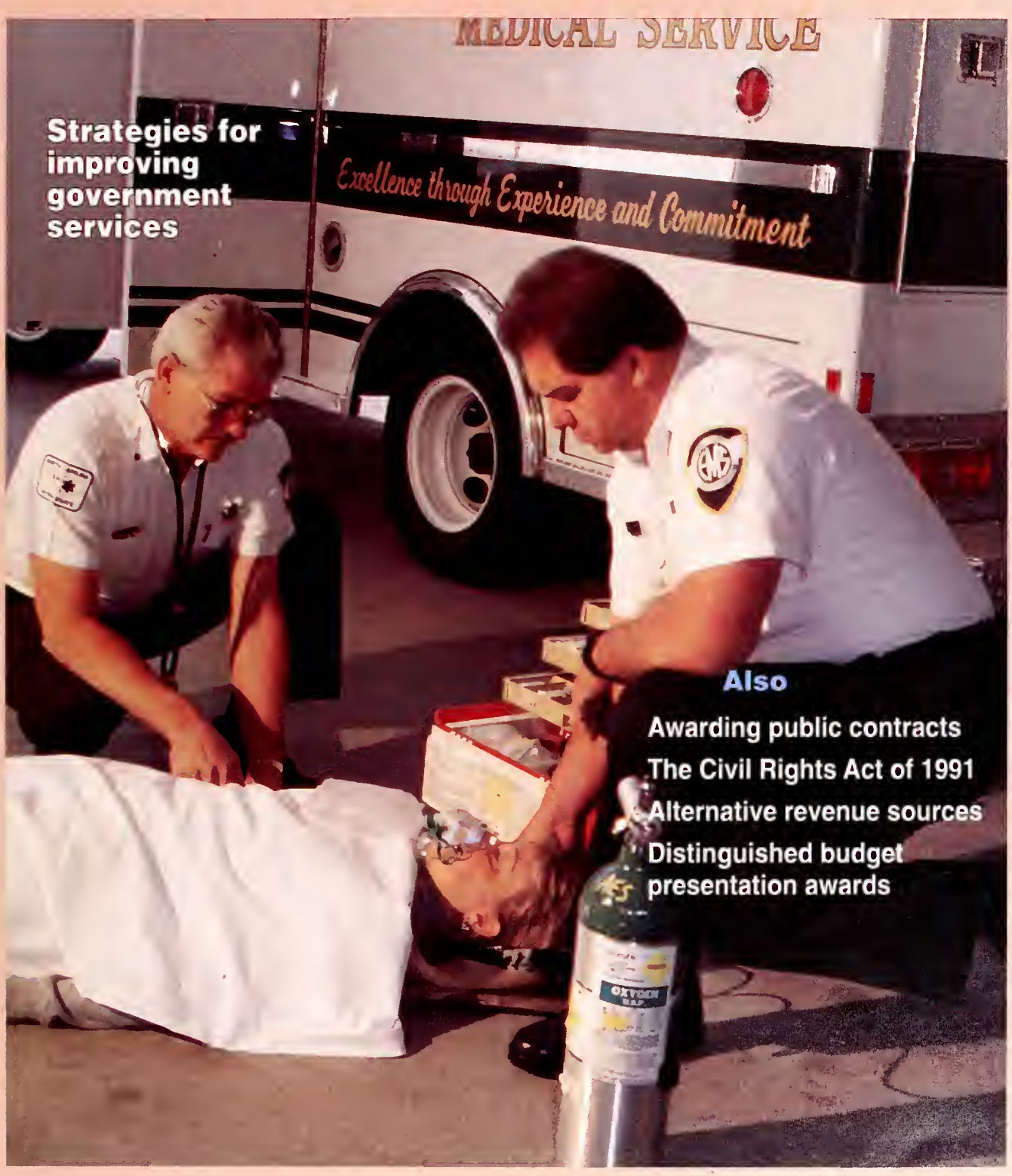
Winter 1992 Vol. 57, No. 3

Popular Government

Institute of Government • The University of North Carolina at Chapel Hill



Strategies for improving government services

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Popular Government

On the Cover

Wake County Emergency Medical Services' motto, "Excellence through Experience and Commitment," can instill a feeling of pride in employees and confidence in the people they help. Pictured from left to right are Grayson Jones, Kristin Cuthrell, and Edwin Williams. Photograph by Gary D. Knight of the City-County Bureau of Identification in Raleigh.

Popular Government (ISSN 0032-4515) is published four times a year (summer, fall, winter, spring) by the Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330. Subscription $12.00 per year. Second-class postage paid at Chapel Hill, NC, and additional mailing offices. POSTMASTER: Please send change of address to Institute of Government, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, NC 27599-3330.

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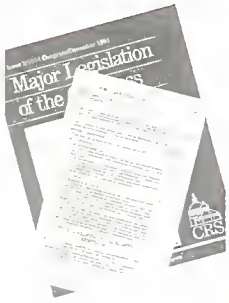

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Feature Articles

At the Institute

Improving Customer Satisfaction in Government

Wally Hill

Governments are highly diversified operations, offering broad varieties of complex services that would humble the largest private sector conglomerates. In addition, governments face increasing demands for these services and often decreasing resources. While accepting those daunting challenges, however, governments too often misplace what could be the key to their success—an unyielding commitment to customer satisfaction. And while governments are not like private businesses in many ways, tools used by businesses to satisfy their customers can be successfully employed in the public sector. This article explores how governments can use these tools to fundamentally change the culture of their organizations and build customer satisfaction. In doing so, Wake County's current efforts to achieve customer satisfaction are cited as examples.

Governments touch many lives. People who work in government give those they serve many names: clients, taxpayers, recipients, users, victims, patrons, citizens, and others. But in the broadest sense, they are all "customers"—people who buy government services for themselves or others through taxes or fees. And there are customers within the government organization as well. Those who directly serve people in clinics, libraries, and households are themselves customers of internal building maintenance, personnel, computer systems, and other support operations. Successful service delivery depends on satisfying all of these customers' needs.

Customer satisfaction seldom comes easily and is particularly challenging in government. Unlike the private sector, governments often provide services to one group of people that are paid for by others. And sometimes governments must restrict the activities or rights of some people on behalf of others. These indirect customer-provider relationships pose particular problems in meeting the often varying expectations of both the recipients of the services and the purchasers of them.

Customer satisfaction in government also is challenged by the nature of public services. Services are inherently more difficult to deliver than products. Services are intangible, while products can be manufactured to exacting design specifications under controlled conditions, ensuring consistent, reliable quality. Services are simultaneously produced and consumed; they cannot be manufactured, inventoried, and delivered on demand. Services also require the active participation of the persons being served. For these reasons, the expectations customers have for services cannot easily be defined and negotiated, and service delivery cannot be controlled rigorously. Services are, therefore, inherently more variable and subject to failures. With these limitations, what can governments do to improve customer satisfaction?

Building a Customer Satisfaction Strategy

If a government wants to improve customer satisfaction, it must develop a customer satisfaction strategy. For this strategy to be effective, it must be able to reshape the culture of the organization fundamentally. The strategy must include a careful integration of a customer-centered mission, customer-driven service deliveries, and management systems that support and reinforce them. The development of such an effective customer satisfaction strategy should include the following steps:

The author is an assistant county manager for Wake County, North Carolina. The photograph at left shows La Verne Rountree, an employee of the Wake County Revenue Collector's Office, helping Donna Ritter. Photographs by Gary D. Knight.

Figure 1
Wake County Customer Service Self-Assessment

1. Who are my customers?
2. What services do I offer to my customers?
3. What do my customers want/expect for the services I offer?
4. How do I know what my customers want/expect?
5. Compared to my ability to deliver, how realistic are these customer wants/expectations?
6. What are my constraints in meeting my customers' wants/expectations?
7. How have I responded to unrealistic customer wants/expectations?
8. On a scale of one to ten, how satisfied are my customers with each of the services I offer?
9. On a scale of one to ten, how satisfied am I with the services I offer?
10. How do I know if my customers are satisfied?
11. If my customers had the choice, would they pay me the cost of my services, refuse them, or purchase the services from someone else?

Figure 2
Wake County Customer Feedback Card

How Did We Do??

	Excellent		Average		Poor
Quality of Work?	☐	☐	☐	☐	☐
Knowledgeable?	☐	☐	☐	☐	☐
Courteous?	☐	☐	☐	☐	☐
Timeliness?	☐	☐	☐	☐	☐

We welcome your comments _____

_____

_____

1. A self-assessment of the current delivery of services to customers
2. Active solicitation of customer feedback
3. Selection of customer satisfaction tools
4. Implementation efforts
5. Reevaluation and redesign of the delivery of services to customers

Self-Assessments

The biggest obstacles to good customer service are service providers' reliances on their own perceptions of their services. In truth, the service providers' judgments are largely irrelevant. The most important perceptions are those of the customers, for without them there would be no service demand. Public organizations cannot afford to pursue service standards that are not valued by their customers. However, it is important for managers to realize that differences between employee or professional standards and those of their customers can create anxieties and conflicts within an organization.

A customer service self-assessment can help service managers realize the limitations of their own perceptions and focus their attention on the need for greater customer feedback. A self-assessment questionnaire should challenge the service providers to think about who their customers are, what they want, and how they evaluate the services they receive. It should also encourage the providers to think about how their customers' expectations compare to their service capabilities, what constrains those capabilities, and how they can respond to gaps between expectations and abilities to deliver. A sample self-assessment used by a number of Wake County departments is shown in Figure 1.

Customer Feedback

If effective, the self-assessment should draw the service providers to a new desire to get customer input. Efforts to solicit this input at this point are essential for two reasons. First, the input can help to reorient services that may have drifted badly from the mark due to prior inattention. Second, this input is needed to decide which tools should be used as part of the customer service strategy and to provide baseline data for later evaluations of the effectiveness of the tools.

Customer feedback can be obtained in a variety of ways. In Wake County, feedback is obtained through "How Did We Do?" cards used immediately after the service delivery (see Figure 2), annual customer surveys, individual interviews and focus groups, and reviews of

unsolicited written and verbal customer comments. In gathering customer feedback, it is essential to obtain both solicited and unsolicited comments, as a reliance on only unsolicited feedback may give a distorted understanding of customer perceptions.

It also is important to solicit feedback on only relevant aspects of service delivery. Wake County's Revenue Collector's Office, for example, does not solicit feedback on customers' perceptions of the property tax levy. That information may be of interest to the commissioners in their financial planning, but it does not reflect on the nature or quality of the revenue collector's services. Instead, as shown in Figure 3, the focus is on customer service behaviors regarded as important to effective service delivery.

On even these behaviors, of course, service evaluations by customers can be contaminated by their judgments of the appropriateness of a tax levy itself, and this should be considered in evaluating the data received from these evaluations. Surprisingly, Wake County has found taxpayers easily able to disassociate their feelings about taxation from the service behavior of the staff. Those behaviors have been given a high rating consistently, even by people whose salaries have been garnished by Wake County's tax collection efforts.

The Customer Satisfaction Toolbox

Armed with the results of the self-assessment and customer input, a government can identify customer service objectives and decide the means of achieving them. The crafting of this part of the strategy is complex, calling for the development of a variety of customer satisfaction tools. Wake County's Brendan Burke, budget and management analyst, has culled from research of successful, largely private sector organizations a set of useful tools for this task. A brief summary of each of these fourteen tools follows:

Customer satisfaction research. Continuous feedback from the customer is essential to the tuning of services to meet or exceed customer expectations. As described earlier, feedback devices can range from comment cards to focus group interviews. Of all the customer satisfaction tools in the "toolbox," customer feedback is the most indispensable. Feedback is essential in the design of the service, as well as in its ongoing delivery and evaluation. Without it, service providers so distance themselves from

Figure 3
Wake County Revenue Collector's Office
Survey of Customer Satisfaction

WAKE COUNTY REVENUE COLLECTOR'S OFFICE
CUSTOMER SERVICE SURVEY

Date _____

HOW WOULD YOU RATE THE FOLLOWING:

	Excellent	Above Avg.	Average	Below Avg.	Unacceptable
• Availability of staff to assist you	❑	❑	❑	❑	❑
• Knowledgeability of employee	❑	❑	❑	❑	❑
• Friendly attitude/ tone of voice	❑	❑	❑	❑	❑
• Promptness of response to your request/need	❑	❑	❑	❑	❑
• Helpfulness of employee	❑	❑	❑	❑	❑
• Accuracy of employee	❑	❑	❑	❑	❑

DID THE EMPLOYEE...

• Greet you in a friendly and courteous manner?	YES ❑	NO ❑
• Make initial eye contact?	YES ❑	NO ❑
• Smile?	YES ❑	NO ❑
• Acknowledge or apologize if you had to wait for service?	YES ❑	NO ❑
• Use your name during the transaction?	YES ❑	NO ❑
• Make closing eye contact?	YES ❑	NO ❑
• Thank you or express appreciation at the close of your transaction?	YES ❑	NO ❑

Is there anyone you would like to recognize who was especially helpful to you? If so, please indicate their name below:

_____

Please make any other comments or suggestions below:

_____

_____

_____

Thank you for completing our comment card. If you would like us to respond in any way, please print your name & address below:

Name _____

Address _____

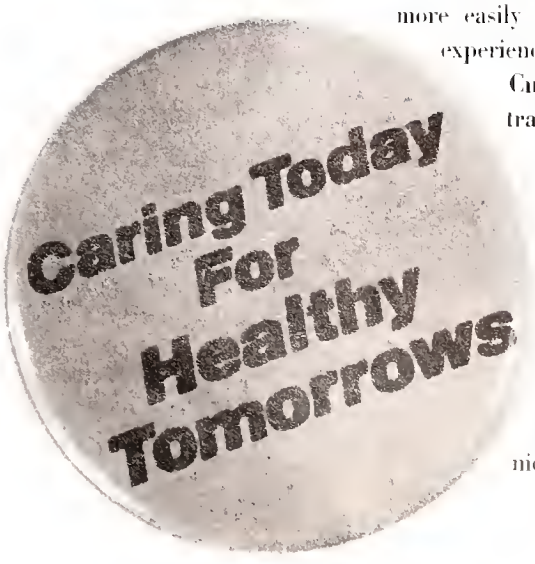
City _____ State _____ Zip _____

Telephone #: Home _____ Work _____

their customers' needs and expectations that gaining their satisfaction becomes more coincidental than earned.

Complaint handling systems and disaster recovery. The best of service delivery systems will sometimes malfunction. Anticipating and preparing for these failures can help to restore customer confidence and loyalty, as well as lessen the possibility of a dissatisfied customer impairing other customers' perceptions. The service provider should have a system for receiving and responding to complaints that makes the expression of the complaint easy and private and that provides for a timely assessment and response to the complaint. The response to the complaint could range from a sincere apology to more substantive compensation, depending on the degree of inconvenience or damage and the customer's perception of what would constitute a fair resolution. Complaints are too important to ignore. A 1986 study by the Technical Assistance Research Institute indicated that only 4 to 5 percent of dissatisfied customers complain. This means that for every person that bothers to complain, there are probably twenty people that feel the same way. Understanding this, the complaint that may have been dismissed as an isolated whine becomes a valuable source of information about service problems that must be addressed.

Personnel selection for customer service attitude and skills. If customer service is valued by the organization, skills in providing it should be an important selection criterion for new employees. It is hard to teach people to care about customers if that is not their normal inclination. It may be easier to teach them the technical skills they will need on the job. When these situations arise, it may be appropriate to favor customer service attitudes and skills more than technical skills, realizing that the latter may sometimes be acquired more easily through training and experience.



Customer service skills training. Training for employees is essential to raising awareness of customer service objectives and to the nurturing and development of customer service skills used to achieve them. Training in technical and problem-solving skills also is essential, as employees must have the knowledge and skills to provide consistent high-quality work. Customer satisfaction results when quality work combines with quality service.

Empowerment of employees. Timely, flexible, and responsive service depends upon supervisors and other employees having sufficient authority to act on the organization's behalf. Unnecessary regulations and approval processes can impede effective service delivery. Recognizing this, Wake County stripped away a broad array of administrative controls, granting its operating departments much greater authority over their budgets, personnel decisions, work schedules, and purchasing activities. A summary of these actions is shown in Table 1, along with an assessment of their impacts after the first year.

Empowering department heads, of course, does not ensure that other employees will be empowered. Department managers must extend that philosophy and its practical day-to-day authorizations throughout their organizations. The empowerment message from management must be clear and convincing. As Wake County Health Director Leah Devlin put it in training her staff, "Just do it. You will make some mistakes. We all do. However, as long as you err on the side of providing better customer service, we will back you completely."

Personalization of service delivery. Adding a personal touch to the delivery of services can make customers feel more comfortable and appreciated. This is particularly important in government, as some public services are not voluntarily consumed (for instance, permitting processes and tax payments), and others involve dealing with customers in particularly stressful moments (for example, public assistance programs, counseling services, and fire and law-enforcement responses). Services can be personalized by assigning particular workers to customers; using names in conversations; showing interest in the customer as a whole individual, not just as a consumer of one particular service; and by always showing empathy for customer concerns.

Employee recognition and ownership efforts. Customer satisfaction depends upon employee satisfaction. It is unreasonable to expect employees to deliver cheerful, empathetic services when they do not feel appreciated. Recognition of good customer service behavior, demonstrated concern for employees' welfare, and expressions of confidence and trust can provide a nurturing environment for employee ownership and promote caring customer service.

Table 1
Summary of Major Wake County Deregulation Efforts

Activity	Procedure Prior to Deregulation	New Procedure after Deregulation	First-Year Impact
Purchase orders	Requisitions and purchase orders were needed for any purchase of $50 or more.	Can order up to $1,000 without a requisition or purchase order.	More departmental flexibility; quicker acquisitions; approximately 10% higher costs due to lack of volume discounts or Purchasing Department's vendor knowledge; unclear impact on purchasing integrity.
Budget control	Line-item control (supplies, travel, utilities, etc.) for all departments; control of number of positions, transfers of salary funding, and capital outlay items of $500 or more.	Lump-sum department budgets; control of number of positions and transfers of salary funding maintained; capital outlay approval limited to $1,000 or more.	0.8% decrease in percentage of operating budgets (excluding salaries) spent; 1.5% increase in average department expenditures (including salaries) largely due to new policy of paying unbudgeted overtime.
Applicant screening	Personnel Department screened all applicants and referred top ranking contenders to department for selection.	Departments given option of screening all applicants who meet minimum qualifications.	Departments selected screening option for 36% of all positions; no adverse impact noted.
Work schedules	County manager's approval needed for deviations from 8:30 A.M. to 5:15 P.M. work schedule (unless subject to mandated duties).	Department head can vary employee work days and time, as long as offices are open to public 8:30 A.M. to 5:15 P.M.	More departmental flexibility; no survey has been conducted to determine variations that have been adopted.
Overtime work	County manager's approval needed for employee overtime work.	Authority for granting overtime delegated to department heads.	$107,000 in overtime; no way to compare to previous years, as policy also changed on payment of overtime.
Merit salary awards	County manager approval needed on all merit salary awards; 5% of awards limited to no more than 50% of employees.	Department heads approve all merit salary awards, except awards for themselves; total funding limited as before, but can have 2.5%, 5%, or 7.5% awards for up to 60% of positions.	Slight decrease in percentage of positions granted merits; no department exceeded its allocation of merits versus five in the previous year; not sufficient experience to judge impact of 2.5% to 7.5% options as they only went into effect July 1, 1991.
Other personnel actions	County manager approval needed for most personnel actions, including promotions, new hires at hiring rate, voluntary terminations, leave without pay, filling vacancies, etc.	Most personnel actions delegated to department heads, except hiring above hiring rate, involuntary dismissals or suspensions, leave without pay for more than six months, advertising positions at above step 3 of pay range, etc.	Reduced average processing time from 2.9 days to 2.3 days; greater sense of departmental empowerment; no adverse impacts noted.

Note: Deregulation began with the 1990–91 fiscal year.

Customer service performance measurements. If you can measure customer service, you can manage it. Regular monitoring and analysis of customer service behavior and customer feedback can point out effective practices, identify variations in service requiring adjustments, and instill a healthy competitiveness in marking progress toward meeting customer service objectives.

Slogans, mottos, and image shaping. Perception is reality, and slogans, mottos, and other image-shaping devices can help to create intended customer perceptions

of services. A number of Wake County departments have adopted slogans, which are displayed on their stationery, notices, and vehicles. For example, the new motto for the Wake County Health Department is "Caring Today for a Healthy Tomorrow." The Emergency Medical Services' motto is "Excellence through Experience and Commitment." In addition to helping to shape customer perceptions, these slogans can provide vision and pride to employees striving to live up to them.

If slogans and mottos are not supported by management and reflected in organizational practices, however, they can lose their legitimacy with both employees and customers. In those situations, such efforts can become counterproductive. The credibility of these image-shaping measures can be supported by the use of other tools. Measuring performance associated with objectives stated or implied in the slogans and mottos, and rewarding employee behavior accordingly, can show management's commitment to them. Likewise, service guarantees that stem from these stated or implied standards of service can enhance the customers' belief in them.

Service guarantees. We expect to have guarantees of quality for VCRs, cars, and other products. Service guarantees are less common, but are equally powerful tools for building customer confidence in government services. Service guarantees also can provide a clear customer service objective for employees and be a source of pride for them when that objective is met consistently. Key issues in establishing service guarantees are (1) being able to deliver on promises most of the time, (2) backing up the guarantee with meaningful (in the customer's perception) compensation when it is not met, and (3) due consideration of liability issues posed by guarantees for service failures that damage customers, not just inconvenience them or fail to meet their expectations.

Service quality improvement programs. There are a variety of formal and informal quality improvement programs that involve an analysis of service processes. For instance, a government might flow-chart services to identify bottlenecks and inefficiencies, ask employees to suggest improvements, or incorporate a statistical quality control method. W. Edwards Deming, an American credited as the designer of the post-war Japanese management miracle, has popularized one such method of statistical quality control. Of his many efforts, Deming's greatest contribution may be his use and interpretation of statistics in assessing and improving a system's performance. These efforts should be geared to produce improvements in service outcomes that are valued by the customer, such as quicker, less costly, higher quality, more individualized services.

Supplier management. One key component to service quality is the management of suppliers providing inputs for that service delivery. The raw materials for a service include personnel, office supplies and equipment, facilities, and information. The quality of service delivery can only be as good as the quality of these service inputs, and efforts need to be made to ensure their quality and timely availability. Often the customers themselves become suppliers, as their participation in the service delivery may be required, either through their physical presence or their provision of needed information. For the service delivery to be effective in those cases, the service providers' challenge is to make their services accessible, easy to understand, and timely.

Information from others. Many good customer service ideas can be learned from observing competitors, peers, or even organizations delivering completely different types of services. What are these organizations doing that makes them successful in satisfying their customers? What practices can we adapt to our organization? This learning can occur from direct observation, review of company operating procedure manuals, or personal discussions and consultations.

Negotiation of customer expectations. With the limited resources available to governments, it may be difficult sometimes to fully meet customer expectations. Failure to meet expectations will result in customer dissatisfaction, unless efforts are made to negotiate achievable expectations with the customer. These discussions should focus on the interests of the customer, show empathy for the customer's concerns, and ask for the customer's help in identifying and examining alternatives that may prove satisfactory to the customer. Customer expectations cannot always be met, but a demonstrated attempt will minimize adverse customer reactions in most cases. When extra efforts are made to recover from a service failure, this unusually solicitous treatment can so impress some customers that it more than makes up for the service disappointment.

Each of these customer satisfaction tools can be of practical use in constructing a customer satisfaction strategy. Which tools are most appropriate for each organization will depend on management styles and the nature of the services being delivered. The essential objective in using these tools is to build a strategy that is capable of effectively changing the culture of the organization.

Table 2
Summary of Selected Wake County Customer Service Strategies

	Department						
Customer Satisfaction Tool	Budget	Revenue Collector	Assessor	Finance	General Services	Information Services	Personnel
Customer satisfaction research	X	X	X	X	X	X	X
Complaint handling systems and disaster recovery		X	X		X	X	X
Personnel selection for customer service attitude and skills	X	X	X	X	X		X
Customer service skills training	X	X		X	X	X	X
Empowerment of employees		X	X			X	X
Personalization of service delivery	X	X		X		X	X
Employee recognition and ownership efforts			X	X	X	X	X
Customer service performance measurements	X	X	X	X	X	X	X
Slogans, mottos, and image shaping		X	X		X		X
Service guarantees					X	X	
Service quality improvement programs	X	X	X	X	X		X
Supplier management							
Information from others	X	X	X	X	X		X
Negotiation of customer expectations	X	X			X	X	X

Mottos and managerial exhortations alone will not work. A blend of customer feedback mechanisms, empowered and trained workers, and quality improvement programs might. So might other combinations of tools. Use of most or all of the tools is virtually certain to compel organizational change.

Wake County focused its earliest efforts in using these tools to improve customer satisfaction on internal support departments. These departments' experiences are now being used to model customer satisfaction practices as Wake County extends this philosophy throughout the organization. Profiles of the tools used by each of these departments in their customer satisfaction strategies are displayed in Table 2.

Strategy Implementation Efforts

Putting strategies into action requires a credible and pervasive management commitment, from the top executive to the supervisor. Managers need to demonstrate their commitment in both word and deed, modeling the behavior they want employees to show and recognizing them when they do. Customer service objectives and performance should be woven into departmental work plans, management information systems, employee orientations and training programs, and individual performance appraisals. Without these efforts, it is unlikely that the culture of the organization will truly reflect a successful customer service orientation.

Reevaluation and Redesign of Service Delivery

The best of plans and strategies are just educated guesses as to how certain organizational efforts will lead to desired outcomes. One of the tools mentioned earlier, ongoing customer feedback, is an essential element in measuring the effects of these efforts. This feedback should be used to make periodic changes in strategies, customer satisfaction tools being employed, and the design of the service delivery system. These changes need not always be major. As an airlines president, Jan Carlzon, has said, "We did not seek to be 1,000 percent better at anything. We seek to be 1 percent better at 1,000 things."

Conclusion

Buffeted by both increasing demands for services and resistance to higher taxes, governments are continuously challenged in their ability to meet the needs of their customers—their citizens. Adoption of a customer satisfaction philosophy that extends throughout the organization can help to ensure that scarce resources are carefully tuned to meeting expectations for services that their customers value. A variety of tools are available to make that philosophy a reality, and seeing that happen can instill both employee and citizen pride in their governments. ❖

Becky Kirkand

North Carolina's "Lowest Responsible Bidder" Standard for Awarding Public Contracts

Institute of Government

Frayda S. Bluestein

Local governments in North Carolina have general authority to enter into contracts and to acquire and hold property as necessary to carry out the functions of government. In addition, the General Statutes establish procedures for awarding public contracts of certain types and within certain monetary ranges. These procedures, often referred to as competitive bidding requirements, are designed (1) to ensure fairness by preventing collusion and favoritism in public contracting and by giving all citizens an equal opportunity to compete for public contracts and (2) to conserve public funds.

The competitive bidding statutes require that local governments award certain public contracts "to the lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract."[1] This statutory language, often called the "lowest responsible bidder" requirement, will be referred to here as the "standard of award." The wording of the standard poses problems of interpretation. It is not clear *how* the factors of "quality, performance, and . . . time" must be "[taken] into consideration" to arrive at the lowest responsible bidder. There is no North Carolina case law that directs local governments as to the extent or limitation of discretion embodied in the statute's language.

This article deals briefly with some of the specific procedures mandated by the North Carolina competitive bidding statutes and with the requirement that all bids be "responsive" to the invitation to bid. It then suggests how the standard of award may be interpreted and applied, and finally discusses the standard that North Carolina courts have used in reviewing contract award decisions of local governments.

The author is an Institute of Government faculty member who specializes in local government law, particularly issues relating to governmental purchasing.

Types of Contracts Governed by the Standard of Award

The competitive bidding statutes apply to two types of contracts worth $5,000 or more: those for "construction or repair work" (construction contracts), and those for the "purchase of apparatus, supplies, materials, or equipment" (purchase contracts). A local board must follow one of two bidding procedures—formal or

Jim Holm

informal[2]—depending on the amount of money involved. (See "Summaries of Informal and Formal Bidding Procedures" on page 12.)

For purchase contracts, the *informal* procedure applies when the amount of the contract is between $5,000 and $20,000, and the *formal* applies when the estimated cost is $20,000 or more. For construction and repair work, the *informal* procedure applies when the amount of the contract is between $5,000 and $50,000, and the *formal* applies to contracts estimated to cost $50,000 or more.[3] For contracts involving less than $5,000, the procedures and basis of award are left to the discretion of the governing board.

Compliance with Statutory Procedures

The contracting authority must conduct the award process in compliance with the statutory procedure. The bidder must comply with the process as established by statute and as conducted by the contracting authority. (This article does not discuss all of the procedures involved in public contracting. These are summarized in *An Outline of Statutory Provisions Controlling Purchasing by Local Governments in North Carolina*, by Warren Jake Wicker.[4]) Thus for contracts in the formal range, a bidder must seal a bid if the invitation to bid so specifies; the bidder must submit a bid prior to the time specified in the advertisement for opening bids; and a formal bid must be accompanied by a deposit or bid bond of at least 5 percent of the bid amount, unless the governing board has waived that requirement. (Such a waiver is authorized only for purchase contracts in amounts less than $100,000.)

If a contract is awarded but the statutory requirements have not been met, the contract is void.[5]

Number of Bids

Most local officials are familiar with the "three-bid rule" in the competitive bidding statutes, the rule that requires a local authority to receive at least three bids before it can award a contract. Many are surprised to discover, however, that the rule does not apply to all contracts that are covered by competitive bidding. It applies only to contracts for construction or repair, and only to those involving estimated expenditure of $50,000 or more—that is, to construction or repair contracts in the formal range.[6] Boards may award all contracts in the informal range and all purchase contracts in the formal range, even if fewer than three bids are received—although the principles underlying the competitive bidding statutes suggest that more than one bid should be obtained where possible. The "lowest responsible bidder" language itself appears to assume a comparison of more than one bid. Nevertheless, the only contracts for which the statutes *mandate* a specific number of bids are construction or repair contracts in the formal range.

Responsiveness

A bid must also be "responsive" to the invitation to bid: it must offer to perform the services or provide the goods that are specified. Though not explicitly mentioned in the statutes, responsiveness is inherent in the contracting process. A proposal that does not comply with the specifications in the request for proposals should be considered nonresponsive and not eligible for award.

Bids will inevitably contain minor variations from the specifications. Because the formal bidding procedure can be expensive and time consuming, local governments often use a standard of "substantial compliance" when evaluating responsiveness.[7] Slight deviations are accepted

so long as they are not deemed "material" in light of the scope and purpose of the contract. Keeping in mind the goal of fairness in competition that underlies the bidding statutes, a contracting authority may judge a deviation to be material if it gives one bidder an advantage over others.

Responsiveness must be evaluated with consistency. As an extreme example, a bid on an automobile should not be rejected for nonresponsiveness because the interior color is different from that specified in the request for proposals, while another bid, offering a different model from that specified, is accepted. In other words, the bids must be scrutinized for the same *degree* of compliance with specifications. Similarly, if one bid discloses that the local board made an error in preparing specifications, or if another makes an alternative proposal that the board prefers, the board should reject all bids, prepare new specifications, and go through the bidding process again.[8]

Applying the Standard of Award

After determining that all of the bidding procedures have been complied with, a governing body is faced with the bids and bidders to whom the standard of award is to be applied. As we have seen, the standard calls for awarding a contract to the "lowest responsible bidder" but also allows consideration of "quality, performance, and . . . time. . . ."

Vocabulary of the Standard

As used in competitive bidding statutes, the term "responsible" means that a bidder has the resources necessary to carry out the contract. These resources include not just financial ability, but appropriate personnel, skill, and experience.[9]

The words "quality" and "performance" are highly subjective, and their meanings in the bidding statutes

Summaries of Formal and Informal Bidding Procedures

	Coverage	Requirements
Formal Procedure (G.S. 143-129)	• Construction or repair work requiring estimated expenditure of $50,000 or more • Purchase of apparatus, supplies, materials, or equipment requiring estimated expenditure of $20,000 or more	• Advertisement Time and place to obtain specifications Time and place of bid opening Reservation of right to reject any or all bids • Bids sealed (if specified) • Bids accompanied by bid deposit (at least 5 percent of bid) • Bids opened in public (at time and place specified) • Bids recorded in minutes
	Award to the "lowest responsible bidder or bidders, taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract."	
Informal Procedure (G.S. 143-131)	• Construction or repair work involving expenditure of between $5,000 and $50,000 • Purchase of apparatus, supplies, materials, or equipment involving expenditure of between $5,000 and $20,000	• Informal bids secured (telephone or written quotes) • Record of all bids kept • Public allowed to inspect record of bids at any time
	Award to the "lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract."	

overlap considerably. A high-quality product will perform well: a company that has performed well on contracts similar to one currently out for bid has done high-quality work. There is no explicit limitation on the aspects of the proposal to which the consideration of quality and performance may be applied. They could relate to degrees of responsibility—that is, extent of experience or skill in construction contracts, or degrees of appropriate usefulness of items for purchase. The concepts also could encompass longevity, economy, maintenance costs, and other tangible measures of products.

The "time" factor is more specific, but its importance will vary depending on the needs of the contracting authority. If a contract requires a particular completion date, that should be stated clearly in the request for proposals. That way all bidders can build it into their proposals and all bids will be judged on the same standard of timeliness. In the absence of specified time frames in the request, the local government may decide from a bidder's proposal whether the bidder has set out reasonable schedules and completion dates.

The statute does not direct the relative weight to be accorded to quality, performance, and time, nor does it explicitly establish the relationship between these factors and the lowest-responsible-bidder requirement. Long-established practice in this and other states, however, as well as case law in other states with standards of award similar to North Carolina's, provide guidance to a reasonable interpretation of the standard.

Guiding Principles

The language of the North Carolina statute, viewed in light of the underlying purposes of competitive bidding, suggests the following principles:

The statute establishes a preference in favor of the lowest bid price. The purposes of fairness and conservation of public funds require an award to the lowest bidder unless an articulable and lawful basis exists for an award to another bidder. The greater the difference between the bid receiving the award and the lowest bid, the stronger must be a finding about quality, performance, or time to overcome the preference in favor of the lowest bid.

The statute requires prudent use of public funds. The awarding authority must also conserve public funds by considering factors besides price, to minimize risk of loss caused by poor performance of a particular product or bidder. The awarding authority is not required to award a contract to the lowest bidder if the proposed product or performance is unacceptable or if a higher bidder offers the level of performance or quality that the awarding authority desires.

Significance of Qualitative Factors

As these principles suggest, an awarding authority may use the qualitative factors in North Carolina's statute—quality, performance, and time—when evaluating which bid is truly "lowest." As indicated earlier, there are no court cases specifically interpreting the language in the North Carolina standard. However, the above principles are consistent with judicial interpretations of standards of award in other jurisdictions where the statutory language contains a qualitative component.

Thus in a Mississippi case the court held that a "lowest and *best* bid" standard does not require the awarding authority invariably to accept the lowest bid.[10] A West Virginia court reached the same conclusion when interpreting a statute similar to North Carolina's. The West Virginia provision requires contracts to be awarded to the "lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the government and the delivery terms."[11] According to the West Virginia Supreme Court, "The statute requires a subjective evaluation of quality, service and compatibility with other programs in addition to price."[12]

Standards of award that contain only the "lowest responsible bidder" language have been interpreted as authorizing less discretion. For example, the California Supreme Court has ruled that a standard requiring contracts to be awarded to the "lowest responsible bidder" (with no additional language) does not authorize the awarding authority to consider relative superiority among responsible bidders.[13] The California court held that the award must be made to the lowest bidder upon a finding that the bidder meets the minimum requirements of responsibility. Under this standard, to award a contract to other than the low bidder, there must be a finding that the low bidder is not responsible.

These cases suggest that there is a difference between a standard that simply directs the awarding of a contract to the lowest responsible bidder and a standard that adds wording allowing consideration of factors besides price and minimum responsibility.

The difference is illustrated in an Indiana case, in which the court compared a "lowest and *best* bid" standard with a "lowest responsible and responsive bidder" standard.[11] Under the latter, the court held, the awarding authority "has *not* been given the discretion to award a contract to the *most* responsible bidder, rather, the statute merely provides that the Board must require the winning bidder to be responsible."[15] The court went on to note that "the absence of the term 'best' or 'most responsible' unmistakably demonstrates the legislature did not intend 'responsibleness' to become a competitive factor between bidders."[16] These decisions suggest that the presence of qualitative factors in the standard of award reflects legislative intent to delegate discretion.

The qualitative language in North Carolina's standard of award, viewed in light of these cases, appears to delegate broad authority to local governments in awarding public contracts. The words "quality" and "performance" are susceptible of almost no objective limitation except as read together with the rest of the standard and in light of the underlying purpose of conserving public funds.

One possible limitation relates to whether the words "quality" and "performance" apply to what is offered in the bid (the product) or to the characteristics of the bidder (responsibility)—or to both. It is reasonable to conclude that they apply to both, although narrower interpretations of the North Carolina statute are certainly possible. Some local governments use the concepts of quality and performance only to evaluate the responsibility of the bidders—whether they have the resources to carry out the contract. Under this view, all responsive bids by definition will have met the specifications, and only the responsibility of the bidders is left to be compared. This interpretation may be more appropriate in construction contracts, where specifications are narrowly drawn and variation in degrees of responsibility is likely to be the primary issue.

In purchase contracts specifications are drawn more broadly to promote competition, and the focus is more likely to be on variations in quality and suitability of products offered. The narrow reading of the statute, in these cases, could require the local government to accept a proposal that complies with the minimum requirements of the invitation to bid, even if what is proposed is of poor quality. This result conflicts with the purpose of conserving public funds and does not necessarily promote fairness. A broader interpretation encompasses the discretion necessary for evaluating both purchasing and construction contracts. According to this view the legislature has, by authorizing consideration of quality, performance, and time, left to the awarding authority the tasks of balancing these factors against cost to determine which bid best serves the needs of the community and justifying an additional cost where necessary.

Standard of Judicial Review

The view that local governments have discretion in awarding public contracts is supported by the deferential standard of review the North Carolina courts have applied to local government contract award decisions. However, local government discretion in this arena is not without limitation. To support a particular contract award, the local governing body must be able to demonstrate a rational and articulable basis for the decision.

In early cases involving public contracts, the North Carolina Supreme Court characterized the contract award decision of a local government as being judicial rather than ministerial in character.[17] The difference between local government functions that are "ministerial" and those that are "judicial" is that ministerial functions involve no discretion: if certain facts are present, a certain decision is required by law. In contrast, a judicial function involves the exercise of discretion by the local government.

The court's characterization of contract decisions as "judicial" dictates the standard the courts use when they review such decisions. Thus in *Mullen v. Town of Louisburg*,[18] a case concerning whether the purchase of electricity is subject to the competitive bidding statutes, the North Carolina Supreme Court, quoting various sources, stated:

> "It is a general rule that officers of a municipal corporation, in the letting of municipal contracts, perform not merely ministerial duties but duties of a judicial and discretionary nature, and that courts, in the absence of fraud or a palpable abuse of discretion, have no power to control their action." . . . The courts may not interfere with the exercise of discretionary powers of local administrative boards for the public welfare "unless their action is so clearly unreasonable as to amount to an oppressive and manifest abuse of their discretion."[19]

In *Burton v. City of Reidsville*, the court elaborated on the deference to be accorded local board decisions that involve discretion:

> [A] court of competent jurisdiction may determine in a proper proceeding whether a public official has acted

capriciously or arbitrarily or in bad faith or in disregard of the law. . . . If the officer acted within the law and in good faith in the exercise of his best judgment, the court must decline to interfere even though it is convinced the official chose the wrong course of action.[20]

More recent contract award cases in this and other jurisdictions[21] have consistently applied the same basic standard of review: *The decision of the awarding authority should be overturned only in the case of fraud or manifest abuse of discretion; otherwise the court may not substitute its judgment for that of the awarding authority.*

Documented Support for Contract Decision

How does a court determine whether there was a reasonable basis for a local government contract award decision? The North Carolina courts' characterization of the contract award decision as judicial and the degree of discretion allowed by the wording of the state's statute determine how much and what kind of documentation the decision must have. The more discretion the local government has in making its decision, the less the courts will look for documented support in the record of that decision.

The deferential standard of judicial review summarized above suggests that the awarding authority is not required to make findings of fact or demonstrate substantial evidence in the record to support a contract award decision. Such findings have generally been required by North Carolina courts only in local government decisions that involve less discretion, such as ministerial or quasi-judicial decisions.[22]

A separate basis for requiring evidence in the record of a contract award decision would exist if a constitutionally protected interest is affected by the award of a contract under the North Carolina statute. If such an interest were affected, all the essential elements of due process, including notice, hearing, impartiality, and substantial evidence in the record, would be required at the contract award stage.

The North Carolina courts have not addressed the question of whether the North Carolina statute governing public contracts confers to a bidder a constitutionally protected right or "entitlement" to a particular contract. However, a majority of courts that have considered this question under other state contract award statutes have held that the degree of discretion involved in the awarding of public contracts precludes a bidder from obtaining a constitutionally protected interest in a contract award.[23] Because of both the degree of discretion involved in the North Carolina statute and the deferential standard of judicial review, it seems likely that our courts would reach a similar result.

This is not to suggest that there is no need to document the basis for a contract award decision. A standard that seems to fit the North Carolina courts' standard of judicial review is expressed in a recent Alabama case involving a challenge to a public contract award decision: the awarding authority "need only have bona fide, rational, and articulable reasons for its decision."[24] These reasons should be articulated in the minutes of the meeting at which the award is made. Of course, if the award is to the low bidder and the bidder is determined to be responsible, the decision will not need detailed explanation.

Even if not required to do so by North Carolina case law or constitutional due process, the awarding authority should hear arguments and receive information that might alter conclusions or assumptions upon which it will rely in awarding the contract. This is particularly necessary if the award goes to other than the low bidder, if for no other reason than to ensure that challenges that might otherwise be raised in court have been considered and resolved to the satisfaction of the awarding authority at the time of its decision. The contract award process should be open and thorough enough to result in a rational and supportable decision.

Conclusion

Awarding public contracts under North Carolina statutes requires adherence to statutory requirements, both for soliciting and receiving bids and for making the award decision itself. Although North Carolina's award standard provides more discretion than more narrowly worded statutes from other states, fair application of the standard is challenging because it requires qualitative judgments that must be made on a case-by-case basis. The statute establishes a preference in favor of the lowest bid, although the awarding board is not required to accept that bid if it offers a product or performance that is unacceptable or if a higher bid offers the level of performance or quality the board desires.

The deference of the North Carolina courts to local government award decisions recognizes the degree of discretion involved in the bid evaluation and contract award process. Due to the lack of North Carolina cases

specifically analyzing the wording of the standard of award, many questions about the limits on local government discretion remain. Where questions of interpretation arise, local government officials should always be guided by the dual principles of fairness and conservation of funds, and should strive to resolve the questions in a manner that preserves them both. ❖

Notes

1. N.C. Gen. Stat. (G.S.) § 143-129. The standard of award is found at both G.S. 143-129 and G.S. 143-131, the first covering contracts of greater monetary value than the second, although G.S. 143-131 contains several insignificant differences in wording from G.S. 143-129. G.S. 143-128, a statute containing special rules for public construction contracts over $100,000, contains a slightly different version of this standard of award, using only the words "lowest responsible bidder" without the additional language. However, because all contracts within the coverage of G.S. 143-128 are also covered by G.S. 143-129, and because the standard in G.S. 143-129 is so well established, the abbreviated version of the standard of award is probably best viewed as a shorthand reference to the earlier statute, rather than an effort to establish a different standard of award for larger construction contracts. *See* A. Fleming Bell, II, *Construction Contracts with North Carolina Local Governments*, 2d ed. (Chapel Hill, N.C.: Institute of Government, 1991), 14–15.

2. The competitive bidding statutes don't actually use the term "formal." They do specifically use the term "informal" in describing the procedure used for smaller contracts (see G.S. 143-131), so by common usage the procedure for larger contracts is referred to as "formal" bidding.

3. G.S. 143-129, -131.

4. December 1990 ed. (Chapel Hill, N.C.: Institute of Government, 1991).

5. Styers v. Gastonia, 252 N.C. 572, 114 S.E.2d 348 (1960); Hawkins v. Town of Dallas, 229 N.C. 561, 50 S.E.2d 561 (1948); Raynor v. Town of Louisburg, 220 N.C. 318, 17 S.E.2d 495 (1941); Abott Realty Co. v. City of Charlotte, 198 N.C. 564, 152 S.E.2d 686 (1930).

6. G.S. 143-132.

7. *See* The Council of State Governments, *State and Local Government Purchasing*, 3d ed. (Lexington, Ky.: CSG, 1988), 73.

8. G.S. 143-29 requires the governing board, in the advertisement for formal bids, to reserve the right to reject any and all bids. The statute also states that bids shall not be rejected to evade the purposes of the competitive bidding statutes.

9. CSG, *State and Local Government Purchasing*, 57; Eugene McQuillin, *The Law of Municipal Corporations*, 3d ed. (Deerfield, Ill.: Callaghan and Co., revised 1990), vol. 10, § 29.73.05, 503.

10. Canton Farm Equip., Inc. v. Richardson, 501 So. 2d 1098, 1101 (Miss. 1987) (emphasis added).

11. W. Va. Code § 5A-3-11 (1982).

12. West Virginia Medical Inst. v. West Virginia Pub. Employees Ins. Bd., 379 S.E.2d 504 (W. Va. 1989). The court held that the statute vests wide discretion in the awarding authority and that the decision of the authority is entitled to a presumption of validity.

13. City of Inglewood-L.A. County Civic Center Auth. v. Superior Court of L.A. County, 7 Cal. 3d 861, 500 P.2d 601, 103 Cal. Rptr. 689 (Cal. 1972).

14. Bowen Eng'g Corp. v. W.P.M., Inc., 557 N.E.2d 1358 (Ind. Ct. App. 1990) (emphasis added).

15. *Bowen*, 557 N.E.2d at 1366.

16. *Bowen*, 557 N.E.2d at 1366.

17. *See* Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945); Murphy v. City of Greensboro, 190 N.C. 268, 277, 129 S.E. 614, 618 (1925).

18. 225 N.C. 53, 33 S.E.2d 184 (1945).

19. 225 N.C. at 60, 33 S.E.2d at 188–89 [quoting 38 Am. Jur. § 499 (1941); and Reed v. Highway Comm'n, 209 N.C. 648, 184 S.E. 513 (1936), other citations omitted]. The principal case holds that the purchase of electricity is not governed by the competitive bidding statutes.

20. Burton v. City of Reidsville, 243 N.C. 405, 407–8, 90 S.E.2d 700, 702–3 (1955).

21. *See* McQuillin at § 29.83, 538–39; Chester James Antieau, *Municipal Corporation Law* (New York, N.Y.: Mathew Bender, 1991), vol. 1A, § 10.52, 125-130.

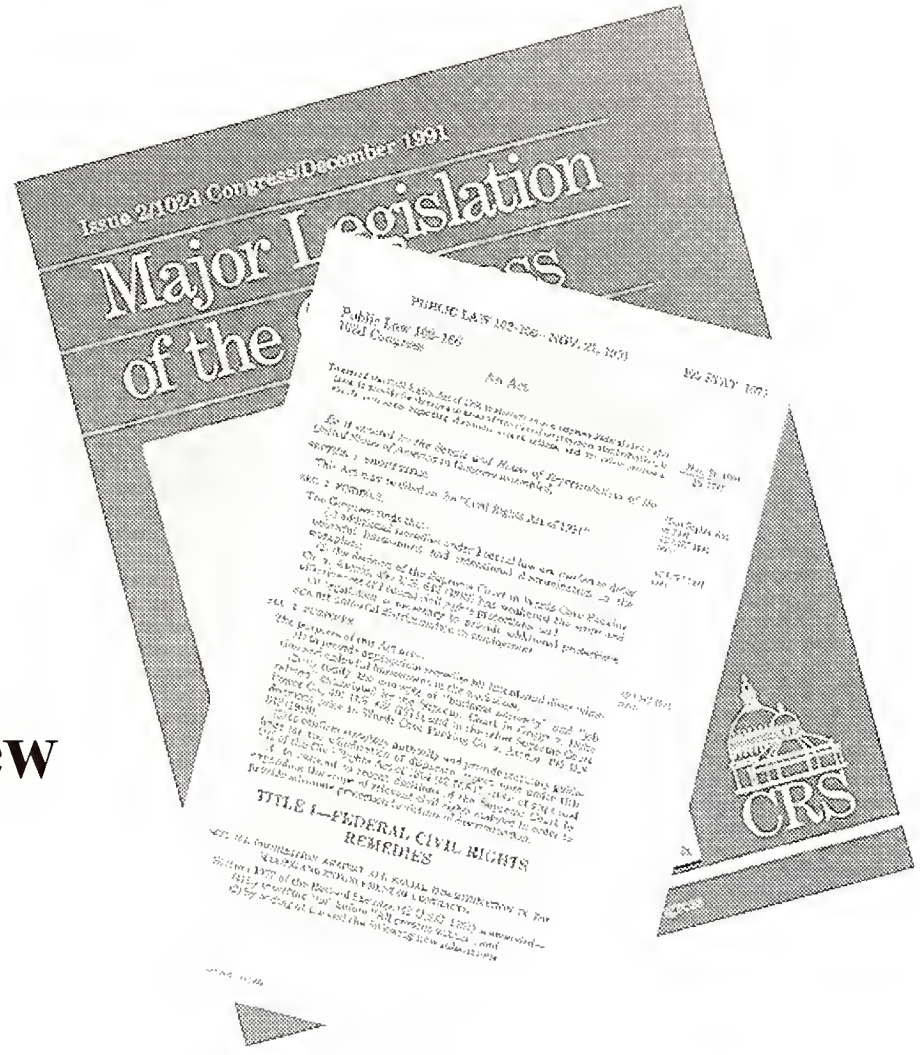
22. Refining Co. v. Board of Aldermen, 284 N.C. 458, 202 S.E.2d 129 (1974). The North Carolina courts have held that local government decisions that are quasi-judicial in character—for example, those rendered by boards of adjustment—must be supported by competent material evidence that was before the decision-making authority at the time of the decision. Interested parties must be afforded all of the essential requirements of due process, including an impartial decision and an opportunity to be heard. It is not clear from these decisions whether the material evidence is required because a constitutionally protected interest is involved, or because of the court's characterization of the proceeding as quasi-judicial. Although early cases describe the contract award decision as being "judicial" in character, the procedural and evidentiary requirements of quasi-judicial proceedings have not generally been required for contract award decisions. It is probably best to view the earlier characterization as an effort to distinguish between ministerial decisions and other local government agency decisions involving more discretion. A more current ruling might characterize the contract award decision as administrative in character, but still apply the deferential standard of review based on the legislative delegation of discretionary authority to the "administrative agency"—here, the awarding authority.

23. *See* Buckley Constr. v. Shawnee Civic and Cultural Dev., 933 F.2d 853 (10th Cir. 1991) (summarizing cases decided to date); *but see* Patania Elec. Membership Corp. v. Whitworth, 60 U.S.L.W. 2488 (11th Cir. Jan. 29, 1992) (No. 91-8098); *and* City of Atlanta v. J.A. Jones Constr. Co., 260 Ga. 658, 398 S.E.2d 369 (1990) (low bidder may recover bid preparation costs as damages for violation of state law bidding procedure and has a claim under Title 42, Section 1983, of the United States Code for deprivation of property interest in contract).

24. Advance Tank and Constr. Co., Inc. v. Arab Water Works, 910 F.2d 761, 768 (11th Cir. 1990).

The Civil Rights Act of 1991: An Overview

Stephen Allred



In 1989 the United States Supreme Court handed down a series of decisions[1] that made it more difficult for plaintiffs to win claims of employment discrimination. For the two years following the 1989 term, Congress considered a series of bills aimed at reversing or modifying the effect of the 1989 Supreme Court decisions. Finally, in November of 1991, Congress enacted and the president signed the Civil Rights Act of 1991. The act amends five federal discrimination statutes: Section 1981 of the Civil Rights Act of 1866 (Section 1981), Title VII of the Civil Rights Act of 1964 (Title VII), the Attorney's Fees Awards Act of 1976, the Americans with Disabilities Act of 1990 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA). This article provides a brief overview of the new provisions of the Civil Rights Act of 1991 that will affect state and local government employees.

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New Provisions

Racial Discrimination in Making and Enforcing Contracts

The Civil Rights Act of 1866, now codified at Section 1981 of Title 42 of the United States Code, was intended as an enforcement mechanism for the Thirteenth Amendment and as a means of outlawing the "Black Codes" enacted by the southern states after the Civil War. Section 1981 provides that "all persons . . . shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." A plaintiff may sue a public or private employer under Section 1981 for discrimination in employment on the basis of race or national origin.

In *Patterson v. McClean Credit Union*[2] the United States Supreme Court held that Section 1981 was to be read narrowly, and that the plaintiff in that case could not bring a claim of racial harassment under the act. Rather, held the Court, the statute only conferred a right

to bring discrimination claims arising from the formation of the employment contract—hiring claims—and did not apply to post-hiring conduct, except in limited circumstances where a promotion essentially amounted to a new contract of employment.

The Civil Rights Act of 1991 adds a new subsection (b) to Section 1981, which defines the term "to make and enforce contracts" to include "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." The effect of this change is to make all terms and conditions of employment, not just hiring claims, actionable under Section 1981. In other words, actions for matters such as pay, discipline, work assignments, and other personnel actions may now be brought under Section 1981.

Damages in Cases of Intentional Employment Discrimination

One of the criticisms leveled at Title VII of the Civil Rights Act of 1964 was the limited scope of relief available to plaintiffs. Up until now, the courts could grant equitable relief to a prevailing plaintiff, such as an injunction against further discrimination, back pay, and attorneys' fees, but could not assess damages against an employer.

The Civil Rights Act of 1991 authorizes the recovery of compensatory damages (when the award is measured by the actual loss suffered) and punitive damages (when the award is offered as a punishment) for intentional discrimination, in addition to the equitable relief authorized by Title VII, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. Compensatory damages include "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." Although the act authorizes punitive damages against private employers, no punitive damages may be assessed where the employer is a governmental agency at either the national, state, or local level.

It is also important to note that although all employers, including state and local governments, are subject to compensatory damages for the first time, their liability is limited by the terms of the act, as follows: An employer with more than 14 and fewer than 101 employees may be liable for damages up to $50,000; for an employer with more than 100 and fewer than 201 employees, the limit is $100,000; for an employer with more than 200 and fewer than 501 employees, liability may extend up to $200,000; finally, for an employer with more than 500 employees, damages may be awarded up to $300,000.

Note that compensatory damages do not include "back pay, interest on back pay, or any other type of relief authorized under § 706(g) of the Civil Rights Act of 1964." Back pay is not, therefore, limited by the cap on compensatory and punitive damages. Moreover, race discrimination cases brought as Section 1981 claims (discussed in the section above) are not limited to any level of compensatory or punitive damages.

The Civil Rights Act of 1991 also provides for a good faith defense to handicap discrimination claims that arise under the ADA or the Rehabilitation Act of 1973. Specifically, damages of any kind are not authorized where the employer demonstrates that it made good faith efforts, in consultation with the person with the disability, to identify and make a reasonable accommodation that would provide the person with an equally effective opportunity and that would not cause an undue hardship to the operation of the business. Certainly, employers and applicants may differ as to whether good faith efforts have been made. The exact meaning of the good faith defense will only become clear with future court decisions.

Jury Trials

A potentially far-reaching effect of the Civil Rights Act of 1991 is its provision for jury trials. If a complaining party seeks compensatory or punitive damages, he or she may demand a jury trial. Further, the judge may not inform the jury of the limitations on damages noted above.

A jury trial is available only for intentional discrimination claims, not disparate impact claims (discussed in the next section). Civil rights advocates have argued that juries are more sympathetic than judges to discrimination claims and are more willing to award damages where appropriate. Again, the extent to which state and local government employers will actually incur liability now that their employment decisions will be subject to scrutiny by juries remains to be seen.

Burden of Proof in Disparate Impact Cases

The key issue that drove the two-year debate on the civil rights bill was the question of burden of proof: Should the alleged victim or the employer bear the

responsibility for proving discrimination? And how big a burden should it be? Unfortunately, the debate on this question was reduced to charges and countercharges of whether or not the bill would require employers to adopt hiring quotas if they had the burden of proof in situations where an employment practice had the effect of disproportionately excluding members of a protected group (such as a particular race or ethnic group). Quite apart from this simplistic rhetoric, the question of burden of proof is a complicated one.

The burden of proof in disparate impact cases was originally set forth by the Supreme Court in its seminal 1971 decision, *Griggs v. Duke Power Company*.[3] The Court in *Griggs* held that even if an employer did not intend to discriminate against a protected group, it violated Title VII nonetheless if its practices had a disparate impact on a protected group. Under *Griggs*, if a plaintiff could show that an employment practice had the effect of disproportionately excluding members of a protected group, the employer had the burden of proving that the practice was directly related to job performance and was justified as a "business necessity."

In 1989 the Court overturned *Griggs* with its issuance of *Wards Cove v. Atonio*.[4] *Wards Cove* brought about four major changes in disparate impact cases: (1) it barred the use of internal work force statistical comparisons to establish a claim of discrimination; (2) it required plaintiffs to identify the specific employment practice that caused the disparity to exist; (3) where the plaintiffs made such a showing, it lowered the standard an employer must meet to justify that practice from proving a "business necessity" to merely demonstrating that the challenged practice was related to a legitimate business objective; and (4) it kept the burden of proof on the plaintiff at all times.

The Civil Rights Act of 1991 overrides *Wards Cove* and essentially enacts a return to the *Griggs* standard. Specifically, the act amends Title VII to state that disparate impact is proven if a plaintiff shows that an employer uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the employer fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity. Further, the act provides an exception to the requirement that the plaintiff identify the particular employment practice that causes the disparate impact. If the plaintiff can demonstrate to the court that the elements of the employer's decision-making process are not capable of separation for analysis, the decision-making process may be analyzed as one employment practice. Of course, if the employer demonstrates that a specific employment practice does not cause the disparate impact, then it will not be required to demonstrate that the practice is required by business necessity.

Race Norming

For a number of years, some employers have used the practice of "race norming," which compares scores on hiring and promotion tests only within the same racial category. For example, if an employer requested from the Employment Security Commission (ESC) only those applicants who scored in the top 10 percent on the General Aptitude Test Battery, it would receive a list of names, some of whom would be black and some white. However, the score of the highest black applicant might be well below the score of the lowest white applicant on the list. Because the black applicants were in the top 10 percent of all black applicants who took the test, however, the ESC could argue that it was referring the top 10 percent. Stated another way, the scores were adjusted by comparing only blacks to blacks and whites to whites, not by simply comparing all test takers on an absolute scale.

The act adds a new section to Title VII to provide that it is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, religion, sex, or national origin. The effect is to ban the practice of race norming and may well signal the end of the use of general aptitude tests as selection tools.

Mixed Motive Cases

The 1989 Supreme Court decision *Price Waterhouse v. Hopkins*[5] held that if an employer could show that it had two motives for an employment decision, one legitimate and the other discriminatory, the employer could escape liability under Title VII if it could show that it would have made the same decision based only on the nondiscriminatory grounds. These claims were termed "mixed motive" cases, because the employer made an employment decision motivated in part by discrimination.

Price Waterhouse is overturned by the Civil Rights Act of 1991. The act adds a new section to Title VII to provide that except as otherwise provided in Title VII, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice. A plaintiff is not, however, entitled to damages or reinstatement in such cases, but is limited to declaratory relief, attorneys' fees, and costs.

Challenges to Consent Decrees

In *Martin v. Wilks*[6] the Supreme Court permitted white fire fighters in Birmingham, Alabama, to challenge a consent decree that required the city to take affirmative action in hiring black fire fighters. The Court held that the white fire fighters could challenge the action even though they waited years after the consent decree had been executed. The effect was to make consent decrees virtually useless to settle Title VII claims, as they could be subject to continuing challenge by disgruntled employees every time a personnel action was taken pursuant to the decree.

The Civil Rights Act of 1991 adds a new section to Title VII to bar challenges to a consent decree by a person who, prior to the entry of the judgment or order, (1) had actual notice of the judgment or order sufficient to inform the person that the judgment or order might adversely affect his or her legal rights and (2) there was a reasonable opportunity to present objections to the judgment or order. The act also bars these types of challenges by anyone whose interests were adequately represented by another.

Challenges to Seniority Systems

In *Lorance v. AT&T Technologies, Inc.*[7] the Supreme Court held that the right to challenge a seniority system under Title VII arises when the system is adopted, not when its operation subsequently has discriminatory effects. Of course, by the time an employee retired and then realized the effects of the discriminatory system, it was too late to bring a timely challenge.

The Civil Rights Act of 1991 reverses the decision in *Lorance* by providing that an unlawful employment practice under Title VII occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose, when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

Personal Staff Exemptions

Title VII has excluded from coverage certain persons who serve in close proximity to elected officials. The Civil Rights Act of 1991 revokes these exclusions and provides that the rights, protections, and remedies of Title VII shall apply with respect to any person who is chosen or appointed by state or local elected officers to serve (1) as a member of an elected official's personal staff, (2) in a policy-making position, or (3) as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

For the first time, then, individuals such as city and county attorneys, clerks to a board of county commissioners or city council, and high-ranking policy makers in state government may bring claims of employment discrimination under Title VII.

Age Claims Filing Period

The act changes the procedure for filing suit under the Age Discrimination in Employment Act (ADEA). It is still the case that a plaintiff has two years (or three years for willful violations) from the incident giving rise to the claim to file the ADEA claim with the Equal Employment Opportunity Commission (EEOC). What is new is a subsection to the ADEA that requires the EEOC to notify complainants when an age discrimination charge is dismissed or otherwise terminated by the commission. The plaintiff then has ninety days of receipt of the EEOC notice to file suit.

Technical Assistance Training Institute

The act amends Title VII to require the EEOC to establish a Technical Assistance Training Institute through which it will provide assistance and training to covered entities. The EEOC will be required to begin multilingual education and outreach programs on the rights and obligations created by the Civil Rights Act of 1991 to those who have historically been victims of discrimination. Employers will not be excused from compliance with Title VII on the grounds that they did not receive technical assistance from the EEOC.

Glass Ceiling Commission

The *glass ceiling* is a term sometimes used to describe a situation in which women and minorities in an employment setting are able to see top positions (because they are inside the company) but are not able to advance to them. Title II of the Civil Rights Act of 1991 sets up a Glass Ceiling Commission to study artificial barriers to the advancement of women and minorities in the workplace and to make recommendations for overcoming such barriers. The commission is to make a report to the president and Congress within fifteen months of passage of the act, including recommendations on changes needed in the law.

Conclusion

The Civil Rights Act of 1991 clearly shifts the balance of power back toward plaintiffs in Title VII litigation and increases the potential liability of employers, including state and local government employers, for findings of employment discrimination. The availability of compensatory damages and jury trials may well spur an increase in litigation. As always, the best defense to any employment discrimination claim is a thorough review of existing practices and procedures to ensure that they are job related. ❖

Notes

1. Wards Cove v. Atonio, 490 U.S. 642 (1989); Price Waterhouse v. Hopkins, 490 U.S. 228 (1989); Patterson v. McClean Credit Union, 491 U.S. 164 (1989); Martin v. Wilks, 490 U.S. 755 (1989); Lorance v. AT&T Technologies, Inc., 490 U.S. 900 (1989); and Public Employees Retirement System of Ohio v. Betts, 492 U.S. 158 (1989). The *Betts* decision was overturned October 16, 1990, when the president signed the Older Workers Benefit Protection Act, which requires employers to provide older workers with benefits at least equal to those provided to younger ones, unless they can prove that the cost of providing an equal benefit is greater for an older worker than for a younger one.
2. 491 U.S. 164 (1989).
3. 401 U.S. 424 (1971).
4. 490 U.S. 642 (1989).
5. 490 U.S 228 (1989).
6. 490 U.S. 755 (1989).
7. 490 U.S. 900 (1989).

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Alternative Revenue Sources for Local Governments

Charles D. Liner

North Carolina's city and county officials, like local officials everywhere, are in a tight fiscal bind. As usual, revenues are not sufficient to meet needs. They find it difficult to cut spending without cutting services, and local residents protest any proposal to reduce services. One way out of this bind is to increase the property tax rate. But above all, outspoken residents don't want their property taxes to increase.

How, then, can governing boards get out of this bind? The most obvious answer is to search for revenue from sources other than the property tax. In recent years this search has involved four approaches: increasing reliance on user charges, seeking authorization for new taxes through local legislation, proposing a menu of optional revenue choices, and imposing a new tax in the form of a per-household charge.

Increasing reliance on user charges. Local units have always relied on charges related to use to pay for such services as water and sewer, building inspections, hospitals, and public transportation. In recent years local units have sought to increase such revenues by increasing existing charges and creating new charges for garbage collection, recreation programs, and other services. Typically, however, they find that the potential for increasing revenues from bona fide user charges (as opposed to the household charges discussed below) is limited. Most public services provide general benefits to the community, so that it is not possible to create charges that fall in proportion to use or benefit. And increased use of user charges runs head-on into the problem that user charges and fees impose a disproportionately heavy burden on poor people.

Seeking authorization for new local taxes. Many local boards have asked the General Assembly to enact local bills granting them authority to levy a new tax. The local-option retail sales tax originally was authorized for one county before authority was extended to all counties in 1971. Individual units have succeeded in gaining authorization for several other kinds of taxes: land transfer taxes (taxes on transfers of real property), occupancy taxes on room rentals, taxes on admission to entertainment and sports events, and a sales tax on prepared meals.

Implementing a revenue menu approach. For several years local officials have proposed that the General Assembly authorize the use of a variety of optional revenue sources by *all* units, thus providing them with a "menu" of choices. The idea of having optional revenue sources is not new. The local-option retail sales tax now provides an alternative revenue source as an option for all local units (all counties have chosen to levy the three separate retail sales tax levies authorized so far), and other taxes—privilege license, franchise, and even the property tax—are optional sources.

Proposals to provide a menu of optional revenue sources boil down to proposals for the addition of more optional revenue sources for use by all units. Several such sources have been proposed, including entertainment taxes, a local payroll tax, and a local income tax that would be collected on state income tax returns (thus it is called a "piggy-back" local income tax). The menu might also include taxes that were originally authorized for some units through local legislation, such as the land transfer, occupancy, and prepared meals taxes. An

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additional menu choice might be an increased rate on the local-option retail sales tax (the original 1 percent rate on that tax was increased to 2 percent by actions taken in 1983 and 1986).

Imposing flat-rate per-household charges. A fourth approach taken by some units is to levy what amounts to a new tax—essentially a flat tax on households—without obtaining specific authorization. A small but apparently growing number of units have levied what is usually called a "user charge" or "user fee" on each property owner or on each residential property owner, using the property tax bill to collect the levy. For example, some counties have levied such a charge and designated it as a user charge for landfill services. The revenue potential of such charges is large, as long as they can be used without legal, legislative, or political challenge. Conceivably a county or city could distribute the cost of many different public services separately through such per-household charges. In fact, it is conceivable that property taxes could be reduced greatly, or eliminated entirely in some units, by substituting these charges for the property tax.

Although called charges or fees, these levies are not truly user charges or fees, because they do not vary with use of the service. All owners of residential property must pay the same amount no matter how much the service is used. In fact, these so-called charges are by nature general taxes—in effect they are a flat tax per household. They are similar in nature to the highly regressive poll tax, or head tax, that was abolished long ago in most places. The only difference is that the poll tax was levied as a flat amount per adult. These new taxes are levied usually as a flat amount on each owner of residential property.

There is no published statewide information on use of these levies, but apparently some units have levied per-household charges for solid waste collection and disposal or other purposes for several years. This has been occurring despite the fact that there was no specific authorization to levy a flat household charge or fee for any purpose until recently.[1] (It is important to local units that these charges be authorized, for they would be uncollectible if their legality were successfully challenged.) In 1989 the General Assembly authorized a uniform monthly fee for 911 emergency telephone service, to be collected by the telephone exchange.[2] And in 1991 the General Assembly authorized an "availability charge" for solid waste facilities and provided that such charges could be collected in the same manner as property taxes.[3]

A second law enacted in 1991 also has implications for future use of flat household charges. Chapter 591 of the 1991 North Carolina Session Laws amended existing laws to allow cities and counties to levy and collect charges and fees for storm-water drainage facilities, as well as for other public enterprise activities.[4] Public enterprise services include electricity and gas distribution, water and sewer services, public transportation, solid waste collection and disposal, cable television, off-street parking, and airports.[5] The act makes it feasible for cities and counties to collect various charges or fees for public enterprises. Cities and counties can enforce collection of such fees by specifying in an ordinance the order in which partial payments of bills will be applied to the various services covered by a bill for charges. This provision in effect allows a county or city to use water bills, or bills for other services provided by public enterprises (such as electricity), to collect several household charges levied to pay for other public enterprise activities. For example, if a storm-water drainage charge or garbage collection fee included on a water bill were not paid, water supply could be cut off.

The remainder of this article describes the principles involved in considering the appropriateness of using certain alternative revenue sources and discusses those alternative sources in light of the principles.

Principles of Tax Fairness and Equity

What are the issues that must be considered in the search for alternatives to the property tax? Whether or not it is good public policy to authorize optional revenue sources for local units is not an issue. It has long been the practice in North Carolina to allow local units the option of using various revenue sources. Nor is the question of whether or not local units need, or should have, more revenue an issue. That question is best left to local officials, and local officials already have available through law a means for increasing revenue—the property tax. Rather, the fundamental issue is, what are appropriate revenue sources for North Carolina's cities and counties?

The purpose of taxes and charges is not merely to raise revenue. The fundamental purpose is to distribute the costs of providing public services among people in a fair and equitable way. The kinds of taxes and charges that are used will determine who will pay the costs of government services. Therefore, the paramount concern in judging revenue sources is whether they

result in a fair distribution of the cost of providing public services.

What is fair is a matter of opinion. However, there are two long-established and commonly accepted principles of tax fairness and equity. The benefits-received (or simply "benefits") principle is that those who benefit from a public service should bear the costs, and that the burden of supporting a public service should be distributed in proportion to the amount of use or benefit received from the service. The ability-to-pay principle is that taxes should be levied in accordance with taxpayers' ability to pay.

The Benefits Principle

The benefits principle is applicable when the use of a service, or benefits derived from a service, vary among people, groups of people, or business firms. Its application is feasible, however, only when use or benefits can be measured or assessed and when a charge or fee can be devised that corresponds with use or benefits received. Metered water charges and highway taxes and fees are examples of benefits-related charges and taxes.

The benefits principle is particularly applicable when considering appropriate taxes for North Carolina's municipalities because North Carolina's municipalities were established essentially in accordance with the benefits principle. North Carolina's counties were established as agents of the state government to provide basic services on behalf all the people of the county, including those who live within municipal borders. Municipalities were established to provide those additional urban services, such as police and fire protection and garbage collection, needed by people who live in towns and cities, or to provide a higher level of service if municipal residents are not satisfied with the level of service provided by the county government.

Under this system municipal residents receive more services than those who live outside municipal boundaries, so they pay an additional property tax levied by the municipality only on municipal residents. Thus, municipal residents benefit from a second level of service, and in compensation they pay a second property tax in addition to their county property tax. As we will see, some proposed municipal revenue sources may violate this principle by failing to impose an extra burden on municipal residents (as the retail sales tax does) or by exporting part of the burden to people who live elsewhere (as a payroll tax does). For such revenue sources to be consistent with the benefits principle, a municipality would have to incur costs for providing public services to nonresident taxpayers that are not already covered through increased property tax valuations on stores, offices, and factories that nonresidents use.

The Ability-to-Pay Principle

The principle that taxes should be imposed according to ability to pay has two subordinate concepts—vertical and horizontal equity—that are salient to the issues in question. Vertical equity refers to fairness between those who have ample ability to pay and those who do not. If high-income taxpayers pay a larger percentage of their income in taxes than do low-income families, a tax is called progressive. If, on the other hand, low-income taxpayers pay a higher percentage of income in taxes, a tax is called regressive.

Whereas vertical equity requires that those who are unequal in ability to pay should be treated differently, horizontal equity requires that those who have equal ability to pay should pay the same amount in taxes. A payroll tax, for example, would violate this principle because a family that received all its income from wages would be taxed on all its income, while a family that received all of its income from rental income, interest, or dividends would not be taxed at all.

Application of Principles to Proposed Revenue Sources

This section examines specific revenue sources that have been authorized through local legislation or proposed for general use and analyzes them in light of the principles of equity discussed above.

Local Income Taxes

Three types of local income taxes could be authorized: a full-fledged tax like the state income tax administered by local units, a local income tax piggy-backed on the state income tax and collected by the state, and a locally administered payroll tax. The first type of income tax would not be feasible except in larger units, and where feasible it would be wasteful because local administration would duplicate state income tax administration. A piggy-back income tax and a payroll tax would be relatively easy and inexpensive to administer. The former would be levied on a unit's residents as a percentage of

their state income tax liability and collected by the state using state income tax returns. A payroll tax would be imposed at a flat rate on all wages and salaries paid within a unit's boundaries, and employers would withhold and remit the tax to local units. Normally there would be no exemptions or deductions under a payroll tax.

One advantage of a piggy-back local income tax is its progressiveness—higher-income taxpayers would pay a higher percentage of their income than would lower-income taxpayers. In fact, the tax would have the same degree of progressivity as the state income tax.[6] Another advantage is that it would be paid only by residents of the units that levy the tax, so would therefore conform to the benefits principle.

A payroll tax, in contrast, would be a regressive tax—lower-income taxpayers would pay proportionately more of their income than would higher-income taxpayers. It would be regressive because, first, only wages would be taxed. Low- and moderate-income families tend to earn all or almost all of their income from wages and salaries, while upper-income families tend to receive more of their income from other sources, such as property income, dividends, interest, and capital gains. Therefore, the proportionate burden on income would be larger for lower-income than for higher-income taxpayers. Failure to tax all sources of income would also violate the principle of horizontal equity—taxpayers with equal ability to pay could be taxed differently. Second, there would be no exemptions to shelter a basic level of income or to adjust for differences in ability to pay due to family size. Third, the tax would be levied at a flat rate, without regard to the level of income.

A payroll tax also would be imposed in part on commuters who live outside the unit that receives revenue from it. Thus, in cities and counties that have substantial in-commuting, a large share of payroll taxes would be exported to nonresidents. Put another way, residents of some units would pay substantial amounts of taxes to cities and counties they do not live in. And residents of the levying unit who earn wages outside the unit would not have to pay the tax (at least not to their own unit), a violation of the benefits principle and the concept of horizontal equity.

Local-Option Sales Tax Increase

When the local-option retail sales tax was first authorized in 1971 at the rate of 1 percent, revenues were returned to the county in which they were collected and then distributed to the county government and to the municipalities in that county. Because of this feature, cities and urban counties that served as regional shopping or employment centers collected sales tax revenues from shoppers who lived in other counties. In 1983 when the authorized rate was increased to 1.5 percent, and again in 1986 when the rate was increased to 2 percent, the law provided that the revenues from the additional rates would be distributed to counties not on the basis of collections but on the basis of each county's share of population. (Thus, in effect the half-cent sales taxes are a form of state revenue sharing rather than a form of local taxation). As a result larger units receive much less in revenue from the second 1 percent rate than from the first 1 percent rate, first because they are no longer receiving sales taxes paid by nonresidents and second because per capita spending tends to be higher in more urban areas. The effects of any increase in the local sales tax would depend on which distribution method is adopted.

The retail sales tax, like most sales and excise taxes, is regressive because taxable spending of lower-income taxpayers represents a higher percentage of their income than of higher-income taxpayers.

An important aspect of the use of the retail sales tax as a local tax is that it departs from North Carolina's system of imposing a second level of taxation on municipal residents to compensate for the extra services provided by municipalities. As discussed earlier, municipal residents pay a county property tax, plus a municipal tax, so there are two levels of service and two levels of taxation. Under North Carolina local retail sales taxes, both municipal and nonmunicipal residents of a county pay the same amount of taxes (taxable spending being equal, of course), but municipalities get a share of the proceeds, in addition to the share received by the county government, to offset the costs of providing municipal services. In other words, there are still two levels of service, but only one level of taxation. In effect, the retail sales tax allows municipal residents to export part of their taxes to nonmunicipal residents.

Land Transfer Taxes

The term "land transfer tax" is a misnomer in that it is a tax on transfers of all real property, not just transfers of land. Actually, a similar tax already exists. The "excise stamp tax on conveyances" is levied at the rate of $1.00 per $500 of value. All counties collect the tax and remit half the revenues to the state.

The use of land transfer taxes as a significant local revenue source is a relatively new idea that appeared first in several resort areas of other states where condominiums and vacation homes were being sold mainly to outsiders. Its use in resort areas tended to follow the benefits principle—buyers of new vacation homes were imposing costs on local communities for public services, and the tax allowed communities to tax the people who stood to benefit. The tax was first authorized for resort areas in North Carolina as well—in Dare and Currituck counties, which have extensive beach development. Now several counties without resort areas are authorized to use the tax.

The common view is that the burden of a land transfer tax falls on buyers of real property. For this view to be valid, however, property owners would have to be able to sell their property for more money than they could get before the tax was imposed. But there is no reason why prospective buyers of property would pay more for property, other factors being constant, after a land transfer tax has been imposed. Therefore, the actual effect of imposing a land transfer tax, at least in theory, would be to reduce the net value of all property at the time the tax is first levied.

Consider, for example, a home whose current market value is $100,000 before such a tax is levied. By the definition of market value, that means that under current market conditions, and given a reasonable amount of time to find a buyer, someone would be willing to purchase the home for $100,000, but no more. If the local government then levied a 5 percent land transfer tax, it would follow that the net value of the home would immediately fall to $95,238. That is, before the tax buyers would have paid no more than at total of $100,000 for the property. After the tax is imposed the potential buyer would still be willing to pay no more than a total of $100,000 (assuming no other circumstances of the sale had changed), and a sales price of $95,238 plus a land transfer tax of 5 percent of that amount ($4,762) would equal $100,000. In effect, the tax places a lien on all property that equals what the tax would be if the property were sold.

If, as the common view suggests, the burden of a land transfer tax actually did fall only on buyers of real property, a question arises as to the use of a land transfer tax as a general revenue measure in the typical city or county (as opposed to resort communities). That is, why should the costs of government services be distributed through a tax that actually did fall only on people who purchase property? It may be true that construction of new homes or businesses imposes costs on a community—for new streets, parks, or schools, for example—but impact fees levied only on new construction and earmarked to defray costs imposed by new residents would be the appropriate way to recoup those costs. A similar justification does not exist for imposing a tax on buyers of existing houses or buildings for which facilities have already been provided.

Occupancy Taxes

Occupancy taxes are sales taxes imposed on the rental of hotel and motel rooms and resort homes and apartments. This kind of tax is authorized through local legislation and therefore varies in character, particularly as to the use of revenues. The tax may be attractive to local units simply because it exports part of the tax burden to travelers and visitors, or because it provides a dedicated source of revenue to promote business for hotels and restaurants through tourism or convention promotion.

Ideally, occupancy taxes would conform to the benefits principle by earmarking revenues to cover costs incurred for the benefit of those who pay the tax. For example, some beach communities earmark occupancy taxes for beach erosion control and refurbishment. Occupancy taxes that are used for general purposes would tend to export a community's tax burden and therefore violate the benefits principle, unless it could be shown that those who rent hotel or motel rooms impose additional costs on the local government that are not being covered already through additional property and sales tax revenue.

Entertainment Taxes

These taxes could take a variety of forms, but essentially the proposal is to impose a special sales tax on the purchase of tickets to entertainment events, including movies. Cities that have facilities for large entertainment events, such as rock music concerts and sports events, have proposed special taxes on tickets sold for such events.

If the purpose of such taxes is to offset direct costs of providing police protection or traffic control services associated with entertainment events, such taxes might be justified under the benefits principle of fairness. However, in the case of publicly owned municipal facilities for entertainment and sports events, it is possible to work out an agreement by which funds from ticket sales—aside from a special entertainment tax—would

be paid to the city government to compensate for costs of extra police protection and traffic control. In fact, in many cases these arrangements were worked out long ago, and the city is already being reimbursed for such costs. The question arises, then, why should a tax for general use be imposed on those who attend entertainment events? And why should those who drive into a city to see an event be asked to pay a tax to cover the costs of government services provided in that unit, when no costs are being incurred that are not being covered through ticket prices?

Prepared Meals Sales Taxes

In 1990 the General Assembly authorized a new tax for Mecklenburg County and the city of Charlotte called a prepared meals tax—a sales tax on the price of meals purchased in restaurants and other establishments that prepare and sell food. Although in this case the proceeds were earmarked for convention center facilities and promotion, it is difficult to understand the rationale for this tax as a benefits-related tax. Of course people who attend conventions and meetings in Charlotte would pay the tax when they eat at restaurants, but so would everyone who eats out or consumes prepared food in restaurants, bars, convenience stores, fast-food stores, and other establishments that sell prepared food. The tax would not be as regressive as most sales taxes—those who are well-off tend to eat out more than others—but like other sales taxes it would be regressive.

Flat-Rate Household Taxes

As discussed earlier, these taxes are being imposed as user charges, fees, or "availability charges" and collected at a flat rate per household through the property tax billing and collection system or through water and sewer or municipal electric bills. They are in truth earmarked general taxes because their payment is involuntary and the amount levied is not related to the use of a service or the amount of benefits derived from the service being financed.

Like poll taxes, such household charges are levied completely without regard to ability to pay—the janitor pays the same amount as the bank president—and therefore are highly regressive. They are substantially more regressive than property and sales taxes—property values and taxable spending rise with income, so in absolute amounts property, sales, and excise taxes rise as income rises, whereas household charges are levied at the same amount for everyone. They would tend to be more regressive than true user charges because the use of services for which user charges are levied, such as water consumption, tends to increase with income. In fact, the only revenue source that could be more regressive than a flat-rate household tax or a poll tax would be a charge imposed only on low-income people, or imposed in greater amounts on people with low incomes.

Discussion

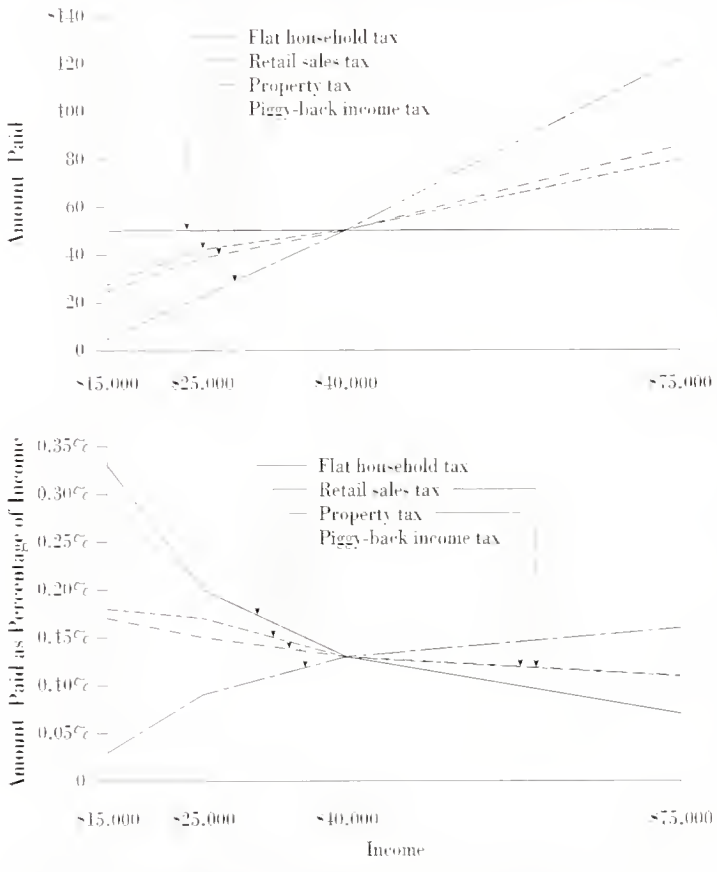
The fiscal bind that local units face poses two kinds of threats to the quality of government in North Carolina. The first threat is that local opposition to increasing property tax rates will deter local units from providing an adequate level of services that are of statewide concern. Today, for example, a few counties cannot replace antiquated school buildings because to do so would require increases in the property tax rate that would be unacceptable to local residents, and many counties are unwilling to provide the local contribution necessary to provide child day care and various social services programs.

The second threat is that the search for alternatives to the property tax will lead to a serious deterioration in the fairness of local tax systems and North Carolina's tax system as a whole. For example, the per-household taxes being levied in the guise of user charges are far more regressive than any tax or charge now used (see Figure 1). And allowing cities or counties to use taxes, such as payroll taxes, whose effect is to export part of a unit's tax burden to residents of other units also has serious implications for tax fairness. Although a progressive piggy-back income tax would make the system more fair, it might be difficult to gain local acceptance of such a tax.

Given resistance to property tax increases, what can be done to help local officials out of their bind without causing deterioration in tax fairness?

The search for answers to that question should begin by examining the property tax itself, and the role it plays in financing public services in North Carolina. Although North Carolina has greatly reduced reliance on the property tax, it still plays a vital role because it is the only major tax, other than a local income tax, that is truly local in nature and that can be administered effectively by local units. Without it, there would be no effective and adequate means by which local units could

Figure 1
How Raising Revenues from Alternative Sources
Affects the Tax Burdens of Four Representative Families



Notes: These figures show the effects of raising an average of $50.00 from four representative families (that is, a total of $200) using four alternative revenue sources. The upper figure shows the estimated amount paid by each family. The lower figure shows that amount as a percentage of family income. Representative families are married couples with two children who own their homes. Tax estimates are based on spending patterns reported in the U.S. Department of Labor *Survey of Consumer Expenditure*. *See* U.S. Department of Labor, *News*, USDL 91-607, Nov. 22, 1991.

vary the level of taxation they place upon their own residents to provide the level of services those residents want to have. In fact, resistance to property tax increases is to be expected precisely because the property tax is the only major local tax under the control of local officials.

If the tax is genuinely unpopular, however, it may be important to understand why it is unpopular. It does not appear related to a perception that the tax is unfair. Under the most unfavorable assumptions about its incidence, the tax would tend to be less regressive than a retail sales tax or excise tax and far less regressive than a per-household charge, and some economists contend that the property tax is a progressive tax.[7] Furthermore, property taxes in North Carolina tend to be substantially lower than in many parts of the nation, and in any given year the great majority of local units do hold the line on property tax rates.[8]

Several other reasons might explain the tax's unpopularity. First, whereas income taxes are withheld from paychecks and retail sales taxes are paid in small amounts with each purchase, many people must pay property taxes in a lump sum (the tax is due in a lump sum, but people with mortgages usually make monthly payments into their escrow accounts). And whereas income taxes increase only when income increases, and sales taxes increase only when taxable purchases increase, property tax liabilities are not tied to income—a farmer must pay despite crop losses, and retired people on fixed incomes are subject to increased taxes. Unlike any other tax, property tax liabilities can increase suddenly, as a result of revaluations.

These reasons may or may not provide clues to solutions. Would the tax be less resented, or more resented, if monthly payments were required? Would more frequent revaluations reduce protests, or merely increase the frequency of protests? One should also ask whether relief can be granted to those who would be hurt most by property tax increases. North Carolina already provides a homestead exemption for the elderly, and that exemption has been increased frequently. The homestead exemption does not, however, protect elderly people from property tax increases. To do that, for the elderly or for others, would require another approach that actually protects people from having to pay more than a set percentage of their income in property taxes. Such an approach—the circuit-breaker approach—has been used in many other states, but the idea has never gained support in North Carolina.[9]

It is important to recognize that, historically, the major alternative to the property tax has been not the authorization of more local taxes but greater reliance on statewide taxes to finance statewide services previously financed by local governments. At the turn of the century the property tax financed most of the costs of public services, including those provided by the state government. In 1921 the General Assembly deliberately adopted the policy of making the property tax a local tax—it abolished the state property tax and adopted the state personal and corporate income taxes and the gasoline tax. Under this policy statewide programs would be financed through statewide taxes, and local services would be financed mainly through the property tax. In

1931 and 1933 the state radically reduced the role of the property taxes by shifting to the state government the responsibility for financing public schools, county roads, and prisons. Since then the state has assumed primary responsibility for financing social services programs, the judicial system, community colleges, and many health programs. Today, state tax sources—the largest being the progressive personal income tax—account for three-quarters of the combined tax revenue of the state and local governments.

The principles underlying the shift to statewide financing of statewide services are still valid today. To the extent that local units are responsible for financing services, spending and the quantity and quality of services will vary, and the burden of financing those services will be greatest in the poorer units. Providing additional tax sources will not help, because poor units have poor tax bases. Tax fairness and the need to provide uniform and adequate programs in education, social services, and other programs of statewide concern require that statewide programs be financed largely from statewide revenues, most of which come from income taxes.

Thus, at least part of the answer to local units' fiscal bind, particularly in the case of counties, may be for the state to ensure that services that are of statewide concern, such as school construction and programs for the poor, are financed primarily through statewide taxes. It would not be sound to relieve local units of all responsibility for financing such services, but it is important to ensure that the provision of those kinds of services does not depend solely on the willingness of local residents to pay property taxes. ❖

Notes

1. An exception is that water and sewer bills usually contain a small, flat charge designated as an administrative charge or billing fee.

2. 1989 N.C. Sess. Laws, ch. 587.

3. 1991 N.C. Sess. Laws, ch. 652.

4. 1991 N.C. Sess. Laws, ch. 591. This chapter amended North Carolina General Statutes (G.S.) sections 160A-311 and 153A-277, which authorize fees for public enterprises.

5. G.S. 160A-311.

6. The state income tax uses the federal definition of taxable income but makes some adjustments in the size of personal exemptions and the standard deduction and imposes a different set of graduated tax rates. Although the state income tax rate structure is not graduated steeply according to taxable income (rates are 6, 7, and 7.75 percent), the tax is progressive because the tax is imposed on most forms of income; because personal exemptions and a standard deduction are allowed, thus sheltering the income of lower-income taxpayers; and because of the moderately graduated rate structure.

7. For a discussion, see Henry J. Aaron, *Who Pays the Property Tax?: A New View* (Washington: Brookings Institution, 1975).

8. For example, only 10.9 percent of municipalities increased property tax rates in 1991. North Carolina League of Municipalities, *Results of the 1991 North Carolina Municipal Tax Rates and Budget Adjustments Survey* (Raleigh: NCLM, August 20, 1991).

9. *See* Charles D. Liner, "Property Tax Relief through a Circuit-Breaker System," *Popular Government* 43 (Fall 1977): 28–31, 47.

The GFOA Award for Distinguished Budget Presentation: The Hallmark of a Professional Budget Document

Paula Few

The Government Finance Officers' Association (GFOA) Awards Program for Distinguished Budget Presentation originated from a desire on the part of budget professionals across the United States to advance the concept that there are identifiable elements that are essential in a good budget document.[1] The GFOA initiated the budget awards program in the spring of 1981, modeling the mechanics of application and peer review on GFOA's already existing Certificate of Conformance in Financial Reporting Program. There is a chief difference between the two awards programs, however. To encompass the many varieties of budget presentation—ranging from line item budgets to program budgets to zero base budgets—the evaluation criteria for the budget awards program are based much more broadly than those for the financial reporting program. The budget awards program criteria recognize that there is no one "good" budget format: various jurisdictions may utilize different methods of effectively presenting budget information to their constituencies.

There are several additional points worth noting at the beginning of any discussion of GFOA's budget awards program. First, the program reviews only operating budgets. If separate capital budget documents are prepared, they may be sent along with the application materials; but the operating budget must provide some discussion of capital budgeting as well. Also, the award is for budget presentation and does not attest to the financial condition of the applicant jurisdiction or the efficacy of the budget process.

The first awards were granted for fiscal year 1986–87 budget documents. Between that time and December 1, 1991, a total of seventeen jurisdictions in North Carolina received the GFOA budget award at least once: seven counties (Cabarrus, Catawba, Durham, Forsyth, Mecklenburg, Orange, and Wake) and ten cities or towns (Asheville, Cary, Durham, Fayetteville, Garner, Lumberton, Raleigh, Sanford, Wilmington, and Winston-Salem). The award is valid for one year only—jurisdictions must submit a budget each fiscal year.

Evaluation Criteria

Budgets are reviewed using four broad categories: the budget as a policy document, as a financial plan, as a guide to operations, and as a communications device. These categories in turn contain several evaluation criteria. Each budget is sent to three reviewers chosen from jurisdictions of approximately similar size but not from the same state as the applicant. The reviewers judge whether a budget is "proficient" in meeting the criteria in the four categories or "does not satisfy" the criteria. The reviewers also judge the budget by rating several designated criteria as either being "especially notable" or not; that is, if the budget satisfies the measure at all, it automatically achieves this ranking.

The author is the budget analyst for the town of Cary, North Carolina.

The Budget as a Policy Document

Five criteria are used to judge how closely a budget document explains policy:

1. A coherent statement of budgetary policies should be included. These may be in the form of goals and objectives, strategies, or other mechanisms. This material is usually found near the beginning of a budget document, either in a transmittal letter or in a narrative summary of the budget.
2. The budgeting process should be explained.
3. Basic policy changes should be described, and the substantive impact of these changes on operations, service levels, or finances should be explained.
4. The rationale behind policies should be explained. It is not necessary to meet this criterion to win the award, but if it is fulfilled, an "especially notable" rating is awarded for this specific item.
5. The document should explain how policies, particularly new and revised policies, will be implemented and monitored. An "especially notable" rating will be awarded if this criterion is fulfilled.

The Budget as a Financial Plan

Ten criteria are reviewed in evaluating a budget's adequacy as a financial plan:

1. The financial structure and operations of the government should be explained, including major revenue sources, how funds are organized, and others.
2. All operating funds should be listed, including internal service and enterprise funds.
3. The document should include projections of the unit's financial condition at the end of the proposed fiscal year, including year-end fund balances, surpluses, or deficits.
4. The budget should explain any conditions or events that will require changes in operations to ensure solvency. If the document fulfills this requirement, an "especially notable" rating is awarded for this item.
5. Projections of the current year's financial activity should be present, along with the prior year's actual numbers and next year's budgeted.
6. Both operating and capital financing elements should be included in the document. If a separate capital budget document exists, the operating budget should explain the relationship between the two.
7. A summary of all operations and financing activity should be present.
8. Information should be presented in a such a way as to allow measurement of budgetary performance or progress toward meeting budgetary goals.
9. Debt management should be discussed.
10. The basis of the budget should be explained, for example Generally Accepted Accounting Principles (GAAP) or cash.

The Budget as a Guide to Operations

Five criteria are used to review the budget as a guide to operations:

1. Relationships between organizational units and programs, and the functions they perform, should be explained.
2. The budget should contain an organizational chart, descriptive personnel information and numbers, and enough data from past years to provide a basis for comparison.
3. The budget should explain how capital spending decisions will affect the operating budget.
4. The document should include objectives and performance measures or targets, and appropriate deadlines should be specified. An "especially notable" rating is awarded if this criterion is met.
5. The budget should discuss the directions given to department heads or supervisors through goals and objectives, statements of functions, or other ways. If the document fulfills this criterion, an "especially notable" rating is given.

The Budget as a Communications Device

Twelve items are evaluated in this broad category:

1. A draft of the budget should be available to the public prior to action by the governing body.
2. The budget should contain summary information for use by the media and the public.
3. The document should not use complex technical

How to Apply for the GFOA Award for Distinguished Budget Presentation

Governmental units considering participation in the budget awards program may find it helpful to obtain a copy of the application materials. These can be obtained by writing the GFOA at the following address:

Government Finance Officers' Association
180 N. Michigan Avenue
Suite 800
Chicago, IL 60601-7476

An application packet will be sent containing general information about the program and two forms to be used when the application is submitted. One form requests some basic information on the budget process and the characteristics of the governmental unit. The other form, entitled "Reviewer's Guide to Detailed Criteria," asks the applicant to specify page numbers in the budget document where examples may be found for each of the evaluation criteria. Both of these forms are utilized by the reviewers when they rate a budget document.

It is then up to the applicant to send all of the required materials—four copies of the budget document, forms, the fee, and any supplementary material (such as a copy of the Capital Improvement Plan, if it is a separate document)—back to the GFOA. This must occur no more than ninety days after the proposed year's budget is legally adopted or six months after the beginning of the fiscal year. The budget is first assigned a review number, which is communicated back to the applicant, then copies are sent to the three reviewers. It usually takes at least four months from the time a budget is received by the GFOA for notification of the award to be sent back to the jurisdiction.

In addition to this information, the GFOA publishes a brochure entitled "Distinguished Budget Presentation Awards Program: 'A Report Card for Budgets,'" which describes the evaluation criteria, how to apply for the award, and how to serve as a reviewer.

language that a reasonably informed reader would not understand.

4. A transmittal letter or budget message that outlines key policies and strategies should be present.
5. The budget should include a table of contents, an index, or both.
6. A glossary of key terms should be included.
7. Basic units of the budget, whether funds, programs, departments, or others, should be explained.
8. Simple charts and graphs should be used to highlight key relationships. Interpretation should accompany these charts and graphs.
9. Key revenue sources should be disclosed, and assumptions underlying revenue estimates and key revenue trends should be explained.
10. The budget document or application materials should explain procedures for amending the budget during the fiscal year.
11. Related financial and operational activity should be cross-classified or cross-indexed to assist the reader. An "especially notable" rating is awarded if this criterion is met.
12. Statistical and supplemental data should be included in an appendix or within the text.

To qualify for the award, a budget document must receive an overall rating of "proficient" from at least two of the three reviewers for a first submission, and from all three reviewers for any jurisdiction that has submitted its budget in a previous year. Within the "proficient" rating, a budget document may be ranked as either "acceptable" or "distinctive," and within the "does not satisfy criteria" rating, a budget may be either "weak" or "marginal." After assigning a rating to each individual criterion within one of the four major categories, reviewers give each category a rating. This rating is based on where the majority of rankings within that particular category fall. For example, in reviewing a budget as a communications device, three items may be "marginal," six "acceptable," and three "distinctive." In this case a rating of "acceptable" normally would be assigned to that category. Once the four categories have received a rating, the reviewers give the budget an overall rating. There is some room for a reviewer's subjective judgment in the rating process, and each reviewer must know which elements, if present in a budget document, meet his or her expectations for each ranking in each category.

Winners receive a copy of the award for use in the upcoming budget document and an award plaque. Regardless of whether a budget qualifies for the budget award, all comments and suggestions are sent back to the applicant. This may be disconcerting to the first-time applicant, as reviewers tend to be brutally honest in explaining why a budget fails to meet the evaluation criteria. Even if a budget does achieve the award, reviewers always make useful suggestions for further improvements.

Benefits and Costs of Participating in the Awards Program

What are the benefits of participating in the budget awards program? Is it worthwhile to devote the necessary time and effort to include all the required elements into a budget document to qualify for the award? There are several concrete benefits that arise from submitting a budget for review above and beyond those that accrue from actually receiving the award. The first such benefit is the improvement in the budget document that will inevitably occur. By making necessary revisions and additions to a budget to meet the evaluation criteria, a more professional and informative document will be produced, one that conforms to common standards in the budgeting field. In addition, the process of producing a budget document to meet GFOA standards often improves the basic budgeting process: departments provide more and better information, budget preparers give more thought to the operational effects of capital spending, and performance goals are established, to name some examples.

The mechanics of the award process allow a jurisdiction's budget process and documents to improve continually with each year of participation in the program. This is due to the annual nature of the award—it is only valid for the year in which it is granted. A governmental unit must reapply for the award each year and is required to respond specifically to reviewer comments and suggestions made the previous year. This feature of the program ensures that even an exemplary budget document will continue to improve.

Another benefit of participation in the awards program is the better information for the media and other outside entities—such as bond rating agencies—produced in a budget that conforms to GFOA standards. Receipt of the budget award is an indication to outside agencies that budgeting is done professionally and responsibly. By carefully organizing and planning the information contained in a budget, it becomes a vital part of the program planning process for the government as a whole and for its component departments or programs. The GFOA budget award criteria encourage units to begin the budget process by setting strategic goals and objectives and using them to determine the future course of governmental programs and projects. Once goals are established, they are made operational through the budget and are implemented over the course of the year.

A final benefit of participation is the information that comes back from GFOA reviewers from governmental

Observations of a GFOA Budget Reviewer

Having served as a reviewer for the GFOA Awards Program for Distinguished Budget Presentation for the past several years, I would like to offer some comments from a reviewer's perspective. During most years, I receive eight or nine budgets to rate. The program allows reviewers to take several months off during the year, an option I have chosen so I can avoid receiving budgets during my busiest times. Budgets from Canadian provinces, sewer districts, school districts, cities, towns, and counties have been sent to me, and I have learned something of use and interest from each of them. Some are offset printed with color graphics on shiny paper, while others are typed and bound by hand. Exceptional budget documents have come to me from both small towns and large counties. By noting and borrowing some of the good ideas that I have found in other budget documents, my jurisdiction's budget process and budget documents have improved. Also, it has been extremely interesting to learn how local governments in states that have property tax caps (such as California) have devised imaginative new revenue sources. I also have seen how jurisdictions in the Northeast and Midwest with sharply declining tax bases have pared down operations to balance their budgets. Speaking from my own personal experience, I would encourage others who work in budgeting to become involved in the GFOA budget awards program as reviewers. For me, the benefits have far outweighed the time and effort I have contributed.

—Paula Few

units of similar size. The comments and suggestions for improvements made by these reviewers are most helpful: reviewers often are able to draw on the experience of having seen a variety of budget presentations.

There also are some costs involved in submitting a budget for the GFOA awards program. One of these is the staff time and effort involved in incorporating all of the evaluation criteria into the budget document. Many governmental units, particularly smaller ones, view this as a daunting task. Once the budget document is subjected to internal revision and a document is produced, however, even if the budget does not win the award on its initial submission, the helpful reviewer comments and the fact that most of the groundwork has been laid will make subsequent applications much less time consuming. With computer technology available in even the smallest governmental units, information may be stored and simply updated each year instead of having to start over again.

The application fee charged by the GFOA is a cost that should be considered when deciding to participate in the budget awards program. This fee is based upon the dollar amount of the total budget of the applicant and runs from $125 for a GFOA member jurisdiction with a total budget of under $10 million, to $500 for a GFOA member jurisdiction with a total budget of over $500 million. Also, because four copies of a jurisdiction's budget document must be mailed to the GFOA, printing and binding costs may need to be weighed along with the other costs in making a decision to submit a budget for the award.

Conclusion

For the past eight years, GFOA's awards program for distinguished budget presentation has helped local governments throughout the United States improve their budget documents and their processes for developing those documents. Local jurisdictions are not the only ones working on improvement, however. The GFOA itself is currently in the process of revising the program. In particular, the evaluation criteria for the program are being clarified or otherwise improved and the addition of mandatory criteria is being considered. Changes to the awards program may be forthcoming within a year. ❖

Notes

1. Girard Miller, "GFOA's Program of Awards for Distinguished Budget Presentation," *Governmental Finance* 13 (September 1984): 29–33.

AT THE INSTITUTE

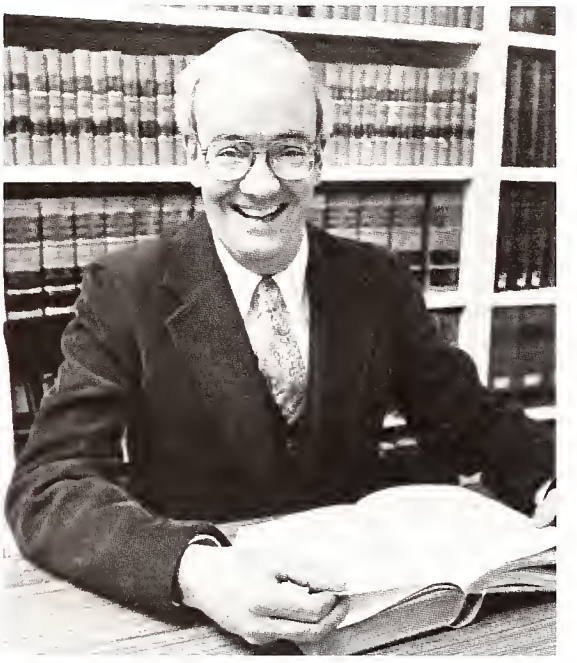
Mason Thomas Retires

We the friends and fellow workers of Mason Page Thomas, Jr., express our appreciation for his steadfast service to the Institute of Government and the state of North Carolina in five decades of this century and under three directors of the Institute.

First appointed to the Institute by Albert Coates in 1951, and then reappointed by John Sanders in 1965, he drew on a rich store of experience as judge and counselor with domestic relations courts in taking the Institute's programs to North Carolina.

As a home-grown North Carolina lawyer and social worker, Mason Thomas created the Institute's work in juvenile corrections and expanded its work greatly in social services. His strong written work will live in guidebooks, articles, and important legislation, but he will be remembered especially for his determination to carry the Institute to county social services boards, social services workers, and juvenile services offices.

Mason Thomas is an academic who cares deeply for people. His friendship, his contagious enthusiasm, his forthright idealism, and his compassion are the treasures that he leaves with us.



UNC Photo Lab

Mason P. Thomas, Jr.

The text quoted above appeared on a certificate presented to Mason P. Thomas, Jr., who retired from the Institute of Government on February 1, 1992. In presenting this certificate, Thomas's friends and colleagues were recognizing his many years of service to the Institute of Government and to the people of North Carolina.

With Thomas's retirement, a library of knowledge and experience relating to human services and the law departed the Institute of Government. Since 1965 Thomas had been on the Institute's faculty specializing in social services law and juvenile law and corrections. In recent years, he also did substantial work in the area of laws affecting the elderly. Thomas brought to his legal work at the Institute a special capacity for viewing laws in relation to the "real life" needs of the people they affect and of the people who are charged with implementing them. In the 1950s and early 1960s Thomas worked as a child welfare caseworker in North Carolina's public social services system, as a counselor-solicitor in the Gaston County Domestic Relations and Juvenile Court, and as a judge in the Wake County Domestic Relations and Juvenile Court.

Thomas says these experiences were invaluable to his later work. His social work experience gave him an understanding of people in poverty and others who have special needs for government assistance. His judicial experience gave him an understanding of how people work within the court system and how authority and power can be used to help people, especially young people, become more responsible. He learned early how to communicate well with people at all levels, and he learned the importance of communication in making governmental intervention and assistance effective.

As a member of the Institute of Government faculty, Thomas helped innumerable others—both those in power and those in service-providing positions—to learn those same lessons. He also saw, and helped shape, many changes in juvenile and social services laws and in the social services and judicial systems in which those laws operate.

Asked about the highlights of his career, Thomas points to his work with legislative committees and commissions. He participated in the drafting of the state's Juvenile Code in the late 1960s and worked with the Juvenile Code Revision Commission when the code was rewritten in 1979. He also participated in two rewrites of North Carolina's social services laws. He recalls being asked to draft the state's first child abuse reporting law and notes the tremendous increase in attention to children's issues over the course of his career. Even now Thomas serves on a committee of the General Statutes Commission that is drafting a proposed new adoptions law.

Another highlight, Thomas says, has been his work with county social services boards. He has watched these local volunteer citizen leaders become more and more sophisticated in their ideas and their needs.

He has found it a rewarding challenge to help educate and train board members and to help them and county social services directors define their roles in relation to an increasingly complex social services system. He has facilitated board retreats and provided other services to boards across the state.

Thomas has received many awards and honors. Among those that meant the most to him were the establishment by the state Division of Youth Services of a Mason Thomas Award to recognize the most distinguished graduate of the division's basic training course and the Distinguished Service Award that he received from the North Carolina Juvenile Services Association.

Thomas has retired from the faculty, but not from the kind of work that he has cared about for so long. He is in the process of completing a new edition of his book *The Law and the Elderly in North Carolina*, working on a chapter of a book about the history of the state court system's juvenile services program, and researching material for another book on the history of juvenile services in North Carolina and the United States. Thomas said that until he started that last project, he thought he knew about all he needed to know in that field. But his face lit up as he talked about the "wealth of fascinating information" he was discovering.

Thomas's love of learning, of teaching, and of applying knowledge to the betterment of the neediest of the state's citizens is part of what his friends and colleagues cherish most about him. We will miss his knowledge and the caring spirit in which it was shared. —*Janet Mason*

The author is an Institute of Government faculty member who specializes in social services law.

Faculty Changes at the Institute

This winter the Institute of Government welcomed Margaret S. Carlson and Terry L. Roberts as members of the faculty. Carlson joins the Institute from Michigan and will be working in the area of public management. Roberts has been with the Institute part time for two years, first as a teaching assistant and then as a visiting lecturer, and is now a permanent member of the Principals' Executive Program faculty.

Peg Carlson graduated summa cum laude from the University of Minnesota in 1983 with a bachelor's degree in psychology. She received a master's degree from the University of Michigan in 1988 and currently is completing her doctoral degree in organizational psychology from Michigan. Carlson has taught, consulted, and conducted research in many areas of management, including communication, team building, and performance appraisal. She has helped corporations implement large-scale organizational change and has taught in executive education programs. At the Institute she will teach in the various management programs and consult with clients on management issues, particularly clients in human resource management departments, including personnel directors.

Terry Roberts graduated magna cum laude from The University of North Carolina at Asheville in 1977 with a bachelor's degree in literature. He received a master's degree from Duke University in 1979 and a doctoral degree in American literature from The University of North Carolina at Chapel Hill in 1991. Roberts has extensive experience teaching English and writing and has published numerous articles, papers, interviews, and short stories in such publications as *The Thomas Wolfe Review*, *The Mississippi Quarterly Review*, and *Pembroke Magazine*. Roberts will continue teaching professional writing and language arts in the Principals' Executive Program.

—*Liz McGeachy*

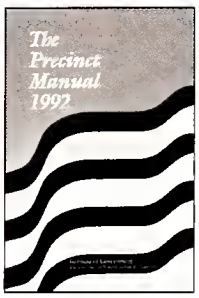
Susannah Odenwelder

Margaret S. Carlson

Susannah Odenwelder

Terry L. Roberts

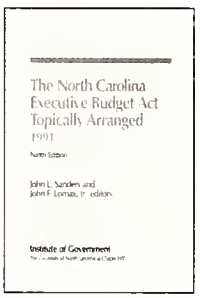
Off the Press



The Precinct Manual 1992

Robert P. Joyce

The basic source book for precinct officials, this revised manual should be found in the office of every precinct officer, registrar, judge, and library deputy. In addition, the General Assembly now requires county boards of election to give all special registration commissioners the same instructions that are given to precinct officials, so they will need copies as well. [91.12] ISBN 1-56011-196-8. $4.50.

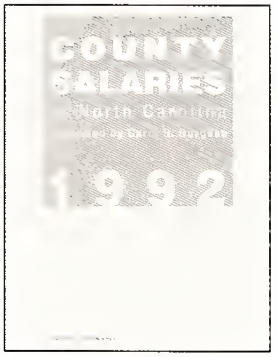


The North Carolina Executive Budget Act Topically Arranged.

Ninth Edition, 1991

Edited by John L. Sanders and John F. Lomax, Jr.

This publication presents the full text of the Executive Budget Act, rearranged in a logical order that makes it easier to understand the budget processes and to find desired provisions. Anyone who wants a better understanding of the legal framework of state budgeting and the budgetary roles of the governor and the General Assembly will find this book helpful. [90.28] ISBN 1-56011-184-4. $7.50.



County Salaries in North Carolina 1992

Compiled by Carol S. Burgess

A tool for elected and appointed officials when they review personnel policies, this annual publication of the Institute of Government lists for each of the 100 North Carolina counties (1) population, (2) total tax valuation, and (3) salaries for fifty-three appointive and four elective positions. This survey also gives fringe benefits and travel allowances for the 1991–92 fiscal year. [91.15] ISBN 1-56011-199-2. $12.50.

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1991 Edition

Compiled by Stephen Allred

A comprehensive guide to North Carolina's government agencies, including commissions, boards, committees, councils, and authorities. (See the ad on page 21.) [90.16] ISBN 1-56011-174-7. $5.00.

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Popular Government
(ISSN 0032-4515)
Institute of Government
CB# 3330 Knapp Building
The University of North Carolina at Chapel Hill
Chapel Hill, North Carolina 27599-3330