

Popular Government

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Popular Government

James Madison and other leaders in the American Revolution employed the term “popular government” to signify the ideal of a democratic, or “popular,” government—a government, as Abraham Lincoln later put it, of the people, by the people, and for the people. In that spirit *Popular Government* offers research and analysis on state and local government in North Carolina and other issues of public concern. For, as Madison said, “A people who mean to be their own governors must arm themselves with the power which knowledge gives.”

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As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 classes, seminars, schools, and specialized conferences for more than 12,000 public officials each year. In addition, faculty members annually publish approximately fifty books, periodicals, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the *Daily Bulletin*, which reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

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Dear *Popular Government* readers,

Today's communication tools are evolving rapidly, and governments and organizations are evaluating the best ways to meet the changing needs of their audiences. The School of Government is no exception. As part of our ongoing efforts to share information with public officials and others in the most effective ways possible, we have decided to stop publishing *Popular Government*.

As many of you know, last year the School began a strategic planning initiative with the goal of ensuring that we are working in ways that will have the greatest impact for the public officials we serve. We have used focus groups, a wide-ranging survey, and one-on-one interviews to identify our strengths and determine gaps in our services.

As the economy has rapidly changed the needs of North Carolina communities, we have sought ways to be more responsive, provide more timely information, be more environmentally responsible, and decrease costs. Our decision about *Popular Government* reflects our commitment to do more for you—not less—and to do it more effectively.

Although we have enormous pride in and affection for *Popular Government*, which has been an integral part of our history, this will be the last issue. As alternative forms of disseminating and exchanging information have grown exponentially in the past few years, it has become apparent that the School can provide information and resources to public officials in other ways. Many of you already communicate with the School's faculty members—and each other—through our website, listservs, and growing number of blogs. Our faculty members are allocating their time to get information to you in more convenient and accessible formats, and we especially value opportunities for two-way communication as we refine our work to meet your changing needs.

I welcome your thoughts as we consider print and online alternatives to *Popular Government*, and I invite you to take a brief online survey to let us know what information you need, and how we can best provide it. Our decision about *Popular Government* itself has been informed by feedback from you. You will find the survey at www.sog.unc.edu/popgov/. Also, you may contact me at msmith@sog.unc.edu or 919.966.4107 to share your thoughts.

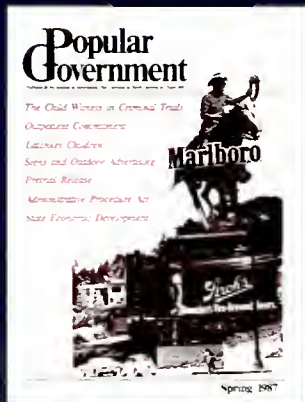
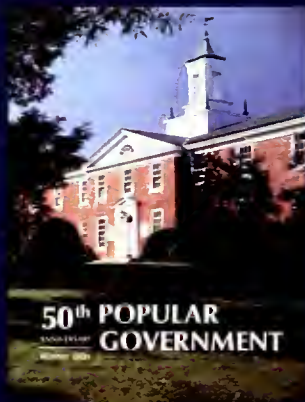
In the meantime, we will continue to offer archived issues of *Popular Government* on our website, free of charge. As always, I hope you will take advantage of the growing number of online resources that the School continues to make available at www.sog.unc.edu.

I look forward to receiving your ideas and comments.

Michael R. Smith
Dean, School of Government

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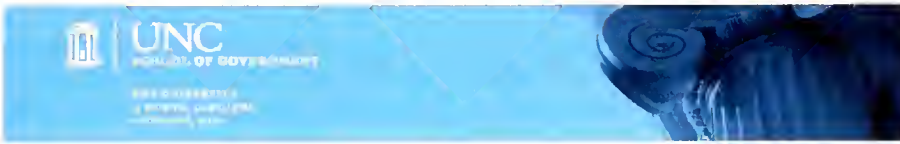
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HEALTH LAW BULLETIN

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Immunizations for Children and Adolescents: Frequently Asked Questions about North Carolina's Laws

Jill Moore

Immunization laws have existed in the United States since the 1800s. The earliest laws required vaccination against smallpox. Later laws extended the requirements to include immunization against other highly feared diseases such as polio, or widely prevalent diseases such as measles. Many of the early laws required immunization only when there was an outbreak in a community, but in the 1960s and 1970s there was a shift toward laws designed to achieve universal immunity against particular diseases by requiring children to be immunized. Today every state has laws requiring children to be immunized.

Bulletin Explains Key Points of Law on Immunizations for Children

In recent years, several new vaccines have been added to immunization schedules for children and adolescents. Some are required by North Carolina law—for example, the tetanus, diphtheria, and acellular pertussis (Tdap) booster for children entering sixth grade. Others are recommended, but not required, such as the human papillomavirus (HPV) vaccine for adolescent girls. In light of these changes, public officials—and parents—may wish to review a new School of Government publication, *Immunizations for Children and Adolescents: Frequently Asked Questions about North Carolina's Laws* (Health Law Bulletin no. 91) by Jill Moore.

A convenient question-and-answer format provides specific answers to a wide range of questions. For example:

- Are children who are homeschooled required to be immunized?
- Who qualifies for a medical exemption?
- Who qualifies for a religious exemption? How is a religious exemption documented?
- Suppose a school requests a copy of a child's immunization record. Must the parent give authorization for the record to be disclosed to the school?
- What are the legal consequences of refusing to immunize a child?

The complete bulletin is available for free viewing or downloading. Go to www.sog.unc.edu/, and click on Publications.

School Gets Grant to Study Economic Opportunities

In June 2009 the Community and Economic Development Program at the School of Government, in part-

nership with the Center for Economic Research and Policy Analysis at Appalachian State University, received a grant to prepare a report on economic opportunities in distressed rural areas. The \$90,000 grant was awarded to Appalachian State by the North Carolina Rural Economic Development Center. The School's portion is \$33,000.

The report is scheduled for completion by January 2010. Its intended audience is rural leaders in the eighty-five North Carolina counties served by the center.

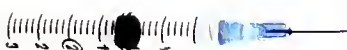
The School team, led by faculty member C. Tyler Mulligan, will produce a report highlighting strategies that rural leaders can apply to reduce poverty, develop assets, and build community wealth.

"The School is a good match for this particular research effort," according to Mulligan. "Faculty here are already working with leaders in rural areas that are hard hit by poverty, so we're well-positioned to conduct the research and package it in a way that is helpful to leaders around the state."

Mulligan emphasized that the School will work with rural leaders to implement the strategies identified in the report. "The purpose of this report won't be served if it collects dust on a shelf," Mulligan explained. "We intend to incorporate the research into School training programs and assist leaders as they translate the report's findings into concrete action."

Research by the School team is intended to complement the work of partners in the effort. A team from Appalachian State University will analyze the circumstances of North Carolina residents living on the economic margins, and a private consultant will develop a resource directory for rural leaders working in distressed areas.

For more information, contact Mulligan at mulligan@sog.unc.edu or 919.962.0987.



Communicating Financial Condition to Elected Officials in Local Government

William C. Rivenbark, Dale J. Roenigk, and Gregory S. Allison

The public expects much of its elected officials in local government, who in many cases assume their positions facing a steep learning curve on a wide range of complex issues. A critical part of this learning curve involves financial management, in localities where elected officials possess the ultimate responsibility for the fiscal matters of their organizations.¹ To carry out this responsibility, the law requires an annual independent audit of the financial statements and requires that the auditor be selected by and report directly to the governing board.² One goal of this process is for the locality to receive an “unqualified audit opinion,” meaning that its financial statements were prepared in conformity with generally accepted accounting principles (GAAP) and present, in all material respects, the *financial position* of the organization. Another goal, which may be overlooked by elected officials, is to analyze and interpret the financial statements to determine the *financial condition* of the local government.

Administrators play an extremely important role in helping elected officials manage the fiscal matters of local governments. They ensure that professional management practices are used to budget and account for the financial resources of the organization, they prepare monthly financial reports for elected officials to review budget-to-



actual variances, and they ensure that annual financial statements are prepared in conformity with GAAP. In 1999, as part of their role, they were responsible for implementing Governmental Accounting Standards Board (GASB) Statement No. 34, *Basic Financial Statements—and Management’s Discussion and Analysis—for State and Local Governments*. This pronouncement expanded the financial reporting model for local governments to include government-wide and fund statements. One reason for expanding the model was to provide a more complete picture of financial position.³ Another reason was to increase a local government’s ability to compare itself financially with other local governments and thus to help readers of financial statements evaluate the financial condition of local governments through benchmarking.⁴

GASB Statement No. 34 now has been fully implemented in North Caro-

lina local governments, so the natural next step for administrators is to take advantage of the expanded model of financial reporting and provide elected officials with more robust information on the financial condition of their local governments. The purpose of this article is to present administrators with an approach for analyzing, interpreting, and communicating financial condition to elected officials. First, we define financial condition, responding to the lack of agreement on this concept in our profession.⁵ Next, we present the criteria that we identified for creating our approach to evaluating financial condition. Then we describe how the approach relates to the expanded model of financial reporting, the dimensions and the indicators that we selected to measure financial condition, and the “dashboard,” or the gauges, that are needed to communicate financial condition to elected officials in a written, numerical, and visual format.

Rivenbark is a School of Government faculty member specializing in local government administration. Roenigk is the director of the North Carolina Benchmarking Project. Allison is a School faculty member specializing in governmental accounting and financial reporting. Contact them at rivenbark@sog.unc.edu, roenigk@sog.unc.edu, and allison@sog.unc.edu.

Defining Financial Condition

The definitions of financial condition in the professional literature are either specific in nature or broad in scope.⁶ Therefore, in search of middle ground, we turned to the work of Robert Berne and Richard Schramm to guide our approach for evaluating financial condition.⁷ These scholars maintain that there are two basic reasons for how resources are presented in financial statements: to report on the flow of resources during a given period and to report on the stock of resources at a given point. Operating statements report on the inflow and the outflow of financial resources during the fiscal year. Balance sheets report on the stock of assets, liabilities, and net assets or fund balances at the end of the fiscal year. We concluded that a logical definition of financial condition would align with resource flow and stock as reported in annual financial statements.

Berne offers a definition of financial condition that is closely related to the concept of resource flow and stock: the probability that a government will meet, currently and in the future, its financial obligations to creditors, consumers, employees, taxpayers, suppliers, constituents, and others as they become due, and its service obligations to constituents.⁸ The probability that a local government can meet these obligations, as interpreted from financial statements, increases with adequate resource flow to meet current obligations and with adequate resource stock to meet obligations over time.

An implied but missing element of Berne's definition is provision of capital assets. In response to this and other considerations, we offer the following definition of financial condition: a local government's ability to meet its ongoing financial, service, and capital obligations based on the status of resource flow and stock as interpreted from annual financial statements.

Although a local government's ability to meet its ongoing financial, service, and capital obligations is broad in scope, the specific component of our definition is how a local government's ability to meet them aligns with resource flow and stock as interpreted from annual financial statements.

Another important aspect of our definition is that it focuses solely on financial condition. One of the most frequently cited definitions of financial condition comes from the International City/County Management Association (ICMA): a government's ability to finance its services on a continuing basis.⁹ This definition aligns with financial factors that show financial condition and with economic factors that affect financial condition. However, this alignment represents a different form of analysis and requires data from sources outside annual financial statements.¹⁰

Criteria for Creating an Approach to Evaluating Financial Condition

Similar to the situation with defining financial condition, our profession does not have an agreed-on approach for analyzing, interpreting, and communicating financial condition in local government. And again, the approaches that exist are either specific in nature or broad in scope. As an integral part of the development of our model, we reviewed and analyzed approaches contained in the literature. Ken Brown created the 10-point test (which was updated in response to GASB Statement No. 34) as an easy-to-use approach to evaluate the financial condition of a local government.¹¹ An advantage of the 10-point test is the use of benchmark data for interpreting each financial indicator. A disadvantage is the limited analysis across all major funds.

The ICMA's model, on the other hand, provides a comprehensive approach to evaluating the financial condition of a local government, similar to bonding agencies' approach to evaluating a local government's ability to manage systematic and unsystematic risk in the repayment of debt over time.¹² The disadvantage of this approach is the sheer number of indicators used to analyze both financial and economic factors of financial condition, making it a feasible tool for larger local governments only.

Because of the broad continuum of current methods for evaluating financial condition in local government, we started with the following criteria to guide our approach: systematicness, comprehensiveness, flexibility, comparability, and

manageability. We based the criteria on a literature review and our own professional backgrounds.

Designing a systematic approach to evaluating financial condition was paramount, given the expanded financial-reporting model created by GASB Statement No. 34. More specifically, the approach had to systematically evaluate the financial condition of the organization as a whole as reported in government-wide statements, and systematically evaluate the financial condition of each major fund.

The approach also had to be comprehensive, providing a thorough analysis of resource flow and stock at the government-wide and fund levels of the organization. The focus on resource flow and stock supported our definition of financial condition.

The criterion of flexibility acknowledged that administrators might want to augment our approach with additional financial indicators or even replace a financial indicator that we had selected with another. We have used the quick ratio to analyze the liquidity of a local government, for example, whereas others support the use of the current ratio.¹³ Although we relied on the most prevalent indicators in the literature, individual circumstances might warrant change.

Comparability was one of the primary reasons for the passage of GASB Statement No. 34. Calculating a financial indicator like the quick ratio at one point would provide only limited information. Calculating it over time for trend analysis and benchmarking it against other local governments would provide the necessary context for interpreting the results. The reality is that evaluating financial condition is relative, requiring comparative information for analyzing, interpreting, and communicating it to elected officials.

Evaluating financial condition also had to be manageable, unlike the ICMA's model. Local governments of all sizes had to be able to implement it accurately from financial data taken from their annual financial statements—consistent with our definition of financial condition—and had to have the organizational resources to manage it over time. Another important aspect of this criterion was the ability to use our approach success-

fully to communicate financial condition to elected officials. Doing so would require a careful balance of financial indicators selected for the evaluation. If the approach relied on a limited number of financial indicators, then communicating a comprehensive analysis to elected officials would not be possible. If the approach relied on too many financial indicators, then communicating the analysis would be unwieldy.

Understanding the Financial Reporting Model

Because our approach is designed to be systematic across the government-wide and fund statements, to use it, elected officials must possess some understanding of the model of financial reporting used in local government (for the model in which our approach is applied, see Figure 1). Elected officials must have a basic understanding of three important aspects of this model before they can be expected to use financial condition information effectively. First, financial statements in local government have two levels of reporting, the government-wide level and the fund

Figure 1 Revised Financial-Reporting Model for Analysis of Financial Condition

Primary Government		
Government-Wide Level	Governmental Activities (Economic Resources)	Business-Type Activities (Economic Resources)
Fund Level	Governmental Funds (Financial Resources)	Enterprise Funds (Economic Resources)

level. Second, financial statements for government-wide activities and enterprise funds measure *economic resources* using the *accrual basis* of accounting, whereas financial statements for governmental funds measure *financial resources* using the *modified accrual basis* of accounting.¹⁴ Third, all North Carolina counties and municipalities are required to have a general fund, which is the main operating fund and one of several potential governmental funds. However, not all local governments have enterprise funds, which are used to account for the resource flow and stock of utilities (for example, water, wastewater, electricity, and natural gas).

Two important resources for understanding the aspects of the financial reporting model in local government

appear in previous issues of *Popular Government*: “How to Read Governmental Financial Statements, Part 1,” by Gregory S. Allison, which explains the fund structure of governmental accounting; and “How to Read Governmental Financial Statements, Part 2,” also by Allison, which explains the financial statements for governmental activities and business-type activities prepared at the government-wide level.¹⁵ The purpose of those articles is not to make elected officials experts in governmental accounting. It is to provide them with basic information on reading financial statements, which will be extremely useful in communicating financial condition to them. In other words, they need enough information to ask questions about the

Table 1 Resource Flow for Government-Wide Activities and Enterprise Funds (Focusing on Economic Resources and Accounted for on an Accrual Basis)

Government-Wide			
Financial Dimension	Description	Financial Indicator	Calculation
Interperiod Equity	Addresses whether government lived within its financial means during fiscal year	Total margin ratio	Total resource inflow (program revenues plus total general revenues and net transfers) divided by total resource outflow (total expenses)
Financial Performance	Addresses extent to which government’s financial position improved or deteriorated as result of resource flow	Percentage change in net assets	Change in net assets divided by net assets, beginning
Self-Sufficiency	Addresses extent to which service charges covered total expenses	Charge-to-expense ratio	Charges for services (fees, fines, and charges for services) divided by total expenses ²
Financing Obligation	Addresses service flexibility, or amount of total expenses committed to annual debt service	Debt service ratio	Debt service (principal and interest payments on long-term debt) divided by total expenses plus principal ⁴

1. Trend and benchmark data are needed for a more robust interpretation of each financial indicator.
2. Depending on how self-sufficiency is defined for government-wide activities, some local governments may choose to use total program revenues rather than charges for services as the numerator.
3. Self-sufficiency may be defined as below 1.0 for selected enterprise funds, responding to state law and local policy.
4. Principal is added to the denominator because it is not included in expenses.

financial position and condition of the local government.

Figure 1 does not contain fiduciary funds because the resources accounted for in pension trust, investment trust, private-purpose trust, and agency funds are owned by parties other than the local government.

Figure 1 also does not contain internal service funds, one of the two types of proprietary funds (the other type being enterprise funds) because they inherently create redundancy in financial reporting.¹⁶ To overcome this problem, the accumulated resources of these funds are disbursed back to either governmental activities or business-type activities at the end of the fiscal year on the basis of which group of activities used them the most. The profits or the losses of these funds then are divided between governmental activities and business-type activities on the basis of actual use. We acknowledge that local governments may want to use our approach to evaluate the financial condition of selected internal service funds on a case-by-case basis. Internal service funds that account for activities like fleet services may be appropriate for this form of analysis. An actuarial analysis

may be more appropriate for internal service funds that account for activities like health benefits, given the known and unknown risks involved with them.

Selecting Financial Dimensions and Indicators

Fortunately the literature contains a large number of financial dimensions and indicators to choose from in evaluating financial condition.¹⁷ Our task was to pare them down so that our approach would result in a comprehensive financial evaluation, but be manageable for local governments of all sizes in North Carolina. To begin selection, we used our definition of financial condition, which focuses on the status of resource flow and stock as interpreted from annual financial statements. We then identified fundamental financial dimensions that support the analysis of resource flow and stock.

Our intent was to identify one set of flow indicators and one set of stock

indicators for evaluating the financial dimensions that we selected. Doing so was not possible, however, given that certain financial statements measure economic resources, whereas other statements measure financial resources. We responded by selecting one set of flow and stock indicators for evaluating the financial condition of government-wide activities and enterprise funds, given that their financial statements measure economic resources. We then selected another set of flow and stock indicators for evaluating the financial condition of governmental funds, given that their financial statements measure financial resources. Although some overlap exists between the two sets of flow and stock indicators, there are some fundamental differences between them because of the accounting differences.¹⁸

North Carolina local governments of all sizes will find our approach to evaluating financial condition comprehensive, but manageable.

Evaluating the Financial Condition of Government-Wide Activities and Enterprise Funds

We selected four financial dimensions and four financial indicators for eval-

Activities		Enterprise Funds	
Data Source	Calculation	Data Source	Interpretation ¹
Statement of activities	Total resource inflow (operating and nonoperating revenues plus transfers in) divided by total resource outflow (operating and nonoperating expenses plus transfers out)	Statement of revenues, expenses, and changes in fund net assets	Ratio of 1.0 or higher indicates that government lived within its financial means.
Statement of activities	Change in net assets divided by net assets, beginning	Statement of revenues, expenses, and changes in fund net assets	Positive percentage change indicates that government's financial position improved.
Statement of activities	Charges for services divided by operating and nonoperating expenses	Statement of revenues, expenses, and changes in fund net assets	Ratio of 1.0 or higher indicates that service is self-supporting. ³
Statement of activities ⁵	Debt service (principal and interest payments on long-term debt) divided by operating and nonoperating expenses plus principal ⁶	Statement of revenues, expenses, and changes in fund net assets ⁷	Service flexibility decreases as more resources are committed to annual debt service.

5. Principal and interest payments on long-term debt for governmental activities are located on the statement of revenues, expenditures, and changes in fund balances. Principal payments on long-term debt for business-type activities are located in the notes to financial statements. Interest payments on long-term debt for business-type activities are located on the statement of revenues, expenses, and changes in fund net assets.
 6. Principal is added to the denominator because it is not included in expenses.
 7. Principal payments on long-term debt for enterprise funds are located in the notes to financial statements. Interest payments on long-term debt for enterprise funds are located on the statement of revenues, expenses, and changes in fund net assets.

uating resource flow for government-wide activities and enterprise funds (see Table 1). The first dimension, inter-period equity, addresses whether a government lived within its means during the fiscal year.¹⁹ The total margin ratio is used to evaluate this dimension. It represents the total inflow of resources divided by the total outflow of resources for government-wide activities and for enterprise funds. A ratio of 1.0 or higher indicates that the government lived within its means for the respective activity or fund. For government-wide activities, resource inflow includes the net of transfers in and out between governmental activities and business-type activities. For the enterprise funds, transfers in from other funds are included as resource inflow, and transfers out to other funds are included as resource outflow. These assumptions are consistent with the GAAP reporting format.

Whereas the total margin ratio analyzes the relationship between total resources available and total resources consumed, the financial indicator of percentage change in net assets used to evaluate our second financial dimension, financial performance, provides feedback on the extent to which a government's net assets improved or deteriorated as a result of resource flow.²⁰ A positive percentage change

indicates that a government's financial position improved from the resource flow that occurred during the fiscal year. Periodic modest fluctuations are generally to be expected. Fluctuations that are significant in nature (in either direction) should be obvious and evaluated accordingly.

The financial dimension of self-sufficiency addresses the extent to which the government used service charges to cover total expenses. This dimension is especially important to business-type activities and to enterprise funds, for which the goal often is to cover total expenses on a charge-for-service basis. The charge-to-expense ratio is used to analyze this dimension. A ratio of 1.0 or higher indicates that the activity or the fund was self-sufficient.

An argument could be made that this financial dimension is not applicable for governmental activities because governmental services with public-good characteristics are not designed to be self-supporting. However, elected officials and administrators often are interested in the mix between general taxation and user-fee revenue when preparing and adopting budgets for the forthcoming fiscal year. To this end, the financial-indicator calculation does not include grants and contributions, which are an inherent part of program revenues in the government-wide financial statements.

Our final dimension for resource flow for government-wide activities and enterprise funds is financing obligation. This dimension is analyzed with the debt service ratio, which is calculated by dividing annual debt service of principal and interest payments by total expenses plus principal. Because of their measurement focus, both government-wide activities and enterprise funds do not report principal repayments on debt as an expense. To achieve a proper calculation of this debt service ratio, the principal amounts must be included in both the numerator and the denominator. The purpose of this ratio is to provide feedback on service flexibility, which decreases as more resources are committed to annual debt service.

We selected four financial dimensions and four financial indicators for evaluating resource stock for government-wide activities and enterprise funds (see Table 2). An advantage of the stock indicators over the flow indicators is that they tend to be more recognizable in the profession because they are associated with the balance sheet, which more often is used to evaluate financial condition in the public and private sectors. In other words, balance sheets report on equity, or net position, at a given point.

Liquidity is the financial dimension used to analyze an organization's ability

Table 2. Resource Stock for Government-Wide Activities and Enterprise Funds, Focusing on Economic Resources (on an Accrual Basis)

Financial Dimension	Description	Financial Indicator	Government-Wide
			Calculation
Liquidity	Addresses government's ability to meet short-term obligations	Quick ratio	Cash and investments divided by current liabilities (not including deferred revenue)
Solvency	Addresses government's ability to meet long-term obligations	Net assets ratio	Unrestricted net assets divided by total liabilities ⁵
Leverage	Addresses extent to which total assets are financed with long-term debt	Debt-to-assets ratio	Long-term debt divided by total assets
Capital	Addresses condition of capital assets as defined by remaining useful life	Capital-assets condition ratio	1.0 - (accumulated depreciation divided by capital assets being depreciated)

1. Trend and benchmark data are needed for a more robust interpretation of each financial indicator.
2. Deferred revenues are located either on the statement of net assets or in the notes to financial statements.
3. The Local Government Commission uses a different ratio for calculating the quick ratio for enterprise funds: current assets (less inventory and prepaid expenses) divided by current liabilities.
4. Deferred revenues are located either on the statement of net assets—proprietary funds, or in the notes to financial statements.

to meet short-term obligations. It is calculated with the quick ratio: cash and investments divided by current liabilities. A high ratio suggests that the government is more likely to meet its short-term obligations.

Solvency, on the other hand, is the financial dimension used to analyze an organization's ability to meet long-term obligations. It is calculated with the net assets ratio: unrestricted net assets divided by total liabilities. As with the quick ratio, a high ratio suggests that the government is more likely to meet long-term obligations.

Some advocate using total assets as the denominator for this calculation rather than total liabilities.²¹ We believe that standardizing unrestricted net assets with total liabilities provides a stronger indication of an organization's ability to meet long-term obligations. Furthermore, we believe that restricted net assets should not be a part of this equation because such assets are typically not directly related to an entity's ability to meet current or long-term obligations.

Leverage is the financial dimension that addresses the extent to which total assets are financed with long-term debt. The financial indicator used to analyze this dimension is debt-to-assets ratio:

long-term debt divided by total assets. If a government becomes too reliant on debt financing to secure capital assets, it may compromise service flexibility as it commits more resource flow to annual debt-service obligations. An overreliance on debt also may have unfavorable implications for bond ratings.

This financial indicator may present challenges for North Carolina counties because school debt is included on their financial statements and the value of school infrastructure financed with that debt is

not. One approach to getting around this problem is to use the flexibility criterion, eliminating or replacing the debt-to-asset ratio. The preferred approach is to calculate the indicator on the basis of the data contained in the financial statements, footnoting the discrepancy for the reader.²² The reality is that counties are responsible for school debt but do not own the related infrastructure.

Capital, the final financial dimension of resource stock for government-wide activities and enterprise funds, is used to analyze the condition of capital assets as defined by their remaining useful life. The financial indicator to measure this dimension is capital-assets condition ratio. The data used for this calculation are located in the capital assets section

of the notes to financial statements. To calculate the indicator, accumulated depreciation is first divided by capital assets subject to depreciation. The resulting percentage is then subtracted from 1.0, which results in the remaining useful life of the total capital assets being depreciated. A high ratio suggests that a government is investing in its capital assets.

Big problem: North Carolina counties must include school debt on their financial statements, but they can't include the value of the infrastructure that they finance with that debt.

Evaluating the Financial Condition of Governmental Funds

We selected three financial dimensions and three financial indicators for evaluating resource flow for governmental funds (see Table 3). This evaluation applies primarily to the general fund. At times a local government may want to analyze the financial condition of special revenue funds, debt service funds, capital project funds, or permanent funds. Our indicators may be used to evaluate the financial condition of these funds. However, we propose that they be captured as part of governmental activities unless a local government has a specific reason for disaggregating them. For example, a local government may have a major special revenue fund that it wants to disaggregate, given the amount of resources involved or the importance of services and activities being accounted for in the fund.

Service obligation is the first financial dimension for evaluating the resource flow for governmental funds. The

Activities	Enterprise Funds		
Data Source	Calculation	Data Source	Interpretation ¹
Statement of net assets ²	Cash and investments divided by current liabilities (not including deferred revenue) ³	Statement of net assets—proprietary funds ⁴	High ratio suggests that government is able to meet short-term obligations.
Statement of net assets	Unrestricted net assets divided by total liabilities	Statement of net assets—proprietary funds	High ratio suggests that government is able to meet long-term obligations.
Statement of net assets	Long-term debt divided by total assets	Statement of net assets—proprietary funds	High ratio suggests that government is overly reliant on debt for financing assets.
Notes to financial statements	1.0 – (accumulated depreciation divided by capital assets being depreciated)	Notes to financial statements	High ratio suggests that government is investing in capital assets.

5. The value of unrestricted net assets for governmental activities often is negative for North Carolina counties because the value of school assets financed with county debt is not included on the statement of net assets. Although the interpretation of the financial indicator remains the same, the fact that these assets are not included should be footnoted for explanation.

Table 4. Resource Flow for Governmental Funds (Focusing on Financial Resources and Accounted for on a Modified Accrual Basis)

Financial Dimension	Description	Financial Indicator	Calculation	Data Source	Interpretation ¹
Service Obligation	Addresses whether government's annual revenues were sufficient to pay for annual operations	Operations ratio	Total revenues divided by total expenditures (plus transfers to debt service fund and less proceeds from capital leases and installment purchases)	Statement of revenues, expenditures, and changes in fund balances	Ratio of 1.0 or higher indicates that government lived within annual revenues.
Dependency	Addresses extent to which government relies on other governments for resources	Intergovernmental ratio	Total intergovernmental revenue divided by total revenue	Statement of revenues, expenditures, and changes in fund balances	High ratio may indicate that government is too reliant on other governments.
Financing Obligation	Addresses service flexibility, or amount of expenditures committed to annual debt service	Debt service ratio	Debt service (principal and interest payments on long-term debt, including transfers to debt service fund) divided by total expenditures plus transfers to debt service fund ²	Statement of revenues, expenditures, and changes in fund balances	Service flexibility decreases as more expenditures are committed to annual debt services.

1. Trend and benchmark data are needed for a more robust interpretation of each financial indicator.
2. Debt service may be part of expenditures, a transfer to the debt service fund, or both.

operations ratio, representing total revenues divided by total expenditures, is used to analyze this dimension. The data for this calculation come directly from the statement of revenues, expenditures, and changes in fund balances, and a ratio of 1.0 or higher indicates that a government lived within its means.

Transfers out are not part of this calculation unless the transfer is to a debt service fund. Also, GAAP require governmental funds to report the present value of the minimum payments on a capital lease or installment purchases as an expenditure in the year of the agreement's inception. If the total expenditures do include this amount (as would be evidenced by another financing source of an equal amount), they should not be included for purposes of this calculation and should be subtracted from total expenditures.

The remaining two dimensions capture important aspects of revenues and expenditures. Dependency is used to determine the extent to which governments rely on other governments for resources, as measured by the intergovernmental ratio: intergovernmental revenue divided by total revenue. Financing obligation is used to provide feedback on service flexibility by measuring, with the debt service ratio, the amount of resources committed to

annual debt obligations. If transfers to a debt service fund have been made by the governmental fund, the transfer should be included in both the numerator and the denominator.

We selected three financial dimensions and three financial indicators for evaluating resource stock for governmental funds (see Table 4). The financial dimension of liquidity uses the quick ratio, which follows the same philosophy and calculation as the liquidity dimension for government-wide activities and enterprise funds.

The financial dimension of solvency is evaluated with one of the most recognized financial indicators in local government: fund balance as a percentage of expenditures, as calculated with available fund balance divided by total expenditures plus transfers out.²³ Transfers out is included in the denominator because the Local Government Commission standardizes available fund balance for comparison purposes by dividing it by expenditures and transfers out less the present value of any capital leases or installment purchases entered into during the fiscal year.²⁴

The final financial dimension for evaluating resource stock for governmental funds is leverage, which is supported with the financial indicator of debt as a percentage of assessed value. The defi-

nition of "debt" is tax-supported, long-term debt, which is the amount prepared for a local government's sworn statement of debt.²⁵ The debt is standardized by dividing it by assessed value. State law prevents local governments from issuing debt that would result in net debt exceeding 8 percent of assessed value.²⁶ This financial indicator also plays a major role with bond-rating agencies when they are conducting a general-obligation rating assignment.²⁷

Using a Dashboard to Communicate Financial Condition

Communicating with dashboards is becoming more common in local government.²⁸ One possible reason is people's ability to create them with common software packages like Excel. Another possible reason is our understanding that most people are visual learners. Dashboards capitalize on this reality by communicating critical information in a visual format. We selected the dashboard because it supports our approach of communicating financial condition in a written, numerical, and visual format, including a comparative analysis for a more robust interpretation of each financial indicator.

We created a four-page dashboard for communicating the financial condition

of local governments to elected officials (for an excerpt, see Figure 2).²⁹ Page 1, the cover of the dashboard, contains the written interpretation of the analysis, which includes an overview of funds, an interpretation of the financial dimensions and indicators, a discussion of policy implications, and a summary of financial condition. The overview of funds is optional, given that this information also is contained in the notes to the financial statements. The discussion of policy implications also is optional, given that some administrators may want elected officials to draw their own conclusions about how the local government's financial condition affects organizational policy.

The interpretation of the financial dimensions and indicators should be completed with a written analysis of selected results. In other words, the focus is on the financial strengths and weaknesses of the organization. Trying to provide written information on each financial indicator would not reconcile with our criterion of manageability. In the previous section, we presented the first aspect of manageability: that local governments of all sizes in North Carolina should be able to implement our approach. Another aspect is that information should be presented in a manageable way for interpreting the results and making decisions. Therefore, the interpretation of this section

should focus on outliers, important trends, and key comparisons with the benchmark group.

The summary of financial condition is used to communicate to elected officials the overall financial condition with aggregate conclusions. For example: "The financial condition of Capital City is relatively strong on the basis of liquidity and leverage.³⁰ Capital City also has improved its ability to live within its means over the past five years." Although elected officials may want concluding statements like "Capital City's financial condition is strong," administrators understand that evaluating the financial condition of any organization, public or private, involves a subjective element that often prevents matter-of-fact conclusions.

The remaining pages of the dashboard, shown in the background in Figure 2, contain the financial indicators that we selected to evaluate the financial condition of local governments. They are presented in a manner consistent with our approach to communicating financial condition to elected officials. Adhering to the criterion of systematicness, we have displayed the financial indicators for the governmental activities on page 2 and the financial

indicators for the major funds of the local government on pages 3–4. Adhering to the criterion of comprehensive-ness, we have aligned the financial dimensions with the financial indicators that support the analysis of resource flow and stock for Capital City's governmental activities, enterprise fund (water and sewer), and general fund.³¹

The criterion of comparability was the primary driver for the dashboard's design. The results of the financial indicators are based on the most recent fiscal year, plus four years of historical data. The charts take advantage of trend analysis, placing each indicator in the context of change over time. The results of the financial indicators are then evaluated against averages that are calculated from the benchmark group, adding another comparative dimension.³²

An issue in local government is selecting appropriate benchmark partners. We support two approaches for making this selection. One is to select local governments of a similar population size. Another is to select local governments that offer similar services, paying close attention to those that operate the same type of utility systems. This approach follows the strategy used by the Local Government

Local governments should choose as benchmark partners either jurisdictions of a similar size or jurisdictions that offer similar services.

Table 4. **Resource Stock for Governmental Funds (Focusing on Financial Resources and Accounted for on a Modified Accrual Basis)**

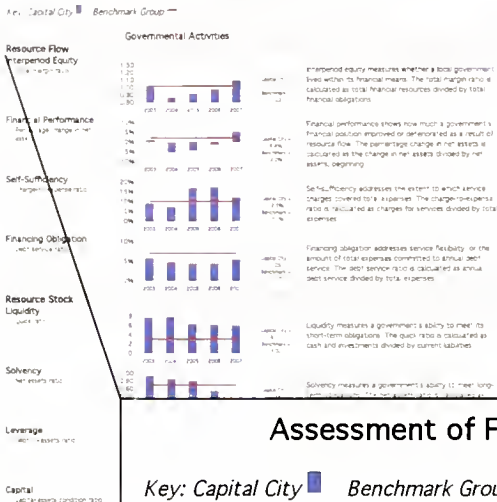
Financial Dimension	Description	Financial Indicator	Calculation	Data Source	Interpretation ¹
Liquidity	Addresses government's ability to meet short-term obligations	Quick ratio	Cash and investments divided by current liabilities (not including deferred revenue)	Balance sheet ²	High ratio suggests that government can meet short-term obligations.
Solvency	Addresses government's ability to meet long-term obligations	Fund balance as percentage of expenditures	Available fund balance divided by total expenditures (less proceeds from capital leases) plus transfers out ³	Balance sheet	High ratio suggests that government can meet long-term obligations.
Leverage	Addresses extent to which government relies on tax-supported debt	Debt as percentage of assessed value	Tax-supported, long-term debt divided by assessed value ⁴	Notes to financial statements	High ratio suggests that government is overly reliant on debt.

1. Trend and benchmark data are needed for a more robust interpretation of each financial indicator.
2. Deferred revenues are located either on the balance sheet of governmental funds or in the notes to financial statements.
3. G.S. 159-8 defines "available fund balance for appropriation" as the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts.
4. This calculation follows the requirement of G.S. 159-55 that the net debt of the unit not exceed 8 percent of assessed valuation.

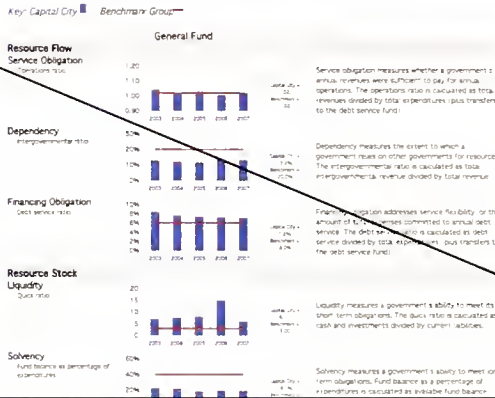


Assessment of Financial Condition
 Evaluation of Financial Condition
 June 30, 2007

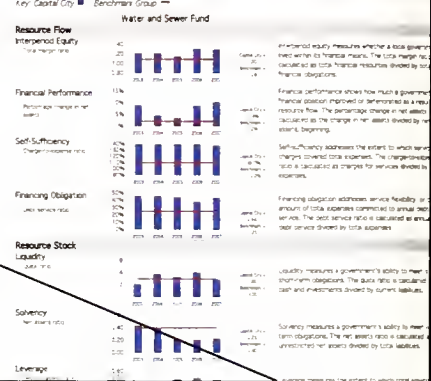
Assessment of Financial Condition at the Government-Wide Level



Assessment of Financial Condition for the General Fund



Assessment of Financial Condition for the Enterprise Fund



Assessment of Financial Condition at the Government-Wide Level

Key: Capital City ■ Benchmark Group —

Governmental Activities

Resource Flow
 Interperiod Equity

Total margin ratio



Interperiod equity measures whether a local government lived within its financial means. The total margin ratio is calculated as total financial resources divided by total financial obligations.

Commission to report on fund balance as a percentage of expenditures for cities that operate electric utilities and cities that do not. When data from other local governments are not used for establishing benchmarks, professional standards and internal policies may be used for establishing them.

We explain how the dashboard is designed because it is not simply a collection of financial indicators. It is specifically designed to increase the ability to communicate financial condition effectively to elected officials in local government. It also is designed to support our definition of financial condition and the financial dimensions that we have selected to analyze resource flow and stock in annual financial statements.

Summary

Local officials, both elected and non-elected, may never reach a consensus on a professionally accepted set of financial indicators for evaluating the financial condition of local governments. Although there are pros and cons associated with any individual financial indicator (or any set of indicators), our focus is on providing administrators with an effective approach for analyzing, interpreting, and communicating financial condition to elected officials. We have offered the following definition of financial condition to guide our approach: a local government's ability to meet its ongoing financial, service, and capital obligations based on the status of resource flow and stock as inter-

preted from annual financial statements. We then selected financial dimensions and indicators that supported the analysis of resource flow and stock as shown on the numerous operating statements and balance sheets contained in annual financial statements.

Unlike previous models for evaluating the financial condition of local governments, our approach recognizes that financial reporting contains government-wide and fund statements and that some financial statements measure economic resources while others measure financial resources. This recognition provides a more systematic and comprehensive approach to evaluating financial condition, responding to the complexities of local government financial statements. We

also capitalize on the strengths of a dashboard for communicating financial condition to elected officials, using trend and benchmark data for a more robust interpretation of each financial indicator.

Historically, more attention has been placed on financial position in local government than on financial condition. With the implementation of GASB Statement No. 34, an opportunity has been created to shift the focus to financial position and condition in local government. This represents the ultimate goal of our approach: to give administrators a management tool that facilitates their including financial condition when they are helping elected officials embrace the responsibility of managing the fiscal matters of local governments.

Notes

1. For a complete definition of financial management, see Jerome B. McKinney, *Effective Financial Management in Public and Nonprofit Agencies* (3d ed. Westport, CT: Praeger, 2004). G.S. 160A-67 states that the government and the general management of the city shall be invested in the council. G.S. 153A-101 is even more specific, stating that the board of commissioners shall exercise the responsibility of developing and directing the fiscal policy of county government.

2. See G.S. 159-34(a).

3. Dean Michael Mead, *An Analyst's Guide to Government Financial Statements* (Norwalk, CT: Governmental Accounting Standards Board, 2001).

4. Governmental Accounting Standards Board Statement No. 34, *Basic Financial Statements—Management's Discussion and Analysis—For State and Local Governments* (Norwalk, CT: Governmental Accounting Standards Board, 1999). Although GASB Statement No. 34 applies to both state and local governments, this article focuses solely on local governments.

5. Xiaohu Wang, Lynda Dennis, and Yuan Sen (Jeff) Tu, "Measuring Financial Condition: A Study of U.S. States," *Public Budgeting & Finance* 27, no. 2: 1-21 (2007).

6. Ibid.

7. Robert Berne and Richard Schramm, *The Financial Analysis of Governments* (Englewood Cliffs, NJ: Prentice Hall, 1986).

8. Robert Berne, "Measuring and Reporting Financial Condition," in *Handbook*

of Public Administration, ed. James L. Perry (2d ed. San Francisco: Jossey-Bass, 1996), 66-96.

9. International City/County Management Association, *Evaluating Financial Condition* (4th ed. Washington, DC: International City/County Management Association, 2003).

10. A financial factor that shows financial condition is fund balance as a percentage of expenditures. An economic factor that affects financial condition is the annual growth rate of the assessed value of the community's property.

11. For information on the original test, see Ken W. Brown, "The 10-Point Test of Financial Condition: Toward an Easy-to-Use Assessment Tool for Smaller Cities," *Government Finance Review* 9, no. 6: 21-26 (1993). For information on the updated test, see Dean Michael Mead, "A Manageable System of Economic Condition Analysis for Governments," in *Public Financial Management*, ed. Howard Frank (Boca Raton, FL: Taylor & Francis, 2006), 383-419.

12. International City/County Management Association, *Evaluating Financial Condition*.

13. The quick ratio represents a more conversational approach to evaluating an organization's ability to meet its short-term obligations, preventing current assets like inventory from increasing a local government's liquidity. For more information on quick and current ratios, see Earl R. Wilson, Susan C. Kattelus, and Jacqueline L. Reck, *Accounting for Governmental and Nonprofit Entities* (14th ed. Boston: McGraw-Hill Irwin, 2007).

14. Robert J. Freeman, Craig D. Shoulders, and Gregory S. Allison, *Governmental and Nonprofit Accounting* (9th ed. Upper Saddle River, NJ: Prentice Hall, 2009).

15. Gregory S. Allison, "How to Read Governmental Financial Statements, Part 1," *Popular Government*, Spring 2000, pp. 23-34; "How to Read Governmental Financial Statements, Part 2," *Popular Government*, Fall 2001, pp. 24-31.

16. Stephen J. Gauthier, *Governmental Accounting, Auditing, and Financial Reporting* (Chicago: Government Finance Officers Association, 2001).

17. See, for example, Wilson, Kattelus, and Reck, *Accounting for Governmental and Nonprofit Entities*.

18. If a local government chooses to include an internal service fund in its analysis, it would use the set of financial dimensions and indicators selected to evaluate the financial condition of governmental activities and enterprise funds, given that financial

statements for internal service funds measure *economic resources* using the accrual basis of accounting.

19. Wilson, Kattelus, and Reck, *Accounting for Governmental and Nonprofit Entities*.

20. Financial performance represents a relatively new financial dimension in local government. For more information, see Stephen J. Gauthier, "Interpreting Local Government Financial Statements," *Government Finance Review* 23, no. 3: 8-14 (2007).

21. Wang, Dennis, and Tu, "Measuring Financial Condition."

22. The authors, in consultation with the Local Government Commission, recommend this approach.

23. G.S. 159-8(a) defines "available fund balance" as the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts.

24. The Government Finance Officers Association standardizes available fund balance by dividing it by general-fund operating revenues. For more information, see *Appropriate Level of Unreserved Fund Balance in the General Fund*, which was adopted by the executive board of the Government Finance Officers Association on February 15, 2002. It can be found at www.gfoa.org. Click on GFOA Recommended Practices.

25. See G.S. 159-55.

26. G.S. 159-55(c).

27. Linda Hird Lipnick and Yaffa Rattner, *The Determinants of Credit Quality* (New York: Moody's Investors Service, 2002).

28. See, for example, David Edwards and John Clayton Thomas, "Developing a Municipal Performance-Measurement System: Reflections on the Atlanta Dashboard," *Public Administration Review* 65: 369-76 (2005).

29. The full dashboard is available as an appendix to the online version of this article. Go to www.sog.unc.edu/popgov/.

30. We used actual data from a local government to construct the dashboard for Capital City. However, the purpose is to present the approach rather than to draw specific conclusions from an actual local government.

31. Because Capital City, like many local governments in North Carolina, has only one enterprise fund, the dashboard does not contain business-type activities, given that the data would be approximately the same as for the enterprise (water and sewer) fund.

32. We used hypothetical benchmarks for Capital City, realizing that local governments may use a variety of sources for establishing their benchmarks.

Planning for Pedestrians and Bicyclists in North Carolina

Kelly R. Evenson, Sara B. Satinsky, Semra A. Aytur, and Daniel A. Rodríguez



Over the past decade, as obesity has continued to rise among both youth and adults, interest has grown in developing policies to promote community environments that support healthy lifestyles.¹ A broad range of local, regional, state, and federal policies under the rubrics of active living, smart growth, and sustainable development share the underlying assumption that they can help people make healthier choices. From a transportation-planning perspective, the benefits of pedestrian and bicycle plans resulting

from the building of infrastructure to support pedestrian and bicycle travel include improved health (for example, through increased levels of physical activity and reduced obesity), a better environment (for example, through lower carbon emissions), and a stronger economy (for example, through lower fuel bills). However, until more recently, the health benefits have not been specifically explored.

Physical inactivity, obesity, diabetes, and related conditions lead to an enormous cost. North Carolinians spend more than \$24 billion annually on health care costs related to them.² The disciplines of planning and health have begun to work together on finding ways to address physical inactivity and obesity. For example, the physical environment may lack sidewalks or trails allowing people to walk or bicycle to their destinations. Planning tools, including a pedestrian or bicycle plan, help ameliorate such a situation.

Issues like accessibility are important to many North Carolina adults. In 2007, 60 percent of them reported that they would increase their physical activity if their community had more accessible sidewalks or trails for walking or bicycling. Notably, the prevalence of this view varied by region, with

eastern North Carolina having the highest (63 percent), followed by the Piedmont (59 percent) and western North Carolina (53 percent).³

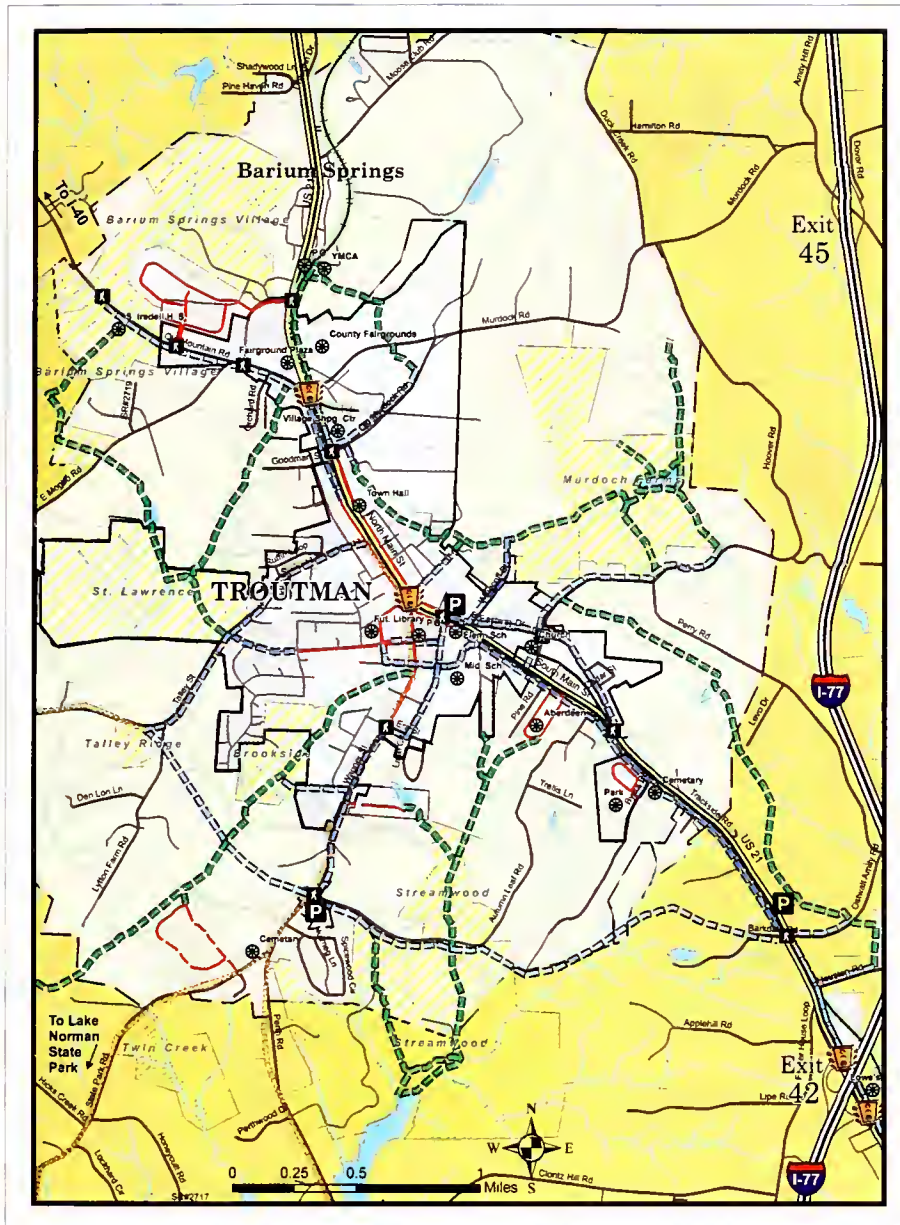
Despite the growing popularity of research and practice related to the built environment and health, little is known about local policies and planning processes to support active living. Pedestrian and bicycle plans are one way to support active living. This article provides an overview of the development and the prevalence of pedestrian and bicycle plans in North Carolina.

Pedestrian and Bicycle Planning

A pedestrian or bicycle plan is a public document usually developed through public participation, visioning, and an analysis of current conditions. The planning process brings together interested parties, such as staff of local and regional organizations, representatives of the state department of transportation, citizens, consultants, and local advocates. The resulting plan typically lays out a community's vision for future pedestrian and bicycling activity, identifies the actions required to realize that vision, ties actions to funding sources, and describes implementation and use.

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Figure 1. **A Simplified Comprehensive-System Map for Troutman, North Carolina. Showing Recommended Projects Based on the Pedestrian Planning Process**



Source: Map reprinted, with permission, from the Troutman (North Carolina) Pedestrian Plan (February 2008). Created and simplified by Blair Israel, Centralina Council of Governments, Charlotte, North Carolina. To see the original, go to www.unc.edu/~kevenson/_Figure1_TroutmanNC.pdf. The green dashes represent proposed trails; the blue dashes, proposed sidewalks; the red lines, existing sidewalks; the pedestrian symbols, crosswalks; and the "P" symbols, Park & Ride locations.

Pedestrian and bicycle plans are defined geographically, either for a municipality or for a broader area, such as a county, a region, or an entire state. Often pedestrian and bicycle plans are developed as separate documents, but sometimes a plan is targeted at both pedestrian and bicycle needs. In other cases, pedestrian and bicycle plans are embedded in

broader plans, such as those for comprehensive land use, transportation, greenways, open space, or parks and recreation.

Pedestrian and bicycle plans promote a community's vision and guide future priorities and investments. For example, some plans include visions of using an area's pedestrian friendliness to attract heritage tourism, whereas other plans

view pedestrian activity as a way of simultaneously achieving a more balanced transportation system and contributing to social and environmental sustainability. Other visions and goals of a plan might be as follows:

- Improving connectivity of sidewalks, trails, or bike lanes for pedestrians and bicyclists
- Improving safety and preventing injury for pedestrians and bicyclists
- Improving or maintaining existing pedestrian or bicycle facilities (for example, sidewalks and bike racks)
- Reducing traffic congestion
- Enhancing quality of life
- Improving public health
- Encouraging general recreation or physical activity
- Promoting economic development through tourism

Each plan is unique and tailored to the community, creating variation among plans in focus, scope, and strength. In addition to expressing a community's vision and goals, a plan should include an assessment of current conditions for pedestrians and bicyclists (including an assessment of past injuries and crashes), and it should document public participation contributing to its development. A plan also should include an assessment of the sociodemographic characteristics of the area and projections for the future (for example, an increasing population of elderly residents) that may highlight the needs of special populations with respect to walking and bicycling. Further, a plan should contain a review of existing policies, ordinances, and programs, including how they might affect pedestrians and bicyclists. Detailed maps of current conditions and proposed changes to infrastructure should be part of a plan as well, including maps of sidewalks, greenways, rails-to-trails, bike lanes, paved shoulders, and crosswalks (for an example, see Figure 1).

A plan should include recommendations related to its goals, such as changes in policies, investments in facilities, improved maintenance, or establishment of programs, with a ranking of their relative priority. (For an example of a



Above, existing conditions in 2008 looking east on East Street in Pittsboro; below, several possible improvements, including street trees, street furniture, landscaped medians, pedestrian-scale lighting, bicycle lanes, wider sidewalks, sidewalks on both sides of the road, closing of curb cuts (reduction of parking-lot access points), and crosswalks.



Source: Photos reprinted, with permission, from the Pittsboro Pedestrian Transportation Plan (2009), authored by Jason Reyes, AICP, and Matt Hayes, AICP, of Greenways, Inc. Photo rendering by Jason Reyes. Available at www.greenways.com/pittsboro_download.html.

picture of current conditions, see Figure 2a. For changes that could be made to incorporate more pedestrian- and bicycle-friendly elements, see Figure 2b.)

A plan also should include a timeline for implementation, cost estimates, a review of potential funding sources, and design guidelines for the construction of new facilities. Finally, it is important for

a plan to include an evaluation component, to assess whether goals are reached over a specific time period.

A pedestrian or bicycle plan covers a cross-section of interests, as illustrated by these examples of visions, goals, and plan components. It reflects the diversity of professionals and community members who develop it, including people from

local government, city planning, transportation planning, parks and recreation, engineering/public works, and public health.

Planning for Pedestrians and Bicyclists in North Carolina

Given the potential importance of pedestrian and bicycle plans as components

Table 1. **Most Recent Pedestrian Plans in North Carolina through 2008**

Locality	Year	Plan Level
Albemarle	2007	Municipality
Asheville	2004	Municipality
Badin	2008	Municipality
Black Mountain	2008	Municipality
Boiling Springs	2006	Municipality
Brevard	2006	Municipality
Bryson City	2007	Municipality
Burnsville	2006	Municipality
Cary	2007	Municipality
Conover	2008	Municipality
Durham	2006	Municipality
Graham	2006	Municipality
Hendersonville	2007	Municipality
Hertford	2007	Municipality
Holly Springs	2007	Municipality
Kannapolis	2007	Municipality
Kenansville	2007	Municipality
Mars Hill	2007	Municipality
Mooreville	2006	Municipality
Nashville	2008	Municipality
Norwood	2007	Municipality
Shelby	2007	Municipality
Sparta	2006	Municipality
Stallings	2008	Municipality
Troutman	2008	Municipality
Wake Forest	2006	Municipality
Washington	2006	Municipality
Wilson	2006	Municipality
Winston-Salem Urban Area	2007	MPO

Note: In Tables 1–3, the year of the plan may not match the adoption date. MPO = metropolitan planning organization. RPO = rural planning organization. As the authors identify new plans through 2008, they will update the tables at the following website: www.unc.edu/~keverson/_NCPedBikePlans.pdf. Only stand-alone plans are included. Plans with pedestrian or bicycle elements (e.g., comprehensive, transportation, park, livable-community, or main-street plans) are not included.

of a public policy process to improve sustainability and influence residents' health, the North Carolina Physical Activity Policy Research Center sought to examine more closely the characteristics of plans in the state.⁴ A first step

Table 2. **Most Recent Bicycle Plans in North Carolina through 2008**

Locality	Year	Plan Level
Asheville	2008	Municipality
Carolina Beach	1985	Municipality
Carrboro	1980	Municipality
Charlotte	1981	Municipality
Clayton	2007	Municipality
Durham	2006	Municipality
Durham–Chapel Hill–Carrboro MPO	1993	MPO
Elizabeth City	1985	Municipality
Fayetteville	1980	Municipality
Forsyth County	1988	County
Goldsboro	1975	Municipality
Greenville	1974	Municipality
Greenville Urban Area	2002	MPO
Lake Norman	2006	RPO
Matthews	2006	Municipality
Mecklenburg County	1977	County
Mooreville	2008	Municipality
Morehead City	2007	Municipality
New Bern	2006	Municipality
North Topsail Beach	2006	Municipality
Oak Island	2006	Municipality
Raleigh	1991	Municipality
Rocky Mount	2007	Municipality
Tarboro	2006	Municipality
Washington	2008	Municipality
Wilmington Area	1981	MPO
Wilson	2008	Municipality
Winston-Salem	1974	Municipality
Winston-Salem Urban Area	2005	MPO
Wrightsville Beach	2005	Municipality

was to identify all pedestrian and bicycle plans in North Carolina completed through fall 2008.⁵ Although some municipalities have plans under development, we did not include them in our study if they were not completed before this date. To collect all plans, we conducted Web searches, accessed the plan

Table 3. **Most Recent Combined Pedestrian/Bicycle Plans in North Carolina through 2008**

Locality	Year	Plan Level
Alamance County	1994	County
Boone	1995	Municipality
Caldwell County	2004	County
CAMPO (Capital Area MPO)	2003	MPO
Chapel Hill	2005	Municipality
CORE (Center of the Region Enterprise)	2005	Region
Fayetteville MPO	2004	MPO
Greensboro	2006	MPO
Hickory	2005	Municipality
Kernersville	2007	Municipality
Kings Mountain	2002	Municipality
Mid-Carolina RPO	2005	RPO
North Carolina	1996	State

library of the North Carolina Department of Transportation (NCDOT), Division of Bicycle and Pedestrian Transportation, and called to follow up when necessary. We also sent our plan list to a listserv of North Carolina planners to identify any missing plans. In instances in which a community had updated its plan, we counted and collected only the most recent plan. Even with this thorough search strategy, we may have inadvertently missed some plans, for not all documents were easily accessible.

In North Carolina, there are 100 counties, 17 metropolitan planning organizations (MPOs), 20 rural planning organizations (RPOs), and 544 municipalities.⁶ We identified 72 current plans in the state, 29 of them pedestrian, 30 of them bicycle, and 13 of them combined pedestrian and bicycle (see Tables 1–3). One plan was at the state level, 11 were at the regional level, 4 were at the county level, and 56 were at the municipality level. Of the 11 regional plans, 8 were developed for MPOs, 2 were developed for RPOs, and 1 was developed by an interjurisdictional organization in the Piedmont called the Center of the Region Enterprise.⁷

For the municipalities, bicycle and pedestrian plans existed in all three

Table 4. Census Characteristics of All North Carolina Municipalities, Overall and among Those with and without a Pedestrian, Bicycle, or Combined Pedestrian/Bicycle Plan

Characteristic	All Municipalities N = 544		Municipalities with Plan N = 51		Municipalities without Plan N = 493	
	%	n	%	n	%	n
Population						
1–5,000	80.1	436	29.4	15	85.4	421
5,001–30,000	16.0	87	43.1	22	13.2	65
30,001+	3.9	21	27.5	14	1.4	7
Speed of Population Growth*						
Decline (–100%–0%)	24.8	134	13.7	7	26.0	128
Slow growth (>0%–15%)	48.2	261	49.0	25	47.9	236
Moderate to fast growth (>15%)	27.0	146	37.3	19	25.8	127
Race						
0%–10% nonwhite	28.5	155	17.6	9	29.6	146
>10%–20% nonwhite	17.3	94	19.6	10	17.0	84
>20% nonwhite	54.2	295	62.7	32	53.3	263
Average Median Income						
<\$30,000	38.8	211	25.5	13	40.2	198
\$30,000	61.2	333	74.5	38	59.8	295

Source: U.S. Bureau of the Census, Census 2000 Summary File 3 for North Carolina Places, Table P53, Median Household Income in 1999 (dollars), <http://factfinder.census.gov/servlet/BasicFactsServlet>. Median income is based on 1999 reports. Percentages may not add to 100 because of rounding.

*This sample size is 541 because 2006 estimates were not available for three municipalities. Population growth is defined from 2000 to 2006.

regions of the state.⁸ Of the 544 municipalities in North Carolina, 28 have pedestrian plans, including 5 in the eastern region, 15 in the Piedmont, and 8 in the western region.⁹ In addition, 23 have bicycle plans, including 15 in the eastern region, 7 in the Piedmont, and 1 in the western region. Only 9 municipalities have both a pedestrian and a bicycle plan, 5 of them with combined plans and 4 with separate plans. The Piedmont has the highest number of

pedestrian plans, the eastern region the highest number of bicycle plans.

More municipalities with a population greater than 5,000 had plans, than did municipalities with a population of 5,000 or fewer (see Table 4). Pedestrian and bicycle plans also were more common among municipalities with recent population growth and in areas with more racial diversity (more than 20 percent nonwhite) and a higher median income.¹⁰

We reexamined our findings among municipalities with at least a population size of 3,000, to explore whether the cutoff point we chose for population size influenced our results. We obtained similar results on three dimensions: pedestrian and bicycle plans were more common among municipalities that had a larger population, had experienced recent population growth, and had more racial diversity. The differences by income were diminished.

Table 5. Summary of the North Carolina Bicycle and Pedestrian Planning Grant Initiative, 2004–8

Year	Pedestrian Planning Grants			Bicycle Planning Grants		
	No. of Grants Awarded	Range in Award Amount	Municipality Population Range	No. of Grants Awarded	Range in Award Amount	Municipality Population Range
2004	13	\$9,040–\$37,500	1,641–570,353	5	\$16,800–\$36,000	833–55,998
2005	13	\$12,000–\$24,500	1,181–107,693	5	\$20,000–\$75,000	7,821–614,330
2006	6	\$16,000–\$31,500	1,971–23,688	6	\$22,400–\$90,000	4,703–344,000
2007	13	\$16,000–\$39,000	2,802–91,207	3	\$28,000–\$45,500	8,100–26,084
2008	14	\$20,000–\$31,500	999–58,000	2	\$28,000–\$31,850	4,261–16,042

Source: North Carolina Department of Transportation, Division of Bicycle and Pedestrian Transportation, North Carolina Department of Transportation Bicycle and Pedestrian Planning Grant Initiative (2008), www.itre.ncsu.edu/PTG/BikePed/NCDOT/index.html.

Why the Concern? A Public Health Perspective

In North Carolina, concerns about obesity and physical inactivity of both youth and adults continue to escalate as surveillance data are released on these behaviors each year. A 2007 statewide survey of adults reporting on their children revealed that 17 percent of children in grade school (kindergarten through fifth grade) exceeded the 95th percentile on weight for height. The prevalence was higher among middle school students (18 percent) and lower among high school students (14 percent).¹

The high prevalence of obesity among youth can be partially attributed to lack of physical activity and high inactivity. A self-reported schoolwide survey in 2007 revealed that the proportions of middle and high school students who had been physically active for at least one hour on five or more days of the preceding week were 55 percent and 44 percent respectively. At the same time, 44 percent of middle school and 35 percent of high school students reported watching three or more hours of television per day on an average school day. In addition, 25 percent of middle school and 21 percent of high school students reported playing video or computer games or using the computer (not for school work) three or more hours on an average school day.²

A high prevalence of obesity and lack of physical activity also occurs among adults of North Carolina. The prevalence of obesity reached a high of 29 percent in 2007, an absolute increase of 16 percent since 1991 (when the prevalence was 13 percent).³ Obesity differs regionally, with the highest prevalence in eastern North Carolina (31 percent) and slightly lower prevalences in the Piedmont (28 percent) and western North Carolina (26 percent). Concurrently in 2007, 24 percent of adults reported no participation in any physical activities or exercises during the past month, with eastern North Carolina reporting the highest prevalence (27 percent), followed by the Piedmont (24 percent) and western North Carolina (23 percent).⁴

Notes

1. North Carolina State Center for Health Statistics. North Carolina Child Health Assessment and Monitoring Program, www.schs.state.nc.us/SCHS/champ/index.html.
2. North Carolina Department of Public Instruction and North Carolina Department of Health and Human Services, North Carolina Youth Risk Behavior Survey (YRBS), www.nchealthyschools.org/data/yrebs/.
3. Centers for Disease Control and Prevention, Behavioral Risk Factor Surveillance System, Prevalence Data, 2007, www.cdc.gov/brfss; North Carolina State Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS), Calendar Year 2007 Results, www.schs.state.nc.us/SCHS/brfss/2007/index.html.
4. Centers for Disease Control and Prevention, Behavioral Risk Factor Surveillance System, Prevalence Data, 2007; North Carolina State Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS), Calendar Year 2007 Results.

Across the state, most of the 72 plans were first generation, but at least 10 of them had been updated from a previous plan. The plans were developed either by in-house staff or by consultants or regional staff. Of the 72 plans, almost half (44 percent) were developed using consultants. Of the current plans, 18 bicycle and combined pedestrian/bicycle plans existed in North Carolina before 2004, with the earliest dating back to 1974. We found only one pedestrian plan that existed before 2004. This trend is, in part, due to the development of a grant initiative by NCDOT.

The Grant Initiative

For at least two reasons, local governments are well positioned to enhance physical activity and promote alternative transportation modes by developing pedestrian and bicycle plans. First, most walking or bicycling for transport or recreation tends to occur locally, near or originating from where people live.¹¹ Second, local governments oversee land-use planning and development, thereby influencing whether the environment supports or discourages walking or bicycling.

To encourage the development of comprehensive local pedestrian and bicycle plans, in 2003, NCDOT's Division of Bicycle and Pedestrian Transportation and its Transportation Planning Branch created a matching grant program.¹² Over the past five grant cycles (2004–8), the program has awarded eighty planning grants totaling more than \$1.9 million (see Table 5).¹³ The communities that have received funding range greatly in size and industry, from towns more reliant on tourism, such as North Topsail Beach and Sparta, to the capital city, Raleigh.

The NCDOT grant initiative spurred development of pedestrian and bicycle plans. Only municipalities could apply for grants; nonmunicipal entities (for example, counties, MPOs, RPOs, and universities) were not eligible. However, municipalities that had developed pedestrian or bicycle plans within the last five years were not eligible to apply. The municipalities that received a grant were required to provide a monetary match based on a sliding scale (determined by population size), and to assign an em-



ployee to coordinate the process. More details on the grant process and review can be found elsewhere.¹⁴

Of the 72 pedestrian and bicycle plans identified in North Carolina, 41 were municipalities that were eligible to receive an NCDOT grant. Of those municipalities, 90 percent received funding from the initiative.

The grant initiative made the creation of plans more feasible in many communities and appears to be reaching more diverse communities with respect to population, race, and median income. We explored associations among the 41 municipalities eligible for funding that had either a pedestrian or a bicycle plan. Approximately one-third (13) of the NCDOT-funded plans were in communities with a population of less than 5,000, compared with only 2 locally funded plans in communities with a similar population size. Population growth was not associated with funding source. Municipalities with more racial diversity, defined as more than 20 percent nonwhite, were more likely to have a pedestrian or bicycle plan if funded by the NCDOT program. Similarly, communities with a median income of less than \$30,000 were more likely to have a pedestrian or bicycle plan if funded by the NCDOT program.¹⁵

In summary, the North Carolina grant program has had a significant impact on the number of pedestrian and bicycle plans in the state. A surge in the development of pedestrian and bicycle plans started a few years ago, concurrent with the initiation of the grant program. Although the increase is promising, many communities currently do not have either a pedestrian or a bicycle plan. Despite the public support of pedestrian and bicycle facilities, of the 544 municipalities in North Carolina, we found that only 28 had a pedestrian plan, 23 a bicycle plan, and 5 a combined pedestrian and bicycle plan. Thus a positive opportunity still exists for many municipalities. Furthermore, additional financial support for plans

The state's grant initiative made the creation of pedestrian and bicycle plans more feasible for many localities and is reaching more diverse communities.

to be developed in smaller municipalities is important, because they are less likely to have such plans and may need to improve pedestrian and bicycle activity.

Further Questions about the North Carolina Plans

Having documented the number of plans in the state, we see our next step as examining the qualities of the plans that make them useful to the communities. Most planners can distinguish high-quality plans from low-quality ones, but the characteristics shared by plans are rarely enunciated. These attributes are important to identify and understand, for high-quality plans are better positioned to influence outcomes, and clarifying their features could greatly benefit the development of future plans and updates to existing plans.

The North Carolina Physical Activity Policy Research Center will engage in doing just that, by exploring the content of the plans across North Carolina. We will assess the content of selected plans

by abstracting or collecting similar information in a systematic and reliable way. The aspects that we will abstract include plan components (for example, summary, glossary, and maps), public participation, plan goals and objectives, analysis of current conditions and trends, relationship to other existing plans, policy recommendations, and method of implementation.

Further research also can help us better understand the factors that motivate planners, policy makers, and residents to develop pedestrian and bicycle plans. To what extent are health issues identified as motivating factors, among a constellation of other values? Which stakeholders are involved in the planning process, which interests drive various decisions, and how are the needs of diverse groups represented? What factors or conditions motivate some groups to abandon planning and pursue their goals via alternative pathways—for example, informal decisions, agreements with private developers, or grassroots coalitions to promote activities such as community-based walking groups and incentives for employees who walk or bike to work? Finally, the extent to which pedestrian and bicycle plans are embedded in other plans, like a



comprehensive plan, could be documented, and integration of the plans might be further explored. Also, it would be helpful to understand how pedestrian and bicycle issues are addressed in localities without pedestrian or bicycle plans.

Conclusion

In North Carolina, planning for bicycling dates back to the 1970s, with pedestrian planning not following until 2004 (with one exception). We identified 72 plans currently available in the state, 82 percent of which dealt with pedestrian and bicycle planning separately, the other 18 percent jointly. The NCDOT grant program has been a catalyst in the development of pedestrian and bicycle plans statewide, addressing communities' interests in promoting walking and bicycling.

Establishing a pedestrian and bicycle plan is one approach that local governments can use to help set goals and benchmarks for a more pedestrian- and bicycle-friendly community. Despite the progress made, a majority of communities in North Carolina have neither a pedestrian nor a bicycle plan and may not have an element of either type of plan in other plans. The lack of a plan represents a favorable opportunity for many communities. Communities with plans may have, over time, more infrastructure for pedestrian and bicycle activity in the community, which may contribute to more physical activity and less obesity. This is just one of many benefits that might accrue; other benefits might include additional health improvements, as well as environmental and economic improvements. It will be important to document and understand the outcomes of this pedestrian and bicycle planning process in North Carolina over the years ahead, as more plans are funded locally or take advantage of available funding from the NCDOT grant initiative.

Notes

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1. Cynthia L. Ogden et al., "Prevalence of Overweight and Obesity in the United States, 1999–2004," *JAMA* 295: 1549–55 (2006).

2. North Carolina Department of Health and Human Services, Physical Activity and Nutrition Branch, Eat Smart, Move More NC, *The Obesity Epidemic in North Carolina*, app. I: Fast Facts, www.eatsmartmovemore.nc.com/ObesityInNC/ObesityInNC.html.

3. North Carolina State Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS), Calendar Year 2007 Results, www.schs.state.nc.us/SCHS/brfss/2007/index.html.

4. The Physical Activity Policy Research Network, established in 2004, conducts transdisciplinary policy research by examining physical activity policies, identifying their determinants, describing the process of implementing them, and researching the outcomes. For more information, visit the network's website, <http://prc.slu.edu/paprn.htm>. North Carolina is home to one of the participating centers. For more information about the North Carolina center, visit its website, www.hpdp.unc.edu/projects/ncpaprc.

5. Most of the plans that we identified probably had been adopted, but the plan typically did not include documentation of this.

6. Metropolitan planning organizations (MPOs) are transportation planning organizations for urbanized areas with populations greater than 50,000 that work in cooperation with state and federal governments to have continuing, cooperative, and comprehensive transportation planning processes. At present, North Carolina includes seventeen urban areas with corresponding MPOs: Asheville, Burlington, Cabarrus-Rowan, Charlotte, Durham–Chapel Hill–Carrboro, Fayetteville, Gastonia, Goldsboro, Greensboro, Greenville, Hickory-Newton-Conover, High Point, Jacksonville, Raleigh, Rocky Mount, Wilmington, and Winston-Salem. North Carolina Department of Transportation, Transportation Planning Branch, Metropolitan Planning Organizations, www.ncdot.org/doh/preconstruct/tpb/mpo/mpo.html. Rural planning organizations (RPOs) are transportation planning organizations that provide a forum for public

participation in rural transportation issues and policies and work in coordination with the state government and the MPO. Initiated in 2000, RPOs in the state now number twenty: Albemarle, Cape Fear, Down East, Eastern Carolina, High Country, Isothermal, Kerr-Tar, Lake Norman, Land of Sky, Lumber River, Mid-Carolina, Mid-East, Northwest Piedmont, Peanut Belt, Piedmont Triad, Rocky River, Southwestern, Triangle Area, Unifour, and Upper Coastal Plain. North Carolina Department of Transportation, Transportation Planning Branch, Rural Planning Organizations, www.ncdot.org/doh/preconstruct/tpb/mpo/rpo.html.

7. The Center of the Region Enterprise (CORE) includes six local governments (Durham County, Durham City, Wake County, Raleigh, Cary, and Morrisville), several regional organizations, and multiple private-sector parties. For more information, visit CORE's website, www.tjcog.dst.nc.us/regplan/core.shtml.

8. Regions in North Carolina are based on landforms: coastal (eastern), Piedmont, and mountain (western). More information is available at the North Carolina Department of Transportation: Region: Coastal, www.ncdot.org/findInfo/coastal.html; Region: Piedmont, www.ncdot.org/findInfo/piedmont.html; Region: Mountain, www.ncdot.org/findInfo/mountain.html.

9. North Carolina League of Municipalities, About Cities and Towns, www.nclm.org/about%20cities%20and%20towns/about.htm.

10. U.S. Bureau of the Census, Census 2000 Summary File 3 for North Carolina Places, Table P53, Median Household Income in 1999 (dollars), <http://factfinder.census.gov/servlet/BasicFactsServlet>.

11. Ester Cerin et al., "Destinations That Matter: Associations with Walking for Transport," *Health Place* 13: 713–24 (2007); Billie Giles-Corti et al., "Increasing Walking: How Important Is Distance to, Attractiveness, and Size of Public Open Space?" *American Journal of Preventive Medicine* 28(2S2): 169–76 (2005).

12. North Carolina Department of Transportation, Division of Bicycle and Pedestrian Transportation, Bicycle and Pedestrian Planning Grant Initiative, www.itre.ncsu.edu/PTG/BikePed/NCDOT/index.html.

13. North Carolina State Center for Health Statistics, Behavioral Risk Factor Surveillance System (BRFSS), Calendar Year 2006 Results, www.schs.state.nc.us/SCHS/brfss/2006/index.html.

14. NCDOT, Bicycle and Pedestrian Planning Grant Initiative, www.itre.ncsu.edu/PTG/BikePed/NCDOT/index.html.

15. U.S. Bureau of the Census, Census 2000 Summary File 3, <http://factfinder.census.gov/servlet/BasicFactsServlet>.

Constitutional Limits on Officers' Authority to Search Vehicles

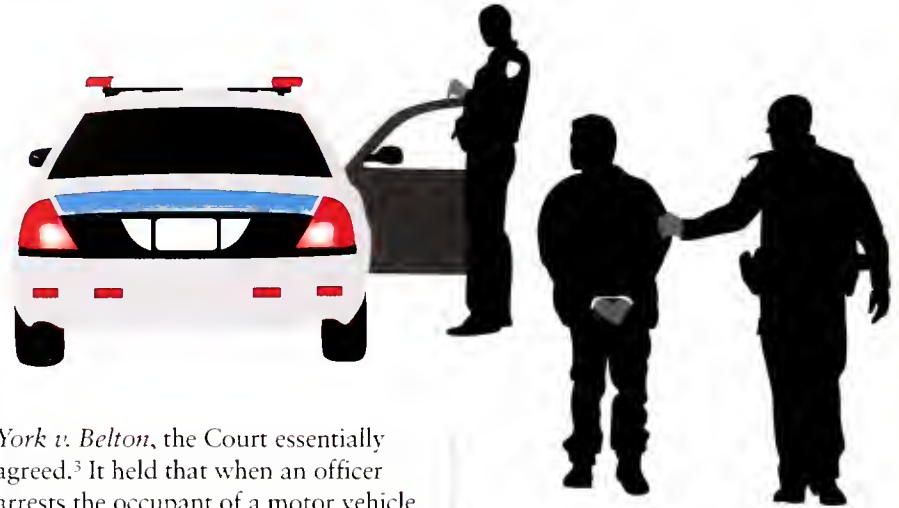
Jeffrey B. Welty

One of the most controversial U.S. Supreme Court decisions of the year so far is *Arizona v. Gant*, which significantly curtailed the right of police officers to search a suspect's automobile without a search warrant, as part of a suspect's arrest.¹ The case reversed a long-standing rule regarding these so-called searches incident to arrest and, in the process, raised questions about similar searches, such as the search of a suspect's briefcase or backpack upon the suspect's arrest.

This article first explains the law regarding vehicle searches incident to arrest before the *Gant* decision. Next, it explains the ramifications of the Supreme Court's new and more restrictive search rule. Finally, it identifies some practical concerns raised by the new rule.

Gant is the latest in a long series of Supreme Court decisions regarding searches incident to arrest. The first was the landmark case *Chimel v. California*, in which the Court held that when an officer lawfully arrests a suspect, the officer may search the suspect without a search warrant, as part of the arrest.² Such a search is justified partly to protect the officer from any weapon that the suspect might be carrying and partly to prevent the suspect from destroying evidence.

But what if the suspect was arrested while in a car? Officers argued that they needed to be able to search the passenger compartment of the vehicle as well, to ensure that the suspect could not reach into the glove compartment for a gun or grab critical evidence from beneath the seat and destroy it. In *New*



York v. Belton, the Court essentially agreed.³ It held that when an officer arrests the occupant of a motor vehicle, the officer may search the entire passenger compartment of the vehicle, including any containers in it, such as purses, briefcases, boxes, and the glove compartment. In a 2004 case, *Thornton v. United States*, the Court extended the *Belton* rule to allow the search of the entire passenger compartment of a vehicle upon the arrest of a person who exited the vehicle shortly before being arrested, on the theory that the arrestee could reach back into the vehicle for a weapon or to destroy evidence.⁴

These vehicle search decisions were popular with officers because they provided clear, easy-to-apply rules and gave the officers substantial authority to search vehicles. For example, when an officer arrested a suspect for driving while impaired, the officer could search the suspect's car incident to that arrest. If the officer found drugs, the officer could bring drug charges in addition to the charge of driving while impaired.

On the other hand, many legal commentators argued that the *Belton* line of cases gave the police too much power to conduct warrantless searches. They contended that after a suspect had been arrested and removed from the vehicle, the risk of the suspect's retrieving a weapon from the vehicle or destroying evidence in the vehicle was remote.⁵

In *Gant* the pendulum swung away from the officers' preferences and to-

ward the commentators' arguments. A 5–4 majority emphasized the two reasons given in *Chimel* for allowing searches incident to arrest: promoting the safety of officers and preventing the destruction of evidence. The majority concluded that vehicle searches incident to arrest should be permitted only when they furthered those reasons.

Accordingly, the majority held, an officer may search the passenger compartment of a vehicle incident to a recent occupant's arrest only when one of two conditions obtain. First, a search is permitted if the arrestee is "unsecured and within reaching distance of the passenger compartment at the time of the search." In practice, this is very rare. An arrestee is typically placed in the back seat of a police car and often is handcuffed. Thus, vehicles normally may be searched incident to arrest only if they meet the second test of *Gant*, which permits a search when it is "reasonable to believe" that evidence of the crime of arrest may be found in the vehicle.⁶

The *Gant* case itself illustrates how these new rules work. The case began when the police received reports of drug activity at a particular residence. They went to investigate, knocked on the door, and Rodney Gant answered. He identified himself and indicated that the owner of the premises was not there,

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but would be back later. The police left, ran Gant's record, and found an outstanding warrant for driving with a suspended license. They went back to the residence

that night and staked it out. They saw Gant drive up, park, and exit his vehicle. The officers called out to him, and Gant approached the officers, meeting them about 10 feet from his car. They arrested him on the basis of the outstanding warrant, handcuffed him, and put him in the back of a police car. Then they searched his car incident to the arrest, finding a bag of cocaine.

Gant was charged with drug offenses, but he argued that the cocaine had been seized illegally. He contended that, because he was in the officers' custody, there was no real risk that he would access a weapon in his car or destroy any evidence in it. Under the principles discussed earlier, the Supreme Court agreed. Because Gant was neither "unsecured" nor within "reaching distance" of his vehicle at the time of the search, and because the majority thought it unlikely that evidence of the crime of arrest (driving with a suspended license) would be found in the vehicle, the majority held that the search was invalid.

As a theoretical matter, the reasoning of the Court is unimpeachable. The Court often has said that a warrantless search by law enforcement officers should be the exception, not the rule. In other words, warrantless searches should be permitted only when they are clearly justified by the circumstances. *Gant* is probably more consistent with that principle than *Belton* was, because *Belton* allowed vehicle searches incident to ar-

The Court's reasoning in *Gant* is unimpeachable, but the decision poses some practical problems.

rest as a matter of course, even when there was no realistic danger to officers or risk that evidence would be destroyed.

Regardless of its legal reasoning, however, the decision brings some practical problems with it. First, as Justice Antonin Scalia pointed out in his reluctant concurrence, the decision creates a perverse incentive for officers to leave arrestees unsecured, in order to justify searches of the arrestees' vehicles. To the extent that *Gant* results in officers risking their own safety to further their investigations, it is counterproductive.

Second, because *Gant* applies to pending cases, there will be a frustrating result in some instances: vehicle searches conducted by officers in reliance on the law as it stood before *Gant* will be invalidated, despite having been conducted in good faith and having been proper under the law in effect at the time of the search. Evidence will be suppressed, and cases will be lost despite the officers' faultless behavior. This effect will be mitigated in some cases by the language in *Gant* allowing a warrantless vehicle search when there is reason to believe that the vehicle will contain evidence of the crime of arrest, and in other cases by other legal doctrines. But there will be real costs during the transition period from searches allowed under the *Belton* decision to the tighter rules set by *Gant*.

Finally, whether the rationale of *Gant* will be extended into other areas is worth considering. For example, since *Belton*, most courts have held that personal items like purses, backpacks, and briefcases may be searched incident to an arrest if they are within an arrestee's

reach at the time of arrest. Further, many courts have allowed the search of cellular telephones and other electronic devices under a similar justification. Does the rationale of *Gant* apply to these searches too? In other words, after *Gant*, may an officer search an arrestee's briefcase or cellular telephone incident to an arrest, if the arrestee has been secured and separated from the item? The answer may not be clear, but *Gant* signals that it is time to raise the question.

(For more details about the *Gant* case, visit the website identified in the sidebar on this page.)

Notes

1. *Arizona v. Gant*, 556 U.S. ___, 129 S. Ct. 1710 (2009).
2. *Chimel v. California*, 395 U.S. 752 (1969).
3. *New York v. Belton*, 453 U.S. 454 (1981).
4. *Thornton v. United States*, 541 U.S. 615 (2004).
5. See, e.g., Wayne R. LaFare, *Search and Seizure*, vol. 3 (4th ed. Eagan, MN: West, 2004), 527.
6. *Gant*, 556 U.S. at ___, 129 S. Ct. at 1719.

North Carolina Criminal Law Blog

To learn about developments in criminal law, visit the North Carolina Criminal Law blog at <http://sogweb.sog.unc.edu/blogs/ncclaw/>. The blog is updated every weekday with criminal law news, discussions of recent cases, and answers to frequently asked questions.

Public Opinion on Land Use Policies

Christopher A. Cooper and H. Gibbs Knotts

Land use policies always have been an important part of local government administration.¹ In 1974, U.S. Supreme Court Justice Thurgood Marshall Jr. noted that zoning “may indeed be the most essential function performed by local government.”² Although public administrators have long believed that land use policies are important, recent high-profile court decisions, such as *Kelo v. City of New London*, have placed land use in the public spotlight.³ Public support for land use policies has become even more relevant in an age of collaborative planning and ballot measures addressing land use.⁴

Although debates rage across the country, western North Carolina has experienced particularly hard-fought battles over land use. This region of twenty-three counties still contains large parcels of undeveloped and underdeveloped land, leading to strong feelings both supporting and opposing land use policies. Few counties in the region have countywide zoning, and questions over property rights, zoning, and land use planning often dominate local politics.⁵ Consequently, public administrators in the region frequently struggle with how to shape policy debates to gain support for land-use planning and zoning initiatives.

Although land use planning and zoning are generally considered unpopular in the area, recent developments

suggest that the tide may be turning. In February 2007, the Jackson County commissioners passed a subdivision moratorium before embarking on a comprehensive countywide plan for land use.⁶ Later that year, the commissioners weathered stinging editorials and protests by real estate developers to pass the county’s first comprehensive land-use plan. As a tribute to this accomplishment, the commissioners were recognized with the governor’s Municipal Conservationist of the Year award in 2008.

Perhaps sensing the importance of public engagement in shaping land use policies, the Community Foundation of Western North Carolina and the Southwestern Commission, the council of government serving Region A (the state’s seven westernmost counties), sponsored a series of workshops in the region. The process began with interviews and small-group discussions and resulted in a “toolbox” of planning guidelines for western North Carolina.⁷

Given the increased attention to land use policies, evaluating how the public feels about them is important. This article focuses on public opinion in western North Carolina in two key areas: land use planning and zoning. It begins with a brief history of land use policies and a discussion of the nature of the opposition to land use planning and zoning. Next, it describes a survey of western North Carolina residents that we conducted in 2007, and discusses and analyzes the results. It concludes with practical suggestions for navigating controversies about land use policy.

Some western North Carolina residents view zoning and land use planning as an assault on property rights.

Land Use Policies

In the United States, land use policies date to the late 1800s, when citizens agreed to divide land into zones, specifying the

type of development that might occur in each.⁸ The number of cities and states that adopted such policies increased in the early part of the twentieth century, but the decisions were not without controversy. Although some property owners challenged the constitutionality of land use policies, the legality of zoning was affirmed in the 1926 Supreme Court case *Village of Euclid v. Amber Realty Company*.⁹

Support for zoning in North Carolina has mirrored developments nationally. The General Assembly gave cities zoning power in 1923, and land use plans accelerated considerably after World War II. It gave counties zoning power in 1959, but many waited until the 1980s and the 1990s to pass regulations.¹⁰ Recent planning and development debates in North Carolina have centered on smart-growth and growth-management policies.¹¹

The planning field has many approaches to addressing community needs and growth management. Local governments have opted for transportation plans, neighborhood development plans, and a variety of other emerging smart-growth initiatives to handle growth and development.

Despite the rise of a variety of growth-management initiatives, the two principal terms in discussing land use policies are “land use planning” and “zoning.” A land use plan “is based on projections

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of population growth and land development patterns that have implications for public facilities, transportation, and economic development as well as housing, cultural and natural resource protections, and community appearance.”¹² Zoning is a key component of any land use plan. Richard Ducker, an authority on land use, notes, “Of all the programs, tools, and techniques associated with land use planning, zoning is perhaps the best known.”¹³ William Fischel, an expert on the economics of zoning, calls zoning “a collective property right that is used by the municipality to maximize the net worth of those in control of the political apparatus.”¹⁴

Land use planning and zoning can take on negative connotations in the public mind. In Houston, Texas, the “only major U.S. city without zoning,” residents have consistently resisted efforts to introduce land use planning.¹⁵ A 1993 referendum on the issue failed 47%–53% with help from a coalition of low-income whites, low-income blacks, Hispanics, and affluent voters.¹⁶ One reporter noted, “[A] large number of voters with moderate incomes and diverse ethnic backgrounds had the quaint notion that property owners are more capable of controlling their real estate destinies than a panel of bureaucrats with the proper political connections.”¹⁷ The same sentiment can be found in areas of western North Carolina, where zoning and land use planning are seen as an assault on property rights, pitting longtime residents and newcomers against one another.¹⁸

In an earlier survey on the subject, we found that support for zoning initiatives is highest among liberals, newcomers to the region, more highly

Distribution of Western North Carolina Residents' Opinions on Zoning and Land-Use Planning Policies, 2007

	Zoning	Land Use Planning
Strongly against	18%	11%
Somewhat against	21%	22%
Somewhat in favor	35%	33%
Strongly in favor	26%	33%
Number of respondents	470	429

Note: Numbers may not add up to 100% because of rounding.

educated people, and older residents. We also demonstrated an important link between zoning and trust in local government, arguing that “trust affects policy choice and determines how much power citizens grant to local administrators.”¹⁹

Given the importance of public opinion on land use policies, we address three new questions in this article. First, what is the current level of support for land use planning and zoning in western North Carolina? Our earlier work used data collected in 2003, so it made sense to conduct a follow-up study to see how opinion had changed. Second, do people express higher levels of support for land use planning or for zoning? Third, how do the patterns of support for these two policies compare? The answers to these three questions should help both public officials and scholars understand the nature of public support on this vitally important yet contentious issue.

The Approach

We surveyed residents of the twenty-three westernmost counties in North Carolina. Many residents of these counties wish to preserve property rights, whereas many others see the need for stricter zoning laws. This region is an ideal one to study because it is predominantly rural. Most studies of land use policies have relied on samples of major urban areas.²⁰

We surveyed more than one thousand residents whom we identified through random-digit dialing. The sampling frame included both land lines and cell phones. The survey asked residents about a variety of political and economic topics in western North Carolina and took about twelve minutes to complete. Of those whom we reached, 47 percent answered our questions. After taking into account the people who were unreachable, we achieved a 24 percent response rate.²¹ Complete results from this survey can be found on the website of the Institute for the Economy and the Future at Western Carolina University.²²

Using computer-assisted telephone interviewing, live callers asked roughly half of the residents about their opinions on land use planning, and the other half about their opinions on zoning. The response options in both samples were Strongly against, Somewhat against, Somewhat in Favor, and Strongly in Favor. There was not a No Opinion choice. Because no respondent was asked both questions, the respondents were not able to compare the two and base their answer to one question on their answer to the other question. This approach also prevented respondents from drawing distinctions between the two concepts even though they might have felt similarly about both.

Support for Land Use Policies

Twenty-six percent of the respondents were strongly in favor of zoning (see Table 1). In our 2003 survey, fewer than 20 percent of respondents were strongly in favor of zoning. This comparison suggests that public support for zoning may be increasing in western North Carolina. The two sets of results are not entirely comparable, however, because our 2007 survey did not include a No Opinion option, whereas our 2003 survey did.

Regarding our question about which policy registered higher levels of support, respondents to the zoning question were more strongly against zoning policy than respondents to the

Table 2. Variables Predicting Western North Carolina Residents' Opinions on Zoning and Land-Use Planning Policies, 2007

	Zoning	Land Use Planning
Age	+	+
Proportion of life in western NC	-	-
Asheville resident	N.S.	N.S.
Education	+	+
Political conservatism	-	N.S.
Women	N.S.	N.S.
Number of respondents	416	392

Note: The plus sign (+) indicates a positive relationship with zoning or land use planning at the significance level of $< .05$, meaning that as this attribute rises, so do opinions on land use planning or zoning. The minus sign (-) indicates a negative relationship with zoning or land use planning at $p < .05$, meaning that as this attribute rises, opinions on zoning or land use planning decrease. N.S. indicates no statistically significant relationship.

land-use planning question were against land-use policy (18 percent compared with 11 percent). As mentioned earlier, 26 percent of respondents to the zoning question were strongly in favor of the policy, as opposed to 33 percent of the land-use planning group being strongly in favor of that policy. In other words, residents of western North Carolina seem to approve of land-use planning more than they approve of zoning. This is not surprising, given that zoning has become highly politicized and that planning often is viewed as a guide, not a mandatory regulation of private actions. Land use planning is a concept that has received more support from proponents of property rights.

To determine patterns of support for land use planning and zoning, we ran a multivariate statistical model to test the influence of six variables:

- Age
- Proportion of life lived in western North Carolina
- Resident of Asheville (the largest city in the sample) or not



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- Education
- Political conservatism
- Sex

Many of these variables were found to be significant predictors of support for zoning in our previous survey.²³

The patterns of support are similar across the two groups (see Table 2). Older people, people who have lived in western North Carolina a smaller proportion of their lives, and more highly educated people are more likely to support both zoning and land use planning policies. Education's liberalizing effect on opinions is well established, but it is surprising that education affects opinions on these issues, even while controlling for ideology. Similarly, it is surprising that older people have significantly different opinions about land use planning and zoning than their younger counterparts. The finding regarding people who have lived in western North Carolina a smaller proportion of their lives is less surprising, for newcomers to the region are commonly assumed to feel different about growth and development than those who grew up in the region.

Another unexpected finding is that although liberals are more likely than their conservative counterparts to favor zoning, political ideology has no influ-

Table 3. Probability of Strong Support for Zoning and Land-Use Planning Policies among Western North Carolina Residents, 2007

	Strongly Supporting Zoning		Strongly Supporting Land Use Planning	
	Lowest Value	Highest Value	Lowest Value	Highest Value
Age	.11	.36	.20	.52
Proportion of life in western NC	.37	.15	.47	.23
Education	.05	.39	.23	.43
Conservative ideology	.39	.13	.44	.29

ence on opinions on land use planning. Zoning appears to be more politicized than land use planning.

The results suggest statistically significant differences for many of the variables, but what is the substantive significance? What difference does it really make if you are a newcomer or a life-long resident? A young person or an old person? An undereducated person or a well-educated person? To understand the substantive influence of these patterns better, we computed the probability of people at the highest and lowest value of each independent variable strongly supporting zoning and land use planning, controlling for all the other predictors (see Table 3).

The results suggest that the youngest person in the sample (eighteen years old) has a .11 probability of strongly

supporting zoning, compared with a .36 probability for the oldest person in the sample (ninety-six years old). For land use planning, the probabilities range from .20 to .52.

Proportion of life in western North Carolina has a strong influence on public opinion for both policies. Someone who has lived in the region less than a year has a .37 probability of strongly supporting zoning and a .47 probability of strongly supporting land use planning, compared with probabilities of .15 and .23 respectively for someone who has lived his or her entire life in the region. Clearly a divide exists between these groups.²⁴

The biggest differences between the lowest and highest values are in education and ideology. As we suspected, ideology is a much more powerful

influence on opinions on zoning than it is on land use planning, providing further support for our contention that zoning tends to be more politicized. Similarly, education has a much bigger effect on opinions on zoning than it has on opinions on land use planning.

Conclusion

In an age of increasing citizen involvement in land use decisions, public administrators should strive to understand public opinion. Our results contribute to this cause in three ways.

First, they demonstrate a relatively high degree of support for both land use planning and zoning. More than 60 percent of residents were strongly in favor or somewhat in favor of land use planning and zoning.

Second, they indicate that the public is generally more supportive of land use planning than it is of zoning. Public administrators and elected officials who are considering both land-use planning and zoning alternatives would be well advised to stress land use planning, for it is more likely to draw support than zoning is.

Third, they suggest that certain demographic groups are much more likely to support these policies than others. Specifically, older people and people who have lived in western North Carolina a smaller proportion of their lives are more likely to support both zoning and land-use planning policies. Liberals and more educated people are more likely to support zoning and land use planning than their conservative and less educated counterparts, but the effects are less pronounced for land use planning.

These results should be of considerable interest to public administrators who seek to understand how the public is likely to respond to their land use initiatives. The results also will help elected officials who may wish to understand how supporting or opposing land use policies will affect their public standing. Public administrators might consider beginning community dialogues with a discussion of more generic terms, like land use planning, before addressing

specific policies, such as zoning. Beginning with more general, accepted terms may help unite administrators and the public rather than create divisions before dialogue has begun.

Notes

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2. Owens, *Introduction to Zoning*, 2.

3. *Kelo v. City of New London*, 545 U.S. 469 (2005); Charles Lane, "Justices Affirm Property Seizures," *Washington Post*, June 24, 2005, p. A1; Terry Pristin, "Voters Back Limits on Eminent Domain," *New York Times*, November 15, 2006, p. C6.

4. Elisabeth R. Gerber and Justin H. Phillips, "Development Ballot Measures, Interest Group Endorsements, and the Political Geography of Growth Preferences," *American Journal of Political Science* 47: 625–39 (2003); Carmen Sirianni, "Neighborhood Planning as Collaborative Democratic Design," *Journal of the American Planning Association* 73: 373–87 (2007).

5. Jennifer Garlesky, "Growth, Development Drive Jackson Commissioners Race," *Smoky Mountain News* (western NC), April 30, 2008, www.smokymountainnews.com/issues/04_08/04_30_08/fr_elec_jackson.html; Owens, *Introduction to Zoning*.

6. Becky Johnson, "Moratorium Opponents Suffer Setback," *Smoky Mountain News* (western NC), May 23, 2007, www.smokymountainnews.com/issues/05_07/05_23_07/update_moratorium.html.

7. For more about this initiative, see www.mountainlandscapesnc.org.

8. Owens, *Introduction to Zoning*.

9. *Village of Euclid, Ohio v. Amber Realty Company*, 272 U.S. 365 (1926); Windsor, "The Political Economy."

10. Owens, *Introduction to Zoning*.

11. Richard D. Ducker and David W. Owens, "A Smart Growth Toolbox for Local Governments," *Popular Government*, Fall 2000, pp. 29–41; Hannah Holm, "The Evolution of State Initiatives in North Carolina," *Popular Government*, Fall 2000, pp. 21–28.

12. Richard D. Ducker, "Community Planning, Land Use, and Development," in *Municipal Government in North Carolina*, ed. David M. Lawrence and Warren Jake Wicker (2d ed. Chapel Hill, NC: School of Government, University of North Carolina at Chapel Hill, 2006), 558.

13. Ducker, "Community Planning," 561.

14. William A. Fischel, "Zoning and Land Use Regulation," in *Encyclopedia of Law and Economics*, ed. Bondewijn Bouckaert and Gerrit De Geest (Ghent, Belgium: University of Ghent, 1999), 404, <http://encyclo.findlaw.com/>.

15. Bill Schadewald, "The Only Major U.S. City without Zoning," *Houston Business Journal*, April 7, 2006, <http://houston.bizjournals.com/houston/stories/2006/04/10/editorial1.html>.

16. Kevin M. Southwick, "The Dead Zone—Houston, Texas Residents Vote against Zoning Ordinance," *Reason*, February 1994, pp. 50–52.

17. Schadewald, "The Only Major U.S. City."

18. Christopher A. Cooper, H. Gibbs Knotts, and Kathleen Brennan, "The Importance of Trust in Government for Public Administration: The Case of Zoning," *Public Administration Review* 68: 459–68 (2007).

19. Cooper, Knotts, and Brennan, "The Importance of Trust," 459.

20. Gerber and Phillips, "Development Ballot Measures"; Sirianni, "Neighborhood Planning."

21. Calling took place from mid-afternoon through evening on weekdays and from late morning to early evening on weekends. The sample consisted of 5,295 phone numbers that were selected using random-digit dialing. Of these numbers, 817 were ineligible (i.e., nonworking, disconnected, business, or nonqualified), 2,193 were unreachable (i.e., we received no answer, got a busy signal, or reached an answering machine), and 1,206 were refusals. Information was collected from a total of 1,079 respondents. We are 95 percent confident that our results are accurate within 3 percent. Four hundred seventy respondents provided answers to the zoning question, 429 respondents provided answers to the land-use planning question, and 180 people whom we reached refused to answer.

22. Western Carolina University, Institute for the Economy and the Future, <http://ief.wcu.edu>.

23. In our previous study, we examined opinions on zoning, not land use planning. See Cooper, Knotts, and Brennan, "The Importance of Trust."

24. See Kathleen Brennan and Christopher A. Cooper, "Rural Mountain Natives, Immigrants, and the Cultural Divide," *Social Science Journal* 45: 279–95 (2008).

Legal Abandonment of Newborns: North Carolina's Safe Surrender Law

Janet Mason



Child abandonment” does not have one, clear legal definition. Sometimes it refers to a specific act, such as leaving a baby in a basket on a stranger’s doorstep.¹ It also may refer to a parent’s neglect of a child over an extended period.² In North Carolina, the definition cited most frequently is that of the North Carolina Supreme Court: parental conduct that “evinces a settled purpose and a wilful intent to

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forego all parental duties and obligations and to relinquish all parental claims to the child.”³

“Safe surrender laws,” which exist in some form in every state, represent efforts to prevent deaths and injuries that may occur when a parent physically abandons an infant. The proliferation of laws directed specifically at abandoned infants is explainable in part by the publicity that has surrounded the most shocking cases. Everyone has read the headline or seen the news story: “Infant Abandoned in Motel Room”; “Unidentified Mother Leaves Newborn at Hospital”; “Teen Gives Birth in Bathroom

during Prom”; “Baby Found in Dumpster.” Safe surrender laws aim to increase awareness of the problem of infant abandonment, meet the special and immediate needs of the infants, and provide safe alternatives for parents who may be tempted in a crisis or in desperation to abandon their newborns.

A North Carolina study of the deaths of infants up to four days of age, during the years 1985–2000, found thirty-four known instances of newborns killed or discarded by a parent. In cases in which the perpetrator’s identity was known, it was the infant’s mother. In cases in which the parent’s age was known,

it ranged from fourteen to thirty-five years, with a mean of just over nineteen. The most common causes of death were strangulation and drowning.⁴

In more recent years, most published data on child deaths, or on infants who are abandoned but survive, do not provide information about newborns that is similar in detail. Published reports from the North Carolina Central Registry, which collects information from county departments of social services about child abuse and neglect, do not distinguish between abandonment and other forms of neglect, and do not include data specifically for infants or newborns.⁵ In reports of child deaths from the North Carolina Center for Health Statistics, the infant category includes children up to one year of age.⁶ The North Carolina Office of the Chief Medical Examiner also characterizes children in the first year of life as infants, but in some instances, it makes finer distinctions. In 2007, for example, the office reported that four infant deaths “occurred when the newborns were abandoned or unwanted.”⁷ (For the preliminary results of a study on protective services for children age seven days or younger, see the sidebar on page 33).

This article explains North Carolina’s safe surrender law, its effect on the possible criminal consequences of abandoning a newborn, and its relationship to civil child-protection cases in juvenile court. In addition to answering frequently asked questions about the law, the article compares safe surrender with the procedure for relinquishing a child to an agency for adoption. It concludes with a summary of the state of knowledge on how the law is working.

Federal and State Laws on Abandoned Infants

More than two decades ago, Congress enacted the Abandoned Infants Assistance Act of 1988 to direct resources specifically toward infants who were abandoned in hospitals.⁸ Sometimes called “boarder babies,” these children often have been exposed perinatally to illicit drugs or HIV.⁹ The act, as amended, continues to fund the National Abandoned Infants Assistance Resource Center at the University of

California at Berkeley, as well as direct-service programs for this category of abandoned children.¹⁰

More recently, attention also has been focused on a smaller group of infants who are abandoned in ways that are much less safe than leaving a child in the hospital. Through the Promoting Safe and Stable Families Amendments of 2001, for example, Congress changed the definition of “family preservation services” in Title IV-B of the Social Security Act to clarify that states may use federal family-preservation funds to support safe haven programs for infants.¹¹

A “safe haven” is a place designated by state law where a parent may safely and legally abandon an infant or new-

born child. In 1999, Texas became the first state to adopt such a law.¹² With the passage of Nebraska’s safe haven law in 2008, all fifty states have some form of legislation providing parents a way to surrender children informally and safely without risking criminal liability.¹³ In addition to being called safe surrender or safe haven laws, these statutes have been called homicide prevention, legal abandonment, baby drop-off, and even Baby Moses laws. They vary substantially from state to state, reflecting each state’s attempt to strike a balance between protecting infants and holding parents accountable, usually in narrowly prescribed circumstances.

In 2001 the North Carolina General Assembly enacted its safe surrender law.¹⁴ Ordinarily a parent’s abandon-

Illustrations of the Different Legal Consequences of Leaving an Infant

The following scenarios illustrate the operation of North Carolina’s safe surrender law and contrast the legal con-



sequences for a parent who acts according to that law and those for a parent who makes other choices. M.C., the woman in the scenarios, could be of any childbearing age. She could be rich, poor, or in between. She could have minimal or extensive education, varied or very limited life experiences, and any level of intellectual capacity. She probably is unmarried, and she may have hidden her pregnancy from her family and friends. The three scenarios illustrate criminal abandonment, safe surrender, and relinquishment for adoption.

M.C. is shopping when she starts feeling sharp pains. She fears that the baby that she is expecting is about to arrive, although she had assumed it would not come for at least six weeks.

She has made no plans and has kept putting off talking with someone about her condition. She leaves the store, starts driving, and thinks about going to a hospital. But she is afraid of all sorts of things—how her family will react, whether the baby will be “normal” because she has not seen a doctor, and how people will judge her. When the pains are even sharper, M.C. pulls off the road near a park where she sees no other cars. She walks into the woods behind the visitors’ center and gives birth to the baby there. His physical appearance and his crying frighten M.C. even more.

In North Carolina, a parent who leaves an infant safely with an adult is exempt from criminal prosecution under the child abandonment statutes.

Criminal Abandonment

Scenario 1: Panicking, M.C. wraps the baby in her sweater, lays him in a soft, sheltered area under a tree, then drives herself home. If a hiker finds the baby the next morning, the lead news story that evening could be either “Infant Survives Night in Woods” or “Hiker Finds Dead Baby in Park.”

Obviously, M.C.’s decision may cause serious harm to or even the death of the baby. The emotional impact on M.C. herself is likely to be severe and long-lasting. In addition, M.C. could face criminal charges for abandoning her child. If the baby dies, depending on other facts, M.C. could be prosecuted for murder or manslaughter.¹⁵ If the baby survives, criminal laws on abandonment, child abuse, and neglect could be relevant.

Abandonment. One statute, Section 14-322.1 of the North Carolina General Statutes (hereinafter G.S.), specifically makes willful child abandonment a crime. However, the statute applies only when the abandonment lasts at least six months, and it focuses on a parent’s failure to provide adequate support for a child for that length of time.¹⁶ A related offense, identified in G.S. 14-322, although titled “Abandonment and failure to support spouse and children,” makes it a misdemeanor for a parent willfully to neglect or refuse to provide

adequate support for a child, without regard to whether the parent abandons the child.¹⁷ G.S. 14-322.1 would not apply to M.C. immediately, given its emphasis on a parent’s failure to provide support for a child over a period of time. (The offense could be charged six months later, if M.C. had assumed no responsibility for the child and her parental rights had not been terminated during that time.) Neither statute is truly

aimed at a parent’s physical abandonment of a child: neither would apply if M.C., anonymously or otherwise, provided financial support for the baby.

Child abuse. Most forms of criminal child abuse involve physical injury to a child. Misdemeanor child abuse occurs when a parent inflicts or allows someone else to inflict physical injury on a child, or creates or allows a substantial risk of nonaccidental physical injury to a child.¹⁸ Felony child abuse occurs if the parent intentionally inflicts serious physical or bodily injury on the child or if a parent’s willful act or grossly negligent omission in caring for a child “shows a reckless disregard for human life” and results in serious physical or bodily injury to the child.¹⁹

M.C. did not assault or intentionally inflict harm on the infant, but her conduct was willful, or at least grossly negligent, and it almost certainly showed a reckless disregard for the baby’s life. Therefore, if the baby suffers a serious injury as a result of being left in the woods, M.C. could be prosecuted for felony child abuse. If the baby is found unharmed, a child abuse charge would be unlikely.²⁰

Neglect. The only criminal statute that addresses child neglect makes it a misdemeanor for any person to contribute to a child’s being a neglected juvenile. In the North Carolina Juvenile Code, which provides for civil child-protection actions in juvenile court, the definition of “neglected juvenile” includes a child who has been abandoned as well as a child who does not receive proper care or supervision from a parent.²¹ Any person, including a parent, who knowingly or willfully causes a child to be in a place or a condition that

could result in a juvenile court’s finding the child to be a neglected juvenile is guilty of a Class 1 misdemeanor.²² This offense occurs regardless of whether a juvenile court action is filed.

A newborn left in the woods by a parent clearly is a “neglected juvenile” for purposes of the Juvenile Code. The offense of contributing to the neglect of a minor can occur regardless of whether the child suffers any physical injury and is the offense most likely to apply immediately to M.C.

Whether M.C. is criminally charged and, if she is, with what offense, would be determined by a magistrate or the district attorney in the county where M.C. abandoned the baby.

The likely civil consequences of M.C.’s abandonment of her baby are described later under “Social Services and Juvenile Court.”

Safe Surrender

Scenario 2: Panicking, M.C. wraps the baby in her sweater and lays him in a soft, sheltered area under a tree. She considers leaving him there, but remembers a brochure and a recent discussion about a law that says she can leave the baby with almost anyone, and not even identify herself, without getting into trouble. The brochure mentioned a number of possible places, and she tries to think of one where there will not be a lot of people and no one will know her or her family. Taking the baby with her, she drives into the next county and stops at a fire station just outside a small town. She takes the baby to the door, hands him to a fireman, and says, “Please take my baby. I can’t take care of him.” The fireman tries to talk to M.C. and offer her help, but she returns to the car and drives home. The fireman immediately calls the county department of social services.

In this scenario, both M.C. and the fireman have acted in conformity with North Carolina’s safe surrender law. The primary thrust of the law is to exempt from criminal prosecution a parent who leaves an infant safely with an adult instead of abandoning it in a way that could result in harm or death to the child. Because M.C. voluntarily delivered

the baby to the fireman and did not express an intent to return for him, she cannot be criminally prosecuted under the child abandonment statutes described earlier (G.S. 14-322 and G.S. 14-322.1) or for misdemeanor child abuse.²³

Ironically, no statute gives M.C. immunity from prosecution for contributing to the neglect of a minor, the offense that most squarely fits the facts in Scenario 1.²⁴ The policy underlying the safe surrender legislation suggests that M.C. should be immune from prosecution under that statute as well. But the legislature did not make such a provision, and the issue has not been addressed by the appellate courts.

M.C.'s surrender of the infant to the fireman does not give her immunity from prosecution for felony child abuse. So, if before surrendering the baby to the fireman, she had tried to smother him, causing a serious injury, she could be prosecuted for a felony. Or if she had not taken the baby to the fire station until the next day, and the baby had been

seriously injured before she returned to the park to get him, she could be prosecuted for felony child abuse. However, if convicted in either instance, her safe surrender of the baby could be considered as a mitigating factor at sentencing.²⁵

The likely civil consequences of M.C.'s safe surrender are described later under "Social Services and Juvenile Court."

Elements of North Carolina's Safe Surrender Law

The immunity from criminal prosecution or the existence of a mitigating factor at sentencing described earlier is available only in limited circumstances. The scope of North Carolina's safe surrender law involves the answers to the following questions.²⁶

Who may surrender an infant?

Only a parent may surrender a child under the safe surrender law. When the surrender takes place, however, no proof of parental status is required.

At what age may a child be surrendered?

A safe surrender may occur only within the first seven days of the child's life.²⁷

A parent who surrenders a child does not have to identify himself or herself. That fact does not assure the parent of anonymity though.

Resources on Safe Surrender and Safe Haven Laws

Child Welfare Information Gateway (U.S. Department of Health and Human Services): www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.cfm

National Safe Haven Alliance: <http://nationalsafehavenalliance.org/>

National Safe Surrender Site: www.safesurrendersite.com/

North Carolina Department of Health and Human Services: www.safesurrender.net/

North Carolina Bar Association, Health Law Section: <http://health.ncbar.org/Legal+Resources/Infant+Abandonment+Packet/default.aspx>

"Officials: More Information Needed on Safe Haven Laws," news stories and video posted February 8, 2007, by WRAL.com at www.wral.com/news/local/story/1197636/

However, a parent is not required to provide proof of the infant's age at the time of surrender. The maximum age at which a child may be surrendered under other states' laws ranges from three days in more than a dozen states,

to one year in North Dakota.²⁸ The Nebraska statute initially did not specify any age limit and was used by some parents to surrender children who were in their teens. The law was amended before it had been in place a year, to allow the surrender only of children under the age of thirty days.²⁹

Where, or to whom, may a child be surrendered?

In North Carolina, a parent may surrender the infant to "any adult."³⁰ Most other states' laws require that the surrender be made at a specified safe haven or to a specified professional who works at such a place.³¹ Some states allow surrenders only at hospitals. Others allow a parent to surrender an infant also at a fire station, a police station, a social services agency, a health department, or similar places specified in the statute. New York, on the other hand, requires only that the child be left "with an appropriate person or in a suitable location."³²

Although it is permissible in North Carolina to surrender an infant to any adult, only four categories of people are

required to accept custody of an infant whom a parent wants to surrender:³³

- A health care provider who is on duty or is at a hospital, a local or district health department, or a nonprofit community health center
- A law enforcement officer who is on duty or is at a police station or a sheriff's department
- A social services worker who is on duty or is at a local department of social services
- A certified emergency-medical-services worker who is on duty or is at a fire or emergency-medical-services station

Is a parent who surrenders an infant required to provide or disclose any information?

No. A person who accepts custody of a surrendered infant—whether it is one of the professionals listed earlier or another adult—may ask about the identities of the infant's parents and any relevant medical history. The parent is not required to provide that or any other information, however, and the person accepting the infant must inform the parent that he or she is not required to provide information.³⁴

What are the duties of a person who accepts a surrendered infant?

The person accepting a surrendered infant from a parent must do the following:³⁵

- Do anything that is necessary to protect the infant's physical health and well-being

Research on Protective Services Involving Children Age Seven Days or Younger

Recent research looks at data on child protective services in North Carolina for 1993–2008 relating to child abuse, neglect, and dependency reports involving children who were seven days of age or younger at the time of the report.¹ For the year 2008, the research shows the following profile of cases in which safe surrender was a legal option:

- Of 72,921 reports to county departments of social services, 1,974 involved children seven days of age or younger.²
- Most of those, 1,859, were reports of neglect, and in 235 cases, the county departments of social services determined that the child was neglected. It found abuse in 2 of 19 cases reported; abuse and neglect, in 19 of 35 cases reported; and dependency, in 54 of 61 cases reported.
- In the 174 substantiated cases in which the mother was found to be responsible for the child's condition, the average age of the mother was twenty-eight. In the 17 substantiated cases in which the father was found to be responsible, the average age of the father was thirty.
- Five children were surrendered pursuant to the safe surrender law.

1. Terri Reichert, "Evaluation of the Utilization of the Infant Homicide Prevention Act (Safe Surrender) of 2001" (unpublished preliminary results of study, North Carolina State University, April 2009).

2. This is a count as of April 2009. Some counties were still entering data for 2008, so the number may increase.

- Contact the county department of social services or a local law enforcement agency immediately

An assessment by child protective services (part of the county department of social services) follows every safe surrender. If the person to whom the infant was surrendered knows the identity of the baby's parents or has other information about the child, he or she is required to disclose that information to the department.³⁶

Is there a legal risk involved for someone who accepts an infant from a parent who wants to surrender him or her?

The statute provides immunity from civil or criminal liability for an adult who accepts an infant from a parent who wants to surrender him or her, as long as the adult acts in good faith. The immunity does not apply to gross negligence, wanton conduct, or intentional wrongdoing.³⁷

Is a parent who surrenders an infant guaranteed anonymity?

The physical act of surrender may be done anonymously: the parent is not required to identify himself or herself or

disclose any information about himself or herself, his or her circumstances, or the infant. Interpreting that fact as an assurance of anonymity would be a mistake, however. As explained in the next section, "Social Services and Juvenile Court," a county department of social services is required to make a diligent effort to identify and locate the infant's parents.

If a mother surrenders an infant under the safe surrender law, does the child's father have any rights?

A mother's surrender of an infant has no immediate effect on the legal rights or responsibilities of the child's father. (The same is true of the mother's rights if the father surrenders the infant.) As described later, however, a juvenile court action will follow almost every safe surrender. If the father can be identified, located, and served with court documents, he can assert or defend his parental rights in the juvenile court proceeding. If he chooses not to do so, or if diligent attempts to identify or locate him are not successful and he can be notified only through a notice

published in a newspaper, the court may enter orders that affect or terminate his parental rights. This may occur even if the father is unable to assert his rights because he does not know of the child's existence.³⁸

Social Services and Juvenile Court

The answers to the last two questions just posed are contrary to the assumptions that many people make about safe surrender. It is not unusual for safe surrender laws to be described as allowing the parent to remain anonymous or as allowing a parent to surrender an infant without any legal repercussions. In North Carolina, though, as soon as the safe surrender occurs and the county department of social services is notified, that agency assumes physical custody of the child and proceeds as it would in any other case of child abuse, neglect, or dependency.³⁹ Thus, although the safe surrender statute exempts a surrendering parent from most criminal consequences that otherwise might result from abandoning a child, with respect to the civil protective action in juvenile court, the consequences do not differ from those that would follow an "unsafe" surrender or the abandonment of a child more than seven days of age.

The county department of social services is required, within twelve hours of assuming custody of the child (twenty-four hours if that period includes any part of a holiday or a weekend), to file a petition initiating a juvenile court action. The department also must obtain a court order authorizing it to retain custody of the child pending a full hearing.⁴⁰ The parents, or at least one of them, must be given notice of the court action, the hearing date, and their right to appointed counsel if they are indigent and want counsel.⁴¹ If a parent cannot be identified or is identified but cannot be located, notice to the parent may be given through publication of a newspaper notice, which can occur only after diligent efforts have been made to locate the parent and serve court papers on him or her personally.⁴²

In the juvenile court proceeding, if the court adjudicates the child to be

abused, neglected, or dependent and also finds that the child cannot be placed safely in the custody of a parent, the court may place the child in the custody of a relative, the county department of social services, or another suitable person or agency.⁴³ Sixty days after a parent's voluntary surrender of an infant, if the parent has not sought the return of the child, legal grounds exist for the court to terminate that parent's rights, allowing the child to be adopted without his or her consent.⁴⁴ Adoption cannot occur, however, without either the consent of the other parent or a court's termination of the other parent's rights. Should the surrendering parent change his or her mind and seek to have the child returned to him or her before rights have been terminated, the court in the juvenile proceeding would determine where the child should be placed and whether the county department of social services should provide services to reunify the child with the parent.⁴⁵

Planned, informed relinquishment of a child for adoption is almost always better than safe surrender.

Relinquishment for Adoption

Scenario 3: M.C. takes the baby to the door, hands him to a fireman, and says, "Please take my baby. I can't take care of him." The fireman tries to talk to M.C. and offer her help. Because M.C. does talk with the fireman, she ends up at a hospital where she and the baby receive medical attention, although M.C. refuses to identify herself. There a social worker talks to her about the baby and M.C.'s plans and options. The social worker describes the supports and the services that are available if M.C. keeps the baby. When M.C. says she plans to leave the baby at the hospital, the social worker tells her that would be a safe surrender and is one of her options. She also explains the alternative of relinquishment and the steps involved in formally relinquishing the baby to the county department of social services or another agency for adoption. The social worker stresses that she cannot give M.C. legal advice

and encourages M.C. to talk to an attorney before making a final decision either to surrender or to relinquish the child. On her own or after consulting others, on the same day or sometime later, M.C. decides to sign documents relinquishing the baby to the county department of social services for adoption.

M.C.'s relinquishment must be in writing and acknowledged under oath, and she must be given a copy.⁴⁶ The law specifies a number of provisions that a written relinquishment must include, a few of which are as follows:⁴⁷

- The date and the place of the relinquishment
- The parent's name, date of birth, and permanent address
- The baby's date of birth, sex, and name if known
- Statements that the relinquishing parent—
 - ♦ voluntarily consents to the permanent transfer of legal and physical custody of the child to the agency for the purpose of adoption
 - ♦ understands that he or she may revoke the relinquishment within seven days
 - ♦ waives notice of any adoption proceeding
 - ♦ has been advised that counseling services are available through the agency and
 - ♦ has been advised that he or she may employ independent legal counsel

In addition, the agency will obtain extensive medical and other information about M.C., the baby, and, to the extent possible, the baby's father, so that important nonidentifying information can be given to the adoptive parents.⁴⁸ M.C. may not relinquish the baby anonymously, but the social services and adoption records and information are confidential.⁴⁹

As with criminal abandonment or safe surrender, M.C.'s act of relinquishing the child for adoption does not af-

fect the legal rights of the baby's father. A parent's relinquishment is not effective until the agency formally accepts it, and an agency should not accept a parent's relinquishment unless it appears that adoption is the best plan for the child. Unless the baby's father is located and consents to the child's adoption, an adoption may not occur until a court terminates his rights. M.C., once she relinquishes the child, will not be notified of or required to participate in any juvenile court proceeding. However, if the child's father seeks custody, the fact that M.C. has relinquished the child will not affect her right to participate in the court action.⁵⁰

Compared with safe surrender, which may be a desperate or crisis-driven decision, relinquishment is more likely to represent an informed choice. By relinquishing the child, M.C. ensures that future adoptive parents will have important medical and family background information. Although relinquishment requires more involvement by M.C. initially, it may provide her with more privacy than she would have after a safe surrender, when the county department of social services would be required to make diligent efforts to identify and locate her and make her a party to a juvenile court proceeding. Neither safe surrender nor relinquishment will affect the rights or the options of the baby's father.

Implementation of the Law

Since the enactment of North Carolina's safe surrender legislation in 2001, efforts have been made at both the state and the local level to ensure that people know about it. In 2007 the General Assembly enacted laws to require local boards of education to have policies to ensure that students in grades nine through twelve receive information each year on the procedure for lawfully abandoning a newborn baby.⁵¹ News stories, public service announcements, and numerous websites have called attention to the issue of abandoned infants and provided information about safe surrender and safe haven laws (see the sidebar on page 32).

No good measure of the law's success exists. The North Carolina Division

of Social Services, which collects data about child abuse, neglect, and dependency in the state, has initiated procedures for systematically collecting safe surrender information from counties.⁵² The division is “anecdotally aware” of eleven cases of safe surrender since the law went into effect in 2001, including one in 2007 and five in 2008.⁵³ The total number is probably low, given the lack of uniform reporting from counties, possible confusion about when to classify a case as a safe surrender, and the fine line in some cases between a safe surrender and other instances of neglect or dependency.

Conclusion

A parent’s decision to hand his or her newborn baby to a fireman is immeasurably better than a decision to abandon the baby in the woods. But a planned, informed relinquishment is almost always better still, for both the child and the parent. A parent like M.C., who thinks she cannot or does not want to keep her baby, is unlikely to relinquish her child formally for adoption, however, unless she has good information and a connection with at least one supportive person who can help her identify, weigh, and choose responsibly from the options available. If she has that information and that connection, she may conclude that she or a relative *can* care for the child, or decide that she wants to consent to the child’s adoption by people whom she, rather than an agency, selects. The most effective efforts to address the problem of infant abandonment will be those that reach parents and potential parents early with information, support, and resources to prepare them to make decisions that are not directed by fear and desperation. For the few cases in which the parent of a newborn is going to abandon the child, however, the safe surrender law removes the criminal sanctions that might deter him or her from doing that in a way that keeps the baby safe.

Notes

1. North Carolina law addresses this kind of abandonment when it requires a county department of social services to act

immediately when it receives a report alleging that a child has been abandoned. The department is required to “immediately initiate an assessment” and take appropriate steps to assume custody of the child and obtain a court order authorizing the department to retain custody. In addition, the department must ask law enforcement to investigate through state and national resources whether the child has been reported missing. N.C. GEN. STAT. § 7B-302(a) (hereinafter G.S.).

2. See, e.g., *Whittington v. Hendren*, 156 N.C. App. 364, 576 S.E.2d 372 (2003) (holding that abandonment occurred when incarcerated father had no meaningful contact with child for five years).

3. *Pratt v. Bishop*, 257 N.C. 486, 503, 126 S.E.2d 597, 609 (1962).

4. Marcia E. Herman-Giddens et al., “Newborns Killed or Left to Die by a Parent: A Population-Based Study,” *JAMA* 289: 1425–9 (2003).

5. Dean F. Duncan et al., North Carolina Longitudinal Cohort Data of Abuse and Neglect, http://sasweb.unc.edu/cgi-bin/broker?_service=default&_program=cwweb.icans.sas&county=North%20Carolina&label. Procedures have been modified to begin capturing instances of abandonment pursuant to the safe surrender law. See Charisse S. Johnson (chief, Child Welfare Services, North Carolina Division of Social Services), letter to county social services directors, March 17, 2009, www.ncdhs.gov/dss/dcdl/famsupchildwelfare/CWS-15-09.pdf.

6. North Carolina State Center for Health Statistics, “Technical Notes for 2007 Child Deaths in North Carolina,” www.schs.state.nc.us/SCHS/deaths/child/cd2007.html.

7. North Carolina Office of the Chief Medical Examiner, North Carolina Child Fatality Prevention Team, *Annual Report 2007: Summary and Analysis of Child Deaths Investigated by the Office of the Chief Medical Examiner and the North Carolina Child Fatality Prevention Team* (Raleigh, NC: North Carolina Child Fatality Prevention Team, North Carolina Office of the Chief Medical Examiner, 2009), www.ocme.unc.edu/nccfpp/2007childfatalityreport.pdf.

8. Abandoned Infants Assistance Act of 1988, Pub. L. No. 100-505 (codified as amended at 42 U.S.C. §§ 5117aa *et seq.* (2008)). A White Paper indicated that 30,800 babies were abandoned in hospitals in 1997. Evan B. Donaldson Adoption Institute, *Unintended Consequences: “Safe Haven” Laws Are Causing Problems, Not Solving Them* (New York: Evan B. Donaldson Adoption Institute, 2003), www.adoptioninstitute.org/whowe/Last%20Report.pdf.

9. See National Abandoned Infants Assistance Resource Center, *Boarder Babies, Abandoned Infants, and Discarded Infants* (Berkeley, CA: National Abandoned Infants Assistance Resource Center, 2005), http://aia.berkeley.edu/media/pdf/abandoned_infant_fact_sheet_2005.pdf. Citing the U.S. Department of Health and Human Services’ 2001 definitions, the article describes boarder babies as “infants under the age of twelve months who remain in the hospital past the date of medical discharge” and who eventually may be “claimed by parents and/or be placed in alternative care”; abandoned infants as “newborn children who are not medically cleared for hospital discharge, but who are unlikely to leave the hospital in the custody of their biological parents”; and discarded infants as “newborns who have been abandoned in public places, other than hospitals, without care or supervision.” *Ibid.*, 1.

10. The center’s website, at <http://aia.berkeley.edu/>, includes a link to currently funded direct-service programs. See also the 2009 announcement of funding opportunities from the federal Administration for Children and Families at www.acf.hhs.gov/grants/open/HHS-2009-ACF-ACYF-CB-0060.html.

11. Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107-133, 42 U.S.C. § 629h(c) (2007). See Grace Antebi, *Information Packet: Promoting Safe and Stable Families* (New York: National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work, 2002), 10, www.hunter.cuny.edu/socwork/nrcfcpp/downloads/information_packets/safe_and_stable_families-pkt.pdf. Section 102 of Public Law Number 107-133 amended 42 U.S.C. 629a(a)(1) to add this provision.

12. Child Welfare Information Gateway, “Infant Safe Haven Laws, State Statutes Series, 2007,” www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.cfm.

13. In July 2008, Nebraska Legislative Bill 157 went into effect, providing that “[n]o person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska.” NEB. REV. STAT. § 29-121 (2008). In November 2008, the governor of Nebraska called a special session of the state’s legislature to amend the law after several parents used it to legally “abandon” teenagers at hospitals. See, e.g., Claire Suddath, “Nebraska’s Abandoned-Kid Law,” *Time.com*, November 12, 2008, www.time.com/time/nation/article/0,8599,1858355,00.html.

14. S.L. 2001-291 (H 275) (codified at G.S. 7B-302(a), G.S. 7B-500, G.S. 7B-

1111(a)(7), G.S. 14-318.2, G.S. 14-318.4, G.S. 14-322.3). The full text of the bill is available at www.ncga.state.nc.us/Sessions/2001/Bills/House/HTML/H275v7.html.

15. See G.S. 14-17, -18. For an explanation of the elements of these crimes, see Jessica Smith, *North Carolina Crimes* (6th ed., School of Government, University of North Carolina at Chapel Hill, 2007), ch. 6, "Homicide," pp. 65-76. If the baby died shortly after birth and M.C. left or buried the body in the woods, she could be guilty of a Class 1 felony for concealing the birth of a child. This offense occurs when someone undertakes to conceal the birth of a child by secretly burying or otherwise disposing of the dead body of a newborn child. G.S. 14-46.

16. G.S. 14-322.1. The full definition of this offense, a Class 1 felony, describes a parent who willfully, and without just cause or provocation, abandons a child for six months, willfully fails or refuses to provide adequate support for the child during that period, and attempts to conceal his or her whereabouts from the child with the intent of escaping his or her lawful obligation to support the child.

17. G.S. 14-322. A first offense under this statute is a Class 2 misdemeanor, and any subsequent offense is a Class 1 misdemeanor.

18. G.S. 14-318.2. Misdemeanor child abuse is a Class A1 misdemeanor.

19. G.S. 14-318.4. Felony child abuse also occurs if a parent's intentional assault causes serious physical or bodily injury to the child. The offense of intentional assault may be a Class C or Class E felony, depending on the injury to the child. The statute defines serious physical injury as "[p]hysical injury that causes great pain and suffering" and specifies that the term also includes serious mental injury. The statute defines "serious bodily injury" as "[b]odily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization." The offense of showing reckless disregard may be a Class E or Class H felony, depending on the injury to the child.

20. Although M.C. may have created a substantial risk of nonaccidental physical injury to the child and therefore be

subject to prosecution for misdemeanor child abuse under G.S. 14-318.2, it is not clear that injuries the child might suffer after M.C.'s departure would be "nonaccidental" as that term generally is understood.

21. G.S. 7B-101(15).

22. G.S. 14-316.1.

23. G.S. 14-322.3.

24. G.S. 14-316.1.

25. G.S. 14-318.4(c).

26. The website of the Child Welfare League of America includes a chart showing the characteristics of other states' safe surrender laws. See www.cwla.org/programs/prevp/flocrittsafehaven.htm. The chart covers all fifty states, although when retrieved on August 10, 2009, it contained a heading that indicated otherwise. The chart includes the 2008 enactment of the Nebraska law, but not the addition to that law of a thirty-day age limit.

27. As first introduced, the North Carolina safe surrender legislation would have allowed surrender of infants under the age of fifteen days. HR 275, introduced February 27, 2001. The bill history and other editions of the bill can be found at www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2001&BillID=h+275&submitButton=Go.

28. See the chart described in note 26.

29. See "Nebraska Lawmakers OK Age Limit for Safe-Haven Law," Safe Surrender Site, November 21, 2008, www.safesurrender.com/news/27.

30. G.S. 7B-500(d).

31. See the chart described in note 26.

32. NEW YORK PENAL CODE § 260.03 (2008).

33. G.S. 7B-500(b).

34. G.S. 7B-500(c), (d).

35. *Ibid.*

36. See G.S. 7B-301, which describes the required contents of a mandated report of child abuse or neglect, and G.S. 7B-303, which allows a county department of social services to seek a court order against someone who obstructs or interferes with a required assessment.

37. G.S. 7B-500(e).

38. See, e.g., *A Child's Hope, LLC v. Doe*, 178 N.C. App. 96, 630 S.E.2d 673 (2006); *In re T.L.B.*, 167 N.C. App. 298, 605 S.E.2d 249 (2004).

39. See G.S. ch. 7B, subch. 1. See also North Carolina Department of Health and Human Services, Division of Social Services, *Family Support and Child Welfare*

Manual (Raleigh, NC: Division of Social Services, North Carolina Department of Health and Human Services), ch. 8, § 1411 Safe Surrender (June 2008), <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-60/man/CS1411.htm#TopOfPage>.

40. G.S. 7B-501.

41. See G.S. 7B-406, -407.

42. The North Carolina Supreme Court has held that a court may proceed in an abuse, neglect, or dependency proceeding even if only one of the parents has been served. See *In re Poole*, 151 N.C. App. 472, 568 S.E.2d 200 (2002) (Timmons-Goodson, J., dissenting), *adopted per curiam*, 357 N.C. 151, 579 S.E.2d 248 (2003). At various hearings, however, the court must inquire "as to the identity and location of any missing parent and as to whether paternity is at issue," and the court's order "may provide for specific efforts aimed at determining the identity and location of any missing parent, as well as specific efforts aimed at establishing paternity." G.S. 7B-506(h). In every case, the parent must be served, even if service by publication is necessary, before the court may terminate the parent's rights. G.S. 7B-1101, -1106, -1106.1.

43. G.S. 7B-903.

44. G.S. 7B-1111(a)(7).

45. See G.S. 7B-507, -903, -906, -907.

46. G.S. 48-3-702.

47. G.S. 48-3-703. The form provided by the North Carolina Department of Health and Human Services for a parent's relinquishment of a child for adoption is DSS-1804, available at <http://info.dhhs.state.nc.us/olm/forms/dss/dss-1804-ja.pdf>.

48. See G.S. 48-3-205. When the child reaches age eighteen, he or she may obtain the same nonidentifying information from the agency.

49. G.S. 48-9-102.

50. See G.S. 50-13.2, which provides that "[i]f, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child."

51. S.L. 2007-126 (H 485), amending G.S. 115C 47(50), 238.29F(a), 548, 556, 565. The act applies to schools beginning with the 2008-9 school year.

52. See Johnson, letter to county social services directors.

53. *Ibid.*



School Mourns Passing of Wright

The School of Government's Master of Public Administration (MPA) Program lost a monumental scholar, mentor, and friend with the death of Deil Wright on June 30, 2009. A legend in the fields of public administration and political science, Wright, professor emeritus of political science, was viewed as one of the fathers of the MPA Program. He was beloved by his students, and he mentored

hundreds of MPA alumni throughout their careers.

Wright joined the UNC at Chapel Hill Department of Political Science in 1967. A prolific researcher and writer, he authored many books, including three editions of *Understanding Intergovernmental Relations* and more than one hundred published articles. In 1983, Wright was named Alumni Distinguished Professor of Political Science, and in 2002 he was named Professor Emeritus.

Wright served as director of the MPA Program from 1973 to 1979. MPA alumni have honored him by endowing both a lecture series and a scholarship. Memorial contributions may be made to the Wright MPA Scholarship Fund. To learn more, visit www.mpa.unc.edu, or contact Jean Coble at 919.962.0426.



Professor Emeritus Deil Wright

Vinroots Support School with \$1 Million Pledge

Richard and Judy Vinroot of Charlotte have pledged \$1 million to the University of North Carolina at Chapel Hill in honor of Richard's friend and mentor, Robert W. Bradshaw Jr. The pledge, which will support faculty and students in UNC at Chapel Hill's School of Government, is the largest-ever commitment by an individual to the school.

"Judy and Richard Vinroot have shown extraordinary generosity and thoughtfulness in creating this new professorship and fellowship," said Michael R. Smith, dean of the School. "This historic gift will support two important aspects of our work: the faculty who teach and advise government officials every day, and the graduate students who become public service leaders in local and state government, as well as in federal agencies and nonprofit organizations in North Carolina and throughout the country. The Vinroots are known for their support of good government and an ever-stronger North Carolina. This gift is clear evidence of their dedication."

Part of the commitment, \$666,000, will be matched by the state's Distinguished Professors Endowment Trust Fund to create the \$1 million Robert W. Bradshaw Jr. Distinguished Professorship. It will support a faculty member who teaches, advises, and

publishes in local and state government fields such as local government law and finance, courts and criminal justice, health and human services, taxation, and public employment.

The remaining \$334,000 will establish the Robert W. Bradshaw Jr.



Judy and Richard Vinroot

Public Administration Fellowship. It will provide aid to a worthy student or students in the Master of Public Administration (MPA) Program, covering tuition and expenses for both years of the two-year program. "The fellowship will help us attract the highest-quality students interested in public service," Smith said. "This will be the premier fellowship for the MPA Program at Carolina. Private support for the MPA Program has become more and more important, and this pledge comes at a wonderful time."

Bradshaw, a graduate of the Duke University Law School, served as the chair of the Republican Party of North Carolina from 1985 to 1987. "Bob Bradshaw spent many years encouraging good people to enter public service, and then mentoring them once they did so," Richard Vinroot said. "Wonderful examples of this are former Governor Jim Martin and Ninth District Congressman Alex

McMillan, both of whom are among Bob's protégés.

"I'm grateful for what Bob did for me personally, but more so for what he's done for everyone in North Carolina throughout his professional life. Accordingly, Judy and I can think of no better way to honor Bob than at the School of Government, where public service is the essence of their mission."

A native of Charlotte, Richard Vinroot attended UNC at Chapel Hill on a Morehead Scholarship, served as class president in his junior and senior years, and played basketball for Coach Dean Smith. He graduated in 1963 with a degree in business administration and went on to earn a law degree from UNC at Chapel Hill in 1966. After law school, Vinroot served in Vietnam and received a Bronze Star. He returned to Charlotte and joined the law firm of Robinson Bradshaw & Hinson, where he now is a senior partner, specializing in commercial litigation.

Vinroot also has extensive experience in public service. He served on the Charlotte City Council from 1983 to 1991 and as mayor of Charlotte from 1991 to 1995. He was the Republican candidate for governor of North Carolina in 2000.

Judy (Allen) Vinroot is a native of Fort Lauderdale, Florida, who graduated from UNC at Chapel Hill with a degree in education in 1965. At the university, she was a class officer and a cheerleader and was active in numerous campus activities. She earned a master's degree in adult literacy at Appalachian State University and has taught in the Charlotte-Mecklenburg Public Schools and at Central Piedmont Community College, also in Charlotte. She currently serves on the Board of Directors of the UNC Alumni Association.

For information about giving opportunities, contact Ann Simpson, associate dean for development and communications, at 919.966.9780 or simpson@sog.unc.edu.

School Initiates Blogs for Information, Education, Conversation

For many years, the School of Government has used its website and listservs to share information and expand resources beyond the classroom. Demand for additional online resources has grown over the past year, as local government travel budgets have shrunk. In response, the School has created more than forty new Web-based training opportunities for public officials and several blogs. The blogs not only provide timely information in an easy-to-read format, but also encourage virtual conversations about issues that are important to North Carolina local governments.

"Coates' Canons: NC Local Government Law Blog" disseminates information about a broad range of legal issues affecting local governments and other public agencies in North Carolina. Named for Institute of Government founder Albert Coates, the

The screenshot shows the website for "COATES' CANONS' NC LOCAL GOVERNMENT LAW BLOG". The page layout includes a header with the UNC logo and navigation links like "ABOUT THIS BLOG", "ABOUT THE AUTHORS", and "SUBSCRIBE". The main content area features several article teasers:

- Motions to Reconsider – A Follow-up** by David L. Johnson. The article discusses the process of reconsidering a council action, noting that it is a common practice in many local governments.
- A New Difficulty in Redistricting?** by David L. Johnson. This article addresses the challenges of redistricting, particularly in the context of the 2010 census and the need for new maps.
- Electronic Participation in Meetings – Part I** by David L. Johnson. This article explores the use of technology to facilitate public participation in local government meetings.

Additional features on the page include a "GET UPDATES BY EMAIL" section with a subscription form, a "BLOG TOPICS" sidebar with a list of categories, and a "RELATED TOPICS" section with links to "construction" and "contracts". The page also has a search bar, a "LINKS" section, and a "RECENT POSTS" section listing recent articles.

blog serves as a forum for discussion and provides a lasting resource for people in government and community groups and citizens across the state.

The primary focus of the blog is legal issues, but it serves as a rich source of information for a variety of public officials—elected officials, managers, department heads, attorneys, and other public employees—as well as for people who interact with local governments and other public agencies.

Created and maintained by eleven School faculty members who have expertise in a wide range of subjects, the blog features posts that vary in style, length, and content. Recent posts have addressed topics such as electronic participation in meetings, HUB (historically underutilized businesses) certification, local police-power ordinances, utility debt collection, and smoking laws.

Mecklenburg County Attorney Marvin Bethune says, “To be able to get weekly mini-sessions about different topics is great—for experienced people like me as well as brand new local government attorneys. As the

county attorney for Mecklenburg, I have to deal with a wide range of topics. This blog promises to provide new information as well as reminders about things I’ve already learned.”

Assistant Professor Jeff Welty launched the North Carolina Criminal Law Blog in January 2009. This blog, which had nearly fifty thousand hits in its first seven months, includes posts about current criminal law issues, answers to recurrent questions that Welty receives from the field, and interesting theories about criminal law on which he has stumbled. Guest bloggers are invited to post articles, and anyone with an interest in the criminal justice system may join the conversation. Recent posts have included “Another Take on the *Gates Case*”; “You Can’t Tell Just from the Smell,” a posting by guest blogger and Assistant Professor Shea Denning about the odor of alcohol and impaired-driving charges; and a summary of S 920, the new probation reform bill.

The Delinquency Defense Law Forum, an indigent defense education

blog administered by Civil Defender Educator Whitney Fairbanks, serves as a forum for the discussion of North Carolina juvenile delinquency law and defense. Topics include interrogation, procedure, schools, and more. Early posts include “Policing the Schools,” “*Melendez-Diaz* and Juvenile Adjudications” and “*In re W.R.*” Fairbanks initiated the blog to be more responsive and flexible in dealing with new information, case law, and statutory changes. “With this technology,” she says, “I can disseminate information quickly and give juvenile defenders more resources for their work in a short time frame, without waiting to publish a bulletin or teach a course.”

Visit these School blogs:

- Coates’ Canons: NC Local Government Law Blog: sogweb.sog.unc.edu/blogs/localgovt
- North Carolina Criminal Law Blog: sogweb.sog.unc.edu/blogs/ncclaw
- Delinquency Defense Law Forum: sogweb.sog.unc.edu/blogs/indigent

LGFCU
LOCAL GOVERNMENT
FEDERAL CREDIT UNION

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LGFCU Scholarships Are Available!

The Local Government Federal Credit Union (LGFCU) offers a special scholarship program to help nurture the career development of its members who are employed in local government in North Carolina.

Members who plan to attend a class, a conference, or a seminar at the School of Government may apply for scholarships to cover the cost of tuition.

Awards are made three times each year, or until funds are expended. Applications are accepted throughout the year, with deadlines of December 1, April 1, and August 1. For more information and a copy of the application, call 1.800.344.4846, e-mail info@lgfcu.org, or visit <https://www.lgfcu.org/pages/application.php>.

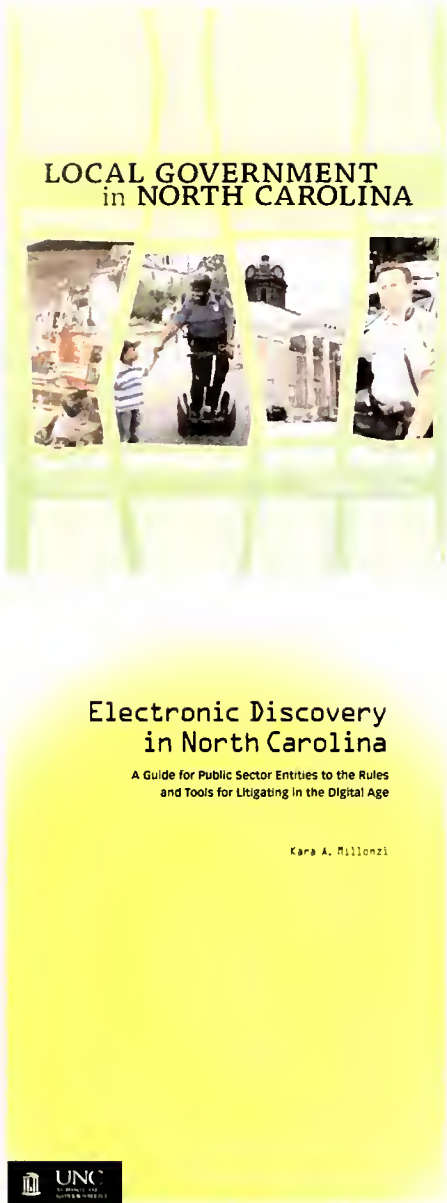
School Offers New Online Publications

Every year, the School of Government adds more than fifty books, periodicals, and other reference works related to state and local govern-

ment to its catalog of publications. Increasingly, the School is offering some of those publications in digital format. This often is a good option for academic works that have a limited audience, tightly focused topics, and a need for timely updates.

Decisions about publishing books in hard copy or digital format are based

primarily on which format will better meet the needs of the potential reader. For instance, *NC Crimes: A Guidebook on the Elements of Crime*, is considered an essential reference book for law enforcement officers, magistrates, prosecutors, public defenders, defense lawyers, and judges in North Carolina. It now is also offered on a searchable CD, which



is particularly helpful to police officers who can access information via the laptops in their cars while in the field.

Recent online publications include an e-textbook, bulletins, and an e-book. *Local Government in North Carolina*, third edition, by Professor Gordon Whitaker, is designed as a supplemental resource for tenth-grade civics and economics courses, though it is applicable for younger students and for adults who would like an easy-to-comprehend overview of how North Carolina cities, towns, and counties are organized and what they do. In the past, the book has been used in orienting new city council members and county commissioners who need a broad overview of how local government works.

In addition to the comprehensive information in the publication itself, the new e-book contains links to online resources for the most current data that readers might need. "Publishing this version as an e-book meant we could get the content delivered more quickly than if we had gone through a traditional printing process," says Whitaker, "and we will be able to update our content more readily."

The book is a joint venture of the School and the North Carolina City & County Management Association. The most recent edition has been designed exclusively for online viewing and distribution. Because the book is funded by the International City/County Manage-

ment Association Fund for Professional Development, teachers and students can access the text online at any time and print individual pages or chapters as needed, at no charge.

The School's twenty-one bulletins, which cover topics as varied as administration of justice and school law, now are offered online as free, downloadable PDF documents. The most recent bulletin to move to a digital-only format is *School Law Bulletin*. For almost forty years, *School Law Bulletin* has kept North Carolina attorneys and school administrators better informed about issues and trends in school law, featuring articles with in-depth legal analysis. The bulletin's popular Clearinghouse summaries of recent legal developments will be available through an online, searchable database that is currently under development.

Faculty member Kara Millonzi has written a new e-book titled *Electronic Discovery in North Carolina: A Guide for Public Sector Entities to the Rules and Tools for Litigating in the Digital Age*, which addresses differences between electronic information and paper documents. The book explores current rules governing the discovery of electronic information in federal and state courts and includes an analysis of the effectiveness of rules related to e-discovery. A complete catalog of School of Government print and online publications can be found at www.sog.unc.edu.



To access **updates** and **supplements** for **School of Government** publications, visit www.sog.unc.edu/pubs/updates

Off the Press

Leading Your Governing Board: A Guide for Mayors and County Board Chairs

2009 • \$20.00*

Vaughn M. Upshaw



This first book in the new series, Local Government Board Builders, focuses on the requirements for and tools used by lead governing officers: mayors of city councils and chairs of county boards of commissioners. Mayors and board chairs hold the keys to effective meetings of their governing bodies and must create successful working relations with public managers and other organizations. This book emphasizes how these leadership roles should work, including tips for setting agendas and maintaining forward motion and participation in meetings. Intangible essentials, such as keeping a fair and impartial manner and respecting professional roles, also are clarified.

Handbook for County Social Services Boards

2009 • \$20.00*

John L. Saxon



This book explains the duties, the responsibilities, and the regulations that social services board members need to follow to improve their board's effectiveness. It will be especially useful during board meetings, as a training tool, and as a desk reference. Social services directors and county commissioners also will find it to be a practical resource.



FREE Bits and Bytes Free online publications from the School of Government

Visit the Publications section of the School's website at www.sog.unc.edu and search by keyword or author's last name.

The Effect of the Global Economic Crisis on State and Local Tax Revenues

Economics Bulletin no. 3, August 2009

Karl W. Smith

Statement of Revenue-Neutral Tax Rate: Questions and Answers

Local Finance Bulletin no. 39, August 2009

Christopher B. McLaughlin and William C. Ruenbark

School Board Control of Curricular Speech

School Law Bulletin no. 2009/01, July 2009

Laurie L. Mesibov and Natalie Russell Dunham

2009–2010 Finance Calendar of Duties for City and County Officials

2009

Prepared by Gregory S. Allison

Immunizations for Children and Adolescents: Frequently Asked Questions about North Carolina's Laws

Health Law Bulletin no. 91, July 2009

Jill D. Moore

Law Enforcement's Role in U Visa Certification

Immigration Law Bulletin no. 2, June 2009

Sejal Zota

Local Government in North Carolina (e-Book)

Third edition, 2009 • Available free online at www.civics.org/ignc

Gordon P. Whitaker



A joint venture of the School of Government and the North Carolina City & County Management Association with support from the International City/County Management Association Fund for Professional Development. How does local government affect daily life in North Carolina? How does it work? How is public participation important? This book answers those

questions for a general audience. Widely used in civic education courses, the book describes how North Carolina cities, towns, and counties are organized and what they do. It encourages playing an active role in the community and becoming personally engaged in maintaining an effective government. Each chapter includes definitions of key terms in the margins, articles from local newspapers, and discussion questions.

North Carolina Small Claims Law

2009 • \$60.00*

Joan G. Brannon

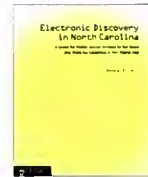


This book discusses the procedure in trials before a magistrate, as well as the substantive law for common cases that magistrates hear, including basic contract and tort principles, summary ejection, actions to recover possession of personal property, and motor vehicle lien actions. It also includes chapters on miscellaneous duties of the magistrate, such as performing marriages, assigning year's allowances, and acknowledging documents.

Electronic Discovery in North Carolina: A Guide for Public Sector Entities to the Rules and Tools for Litigating in the Digital Age

2009 • Available free online at the School's website

Kara A. Millonzi



What are the current rules governing the discovery of electronic information in federal and state courts in North Carolina? How effective are these rules in addressing the unique issues posed by e-discovery? This publication identifies distinct aspects of electronic information and analyzes the application of current

rules of civil procedure in both federal and state courts to its discovery. The book provides (1) a discussion of the differences between electronic information and paper documents, (2) a roadmap to what electronic information is discoverable in federal and state courts in North Carolina, (3) an analysis of how litigants may use federal and state rules to contain the costs and burdens of e-discovery, and (4) guidance for public sector litigants who face challenges in complying with e-discovery requirements.

The Role of Local Government in Economic Development: Survey Findings from North Carolina

2009 • \$25.00* in print; view-only PDF version online

Jonathan Q. Morgan



This report discusses the findings of a survey of local government economic development activities that was sent to all municipalities and counties in North Carolina. It examines whether cities and counties differ significantly in their economic development efforts and whether smaller jurisdictions employ different types of development strategies and tools than larger ones. It

also describes the barriers that local governments face in promoting economic development and identifies important technical assistance needs and gaps in local capacity.



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— Mac McCarley, City Attorney, Charlotte, NC



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