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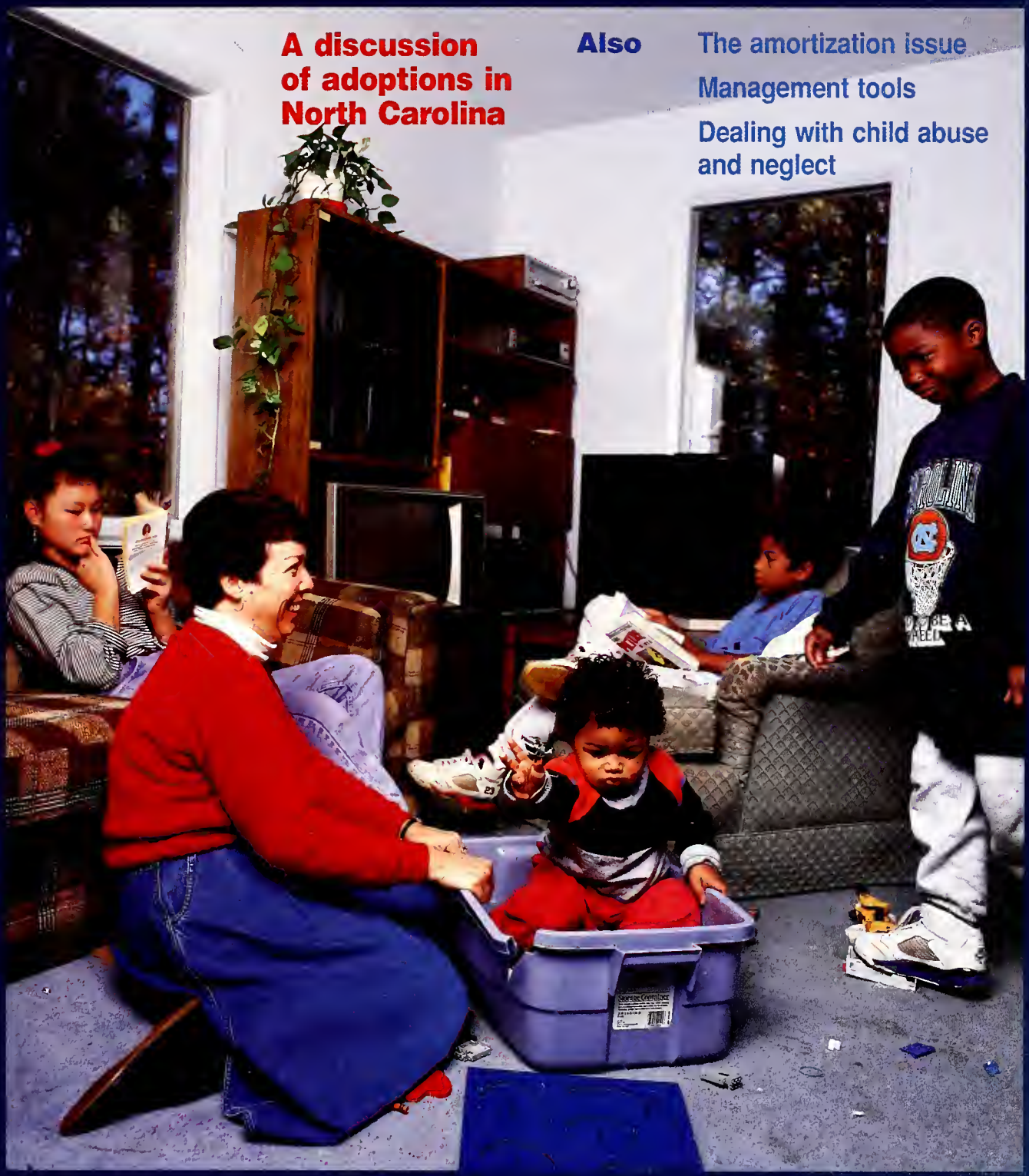
Popular Government

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



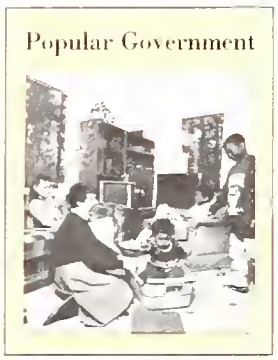
A discussion of adoptions in North Carolina

Also

The amortization issue

Management tools

Dealing with child abuse and neglect



On the Cover

Pam Uhlenberg enjoys some rare free time with four of her adopted children: Heidi, Isaac, Aaron, and Nathaniel. Pam and Peter Uhlenberg have thirteen children, eleven of whom are adopted.
Photograph by Bob Donnan

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Feature Articles

At the Institute

Adoptions in North Carolina

An Interview with Robin Peacock

Mason P. Thomas, Jr.

Adoption—the legal process through which a child acquires new parents and loses the legal relationship with his or her biological parents—is an important field in children's services. It is also a field that has gone through, and is continuing to go through, massive changes. Twenty years ago the typical adoption case involved an infant, usually the child of an unmarried mother, who was being placed for adoption with a couple who had applied with and been approved by an adoption agency. Today the children involved in the adoptions process are much different. There is no longer the supply of available infants, because it is more socially acceptable now for unmarried mothers to raise their children. In addition, adoption agencies are now providing adoptive homes for older children, handicapped children, and foreign-born children. One indication of these many changes is a new adoption statute for North Carolina being drafted by the General Statutes Commission to be proposed to the North Carolina General Assembly.

In North Carolina, direct adoption services are administered at the county level by each of the 100 county departments of social services in the state. In addition, there are nine private child-placing agencies licensed to provide adoption services. [See "Licensed Private Child-Placing Agencies in North Carolina," on page 12.] All of the county departments and licensed private agencies are authorized to accept releases of children for adoptive placement and to conduct adoptive home studies for people who apply to be adoptive parents. In each of the 100 counties, the clerks of superior court act as judges of the courts of adoption, and the legal documents for adoption are filed with them. Usually the responsibility for reviewing the adoption proceedings and issuing the various adoption orders is delegated to one of the deputy clerks of court who has received training in the legal process.

Robin Peacock has worked in the adoptions field in North Carolina for more than twenty years, so she has experienced its many changes. As program manager for Adoption Services with the Division of Social Services in the North Carolina Department of Human Resources, she helps oversee the adoption program in North Carolina. In October Peacock agreed to meet with Mason Thomas to talk about the field of adoptions in North Carolina today and in the past and to anticipate changes for the future.

The interviewer is an Institute of Government faculty member who specializes in social services law and legal issues affecting children and their families.

All photographs of Robin Peacock by Jim Page/N.C. Department of Environment, Health, and Natural Resources

Thomas: Can you tell me a little bit about the adoption program in the Division of Social Services? What are your responsibilities?

Peacock: The Division of Social Services is responsible for providing training in the various aspects of adoption services to the county departments of social services and clerks of superior court. We provide frequent consultation to the clerks of court, agencies, attorneys, and individuals who inquire about adoption issues and technical aspects related to adoption. We participate in the licensing activities and annual licensing reviews of the private child-placing agencies. We are also responsible for the development of policies and standards, often in response to federal funding provisions that would expand adoption opportunities. For instance, we provide financial assistance for the care and treatment of adopted children with special needs. And, of course, one of our primary responsibilities pertains to the indexing and permanent retention of adoption records.

Thomas: Could you explain what you mean by indexing?

Peacock: In 1935 the adoption laws were rewritten by the General Assembly. This legislation required the clerks of superior court to send all adoption proceedings filed in North Carolina to our agency (then the State Board of Charities and Public Welfare) for indexing and permanent retention. Part of our responsibility at that time was to give close review of adoption proceedings to assure that they would be legally sound and invulnerable to attack. We also completed an extensive statistical coding sheet to elicit certain characteristics of the adoption proceedings and then assigned an index number to each adoption proceeding. We had a cross reference for every adoption proceeding so that if we knew any of the names of any of the parties involved, we were able to retrieve that proceeding, if necessary for any purpose. That has remained the primary responsibility for our agency.

Thomas: How many adoptions do you index in a year?

Peacock: During any given year, we receive in the neighborhood of 3,500 new proceedings for children who are adopted in North Carolina. And several years ago the statutes were amended so that the adoptions of adults are also sent to us for indexing and permanent retention. We receive several hundred of those each year. We also record information on the adoptions that have been dismissed by the courts for one reason or another. Adoptions fall into three general categories: First, there are those for children being adopted by relatives, and we include stepparents in that category. These adoptions would be about 70 to 75 percent of all adoptions filed in a given year. Second, about 20 percent are for the adoption of children placed by the county department of social services and licensed private adoption agencies. Third are the proceedings for children who are placed by their biological parents with nonrelatives. These are called independent adoptions, or direct placements.

Thomas: Isn't your agency also responsible for the Adoption Resource Exchange? Can you tell us what that is?

Peacock: Until about twenty years ago, adoption primarily was for the placement of healthy white infants. As the number of infants in need of adoption declined, agencies began to recognize that they had older children and children with special needs who would remain in foster care without hope of return to their parents. As a result, in 1968 the North Carolina Adoption Resource Exchange was established to expand adoption opportunities for these children. Very simply, county departments and private agencies send registration profiles of children for

Coleman and Callie Cassedy (seven and nine) were both adopted as infants by Pierce and Elizabeth Cassedy.

whom they are having difficulty finding adoptive homes to our office, where we administer the program. They also send profiles of approved adoptive applicants who are interested in adopting children other than healthy white infants. When we see the potential for a match—for instance, a seven-year-old child with a hearing difficulty and a couple who is interested in providing care for a child with a hearing impairment—then we will make a cross referral to the agency having custody of the child, telling that agency about the applicant, and to the applicant's agency, telling it about the adoptive child. Then those two agencies consult with each other to see if it's possible for the placement to be made.

Our agency has no responsibility under the law for arranging or making adoptive placements. All responsibility and authority lies with the county departments of social services and with the private child-placing agencies licensed by the Department of Human Resources to provide adoption services. But the exchange is a facilitating program. With the Adoption Resource Exchange we publish a monthly listing of all the children registered, to give people an idea of the types of children, the age, sex, and race and the particular condition. We also have a photo adoption listing service in which we feature photographs and paragraphs about the children in need of adoption. This information goes to all of the county departments of social services and licensed private agencies and to many specialized adoption agencies across the country.

Thomas: In recent years, has there been an increase in the number of black children in need of adoption, and, if so, are the agencies able to find families for all black children who need adoptive families?

Peacock: We have seen quite an increase in the number of black children in foster care who, for various reasons, cannot be returned to their biological parents or relatives. Fifteen or twenty years ago few people expressed interest in adopting black children, and agencies made little effort to find adoptive homes for them. Black families would often care for the children of relatives and friends without a formal adoption. Now, however, the county departments of social services and licensed private adoption agencies focus efforts on clearing black children for adoption and finding adoptive families for them.

In North Carolina many black children have been adopted through a highly successful program, the Friends of Black Children Program. This program began in 1982 as a two-year federally funded project and was then made an ongoing program with twenty counties currently participating. Amelia Lance, the state Friends of Black Children coordinator, is a member of our staff. The program's success is due to the dedication and commitment of members of the black community and county social services staff who work together to recruit and prepare people to become parents to black children through adoption. This is not meant to imply that additional adoptive families for black children are not needed. At present, ninety-two black children in need of adoption are registered on the North Carolina Adoption Resource Exchange, and there are many more who are not yet legally cleared for adoption but for whom adoption is the plan.

Thomas: We have been talking some about private adoption agencies. Many of us remember the North Carolina Children's Home Society as the first private adoption agency established in North Carolina. It is my understanding that this agency is licensed by the state. Could you explain the licensing program and tell us about how many private agencies are involved in that?

Courtesy Lutheran Family Services in the Carolinas

Kristen Kelly, who was adopted by Jim and Jeanne Kelly in 1987, is originally from Chile.

Peacock: Licensing regulations for the private adoption agencies are established by the Social Services Commission of the Department of Human Resources, which has the power and duty to establish rules and regulations in regard to the standards of service that will be available to people experiencing unwanted pregnancies, to the children who are released for adoption, and to the people who are adopting these children. These licensing regulations are codified in the North Carolina Administrative Code. The adoption standards applicable to county departments of social services are also codified in this code. Annually, staff in the Division of Social Services, as agents of the Department of Human Resources, are involved in conducting licensing reviews with each private agency to determine if each agency is providing services that are acceptable and that meet the standards set forth by the commission. There are nine private agencies currently licensed by the Department of Human Resources, and they vary in size and in focus. The Children's Home Society, as you mentioned, is the oldest and the largest. It was founded in 1902. There are two Catholic agencies that provide adoption services: one in the eastern part of North Carolina and one in the western part. There is a Latter Day Saints agency that is very small, but it provides services for people of that faith. Some agencies are affiliated with specific religions, and others are nonsectarian. Some specialize in international adoptions.

Thomas: Is international adoption a growing field?

Peacock: It certainly is. When I first came to this office in 1972, there were very few international adoptions. The children at that time were coming almost exclusively from Korea through one program in particular, the Holt Adoption Program, with an agency located in Eugene, Oregon. Since then we have seen many changes in the adoption of foreign-born children. For a while many children were coming from Vietnam, and then with the fall of Vietnam, that ended. Now children are coming from the Philippines, Thailand, China, India, Romania, and many of the Latin American countries. And most recently a program was established to provide for the adoption of children from Russia with families in the United States. International adoption is a dynamic program and interesting in all of its changes.

Thomas: It seems that in providing placement for children from other countries, we are doing more placements across racial and cultural lines. Is that correct?

Peacock: That is correct. For applicants who are interested in adopting internationally and transracially, agencies must focus on sensitive areas and issues, such as helping them understand the need to value the adopted child's background and culture, no matter where he or she might come from. In addition to the adoption process, of course, with adoption of foreign-born children there is the issue of the adoptive parents' obtaining visas from the Immigration and Naturalization Service, which is a rather complex process. Then, following the legal adoption process, they must complete the naturalization action to establish their child as a United States citizen.

Thomas: One of the things that is interesting to me about the changes in adoption recently is the need of adoptive persons—that is adoptive children who have grown up to be adoptive adults—to know about their biological roots and genetic history and medical problems in the biological family. Some years ago I read a book called *The Search for Anna Fisher*, which dramatized for me the intense need of a woman to find her biological mother. Could you say a word about that?

Peacock: *The Search for Anna Fisher* was probably the first major publication to indicate that there was this kind of need. I think that Florence Ladden Fisher, the author of that book, said what many people had wanted to say about being adopted, but had not ever voiced for one reason or another. Now I hear from at least three or more individuals a week who are interested in finding out more about their past and their biological and genetic background. Some are not interested in actually making a search and having face to face contact with their biological parents, but really are more interested in completing the answer to the question, "Who am I genetically, as well as environmentally?" They want to know who they look like, why they might be left-handed instead of right-handed, or why they have red hair instead of brown hair. And the medical issues are extremely important. These people are grown, some in their thirties, forties, even fifties when they begin to search, and they just want to find out more about themselves.

In addition to hearing from adult adoptees, we are hearing from an increasing number of biological parents who indicate that they have always had an interest in knowing about the health and happiness and security of the child they released for adoption. We used to think that when parents placed their child for adoption, they could get on with their lives and not really dwell upon

the fact that they had released a child for adoption. That's no longer the case. The people who talk with me indicate that never a day goes by that they don't think about the child they released, especially on anniversaries, birthdays, or holidays. So the biological parents as well as the adoptees may be interested in making a search.

Thomas: What can you do to help these adoptees and biological parents?

Peacock: As you know, North Carolina's laws are very restrictive in this area.

Thomas: You're talking about confidentiality.

Peacock: Yes. The intent of the adoption statutes is to protect the confidentiality of adoption records, so only very limited information can be provided to either the biological parent who might inquire or to the adult adopted person. Our office can provide only the name of the agency that supervised the adoption and the address of that agency. The inquirer can then turn to that agency and obtain available, nonidentifying descriptive information about the biological parents and any available health history. With that information, the person may decide to turn to individuals who are proficient in making searches and who frequently are able to locate biological relatives. In nearly all the cases where a search has been successful, the person being searched for is pleased to know of the desire for a contact, and there is a meeting.

Thomas: There is an organization that assists people in identifying their birth families. Could you say a word about that organization?

Peacock: The name of the largest organization in North Carolina is the Adoption Information Exchange. It is a private organization with several hundred members. This organization is the primary one in the state to provide understanding, support, and empathy to birth parents, adult adoptees, and adoptive parents. There are several branches or chapters across the state. They have meetings on a monthly basis where people come together to share their concerns, interests, and experiences in making searches.

Thomas: This is at least partly a support group isn't it?

Peacock: Definitely. I think that's one of the most valuable aspects of the Adoption Information Exchange. In addition, some of the individuals within the group conduct searches upon request. They maintain a voluntary registry—a reunion registry—and people wanting to have contact with a biological relative may give their information to the registry at no cost. If there is a match on the registry, then people are put in touch with each other. That has happened in some cases. I'm not sure how many names are on that list, but more than 5,000, I know.

Thomas: If I were an adopted person wanting to have a search done for me, should I expect to pay a fee for that?

Peacock: I think you would, definitely, whether it's done by members of the Adoption Information Exchange or by any other group that specializes in this kind of work. Searching often takes a great deal of time and effort and may involve quite a bit of travel on the part of the searcher. I doubt that it's possible to have a search done without some cost to the person requesting it.

Thomas: Could you tell us a little bit about the legislative study commission that deals with these types of adoption issues?

Luke Hartford weighed only two pounds when he was born prematurely in Honduras. His adoptive parents, Josh Hartford and Sheilah Thomas, say he is doing well and recently celebrated his first birthday.

Courtesy Orange County Department of Social Services

Peacock: The first legislative study committee was established in 1979 to respond to requests from individuals interested in having more access to information from their adoption records. That committee met for many months and provided recommendations to the legislature in 1981 to establish a registry—a passive adoption registry—by which people could register their name and their interests. If the counterpart of their biological family were also registered, then that information could be shared with both parties.

Thomas: Almost like the registry administered by the Adoption Information Exchange.

Peacock: Yes, that's right. However, the legislature was not receptive to the recommendation submitted by the legislative study committee in 1981, and the bill was defeated. The legislature at that time also repealed a law that allowed information about an adoptive child—his health and developmental history—to be shared with the prospective adoptive parents. With that law repealed, there was no provision in the statutes to allow information to be provided to the prospective adoptive parents about the child who was being considered for adoption. With the increase in the number of older children and children with significant background experiences, the repeal of this law actually was detrimental to all parties.

The next major effort was the establishment of the Legislative Study Commission on Adoption and Surrogate Parenting in 1987. That commission was to study the adoption law and offer recommendations for legislation to ease the confidential aspects of the law and for legislation regarding surrogate parenting issues. The commission met for about two years and divided into two subcommittees, one to focus on adoption issues and the other on surrogate parenting issues. After they reconvened, they didn't make any recommendations for a surrogate parenting law but did prepare a report for the 1989 session of the General Assembly in regard to the open adoption records issue. They recommended an active adoption registry whereby if one person supplied his or her name, then a search would be made for the other biological relative or relatives to see if they would be willing to have a contact from the inquirer. By the time the bill actually was introduced into the General Assembly, the recommendation had been changed to provide for a passive adoption registry, whereby both parties would need to be mutually registered for their identity to be shared with the other party. At the same time, there was a bill introduced that would have allowed agencies to share with prospective adoptive parents full, though nonidentifying, developmental and medical information about the children being considered for adoption. Neither of these bills was passed by the legislature.

Linda Frank holds her adopted daughter, Maria Frank, who came to this country from Guatemala. Linda and Geoffrey Frank adopted Maria in 1987.

Thomas: So in terms of the openness of records today, it seems that North Carolina is at one extreme: confidentiality is the law, and adoptive parents have access to almost no information about the child's medical and developmental history. The other extreme would be to allow agencies to more or less specialize in open adoptions—particularly for those working with older children—with the biological parents in touch with the child who has been adopted and the adoptive parents in touch with the biological parents. Could you say something about what's happening in this area?

Peacock: It's true. North Carolina's adoptions are still more at the closed, confidential end of the spectrum. But we are seeing a growing trend across the country toward more openness in adoptive placements. It stands to reason, then, that there will be more openness in North Carolina's records down the road. An atmosphere of confidentiality is not seen to be as important as it once was.

Thomas: What would that openness be like?

Peacock: In many other states there are very well planned programs that allow those involved to be open to any degree on the spectrum, ranging from the completely closed to the entirely open adoption process. At the most liberal extreme, adoption agencies allow the adoptive parents and the biological parents to talk with each other, get to know each other, and feel comfortable with this. They might maintain continuing contact and jointly attend the child's birthday party or other celebrations. Everybody respects and understands this and expects that the adoptive parents will act as the parents to that child. They are the child's parents legally, and that's accepted. The biological parents can have varying degrees of involvement that can be incorporated along the way.

Thomas: It seems that with absolute confidentiality on one hand and complete openness on the other, there's a lot of room for negotiation and for designing programs that provide the information to adoptive parents that they need in order to do an adequate job as a parent.

Peacock: I think that's right, and some adoptive applicants are still going to feel the need for a completely closed, confidential situation, as are some biological parents. But we are seeing an increasing number of others who want a more open atmosphere, and though this trend is still fairly new, the theory is that the children placed through an open adoption process will not have a need to search and question in later years. They will have grown up knowing the "who" and the "why" and their genetic history. We think that this would bring about a healthier atmosphere for adoption in the long run.

Thomas: One of the things that I have learned is that this is a very emotional issue. People are often at one extreme or the other, and there's not much reasoning based on the best interest of the child. What do you think about that?

Peacock: I think you're probably right about that. Also, I think one of the things that has led agencies to delve into and develop programs for openness in adoptive placement is the increase in independent adoptions in the last few years.

Thomas: Can you explain independent adoptions?

Peacock: This is another one of the growing trends in adoption today. Independent adoption as we define it in North Carolina is the adoptive placement of a child by his biological parents directly with people who are not related to that child. No agency is involved. It's done directly by the biological parents with the adoptive parents. Through the increase in independent adoptions, we are seeing a need for the biological parents, who are not in a position to keep and raise the child, to have input. They want to have some control over the placement, and they want to know who their child is to be placed with, to be comfortable with that family. In an independent placement, that is their right and privilege. They've given informed consent for their child to be adopted by certain people. Two primary factors have probably led to the increase in independent adoptions. The first one would be that the biological parents want to have some say-so about the people who will become their child's parents. The second is that the parents do not want their children to be in foster care for the length of the revocation period, but instead to go directly from the hospital after birth into their adoptive homes.

Thomas: You're speaking of revocation of the consent to adopt.

Peacock: Yes. If the child is released to an agency, the agency cannot place the child into its adoptive home until the revocation period for that consent and release has expired. That's thirty days in North Carolina. So the child will be in foster care in that interim. Some biological parents are adamant about wanting their child to go directly from the hospital into the adoptive home.

Thomas: You've mentioned a couple of times children with special needs, and this seems to be an important issue in the field of adoptions in North Carolina. Could you give us an example of a child with special needs?

Peacock: There are so many. I'll need to give this a bit of thought.

Thomas: We are talking mostly about children with physical handicaps or mental problems who require certain types of care.

Peacock: That's right. These children may have cerebral palsy, heart problems, or other handicapping conditions, even AIDS—conditions requiring extensive medical treatment. Or they may have come into the foster care system as older children because of severe neglect or abuse and be in need of ongoing therapy. When it has been determined that they cannot be returned to their own family, then steps are taken to legally clear them for adoption and to find adoptive homes for them. A significant number of these children will have rather serious and significant emotional problems. Some have physical conditions; many are developmentally delayed or are mentally retarded. We have family groups of children who need to be placed together, and of course it is an expensive venture when you are facing the thought of adopting perhaps five children. Some funds are available to assist the adoptive parents with the care and the treatment that will be needed for these children.

Thomas: Are you talking about federal funds only or does the state of North Carolina pay part of the cost for this type of care?

Peacock: The state assists with this. There are three funding sources: federal, state, and county participation in the adoption subsidy program. Some of the children who are eligible for adoption assistance—or subsidy—are entitled automatically to be recipients of Medicaid without regard to the adopted family's income. That is a tremendous help for some of these children who have ongoing medical needs.

Thomas: It sounds like some of them have very expensive medical needs.

Peacock: Very definitely. Many of the children, especially those with severe emotional trauma, are needing and receiving residential treatment. This is very expensive, and the funding through adoption assistance is not adequate to provide for the needs in this particular area.

Thomas: Could you explain more about adoption subsidies and why this is an important issue now?

Peacock: There are still people who do not understand the purpose for adoption subsidy—or adoption assistance—and they criticize it, thinking that we are paying people to adopt children. Really, nothing could be further from the truth. The needs of these children and the expenses for their care are so much greater than the funds that we can provide for them that it's not true that anybody is making a profit from the adoption of one of these children with special needs.

In North Carolina our first adoption subsidy program went into effect in 1975.

Thomas: Was this in response to federal funding?

Peacock: No. There were no federal funds available at that time, and the legislature established what was called the State Fund for Adoptive Children with Special Needs. Only a few states at that time had adoption subsidy programs, and I think our legislature was actually quite progressive in recognizing the need for subsidizations for some of the adoptions. The funds in 1975 were 100 percent state funds for cash assistance and other benefits for the child after his adoption.

Thomas: Has this changed much since then?

Peacock: It has changed both in the number of children receiving adoption assistance and in the funding for the program. In contrast to the twelve children who received adoption assistance in 1977—the first full year of implementation—in June, 1991, 1,539 children were receiving benefits from this program.

In 1982 we received the first federal funding for adoption assistance. This was under Title IV-E of the Social Security Act and provided federal funds in addition to state and county funds for certain children meeting the eligibility criteria. Of course, the cost of the program has escalated, but the funding to the child has not begun to keep up with the cost of living increases and cost of care. The majority of states have their adoption assistance level at the same level as the foster care payments. North Carolina's foster care payments are currently $260 per month; however, the maximum amount of adoption assistance for any special needs child placed by a North Carolina agency is $150 per month. This difference is significant because it has presented barriers to foster parents wanting to adopt a special needs child who may have been in their care many months or years; they may be unable to do so at the reduced amount of assistance.

Thomas: Do all of the special needs children who receive adoption assistance also receive Medicaid benefits without regard to family income?

Peacock: No. Less than half of them continue to be Medicaid recipients after their adoptions are finalized. Only those children who are eligible for the Title IV-E adoption assistance are automatically entitled to ongoing Medicaid benefits following completion of their adoptions.

Thomas: The children's extensive medical and other needs may cause a lot of stress in the family relationships. Could you say a word about that?

Peacock: Many of these children have had devastating earlier life experiences. Many, many move from one family to another, sometimes suffering severe physical abuse, frequently sexual abuse. They may be in and out of foster care several times. These children may have significant developmental delays, behavioral problems, or emotional problems. Being adoptive parents for children like this can be stressful in many cases. The families seem to be very committed. I marvel at the dedication and commitment and the love that the adoptive parents provide for these children. Some of the children are not able to bond or attach, and that's one of the most difficult problems for a parent who wants to reach out and give love, care, and nurturing support. To have a child who is not able to respond in any way, even after a long period of time, seems to be one of the areas that is really hardest for the adoptive parents.

Thomas: So the child can't bond with the parents because of damaging earlier experiences.

Peacock: Yes. I receive many calls from adoptive families expressing their concerns and frustrations. I think what they really need and what would help so greatly with some of these placements would be respite care, so that the adoptive parents could have just a day or so of relief from the ongoing level of intensity of the placement. I hear from some of the adoptive parents who have had children in their homes for up to seven years that they feel emotionally drained, physically drained, and financially drained. It's an expensive process and some of the families are just not able to continue helping with the children who provide the most traumatic experiences.

Thomas: So what you seem to be saying is that the amount of the adoption subsidy is not specifically related to the cost of caring for a particular child. It's a fixed amount.

Peacock: That's right. It would be wonderful if it really were related to the actual cost of care.

Thomas: So for some of these families, the adoption falls apart or comes to the point where the child has to return to the agency?

Peacock: Yes. Unfortunately, that's sometimes the reality of it.

Thomas: We've spent some time now looking at adoption and the changes over the past twenty years. Does anything else of importance come to mind?

Peacock: I think that one of the major impacts on adoption in recent years resulted from the 1972 decision by the U.S. Supreme Court in the case of *Stanley v. Illinois*. This decision accorded certain parental rights to fathers of children born out of wedlock where previously these individuals had no legal rights or say-so in regard to their children, and their consent to adoption had not been required. A few years after the *Stanley* decision, North Carolina's legislature enacted legislation to require either adoption consent from fathers of children born out of wedlock or court action to rule out need for their consent. Some of these fathers have been successful in overturning the adoptions of their children and even, in a few cases, in obtaining custody of their children.

Thomas: The past twenty years have brought about some specific and dramatic changes in the area of adoption. Robin, what changes do you anticipate in adoption in North Carolina over the next twenty years?

Peacock: The past twenty years in the field of adoption have been incredibly interesting and challenging to me personally and also, at times, frustrating when it has seemed that laws and policies were in the way of keeping the child's best interests at the forefront of concern. We've seen many changes. It is difficult to consider that the next twenty years will bring about as much change. I think that one of the most challenging areas for agencies will be the need for recruitment and preparation of adoptive families for the increasing numbers of medically fragile children—those children born with drug addiction, fetal alcohol syndrome, AIDS, etc. Caring for these children will be emotionally, physically, and financially taxing for the adoptive parents, yet obtaining their commitment to the children will continue to be of paramount importance.

Photographs of all thirteen of Pam and Peter Uhlenberg's children (eleven of whom are adopted) are displayed on the mantelpiece in their Chapel Hill home.

I think we will see continued efforts focused on the adoptive placement of older children: children with special physical, mental, or emotional needs; and sibling groups of children. In addition, I anticipate and hope that all of these children—not just those now categorically eligible—will be entitled to ongoing Medicaid benefits, as well as adoption subsidies.

And I think that we will see a return to agency adoptive placements of infants, signifying a decrease in the number of independent placements. This change, however, will come about only if North Carolina's laws allow it and agencies implement programs that appeal to biological parents—with the agencies moving toward and providing services that support openness in the adoption selection and placement process and also placing newborn infants directly from the hospital with the families who will be adopting them.

Also, unless the General Assembly takes action to ease the restrictions on providing information from adoption records to adult adoptees, I think that in coming years there will be a significant increase in the number of petitions filed by the adoptees to have their adoption records opened. Already this year, our office has received more such petitions, or motions, than in all of the past twenty years combined.

I'll be watching and following the changes with great interest, from the sidelines. From our earlier conversations I know that you will be retiring from your work at the Institute of Government in 1992, and I, too, will be retiring and leaving this office during 1992. It's been exciting as well as interesting to have been in the midst of the dramatic changes over the past twenty years, and I have no doubts that the person who replaces me will have similar feelings twenty years from now. ❖

Licensed Private Child-Placing Agencies in North Carolina

AGAPE of North Carolina, Inc.
302 College Road
Greensboro, NC 27410
Tom Slaughter, Administrative Director
(919) 855-7107

Bethany Christian Services
25 Reed Street
P.O. Box 15569
Asheville, NC 28813
Nancy Kurtts, Branch Supervisor
(704) 274-7116

Catholic Social Ministries
100 Oberlin Road, Suite 350
Raleigh, NC 27605
Roderick B. O'Connor, Director of Adoption Services
(919) 832-0225

Catholic Social Services of the Diocese of Charlotte, North Carolina, Inc.
116 E. First Street
P.O. Box 35523
Charlotte, NC 28235-5523
Elizabeth K. Thurbee, Director, Charlotte Office
(704) 333-9954

The Children's Home Society of North Carolina, Inc.
740 Chestnut Street
P.O. Box 14608
Greensboro, NC 27415
Sandy Mastin Cook, Executive Director
(919) 274-1538

Christian Adoption Services
624 Matthews-Mint Hill Road, Suite 134
Matthews, NC 28105
James M. Woodward, Executive Director
(704) 847-0038

Family Services, Inc.
610 Coliseum Drive
Winston-Salem, NC 27106-5393
Sarah Y. Austin, President
(919) 722-8173

Latter Day Saints (LDS) Social Services
5624 Executive Center Drive, Suite 109
Charlotte, NC 28212
Richard Fletcher, Executive Director
(704) 535-2436

Lutheran Family Services in the Carolinas, Inc.
P.O. Box 12287
Raleigh, NC 27605
Joyce Gourley, Director of Adoptions
(919) 832-2620

The Use of Management Tools in North Carolina Local Governments

Lee M. Mandell

Probably everyone working in local government would say they have experienced an increase in the demand for productive and professional services. At the same time, local governments face drastic financial crises and continuing social problems. Governments use various management tools to help them confront these challenges. Such tools may help them more accurately measure performance effectiveness, improve administration and decision making, reduce budget problems, enhance productivity, and more.

The use of management tools in the public sector and the impact of these tools on decision making are of long-standing interest in budgetary and management research.[1] Recent studies have attempted to quantify the use of various management tools in local governments across the nation.[2] While national studies provide a broad perspective and context in which to evaluate local efforts, cities and counties usually want to know what their neighbors are doing. National trends aren't as important until they arrive in one's own backyard.

Local governments in North Carolina, supported by state statutes, have long exhibited a high degree of professionalism in conducting their budgetary and fiscal management activities. However, there has been little documentation about the tools and strategies North Carolina local governments have been using. What kind of management tools have those local governments implemented to help them meet their responsibilities? This article reports the results of a 1990 study that set out to answer that question. The purpose was to study the use and perceived effectiveness of management and budgetary tools by cities and counties in North Carolina. It narrows the scope of previous studies to local governments in a single state. It broadens the scope to include county governments—jurisdictions seldom researched on this issue.

The major questions this article addresses include the following:

- What management tools are local governments in North Carolina using?
- How effective do managers perceive these tools to be in program administration and decision making?
- What specific performance measures do cities and counties use and in what functional areas of government?
- How do cities and counties differ in their adoption and evaluation of these tools?
- What is the extent of anticipated adoption of these tools by governments not yet using them?
- What is the future of standard management tools in North Carolina local governments?

A survey was mailed in the spring of 1990 to 106 jurisdictions across the state. The sample included all cities over 10,000 population (fifty-one) and all counties over 40,000 population, plus five additional counties between 30,000 and 40,000 (fifty-five). Eighty-five local governments returned questionnaires—forty-eight cities

The author is director of research and information systems at the North Carolina League of Municipalities. Data were gathered, under the direction of the author, by four graduate students in the Masters of Public Administration Program at The University of North Carolina at Chapel Hill: Leslie S. Stewart, H. Lee Clyburn, J. Dudley Watts, and David H. Green. *Portions of this article were presented at the Twelfth Annual Research Conference of the Association for Public Policy Analysis and Management, October 18 through 20, 1990, in San Francisco, California, and at the Fifty-second National Conference of the American Society for Public Administration, March 23 through 27, 1991, in Washington, D.C.*

and thirty-seven counties—for a response rate of about 80 percent. While the surveys were sent to the managers of all jurisdictions, often they were completed by finance office or budget office personnel.[3]

Results of the Survey

The first part of the three-part survey asked respondents to note their current use of eleven management tools:

1. **Performance measurement.** The regular or periodic monitoring of the status of major programs using key indicators to track their efficiency and effectiveness.
2. **Program budgeting.** A budget system using a format keyed to program structure rather than objects of expenditure and emphasizing the relationship between program objectives and outputs. Program budgeting involves multi-year planning and translates broad program categories into traditional appropriation codes for budgetary control.
3. **Zero-base or target-base budgeting (ZBB).** A budget system emphasizing the review of alternative funding levels through the preparation and ranking of programs or decision packages. The system uses zero or some other target percentage as the base for funding projects and making budgetary decisions.[4]
4. **Financial trend monitoring.** The systematic tracking of annual economic and financial trends to evaluate financial conditions as a basis for making program and budget decisions.
5. **Multi-year revenue and expense forecasting.** The use of forecasting models to develop estimates of revenues and the cost of operations in future years as a basis for budgetary and fiscal decision making.
6. **Strategic planning.** Corporate-style planning involving the analysis of external forces, as well as internal strengths and weaknesses, to identify critical issues, establish missions and objectives, and develop strategies for achieving them.
7. **Management by objectives (MBO).** A process of joint target setting and periodic review emphasizing the planning and evaluation of activities in light of city or agency goals and objectives.
8. **Management information systems (MIS).** A computerized data-processing system for providing decision support for planning and management.
9. **Program evaluation.** Data collection and analysis to evaluate the effectiveness and efficiency of ongoing programs and suggest possible improvements.
10. **Productivity improvement programs.** An ongoing program aimed at analyzing, promoting, and demonstrating productivity improvement to help units "produce more with less."
11. **Employee incentive programs.** The encouragement of improved performance of employees, including managers, through merit and bonus pay awards and other, nonmonetary incentives.

Figure 1 presents results for the eighty-five North Carolina cities and counties in the sample. While usage between cities and counties is similar for six of the eleven tools, some differences are striking. Forty-one percent of counties use zero-base budgeting, but only 13 percent of cities do. Sixty-two percent of counties use strategic planning, but only 42 percent of cities do. With management information systems, employee incentive programs, and productivity improvement programs, use by North Carolina cities exceeds that of counties by 15 to 18 percent.

It might be expected that the use of these management tools would be high only among larger jurisdictions or that the degree of use would increase with size. However, an analysis by population showed no clear progression in the data. Small jurisdictions are experimenting with most of these tools, except for zero-base budgeting, which is used mainly by areas with populations of 50,000 or more. Although the use of all tools except financial trend monitoring and revenue and expense forecasting is much higher for the largest jurisdictions, use in other units follows no clear pattern by size. As in every study that surveys jurisdictions of greatly varying size, the findings in this study are qualified. Use of these tools in a unit of 10,000 population is likely to be very different, both in quality and extent, than in one with a population of 400,000.

Patterns of Use

On the survey, respondents could say whether their local government uses each management tool unit wide or only in selected agencies, departments, or programs of the jurisdiction. They could also indicate if the unit had used the tool previously and then discontinued its use. Figure 2 illustrates that the distinction between unit-wide and selected-area use is important in understanding how widespread the use of each tool is. For nine of the eleven tools, selected-area use is greater than unit-wide use. In three of these cases—productivity improvement programs, performance measurement, and program evaluation—the difference is more than 25

percent. Two tools enjoy wider unit-wide than selected-area use: employee incentive programs and revenue and expense forecasting. Employee incentive programs are used unit wide eight times more than in selected areas.

This might mean that North Carolina jurisdictions are still in the introductory stages with some of these tools, having implemented them first in selected agencies and programs. If so, after a period of transition, some of these tools might enjoy wider unit-wide use. For most of the tools, the percentage of jurisdictions indicating they had tried and then dropped use of the tool was low, ranging from 1 to 4 percent. However, for program budgeting and zero-base budgeting, 9 and 8 percent of the jurisdictions, respectively, said they no longer use the tools.

The responses also were analyzed comparing cities to counties and different population sizes. With six of the nine management tools that overall are used more in selected areas, counties place a heavier reliance on selected-area use than cities. These six are performance measurement, program budgeting, zero-base budgeting, financial trend monitoring, strategic planning, and management by objectives. In one of these cases, strategic planning, cities actually use the tool more unit wide. In the two cases where unit-wide use is greater overall, revenue and expense forecasting and employee incentives, cities place a greater reliance on unit-wide use than counties. With revenue and expense forecasting, counties actually have

Figure 1
Use of Management Tools in North Carolina Cities and Counties

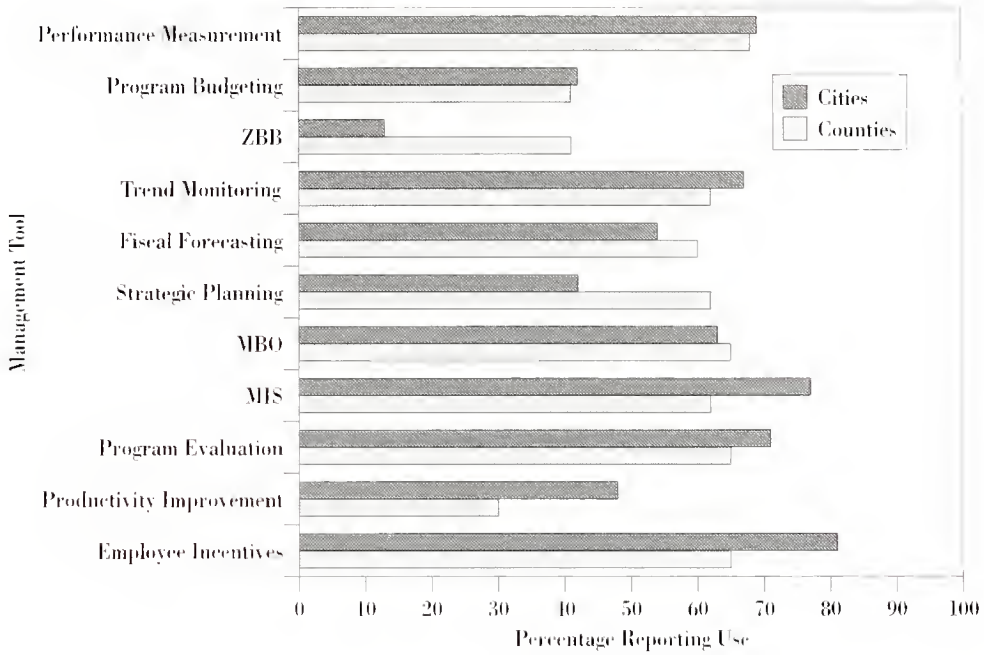


Figure 2
Unit-wide and Selected-Area Use of Management Tools in North Carolina Cities and Counties

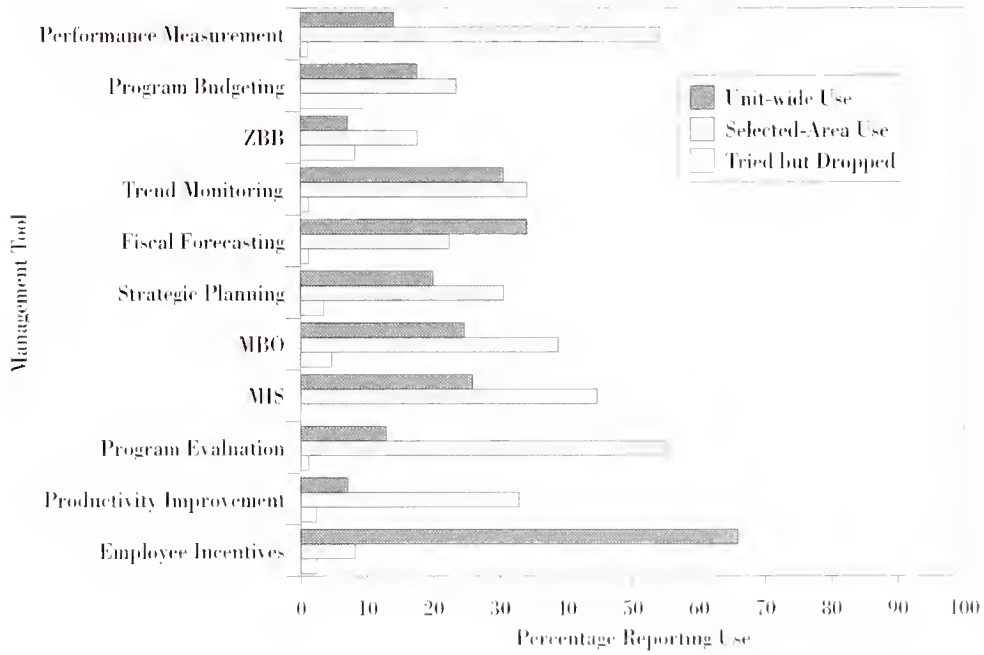


Figure 3
Effectiveness of Management Tools in North Carolina Cities and Counties

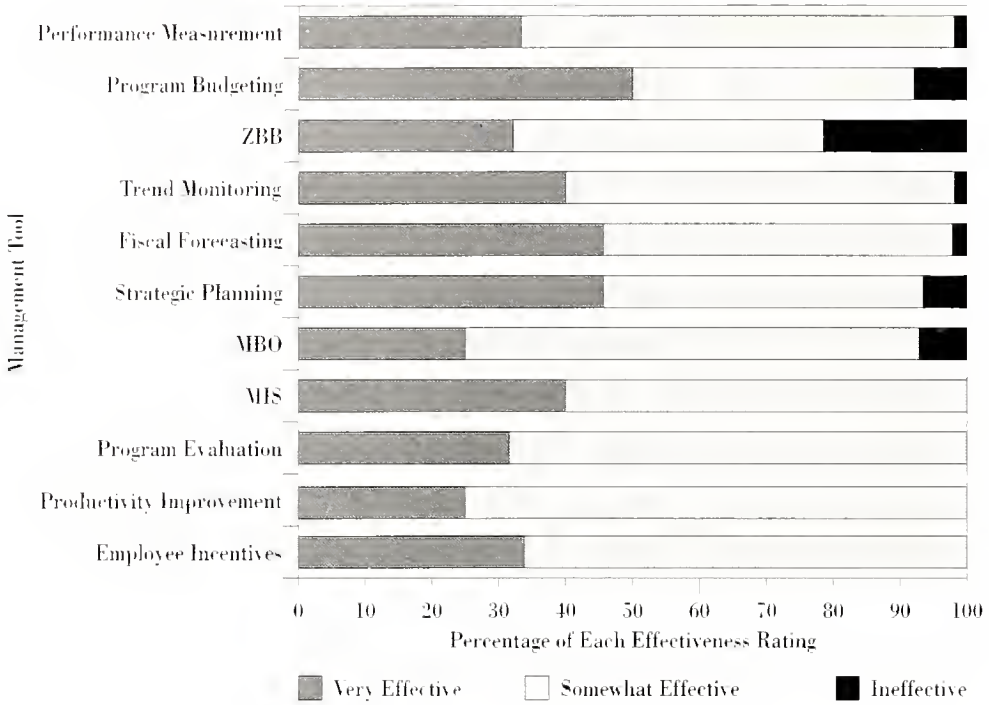
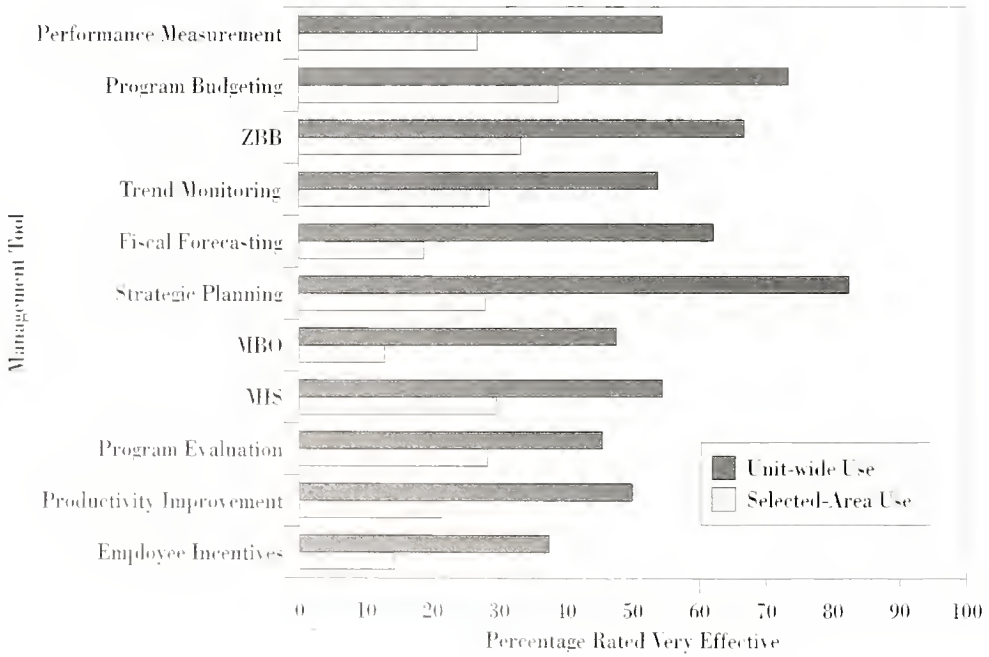


Figure 4
Effectiveness of Management Tools in North Carolina Cities and Counties, Unit-wide vs. Selected-Area Use



greater selected-area use than unit-wide use.

There is some tendency for smaller jurisdictions to be more likely to use the tools in selected areas than larger ones, except for productivity improvement programs and program evaluation.

Effectiveness Ratings

The second part of the survey asked respondents currently using the tools to indicate how effective each tool has been in aiding program administration and decision making in their jurisdiction on a three-point scale. The choices were very effective, somewhat effective, and ineffective. Figure 3 shows that the tools that received the highest percentage of very effective responses were program budgeting, strategic planning, and revenue and expense forecasting. Those with the lowest percentage of very effective responses were management by objectives and productivity improvement programs.

For the somewhat effective response, productivity improvement programs, program evaluation, and employee incentive programs received the highest percentages. Zero-base budgeting and program budgeting received the lowest percentages of somewhat effective responses. The management tool with the highest percentage of ineffective ratings was zero-base budgeting. Program evaluation, management information systems, productivity improvement programs, and employee incentive programs did not receive any ineffective ratings.

When the effectiveness of management tools, as indicated

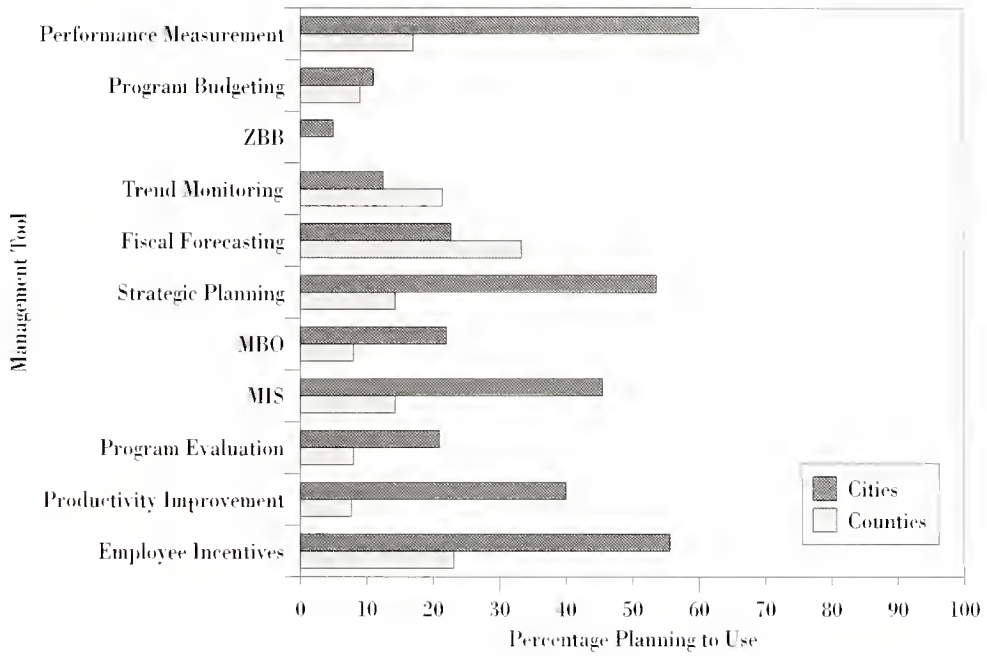
by just the very effective rating, was looked at in terms of the differences between cities and counties, population groups, and survey respondents, interesting differences appeared. Cities rated performance measurement, financial trend monitoring, revenue and expense forecasting, strategic planning, management by objectives, program evaluation, productivity improvement, and employee incentives higher than counties, six of these by 11 to 33 percent. Performance measurement and financial trend monitoring exhibited the greatest differential. The other three tools were rated higher by counties than cities, with zero-base budgeting rated five times higher by counties.

Some tools were rated higher by smaller cities and counties than larger ones: performance measurement, management by objectives, and productivity improvement programs. Larger units of local government favored zero-base budgeting. The rest of the tools showed no particular pattern of effectiveness by population.

The type of respondent to the survey also affected ratings of perceived effectiveness. Budget officials tended to rate program budgeting and revenue and expense forecasting higher than others. They tended to rate productivity improvement programs, management by objectives, and employee incentive programs the lowest. Finance officials tended to rate program budgeting and management information systems higher and productivity improvement programs and revenue and expense forecasting lower than other tools. Managers tended to rate strategic planning, revenue and expense forecasting, and employee incentive programs higher than other tools.

When the very effective rating is examined in terms of unit-wide versus selected-area use of the management tool, a distinct pattern emerges. As Figure 4 shows, cities and counties using the tools on a unit-wide basis were more likely to rate all eleven tools as very effective than jurisdictions using them only in certain departments or agencies. At times this difference was as much as three and a half to one.

Figure 5
Future Use of Management Tools in North Carolina Cities and Counties Not Currently Using Tools



Future Use

As part of the survey, each respondent had the opportunity to indicate if his or her jurisdiction is planning to implement any management tool it is not currently using. Figure 5 presents the results of this analysis of jurisdictions not currently using tools. The data reveal that large numbers of those jurisdictions not using certain tools are planning to use them. Forty percent or more of the jurisdictions said they are planning to use five of the tools: productivity improvement programs, management information systems, strategic planning, employee incentive programs, and performance measurement. In seven of eleven cases, cities were much more likely to be planning to implement the tools than were counties. This was especially true for performance measurement, strategic planning, productivity improvement programs, and management information systems, where ratios exceeded three to one. Only with financial trend monitoring and revenue and expense forecasting did counties indicate a greater likelihood of adoption.

Use of Performance Measures

Measuring the performance of departments and programs in local governments can be a component of various management tools. Chief among these is performance

Table 1
Use of Performance Measures in Functional Areas by North Carolina Cities and Counties

	Number Reporting Measuring Function		Work Load or Output		Unit Cost or Efficiency		Effectiveness		Citizen Satisfaction	
Functional Area	City	County	City	County	City	County	City	County	City	County
General Administration	29	22	48%	15%	6%	4%	75%	36%	68%	68%
Inspection and Codes Enforcement	37	26	83%	88%	35%	26%	59%	19%	40%	53%
Police or Sheriff	11	28	82%	60%	31%	21%	68%	35%	60%	46%
Fire Prevention and Suppression	38	15	84%	66%	28%	6%	81%	33%	50%	40%
Solid Waste Collection and Disposal	38	28	84%	67%	50%	12%	44%	28%	60%	50%
Street Maintenance and Construction	38	1	76%	0%	34%	0%	52%	0%	60%	100%
Sewage and Wastewater	37	6	78%	83%	59%	50%	59%	16%	35%	33%
Water Supply	36	9	69%	66%	52%	55%	58%	0%	44%	33%
Public Housing	11	2	85%	50%	28%	100%	85%	50%	35%	50%
Public Transit	15	2	86%	50%	73%	50%	53%	100%	73%	100%
Gas and Electric	13	0	84%	0%	92%	0%	38%	0%	61%	0%
Libraries	8	22	75%	63%	37%	13%	37%	31%	62%	63%
Parks and Recreation	33	17	60%	58%	27%	23%	69%	11%	75%	64%
Health and Hospitals	0	23	0%	86%	0%	13%	0%	13%	0%	52%
Tax Assessment and Collection	18	25	83%	80%	33%	16%	61%	48%	33%	64%
Social Services	2	29	50%	86%	50%	37%	100%	37%	50%	48%
Recycling	14	10	78%	50%	42%	30%	64%	50%	57%	50%
Planning and Zoning	35	22	68%	45%	11%	13%	71%	36%	51%	63%

measurement. However, measurement also can take place as a part of program evaluation, management by objectives, zero-base budgeting, employee incentive programs, program budgeting, and productivity improvement programs. Another goal of this study was to identify how performance measurement is applied to various governmental functions.

The third part of the survey defined four types of performance measures. It then asked respondents to note which ones, if any, they use within their performance measurement system for each functional area within their jurisdiction. The four types are as follows:

1. **Work-load or output measures.** The amount of work performed or services provided.
2. **Unit-cost or efficiency measures.** The dollar cost per unit of output or work load.
3. **Effectiveness measures.** The extent to which objectives are achieved, needs are met, or desired impacts are produced.
4. **Citizen satisfaction measures.** The extent to which clients feel their needs are met, or citizen ratings of programs.

Table 1 summarizes the frequency of use of each type of performance measure for eighteen common functional areas in city or county government. The figures in the table show the percentage use of a particular type of measure *of those jurisdictions that do any measurement of the function.* The data are presented for both city and county use of the measures to account for the different types of services they deliver to their residents. Also note that the quality and extent of use of each measure may vary widely across jurisdictions.

For North Carolina cities and counties combined, work-load data on the amount of service provided are the broadest based of the four types of performance measures. Fifty percent or more of the jurisdictions that measure the functions use work-load measures in almost every functional area listed. Overall, twelve of the eighteen measures have 75 percent or higher use. When looked at by city or county use, some differences appear. At least 75 percent of cities use work-load measures in twelve of the seventeen functional areas they measure. Only five of the seventeen functional areas that counties measure have usage rates at 75 percent or more for work-load measures. For both cities and counties, work-load or output measures have the highest use levels across the four performance measures.

Unit-cost or efficiency measures show the widest range of use of the four performance measures. Combined city and county use on gas and electric utilities is fifteen times that for general administration. Only four of the eighteen functions have combined usage rates of 50 percent or

more. Cities and counties do not differ too much in the degree to which they use unit-cost measures. Cities have only six functions with usage rates of 50 percent or more, while counties have four functions with 50 percent or more. In addition, three of the top four functions in usage rates are the same for both groups.

Over all jurisdictions, effectiveness measures have broader use than efficiency ones, with eleven of the eighteen functional areas having usage rates of 50 percent or more. North Carolina cities and counties clearly have different patterns of use of effectiveness measures. While cities have usage rates of at least 50 percent for effectiveness measures in fourteen functional areas, counties have usage rates that high in only in three functional areas.

Combined, North Carolina cities and counties rated the use of citizen satisfaction measures in twelve of eighteen functional areas 50 percent or more. Cities and counties do not differ dramatically in their use of citizen satisfaction measures. Each has usage rates of 50 percent or more for twelve of the seventeen functional areas they measure. However, counties tend to rely on citizen satisfaction measures more than cities as indicated by six of these measures being their most used ones.

Conclusions

North Carolina local governments are dealing with the same types of fiscal and regulatory pressures as jurisdictions across the country. Local governments have been forced to accept increased levels of responsibility as fiscal constraints at both the state and federal levels have become chronic. With the demand and cost for services rising more rapidly than local revenues, city and county governments have been motivated to monitor and control more carefully the performance of their functions.

The eleven tools analyzed in this paper are part of the arsenal of management practices and administrative techniques that managers and other local government professionals can use to improve the functioning of their units. The data seem to confirm that North Carolina jurisdictions have taken major steps in the direction of using the management tools available to them. In addition, large numbers of those cities and counties not using these tools plan to do so in the future.

The emphasis on use of these tools only in selected areas of the local governments suggests that North Carolina is still in the early stages of implementation of many of them. However, the clear perception of respondents that these tools are more effective in improving program administration and decision making when they are implemented *throughout* the governmental unit might lead to wider use in the future. The future for management tools looks bright in North Carolina local governments: The adoption of the tools is widespread and growing among the population groups surveyed for this article. There have been indications of interest in these tools from numerous smaller North Carolina jurisdictions as well. ❖

Notes

1. *See* Paul D. Epstein, *Using Performance Measurement in Local Government* (New York: National Civic League Press, 1988); and Charles K. Bens, "Strategies for Implementing Performance Measurement," *Management Information Services Report* 18 (International City Management Association, November 1986).

2. *See* Stanley B. Botner, "Trends and Developments in Budgeting and Financial Management in Large Cities of the United States," *Public Budgeting and Finance* 9 (Autumn 1989): 37–42; Glen Hahn Cope, "Municipal Budgeting and Productivity," *Baseline Data Report* 21 (International City Management Association, March/April 1989); Theodore H. Poister and Gregory Streib, "Management Tools in Municipal Government: Trends over the Past Decade," *Public Administration Review* 49 (May/June 1989): 240–48; and Gregory Streib and Theodore H. Poister, "Established and Emerging Management Tools: A 12-Year Perspective," in *The Municipal Yearbook 1989* (Washington, D.C.: International City Management Association, 1989): 45–54. The study reported in this article replicates much of Poister and Streib's municipal management survey.

3. The sample well represents the total number of jurisdictions in the size range for the study. The only group underrepresented is the smaller counties (population 25,000 to 50,000). While the response rate was higher for cities than counties, overall both groups are appropriately represented in the sample used for this study. All local governments in the survey use the council-manager or commission-manager form of government. Managers or assistant managers completed 60 percent of the surveys, budget officers or staff completed 22 percent, and finance directors or staff completed the remaining 18 percent.

1. For more information on zero-base budgeting, see Gary R. Rassel, "Zero-Base Budgeting in Mecklenburg County," *Popular Government* 56 (Summer 1990): 43–47.

Amortization: An Old Land-Use Controversy Heats Up

David W. Owens

"It is a reasonable way to solve a very difficult problem."
"It is unAmerican, unfair, and little more than highway robbery."
"I don't understand it and don't know what all the fuss is about."

These were some of the divergent comments heard in the halls of the Legislative Building this past spring as consideration of amortization—the subject of one of the more hotly debated bills of the 1991 session of the General Assembly—got under way. Across the state it has blossomed into one of North Carolina's more heated land-use controversies. What is behind this controversy, and why has it become such a hot topic?

The author is an Institute of Government faculty member who specializes in zoning and other land-use controls.

All photographs by Becky Kirkland

Amortization has developed a special meaning when applied to land-use regulation. It is not used in the technical or accounting sense of gradually reducing a fund or loan balance to zero. Instead, it is used to describe the practice of allowing a preexisting land use or structure that does not comply with newly adopted regulations to remain in place for a set period. Then the structure must be brought into compliance at the end of that grace period. In a number of North Carolina communities, grace periods for bringing prior land uses into compliance with new ordinances have recently expired. In these places, and their number is growing, amortization has moved from being an abstract legal concept to a very real practice that has substantial impacts on both individual landowners and the general public.

Nonconformities

Communities grow and change over time, as do attitudes and public concerns about land use. As a result, new land-use ordinances are adopted and existing regulations are amended. How should these newly adopted requirements apply to development that is already in place? For example, what if a new county zoning ordinance is adopted that restricts an area to residential uses, but a landowner in that area has been operating an automobile repair shop there for ten years? Or suppose, in response to a petition from concerned citizens, a city council amends the town's zoning ordinance to prohibit adult entertainment businesses from locating within 1,000 feet of a school, but there is an existing adult book store and massage parlor directly across the street from the

Supporters of amortization contend that older structures built before stricter regulations were in place (for example, a regulation that signs can only be a certain height) have an unfair advantage over new structures.

high school. What if a sign ordinance is amended to reduce the permitted size of signs, but a number of stores already have larger signs in place?

These prior uses that were once lawful but that do not meet new requirements are called *nonconforming uses*. Because structures and lots can also be nonconforming, some zoning ordinances use the broader term *nonconformities* to describe all of these situations. The question of how to deal with nonconformities that are incompatible with a city's plan for its future is as old as zoning. Court cases prior to the 1920s required uniform treatment of existing and future land use, so the framers of early zoning ordinances had a considerable dilemma. If they required all land uses to be brought immediately into compliance, the economic costs and political outcry might well doom zoning before it got started. On the other hand, if they left nonconforming uses in place, they faced potential invalidation of the ordinance by the courts and lost the full effect of their new zoning ordinance.

Three main options emerged as ways of addressing this issue, options that are still in use today. One is to require nonconformities to be immediately brought into compliance. For example, an industry that is discharging toxic wastes into the air or water can be required to stop the discharge, even if that means closing the plant. In some instances this may not be necessary or practical, and immediate compliance may have a harsh impact on landowners who started their land use in an entirely lawful fashion. These concerns led to the second option of *grandfathering* nonconformities—allowing them to continue to operate under the old rules, though frequently limiting any future expansion of that use. This, however, may not only leave important public interests unmet but can create inequities for landowners. For example, a new business that has to comply with a restrictive sign ordinance may feel that it is at a competitive disadvantage with competitors having older large signs. A third option is an intermediate position—amortization. With this option landowners are allowed to keep their nonconformity long enough to recoup much of their investment and plan for an orderly transition to the new requirements, but they are required to come into compliance with the new standards following this grace period. Other options exist, such as declaring nonconforming uses to be nuisances or using eminent domain power to condemn nonconformities, but they have been used only rarely.

All three of these main options for dealing with nonconformities have been used in North Carolina. As it is concern with the fairness and adequacy of the first two options that has led to the use of the third, it is useful to start with a review of the rules on terminating and grandfathering nonconformities before looking at the amortization issue.

Terminating Nonconformities

As a general principle, regulations needed to protect the public health, safety, and welfare are applied uniformly to all citizens. Where public health and safety considerations warrant, local regulations have long required certain nonconformities to be terminated. For example, in 1908 the state supreme court upheld an Edenton ordinance that required nonconforming awnings overhanging sidewalks to be removed because they were a fire hazard and aesthetically unpleasant. In this case Chief Justice Clark took an expansive view of the local government's police power to require the removal of nonconforming uses, holding that this was a policy decision for the town, not a legal issue for the courts:

> The ordinance was within the powers of the governing board of the town, and was properly held by his Honor to be reasonable. If it does not meet the approval of the citizens of the town, they can secure its repeal by instructing their town council to that effect, or by electing a new board. Such local matters are properly left to the people of a self-governing community, to be decided and determined by them for themselves, and not by a judge or court for them.[1]

In this and similar situations, where prior lawful land uses were deemed to be a public health or safety problem or a nuisance, the courts have allowed the police power to be used to require the uses to be brought into conformance with newly adopted requirements or be terminated. Current land-use issues that could fit into a similar public health and safety setting include restrictions on development in floodplains and public water supply watersheds.

A series of five state supreme court decisions in the late 1920s involving gasoline filling stations raised the possibility that termination of nonconforming uses might be constitutionally required in North Carolina for the new regulation to be valid. The court ruled in these cases that a general police power ordinance that treats existing and proposed land uses differently is illegal. In the first of these[2] a Clinton ordinance said no more filling stations could be built in the city's fire district but allowed six existing stations to remain in operation. Citing the state constitutional prohibition of monopolies, the court invalidated the ordinance for failing to apply uniformly to existing and proposed businesses. Other cases in this series invalidated an ordinance that allowed the

nonconforming use to remain for six months (an early experiment in amortization) and upheld an ordinance that required a gas station that had been in operation for twenty-five years to be closed.[3] These cases established the general principle that regulations adopted to protect public health and safety are to be applied uniformly to both existing and future land uses.

Grandfathering Nonconformities

The gas station cases raised a serious question as to whether local governments could make the policy choice of allowing the continuation of nonconformities when they adopted city-wide zoning ordinances.

The answer to this question came early in the state's zoning experience. In a 1931 landmark case upholding zoning in North Carolina, an exception was created to the requirement that nonconforming uses have to be eliminated. The court distinguished a *comprehensive* zoning ordinance from a *special purpose* ordinance dealing with one use, such as gasoline stations, and permitted comprehensive zoning ordinances to allow nonconforming uses to be retained. In this instance the property on which the landowner wished to build a new filling station was zoned by Elizabeth City as part of a business district that did not allow gasoline filling stations. There were four existing stations in that district that were allowed to continue operation as nonconforming uses. The court recognized the necessity of allowing the continuance of nonconforming uses if comprehensive zoning was to work:

> Unless the theory of nonconforming uses is practically applied it will be well-nigh impossible to zone the cities and towns of the State. It is an almost invariable rule to find a filling station in that part of town or city which in the interest of the public welfare should, under the zoning system, be devoted to other uses. If the ordinance destroys an existing business it is retroactive; if it cannot be enforced because such business exists zoning as a practical matter is not possible.[4]

Thus the court allowed zoning ordinances to discriminate between existing and future uses. Allowing nonconforming uses to continue under zoning ordinances was so well and quickly accepted that Justice Sam Ervin in 1949 dismissed a contention that such was unlawful discrimination in a single sentence, noting that a nonconforming use exemption "has a sound basis and is not unreasonable."[5]

For years this authority to grandfather prior nonconforming uses was allowed only for zoning ordinances.[6] In recent years, however, there are indications that the courts are becoming more sympathetic to land-use ordinances other than zoning that treat existing and future uses differently. For example, a Henderson County sign ordinance that allowed nonconforming signs to be temporarily continued was upheld in 1989 by the state court of appeals even though the regulation was not part of a comprehensive zoning ordinance.[7] In its analysis the court emphasized that judicial review of classifications of land uses for different treatments (such as treating preexisting and future land uses differently) should be based on whether the classification is reasonable and relates to legitimate public objectives rather than whether the different treatment was based on a zoning ordinance adopted under the general police power or the specific power of zoning. These considerations will probably be critical factors in future review of the constitutionality of grandfathering provisions, given that many modern general regulatory ordinances are increasingly comprehensive, either geographically (as with a county-wide sign ordinance) or by subject matter (as with a watershed protection ordinance that regulates all land uses within a water supply watershed). Because local governments are more frequently adopting land-use regulations under their general power, as for example was specifically authorized by the 1991 General Assembly for watershed protection ordinances, this judicial approach will be very important. Of course, even with this expanded judicial tolerance, a local government must be careful to document a reasonable basis for distinguishing between prior and future land uses.[8]

While land-use ordinances may grandfather nonconformities, most such ordinances substantially restrict them to encourage their eventual termination. The intent to phase out nonconformities through obsolescence has a long history in North Carolina law. Early land-use cases regarding the repair and improvement of structures subject to fire protection ordinances illustrate the principle. In 1891 the state supreme court upheld an ordinance prohibiting the repair of a wooden building that had been partially destroyed by fire in a district where the city of Winston's fire code would not allow new wooden buildings.[9] In 1913 the court elaborated on the policy of limiting repair of nonconforming structures in upholding a Lincolnton ordinance prohibiting the installation of metal roofs on wooden buildings in the fire district. The court noted that while the metal roof provided greater fire safety, it would prolong the life of a nonconforming wooden building. The court stated that allowing substantial repairs to a nonconforming structure

> loses sight of the object of the ordinance, which is not only to prohibit the building of wooden buildings within the prescribed limits, but while not requiring the pulling down of the wooden buildings now within the limits, prohibits their repair, in order to prevent their indefinite continuance. . . . [T]his does not prohibit slight repairs, such as putting in broken windows or hanging a shutter, or fixing up the steps. But it does prohibit such repairs as in this case, putting on a new roof, which makes the building habitable and thereby insures its continuance. This is contrary to the spirit and the letter of the ordinance, and defeats its purposes, which . . . contemplates the discontinuance of wooden buildings as fast as they become by decay unfit for further use or habitation.[10]

This notion of gradually phasing out grandfathered nonconforming uses and structures, or at least limiting them to continuation as they existed on the effective date of the ordinance, was incorporated into most of North Carolina's zoning ordinances. The most common limitations on nonconforming uses and structures now in zoning ordinances are those limiting (1) their expansion or enlargement, (2) their repair or replacement, (3) a change in a nonconforming use, and (4) the resumption of nonconforming uses if they are abandoned or discontinued for a specified period.

The exact scope of these restrictions has, however, proven to be particularly controversial. The supreme court and court of appeals have issued eighteen decisions over the past thirty-five years interpreting individual restrictions on nonconformities. Over the years tension has developed between the principle of eventually bringing all uses into compliance through the gradual elimination of nonconformities and the principle that government restrictions on the use of private property are to be construed so as to favor the free use of property. This tension between legal principles has increased uncertainty for both local governments and landowners as to the interpretation of restrictions on grandfathered nonconformities. The general resolution that seems to be emerging is that substantial restrictions on nonconforming uses and structures will be upheld, but they must be stated clearly, and any doubts about their application will be resolved in favor of the landowner.

Amortization

North Carolina's seventy years' experience with zoning has proven that the passage of time does not invariably lead to the elimination of nonconformities. They do not fade away due to obsolescence, and, in fact, most have proven remarkably resilient. Some of these enduring nonconformities have proven not to be a problem for the community. Others, however, cause substantial detriment to surrounding neighborhoods. Nonconforming commercial uses may obtain a monopoly position that is deemed unfair. Therefore local governments have begun turning to amortization as a way of dealing with particularly troublesome nonconformities, especially those that are less expensive to remove.

Amortization is not a new idea—the Louisiana Supreme Court upheld New Orleans' use of amortization to remove commercial uses from residential neighborhoods in 1929. Specific authority to amortize nonconforming uses was included in local legislation for Forsyth County's zoning in 1947, though it is still not explicitly mentioned in the state's zoning enabling statutes.[11] Even so, amortization was used nationally only rarely before the 1950s and only came into wide use in North Carolina in the 1980s.

Amortization has been applied primarily to junkyards and signs, both nationally and in North Carolina. However, it is possible to apply the concept to any nonconformity. Several North Carolina ordinances require older mobile home parks to be improved, after a grace period, to meet new standards, such as those requiring paved roads of a certain width. Applications in other parts of the country have covered everything from dog kennels to adult entertainment facilities. Courts in a vast majority of states where amortization requirements have been challenged have held that use of the concept is constitutional.

The North Carolina Supreme Court first considered the amortization concept in a 1974 case challenging a Winston-Salem zoning ordinance that required a nonconforming building-material salvage yard to be removed within three years.[12] The salvage yard operator challenged the amortization requirement on two grounds: first, that it deprived him of his property without due process of law, and second, that it was an unconstitutional, uncompensated taking of his property.

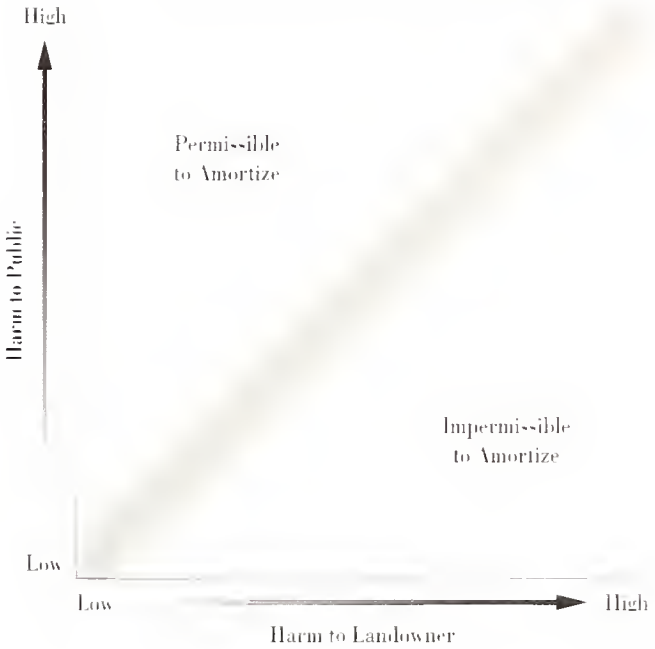
The court upheld the concept of using amortization to remove nonconforming land uses. Writing for the majority of the court, Justice Dan Moore quoted with approval a leading zoning text's statement of the rationale behind amortization: "It is reasoned that the opportunity to continue for a limited time cushions the economic shock of the restriction, dulls the edge of popular disapproval, and improves the prospects of judicial approval."[13]

As for the two specific constitutional challenges, the court upheld amortization on both counts. On the due process issue, the comprehensive nature of the zoning ordinance and the city's conscious effort to balance the burdens on the individuals who had to remove their nonconforming uses with the public good were key considerations. This led the court to conclude that the amortization requirement did not violate due process, as the requirement was not unreasonable and was substantially related to valid governmental objectives. In considering the takings claim, the court noted the earlier gas station cases that required nonconforming uses to be immediately terminated and other prior cases approving ordinances that prohibited expansion of nonconforming uses. The court said that in essence there is no legal distinction between requiring discontinuance of a nonconforming use after a grace period and limiting its expansion or enlargement—both were valid exercises of the police power. In dissent, however, Justice Beverly Lake argued that amortization is always a taking unless the nonconforming use is a nuisance or a threat to the public health, safety, or morals. The court majority, however, joined most other states in ruling that amortization is not a taking *in and of itself* and is valid if the grace period is reasonable in length.

In recent cases the "reasonableness" of the length of the grace period allowed has been a key factor in determining the legal validity of individual amortization requirements. Because amortization requirements may be challenged under either the North Carolina or the United States constitutions, both state and federal court analyses must be considered. In North Carolina the supreme court applies the following questions in cases involving due process and takings analysis: (1) are the ends sought to be achieved by the regulation legitimate and the means used reasonable, and (2) is the owner left with a practical use of the property that has reasonable value.[14] In takings cases under the United States Constitution, the question is whether the requirement denies the owner economically viable use of the property, with the key factors in the analysis being the economic impact on the owner, the degree of interference with distinct investment-backed expectations, and the character of the governmental action. For cases involving due process and takings analysis in the amortization context, the length of the grace period is important both in determining whether the means used by the government to bring all uses into compliance are reasonable and in determining whether the owner of the nonconforming use or structure

Amortization may be used to deal with a number of nonconformities: a junkyard in a rezoned area, a mobile home park required to pave its roads, or a billboard in a residential area.

Figure 1
Authority to Amortize Nonconformities



has been provided or left with practical use and reasonable value. Two sets of detailed factors will be considered by the courts in such cases.

The first set of factors focuses on the public interest in amortization, particularly the extent of harm to the public caused by continuing the nonconformity. This requires that attention be given to the nature of the use and the character of the surrounding neighborhood, with particular attention to whether the nonconforming use is harming neighbors, poses a threat to public health or safety, significantly harms community aesthetics, and the like. If the potential harm to public interests is high enough, the local government can move beyond amortization to immediate termination of the nonconformity, even if this causes substantial harm to the individual landowner.

The second set of factors involves the economic impact on the individual affected by the amortization requirement. Here the courts examine whether the grace period allows owners to recoup a substantial portion of their investment in the nonconformity. This requires that attention be given to the amount of the investment in the nonconforming use or structure, the income flow it generates, any improvements on the land, the age and depreciation involved with improvements, the feasibility and costs of relocation, and any salvage value. Neither the North Carolina nor the United States constitutions require that land-use regulations have no detrimental economic impact on landowners or that the costs of compliance with the regulations be compensated. Indeed, zoning restrictions can substantially reduce property values without being an unconstitutional taking. So, from a constitutional standpoint, an amortization period need not be designed to allow an owner to recoup all of his or her costs. But it does need to allow enough cost recovery that an undue burden is not placed on the individual and the individual gets some practical use from the previously lawful use.[15]

While both of these sets of factors are independently important, a critical concern is that there be an appropriate balance of these two sets of considerations. That is, as the negative impact of amortization on the owner increases, so should the public need for the amortization. This interrelationship is illustrated in Figure 1. The figure shows that it is important for a local government considering an amortization requirement to assure that the private losses are not disproportionate to the public benefit.

Recent court cases on takings emphasize that a very detailed case-by-case analysis of the economic impacts of amortization requirements is necessary to determine the requirements' constitutionality. It is certainly prudent for governments to undertake this analysis prior to imposing an amortization requirement. Beyond its contribution to establishing a proper legal foundation, this type of economic analysis can also be very useful in making policy choices on whether amortization requirements are appropriate in a particular context and, if so, how long the grace period should be. The closer a grace period comes to allowing owners to eliminate their costs of coming into compliance, the more reasonable it is to require them to make that contribution to the overall community good.

A number of recent North Carolina cases have addressed the application of amortization requirements to signs. Cumberland and Henderson counties and the cities of Raleigh, Durham, Nags Head, and Waynesville have all been in court in recent years defending their amortization requirements. Despite sometimes marathon litigation, so far the local governments have prevailed in all of these cases, as grace periods ranging from ninety days for wind-blown signs to three to five-and-one-half years for more substantial nonconforming signs have been held to be reasonable.[16] However, several provisions requiring total elimination of certain classes of signs are still under review by the federal courts to determine whether monetary compensation will be required.

Legislative Consideration

Despite this substantial body of law on amortization, both legal and policy debates about its use continue. The debate is taking on renewed vigor in North Carolina because the grace periods set in a number of local ordinances, particularly those regulating signs, are now running out.

On the legal front, individual amortization requirements continue to be challenged, primarily on the grounds that the takings clause of the United States Constitution requires monetary compensation to be paid for removal of the use or reduced land values subsequent to amortization. Both North Carolina and federal courts have consistently rejected legal challenges on this ground. However, the law on takings is evolving, and each new pronouncement on the subject by the United States Supreme Court creates new wrinkles in the law that are promptly and fully explored by those opposed to amortization. And while the concept of amortization has been accepted by the courts, that does not mean they will approve every application of the concept. The reasonableness of each individual amortization requirement must be established.

A good deal of the controversy has, however, focused on policy rather than legal questions. Is amortization a fair and reasonable way to deal with nonconformities? How should the interests of the general public be balanced against the rights of individual property owners and investors? Should a landowner be able to continue indefinitely a use denied to his or her neighbors? These questions are being hotly debated in city halls, courthouses, and the legislature.

The debate came to the 1991 General Assembly in the form of House Bill 1009. The bill, introduced late in the session, was short and direct. The substantive section of the original version of the bill, in its entirety, said,

> Any municipality, county government, or other political subdivision of this State which makes a previously conforming use of property nonconforming must either allow the existing use to continue or compensate the owner of the interest for the termination of such right. The phasing out of nonconforming uses through amortization is expressly prohibited.[17]

This bill, if adopted, would have had two major impacts.

First, it would have moved the policy decision as how to deal with nonconforming uses from the local to the state level. North Carolina local governments now use a variety of approaches for dealing with nonconforming uses. Most restrict nonconforming uses, but the severity of the restrictions vary substantially. Some use amortization; many do not. House Bill 1009 would have mandated a uniform state approach to nonconforming uses. Nationally, about a dozen states have some provision in their state zoning enabling statutes protecting the continuation of nonconforming uses, several specifically allow termination of nonconforming uses, and the majority leave the question to local governments.

The second thing House Bill 1009 would have mandated was that the uniform approach applied in North Carolina be grandfathering nonconforming uses or compensating owners for those that are eliminated. Termination without compensation and amortization could no longer be used by local governments as options for addressing this issue. It is important to note that even though most of the discussion in 1991 concerned amortization of nonconforming billboards, this policy choice would be applied to all nonconforming uses.

There were both strong supporters and strong opponents to House Bill 1009 in the 1991 session. The outdoor advertising industry was a leading supporter, with local governments, planning groups, and environmental groups opposed. Under the rules of the 1991 General Assembly, bills had to be approved by the house they were introduced in by May 16, 1991, to be considered further in 1991 or 1992. House Bill 1009 got to the floor of the House of Representatives on May 16 and was approved on second reading by a sixty-one to forty-two majority after being amended to clarify that it did not prevent rezonings and did not apply to amortization provisions that had already run out. However, House rules provide that the third and final reading of a bill can be approved on the same day as the second reading only if two thirds of the members of the House agree. The motion to allow the third reading was approved sixty-two to thirty-eight, but this was five votes short of the required two-thirds majority required. So House Bill 1009 was dead for 1991.

Though not eligible for adoption, legislative work on House Bill 1009 continued. The bill was rereferred to committee and rewritten to change the ban on amortization to a two-year moratorium on amortization, to authorize a study of the amortization concept, to exempt on-premise advertising signs from its coverage, and to increase fees for billboards along federal highways. Although this revised bill was not voted on by the full House of Representatives, the Legislative Research Commission

was authorized to study amortization and the ideas included in House Bill 1009, with any recommendations from that group being eligible for consideration in the 1992 short session of the General Assembly or the 1993 session. A study committee has been appointed and is now at work.

Conclusions

What is the future for amortization in North Carolina? Its future in the courts seems relatively secure. A half dozen cases over the past twenty years have concluded that the concept of amortization is legal. Still the concept must be reasonably applied, and there is the possibility that individual amortization requirements could constitute an unlawful taking.

The political future of amortization is more uncertain. Is it a reasonable way to secure uniform application of new laws and regulations, or is it an unreasonable burden on individual property owners?

For local governments considering this question, a series of inquiries should be a part of their policy analyses. First, does the particular nonconforming use or structure need to be removed or brought into compliance? This involves consideration of whether the nonconformity gives the owner an unfair advantage over those who must comply, whether the activity is harming neighbors or the community, and whether the land-use policies can be achieved without uniform compliance. If the answer to this initial inquiry is that grandfathering the nonconformity is not appropriate, the second inquiry is whether it should be terminated immediately. Here the degree of harm to the public health, safety, and welfare due to the continuance of the nonconformity is the key factor. If a conclusion is reached that the nonconformity should be terminated but there is not an urgent need for immediate compliance or it would be unfair to individual owners to require immediate compliance, consideration of amortization is appropriate. If amortization is to be used, it must be based on a careful analysis of the public benefits to be secured, the burden compliance places on individuals, and creation of a grace period long enough to assure an appropriate and reasonable balance between these considerations.

The principal question for the General Assembly is whether North Carolina needs a uniform resolution of these questions or whether this analysis and judgment should be left to local governments. Should the amortization tool be available to those local governments that undertake the above analysis and conclude it is necessary and reasonable, with the courts resolving any disputes about compensation? Should there be a mandated process for analysis for local governments considering amortization? If there are to be limits to be imposed on the use of amortization, should they be applied to all land uses or only specific types, such as outdoor advertising?

These are the policy choices now before the state's elected officials. The choices will not be easy, as competing legitimate concerns must be balanced. There are large financial stakes involved for those landowners and industries that will have to come into compliance with current and future laws. There also are substantial impacts on neighbors, business competitors, and the public at large if compliance cannot be compelled. These are difficult issues that warrant serious debate and consideration. Given the events of the past year, one thing is certain—it is unlikely that the controversial issue of amortization will quietly fade away. ❖

Notes

1. Small v. Councilmen of Edenton, 146 N.C. 527, 528, 60 S.E. 413, 414 (1908). Several other North Carolina cases upheld requirements that nonconforming uses be terminated. Angelo v. City of Winston-Salem, 193 N.C. 207, 136 S.E. 489, *aff'd*, 274 U.S. 725 (1927); State v. Perry, 151 N.C. 661, 65 S.E. 915 (1909); State v. Pendergrass, 106 N.C. 664, 10 S.E. 1002 (1890). Similar requirements in other states have been upheld by the U.S. Supreme Court. Hadacheck v. Sebastian, 239 U.S. 394 (1915); Reiman v. Little Rock, 237 U.S. 171 (1915); *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36 (1873).

2. Town of Clinton v. Standard Oil Co., 193 N.C. 432, 137 S.E. 183 (1927). The court had previously ruled that building regulations must establish a uniform rule of action applicable to all structures, whether new, existing, or under way. State v. Tenant, 110 N.C. 609, 14 S.E. 387 (1892).

3. The other cases in the gas station series are State v. Moye, 200 N.C. 11, 156 S.E. 130 (1930), *appeal dismissed*, 283 U.S. 810 (1931); Town of Wake Forest v. Medlin, 199 N.C. 83, 154 S.E. 29 (1930); Burden v. Town of Ahoskie, 198 N.C. 92, 150 S.E. 808 (1929); and McRae v. City of Fayetteville, 198 N.C. 51, 150 S.E. 810 (1929).

4. Elizabeth City v. Aydlett, 201 N.C. 602, 608, 161 S.E. 78, 81 (1931).

5. Kinney v. Sutton, 230 N.C. 401, 411, 53 S.E.2d 306, 311 (1949). The U.S. Supreme Court recently acknowledged the impact this practice has, noting "The very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition, particularly on the part of new entrants." City of Columbia v. Omni Outdoor Advertising, Inc., 113 L. Ed. 2d 382, 393 (1991).

6. *See* Shuford v. City of Waynesville, 214 N.C. 135, 198 S.E. 585 (1938) (a nonzoning ordinance prohibiting gas station in down-

town area invalidated for not applying uniformly to future and existing stations); and Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987) (zoning ordinance requiring new parking lots to be paved while allowing preexisting lots to remain unpaved upheld).

7. Summey Outdoor Advertising, Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989), *rev. denied*, 326 N.C. 486, 392 S.E.2d 101 (1990). This was an amortization requirement because the nonconforming signs had to be removed eventually. The court allowed the temporary disparate treatment even though the restriction was not part of a comprehensive zoning ordinance. It should be noted that the supreme court also applied a traditional equal protection analysis in upholding the grandfathering provision in Grace Baptist Church v. City of Oxford, 320 N.C. 439, 358 S.E.2d 372 (1987).

8. For an example of a regulation that was invalidated due to the lack of a reasonable basis for such a classification, see State v. Glidden Co., 228 N.C. 661, 46 S.E.2d 860 (1948). This case invalidated a state stream protection law that allowed companies chartered before a set date to discharge deleterious substances into the water.

9. State v. Johnson, 111 N.C. 816, 19 S.E. 599 (1894).

10. State v. Lawing, 164 N.C. 492, 496, 80 S.E. 69, 71 (1913). *See also* State v. Shannonhouse, 166 N.C. 241, 80 S.E. 881 (1914).

11. The 1990 legislation on vested rights does recognize that most zoning ordinances restrict nonconforming uses. N.C. General Statutes Sections 160A-385.1(e)(3) and 153A-344.1(e)(3) provide that "the establishment of a vested right shall not preclude, change or impair the authority of a city [or county] to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses."

12. State v. Joyner, 286 N.C. 366, 211 S.E.2d 320, *appeal dismissed*, 422 U.S. 1002 (1975). The case is reviewed at Note, "State v. Joyner—The Future of Amortization as an Effective Zoning Tool for North Carolina," *Wake Forest Law Review* 11 (1975): 751. There is substantial literature nationally on the legal issues and cases on amortization. *See, e.g.*, R. Anderson, 1 *American Law of Zoning 3d* (1986 & Supp. Dec. 1990), §§ 6.69 to 6.78; N. Williams, *American Planning Law* (1986 & Supp. Aug. 1990), §§ 116.01 to 116.10; and the collection of cases at Annotation, "Validity of Provisions for Amortization of Nonconforming Uses," *American Law Reports 3d* 22 (Aug. 1991): 1131. For a proposed statute specifically authorizing amortization in North Carolina, see Comment, "Amortization of Nonconforming Uses," *Wake Forest Law Review* 7 (1971): 255.

13. *Joyner*, 286 N.C. at 373, 211 S.E.2d at 321 [quoting R. Anderson, 1 *American Law of Zoning* (1968), § 6.65, 416–7].

14. Finch v. City of Durham, 325 N.C. 352, 384 S.E.2d 8 (1989); Responsible Citizens v. City of Asheville, 308 N.C. 255, 302 S.E.2d 204 (1983); A-S-P Associates v. City of Raleigh, 298 N.C. 207, 258 S.E.2d 444 (1979); Helms v. City of Charlotte, 255 N.C. 617, 122 S.E.2d 817 (1961).

15. The question of whether some residual beneficial use or reasonable value must always be left to the owner, even if the use of the property would cause substantial harm to the community, poses a difficult question in takings litigation. Most cases assume that a substantial public health or safety rationale justifies completely terminating a "nuisance" use, though recent cases have not expressly held this to be so. Guidance on whether and when a public safety regulation constitutes a taking may be forthcoming from the U.S. Supreme Court. The court recently agreed to review a South Carolina case that had ruled that denial of permits to build on lots that did not meet the state's oceanfront setback was not a taking. Lucas v. South Carolina Coastal Council, 404 S.E.2d 895 (S.C. 1991), *cert. granted*, No. 91-453 (U.S. Nov. 18, 1991) (1991 U.S. LEXIS 6625).

16. Georgia Outdoor Advertising, Inc. v. Waynesville, 900 F.2d 783 (4th Cir. 1990); Naegele Outdoor Advertising, Inc. v. City of Durham, 844 F.2d 172 (4th Cir. 1988); Major Media of the Southeast, Inc. v. City of Raleigh, 792 F.2d 1269 (4th Cir. 1986), *cert. denied*, 479 U.S. 1102 (1987), *motion to modify denied*, No. 89-1571 (4th Cir. Apr. 9, 1991) (1991 U.S. App. LEXIS 5711) (per curiam); Summey Outdoor Advertising, Inc. v. County of Henderson, 96 N.C. App. 533, 386 S.E.2d 439 (1989), *rev. denied*, 326 N.C. 486, 392 S.E.2d 101 (1990); Goodman Toyota v. City of Raleigh, 63 N.C. App. 660, 306 S.E.2d 192 (1983), *rev. denied*, 310 N.C. 477, 312 S.E.2d 884 (1984); R.O. Givens, Inc. v. Town of Nags Head, 58 N.C. App. 697, 294 S.E.2d 388, *cert. denied*, 307 N.C. 127, 297 S.E.2d 400 (1982); Cumberland County v. Eastern Federal Corp., 48 N.C. App. 518, 269 S.E.2d 672, *rev. denied*, 301 N.C. 527, 273 S.E.2d 453 (1980).

17. H.B. 1009, 1991 Sess., N.C. General Assembly, § 1. This would have been added to the North Carolina General Statutes as Section 40A-70.

Questions about Child Abuse: What Does the Problem Look Like? What Is North Carolina Doing about It?

Janet Mason

Painting an accurate picture of child abuse and neglect is difficult. Children may be mistreated physically, emotionally, or sexually. Abuse or neglect may occur through deprivation of nutrition, medical care, or other basic needs. Children may also be deprived of appropriate responses to their special needs, whether educational, psychological, developmental, or other. At some point discipline of a child becomes so severe or inappropriate that it constitutes abuse or neglect. It is not unusual for people to disagree about where that point lies.

The extent as well as the nature of child abuse and neglect is difficult to define precisely. When reports of child abuse and neglect increase, does that mean that more abuse and neglect are occurring or just that more people are reporting? There is no clear answer to that question. It is clear, however, that the number of reports received by county departments of social services in North Carolina has been increasing steadily. In fiscal year 1990–91, there were 45,617 reports. That is an increase of 26 percent from the year before and an increase of 94 percent from fiscal year 1986–87.

The first part of this article presents a picture of child abuse in North Carolina as seen through available statistical data. The second part examines North Carolina's recent responses to the picture these data portray.

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What Does the Problem Look Like?

Each year the Division of Social Services in the Department of Human Resources issues a report on the data concerning child abuse and neglect in the state.[1] The data are from the central registry that state law requires the Department of Human Resources to maintain regarding child abuse and neglect reports.[2] While the figures cannot be considered an *exact* representation of the problem, they give an idea of its extent over the past several years. The division's introduction to the data makes this point, noting (1) that a child or children may be reported more than one time in a given year and (2) that a report may relate to more than one child.[3]

Some of the data from this annual report are presented in figures 1 and 2 and tables 1 through 5.[4] Figure 1 shows how the number of abuse and neglect reports has increased since fiscal year 1986–87. Figure 2 shows the number of abuse and neglect reports that were substantiated. It is clear from this figure that the number of substantiated reports has also increased since fiscal year 1986–87. Tables 1 through 4 give an overview of reports in fiscal year 1990–91, showing the sources of the reports, the characteristics of the alleged victims and the perpetrators, the types of abuse and neglect reported, and the major contributory factors. Finally, Table 5 shows some comparisons between fiscal year 1989–90 and 1990–91.

What Is North Carolina Doing about It?

Each report of child abuse or neglect triggers a set of responsibilities for the county social services department, beginning with the duty to conduct a prompt and thorough investigation. When abuse or neglect is substantiated, the department must offer the family protective services—a range of services designed to address the causes of the abuse or neglect and to protect the child. In some cases the department initiates a juvenile proceeding in district court to ask the court to impose conditions

on the family or to remove the child from the home. In a small but significant percentage of cases the court places children in the custody of the county department of social services for placement in foster homes or with relatives or for supervision while they remain in their own homes.

These responses require substantial resources—skilled social workers; well-supervised foster homes, including some that are equipped to provide specialized care; treatment options; counseling services; legal assistance; and others. The range and adequacy of services vary across North Carolina's 100 counties. It is unlikely that any county has seen resources increase at anything like the rate of increase in child abuse and neglect reports. These resource needs relating to abused and neglected children caught the attention of the 1991 North Carolina General Assembly.[5] Despite the unusually difficult budget year, the General Assembly provided substantial new state funding for child protective services. It also made several significant program initiatives relating to child abuse and neglect. These 1991 legislative developments are described below.[6]

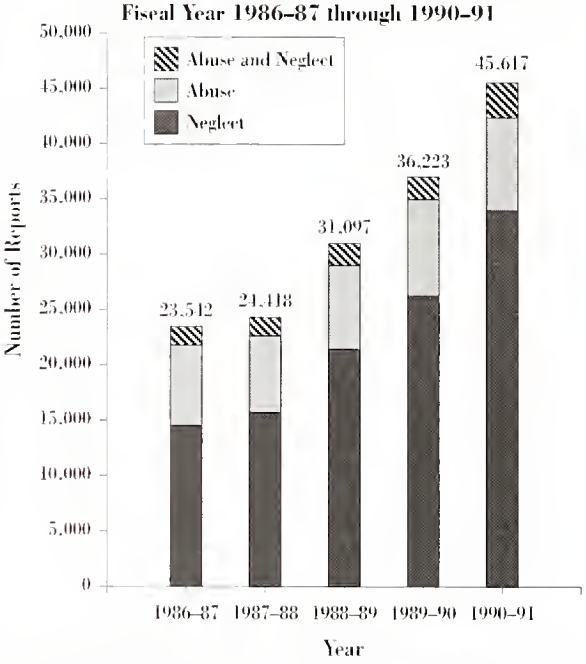
Child Protective Services

County departments of social services received new funds for additional staff to investigate abuse and neglect reports or to provide services when abuse, neglect, or dependency is confirmed.[7] Of the total allocation—$3.25 million for fiscal year 1991–92 (beginning January 1, 1992) and $7 million for 1992–93—each county department of social services will receive $10,000 in each fiscal year. The balance will be allocated based on each county's percent of the state's total number of reports of child abuse and neglect, computed from central registry data for the last two fiscal years.

The Division of Social Services is to develop guidelines to assure the proper use of the funds and, by March 15, 1992, is to report on progress in improving child protective services throughout the state. The report will include an analysis of county staffing patterns, future county staffing and funding needs, and barriers to recruiting and retaining protective services staff. It will also include a summary of progress in improving the state's training and oversight responsibilities.

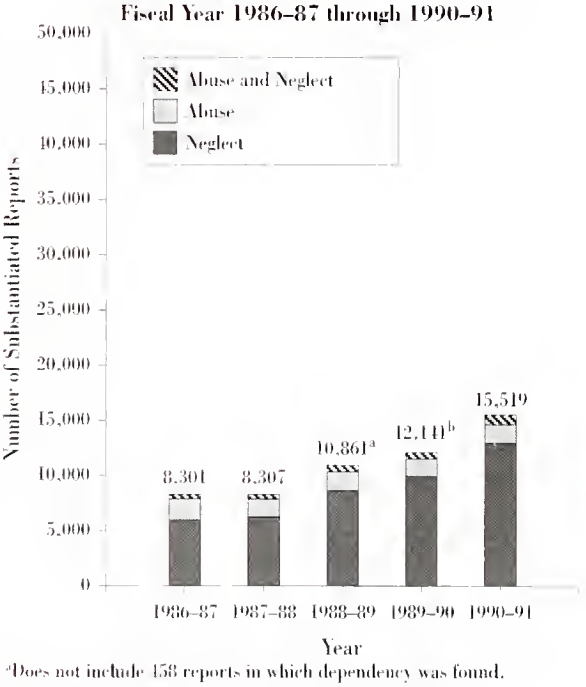
The Division of Social Services may use up to $175,900 for each fiscal year of the 1991–93 biennium to provide consultation and technical assistance to county social services departments to strengthen and support local

Figure 1
Number of Abuse and Neglect Reports in North Carolina
Fiscal Year 1986–87 through 1990–91



Source: N.C. Department of Human Resources, Division of Social Services.

Figure 2
Number of Substantiated
Abuse and Neglect Reports in North Carolina
Fiscal Year 1986–87 through 1990–91



[a]Does not include 458 reports in which dependency was found.
[b]Does not include 134 reports in which dependency was found.
Source: N.C. Department of Human Resources, Division of Social Services.

Table 1
Primary Sources of All Abuse and Neglect Reports
Fiscal Year 1990–91

Educational Personnel	17.1%
Nonrelative	16.7%
Relative	14.7%
Anonymous	12.3%
Human Services Personnel	12.3%
Medical Personnel	8.4%
Law-Enforcement or Court Personnel	7.3%
Parent	7.7%
Child-Care Provider	1.6%
Victim	1.4%

Source: N.C. Department of Human Resources, Division of Social Services.

Table 2
Characteristics of Alleged Victims (Substantiated and Unsubstantiated Reports)
Fiscal Year 1990–91

Race	
White	58.2%
Black	37.7%
American Indian	1.9%
Other	2.0%
Age	
0–6	53.6%
7–12	30.7%
13+	15.5%
Sex	
Male	48.5%
Female	51.4%

Source: N.C. Department of Human Resources, Division of Social Services

Table 3
Characteristics of Perpetrators (Substantiated Reports)
Fiscal Year 1990–91

Relation-ship to the Victim[a]	
Natural Parent	86.3%
Stepparent	5.6%
Other Caretaker[b]	2.9%
Care Facility Employee	0.2%
Grandparent	1.5%
Other Relative	1.1%
Adoptive Parent	0.6%
Foster Parent	0.2%
Step Grandparent	0.1%
Day Care	1.0%
Age	
Below 18	1.6%
18–30	50.7%
31–40	35.0%
41–50	9.2%
51–60	2.3%
60+	1.0%
Race	
White	58.5%
Black	37.6%
American Indian	1.8%
Other	1.8%
Sex	
Male	31.6%
Female	68.3%

[a]Victims may have had more than one perpetrator.
[b]Includes nonrelated persons with whom the child lives or who may be living in the child's home.
Source: N.C. Department of Human Resources, Division of Social Services.

child protective services.[8] Other appropriations for child protective services include $700,000 for fiscal year 1991–92 and $1 million for 1992–93 to create ten new positions to strengthen the training and oversight capacity of the Division of Social Services, and $150,000 for 1991–92 for a comprehensive independent study of the child protective services system.[9] This study, which began in November, is being done by the American Humane Association.

Family Preservation

The Family Preservation Act[10] establishes the Family Preservation Services Program in the Department of Human Resources. The program is to be phased in over four years, beginning this fiscal year (1991–92). Its purpose is to keep families intact, when that is feasible and in the best interest of the children, by providing intensive family-centered services. The services will be financed partially through competitive grants awarded to local agencies by the secretary of the Department of Human Resources, from funds appropriated by the General Assembly.

Families eligible for the program are those with children under age eighteen who are at imminent risk of out-of-home placement. Services that the program will provide include family assessment, intensive family and individual counseling, client advocacy, case management, development and enhancement of parenting skills, and

referral for other services. The following program standards apply:

1. Eligible families are to receive intensive family preservation services for an average of four weeks but not more than six weeks.
2. At least half of a caseworker's time providing services to a family is to be provided in the family's home and community.
3. Caseworkers are to be available to each family by telephone and on call for visits twenty-four hours a day, seven days a week.
4. Each family preservation caseworker is to provide services to a maximum of four families at any given time.

An Advisory Committee on Family-Centered Services will establish criteria and procedures for awarding grants; advise the secretary of the Department of Human Resources in developing a plan to implement services statewide by July 1, 1995;[11] and recommend standards relating to oversight and development of services, training and technical assistance, staff qualifications, program monitoring and evaluation, data collection, and coordination of funding.

This twenty-four-member advisory committee includes broad representation. Its members are appointed by the General Assembly or the governor from categories specified in the legislation. The secretary of the Department of Human Resources serves as chairperson.

Appropriations to the Department of Human Resources included $242,000 for family preservation services in fiscal year 1991–92, $335,000 for 1992–93, and $80,000 each year of the biennium for the work of the advisory committee.

Table 4
Type of Abuse or Neglect and Major Contributory Factors
(Substantiated Reports)
Fiscal Year 1990–91

Type of Abuse or Neglect[a]		
Physical or Emotional Neglect		
Improper Supervision	26.8%	
Improper Care or Discipline	42.0%	
Abandonment	0.9%	
Lack of Medical Care	3.0%	
Environment Injurious to Welfare	16.1%	
Total Physical or Emotional Neglect		88.8%
Physical Abuse		4.8%
Sexual Abuse		5.6%
Emotional Abuse or Moral Turpitude		0.4%
Major Contributory Factors[b]		
Lack of Child Development Knowledge		20.5%
Alcohol Abuse		12.8%
Mental or Emotional Disturbance		11.7%
Single Parent		11.3%
Disruption in Family Stability		7.8%
Drugs		6.5%
Unstable Living Arrangements		5.6%
Severe Discipline Accepted		5.3%
Heavy Child-Care Responsibility		4.0%
Chronic Family Violence		2.9%
Insufficient Income		2.6%
Inadequate Housing		2.4%
Health Problems		1.4%
Abused as Child		1.3%
Mental Retardation		1.0%
Social Isolation		0.8%
Fiscal Mismanagement		0.7%
Unemployment		0.5%

[a]Reports may involve more than one victim.
[b]Represents the number of times these factors were listed as primary factors contributing to abuse or neglect.
Source: N.C. Department of Human Resources, Division of Social Services.

Child Fatalities

Another group of new laws[12] establishes a twenty-five-member North Carolina Child Fatality Task Force to deal with child fatalities and related matters. The task force is to study the incidence and causes of child deaths in the state during 1988 and 1989 and establish a profile of child deaths, develop a system for multidisciplinary review of child deaths, receive and consider reports from the North Carolina Child Fatality Review Team (see below), and perform any other studies or evaluations that it considers necessary.

A nine-member North Carolina Child Fatality Review Team (state team) is charged with (1) reviewing current deaths of children when the deaths are attributed to abuse or neglect or when the child had been reported to social services under the child abuse and neglect reporting law any time before his or her death, (2) making recommendations to the Child Fatality Task Force, and (3) providing technical assistance when asked to do so by a local child abuse review team.

The Department of Environment, Health, and Natural Resources; the Department of Human Resources; the Department of Justice; and the State Board of Education are to adopt joint rules to ensure the cooperation of these departments and related agencies with the work of the task force and the state team. For fiscal year 1991–

Table 5
Percentage Change in Abuse and Neglect Reports in North Carolina from Fiscal Year 1989–90 to 1990–91

Number of Reports	26% increase
Neglect Reports	29% increase
Abuse Reports	10% increase
Abuse and Neglect Reports	38% increase
Number of Substantiated Reports	26% increase
Neglect Substantiated	30% increase
Abuse Substantiated	6% increase
Abuse and Neglect Substantiated	16% increase
Type of Maltreatment Substantiated (Number of Children)	
Neglect	44% increase
Physical Abuse	3% decrease
Sexual Abuse	12% increase
Emotional Abuse	12% increase

Source: N.C. Department of Human Resources, Division of Social Services.

92, the General Assembly allocated $83,200 to the task force and $74,800 to the state team; for 1992–93, it allocated $75,000 to the task force and $90,000 to the state team.

Response to Sexual Abuse in Child Day Care

Another piece of legislation[13] addresses the relationship between a protective services investigation and a law-enforcement investigation in some abuse cases. The duty of a county social services department to receive and investigate abuse and neglect reports extends to cases of alleged abuse or neglect in child day-care facilities. Effective October 1, 1991, if the county social services director's initial investigation reveals that sexual abuse may have occurred in a day-care facility, the director must notify the State Bureau of Investigation within twenty-four hours or on the next working day. The SBI may send a task force to investigate and gather evidence. The Department of Human Resources and the Department of Justice are directed to adopt rules to ensure that abuse investigations undertaken by the county social services director, the Child Day Care Section in the Department of Human Resources, and the State Bureau of Investigation do not interfere with one another. They are also to report jointly by March 1, 1992, as to whether additional legislation is needed in this area.

Conclusions

The problems of child abuse and neglect are extensive and complex. They will not be solved by laws alone, by money alone, or by task forces or teams or reports. However, adequate resources and the concerted awareness and commitment of government at every level and of citizens to make things better for these vulnerable children may be conditions precedent to any real progress. The initiatives coming from the 1991 North Carolina General Assembly, the governor's initiatives announced last spring, the commitment of women and men in county social services departments and other agencies across the state who will implement those initiatives and advocate others—these create hope that we will both have a better understanding of child abuse and neglect as they

County Directors Call for Changes in Child Protective Services System

On November 14, 1991, the North Carolina Association of County Directors of Social Services issued a report, "Protect Our Children—We All Share the Responsibility," calling for major changes in the state's child protective services system. The report includes recommendations relating to intake and investigation, prevention, confidentiality, legal and legislative issues, treatment and intervention, and community awareness and interagency cooperation. Specific recommendations include the establishment of maximum case-load sizes for child protective services workers and the adoption and implementation of "Standards for Services to Abused and Neglected Children and Their Families—The Model," model standards that were developed by the directors' association and are included in this report.

The report also calls for additional state funding (1) to implement the model standards, (2) to increase payments to foster parents and certain adoptive parents, and (3) for the Child Medical Examiners Program, which provides physicians across the state to evaluate children who are suspected of being abused or neglected.

Copies of the directors' report can be obtained by contacting NCACDSS, P.O. Box 810, Durham, NC 27702, 919-683-3838.

occur in North Carolina and become more effective in confronting this problem. ❖

Notes

1. North Carolina Department of Human Resources. Division of Social Services. "Central Registry Reports of Child Abuse and Neglect. Selected Statistical Data" (July 22, 1991), unpublished photocopy.

2. N.C. Gen. Stat. § 7A-552.

3. North Carolina Department of Human Resources. Division of Social Services. "Central Registry Reports of Child Abuse and Neglect. Selected Statistical Data" (July 22, 1991), unpublished photocopy. 1. For example, in fiscal year 1990–91, the 15,617 reports related to 71,161 children. Because some children may have been the subject of more than one report, however, it is not possible to tell from the data exactly how many different children were reported or how many were actually abused or neglected.

4. The report also includes, for each county for fiscal year 1990–91, the number of reports, the number and percentage of substantiated reports, the number of children about whom reports were received, and the number of children for whom abuse or neglect was substantiated. In addition, it ranks counties in terms of their total number of reports and their substantiation rates, and it shows the percentage of children in each county who were reported for suspected abuse or neglect in 1990–91.

5. Problems of child abuse and neglect also have had the governor's attention. *See* Exec. Order No. 112, 6 N.C. Reg. 227 (1991). A conference entitled the "Governor's Conference on Child Abuse and Neglect: Rising to the Challenge" is scheduled for December 11, 1991. Across the state, community child-protection teams are being developed as a result of the governor's executive order and ensuing rules of the Social Services Commission.

6. These legislative developments are described more fully along with other 1991 legislation relating to social services and juvenile law in "1991 Legislation Concerning Social Services, Juvenile Law, and Aging," by Janet Mason and Michael J. McCann, *Social Services Law Bulletin* 15 (Institute of Government, October 1991).

7. 1991 N.C. Sess. Laws ch. 689 § 216 (H.B. 83).

8. 1991 N.C. Sess. Laws ch. 689 § 103 (H.B. 83).

9. 1991 N.C. Sess. Laws ch. 689 § 3 (H.B. 83), as explained in House/Senate Joint Appropriations Committee, "Base Expansion Budget" (July 11, 1991), 19.

10. 1991 N.C. Sess. Laws ch. 743 (S. 111). Effective October 1, 1991, this legislation created the Family Preservation Act as Part 5A of N.C. General Statutes Chapter 143B (Sections 143B-150.5 through -150.9).

11. Implementation is to occur through the Division of Social Services; the Division of Youth Services; and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in the Department of Human Resources.

12. 1991 N.C. Sess. Laws ch. 689 § 233, enacting N.C. Gen. Stat. ch. 143, art. 62 (§§ 143-571 through -579).

13. 1991 N.C. Sess. Laws ch. 593 (H.B. 597).

AT THE INSTITUTE

New Faculty at the Institute

Two new faculty members, Frayda S. Bluestein and John Rubin, began work at the Institute of Government in September. Bluestein's primary area of responsibility is local government law, focusing on issues relating to governmental purchasing. Rubin specializes in criminal justice law, working with public defenders in particular.

Susannah Odenwelder

Frayda S. Bluestein

Susannah Odenwelder

John Rubin

Frayda Bluestein worked in the Legislative Drafting Division of the North Carolina General Assembly from November, 1990, to August, 1991. She was an associate with the firm of Michael B. Brough & Associates in Chapel Hill, North Carolina, from 1986 to 1990. Her practice there included municipal, land-use, administrative, and environmental matters. She received her undergraduate degree in political science, with honors, from the University of California, Berkeley, in 1980. She received her law degree from the University of California, Davis, in 1986, and was a visiting third-year law student at The University of North Carolina at Chapel Hill.

John Rubin was a partner with the firm of Reich, Adell & Crost in Los Angeles, California. He worked there from 1985 until he came to the Institute, and he dealt with such issues as labor relations and discrimination, employee benefits, bankruptcy, and constitutional and administrative law. Before that he worked with the Appellate Court Branch of the National Labor Relations Board in Washington, D.C. Rubin received his undergraduate degree in political science from the University of California, Berkeley, in 1978, and his law degree from The University of North Carolina at Chapel Hill in 1982. He was a visiting third-year law student at Boalt Hall in Berkeley.

—Liz McGeachy

North Carolina Legislation 1991

Edited by
Joseph S. Ferrell

The Institute of Government announces the upcoming publication of its special wrap-up of the 1991 session of the General Assembly: *North Carolina Legislation 1991*. This annual comprehensive summary is written by Institute faculty members who are experts in the respective fields affected by the new statutes. This year's summary covers legislation pertaining to courts and civil procedure, elections, health, education, natural resources and the environment, taxation, criminal law, planning and development, social services, state government, and more.

This publication will be of interest to all North Carolina public officials and anyone else following the course of legislation in North Carolina.

North Carolina Legislation 1991 will be available some time in early 1992. For information on how to order it, call the Institute of Government Publications Office at (919) 966-4119.

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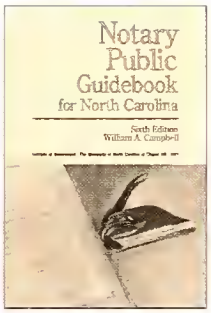

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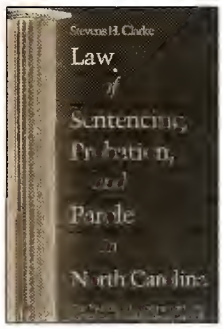

Stevens H. Clarke

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