislature repealed the authorization for the study -- the Senate by a 43-0 vote and the House by 92-21.²⁷

Traditionally, legislators have preferred shortcuts on measures which would increase their salaries or benefits. Under the definition used by the Center

²³The three preceding paragraphs are taken from Betts, note 7 above.

²⁴See the final reports of the N.C. Legislative Committee on Agency Review (February 1983), pp. 31-32 and D-20-25, and the report of the Legislative Research Commission on the Coastal Area Management Act to the 1983 General Assembly.

²⁵Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), section 146(c).

²⁶See the Center's vote reporting service, How the Legislators Voted, Volume III, Number 1, N.C. Center for Public Policy Research, 1984, p. 400. See HB 1496, amendment #5 (vote #0098).

²⁷Both votes on second reading. The bill was ratified as Chapter 142 of the 1985 Session Laws (HB 236).

in this report, special provisions that raise legislative salaries would properly lie within the budget bill. Modifications to existing benefits might also be in order. However, establishing an entirely new benefit -- as the General Assembly did in 1983 by creating a legislative retirement program²⁸ -- should be debated separately. New legislative initiatives deserve to be treated as separate measures. (See also section B1 on page 15 below.)

When statutory provisions unrelated to budgetary outlays are amended in the budget bill, there are two outcomes that are detrimental to the democratic process. The first has been pointed out by Ron Aycok, executive director of the N.C. Association of County Commissioners, who said decisions are made unknowingly because they are hidden within a lengthy bill which few legislators or reporters read word for word. Second, because these provisions are placed within the budget bill, few legislators are willing to challenge the legislative leadership for fear of retribution by those who hold the purse strings over funds for all local projects.

An example of a special provision with these two outcomes was the 1983 repeal of the Administrative Procedure Act (APA) within a bill making appropriations for various local projects in North Carolina. On page 16 of that 59-page bill, among its 267 sections, was one sentence which read, "Effective July 1, 1985, Chapter 150A of the General Statutes [the APA] is repealed, with the exception of G.S. 150A-9 and G.S. 150A-11 through 17."²⁹ To his credit, the sponsor of this provision, Rep. William T. Watkins (D-Granville) called it to the attention of his colleagues on the House floor, but most legislators present seemed not to understand the consequences of the provision. Furthermore, what representative was going to challenge the provision when almost every Democrat had \$40,000 earmarked for his or her district in the same bill and when Representative Watkins was Chairman of the House Appropriations Committee on the Expansion Budget?

2. Too Few Legislators Are Involved in the Special Provisions Process

The core of the legislative leadership is composed of the Lieutenant Governor, who presides over the Senate, the Speaker of the House, and the chairpersons of the House and Senate Appropriations full committees and subcommittees -- a total of 20 legislators. Only these persons are actually involved in inserting special provisions into the budget bill. And even then (see page 8 above), one leader can sometimes slide a special provision past another member of the inner circle, as Senator Lawing did with his bingo reform provision in 1983.

When questioned about the secrecy of the process, those leaders will defend the technique by saying that the full House and Senate Appropriations Committees review all special provisions. However, anyone who has attended such sessions knows that the leadership is not very tolerant of questioning. Consider the following scene.

²⁸Chapter 761 of the 1983 Session Laws (SB 23), sections 238-240. See also Ran Coble, "Budgetary Issues for the 1980s," in The 1983-85 North Carolina Budget: Finding the Missing Pieces in the Fiscal Jigsaw Puzzle, N.C. Center for Public Policy Research, 1984, p. 17.

²⁹Chapter 923 of the 1983 Session Laws (SB 313), section 52.

One day in a 1984 Appropriations Committee session, Rep. Bruce Ethridge (D-Onslow) asked Rep. William T. Watkins (D-Granville), Chairman of the House Appropriations Expansion Budget Committee, if he could submit an amendment to the appropriations bill.

"I don't know," Watkins said. "That depends on what it is." Ethridge did not send forth his amendment, although the rules under which the committee operates allowed amendments to be proposed.³⁰

Similar responses greet any legislator who questions special provisions on the floor. In 1985, a 78-page statewide pork barrel bill contained the following provision tucked away in its corpulent middle:

The Department of Human Resources may not issue a permit for a sanitary landfill...to be located within a county with a population of four hundred thousand or more if the landfill is to be located within one mile of an incorporated city, town, or village with a population of two thousand five hundred or more in that county, without the approval of the governing board of the city, town or village.³¹

Senator Melvin Watt (D-Mecklenburg), a freshman Senator from Charlotte, where this provision would apply, asked on the Senate floor, "Why is this to be in this bill versus in some local legislation or some other statewide bill?" His answer? A 40-7 vote to pass the bill on second reading with the provision intact anyway.

3. A Vote For Special Provisions Is Implicitly Tied to a Share of the Pork Barrel

When asked why rank and file legislators do not revolt against the heavy-handedness described above, legislators often respond, "Because I won't get my share of the pork barrel." Legislators know that the leadership which inserts special provisions is the same group which distributes pork barrel money for special projects in each legislator's district. In 1983, this pork barrel was worth about \$40,000 per House district and \$80,000 per Senate district. By 1985, each loyal House member got \$50,000 and each Senate member \$100,000.

The key word in the preceding sentence is "loyal." For most Republicans, who usually vote against the main appropriations bill, there is no pork. And once in a while -- perhaps just often enough to make the point -- a Democrat will be deprived of his or her ration of pork. This was the case, for example, with ex-Sen. John Jordan (D-Alamance), who in 1985 did not vote for the main appropriations bill and got in trouble with the law. Jordan was the only Democrat -- House or Senate -- who did not get his share of the pork while only five of twelve Republican Senators and only 11 of 38 Republican House members got money from the barrel.

³⁰As reported by Ken Allen, "The Iron Fists of Raleigh," Charlotte Observer, July 1, 1984, p. 3.

³¹Chapter 757 of the 1985 Session Laws (SB 182), section 157.

The order in which the various budget bills are considered is no accident. First to be voted on are the bills to fund current operations and capital improvements, which usually contain the majority of the special provisions. In 1985, these two bills were followed by a bill to fund statewide pork barrel projects, known to legislative wags as Porky I, and then a bill to fund various local projects (Porky II), which is taken up last.³²

One reason that special provisions are seldom upset on the floor of the House or Senate is that legislators recognize that the budget itself comes to the floor in a delicate balance among competing interests. If either the dollars appropriated or special provisions were to be truly opened up for amendments or debate, the end of the session would be delayed indefinitely. Thus, there is a strong bias to vote for the budget bills -- special provisions and all, in order to hold the agreement together.³³

The best way to ensure your share of the bacon, say most legislative observers, is to have voted for all previous appropriations bills. Thus, the legislative process links special provisions to the pork barrel and thereby intimidates those who might question special provisions. This vignette of hanging special provisions onto budget bills has been compared to decorating a Christmas tree, so perhaps the best explanation of the process is contained in these lines from a popular Christmas song:

"He's making a list and checking it twice/
Gonna find out who's naughty or nice/
Santa Claus is coming to town."

Distinguishing Special Provisions From Pork Barrel Legislation

This bringing home of the bacon, known in legislative halls everywhere as "pork barrel," is often confused with special provisions, partly because both pork barrel appropriations and special provisions sometimes wind up in the same bill and are considered -- to use the term loosely -- during the last-minute frenzy to adjourn for the year. Yet the two perform distinctly separate functions. (In 1985, the local pork barrel bill [HB 922] contained no special provisions.)

Pork barrel, for the uninitiated, refers specifically to special appropriations for pet projects. Some of these are statewide in nature, such as the \$4.1 million horse arenas in Asheville and Raleigh funded by the 1981 General Assembly. However, most are of a more local nature, such as the \$200,000 appropriation for a fire plow and related equipment for Stanly County approved by the 1985 General Assembly. (See Chapter 757 of the 1985 Session Laws [SB 182], section 133.)

By contrast, special provisions, as defined in this report, rarely involve the expenditure of money, but directly affect state laws by amending, repealing or even creating new laws.

-- Jack Betts

³²The Executive Budget Act (G.S. 143-15), requires that no special appropriations may be considered until the main bill has passed.

³³I am indebted to Robert P. Joyce of the UNC-CH Institute of Government, for this point, as excerpted from his comments on the draft report in a letter of January 27, 1986.

4. New Study Commissions Are Established Outside of the Normal Decision-making Process

A fourth way that special provisions undermine the legislative process is that they establish new study commissions within the budget bill. One of the important tasks of each legislative session is to sift through those bills which will be considered during the session and those which need further study. The importance of this task is underlined by the fact that legislation recommended by a study commission has a high likelihood of subsequent passage. If a study commission is established by a special provision, then the need for that particular study may receive less scrutiny than other separate bills which also call for study commissions.

Special provisions have been used to set up study groups on such issues as the number of state credit cards issued to state employees, the number of telephones installed in state vehicles,³⁴ the need for a new Division of Emergency Services,³⁵ and the feasibility of a statewide voter registration file.³⁶ Still other special provisions have required studies of the quality of the Pigeon River's water,³⁷ the economic feasibility of the Amtrak Piedmont Crescent train service for North Carolina,³⁸ and a plan for a retirement system for local sheriffs and registers of deeds.³⁹

Meanwhile, many legislators think all studies authorized between sessions are in a bill which is usually labeled "An Act Authorizing Studies By the Legislative Research Commission." The 1985 version of this bill (SB 636) authorized 44 such studies.⁴⁰ Did the rank-and-file know that others were authorized in budget bills?

Some legislative observers argue that the use of special provisions to establish study commissions is not as serious an abuse as amending state laws. One legislative staffer commented that requiring a feasibility study might be a legitimate exercise of legislative appropriations oversight before state funds are expended. A second legislative staffer pointed out that studies often are the result of a compromise in the budget process and may have been recommended by a budget subcommittee. For example, the Amtrak study was part of a compro-

³⁴Both in Chapter 859 of the 1981 Session Laws (SB 29), section 13.5.

³⁵Chapter 1034 of the 1983 Session Laws (2nd Session, 1984, HB 80), section 98.

³⁶Chapter 757 of the 1985 Session Laws (SB 182), section 53.

³⁷Chapter 757 of the 1985 Session Laws (SB 182), section 128.

³⁸Chapter 1034 (HB 80) of the 1983 Session Laws (2nd Session, 1984), section 203.

³⁹Chapter 1034 (HB 80) of the 1983 Session Laws (2nd Session, 1984), section 250.

⁴⁰Chapter 790 of the 1985 Session Laws (SB 636).

mise on funding the train service on a one-year trial basis. These points have a great deal of validity. The study commissions established by special provisions may well be very desirable and may ultimately be in the public's best interest. However, the process by which some study commissions are created without full debate or awareness by all legislators is still a cause for concern.

B. Special Provisions Work Against the Public Interest

1. New Government Programs Are Created Without Full Debate Over Their Merits

A special provision inserted to study the need for a new program is bad enough. Actually using special provisions to create new government programs is worse. This is one of the worst potential evils in Pandora's Budget Box.

Citizens care a great deal about legislative decisions to create new programs in state government because such decisions make their pocketbooks thinner. Taxpayers may reasonably expect that decisions to increase the size of government will be made only after careful consideration of the measure on its own merits. Actually, it may even be to the sponsor's advantage to travel the separate bill route because a new program may build up a constituency as it wends through the legislative process on its way to enactment. Nevertheless, it is quicker and easier to establish a new program in a special provision. There is less controversy surrounding new expenditures made in this way, and legislators prefer to avoid controversy because it loses votes.

In the 1983 budget bill, a special provision created a Homeownership Assistance Program.⁴¹ The 1984 bill established a Community College Scholarship Program, a Hazardous Waste Site Remedial Fund, and a Deferred Prosecution Program.⁴² The 1985 bill created an Alcohol and Drug Defense Program and a Distinguished Professors Endowment Trust Fund within the state university system.⁴³ All of these programs may be very worthy initiatives, but they should be debated -- and approved or rejected -- on their own merits.

This part of the problem cannot be solved simply by barring the use of special provisions to establish new programs. A change in legislative procedures would also have to occur so that proposals for new programs were first referred to substantive committees (education proposals to the Education Committee, etc.) by the presiding officers. Once the need for the program was initially established, the second decision on the level of funding available for the program would still rest with the Appropriations Committees. Still, in the final analysis, new programs should be enacted as separate bills and voted on separately from the appropriations bill.

⁴¹Chapter 923 of the 1983 Session Laws (SB 313), section 203.

⁴²Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), sections 38, 74, and 102, respectively.

⁴³Chapter 757 of the 1985 Session Laws (SB 182), sections 79 and 202, respectively.

2. New Duties Are Assigned to State Agencies Without Public Debate

Special provisions are also used to assign state agencies new duties or responsibilities. One of the most important of these changes was a total overhaul in 1985 of day care licensing and funding functions within state government. This reorganization was contained in a bill appropriating funds for various state-wide projects.⁴⁴

The Department of Natural Resources and Community Development was given new duties by a 1984 budget bill. Incorporated in the bill for current operations was the Community Action Partnership Act.⁴⁵ Under this act, the state will modify its programs which provide financial help to local agencies working to promote self-sufficiency among the state's poor people.

Another special provision broadened the Department of Transportation's authority to allow overweight trucks onto the highway.⁴⁶ Yet another provision empowered the State Board of Education to collect debts to the Scholarship Loan Fund for Prospective Teachers by withholding the amount of the debt from a debtor's tax refund.⁴⁷

Special provisions have also been used to levy new reporting requirements on state agencies. For example, the Housing Finance Agency was required to submit a new report on its expenditures to the Joint Legislative Commission on Governmental Operations, while the Department of Human Resources was ordered to report on the administration of the Child Support Enforcement Program.⁴⁸

3. New Boards, Commissions, and Councils Are Created Without Debate

In 1985, the N.C. Center for Public Policy Research documented the proliferation of boards, commissions, and councils in the executive branch of state government.⁴⁹ One reason for the proliferation of boards is that new advisory or policymaking groups are often created in special provisions. Again, by using

⁴⁴Chapter 757 of the 1985 Session Laws (SB 182), sections 155 and 156.

⁴⁵Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), section 111.1.

⁴⁶Chapter 1116 (HB 1376) of the 1983 Session Laws (2nd session, 1984), sections 105-109.

⁴⁷Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), section 10.2.

⁴⁸Chapter 1034, sections 134 and 77, respectively.

⁴⁹Jim Bryan, Ran Coble, and Lacy Maddox, Boards, Commissions, and Councils in the Executive Branch of N.C. State Government, N.C. Center for Public Policy Research, 1985. See especially pages 3-4, 103-105, and 106-122. Also see Jim Bryan, "Eliminating Boards and Commissions in the Executive Branch -- Action in the 1986 Legislature?," North Carolina Insight, Vol. 9, No. 1 (June 1986), p. 2.

special provisions as the vehicle for creating these groups, the need for a new group is not debated.

In special provisions in the 1983 session, the General Assembly created a new Board of State Contract Appeals and a N.C. Farmworkers Council.⁵⁰ In 1984, legislators inserted a provision establishing a new Commission on the Bicentennial of the United States Constitution.⁵¹ In 1985 -- a session in which many legislators expressed concern about the growth in the number of advisory boards -- special provisions were used to create a new N.C. Commission on Jobs and Economic Growth, an Educational Advisory Committee to the Board of Trustees of the N.C. School of Science and Mathematics, a Chowan River Interstate Commission, a N.C. Medical Database Commission, a Board of Trustees for the N.C. Center for the Advancement of Teaching, and an Advisory Board for Adolescent Pregnancy and Prematurity Prevention.⁵² The N.C. Council on the Holocaust and the Andrew Jackson Historic Memorial Committee, both of which had been created under temporary executive order by Gov. James B. Hunt, Jr., gained permanent status when they were given statutory authority for their existence in special provisions.⁵³ Again, these boards and commissions may be appropriate and needed, but insufficient attention was given in the process of creating boards through special provisions.

In addition to creating new boards, special provisions are also used to modify the duties or membership of existing boards. For example, three members were added to the Social Security Disability Task Force,⁵⁴ while the membership of the Governor's Jobs for Veterans Committee was limited to eleven.⁵⁵ The Child Day Care Licensing Commission was transferred from the Department of Administration to the Department of Human Resources, and its functions were redefined and expanded.⁵⁶ Likewise, the State Fire Commission was transferred from the Department of Crime Control and Public Safety to the Department of Insurance, and the N.C. Board of Science and Technology was moved from the Department of Commerce to the Department of Administration.⁵⁷ The Board of Trustees for the N.C. School of Science and Mathematics was transferred, along with the school itself, from the Department of Administration to a new home in the University of North Carolina system.⁵⁸

⁵⁰Chapter 761 of the 1983 Session Laws (SB 23), sections 187-192 and Chapter 923 of the 1983 Session Laws (SB 313), section 205, respectively.

⁵¹Chapter 1116 (HB 1376) of the 1983 Session Laws (2nd session, 1984), sections 47-48.

⁵²Chapter 757 of the 1985 Session Laws (SB 182), sections 52, 206, 207, and 208, respectively, and Chapter 479 of the 1985 Session Laws (SB 1), sections 74 and 101, respectively.

⁵³Chapter 757, sections 81 and 180, respectively.

⁵⁴Chapter 757, section 82.

⁵⁵Chapter 479 of the 1985 Session Laws (SB 1), section 166.

⁵⁶Chapter 757, sections 155-156.

⁵⁷Chapter 757, sections 167 and 179, respectively.

⁵⁸Chapter 757, section 206.

4. Special Tax Breaks Are Granted

To its credit, the General Assembly does not often amend tax laws in the spending bills. However, when it does, it commits a particularly egregious act against the public interest when a special provision grants a special tax break to one group of citizens or one type of economic activity. One provision authorized foreign trade zones, which, coupled with a later amendment, has the effect of creating tax breaks for certain types of property held in those zones.⁵⁹ The tax law (G.S. Chapter 105) has also been amended to benefit the Wildlife Resources Fund by transferring from the General Fund (which funds most state programs) to the Wildlife Fund (a special fund for certain programs) all revenue from taxes collected on sales of hunting and fishing supplies and equipment.⁶⁰ Finally, in 1984, the General Assembly changed provisions exempting certain trucks from penalties for being overweight.⁶¹

5. Unlawful Acts Can Be Committed

Even less frequently, legislators may enact special provisions of doubtful legality in the budget bill. This is particularly objectionable, however, because it is doubtful that the full General Assembly would accede to such provisions if they were discussed separately and on their own merits. And, as the case of Jan Proctor illustrates, such special provisions can both harm the public interest, violate contractual and statutory law, and may literally cost the state money.

Janet M. Proctor was executive secretary of the state's Need-Based Medical Student Loan program, which was transferred from the Department of Human Resources to the Office of Budget and Management in the Governor's Office in 1982. She became embroiled in controversy when she denied loans to constituents of Rep. William T. Watkins (D-Granville) and Sen. Harold W. Hardison (D-Lenoir), both of whom were Appropriations Committee chairmen at the time. Proctor previously had filed a lawsuit against the state alleging that female state employees were paid less than men for equal work. In 1983, a six-line special provision in the middle of a 191-page budget bill exempted her position -- and her position only -- from protections under the State Personnel Act.⁶²

⁵⁹Chapter 983 of the 1975 Session Laws (2nd Session, 1976), section 132, and Chapter 782 of the 1977 Session Laws, sections 1 and 2.

⁶⁰Chapter 1116 (HB 1376) of the 1983 Session Laws (2nd Session, 1984), section 88.

⁶¹Chapter 1116, section 105. Under the old law, the Department of Transportation could allow certain trucks exceeding the statutory weight limits of G.S. 20-118 to operate on the highways. This special treatment was available only for trucks manufactured before October 1, 1983. Under the special provision adopted in 1984, all trucks, regardless of the date of manufacture, are now eligible for special treatment. A case note following the statutory provision says N.C. courts have specifically held that the penalties for overweight trucks are deemed to be taxes.

⁶²Chapter 761 of the 1983 Session Laws (SB 23), section 181, which reads in part, "The position of Executive Secretary to the Board shall be appointed by the State Budget Office and is exempt from G.S. 126-5(a)."

This move enabled State Budget Officer John A. Williams Jr. and his deputy, Marvin K. Dorman, to fire Proctor three weeks after the legislature left town. Proctor sued, alleging that the exemption of her job from the State Personnel Act and her dismissal were in direct retaliation against her pursuit of her civil rights on July 1, 1985. Federal Judge Earl Britt ruled in her favor, awarding her more than \$180,000 in damages, plus an additional sum in attorneys' fees. The state has appealed the decision. Thus, a special provision was found by a court to have violated a citizen's civil rights, and this act led to a monetary judgment against the state.

It is important to remember that the Proctor case is not an isolated incident. Still other special provisions have been held unconstitutional. The N.C. Supreme Court found two provisions in the October 1981 session's budget bill to be unconstitutional encroachments on Governor Hunt's power to administer the budget. (See page 5 above for more.)

C. Special Provisions Undermine the Authority of Other Systems and Institutions of Governance

1. The State's Relationship With Local Governments Can Be Damaged

At the N.C. Center's February 1983 symposium on the state budget process and the assumptions and priorities in the proposed 1983-85 budget, Ron Aycock, the executive director of the N.C. Association of County Commissioners, criticized the use of special provisions. "In recent sessions of the General Assembly," he said, "there has been a shift toward putting non-budgetary issues in the main appropriations bill." Citing the example of the special provision on foreign trade zones (see page 18 above), Aycock said, "Again, it may be very good policy, but it is a departure from the practice in the past in this state, which was that the appropriations bill was a bill which either funds or directs the use of state funds."⁶³

Aycock's thoughts point to another potential ill that can emerge from Pandora's Box: special provisions can harm the relationship between state and local governments. Above all else, local officials value being kept abreast of mandates the state plans to place on local governments, changes in funding formulas, and any other legislation that will affect government services and functions at the local level. In Aycock's words, "When the General Assembly sneezes, the counties catch a cold."

Thus, it is no surprise that local officials resent special provisions being used in a way that undermines a healthy and open relationship with state government. One of the most controversial measures of this type was a special provision in a 1984 budget bill which enacted a centralized payroll system for all public school systems in North Carolina.⁶⁴ Under this system, all school

⁶³A transcript of Aycock's remarks can be found in The 1983-85 North Carolina Budget: Finding the Missing Pieces in the Fiscal Jigsaw Puzzle, N.C. Center for Public Policy Research, 1984, pp. 60-62.

⁶⁴Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), section 16.

employees' paychecks would be deposited directly into their bank accounts. In a presentation before the Wake County legislative delegation after the session, James Barber, Controller for the State Board of Education, noted the use of a special provision to create this requirement. He said, "We could have worked out the problems during debate in the normal committee process." In 1985, efforts were made to undo the special provision and allow local school systems or employees to exempt themselves from the plan. Centralizing might be a great burden on small rural systems that do not have easy access to banks, pointed out Rep. Daniel H. DeVane (D-Hoke). The 1985 General Assembly amended the centralized payroll system, but kept the requirement intact. The amendments were also accomplished by special provision.⁶⁵

Earlier, a 1983 special provision had given a duty-free class period to all full-time assigned classroom teachers but appropriated only \$2.18 million to cover it. Several school superintendents said this amount was insufficient to provide the staff to fill in for teachers during their free periods.⁶⁶

Sometimes, special provisions benefit or affect only one county. Two sentences in a 78-page statewide projects funding bill restricted the location of Mecklenburg County landfills.⁶⁷ And, a special provision which would have banned all new billboards "in counties bordering on South Carolina with populations of 60,000 or more and with minimum altitudes of 1300 feet" was detected early and deleted from a budget bill. That provision affected only one county -- Henderson County -- and was inserted by Senator R. P. "Bo" Thomas (D-Henderson) after he had been involved in disputes with a local billboard business. The measure might also have been unconstitutional.

Finally, a special provision was used to make sweeping changes in the Law Enforcement Officers Retirement Fund in 1984. Under the original system, the state, municipalities, law enforcement officers, and criminal court fees all contributed money for retirement benefits. The state's contribution in FY 1983-84 was \$6.9 million. But the legislative leadership thought the pension fund for police and sheriff's deputies should be paid by local governments. They inserted a special provision that reduced the state's contribution to \$3.47 million for FY 1984-85 and abolished it beginning July 1, 1985.⁶⁸ The Raleigh Times characterized the move as "rashly and hurriedly passed." The editorial continued, "For the legislature to simply close its eyes and lob back to localities the whole issue of special retirement treatment for law officers, together with all the funding burden, was totally irresponsible."⁶⁹ Used in this manner, special provisions can do serious and unnecessary damage to the partnership between state and local governments.

⁶⁵Chapter 757 of the 1985 Session Laws (SB 182), section 145.

⁶⁶Chapter 761 of the 1983 Session Laws (SB 23), sections 87-88.

⁶⁷Chapter 757 of the 1985 Session Laws (SB 182), section 157.

⁶⁸Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), section 227.

⁶⁹"Bucking police pension," The Raleigh Times, October 24, 1984, p. 4A.

2. Special Provisions Can Damage Relations Between the Legislative and Executive Branches of State Government

When the governor and the legislative majority are of different parties, special provisions can be a vehicle for partisan legislative mischief. In 1985, special provisions were used by the Democratic leadership to prohibit Republican Gov. James G. Martin from hiring private legal counsel or private investigators without the consent of the Attorney General.⁷⁰ The reason for this measure is that Democratic Attorney General Lacy Thornburg (normally the lawyer for all state agencies) is appealing a federal court ruling that upheld the legislative redistricting plan, and Gov. Martin does not want it appealed. This special provision, therefore, prevents the governor from hiring a private lawyer to argue the governor's side in court. The June 1984 session of the legislature had already expanded its access to the governor's files and those of other executive agencies.⁷¹

It is important to distinguish what is at stake here. The Center does not object to debate between co-equal branches of state government or even to partisan wrangling. Such debate and tension are healthy in making judgments about the directions in which the governor and legislature want to lead the state. What is objectionable is that special provisions, by their very nature, are last-minute legislative punches to the back of the executive's head, almost after the bell has rung to end the legislative sparring. Coming at the end of the session with no sponsor(s) named, and hidden away in budget bills, special provisions represent an unfair attempt to alter the balance of power between the legislative and executive branches.

And alter the balance of power they do. In fact, two special provisions enacted in a special October 1981 session overreached so far into the executive's constitutional authority to administer the budget that the N.C. Supreme Court had to step in. In a 1982 advisory opinion,⁷² the Court ruled that a special provision granting the Joint Legislative Commission on Governmental Operations authority over executive transfer of funds⁷³ was unconstitutional.

⁷⁰Chapter 479 of the 1985 Session Laws (SB 1), sections 135-138.

⁷¹Chapter 1034 (HB 80) of the 1983 Session Laws (2nd session, 1984), sections 176-177.1. Also see section 95, which limits the executive's ability to enter into consent judgments in court cases.

⁷²Advisory Opinion In re: Separation of Powers, 305 N.C. 767 (Appendix, 1982). Also see Katherine White, "Advisory Opinions -- The Ghosts That Slay," North Carolina Insight, Vol. 8, No. 2 (November 1985), pp. 48-49, and 52. For a full discussion of the constitutional issues involved here, see 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, 1985, pp. 44-45.

⁷³Chapter 1127 of the 1981 Session Laws, (October Session, HB 1392), section 82.

The Court also invalidated an attempt to create a new legislative group that would have control over federal block grant funds.⁷⁴ Since North Carolina is the only state where the governor has no veto power, only the Supreme Court can strike down special provisions being used in this manner.

3. Special Provisions Can Undermine Systems of Governance for Educational Institutions

Oversight of the state's expenditures in education is perhaps one of the most important roles of the legislature. Because about half of the state budget is devoted to education, it is important that legislators make sure citizens are getting the best education their tax money can buy. But it is equally important that the legislature not overreach into the educational decision-making process they have statutorily entrusted to the University of North Carolina Board of Governors, the State Board of Community Colleges, and the State Board of Education.

A recent example was Rep. William Watkins' (D-Granville) use of a special provision to get Caswell County assigned to Piedmont Technical College (which is in his district) instead of the Technical College of Alamance as the primary provider of community college courses in Caswell County. Watkins was dissatisfied with the services provided by the Alamance County institution to Caswell County students, but instead of taking it to the Board of Community Colleges, he took care of the problem in a budget bill for statewide projects. The provision begins with the telltale phrase, "Notwithstanding all rules and regulations and laws to the contrary...."⁷⁵

However, special provisions not only worm their way into the apples of the community college system, but also damage the oranges of the university system. For example, in the same 1983 session, a special provision placed a moratorium on planned changes in the public health nursing program at the University of North Carolina at Chapel Hill.⁷⁶ The moratorium raised the ire of UNC officials. Then-UNC President William C. Friday labeled the legislature's action as an intrusion on the statutory authority of the UNC Board of Governors and a threat to academic freedom. A 1985 special provision told the Board of Governors to set up a study of teacher training programs at its campuses.⁷⁷ Typically, authorship of the provision was somewhat a mystery. The chairmen of the House Base Budget (Rep. Bobby R. Etheridge, D-Harnett) and House Expansion Budget (Rep. Watkins) Appropriations Committees both disclaimed knowledge of who wrote it, as did the Chairman of the Senate Appropriations Committee for Education (Sen. Marvin Ward, D-Forsyth). The university officials expressed stoic surprise at the move which took place late in the session. "Somebody obviously

⁷⁴Chapter 1127, section 63.

⁷⁵Chapter 791 of the 1985 Session Laws (SB 489), section 13.

⁷⁶Chapter 923 of the 1983 Session Laws (SB 313), section 217(I).

⁷⁷Chapter 479 of the 1985 Session Laws (SB 1), section 72.

wants it done, so we'll have to do it," commented Raymond H. Dawson, vice president for academic affairs.⁷⁸ Eighteen days later, the legislature used a special provision in a budget bill for statewide projects to make statutory changes reflecting the transfer of the N.C. School of Science and Mathematics from the Department of Administration to the university system.⁷⁹

As discussed earlier, the public school's policymaking body, the State Board of Education, had been surprised by a special provision requiring a centralized payroll system (see pages 19-20 above). One underlying theme throughout these moves is legislative concern about the cost and quality of education provided with taxpayers' dollars. However, one other theme is a willingness by legislators to make last-minute educational policy, despite other laws giving policymaking duties to the State Board of Education, the UNC Board of Governors, and the Board of Community Colleges. It is not the legislators' honest concerns that are at fault; it is the vehicle through which legislators sometimes register those concerns -- special provisions.

⁷⁸See the account in David Perkins, "Bill would require teacher training study," The News and Observer (Raleigh, NC), June 25, 1985, p. 8B.

⁷⁹Chapter 757 of the 1985 Session Laws (SB 182), section 206. Though the statutory changes were made in 1985, the actual transfer took place in 1984.

IV. FEW OTHER STATES ALLOW SUBSTANTIVE STATUTORY PROVISIONS IN APPROPRIATIONS BILLS

As part of his successful campaign for the office of lieutenant governor, then-Sen. Robert B. Jordan III promised to try to discourage special provisions in budget bills. Thus, it was no surprise when, late in the 1985 session, Sen. Anthony Rand (D-Cumberland), one of Jordan's chief lieutenants, introduced "An Act to Restrict Substantive Legislation in Appropriations Bills" (SB 851). Taking their cues from the new Senate President, 48 of 50 senators co-sponsored the bill. Only Sens. Robert Shaw (R-Guilford) and Robert Somers (R-Rowan) demurred.

The bill passed the Senate unanimously but was not acted upon in the House. Instead, on July 16, 1985, the House adopted House Resolution 1 which stated, "The two houses of the General Assembly should examine the issue of limiting substantive legislation on appropriations bills as part of the process of adopting rules for the 1987 Session of their respective houses."

Lieutenant Governor Jordan promptly established a 10-member Senate Select Committee on the Appropriations Process and named Senate Appropriations Committee Chairman Aaron Plyler (D-Union) as chairman of the select group. The committee was charged with examining special provisions and the pork barrel process.

At its second meeting on November 5, 1985, the Committee heard Gerry F. Cohen, director of the legislature's Bill Drafting Division, present his findings on whether substantive or special provisions on the appropriations bill are forbidden by other states. Cohen's findings, summarized in two cogent memoranda to the committee (dated October 31 and November 4, 1985 and reproduced as part of Appendix C of this report) were revealing.

Cohen told the committee, "From analyzing the responses [from 48 of the 49 other states], it appears that 31 of the 48 states prohibit substantive legislation in appropriations bills, and that in three other states, provisions are now in court or are difficult to define" [emphasis added]. Cohen added, "Nine states, including two of the three questionable states, have restrictions less than total prohibition. Thus, a total of 41 of the 48 states have restrictions or prohibitions either contained in the constitution, statutes or legislative rules." Thus, the North Carolina legislature is in the small minority of states that allow special provisions.

Cohen's meticulous research also uncovered a distaste for special provisions in opinions by other state courts. He concluded, "Omnibus bills and substantive special provisions are almost universally condemned by the courts which have interpreted provisions concerning them." Cohen's October 31 memorandum (p. 2) quoted several state supreme court cases, as follows:

"The Arkansas Supreme Court has noted that the state's restrictions were designed to '...prevent the inclusion of separate and unrelated appropriations in a single bill, because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation.'"

Cottrell v. Faubus, 347 S.W.2d 42,53 (Ark. 1961)

"The Washington Supreme Court has observed 'It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation.'"

Flanders v. Morris, 558 P2d 769,772 (Wash. 1977)

"The Pennsylvania Supreme Court has noted that omnibus bills became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits. A still more objectionable procedure grew up of putting what is known as a rider (that is, a new and unrelated enactment or provision) on the appropriations bills, and thus coercing the executive to approve obnoxious legislation or bring the wheels of government to a stop for want of funds.'"⁸⁰

Commonwealth ex rel. Attorney General v. Barnett,
48 Atlantic 976, 977 (Pa. 1901)

⁸⁰All are excerpts from Gerry F. Cohen, "Survey of Other States Concerning Appropriations Process," memorandum to the N.C. Senate Select Committee on the Appropriations Process (October 31, 1985), p. 2.

**Table 3. Prohibitions Against Substantive Legislation (Special Provisions)
Being Included in Budget Bills, By State**

	<u>Forbid Special Provisions</u>	<u>Regulate Special Provisions</u>	<u>Source of Prohibition or Regulating Measure</u>
1. Alabama	Yes	N/A	Constitution
2. Alaska	Yes	N/A	Constitution
3. Arizona	Yes	N/A	Constitution
4. Arkansas	Yes	N/A	Constitution
5. California	Yes	N/A	Constitution
6. Colorado	Yes	N/A	Constitution
7. Connecticut	Yes	N/A	Statute and rule
8. Delaware	No	No	N/A
9. Florida	Yes	N/A	Constitution
10. Georgia	Yes	N/A	Constitution
11. Hawaii	Yes	N/A	Constitution
12. Idaho	No	Yes	Constitution
13. Illinois	Yes	N/A	Constitution
14. Indiana	Yes	N/A	Constitution
15. Iowa	No	Yes	Constitution
16. Kansas	Yes	N/A	Constitution
17. Kentucky	?	N/A	Constitution, with court case pending
18. Louisiana	Yes	N/A	Constitution
19. Maine	No	No	N/A
20. Maryland	Yes	N/A	Constitution
21. Massachusetts	Yes	N/A	Statute
22. Michigan	—	—	No response to survey
23. Minnesota	No	No	N/A
24. Mississippi	Yes	N/A	Constitution and House rule
25. Missouri	Yes	N/A	Constitution
26. Montana	Yes	N/A	Constitution and joint rule
27. Nebraska	Yes	N/A	Constitution
28. Nevada	No	Yes	Constitution
29. New Hampshire	Yes	N/A	Constitution
30. New Jersey	Yes	N/A	Constitution
31. New Mexico	Yes	N/A	Constitution
32. New York	No	Yes	Constitution
33. North Carolina	No	No	N/A
34. North Dakota	?	Yes	Senate rule, though state does not use a general appropriation bill
35. Ohio	No	Yes	Constitution
36. Oklahoma	Yes	N/A	Constitution
37. Oregon	Yes	N/A	Constitution
38. Pennsylvania	Yes	N/A	Constitution
39. Rhode Island	No	No	N/A
40. South Carolina	?	Yes	Constitution, court case pending
41. South Dakota	Yes	N/A	Constitution
42. Tennessee	Yes	N/A	Constitution
43. Texas	Yes	N/A	Constitution
44. Utah	Yes	N/A	Constitution
45. Vermont	No	N/A	N/A
46. Virginia	No	Yes	Constitution
47. Washington	No	Yes	Constitution
48. W. Virginia	Yes	N/A	Constitution
49. Wisconsin	No	No	N/A
50. Wyoming	No	No	N/A

Source: Gerry F. Cohen, "Survey of Other States Concerning Appropriations Process,"
Memorandum to the N.C. Senate Select Committee on the Appropriations Process
(October 31, 1985), pp. 5-6.

Another recent challenge to the special provisions process cropped up last year in South Carolina, where citizens became equally concerned about opening Pandora's Box. The S.C. Chamber of Commerce, angered over a special provision that allowed dues checkoffs for members of state employees groups, asked the state Supreme Court to nullify 237 special appropriations in the 1985-86 Appropriations Act. Calling the practice "bobtailing" and "piggybacking," the chamber sued Gov. Richard Riley, the state Budget and Control Board, and the state House and Senate to void the appropriations and end the bobtailing procedure.

Chamber of Commerce President Mat Self criticized "the procedure of adding non-governance legislation to the annual appropriations bill in violation of the state Constitution."⁸¹ The chamber said the practice of "bobtailing" special provisions onto the main appropriations bill had "more than doubled since 1979 and shows no sign of abating."

South Carolina newspapers, like those north of the border in the Tar Heel State, quickly rallied to the cause. The Evening Post of Charleston blasted members of the legislature for continuing the bobtailing practice and speculated that a top-heavy appropriations bill loaded with special provisions "could come crashing down around their ears. And the public will know exactly whom to blame." The Greenville News called the lawsuit "probably the most important legal dispute in the contemporary history of state government" and added, "A group of state officials and influential lawmakers who manipulate the annual state spending bill are going to emerge from this dispute either subject to the state Constitution or triumphant over it." The State of Columbia called the practice a "bad old habit" that had been abused for too long.

⁸¹Article III, Section 17 of the S.C. Constitution, which states, "Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title."

V. CONCLUSIONS AND RECOMMENDATIONS

Because the use of special provisions undermines the legislative process, because it can result in legislation against the public interest, and because it can be used to undermine other institutions of governance, the General Assembly should end the practice. The three vehicles for banning special provisions are through (1) an amendment to the state Constitution, (2) enactment of a new state statute, or (3) passage of a new rule by both the N.C. Senate and N.C. House of Representatives.

Though a constitutional amendment is perhaps the surest and most long-lasting way to end the use of special provisions, it is also the most difficult. Such an amendment would first require passage of legislation authorizing a popular vote on the amendment, and that legislation must pass both House and Senate by a three-fifths vote. Second, the referendum must also pass but only by a majority. Thirty-five states limit the use of special provisions through their constitutions. The argument in favor of this solution, Gerry Cohen says, is that "Only putting a procedure in the Constitution guarantees outside enforcement" by the courts. Governor James G. Martin favors such an amendment to the Constitution. In a letter to the Center outlining his position (reprinted as Appendix D of this report), Martin says, "It is my opinion that, while an amendment to the rules of each House or an amendment to the Executive Budget Act would be the first step in eliminating special provisions, it is necessary for our Constitution to be amended to prohibit special provisions." Nevertheless, until less drastic correctives have been tried, the Center recommends that the avenues of prohibition by statute or rules be pursued first.

Two states limit special provisions through state statutes. However, the problem with a statutory prohibition of special provisions, in Cohen's words, is that statutes relating to legislative procedure "have only as much effect as the legislature chooses to give them." He says "This is because an appropriation bill [including special provisions] passed in violation of a statute supercedes the statute." In legal terms, when there is a conflict between two statutes, the latest in time --here, the one with special provisions -- would rule.

For this reason, Cohen suggests limiting special provisions by amending the legislature's rules. "Language in the rules of the two houses," he says, "would have more binding force within the legislative process." The enforcement mechanism here would be the legislature itself, since a special provision could be objected to by any member of the General Assembly. On such a point of order, it would take a two-third's majority vote to suspend the rules and pass a special provision. However, the threat of losing one's share of the pork barrel (see pages 12-13 above) may increase the likelihood that each house might suspend its rules. For that reason, and because each house regularly suspends its rules, the Center cannot recommend resorting to a change in rules alone. Only four other states curb special provisions through legislative rules.

To curb the use of special provisions, the N.C. Center for Public Policy Research offers a three-part recommendation involving changes in legislative rules, statutory language, and legislative committee procedures:

(1) Each house of the N.C. General Assembly should adopt the following language in its rules each session:

"Bills for appropriations shall be confined to appropriations. No section of any appropriations bill shall contain any provision which establishes, amends, or repeals statutory law, other than provisions establishing, amending, or repealing operating and

capital expenses for the executive, legislative, and judicial branches of government."⁸²

(2) The General Assembly should enact statutory language identical to the preceding paragraph in an amendment to the Executive Budget Act with this additional proviso: "Any person who is a resident of North Carolina shall have the right to petition the Attorney General to sue to invalidate any special provision⁸³ enacted as part of an appropriations bill. If the Attorney General declines to act within 60 days, a right of private Attorney General is created to allow the resident to pursue the case in Superior Court of North Carolina."

(3) These changes affect the legislative route that bills take, and the following road map should apply:

(a) Any proposed legislation which would amend a statute, is unrelated to the budget, and does not require an appropriation should be in a bill separate from the appropriations bill and subject to the normal legislative route to passage. Such a bill should not be referred to the Appropriations Committee by the presiding officers of the House or Senate. The requirements of separate bills and separate votes would open up the legislative process.

Examples: Under the definition of special provisions contained on page 3, the Center recommends that the following types of legislation be contained in separate bills and referred to substantive committees other than the Appropriations Committee:

1. Bills to amend, repeal, or otherwise change any existing law other than the Executive Budget Act;
2. Bills to establish new boards, commissions, and councils or to alter existing boards' powers (because the legislature usually does not appropriate money for this purpose);
3. Bills to grant special tax breaks or otherwise change the tax laws (These should be referred to the Finance Committees.); and
4. Bills to authorize new interim studies by the General Assembly, executive agencies, or other groups, which do not require funding.

(b) Any proposed legislation which amends other laws but is related to the budget and which appropriates funds should be in a bill separate from the appropriations bill. However, after first being referred to a substantive committee, it also may be referred to the Appropriations Committee by the presiding officers of the House and Senate, but the Appropriations Committee should take a separate vote on the matter. Again, these requirements of separate bills and separate votes would open up the legislative process.

Examples: Bills to establish new agency programs belong in this category (because funds usually are appropriated for a new program, but authorizing legislation must also be passed). Often, the presiding officer may wish to refer the bill initially to a substantive committee to consider the need for the new program, and then to the Appropriations Committee to determine the level of funding. The new Basic Education Plan, for example, was first referred to the Education Committees in 1985 and then to the Appropriations Committees.

(c) Salary changes for state officials and amendments to retirement or state employee benefits packages are normally budgetary matters and can properly be contained in appropriations bills and considered by the Appropriations Committees.

Example: Many state officials' salaries (e.g., for the governor, Council of State, and judges) are set by statute, and salary increases which amend those existing statutes are properly contained in budget bills.

⁸²The first sentence is almost identical to prohibitions in the Alaska and Illinois constitutions, while the second sentence is almost identical to a prohibition enacted as part of the 1984 New Hampshire Constitution.

⁸³As defined on page 3 of this report.

Each of these recommendations is important because without the vigilance of the presiding officers in both the House and Senate, the rules to limit special provisions would become merely paper tigers. And, without the possibility of outside enforcement by the citizens who could exercise power as private attorneys general, the General Assembly might leave open Pandora's Budget Box of Special Provisions. The time has come to close the box -- before additional plagues escape to wreak havoc on the orderly process of government.

Appendix A

**Documentation of Special Provisions in Budget Bills,
By Legislative Session**

SPECIAL PROVISIONS, 1985 REGULAR SESSION

SB 1 -- An Act To Make Appropriations For Current Operations of State
Department, Institutions, and Agencies, and For Other Purposes

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	9	Use of Sales Tax Collected by the Division of Motor Vehicles	Notwithstanding 105- 164.4
2.	26	Limit Free Bus Transportation of Children With Special Needs to Handicapped Children	115C-108 115C-250(a)
3.	27	Vocational Education Study	NA
4.	28	Standards for Approval of Vocational Educational Programs	NA
5.	32	Disposition of Services, Products, and Properties Generated Through Vocational Education	115C-159
6.	36	Eligibility to Serve on State Board of Education	115C-10
7.	37	Authority to Appoint Public Instruction Staff	115C-21(a)(1)
8.	38	Certified School Personnel Evaluation/ Research and Pilot Program	NA
9.	40-50, 52-53	School Career Development Pilot Program	115C-326.1 Chpt. 971, Sec. 4 of 1984 Session Laws
10.	54	Re-examine New Competency-Based Curriculum	NA
11.	55(b)(3)b and (c)	Basic Education Program	115C-301(d) 115C-81(a)-(d) 115C-12(9)c 115C-47(12)
12.	66	Community College Study	NA
13.	67	Tuition Waiver for Certain Students	115D-5(b)
14.	68	Attendance/Training School Student	115D-1
15.	69	Military and Military Dependent Tuition	116-143.3(b), (c), and (e)
16.	72	Teacher Preparation Program Study	NA
17.	74	North Carolina Center for the Advancement of Teaching	new program
18.	77	N.C. Memorial Hospital/Use of Proceeds of Vending Operations	143-12.1
19.	85	Willie M. Program	NA
20.	96	Day Care	143B-153(8)a
21.	97(f)	Day Care Rate Setting Study	NA
22.	101	Adolescent Pregnancy Advisory Board	new board
23.	102	Adolescent Pregnancy and Prematurity Prevention Projects	new program
24.	107	State Medical Facilities Plan/Nursing Home Allocation Study	NA
25.	108	Domiciliary Care Facilities/Reporting Requirements	131D-3

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
26.	116	Eckerd Wilderness Therapeutic Camp	study
27.	118-121	Job Training Partnership Act	NA
28.	124	Biennial State of the Environment Report	new 143B-278.1
29.	129	Wanchese Harbor Development Report	NA
30.	130	Women in Economic Development Report	NA
31.	133-134	Agricultural Marketing Reports	NA
32.	135	Use of Private Counsel by Boards and Commissions Limited	new 114-2.2
33.	136	Private Counsel by State Agencies	147-17(a) and (b)
34.	137	Common Law Powers	new 114-1.1
35.	138	Use of Private Investigators by State Agencies Limited	new 114-15.2
36.	140	Interns	new 114-8.1
37.	143	Separation Allowances/Law Enforcement Officers	143-166.41(a), (b), (c), and (d)
38.	149	Housing Commission Funds	Chpt. 778 of 1983 Session Laws and Chpt. 1034, Sec. 132 of 1983 Session Laws
39.	150	Copies of Executive Orders	147-16.1
40.	153	Pay Incentive Program Repealed	Chpt. 126, Article II and 120-123(16)
41.	155	Non-State Match Defined	new 143-31.4
42.	156	Over Realized Receipts	143-27
43.	158	Unencumbered Balances to Revert to Treasury	143-18
44.	159-160	No Transfers Between Items in the Budget	143-23 143-34.5
45.	164	Internal Reorganization Reports	143B-12
46.	165	Land Records Management Program/Transfer	102-15 102-17(4) 143-345.6(a) and (c)(1)
47.	166	Limit Membership of Jobs for Veterans Committee	143B-420(a)
48.	168	Assignment of Cars to State Agencies	143-341(8)i.5.
49.	170	Commuting by State Employees	143-341(8)i.7a.
50.	172	State Sales or Leases at Fair Market Value	new 146-29.1
51.	173	Lease Exceptions	146-32(3)
52.	174	State Agencies to Use State-Owned Office Space	143-341(4)
53.	176	Legislative Excess Indemnity Insurance	120-32
54.	180	Local Government Transportation Grant Reports	NA
55.	185	Consultation With Transportation Board Member Residing in a Highway District	143B-350
56.	186	Relocation of Sewers in Highway Right-of-Way Cost	136-27.1

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
57.	189	Cost of Living Adjustments for Retirees/ Teachers, State Employees, Judicial Personnel	135-5 135-65
58.	190	Formula Increase/Continuation of Unreduced Retirement at Age 60 With 25 Years' Service	135-5(b7) 135-5(b8) new 135-5(b9)
59.	191	Retirement Allowance Increase	new 135-5(kk)
60.	192	Survivor's Benefits for Deceased Disabled Members	135-5(c) 135-59
61.	193	Unused Sick Leaves Qualifies for Retirement	135-4(e)
62.	194	Conversion of Service or Early Retirement to to Disability Retirement	135-5(c) 135-59
63.	195	No Retirement Until Liability for Wrongfully Spending Funds is Discharged	143-32(a)
64.	196	Local Governmental Law Officer Retirement Benefits Equalized	7a-304(a)(3) 128-21 128-23 128-24(1),(2) and (5) new 128-24(5)b1,b2, and (5a) 128-26(e) 128-27(a),(b8), (c),(e)(1), (11), and (m)(1) 128-28(c) 128-30(d)(2),(6), new 128-30(d)(9) 143-166.30(e) new 143-166.50, and 166.60

SPECIAL PROVISIONS, 1985 REGULAR SESSION

SB 182 -- An Act To Appropriate Funds For Various Statewide Projects To
Specify How Certain Appropriated Funds Are To Be Used, and
To Make Various Changes in the Law

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	52	N.C. Commission on Jobs and Economic Growth	new commission
2.	53	Voter File Study and Funds	NA
3.	79	Public School Alcohol and Drug Programs Funds	new program
4.	81	Holocaust Council	new 143B-216.20 new 116-230
5.	82	Social Security Information Funds	new members on task force
6.	128	Pigeon River Water Study	NA
7.	138	Artificial Reef Control and Funds	143B-286(2)
8.	142	Expand Membership of Joint Legislative Commission on Governmental Operations	120-74
9.	145	Central Pay for Schools Modified	115C-12(18) 115C-272(b)(1) 115C-285(a)(1) 115C-302(a)(1),(2) 115C-316(a)(1),(2) 115C-47(21) new 115C-13 115C-29(b) 115D-31(a)(1)
10.	146	Community College/Matching Funds for Capital Projects	115D-12(a)
11.	147	Satellite County/Appointments to Boards of Trustees	115D-32
12.	148	Community College Satellite Funds/Requirements	Chpt. 479, Sec. 69(a) of 1985 Session Laws 116-143.3(b)
13.	154	Military Tuition	new 143B-168.1 new 143B-168.2 120-123 110-86(1) 110-88(2),(6),(8) 110-90 110-91 110-91(9) 110-92 110-93(a),(b) 110-94 110-100 110-102 110-106
14.	155	Day Care Reorganization	

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
15.	156	Day Care/Standards/Abuse and Neglect Protection/Enforcement	110-88(3) 110-90.1 110-91(2) 110-91(6) 110-91(7) 110-91(8) 110-91(10) 110-91 110-101 110-106 new 110-106.1 7A-517(5) 7A-548 110-102 new 110-105.2 110-88(2) new 110-88(6.1) 110-88(9) 110-90 110-90(5) 110-98 new 110-102.1 new 110-103.1 110-104 110-105(a)(3) 110-105.1
16.	157	Limitation on Permits for Landfills	NA
17.	160	Forest Resources Division Fire Fighters Standby Duty	new 113-60.32
18.	161	Land Records Management Program/Transfer	161-22.2(d),(e)(1)
19.	162	Attorney General's Interns	143B-417(1)p.
20.	163	Distillery Representatives Transportation Limits	18B-400
21.	164	Transfer of Motor Carrier Safety Regulation	20-384 143B-476(a)
22.	167	State Fire Commission Transfer	new 143A-79.1 143B-481--485 58-27.20 120-123(9)
23.	168	Capital Building Authority Amendements	129-42(1),(2), and (5)
24.	170	Building Code Requirement	143-135.1
25.	175	Assignment of State Cars	143-341(8)i.5.
26.	176-177	Commuting by State Employees	143-341(8)i.7a.
27.	179	N.C. Board of Science and Technology/ Transfer	143B-440,441 143B-433(13) 120-123(18)
28.	180	Andrew Jackson Historic Memorial Committee	new 143B-132
29.	181	Deadline for Certain Appointments	147-12

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
30.	200	Certain Associations' Employees' Retirement Option	. 135-27
31.	202	UNC Chair Endowment	new 116-36.5--36.10
32.	205	1990 Census Preparation	new 163-132.1--132.6 160A-36(d) 160A-48(c)
33.	206	School of Science and Mathematics	Chpt. 115C, Article I new 116-230--238 126-5(C1) 66-58 143-318.18(8) 120-123(17)
34.	207	Chowan Interstate Commission	NA
35.	208	Medical Database Commission	new 131E-210--213 120-123

SPECIAL PROVISIONS, 1985 REGULAR SESSION

SB 489 -- An Act To Make Additional Appropriations For Various
Statewide Projects and For Other Purposes

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	5	Employment/Certified Teachers	115C-325
2.	7-8	Snow Days	115C-84(c)
3.	9	Teacher Leave Policy Pilot Program	NA
4.	13	Caswell County Satellite	NA
5.	26.1	Employment and Training Act/Technical Correction	Chpt. 543 of 1985 Session Laws, Sections 4(e)(7)b and c
6.	34	Wildlife Resources Commission/ License Agents Commission	113-270.1(b) and (c)
7.	39.1	Clarification of Magistrate's Salary Increase	7A-171.1(3)
8.	52	Private License Tags on State-owned Cars Limited	14-250
9.	54.1	Certificate of Need Technical Change	Chpt. 740, Sec. 7 of 1985 Session Laws

SPECIAL PROVISIONS, 1984 SHORT SESSION

HB 80 -- An Act To Modify Current Operations and Capital Improvements
Appropriations For North Carolina State Government For the
1984-85 Fiscal Year and To Make Other Changes in the Budget
Operation of the State

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	8	Competency Testing/Measurement	NA
2.	10.2	Scholarship Loan Fund for Prospective Teachers	105A-2(1) 115C-468 -- 471
3.	11-13	Funds to Reduce Class Size	115C-301(d),(d)(2)
4.	16	Centralized Payroll System for Public Schools	115C-12 115C-47(21)
5.	21-24	Tuition for Persons Over 19 Years Old	115C-1 115C-366.1(a) 115C-109 115C-124 115C-128 115C-109
6.	28	Exceptional Children Accountability	Chpt. 761, Sec. 83, subpart (i) of 1983 Session Laws
7.	30	Transfer Tort Claims Funds	143-300.1(c)
8.	33-34	Teachers in State Agencies Exempted From State Personnel Pay Plan	new 126-5(c1) 115C-325(p)
9.	36	Community Colleges Allocation of Capital Funds	Notwithstanding 116-53(b)
10.	38	Community College Scholarship Fund	115D-31 new 115D-40
11.	45-46	Program Approval by State Board	new 115D-5(f)
12.	49-50	Transfer of Science and Mathematics School	Notwithstanding Chpt. 115C, Article 15 116-31 115C-223(a)(2) 115C-223(a)(3) 115C-223(a)(4)
13.	57-59	Military Tuition Rates	new 116-143.3 115D-39 116-22(2)
14.	61	Willie M.	NA
15.	64	Aid for Disabled Citizens	Chpt. 971, Sec. 2 of 1983 Session Laws
16.	66	Aged and Family Care/County and State Share of Costs	Chpt. 761, Sec. 37 of 1983 Session Laws
17.	67	Domiciliary Care Facilities	Chpt. 761, Sec. 31 of 1983 Session Laws
18.	67.1	ICF/MR Certificate of Need Distribution	NA
19.	68	Change Reporting Date on Deinstitutionalization Project	Chpt. 761, Sec. 28(a) of 1983 Session Law
20.	73	Sanitary Landfill Requirements for Local Governments	130A-294(a)(4)
21.	74	Emergency Hazardous Waste Site Remedial Fund	new 130A-307

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
22.	75	Qualifications of Local Health Directors	130A-40
23.	76	County Duty to Support IV-D Program	110-141
24.	77	Child Support Enforcement Program Report	NA
25.	78	After-School Child Care	110-86(4)
26.	81	Alcohol and Drug Programs in the Public Schools	115C-81(a)
27.	84	Magistrates Not Compensated for Mileage Within County	7A-171.1
28.	85	Schedules of Magistrates	7A-146(4)
29.	86, 88, and 89	Salaries/Superior Court Clerks	7A-101 7A-102 and 102(a)
30.	92-93	Longevity Pay for Assistant District Attorneys and Assistant Public Defenders	new 7A-65(d) 7A-467
31.	94	Longevity Pay for Public Defenders	7A-465
32.	95	Consent Judgments Entered Into by the State	new 114-2.1 114-2.2
33.	98	Division of Emergency Services	NA
34.	99-100	National Guard Tuition Assistance	127A-193
35.	102-103	Crime Control and Public Safety/Deferred Prosecution Program	new 143B-475.1 143B-475(d)
36.	104	Separation Allowances/Law-Enforcement Officers	new 143-166.40--166.4
37.	105	Replacing Law-Enforcement Officers on Final Sick Leave	new 126-8.2
38.	106-107	Exemption From State Personnel Commission Salary Standards	20-187.3
39.	110	Implementation of [Nutrient Sensitive Watershed] Project	NA
40.	111.1	Community Action Partnership	new 113-28.21--28.26
41.	116-118	Costs of Treasurer's Investment Programs	147-69.3(f) new 147-68.1
42.	120-121	Private License Plates on State-Owned Cars	14-250
43.	122	Permanent Assignment of State-Owned Passenger Motor Vehicles	143-341(8)i.7a.
44.	124	Clarify Application of the Building Code	Chpt. 531, Sec. 7 of 1977 Session Laws
45.	125	State Employees Receiving Confidential Tax Information	105-259
46.	126	Revenue/Refund of Income Taxes	105-267.1
47.	127	Clarify Use of Sales Tax Revenue in Burke County	Chpt. 273 of 1983 Session Laws
48.	132	Housing Commission Funds From General Fund	Chpt. 778, Sec. 3 of 1983 Session Laws
49.	134	HFA Budget Reports	122A-16
50.	135-138	Legislative Committee on Energy Crisis Management	113B-21(a) 113B-22(b),(c) and (d) 113B-23(b)
51.	139	Discharge of Need-Based Student Loans by Service	143-47.24

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
52.	146	Pay Equity Study	NA
53.	166-175	Operation of Vending Facilities by the State	new 143-12.1 new 115C-423(6) new 115C-426.1 new 115D-2(8) new 115D-58.13 new 116-2(6) new 116-36.4 new 159-7(b)(16) new 159-17.1 120-36.4 new 120-32.01 143-34.4
54.	176-177	Information to the Legislative Services Office	120-30.11
55.	177.1	Meetings of the Board of Awards and the Council of State	120-34(a)
56.	178	Termination of Legislative Research Commission Terms	Notwithstanding 135- 4(e) and 135-4(m)
57.	179	Publication of Session Laws and Journals	120-3.1(a),(2), (3), and (4)
58.	183	Retirement Credits for Employment With the General Assembly	138-5(f)
59.	184-186	Legislators' Travel Allowances	new 120-4.12(d)
60.	187	Military Service Credit/Legislative Retirement System	120-4.11(1) and (
61.	188-199	Technical Amendments/Legislative Retirement System	new 120-4.11(3) 120-4.12(c)(1) 120-4.14 120-4.15 120-4.21(a) 120-4.21(b)(1) 120-4.21(c) 120-4.22(a) 120-4.22(d) 120-4.25 120-4.8(9) 120-4.8(12) 120-4.28
62.	203	Amtrak Piedmont Crescent [Study]	NA
63.	227-247	State LEO Transfer and Enhancement	new 135-1(11b) 135-3(9) 135-3(8)c,d 135-4(e) 128-26(i) new 135-5(b8) 135-5(c),(e)(1), (m)(1) 135-3(1) 135-6(b) 143-166(a),(a1), (b),(i1),(m), (o), and (p) 143-166.03

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
64.	248-249	Retirement Benefits for State Law Enforcement Officers	new 143-166.30 7A-304(a)(3)
65.	250	Retirement Study/Sheriffs and Registers of Deeds	NA

SPECIAL PROVISIONS, 1984 SHORT SESSION

HB 1376 -- An Act Appropriating Funds For Various State Projects

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	30	Black Mountain DHR Police	new 122-98.3
2.	41-43	Farm Products Liens Filings	25-9-401(1)(a) 25-9-401(5) 25-9-402(1)
3.	47-48	Constitution Bicentennial Commission	new 143-563--570
4.	75	Clarify Competency Testing/Measurement	Chpt. 1034, Sec. 8 of 1983 Session Law
5.	80	Modify DHR Bed Freeze	NA
6.	82	ICF-MR Long-Term Care	143-127.1(d)
7.	85	Consent Judgments	114-2.2(c) 114-2.1
8.	87	Magistrate Training	7A-177
9.	88	Wildlife Fund Gets Sales Tax Funds	new 105-164.45A
10.	91	Longevity Pay/Utilities Commission	62-10(h)
11.	92	Public Telecommunications Agency Members	143B-426.9(8)
12.	95	DHR and Correction Capital Projects	143-31.1
13.	96	Personnel Changes	Chpt. 1034, Sec. 33 of 1983 Session Law
14.	97	Sales and Purchases of Land	146-22 146-74 146-32 146-30 146-25.1(a)
15.	98-99	Private License Plates on State-owned Cars	Chpt. 1034, Sec. 121 of 1983 Session Law
16.	104	Need-Based Student Loans	143-47.21
17.	105-109	Truck Weight Exemptions	20-118(i)(2) 20-118(i)(2)e., f. and new g. 20-118(j)(1)
18.	111	Compensation Equalization	126-16
19.	113	No Special Bond/Pension Fund	118-36
20.	113.1	Durham ABC Board	Chpt. 299, 1981 Session Laws; Notwithstanding 18B-7
21.	114	Hospital and Medical Claims	Notwithstanding Chpt. 135, Article 3

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HB 1496 - An Act To Modify Current Operations and Capital Appropriations For North Carolina State Government for the 1984-85 Fiscal Year and To Make Other Changes in the Budget Operation of the State

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	4	Special Provisions - Career Growth Program For Teachers	NA

SPECIAL PROVISIONS, 1983 REGULAR SESSION

SB 23 -- An Act To Make Appropriations For Current Operations of State
Departments, Institutions, and Agencies, and For Other Purposes

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	20	Special Study on Fire Service Training Programs	NA
2.	21	Local Fire Protection for State-Owned Property	58-191.05
3.	34-35	Domiciliary Care Facilities	131D-3,4
4.	37	Aged and Family Care/County and State Share of Costs	NA
5.	41	Report on Cost to Establish Threshold Concentrations	affects HB 559 of 1983 Session
6.	44	Eckerd Wilderness Camping Program	NA
7.	46	DHR Office Space	NA
8.	48	Limitation on AFDC and Food Stamp Eligibility	NA
9.	51-55	McCain Hospital	references not specific
10.	74	Certificate of Need Provision for Nursing Home Beds	Chpt. 1127, Sec. 31, of 1981 Session Laws and Chpt. 655, Sec. 3 of 1983 Session Laws
11.	77	Funds for Members of the Class Identified in Willie M., et al. vs. Hunt, et al.	NA
12.	83	Exceptional Children/Legislative Study Report on Special Education Finance	NA
13.	84	Exceptional Children/Accounting System	NA
14.	85	Exceptional Children/Report to General Assembly	NA
15.	86	School Finance	NA
16.	88	Daily Duty Free Period	new 115C-301.1
17.	90	Vocational Education Resources	115C-302(a)(2)
18.	92	Extended Day	NA
19.	93	Modular Classroom Tie-Down Requirements	115C-521(b)
20.	104	"Regional Institutions" Redefined	115D-2(4)
21.	105	Community Colleges/Liability Insurance	new 115D-31.1
22.	112	Nonresident Tuition Set by Board of Governors	116-144
23.	113	Board of Governors/Expenditures	116-11(9)b.
24.	119	Forest Fire Fighters' Overtime Pay	new 113-56.1
25.	120	Forest Development Act Report	113A-193(b)
26.	121	Forestry County Cooperative Program Study	NA
27.	122	Forest Radio Communications Pilot Project	NA
28.	126	Community Development Block Grants [Study]	NA
29.	133	ALE Funding From Bailment Surcharge	18B-208(b)
30.	135	Highway Repair, Maintenance and Construction Contract Pilot Program	Notwithstanding 136-28.1

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
31.	137-138	Transfer of Motor Carrier Safety Regulation	62-281
32.	140	Use of Sales Tax Collected by Division of Motor Vehicles	Notwithstanding 105-164.4(1) and 20-63
33.	141	Driver Training and Safety Education	20-88.1
34.	146-148	Motor Vehicle Financial Responsibility	20-309(e) 20-311 20-48
35.	151	DOT Exception to Vehicle Policy Increased	143-341(8)(i)7a
36.	152	District Attorney's Conference Created	new 7A-411--414
37.	153	Uniform Criminal Calendaring	new 7A-49.3(a)
38.	154-156	Community Service for Persons Guilty of DWI	20-179.2 new 20-179.4
39.	157	Parole Consideration Hearings in Onslow County	15A-1371(b)(2)
40.	159-160	Statewide Guardian Ad Litem Program	7A-586 new 7A-484--488
41.	162	Mecklenburg Pilot Program for Custody and Visitation Dispute Mediation	50-13.1
42.	163	Appellate Defender Caseload	7A-478(1)
43.	164	License Plate Study	NA
44.	165-166	Butner	122-98 146-30
45.	168	Department of Correction/Laundry Services	66-58(b)(16)
46.	172	Oil Re-Refining Facility	NA
47.	173-174.1	Commuting Policy	143-348(8)i.7a. Chpt. 1282, Sec. 61 of the 1981 Session Laws
48.	175	State-Owned Rental Housing	NA
49.	176-182	Need Based Student Loans	143-47.21, 47.24 120-123(33a) 143-47.24
50.	183	State Vehicle Maintenance System Study	NA
51.	184	N.C. School of Science and Mathematics	115C-223(a)(5)
52.	185	Agency Rules Submitted to the Director of the Budget	150A-11(4)
53.	187-192	Board of State Contract Appeals	new 143-135.5-- 135.15 7A-29 7A-31(a) 143-135.3
54.	238-240	Legislative Retirement System	new 136-29(d) new 120-4.3--4.23

SPECIAL PROVISIONS, 1983 REGULAR SESSION

SB 313 -- An Act Making Appropriations For Various Local Projects

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	52	[Administrative Procedure Act]	most of Chpt. 150A repealed
2.	197	Establish Institute of Medicine	NA
3.	203	Homeownership Assistance Fund	new 122A-5.6
4.	204	Protect Swift Creek Township	NA
5.	205	Establish N.C. Farmworker Council	new 143B-426.30-- 426.31
6.	217(F) and (G)	[Bingo Laws]	14-309.7(c) and 309.8
7.	217(H)	[Leave for Temporary Employees]	new 120-32.5
8.	217(I)	[Department of Public Health Nursing]	NA
9.	217(L) and (M)	[Legislative Retirement System]	120-4.9(1),(2) 120-4.10
10.	217(N)	[Itemized Statements and Forms]	Chpt. 761, new Sec. 19.1 of 1983 Session Laws 143-7

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SB 22 -- An Act To Make Appropriations To Provide Capital Improvements
For State Departments, Institutions, and Agencies

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	13	Beach Access Program	113A-134.2 and 134.3

SPECIAL PROVISIONS, 1982 SHORT SESSION

HB 61 -- An Act To Modify Current Operations and Capital Improvements For
North Carolina State Government for the Fiscal Year 1982-83, and
To Make Other Changes in the Budget Operation of the State

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	8	Tax Shelter for Teachers and State Employees	new 135-8(b1)
2.	9	Tax Shelter for Local Government Employees	new 128-30(b1)
3.	14	Authorization for Payroll Deduction for the State Employees Combined Campaign	147-62
4.	15	Authorization for Payroll Deduction for Charities Approved by Local Boards of Education or Community Colleges	147-62
5.	15.1	Leave for Inclement Weather	115C-84
6.	19	Limitation on AFDC Eligibility	NA
7.	20.1-20.2D	Limitation on Rest Home Beds	131D-2(a)(5) 131D-20(5) 143-138
8.	22-23	Office of State Personnel Study of Equal Treatment for All Teachers	Chpt. 1127, sec. 36 of 1981 Session Law
9.	25-26	Funds for Members of the Class Identified in Willie M., <u>et al.</u> vs. Hunt, <u>et al.</u>	NA
10.	29	Delete Reporting Requirement on Funds for Exceptional Children	115C-143
11.	30	Update Obsolete Reference to Department of Correction Schools	115C-325(p)
12.	31	Transportation of Exceptional Children	115C-250(a)
13.	32	Availability of Records for Special Education Cost Study	Notwithstanding 115C-114
14.	32.1	Teacher Evaluation	115C-326
15.	44	Lightning Rod Agent Privilege Tax Repealed	105-59
16.	46	Personnel Service Credit for Former Legislative Employees	NA
17.	48	Extension of Marine Fisheries Study Commission	Chpt. 930, Sec. 6 of 1981 Session Laws
18.	51	Consent Judgments	new 114-2.1
19.	52	Permit SBI to Dispose of Surplus Weapons	143-63.1(d)
20.	54	Date of Clean Water Bond Referendum	Chpt. 993, Sec. 4(b) of 1981 Session Law
21.	59-61	License Tags on State-Owned Cars	14-250
22.	62	Permanent Assignment of State-Owned Cars and State Commuting Policy	143-341(8)(i)7a.
23.	63	Compensation for Governors' Spouses	147-32
24.	65	State Treasurer to Report on Investments	new 147-68(d1)
25.	66	Overrealized Agency Receipts	143-27
26.	67	Budgeting of Pilot Programs	Chpt. 859, Sec. 13.2 of 1981 Session Law
27.	69	Property Tax Assistance	105-213(a)
28.	70.1	Homestead Exemption Reimbursement	Chpt. 1052, Sec. 3 of 1981 Session Laws
29.	71.2	Restrictive Reserve Funds [Number of FT Assistant DAs]	7A-41
30.	72	Public Defender for 15B	7A-465,466

SPECIAL PROVISIONS, 1981 REGULAR SESSION

SB 29 -- An Act To Make Appropriations For Current Operations of State
Departments, Institutions, and Agencies, and For Other Purposes

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
1.	13.3	Location of Fiscal Research Division Offices	120-36.5
2.	13.5	Study of State Credit Cards/Office of State Budget and Management	NA
3.	13.9	Extradition of Probation and Parole Violators	15A-744
4.	13.10	General Statutes Code Recodification Commission Abolished	Chpt. 164, Article 3 and 114-4.2E
5.	13.2-13.19	Committee on Employee Hospital and Medical Benefits Created	135-33(a) and (c) 135-33.1 135-34 135-35 new 135-37
6.	16	Encourage Counties to Meet Their Local Social Services Budget Operations	NA
7.	23.2-23.3	Domiciliary Care Facilities	new 108-77.1 and 77.2
8.	23.4	Sale of Real Property, John Umstead Hospital	146-30
9.	25	Reimbursement to Local Confinement Facilities	148-32.1(a)
10.	29.1	School Employee Personnel Commission Recommendations	115C-329(b)
11.	29.7	Responsibility for Education of Children With Special Needs	new 115C-140.1
12.	29.8	Funds for Members of the Class Identified in Willie M., <u>et al.</u> vs. Hunt, <u>et al.</u>	NA
13.	29.10	Class Size Maxima	Notwithstanding other laws
14.	29.12	Teacher Performance Standards	115C-326
15.	33.1	Community College Study/High Cost Specialized Programs	NA
16.	35.1	Eliminate Community College Tuition/High School Courses	115D-5(b)
17.	35.2	Staff Salaries/State Board of Community Colleges	115D-3
18.	41.2	Interest Proceeds on Sale of University Utilities	Chpt. 723, Sec. 11 o. 1971 Session Laws Chpt. 983, Sec. 31 o. 1975 Session Laws
19.	41.3	Extension Instruction Program Study/UNC	NA
20.	41.5	Memorial Hospital/Social Security Number Disclosure Requirement	116-37
21.	46	Appellate Judges/Emergency Judges	7A-39.3(b)
	47	Trial Judges/Emergency Judges	7A-52(b)

<u>Number of Special Provisions</u>	<u>Sections Containing Special Provisions Provisions in Bill</u>	<u>Title of Section</u>	<u>Portions of G.S. Amended</u>
22.	47.1	Fiscal Independence of Administrative Office of the Courts	Article 1, Chpt. 143
23.	48-55	State-Owned Motor Vehicles	143-341(8)i.3. 143-341(8)i.7. 143-341(8)i.8. new 143-341(8)i.7a. 14-247
24.	57-59	State Employee Travel Allowance	138-6(a)(1),(3) new 138-6(c)
25.	68	Highway Consultant Contracts	136-28.1(f)
26.	69	Highway Right-of-Way Purchases	136-44.11
27.	77-82	Gasoline Tax Audit Transfer	new 20-86.1(c) new 20-91(f) 105-260 105-262 143B-218 143B-219(a)
28.	84-89	State Funding of Federally Eligible Road Projects	136-44.2 120-74,75 new 120-76(7) 120-79(a),(b)
29.	94	Actuarial Consultants/Department of Insurance	58-7.3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985

SENATE BILL 851

Short Title: Legislation on Appropriations.

(Public)

Sponsors: Senators Rand, Plyler; Ballenger, Barnes, Basnight,*

Referred to: Special Message to House.

July 10, 1985

A BILL TO BE ENTITLED

1
2 AN ACT TO RESTRICT SUBSTANTIVE LEGISLATION IN APPROPRIATIONS
3 BILLS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The Executive Budget Act, Article 1 of
6 Chapter 143 of the General Statutes, is amended by adding a new
7 section to read:

8 "§ 143-15.1. Limitation on general appropriations bills.--(a)
9 No provision changing existing law shall be contained in the
10 Current Operations Appropriations Bill or in the Capital
11 Improvement Appropriations Bill, or in any bill generally
12 revising appropriations for the second fiscal year of a biennium
13 which were contained in the Current Operations Appropriations
14 Bill or the Capital Improvement Appropriations Bill.

15 (b) No amendment to any bill listed in subsection (a) of this
16 bill shall be in order if the language is prohibited by that
17 subsection.

18 (c) Notwithstanding subsections (a) and (b) of this section,
19 any of the bills listed in subsection (a) of this section or an
20 amendment such bill may change existing law if the change:

1 (1) reduces expenditures or alters salaries; or
2 (2) changes the scope or character of a program which
3 must be reduced, increased, or changed because of
4 an increase or decrease of funds appropriated for
5 the program;

6 provided, that for a provision to be in order under this
7 subsection, it must be recommended to the General Assembly in a
8 written report adopted by the Appropriations Committee before or
9 at the same time the bill is reported, or if such provision is
10 contained in a floor amendment, the sponsor of the amendment must
11 present to the principal clerk at or before the time the
12 amendment is offered an explanation of the amendment for
13 distribution to each member of that house."

14 Sec. 2. Section 1 of this act is an adoption in part of
15 Rule XXI, clause 2(b) of the Rules of the U. S. House of
16 Representatives. The Legislative Research Commission shall
17 report to the 1985 General Assembly, Second Session 1986, as to
18 whether the adoption of the modified Holman rule was an effective
19 way to regulate the appropriations process, whether it should
20 remain, be amended, be repealed, or be placed in the North
21 Carolina Constitution.

22 Sec. 3. This act is effective upon ratification.

23 _____
24 *Additional Sponsors: Cobb, Conder, Ezzell, Goldston, Guy,
25 Hardison, Harrington, Harris, Higgs, Hunt of Durham, Hunt of
26 Moore, Johnson of Cabarrus, Johnson of Wake, Jordan, Kaplan,
27 Kincaid, Martin of Pitt, Martin of Guilford, Marvin, McDuffie,
Parnell, Price, Rauch, Redman, Royall, Sawyer, Simpson, Smith,

1 Soles, Speed, Staton, Swain, Taft, Tally, Thomas of Craven,
2 Thomas of Henderson, Walker, Ward, Warren, Watt, Winner, Woodard,
3 Williams.

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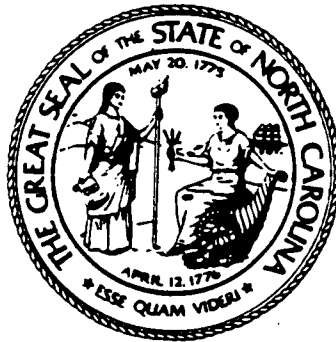
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SENATE SELECT COMMITTEE ON THE APPROPRIATIONS PROCESS



**REPORT TO THE
1985 SENATE
OF NORTH CAROLINA
1986 SESSION**

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THIS REPORT ADOPTED DECEMBER 10, 1985

BACKGROUND AND COMMITTEE PROCEEDINGS

As a result of concern about the appropriations process of the North Carolina General Assembly, Lieutenant Governor Robert B. Jordan III on July 31, 1985 established the Select Committee on the Appropriations Process.

That committee was chaired by Senator Aaron Plyler. Other committee members were Senators Tony Rand, Marvin Ward, Bob Warren, Joe Thomas, Wilma Woodard, Harold Hardison, Kenneth Royall, Russell Walker, and David Parnell.

The Lieutenant Governor's charge to the Committee (see Appendix A), was to examine both the practice of including substantive legislation in appropriations bills, and the process of making special appropriations for local projects.

The committee met on August 29, 1985, November 6, 1985, and December 10, 1985.

At the first meeting, the Committee heard remarks from the Lieutenant Governor (see Appendix B), and heard a review from staff of the Bill Drafting and Fiscal Research Divisions. Staff was directed to prepare a report on how other states handle the process, and a legal report on the public purpose doctrine.

At the second meeting, the Committee heard a presentation from Gerry F. Cohen, Director of the Bill Drafting Division, on how the other 49 states handle the special provision and local appropriation processes. (see Appendix D) The committee also heard a report from Sabra Faires, a staff attorney in the Bill Drafting Division, concerning the public purpose doctrine. (see Appendix E) After discussing the memorandum, the Committee determined that under the Constitution, no appropriation could be made unless for a public purpose under our constitution. Jim Johnson of the Fiscal Research Division reported on the local appropriations process. The Committee directed staff to look further into the special provision process in Connecticut and New York.

At the final meeting, the committee heard the requested report, continued discussion, and adopted the recommendations found on page 2 of this report. The Connecticut and New York report appears as Appendix C.

Additional information may be obtained from Gerry F. Cohen, Committee Counsel, 100 Legislative Office Building, Raleigh, N.C. 27611, telephone (919)733-6660.

RECOMMENDATIONS

The Senate Select Committee on the Appropriations Process makes the following recommendations to the Senate:

1) Each bill appropriating money for local projects shall be considered separately on its own merits by the Appropriations Subcommittees and then by the full Appropriations Committee.

2) No local appropriation bill shall be eligible for introduction if it deals with more than one subject or object.

3) In the 1986 short session, no local appropriations bill may be filed for introduction after June 11, 1986. In the 1987 Session, the deadline for filing for introduction of agency bills, local bills, and local appropriations bills will be April 16, 1986, and the deadline for introduction of all other bills will be April 30, 1987. All House bills other than appropriations bills must receive third reading in the house no later than May 21, 1987, and received on messages in the Senate by May 25, 1987 in order to be eligible for consideration by the Senate in 1987.

4) The Current Operations Appropriations Act, the Capital Improvement Appropriations Bill, and the appropriation bill making general revisions in the second-year budget shall contain nothing but items related to appropriations.

5) The Committee endorses Senate Bill 851, 1985 Session, (see Appendix F) and recommends that its text be included in the Senate Rules.

6) No subject may be included in a local appropriations bill unless that subject was in a bill introduced in that session of the General Assembly.

7) The above recommendations shall be referred to the Senate Rules Committee with the recommendation they be incorporated in the rules of the Senate. Copies of this committee report shall be sent to all members of the Senate.

APPENDIX A



OFFICE OF THE LIEUTENANT GOVERNOR
STATE OF NORTH CAROLINA
RALEIGH 27611

July 31, 1985

ROBERT B. JORDAN III
LIEUTENANT GOVERNOR

The Honorable Aaron Plyler
2170 Concord Avenue
Monroe, North Carolina 28110

Dear Aaron:

As you know, I have been concerned about various aspects of the appropriations process as they have evolved over the past several sessions. Therefore, in accordance with Senate Rule 31(a), I appoint you Chairman of the Select Committee on the Appropriations Process. Other members of the committee are:

Senator Tony Rand
Senator Marvin Ward
Senator Bob Warren
Senator Joe Thomas
Senator Wilma Woodard

Senator Harold Hardison
Senator Kenneth Royall
Senator Russell Walker
Senator David Parnell

The Select Committee on the Appropriations Process is charged with the following duties:

(1) Examining the practice of including substantive legislation in appropriations bills, and recommending either legislation or an amendment to the Senate Rules to regulate, restrict, or prohibit this practice; and

(2) Examining the process of making special appropriations for local projects, and recommending either legislation or an amendment to the Senate rules that would provide for an orderly and equitable process. Such examination should include but is not limited to:

a. A minimum dollar amount for each appropriation, so as to reduce paperwork and enable the process to operate more smoothly and with adequate opportunity for scrutiny of requests for special appropriations for local projects;

b. The elimination of the omnibus appropriations bill for local projects; and

c. The elimination of special appropriations for local projects.

In accordance with Section 2 of Resolution 34, Session Laws of 1985, the Select Committee on the Appropriations Process may meet during the interim prior to reconvening of the 1985 Regular Session of the General Assembly, and may recommend matters for consideration at the 1986 Session.

Sincerely,

-3-

Bob Jordan

APPENDIX "B"

REMARKS BY LIEUTENANT GOVERNOR BOB JORDAN TO SENATE SELECT COMMITTEE ON APPROPRIATIONS PROCESS AUGUST 29, 1985

I WANT TO THANK ALL OF YOU FOR AGREEING TO SERVE ON THIS COMMITTEE. YOU, IN YOUR RESPONSIBILITIES AS CHAIRMEN OF BUDGET COMMITTEES HAVE HAD A FIRST HAND LOOK AT HOW THE PROCESS HAS WORKED THIS SESSION. I AM CONFIDENT OF YOUR ABILITY AND COMMITMENT TO PUBLIC SERVICE AND KNOW YOU WILL DO YOUR BEST IN THIS UNDERTAKING. BETWEEN NOW AND FEBRUARY I WANT YOU TO RE-EXAMINE THE BUDGETING PROCESS TO SEE HOW WE CAN CHANGE SOME PROCEDURES AND OPEN UP THE PROCESS MORE.

TWO AREAS I PARTICULARLY WANT YOU TO STUDY AND MAKE RECOMMENDATIONS ARE THE SPECIAL PROVISIONS AND THE FUNDS FOR LOCAL PROJECTS. I WANT YOU TO FIND OUT HOW OTHER STATES HANDLE THESE TWO PROCEDURES AND SEE HOW THEY HANDLE THE OVERALL APPROPRIATIONS PROCESS.

I AM PLEASED THE SENATE PASSED LEGISLATION TO PREVENT SPECIAL PROVISIONS IN THE BUDGET THAT DO NOT DIRECTLY RELATE TO APPROPRIATIONS. I DO NOT BELIEVE WE SHOULD BE ENACTING LAWS THROUGH SPECIAL PROVISIONS WITHOUT OPEN DEBATE ON THE PROPOSED CHANGES. YOU DID A GOOD JOB THIS YEAR IN DEALING WITH SPECIAL PROVISIONS IN THE SUBCOMMITTEES AND THEN TAKING IT TO THE FULL COMMITTEE. HOWEVER, I FIRMLY BELIEVE THAT ONLY PROVISIONS RELATING DIRECTLY TO THE BUDGET SHOULD BE INCLUDED IN THE APPROPRIATIONS BILLS. I WANT YOU TO DETERMINE HOW THIS PROCESS CAN BEST BE HANDLED IN THE FUTURE.

ON THE FUNDING OF LOCAL PROJECTS, I HAVE NO DOUBT THAT THE MONEY GOES TO MANY WORTHWHILE LOCAL PROJECTS THAT BENEFIT THE ENTIRE COMMUNITY. BUT WE NEED TO RE-EXAMINE THE PROCESS TO SEE

THAT THE PUBLIC'S INTEREST IS BEST SERVED THROUGH THE PROCESS. I WOULD SUGGEST THAT YOU HAVE STAFF DO A LEGAL ANALYSIS OF FUNDING FOR PUBLIC PURPOSE TO DETERMINE THE POLICY WE SHOULD FOLLOW. IF YOU DECIDE THAT THE GENERAL ASSEMBLY SHOULD CONTINUE TO FUND WORTHWHILE LOCAL PROJECTS, THEN DECIDE THE BEST METHOD FOR FUNDING THOSE PROJECTS. I THINK IT IS IMPORTANT THAT THE LOCAL COMMUNITIES BE INVOLVED IN THE PROCESS IF IT IS CONTINUED AND THAT BUDGET COMMITTEES GIVE THOROUGH REVIEW OF THE REQUESTS.

THIS IS A SIGNIFICANT PROCESS THAT YOU ARE UNDERTAKING. THE PEOPLE OF NORTH CAROLINA WANT TO BE ASSURED AND I WANT TO ASSURE THEM THAT WE ARE SPENDING THEIR TAX DOLLARS WISELY, SO IT IS IMPORTANT THAT THEY HAVE AS MUCH INFORMATION AS POSSIBLE AND CAN PARTICIPATE IN THE PROCESS.

I HOPE THAT YOU WILL HAVE RECOMMENDATIONS BY THE END OF THE YEAR SO WE CAN USE THEM IN PREPARING FOR THE 1986 BUDGET SESSION. AGAIN, I THANK YOU FOR UNDERTAKING THIS EFFORT, AND I LOOK FORWARD TO HEARING YOUR PROPOSALS.

APPENDIX "C"

December 3, 1985

MEMORANDUM

TO: Senate Select Committee on the Appropriations Process

FROM: Gerry F. Cohen
Director of Legislative Drafting

SUBJECT: Connecticut and New York

At the November 6, 1985 meeting of the committee, I was instructed to evaluate the experience of Connecticut and New York with the restrictions on appropriations found in those states.

In Connecticut, C.G.S. 2-35 states "Each appropriation bill shall specify the particular purpose for which appropriation is made, shall be itemized as far as practicable and may contain any legislation necessary to implement its appropriations provisions, provided no other general legislation shall be made a part of such appropriation bill."

This language appears to have worked quite well in Connecticut to keep substantive legislation out of the appropriations bill. I enclose copies of the 1984 and 1985 Connecticut general appropriations bill, which contain no substantive special provisions.

Fiscal staff in Connecticut tell me that when a substantive bill requiring an appropriation is reported by a subject matter committee, it is re-referred to the appropriations committee, as is our practice in North Carolina. If the appropriations committee decides to fund the bill as part of the main appropriations process, it will include the funds in the appropriate department, and then report the bill itself after the main appropriations bill has been enacted.

The main appropriations bill will contain a limitation on the expenditure. For instance, if the Judiciary Committee has approved Senate Bill 100 to add two five superior court judges,

and it has been re-referred to appropriations, which determines an annual cost of \$300,000 and agrees to fund the expansion, that amount will be added to the Judicial Budget. A limitation will be added to the budget bill such as "Of the funds appropriated to the Administrative Office of the Courts, \$300,000 shall be available only for the purposes of Senate Bill 100, 1985 Session, and if that bill is not ratified, such funds shall not be expended."

This means that if the legislature defeats the courts bill, the Judicial Department does not have \$300,000 to play with. The General Assembly could reappropriate it for another purpose, or the money would revert at the end of the fiscal year. Some substantive bills are defeated on their merits in Connecticut even though the budget has funded them in this way.

If the committee decides to follow the Connecticut approach, I would suggest the following language: "The Current Operations Appropriations Act, Capital Improvement Appropriation Act, or any other act appropriating funds to more than one subject or object may contain any legislation necessary to implement its appropriations provisions, but no other general or local legislation may be included in that such appropriation bill. A bill enacting, repealing, or amending general or local law and relating to only one subject or object may contain an appropriation to carry out its purpose."

This language would be more flexible than Connecticut because it would still allow a substantive bill to carry an appropriation to carry it out, but it would still be subject to the Executive Budget Act restriction that it can not be considered until the main bill has passed.

New York's constitutional provision in Article VII, Section 6 states "No provision shall be embraced in any appropriation bill...unless it relates specifically to some particular appropriation the bill, and any such provision shall be limited in its operation to such appropriation."

In contrast to Connecticut's 40 page appropriations bill, New York's runs to about 700 pages. This is largely because New York passes a line item budget. New York's enacted budget contains the detail of our Governor's proposed budget. New York uses far more special provisions than Connecticut, but they are limited to appropriations. For instance, there may be a statutory formula for funding public schools, and if the Legislature is increasing or decreasing funding, it may change the statutory formula in the bill. I enclose some scattered pages of the 1981 New York budget to show the kind of provisions which are found in the New York budget bill. Provisions are noted by arrows in the margin. Also note at pages 406-407 some "pork barrel" funds in the main budget bill.

New York's language is a little more flexible. To meld the New York language into the Connecticut language, I would suggest something along the order of "The Current Operations Appropriations Act, Capital Improvement Appropriation Act, or any other act appropriating funds to more than one subject or object may contain any legislation necessary to implement its appropriations provisions or which relates specifically to some particular appropriation in the bill, and any such legislation shall be limited in its operation to such appropriation. No other general or local legislation may be included in that such appropriation bill. A bill enacting, repealing, or amending general or local law and relating to only one subject or object may contain an appropriation to carry out its purpose."

Please let me know if I can provide further assistance in this matter.

APPENDIX "D"

October 31, 1985

MEMORANDUM

TO: Senate Select Committee on the Appropriations Process

FROM: Gerry F. Cohen
Director of Legislative Drafting

SUBJECT: Survey of other States Concerning Appropriations Process

At the instruction of the committee, I have surveyed the other 49 states concerning substantive legislation in the appropriations process, and restrictions on omnibus local appropriations bills. I received responses from 48 states. Only Michigan failed to respond. Following the text below is a chart outlining the responses, and footnotes to most entries on the table. On the table, the first category indicates responses to a question on whether substantive provisions on the appropriations bill are forbidden. The second category deals with restrictions that are not total prohibitions. The third category relates to prohibitions of omnibus local appropriations bills.

From analyzing the responses, it appears that 31 of the 48 states prohibit substantive legislation in appropriations bills, and that in three other states, provisions are now in court or are difficult to define. Nine states, including two of the three questionable states, have restrictions less than total prohibition. Thus, a total of 41 of the 48 states have restrictions or prohibitions either contained in the constitution, statutes, or legislative rules.

In addition, a total of 16 of the 48 states appear to prohibit omnibus local appropriations acts. Five other states have provisions which restrict the use of these bills. Many of the other states indicate they do not use such acts, even though they might not be prohibited.

Omnibus bills and substantive special provisions are almost universally condemned by the courts which have interpreted provisions concerning them. For instance, the United States Court

of Appeals for the District of Columbia Circuit has noted "Congress of course has undoubted power to permanently change existing laws even in an appropriation act, and the fact that it is universally recognized as exceedingly bad legislative practice and is forbidden by the rules of both House of Congress does not subject it to judicial scrutiny." Taylor v. Kjaer, 171 F.2d 343 (D.C. Cir. 1948).

The Arkansas Supreme Court has noted that that state's restrictions were designed to "...prevent the inclusion of separate and unrelated appropriations in a single bill, because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation." Cottrell v. Faubus, 347 S.W.2d 42, 53 (Ark. 1961). The Colorado Supreme Court in an advisory opinion opined that "...the evils and dangers of combinations and 'logrolling' in the matter of the appropriation of public revenue were so great that a separate provision was inserted in our constitution to protect it from improvident disbursements" In re House Bill 168, 39 P. 1096, 1098 (Colo. 1895).

The Washington Supreme Court has observed "It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation." Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977).

The Pennsylvania Supreme Court has noted that "... 'omnibus bills' became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits. A still more objectionable procedure grew up, of putting what is known as a 'rider' (that is, a new and unrelated enactment or provision) on the appropriation bills, and thus coercing the executive to approve obnoxious legislation, or bring the wheels of government to a stop for want of funds." Commonwealth ex rel. Attorney General v. Barnett, 48 Atl. 976, 977 (Pa. 1901).

New Hampshire faced this entire controversy in 1984, when a state constitutional convention dealt with this subject. The convention approved a constitutional provision banning special provisions, and the voters approved that ban in a 1984 referendum by an 80-20 margin. The New Hampshire Supreme Court noted in a May 1985 advisory opinion a convention memorandum which stated that "Because the leadership in the House and Senate controlled the Committee of Conference on the Budget, the negotiating was done behind closed doors without the input of the non-leadership representatives or the public." One convention delegate who was also a legislator noted in a convention debate "[U]nless we

address and stop these abuses today, they will never be addressed by the Legislature, because as a legislator, I can tell you they are tooled to our advantage. They are something that expedites the process, and we will never, never...reform ourselves, because they are used to our advantage."

While most of the literature is negative about special provisions, some states allow permanent statutory changes as long as they relate to items in the budget, some allow temporary changes for the biennium, and almost all allow limitations and restrictions on spending. The Louisiana Supreme Court in upholding such textual commentary stated the constitutional restriction in that state "...clearly limits the content of an appropriation bill to items of appropriation of money. However, inherent in the power of appropriation is the power to specify how the money shall be spent. Therefore, in addition to distinct 'items' of appropriation, the legislature may include in an appropriation bill qualifications, conditions, limitations, or restrictions on the expenditure of funds which would not be dealt with more properly in a separate bill." Henry v. Edwards, 346 So.2d 153, 157 (La. 1977).

Until 1984, North Carolina had a statutory prohibition against omnibus appropriations bills similar to "one subject", or "one object" constitutional provisions regarding appropriations bills in Alabama, Arizona, California, Colorado, Georgia, Maryland, Mississippi, Montana, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, and West Virginia.

The North Carolina language contained in G.S. 143-15 stated "...[N]o bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described..." The 1984 Session repealed the single object rule. (Ch. 1034, S.L.1983, sec. 159-161. The single object rule was repealed because the 1983 session had adopted the first omnibus local appropriation bill in spite of the statutory prohibition, so the statute was amended to conform to the practice.

This points out a problem with statutory rules concerning the legislative process. They have only as much effect as the legislature chooses to give them. Language in the rules of the two houses would have more binding force within the legislative process. This does not mean that a statute is ineffective. It is simply that an appropriation bill passed in violation of a statute supercedes the statute. Thus, a statute setting out legislative rules is really a policy statement. No appeal to the courts is permitted, however, for violation of a legislative rule. Only putting a rule in the Constitution guarantees outside enforcement.

This memorandum is not a comprehensive review of the nuances in all the cases and provisions, but gives some overview of the restrictions in other states. For instance, there have been

entire articles written on the difference between the "subject" of a bill and the "object" of a bill, but at this stage of the process it would be more useful to provide general information and use it as guidance in helping the committee decide what to prohibit or regulate.

Reference in any footnote to "Legislative staff" indicates the legislative staff of that state.

G7-1

c.c. Tom Covington

	FORBID SPEC PROV	REGULATE SPEC PROV	FORBID OMNIBUS LOCAL APPR.
<u>Alabama</u>	YES ¹	N.A.	? ²
<u>Alaska</u>	YES ³	N.A.	NO
<u>Arizona</u>	YES ⁴	N.A.	YES ⁵
<u>Arkansas</u>	YES ⁶	N.A.	YES ⁷
<u>California</u>	YES ⁸	N.A.	YES ⁹
<u>Colorado</u>	YES ¹⁰	N.A.	YES ¹¹
<u>Connecticut</u>	YES ¹²	N.A.	NO ¹³
<u>Delaware</u>	NO ¹⁴	NO	NO
<u>Florida</u>	YES ¹⁵	N.A.	YES ¹⁶
<u>Georgia</u>	YES ¹⁷	N.A.	YES ¹⁸
<u>Hawaii</u>	YES ¹⁹	N.A.	NO
<u>Idaho</u>	NO ²⁰	YES ²¹	NO ²²
<u>Illinois</u>	YES ²³	N.A.	NO ²⁴
<u>Indiana</u>	YES ²⁵	N.A.	?
<u>Iowa</u>	NO	YES ²⁶	NO
<u>Kansas</u>	YES ²⁷	N.A.	? ²⁸
<u>Kentucky</u>	? ²⁹	N.A.	NO
<u>Louisiana</u>	YES ³⁰	N.A.	NO
<u>Maine</u>	NO	NO	NO
<u>Maryland</u>	YES ³¹	N.A.	YES ³²
<u>Massachusetts</u>	YES ³³	N.A.	NO
<u>Michigan</u>			
<u>Minnesota</u>	NO ³⁴	NO	NO ³⁵
<u>Mississippi</u>	YES ³⁶	N.A.	YES ³⁷

	FORBID SPEC PROV	REGULATE SPEC PROV	FORBID OMNIBUS LOCAL APPR.
<u>Missouri</u>	YES ³⁸	N.A.	NO ³⁹
<u>Montana</u>	YES ⁴⁰	N.A.	? ⁴¹
<u>Nebraska</u>	YES ⁴²	N.A.	NO
<u>Nevada</u>	NO	YES ⁴³	NO
<u>New Hampshire</u>	YES ⁴⁴	N.A.	NO
<u>New Jersey</u>	YES ⁴⁵	N.A.	NO
<u>New Mexico</u>	YES ⁴⁶	N.A.	NO ⁴⁷
<u>New York</u>	NO	YES ⁴⁸	YES ⁴⁹
<u>N. Dakota</u>	? ⁵⁰	YES ⁵¹	YES ⁵²
<u>Ohio</u>	NO	YES ⁵³	NO ⁵⁴
<u>Oklahoma</u>	YES ⁵⁵	N.A.	? ⁵⁶
<u>Oregon</u>	YES ⁵⁷	N.A.	NO
<u>Pennsylvania</u>	YES ⁵⁸	N.A.	YES ⁵⁹
<u>Rhode Island</u>	NO	NO	NO ⁶⁰
<u>S. Carolina</u>	? ⁶¹	YES ⁶²	NO
<u>S. Dakota</u>	YES ⁶³	N.A.	YES ⁶⁴
<u>Tennessee</u>	YES ⁶⁵	N.A.	NO
<u>Texas</u>	YES ⁶⁶	N.A.	YES ⁶⁷
<u>Utah</u>	YES ⁶⁸	N.A.	NO
<u>Vermont</u>	NO ⁶⁹	N.A.	NO
<u>Virginia</u>	NO	YES ⁷⁰	NO ⁷¹
<u>Washington</u>	NO	YES ⁷²	NO
<u>W. Virginia</u>	YES ⁷³	N.A.	YES ⁷⁴
<u>Wisconsin</u>	NO	NO	YES ⁷⁵
<u>Wyoming</u>	NO	NO	YES ⁷⁶

¹Article IV, Section 71 of the Constitution of Alabama states "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the state, for interest on the public debt, and for public schools. The salary of no officer or employee shall be increased in such bill, nor shall any appropriation be made therein for any officer or employee unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject."

²While Article IV, Section 71 of the Alabama Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject.", legislative staff indicates that this issue has not been litigated. In practice, Alabama just makes sure the titles of appropriations bills containing unrelated subjects are broad enough to loosely describe the bills.

³Article II, Section 13 of the Alaska Constitution provides "Bills for appropriations shall be confined to appropriations." Legislative Budget and Audit Committee v. Hammond, a 1983 Superior Court case, is the only construction of this provision, and includes a good analysis of the provision and comparable ones in other states. The court noted "The purpose in restricting appropriations bills to appropriations was to avoid the practice of 'logrolling'. Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because frequently the appropriations bill is the result of a free conference committee. Various courts have noted the evil inherent in the practice." The Alaska Superior Court notes a Washington case Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977) where the Court stated "It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation."

⁴Article 4, Section 20 of the Arizona Constitution states "The general appropriation bill shall embrace nothing but appropriations for the different departments of the State, for State institutions, for public schools, and for interest on the public debt."

⁵Article 4, Section 20 of the Arizona Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject."

⁶Article V, Section 30 of the Arkansas Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the ordinary expense of the executive,

legislative, and judicial departments of the State..." Legislative staff notes that substantive provisions are acceptable if they define the purpose for which an appropriation is made or restrict or limit the purposes for which funds appropriated may be used.

⁷Section 30 of Article V of the Arkansas Constitution concludes by stating "...all other appropriations shall be made by separate bills, each embracing but one subject." The Arkansas Supreme Court has stated this provision is to "...prevent the inclusion of separate and unrelated appropriations in a single bill, because that practice opens the door to the evils that have come to be known as logrolling and pork barrel legislation." Cottrell v. Faubus, 347 S.W.2d 52, 53 (Ark. 1961).

⁸Article IV, Section 9 of the California Constitution states "A statute shall embrace but one subject..." Although Article IV, Section 12 of the California Constitution allows the budget bill to contain more than one item of appropriation, legislative staff indicates the budget bill is otherwise subject to the limitations of Section 9, and may not be used for the purpose of legislation. See, Association for Retarded Citizens v. Department of Developmental Services, 38 Cal.3d 384 (1985). Legislative staff indicates that bills, other than the Budget Bill, which enact substantive legislation may also contain an appropriation which effectuates the substantive provisions of the legislation.

⁹Article IV, Section 12 of the California Constitution states "No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose."

¹⁰Article V, Section 32 of the Colorado Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the expense of the executive, legislative and judicial departments of the state, state institutions, interest on the public debt, and for public schools. The Colorado Court of Appeals has stated "The sole purpose of the 'Long Bill' is to meet charges against the public funds by affirmative acts of the General Assembly; thus the 'Long Bill' may only be used to provide funds for programs that have been separately authorized and specifically detailed in other bills." Dodge v. Department of Social Services, 677 P.2d 969, 975 (Colo. Ct. App. 1982).

¹¹Article V, Section 32 of the Colorado Constitution concludes "All other appropriations shall be made by separate bills, each embracing but one subject." Article V, Section 21 of the Colorado Constitution states "...No bill, except general appropriation bills, shall be passed containing more than one subject." The Colorado Supreme Court has noted of the origin of these provisions, "...the evils and dangers of combinations and 'logrolling' in the matter of the appropriation of public revenue were so great that a separate provision was inserted in our constitution to protect it from improvident disbursements." In re

House Bill 168, 39 P. 1096, 1098 (Colo. 1895).

¹²C.G.S. 2-35 prohibits general legislation in an appropriations bill except where it implements appropriations provisions. It states in part "Each appropriation bill ... may contain any legislation necessary to implement its appropriations provisions, provided no other general legislation shall be made a part of such appropriation bill." Since this provision is statutory there is no court enforcement. Joint Rule 3.A.(1) states specifically that when a bill is referred from another committee to appropriations, the appropriations committee's "...consideration shall be limited to their fiscal aspects and appropriations provisions of such bills and resolutions and shall not extend to their other substantive provisions or purpose, except to the extent that such other provisions or purpose relate to the fiscal aspects and appropriations provisions of such bills."

¹³Connecticut has few specific special appropriations. Local grants-in-aid are generally covered by statutory provisions, and individual grants are administered through state agencies, usually by contracts.

¹⁴Legislative staff indicates Delaware does put substantive legislation in the appropriations bill. Article II, Section 16 of the Delaware Constitution states "No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject.", this indirectly allowing substantive provisions on appropriations bills.

¹⁵Section 12 of Article III of the Florida Constitution provides that "Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject." Legislative staff indicates that in 1983, the Legislature "got tired of having the Governor and various cabinet members and state agencies engaged in periodic law suits involving the General Appropriations Act. Consequently, a new system was adopted under which much of the proviso language is included in a separate bill, commonly known as the 'implementing bill' The implementing bill has not yet been challenged as being violative of the single-subject requirement." Section 6 of Article II of the Florida Constitution requires that all laws be limited to a single subject and matters properly related to that subject. The Florida Supreme Court noted in Department of Education v. Lewis, 416 So.2d 455 (1982) "An extensive body of constitutional law teaches that the purpose of Article III, section 6 is to ensure that every proposed enactment is considered with deliberation and on its own merits. A lawmaker must not be placed in the position of having to accept a repugnant provision in order to achieve adoption of a desired one."

¹⁶Article III, Section 6 of the Florida Constitution contains a single object rule. Legislative staff indicates that omnibus local appropriations bills have never been used in Florida.

¹⁷Article III, Section IX, Paragraph III of the Constitution of the State of Georgia provides "The general appropriations bill shall embrace nothing except appropriations fixed by previous laws; the ordinary expenses of the executive, legislative, and judicial departments of the government; payment of the public debt and interest thereon; and for support of the public institutions and educational interests of the state."

¹⁸The constitutional provision cited in the previous footnote concludes "All other appropriations shall be made by separate bills, each embracing but one subject."

¹⁹While the Constitution does not speak directly to the issue of substantive legislation, Article III, Section 14 of the Hawaii Constitution provides "Each law shall embrace but one subject...", a provision which legislative staff has said has been construed to prohibit substantive legislation.

²⁰Idaho legislative staff notes that as a matter of practice and tradition, it is very rare that a substantive bill would also contain an appropriation. Idaho does not have a general appropriations bill, relying instead on about 120 separate bills.

²¹Article 3, Section 16 of the Idaho Constitution states "Every act shall embrace but one subject and matters properly connected therewith..." This one subject rule might limit substantive legislation to that relating to the specific appropriation in the bill.

²²Idaho does not appropriate money directly for local projects of any sort.

²³Article IV, Section 8 of the Illinois Constitution states "Appropriations bills shall be limited to the subject of appropriations."

²⁴Legislative staff indicates omnibus local appropriations are not forbidden but are little used. State assistance to local governments is usually appropriated to a state agency in one lump sum which is then distributed to the various units according to a formula.

²⁵Article 4, Section 19 of the Indiana Constitution states "An act ... shall be limited to one subject and matters properly connected therewith." In Official Opinion No. 13, 8/19/1975, the Attorney General of Indiana noted "Appropriation Acts are limited by the Indiana Constitution to the subject matter of money. They cannot create, amend, or repeal the substantive laws."

²⁶Article 3, Section 29 of the Iowa Constitution states that "Every act shall embrace but one subject, and matters properly connected therewith...."

²⁷Article 2, Section 16 of the Kansas Constitution states "No bill shall contain more than one subject, except appropriation bills..." The Kansas Supreme Court held that this exception only dealt with different subjects of appropriations, and that "...appropriation bills may not include subjects wholly foreign and unrelated to their primary purpose: authorizing the expenditure of specific sums of money for specific purposes." Kansas ex. rel Stephan v. Carlin, 230 Ks. 252 (1981).

²⁸Article 11, Section 9 of the Kansas Constitution states "The state shall never be a party in carrying on any work of internal improvement except...(1)...highways...;(2)...flood control works and works for the construction or development of water resources." Legislative staff indicates that state rarely appropriates funds directly to a non-state organization.

²⁹While Section 51 of the Kentucky Constitution provides that "No law enacted by the General Assembly shall relate to more than one subject...", and requires statutes amended to be set out at length, legislative staff indicates that a case is currently pending on this issue as to applicability on substantive provisions in the appropriations bill. (Commonwealth ex rel. Armstrong v. Collins, 84-CI-0787, Franklin Circuit Court, filed 6/6/84.)

³⁰Article 3, Section 16(C) of the Louisiana Constitution provides "The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt or interest thereon." The Louisiana Supreme Court has held that this provision "...clearly limits the content of an appropriation bill to items of appropriation of money. However, inherent in the power of appropriation is the power to specify how the money shall be spent. Therefore, in addition to distinct 'items' of appropriation, the legislature may include in an appropriation bill qualifications, conditions, limitations, or restrictions on the expenditure of funds which would not be dealt with more properly in a separate bill." Henry v. Edwards, 346 So. 2d 153, 157 (La. 1977). The court went on to add "The distinction between what constitutes a condition or limitation properly included in a general appropriation bill and what amounts to a provision which is essentially a matter of general legislation more properly dealt with in a separate enactment appears, on first consideration, to be difficult to draw....These provisions were never intended to hamstring the legislature in its legitimate efforts to control the purse strings of government. On the other hand, legislative control cannot be exercised in such a manner as to encumber the general appropriation bill with veto-proof 'logrolling' measures, special interest provisions which could not succeed if separately enacted, or 'riders', substantive pieces of legislation incorporated in a bill to insure passage without veto. It is not enough that a provision be related to the institution or agency to which funds are appropriated. Conditions and limitations properly

included in an appropriation bill must exhibit such a connexity with money items of appropriation that they logically belong in a schedule of expenditures. We conclude...that the ultimate test is one of appropriateness." Id. at 158.

³¹Article III, Section 52 of the Maryland Constitution provides that the Governor prepares and submits the budget bill to the General Assembly. The power of the legislature is itemized in that section. "The function and effect of the Budget Bill ... is to appropriate money, not to legislate generally." 59 Opinions of the Attorney General 70, 75 (1974). The General Assembly may "...condition or limit the use of money appropriated, or the use of the facility for which the money is appropriated, provided the condition or limitation is directly related to the expenditure of the sum appropriated, does not, in essence, amend ...substantive legislation... and is effective only during the fiscal year for which the appropriation is made." Bayne v. Secretary of State, 283 Md. 560, 574 (1978). Legislative staff indicates that supplemental appropriations bills may contain substantive provisions related to the same subject as the supplemental appropriation, because of the one subject rule for legislation.

³²Article III, Section 52(8)(a) of the Maryland Constitution requires every appropriation not made by the Budget Bill "...shall be embodied in a separate bill limited to some single work, object, or purpose therein stated."

³³Section 7L of Chapter 20 of the General Laws of Massachusetts states that "A law making an appropriation for expenses of the commonwealth shall not contain provisions on any other subject matter. As used in this section, expenses of the commonwealth shall include expenses of the executive, legislative, and judicial departments, interest, payments on the public debt, local aid, and other items of expense authorized or required by existing law." Substantive legislation does still appear in appropriations bills, according to legislative staff.

³⁴While Minnesota has a one subject clause, in practice the various sections of a bill need only be generically related, according to legislative staff.

³⁵While Article IV, Section 17 of the Minnesota Constitution provides "No law shall embrace more than one subject...", legislative staff indicates in practice the various sections of a bill need be only generically related. While no appropriation has been voided because of the provisions, staff indicates the legislature "respects" the clause so enforcement by the courts is unnecessary.

³⁶Article 4, Section 69 of the Mississippi Constitution state that "General appropriation Bills shall contain only the appropriations to defray the ordinary expenses of the executive, legislative, and judicial departments of the government; to pay interest on state bonds and to support the common schools. All

other appropriations shall be made by separate bills, each embracing but one subject. Legislation shall not be engrafted on appropriation Bills, but the same may prescribe the conditions on which the money may be drawn, and for what purposes paid." House Rule 111 repeats this provision.

³⁷Article 4, Section 69 of the Mississippi Constitution states that appropriations other than the General appropriation bill "...shall be made by separate bills, each embracing but one subject."

³⁸Article III, Section 23 of the Missouri Constitution provides "No bill shall contain more than one subject...except general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated." The Missouri Supreme Court has interpreted this to mean "...legislation of a general character cannot be included in an appropriation bill." State ex rel. Davis v. Smith, 75 S.W.2d 828, 830 (1934).

³⁹While Article III, Section 23 of the Missouri Constitution provides "No bill shall contain more than one subject...except general appropriation bills", legislative staff indicates this provision would not prevent an omnibus local bill. In fact, that state does not directly appropriate any funds for special local projects.

⁴⁰Article V, Section 11(4) of the Montana Constitution provides "A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools." Joint Rule 6-4 repeats this constitutional provision. M.C.A. 17-8-103(2) expands on this by stating "A condition or limitation contained in an appropriation act shall govern the administration and expenditure of the appropriation until the appropriation has been expended for the purpose set forth in the act or until such condition or limitation is changed by a subsequent appropriation act. In no event does a condition or limitation contained in an appropriation act amend another statute." Legislative staff notes that while the main budget bill may not contain substantive provisions, it may contain conditions and limitations on administration and expenditure. A bill may appropriate money for the specific purpose of carrying out a substantive provision of that law, i.e. creating a lottery and appropriating money to pay expenses of the lottery.

⁴¹While the constitutional provision in the previous footnote concludes "Every other appropriation shall be made by a separate bill, containing but one subject", staff indicates that this has been construed to allow bills to appropriate monies to many objects, as long as there is but one subject. The subject could be incarceration of criminals, and the objects renovating jails, hiring more guards, creating and funding an ombudsman, and setting up a prison industries program. By analogy to the North

Carolina situation, this would allow one bill to appropriate funds to 100 different fire departments, but not also to an arts council.

⁴²Article III, Section 22 of the Nebraska Constitution provides "Bills making appropriations for the pay of members and officers of the legislature and for the salaries of the officers of the Government shall contain no provision on any other subject." Article III, Section 14 states "No bill shall contain more than one subject..." Although Section 30 appears to indicate that salaries must be in a completely separate bill, the Indiana Supreme Court has stated that they may be in the general appropriations bill because while Section 30 provides that the salaries may not be in a bill on "...any other subject...", appropriations to state agencies generally are not another subject. Rein v. Johnson, 149 Neb. 67, 82 (1947). Indiana legislative staff indicates that while substantive legislation on an appropriations bill is not permissible, an appropriation on a substantive bill is permissible, if it relates to the subject of the program for which substantive legislation is being enacted.

⁴³The provisions of Article 4 of Section 17 of the Nevada Constitution provide that "Each law enacted by the Legislature shall embrace but one subject, and matter, properly connected therewith...." Thus, any substantive legislation which was not related to the subject of appropriations would be unconstitutional. See, Stat v. Silver, 9 Nev. 227 (1874).

⁴⁴Article 18-a of Part 2 of the New Hampshire Constitution, adopted in 1984, states "All sections of all budget bills before the general court shall contain only the operating and capital expenses for the executive, legislative and judicial branches of government. No section or footnote of any such budget bill shall contain any provision which establishes, amends or repeals statutory law, other than provisions establishing, amending or repealing operating and capital expenses for the executive, legislative, and judicial branches of government." According to an Advisory Opinion of the New Hampshire Supreme Court, dated May 10, 1985, this Constitutional Amendment was adopted by a State Constitutional Convention in 1984. The practice of adding budget footnotes (what North Carolina calls "special provisions") began in the 1970's. The Supreme Court notes one memorandum which stated "Because the leadership in the House and Senate controlled the Committee of Conference on the budget, the negotiating was done behind closed doors without the input of the non-leadership representatives or the public. The representatives also faced an all or nothing choice when the Conference report came back to the floor...." The adopted minority report on the constitutional amendment noted that the amendment "would prevent infamous footnotes which have appeared in increasing numbers in recent years." One convention delegate noted "There are two kinds of footnotes. One kind is fiscal in character. It is fiscal management of the budget entries. That kind, which constitutes

the majority of the sections, is not touched in this proposal. The footnotes that are touched are those that amend, repeal, or enact statutory law." Another convention delegate, who was also a state legislator noted in the convention "[U]nless we address and stop these abuses today, they will never be addressed by the Legislature, because as a legislator, I can tell you they are tooled to our advantage. They are something that expedites the process, and we will never, never, I submit to you, we will never close these loopholes, and we will never reform ourselves, because they are used to our advantage." The amendment received an 80% favorable vote in a 1984 referendum.

⁴⁵Article IV, Section VII, par. 4 of the New Jersey Constitution states "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object...", and paragraph 5 of the same section requires statutes amended to be set out at length. Legislative staff indicates that such provisions prohibit the amendment of existing law or the promulgation of new substantive law in an act the main purpose of which is the appropriation of state funds. The Attorney General has held "...it would appear that the purpose of appropriation legislation would not extend to the amendment of permanent law." Formal Opinion of the Attorney General No. 15-1975. More recently, the New Jersey Supreme Court held that the budget bill can include matters "related to appropriations or the expenditure of appropriated sums." Karcher v. Kean, 97 N.J. 483, 511 (1984).

⁴⁶Article IV, Section 16 of the New Mexico Constitution provides "General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools and other expenses required by existing laws."

⁴⁷Article IV, Section 16 of the New Mexico Constitution provides "All other appropriations shall be made by separate bills." Note that this provision does not conclude "...each embracing but one subject." as is found in many other states. Legislative staff states that in fact they do have an omnibus bill they call a "Christmas tree".

⁴⁸Article VII, Section 6 of the New York Constitution provides "No provision shall be embraced in any appropriation bill submitted by the Governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

⁴⁹Article VII, Section 6 of the New York Constitution provides "Except for the appropriations contained in the bills submitted by the Governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by

separate bills each for a single object or purpose."

50While Article IV, Section 36 of the North Dakota Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools.", staff indicates that the state does not use a general appropriation bill, instead having a bill for each department. These bills will have substantive provisions relating to the department covered by the bill.

51North Dakota Senate Rule 511 provides "The Committee on Appropriations shall not change the intent of any measure rereferred to it after a hearing in another standing committee of the Senate, unless necessitated by consideration of the appropriation contained in the measure."

52Article IV, Section 36 of the North Dakota Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject."

53While Article II, Section 15(D) of the Ohio Constitution provides "No bill shall contain more than one subject..." the Ohio Supreme Court has held that the purpose of the provision is not to prevent multiple subjects but to stop disunified subjects, thus they have to be unrelated to be void. The provision has been held to be directory rather than mandatory, and specifically a bill changing a program and appropriating funds to that program is not void because "...there seems to be no serious contention that an appropriation is in itself a second subject, therefore, an act may, for example, establish an agency, set out the regulatory program, and make an appropriation for the agency without violating the one-subject rule." State v. Celeste, 11 Ohio Bar Reports 436, 441 (1984), quoting with approval Ruud, "No Law Shall Embrace More Than One Subject" (1958) 42 Minn. L. Rev. 389, 441".

54Legislative staff states Ohio does not have an omnibus local appropriations bill. Some appropriations to agencies like volunteer fire departments and drama groups do appear in the Main Appropriation Bill and the Capital Improvements Bill.

55Article 5, Section 56 of the Oklahoma Constitution states that "The General appropriations bill shall embrace nothing but appropriations for the expenses of the executive, legislative, and judicial departments of the State, and for interest on the public debt. The salary of no officer or employee of the State, or any subdivision thereof, shall be increased in such bill, nor shall any appropriation be made therein for any such officer or employee, unless his employment and the amount of his salary shall have been already provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject." However, Oklahoma does not in fact use general appropriations bills, so as a practical matter this limitation is meaningless.

The one subject rules in Article 5, Section 57 ("Every act of the Legislature shall embrace but one subject...except general appropriations bills, general revenue bills, and bills adopting a code, digest, or revision of statutes...") has not been construed as prohibiting substantive legislation in appropriations bills. House Rule 3, Section 2(b) does state that the House may not consider a bill "If said bill or resolution has been amended by the insertion of matter not germane to the purpose of the original bill or resolution."

⁵⁶While Article 5, Section 56 of the Oklahoma Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject.", this issue has not been litigated. Legislative staff indicates that state has an omnibus bill for "various state agencies" on the theory that such appropriations are for but one subject.

⁵⁷Article IX, Section 7 of the Oregon Constitution provides "Laws making appropriations, for the salaries of public officers, and other current expenses of the State, shall contain provisions upon no other subject."

⁵⁸Article III, Section 11 of the Pennsylvania Constitution provides "The general appropriation bill shall embrace nothing but appropriations for the executive, legislative, and judicial departments of the Commonwealth, for the public debt, and for public schools." This language is repeated in Senate Rule 7(a).

⁵⁹Article III, Section 11 of the Pennsylvania Constitution provides "All other appropriations shall be made by separate bills, each embracing but one subject." This language is repeated in Senate Rule 7(a).

⁶⁰Article 4, Section 14 of the Rhode Island Constitution does provide that "The assent of two-thirds of the members elected to each house of the General Assembly shall be required to every bill appropriating the public money or property for local or private purposes."

⁶¹Article III, Section 17 of the South Carolina Constitution provides "Every act or resolution having the force of law shall relate to but one subject...", this statute has been applied to the appropriations bill with a test of germaneness to the matter of appropriating money and raising revenue, Powell v. Red Carpet Lounge, 311 S.E. 2d 719 (S.C. 1984), or with a test of reasonable relation to the subject of making appropriations to meet government expenses and to direct the manner of expenditures of these funds, Maner v. Miller, 296 S.E.2d 533 (S.C. 1982). A case is currently pending concerning that issue.

⁶²S.C. Code 11-11-440(A), enacted in 1984, provides "The General Assembly may not provide for any general tax increase or enact new general taxes in the permanent provisions of the State General

Appropriation Act or acts supplemental thereto, and any such general tax increases or new general taxes must be enacted only by separate act." Legislative staff notes that this statutory provision is not binding on the General Assembly.

⁶³Article XII, Section 2 of the South Dakota Constitution provides that "The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative, and judicial department of the state, the current expenses of state institutions, interest on the public debt, and for common schools. All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all the members of each branch of the Legislature. South Dakota legislative staff indicates that substantive legislation may be contained in special appropriations bills.

⁶⁴Article XII, Section 2 of the South Dakota Constitution provides that "All other appropriations shall be made by separate bills, each embracing but one object."

⁶⁵Article II, Section 17 of the Tennessee Constitution provides "No bill shall become a law which embraces more than one subject..." T.C.A. 9-6-108 provides "The appropriation bill shall not contain any provisions of general legislation." The Attorney General has held that the constitutional provision on single subject forbids substantive legislation in an appropriations bill. Opinion 194, May 12, 1983.

⁶⁶Article 3, Section 35 of the Texas Constitution provides "No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject..." Texas House Rule 8, Section 4 provides "A general law may not be changed by the provisions in an appropriations bill." An explanatory note to the House Rules states "There are many rulings which hold that a general law may not be changed in an appropriation bill, but the right of the legislature to attach conditions to an appropriation has been upheld." Legislative staff notes the parenthetical reference to general appropriations bills in Section 35 has been construed as recognition that appropriations is a single subject rather than as an exception to the unity of subject requirement, see Moore v. Shepard, 192 S.W. 2d 559 (1946).

⁶⁷Article III, Section 35 of the Texas Constitution is cited in the previous footnote. Legislative staff states that appropriations bills other than a general appropriations bill is subject to the single subject rule, and thus multiple appropriations in a bill other than a general appropriations bill must have a common subject other than "appropriations".

⁶⁸Article VI, Section 22 of the Utah constitution provides "Except general appropriation bills...no bill shall be passed

containing more than one subject." Case law forbids substantive legislation on appropriations bills. In Petty v. Utah Board of Regents, 595 P.2d 1299, 1301 (1979), the Utah Supreme Court stated "...the purpose of the Appropriations act is to allocate finances, and not to affect substantive changes in the law on other matters. Consequently, it is our opinion that such an expression of intent in an appropriations act should not be regarded as repealing or superseding other statutory law." Utah Code 63-38-13 does provide "Any and all conditions as may be attached to items of appropriation made by the appropriations act not inconsistent with law shall be binding upon the recipient of any such appropriation." Utah Joint Rule 4.14 provides "The legislature may attach conditions to items of appropriation in appropriations bills."

69Legislative staff indicates that "...while we have no specific prohibition on this practice, there is a tradition in the Vermont legislature that substantive provisions should be kept to a minimum in appropriations bills. This tradition is founded on the comity and respect which the appropriations committees generally accord to other standing committees of the Legislature. However, each year a few substantive provisions appear in general appropriations acts." (letter of William P. Russell, Chief Legislative Counsel, to Gerry Cohen, September 25, 1985.)

70Article IV, Section 12 of the Virginia Constitution states "No law shall embrace more than one subject..." The courts have been liberal in allowing the legislature the freedom to include a great many provisions within a broad subject area into a single bill. However, legislative staff indicates that the courts do not allow logrolling, including a provision that might have difficulty passing on its own merits within a bill that is sure to pass.

71While Article IV, Section 12 of the Virginia Constitution provides "No law shall embrace more than one subject...", legislative staff indicates that this rule has been liberally construed, and an omnibus local bill would probably be allowed. In practice, no such acts are passed in that state.

72Article II, Section 19 of the Washington State Constitution provides "No bill shall embrace more than one subject...", and Article II, Section 37 of that Constitution provides "No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth at full length." In a fact situation where codified eligibility standards were set for a public assistance program by codified law, the legislature attempted to add an additional requirement with an uncoded provision. The Washington Supreme Court construed the two constitutional sections together so that "General law cannot be suspended by provisions in appropriations bills which are in conflict." Flanders v. Morris, 558 P. 2d 769 (1977). Legislative staff notes that although the case statement seems absolute, if the title of the bill had noted the change and the eligibility

statute had been actually amended in the bill, the case result might be different.

⁷³Article 6, Section 51 of the West Virginia Constitution, does not specifically speak to legislation in an appropriations bill, but in specifically listing what is to be in the budget submitted by the governor, and limiting the power of the legislature to amend the budget bill, appears to have prohibited substantive legislation. The Attorney General has noted that the inclusion of general legislation in an appropriation act renders such legislation void, 45 Op. Att'y Gen. 543 (1953).

⁷⁴Article 6, Section 51C(7)(a) of the West Virginia Constitution provides "Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object, or purpose therein stated and called therein a supplementary appropriation bill..."

⁷⁵Article IV, Section 18 of the Wisconsin Constitution provides that "No private or local bill which may be passed by the Legislature shall embrace more than one subject..." Legislative staff indicates that this provision would forbid an omnibus bill making local appropriations to specified grantees.

⁷⁶Article III, Section 24 of the Wyoming Constitution states "No bill, except general appropriations bills ... shall be passed containing more than one subject."

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APPENDIX
E

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October 3, 1985

M E M O R A N D U M

TO: Senate Select Committee on the Appropriations Process

FROM: Sabra J. Faires *SJF*
Staff Attorney

SUBJECT: The Public Purpose Doctrine

The public purpose doctrine restricts the power of the General Assembly, and of local governmental units, to raise revenue through taxes and to appropriate tax and nontax revenues of the State or governmental unit. In accordance with this doctrine, taxes may be levied only for a public purpose and funds may be appropriated only for a public purpose.

The public purpose doctrine is imposed on governmental entities by the North Carolina Constitution as well as the United States Constitution. Article V, §2(1) of the North Carolina Constitution contains a partial statement of this doctrine, providing that "[t]he power of taxation shall be exercised in a just and equitable manner, for public purposes only". The similar restriction on appropriations of revenue is supplied by judicial interpretation of this constitutional provision. The Supreme Court of North Carolina has repeatedly held that the power to appropriate funds from the public treasury is no greater than the power to levy taxes to generate the funds. The same restrictions on levying taxes and appropriating funds would apply in the absence of this state constitutional provision, however, because the due process clause of the Fifth Amendment of the United States Constitution, as interpreted by the United States Supreme Court, mandates that taxes be levied only for public purposes and that public funds be used only for public purposes.

Although it is clear that public funds may be appropriated only for a public purpose, it is not clear what is and is not a public purpose. Neither the United States Supreme Court nor the North Carolina Supreme Court has formulated a definition of public purpose. Instead, the determination of whether an appropriation is for a public purpose is made on a case-by-case basis, with the court emphasizing one factor in one case and a different one in another. In fact, the North Carolina Supreme Court freely admits that a definition of public purpose cannot be established once and for all because "the concept expands with the population, economy, scientific knowledge, and changing conditions." Thus, what once was considered a public purpose may no longer be one and, likewise, what was previously not a public purpose may become one. Appropriations to chambers of commerce, for example, were once held invalid but were subsequently upheld as being for a public purpose.

In making an appropriation, the General Assembly or local governmental unit obviously determines that the appropriation is for a public purpose. Statements or findings by the appropriating entity that an appropriation is for a public purpose are not conclusive, however, and a reviewing court uses its own judgment to determine whether an appropriation satisfies the public purpose requirement. In reviewing an appropriation, the court will presume, as it will with all legislation, that the appropriation is valid and will uphold the appropriation unless it is clearly established that the appropriation is not for a public purpose.

In reviewing the North Carolina cases on public purpose, two different approaches to the issue can be discerned. In most of the cases, the court focuses on the benefits to be obtained by the appropriation in question and weighs the benefits accruing to the public against those accruing to individuals or other private entities as a result of the appropriation. If the public benefits outweigh the private benefits, the appropriation is held to be for a public purpose. Conversely, if the private benefits outweigh the public benefits, the appropriation is held to be invalid. In a few cases, the court considers the public versus private benefits of the appropriation, but focuses more on whether the appropriation is for an activity in which the government should be engaged. If the activity is found to be a proper function of government, the appropriation is held to be for a public purpose. If the activity is found to be one that is not a proper function of government, such as operating a hotel or aiding business ventures through the issuance of tax-exempt revenue bonds, the appropriation is held invalid even though it may result in substantial public benefits. In several cases concerning tax-exempt revenue bonds, the court has made clear that it is not a function of government either to engage in private business itself or to aid particular business ventures, and that the government may invade the private sector only when private enterprise has demonstrated its inability or its unwillingness to meet a public need.

Even though some uncertainty surrounds the meaning of public purpose, several principles can be drawn from the numerous North Carolina cases on the public purpose doctrine. First, an appropriation that is for a necessary expense of government, such as salaries of governmental employees and the construction of governmental office buildings, is for a public purpose. Second, because the State through its police power has the authority to protect or promote the health, morals, order, safety, and general welfare of society, appropriations for government-run programs or facilities that promote one of these purposes are for public purposes. For example, appropriations to train policemen, establish a county hospital, and establish a park are for public purposes. Third, an appropriation for a public purpose can be made to a private entity. Fourth, an appropriation that benefits the public more than it benefits private entities is for a public purpose unless it requires the government to intrude unnecessarily into the private sector. Finally, a purpose that violates the constitution by promoting religion or in some other way, exclusive of the public purpose requirement, cannot be for a public purpose.

The attached tables list purposes that have been examined by the North Carolina courts to determine whether they comply with the public purpose requirement. Purposes that have been found unconstitutional are listed in Table I; those that have been upheld are listed in Table II. In addition to the cases in the tables, the following articles are helpful to an understanding of the public purpose doctrine in North Carolina: Municipal Bonds - North Carolina Enters the Housing Market, 19 Wake Forest Law Review 931 (1983); Constitutional Law - Public Purpose - Restricting Revenue Bond Financing of Private Enterprise, 52 N.C. Law Review 859 (1974); Municipal Corporations - Public Purpose - Taxation and Revenue Bonds To Finance Low-Income Housing, 49 N.C. Law Review 830 (1971); Municipal Corporations - Taxation - Meaning of Public Purpose, 25 N.C. Law Review 504 (1947).

SLF/no
N23-27

Table I: No Public Purpose

<u>Case</u>	<u>Tax or Appropriation and Purpose</u>	<u>Decision</u>
Stanley v. Department of Conservation and Development, 284 N.C. 15 (1973)	Issuance of tax-exempt revenue bonds by county Pollution Abatement & Industrial Facilities Financing Authorities to provide funds to construct pollution control facilities and industrial facilities that would ultimately be conveyed to private industry.	Bonds are invalid; issuing tax-exempt bonds to aid particular businesses found not to be a proper function of government; benefits to public found to be incidental compared to benefits to private entities.
Foster v. N.C. Medical Care Comm'n., 283 N.C. 110 (1973)	Appropriation to enable Medical Care Commission to issue tax-exempt revenue bonds to construct hospitals that would ultimately be conveyed to public or private, nonprofit entities.	Appropriation invalid; financing the construction of hospitals to be privately operated, managed, and controlled not a public purpose because tax revenues may not be used for private entities, "no matter how benevolent".
Mitchell v. N.C. Indus. Dev. Financing Auth., 273 N.C. 137 (1968)	Appropriation to enable N.C. Industrial Financing Authority to issue tax-exempt revenue bonds to finance industrial facilities that, upon construction, were to be leased to private industry.	Appropriation invalid; financing the construction of private industrial facilities found not to be a proper function of government; social order found not to be threatened by widespread unemployment.
Nash v. Town of Tarboro, 227 N.C. 283 (1947)	Tax levy to pay for general obligation bonds issued to finance construction of hotel by Town.	Tax and bonds invalid; a municipality cannot embark in a private enterprise and the operation of a hotel is essentially a private business; a hotel would serve useful purpose but its incidental benefits are too few to make it a public purpose.

Table II: Public Purpose

<u>Case</u>	<u>Tax or Appropriation and Purpose</u>	<u>Decision</u>
North Carolina ex. rel Horne v. Chafin, 62 N.C. App. 95, aff'd per curiam, 309 N.C. 813 (1983)	Appropriation by Charlotte City Council and Mecklenburg County Commissioners for reception honoring General Assembly and Senate President Pro Tem.	Upheld; presenting local interests to legislators found to be a proper function of local government and to benefit residents of Charlotte-Mecklenburg.
Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Bd. of Educ., 55 N.C. App. 134 (1981)	Expenditure of funds by county board of education for extended day program at elementary school.	Upheld; program found to further education and bestow greater public than private benefit.
In re Housing Bonds for Persons of Moderate Income, 307 N.C. 52 (1982)	Issuance by Housing Finance Agency of tax-exempt revenue bonds to finance individual mortgage loans for moderate-income persons and to finance project development loans for moderate-income residential housing.	Upheld; providing housing to persons otherwise unable to attain it is a public purpose provided similar mortgage loans unavailable from private lenders.
Hughey v. Cloninger, 297 N.C. 86 (1979)	Appropriation by county board of commissioners to Dyslexia School of N.C., a private, nonprofit school.	Public purpose upheld but appropriation declared invalid because no statute authorized county to spend money for this purpose.
Martin v. N.C. Housing Corp., 277 N.C. 29 (1970)	Appropriation to enable N.C. Housing Corp. to issue tax-exempt revenue bonds to finance individual mortgage loans for low-income persons and to finance project development loans for construction of low-income residential housing.	Upheld; providing safe, sanitary housing for persons who could not otherwise obtain the housing is a public purpose; public benefit outweighs private; private enterprise found unable to meet this need.

<u>Case</u>	<u>Tax or Appropriation and Purpose</u>	<u>Decision</u>
State Educ. Assistance Auth. v. Bank of Statesville, 276 N.C. 576 (1976)	Issuance of tax-exempt revenue bonds to finance loans to needy students.	Upheld; public benefit of education greater than private benefit to in- dividuals that qualify for the loans; commercial lenders found unwilling to make these loans.
Keeter v. Town of Lake Lure 264 N.C. 252 (1965)	Issuance of municipal revenue bonds to finance purchase of lake and power plant that, by contract with Duke Power, served the Town.	Upheld; municipal ownership of plant and lake a proper municipal purpose; purchase of plant and lake found necessary to preserve the existence of the Town.
Horton v. Redevelopment Comm'n of High Point, 262 N.C. 306 (1964)	Appropriation and issuance of municipal revenue bonds to finance urban redevelopment project.	Upheld; redevelopment, slum clearance and urban renewal are public purposes; construction of municipal off-street parking facilities may or may not be a public purpose depending on facts.
Morgan v. Town of Spindale, 254 N.C. 304 (1961)	Tax levy to pay for general obligation bonds issued to finance construction of armory facilities for N.C. National Guard.	Upheld; protection against invasion and maintenance of peace and order are governmental functions.
Dennis v. City of Raleigh, 253 N.C. 400 (1960)	Appropriation to Raleigh Chamber of Commerce to advertise advantages of Raleigh to prospective industry.	Upheld; advertising the natural ad- vantages, resources, and adaptability of locality with the object of in- creasing the locality's trade and commerce and encouraging people to settle in community found to be a public purpose.
Kamsey v. Rollins, 246 N.C. 647 (1957)	Tax levy to pay for county general obligation bonds issued to finance water and sewer systems.	Upheld; construction of water and sewer systems a necessary govern- mental expense.

<u>Case</u>	<u>Tax or Appropriation and Purpose</u>	<u>Decision</u>
City of Greensboro v. Smith, 241 N.C. 363 (1955)	Appropriation to construct war memorial consisting of auditorium and recreation facilities.	Upheld; expenses found not to be necessary governmental functions but held to be for public purpose.
Jamison v. City of Charlotte, 239 N.C. 682 (1954)	Tax levy to pay for issuance of general obligation bonds to finance public library.	Upheld; library found to be a means of education, which is a public purpose.
City of Greensboro v. Smith, 239 N.C. 138 (1954)	Appropriation to build municipal swimming pool as part of city's recreational system.	Upheld; not a necessary expense but for a public purpose.
Green v. Kitchen, 229 N.C. 450 (1948)	Appropriation by Town of Weldon to reimburse town policeman for training at FBI's National Police Academy.	Upheld; appropriation found to be for maintenance of law and order, which is a recognized and essential object of government; direct reimbursement to police officer irrelevant because the test is not who receives money but the purpose for which it is to be expended.
Greensboro-High Point Authority v. Johnson, 226 N.C. 1 (1945)	Appropriation by Guilford County, Greensboro, and High Point to Greensboro-High Point Airport Authority.	Upheld; establishment and maintenance of airport serves public need and is for public purpose.
Turner v. City of Reidsville, 224 N.C. 42 (1944)	Tax levy to pay for municipal general obligation bonds issued to establish and maintain municipal airport.	Upheld; for public purpose even though no airline then stopped at Reidsville and City had no assurances any would stop there in the future.

<u>Case</u>	<u>Tax or Appropriation and Purpose</u>	<u>Decision</u>
Bridges v. City of Charlotte, 221 N.C. 472 (1942)	Tax levy and appropriation by Charlotte for local share of employer payments to teachers' retirement fund.	Upheld; retirement fund found to be for a public purpose because it will improve the standards of teacher service and stabilize teacher employ- ment; benefits to members of retire- ment system found to be incidental when compared to public benefit in improved education.
Briggs v. City of Raleigh, 195 N.C. 223 (1928)	Tax levy to pay for general obligation bonds issued by city to develop State Fair.	Upheld; a State Fair promotes the general welfare of the people by advancing their education in agricultural and industrial matters and by increasing their appreciation for the arts and sciences and is thus a public purpose; State Fair a municipal purpose because community interests in fair are inseparable from general public interest.

W22-33



SESSION 1985

Appendix
115



SENATE BILL 851

Short Title: Legislation on Appropriations.

(Public)

Sponsors: Senators Rand, Plyler; Ballenger, Barnes, Basnight,*

Referred to: Special Message to House.

July 10, 1985

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTRICT SUBSTANTIVE LEGISLATION IN APPROPRIATIONS
3 BILLS..

4 The General Assembly of North Carolina enacts:

5 Section 1. The Executive Budget Act, Article 1 of
6 Chapter 143 of the General Statutes, is amended by adding a new
7 section to read:

8 "§ 143-15.1. Limitation on general appropriations bills.--(a)
9 No provision changing existing law shall be contained in the
10 Current Operations Appropriations Bill or in the Capital
11 Improvement Appropriations Bill, or in any bill generally
12 revising appropriations for the second fiscal year of a biennium
13 which were contained in the Current Operations Appropriations
14 Bill or the Capital Improvement Appropriations Bill..

15 (b) No amendment to any bill listed in subsection (a) of this
16 bill shall be in order if the language is prohibited by that
17 subsection.

18 (c) Notwithstanding subsections (a) and (b) of this section,
19 any of the bills listed in subsection (a) of this section or an
20 amendment to such bill may change existing law if the change:

1 (1) reduces expenditures or alters salaries; or
2 (2) changes the scope or character of a program which
3 must be reduced, increased, or changed because of
4 an increase or decrease of funds appropriated for
5 the program;
6 provided, that for a provision to be in order under this
7 subsection, it must be recommended to the General Assembly in a
8 written report adopted by the Appropriations Committee before or
9 at the same time the bill is reported, or if such provision is
10 contained in a floor amendment, the sponsor of the amendment must
11 present to the principal clerk at or before the time the
12 amendment is offered an explanation of the amendment for
13 distribution to each member of that house."

14 Sec. 2. Section 1 of this act is an adoption in part of
15 Rule XXI, clause 2(b) of the Rules of the U. S. House of
16 Representatives. The Legislative Research Commission shall
17 report to the 1985 General Assembly, Second Session 1986, as to
18 whether the adoption of the modified Holman rule was an effective
19 way to regulate the appropriations process, whether it should
20 remain, be amended, be repealed, or be placed in the North
21 Carolina Constitution.

22 Sec. 3. This act is effective upon ratification.

23 _____
24 Additional Sponsors: Cobb, Conder, Ezzell, Goldston, Guy,
25 Hardison, Harrington, Harris, Hipps, Hunt of Durham, Hunt of
26 Moore, Johnson of Cabarrus, Johnson of Wake, Jordan, Kaplan,
27 Kincaid, Martin of Pitt, Martin of Guilford, Marvin, McDuffie,
Parnell, Price, Rauch, Redman, Royall, Sawyer, Simpson, Smith,

1 Soles, Sprad, Staton, Swain, Taft, Tally, Thomas of Craven,
2 Thomas of Henderson, Walker, Ward, Warren, Watt, Winner, Woodard,
3 Williams.

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-F3-

H. B. No. _____

DATE 7/10/85

S. B. No. 851

Amendment No. (None)

(to be filled in by
Principal Clerk)

Rep.) MARTIN DE GUILLERD
Sen.) _____

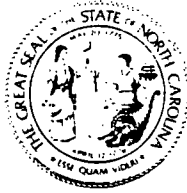
moves to amend the bill on page 2, line 5

by deleting the semicolon and adding the
following:

or because of changes in
federal law or regulation

SIGNED [Signature]

ADOPTED 44-0 7/10/85 FAILED TABLED



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27611

JAMES G. MARTIN
GOVERNOR

May 21, 1986

North Carolina Center for Public Policy Research, Inc.
Post Office Box 430
Raleigh, North Carolina 27602
Attn: Jack Betts

Dear Mr. Betts:

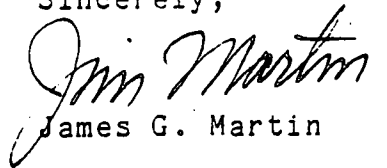
I have been informed of your recent request for my position on special provisions in appropriations bills. I am opposed to such provisions in appropriations bills, for many of the reasons set forth in your article, but I believe the following are the most significant problems:

1. Special provisions are used to enact substantive legislation without debate or public hearing.
2. Legislators are inhibited from challenging special provisions because the same leadership that allocates Pork Barrel appropriations inserts special provisions.
3. Legislators are often not even aware that such provisions are in an appropriation bill.
4. Special provisions, because of the nature of the procedure in which they are enacted, are much more likely than other legislation to be unconstitutional, create unnecessary new commissions and programs, and diminish the integrity of the Executive Branch.
5. The lack of a gubernatorial veto prevents any check on inappropriate special provisions. In this regard I note that thirty-one other states prohibit substantive legislation in appropriation bills.

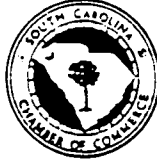
It is my opinion that, while an amendment to the rules of each House or an amendment to the Executive Budget Act would be the first step in eliminating special provisions, it is necessary for our Constitution to be amended to prohibit special provisions. Perhaps the General Assembly would consider submitting to the people a constitutional amendment prohibiting special provisions in appropriation bills at the same time as the people are allowed to vote on a gubernatorial veto.

Thank you for the opportunity to comment.

Sincerely,


James G. Martin

JGM:ghc



SOUTH CAROLINA CHAMBER OF COMMERCE

SUITE 520
P. O. BOX 11278

BANKERS TRUST TOWER
COLUMBIA, SOUTH CAROLINA 29211

1301 GERVAIS STREET
(803) 799-4601

STATEMENT BY LOWELL REESE

EXECUTIVE VICE PRESIDENT

SOUTH CAROLINA CHAMBER OF COMMERCE

The lawsuit ~~concerns the sections and provisos in the 1985-86~~

~~appropriations act.~~ We are distributing lists of these sections and provisos, along with the reasons the citizens who have filed this suit, on behalf of themselves and all other South Carolinians, believe that these laws have been enacted unconstitutionally.

(A 17-page complaint has been filed which seeks to have six separate sections and provisos declared unconstitutional and therefore invalid. A seventh request is made in the same complaint asking the court to strike down the other unconstitutional sections and provisos. The court is also being asked to ~~take the case under advisement~~ in this matter to resolve expeditiously this compelling public issue.)

For almost 200 years the Constitution of the United States has been both the framework for our national government and the protector of the rights and liberties of all Americans. Ninety years ago South Carolinians gathered here in Columbia and adopted a state Constitution designed to further protect the rights and liberties of South Carolinians. The South Carolina Constitution of 1895 was drawn up to govern South Carolina, and yet at the same time protect generations to come against the encroachments of government authority.

One of the protections guaranteed in both constitutions is that the legislative process of lawmaking will be fair, predictable and orderly.

Article III, Section 17, of the State Constitution says:

~~Any Act or resolution~~ having the force of law shall relate to but one subject, and that shall be expressed in the title."

The South Carolina Supreme Court has diligently interpreted the purpose of this section as being to "prevent the General Assembly from being misled into the passage of bills containing provisions not indicated in their titles, and to apprise the people of the subject of proposed legislation, thereby giving them an opportunity to be heard."

The citizens' lawsuit being brought at this time asks the court, on behalf of all South Carolinians, to further defend Article III, Section 17, of the Constitution (as the court has done in previous challenges) and make it abundantly clear that additional erosion of the rights and liberties of all South Carolinians will not be condoned. The South Carolina Chamber of Commerce and the citizens who are filing this suit are alarmed at the increase in the ~~annual appropriations bill~~ annually to the ~~appropriations bill~~ for an unconstitutional manner.

(The number in the so-called "permanent provisions section" alone ~~has increased from 34 in 1979 to 89 in 1985.~~ Additionally, as indicated in the material you have been given, there are matters having the force and effect of law in the first part of the appropriations bill that also increase each year. From 1979 to 1985 the appropriations bill has grown from about 370 pages to almost 800 pages. Incidentally, no other state in the nation uses - or abuses, if you will - its appropriations bill as

Included in the material you have received is a copy of the Supreme Court's most recent opinion on this subject. In March 1985 the court ruled that a section of the 1984 appropriations bill that did not relate to the raising and spending of tax monies violated the South Carolina Constitution and is invalid. In the same opinion the court made reference to precedents it established in 1982 and 1980.

There are several expected benefits of this lawsuit.

. . . A favorable Supreme Court decision will ~~be a landmark decision for the State of South Carolina~~. Throughout the state the need for this has been pointed out in numerous editorials recognizing the chamber's public service in supporting this lawsuit. (Copies of newspaper editorials are provided.)

. . . ~~The bill will become~~ what the Supreme Court has consistently said the state Constitution should be: a vehicle to make appropriations to meet the ordinary expenses of state government and to direct the manner in which the funds are to be expended.

. . . The ~~public's right to know and to have~~ ample time to make their views heard will be protected because legislation unrelated to the appropriations bill will have to stand the test of three readings in each house of the legislature on different days. ~~Legislators~~ themselves will be afforded ~~ample time to deliberate~~ and consider the matters put before them. The public and the Legislature will both benefit from the elimination of hastily contrived or poorly reasoned bills.

. . . ~~These laws might be passed when legislation is considered on~~
its own merit and not "bobtailed" to the appropriations bill. Some of
those sections and provisos under challenge today could be introduced as
separate legislation next year, and become law in the constitutionally
prescribed manner. No one should be fooled into believing that obeying
the Constitution will take more time or make the cost of government go
up. To the contrary, the public should receive better value for its tax
dollars if the General Assembly legislates within the constitutional
procedures.

The nine South Carolinians filing this suit, individually and
representing all the citizens and taxpayers of South Carolina are doing
so in the firm conviction that, as John Adams said 200 years ago, we are
to be "a government of laws, and not of men." These citizens have volunteered
to help "preserve, protect and defend the Constitution of this State and
of the United States" out of a sense of public duty, and to secure for
themselves and their neighbors the rights and liberties guaranteed in our
Constitution. The defense of these values must be borne by individual
citizens because, under our law, an organization or a corporation does
not have standing to file suit over this compelling public question.

These citizens are:

<u>NAME</u>	<u>COUNTY</u>
Mat Self	Greenwood
Martha C. Chapman	Spartanburg
E. Craig Wall, Jr.	Horry
Richard E. Greer	Greenville
Arthur J. Clement, Jr	Charleston
Thomas L. Gregory	Lexington
Leo R. Maguire	Lancaster
E. Ervin Dargan	Darlington
Ron Atkinson	Beaufort

The lawsuit is being managed through the South Carolina Business Legal Foundation, Inc., established by the South Carolina Chamber of Commerce to represent business and industry in judicial matters. This lawsuit goes beyond business and industry interests, but the chamber and the foundation welcome this opportunity to work on behalf of all the people of South Carolina. The firm of McKay & Guerard of Columbia and Charleston has been engaged, and lead counsel is Theodore Guerard.

(Question and Answer periof to follow.)

