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Cover: This issue's cover photograph celebrates North Carolina's Four Hundreth Anniversary by showing the Elizabeth II, a replica—built at Manteo—of the kind of sixteenth-century ship those first settlers would have sailed. The photo is by Henry Applewhite of the Dare County Tourist Bureau.
Charts: *Ted Clark.*

Many thanks to the North Carolina Wildlife Commission and The Nature Conservancy for permitting us to use their color separations for the photographs on pages 22, 23, 26, and 27. The photos on pages 33 and 34 are from the North Carolina Division of Archives and History.

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EQUAL PAY
EQUAL OPPORTUNITY
COMPARABLE WORTH

Robert P. Joyce

Equal pay for equal work. In 1963 Congress made it the law. No longer could an employer pay a woman less than a man for doing exactly the same job on the solitary basis that she was a woman.

The rationale for paying women less was entrenched. It was said that women were transients: they left their jobs to get married, to have babies, to follow husbands to other locations. It was said that women were less reliable: they got sick too often, they stayed home to tend the children, their jobs were not their first priorities. It was said that women were less deserving: in the workplace, they displaced men who needed the jobs to support wives and families. The view was that women should be at home looking after their families, contributing to the strength of the society and the nation.

"Equal pay for equal work" was an early rallying cry in the fight against sex discrimination in employment. In the years since it was first heard, Congress has forged new weapons for that fight, and the federal courts have wielded them. The Equal Pay Act of 1963[1] was followed by Title VII of the Civil Rights Act of 1964[2] and by the Equal Employment Opportunity Act of 1972,[3] which brought the full force of the antidiscrimination laws to bear on state and local public employers. Now a new concept—the idea of "comparable pay for comparable worth"—is finding its way before the courts and challenging the ways employers have traditionally done business.

A narrow view

The Equal Pay Act of 1963[4] embodied a narrow view of the problems women face in employment. But in retrospect it was a logical first step, because it attacked a situation that was blatantly unfair. The act said simply that an employer could not pay a woman less than a man for doing equal work that required equal skill, effort, and responsibility and was performed under similar conditions at the same location unless the difference in pay was based on seniority, quality, or quantity of work produced, or some other factor other than sex.

For the Equal Pay Act to apply, the work must be *equal*. The courts have said that "equal" means not necessarily "identical" but "substantially equal." With

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1. 29 U.S.C. § 206(d).
2. 42 U.S.C. §§ 2000e to 2000e-17.
3. 86 STAT. 103, P.L. 92-261; provisions incorporated throughout Title VII.
4. The Equal Pay Act was an amendment to the Fair Labor Standards Act (29 U.S.C. §§ 201-219); as originally enacted, it applied only to employees of enterprises engaged in interstate commerce and not to governmental employees at all. In 1974 the act was amended to bring state and local governmental employees within its scope.

this view, a federal appeals court found that the Equal Pay Act had been violated when (1) male teachers got an annual $300 "head of household" supplement that female teachers did not receive (the fact that males guarded the gates at school events while females sat in the bleachers and men patrolled the school grounds at lunch while women patrolled the halls was not a difference sufficient to upset the "substantial equality" of their work),[5] and when (2) female teachers with the title "teacher assistant" were paid less than male "teachers" whose duties were substantially the same (the difference in titles was not a valid reason for the difference in pay).[6] The view is narrow enough that the court also found no violation where males who did "heavy" custodial jobs at schools on a year-round basis, including some school vacations and some nights, were paid more per hour than female workers who did light custodial jobs that were "closely related" or "very much alike" but were not required to work summers, vacations, or nights.[7]

The victory won under the doctrine of equal pay for equal work was a narrow one. The law was written to apply only to claims of unequal pay for substantially equal work. It did not face the great array of other problems women faced on the job. It could do nothing for women who suffered from a great variety of unfair and discriminatory practices of many employers.

A North Carolina example. Barbara Curl of Iredell County ran into problems in the workplace that no guarantee of equal pay for equal work could touch. In May of 1983 the federal district court judge who heard her claims wrote a decision[8] filed in Statesville that described her experience.

Ms. Curl was hired in 1976 as a dispatcher-matron in the sheriff's department. Her rank was deputy sheriff, and her duties included serving subpoenas, typing complaints and reports, and processing female prisoners.

That same year—after finishing rookie school, with training in firearms, arrest, crime scene search, homicide investigations, and the entire gamut of police work—she was certified by the North Carolina Criminal Justice Education and Training Commission to be a law enforcement officer.

In April of 1981, Ms. Curl was fired from her job as deputy sheriff. That five-year period, as the district court found, was characterized by denied opportunities and blatant discrimination against Ms. Curl and other women in the department on account of their sex.

A year after she was hired, she was transferred from dispatcher-matron to records clerk, with no change in her pay or status as deputy sheriff, and in 1978 she was transferred to secretary of the detective division. In 1980 she was transferred back to dispatcher-matron. After four years on the job she was right back where she started, and a year later she was fired.

Throughout this period, Ms. Curl demonstrated her interest in advancing her law enforcement career. In 1979 she worked, on her own time and without pay, on two undercover assignments in the field, one in drugs and one in prostitution. She asked permission to attend a drug education school and various law enforcement schools that the all-male uniformed officer staff attended. Permission was denied. She repeatedly indicated her interest in being promoted to patrol duty or to the detective force. Repeatedly her requests were denied. Each time she was put off as "not ready" or as unqualified.

Other women who joined the sheriff's department encountered the same fate. They were all hired as dispatcher-matrons. They were all denied the opportunity to move into other positions, such as patrol or detective duty. One woman, hired in 1978, resigned three months later when she was informed that she would not be given patrol duty. Another, hired in 1979, was told that she could not get a patrol assignment because she was overweight, even though several male patrolmen were also overweight. In September 1980 a woman who held an associate degree in criminal justice was hired as a dispatcher-matron but fired when she sought patrol duty; she is now an active law enforcement officer in another North Carolina jurisdiction. A woman who had been a professional athlete took the dispatcher-matron job when Ms. Curl was fired from it. This woman was never given an opportunity for patrol duty and eventually resigned from the department to become a trainee in the State Highway Patrol, in which she is now a trooper.[9]

These women soon learned that the only job females were hired for was dispatcher-matron, from which there was no opportunity for advancement. The department's personnel officer said that there was "no way" that he

5. Marshall v. A & M Consolidated School District, 605 F.2d 186 (5th Cir. 1979).

6. Katz v. School District of Clayton, Mo., 557 F.2d 153 (8th Cir. 1977).

7. Usery v. Dallas Independent School District, 605 F.2d 191 (5th Cir. 1979).

8. Barbara E. Curl v. LeRoy Reavis and Iredell County, ST-C-82-91 (W.D.N.C. 1983).

9. Of 1,137 uniformed officers in the State Highway Patrol, four are female.

"would put a woman on the road in uniform." The county, he said, was "not ready for it."

The narrow remedy for violations of the equal-pay-for-equal-work concept did not touch the barriers placed before Ms. Curl and the other women in the sheriff's department. Because only women were dispatcher-matrons, there were no men getting paid more for doing *equal* work. Accordingly, there could be no remedy under the Equal Pay Act.

The very fact that there was no equal work was the problem. Ms. Curl and other women could not get equal work because they were hired only as dispatcher-matrons and could not move above that position. What they wanted was an *opportunity* for equal work. Once they got that opportunity, the question of equal pay for equal work might arise; but in the face of employer recalcitrance, the issue never arose.

Title VII: A wider view

Ms. Curl was able to bring her claims into a federal district court because Congress—after adopting the Equal Pay Act, with its narrow view of sex discrimination—followed up with a much wider view. In 1964 it passed the Civil Rights Act, one of the most significant pieces of social legislation in the nation's history.

The Civil Rights Act of 1964 grew out of the climate of social change that was characterized by lunch-counter sit-ins, bus boycotts, police attack dogs, and church bombings. The concern of the time was for racial justice and racial equality. The "plight of the Negro"[10] was the motivating factor behind passage of the act, and the guarantees against job discrimination in Title VII of the act were primarily aimed at the economic condition of black Americans.

When the debate over Title VII of the Civil Rights Act began, discrimination on account of sex was not one of the bases for liability under that title. Only discrimination on account of race, color, national origin, and religion was included. A southern congressman who was not known as a friend to the civil rights effort (he had, in fact, voted against the Equal Pay Act and eventually voted against the Civil Rights Act) introduced an amendment that may have been intended to sabotage Title VII—his amendment added "sex."[11]

The bill passed despite the amendment; with its passage, discrimination in employment on account of sex became unlawful. Title VII provides:

> It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.[12]

This very comprehensive statute covers hiring, discharging, and compensation. It also covers "terms, conditions, or privileges of employment." Any aspect of the employer-employee relationship is encompassed within that phrase—job assignment, promotion, demotion, work tasks, hours, discipline, working conditions. Any advantage that a man gains over a woman (or vice versa) because his (or her) sex is a violation of Title VII.

The federal district judge who heard Ms. Curl's case found a mass of Title VII violations in the environment in which she and the other female deputies worked:[13] (1) "Women were hired only when a vacancy occurred in the 'female' position of dispatcher-matron . . . . This policy all but eliminated the opportunity of women to gain employment with the Sheriff's Department." (2) The sheriff's department "relied solely upon subjective evaluation of the women's 'readiness' or 'qualifications' to perform 'male' jobs. Such subjective views were tainted by the well-documented belief within the Department that women did not belong on the road and thus could never be 'qualified' in their eyes." (3) "All inquiries . . . submitted by women for patrol work within the Department were treated lightly. Women found 'unqualified' or 'not ready' by the Sheriff or [the chief deputy] were able to obtain active law enforcement positions outside the Department."

The judge ruled that Ms. Curl had proved unlawful discrimination because of her sex in the denial of promotions to patrol duty. He further found that the department maintained an unlawful male line of progression leading to detective status. To be a detective, a person had to have patrol experience. That, the judge said, is a reasonable and nondiscriminatory requirement. But

10. United Steelworkers v. Weber, 443 U.S. 193, 202 (1979).

11. "Indeed, Title VII was originally intended to protect the rights of Negroes. On the final day of consideration by the entire House, Representative Smith [of Virginia] added an amendment to prohibit sex discrimination. It has been speculated that the amendment was added as an attempt to thwart passage of Title VII." County of Washington v. Gunther, 452 U.S. 155, 190, n. 4 (Rehnquist, J., dissenting) (1981). Also see Schlei and Grossman, *Employment Discrimination Law* (Washington, D.C.: Bureau of National Affairs, 1976), pp. xi-xii.

12. U.S.C. § 2000e-2(a).

13. The *Curl* decision has been appealed to the U.S. Court of Appeals for the Fourth Circuit. If the appeal changes the decision, a follow-up article will be published in *Popular Government* explaining the change.

women could not get the patrol experience and therefore never could become detectives.

After being continually rebuffed in her attempts to get promotion to patrol or detective duty, Ms. Curl saw as the last straw the transfer back to dispatcher-matron, her original position—the "female" entry position. She exercised the right guaranteed to her by Title VII of the Civil Rights Act and filed a charge with the Equal Employment Opportunity Commission, the federal agency charged with investigating claims of unlawful employment discrimination and attempting to conciliate them. Three months later she was fired.

The sheriff's department said at the trial that the discharge occurred because Ms. Curl had a bad attitude, lacked loyalty, and had created a public outcry by the publicity surrounding her charge of discrimination.

The federal judge found that these claims were untrue. "The dispositive motive for discharging [Ms. Curl] was unlawful retaliation" for her charge of discrimination. Title VII forbids an employer from firing an employee because he or she filed a charge of unlawful discrimination.

The judge ordered the sheriff's department to put Ms. Curl back on the job, to give her an amount of money that would make up for the money she would have earned on patrol duty from June 1980 until May 1983 if she had not been discriminated against, and to give her the first patrol-duty position that opened up.

The money awarded to Ms. Curl was not related to equal pay for equal work—it was to compensate for pay she did not receive because she did not have the opportunity to do the equal, higher-paying work. And the guarantee of future job opportunities was also to make up for the lack of opportunities in the past. Neither remedy would have been available under the Equal Pay Act.

Title VII: Discrimination in opportunity

Barbara Curl's case demonstrates that Title VII provides a broader remedy than the Equal Pay Act. In her case, Title VII covered unfair hiring, unfair job assignment, unfair refusal to promote, and unfair retaliation for complaining of discrimination.

But Barbara Curl suffered only one of two distinct types of unlawful discrimination on account of sex: *intentional discrimination*. The officials who had the power to determine the course of her employment *intended* to treat her differently because she was a woman. It was as if they had said, with respect to patrol duty, "No women need apply."

The other type of unlawful discrimination is very different. It did not affect Ms. Curl, but it affects countless women, blacks, and other minority-group members every day.

Consider as an example a woman (call her Ms. Smith) who in 1980 wanted to join the State Highway Patrol as a trooper. The North Carolina Highway Patrol is justly proud of its high standards. Ms. Smith met them all—all, that is, except that she is not 5 feet 6 inches tall.

In 1980, the Highway Patrol required that to be hired as a trooper, a candidate had to be at least 5 feet 6 inches. Before 1968 the requirement was 5 feet 10 inches but had been gradually reduced since then.

The minimum height requirement is "facially neutral"—that is, it *appears* on the surface to apply to men and women identically. A man who is shorter than the minimum height stands no greater chance of being hired than a woman. Unless some other, unlawful discrimination is present, a qualified woman who is taller than the minimum height stands as good a chance as a qualified man.

The rule was presumably adopted with no intent to discriminate on the basis of sex (it was adopted in an era when no one even dreamed that women might apply as Patrol recruits). Rather, it was adopted to improve the "command presence" of troopers, in the intuitive belief that large people are more effective law enforcement officers than small ones.

So, unlike Ms. Curl, fictional Ms. Smith was not the victim of *intentional* discrimination.

But in April of 1981, a federal district court sitting in Raleigh found that the minimum-height requirement violated Title VII on the grounds of sex discrimination.[14] The *effect* of the requirement was to screen out a much higher proportion of women than men. Of all women between the ages of 18 and 34, 77 per cent would be eliminated from consideration for trooper. Of all men between the same ages, only 9 per cent would be eliminated.

Where an employment requirement has the *effect* of eliminating a greater proportion of women than men (or, for example, blacks than whites), the court will call on the employer to demonstrate that the requirement on which the disproportionate weeding-out is based is job-related. In one of the earliest cases[15] to make this point, the United States Supreme Court held an employer in

14. United States v. State of North Carolina, 512 F. Supp. 968 (E.D.N.C. 1981). The plaintiff in this case was not our fictional Ms. Smith but the U.S. Government. Title VII lawsuits may be brought by individuals who believe they have been discriminated against, by individuals on behalf of themselves and others in a similar circumstance, or by the federal government.

15. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

North Carolina liable for its rule requiring that applicants have a high school diploma in order to be hired. The requirement was "facially neutral"—it applied equally to blacks and whites. But because a smaller proportion of blacks have high school diplomas, the *effect* was to screen blacks out disproportionately. The employer could not demonstrate the need for a diploma for certain jobs and was found liable.

In the Highway Patrol case, the judge found that the Patrol had not shown that the minimum height requirement was job-related and ordered it dropped. In the future, women under 5 feet 6 inches in height will have a better chance to become Highway Patrol troopers.

The courts' interpretation of Title VII—that the *effects* of facially neutral policies can lead to liability for the employer—represents a wider approach to the problems of women in the workplace. But it may not be the widest view of all.

Title VII: Discrimination in pay

The real Ms. Curl and the fictional Ms. Smith used Title VII to get the *opportunity* for jobs. For Ms. Curl, the opportunity sought was the chance to be promoted into higher positions. For Ms. Smith, it was the chance to be hired into the initial position. These are the sorts of efforts that have characterized sex discrimination lawsuits under Title VII.

The earliest of the employment discrimination statutes was concerned not with the *opportunity* for work, but with the *pay* women got for the work they did. As we have seen, the Equal Pay Act said that it was unlawful to pay women less than men for, on the same location and under the same conditions, equal work that requires equal skill, effort, and responsibility.

Title VII, a much more potent weapon against sex discrimination in employment generally, simply has not been available for claims of discrimination in *pay* on the basis of sex. Women who believed they were being discriminated against in pay but could not show that they were doing work equal to what a man was doing and for which he was paid more were out of luck.

But that may be changing. In 1981 the United States Supreme Court opened the door to the widest theory of liability yet developed under Title VII.[16] It brings us back to the Equal Pay Act's concern with discrimination in pay, but its potential ramifications are far greater than any that the Equal Pay Act encompassed.

16. County of Washington v. Gunther, 452 U.S. 155 (1981).

As we saw earlier, "sex" was added to the list of prohibited bases for discrimination while Title VII was being debated. The bill continued a speedy move through the Congress with "sex" as a part of it, to the dismay of both opponents and some proponents of the remedies as to race who did not favor the inclusion of "sex" among the proscribed grounds for discrimination in pay. When it began to appear that Title VII would pass, an amendment was added that came to be known, after its introducer, as the Bennett Amendment:[17]

> It shall not be an unlawful employment practice under [Title VII] for any employer to differentiate upon the basis of sex in determining . . . compensation paid . . . to employees of such employer if such differentiation *is authorized* by the [Equal Pay Act]. [Emphasis added.]

When Title VII became law, the question immediately became: What differences in pay are "authorized by" the Equal Pay Act. From 1965 on, the courts[18] consistently interpreted that phrase as meaning "not prohibited by." Any pay difference not prohibited by the Equal Pay Act was construed to be "authorized by" it. And, of course, the only differences in pay that were prohibited by the Equal Pay Act were those in which persons of one sex (typically women) were paid less than persons of the other sex (typically men) for equal work requiring equal skill, effort, and responsibility.

So a woman who was unable to show that a man doing equal work received more money than she did could not, under Title VII, get relief for discrimination in pay. Her boss might tell her "If you were a man, we'd pay you more," and the courts would shrug their shoulders.

But over the years an alternative idea as to the meaning of the phrase "authorized by" in Title VII had been expressed in dissenting court opinions and in law review articles. The Equal Pay Act provides that even a difference in pay between the sexes for equal work is not a violation if the difference is caused by (1) a seniority system, (2) a merit system, (3) a system that measures earnings by quantity or quality of production, or (4) "a differential based on any other factor other than sex."[19] The dissenting view was that these four exceptions are the differentiations that are "authorized by" the Equal Pay Act within the meaning of the Bennett Amendment.

17. 42 U.S.C. § 2000e-2(h).

18. *See, e.g.*, Lemons v. City and County of Denver, 620 F.2d 228 (10th Cir.), *cert. denied*, 101 S.Ct. 244 (1980).

19. 29 U.S.C. § 206(d)(1).

The courts did not accept this approach because it appeared to take all of the punch out of the Bennett Amendment. Title VII itself contains provisions nearly identical to the first three of the four factors. The fourth seemed implicit—if, in a case that charges sex discrimination under Title VII, the difference in treatment is based on "any other factor other than sex," there is no sex discrimination and the statute is not violated. The objection to this alternative idea was that it made the Bennett Amendment "mere surplusage."[20]

But in 1981 the United States Supreme Court surprised the majority of observers and adopted this alternative concept. The interpretation that had prevailed until this decision, the Court said, was unfair:

> [A] woman who is discriminatorily underpaid could obtain no relief—no matter how egregious the discrimination might be—unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay. Thus, if an employer hired a woman for a unique position in the company and then admitted that her salary would have been higher had she been male, the woman would be unable to obtain legal relief . . . .[21]

In this ground-breaking 1981 case, the women who brought the lawsuit were guards who were responsible for female prisoners in a county jail. They sued because they were paid less than male guards in the same jail who guarded male prisoners. They lost under the Equal Pay Act because the federal trial court ruled that they did not do equal work: Each man guarded more prisoners than each woman did, so that the women had some time left over for clerical duties. The trial court then threw out the women's claim of discrimination in pay under Title VII. It reasoned that since the Equal Pay Act did not prohibit the difference in pay, the difference was "authorized by" the act and did not, because of the Bennett Amendment, violate Title VII.

But the Supreme Court ruled that the trial court was wrong. The effect was a revolutionary new view of lawsuits under Title VII that claim discrimination in pay on the basis of sex. Women may now maintain claims even if they cannot show a violation of the Equal Pay Act—that is, even if they cannot show that a man who in that location is doing equal work requiring equal skill, effort, and responsibility is being paid more than the women are paid.

But the Supreme Court went on to make clear that to prevail in such a suit, the women must show evidence of *discrimination*, not just evidence of a difference in pay. In the jail-guard case, the women presented such evidence. The county had hired a consultant to evaluate the jobs in the county workforce and to set suggested salaries. The consultant's study found that the jail guard jobs of males and females were not equal but the women should be paid 95 per cent as much as the men. But when the county in fact set the pay, the women were paid only 70 per cent as much. That 25 per cent difference, the Court said, was evidence of intentional discrimination.

At the time it seemed that that kind of evidence would be very rare. The jail guards' employer had created an indicator of fair pay for female employees and then had not followed that indicator. But a very recent case, decided in December of 1983, shows that situations like the jail guards' case are not unique, and when they arise and provide evidence of discrimination in pay on the basis of sex, liability for the employer can run into the hundreds of millions of dollars. The case is *American Federation of State, County, and Municipal Employees v. State of Washington*,[22] which the presiding judge called "remarkedly analogous" to the jail-guard case.

In 1974 the State of Washington commissioned a study to "examine and identify salary differences that may pertain to [state government] job classes predominantly filled by men compared to job classes predominantly filled by women, based on job worth." Through the course of this study and an update study done in 1976, state government jobs were evaluated on the basis of knowledge and skills required, mental demands, accountability, and working conditions. Each job was assigned a "worth," and then the "worths" of all jobs studied were compared with the salaries paid for the respective jobs. The state's governor announced the results: "We found that there is, indeed, a general relationship which results in an average of about twenty percent less for women than for males doing equivalent jobs . . . . You can see the disparity which does exist."[23]

Between the final report in 1976 and the time the lawsuit was filed in 1982, the State of Washington took no steps to remedy the 20 per cent difference in pay that the study found. In 1980 the next governor said, "The dollar cost of solution will be high; it probably cannot be achieved in one action. But, the cost of perpetuating unfairness, within state government itself,

20. County of Washington v. Gunther, 452 U.S. at 200 (Rehnquist, J., dissenting).

21. *Id.* at 178.

22. 33 F.E.P. Cases 808 (W.D. Wash. 1983).

23. AFSCME v. Washington, 33 F.E.P. Cases at 818.

is too great to put off any longer . . . ." Still, salaries were not adjusted to remedy the disparity found by the study.

The judge who decided the case said that the issue was "whether [the state's] failure to pay [female employees] their evaluated worth, under the provisions of [the state's] comparable worth studies, constitutes discrimination in violation of the provisions of Title VII."[24] His answer was Yes, that failure did violate Title VII: "The State of Washington has failed to rectify an acknowledged discriminatory disparity in compensation. The State has, and is continuing to treat some employees less favorably than others because of their sex, and this treatment is intentional."[25]

The State of Washington had studied its jobs, had found disparities in pay between men and women, and had not rectified those inequalities. The federal district court ruled that that was evidence of unlawful discrimination and ordered the state to pay the women who had been discriminated against hundreds of millions of dollars to rectify the disparity.

A North Carolina example. In 1983 the North Carolina Office of State Personnel released a study of pay patterns in state government.[26] The study was in one aspect merely statistical. It sought to account statistically for factors that affect salary and to determine the effect on pay of the race and sex of the person who holds the job.

The study concluded: "While education has the single most influential impact on salary, the effects of race and sex are also significant. The considerable direct effects of race and sex on salary (that is, those not transmitted through differences in education levels, years of aggregate service, occupational placement, or supervisory placement) indicate other, perhaps, *illegitimate* sources of salary disparities are present"[27] [emphasis added].

A second aspect of the North Carolina study was more like the job-worth analysis done in the jail guards' case or the State of Washington's case. Jobs in the state government workforces in Idaho and Washington were matched with comparable jobs in North Carolina state government. Using the job-worth evaluation of the matched jobs from those states, the study examined whether the North Carolina state government pay structure "caused a greater wage gap in terms of race and sex" than the pay structures in Idaho and Washington.

The North Carolina study concluded:

> If these job-evaluation systems do not consider the composition [that is, presumably, the systems are not biased as to sex and race] of the workforce of each job, as they should not if they are valid methods of evaluation, then the differences found in these analyses support the contention that *jobs dominated by women and blacks* [in North Carolina state government] *are undervalued under the present pay structure* [emphasis added].[28]

The oblique reference in the first aspect of the study to "perhaps illegitimate" sources of salary differences can certainly be read to include sex discrimination. The second aspect of the study concludes that there is support for the contention that "jobs dominated by women and blacks are undervalued under the present pay structure" in North Carolina state government.

In the jail-guard case, the county did a study and then did not follow it in setting salaries, to the detriment of female employees. The court found that that failure evidenced sex discrimination. In the Washington State case, the state commissioned a study of job worth in state government and then did not change the salary structure that the study found worked to the detriment of women. The federal court imposed liability on the state. In North Carolina the Office of State Personnel's report has suggested the presence of sex discrimination in pay for state government jobs. If the state does not respond by adjusting salaries to eliminate the possibility that sex discrimination is present, the court might consider that failure to be evidence of discrimination, just as the court did in the Washington case. If the court did take this view, the state could argue that nondiscriminatory factors account for the salary differences. It could attempt to discredit the report as incomplete or inaccurate and therefore not convincing, or it could try to find factors not dealt with in the report, such as job-performance measures or labor-market requirements, as explanations of the differences in pay between men and women. Whether a court would be convinced by those arguments is open to question.

Comparable pay for comparable worth

The jail-guard case and the State of Washington case turned on whether the women who brought the lawsuits could produce evidence of *discrimination*, not just

24. Id. at 822.
25. Id. at 823.
26. *Patterns of Pay in N.C. State Government* (Raleigh, N.C.: North Carolina Office of State Personnel, 1983).
27. *Id.* Summary, at 2.
28. *Id.* at 85.

evidence of difference in pay. That question of evidence came up in a case[29] from Madison, Wisconsin, where all the public health nurses were women and all the public health sanitarians were men. The women were paid less than the men.

The nurses showed that (1) they were members of a protected class (women), (2) they occupied a sex-segregated job classification (nurse), and (3) they were paid less than men in another sex-segregated job classification (sanitarian). They claimed that those facts alone were sufficient evidence of unlawful discrimination. Their reasoning was that job segregation and wage discrimination are intimately related; that history, anthropology, economics, and sociology all indicate that women have traditionally been segregated into women-only jobs; and that those jobs have been undervalued because they were held by women. Therefore, the nurses argued, if they showed that they were in a sex-segregated job and that men in another sex-segregated job were paid more, they had produced enough evidence of discrimination to force the court to call on the employer to explain why discrimination does not exist.

This argument by the nurses came very close to an articulation of the newest and most expansive concept of liability under Title VII: comparable pay for comparable worth. *This concept has nowhere become law.* Before the jail guards' case, it *could* not become law. But the jail guards' case opened the door, and the State of Washington case indicates that some courts are ready to take another step.[30]

The comparable-worth argument rests on two undeniable premises: (1) in this country's labor market, there is considerable segregation of jobs by sex; and (2) the jobs that men dominate pay more. The conclusion drawn is that at least part of the difference in pay between "men's jobs" and "women's jobs" is due to sex discrimination. The Madison nurses' argument was very close to this argument.

The judge in the Madison nurses' case did not accept their initial argument. He was not convinced that the nurses had produced evidence of sex discrimination by merely showing that they in "women's jobs" were paid less than men in "men's jobs." But he did allow them to go further. He allowed the nurses to show that their jobs were substantially similar to the male sanitarians' jobs. With that additional showing, the court said, the nurses had a case of unlawful discrimination.

> It rests upon the logical premise that jobs which are similar in their requirements of skill, effort, and responsibility and in their working conditions are of comparable value to an employer, and upon the equally *logical premise that jobs of comparable value would be compensated comparably but for the employer's discriminatory treatment of the lower-paid employees* [emphasis added].[31]

Comparable-worth proponents would agree with the judge in this case that it is a logical premise that "jobs of comparable value would be compensated comparably." That statement expresses their theory. But they would disagree with him that jobs must be similar before they can be considered comparable. Whether the jobs are similar, they argue, is irrelevant. The goal is comparable pay for comparable *worth*, not for comparable *jobs*. Comparable-worth supporters recognize that determining whether jobs are substantially similar is easier than determining their worth, but they advocate the use of comprehensive job evaluation systems to determine both worth and whether there is sex-based discrimination in pay.

There are many systems of comprehensive job evaluation. A typical one begins with job descriptions, usually developed by asking employees what they do. Once the descriptions are put into uniform style, they are graded according to some combination of the following factors: knowledge required, supervisory controls, guideline controls, complexity, scope and effect, personal contacts, physical demands, and working environment. The grading may be high-medium-low, or on a 10-point scale, or by some such device. Once the job is graded, the ratings are added in some way to create a total score. This step is a highly subjective process in which the analyst may decide, for instance, that a relatively low score on knowledge required has a greater weight than a relatively high score on personal contacts. Jobs can be ranked according to the total reached by the evaluation process. Proponents of comparable worth argue that jobs that emerge from this evaluation process with comparable rankings are of comparable worth to the employer and should be paid comparably.

Under commission by the federal Equal Opportunity Commission, the National Academy of Sciences studied the usefulness of job-evaluation systems. The NAS report[32] concluded that such systems are "inherently judgmental" and that their undeveloped nature "does

(continued on page 31)

29. Briggs v. City of Madison, 536 F. Supp. 435 (W.D. Wis. 1982).

30. *See, e.g.*, Connecticut State Employee Assn. v. Connecticut, 31 F.E.P. Cases 191 (D. Conn. 1983).

31. Briggs v. City of Madison, 536 F. Supp. at 445.

32. D. Treiman and H. Hartmann, eds., *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (National Academy Press, 1981). For materials on job-evaluation systems, see D. Treiman, *Job Evaluation: An Analytic Review* (1979), and "Equal Pay, Comparable Work and Job Evaluation," 90 *Yale Law Journal* 657 (January 1981).

Questions I'm Most Often Asked

Are the "trip tickets" of county-owned ambulances public records?

Anne M. Dellinger

North Carolina's public records statute is broad. With few exceptions it covers "all documents . . . made or received . . . in connection with . . . public business." So the question here is whether an ambulance trip ticket is one of those few exceptions to our statute.

A "trip ticket"—that is, an ambulance's work order—contains a fair amount of information that may interest people other than the patient. Most tickets tell when the ambulance was called and when it arrived, the address and name of the person transported, what situation was presented to emergency medical personnel, what assistance they rendered on the spot and in transit, where the patient was taken, and his or her condition on arrival. Eventually, the ticket will also show the charges and payment for the service.

Usually a copy of the ticket is presented to the hospital, where it becomes part of the patient's medical records. But what happens when others—say, a reporter trying to supplement her information about a newsworthy accident, a claims adjuster wondering whether either driver was intoxicated, or a neighbor who's just curious—ask to see the trip ticket? May it be shown to anyone on request? Must it be?

We can easily understand why patients and their families might want the answers to be "no." Besides wanting to avoid publicity, the patient may feel that the information is damaging or erroneous or both. An example from personal experience: A friend of mine was taken by ambulance to the hospital after fainting spells that caused her to fall and hit her head several times. Her husband, though worried, still noted that questions asked by ambulance and emergency room personnel seemed, very tactfully, to be exploring whether he might have injured her himself. My recovered friend and her husband laughed at that aspect of the episode and agreed that the questioners were doing their duty. But they would certainly not have been amused if a trip ticket raising such a possibility had been made public.

To answer the question of who may see the ticket, let's first assume that a county-owned and -operated ambulance service is subject to the North Carolina Public Records Act just as the county itself is.[1] Next we ask whether the tickets themselves are exempt for some reason. I conclude, for the following reasons, that the "medical records" exception enacted by the 1983 General Assembly probably covers much, though not all, of the information on trip tickets and protects that part of it from public scrutiny.

The North Carolina Attorney General has expressed the opinion that medical information on a trip ticket is a medical record, and therefore confidential, if the emergency medical technicians aboard the ambulance are in radio contact with a physician during the trip.[2] (The Attorney General's point is that information must be gathered by or under the supervision of a doctor in order to qualify as a medical record and the ambulance patient has not yet entered into a doctor-patient relationship unless a physician is directing treatment by radio.) I certainly agree with the opinion as far as it goes, but think too that a good argument can be made for not limiting the medical records exception to radio-contact trips. On every trip ambulance personnel are compiling information that will very soon be presented to a physician for use in the passenger-patient's medical treatment. The same motivation that presumably led the North Carolina General Assembly (and the courts of nearly every state) to protect the confidentiality of medical information would seem to apply to all trips—that is, the wish to encourage sick people to reveal all information that their doctors might need to diagnose and treat them. If that is indeed the reason for a medical records exception, it would seem illogical to me that a passenger's confidentiality rights should depend on whether ambulance personnel have the opportunity to talk to a doctor on the way to the hospital. Thus, in the absence of a court ruling on the point, I would advise all ambulance operators not to release medical information about passengers.

What about nonmedical information on the trip ticket? Finding no exception to cover it, I assume it is a public record and must be shown to anyone who requests it. This result may inconvenience those who must therefore release some information and withhold the rest, but in my opinion it is the best way to safeguard the legitimate interests of all parties.

1. An ambulance service would seem to be "an agency of North Carolina government or its subdivisions," N.C. GEN. STAT. § 132-1, especially since the Court of Appeals has held the Public Records Act applicable to a county hospital. News and Observer Publishing Co. v. Wake County Hospital System, 55 N.C. App. 1, 284 S.E. 2d 542 (1981).

2. Letter to Rebecca R. Yarborough, Piedmont Triad Council of Governments, January 4, 1979.

Lease-Purchase Agreements and North Carolina Local Governments

Many local governments are acquiring "large ticket" items through lease-purchase agreements—buying major pieces of equipment while they use them.

A. Fleming Bell, II

The equipment that local governments need to provide the services their citizens demand is becoming more and more expensive. Units often have trouble finding funds in a single year's budget to pay for "large ticket" items like computers, fire trucks, and landfill equipment. Because of this difficulty, cities and counties are actively seeking ways to spread the cost of such items over the several years that they will be in service.

One method used by a number of North Carolina local governments is the installment purchase, or lease-purchase, contract. Under such a contract, the city or county agrees with a seller of equipment to pay the equipment's purchase price, plus interest, in a number of installments. The seller retains a security interest in the equipment that permits it to repossess the equipment if scheduled payments are not made.

The interest that the local government pays to the equipment seller in a lease-purchase transaction is exempt from federal income taxation if the provisions of the agreement meet certain Internal Revenue Service requirements. A correctly structured lease-purchase agreement is treated, for federal income tax purposes, in the same manner as a local government bond issue; the

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IRS considers it to be an "obligation" of a local government, and the interest on it is exempt from taxation under the Internal Revenue Code.[1] (This IRS rule contrasts with North Carolina state law, under which, as we will see, lease-purchase obligations and bond obligations are treated quite differently.)

Equipment vendors, banks, and other financial institutions find lease-purchase agreements with local governments attractive because of the tax-exempt interest that they can earn. Local government lease-purchasers benefit financially from such transactions as well, since some of the tax savings are usually passed along to the local governments in the form of lower interest rates.

Under a lease-purchase agreement, it is expected that the local government will acquire title to the equipment, usually initially but sometimes after it makes all of the scheduled payments. By acquiring title, the city or county becomes the owner of the equipment. Agreements of this type differ from traditional leases in which the local government only pays for the right to use the equipment for a specified time. Under a traditional lease, the lessor retains title to the equipment, which is returned to it at the end of the rental period. A lease-purchase agreement also differs from a traditional lease with option to purchase, under which the local government that rents the equipment has the right to buy it for its "fair market value" at the end of the rental period.

Lease-purchase transactions are more complicated than the standard contractual arrangements with which North Carolina public officials may be familiar. They must be carefully planned and executed in order to comply with the applicable statutory and constitutional provisions. This article will (a) explore the state laws that apply to lease-purchase agreements entered into by North Carolina local governments, (b) describe the structure of typical lease-purchase transactions, and (c) examine some terms of lease-purchase contracts that often cause problems.

State laws

The primary statutory authorization for North Carolina local governments to enter into lease-purchase agreements is G.S. 160A-20, which permits cities and counties to buy real or personal property "by installment contract which create in the property purchased a security interest to secure payment of the purchase money." (The "purchase money" is the cost of the equipment.) G.S. 160A-20 also provides some "ground rules" for such contracts. It stipulates that no "deficiency judgment" may be rendered against a city or county in an action for breach of the contract,[2] forbids pledging the city's or county's taxing power as security, and makes clear that Local Government Commission approval is required for contracts of over a specified amount and duration.

Several other statutes also bear on lease-purchase agreements. Article 8 of G.S. Chapter 159 (beginning at G.S. 159-148) specifies when Local Government Commission approval is required for lease-purchase agreements and other similar contracts and sets out the conditions under which that approval will be granted. The competitive bidding requirements found in Article 8 of Chapter 143 and in other parts of the General Statutes are also important, since local governments that enter into lease-purchase agreements are typically making equipment purchases to which the bidding laws apply. Other related statutes authorize counties and cities to enter into leases (respectively, G.S. 153A-165 and G.S. 160A-19) and continuing contracts (respectively, G.S. 153A-13 and G.S. 160A-17).[3]

Structuring a lease-purchase agreement under G.S. 160A-20. G.S. 160A-20 contemplates a two-party purchase money security interest or lease-purchase transaction between a seller of equipment and a buyer of that equipment. The city or county agrees to pay the purchase

1. For a good discussion of the federal income tax treatment of the interest paid by local governments under lease-purchase contracts, see A. J. Vogt, L. A. Cole, D. R. Duven, and S. H. Owen, Jr., A Guide to Municipal Leasing 52-56 (1983).

2. If the buyer breaches an installment purchase contract, the seller can often repossess the item being purchased and sell it to recover some of the money lost because of the breach. A "deficiency judgment," which G.S. 160A-20 prohibits in installment purchase contracts involving cities and counties, is a judgment entered by a court against a breaching buyer for any loss suffered by the seller that was uncompensated after the repossessed item was sold.

3. Article 9, "Secured Transactions," of the Uniform Commercial Code, N.C. Gen. Stat. Chapter 25, which deals with security interests in personal property, may also be of interest. While "transfer[s] by a government or governmental subdivision or agency" are specifically excluded from Article 9's coverage [N.C. Gen. Stat. § 25-9-104(e)], lessors often follow the rules of Article 9 in dealing with the security interests created by governmental lease-purchase agreements.

price plus interest in a series of installments and, in order to secure those payments, grants a security interest in the equipment to the seller. No money ever passes from the seller to the local unit.[4] Such a structure makes clear that a local government is not borrowing money when it enters into a lease-purchase transaction; thus it avoids problems that might otherwise arise under the state constitutional provisions that apply to local government debt. Section 4 of Article V of the North Carolina Constitution prohibits local governments, except in limited cases, from "incurring debts" (a debt is incurred when the local government "borrows money") "secured by a pledge of the faith and credit" (defined as "a pledge of the taxing power") without voter approval. The fact that G.S. 160A-20 specifically forbids a pledge of the unit's faith and credit to secure repayment of the purchase price is further assurance that the transaction will not run afoul of Section 4.

4. A G.S. 160A-20 transaction is conceptually similar to the *first* of the two types of transactions described in the definition of "purchase money security interest" in Article 9 of the Uniform Commercial Code. A "purchase money security interest," as defined in G.S. 25-9-107, includes both (1) a security interest "taken or retained by the seller of the collateral to secure all or part of its price" and (2) a security interest taken by a person who lends money or otherwise "gives value" that is used to buy the collateral from someone else.

Lease-purchase agreements entered into by North Carolina local governments under G.S. 160A-20 may be structured in at least two ways.

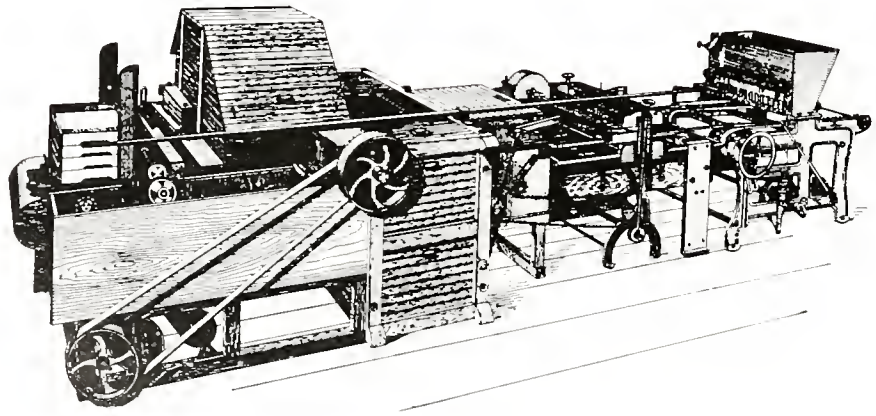
Lease-purchase agreement with the equipment vendor. A lease-purchase transaction under G.S. 160A-20 often comes about as follows: A local government decides that it needs an item of equipment that costs more than the city or county can pay in cash during one fiscal year. It solicits bids for the equipment from a number of vendors, asking each one to quote a total price for both the equipment and financing costs over a specified period of time—typically less than five years. The local government selects the bid that offers the lowest total cost. The lowest total cost can be figured by calculating the value in present-day dollars of the payments to be made under each bid and choosing the bid that has the lowest present value of payments.

Once the bid that offers the lowest total cost has been determined, the local government enters into a lease-purchase agreement with the successful bidder by executing a contract and various other documents. It usually takes title to the equipment, subject to the vendor's security interest, and agrees to make a series of regularly scheduled payments to the vendor.

In some cases, the vendor will prefer that the actual long-term financing of the equipment be handled by a bank or other financial institution that is familiar with installment purchase or lease-purchase transactions and the paper work and other tasks involved in handling such accounts. (For simplicity, the term "bank" will hereafter mean any institution that supplies financing for a lease-purchase transaction.) In such a case, the vendor can sell (or "discount") and assign its right to the payments under the lease-purchase agreement and its security interest in the equipment to the bank in exchange for a cash payment of the purchase price. The local government then makes its payments under the agreement directly to the financial institution.

Lease-purchase agreement with a bank. In addition to following the basic scheme outlined above, local governments often seek to secure financing for lease-purchase transactions under G.S. 160A-20 that is separate and apart from the bids they secure for the equipment itself. Many banks prefer to enter into lease-purchase agreements directly with local governments rather than to buy contractual rights from equipment vendors.

A city or county that is planning to use such a financing arrangement will usually advertise for bids on a cash basis for the equipment being purchased, in accordance with the statutory bidding requirements discussed below. It will stipulate in the bid specifications that acceptance of a bid is contingent on (1) the securing of satisfactory lease-purchase financing; (2) the successful bidder's assignment, to the bank that provides the lease-purchase financing, of its right to sell the equipment to the local governmental unit; and (3) the passage of title to the equipment to the bank when the bank pays the equipment's purchase price to the successful bidder.[5] Once



5. The request for bids and the contract with the successful bidder need to contain these three conditions in order to make clear

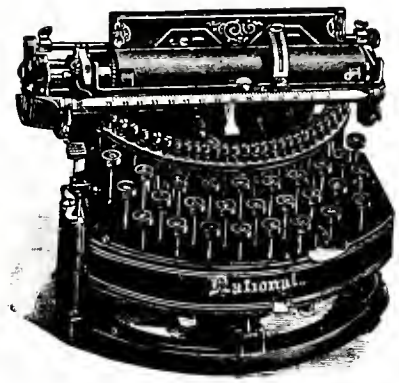
bids are received, the local government determines the successful bidder for the equipment.

The city or county next solicits proposals for financing the equipment from banks and accepts the most satisfactory financing arrangement, usually choosing the proposal with the lowest interest rate or the lowest present value of payments. The successful vendor is usually given an opportunity to submit a financing proposal. The local government will find it advantageous to solicit competitive bids for the supplying of financing for the lease-purchase transaction. However, it is not required to follow the statutory bidding procedures in selecting the financing institution, if financing is arranged separately from acquisition of the equipment. Financing is a service, and the bidding requirements do not apply to the purchase of services.

The local government and the bank enter into the lease-purchase agreement under the scheme described above with the bank acting as the "seller" of the equipment for purposes of G.S. 160A-20. The financing transaction typically involves these steps.

(1) The bank enters into a lease-purchase agreement with the local government. The agreement provides that it takes effect once title to the equipment is transferred from the bank to the city or county.

(2) The bank makes a contract with the equipment vendor in which the vendor agrees (a) to assign to the bank the vendor's right to sell the equipment to the local government



and (b) to convey title to the equipment to the bank; in exchange, the bank pays the vendor for the equipment in cash. The agreement specifies that the assignment, title transfer, and payment will occur when the local government accepts the equipment.

(3) The equipment is delivered, inspected, and accepted by the local government.

(4) The bank pays the equipment vendor the agreed price for the equipment, is assigned the vendor's right to sell the equipment to the local government, and takes title to the equipment from the vendor.

(5) The bank (which is now the assignee of the equipment vendor's right to sell the equipment and the nominal owner of the equipment) transfers title to the equipment to the local government. It receives a security interest in the equipment from the city or county, and the lease-purchase agreement's term begins.

With this kind of agreement, the two-party structure contemplated by G.S. 160A-20 is preserved. Since the bank is technically the "seller" of the equipment, the city or county can acquire title to the equipment from the same entity to which it grants a security interest in the equipment.

Correctly structuring a lease-purchase agreement with a bank under G.S. 160A-20 generally proves more complicated and time-consuming for a local government than arranging a lease-purchase transaction directly with an equipment vendor. Nevertheless, lease-purchase agreements between local governments and financial institutions have proved very popular for several reasons. First, many equipment vendors cannot provide lease-purchase financing for their customers. Second, as noted above, many banks prefer to deal directly with local governments in entering into lease-purchase agreements rather than to buy rights under such agreements from equipment vendors. A third important consideration is cost. Many local governments choose to make direct arrangements with banks in an effort to obtain better financing rates or more flexible terms.

Requirements for Local Government Commission approval. Certain lease-purchase agreements must be approved by the Local Government Commission (LGC) in accordance with G.S. Chapter 159, Article 8, as well as correctly structured under G.S. 160A-20. Under G.S. 159-148, LGC approval is required for "any contract, agreement, memorandum of understanding," or "other transaction having the force and effect of a contract," other than certain bond agreements, if the transaction is "made or entered into by a unit of local government (as defined by G.S. 159-7(b)," relates "to the lease, acquisition, or construction of capital assets," and meets four conditions:

(1) It "extends for five or more years from the date of the contract," including optional renewal periods.

(2) It obligates the local government "to pay sums of money to another."

(3) It obligates the local government, "over the full term of the contract," including renewal periods, for the lesser of $500,000 or "a sum equal to one tenth of one percent of the appraised value" of the property

that the local government is not obligating itself to pay the full price of the equipment during the current fiscal year. If such an obligation were to be created, in order for the unit's finance officer to issue the preaudit certificate required by Section 159-28(a) of the General Statutes for any "obligation . . . evidenced by a contract or agreement requiring the payment of money. . .," the unit would have to encumber sufficient funds to pay the full purchase price.

subject to taxation by the local government.

(4) It expressly or by implication obligates the local government "to exercise its power to levy taxes either to make payments falling due under the contract or to pay any judgment entered against" the local government for breach of contract.

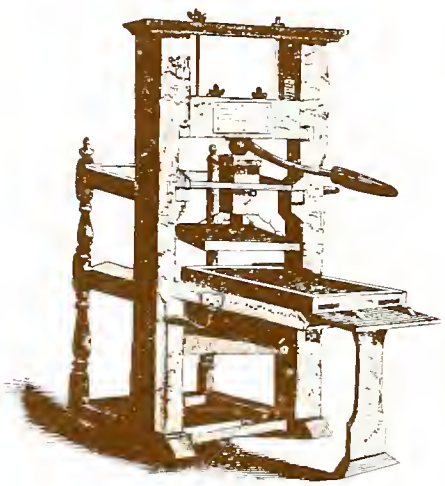
The requirements of Article 8 do not apply to "contracts for the purchase, lease, or lease with option to purchase motor vehicles or voting machines" or to contracts entered into between a local government and the state or federal government as a condition for grants or loans to the local government.

The fourth requirement of G.S. 159-148—that the contract obligate the local government, expressly or by implication, to exercise its taxing power to make payments under the contract or to pay damages for breach of contract—reveals an apparent inconsistency between this statute and G.S. 160A-20. It will be recalled that lease-purchase agreements adopted under the authority of G.S. 160A-20 *cannot* involve a direct or indirect pledge of the taxing power. (Indeed, most lease-purchase contracts used in North Carolina expressly state that the agreement involves no pledge of the local unit's taxing ability.) Furthermore, a local government that enters into a G.S. 160A-20 lease-purchase agreement will never be obliged to use its taxing power to pay a judgment in a breach-of-contract action. The prohibition of "deficiency judgments" in actions for breach of G.S. 160A-20 contracts limits the recovery of damages in such an action to whatever proceeds are derived from the sale of the equipment that serves as security or collateral for the agreement; if a city or county is the lessee, a court cannot render a judgment against the unit for the "deficiency," or difference, between the amount received in the sale of the equipment and the lessor's damages.

Taking the requirements of G.S. 160A-20 and G.S. 159-148 together, one might conclude that no G.S. 160A-20 agreements require LGC approval. Such an interpretation would have the practical effect of rendering Article 8 of Chapter 159 meaningless with regard to lease-purchase contracts.

The LGC staff, with concurrence by the State Attorney General's office, has interpreted G.S. 160A-20 and G.S. 159-148 in a manner that allows the two statutes to work together. G.S. 160A-20 provides that purchase money security interest or lease-purchase transactions are subject to the "applicable" provisions of Article 8 of Chapter 159. G.S. 159-148 provides, as a prerequisite for mandatory LGC review, that the contract must obligate the local government to exercise its taxing power; because this prerequisite is inconsistent with G.S. 160A-20, the LGC's staff takes the position that it is not an applicable provision of Article 8. On the basis of this interpretation, the LGC requires cities and counties to submit for LGC approval those lease-purchase agreements that meet the first three requirements of G.S. 159-148, even though they do not involve a pledge of the taxing power.

A local government that is proposing a lease-purchase agreement for which LGC approval is required must apply for approval of the contract to the LGC Secretary. The Secretary may require the unit's governing board or its representative to attend an informal, preliminary conference before the Secretary accepts the application. In addition, the unit's finance officer or other designated official must give the Secretary a sworn "statement of debt," like that required by G.S. 159-55 in connection with a general obligation bond issue.



Article 8 of Chapter 159 lists a number of factors that the LGC may consider in determining whether to approve the contract. The contract may be approved only if the unit's net debt, after the contract is executed, will be 8 per cent or less of the appraised value of property subject to taxation by the local government. (The amounts to be paid under lease-purchase agreements subject to Article 8 are counted as "debt" for purposes of this calculation.) The Commission must also find that:

(1) The contract is "necessary or expedient."
(2) "[T]he contract, under the circumstances, is preferable to a bond issue for the same purpose."
(3) The sums that fall due under the contract are "adequate and not excessive" for the purpose of the contract and can be met without an "excessive" increase in taxes.
(4) The local government is "is not in default in any of its debt service obligations" and either has good debt management policies and procedures or has assured the Commission that it will manage its debt "in strict compliance with law."

The unit need not meet all of the listed conditions if it can show that (a) the project is *both* "necessary and expedient," (b) "the proposed undertaking cannot be economically financed by a bond issue," and (c) "the contract will not require an

excessive increase in taxes."
If it tentatively denies the unit's application because the information submitted does not provide a sufficient basis for approval of the application, the LGC is to notify the local government and then hold a public hearing on the application if the unit requests one.

Bidding law requirements. G.S. 143-129 requires that a local government obtain formal bids from potential sellers before it makes a "purchase of apparatus, supplies, materials, or equipment" in an amount of $10,000 or more. Informal bids must be secured before the unit makes a purchase of such items in an amount of $2,500 to $10,000. The acquisition of equipment through a lease-purchase transaction is covered by these bidding rules. (As was noted earlier, the competitive bidding procedures need *not* be followed in selecting the institution that supplies the financing for the transaction, if financing is arranged separately from the acquisition of the equipment.) A lease-purchase of goods is much like a cash purchase of the same items; the local unit that lease-purchases a piece of equipment is not merely renting it but rather expects to own that equipment. Further, G.S. 153A-165 and G.S. 160A-19 explicitly provide that a county's or city's lease of personal property with option to purchase is subject to the bidding laws. A purchase option is typically included in lease-purchase or installment purchase agreements entered into by North Carolina local governments.[6]

The bidding laws pose no special difficulty for the local government if it plans to enter into a lease-purchase agreement with the vendor of the equipment it wishes to acquire. The only difference from standard bid procedures will be a slight modification of the bid documents. As noted earlier, the request for bids should specify that a G.S. 160A-20 transaction is being considered and that vendors should provide "total cost" bids (cash price plus financing charges). Vendors should be asked to state separately the price of the equipment and the financing charges, to specify the interest rate implicit in the financing charges, and to provide a payment schedule.[7]

A local government that plans to enter into a lease-purchase agreement with a bank should take certain additional steps in structuring its transaction. In particular, it should make certain that each equipment vendor that submits a bid agrees that, if its bid is accepted, it will assign to the bank its right to sell the equipment to the local government. Once this assignment has been made, the bank stands "in the shoes" of the low bidder for purposes of the bidding laws, and the local government may enter into a lease-purchase agreement with it, as described above.[8]

Other laws. Other statutes relevant to lease-purchase transactions include G.S. 153A-165 and G.S. 160A-19, which respectively authorize counties and cities to enter into lease and lease-with-option-to-purchase transactions. These statutes were probably intended primarily to authorize traditional lease agreements rather than installment sale or lease-purchase contracts. However, they do contain the important requirement, noted above, that all leases with option to purchase (including lease-purchase agreements) comply with the competitive bidding laws.

G.S. 153A-13 and G.S. 160A-17, which respectively authorize counties and cities to enter into continuing contracts "some portion or all of which are to be performed in ensuing fiscal years," may also interest local officials who are contemplating lease-purchase agreements, even though these statutes probably have only limited application to most such agreements. As will be seen, the typical lease-purchase agreement contains a clause that allows the local government lessee to terminate the agreement at the end of any fiscal year. The presence of such a clause in a lease-purchase agreement probably means that the lease-purchase arrangement creates no continuing contractual obligations of the type contemplated by G.S. 153A-13 and G.S. 160A-17.[9]

6. Exercise of this option makes the local government the owner of the equipment free of any security interest of the lessor. As noted earlier, title to the equipment *subject to the lessor's security interest* may already have been transferred to the local government lessee at the beginning of the lease-purchase agreement's term.

7. For a good example of the type of payment schedule that can be used, see VOGT, ET AL., *op. cit. supra* note 1, at 156.

8. Since it is important for purposes of the bidding laws that the local government buy the equipment from the low bidder or its assignee, the city or county should be certain that what is assigned to the bank is *the successful bidder's right to sell the equipment* to the local government. The unit should take care to avoid an arrangement, seen in many lease-purchase contracts, under which the bank (1) is assigned *the local government's right to buy the equipment*, (2) takes title to the equipment as the assignee of the local government, and (3) resells the equipment to the city or county. Since the bank has not itself submitted the low bid, it can sell the equipment to the local government only as the assignee of the successful bidder.

9. Some writers, along with staff attorneys in the North Carolina Attorney General's office, take the position that installment purchase contracts should not be considered to be "continuing contracts," whether or not termination at the end of any fiscal year is allowed. They reason that, for a true continuing contract to exist, both parties must have performance obligations that extend beyond the current fiscal year. A lease-purchase or installment purchase contract does not meet this requirement, in their view, because the lessor's performance is essentially completed once financing for the transaction has been provided to the local government lessee. Only the lessee has a continuing performance obligation after the contract's term begins. *See* VOGT, ET AL., *op. cit. supra* note 1, at 69, 76. While not all authorities share this view [*see* D. M. LAWRENCE, LOCAL GOVERNMENT FINANCE IN NORTH CAROLINA 172-73 (1977)], North Carolina cities and counties can avoid uncertainty by relying on G.S. 160A-20 as their primary source of authority for entering into lease-purchase agreements.

Important provisions of agreements

Lease-purchase agreements are complicated documents. They often contain a number of provisions unfamiliar to many local officials. Issues that can generally be resolved in simpler, more straightforward contracts by following the ordinary rules of contract law may need special treatment in lease-purchase agreements. This section will highlight some contractual provisions that can cause problems and misunderstanding unless they are confronted and dealt with *before* the lease-purchase agreement is signed.

Delivery, inspection, acceptance, and transfer of title. Local government officials who are entering into lease-purchase transactions should make certain that the proper sequence of events is followed before the lease-purchase agreement's term begins. In particular, the agreement should provide for adequate time after the equipment is delivered for the local government's employees to inspect it and test it for defects. The agreement (and the contract with the equipment vendor, if the equipment is being lease-purchased from a bank) should specify that, if the equipment is defective, the city or county can either reject it and terminate the contract or require that corrections be made before title is transferred and the lease-purchase agreement's term begins. Such a provision merely preserves for the local government those rights granted under sales law to a buyer of goods.[10] If the local government is lease-purchasing the equipment from a bank, it should insist that the bank neither pay the equipment vendor nor take title to the equipment as assignee of the vendor's right to sell until the local government has accepted the equipment.

10. *See, e.g.*, N.C. GEN. STAT. §§ 25-2-508, -2-513, -2-601, -2-602, -2-605 to -608.

If it will take an extended time to install the equipment (as, for example, in the case of a telephone system), the bank may feel compelled to make "progress payments" to the vendor and to take title to the installed portions of the system as installation proceeds. In such a case, it is essential that the local government require a performance bond from the vendor to insure that the entire system is installed and operates properly. (Requiring such a bond may be a good idea in *any* transaction that involves the acquisition of complex, expensive equipment.)

"Entire agreement" provision. Lease-purchase contracts often state that they contain the entire agreement between the parties and replace all former written or oral understandings between the lessor and the local government lessee. The local government should modify such an "entire agreement" clause to recognize the fact that a variety of other documents, such as the request for bids and the proposal of the successful equipment vendor, also contain important details concerning the transaction. These other documents should be incorporated by reference in the lease-purchase agreement. The city or county should also make certain that the terms of the lease-purchase agreement—particularly with respect to delivery, inspection, and acceptance of the equipment and the beginning of the lease term—are consistent with the provisions of these other documents.

Payment conditions. Agreements for the lease-purchase of equipment often provide that the local government lessee's obligation to make payments under the agreement is unconditional except in the event of nonappropriation of funds (discussed below). That is, the city or county must make the scheduled payments, regardless of any problems that may be encountered with respect to the equipment. The lessor will generally be unwilling to remove this provision from the contract, since such an unconditional obligation to pay may be needed to preserve the exemption from the federal income tax for the interest paid under the contract. Since the local government has an unconditional obligation to pay, it is especially important for the unit both to make certain that the equipment is satisfactory before accepting it and to protect itself with adequate warranty provisions.

Warranties. Sellers of goods generally make certain express and implied warranties to the buyer of those goods. When a city or county purchases equipment through a lease-purchase agreement, it must make certain that it can enforce these warranties against the party that is in the best position to solve any problems with the equipment—the vendor or, in some cases, the manufacturer. If only the equipment vendor and the local government are involved in the lease-purchase transaction, usually no difficulty arises. In such a case, the vendor is both selling and financing the equipment, and the standard legal rules governing seller warranties can be applied. The warranties that the vendor makes as seller of the equipment can be enforced directly by the local goverment buyer.

The local government must take more care, however, when it enters into a lease-purchase agreement with a bank. Technically, the bank is the seller of the equipment, since it has been assigned the equipment vendor's contractual rights and has taken title to the equipment. In fact, however, the bank is interested only in providing financing for the transaction and does not want to be bothered with warranty claims if the equipment proves defective. For this reason, a bank that enters into a lease-purchase agreement will disclaim all warranties, express or implied, with respect to the equipment.

To protect itself and avoid misunderstandings, the local govern-

ment should stipulate in its request for bids and in its contract with the successful equipment vendor that all warranties made by the vendor or the manufacturer to the buyer of the equipment are for the benefit of and may be enforced by the local government. Such a provision makes clear that the vendor remains ultimately responsible for the equipment's satisfactory performance, even though it assigns to the bank its right to sell the equipment to the city or county. The local government should also require the bank to assign to it all of the claims and rights that the bank may have against the equipment manufacturer or vendor. It is reasonable to expect the bank to agree to such a provision in the lease-purchase agreement, since the bank normally expects the unit to look to the vendor or manufacturer to resolve any problems with the equipment.

Maintenance, insurance, and inspection provisions. The equipment being purchased is the lessor's collateral or security if the local government does not make the scheduled payments. Most lessors will therefore insist that the local government lessee promise to maintain the equipment properly and to provide adequate insurance coverage for losses to the equipment. The lessor may want the right to make periodic on-site inspections of the equipment in order to assure that the city or county is taking proper care of it. The lessor may also ask for copies of all insurance policies covering the equipment.

The local government also has a strong interest in seeing that the equipment is properly maintained and insured and will probably not find these obligations to be burdensome. It should, however, reach a clear written understanding with the lessor as to the use of any payments made under the insurance policies if the equipment is lost or damaged. Since the obligation to make payments under the contract will probably continue regardless of what happens to the equipment, the local government should make certain that it will receive sufficient insurance proceeds to repair or replace the equipment.

Indemnification provisions. The local government lessee will likely be asked to indemnify (or "hold harmless") the lessor for all liabilities or losses connected with the lease-purchase agreement or the equipment. The unit should make sure that its indemnification responsibilities are limited to those matters over which it has some control and for which it can expect to be responsible, particularly the possession and use of the equipment. (Even such a limited indemnification provision may not be entirely appropriate if the lessor is the equipment vendor or manufacturer. A vendor or manufacturer generally has some responsibility, at least to the original consumer, for the safe design and manufacture of its product.[11]) The city or county should not bear responsibility, for example, if the lessor is sued for patent infringement in the design or manufacture of the equipment or if the interest paid to the lessor under the agreement turns out for any reason to be not exempt from federal income taxation.

Assignment of rights under the contract. The lease-purchase agreement will generally provide that the local government lessee has no right, without the lessor's approval, to assign its benefits or obligations under the contract to another party. Such a provision is intended to prevent an assignment to a private individual or company, which would endanger the tax-exempt status of the income earned by the lessor under the contract.

In contrast, the lessor will probably insist that its rights under the agreement be freely assignable. Indeed, if the lease-purchase contract is between a local government and an equipment vendor, the parties may even have planned for a transfer of the vendor's contractual rights to a bank. A local government should have no difficulty with assignments by the lessor, so long as it requires as part of the agreement (1) that it be notified immediately of assignments and (2) that it not be expected to make its scheduled payments to the lessor's assignee until the notification is received.

Cities and counties should maintain accurate records of assignments by the lessor, both to insure that they send their payments to the proper party and as a precaution in light of recent changes in the federal income tax laws. It is quite possible that lease-purchase agreements are subject to certain registration requirements recently enacted by Congress. If this is the case, local governments will be required to

11. North Carolina law in this area has been shaped by both the courts and the legislature. Some of the relevant statutes include the express and implied warranty provisions of Article 2, "Sales," of the Uniform Commercial Code [G.S. §§ 25-2-103(1)(d), -2-313 to -318] and G.S. Chapter 99B, "Product's Liability."

maintain accurate records of all assignments of the lessor's rights under the agreement.[12]

Nonappropriation and "best efforts" clauses. Lease-purchase contracts used by local governments in North Carolina and other states almost always provide that the local government may terminate the agreement at the end of any fiscal year if insufficient funds are appropriated to make the payments that will fall due under the contract during the next year. If there is no appropriation, the equipment is returned to the lessor and the contract terminates. (No breach of the agreement is involved.) Such a provision is called a nonappropriation or "fiscal funding-out" clause. It helps insure that the unit's payment obligation under the agreement is not construed as creating a "debt," for which state law may require voter approval.

It is not clear whether a lease-purchase agreement entered into by a North Carolina city or county in accordance with G.S. 160A-20 must include a nonappropriation clause in order to avoid violating the local government debt provision of the North Carolina Constitution (Article V, Section 4). As discussed earlier, this provision applies only if the local unit "borrows money" secured by "a pledge of the taxing power," and neither a borrowing of money nor a pledge of the taxing power will be made in a properly drafted G.S. 160A-20 agreement. Nevertheless, many persons, including vendors and banks, regard the nonappropriation clause as additional insurance that the lease-purchase agreement will not be viewed as creating a "debt" for the city or county. It is certainly safe for North Carolina local governments to include nonappropriation clauses in their lease-purchase agreements, but cities and counties that use such clauses should be aware that they may be charged a higher interest rate because their contracts include the nonappropriation language.

Closely related to the nonappropriation provision in most lease-purchase contracts is a "best efforts" clause. This provision typically specifies that the local government will use its "best efforts" each fiscal year to insure that funds are appropriated to make the scheduled payments under the agreement. The lessor includes the "best efforts" clause in the contract in an effort to reduce the risk that funds will not be appropriated.

Two cautions are in order concerning "best efforts" provisions. First, it is often difficult to determine from reading the contract precisely what actions by the governing board will constitute "best efforts." Second, even if specific actions are listed, the list frequently includes steps—such as including funds in the proposed budget—that appointed local officials who are not parties to (and hence not bound by) the contract must take.

Nonsubstitution clause. A frequent companion of the nonappropriation and "best efforts" provisions is the nonsubstitution clause. Such clauses vary in their terms and severity, but generally they state that if the local government lessee chooses to terminate the agreement because of nonappropriation of funds, it cannot replace the equipment with equipment (or services) to perform the same (or a similar) function. The prohibition remains in effect for a prescribed period of time, ranging from a month to as long as the duration of the original contract. The intended effect of the nonsubstitution clause, quite obviously, is to discourage the local government from exercising its nonappropriation right.

Nonsubstitution clauses are probably unenforceable in North Carolina, particularly if the equipment being lease-purchased is being used to perform governmental functions. A local governing board cannot generally contract away its statutory authority or duty to exercise discretion to legislate in the unit's best interest.[13]

Default and remedies. The parties to a lease-purchase agreement enter into the contract in good faith, with no thought that either party will breach the agreement. For the protection of all concerned, however, the contract should specify what steps can be taken should a default occur.

Out of fairness to both parties, the lease-purchase agreement should require that a lessor or lessee that asserts that a default has occurred notify the other party and give it an opportunity to correct the situation. Should a solution not be reached, the party that alleges the default should be permitted to proceed, by appropriate court action, to enforce performance of the provision of the agreement with respect to which there has been a default, to seek monetary damages if the party has incurred any loss as a result of the default, or to seek termination of the contract.

The local government lessee should make certain that the contract provides, in the event of default, only for remedies that are available under North Carolina law. In particular, the agreement should specify that no deficiency judgment may be rendered against the city or county in any action based on the local government's default with respect to a provision of the contract. (As will be recalled, deficiency judgments are specifically forbidden in contracts authorized by G.S. 160A-20.)

be defective may be affected by various limitations found in G.S. Chapter 99B, "Products Liability."

13. E. McQuillin, The Law of Municipal Corporations §§ 24.41 (3d ed. 1980) and 29.07 (3d ed. 1981); 1A C. J. Antieau, Local Government Law Municipal Corporation Law §§ 10.21-10.22 (1984).

The local government should also be wary of "acceleration" clauses, which declare that all payments that will come due under the agreement become immediately due and payable if any payment is missed. If an acceleration provision is included in the contract, it should be limited to payments that come due during the current fiscal year, for which an appropriation has been made. An acceleration clause that is not limited in this way greatly reduces the value of the local government's right not to appropriate funds and thereby to end the contract, since it declares that on default even those sums not yet appropriated become immediately due and payable.

It is doubtful, moreover, that a North Carolina local government is authorized to spend funds to pay a sum that comes due under an unlimited acceleration provision, since its payment obligation in a court action for breach of contract is limited by G.S. 160A-20 to the value of the equipment being lease-purchased. The unlimited acceleration clause might well be seen as an attempt to impose greater contractual liability on the local government lessee than G.S. 160A-20 permits.

Choice of law and forum. The local government lessee should make certain that the lease-purchase agreement is to be governed by and construed in accordance with the law under which the local government exists and with which it is most familiar—North Carolina law. The contract should also specify that the North Carolina courts are to be used to resolve any disputes that arise in connection with the agreement. The local government's officials would likely find it very inconvenient to travel to another state to litigate any dispute that arose under the contract.

Conclusion

North Carolina local governments will probably increase their use of lease-purchase agreements in coming years, as the prices of the equipment that local governments need in order to perform their functions continue to rise and as pressure on local budgets continues. Cities and counties will find installment or lease-purchase arrangements to be an effective way to spread the cost of equipment over the equipment's useful life in the many cases in which long-term bond financing is impractical.

In structuring lease-purchase transactions, care must be taken both to comply with all applicable statutes and to draft contractual terms that adequately protect the local government's interest. With such caution, however, North Carolina cities and counties will find that lease-purchase agreements are a valuable addition to the assortment of financial tools available to help them provide governmental services efficiently and effectively.

Further reading

A model equipment lease-purchase and security agreement is being planned for publication by the Institute of Government. This document, which will include annotations and other supplementary material, should be helpful to North Carolina public officials who need to know more about lease-purchase transactions. For a detailed look at municipal leasing from a national perspective, see *A Guide to Municipal Leasing*, edited by A. John Vogt (of the Institute of Government's faculty) and Lisa A. Cole; this book was published in 1983 by the Municipal Finance Officers Association of the United States and Canada (180 N. Michigan Ave., Suite 800, Chicago, Ill. 60601).

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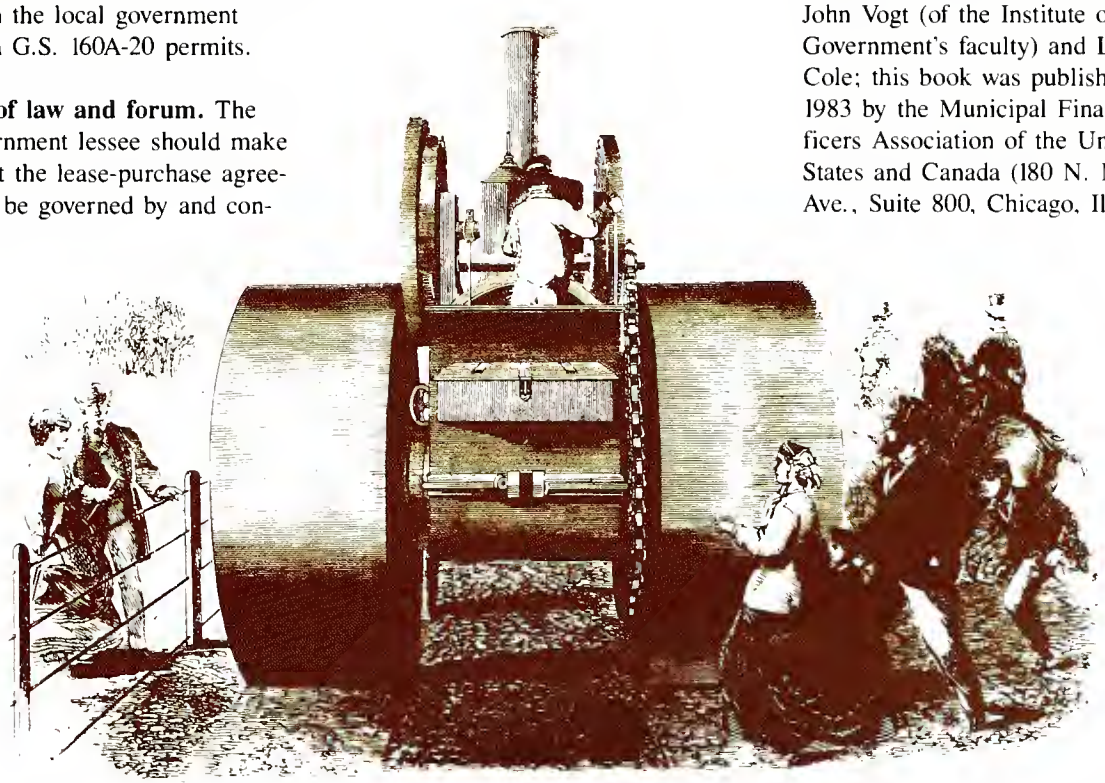


BOOK REVIEW

Natives & Newcomers: The Way We Lived in North Carolina before 1770.
Elizabeth A. Fenn and Peter H. Wood. Chapel Hill: The University of North Carolina Press, 1983. 103 pages.

An Independent People: The Way We Lived in North Carolina, 1770-1820.
Harry L. Watson. Chapel Hill: The University of North Carolina Press, 1983. 120 pages.

Only a few years ago North Carolina made much of the fact that it had one of the largest, if not *the* largest, native-born populations of any state in the union. But no more. Men and women who are more than fifty years old and native to the state—not infrequently cast in the role of experts in North Carolina history and geography—are often asked by newcomers what book will tell them about the state they have adopted, a book that is easy to read. And it is not uncommon for natives, aware of the vagueness of their own understanding of North Carolina history, to yearn for a book in easy style that will set them straight. These two little volumes offer useful tools in responding to the needs of both newcomer and native.

These volumes are the first two in a five-volume series published for the North Carolina Department of Cultural Resources by the University of North Carolina Press—a series designed to introduce the reader to the social and economic history of the state through the physical evidence of that history as illustrated by sites open to visitation today. The authors were not asked to tell the full story of North Carolina; instead, they were to lay a basis for understanding the state and, perhaps, to entice readers to dig deeper in other sources to broaden their knowledge of the highly self-conscious state with which they are identified. The format is impressive: the paper, the typefaces, the pictures, and an interesting set of marginal notes—not to mention the slenderness of each volume—are all calculated to attract the reader who might well reject a text that displayed the often bewildering apparatus of scholarship.

Natives & Newcomers is a delight. It makes the misty years when North Carolina was populated with native Americans come alive with a surprising vividness. The account of the various strains of Indians who populated this region tempts the reader to set out at once to examine the sites that preserve that earliest evidence of "how we lived in North Carolina." The sites are well described and handsomely illustrated. Perhaps the most impressive part of this first little book is the account of the Tuscarora War and its significance.

This opening volume does an excellent if subtle job in laying a base for comprehending the regional or sectional strife North Carolina has suffered from its earliest beginnings as a colony and from which the state has certainly not recovered. It does needed service in explaining and defining the national and ethnic strains that made up the colony's prerevolutionary population. (Much of this information is reiterated—perhaps wisely—in the second volume.) Here the new citizen of the state will find the earliest traces of the tensions that continue to permeate North Carolina's political, economic, and social life: East versus West; Piedmont versus East and West; agriculture versus industry; Black versus White; small town versus metropolitan center; etc.

An Independent People tackles a portion of the state's history with which its citizens are far more familiar than the period treated in the first volume. And it is with this segment that many of the most familiar historic sites are associated. The author was faced with an unusually difficult task—to introduce North Carolina's part in the American Revolution and in the early days of the Republic through sites now existing and the men and women who occupied them. Emphasis on sites is the theme of the series, and the author of this volume does a commendable job in describing and interpreting them—New Bern and the John Allen House in Alamance County are extremely well done.

The reader who seeks to understand the critical nature of what happened in that period of North Carolina history must realize that this volume is only a stepping stone, a beginning point. He will have to read more broadly and in less attractive books for a thorough background. Yet *An Independent People* accomplishes precisely what must have been the sponsors' primary intention—to demonstrate how the preservation of physical sites is perhaps the single most useful device to use in awakening the citizenry to the fundamental theses of their state's history.—**Henry W. Lewis**

Safeguarding North Carolina's Natural Heritage

Charles E. Roe

North Carolinians consider the state's natural environment as an important part of their quality of life. Our state is endowed by richly varied natural landscapes, from its Blue Ridge mountains to its expansive estuaries and chain of barrier islands. The widespread land cover of young pine and hardwood forests contributes to a common belief that the natural landscape is secure. But, in fact, there is ample evidence that much of North Carolina's natural environments could soon be obliterated.

Natural resources are being consumed and natural habitats are being destroyed with unprecedented speed. With the loss of natural habitats, many native plant and animal species could also be eliminated. Many unique natural areas, particularly those in private ownership, are now threatened. Pressures are mounting to put the land to active use, and conflicting demands are being made even on our publicly owned lands (only 7 per cent of the state's total acreage), where designs for mineral exploitation, economic development, and construction of recreational facilities could dramatically alter the land. Except for a relatively few reserves, where natural areas and their native biota may survive, the greatest parts of our natural landscape may soon be paved over, built on, dug up, drained, or timbered.

North Carolina is not alone in its experience. Most other states, and especially those in the South, face similar trends. Nearly all states in the last decade have endeavored, with varying levels of public concern and investment, to preserve important remnants of their natural landscapes, open spaces, and exceptional natural areas. In the past ten years more than two-thirds of the states have established programs to identify and protect their finest natural areas. Some states have created comprehensive systems of publicly owned and privately dedicated nature preserves.

The State of North Carolina has also recognized that its natural heritage is imperiled. In 1976, with assistance from the private Nature Conservancy and grants from charitable foundations and federal agencies, the state undertook a program to identify outstanding and unique natural areas. The Natural Heritage Program was established by the State Department of Natural Resources and Community Development and made a unit of the Division of Parks and Recreation. This program provides a modest beginning toward assuring that North Carolina's natural legacies survive.

Charles E. Roe has coordinated the North Carolina Natural Heritage Program since 1976. Besides being actively involved with a number of state convervation groups, he is an adjunct associate professor with the School of Design at North Carolina State University. He holds a master's degree in regional planning from UNC at Chapel Hill and another in history and environmental policy from Indiana University.

The prerequisite for a practical program to protect natural areas is a comprehensive inventory designed to locate the state's most important natural areas. The Natural Heritage Pro-

Perkins Rock on Bluff Mountain, Nature Conservancy Preserve

Ruby Harbison-Pharr

A sundew in a Bluff Mountain bog

Susan Bourmique

Nag's Head Wood, Nature Conservancy Preserve

Merchants Millpond State Park: Registered Natural Heritage Area

gram's first purpose is to assemble and maintain a statewide inventory of exceptional and rare natural habitats and biotic communities, special wildlife habitats, locations of endangered or rare plants and animals, and special geologic landmarks. From the evaluations of the relative rarity and quality of these natural resources, priorities can be set and means selected to protect those natural areas that best represent the natural diversity of North Carolina.

The Natural Heritage inventory focuses on those resources that make a specific natural area unique and significant. Information about the locations of premier quality and endangered natural resources is gathered from a variety of sources, including studies by the state's biologists. Well over 5,000 records have been collected on locations of special-concern "elements" of natural resources. A sophisticated data management system records and updates the reports. It incorporates cross-referenced files, site locations on topographic maps with a 7.5-minute scale, and a computer storage and retrieval system.

This natural resources "library" has made the Natural Heritage Program a valuable information source for many other public agencies, consulting firms, public service utilities, researchers, and conservationists. Its information is used for environmental impact assessment, land-use and project development planning, and resource management decisions. Most important, the Natural Heritage Program has helped make other development and regulatory agencies more conscious and sensitive to significant natural resources.

The program provides an efficient and objective means of protecting North Carolina's most critical natural areas because:

—It focuses on specific protection needs defined by a scientific classification of natural resources and a methodical inventory of special elements of the state's natural diversity.

—It endeavors to protect a limited number of natural areas that are the best remaining examples of North Carolina's ecological systems, native plant and animal habitats, and geologic landmarks.

—It promotes the protection of these resources through cooperative and voluntary actions by private landowners, conservation organizations, and government agencies.

In its few years of existence, the modestly funded Natural Heritage Program has made substantial progress in identifying critical natural areas and endangered natural resources. So far nearly 500 natural areas throughout the state have been identified as having special importance to the survival of North Carolina's natural heritage. Some such areas have already been protected, but many others remain vulnerable to destruction.

Surveys of natural areas conducted by or contracted by the Natural Heritage Program have revealed numerous highly significant sites, often in counties that formerly were little known in terms of ecological resources. These discoveries include old-growth river bottomland and swamp forests, undisturbed remnants of pocosins and longleaf pine savannas, ecologically rich Carolina bays, rare mountain bogs, mature stands of Piedmont hardwood forests, and rock outcrops with unique botanical associations. Because money is short, most of the program's early investigations have been concentrated in the coastal counties. If surveys can be extended to all regions of the state, many other special natural areas will likely be found and documented.

Surveys for rare plant species, in cooperation with the North Carolina Department of Agriculture's Plant

The Nature Conservancy in North Carolina

The Nature Conservancy is a national nonprofit organization exclusively dedicated to the preservation of the nation's most important remaining natural areas. Since it was founded in 1951, the Nature Conservancy has protected more than two million acres of ecologically significant land. It operates the largest system of private natural sanctuaries in the world and has helped 32 states, including North Carolina, establish natural heritage programs. In North Carolina, the Conservancy and its state chapter have acquired over 100,000 acres of critical natural habitats (over 58,000 acres since 1977) and have assisted governmental agencies in protecting an additional 43,371 acres in some 42 projects. Recent preserves acquired include Nag's Head Woods (Dare County), Camassia Slopes (Northampton County), Bluff Mountain (Ashe County), several Carolina bays (Scotland, Robeson, Hoke), the Roanoke River's Great Island (Bertie), and Green Swamp (Brunswick County). Total fair market value of these recent acquisitions is over $18 million, but these lands have been protected by the Conservancy for less than $2.7 million in private funds. Most recently, The Nature Conservancy, guided by Natural Heritage Program surveys, arranged the largest donation of land in North Carolina's conservation history, in which Prudential Life Insurance Company gave 120,000 acres in Dare and Tyrrell counties for the creation of an Alligator River national wildlife refuge. The Conservancy uses a businesslike approach to conservation. It is a membership organization and depends on private contributions. For information, write to the North Carolina Nature Conservancy, P.O. Box 805, Chapel Hill, NC 27514.

Conservation Program, have discovered species not previously known to exist in the state, have relocated plants believed extirpated, and have clarified the numbers and distribution of other rare species. In all, the rarity and the endangered status of more than 400 plant species has been evaluated, which has provided a much clearer understanding of these plants' numbers and likelihood of survival. As a consequence, the state's catalog of endangered and threatened plant species has been substantially revised. It is hoped that similar analyses of animal species can also be accomplished in cooperation with the Wildlife Resources Commission's new nongame and endangered wildlife program.

Information about significant natural areas, furnished by the Natural Heritage Program, has helped other public agencies and private utilities safeguard some important sites as they plan development projects and make regulatory decisions. The Heritage Program staff responds to more than 300 requests for information each year. Knowing, in the early planning stages, about the presence of special natural resources allows development agencies to choose alternative designs for construction projects that will not harm the natural area or endangered species.

Awareness and concern for natural areas have been strengthened across the whole spectrum of governmental agencies. Besides providing data for specific sites and planning decisions, the Natural Heritage Program has forged cooperative relationships with numerous public agencies. Among the arrangements for exchange of information and planning for protection of natural areas have been formal cooperative agreements between the Natural Heritage Program and the U.S. Forest Service, the National Park Service, the U.S. Fish and Wildlife Service, the Tennessee Valley Authority, the U.S. Air Force, the North Carolina Office of Coastal Management, and the North Carolina Wildlife Resources Commission.

Since the Natural Heritage Program came into being—except for the recent acquisitions of estuarine sanctuaries by the State Office of Coastal Management and swamp forest tracts by the Wildlife Resources Commission—government agencies have acquired only a few natural areas as preserves. However, the Natural Heritage Program has worked closely with private conservation organizations, particularly the Nature Conservancy, to preserve some of the state's finest natural areas. Recently, the Conservancy responded to the Heritage Program's acquiring surveys and recommendations by a series of Carolina bays and Roanoke River natural areas.

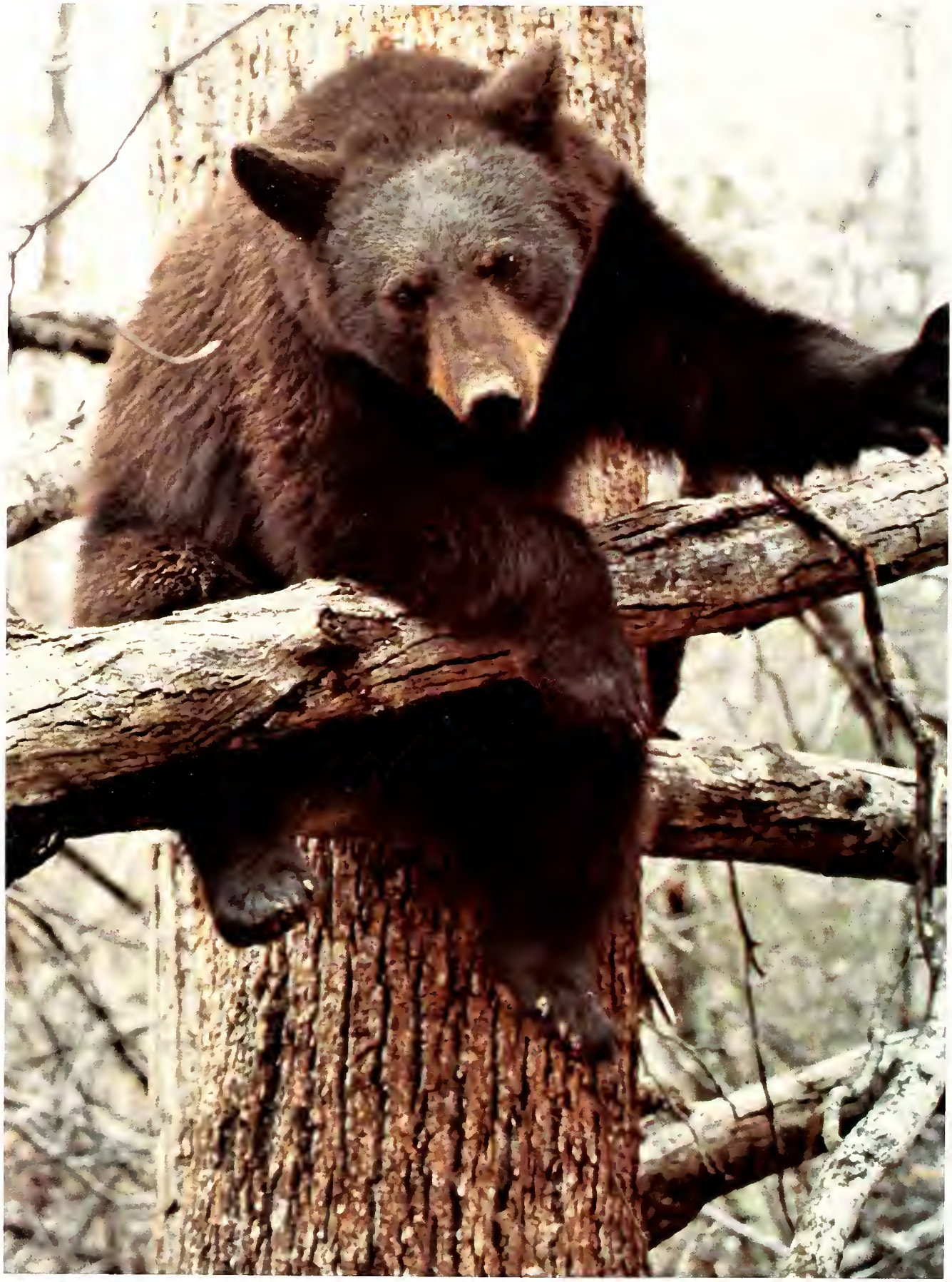
Protecting Critically Endangered Resources Through Voluntary Agreements

One plant species that is native only to the Carolinas is Cooley's meadowrue (*Thalictrum cooleyi*). Natural Heritage botanists from the North and South Carolina programs determined that the plant grows only on the open edges of pine woodlands in a cluster of locations just three miles apart in Pender and Onslow Counties and nowhere else in the world. The largest population of the endangered plant grows along an electric transmission line. The Natural Heritage Program approached the landowner and the public utility, International Paper Company and Carolina Power & Light Company, to assure that future management of the power line would preserve the meadowrue. In the winter of 1983-84 both companies adopted management policies to protect the plant and were recognized on the State Registry of Natural Heritage Areas. Similar protection and management agreements have also been arranged elsewhere with other corporate and private landowners.

Defining Natural Areas in the National Forests

The U.S. Forest Service is the largest landowner in North Carolina; it is managing nearly 1,200,000 acres in the Pisgah, Nantahala, Uwharrie, and Croatan national forests. From the beginning, the Natural Heritage Program has frequently exchanged information with the Forest Service. Data are commonly provided to help the Forest Service compile resource inventories and prepare forest management plans. A formal cooperative agreement established in 1983 between the North Carolina Department of Natural Resources and Community Development and the U.S. Forest Service authorizes the Natural Heritage Program to maintain an inventory of significant natural diversity resources on national forest lands and to recommend the designation and protection of special natural areas. This process could result in the nomination of as many as forty forest natural areas in 1984. Among them will be some of the Southeast's finest examples of natural community types and geologic landmarks and critical habitats for numerous endangered species.

In the absence of state funds to acquire and manage more nature preserves, the Natural Heritage Program has established the North Carolina Registry of Natural Heritage Areas to arrange voluntary conservation agreements with private owners of natural areas and to designate protected natural areas on publicly owned lands. Since the registry began in 1979, landowners have signed 127 conservation pledges to



A black bear in a North Carolina swamp forest

Ken Taylor, Wildlife Resources Commission

Union Camp Corp.

Camassia scilloides (wild hyacinth) at Camassia Slopes, Nature Conservancy Preserve

American egret

Joel Arrington / Wildlife Resources Commission

Horseshoe Lake a Carolina bay in Bladen County

Laverne Smith

protect all or parts of 156 natural areas.

The registry recognizes and honors landowners who promise to protect important areas. A site is entered on the registry only after the owner voluntarily agrees to have it recognized as a protected natural area and signs a conservation agreement. Owners are given written descriptions and management recommendations for their natural areas and are awarded framed certificates in recognition of their cooperation.

Over half of the registered areas are in public ownership. Sites have been designated in 35 state parks, eight national wildlife refuges, 12 sites along the Blue Ridge Parkway, and sections of other national parks and seashores. Other registered areas on public lands include 13 sites in the Sandhills gamelands, five marine subtropical reefs, part of Bladen State Forest, several sites administered by correctional institutions, and several county and municipal parks. Agreements recently forged with the U.S. Forest Service and the U.S. Air Force will allow natural areas to be defined in the national forests and in the Dare Bombing Range.

Increasingly the registry is being used to encourage protection of privately owned natural areas. Sites have been registered by many individuals, several timber companies, colleges and universities, sportsmen's clubs, private foundations, churches, utility companies, the Scouts, and various conservation groups.

Table 1 shows the growth of the registry.

Information on the Natural Heritage Program

For information on locations of natural diversity resources and natural areas, the means for protecting North Carolina's natural heritage, and the organizations that are engaged in conservation activities, please write to the North Carolina Natural Heritage Program, Division of Parks and Recreation, North Carolina Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, NC 27611

Table 1 Registered Natural Heritage Areas

Year	Total Registry Agreements	Private Owners	Public Owners
1979	31	13	18
1980	36	19	17
1981	35	11	24
1982	13	8	5
1983	12	7	5
Total	**127**	**58**	**69**

Owner Categories	Registered Areas	Acreages
Private Conservation Groups	11	19,119
University/College and Support Foundations	6	699
Other Private Owners	42	31,653
State Parks	47 (in 32 park units)	41,484 (2 lakes, total 25,000+ acres)
Other State Lands	25 (14 in Sandhills gamelands)	11,585
Municipal/County Lands	2	412
Great Smoky Mtns.	1	240,000
Mattamuskeet Natural Wildlife Reserve	1	50,177
Other U.S. Dept. Interior Lands	21	78,014
Total	**156**	**453,325**

There is no single agency and no single means to protect all the natural areas and ecological resources that compose North Carolina's natural heritage. The requirements of each natural area and each landowner are different. To preserve our state's greatest natural legacies, we need a set of "tools" that meet the varying needs of many individuals, corporations, groups, and public agencies that own natural lands. North Carolina needs a set of legal, administrative, and voluntary protection approaches that can function creatively as a system to preserve the state's natural diversity.

Public acquisition continues to be the best means to preserve some critical natural areas for future public benefit. Only a few natural areas have been preserved through public acquisition in recent years. Public funds have not been appropriated for this purpose. The State of North Carolina's acquisition of natural areas in recent years have

Safeguarding Roanoke River Natural Areas

The floodplain along the Roanoke River contains a rich mosaic of natural habitats and the most extensive river bottomland forests in the state. Camassia Slopes is one of twenty Roanoke River natural areas located by a survey made by the Natural Heritage Program in 1979-81. The river bluffs and floodplain at this Northampton County site form an extraordinary refuge of unusual plants. Many of the wildflowers that blanket the slopes are disjunct from their common range west of the Appalachians—perhaps stranded here after the last glacial age. Abundant wild hyacinths *(Camassia scilloides)* give the site its name. Under the hardwood forest on the bluffs is a spring-time carpet of rare and beautiful wildflowers. Below the forested slopes, stately cypress and tupelo and other swamp forest trees canopy the river's natural levees and sloughs. "Camassia Slopes" were owned by the Union Camp timber products corporation and the state (Odom State Prison). Protecting the natural area has been a conservation ideal. Within a year after Natural Heritage biologists discovered the site, the Union Camp Corporation agreed to donate 176 acres to the Nature Conservancy, and the new preserve was dedicated in April 1982. In 1983 the State Department of Correction also agreed to preserve the adjacent 35 acres of equally rich forest habitats and allowed its land to be designated on the North Carolina Registry of Natural Heritage Areas. The combination of river wetlands and upland forest communities, the many rare plant species and abundant wildlife, and the unusual soils and geology make this natural area an exceptional scientific and educational resource as well as a place of great beauty. Within the past few years, the Natural Heritage Program has also negotiated registry conservation agreements with the private owners of four other Roanoke River natural areas, and recently the Nature Conservancy and the State Wildlife Resources Commission joined to purchase 4,800 acres of swamp forests on the lower Roanoke River.

come by gifts, federal grants, or transfer of lands purchased by private conservation groups. Governor Hunt's Commission on the Future of North Carolina has recommended that the state establish a land and water conservation fund to make it possible for the state to acquire other natural areas.

Relying on governmental agencies to acquire lands will not protect all the important natural areas and ecological resources of North Carolina: Not all land is for sale. Much of it is too expensive to purchase. Withdrawal of private lands is sometimes unpopular. There may be too little time to acquire land immediately threatened. And public agencies are increasingly reluctant to incur the costs of buying and managing more land.

Alternative protection tools—aside from acquisition—can offer landowners a variety of incentives like information, recognition, tax savings, and management assistance. At this time North Carolina has only a partial set of these conservation tools. The Registry of Natural Heritage Areas (described above) helps to inform and encourage landowners to protect natural areas voluntarily. The Commission on the Future of North Carolina recommended that property tax incentives—similar to those provided for the preservation of privately owned historic buildings—be extended to the preservation of privately

Carolina Bays: Protection Priority

Carolina bays are the most striking physical features of the Coastal Plain region. From an aerial perspective they appear to be hundreds of elliptic depressions, oriented from northwest to southeast, and ranging in size from one acre to over a thousand acres. Many are rimmed at their southeast ends by sand crescents. The origin of the bays remains in doubt, as geologists debate whether they were scoured out by a catastrophic meteorite shower or formed during the Ice Age by complex processes of winds on bare, sandy surfaces, perhaps submerged under shallow ponds. Whatever the cause, Carolina bays pepper the Coastal Plain from New Jersey to Georgia, by far the most being concentrated in the Carolinas.

The best-known Carolina bays are the Bladen Lakes in Bladen County and Lake Waccamaw in Columbus County, part of the State Parks system. Bladen Lakes State Forest also contains a series of large, peat-filled bays covered by bogs, dense shrubs, and "bay" forests. Large parts of these bays are registered by their managing agencies as protected natural areas. But these few bays are quickly becoming isolated and imperiled natural "islands" surrounded by cleared lands.

Most bays have been eliminated or damaged by agricultural and forestry conversion. A Natural Heritage inventory of bays in Bladen and southern Cumberland counties found that 35 per cent had been completely or partially altered between 1974 and 1981, and half of the bays in private ownership had been cleared and drained in that period. Destruction of the bays in the inner Coastal Plain counties is even more widespread. In Robeson, Scotland, and Hoke counties and part of Cumberland, the →

usually smaller clay-based bays have nearly all been eliminated. Only a few dozen remain in their natural condition.

Each bay has an identity of its own. The delights and biological riches of some—especially those large, peaty bays covered by tangled shrubs and greenbriars—may be clear only to dedicated biologists. Others, forested by cypress trees filtering sunlight onto a beautiful, floating mass of wildflowers or a shrub layer of berry-laden sarvis hollies, are spectacular places even for those unaware of the diverse animal and plant life present.

owned natural areas. Also, management leases and conservation easements can be attractive alternatives for long-term protection of such areas.

Continued cooperation by public agencies and private conservation organizations like the Nature Conservancy will be necessary in order to establish a system of nature preserves that represent and protect the state's total natural diversity.

North Carolina has taken initial steps to identify and inventory critically endangered natural resources and outstanding natural areas. The state has established systems of state parks and wildlife gamelands, which frequently contain superb natural areas. Yet, to assure the survival of many of our finest and most unique natural areas, I believe that North Carolina also needs to establish a statewide system of dedicated nature preserves. In my opinion, by following the models of other states—including Missouri, Kentucky, Florida, Arkansas, and others—North Carolina can create a system of nature preserves that saves its magnificent natural heritage and takes leadership in protecting the environment.

A preserves system would enable the permanent dedication of natural areas within existing parks and wildlife management areas and the acquisition of other critical habitats that may be too small or too fragile to be used for state parks and hunting areas. Most of the preserves would probably have to be managed by state agencies, but other sanctuaries would also be held by universities and colleges, local park districts, soil conservation districts, municipalities and counties, local land conservancies, private foundations, and even individuals. These preserves would be immensely important—not only for saving much of our state's natural diversity but also as public resources for environmental education, scientific study, pollution monitoring, and low-impact forms of recreation.

Without the means to acquire and preserve critical natural areas, North Carolina's natural environment will be eroded. We will likely lose most of our swamp forests and pocosins, estuary and marsh habitats, Carolina bays, pine savannas, piedmont hardwood forests, mountain bogs, and habitats of rare species. A system of nature preserves can be created only with a funding commitment by the state in recognition of the public interest in saving our natural legacies.

The Natural Heritage Program has demonstrated the values and practical

Promoting Local Land Conservation Initiatives

The Natural Heritage Program advocates the formation of local and regional land conservation foundations—known in some states as land trusts. The program offers an instructional guidebook to help concerned citizens incorporate tax-exempt local land conservancies. Local land conservation foundations or land trusts, though new to North Carolina, have had widespread success in other regions of the country. These conservation foundations are created to increase public awareness of local natural resources and to acquire and manage natural lands important to the citizens of local communities and regions. The purpose of these "grass roots" citizen groups may extend beyond preserving natural lands to providing for community recreational and open-space needs. These citizen conservation associations can respond to local needs and opportunities, often better than government agencies or state and national preservation organizations can do. Conservation foundations can provide the means by which North Carolinians can protect the local natural environments they love. Until recently, only a few conservation foundations existed in this state. One of the older examples is the Eno River Preservation Association in Durham and Orange counties. In the past several years a number of conservation foundations have been incorporated to safeguard river watersheds and coastal islands. One newly created private nonprofit corporation is the Triangle Land Conservancy, which was organized in 1983 with sponsorship by the Triangle J Council of Governments for Orange, Wake, Durham, Lee, Johnston, and Chatham counties. This regional land trust will help local governments protect critical natural and historic landscapes in the rapidly developing region formed by those counties. TLC is a citizen membership group that attracts people concerned about protecting the natural resources of that area.

uses of easily accessible information about natural areas and special-concern natural resources. Its recent surveys of coastal counties and river watersheds have proved that many natural areas of special significance were not previously known to the state's biologists and that many previously known natural areas have already been destroyed or seriously altered. The Natural Heritage Program needs the means to extend ecological surveys over all regions of the state. Also, the state needs to expand programs to inform and educate North Carolinians about their magnificent natural heritage and to motivate them to participate in efforts to protect those resources.

North Carolinians are beginning to understand that natural ecosystems are vital for maintaining a healthy and productive human environment. But disruption and destruction of natural areas are so widespread and rapid that it is vital to act decisively now to preserve those that remain. If our natural environment is important to the people of this state, a public commitment is necessary to identify and protect our most critical natural areas. North Carolina's Natural Heritage Program represents the first steps toward meeting that need. pg

EQUAL PAY

(continued from page 8)

not justify the universal application of such plans." Nevertheless, it said, "the plans have a potential that deserves further experimentation and development."

Even if reliable job-evaluation systems can be developed, the comparable-worth theory faces some hurdles. Will it mean that every employer subject to Title VII will have to conduct a job-evaluation study? Who will pay for it? Who will determine whether the study was a good one? Will the federal courts be involved in every wage adjustment in every factory and office in the land?

The comparable-worth theory faces one more very difficult hurdle: the role of the market in determining pay. In the public health nurses' case, the court allowed the nurses to show that their jobs were comparable with the male sanitarians' jobs, and it accepted the "logical premise" that comparable jobs should be paid comparably. But the employer (the City of Madison) proved to the court that the nurses were paid less than the sanitarians because at an earlier time, when the salaries had been the same, the city could hire all the nurses it needed but could not get enough qualified sanitarians. To fill the sanitarian positions, it had had to raise the pay for that job. The court accepted this explanation as a nondiscriminatory reason for the pay differential—the job simply commanded a higher price in the labor market.

The unstated rationale in the decision against the nurses was that they made no claim and introduced no evidence that the city discriminated against women in hiring sanitarians. (Indeed, that kind of discrimination would be a violation of Title VII.) In effect, the nurses were told: If you want sanitarians' salaries, become sanitarians; but if you want to be nurses, you'll have to take nurses' salaries.

Summary

The Equal Pay Act was the first of a set of laws designed to rid the workplace of sex discrimination. It encompassed a very narrow view of the problem and provided a remedy only for women who were paid less than men who were doing equal work. Title VII of the Civil Rights Act embodied a much broader view of sex discrimination. It addressed the opportunities of women to gain meaningful employment, and it gave remedies to both victims of *intentional* discrimination and victims of the *effects* of rules that appear to be neutral with respect to sex but have a disproportionate impact on women.

The ability of Title VII also to address the problems women have in getting fair pay was strengthened in 1981 when the United States Supreme Court recognized for the first time that Title VII can apply to claims of pay discrimination even if the women who make the claim cannot meet the narrow equal-work standards of the Equal Pay Act. That ruling has opened the door to a fight now being waged over the idea of comparable pay for comparable worth. This concept implies that women are discriminated against in pay when they are employed in sex-segregated "women's jobs" that are paid less than "men's jobs" of comparable worth. It is not now clear whether this idea will become law and, if it does became law, what the courts can do about the problem of unequal pay for jobs of equal worth. pg

News Coverage of the General Assembly, Past and Present

Richard W. Hatch

The past twenty years have brought major changes to the North Carolina General Assembly, including the way the institution is reported by the news media. During that period the amount of time the legislature spends in Raleigh has more than doubled, the legislative staff has grown, and the entire legislative branch has moved from its old chambers to new quarters in the contemporary legislative building across the street from the Capitol.[1]

Such issues as "professional" versus "citizen" legislators, the cost of operating the growing legislative branch, and the balance of power between the legislative and executive branches have been widely reported and

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1. For a detailed history of the General Assembly's staff, facilities, and composition, see Milton S. Heath, Jr., "Fifty Years of the General Assembly," *Popular Government* 46, no. 3, (Winter 1981), 20.

debated. Changes in the news coverage that brings these matters before the public have been less widely discussed. They include the growth of television coverage of the General Assembly and a change in what newspeople perceive as the important stories associated with the legislature. Reporters have come to treat the legislature less as a periodic gathering of the honorables from across the state and more as an on-going function of government. As a result, the media tend increasingly to cover issues and the strengths and weaknesses of the legislature rather than treat the biennial sessions as political and social happenings.

Required to meet only every other year by the State Constitution, the legislature has met at least once every year since 1973. Before 1973, the biennial arrival of the General Assembly in Raleigh rated big newspaper headlines. Regular sessions lasted about 90 legislative days and even the hour of adjournment was news. If the regular session was an event, the infrequent special session was almost a Second Coming. It rated banner headlines in the newspapers and bulletins on the wire services. By contrast, the 1981-82 General Assembly met in seven sessions during those two years for a total of 156 days.

The General Assembly moved from its chambers in the Capitol to the new legislative building in time for the 1963 session. Most of the changes in the General Assembly have become apparent since that date, although many of the trends originated earlier.

Before 1963, the convening of a special or a regular session created something of a carnival atmosphere. Newspapers and radio stations covered the arrival of the colorful lawmakers somewhat as they covered a circus parade. Although the sessions met in the Capitol, the story was scattered all over downtown Raleigh. Though portable television cameras and videotape recorders did not yet exist, newspaper and radio reporters could and did follow the lawmakers to committee meetings in various state office buildings and to the Sir Walter Hotel, where most legislators stayed. The Capitol provided tiny offices for the Speaker, the Lieutenant Governor, and the two principal clerks. The part-time staffs of the principal clerks and the sergeants-at-arms were crowded into various other offices in the Capitol building, its corners, and its stairwell landings. A secretarial pool operated out of the former state library room upstairs in the Capitol. There was no press room. Reporters trailed legislative leaders to their hotel rooms and to parties to find out why things happened as they had that day and what would happen tomorrow. The legislature employed no fiscal or research staff, the research function being performed by the Institute of Government. With few published reports and an institution that often made key decisions at unofficial meetings in hotel rooms,

A grand affair at the Sir Walter. . .

Where the action was. . .

only the experienced reporter who knew the people and the background of the issues could make sense of what was going on. Most of these reporters worked for large daily newspapers, though some worked for radio stations and some for the wire services.

Into this environment television poked its lens in 1955. WUNC-TV, the newly licensed educational television station, put cameras (black and white) in the House gallery and aimed them at the special session called to deal with the state's response to court-ordered desegregation. The station televised live gavel-to-gavel coverage of the special session without regular comment or interpretation. Its coverage also was broadcast by Durham's new commercial station, WTVD, which had gone on the air the previous year.

But even after the advent of television coverage, the General Assembly continued to be mainly a newspaper and radio reporter's story. Television—with its large, fixed cameras—could cover it only when the members gathered in one single, accessible spot to do something interesting. After the novelty of live coverage wore off, WUNC-TV covered only special events like special sessions, the Governor's State-of-the-State address, and hearings on important public issues.

WTVD and WRAL-TV, which went on the air in 1957, sent reporters with silent film cameras to cover the legislature occasionally in the Capitol. The typical technique was to shoot silent film of the proceedings from the balcony and add a "voice over" report later. And sometimes both stations set up large sound-on-film cameras to do interviews in the rotunda.

The Legislative Building, designed by Edward Durrell Stone, was the first in the nation devoted entirely to the legislative branch of state government. It provided an individual office for each member. Secretaries were hired, first for committee chairmen and later for all members. Each committee had a meeting room. Offices were provided for printing, bill-drafting, research, and maintenance. There was also a press room—a suite, in fact. The new building had conduits with monochrome (black and white) television cables running from each chamber and from the press room to a convenient parking spot for a television mobile unit.

The General Assembly began doing most of its business in the Legislative Building. Legislative leaders and members held frequent news conferences in the press suite. WUNC-TV continued its practice of covering only exceptional events. Commercial television stations began sending reporter-camera operators to the legislature more regularly. But few of the television reporters were experienced or knowledgeable about the legislature. Furthermore, since they shot their own film, they had little time for real reporting—but that would soon change.

". . . key decisions at official meetings in hotel rooms"

The General Assembly in its old chambers

The legislature also was changing. In the late sixties it created the position of Director of Legislative Services. That administrator began to develop a support staff for the legislature. The support staff grew and the building quickly became crowded.

Legislative sessions also became longer. Before 1968, legislative pay was restricted to a specific number of days in session. Legislators were not paid if they met beyond the limited number of days. In 1968 a constitutional amendment was approved that permitted the General Assembly to set its own salaries, with no restriction on the number of days.[2] The salaries increased, and expenses were paid according to the number of days in session. Sessions usually have lasted longer and been more frequent since this change.

North Carolina expanded in many ways during the postwar years, including the size of its state government. Budgets grew, then exploded with inflation. The process of considering and adopting the multi-billion-dollar biennial budget became a gigantic job for the legislature, even with the help of the new fiscal research staff. The budget also became a focal point of news coverage.

As the legislature met longer and more frequently, the news accounts changed. Since the General Assembly now met annually and for such a long period, the fact that the legislators had arrived or met in special session was no longer news. The news was the issues, and much more information was available about them, since more staff helped the legislature produce more reports and studies.

Also during the seventies, the legislature became much more open. Budget sessions were opened, first to other members and then to the public. Few closed meetings were held.

All of this made covering the legislature in a way easier for journalists, especially for those with little experience. Information—lots of it—was available. The reporter's job shifted from finding the news to deciding what was important.

□

During this same period, television was growing up. Commercial television stations across the state were broadcasting regular newcasts, and the American public came to rely on television news and information. TV reporters gained more experience in covering governmental news, and stations began assigning both a reporter and a camera operator to stories like the legislature, freeing the reporter from the mechanical aspects of the job. Smaller cameras with sound became available. Color film replaced black and white film, and then electronic news-gathering (ENG) cameras replaced film. The ENG cameras, with their convenient and reusable videotape recording, made it easy for television reporters to get out of the press room and follow the newsmakers to wherever they were making the news.

WUNC-TV grew into a statewide public television network and eventually into the University of North Carolina Center for Public Television. In 1971, the network began regular news coverage of the General Assembly, both on a weekly basis and as a live insert in its noon and evening newscasts. In 1974, the network got its first portable color television cameras with videotape recording and assigned them to legislative coverage. Since then, a thirty-minute news summary of the legislature has been broadcast statewide on Tuesday through Friday evenings (Wednesday through Friday in 1983) when the legislature is in session.

In the same period, commercial television news coverage of the legislature, although still abbreviated, improved in content and technique. By 1983 the legislature was extensively covered by both commercial and public television as well as by radio and newspapers. In fact, broadcast coverage was expanding while coverage shrank in some newspapers. As many newspapers responded to surveys showing their readers more interested in features and "people" news, television responded to surveys that showed growing audiences for news and public affairs.

In the last sixteen years of this century, failing some major change of direction, the legislature's role will continue to expand. It can be predicted that the General Assembly will meet almost continuously, and members may become full-time politicians. In addition to passing laws, the legislature will take on an oversight role—that is, it will follow up to see that programs are carried out as the General Assembly intended. The legislative staff will make studies and issue reports on the effectiveness (or ineffectiveness) of agencies that spend tax money. At least until another swing of the political pendulum, the country appears headed into a period when power will flow from Washington back to the states. This means that more complex issues will be debated and decided in the legislatures. Money that was formerly appropriated by Congress will be appropriated (if at all) by the state legislatures. The co

2. N.C. Const. art. II, § 16; N.C. Const. of 1868 (as amended in 1968), Art. II, § 28.

petition and lobbying that attend such decisions will focus more on state capitals and less on Washington.

The news will follow these trends. The continuous legislature will be a continuous assignment for journalists. It will become more complex, but there will be a host of resources to help the reporter, print and broadcast alike. To interpret what goes on in Raleigh, many reporters will need to become expert on parliamentary maneuvers, administrative rules and regulations, budget procedures, and law.

Effective coverage by television will require more people and more specialized equipment. For example, in 1982 the legislature expanded into a new office building with more staff, more offices, and more committee rooms to cover.

Regularly scheduled newscasts may be only one way in which legislative news is broadcast. Coverage comparable with the present TV coverage of the U.S. House of Representatives is surely in the future for North Carolina's General Assembly. Public television probably will produce more "gavel-to-gavel" coverage in addition to edited news coverage. For this to happen, however, alternative delivery systems will be necessary. These may be through cable systems or additional over-the-air channels.

The hour-long newscast may open the way to more time for legislative coverage on commercial stations. The commercial stations, which will have expanded both the number and competence of reporters and added appropriate equipment, may prepare more special reports and documentaries on state government affairs.

Members of the legislature are likely to welcome and cooperate in this trend, since politicians increasingly recognize the importance of the broadcast media in getting both their name and their deeds known to the public.

Finally, in this last part of the twentieth century, the legislature itself probably will adapt both to the revolution in electronic communications. The legislature of the future is likely to find endless ways to use in-house video, computers, satellite communications, and data transmission. The General Assembly will "go electronic," just as the news media that interpret the legislature to the public have done. **pg**

The Press 1984, the author in the foreground

Computer-Assisted Assessments for Property Taxation

A computer-assisted property tax assessment system can not only expedite the work of the tax supervisor's office but also provide invaluable information for city and county governing boards in shaping their unit's tax policy.

Joesph E. Hunt

IS THE APPRAISAL OF MY PROPERTY RIGHT? When the taxpayers receive their notice of assessed value for property tax purposes after a county-wide revaluation, this question is undoubtedly the first thing that comes to their minds. On a broader basis, the county tax supervisor[1] might ask whether the county revaluation is too high or too low, and whether it is uniform for all properties. County and city managers also need to know about the impact of the revaluation on their unit's finances—how much revenue will be produced by the property tax this year.

Can computers help provide quick and accurate answers to questions like these about property taxation? They can. Computers have brought to the assessment process (1) data storage techniques that can efficiently handle large information systems, (2) the ability to make rapid recalculations in mass appraisals, (3) improved statistical procedures, (4) immediate retrieval of stored information in response to public inquiry, and (5) reliable financial forecasting for budgeting purposes. This article explains how a computer-assisted assessment system is organized and what results it should have.

The property tax

The property tax is an ad valorem tax[2]—that is, it is calculated by applying a tax rate to the value of the property to be taxed. This process involves the appraisal of property, the assessment of that property, and the fixing of a property tax rate.

Appraising real property—land and improvements—in order to establish its market value on which a later assessment will be based is functionally the same as appraising for property mortgages, property purchase, insurance, and related real estate purposes.[3] Trained appraisers employed by the tax supervisor's office carry out this responsibility. (Appraisal methodology will be discussed more thoroughly later in this article.)

Assessment is the official assignment of a value to each taxable parcel for the purpose of taxation. The type of assessed value for each parcel by type and use is prescribed by law.[4] Assessment is an annual process, whereas property is appraised only once every eight years (except when a cognizable change to the property during the eight-year inter-

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1. The county tax supervisor is responsible for listing and appraising all property in the county. N.C. GEN. STAT. § 105-296.

2. Literally ad valorem means *according to value*. The statutes (G.S. 105-283, -284) provides that the value to be taxed shall be market value and that the assessments shall be made on a uniform basis. Use value may be substituted for market value under certain conditions.

3. Since the valuation process for personal property is less complicated than for real property, only real property will be analyzed in this article. It is assumed that personal property appraisal will use similar techniques and be an integral part of the system.

4. Machinery Act of North Carolina, N.C. GEN. STAT. §§ 105-271 to -398.

val requires that the property be reappraised).[5]

The *rate* at which property is taxed is derived from the mathematical relationship between the total assessed value of taxable property in the jurisdiction and the amount of revenue that must be raised by the property tax. It is calculated by dividing the revenue to be raised by the total assessed value of all property in the jurisdiction.[6] Once these components—appraised value, assessed value, tax rate—of the property tax have been determined, a tax bill for each property can be produced by multiplying the property's assessed value by the tax rate for that jurisdiction.

The tax supervisor's job

North Carolina law makes the county tax supervisor responsible for listing, appraising, and assessing all taxable property in the county.[7] The average tax supervisor's office in this state has 10 employees and is responsible for assessing 30,000 parcels of taxable real property plus tangible business and personal property.[8] Taxable property means all real and personal property that is not exempt or otherwise excluded from taxation by statute.[9] The general steps of the appraisal and assessment process are as follows:

(1) For each taxpayer an abstract is prepared that shows the taxpayer's name and address and certain information about the taxable property being listed.
(2) An appraiser's manual is prepared that contains instructions and procedures for making appraisals, describes the pertinent valuation characteristics, and states the factors that are to be used in the appraisal.
(3) A descriptive record is prepared for each parcel.
(4) All social, economic, political, and physical data used in appraisal are collected.
(5) Each parcel is appraised on the basis of an appropriate valuation method applied in a uniform manner.
(6) Each parcel whose owner requests an on-site inspection is visited for purposes of examining the property and verifying information about the property.
(7) An assessed value is placed on each parcel.
(8) A written notice of appraised and assessed value is sent to the owner of each parcel.[10]

Appraisal responsibilities of the individual real estate appraiser—for example, real estate brokers who list property for sale—differs from appraisal responsibilities for assessment purposes. In assessment appraisal, there are so many parcels to be appraised that each step in the process becomes a major project that requires handling masses of data, organizing personnel, and applying sound management techniques. To manage assessment appraisals, it is helpful first to separate the three broad procedures on which the assessment system is based and then to consider the sequential tasks needed to accomplish each of these major functions.

General assessment functions

The three broad components of the assessment process are (a) identification of the property, (b) description of the property, and (c) valuation of the property. (See Figure 1.)

Identification of the property involves preparing a record for each parcel in the county that must be appraised. Fundamental to this record are the property owner's name, his mailing address, and the location of the property. The tax scroll lists all taxable property in the county. It is updated each year during the listing period, when taxpayers must list their property for taxation with the tax supervisor. Also, the tax supervisor must check registered deeds for unlisted property and should maintain tax maps that show the property location and identification. This activity yields a new list of taxable property for the ensuing tax year.[11] (See Figure 1.)

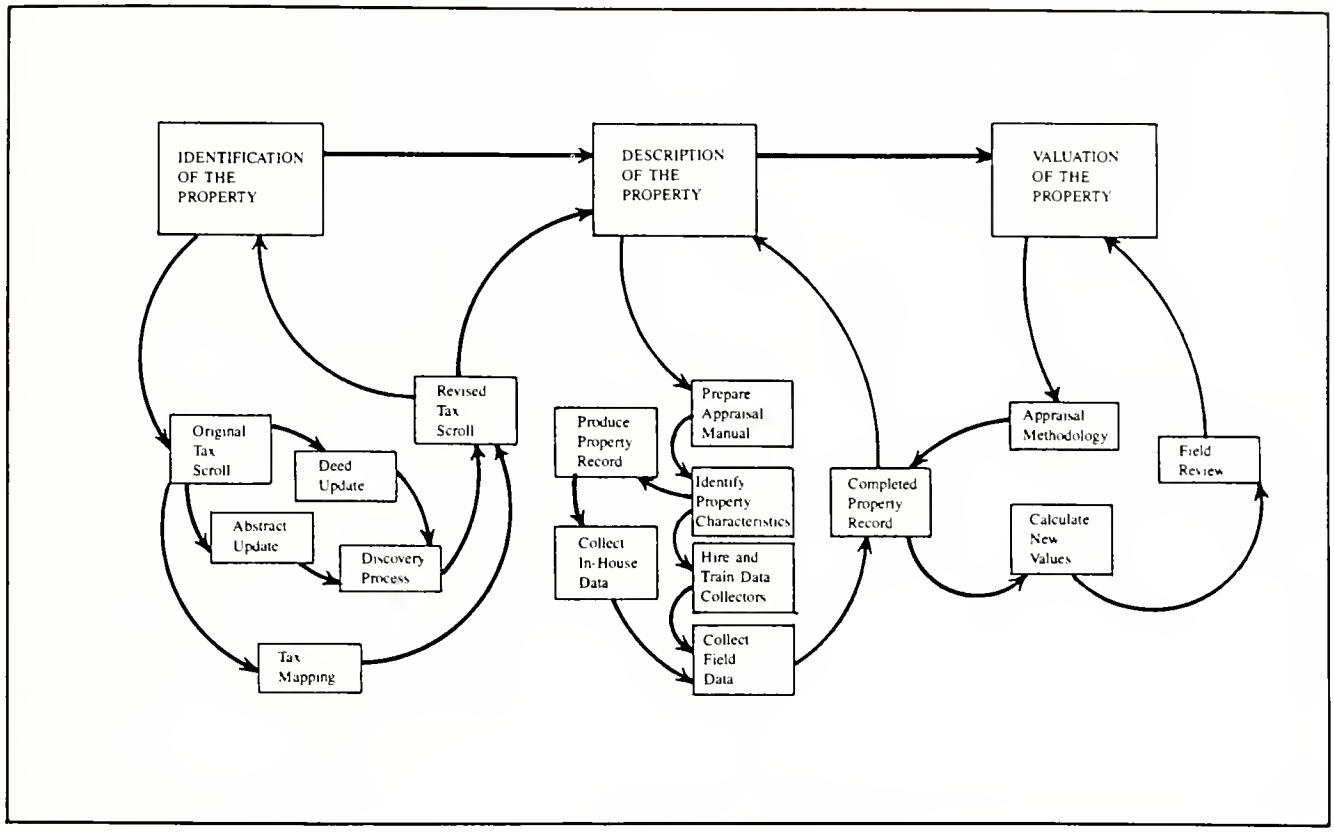
A description of the property is necessary to put in the record for each property the information on which the appraisal and assessment are based. Before the necessary information can be identified, the county's appraisal manual—a schedule of values[12]—must be prepared. The manual contains instructions on how the appraisal will be made, the factors that will be considered in making the appraisals, and what other pieces of information are relevant. These items—collectively called data base requirements—include zoning, deed restrictions, easements and other legal information that may be found in existing governmental records, and the physical descriptions of the actual property and its neighborhood that come from field inspections. (See Figure 1.)

The valuation of the property results from applying the prescribed appraisal methods to the characteristics of each parcel, using the market valuation factors from the appraisal manual. Finally, each appraisal must be reviewed by a competent appraiser and the property visited (if the property owner so requests).[13] (See Figure 1.)

After an appraisal and assessment have been performed for every taxable parcel in the jurisdiction, each property owner receives a written notice that states the appraised value and the assessed value for each parcel owned by

5. *Id.* §§ 105-285, -286.
6. It is the unit's governing board that makes the ultimte decision on the tax rate. The board adopts the tax rate as a levy to fund the adopted budget ordinance.
7. *Id.* at § 105-296.
8. This average is calculated from a range of 2,870 parcels and two employees in the smallest county to 150,000 parcels and 54 employees in the largest county. D. R. Holbrook, Director Ad Valorem Tax Division, "Memorandum to County Tax Supervisors," 3 December 1980.
9. N.C. GEN. STAT. § 105-274.
10. For a more detailed discussion of this process, see Joseph S. Ferrell's article, "A Taxpayer's Guide to Property Tax Evaluation," *Popular Government* 47 (Winter 1982), 36-44.
11. N.C. GEN. STAT. §§ 105-219, -308.
12. *Id.* at § 105-317.
13. *Id.*

Figure 1 General Assessment Functions



him. For a limited time the property owner may appeal the assessment to the tax supervisor, the county board of equalization and review, and the State Property Tax Commission, in that order. The taxpayer has the burden of proving error in the assessment, but the tax supervisor is expected to support the valuation reported.[14] After the appeal period ends, all assessments are recorded in the county's tax book and the sum total of all assessments in that book is used to calculate the county's property tax rate. The rate is figured by dividing the portion of the county budget to be supported by the property tax by the taxable base—the sum of all assessments. After the governing board has formally adopted the tax rate, the assessed valuation of each piece of property is multiplied by the tax rate to determine the tax bill for that parcel.

14. For a complete discussion of the appeal process, Ferrell, *op. cit. supra* note 8, at 36-44.

Problems with a manual assessment system

Doing the repetitive clerical operations and retrieving the large numbers of records involved in a manual assessment system takes a lot of time and staff. For example, the square footage for each building being appraised must be calculated. To do this, the length for each section in the building must be multiplied by its width, and then the resulting square footages must be added to get a total square footage for the entire building. This operation performed manually on 20,000 buildings—at an estimated clerical production rate of 84 records per day, and 210 average working days per year—would take 1.13 man-years to complete. Another task—changing the land value for every parcel in the county—also requires a multiplication process and the posting of a new value for each record. Consequently, because of the time required to process, in manual appraisal systems the most important valuation decisions needed in reappraisal must be made early in order to leave enough time for clerical work. For the same reasons, a change late in the reappraisal process is nearly impossible if it affects many parcels. Comparisons, such as the percentage increase or decrease of new value for different types of property involved in the reappraisal, are virtually impossible to make because it is so difficult to locate each record and make the necessary calculations. New valuation totals, used in making financial projections, for the reappraisal are not known until all records have been completed and calculated. For budgeting purposes, this means that revenue and rate projections cannot be made until the reappraisal is complete.

The manual system requires that each major function in the system—identification, description, and valuation—be subdivided into component tasks. Then these tasks must be put in proper sequence and personnel assignments

made in order to complete the project on time. Often, because there are too few staff members, the tasks must be performed sequentially, with personnel moving from one task to another; therefore important decisions are often delayed because the information needed to make them is not yet ready.

Advantages of a computer-assisted assessment system

A computer-assisted assessment system carries out assessments by means of electronic data processing equipment. Whereas the manual system breaks the assessment operation down into a series of tasks that are then assigned to personnel for manual completion, the computer-assisted system separates tasks that lend themselves to computer handling from those that call for human judgment. The computer-oriented tasks are the repetitious clerical jobs that can be defined precisely. Computers demand exactness. The advantage of adapting a task so that it can be done on a computer is speed. For example, calculating square footage for 20,000 buildings—described above as a job that would require 1.13 man-years—could be performed by a computer-assisted system in less than 24 hours. This speed in retrieving and processing data greatly augments (a) the worth of the system's data base, (b) the possibility of postponing the mass calculations until pertinent decisions have been made, and (c) the system's ability to predict results before the project has been completed.

The concept of data processing in a computer-assisted system is different from the data processing concept in a manual system. In a manual system emphasis is placed on *handling* the data, whereas in a computer-assisted system emphasis can be placed on how the data are to be *used*. A computer-assisted assessment system is based on the series of tasks for each assessment function defined by data input requirements, operation requirements, and output requirements. (1) information must be fed into the system (data input), (2) calculations must be made on the basis of that information (data operation), and (3) information must be produced that is needed to fulfill the unit's property tax policy (data output). Data input is the collection of all information needed for the accomplishment of a particular step; it may include descriptions of land and improvements, the owner's name and address, zoning, tax rate, etc. The computer stores this information by means of electronic storage devices. Data operations are the clerical routines by which a certain ingredient of the assessment process is produced (i.e., calculations on square footage, cost, or depreciation; record production; application of value factors, etc.). These routines are broken down into primary steps and then written in computer language—computer programs—as instructions to the computer (that is, the instructions become "computer software"). Data output (the result of the computer operations) can take the form of printed records or electronic images (i.e., property record cards, appraisal manuals, land value tables, tax notices, tax bills, tax scrolls, reports, etc.) on a computer terminal—that is, a cathode ray tube, or CRT.

This total assessment system is usually organized around three subsystems: the land records management subsystem (LRM); the computer-assisted mass appraisal subsystem (CAMA); and the tax accounting subsystem (TA). (See Figure 2.)

The **land records management** program provides inventory control for the computerized system.[15] In any assessment program, the property to be appraised and assessed must first be identified. Formerly, identification was achieved by requiring property owners to list their taxable property each year with the tax supervisor. More recently the listing method has often been replaced by land records management, a system that creates and maintains a record for each legal parcel of land in the county. This record is created by matching each deed of property ownership recorded in the register of deeds' office with the corresponding parcel depicted on a county-wide tax map. Then, for the purpose of inventory control, a unique parcel identification number (PIN) is assigned to each record; it is this number that the computer uses to store, sort, and retrieve pertinent information about that parcel on all land records. Land records management was designed originally for ad valorem taxation purposes, but it has become a property information system for all governmental needs.

More precisely, a land records management subsystem starts with a base map of all parcels of land in the county. Each parcel is then assigned a parcel identification number. This number is derived from a statewide mapping scheme, and it indicates the parcel's physical location on that scheme. The numbering system becomes part of the computer program, so that the computer will create for each numbered parcel a record that contains enormous amounts of information. Great care must be taken to keep the record accurate and current. For that purpose, each department of county government that has information about individual parcels has a responsibility for keeping the records up to date. Each participating department contributes such data as ownership changes that occur by deed recordation; zoning changes and legal restrictions on use, such as flood control; mapping changes that result from splits of parcels and resubdivisions; social information like numbers of school programs; and other information pertinent to the parcel. This information is then organized and stored by computer programs. It can be reproduced in virtually any conceivable form—familiar forms are tax scroll documents, tax maps, property record cards for appraisal, and assessment notices for the taxpayer. (See Figure 3.)

The computer-assisted mass appraisal subsystem is designed to accom-

15. N.C. GEN. STAT. § 105-303. For a complete description of North Carolina's land record management system, see the article by Donald P. Holloway and David H. Rogers, "PINning It All Together—A New Land Records Management System," *Popular Government* 49 (Summer 1983), 6-12.

Figure 2 Computer-Assisted Assessment System

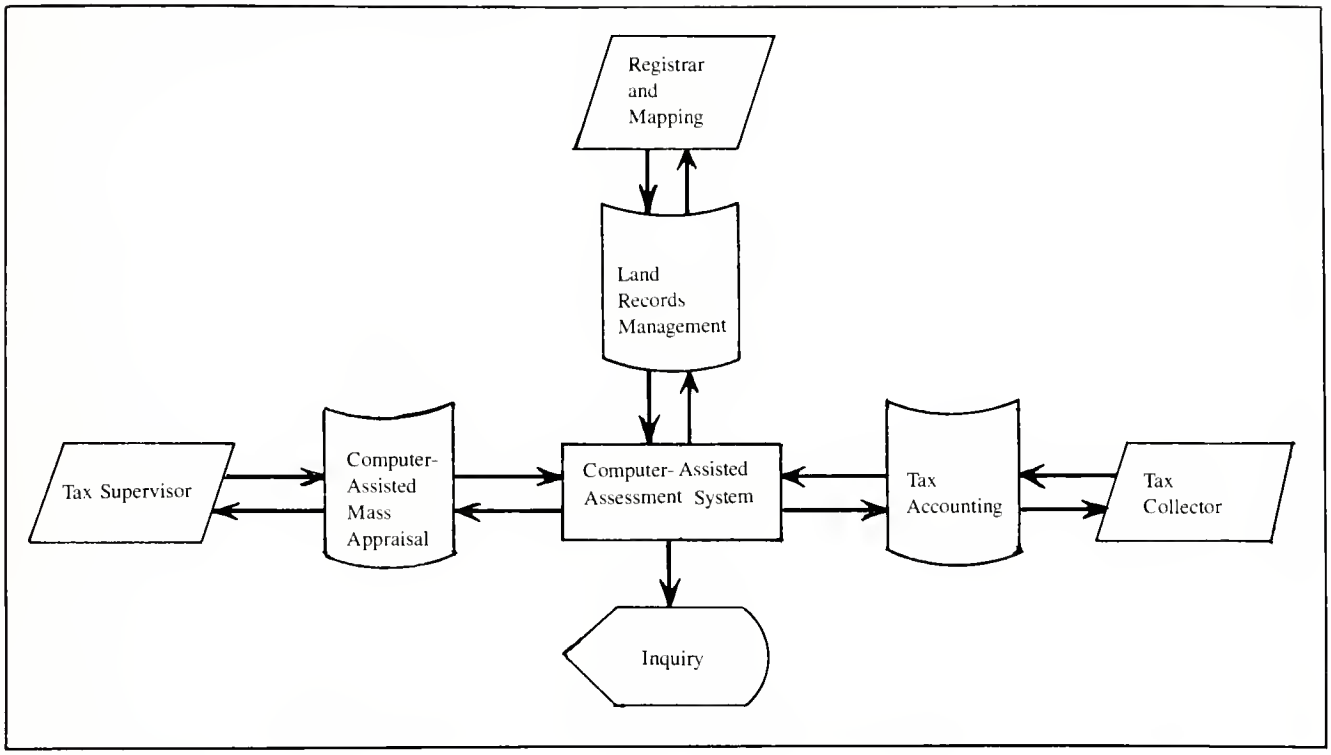
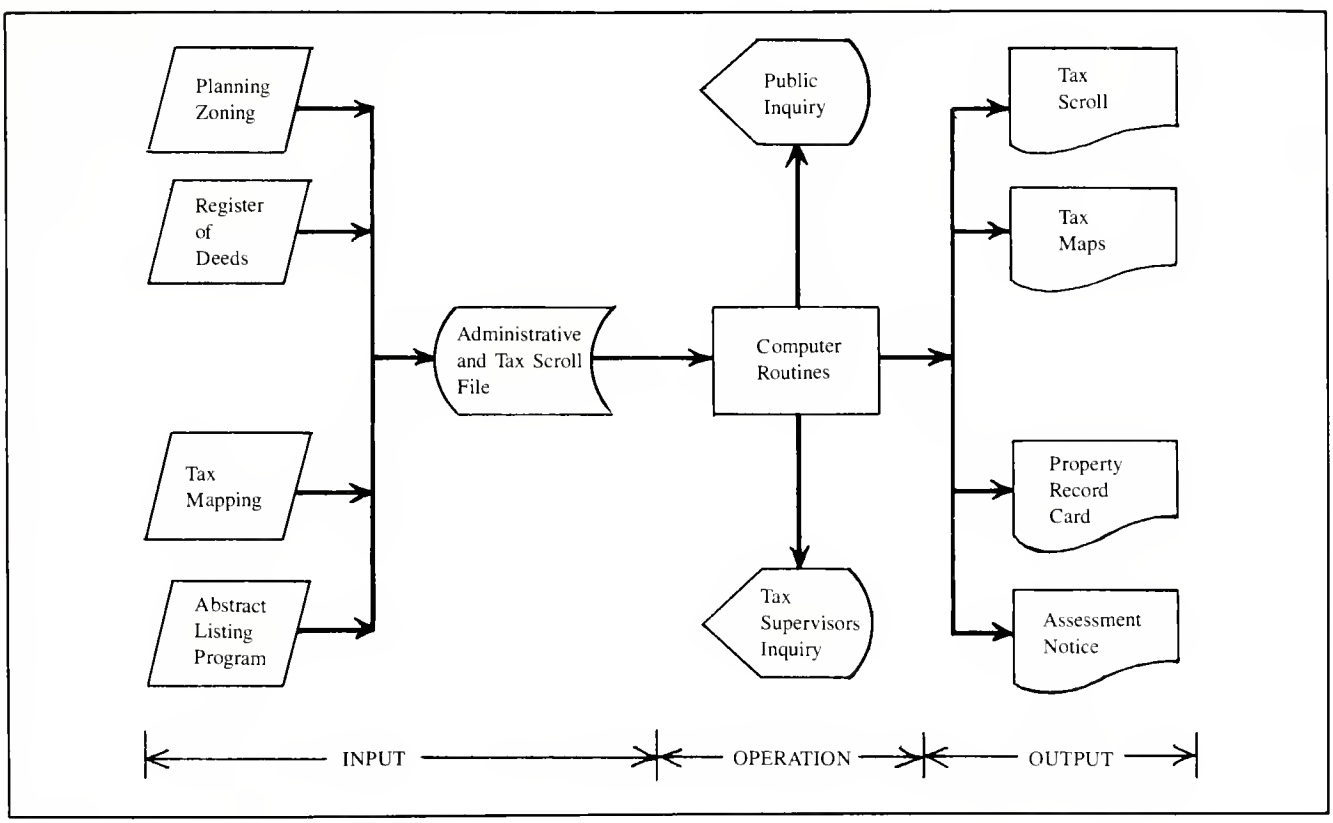


Figure 3 Land Records Management Subsystem



modate the description and valuation aspects of the assessment system. In addition to the data in the land records system that are needed to produce the legal record for property assessment, a lot of information is required for the actual property appraisal. This data base is made up of three files: the property characteristics file, the sales file, and the valuation factors file.

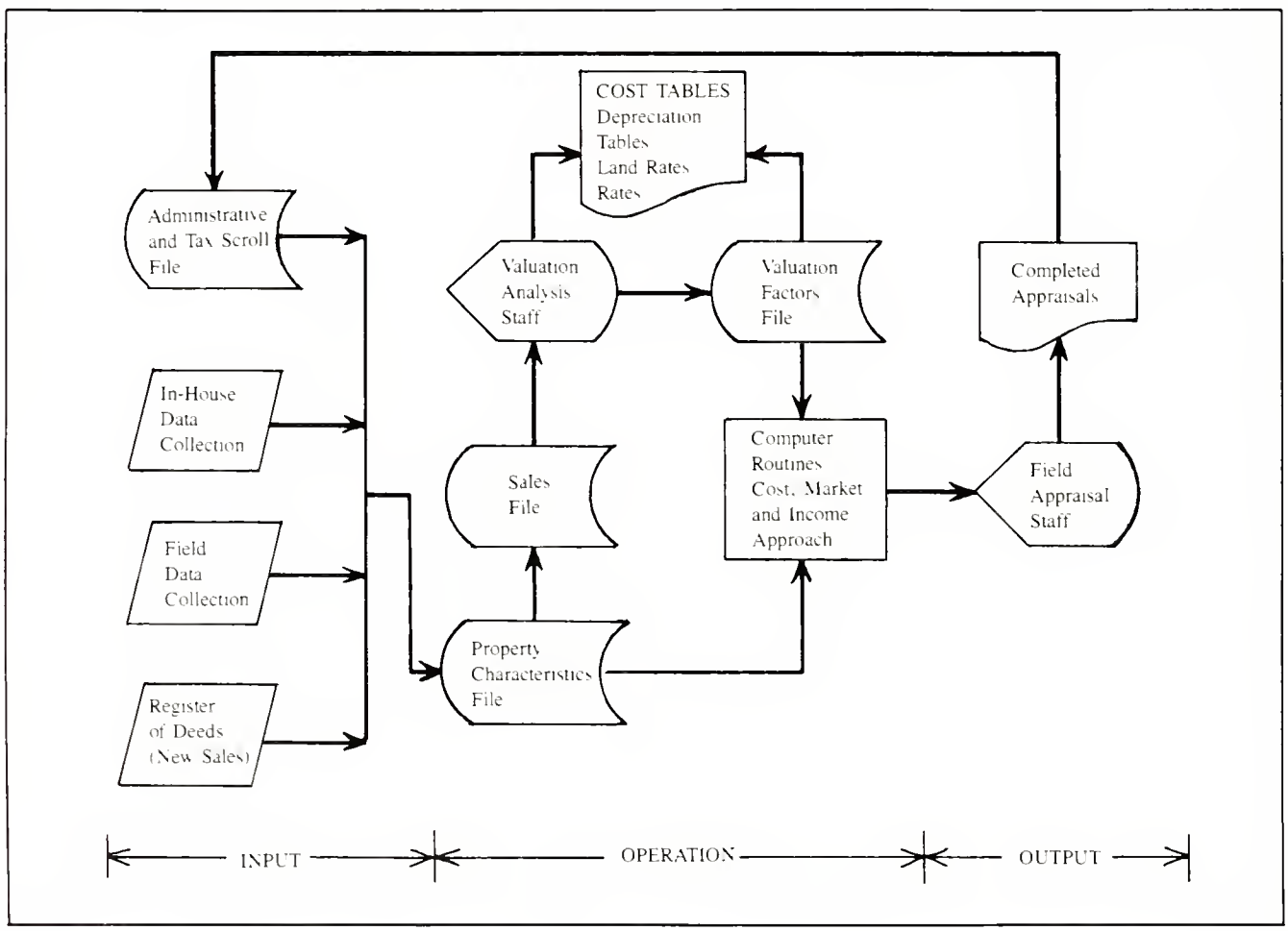
(a) The *property characteristics* file contains descriptive information pertaining to the land, physical improvement, and neighborhood features for each parcel. (b) The *sales file* is a copy of those portions of the property characteristics file that apply to properties that have sold recently enough to provide an indication of current values. This file contains such information as selling prices on land and buildings. It is also used to measure the level of assessments common to the jurisdiction. (This measurement will be discussed later in this article.) (c) The *valuation factors file* contains the information, on values, derived from the sales file, that relates to information contained in the property characteristics file. The valuation factors file is commonly referred to in North Carolina as the "schedule of values."[16]

Finally, when properties are appraised, computer programs apply the valuation factors to the property characteristics for each taxable parcel, using methods consistent with North Carolina statutes and standard appraisal practice. The result of this total operation is an appraisal for each parcel in the county. This appraisal value, after appropriate field checking and review, is then passed to the land records management system for classification according to the property's tax status and calculation of the proper assessed value in accordance with North Carolina statutes. Notice of appraised and assessed value is then sent to the property owner. (See Figure 4.)

Another important aspect of the computer-assisted mass appraisal subsystem is its ability to measure the statistical accuracy of assessments that it generates. The measurement is made by analyzing the assessment-sales ratio. An assessment-sales ratio is the mathematical relationship between the sales price of a property and the assessed value of the same property. Ex-

16. N.C. GEN. STAT. § 105-317(b).

Figure 4 Computer-Assisted Mass Appraisal Subsystem



cept for property otherwise classified by statute, all taxable property in North Carolina is to be assessed at its appraised value.[17] Therefore, an assessment is accurate only if the assessed value and the sales price are the same; in that situation, the assessment-sales ratio is 100 per cent.[18] The assessment-sales ratio is calculated by dividing the assessment valuation of a property by its sales price (assessment-sales ratios are available only for properties that have been sold recently). For example: a property with an assessment of $45,000 that recently sold for $47,000 would have an assessment-sales ratio of .95, or 95 per cent. This is arrived at by the following formula:

assessed value ÷ sale price = assessment-sale ratio.

By calculating the assessment-sale ratio for all properties that have sold, the relationship of the assessment to market value can be determined for that jurisdiction. Assessment-sales ratios may be computed for all sales in the county collectively, or separate ratios may be determined for individual categories of property sales, like agriculture, residential, commercial, and industrial.[19]

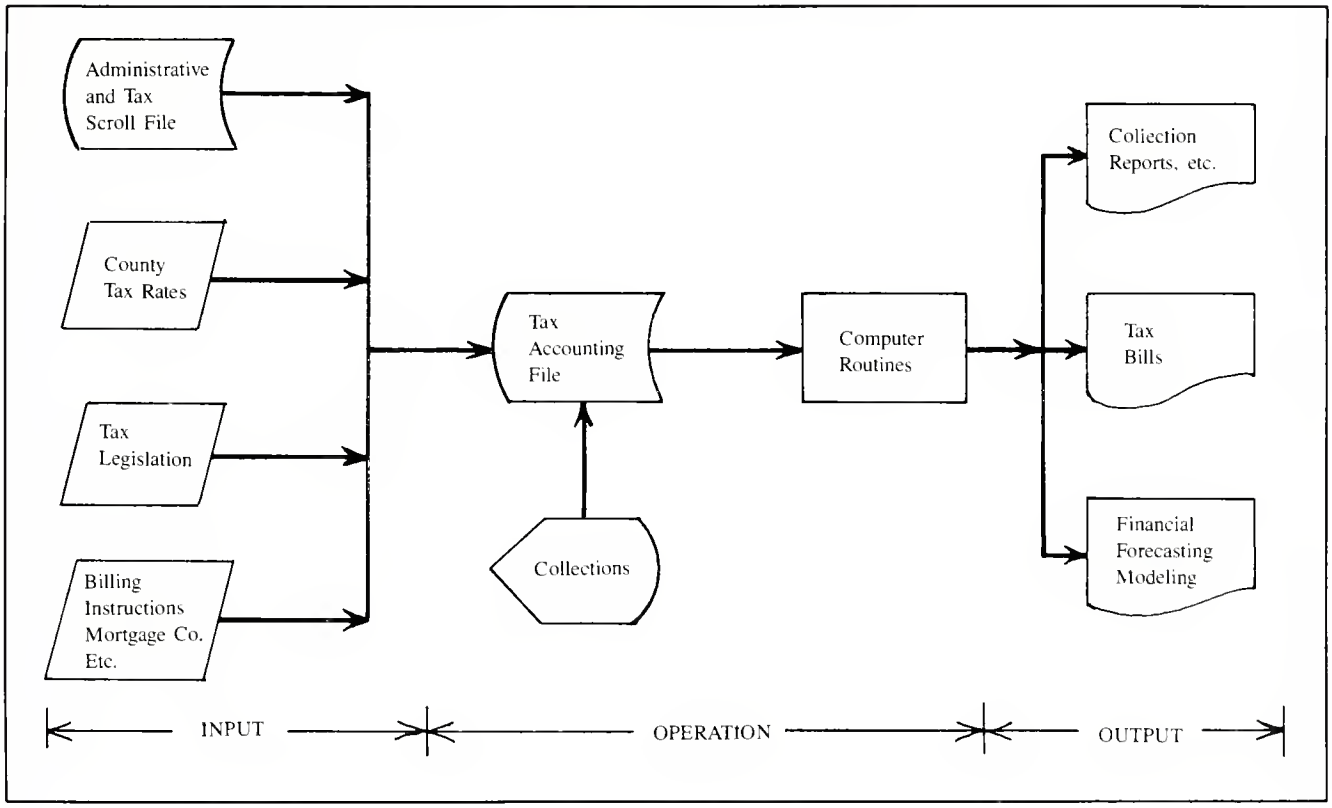
Tax accounting is a computer-assisted assessment subsystem designed to facilitate tax billing and tax collection. It maintains inventory control, using the data base of the land records management subsystem. It also maintains general information on the tax status of each parcel and the tax rate that applies to each parcel within the jurisdiction (some parcels may lie in a special district to which is applied a tax rate that differs from the general rate in the unit), and it lists who receives the tax bill. The tax accounting subsystem calculates payments, tax due, penalties, and delinquencies. It permits financial forecasting. By making certain assumptions with regard to assessment levels, tax rates, and delinquencies, the system can reliably project tax revenue, the distribution of the tax, and the impact of the tax on various classes of taxpayers. This subsystem can also accurately gauge the economic impact of proposed tax reforms and exemptions while the proposals are still being considered for enactment.

17. *Id.* §§ 105-283, -284.

18. In addition to the assessment level, uniformity is equally important in measuring assessment accuracy and is considered in the assessment-sale ratio study. However, an in-depth discussion of statistics in ratio studies is beyond the scope of this article.

19. This cursory description of assessment-sales ratio studies is given only as general reference to this topic. Industry standards are available in *Standard On Assessment Ratio Standards* (Chicago: International Association of Assessing Officers, 1980).

Figure 5 Tax Accounting Subsystem



Finally, the tax accounting subsystem can retrieve information in various forms and can provide data to facilitate the many decisions that the financial administrator must make. (See Figure 5.)

Advantages of a computer system

When a taxpayer asks the tax supervisor's office about the accuracy of the appraisal or assessment of his property, the information needed to answer his question is readily available in a modern computer-assisted assessment system. Within seconds after the parcel identification number for the taxpayer's property is entered in the computer, the computer can provide (1) a complete description of the property characteristics and the valuation factors used in appraisal; (2) the type of property—i.e., residential, agricultural, industrial, etc.—on which the assessment was based; (3) assessments for comparable properties in the taxpayer's immediate neighborhood; (4) recent sales prices for comparable properties and assessment information for each property; (5) and the assessment-sales ratios for the county, for the neighborhood, and for the subject property if it has recently sold. This information tells whether the taxpayer's property has been valued properly and assessed uniformly. Factual information listed on the appraisal record may be displayed and checked for accuracy. North Carolina law says that all property shall be assessed at appraised value—unless it belongs to a category of specially classified property—and assessed uniformly with other properties.[20] The most accurate method of testing value and uniformity is to compare the assessed valuation of the property in question with the assessed valuation of comparable properties that have recently been sold and also were recently reappraised and reassessed. With a state-of-the-art computer-assisted assessment system, this information should be readily available.

Being relieved of routine clerical activities by a computer-assisted assessment system gives the tax supervisor more time to verify the accuracy of appraisals. Besides processing data with incredible speed, the computer supplies data in an analytic format to facilitate appraisal decisions. It can also be programmed to help catch human errors. For example, the computer can flag for review those properties that vary in assessment increase or decrease beyond the established tolerances from the average for the appraisal, and it can make logic checks for data accuracy: When the computer encounters an entry that shows a low-quality house with deluxe features or a mansion-class house with no air conditioning, it lists the entry as a probable error that should be rechecked. A schedule of values—the heart of reappraisal systems in North Carolina—may be tested, before it is adopted, by computer "modeling." Modeling is simulated reappraisal that uses selected properties for test purposes. The schedule of values developed by the assessment office for use in the reappraisal is applied to properties that have recently sold, and the results are then tested for accuracy and uniformity before the complete reappraisal is conducted. This task is easy for a properly programmed computer system but virtually impossible, because of time constraints, with a manual system.

"Financial forecasting" is a term applied to the ability of a computer system to make reliable projections, before the actual reappraisal is conducted, on the effect of a reappraisal with regard to unit's tax revenue, and the impact of tax shifts from one property class to another. Approximately 30 per cent of municipal revenues and over 20 per cent of county revenue in North Carolina come from the property tax, and the proceeds of this tax as a dollar amount have been increasing by nearly 10 per cent per year.[21] In other words, a county with a property tax base of $1.5 billion dollars and a property tax rate of $1 per $100 of assessed value can produce $1.5 million in new revenue from a revaluation that increases the average property value by only 10 per cent. The local governmental administrator needs reliable revenue projections for proper planning and budget preparation, and having valuation figures—and therefore revenue projections—are very important to him.

Before the Idaho legislature enacted significant tax reform measures, that state's tax commission developed a computer forecasting model to test the effect of the proposal on various property types and county tax structures. This kind of analysis made it possible for Idaho legislators to make decisions on tax policy for their state with hard facts about the potential results. The same system is currently used in Idaho both to make revenue projections based on county reappraisal activity and to test the accuracy of the new appraisals.[22]

Cost of a computer system

As a result of greatly increased use of computers and advances in technology, computer-assisted assessment systems are affordable by virtually every tax jurisdiction. The town of Fraser, Michigan—with a population of 15,000 people and fewer than 5,000 taxable parcels—has a computer-assisted system that is capable of all tax assessment administrative functions, including delinquent rolls, tax bills, special assessments, appraisal, and personal property. The system also handles the city payroll, accounts payable, the general ledger, utilities billing, and other administrative functions for the city manager. This system—including hardware, software, and consultant ser-

20. N.C. GEN. STAT. §§ 105-283, -284

21. U.S. Bureau of the Census, *Governmental Finances in 1981-82*, Series GF82, No. 5. (Washington, D.C.: U.S. Government Printing Office, 1983.)

22. Patrick W. Shannon, V. Lyman Gallup, and Alan S. Dornfest, "Computer Modeling: A Decision Tool for Property Tax Reform Legislation," *Assessment Digest* 4 (January/February 1982), 10-15.

vices—can be established for less than $20,000.[23] Larger systems, with greater processing demands and more complex needs, as described in this article—can easily cost over $100,000 and may run to more than $250,000, depending on such variables as computer configuration, software, license and service agreements, and consultant service. In either case, $3 to $5 per parcel is a reasonable cost to expect in a conversion from a manual assessment system to a computer-assisted assessment system.

Conclusion

This article set out to discuss the nature of a computer-assisted assessment system and explain what it can do. The computer has proved to be an invaluable tool in assessment; with the ever increasing demand for more accurate and frequent assessments, it will become indispensable. The time for setting up such a system appears to be now.[24] pg

23. Michael S. Skaff, "Computers in Small Jurisdictions: Setting the Record Straight," *Assessment Digest* 5 (September/October 1983), 14-18.

24. There are many pitfalls in acquiring computer equipment. Officials who would have this responsibility should seek expert assistance before they invest in a computer system.

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