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Popular Government

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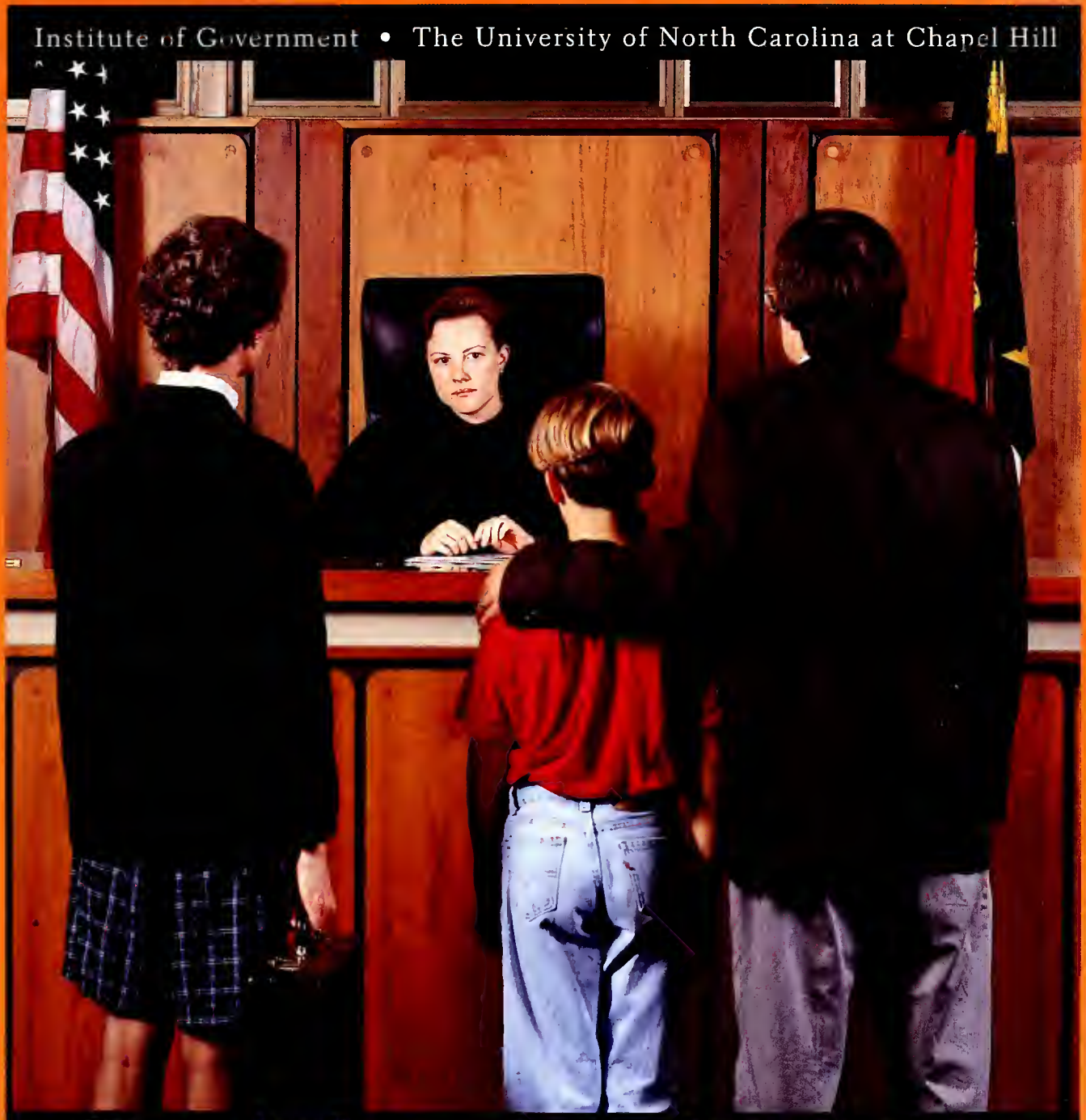

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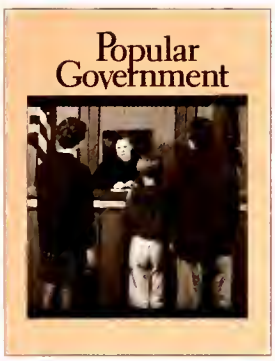

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On the cover Juvenile delinquency proceedings (as portrayed in this reenactment) traditionally have been confidential. However, North Carolina law and practices in juvenile courts across the state reflect ambivalence about whether secrecy is appropriate when young people do things that would be crimes if they were adults. Photo by Thomas Babb.

Juveniles are not *charged with crimes*; they are *alleged to be delinquent* when they commit acts that would be crimes if committed by adults. Juveniles are not *arrested*; they are *taken into custody*. They are not served with *warrants*; they are served with *juvenile petitions*. They are not *convicted* but *adjudicated delinquent*. If found to be delinquent, they are not *sentenced*; the judge orders a *disposition*, from a broad range of dispositional alternatives, designed to meet the juvenile's needs and to protect the public.[1]

Add to this list of differences in the way juveniles and adults are treated in court one other fundamental, and increasingly challenged, difference: Juveniles may go through their court proceedings in almost complete secrecy.

Unlike most court proceedings, juvenile court hearings and records traditionally have been treated as confidential. Recent concern about the increase in serious juvenile crime has fueled controversy about the proper response to the problem.[2] There is growing debate over whether, and to what extent, that tradition of confidentiality should be maintained. A March 1994 report of the National Council of Juvenile and Family Court Judges[3] recommended that juvenile court be open to the public for fact-finding hearings involving violent crimes committed by juveniles and transfers of juveniles' cases to adult criminal court.[4] How radical a proposal is that for the juvenile courts in North Carolina? The answer varies across the state.

The author is an Institute of Government faculty member whose specialties include juvenile law.

This article will explain North Carolina law relating to access to juvenile court hearings involving delinquency and to information about young people who are involved in juvenile delinquency proceedings.[5] It will address such questions as

- What determines whether a juvenile court hearing is open to the public?
- To what extent are records relating to a juvenile's involvement with the court confidential?
- Can an adult criminal defendant's prior juvenile record be considered as evidence at a trial or sentencing hearing?
- What constraints are there on publicity about juvenile court proceedings?

Consider the following hypothetical, but not unrealistic, cases of two juveniles:

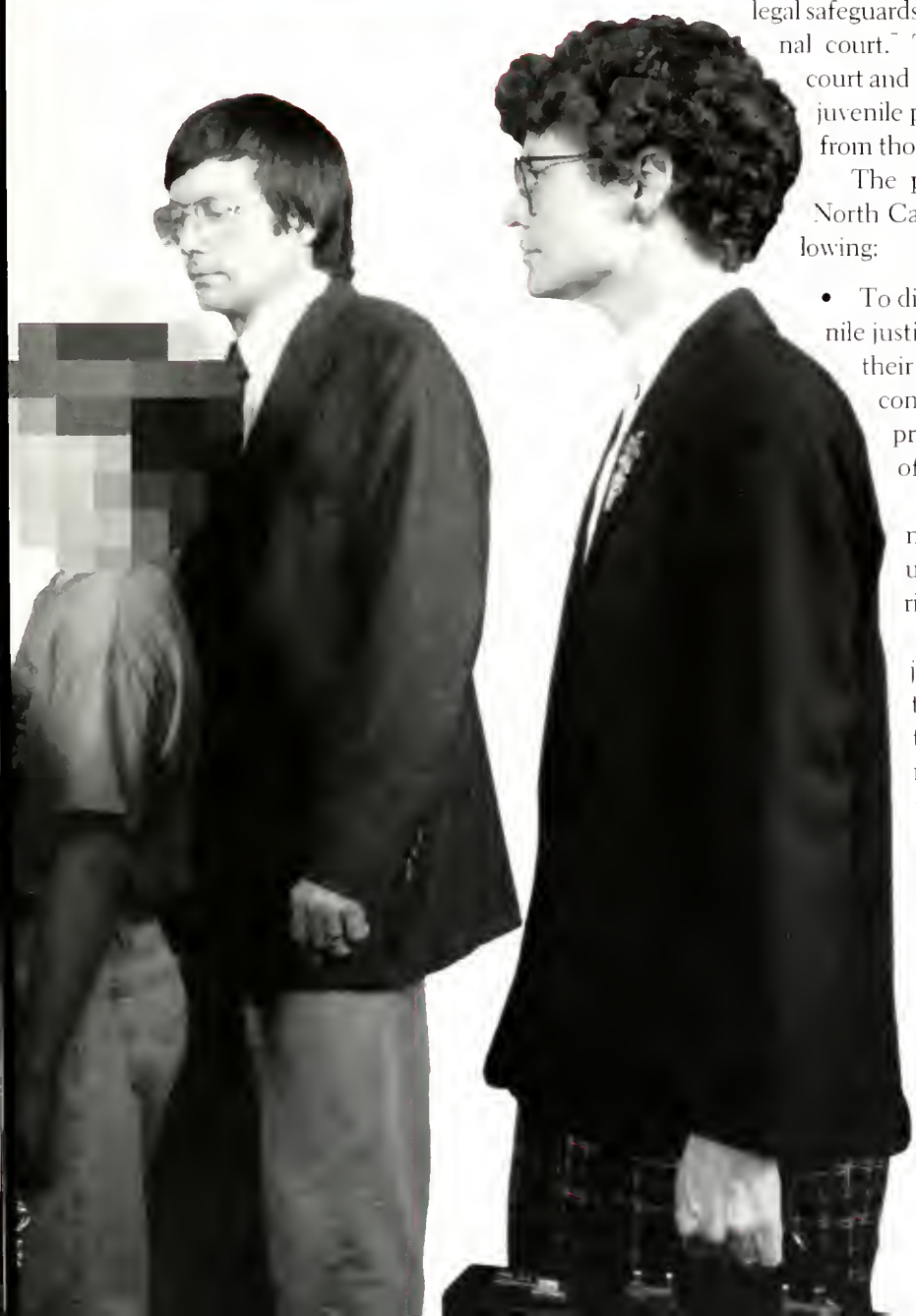
> Jerry, age fourteen, has been served with a juvenile petition alleging that he is delinquent for setting fire to a local warehouse. When he goes to court, he and his parents are directed to a waiting room outside the courtroom. A sign on the courtroom door says, "Juvenile Court In Progress—Do Not Enter." When his case is called, and he and his parents enter the courtroom, the only other people there are his attorney, an assistant district attorney, the police officer who investigated the case, the owner of the warehouse, the judge, a clerk, and a juvenile court counselor. Before the hearing begins, the judge explains that juvenile court proceedings are confidential and that only people directly involved in Jerry's case should be present.

> Derek, age fourteen, is alleged to be delinquent for assaulting another student with a deadly weapon. When he goes to juvenile court, he and his parents are directed to the juvenile courtroom. In the courtroom are other people who have cases scheduled for court; there are also attorneys, police officers, a juvenile court counselor, a newspaper reporter, the clerk of court, several people who might be witnesses, and a group of twenty students and their teacher. When the judge enters, he welcomes Ms. Thompson and her seventh-grade civics class, who have come to observe juvenile court as part of their study of the judicial branch of govern-

Photos by Thomas Babb

Confidentiality in Juvenile Delinquency Proceedings

Janet Mason



ment. The judge says that spectators should remain quiet and refrain from going in and out of the courtroom unnecessarily while court is in session.

Scenes like both of these occur regularly—and quite legally—in North Carolina's juvenile courts.

The Juvenile Court System

When separate juvenile court procedures for children were first established in the late nineteenth and early twentieth centuries, they were informal, nonadversarial proceedings that emphasized helping and rehabilitating children, not punishing them.[6] In recent years the procedures in juvenile court have become more like those in adult criminal court. Constitutionally, juveniles who are alleged to be delinquent are entitled to most of the same legal safeguards available to adult defendants in criminal court.[7] The philosophy underlying juvenile court and the kinds of outcomes that result from juvenile proceedings, however, are still distinct from those for adult criminal court.

The purposes and policies stated in the North Carolina Juvenile Code include the following:

- To divert juvenile offenders from the juvenile justice system so that they may remain in their own homes and be treated through community-based services when that approach is consistent with the protection of the public safety;
- To provide procedures for juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles;
- To develop a disposition in each juvenile case that takes into account the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety;
- To provide standards for the removal of juveniles from their homes, when necessary, and for the return of these juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of children from their parents.[8]

Juvenile court philosophy generally has accepted the tenet that the child's rehabilitation is better served

by conducting juvenile proceedings in private and restricting access to information about the juvenile, his or her family, and the case. Since rehabilitation is the goal, the reasoning goes, the juvenile should not be burdened by the stigma of being involved with the court and should not be labeled or judged for life because of actions that might have been the result of mere youthful indiscretion.[9] There is a growing ambivalence, however—as reflected in the National Council's recommendation and in practices in North Carolina courtrooms—about the merits of excluding the public from juvenile proceedings.[10] This attitude reflects a larger ambivalence about the ways in which juveniles are treated differently from adults when they engage in criminal behavior and even about whether they *should* be treated differently.[11]

North Carolina is already in a small minority of states that limit their special juvenile procedures to young people who commit offenses when they are fifteen years of age and younger.[12] Sixteen- and seventeen-year-olds here, although legally minors, are prosecuted and sentenced as adults when they commit criminal offenses. In addition, North Carolina's juvenile law provides that cases of thirteen-, fourteen-, and fifteen-year-olds who are alleged to have committed felonies may be transferred to adult court, in the discretion of the district court judge holding juvenile court.[13] When a juvenile is tried as an adult in criminal court, the trial and other court proceedings and the defendant's records are open to the public. When a young person's case is heard in juvenile court, public access to court proceedings and to information about the juvenile's case is much more restricted.

Public Access to Juvenile Court Proceedings

Juvenile court proceedings consist of two primary stages: the *adjudicatory*, or fact-finding, hearing and the *dispositional* hearing. At the adjudicatory hearing, a district court judge hears evidence to determine whether the juvenile in fact committed the offense alleged. If the judge finds beyond a reasonable doubt that the juvenile committed the offense, a dispositional hearing follows. At this hearing the judge determines whether probation, restitution, treatment, a fine, commitment to training school, or other dispositional options are in the best interest of the juvenile and the state.[14]

For both types of hearing—adjudicatory and dispositional—the law says that the judge "may exclude the public from the hearing *unless the juvenile moves that the hearing be open, which motion shall be granted.*"[15] If the juvenile makes no request, it is up to the judge to decide whether the public may be present during a juvenile hearing. If the juvenile wants the hearing to be *closed*, however, he or she has no right to demand a closed hearing and may only appeal to the judge's discretion.[16]

The Juvenile Code does not provide any standards or guidelines for judges to follow in deciding whether a juvenile hearing should be open or closed, which explains why local practices vary, depending on individual judges' preferences and philosophies. So, in the hypothetical cases described above, both Jerry's hearing—assuming that he had not asked for a public hearing—and Derek's were consistent with the Juvenile Code.[17]

Confidentiality of Juvenile Records and Information

Courts, law enforcement agencies, and other public agencies maintain several different kinds of records regarding juveniles who become involved in the juvenile justice system. The Juvenile Code restricts the disclosure of information from the following types of juvenile records:[18]

- Clerk of Court's Records: The official court record maintained by the clerk of superior court includes all papers filed in a juvenile proceeding, such as the summonses, petition, court orders, motions, and reports. This record may be examined by the juvenile and his or her attorney; by the juvenile's parent, guardian, or custodian; or by some other authorized representative of the juvenile. It also may be examined by a prosecutor in an adult criminal proceeding against the person who has a juvenile record. Otherwise, the record may be examined only by order of the district court judge. [G.S. 7A-675(a). *See* "Use of the Juvenile's Record in Court," below, for discussion of when these records may be used as evidence in a later proceeding.]
- Recording of Juvenile Hearing: The mechanical or other recording of a juvenile hearing is considered part of the clerk of court's record. A written transcript of the recording may be made only when notice of appeal from a juvenile order is given. If no appeal is taken, the recording may be erased or destroyed upon the written order of the district court judge. [G.S. 7A-675(a).]
- Court Counselor's Record: Juvenile court counselors receive and screen complaints about delinquent behavior, divert cases from court or approve the filing of juvenile petitions, and supervise juveniles who are on probation or who have been con-

ditionally released from training school. In addition to copies of many of the same things that are included in the clerk's record, the court counselor's record may include family background information; social, medical, psychiatric, or psychological reports; probation reports; and other information the judge finds should be protected from public inspection. The juvenile and the juvenile's attorney may examine this record. Otherwise, it may be examined only by order of the district court judge. [G.S. 7A-675(b), (d).]

- Social Services Records: If the juvenile is placed in the custody of the county department of social services, the records kept by that department will contain information about the juvenile and his or her family similar to information in the court counselor's file. Like those records, the social services records may be examined only by the juvenile and the juvenile's attorney without a court order. [G.S. 7A-675(c), (d). *See also* G.S. 108A-80 (confidentiality of social services records).]
- Law-Enforcement Records: Law-enforcement records and files relating to a juvenile may be inspected only by the prosecutor, court counselors, the juvenile, and the juvenile's attorney, parent, guardian, and custodian. These records must be kept separate from adults' records and files. [G.S. 7A-675(e).]
- Division of Youth Services Records: The Division of Youth Services in the state Department of Human Resources is responsible for the state's training schools, state-operated detention facilities, and a variety of community-based programs.[19] The division's records and files relating to a juvenile may be inspected only by the juvenile and his or her attorney, professionals in the agency who are directly involved in the juvenile's case, and court counselors. A judge who commits a juvenile to the Division of Youth Services, usually for placement in a training school, may inspect and order the release of records relating to that juvenile. [G.S. 7A-675(f).]

In addition to restricting access to juvenile records, the Juvenile Code contains the following broad proscription against the disclosure of information about juveniles who are involved with the court: "Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents."[20] The Code also contains three explicit exceptions to this prohibition.

First, the Juvenile Code authorizes "the necessary sharing of information among authorized agencies."[21] The intent of this provision almost certainly is to prevent confidentiality provisions from interfering with agencies' ability to arrange and coordinate services to meet the child's needs. However, there is no guidance in the Code as to when the sharing of information is "necessary" or what it means to be an "authorized agency." Faced with this vague authorization to share information and the very explicit prohibitions against disclosure, many agencies and professionals are reluctant to share information about juveniles who are involved with the court. In some judicial districts, the chief district court judges have issued administrative orders identifying "authorized agencies,"[22] in an attempt to encourage the appropriate sharing of information without the need for individual court orders in each case.[23]

Second, a 1993 amendment to the Juvenile Code allows the sharing of certain juvenile court information with school officials. If (1) a juvenile is adjudicated delinquent for an offense that involves a threat to the safety of the juvenile or others, and (2) the juvenile is placed on probation, and (3) school attendance is a condition of probation, then the judge may order the court counselor to notify the principal of the juvenile's school, in writing, of the nature of the offense and the probation requirements that relate to school attendance. Principals who receive this type of information are to handle and share it according to guidelines adopted by the State Board of Education.[24]

Third, if information about a delinquent juvenile becomes relevant to the suspected abuse, neglect, or dependency of that juvenile or some other child, the information must be disclosed to the director of the department of social services, even if it is otherwise confidential.[25] Similarly, a guardian ad litem appointed to represent an allegedly abused, neglected, or dependent juvenile may be authorized by the judge to demand any confidential information that the guardian ad litem considers relevant to that juvenile's case.[26]

Use of the Juvenile's Record in Court

What use can be made of a juvenile's record[27] in other court proceedings, including those that occur after the juvenile becomes sixteen and is subject to prosecution as an adult?

Impeachment when the juvenile adjudicated delinquent testifies in a later juvenile proceeding. Ordinarily, witnesses may be impeached—have their credibility challenged—by evidence of their prior criminal convictions.[28]

An adjudication of delinquency, however, is not a criminal conviction.[29] Nevertheless, if a juvenile testifies in his or her own delinquency case or is a witness in another delinquency proceeding, the juvenile may be ordered to testify about whether he or she has been adjudicated delinquent, even if the record of that adjudication has been expunged.[30]

Impeachment when the juvenile testifies in nonjuvenile proceedings. In cases other than juvenile proceedings, an adjudication of delinquency generally may not be used for impeachment purposes, with one exception. In a criminal case, the court may allow evidence of a juvenile adjudication of a witness *other than the defendant* if (1) a conviction for the same offense would be admissible to attack the credibility of an adult and (2) the court finds that admission of the evidence is necessary for a fair determination of the issue of guilt or innocence.[31] Thus an adjudication of delinquency may not be used to impeach a witness in a civil case or a defendant who testifies in his or her own criminal case.

Uses other than impeachment. In some instances an adult criminal defendant's prior juvenile adjudication may be used for purposes other than impeachment. If a juvenile is adjudicated delinquent for an offense that would be a Class A, B, C, D, or E felony[32] if committed by an adult, the juvenile record of that adjudication may be introduced in a later adult criminal trial as follows:

- as evidence of other crimes, wrongs, or acts, to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident;[33]
- as an aggravating factor for purposes of sentencing;[34] and
- as an aggravating circumstance for purposes of sentencing in a capital case, but only if the offense for which the juvenile was adjudicated delinquent would have been a capital felony if committed by an adult or involved the use or threat of violence to a person.[35]

In each of these instances, the juvenile record may be used only by order of the judge, upon motion of the prosecutor, and after an *in camera* (closed) hearing to determine whether it is admissible.[36]

Publicity about Juveniles

As explained above, the Juvenile Code, with several exceptions, prohibits the "[d]isclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile. . . ."[37] It is difficult to reconcile this provision with the fact that juvenile hearings may be open to the public. By deciding that the hearing will be open, the judge, in effect, will disclose to the public all or most of the confidential information regarding the case, including the juvenile's identity.

Does the Juvenile Code prohibit the reporter who sat in on Derek's court hearing from mentioning the case in a newspaper article? Does the Code's prohibition against disclosure apply to a reporter who learned from the owner of the warehouse about the charges against Jerry and what happened at his hearing? Or to a third reporter who has reliable information about Lamont, a thirteen-year-old who police believe was an accomplice in the warehouse fire but whom they have not been able to locate?

Since the prohibition against disclosure appears in the statute that addresses the confidentiality of records,[38] it might be argued that it is aimed at the custodians of official records relating to juveniles—the clerk of superior court, law enforcement agencies, the court counselor, the social services department, and the Division of Youth Services—not others who happen to have such information about the juvenile or the juvenile's involvement with the court. However, both the fact that the statute is not written in such narrow terms and the strong tradition of secrecy and confidentiality in relation to juvenile proceedings probably contribute to the common assumption that it applies more broadly.

It is important to note that the statute prohibits the disclosure only of information that identifies the juvenile. Thus, consistent with the statutory prohibition, the reporter who attended Derek's hearing might publish an article describing the case in detail as long as it did not reveal Derek's identity. So might the reporter who learned about Jerry's case from other sources or who has information about the suspected accomplice. Of course, in small communities in particular, one must wonder about the types of information that might reveal a juvenile's identity even without naming the juvenile.

Even if the statutory prohibition is read broadly, it probably is unenforceable, at least against persons other than the public officials whose duties include safeguarding the confidentiality of juvenile records and information.[39] Almost certainly, reporters and others may not be enjoined from publishing or disclosing information about juvenile cases that they acquire by being present during a court hearing that is open to the public or that they acquire in some other legal fashion. A statute that is not specific to juvenile cases, but that does not exclude them either, provides as follows:

> No court shall make or issue any rule or order banning, prohibiting, or restricting the publication or broadcast of any report concerning any of the following: any evidence, testimony, argument, ruling, verdict, decision, judgment, or other matter occurring in open court in any hearing, trial, or other proceeding, civil or criminal. . . . If any rule or order is made or issued by any court in violation of the provisions of this statute, it shall be null and void and of no effect, and no person shall be punished for contempt for the violation of any such void rule or order.[40]

In addition, in a juvenile case from Oklahoma, the United States Supreme Court held that a pretrial order restraining publicity about a juvenile case violated the free press guarantee of the First and Fourteenth Amendments, where (1) members of the press had been present at the juvenile hearing with the knowledge of the judge and both counsel, (2) there was no objection to the presence of the press or to their photographing the juvenile when he left the hearing, and (3) the juvenile's identity had not been acquired unlawfully but was revealed publicly during the hearing.[41]

The imposition of a penalty after the publication of a juvenile's identity is similarly unlikely. The Juvenile Code does not make violation of the prohibition against disclosure a criminal offense, and it contains no penalty or sanction for the wrongful disclosure of information. There is some precedent for the proposition that violation of a statutory prohibition or mandate is a general misdemeanor when the statute specifies no penalty;[42] but that theory has not been applied frequently, and reliance on it seems particularly unlikely and unwise where the "offending" activity has claim to First Amendment protection. In *Smith v. Daily Mail Publishing Co.*,[43] the U.S. Supreme Court held that imposing criminal sanctions on a newspaper for truthfully publishing an alleged juvenile delinquent's name, which the paper had obtained lawfully, violated the First Amendment. The Court acknowledged the state's interest in protecting juvenile offenders but held that that interest was not substantial enough to overcome the constitutional interests at stake.

A thorough analysis of the constitutional issues involved in the confidentiality of juvenile hearings and records is beyond the scope of this article.[44] Suffice it to say that neither prior restraint of, nor subsequent sanctions for, the publication or broadcasting of information about juveniles who are alleged to be delinquent, when that information is obtained legally, is likely to be upheld. The state's general interest in giving juvenile offenders anonymity apparently is not a sufficiently compelling reason to justify either prior restraint or sanctions.

So, in relation to the media, the statutory prohibition against the disclosure of information that would reveal the juvenile's identity must be viewed as a statement of legislative policy and preference, rather than as an enforceable mandate, when the media obtain the information lawfully. The media in North Carolina have shown a substantial willingness to abide by that policy. It is unusual to see juvenile offenders identified by name in news reports in this state. The media's long-standing concurrence in the policy is reflected in, and probably has been influenced by, the following guidelines that were developed in the 1960s and 1970s by the News Media–Administration of Justice Council in North Carolina.

Guidelines for Reporting Juvenile Proceedings

1. The news media and the bar recognize the distinction between juvenile and adult offenders established by law.
2. The bar and the media further recognize that they share, with the courts and other officials, responsibility for developing sound public interest in and understanding of juvenile problems as they relate to the community.
3. All juvenile hearings are to be regarded as open unless and until the presiding judge acts to exclude the public from a particular hearing under the authority of the North Carolina General Statutes.
4. The record of juvenile cases maintained by the court is required by statute to be withheld from public inspection and may be examined only by order of the judge:
   a. The social part of the juvenile record contains matter which the court has found should be protected from public inspection in the best interest of the juvenile.
   b. The legal part of the juvenile record contains formal court documents and papers which may be made available for inspection by order of the court.
5. Neither public officials concerned with juvenile matters nor court officials, including lawyers, should make any comment for publication concerning a juvenile case in which they are or may be involved.
6. The choice of what to publish and the responsibility for publication rest upon the news media but because immaturity and dependency are underlying bases in law and reality for regarding children individually as less accountable than adults for their behavior and condition, due consideration should be given to:
   a. The recommendations of the juvenile court and its officers.
   b. Whether the information is of the type the public must have to be fully aware of its juvenile court and the delinquency situation.
7. If an alleged act of delinquency is publicized, the news media should complete the story by publishing the disposition of the case.

> 8. These guidelines are not intended to limit news media from publishing news about juvenile offenders from the time of their apprehension through the disposition of their cases, where such information is obtained from sources other than court officials involved in the particular juvenile case.[45]

These guidelines carry no legal weight. They were developed decades ago and are not widely disseminated or discussed. If they were, some changes in them might result. But for the most part they are still a remarkably good expression of the state's philosophy in providing special proceedings for juvenile offenders, of the law relating to the confidentiality of juvenile proceedings, and of the kinds of judgment and cooperation that must supplement the law in dealing with information about juvenile offenders.

Conclusion

Given the growing public concern, even alarm, about the seriousness of juvenile crime, it is not clear that youth and immaturity are universally viewed as bases for regarding children as less accountable than adults for their behavior.

When young people's offenses are handled through special juvenile court procedures, philosophies and opinions vary as to whether those procedures should be confidential. In some quarters there is concern that confidentiality, which originated as a means of protecting young people, actually interferes with agencies' ability to marshal and coordinate resources to meet those young people's needs. There may be a growing sense that those whom the juvenile encounters in the juvenile system—judges, court counselors, social workers, law enforcement officers, training school and detention facility operators, and others—need to be accountable for what happens in that system to a greater extent than is likely when the system is closed to the public. At the same time, the emphasis in juvenile proceedings in this state continues to be on rehabilitation, a goal that may be made more difficult for some young people if they and their families are subjected to widespread publicity and if their teachers, acquaintances, and peers are made aware of the details of their court involvement.

North Carolina law gives district court judges considerable discretion to determine who has access to juvenile court hearings and records. Hearings may be completely open or closed, unless the juvenile asks that his or her hearing be open—a request that must be granted. Access to juvenile records is severely restricted, but a district court judge, by court order, may allow access as he or she sees fit. Despite the general confidentiality of juvenile records and proceedings, in some circumstances the record of a juvenile adjudication may be used later to impeach a witness or as a sentencing factor in an adult criminal proceeding.

North Carolina law strikes a balance between juveniles' need for confidentiality and the public's need to know what happens in and through its courts. Whether that balance is the right one will be the subject of continued debate. ❖

Notes

1. One author has characterized such phrasing as "terminological manipulation" that does little if anything to spare young people the stigma of being involved in the juvenile justice system. Eugene H. Czajkoski, "Why Confidentiality in Juvenile Justice?" *Juvenile & Family Court Journal* 33 (November 1982): 49–50.

2. In North Carolina the number of juveniles age fifteen and under charged with violent crimes (murder, rape, robbery, and aggravated assault) increased 14 percent between 1992 and 1993. State Bureau of Investigation, North Carolina Department of Justice, *Preliminary Annual Report 1993: Juvenile Crime in North Carolina* (Raleigh, N.C.: N.C. Department of Justice, SBI, June 1994). In releasing the report that contained this statistic, the attorney general of North Carolina said, "These numbers point out what community leaders and law enforcement officials know from experience—that a large segment of our young people is becoming more violent and becoming criminals at a younger age. . . . These teenagers are committing brutal assaults, rapes and murders. They can no longer be considered juvenile delinquents. They are criminals." Michael Easley, attorney general of North Carolina, "Easley Releases Juvenile Crime Statistics" (press release from the North Carolina Department of Justice, July 7, 1994).

3. National Council of Juvenile and Family Court Judges, "Where We Stand: An Action Plan for Dealing with Violent Juvenile Crime," March 1, 1994.

4. Transfers to criminal court occur when the juvenile court judge determines that the juvenile should be tried as an adult. In North Carolina, the case of a juvenile who is charged with a felony may be transferred to superior court for trial as in the case of an adult if the juvenile was thirteen, fourteen, or fifteen at the time of the alleged offense. N.C. Gen. Stat. (hereinafter G.S.) § 7A-608.

5. The North Carolina Juvenile Code [G.S. Ch. 7A, Subchap. XI (G.S. 7A-516 through -744)] is the body of law that specifies procedures for juvenile cases. In addition to procedures relating to delinquent juveniles, the Code addresses those concerning juveniles who are alleged to be abused, neglected, dependent, or undisciplined. This article does not address those juveniles, although many of the issues and Juvenile Code provisions are the same.

6. *See, e.g.*, Samuel M. Davis, *Rights of Juveniles: The Juvenile Justice System*, 2d ed. (Deerfield, Ill.: Clark Boardman Callaghan, 1994), 1-1 through 1-6; John R. Bird, Marcia L. Conlin, and Geri Frank, "Children in Trouble: The Juvenile

Justice System," in *Legal Rights of Children*, ed. Robert M. Horowitz and Howard A. Davidson (New York: McGraw-Hill Book Co., 1984), 463–65; Janet E. Ainsworth, "Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court," *North Carolina Law Review* 69 (June 1991): 1083, 1096–1101.

7. The protections are not exactly the same, because juvenile proceedings are not criminal actions. The protections afforded juveniles derive from the juvenile's right to due process. *See* Kent v. United States, 383 U.S. 541 (1966); *In re* Gault, 387 U.S. 1 (1967). Under North Carolina law, juveniles who are alleged to be delinquent, unlike adults who are charged with crimes, are not entitled to trial by jury, do not have a right to be released on bond when they are held in detention, and may not waive their right to be represented by counsel.

8. G.S. 7A-516.

9. *See, e.g.*, Bird, Conlin, and Frank, "Children in Trouble," 507–11.

10. Some critics are not ambivalent but advocate the lifting of confidentiality in juvenile justice proceedings altogether. *See, e.g.*, Czajkoski, "Why Confidentiality in Juvenile Justice?" 49–53. For a description of some other states' approaches to confidentiality of juvenile proceedings, *see* Richard D. Hendrickson, "Media Access to Juvenile Courts: An Update," *Juvenile & Family Court Journal* 44, no. 3 (1993): 27–42.

11. *See, e.g.*, Ainsworth, "Re-Imagining Childhood and Reconstructing the Legal Order," 1083–1133.

12. Most states specify either eighteen or seventeen as the age under which a child is subject to the jurisdiction of the juvenile court for criminal conduct. Only Connecticut, New York, and Vermont—like North Carolina—have a jurisdictional age of sixteen for purposes of delinquency. *See* Davis, *Rights of Juveniles*, appen. B ("Chart of Selected State Statutes").

13. The judge must transfer the case to superior court if the judge finds probable cause to believe that the juvenile, while age thirteen, fourteen, or fifteen, committed first-degree murder. The judge has discretion as to whether to transfer the case if he or she finds probable cause to believe that the juvenile committed some other felony. G.S. 7A-608. The 1993 General Assembly, in its 1994 extra session focusing on crime, authorized the Juvenile Code Committee of the Legislative Research Commission to study (1) whether transfers should be mandatory in additional cases involving certain violent felonies and (2) the appropriate age for mandatory transfers. The committee was directed to report to the 1995 General Assembly. 1993 N.C. Sess. Laws (Extra Sess., 1994) ch. 22, § 29. For a discussion of the national trend toward expanding provisions for transfers to adult court, see Peter Schmidt, "Age of Reckoning," *Education Week* 13 (March 9, 1994): 24–27.

14. The dispositional hearing is similar to an adult criminal sentencing hearing, except that, in keeping with the different philosophy of juvenile court, the range of options and the bases on which the judge chooses among them are markedly different from criminal court. The dispositional hearing may involve substantial evidence regarding the child's emotional, psychological, educational, medical, and other needs, as well as information about the family's strengths and weaknesses.

15. G.S. 7A-629, 7A-640 (emphasis added). The same provision applies to hearings to determine probable cause when a juvenile is alleged to have committed a felony while age thirteen, fourteen, or fifteen. G.S. 7A-609(a). The Code does not address whether other types of juvenile hearings, such as those on the need for continued secure or nonsecure custody, probation violation hearings, and custody review hearings, should be open or closed. It seems likely that the rule stated for adjudicatory, dispositional, and probable cause hearings would apply to these other stages of juvenile proceedings as well.

16. Thus although an open hearing is required only if the juvenile requests it, the scope of permissible openness of North Carolina's juvenile courts is broader than the recommendation by the National Council of Juvenile and Family Court Judges, which is limited to fact-finding hearings in cases involving violent juvenile crime and transfers to criminal court.

17. As to whether there is a constitutional basis for the public or press to claim a right to access to juvenile proceedings, *see* Hendrickson, "Media Access to Juvenile Courts," 27–42, in which the author reviews various state courts' approaches to that question and concludes that "the ultimate question of a constitutional basis for access [is left] unresolved and it must remain so until the U.S. Supreme Court decides an appropriate case" (page 40).

18. G.S. 7A-675.

19. For a detailed description of the Division of Youth Services and its programs and facilities, *see* North Carolina Department of Human Resources, "Division of Youth Services Sourcebook," February 8, 1994.

20. G.S. 7A-675(g).

21. G.S. 7A-675(h).

22. *See, e.g.*, Administrative Order of March 25, 1987, issued by John J. Snow, Chief District Court Judge, 30th District Court District.

23. The Juvenile Code explicitly authorizes the judge to order the sharing of information among public agencies when the judge deems such sharing necessary to reduce the trauma to a child victim. G.S. 7A-675(i). It seems likely that the judge has implicit or inherent authority to order the sharing of information in other instances when the judge finds that to be in the best interest of a juvenile over whom the court is exercising jurisdiction.

24. G.S. 7A-649(8)b. North Carolina State Board of Education Policy Manual, Policy No. 07P101 (January 6, 1994). Obviously, even without this special provision, school officials often have some information about a juvenile's court involvement. For example, the judge may order a juvenile, as a condition of probation, to maintain passing grades in up to four courses and to meet with the court counselor and a representative of the school to make a plan for how to maintain passing grades. G.S. 7A-649(8)b1. The new provision makes clear, however, that the judge may order that the school principal be made aware of the nature of the offense for which the juvenile was adjudicated delinquent.

25. G.S. 7A-544.

26. G.S. 7A-586(c).

27. In this discussion the juvenile's "record" refers to the fact that the juvenile has been adjudicated delinquent, evidenced by the official court record maintained by the clerk of superior court.

28. G.S. 8C-1, Rule 609.

29. G.S. 7A-638.

30. G.S. 7A-677(b). For conditions under which a juvenile's record may be expunged, *see* G.S. 7A-676.

31. G.S. 8C-1, Rule 609(d).

32. These are the most serious felonies, such as murder, rape, sexual offense, first-degree burglary, arson, robbery with firearm or other dangerous weapons, voluntary manslaughter, assault with deadly weapon inflicting serious injury, assault with deadly weapon with intent to kill, and discharging firearm into occupied property. For a complete list of felonies, for offenses committed on or after October 1, 1994, *see* North Carolina Sentencing and Policy Advisory Commission, *Structured Sentencing for Felonies: Training and Reference Manual* (Raleigh, N.C.: N.C. Sentencing and Policy Advisory Commission, 1994), 63–76.

33. G.S. 7A-675(a); G.S. 8C-1, Rule 404(b). It should be noted that G.S. 8C-1, Rule 404(b), allows evidence of an offense committed by a juvenile, if it would have been a Class A, B, C, D, or E felony if committed by an adult, regardless of whether the offense actually resulted in an adjudication of delinquency.

34. G.S. 7A-675(a); 15A-1340.16(d)(18a).

35. G.S. 7A-675(a); G.S. 15A-2000(e).

36. G.S. 7A-675(a). The fact that these requirements are stated only in the Juvenile Code, and not in the Rules of Evidence under which the juvenile offense or records are made admissible, may create a risk of their being overlooked.

37. G.S. 7A-675(g).

38. G.S. 7A-675.

39. *See* G.S. 14-230, which makes it a criminal offense for a public official to willfully omit, neglect, or refuse to discharge the duties of his or her office.

40. G.S. 7A-276.1

41. Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977).

42. *See, e.g.,* State v. Parker, 91 N.C. 650 (1884) (statute making it unlawful to sell liquor in specified localities); State v. Bloodworth, 94 N.C. 918 (1886) (statute requiring keeping fence five feet high around cultivated field during crop season); State v. Bishop, 228 N.C. 371, 45 S.E.2d 858 (1947) (statute prohibiting requiring membership in labor union as condition of employment).

43. Smith v. Daily Mail Publishing Co., 442 U.S. 97 (1979).

44. For example, while North Carolina's statute adequately protects the juvenile's right to a public hearing—by giving him or her a right to demand that the hearing be open—it does not acknowledge any public right of access to juvenile court proceedings. *See In re* Belk, 107 N.C. App. 448, 420 S.E.2d 682, *disc. review denied*, 333 N.C. 168, 424 S.E.2d 905 (1992), in which the court of appeals held that statutory limitations on public access to involuntary civil commitment proceedings and documents are not unconstitutional. The court distinguished Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980) and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982), both of which dealt with the public's right to access to criminal court proceedings. Similarly the court of appeals held that Article I, Sections 18 and 24, of the North Carolina Constitution, which deal with the openness of the state's courts, do not create a presumption of openness in all civil cases. *See also* Hendrickson, "Media Access to Juvenile Courts," 27–42.

45. North Carolina Bar Association and the School of Journalism, The University of North Carolina at Chapel Hill, "The News Media and the Courts: A Guide for Journalists," 3d ed. (Raleigh, N.C.: N.C. Bar Association and UNC-CH School of Journalism, undated), 38–39. (According to the introduction to the third edition, the second edition was published in 1972.)

Paying for Public Health Services in North Carolina

Jeffrey S. Koeze

Hospitals, doctors, insurance companies, drug companies, and the forces of the marketplace are right now tearing down and rebuilding our health care system. Congress and the North Carolina General Assembly continue to debate revisions to the law, and their changes—if and when they come—may speed up health care reform or alter its course a bit. But with or without new laws, major change is under way.

This article addresses how that change has already begun to affect the financing of North Carolina's local public health departments and what changes may affect health department financing in the future. It begins by looking at what local health departments do and where their money comes from. The article then considers the growing role of fee-based financing and its implications for local health departments in an era of health care reform.

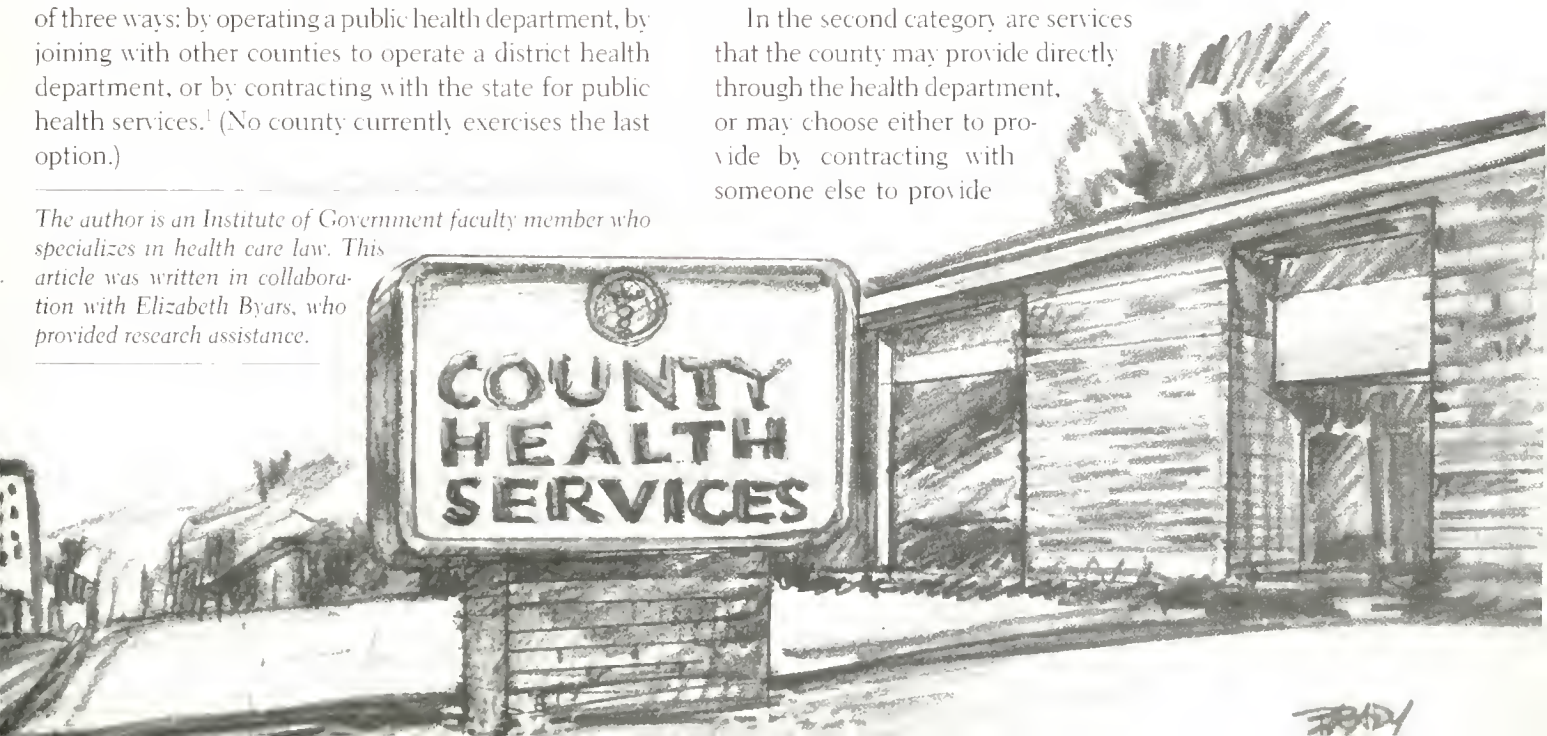
What Health Departments Do

Under state law, every county in North Carolina must provide public health services. Counties may choose one of three ways: by operating a public health department, by joining with other counties to operate a district health department, or by contracting with the state for public health services.[1] (No county currently exercises the last option.)

The General Assembly has granted to a state administrative rule-making body, the Commission for Health Services, the authority to establish standards governing the "nature and scope" of local health department services.[2] The commission's rules adopted under that authority "were developed to ensure that certain basic public health services would be available to citizens throughout the state."[3] These rules require local health departments to make sure that certain services are available. They are called, appropriately, "mandated services."[4]

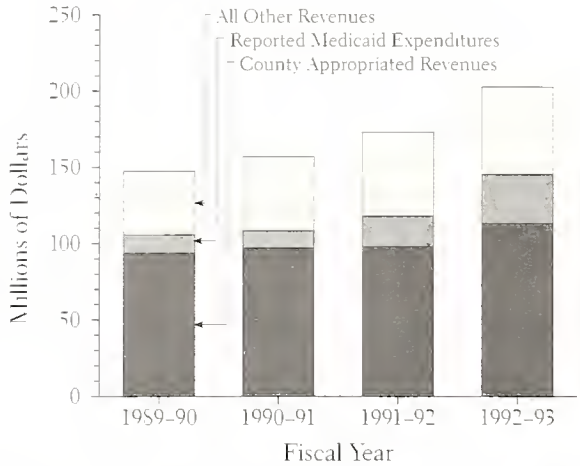
Mandated services fall into two categories. In the first category are services that the county health department must itself provide directly, under the control of the local health director and the local board of health. These include inspecting individual, on-site water supply (wells that serve individual homes); regulating sanitary sewage collection, treatment, and disposal; inspecting food, lodging, and institutional sanitation; inspecting public swimming pool and spa safety and sanitation; communicable disease control; and vital records registration.

In the second category are services that the county may provide directly through the health department, or may choose either to provide by contracting with someone else to provide



The author is an Institute of Government faculty member who specializes in health care law. This article was written in collaboration with Elizabeth Byars, who provided research assistance.

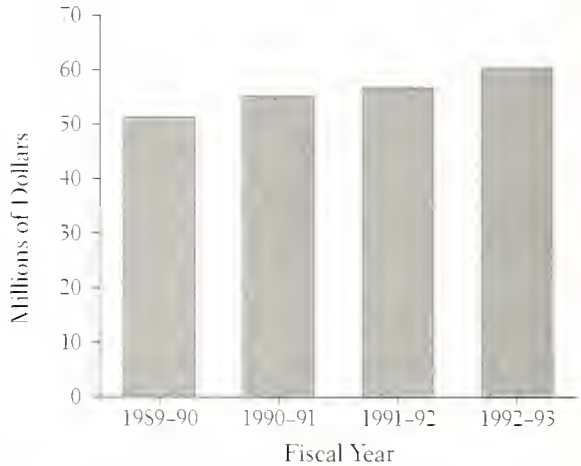
Figure 1
North Carolina County Health Department Expenditures from Local Sources



Note: "All Other Revenues" includes fees such as those from patients and from the environmental health and home health programs.

Source: N.C. Department of Environment, Health, and Natural Resources, "Budgets and Expenditures for Selected Item Codes and Selected Contractors for FYs 90–93," Summary Report BHA95011-2, Office of the Controller computer printout.

Figure 2
North Carolina County Health Department Expenditures from State and Federal Sources



Note: Figures for 1989–90 through 1991–92 include expenditures for the home health program and special projects.

Source: N.C. Department of Environment, Health, and Natural Resources, "Summary of Expenditures Reported by Local Health Departments [FY 1990–93]," computer printout.

the services, or, if it can certify to the state's satisfaction that the services are available in the county from other providers, not provide at all. These services include grade "A" milk sanitation certification; public health laboratory services; family planning; and programs for child, maternal, dental, home, and adult health care.

The services provided by health departments actually extend far beyond these mandated services. No local health departments restrict their activities to the state-mandated services. As an example, because of a shortage of physicians in the county, the Chatham County Health Department operates a primary health care services program that cost $267,800 in fiscal year 1993–94. This program was funded with a $70,800 grant from the state, $28,200 in payments for services, and $168,800 in county appropriations.[5]

Where Health Department Money Comes From

Health department activities are financed through county appropriations, state funds, federal funds, private grants, and fees. Currently, the best information on spending from all sources for the activities of local health departments is contained in reports of expenditures that health departments must make to the state. (The state is developing a comprehensive data set on local expenditures.) These reports give expenditures of local health departments broken down into those paid from local funds and those paid from state and federal funds. Figure 1 shows county expenditures from local funds for fiscal years 1989–90 through 1992–93. Figure 2 shows county expenditures from state and federal funds for those years.[6]

County Appropriations

County commissioners make appropriations for the activities of the health departments. For single-county health departments, the commissioners approve the health department budget as a regular part of their responsibility for county finance. It is common practice for the board of health to approve the health department's budget before it is submitted to the county manager and the commissioners, but no statute requires it.

The General Assembly has set no absolute minimum level of local funding that county commissioners must meet for public health. The basic requirement is that funding must be sufficient to support the mandated services set out in the Commission for Health Services' rules. But the amount necessary to do that varies widely from county to county. It depends on the health department's ability to fund those activities through receipts, the health needs of the people in the county, and how much of that need is met by agencies outside the health department.

There is no comprehensive set of data that breaks out of local appropriations or expenditures those that are made for mandated services. Nor are there any data that assess local appropriations or expenditures against some general index of unmet health needs, or that attempt to directly compare expenditures from county to county by taking into account the different mixes of services offered by local health departments.

Nevertheless, summary data on local expenditures for public health give some idea of the variation in local support. As a percentage of total health department expenditures, local money varied in fiscal year 1993–94 from 89.9 percent in Wake County to 33.2 percent in Graham County. On a per capita basis, local spending ranged from $73.76 in Swain County to $7.61 in Alexander County in that year.[7]

It must be emphasized that these figures count expenditures of Medicaid earnings as local money, even though almost 95 percent of Medicaid dollars originate with the state and federal government. Removing the state and federal portion of Medicaid dollars from the determination of local contributions could lower the local contribution substantially; for fiscal year 1993–94 Wake County's local contribution would fall from 90 percent to approximately 70 percent.

State Funds

The state pays its part of local public health activities in four basic ways. First, some of the money is provided for general support of local public health and is not earmarked for particular programs. Second, additional support comes through funds devoted to particular purposes. This support is typically, but not always, given out according to formulas (which can vary from program to program) that include a base amount that is the same for each county and an amount that is variable according to population and need. Third, the state awards other funds for special projects based on competition between local health departments for grants or contracts. And finally, the state reimburses some services on a fee-for-service basis.

To receive state funds, health departments must sign a contract with the state. Currently, the funds are distributed under a single "consolidated contract," although no law prohibits the state from requiring a separate contract for each funding program. The consolidated contract contains a number of general provisions governing how local health departments must use and account for money flowing from the state and provisions that set out special requirements for the use of certain funds.

If a local health department fails to comply with the terms of the consolidated contract, the state may take steps to cut off state funding for the program that is out of compliance. The state would first notify the department that it has sixty days to comply. If the problem were not corrected to the satisfaction of the state within that period the state could temporarily suspend funding. If the deficiency were still not corrected within thirty days following temporary suspension of funding, program funds could be permanently suspended unless the department provided evidence that the deficiencies were corrected. After "all other reasonable administrative remedies have been exhausted," the state may cancel, terminate, or suspend the contract in whole or in part and the department may be declared ineligible for further state contracts or agreements.

Sudden loss of state funding would be catastrophic for many local health department programs and for the people they serve. The state could also enforce the contract by suing a county. Lawsuits are a slow, expensive, and, in the long term, probably ineffective way in which to engender state-local cooperation. The state has never canceled a contract or sued to enforce one.

Federal Funds

The major source of direct federal support for local public health departments is reimbursement under the Medicare program for services rendered by home health agencies. Apart from that, there is little, if any, direct federal funding of local public health departments, but federal support of local public health services is nonetheless substantial, because of Medicaid reimbursement, block grants, and a few other payment programs. This money all passes through the state before being distributed to the local level, however, and it is governed by the consolidated contract. In that sense it affects local health departments just like state money.

Private Grants

Health departments often receive grants from foundations, hospitals, drug companies, and other private entities. These grants are essentially contracts between the county and the granting agency, and the financial obligations are enforced in accordance with the terms of the grant and applicable law. For example, the United States Conference of Mayors awarded the Wake County Department of Health $104,766 for its Partners in Prevention program.[8] In 1992 the March of Dimes gave the Surry County Health Department $12,000 to develop a

play on issues in adolescent sexuality called "Teens Learning Control."

Fees

Fees can be broadly grouped into two categories. One category is regulatory fees that are charged to help cover the expenses of regulatory programs like well permitting and on-site waste-water treatment and disposal. These fees are typically collected at the time a permit is issued or a required inspection is conducted. The other is payments for medical services, such as charges for family planning or prenatal care.

When Fees May Be Charged

Section 130A-39(g) of the North Carolina General Statutes (G.S.) authorizes local boards of health to charge both regulatory fees and fees for medical services. Fees must be recommended by the health director, approved by the board of health, and approved by the board of county commissioners (or, in a district, all the boards of commissioners of the participating counties). There are, however, a number of specific restrictions on a county's power to collect fees in public health programs.

First, G.S. 130A-39(g) itself prohibits charging fees when a local employee serves as the agent of the state. This prohibition effectively covers all environmental regulatory programs except those that are conducted under local rules, such as well permitting or the regulation of tattooing.[9] This rule has two significant statutory exceptions, however: services provided under the on-site sewage treatment and disposal program[10] and the public swimming pools program.[11] These exceptions permit the collection of significant revenues in some instances. In Dare County, for example, fiscal year 1993–94 fee collections for environmental programs totaled $209,660, most of which was collected in the on-site sewage disposal program. Wake County collected $769,222 in well and waste-water permitting fees in 1992–93.[12]

Second, regulatory fees must be "reasonable." A recent decision of the North Carolina Supreme Court strongly implied that a fee is reasonable if it covers no more than the actual costs of the regulatory program.[13]

And third, while there are no broad restrictions on fees charged for the provision of health services, in several instances state law specifically forbids charging fees. For example, under G.S. 130A-130 local health departments must provide free testing for sickle cell syndrome; under G.S. 130A-144(e) departments must treat tuberculosis and sexually transmitted diseases for free; and under G.S. 130A-153 departments must provide free immunizations.

What a County May Do with Fees

A county must use fees collected under the authority of G.S. 130A-39(g) for public health purposes. Furthermore, in most cases the consolidated contract, state statutes or rules, or federal law requires that fees be spent on the specific program that generated them. For example, under G.S. 130A-4.1(a) all receipts in maternal and child health programs supported by state or federal funds (which in fiscal year 1992–93 represented approximately 90 percent of total health department Medicaid receipts) must be used to further the objectives of the program that generated the income. Similarly, the consolidated contract provides that all income earned in programs covered by the contract must be spent on that program. The largest source of fee revenue that is not restricted to the program in which it is earned (but is restricted to use for public health) is home health.

Counties have put forth two arguments in an attempt to capture health department revenues and put them to other uses. One is to point out that a portion of the counties' support for public health comes in the form of financial and in-kind contributions for overhead costs that do not appear in the health department's budget—some of the county manager's time; maintenance of the health department grounds; services of the county personnel, finance, and purchasing departments; and so forth—and to argue that the county should be able to recoup those costs from receipts. The second is to point out that state law requires counties to contribute part of the state share of Medicaid, and to argue that the county should be able to recoup those contributions from receipts.[14]

There is no case law on this point one way or the other; all that can be said is that G.S. 130A-39(g) states unequivocally that all health department receipts are to be used for public health. There is no exception for overhead[15] and no exception for money that originated in county coffers. Under this reading of G.S. 130A-39(g), the counties' contribution for overhead and for Medicaid is in effect a local match of state funding.[16]

Accounting for Fee Revenue

Fees collected under the authority of G.S. 130A-39(g) must be deposited "to the account of the local health department." The consolidated contract also requires that an "account" be established with "sufficient detail to identify the program source generating the fees."

These provisions do not require the county to maintain a separate bank account for the health department, nor do they mean that the health director or the board of health must have the authority to budget and spend those funds. A county may account for health department income in

its general fund, but it must reserve that portion of the general fund for the appropriate program as indicated above.

District health departments handle receipts a little differently because districts are defined as public authorities for purposes of the Local Government Budget and Fiscal Control Act.[7] This means that districts have their own budgets, accounting systems, and finance officers, so the receipt money is held by the district, not by the participating counties, and duty to budget and account properly for the funds falls on the district.

Maintenance of Effort Provisions

When state appropriations for public health increase, or when health department receipts increase, the first reaction of some county managers and boards of commissioners is to take the opportunity to reduce county appropriations. This can and has been done, but there are several legal restrictions on counties' freedom to remove local money from public health departments.

There is no general statutory prohibition on counties reducing local appropriations to public health when they receive additional appropriations from the state government. The consolidated contract prohibits reductions in local appropriations during the one-year term of the contract but does not prevent the county from reducing appropriations before the contract is signed for the next year.

There are, however, a couple of provisions in G.S. Chapter 130A—known as "maintenance of effort" provisions—that in certain instances prohibit reductions of county appropriations when state money increases. G.S. 130A-4.2, for example, requires the state Department of Environment, Health, and Natural Resources (DEHNR) to ensure that local health departments do not reduce county appropriations for health promotion services because of state appropriations. G.S. 130A-4.1 requires DEHNR to do the same for maternal and child health services. The consolidated contract requires counties to maintain spending on programs for maternal health care, child health care, and family planning at no less than the level provided in fiscal year 1984–85.

There is also no direct statutory restriction on a county's authority to reduce local appropriations when health department receipts go up. As is the case with appropriations, however, the consolidated contract prohibits reductions in local support in response to increased receipts during the term of the contract.

Except for these few specific prohibitions, counties can change their level of support before the consolidated contract is signed for a new year, but, as a practical matter, counties will often have a difficult time doing so. Here's why: Any particular program—such as maternal and child health—that is now generating substantial receipts has always generated some receipts. The presence of those receipts in the past lessened the need for local appropriations, so counties over time tended to put little new local money into them. Appropriations were not cut in response to receipts, they simply weren't raised, or not much. As a result, when counties go to cut local appropriations in those programs, there is often little local money to be cut. Cutting money from other programs doesn't solve the problem, because the consolidated contract forbids the health department from shifting receipts to other programs.

The Problematic, and Growing, Role of Fee-Based Financing

Changes Expanding the Role of Fees

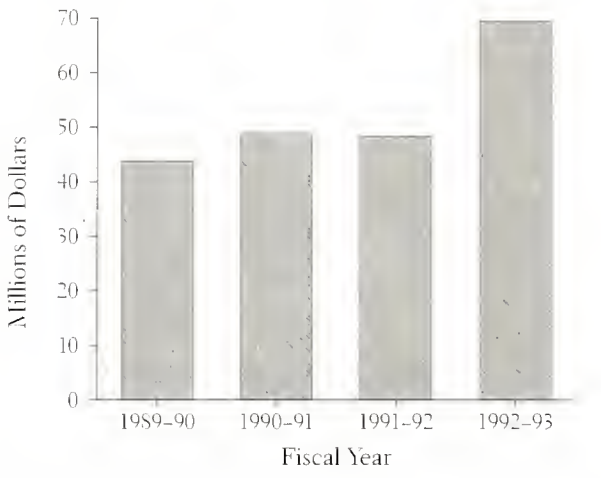
Two recent changes in the health care system have greatly expanded the role of fees in financing local public health in North Carolina. The first change is the renewed emphasis on treating people in need of care for long periods of time in their own homes, rather than in nursing homes. About half of North Carolina's local health departments operate home health agencies that provide this care, and the growth in this market has meant a substantial increase in revenue for local public health departments. Figure 3 shows how this income has changed in recent years.

The second change is the push to provide poor children, mothers, and pregnant women with greater and easier access to care. Federal and state changes in Medicaid have made more people in these groups eligible for services, covered more services, and provided higher levels of reimbursement for services. As a result, local public health departments have greatly increased their revenues by serving this population. Figure 4 shows the dramatic increase in this income in recent years. Although the increases may not be as great in the next few years, the state is actively considering additional expansions in Medicaid eligibility for these groups.

Problems with Fee-Based Financing

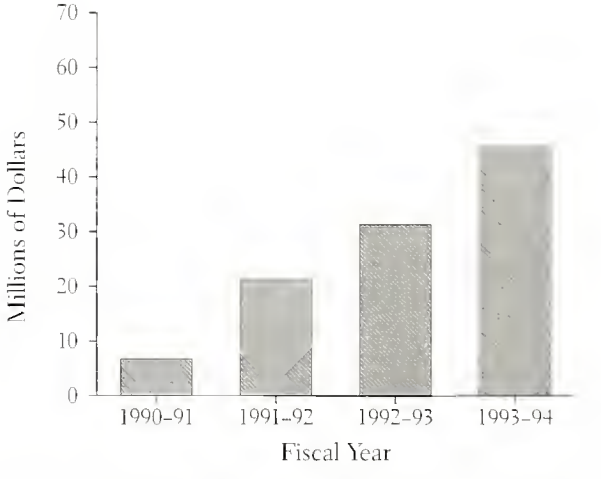
Increases in fee revenue from these programs—along with regulatory fees from on-site waste-water programs—have allowed public health to expand services and improve facilities over the past few years, during a time

Figure 3
Home Health Receipts for Local Government Home Health Agencies in North Carolina



Source: N.C. Association of Home Care, "Summary of Home Health Data, FY 1990–93," computer printout.

Figure 4
North Carolina County Health Department Medicaid Maternal and Child Health Earnings



Source: Barry Goldstein, deputy director, Maternal and Child Health, Department of Environment, Health, and Natural Resources, interview with author, Aug. 16, 1994.

when state and local governments faced serious shortages of money. But difficulties are surfacing from the use of fees to finance public health activities.

The availability of revenue from fees in some programs and not in others can change the balance of health department activities between clinical services and other programs (such as waste-water permitting) in which fees are available and communicable disease control, health education, environmental monitoring, collection of data on health, and other activities not supported by fees.[18] If fee income becomes the only way for a local health department to expand and improve its services, generating receipts could become the priority for the health department (or for the county commissioners), instead of responding to the most pressing public health needs. In addition, to the extent that health department fee-based financing becomes the norm and health departments are successful in generating fees, it can become more difficult politically for health departments to maintain and secure new funding for activities that cannot generate fees. Success invites commissioners to say, "If you want more money, go out and earn it." And big increases in health department budgets in fee-generating programs make it harder to justify increases in other programs. A $100,000 increase in a health department budget created by spending Medicaid maternal and child health revenues may make it harder for commissioners, other department heads, and the public to accept proposed increases in other health department programs.

Another problem arises because the state and federal governments limit counties' use of health department receipts. Generally speaking, health department fee receipts must be spent for public health and in the specific program that generated them. County commissioners, however, must approve those expenditures, and they are often reluctant to do so because it would require adding personnel, expanding programs, or increasing the wages for employees in the programs that generate the fees, and there is no guarantee that the fees will continue to come in.

As a result, some counties have large fund balances reserved for certain health department programs. Reserved fund balances for Medicaid topped half a million dollars in eleven North Carolina counties in 1993. The three highest were $920,000, $1.3 million, and $1.7 million.[19] Adding inhome health and other revenues might push the reserved funds in some counties up to $2 or $3 million.

Money sitting around unspent in public budgets draws attention, and with that attention can come bitter conflict between those who want to find a way to cut local appropriations to the health department in light of the reserves and those who want to improve public health services by adding personnel, paying wages that are more competitive, expanding programs, or making capital improvements.

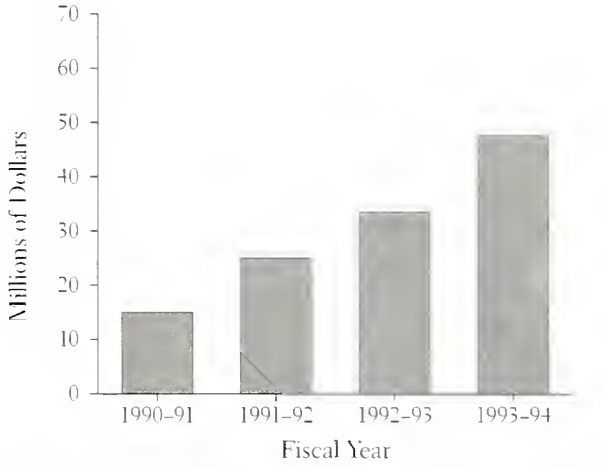
The state has attempted to deal with this problem through the consolidated contract by forcing counties to reduce reserved fund balances that have resulted from

increased Medicaid reimbursements. The consolidated contract now prohibits counties from carrying forward more than the amount of Medicaid receipts collected in the fiscal year before last, or $10,000, whichever is greater. Thus a county may carry forward in fiscal year 1993–94 the greater of $10,000 or the amount of receipts in 1991–92.

This solution is only partial. First, many health departments have had substantial Medicaid receipts in the past few years, and the amount of those receipts has been growing rapidly. Figure 5 shows the substantial changes in Medicaid receipts by health departments between fiscal years 1990–91 and 1993–94. Second, this provision addresses only reserved fund balances that are created by Medicaid. It does not address reserved fund balances created by reimbursements for home health services received from Medicare and private insurers, because that money is not covered by the consolidated contract and may be carried forward indefinitely.

A third major question about local health departments' reliance on fees is whether in the future fees from the provision of health services will be a dependable source of income. As the health care industry changes and health care reform progresses, public health departments may find that some current sources of reimbursement will be eliminated and that other health care providers will begin to compete to provide services now provided by health departments. It is this uncertain future to which we now turn our attention.

Figure 5
North Carolina County Health Department
Medicaid Receipts



Source: N.C. Department of Environment, Health, and Natural Resources, "Summary of Medicaid Cash Transfers to County Health Departments," Office of the Controller computer printout.

The Uncertain Future of the Health Care System

The health care system in this nation is changing rapidly and will continue to change rapidly. Most of the changes come from within the system itself, as responses to skyrocketing costs. The movement to managed care is the most prominent of these changes. The political pressure for health care reform legislation only makes more uncertain the future of the health care system.

The Movement to Managed Care

Traditionally the patient chooses the doctor or other health care provider. The provider charges a fee for the service and the patient's health insurance pays all or a part of that cost. Under this system the costs of health care have increased dramatically. Government and business are trying to figure out a way to control health care costs. A popular remedy is managed care.

A common model for managed care is the health maintenance organization, or HMO. The HMO receives from the entity providing health care benefits—typically an employer—a fixed amount of money per person enrolled in the HMO that year, regardless of how much health care that person now needs or may need during the year. That is, the HMO gets a *per capita* amount of money. This payment arrangement is consequently known as *capitation*.[20] The HMO will lose money on some patients but make money on others. If it is very efficient, it will make a lot of money. If it is not efficient, or if it provides too many health services, or if it is unlucky in having too many of its enrollees get very sick, it may lose money. That is the risk that the HMO takes. But in any event, compared with a fee-for-service provider, which makes more money the more care it provides, an HMO paid on a capitated basis makes less money the more care it provides.

Right now Medicaid in North Carolina reimburses local health departments for services on a fee-for-service basis, with rates based on the actual costs of those services. North Carolina is experimenting, however, with Medicaid managed care. The state's Medicaid managed care program, called Carolina Access, does not at the present time pay on a fully capitated basis. But many health care providers expect that Medicaid, like many other payers, will move to a capitated system in the not-too-distant future.[21]

In one model for a capitated system, the state asks those wishing to serve Medicaid patients to bid competitively for the right to do so. Typically, health maintenance

organizations and other managed care providers bid for these contracts and then provide care themselves or contract with other providers for its provision.

Health departments are not well positioned to contract with Medicaid to provide capitated managed care. In entering into such arrangements the state would want to issue contracts covering large numbers of people in many counties, both for administrative simplicity and to get the best deal from the managed care providers bidding for the contracts. Only the largest three or four counties would conceivably be able to bid against the large health maintenance organizations and other managed care providers in the state.

Counties would not have to deal directly with Medicaid, however. Instead, they could contract to provide services for the health maintenance organization (or other managed care entity) awarded the contract. In some places, particularly rural areas where there were few providers and the HMO was unable to place its own staff, that would happen. Counties would find it difficult, however, to accept capitated payments from managed care providers. First, most are too small. Many counties would not have sufficient numbers of Medicaid patients over which to spread the risks that the county takes when agreeing to capitated payment. Second, bidding for capitated contracts requires actuarial expertise and substantial amounts of data on the costs of providing care and on the expected use of services that few, if any, counties now have.

The Movement to Integrated Delivery Systems

Related to the movement to managed care is the development of integrated delivery systems for the provision of health care. An integrated delivery system is a large group of health care providers joined through ownership or contracts that can provide most or all of the health care that an individual might need. Physicians' services and hospital services form the core of integrated delivery systems, but they may also provide a wide range of other services such as home health, private duty nursing, medical tests, laboratory work, physical therapy, hemodialysis, or medical equipment, to give just a few examples. These systems are already being assembled by health care providers and insurers across the state because they are the most efficient and effective way to bid for managed care contracts. Combining all these services and providers into a single system makes it much simpler to control the quality and costs of care.

As with capitated managed care, health departments are not in a great position to participate in integrated delivery systems. Yet counties have a couple of options to respond to this challenge apart from simply giving up. One option a county may have is to create its own integrated delivery system, perhaps in cooperation with other local governments. The idea of a large, regional public health care system may sound far-fetched, but one of the largest integrated health care providers in the state is a public body—the Charlotte-Mecklenburg Hospital Authority.

The other option is to participate in delivery systems, either through contracts or part ownership. The legal and financial issues associated with such relationships are substantial and would require the county commissioners to give up to the delivery system a large amount of control over the programs involved. Nevertheless, some hospitals have already begun preliminary discussions with local public health departments about how such relationships might be structured.

Competition for Home Health Fees

Local health departments get the bulk of their home health fees—a substantial and growing income source—not from Medicaid (which does pay some) but from Medicare. Therefore a Medicaid movement to managed care may not make a big difference in counties' ability to generate home health revenue. The primary threat to home health revenues is competition from the private sector.

Under current law, to provide services under Medicare a home health agency must have a certificate of need.[22] These certificates are granted on a county-by-county basis. In some counties several agencies may provide home health services, while in other counties only the local health department may do so. There have been attempts to repeal the certificate of need law for home health care over the past several years, and they will continue. In addition, at this writing the state is considering a plan to allow home health agencies to provide services to patients in counties other than those in which it holds a certificate of need to operate an office.

Repeal of the certificate of need law would allow anyone who met the certification standards for Medicare to compete for patients covered by that program. A change in rules governing the areas in which agencies can provide services may expose agencies to additional competition from private agencies. (It might also lead to county agencies competing with each other by expanding over county lines.)

In many cases counties find it difficult to compete with the private sector. No one has conducted a comprehensive study of the reasons for counties' inability to compete,

but health directors agree that there are several factors. First, county pay scales are often too low to allow the health department to attract the staff needed to provide services in the most efficient and effective way. Second, the State Personnel Act (which applies to health department employees) and county personnel and budget policies make it difficult to hire, fire, re-assign, and reorganize staff to respond quickly to changing patient loads and demands for services. And third, counties are reluctant to allow spending for marketing, staff development, travel, consulting services, computer equipment, and other costs of running a business in a competitive market.

That leaves the question of why counties should be in this business at all. One reason is that in many counties home health revenues are used to subsidize indirectly other health department activities. For example, one county is planning to use home health receipts to build a new health department; others have already done so. A second reason is that the state has given counties the responsibility for providing adequate home health services to the people of the county, including persons for whom reimbursement is unavailable or inadequate. Many health departments believe that private agencies will not provide adequate uncompensated care, both in amount and in quality. Under the current system counties can cover some of the cost of indigent care from revenues generated by patients whose care is paid for. If the county gives up the revenue, its only choices will be to run the legal and political risks of not providing care to citizens, or meeting the costs of doing so out of its own resources.

The Movement for Health Care Reform Legislation

Complicating the uncertainty of the future is the possibility of substantial health care reform legislation. Just what form it might take and what its impact would be on local health department finances cannot be guessed.

President Clinton's original health care reform plan would have provided universal health care coverage and abolished Medicaid. With Medicaid gone, so would go Medicaid revenues for local health departments. The Clinton bill offered only a temporary replacement for those revenues. The public health system, under the bill, would have ceased to provide care to individuals after a five-year transition period. During the transition, public health departments would have been eligible for "essential community provider" status. The bill would have required health plans offering care in the health department's geographic area to contract with the health department so the department could continue to provide services and be paid. In return, the health departments would have received payment for those services on the same schedule of payments that providers participating in fee-for-service health plans would receive. After the transition period, however, health departments that wanted to continue providing care would have had to negotiate with health care plans for the right to participate in the plan just as any other provider would. Similar provisions were contained in both the leading House and Senate alternatives to the president's bill.

These plans all reside in the political graveyard and do not appear likely to be resurrected. Nevertheless, rapidly rising Medicaid expenditures continue to be a serious fiscal problem for state and federal government, and there is no doubt that attempts will be made to control that spending. The fiscal reality makes it doubtful that counties will be able to continue to rely on Medicaid to finance improvements in public health services, and existing health department Medicaid funds may even be in jeopardy.

Conclusion

Health departments receive financial support from many sources. In recent years, some have become increasingly dependent on fees they charge for services. That dependence on fees creates problems for health departments in determining how to set priorities for public health programs and how to work with county commissioners to improve health. And that dependence on fees complicates their options in responding to a health care environment that is changing rapidly. In the near future, the movement to managed care and integrated delivery systems will threaten some of the most substantial of health department fee sources. Changes in the home health industry and health care reform may do the same. Whether local health departments will be able to compete effectively for fee revenue, or be able to replace it through appropriations, is the challenge for the rest of the 1990s. In the balance may sit the public's health. ❖

Notes

1. N.C. Gen. Stat. § 130A-34. Hereinafter the General Statutes will be cited as G.S.

2. G.S. 130A-9.

3. N.C. Admin. Code tit. 25, ch. 15A, § .0202 (1993).

4. N.C. Admin. Code tit. 25, ch. 15A, § .0201 (1993). The scope of these services is described in N.C. Admin. Code tit. 25, ch. 15A, rules .0204 to .0216 (1993).

5. Wayne Sherman, Chatham County health director, interview with author, Aug. 31, 1994.

6. The data on public health expenditures in the text and Figures 1 and 2 were provided primarily by the N.C. Department of Environment, Health, and Natural Resources and were drawn from local expenditure reports. North Carolina counties report expenditures to the state each quarter. The expenditures are broken down across about fifty categories and are divided into two larger categories: local funds and state and federal funds. (For purposes of this report, expenditures of Medicaid earnings are placed in the category of local funds.)

The expenditure reports are designed to provide information for the internal needs of the department and not, as this article uses them, to provide multi-year comparisons of public health spending. For purposes of this article the data have drawbacks, primarily, (1) the data are self-reported and not independently audited, and (2) the basis on which the data are reported changes somewhat from year to year, making year-to-year comparisons less valid.

The amounts of Medicaid earnings in Figures 4 and 5 are accurate because they reflect the dollar amounts of actual transfers of money from the state to county governments. Those numbers are combined with data from the expenditure reports to calculate reserve fund balances in the Medicaid program.

The data on home health earnings in Figure 3 come from a summary published each year by the N.C. Home Care Association. The Home Care Association obtains its data from home health agency license applications made annually to the N.C. Department of Human Resources, Division of Facilities Services. These data include all local government home health agencies, whether they are members of the Home Care Association or not. It is self-reported and not audited by the state.

7. N.C. Department of Environment, Health, and Natural Resources, "1993 Summary of Expenditures Reported by Local Health Departments," computer printout.

8. Steve Cline, deputy director, Chronic and Communicable Disease Division, Wake County Department of Health, interview with author, Aug. 23, 1994; Yvonne Hunsucker, health educator, Surry County Department of Health, interview with author, Aug. 17, 1994.

9. Effective January 1, 1995, the regulation of tattooing will be a state responsibility. 1994 Sess. Laws ch. 670 (adding new G.S. 130A-283). Under an amendment to G.S. 130A-39(g), local health departments will be able to collect fees for activities conducted in the regulation of tattooing.

10. G.S. 130A, Art. 11.

11. G.S. 130A, Art. 8.

12. Harry Johnson, director, Dare County Health Department, interview with author, Aug. 16, 1994; Wake County Department of Health, "Wake County Department of Health Annual Report, 1992–93."

13. Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994).

14. From October 1, 1993, to September 30, 1994, counties contributed 5.23 percent of the total cost of most Medicaid programs (the amount is lower for some programs). That amount will rise to 5.29 percent on October 1, 1994. The 1993–94 fiscal year contribution equals 15 percent of the nonfederal share of Medicaid.

15. Counties have for many years prepared plans to allocate overhead costs to human services programs for the purpose of collecting reimbursements for overhead that the federal government has made available in certain grant programs. These plans may also be used to recover overhead payments made available in federal Medicare payments, notwithstanding the provisions of G.S. 130A-39.

16. The overhead argument might work if the county budget was structured in such a way so that centralized services were apportioned among the budgets of county departments.

17. G.S. 130A-36(a).

18. See Larry Gordon, "Public Health Is More Important Than Health Care," *Journal of Public Health Policy* 14 (Autumn 1993): 261–64; Allen N. Koplin, "A National Program to Restructure Local Public Health Agencies in the United States," *Journal of Public Health Policy* 14 (Winter 1993): 393, 397–401; and C. Arden Miller, et al., "Longitudinal Observations on a Selected Group of Local Health Departments: A Preliminary Report," *Journal of Public Health Policy* 14 (Spring 1993): 34, 46.

19. Department of Environment, Health, and Natural Resources, "Consolidated Contract System—Escrow Recap, Statewide Summary of Earnings and Expenditures of Selected Activities for Specified Fiscal Years," report BHA477R, computer printout.

20. Preferred provider organizations are the other major type of managed care provider in North Carolina. A health benefit plan using a PPO gives financial incentives to encourage patients to use PPO member providers.

21. The North Carolina Department of Human Resources, Division of Medical Assistance, is considering whether to implement a fully capitated Medicaid reimbursement plan in Mecklenburg County. The National Association of Community Health Centers (NACHC) has filed suit to invalidate federal managed care of demonstration waivers (called Section 115 waivers). The community health centers charge that by taking cost-based Medicaid reimbursement away from the centers the waivers jeopardize Medicaid patients' access to care. The NACHC has asked a federal court to stop waiver programs in Tennessee, Oregon, Hawaii, and Rhode Island. If the NACHC is successful, pending waiver applications for Ohio, South Carolina, Missouri, Delaware, Massachusetts, and Florida would be jeopardized. "CHC Lawsuit Stirs Medicaid Managed Care Project," *The Nation's Health* (Sept. 1994): 7.

22. Some counties were grandfathered into the certificate of need law and do not have one. But any new home health agency wanting to serve that county would have to get a certificate of need.

nicipal drinking supplies, sewer services, manufacturing, agriculture—and deposit it in another basin. Such interbasin transfers of water (IBTs) are almost always controversial, pitting riparian landowners (those who own land adjoining a stream or lake) against other landowners, people upstream against people downstream, and consumptive users against nonconsumptive users.

For four decades the North Carolina General Assembly has struggled with the proper balance of these interests. In 1993, after preliminary steps in 1990 (a one-year moratorium on IBTs)[1] and 1991 (a requirement that IBTs be registered with the Environmental Management Commission),[2] the legislature passed a comprehensive IBT statute,[3] sweeping away the body of prior legislation. Several legislators, notably Senator Lura Tally, provided consistent leadership in this effort to modernize North Carolina's water rights legislation.

The state is now implementing the new IBT law through adoption of administrative regulations and, inevitably, through lawsuits. This article looks briefly at the history of North Carolina's IBT law,[4] at the major thrusts of the new law, at the newly emerging role of river basin citizens associations, and at the two largest and most controversial IBT projects currently under consideration in North Carolina—the Randleman dam and the Gaston pipeline.

IBT Law before 1993

The "hard law" concerning IBTs and related water rights issues before 1993 could be boiled down to three items.

The author is an Institute of Government faculty member who specializes in the environment, particularly water law issues.

stem downstream is not located entirely in North Carolina—essentially, from interstate rivers such as the Yadkin, the Catawba, the Broad, part of the Roanoke, and the rivers flowing into Tennessee. Local governments in the Research Triangle area had asked the 1961 General Assembly for legislation broadly authorizing IBTs to facilitate water and sewer services, but that move was strongly opposed by a group of electric power companies and other water-intensive industries who feared that IBTs would interfere with their access to the water they needed. In a practical compromise, G.S. 153A-287 gave the power companies the IBT prohibition they wanted—but only on the interstate rivers on which most of their hydroelectric plants were located—and it gave the Research Triangle area governments the authority to install regional water and sewer systems along the rivers running through their jurisdictions—all of which are intrastate.[7] A part of the compromise exempted diversions "now permitted by law"—vague wording that was never clarified by statute or case law.

Second, a statute passed in 1955, G.S. 162A-7,[8] began requiring one particular type of water supplier (water and sewer authorities created under G.S. Chapter 162A) to obtain state approval before condemning water, water rights, or land with attached water rights. In 1973 this requirement was extended by G.S. 153A-285 to "counties and cities acting jointly or through joint agencies in providing water or sewer services or both."[9]

Third, the same 1973 statute (G.S. 153A-285) also required state approval for cities and counties acting jointly or through joint agencies to "divert water from one stream or river to another." This provision applied not just to major river basins but to any river or stream.

Charged by G.S. 153A-285 and G.S. 162A-7 with granting approvals for withdrawals and diversions by

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Interbasin Transfers: Back in the News

Milton S. Heath, Jr.

Left on its own, water in a river basin (less evapotranspiration) stays in that basin until the river reaches the sea. Human engineering allows us to withdraw water from one basin, use it for any number of purposes—municipal drinking supplies, sewer services, manufacturing, agriculture—and deposit it in another basin. Such interbasin transfers of water (IBTs) are almost always controversial, pitting riparian landowners (those who own land adjoining a stream or lake) against other landowners, people upstream against people downstream, and consumptive users against nonconsumptive users.

For four decades the North Carolina General Assembly has struggled with the proper balance of these interests. In 1993, after preliminary steps in 1990 (a one-year moratorium on IBTs)[1] and 1991 (a requirement that IBTs be registered with the Environmental Management Commission),[2] the legislature passed a comprehensive IBT statute,[3] sweeping away the body of prior legislation. Several legislators, notably Senator Lura Tally, provided consistent leadership in this effort to modernize North Carolina's water rights legislation.

The state is now implementing the new IBT law through adoption of administrative regulations and, inevitably, through lawsuits. This article looks briefly at the history of North Carolina's IBT law,[4] at the major thrusts of the new law, at the newly emerging role of river basin citizens associations, and at the two largest and most controversial IBT projects currently under consideration in North Carolina—the Randleman dam and the Gaston pipeline.

IBT Law before 1993

The "hard law" concerning IBTs and related water rights issues before 1993 could be boiled down to three items.

The author is an Institute of Government faculty member who specializes in the environment, particularly water law issues.

First, in 1961[5] the North Carolina General Assembly passed a new statute,[6] now codified as Section 153A-287 of the General Statutes (G.S.), prohibiting diversions from any "major river basin" (undefined) whose main stem downstream is not located entirely in North Carolina—essentially, from interstate rivers such as the Yadkin, the Catawba, the Broad, part of the Roanoke, and the rivers flowing into Tennessee. Local governments in the Research Triangle area had asked the 1961 General Assembly for legislation broadly authorizing IBTs to facilitate water and sewer services, but that move was strongly opposed by a group of electric power companies and other water-intensive industries who feared that IBTs would interfere with their access to the water they needed. In a practical compromise, G.S. 153A-287 gave the power companies the IBT prohibition they wanted—but only on the interstate rivers on which most of their hydroelectric plants were located—and it gave the Research Triangle area governments the authority to install regional water and sewer systems along the rivers running through their jurisdictions—all of which are intrastate.[7] A part of the compromise exempted diversions "now permitted by law"—vague wording that was never clarified by statute or case law.

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Charged by G.S. 153A-285 and G.S. 162A-7 with granting approvals for withdrawals and diversions by

joint agencies and water and sewer authorities, the Environmental Management Commission (EMC) provided some state oversight of regional water systems, but only those that happened to be operated by these particular organizations. The EMC was just beginning to accumulate some experience in applying these laws when they were repealed by the 1993 IBT law.[10]

The 1993 IBT law repealed all this old "hard law": G.S. 153A-285, G.S. 153A-287, and G.S. 162A-7.[11] Thus for all intents and purposes the 1993 IBT law is now the statute law of North Carolina concerning IBTs.

The 1993 IBT Statute

The essentials of the 1993 statute can be summarized in seven points:

1. State approval is required for future IBTs of two million gallons per day (mgd) or more from any of thirty-eight river basins.[12] An EMC certificate now is required to authorize a transfer of 2 mgd or more of water from any one of the thirty-eight listed river basins to another.[13] (See "The River Basins Listed in the 1993 IBT Law," pages 24–25.) This certificate replaces the potpourri of EMC approvals that were previously required only for IBTs by the utilities that happened to be covered in old G.S. 162A-7 or old G.S. 153A-285. The certificate is required for

- new IBTs;
- any increase in an IBT previously approved by the EMC for a water and sewer authority under old G.S. 162A-7; or
- any increase of 25 percent or more above the average daily IBT during the year ending July 1, 1993, if the total transfer (including the increase) is 2 mgd or more.

It is apparent that the provisions concerning increased IBTs may impose significant monitoring requirements on the regulated parties.

2. The new IBT law applies to both water supply projects and waste-water or stormwater discharges. Disputes over IBTs previously have centered on large public water supply projects. The new IBT law also seems to apply to waste-water discharges and may cover some stormwater arrangements, as it covers "the withdrawal, diversion or pumping of surface water from one river basin and discharge . . . in a [different] river basin."[14]

It is not yet clear how the new law will be applied to projects that involve water supply withdrawals and waste-water disposal with multiple discharges into more than one river basin.[15]

3. There are exemptions and exclusions. The new IBT law makes some of the usual accommodations to ongoing and pending projects:

- Projects in existence or under construction on July 1, 1993 (two weeks before the act passed), will not require EMC certificates, "up to [their] full capacity to transfer water from one basin to another."[16] This provision gives some flexibility for minor increases in IBTs from existing and pending waterworks.
- Water and sewer authority projects previously certificated by EMC can continue to operate under their old G.S. 162A-7 certificates without obtaining certificates under the new IBT law.[17] This provision probably applies to the Cary-Apex and Randleman dam projects, although the Randleman certificate may have been jeopardized by a recent superior court decision (discussed below).[18]
- Projects that have completed environmental impact statements by January 1, 1994, need not be certificated.[19] This provision was designed particularly to facilitate a water supply transfer from a Duke Power Company reservoir to the city of Statesville, but it may also apply to other projects, including Randleman dam.[20]

The 1993 IBT law excludes from its coverage the discharge of water, either upstream or downstream from the point where it was withdrawn, back into the same river.[21] (See "Rules to Implement the New Law," below, for an elaboration.) It also allows the secretary of the Department of Environment, Health, and Natural Resources (DEHNR) to approve a temporary IBT for up to six months for water supply contingencies such as droughts, pollution incidents, and temporary water plant failures.[22]

4. IBTs are no longer flatly prohibited by statute. The statutory prohibition in G.S. 153A-287 against diversion from major interstate river basins is no more. Its repeal[23] allows the key actors in the water supply industry to turn their thoughts from speculation over the ambiguities of the former prohibition to the more straightforward (if more expansive) task of interpreting and applying the new IBT statute. If there remains in the law any legal prohibition against IBTs or diversions, it can only be found in the common law or in scattered antidiversion clauses of very old statutes.[24]

5. There is plenty of red tape to go around. Up front, those who file petitions for IBT certificates will

face significant paperwork and data-gathering requirements. The statute itself requires only that the petition describe the proposed facilities, water uses, water conservation measures, and "such other information deemed necessary by the Commission."[25] More to the point, the petitioner must come armed with the information and rationale to meet the statutory standards governing EMC's grant or denial of the certificate.[26] The scope of the required EMC findings is so broad, and the judgments called for are so complex, that petitioners may well need specialized engineering, scientific, and legal assistance to prepare for the IBT proceeding.

6. The heart of the matter is EMC's findings and decision. G.S. 143-215.22I(f) sets forth detailed written findings that must support EMC's decision to grant or deny an IBT request. Those familiar with modern administrative law will recognize in these findings an invitation to extended proceedings on any issues contested by the parties.[27] In current North Carolina practice, any contested case is likely to be heard by an administrative law judge or EMC member serving as a hearing officer, who would present recommendations to the EMC for its consideration and final decision on the administrative law judge's record.

The statutory findings can be divided roughly into two groups: those that involve beneficial effects of a proposed project, in paragraphs (1), (5), and (6), and those that involve detrimental effects, primarily in paragraphs (2) and (3). (See "Statutory Findings for IBT Certificates," page 26.) A crucial burden-of-proof provision that was vigorously debated in the General Assembly directs that an IBT certificate be granted "unless the Commission concludes by a preponderance of the evidence based upon the findings of fact . . . that the potential detriments of the proposed transfer outweigh the benefits of the transfer."[28] Essentially, the statute directs the EMC to apply a benefit-detriment test based on the written record in the proceeding, and to give the project the benefit of the doubt.

On a casual reading, the first four statutory findings for IBT certificates bear a striking resemblance to the findings formerly required by old G.S. 162A-7 for approval of land and water rights condemnations undertaken by a water and sewer authority. A closer comparison, however, reveals important differences that reflect the coming of age of the environmental movement in the years since the 1955 enactment of old G.S. 162A-7, a water use statute with none of the telltale marks of environmental legislation. The criteria set forth in old G.S. 162A-7 related only to water use and water "conservation," as that term was understood in 1955. The comparable criteria set forth in the 1993 IBT law add consideration of water quality, waste-water assimilation, reasonableness, and environmental impacts in the provisions of paragraphs (1) through (4) of G.S. 143-215.22I(f). By the new law, EMC's decisions may come only after extensive public notice and mandatory public hearings.[29]

7. There is a water withdrawal registration requirement that is broader than the IBT provisions. A separate 1993 statute broadened the requirements of the 1991 registration act to cover *groundwater* and all *withdrawals* as well as surface-water IBTs.[30] It also applies to withdrawals of 1 mgd rather than 2 mgd. The 1993 amendments to the registration act relieved local governments that have completed their local water supply plans pursuant to G.S. 143-215.22H(c) from complying with the registration act.

Rules to Implement the New Law

The EMC has adopted a brief set of rules to implement the IBT statute, seeking to clarify some of the terms of the statute.[31]

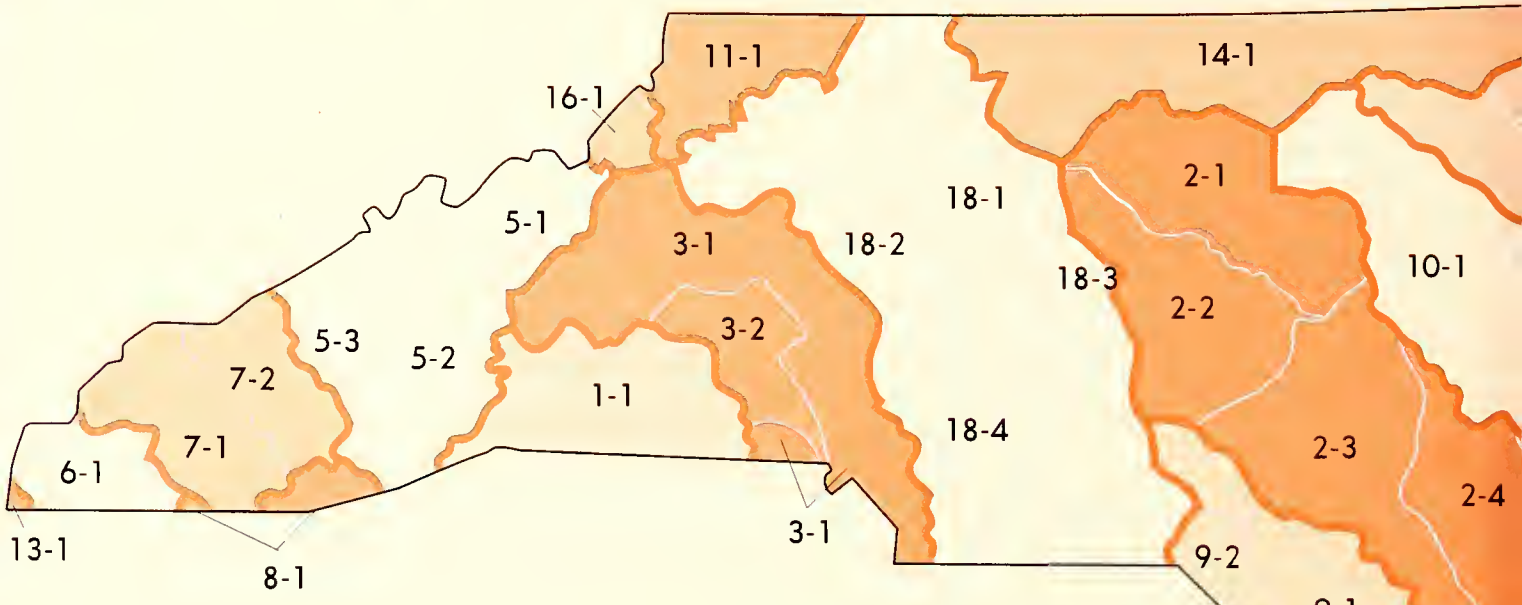
First, the rules clarify the statutory exclusion of transfers involving discharges *in the same river* upstream or downstream from the point of withdrawal.

Second, the rules clarify the statutory allowance of transfers "up to the full capacity of a facility to transfer water from one basin to the other if the facility was existing or under construction as of July 1, 1993."[32] The division's interpretation of the "full capacity of a facility to transfer water" selects the lowest common denominator (the "element . . . with the least capacity"—usually the pipe transporting the water) as the measure of "capacity to transfer." This is obviously a relatively simple rule to administer, and it may involve a permissible interpretation. It is consistent with the apparent overall purpose of the IBT law to regulate IBTs and weigh their benefits and detriments, but at the same time it may seriously disappoint the expectations of some utility owners and bondholders whose concerns are reflected in the "full capacity" provision.[33]

Finally, the rules address transfers involving purchases of water and make the owner of the pipe that carries water across a basin divide responsible for obtaining an IBT certificate, unless the Division of Water Resources approves other arrangements.[34]

As originally proposed by DEHNR's Division of Water Resources, the rules would have elaborated on the definition of a *transfer*. The statutory definition of a transfer—"the withdrawal, diversion or pumping of surface water from one river basin *and* the discharge of all

The River Basins Listed in the 1993 IBT Law



1-1 Broad River

2-1 Haw River
2-2 Deep River
2-3 Cape Fear River
2-4 South River
2-5 Northeast Cape Fear River
2-6 New River (east)

3-1 Catawba River
3-2 South Fork Catawba River

4-1 Chowan River
4-2 Meherrin River

5-1 Nolichucky River
5-2 French Broad River
5-3 Pigeon River

6-1 Hiwassee River

7-1 Little Tennessee River
7-2 Tuskosegee (Tuckosegee) River

8-1 Savannah River

9-1 Lumber River
9-2 Big Shoe Heel Creek
9-3 Waccamaw River
9-4 Shallotte River

10-1 Neuse River
10-2 Contentnea Creek
10-3 Trent River

11-1 New River (west)

12-1 Albemarle Sound

13-1 Ocoee River

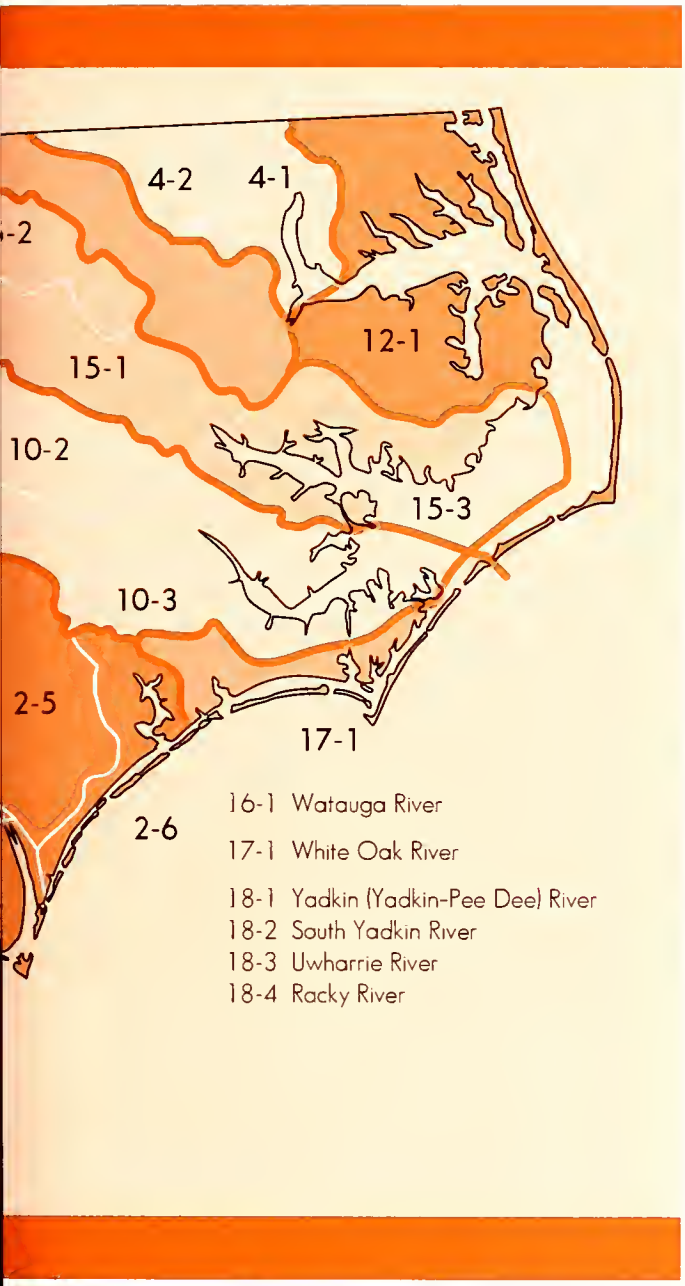
14-1 Roanoke River

15-1 Tar River
15-2 Fishing Creek
15-3 Pamlico River and Sound

What Is an IBT?

Experts have argued long over definitions of interbasin transfers or diversions of water (IBTs). North Carolina's new IBT law settles the issue for now in North Carolina. It defines a *transfer* as the withdrawal, diversion, or pumping of surface water from any of thirty-eight listed river basins, and the discharge of all or any part of the water in any of the other listed basins.

or any part of the water in a river basin different from the origin" (emphasis added)—requires both a withdrawal and a discharge.[35] The proposed rule would have defined a transfer to include "any use of water that is not returned to the source basin" as well as any "release" or "disposal" of water.[36] Inclusion of the word "use" signaled the Division's intent to construe transfers broadly to cover consumptive uses associated with IBTs (such as irrigation or as cooling water) that do not involve a direct discharge into another watercourse. The rule as finally adopted, however, did not include this elaboration of the definition of "transfer," leaving the statutory definition to speak for itself.



The Role of River Basin Associations

At the initial EMC public hearing where these rules were first proposed, regional river basin associations and groups were much in evidence.[37] This reflects the growth of these groups and of the "green" movement generally in recent years, and their active involvement in public policy debates on IBTs and other developments affecting water conservation and water quality. Twenty or thirty years ago the only consistent public opponents of water projects involving IBTs were a few water-intensive industries, such as electric power companies. Today the most vocal opponents typically are river basin groups.

Among the established groups are the Yadkin–Pee Dee River Basin Association, the Haw River Assembly, the Cape Fear River Assembly, the Mayo-Dan Committee, and the Roanoke River Basin Association. Their presence has been a strong factor to reckon with in legislative hearings and promises to become a strong factor at hearings of state boards and commissions, such as the EMC public hearing on the IBT rules. The maturing of these regional organizations should ensure that downstream interests will be effectively represented and should reinforce the message of the new IBT law to proceed with care in launching large new IBTs.

Randleman Dam and the Gaston Pipeline: Major IBTs in Controversy

In the time since the ratification of the 1993 IBT law, there have been legal developments in two major North Carolina IBT projects with the potential for affecting long-term interpretation of the new law: a North Carolina Superior Court decision concerning the Randleman dam project and decisions by the United States secretary of commerce and the Federal Energy Regulatory Commission (FERC) on aspects of the Lake Gaston pipeline controversy.

The Randleman Dam Case

Major water users in the Guilford County area—particularly municipalities—have been major players in North Carolina IBT scenarios for years because of their location at the headwaters of small Cape Fear River tributaries that cannot be expected to meet area water supply needs at the beginning of the twenty-first century. In their efforts to cope with this natural shortage, they have periodically considered projects in neighboring major river systems, such as the Yadkin–Pee Dee and the Roanoke-Dan, but every planning effort in these directions has been rebuffed by vigorous local resistance.

In 1956 Guilford County and its municipalities joined forces with Randolph County and two of its towns to form the Piedmont-Triad Water Authority under G.S. Chapter 162A and to cosponsor the Randleman project, a proposed reservoir on the Deep River near the town of Randleman.

The Randleman project was originally proposed as a Corps of Engineers multipurpose reservoir, but it was later dropped from the corps's list and picked up by Piedmont-Triad. Because G.S. Chapter 162A has long required that water authorities obtain EMC approval

Statutory Findings for IBT Certificates

In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation.

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

—From G.S. 143-215.22I(f)

before condemning water rights, Piedmont-Triad petitioned the EMC for approval. A full North Carolina environmental impact statement was prepared. In December 1991 the EMC—by a vote of eight to seven—granted Piedmont-Triad's request, overriding an adverse recommendation by its hearing officer, Dr. William Farrabow of High Point. (Farrabow's objections to the project were based on water quality concerns. He noted potential groundwater contamination from the High Point landfill, the Randleman "dump," and a Seaboard Chemical Company site, as well as waste-water discharges from a High Point sewage treatment plant into the proposed reservoir. Piedmont-Triad's engineering study showed that the lake would meet drinking water standards, and the Division of Environmental Management had reviewed and accepted the study.)

Two affected landowners and the Deep River Citizens Coalition sought a review of the EMC decision in Wake County Superior Court. On May 12, 1994, Superior Court Judge Dexter Brooks entered an order reversing and vacating the EMC decision. Judge Brooks's order essentially found that the project's environmental impact statement was inadequate and that the EMC had acted arbitrarily and capriciously in approving "a water supply project that cannot guarantee that the water it supplies is drinkable and protective of the public health and safety."[38] The EMC has appealed Judge Brooks's decision to the North Carolina Court of Appeals, which had not acted when this article went to press.

Whatever its potential water quality limitations, Randleman reservoir appealed to the Guilford interests as, at least, "compared to what?" Development of this reservoir would avoid guaranteed controversy over alternatives, such as IBTs from neighboring major river basins. The new IBT law complicated matters by defining "river basins" to include not only such major systems as the Cape Fear and the Yadkin, but also some lesser tributaries, such as the Deep and Haw rivers, which help form the Cape Fear.[39] Thus Randleman reservoir would require an EMC certificate under the new IBT law unless exempted.

The Randleman project might be exempt from IBT approval on either of two grounds: that it was previously approved by EMC under old G.S. 162A-7 and G.S. 153A-285, or that it completed a North Carolina environmental impact statement before January 1, 1994.[40] Judge Brooks's order jeopardized the potential Randleman exemption on both grounds. The environmental impact statement basis is probably ultimately of lesser concern to Piedmont-Triad because, in the normal course of events, an inadequate initial statement is later cured.

The reversal of the G.S. 162A-7 approval is probably

of greater concern to Piedmont-Triad. If this decision is not later reversed on appeal, Randleman might become the test case on which the EMC cuts its teeth under the new IBT law. Obtaining an IBT approval would likely be a much more formidable challenge than working the kinks out of a previous faulty G.S. 162A-7 approval.

The Gaston Pipeline "Consistency" Order and FERC Decision

A high-profile interstate IBT dispute, the Lake Gaston pipeline case, has been in the public eye for more than a decade. Around 1980 the city of Virginia Beach, Virginia, proposed to increase its available water supply by building a pipeline to tap the Virginia side of Lake Gaston, a power lake on the Roanoke River. The project involved an eighty-five-mile pipeline from Lake Gaston to Virginia Beach, twenty-six river crossings (traversing several large drainage basins), and an ultimate pumping rate of sixty million gallons per day. Below Gaston dam the Roanoke River flows exclusively through North Carolina and eventually empties into Albemarle Sound. Downstream riparian owners were watching the proposed project with great concern. Despite strong public and political resistance in North Carolina, Virginia Beach moved ahead through preliminary project phases and, after years of litigation, obtained Corps of Engineers permits covering the project. (Along the way, North Carolina's challenge to the adequacy of the corps's environmental impact statement review was rejected by the federal courts.[41])

North Carolina launched a second challenge to the pipeline by demanding that Virginia Beach obtain permission from VEPCO, the owner of Lake Gaston, and from the Federal Energy Regulatory Commission (FERC), which licensed VEPCO's Gaston power project. VEPCO has given its permission, and the proceeding before FERC is still under way. In conjunction with the FERC proceeding, North Carolina exercised its right to request the United States secretary of commerce to certify that the pipeline project is (or is not) consistent with North Carolina's approved coastal management plan. These consistency decisions are authorized by the federal Coastal Zone Management Act and give coastal states a way to apply their coastal management regulations to actions taken by federal agencies.

North Carolina argued to the secretary of commerce that the project would be inconsistent with the state's guidelines for estuarine waters and public trust areas because it would significantly increase low flow periods in the lower Roanoke River and adversely affect the Roanoke striped bass fishery—an argument that the state had first developed in the corps's permit proceedings. On May 18, 1994, the secretary of commerce rejected North Carolina's appeal and found that the pipeline project is consistent with the objectives of the Coastal Zone Management Act and that its contributions to the national interest outweighed its adverse effects on the coastal zone.[42]

North Carolina, having lost the Corps of Engineers permit and coastal zone consistency cases, was down to one last pending challenge to the pipeline: the basic FERC proceeding itself.[43] On June 23, 1994, North Carolina won at least partial victory when FERC required Virginia Beach to submit a formal environmental impact statement concerning the Gaston pipeline proposal.[44] If the FERC proceeding is not resolved to North Carolina's satisfaction, the state has two additional options that it has previously rejected: an original suit in the U.S. Supreme Court against the state of Virginia, or active pursuit of an interstate water compact with Virginia. One further possibility has been opened up by a May 1994 U.S. Supreme Court decision involving the state of Washington:[45] a water quality certification for a hydroelectric project under Section 401 of the federal Clean Water Act. This decision sustained Washington's Section 401 certification, requiring the project sponsor to accept the state's minimum flow recommendations for protection of salmon and steelhead runs. This may support North Carolina's position emphasizing the need for protection of the Roanoke River striped bass fishery.

One other pipeline-related suit is still pending: a tactical challenge by Virginia Beach to North Carolina's opposition to the pipeline, in the case of *Virginia Beach v. Champion International and Weyerhaeuser Company*.[46] The suit seeks a declaratory judgment that the two defendant companies (which own or propose plants near the mouth of the Roanoke River that will withdraw large amounts of water from the river) have no riparian rights that would be damaged by the Gaston diversion, because the diversion is only a "minute fraction" of the river's flow. This case has been stayed pending resolution of the related pipeline proceedings, but the stay may be lifted once the FERC proceeding is completed. Should Virginia Beach prevail in this riparian-rights–based litigation, this would be a serious defeat for the North Carolina interests and could pave the way for further Roanoke River diversions by Virginia interests.

As this article goes to press, Virginia Beach officials have just won permission from the Virginia Corporation Commission to condemn the intake site from VEPCO at Lake Gaston in an effort to bypass FERC approval.[47]

Conclusion

In 1993 North Carolina legislation moved to a comprehensive IBT law from an episodic set of statutes that originated in the political give-and-take of spasmodic water law wars. The sponsors of the 1993 act built upon the growing political strength of river basin associations and environmentalists who objected to reductions in existing stream flows. Upstream-water and waste-water managers apparently concluded that their downstream counterparts had the votes to pass a bill, and used their political resources to grandfather pending projects, obtain procedural changes, and gain the flexibility to utilize the full capacity of existing projects.

Implementation of the new statute has just begun, with the first set of clarifying rules adopted by the Division of Water Resources. When some project applications have been processed, the working contours of the new program should become more clear. At that time the interested parties can better assess the impact of the IBT legislation and start planning future directions of North Carolina water management legislation. In that assessment and planning process, IBT regulation is only one part of a set of related programs that includes the state water plan, low flow regulation, and registration of new water withdrawals.

The EMC and the secretary of the DEHNR have a window of opportunity to reflect on the policies that they want to follow in administering the IBT law. What parameters or models should be used in applying the crucial standards that govern EMC decisions on new IBTs? How is the new law likely to affect water and sewer infrastructure needs for growing areas and in-stream flow characteristics of North Carolina's rivers? Should EMC simply treat the IBT applications case by case as they arise, applying the benefits-detriments test, or play a more proactive role through rule-making on issues that it believes should be addressed? If the EMC chooses a more proactive role, should its policy, for example, be to discourage all substantial IBTs or to encourage balanced interchange arrangements or engineering designs that return diverted waters to the basin of origin at or near the point of withdrawal? These and related questions are worthy of the early attention of the EMC and the secretary of the DEHNR. ❖

Notes

1. 1989 N.C. Sess. Laws ch. 954 (1990 Regular Session).

2. 1991 N.C. Sess. Laws ch. 712.

3. 1993 N.C. Sess. Laws ch. 348, N.C. Gen. Stat. (hereinafter G.S.) §§ 143-215.22G through -215.22I.

4. For a full, earlier treatment of interbasin transfers, see the author's article from five years ago: Milton S. Heath, Jr., "Interbasin Transfers and Other Diversions," *Popular Government* 55 (Fall 1989): 34–44, hereinafter cited as Heath, "Interbasin Transfers and Other Diversions."

5. See Heath, "Interbasin Transfers and Other Diversions," 36–37.

6. 1961 N.C. Sess. Laws ch. 1001.

7. See Heath, "Interbasin Transfers and Other Diversions," 36.

8. 1955 N.C. Sess. Laws ch. 857. See Heath, "Interbasin Transfers and Other Diversions," 43, n.19, for background on the 1955 statute.

9. 1973 N.C. Sess. Laws ch. 822.

10. See Heath, "Interbasin Transfers and Other Diversions," 39, 42.

11. 1993 N.C. Sess. Laws ch. 348, §§ 4–6.

12. The thirty-eight river basins are listed in G.S. 143-215.22G(1).

13. G.S. 143-215.22I(a).

14. G.S. 143-215.22G(3).

15. Program Administrator John Morris (director of the N.C. Division of Water Resources) says he hopes that systems requiring IBT certificates will apply for approval of any substantial future IBT increases that are likely to occur within their planning horizons, thereby simplifying administration. Telephone conversation, June 15, 1994. This approach may or may not be permissible without clarifying amendments to the statute.

16. G.S. 143-215.22I(b).

17. G.S. 143-215.22I(i).

18. The information concerning Cary-Apex and Randleman is based on conversations with John Morris, director of the N.C. Division of Water Resources. Telephone conversations, June 1994.

19. 1993 N.C. Sess. Laws ch. 348, § 7.

20. The information concerning Statesville is based on conversations with Marshall Staton, consulting engineer to the city of Statesville. Telephone conversations, June 1994.

21. G.S. 143-215.22G(3).

22. G.S. 143-215.22I(j).

23. 1993 N.C. Sess. Laws ch. 348, § 5.

24. See Heath, "Interbasin Transfers and Other Diversions," 36–37.

25. G.S. 143-215.22I(c).

26. G.S. 143-215.22I(f).

27. Examples of extended litigation under previous North Carolina water-rights legislation include the approval by the EMC of Randleman and Cane Creek reservoirs and the Cary-Apex allocation from Jordan reservoir.

28. G.S. 143-215.22I(g).

29. G.S. 143-215.22I(d). Notices must be published in area newspapers and the *North Carolina Register*, and must be mailed to affected boards of county commissioners, governing boards of public water supply systems, NPDES permit holders, IBT certificate holders, and persons who have registered water transfers or withdrawals.

30. G.S. 143-215.22H, as amended by 1993 N.C. Sess. Laws ch. 344.

31. The rules are codified in N.C. Admin. Code tit. 15A, 2E .0400.

Deep River Citizens Coalition, Scott Lineberry, and Guy Small v. N.C. Dep't of Env't, Health, and Natural Resources and N.C. Env't Management Comm'n, No. 92CV02584 (Wake County Super. Ct., May 24, 1994).

39. G.S. 143-215.22G(1).

Weyerhaeuser Co., Civ. Action No. 84-10-N (E.D. Va.).

47. Final order, Nov. 7, 1994, Richmond, Va., Commonwealth of Virginia State Corporation Commission, on Application of the City of Virginia Beach for a certificate pursuant to Va. Code §25-233, Case No. PUE 940048.

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31. The rules are codified in N.C. Admin. Code tit. 15A, 2E .0400.

32. N.C. Admin. Code tit. 15A, 2E .0401(d).

33. The problem posed for utilities is exposure to lengthy and potentially costly regulatory proceedings and litigation. For example, in the 1980s Orange Water and Sewer Authority went through several years of litigation and two formal environmental impact statements to secure final regulatory approval for Cane Creek reservoir. Attorneys' fees for such extended litigation can easily reach six figures. In this particular case project costs skyrocketed because prevailing interest rates more than doubled during the litigation.

34. N.C. Admin. Code tit. 15A, 2E .0401(c).

35. G.S. 143-215.22G(3).

36. Proposed N.C. Admin Code tit. 15A, 2E. 0401(a).

37. The initial hearing was held at the Archdale Building in Raleigh on May 31, 1994, before EMC Hearing Officer Carla DuPui.

38. The information in this section concerning Judge Brooks's decision and Hearing Officer Farrabow's recommendations was taken from Judge Brooks's order of May 12, 1994. Deep River Citizens Coalition, Scott Lineberry, and Guy Small v. N.C. Dep't of Env't, Health, and Natural Resources and N.C. Env't Management Comm'n, No. 92CV02584 (Wake County Super. Ct., May 24, 1994).

39. G.S. 143-215.22G(1).

40. See G.S. 143-215.221(i) and 1993 N.C. Sess. Laws ch. 348, § 7.

41. See Heath, "Interbasin Transfers and Other Diversions," 40, 41.

42. The information in this section concerning the consistency issue is taken from an executive summary of the decision by the U.S. secretary of commerce on May 18, 1994, finding in favor of consistency. Decision and Findings in the Consistency Approval of the Virginia Electric and Power Co. from an Objection by the N.C. Department of Environment, Health, and Natural Resources (U.S. Secretary of Commerce, May 19, 1994).

43. Virginia Electric Power Company Project #2009-003 (Federal Energy Regulatory Comm'n).

44. "Virginia Pipeline Hits Snag," *News and Observer* (Raleigh), June 24, 1994, 3A.

45. Jefferson County PUD v. Ecology Dep't of Washington, 1994 U.S. LEXIS 4271 (U.S. 1994).

46. City of Virginia Beach v. Champion Int'l and Weyerhaeuser Co., Civ. Action No. 84-10-N (E.D. Va.).

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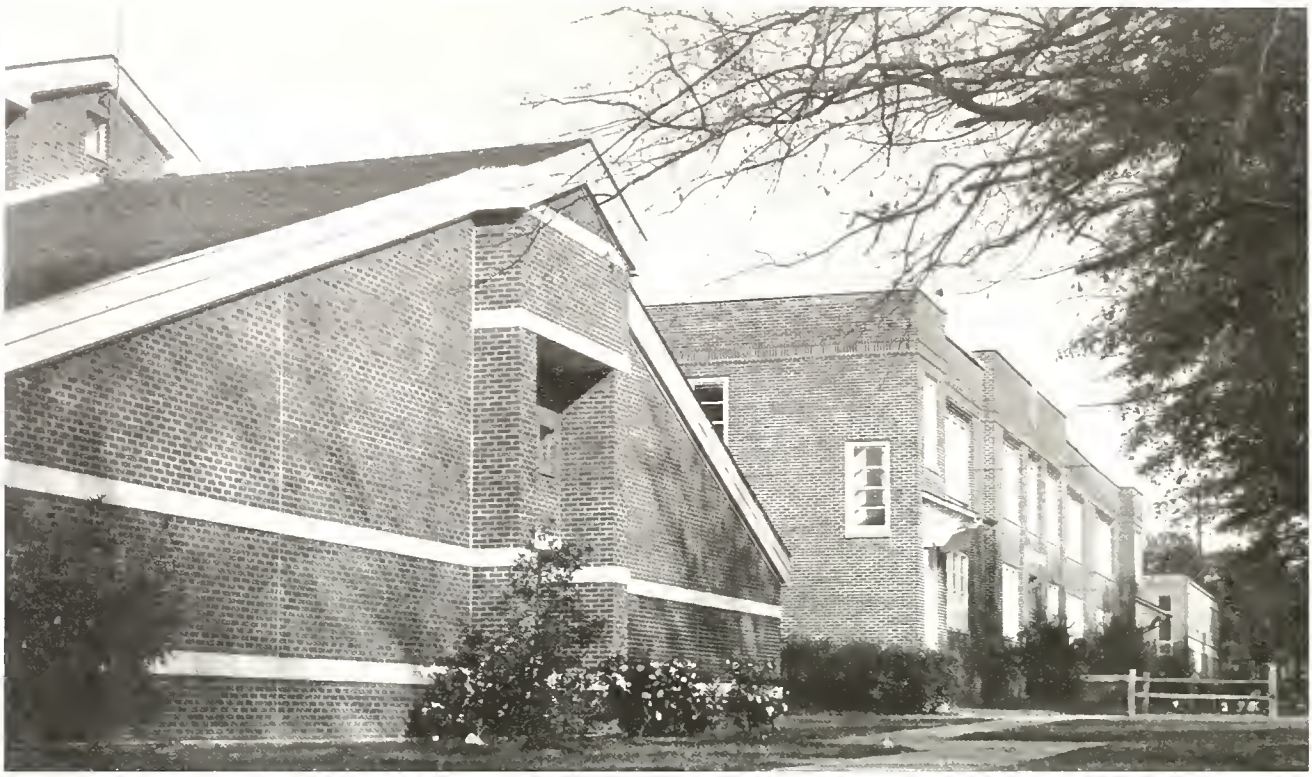


Old and new at Fuquay-Varina Middle School: the Media Center and Classroom Building (left), built in 1991, and the Auditorium Building (center), built in 1920 — two of eight buildings on the burgeoning school campus.

Twelve Years and $3 Billion Later: School Construction in North Carolina

Charles D. Liner

In 1981 the estimate of total school construction needs in North Carolina was $1.8 billion. Over the next twelve years, the state and its school systems actually spent more than $3 billion on school construction and other capital needs.[1] Despite these expenditures, the 1993 estimate of school construction needs stood at $5.6 billion.

After twelve years and $3 billion, how well have North Carolina's counties and their school systems succeeded in meeting their previously stated needs for school construction?

This article looks at changes in reported school construction needs and at North Carolina's efforts to meet those needs. It focuses on the role of state money in helping counties meet their school construction obligations and on the state's efforts to assist the poorest counties in meeting their needs. It also examines the choices that counties have made to spend, save, and borrow.

The author is an Institute of Government faculty member who specializes in public finance, including public school finance.

The Explosion in School Construction Needs

During the early 1980s, North Carolina faced a daunting problem in replacing obsolete school buildings and improving school facilities. Counties, which are responsible for financing school construction, were then suffering from a severe economic recession and had to pay historically high interest rates if they borrowed money to build schools. They had received no state money for school construction since funds from a 1973 state school construction bond were exhausted.

In 1981 school units reported that they needed a total of $1.8 billion to meet their long-range needs for building

school facilities.[2] This seemed a staggering sum at a time when all units together were spending $100 million a year or less for school construction, and when enrollment was declining in almost every unit.

Unlike some earlier surveys that had asked local school officials to estimate only their most critical needs, the 1981 survey asked them to estimate their total needs for providing "attractive, safe, and functional facilities" for their students.[3] Apparently the schools were far from meeting that standard—more than half the total amount was needed to replace temporary and obsolete buildings. Citing these needs, the state school board in 1981 unsuccessfully petitioned the General Assembly to put to the voters a $600 million state school bond issue.

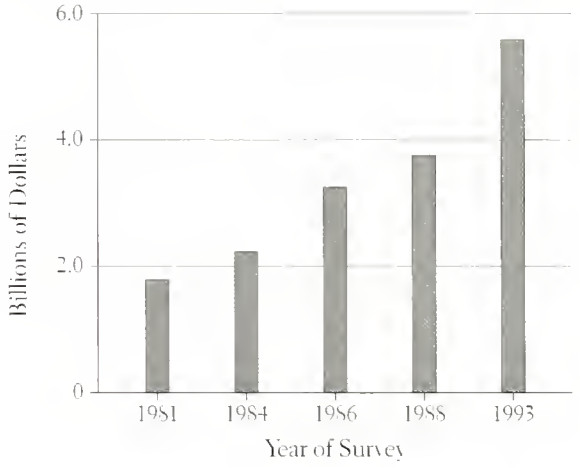
When the survey was repeated in August 1984, total reported needs had increased to $2.2 billion, and the estimated cost of replacing temporary and obsolete facilities alone had increased from $950 million to almost $1.1 billion. Two years later a November 1986 survey found that reported needs had increased to $3.2 billion. By 1988 estimated total needs for the next ten years had increased to $3.7 billion, just about double the 1981 estimate[4] (construction costs had increased 20 percent in the same period).[5] (See Figure 1.)

In 1992 State Superintendent of Public Instruction Bob Etheridge proposed a $600 million state bond issue for school construction, but the General Assembly did not act on it. The next year Etheridge released survey results that showed estimated needs for the coming ten years of $5.6 billion, more than triple the 1981 estimate and 50 percent higher than the 1988 estimate. Etheridge said that the estimates included the need to replace or upgrade some buildings that were more than seventy-five years old, and that 82 of the 6,000 existing school buildings were constructed between 1900 and 1939. According to him, many local districts have "used closets and other areas for classroom space, delayed improving programs because of a lack of space and made other sacrifices because the dollars are not available to build the schools, purchase the equipment and make the repairs that are so needed."[6]

The Boom in School Construction Spending

It would seem, judging from the consistent rise in reported construction needs, that North Carolina made little progress in meeting school construction needs during the twelve years previous to 1993. But that is not the case. Despite the dramatic escalation in needs reported in the surveys, statewide school capital outlay after each survey actually met or exceeded the total dollar amount of needs enumerated in that survey.[7]

Figure 1
Reported Needs for School Construction, 1981 to 1993



During the ten fiscal years 1982–91 following the 1981 survey, which enumerated $1.8 billion in long-range construction needs, spending totaled $2.27 billion. When that figure is adjusted to account for inflation in construction costs, the adjusted figure of $1.87 billion still exceeded needs reported in the 1981 survey.

During the eight fiscal years 1986–93 following the 1984 survey, in which reported needs totaled $2.2 billion, spending totaled $2.8 billion. Adjusted for inflation in construction costs, the total was $2.4 billion.

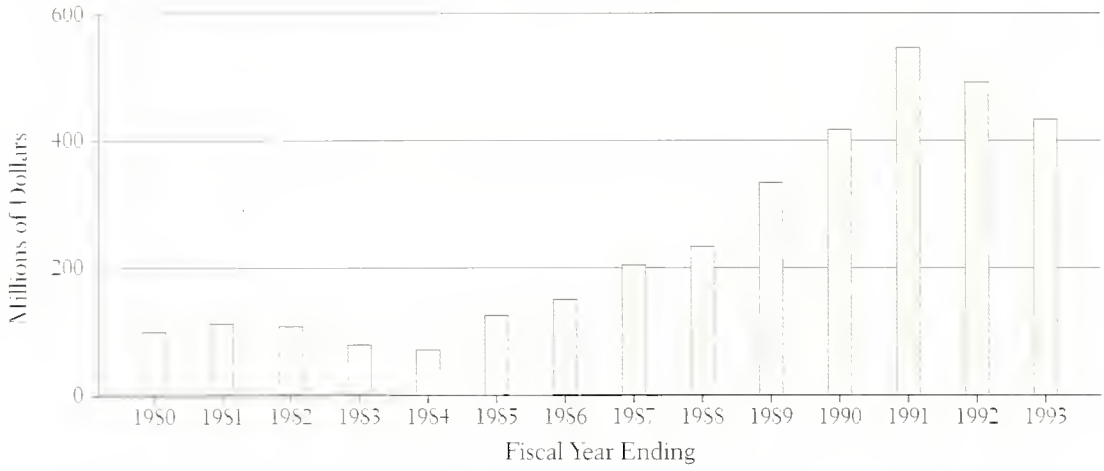
During the six fiscal years 1988–93 following the 1986 survey, which reported long-term needs of $3.2 billion, spending totaled $2.5 billion, or 75 percent of reported needs. If spending continues at only the rate of 1993, spending will have exceeded the needs reported in the 1986 survey within eight years.

During the five fiscal years 1989–93 following the 1988 survey, which found that needs for the next ten years totaled $3.7 billion, spending totaled $2.2 billion, or 59 percent of reported ten-year needs. After adjusting for inflation, the total still exceeded half the needs enumerated in the 1988 survey. If statewide spending continues at only the 1993 level, spending will have exceeded ten-year needs in less than nine years.

Altogether the counties spent $3.2 billion on school capital outlay from 1982 to 1993, which was 77 percent more than called for by the 1981 survey of long-range needs.

As these comparisons suggest, the escalation in reported needs has been matched so far with a boom in statewide school construction spending. As Figure 2

Figure 2
Spending for School Capital Needs in North Carolina, 1980–93



Note: Capital needs include spending not only for school construction but also for furnishings, equipment, and other capital needs, which are all counted as "capital outlay." Not all purchases of furnishings and equipment are associated with construction and renovation.

shows, annual spending doubled between 1982 and 1987, and by 1991 it amounted to more than five times the 1982 level of spending. After adjusting for inflation in construction costs, 1991 capital outlay was still three times the level of that in 1982.[8]

These comparisons show that the escalation in needs was not due to a failure to meet previously reported needs but rather occurred despite success in meeting previously reported needs. (See Figure 3.) For example, between 1988 and 1993, reported needs increased by half, from $3.74 billion to $5.58 billion. However, during the five years from 1989 to 1993, counties spent $2.226 billion meeting the needs the schools reported in 1988. This sum plus the needs reported in 1993 of $5.578 billion equals $7.804 billion. Therefore, needs adjusted for that spending actually doubled between 1988 and 1993, increasing by more than $4 billion.

State Aid for School Construction

The General Assembly did not approve the 1981 request for a $600 million state school bond referendum, but during the next six years it approved several measures that made funds available far in excess of $600 million.

In 1983 the General Assembly approved a new half-cent local retail sales tax for counties and cities and earmarked 40 percent of county proceeds for the first five years, and 30 percent for the second five years, for school construction or school bond indebtedness.[9] (In 1993 the General Assembly required counties to earmark 30 percent for school construction for an additional five years.) The original one-cent local retail sales tax enacted in 1971 was not restricted in any way to school use.

In 1986 the General Assembly authorized another local retail sales tax with the same half-cent rate.[10] Counties were again required to earmark a portion of their receipts for school construction or to pay school bond indebtedness on selected bond issues. That portion began at 60 percent in the first two years and declined to nothing in the twelfth year. This provision was changed in 1987 to require that 60 percent of proceeds be used for school construction for the first eleven years. (In 1993 this period was extended for an additional five years.) Unspent funds earmarked for construction or school bond indebtedness had to be placed in a county capital reserve fund for schools until spent.

In 1987 the School Facilities Finance Act provided additional funds for school construction aid.[11] The act, financed mainly by an increase in the corporate income tax, provided additional funds for school construction in four ways:

1. It required counties to continue to earmark for school construction or school bond indebtedness 60 percent of the proceeds from the local sales tax authorized in 1986, rather than allowing them to earmark a declining percentage of those proceeds, as the original law had allowed.
2. It established the Public School Building Capital Fund, which was to distribute state school construction funds to all counties according to their school enrollment.[12] These funds must be matched by $1.00 of local funds for each $3.00 of state funds, although earmarked local sales tax revenues can be used as local matching funds.
3. It established the Critical School Facility Needs Fund, which was to award funds for specific school construction projects to school systems in counties that had critical needs and inadequate fiscal resources.[13] A large sum was placed in the fund for immediate distribution, and twenty-nine school

systems received grants in fiscal year 1988 totaling almost $120 million. Additional awards totaling $45.9 million were made to school systems in eleven counties between 1990 and 1993.

4. The state assumed responsibility for vocational education and secretarial expenses under the Basic Education Program, thereby freeing local funds for other school uses, including construction.

At the time, it was estimated that the 1987 act would provide a total of $830 million in additional state aid for school construction during the following ten years, and the state assumption of vocational education and secretarial expenses would provide an additional $740 million potentially available for school construction. These additional revenues, when added to the earmarked portion of local sales taxes, were estimated to produce a total of $3.2 billion in revenues potentially available for school construction during the following decade—just enough to cover the total needs of $3.2 billion reported in November 1986.[14]

Poorer Counties Favored

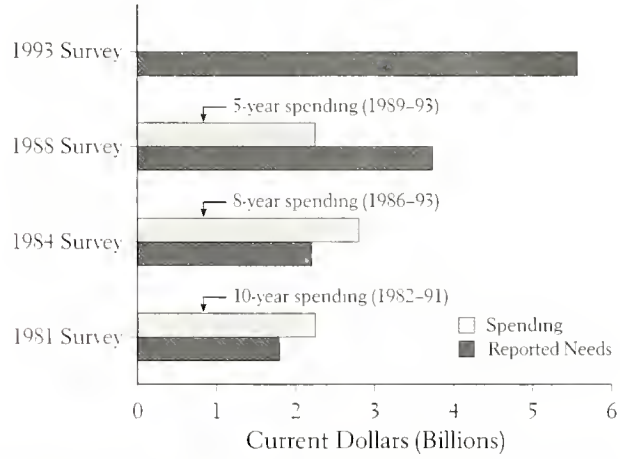
These measures were especially noteworthy because the General Assembly chose to distribute some funds in ways that reflected its concern for the needs of counties with the least ability to pay for school construction.

Whereas previously funds from statewide school construction bonds had been distributed on the basis of enrollment, thus giving wealthy counties the same amount per student as the poor counties, the General Assembly chose to set apart some money to meet critical needs in the poorer counties.

The General Assembly also deliberately changed the distribution of sales tax revenues in a way that favored poorer counties. The proceeds from the original one-cent local retail sales tax, enacted in 1971, were distributed back to the counties where the sales taxes were collected. The wealthy, urban counties, particularly those that served as regional shopping and employment centers, received much more revenue per capita than did rural counties. When the General Assembly authorized the 1983 and 1986 local sales taxes, it provided that the proceeds of these taxes be distributed to counties according to their population, rather than the amount of taxes collected.

Distributing revenues from the 1983 and 1986 local sales taxes according to population greatly increased the revenues received by the poorest counties. For example, several of the lowest-income counties get two to three times more revenue from the two half-cent sales taxes

Figure 3
Schools' Reported Long-Range Needs Compared with Capital Spending in Succeeding Fiscal Years



Note: All reported needs were for long-range capital needs. The 1988 and 1993 surveys were specified as 10-year capital needs.

combined than from the one-cent sales tax, while Wake County, which has the highest per capita income, receives only 61 percent as much.

In effect, the local sales taxes enacted in 1983 and 1986 were not local taxes but rather were a form of state revenue sharing. The state was using a traditional state revenue source—the retail sales tax—to provide funds to local units expressly to meet the specified statewide objective of meeting school construction needs, and it chose to distribute them by formula according to population, not the point of collection. In addition, earmarked sales tax revenues were chosen in lieu of a state school bond issue, which had been the traditional means of providing state aid. Accordingly, in this article the earmarked portion of local sales taxes is regarded as state aid to counties for school construction.

As a result of these provisions, poorer counties have received much more state aid per student for construction than have larger, high-income counties. From 1985 to 1993, average state aid per student in the 15 counties with the lowest per capita income was twice that in the 15 highest-income counties, and in the 21 counties with enrollments of less than 3,000 was twice that of aid received in the 6 counties with enrollments above 20,000.

State Aid and Local Spending for School Construction

Since 1984 state aid has covered a substantial proportion of reported needs, despite the sharp escalation in those needs. From 1984 to 1993, the new state aid

Table 1
State Aid for School Construction, 1984 to 1993, by Source
(Amounts in Millions of Dollars)

Fiscal Year	Earmarked Portion of Local Sales Taxes: 1983 tax	Earmarked Portion of Local Sales Taxes: 1986 tax	Public School Building Capital Fund	Critical School Needs Fund	Total State Aid	Actual Spending for School Capital Outlay	State Aid as a Percentage of Spending
1983–84	$ 8.3	—	—	—	$ 8.3	$ 75.8	11.0%
1984–85	38.3	—	—	—	38.3	127.2	30.1
1985–86	44.4	—	—	—	44.4	151.5	29.3
1986–87	48.5	$ 27.7	—	—	76.2	203.8	37.4
1987–88	52.2	78.2	$ 82.3	$119.9	332.5	230.9	144.0
1988–89	46.0	89.1	70.2	—	205.3	338.4	60.7
1989–90	47.1	93.7	48.3	10.0	199.1	417.8	47.7
1990–91	47.7	96.0	35.3	10.0	189.0	540.3	35.0
1991–92	48.4	98.1	32.6	9.9	189.0	496.0	38.1
1992–93	51.2	103.6	36.3	16.0	207.1	433.6	47.8
Totals	$432.1	$586.3	$304.9	$165.7	$1,489.2	$3,015.4	49.4%

(Figures may not add up because of rounding.)

Source: North Carolina Department of State Treasurer, *Report on County Spending for Public School Capital Outlay* (Raleigh, N.C.: Department of State Treasurer, Feb. 15, 1994, and previous years.)

measures—the earmarked portion of sales tax revenue and funds from the 1987 School Facilities Finance Act—provided local units a total of $1.489 billion in additional funds for school construction (see Table 1), an amount equal to 82 percent of total needs reported in 1981. After reported needs doubled to $3.2 billion in 1986, the additional state aid received during the succeeding six fiscal years amounted to 41 percent of those reported needs. During the five years from 1989 to 1993, the additional state aid amounted to $989 million, or 26 percent of the ten-year needs enumerated in the 1988 survey.

While the additional state aid provided during this period was substantial, its greatest significance in many counties was the role it played in sparking additional local funding for school construction. During the period 1984 to 1993, additional state aid equaled $1.5 billion, but total spending on school capital needs equaled $3 billion—double the amount of state aid. (See Table 1.)

Given this marked increase in state and local funding, how successful have the state's 100 counties been in meeting the needs reported by their school units? Let us examine how the 100 counties responded to escalating needs for school construction by using state aid and local funds to build and equip schools. For this purpose we have reliable spending data for counties for the fiscal years 1984 to 1993, so the analysis is limited mainly to how well counties have met needs reported in 1984, 1986, and 1988.[15]

The shorthand term *state aid* includes the earmarked portion of the 1983 and 1986 retail sales taxes and funds received from the Public School Building Capital Fund ("capital facilities funds") and school systems' receipts from the Critical School Needs Fund ("critical needs funds").[16] It does not include the nonearmarked portion of sales tax revenues, funds freed by takeover of vocational education and secretarial costs, or other instances where the state assumed responsibility for expenses in accordance with the Basic Education Program.

To fully analyze how well the counties have responded to escalating needs, we will address five questions:

1. How does state aid compare with reported needs?
2. To what extent has actual spending for construction met reported needs?
3. How much have counties spent in relation to state aid they received?
4. Did counties leverage state aid by borrowing to finance school construction, or did they pay off school indebtedness?
5. How well have poorer counties met reported needs?

1. How Does State Aid Compare with Reported Needs?

During the eight-year period 1986 to 1993, state aid for the 100 counties averaged 81 percent of needs reported in 1984, though most counties received aid equal to 80 percent or less of reported needs. Comparing state aid with reported needs, 78 counties received funds amounting to at least 50 percent of needs, 39 counties received funds amounting to at least 80 percent of needs, and 20 counties received an amount exceeding reported needs. (See Figure 4.)

Aid was low relative to needs in some counties be-

Figure 4
State Aid, 1986–93, as a Percentage of Schools' 1984 Reported Needs, by County

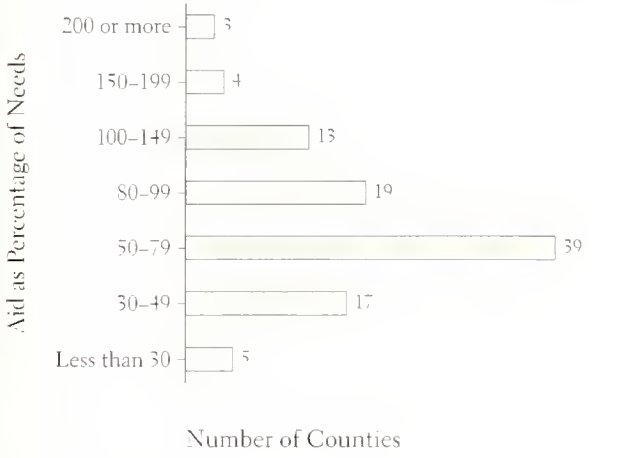


Figure 5
Spending for Capital Needs, 1986–93, as a Percentage of Schools' 1984 Reported Needs, by County

cause their reported needs were high, as indicated by reported needs per student. In the 22 counties where state aid was less than half of reported needs, average reported needs per student were almost 50 percent higher than the statewide average, and in 5 counties where state aid was less than 30 percent of reported needs the average amount of needs per student was double the statewide average.[17]

Between 1984 and 1988, when statewide reported needs increased 46 percent, needs increased 50 percent or more in 54 counties, more than doubled in 32 of those counties, and more than tripled in 11 of those counties. As a result, although state aid to counties during the five-year period 1989 to 1993 was almost double the amount of state aid received during the previous five-year period, on average state aid equaled only 32 percent of ten-year needs reported in 1988.

We can extrapolate state aid to the entire ten-year period 1989 to 1998 by assuming that from 1994 to 1998 each county will have received only the same amount of state aid, excluding critical needs funds, that it received in 1993. Using this very conservative method, which assumes no growth in sales tax revenue or school facilities funds, during the ten years from 1989 to 1998 state aid on average will have equaled 54 percent of the ten-year needs reported in 1988, and 46 counties will have received state aid amounting to half or more of the ten-year needs reported in 1988. As before, the variation is due mainly to the large variation in 1988 reported needs, which ranged from $788 to $15,098 per student.

Thus earmarked state aid represented a substantial portion of 1988 reported needs, despite the escalation in needs between 1984 and 1988 and the wide variation in reported needs.

2. How Well Have Counties Met Reported Needs?

During the eight-year period from 1986 to 1993, capital spending in 64 counties exceeded 80 percent of the needs they had reported in 1984. In those 64 counties spending exceeded needs in 50 counties; spending exceeded needs by 150 percent in 27 counties; and was at least twice as much as needs in 14 of those counties. On the other hand, 17 counties spent an amount equal to less than half of reported 1984 needs. (See Figure 5.)

Some counties failed to meet their needs because during the period they did not spend all the state aid they received. Consider, for example, those counties whose spending from 1986 to 1993 failed to equal at least 80 percent of 1984 reported needs. Of those 36 counties, 29 spent an amount less than the state aid they received. If those 29 counties had spent an amount equal to the state aid they received, 25 would have met at least 50 percent of their needs, 9 would have met at least 80 percent of their needs, and 3 would have exceeded their needs.

During the five-year period from 1989 to 1993, in 51 counties spending equaled 50 percent or more of the ten-year needs reported in 1988. In 25 counties spending exceeded 75 percent of 1988 reported needs, and in 11 counties spending equaled or exceeded ten-year needs reported in 1988. On the other hand, 22 counties met less than 25 percent of their needs, and 6 counties met less than 15 percent of their needs. (See Figure 6, page 36.)

Figure 6
Spending for Capital Needs, 1989–93, as a Percentage of Schools' 10-Year Needs Reported in 1988, by County

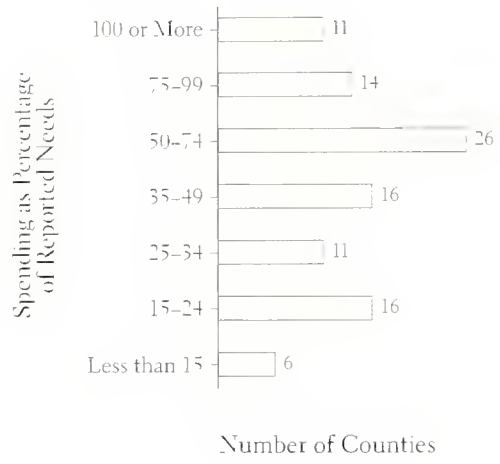
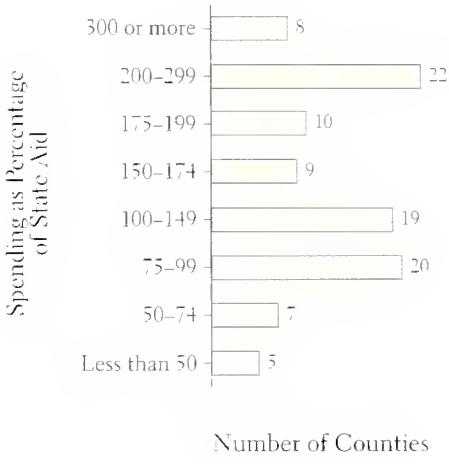


Figure 7
Spending for Capital Needs, 1984–93, as a Percentage of Schools' Earmarked State Aid, 1984–93, by County



3. How Much State Aid Did Counties Spend?

Between 1984 and 1993, the 100 counties together spent a total of $3.0 billion on school capital needs, twice the amount of earmarked state aid they received. However, only 68 counties spent as much on school capital needs as they received in state aid.

Of the 68 counties that spent at least as much as the amount of state aid they received, 49 spent an amount equal to more than 150 percent of the aid, 30 counties spent an amount at least double their state aid, and 8 counties spent an amount at least triple their state aid. (See Figure 7.)

Of the 32 counties that failed to spend as much as they received in state aid, 12 spent less than 75 percent and 5 spent less than 50 percent. These 32 counties tended to be low-income counties with smaller enrollments—they include 24 of the 50 counties with below-median per capita incomes, and 21 had enrollment below the median size. Of the 12 counties that spent an amount less than 75 percent of state aid, 11 had below-median incomes and 8 had below-median enrollment.

There are several reasons that a county might spend less than it receives in state aid. First, by its nature, construction involves lags in spending because planning, contracting for, and constructing buildings takes time. Second, a county may put its earmarked sales tax receipts into a capital reserve fund and spend them only after enough money has accumulated for a needed project. Third, it may let funds accumulate in the Public School Building Capital Fund. Fourth, a county also may take advantage of state aid to pay off existing indebtedness, subject to certain restrictions, rather than spend the aid or its own funds on new construction.[18]

Counties that spend more than they receive in state aid do so by spending more than the earmarked portion of sales tax revenues, or by providing additional funds from local sources. The most effective way for a county to take advantage of state aid is to leverage it by issuing school construction bonds and using earmarked sales tax receipts to pay debt service payments.

4. Did Counties Leverage State Aid by Borrowing for School Construction, or Did They Pay Off School Indebtedness?

Figures 8 and 9 show the dramatic rise since 1984 in the use of debt financing for school construction (the numbers include a few installment and lease-purchase agreements but exclude borrowing to refinance previous debt at lower interest rates).[19] There was no borrowing during fiscal years 1981 and 1982, and during 1983 and 1984 all borrowing totaled only $2.3 million. Between 1985 and 1993, all except 29 counties borrowed for school construction, and total borrowing increased to more than $700 million in 1993. (That amount for 1993 includes a total of $250 million borrowed by Durham and Wake counties; borrowing by the 24 other counties that borrowed that year totaled $454.7 million.) Altogether the counties borrowed $1.5 billion for school construction between 1983 and 1993. Most of that occurred from 1989 to 1993, when borrowing totaled $1.39 billion, equal to more than one-third of the total statewide ten-year needs reported in 1988.

Of course, these trends in county borrowing reflect

other factors in addition to receiving state aid. First, the trend toward lower interest rates made borrowing more attractive. Interest rates were very high during the early 1980s and low during the early 1990s. Municipal bond rates exceeded 11 percent in 1981 and 1982.[20] From 1985 to 1990, rates remained fairly stable between 7 and 8 percent, and then fell to 5.6 percent in 1993 before rising somewhat in late 1993 and 1994. Second, during the early 1980s almost all counties were expecting declining or stable enrollments, while at the end of the 1980s many school units were expecting substantial enrollment increases.

Figure 8
Number of Counties Incurring School Construction Debt, 1981 to 1993 (Excluding Refunding Issues)

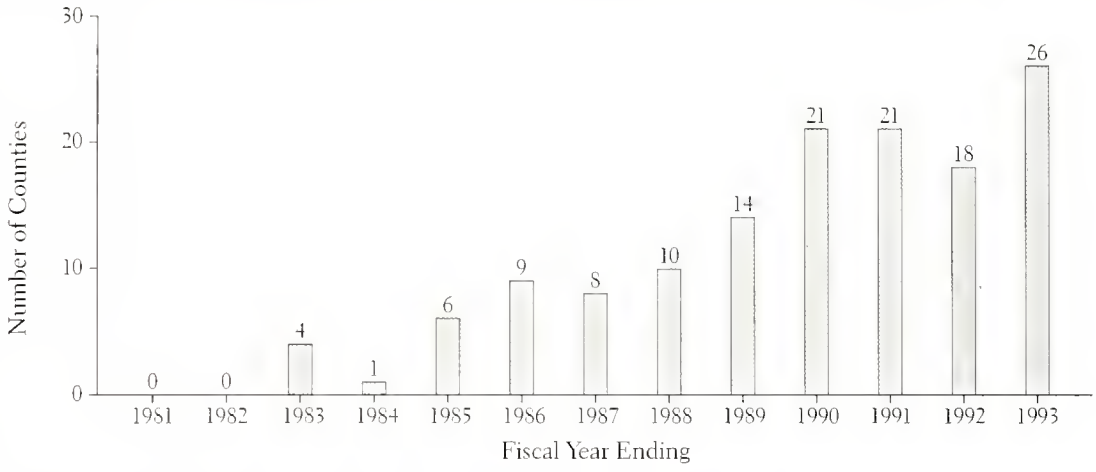
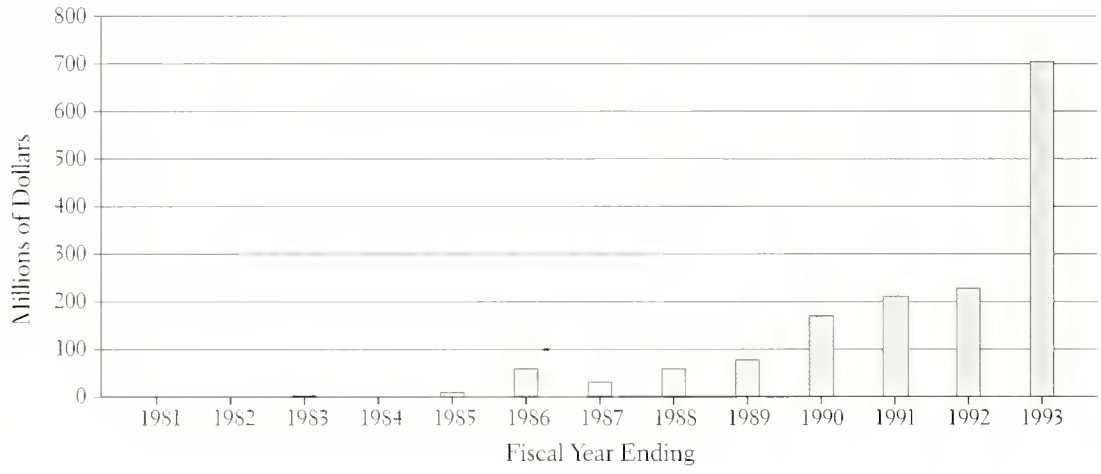


Figure 9
Dollar Value of School Construction Debt Issues, 1981 to 1993 (Excluding Refunding Issues)



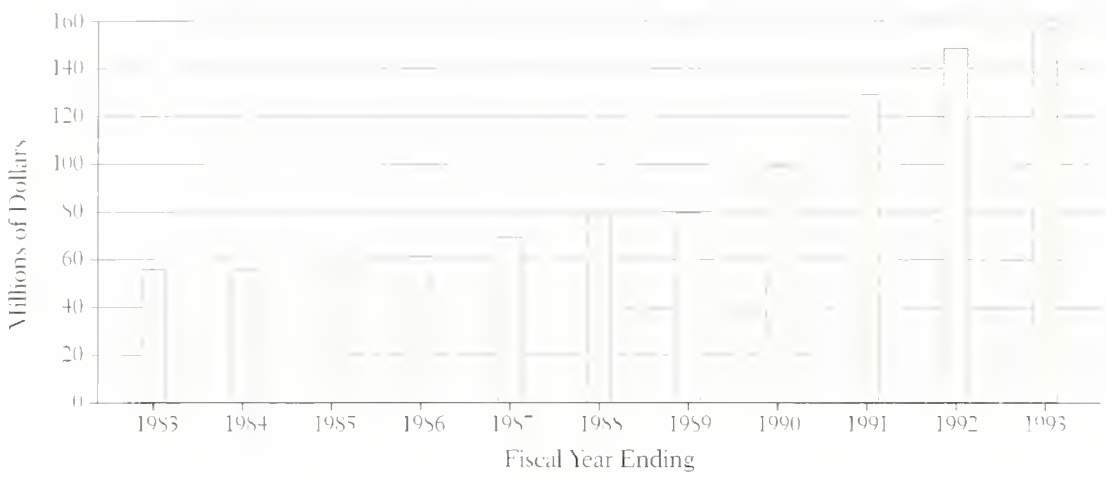
As noted, borrowing allows counties to leverage state aid, as well as local resources, to obtain funds to meet needs. From 1986 to 1993, borrowing equaled at least 50 percent of the amount of state aid received in 52 counties. Borrowing exceeded the amount of state aid in 37 counties, was at least double the amount of state aid in 27 of those 37, and at least triple the amount of state aid in 10 of those 37. In 24 counties the amount borrowed exceeded the amount of needs reported in 1984, and in 7 other counties borrowing exceeded 80 percent of 1984 reported needs.

Similarly, from 1989 to 1993 borrowing equaled at least half of state aid in 52 counties. Of those 52 counties, borrowing exceeded state aid in 37 counties, was double the state aid in 27 counties, and exceeded three times the amount of state aid in 10 counties. During that five-year period, borrowing alone exceeded 50 percent of ten-year needs reported in 1988 in 31 counties, and in 6 of those counties borrowing exceeded 1988 reported needs.

While counties can leverage state aid through debt financing, they can also take advantage of state aid to reduce indebtedness and their debt service payments. For the state as a whole, debt service payments almost tripled between 1983 and 1993, despite the trend during this period toward lower interest rates. (See Figure 10, page 38.) Eleven counties had no school indebtedness during that period. Of the remaining 89 counties, debt service payments at least doubled in 51 counties between 1984 and 1993. Of those 51 counties, payments at least tripled in 38 counties and increased at least fivefold in 27 counties. Twelve counties that had no debt service payments in 1984 had substantial payments in 1993. (See Figure 11, page 38.)

On the other hand, 31 counties had lower debt service payments in 1993 than in 1984. Fifteen of those counties reduced payments by 50 percent or more, and 8 counties that had debt service payments in 1984 had none in 1993.

Figure 10
Total School Debt Service Payments in the 100 Counties



5. How Well Have Poorer Counties Met Construction Needs?

As noted earlier, the distribution of state aid was intended to favor poorer counties. As Figure 12 shows, state aid per student from 1984 to 1993 was much greater for counties with the lowest per capita incomes. The 6 lowest-income counties received more than twice as much state aid per student as did the 6 highest-income counties. State aid from 1986 to 1993 averaged 98 percent of needs reported in 1984 by the 10 lowest-income counties but averaged 70 percent in the 10 counties with highest incomes. In that period state aid averaged 86 percent of 1984 reported needs in the 50 counties with lowest incomes, and 77 percent in the 50 counties with highest incomes.

Spending compared to 1984 reported needs. How well did the poorer counties meet 1984 reported needs during the ensuing eight years? As Figure 13 shows, average spending on capital needs from 1986 to 1993 as a percentage of 1984 reported needs was lowest in the lower-income counties. In the 6 counties with per capita incomes below $12,000, average spending as a percentage of 1984 needs was 82 percent, though that average disguises a range from 27 percent to 152 percent. In comparison, spending averaged 203 percent of needs in the 6 highest-income counties. For all counties together, spending averaged 123 percent of needs.

Many low-income counties did fairly well in meeting needs. Between 1986 and 1993, for example, 4 of the 10 lowest-income counties spent an amount exceeding their 1984 reported needs. Of the 50 counties with lowest incomes, spending equaled at least 80 percent of needs in 26 counties. (In comparison, 38 of the 50 highest-income counties spent that much relative to their needs.) In those 26 counties, spending exceeded reported needs in 18 counties, exceeded 150 percent of needs in 11 counties, and was more than double 1984 reported needs in 5 counties. Of the 24 counties that failed to meet 80 percent of

Figure 11
Change in Debt Service Payments between 1984 and 1993, in 89 Counties with Some Outstanding School Debt during That Period

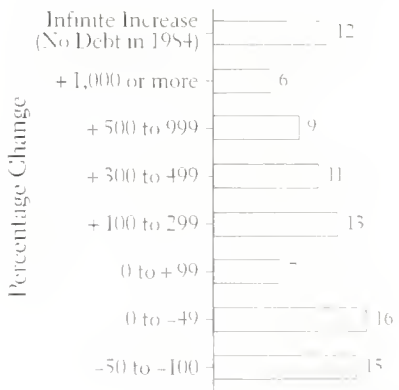
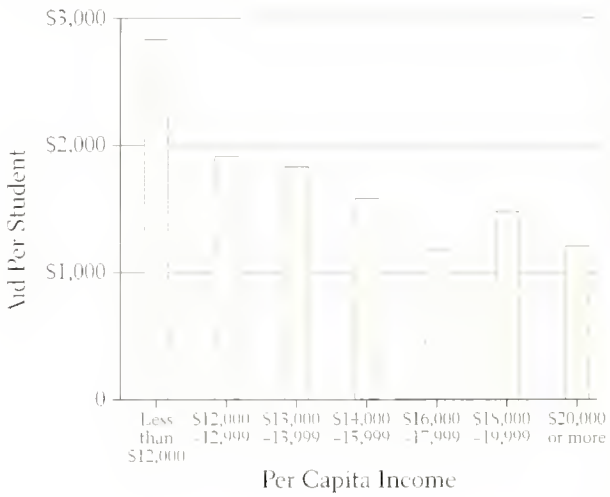


Figure 12
Average State Aid for Capital Needs Per Student, 1984–93, by 1991 Per Capita Income



needs, 14 met less than 50 percent of needs, and 5 counties met less than 30 percent of needs. (See Figure 14.)

What accounts for the fact that 24 of the low-income counties met less than 80 percent of 1984 reported needs?

That their reported needs were relatively high may have been a contributing factor. In the 10 poorest counties, for example, 1984 reported needs per student averaged $3,013, while in the 10 highest-income counties the average was $2,446. These differences, however, do not explain why they failed to meet their needs, because the 10 poorest counties also received twice as much aid per student as did the 10 highest-income counties. And for other low-income counties, the differences were not as great—the 50 lowest-income counties had average 1984 needs of $2,573 per student, compared with $2,203 per student for the others.

Spending less than the state provided. Yet another reason may explain why some of the 50 lowest-income counties had low spending relative to reported needs: many of them spent less than they received in state aid. Twenty-six of those 50 counties spent less than they received in state aid—16 spent an amount equal to less than 75 percent of state aid, and 6 spent an amount equal to less than 50 percent. In comparison, only 10 of the 50 highest-income counties spent less than they received in state aid, and only 4 of those counties spent less than 75 percent of state aid.

Of the 24 low-income counties that met less than 80 percent of 1984 reported needs, 10 of them spent less than 65 percent of state aid and 6 spent less than half of state aid. Only 3 of them spent an amount at least equal to state aid. If all those 24 counties had spent at least the amount of aid they received, 2 of them would have met 100 percent of reported needs, and 5 other counties would have exceeded 80 percent of reported needs.

In contrast, of the 26 low-income counties that met 80 percent or more of 1984 reported needs, only 5 counties spent less than they received in state aid, and 3 of those counties spent more than 90 percent of state aid. In fact, 15 of these 26 counties spent an amount equal to at least 150 percent of state aid, and 5 of them spent more than twice the amount of state aid.

Debt financing in the poorest counties. Did the poorest counties make good use of debt to finance school construction needs, or did they pay off existing debt? Remarkably, 9 of the 10 lowest-income counties borrowed money for construction during the period 1986 through 1993. Of those 9 counties, the amount borrowed at least equaled 1984 reported needs in 3 counties and equaled more than 90 percent of needs in 1 other county. Most of that borrowing was in the five-year period 1989–93, when 4 of the same 9 counties borrowed amounts equal to at least 50 percent of ten-year needs. Only 2 of the 10 poorest counties paid off debt—one reduced debt service substantially, and the other eliminated its modest payments.

However, many low-income counties made less use of debt or paid down their debt, as indicated by debt service payments. While 9 of the 10 lowest-income counties borrowed money, only 2 of the next 10 lowest-income counties did so. Three of those 10 counties used no debt at all, 2 paid off all debt, and 4 counties reduced debt service payments by one-third to two-thirds.

Figure 13
Average Spending for Capital Needs, 1986–93, as a Percentage of Schools' 1984 Reported Needs, by Per Capita Income

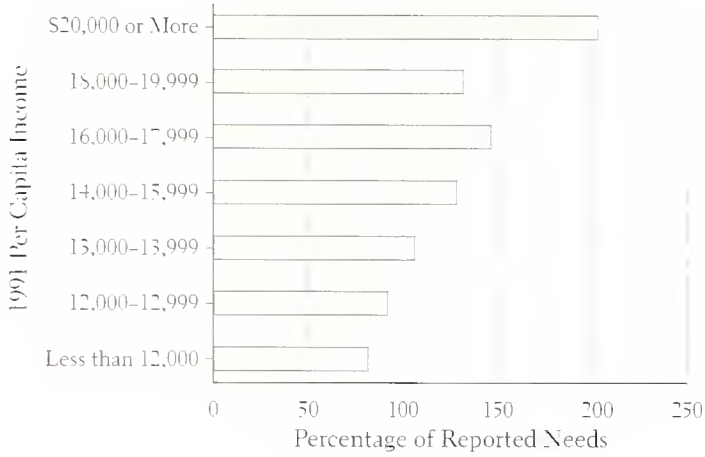
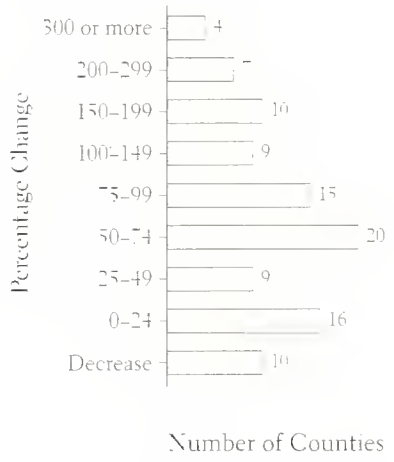


Figure 14
Spending for Capital Needs, 1986–93, as a Percentage of Schools' 1984 Reported Needs in 50 Counties with Lowest Per Capita Income

Figure 15
How Counties' Reported School Needs Changed from 1988 to 1993, Taking into Account Spending for Capital Needs from 1989 to 1993



The 50 lowest-income counties included 9 of the 11 counties that had no school indebtedness during the period 1984 to 1993 and 5 of the 8 counties that paid off their debt between 1984 and 1993. Fourteen other low-income counties had lower debt service payments in 1993 than in 1984 (compared with 10 of the 50 highest-income counties). Only 22 of the 50 low-income counties increased their debt service payments (35 of the 50 highest-income counties did so).

Spending compared to 1988 reported needs. Despite the increases in reported needs between 1984 and 1988, the 50 low-income counties did fairly well in meeting 1988 reported needs. In 20 of those counties, spending during the five-year period 1989 to 1993 exceeded 50 percent or more of ten-year needs reported in 1988. Spending exceeded 70 percent or more of needs in 9 counties and exceeded needs in 2 of them. Thirty-four of the 50 counties spent more than they received in state aid, and 18 of them spent twice as much as they received in state aid.

Construction Spending and Escalating Needs, 1988 to 1993

If most counties have done well in using state aid and local resources to meet previously reported needs, why have reported needs continued to rise so dramatically?

Let us examine how reported needs changed between 1988 and 1993 in the 100 counties, taking into account the spending that occurred during that period. Can those changes be explained by factors that normally could be expected to affect school construction needs, such as increased construction costs, enrollment changes, or increased numbers of classroom teachers provided through the Basic Education Program?

How much have needs actually increased? Comparing change in reported needs of individual counties between 1988 and 1993 without taking into account spending on school construction during that period gives a false indication of actual change in reported needs.

Take, for example, a hypothetical county that reported ten-year needs of $10 million in 1988 and $12 million in 1993, which appears to be a modest increase of 20 percent. Let us suppose that between 1989 and 1993 the county spent $6 million to meet construction needs reported in 1988.

Thus, of this county's 1988 reported needs, $4 million was unmet as of 1993. If needs had not changed since 1988, the county would have reported 1993 needs of $4 million (ignoring, for simplicity, increases in construction costs). Therefore, the $12 million of needs actually reported in 1993 represents an increase in reported needs of $8 million, equal to an 80 percent increase in needs between 1988 and 1993. Equivalently, 1993 reported needs plus the amount of 1988 reported needs already met by spending equals $18 million, an 80 percent increase over 1988 reported needs of $10 million.

When we calculate true increases in reported needs in this fashion, the results are much different from when we simply compare changes in reported needs. First, as noted earlier, statewide needs did not increase by $1.8 billion, or by 50 percent, between 1988 and 1993. Rather, needs increased by $4 billion, or by more than 100 percent.

Second, the escalation in needs was not limited to only a few counties but rather involved about two-thirds of the counties. Whereas 36 counties reported lower needs in 1993 than in 1988, when construction spending is taken into account, reported needs actually fell in only 10 counties.[21] In 16 other counties the increases were modest—below 25 percent. Of the remaining 74 counties, all except 9 had increases above 50 percent. Thirty counties had increases of 100 percent or more, and of those counties 21 had increases of 150 percent or more, 11 had increases of 200 percent or more, and 4 had increases of 300 percent or more. (See Figure 15.) Changes in reported needs per student averaged $2,891 but ranged from a decline of $4,500 per student to an increase of more than $25,000 per student.

As Table 2 shows, the escalation in reported needs was not limited to those with growing enrollments, or to large or high-income counties.

How to explain escalating needs? Three factors that might be expected to explain some of the growth in

reported needs are increased construction costs, enrollment growth, and increased needs for classrooms because of the increased numbers of teachers provided by the Basic Education Program.

Construction costs increased about 14 percent between 1988 and 1993, and therefore do not explain the large increases that occurred in most counties.[22]

Enrollment trends cannot explain the general escalation in reported needs during the 1980s, because enrollment was declining then. In 1981 statewide enrollment had fallen 5 percent below the peak enrollment of 1976–77, and it fell another 5 percent by 1990.

In 1981 only 12 of the 144 school units expected increased enrollment during the next five years, and only 1 unit expected an increase of more than 5 percent.[23] At the time of the 1984 survey, only 19 of the 142 school units expected enrollment growth during the next ten years, and only 10 of those expected growth of more than 5 percent.[24] In 82 school units enrollment was expected to decline by more than 10 percent. In 1988, 42 of the 140 school units expected ten-year enrollment growth of 5 percent or more, and 63 units expected declines of 5 percent or more.

Statewide enrollment began to increase in 1991, and in 2003 is expected to be 15.6 percent higher than 1993 enrollment. At the time of the 1993 survey, 105 of 129 school units expected some enrollment increase during the next ten years.[25] However, only 60 units expected increases of 10 percent or more, and only 21 units expected increases of 20 percent or more.

As Table 2 shows, the escalation in needs is not limited to those counties that are expected to have large enrollment increases. Average net increases in reported needs were largest in the counties that had the highest projected growth rates, but the average increases were large even in counties that expected declining enrollment. Increases in reported needs were not significantly correlated with projected enrollment growth during the period 1988 to 1993.

The absolute increases in enrollment that were expected in 1993 also do not seem to explain why needs escalated in so many counties. Of those 60 counties that in 1993 expected enrollment growth of 10 percent or more during the coming ten years, 10 counties expected fewer than 500 additional students, 13 counties expected from 500 to 1,000 additional students, and 16 counties expected from 1,000 to 2,000 students. In fact, of the net increase in enrollment expected in all counties from 1993 to 2003, 10 counties account for 56 percent of the net increase, and 2 counties (Wake and Mecklenburg) account for 33 percent of the net increase.

Table 2
Average Change in Schools' Reported Needs, 1988 to 1993, after Adjustment for Construction Spending, 1989 to 1993 (By projected enrollment change, enrollment size, and 1991 per capita income)

		Change in Reported Needs, 1988 to 1993		
	Number of Counties	Average Change	Range of Change (%) Low	High
Projected Enrollment Change, 1993 to 2003				
Less than –5%	9	+92%	–15	+431
0 to –5%	12	+56	–55	+262
0 to +5%	13	+59	–25	+237
+5% to 9.9%	21	+94	–47	+737
+10% to 14.9%	15	+106	+7	+230
+15% to 19.9%	13	+88	–55	+191
+20% to 29.9%	12	+122	+1	+397
+30% or more	5	+150	+11	+312
1993 Enrollment				
Less than 3,000	20	+86	–55	+737
3,000 to 5,999	25	+76	–55	+311
6,000 to 9,999	19	+100	+2	+261
10,000 to 19,999	26	+91	–6	+277
20,000 or more	10	+134	–47	+397
1991 Per Capita Income				
Less than $12,000	6	+10	–55	+94
$12,000 to 12,999	15	+34	–55	+82
$13,000 to 13,999	21	+83	–6	+431
$14,000 to 14,999	17	+122	–25	+737
$15,000 to 15,999	15	+105	+1	+311
$16,000 to 19,999	20	+100	–40	+278
$20,000 or more	6	+208	+113	+397

Beginning in 1985 with the enactment of the Basic Education Program, the state began providing additional teachers in all units, thus lowering pupil-teacher ratios. Of course, this factor was offset partly by falling enrollments in many units during the 1980s. While the program undoubtedly created a substantial increase in needs for classroom and other space after 1985, increases in the number of teachers does not appear to explain the sharp escalation in needs in the various counties. The average increase in number of teachers from 1985 to 1993 was 17 percent, while the average increase in needs from 1984 to 1993 was 162 percent. Further, there was only a weak correlation between the increased number of teachers and increased needs.

In only 7 counties did the number of teachers increase by more than 30 percent, and in only 32 counties did the number of teachers increase by more than 20 percent. In 28 counties the number of teachers either fell (due to declining enrollments) or increased by less than 10 percent. Yet of these 28 counties, needs at least doubled in 12 counties and at least tripled in 6.

Summary and Conclusion

In 1981 local school officials in all 100 counties began to report their needs for funds to replace obsolete and temporary school buildings and to provide "attractive, safe, and functional facilities" for their students. Despite declining enrollments during the 1980s, these reported needs escalated sharply, from a total of $1.8 billion in 1981 to $3.7 billion in 1988. In 1993 school officials still complained of obsolete and inadequate school facilities, and reported needs escalated further, to $5.6 billion.

These figures disguise the fact that both the state government and most counties responded forcefully to meet the needs reported by school officials. The General Assembly authorized new local sales taxes in 1983 and 1986, earmarking a portion of counties' receipts to be set aside for school construction and school debt, and in 1987 provided additional funds through the School Facilities Finance Act. Funds from these sources were distributed in a way that favored poorer counties.

Counting only the earmarked portion of county sales tax receipts and receipts from the Public School Building Capital Fund and the Critical School Facility Needs Fund, both created by the 1987 act, state aid for school construction totaled almost $1.5 billion from 1984 to 1993.

This state aid amounted to a substantial share of the schools' reported long-term needs. For example, during the eight fiscal years following the 1984 survey, state aid to the 100 counties averaged 81 percent of needs reported that year. In 78 counties state aid exceeded 50 percent of the schools' reported needs, in 39 counties it exceeded 80 percent of reported needs, and in 20 counties it exceeded all reported needs.

Counties and their school systems responded by creating a dramatic boom in school construction, altogether spending twice as much as they received in state aid. School capital outlay increased from $75 million in 1984 to more than $500 million in 1991, and remained above $400 million in 1993. During the periods following each survey of needs, spending at least equaled reported needs on a proportional basis, assuming reported needs in each survey were ten-year needs (the 1988 and 1993 reported needs were specified as ten-year needs).

Many counties did very well in meeting reported construction needs. For example, in half the counties spending between 1986 and 1993 at least equaled needs reported in 1984, and exceeded 150 percent of needs in 27 counties. On the other hand, 17 counties spent less than half of reported needs. Despite the sharp increase in reported needs between 1984 and 1988, during the five-year period 1989 to 1993 half the counties spent an amount at least equal to half their ten-year needs reported in 1988, and in 11 counties spending exceeded the estimate of needs. However, 22 counties met less than 25 percent of reported needs.

This analysis of reported needs, state aid, and construction spending raises a number of questions and issues.

First, why have some counties met their reported needs so well, while others have met only a fraction of their reported needs? One reason some counties were able to do so well is that they leveraged state aid by borrowing money. Of the counties that did not meet their reported needs, many did not spend as much as they received in state aid. Some of them are apparently saving up the annual receipts from state aid until they have enough money stashed away to build their schools. Other counties have taken advantage of state aid to reduce their school indebtedness, rather than using the money to build schools.

Although poorer counties generally have not met their reported needs as well as wealthier counties, many poor counties have done very well. For example, from 1986 to 1993, 4 of the 10 lowest-income counties spent an amount at least equal to their 1984 reported needs, and 26 of the 50 lowest-income counties met at least 80 percent of the schools' reported needs during that eight-year period. Other poor counties would have done much better if only they had spent the amount of state aid they received and would have done better still if they had leveraged their state aid through borrowing. Many low-income counties made good use of debt to leverage state aid, but others did not borrow at all or reduced their indebtedness.

Second, why have reported needs escalated so sharply? Reported needs totaled $3.7 billion in 1988 and $5.6 billion in 1993, but if we count the school construction spending from 1989 to 1993 as meeting needs reported in 1988, in effect reported needs increased by $4 billion, thereby doubling between 1988 and 1993. Taking into account construction spending between 1989 and 1993, reported needs actually doubled in 30 counties between 1988 and 1993 and at least tripled in 11 of those counties. The escalation in needs reported by the various counties since 1981 cannot be explained, except in part, by inflation in con-

struction costs, enrollment changes, or increased numbers of teachers provided by the Basic Education Program.

Third, why do reported needs vary so much from county to county and change so drastically during relatively short periods? Needs reported in 1993 varied from $485 per student to more than $27,000 per student. In one county reported needs per student fell by more than $7,000 between 1988 and 1993, while in another county they increased from about $3,500 to more than $27,000 per student. Between 1988 and 1993 the total amount of reported needs fell greatly in some units but increased several hundred percent in others.

Finally, after all the funds that have been made available by the state and all the money that has been spent on school construction since 1981, why is it that the superintendent of public instruction can still point to obsolete and inadequate school facilities as a way to justify additional state aid? The 1981 survey of school needs found that the total cost of replacing all obsolete school facilities was $827 million, just over half the amount of state aid that has been made available since 1984 and just over one-quarter of the $3.2 billion spent on school construction from 1982 to 1993.

Why have those obsolete and inadequate buildings still not been renovated or replaced? ❖

Notes

1. The figures on construction spending cited in this article include not only spending for actual construction but also purchases of furnishings, equipment, and other capital needs, which are all counted together as "capital outlay."

Figures from the Department of Public Instruction on statewide capital spending show that from 1989 to 1993 spending on (1) construction and renovation and (2) furnishings and equipment averaged 95.6 percent of total capital outlay. However, not all purchases of furnishings and equipment are associated with construction and renovation.

2. North Carolina Department of Public Instruction, *Public School Facility Needs in North Carolina* (Raleigh, N.C.: NCDPI, Jan. 1981).

3. A. Craig Phillips (state superintendent of public instruction), *Public School Facility Needs in North Carolina, 1984–85* (Raleigh, N.C.: NCDPI, Nov. 1984). The 1981 survey did not specify the time period for estimates of long-range needs. This was true also of the 1984 and 1986 surveys. The 1988 and 1993 surveys asked specifically for needs during the next ten years, as prescribed by the 1987 School Facilities Finance Act, G. S. 115C-521.

4. The 1988 survey, and the later 1993 survey, were conducted in accordance with a provision of the 1987 School Facilities Finance Act, which required reports every five years of the long-range capital plans for the next ten years.

5. This figure is based on the implicit price deflator for fixed investment in nonresidential structures.

6. North Carolina Department of Public Instruction, *News* (Raleigh, N.C.: NCDPI, March 3, 1993). The 1988 survey, and the subsequent 1993 survey, were required as a provision of the 1987 School Facilities Finance Act.

7. All figures on spending and receipts presented in this article are for fiscal years.

8. That construction spending peaked in 1991 and then fell back somewhat in 1992 and 1993 is perhaps explained by the $120 million in critical needs funds awarded in fiscal year 1988. Those funds would have been spent over the next two or three fiscal years. Also, during the late 1980s many units where enrollments had been falling were beginning to prepare for increased enrollment during the 1990s.

9. G.S. 105-480-487.

10. G.S. 105-495-504.

11. 1987 N.C. Sess. Laws ch. 622 and 813; G.S. 115C, Art. 38A, and G.S. 115C, Art. 34A.

12. G.S. 115C, Art. 38A.

13. G.S. 115C, Art. 34A.

14. Laurie Mesibov, "Public Education," in *County Government in North Carolina*, 3rd ed., ed. A. Fleming Bell, II (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1989), 462.

15. N.C. Department of State Treasurer, *Report on County Spending for Public School Capital Outlay*, February 15, 1994, and previous years.

16. Awards from the Critical School Needs Funds go directly to the school boards, not the county government.

17. The variation in reported needs per student does not appear to be related strongly to either enrollment size or per capita income—counties with small enrollments and low income tended to have higher needs per student than others, but the correlation was weak.

18. Earmarked funds from the 1983 sales tax can be used to pay off past debt, while funds from the 1986 sales tax can be used to pay off only debt incurred in the five years prior to the effective date of the tax in each county, which was during the 1986–87 fiscal year for all counties. Notwithstanding those restrictions, a county might choose to pay off debt with money that it might have spent on school construction if state aid had not been made available, as long as it meets the maintenance of effort provisions of the 1986 law.

19. Data on school bond issues were provided by the N.C. Department of State Treasurer.

20. Interest rates cited are annual figures for high-grade municipal bonds. *Economic Report of the President, Transmitted to the Congress February 1994* (Washington, D.C.: Government Printing Office, 1994), Table B-72, p. 352.

21. In four of those counties, there seems to have been a major, downward reassessment of needs. For example, reported needs in one county fell from $106 million to $41 million, despite spending of only $15 million from 1989 to 1993.

22. This figure is based on the implicit price deflator for nonresidential structures.

23. Charles D. Liner, "Projected Enrollments of the 1980s," *School Law Bulletin* 11 (July 1980): 1, 10–13.

24. Charles D. Liner, "Trends Affecting North Carolina School Enrollment," *School Law Bulletin* 15 (Jan. 1984): 1, 12–20.

25. Charles D. Liner, "Update: School Enrollment Projections," *School Law Bulletin* 24 (Winter 1993): 11–13.

Elected to Office? Your Life Will Never Be the Same

Jacquelyn Gist

Three hours into a town board meeting—covered as always by cable TV—I ran my fingers through my hair and a pink foam rubber curler fell out. I grabbed it and shoved it in my purse. When I got home my machine was full of messages. People reported that they had watched to see how long it was going to take me to realize that I had a curler hanging from my hair. No one mentioned the awe-inspiring decisions I had made that night.

A few months ago I ran into a local musician who told me that he and his roommates always watched our "show." They had really loved the "episode" where we talked about requiring people to put their cats on leashes. (That motion failed, by the way.)

The author is in her second term as a Carrboro alderman. She offers these observations for newly elected local officials and for those who someday may be. This article is based on presentations she has made at Institute of Government schools for newly elected officials. Jacquelyn Gist is shown below with her mother, Peggy Gist, at her polling place in November 1993.

An elected official in a small town is a public person. People watch you more closely than you would ever expect—both politically and personally. And the people who let you know today that there's a curler hanging from your hair are the same people who will come to the town hall tomorrow with recycling concerns. The musician who loved the cats-on-leashes "episode" also wanted action on the late night noise from the car wash across the street. The owner of my favorite restaurant, where I've eaten weekly for twelve years, talks to me about property he's just bought that's in the watershed protection district. The woman who has cut my hair for ten years finds out that her new house is next to one of the sites being considered for the new landfill. One of my close friends applies to the town for a small business loan. The list goes on.

I've lived in Carrboro for almost eighteen years and I know a lot of people. The people I hang out with and do business with, the people I spend my life with on a daily basis, are the same people for whom I'm sworn to provide sound governmental decisions. Sometimes I feel like the sibling who is left in charge while the parents are out for the evening. If I let everybody do whatever they please, Mom and Dad will ground me. If I enforce the rules my siblings will hate me. What if I really believe, based on sound judgment and good information, that the best place for the new landfill is next to my hairdresser's house? What if it's in the best fiscal interest of the town not to grant my friend a small business loan?

Newly elected local government officials typically enjoy a wonderful honeymoon period with constituents, staff, and the press. To those of you still on your honeymoon—and to others who would join you—I say: savor it. Pretty soon something magical will happen. You will undergo a metamorphosis and become a "them." No longer will you be the person who *would* be able to solve your community's problems *if only* you were on the board. Instead you will become the one whom people tell how *they* would solve the problems if *they* were on the board. This metamorphosis typically takes place around budget time. Life will never be the same.

Facing Public Prejudice

Being on the Carrboro Board of Aldermen has changed my life in ways I never expected. Most perplexing is the new way people react to me publicly. To people who are not close to me, I am one of "them," a "politician." During my first four years in office, I was accused of being everything from a socialist to a conservative. It seems that lots of people have fixed ideas of who and what elected officials are, how we make deci-

sions, and what motivates us. Suddenly I find myself being prejudged based on the fact that I'm an elected official in ways that are often funny, usually wrong, and sometimes downright insulting.

Last year at a diversity sensitivity workshop, my fellow participants and I were asked to tell about times when we felt we had been prejudged and how that had affected our lives. Without giving it any thought, I found myself talking about problems I've had that have stemmed from people's biases against politicians—problems that had crowded out for that moment my serious concerns about problems I have faced as a woman. Even my family distrusts politicians! It's part of the job, and I guess I deal with it by working hard to serve in a way that allows me to look in the mirror without feeling ashamed. I still get mad if people accuse me of "acting like a politician," but at least I know they're wrong.

Facing the Demands on Your Time

When I was first sworn in a little over four years ago, I got something I hadn't counted on as I campaigned. After the high of the campaign and of being elected, the excitement of seeing my name and picture in the paper every week, after the congratulatory letters and phone calls, after the intense sense of teary eyed joy I felt the night my mother held my family Bible for me during my swearing-in—after all of these intense emotional experiences had passed—I found that I had a second full-time job. It required hours of reading, long meetings, and attention to hundreds of details. It was a job that required me to be an expert on areas that I knew next to nothing about. It was a full-time job that I was supposed to do *after* I finished the full-time day job that paid my bills. All of a sudden instead of working eight hours a day I was working ten, twelve, even eighteen hours a day. And by nature I'm a lazy sort. The life of a local elected official? "What life? I don't have a life; I have meetings!"

That was kind of hard to get used to: all the hours of work and the never-ending meetings. When I was first running for a seat on the Carrboro board, I believed that the job entailed one meeting a week on Tuesday nights. Wrong! Instead, I find my typical week involves two to three lunch meetings squeezed into my day job schedule, one or two 5:30 meetings, and two or three 7:30 meetings in addition to that regular board meeting.

Facing the Demands on Your Professional Life

So, being an elected official has changed the rhythm of my waking hours and my perceptions of what's important in governance. It's also changed other areas of my life.

When I was first elected, I was working as a social worker in a small nonprofit advocacy organization. The agency's work required frequent communication with human service, education, governmental, and media organizations. After being in office a few months, I discovered that the people in these organizations would return my phone calls faster than they had before. Because of my public position, I suddenly had access to people that the agency had been trying to build relationships with. I was in a position to get public attention for the agency's agenda, but I wasn't even the agency's director, although some people thought I was. And I felt uncomfortable, knowing that people were responding to my role as an alderman, not my role as a social worker, even if it was for a good cause. My newfound access to the community's leaders strained my relationship with my boss, whose phone calls were not returned as fast as mine. I ended up changing jobs.

In my new job I bend over backward to keep my political life and my professional life separate—and not just because I believe that I should do the job I'm paid to do by my employer. It also helps to keep me sane and provides a justifiable escape from political life. It's nice to be able to tell people who call me about town business while I'm at work that I'm really sorry, but I'll have to ask them to call me at home after work. I have found particular satisfaction in telling people who call to yell at me about things like wasting tax dollars on overpaid employees that I'm sorry but I'll have to call them after I get off work, because my employer doesn't pay me to spend my time dealing with town business. They have a hard time arguing with that!

I'm pretty certain that I now have the ability to block out the personal and political implications of decision making. It's one of life's harder things to do, but I try hard. I believe that my job as an elected official is to serve the best interest of my whole town, not just of those who voted for me or, even harder, not just of those who are my friends. There have been several meetings where I was shaking as I voted my conscience and then went home and cried. I remember reading a tall tale years ago about a couple who move to a small New England town where every year a harvest king is chosen from among the men of the town. For a year the harvest king reigns supreme. Everyone fawns on him and all his needs are satisfied to excess. The husband decides that this looks like a pretty good deal and begins a ruthless campaign to be crowned harvest king. He's successful and very excited. On the night of the coronation, when he is to take his place as king, he shows up at the ceremony, is

crowned, and then learns that his first duty is to watch the execution of his predecessor. All that work, all the honor and attention, and then they kill you! In my darker political moments I think of that story.

But sometimes I'm able to do something that has a tangible positive effect on the town that I love so much. And it's a wonderful feeling to drive through a neighborhood that's a little safer because of an action I was part of, or to see people using bike lanes and sidewalks I helped to get. It is really satisfying to know that every now and then it matters to somebody that the board took a positive action. When I was working the polls on the day I was up for reelection, people would come up to me and say things like, "I'm voting for you. I don't always agree with you, but I trust you." An old-time conservative told me that in front of my mother. I felt like I was in a Norman Rockwell painting!

Facing the Changes within Yourself

Being an elected official has affected me publicly, professionally, and socially, but it has also changed me privately. It has changed who I am and how I define myself as a person. My best friend—a calm, rational attorney—says that I'm much tougher than I was four years ago and, in her words, much less gullible. She tells a story about something that happened when I first ran for the board. I had not been endorsed by the Home Builders Association, but I did receive a fifty-dollar campaign donation from two builders and a lovely note saying that they had supported me and were sorry that I had not gotten the group's endorsement. I thought that this was really sweet and told my friend about it. "Sweet?" she said. "Don't you know that they're planning to build the new subdivision behind your house?"

Then there was the time that a developer looked me straight in the eye and told me that our development ordinance would not allow him to save trees or open space, even though he wanted to. I apologized for the inadequacy of our ordinance and ran off to talk to the town staff about ways to fix a horrible problem that was keeping these good people from doing the right thing. The staff informed me that they had offered the developer numerous options to preserve the woods and open space, all of them allowed in our ordinance, but that he had rejected every one. A few weeks later when I voted against the guy's proposal, he turned to a mutual friend and said, "Why did Jacquie vote against me?" Our friend said, "Well, you lied to her." "But I had to!" the developer replied.

After several incidents like this, I began to be less willing to just believe anything someone told me. I don't think that people lie a lot in the political arena; it's just that they only tell that part of the story that makes them look best or promotes their interest. So I've had to work toward developing a way of reserving judgment. This runs counter to my personality, and I now find that in all areas of my life I'm not as trusting as I once was or as I would like to be. I feel that I've lost a part of me that I liked.

I'm also not always very nice anymore. I used to work very hard at being nice, because it seemed like the right thing to do. After a year or so on the board, I began to get the feeling that I was sometimes being taken for a chump. Staff members, neighbors, and business people would come to me with issues or problems—they'd come and tell me horrible stories and I'd rush right out and try to fix them. Often I would learn later that they purposefully had been playing to my social work side and had misled me. After a few particularly blatant incidents, I stopped trying to be everybody's friend all the time and realized that providing sound, well-reasoned leadership meant that there would be many times when not everyone would like me. So, I'm not so nice anymore, but I'm a better alderman.

The effect has spilled over into my private life. In matters having nothing to do with town business, I'm also not so concerned anymore with trying to make everyone happy all the time. I figure I work hard, try to be fair, and use my best judgment. That's what people have a right to expect. If they don't like it, it's not my problem. Four years in public office is more productive than ten in therapy.

Facing Your Limitations

Finally, I'm no longer afraid to be wrong or to admit that I made a mistake. I've found that being willing to change your mind or reverse your stand on something doesn't really bother or offend anybody except the press, and who cares what they think? (Well, *I* do, but I try not to let it affect me.) The longer I'm in this job, the more I learn that what's really important is getting the best possible decisions made in a manner that allows the community to have faith in the integrity of those decisions. My personal reactions or political needs are secondary. When I was first elected, I was always worrying about *how* I did in meetings. Now I worry about *what* I did: did the meeting have the outcome I wanted it to? Sometimes getting to that point means not pleasing everybody, disagreeing with my friends, saying no to allies, publicly changing my mind, and admitting that I was wrong.

Recently all of this happened at the same meeting!

For three years I had been going to meetings of the leadership committee of an intergovernmental task force on crime. At one particular meeting, I, along with a fellow member of the board of aldermen, was to present the recommendations of a subcommittee on youth. We had worked on the recommendations for months, and my friend and I had spent weeks working out how we would present the recommendations and exactly what we wanted from the leadership committee. We needed money, legislation, and political support. This was serious stuff. Well, to start with, the meeting had been moved from its regularly scheduled 5:30 start to 5 o'clock. I was so used to going at 5:30 that I hadn't bothered to check the meeting time on the agenda and I cruised in at 5:30. Our presentation had been first on the agenda, so they had moved it back because I was late. After that embarrassment, my colleague finally made our presentation and the group began discussing it. Overall, they were supportive. Then the committee chair said, "Let's refer this to the three managers for a recommendation." The week before, after much argument, our group had decided that this was what we wanted and we were hoping for just such an action by the committee. But based on my original reservations, which I had finally overcome, I automatically started arguing against it.

"No," I said, "if we refer it to staff it'll get watered down and lost." My fellow alderman stared at me, wishing, I'm sure, that he were close enough to kick me. I suddenly realized what I had done, took a deep breath, and said, "I take that back. I do want it to go to staff. Sorry." People looked at me like I was crazy. But the motion carried. Later in the meeting, I also managed to inadvertently insult Chapel Hill's mayor, and then I left before the meeting was over to go teach a workshop. I felt stupid and embarrassed, but the meeting had the outcome I had hoped for. Daddy always said that life ain't easy.

The day after that weird experience, I had lunch with my mentor and friend, Sue, who is on the school board, and I said, "How on earth did this happen? How did we get to be in charge? If we mess up, there's nobody higher up to fix it. We can really do damage!" Sue replied, "Well, it took you four years but you finally figured it out."

Facing the Real Agenda

I ran for town council on issues of social change, but then I found out I was supposed to make decisions on sewer pipes, acres of impervious surface, transition zones, and intergovernmental fund transfers—stuff we hadn't really covered in my days at the School of Social Work. So I now find that maybe a few times a year I deal directly with the issues I first ran on. I had thought that I could march into office and say this, this, and that need to change and this is how we are going to change them—ta-*da*! It's all fixed! It took me about two years to learn that even my brilliant ideas weren't new and that if there were simple overnight answers to my community's problems, they would have happened long ago. This has been hard to convey to the small group of social change and environmental activists who first encouraged me to run for the board. They now accuse me of being, horror of horrors, a "moderate."

But I've learned that it's not the big flashy headline-grabbing political actions that determine the quality of government in a town. It's the small details, the product of long meetings and hard work, that determine the quality of town policy. In the long run, the boring meetings on zoning, sewer, budget, and personnel have a more profound effect on social justice or environmental integrity than do a bundle of flashy resolutions. The bulk of board work that truly affects the day-to-day lives of people goes by without much notice. I've learned that responsible stewardship of a community is the real job of an elected official.

Facing Reality

I love Carrboro (some would say to the point of obsession) and I worry a lot about doing something that would harm it. I also love being an elected official (some would say to the point of obsession). It's the place where those two obsessions clash that I find most personally terrifying. The point where what's best for Carrboro may not be what's best for me politically. I had to face that monster in the 1993 election. There was a hotly controversial issue that came up in the late summer and early fall just as I was gearing up for my reelection campaign. I wished that it would wait until December, but it didn't. I drove my friends crazy worrying about it but decided that my political life was less important than the welfare of the town, and I stuck by my position. October was hell; election day was tough, but I won by a large margin. At the time I swore I'd never go through that again. But I know I will.

So to newly elected officials, I say: welcome to the strangest club in town. It may be hard, it may be wonderful. You may have moments when you want to just throw in the towel. But when all is said and done, it's easier to be on the council than to sit by and watch some other group of idiots mess things up. Good luck and have fun! ❖

At the Institute

New Faculty Members Join the Institute of Government

This summer two new faculty members, both marking a return to The University of North Carolina at Chapel Hill, joined the Institute of Government. Anita Brown-Graham initially will focus her work here in areas related to legal liability of governmental units and governmental officials. Michael Williamson is working on bringing total quality management to North Carolina state government.

Following her graduation from law school at The University of North Carolina at Chapel Hill, Anita Brown-Graham began a three-year tenure as a Californian, first serving as a law clerk to a federal district court judge and then practicing law with the firm of Diepenbrock, Wulff, Plant & Hannegan in Sacramento. As a practicing lawyer she represented business clients in a variety of litigation matters, including antitrust and federal and state employment discrimination actions. A native Louisianan, Ms. Brown-Graham graduated from Louisiana State University with a bachelor's degree in criminal justice.

Dan Sears / UNC News Services

Anita Brown-Graham

Jeff Miller / University of Wisconsin-Madison News & Information Service

Michael Williamson

Michael Williamson, whose time out of state—in Wisconsin—stretched to fifteen years, received a bachelor's degree in history and a master's in public administration from The University of North Carolina at Chapel Hill. He was assistant to the town manager in Waynesville from 1976 to 1978. In Wisconsin he served in several state government executive branch departments, including the governor's office. In 1983 he became chief of staff for the mayor of Madison and in 1988 was named assistant to the chancellor of the University of Wisconsin. In that position he developed a total quality management program for the 43,000-student, 16,000-employee university. At the Institute he is working closely with North Carolina's governor's office and the Council of State to develop a total quality management program for North Carolina state government.

— The Editors

Dan Sears / UNC News Services

Chancellor Paul Hardin presents Gladys Hall Coates with the Bell Award on Cornelia Phillips Spencer Day.

Gladys Coates Receives UNC's Bell Award

Gladys Hall Coates, who helped found the Institute of Government with her late husband, Albert Coates, its first director, has received the university's first Bell Award.

The award, honoring the woman who has made the greatest contribution to The University of North Carolina at Chapel Hill in recent years, was presented as part of the university's Bicentennial Observance activities in March.

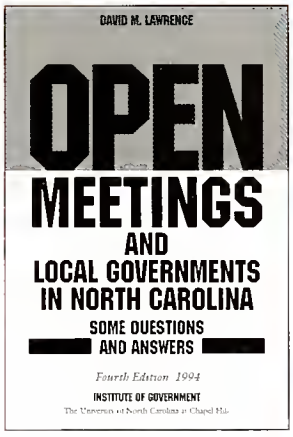
The occasion was Cornelia Phillips Spencer Day, which honored the achievements of women at UNC. Spencer, who spearheaded efforts to reopen the campus after it closed for four years following Reconstruction, was one of the most important women in the university's history.

Mrs. Coates has served the university in several capacities over sixty-five years. She continues to lecture frequently on the history of UNC and specifically on the Institute of Government.

— The Editors

Off the Press

OPEN MEETINGS AND LOCAL GOVERNMENT IN NORTH CAROLINA:
Some Questions and Answers



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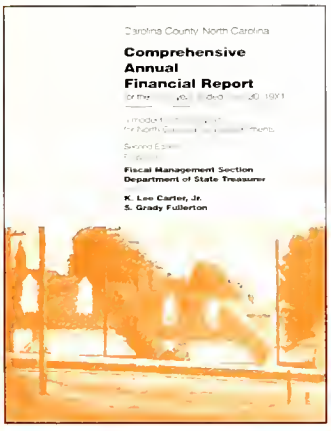

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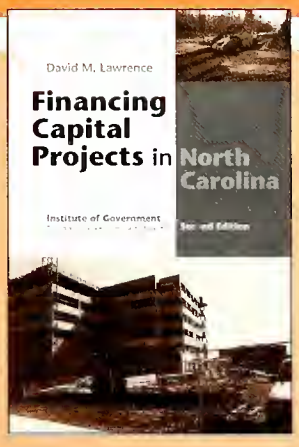

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