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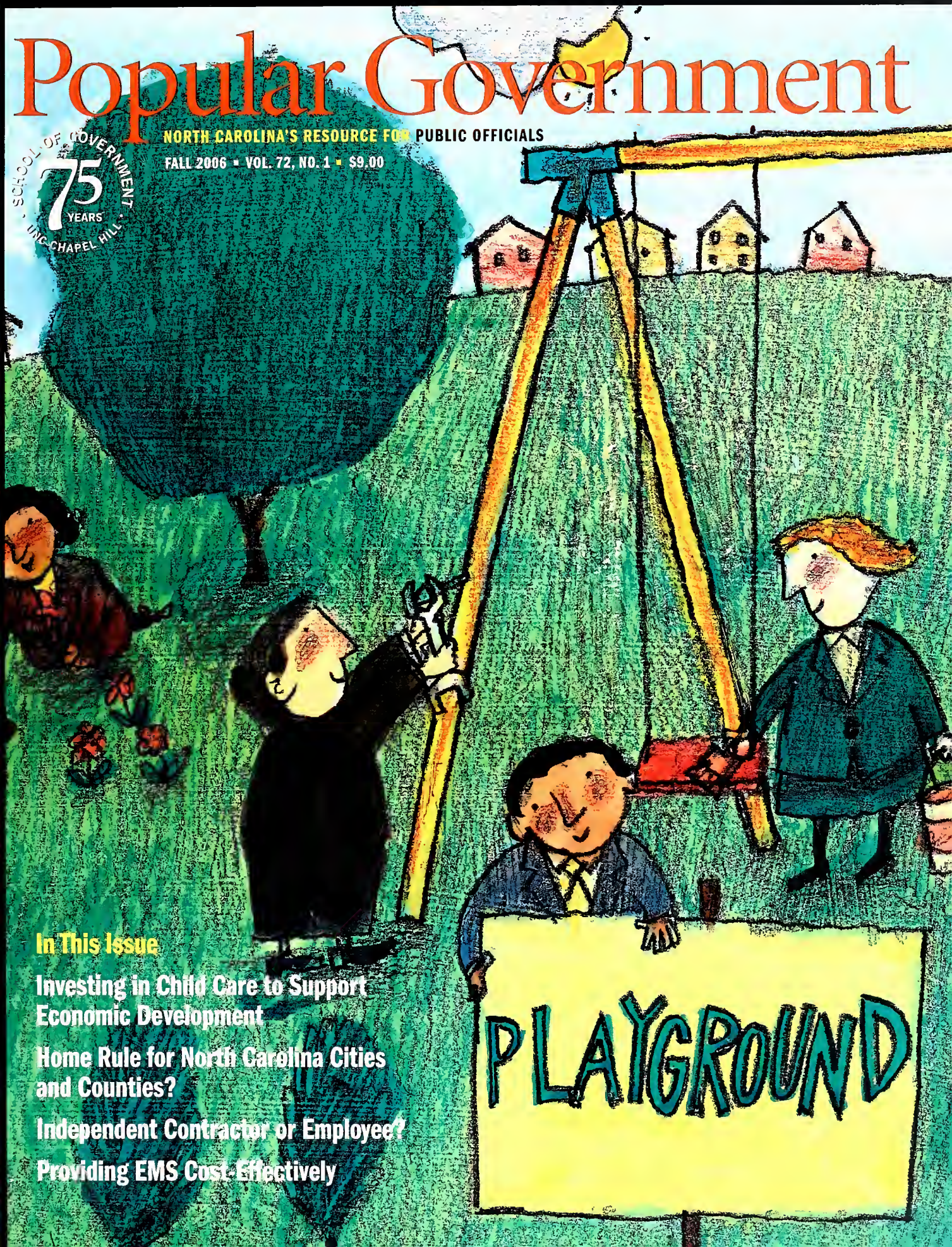

In This Issue

Popular Government

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

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UNC
SCHOOL OF GOVERNMENT

The School of Government at The University of North Carolina at Chapel Hill works to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government. The core components of the School of Government are the Institute of Government, established in 1931 to provide educational, advisory, and research services for state and local governments, and the two-year Master of Public Administration Program, which educates leaders for local, state, and federal governments as well as nonprofit organizations. The School also sponsors centers of importance to North Carolina government and citizens that are focused on information technology, environmental finance, and civic education for youth.

The Institute of Government is the largest university-based local government training, advising, and research organization in the United States, sponsoring more than 200 classes, seminars, schools, and specialized conferences for up to 14,000 public officials each year. Elected officials, city and county managers, finance directors, purchasing agents, information services directors, attorneys, budget directors, school officials, judges and other court officials, and a vast array of other public managers and employees have regular contact with Institute faculty and staff. In addition, faculty members annually publish up to fifty books, bulletins, and other reference works related to state and local government. Each day that the General Assembly is in session, the Institute's Daily Bulletin, available in electronic format, reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

The MPA Program is a full-time, two-year graduate program that serves up to sixty students annually. It consistently ranks among the best public administration graduate programs in the country, particularly in the areas of city management and faculty research. With courses ranging from public policy analysis to ethics and management, the program prepares graduates for leadership careers in public service, with a special strength in local government.

Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu or call (919) 966-5381 for more information on the School's publications, faculty, courses, programs, and services.

Popular Government

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ON THE COVER: *Employees take pleasure in building a playground adjacent to their workplace.*

Cover Article

Feature Articles

Departments

New Program Evaluation Workshops Offered

Is the county's summer recreation program achieving its goals? How efficiently does the city collect on parking tickets and moving violations?

Government programs and services should be analyzed for how well they work. Program evaluation is meant to evaluate something—to render a judgment on or answer some question about a program's implementation, effect, or worth.

The School of Government now is offering one- and two-day workshops on program evaluation. The workshops are for beginners, such as new budget and management analysts in cities, counties, and related jurisdictions, or for experienced analysts who are being asked to add to their expertise. Program staff also will benefit, and participants from government agencies and nonprofit groups are welcome.

The workshops will be offered annually, with the next one scheduled for February 8–9, 2007, in Wilmington. For details, contact Angela Bowden at (919) 843-8176 or bowdena@sog.unc.edu.

School Expands Leadership Programs for Local Government Boards

In collaboration with the North Carolina League of Municipalities (NCLM) and the North Carolina Association of County Commissioners (NCACC), the School of Government is expanding its leadership programs for both newly elected and veteran officials of local government boards. Newly elected officials are encouraged to attend the Essentials, an orientation program offered every other year following county commission and municipal elections. Veteran officials and other members of the local government management team—including city and county managers, clerks, and attorneys—are invited to participate.

The Essentials of County Government program, to be offered in early 2007, includes sessions designed specifically for veteran officials. School of Government faculty, NCLM and NCACC staff, and veteran commissioners will be presenters.

In addition to the Essentials, the School is offering advanced and specialized programs to help elected city and county board officials:

Strategic Leadership for Municipal Boards
November 9, 2006

Working for Results as a Governing Board
Winter 2007

How Am I Doing? Board Self-Assessment and Manager Evaluation
Spring 2007

Managing Conflict: Strategies for Elected Officials
Spring 2007

Calling This Meeting to Order: Parliamentary Procedure
Spring 2007

Ethics and the Public Official
Spring 2007

For more information about the content of the programs and about schedules, contact Donna Warner at (919) 962-1575 or warner@sog.unc.edu, or visit www.sog.unc.edu/programs/ncboards/.

at the School

Smith Named Vice Chancellor

Michael R. Smith has been named vice chancellor for engagement at UNC at Chapel Hill, effective November 1. Smith will continue as dean of the School of Government but expand his duties to serve as an advocate for and facilitator of greater campus-wide engagement with North Carolina.

Michael R. Smith

Smith said, "This additional appointment is a tribute to the School and to the work of its faculty with public officials. The School is recognized as a model for how the University engages with the community to improve the lives of North Carolinians."

James Moeser, chancellor of UNC at Chapel Hill, added, "Mike Smith has been among the great champions on this campus for doing more with engagement over the past several years. He has worked tirelessly and with passion. He will help us define the even deeper level of engagement that I know we are capable of achieving."

Drennan to Direct New Judicial College

For the last several years, School of Government Professor James C. Drennan has been overseeing the formation of a judicial college for North Carolina court officials. The college received $1 million in funding during the last session of the North Carolina General Assembly, and Drennan was named director in late August by School of Government Dean Michael R. Smith.

Since the 1930s the School, through its Institute of Government, has offered training for North Carolina court personnel. The training has consisted mainly of continuing education conferences to update judges, magistrates, and other judicial personnel on changes in the law; orientation courses for new court personnel; and classes that probe more deeply into sentencing, family and juvenile law, small claims matters, and other specialized issues.

Drennan describes the new college as an opportunity to provide a curriculum that will offer judges and other court officials more intensive coverage of focused topics than is currently available. The college also will design and offer online and digital learning tools that will be accessible at any time.

"Our strength traditionally has been in keeping people apprised of legal developments—new legislation, recent cases, and changes in the justice system's programs," said Drennan. "We do a good job in continuing education and in providing information on a need-to-know basis.

"The update function is important in a constantly changing world," Drennan continued. "A judge's job is judgment within an established framework. Education should make judges more comfortable with their decisions and make the decisions more thoughtful and fair.

"But there is a gap in the kind of education that helps those who have to manage the enterprise of the courts and who therefore need more in-depth learning opportunities," he explained. "And the people who work in the courts, whatever their jobs, come to us in all stages of their careers, but our program is one-size-fits-all. We hope now to be able to diversify and get away from addressing gaps by trial and error."

An advisory committee for the college will bring together people across the court system to provide overall policy guidance and to study broad issues in court education. This collaboration does not currently exist within the system, said Drennan, but is necessary to avoid duplication, create better policy, and share knowledge of what is needed.

In 2005, Drennan and others visited judicial education programs in California, Michigan, and Nevada to learn about best practices and explore potential partnerships. The 2006 appropriation will help expand the teaching staff to create and implement the new curriculum in North Carolina.

The first programs to be tested will likely focus on areas such as managing of civil trials, trying of capital cases, and management for senior court executives. Some courses will be offered in collaboration with the North Carolina Administrative Office of the Courts, the School's primary court education partner, and with various organizations that can offer specialized expertise in science, business, technology, and other complex topics that come before the courts with increasing frequency.

James C. Drennan

"The judicial college will focus narrowly on the adjudicative role," Drennan explained. "The Institute of Government already has good training in place for advocates, such as defense attorneys for the indigent, and prosecutors. The college will be a set of more intensive programs focused solely on needs that are unique to judges, clerks, and magistrates."

"We are excited about getting the judicial college started," he continued. "The

continued on page 42

Helping Local Governments View Child Care

Nam Douglass

Child care is a vital and growing industry in North Carolina. Generating more than $1.5 billion annually in gross receipts, providing more than 46,000 jobs, and accounting for roughly 8,500 small businesses, it has a significant impact on North Carolina's economy.[1]

North Carolina's working parents with children in licensed child care also have a significant impact on the state's economy, earning more than $6.1 billion each year. Roughly 12 percent of the state's workforce consists of parents with children under school age.[2] More specifically, 56 percent of children newborn through age five are in households in which both parents are in the labor force. Seventy-three percent of children living with a single mother and 83 percent of children living with a single father also are in households with working parents.[3]

High-quality child care is increasingly becoming a critical component of the economic infrastructure of North Carolina. The demand on the state's child care industry will continue to grow. In 2003, North Carolina's population included almost 700,000 children newborn through age five. The state ranks fifth in the nation in population growth of children newborn through age twelve. Population trends indicate that although the average age of North Carolina's population is increasing, the percentage of children will not significantly decrease, making children newborn through age twelve roughly 17 percent of the population. Given these trends, child care is expected to be among the top ten fastest-growing occupation areas in North Carolina over the next five years.[4]

In 2004 the National Economic Development and Law Center released the report of a study on the economic impact of the child care industry in North Carolina. The study calculated a total economic impact of $7.5 billion.[5] The study's findings underscore the importance of viewing child care as a critical component not only of the state's social infrastructure but also of its economic infrastructure. As well as preparing children for school, child care creates jobs, purchases goods and services in the economy, generates tax revenues, and supports the employment of working families, regardless of race or income.

This article highlights the findings of the 2004 study and summarizes the ongoing efforts in North Carolina to ensure that all children have access to high-

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as Economic Development

High-quality child care is increasingly becoming a critical component of the economic infrastructure of North Carolina.

quality child care. The article focuses on child care outside the home and deals only with child care programs licensed and regulated by the state. It provides examples of how local governments are supporting child care both across the country and in North Carolina. Finally, it describes some creative approaches that local governments can use to leverage resources and strengthen the child care industry in their communities.

Child Care as Economic Development

Historically, support and funding for child care and early childhood education have been viewed as a welfare issue, with significant emphasis placed on providing opportunities for disadvantaged children. Only recently have early care and education begun to be understood and evaluated as economic development issues. As an increasing number of states quantify the value and the impact of the child care industry, people in the industry as well as people in business and economic development are more clearly able to articulate the critical role that child care plays in a community's economic infrastructure.

With this new framing, early care and education can move out of a welfare context and into an economic development context. As a result, child care leaders are beginning to think of their industry differently and to collect data not only on outcomes for children but also on number of businesses, number of employees, gross receipts, and the like.

Child Care and Rates of Return

Business and economic leaders have aided discussion by conducting studies that quantify rates of return on investments in early childhood education programs. For example, a study conducted by the Federal Reserve Bank of Minneapolis estimated that high-quality early childhood education programs generate a 16 percent rate of return, 12 percent to the public and 4 percent to children.[6] More simply put, child care investments benefit the public at large as well as children.

Another study investigating the costs and the benefits of high-quality care, conducted by the Frank Porter Graham Child Development Institute, The University of North Carolina at Chapel Hill, found that at age twenty-one, children who had participated in an early intervention program had a greater likelihood of attending college and being employed in a high-skilled occupation than children who had not participated in such a program.[7]

The High/Scope Perry Preschool Study found that children who benefited

from high-quality child care were more likely than children who did not benefit from such care to graduate from high school, be employed at age forty, own a home, have a savings account, and have higher median annual earnings—all critical components in creating economically strong communities and families.[8]

A 2003 study by the Frank Porter Graham Child Development Institute found that children participating in the state's Smart Start–funded programs arrived at school with a higher level of readiness than other children, and that readiness was sustained through the third grade.[9] Also, a national study published in *Child Development* found that children entering elementary school who had attended higher-quality child care were more likely than other children to have improved math and language ability, better cognitive and social skills, and fewer behavioral problems.[10] Given that nationally, more than one-third of children entering kindergarten are considered not ready for school, early childhood education is becoming increasingly important in preparing children for future opportunities.[11]

Research on public expenditures also is finding that early childhood education is becoming increasingly important in decreasing future public costs. In 2002 the cost to North Carolina for holding back children in kindergarten through third grade was more than $170 million.[12]

Child Care and Employee Productivity

The competitiveness of the global economy requires that businesses recruit and retain the highest-skilled workers. The business community is growing increasingly aware of the importance of family-friendly work policies in general and child care in particular. Some businesses are using child care as a benefit, both to increase employee retention and to reduce absenteeism. Studies examining the ties between child care and employee productivity have produced these findings:

- Child care issues that result in employee absences cost U.S. businesses $3 billion annually.[13]
- Unscheduled absences cost small businesses an average of $60,000 annually, and large businesses, $3.6 million annually.[14]
- Turnover costs for salaried employees are as much as 150 percent of their base salaries.[15]
- Turnover among employees using business-sponsored child care centers is 50 percent less than turnover among other workers.[16]

Characteristics of North Carolina Child Care Enterprises

Center-Based Child Care

Median enrollment	36
Percent enrolling children who receive a child care subsidy[1]	80
Median number of employees (teachers and assistants)	
Full-time	5
Part-time	1
Self-reported median hourly wage of directors	$12
Self-reported median hourly wage of teachers	$8
Percent providing fully paid health benefits for employees	14

Family Child Care

Median enrollment	5
Percent enrolling children who receive a child care subsidy[1]	65
Percent caring for provider's own children	3
Median age of the business (in years)	5.4
Average workweek (in hours)	53
Estimated net yearly earnings	$16,725

Notes

All data are from Working in Child Care in North Carolina: The North Carolina Child Care Workforce Survey 2003 (N.C. Early Childhood Needs and Resources Assessment; Child Care Services Ass'n and Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2004), available at www.childcareservices.org/_downloads/NC2003wfreport.pdf.

1. A center or a home has to enroll with the North Carolina Division of Child Development to be a subsidized child care provider.

Child Care's Impact on the North Carolina Economy

Until recently, evaluations of early childhood education programs have focused primarily on their impact on school readiness and child health. Although interest in understanding the economic impact of the child care industry was growing, no data existed. As noted earlier, the 2004 study by the National Economic Development and Law Center found that the child care industry in North Carolina is a significant part of the economy, with a total economic impact of $7.5 billion. In terms of gross receipts, child care ranks above wireless communications and wholesale leaf tobacco.[17]

The study includes data on licensed and regulated, formal, full- and part-time programs of early care and education. The data cover both center-based child care and child care based in the provider's home, typically called "family child care." Head Start, More at Four, other public preschool programs, and after-school programs are represented. From an economic perspective, the report offers a conservative estimate, at best, of the child care industry's role in North Carolina's economy. Care given to children at home by parents, family members, or others, and programs that fall outside the parameters cited earlier, are not included. Research efforts to quantify the economic value of these "nonmarket" child care services are currently under way. According to one estimate, the cost of raising a child through age eighteen, in terms of what a caregiver could have earned outside the home, can range from $600,000 to $1 million.[18]

North Carolina's Child Care Market

Currently the child care market in North Carolina can serve roughly

24 percent of all children newborn through age twelve at any one time in formal child care programs.[19] The market consists of both family (4,900) and center-based (3,600) regulated facilities.

More than 50 percent of centers identified themselves as independently owned and not part of a chain. The next-largest group identified themselves as religious child care centers, followed by those connected to educational institutions, including public schools, community colleges, universities, and private schools.[20] (For some general characteristics of center-based and family child care in North Carolina, see the sidebar on page 6.)

In spite of the essential service provided by the child care industry, it continues to struggle to afford decent wages and benefits for its employees and to decrease staff turnover. Like all other small businesses, child care facilities face increasing costs for benefits and goods, with little opportunity for achieving economies of scale.

Projects such as WAGE$ and T.E.A.C.H. that provide education-based salary supplements and education scholarships to low-paid teachers are two efforts of North Carolina's early care and education system to help address these conditions. In addition to increasing the number of high-quality (4- or 5-star) child care facilities, the two projects aid in pushing up wages. However, as long as the child care industry remains a group of small businesses largely dependent on fees paid by parents, the two projects may not be enough to make significant gains. (For more information on the projects, see the sidebar on page 8.)

North Carolina's Working Families

Almost 70 percent of children in North Carolina are in households in which all adults work. This statistic includes both single- and dual-parent households. About 170,000 children are currently in licensed child care. As noted earlier, North Carolina's working parents with children in licensed child care earn $6.1 billion annually. Also, they pay nearly $1.8 billion in local, state, and federal taxes.[21]

The financial burden of child care forces many working parents to choose unregulated care for their children, or care that is less than high quality. The 2004 study reported these findings:[22]

- One in ten workers has a child under age six who needs care.
- Center-based care for an infant costs almost $13,000 per year in urban counties and $9,000 per year in rural counties.
- The annual cost of child care for a three-year-old in a rural county is more than twice the cost of in-state tuition at North Carolina's public universities.
- Child care expenses for a single mother with two children in an urban county are more than 50 percent of the total family income.

High-Quality Child Care in North Carolina

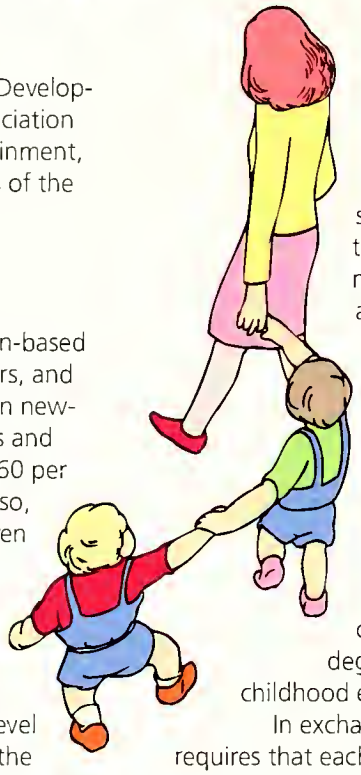
In the early 1990s, North Carolina's child care standards were among the lowest in the country, the state ranked forty-ninth in SAT scores, and the General Assembly was debating the issue of corporal punishment. Child advocates persuaded the General Assembly to create a study commission to raise awareness of young children's needs. Subsequently, the General Assembly established the Smart Start Initiative with a mission to

Smart Start and T.E.A.C.H.

Smart Start, the North Carolina Division of Child Development, and the nonprofit Child Care Services Association support two projects to increase educational attainment, decrease teacher turnover, and bolster the wages of the child care workforce.

The Child Care WAGE$ Project

The Child Care WAGE$ Project provides education-based salary supplements for low-paid teachers, directors, and family child care providers who work with children newborn through age five. Eligible teachers in centers and family child care homes must earn less than $14.60 per hour, and directors, less than $15.00 per hour. Also, they must work at least ten hours a week with children newborn through age five in a licensed child care program and have some formal child care credential or education beyond a high school diploma. Participants must increase their education within three years to remain eligible for the program.



Salary supplements are tied to the education level of the child care worker and vary on the basis of the position that he or she holds and the county in which he or she works. For example, a teacher who holds an early childhood certificate may be eligible for $600 in annual supplements and can earn $1,500 or more if he or she completes an associate degree in early childhood education.

Supplements are paid in six-month increments, and eligible workers must verify that they have worked for the same child care provider during the prior six months. Moving to another provider resets the six-month eligibility criterion.

Following are some important WAGE$ statistics for 2004–05:[1]

- The annual turnover rate was 16 percent for WAGE$ participants versus 24 percent statewide.
- Sixty percent of participants had taken college-level coursework since applying.
- Eighteen percent of participants had moved up a level on the supplement scale because of continued education.
- The average six-month supplement was $574 (or $1,148 per year).

The T.E.A.C.H. Early Childhood Project

The T.E.A.C.H. Early Childhood Project was established in 1990 by the Child Care Services Association to provide educational scholarships for teachers, directors, and family child care workers to complete course work in early childhood education and help increase their income.

Eligible child care workers must meet a minimum number of work hours per week in a regulated child care program and have the sponsorship of their employer. Also, eligible teachers and family child care workers must earn less than $14.60 per hour, and directors, less than $15.00 per hour. Participants are offered scholarships to study early childhood education at fifty-eight community colleges and six four-year universities. Participants also can opt to earn the North Carolina Early Childhood Administration Credential, the North Carolina Early Childhood Credential, or a certificate, a diploma, an associate's degree, or a bachelor's degree in early childhood education.

In exchange for scholarships, T.E.A.C.H. requires that each participant complete a certain amount of education or college course work during a contracted period. Also, participants must agree to remain in their child care program or the field for at least six months and as much as a year. After completing their education requirement, participants can receive increased compensation in the form of a bonus of $100–$700 or a raise of 4–5 percent.

Following are some important T.E.A.C.H. statistics:[2]

- Between 2001 and 2003, the number of teachers with two- and four-year college degrees increased 27 percent.
- Between 1993 and 2003, the number of licensed family child care providers with degrees increased 43 percent.
- Between 1993 and 2003, turnover rates decreased from 42 to 24 percent.

For more information on these programs, visit the Child Care Services Association website at www.childcareservices.org/.

Notes

1. Child Care Serv. Ass'n website, www.childcareservices.org/ps/wage.html#2 (last visited July 28, 2006). Under FAQ, click on What are the benefits/results of the Child Care WAGE$® Project?
2. Turning It Around: The T.E.A.C.H. Early Childhood and Child Care WAGE$ Projects (2004–2005 Annual Program Report, Chapel Hill, N.C.: Child Care Serv. Ass'n, 2005), available at www.childcareservices.org/_downloads/TEACH%20annual%20report%2004-05.pdf (last visited Aug. 3, 2006).

The Smart Start Initiative

North Carolina's Smart Start Initiative began as a demonstration in eighteen counties.[1] Today it serves as a key part of the state's infrastructure for child care and early childhood education, with seventy-nine local Smart Start partnerships responding to the needs of North Carolina children (newborn through age five) and their families in the state's 100 counties.

Each of the local partnerships is a nonprofit organization with a board of directors. By law the board must have a minimum of twenty-one members, who generally include local government officials, business and philanthropic leaders, parents, human service officials, and consumers, among others.

Each local partnership has a strategic plan with measurable goals and accountability standards to ensure that the children in its community have a foundation for a sound basic education. The programs of each local partnership are designed specifically to meet the unique needs of the county or counties the partnership serves.

Since Smart Start's inception, the number of children in high-quality care has increased threefold, to more than 100,000. Other successes of the past ten years are these:

- Increasing the state's rate of children who are immunized, from the lowest in the nation to one of the top three
- Moving from the worst child care standards in the nation to having more than 50 percent of children in the highest-quality programs
- Improving education of early childhood teachers to the extent that more than 80 percent of them now have some college-level education
- Increasing the number of children who receive child care subsidies through Smart Start by 177 percent in the past decade[2]

Through Smart Start's National Technical Assistance Center, North Carolina has served as a national leader and model for other states looking to make strides in early childhood development. The state is again taking the lead in trying to link child care to the economic infrastructure of the state.

Notes

1. Unless otherwise noted, data in this sidebar are from N.C. Partnership for Children, Smart Start: The Foundation for a Sound, Basic Education (Raleigh: the Partnership, 2005).
2. Figure derived by the author from a review of data at N.C. Div. of Child Dev.

ensure that every child in North Carolina arrives at school healthy and prepared for success.[23] Leading it are a statewide nonprofit organization, the North Carolina Partnership for Children, and seventy-nine local nonprofit organizations in collaboration with local government officials, child care providers, public agencies, private foundations, and numerous other community- and state-level organizations and volunteers.

A key component of their work is to ensure that every child enrolled in child care will be in a high-quality environment—that is, in a child care center with a 4- or 5-star rating as determined by North Carolina's child care licensing system. The system uses a scale of 1 to 5, with 5 being the highest quality. The system assesses the quality of licensed and regulated child care programs in three areas: program standards, staff education, and regulatory compliance. The most significant characteristics of higher-quality centers are lower child-to-teacher ratios and a more educated staff, with a greater percentage of teachers having child care credentials and college-level early childhood education.[24]

Higher-quality child care centers have lower child-to-teacher ratios and more staff with child care credentials and college-level early childhood education.

Through Smart Start, North Carolina has made great gains on behalf of its children. Studies show that the quality of child care in the state has risen substantially as a result of Smart Start programs.[25] Other research shows that children in high-quality programs arrive at school at a higher level of readiness than their peers and have fewer behavioral problems, better math skills, and better cognitive skills through second grade.[26]

Further, more services are reaching young children and their families through Smart Start. In 2003, more than 94,000 families benefited from family support programs, about 100,000 children received health and development screenings, and more than 57,000 children received child care subsidies.[27] (For more information about Smart Start, see the sidebar on this page.)

Through its Division of Child Development, North Carolina provides a child care assistance program for low-income and other eligible families who are working or engaged in training leading to employment. Eligibility is limited to families making no more than 75 percent of the state median income. The Division of Child Development allocates subsidy funding to each county on the basis of a set formula. The subsidy amount, which pays a portion of child care costs for eligible families, is based on a market rate survey that provides median cost estimates by county and by the age of the child. The subsidy covers about 75 percent of the cost of care, with the remainder paid for by the parents or absorbed by the child care provider.

The subsidy program is funded largely by federal and state dollars. Smart Start contributes additional funding to it—$75 million in 2003—to assist in reach-

ing more children and families. Despite these additional resources, today almost 30,000 children are on the waiting list for subsidies. That list will only continue to grow.

In many counties more families are eligible to receive a subsidy than there are funds available. Waiting lists for subsidies vary from county to county in terms of the number of families on them and the average number of months that families spend waiting.

Not only are some children unable to secure the high-quality care that will assist in readying them for school, but their working parents often are unable to secure and retain employment because of a lack of affordable child care. Parents unable to secure a child care subsidy are frequently forced to turn down jobs or make difficult choices between work and public assistance. With the average yearly cost of high-quality care for a three-year-old in North Carolina at $5,000 in rural communities and $7,000 in urban communities, child care is out of reach for many low-income families. Working parents with infants often have the most difficult time. With the cost of care the greatest for this age group, parents are sometimes forced to move their children from provider to provider.

Lack of affordable child care undercuts many parents' employment options.

Local Government Support of Investment in Early Care

The Institute for Youth, Education, and Families, a special entity of the National League of Cities, was established to promote the important role that municipal leaders play in improving the future of children and youth and to help them take action on behalf of children in their communities. Local government officials play a critical role in involving the business community, leveraging new resources, supporting creative ideas, and encouraging long-term strategies and investments to support children and families.[28]

Involving the Business Community

Local government officials actively work to retain and strengthen the existing businesses in their communities as well as to attract new business investment. Almost all businesses rely on child care to maintain and retain their workforce. For many businesses, operating an on-site child care facility for their workers is not a feasible option. However, local government can encourage the business community to support other child care strategies. Employer coalitions have been effective in leveraging state resources, pooling their own resources to provide referral and information services, and sharing information with the business community at large on effective family-friendly policies. Florida and Virginia have strong coalitions of employers working on early childhood development issues at the state level. Similar efforts have been successfully launched on regional and local levels. Examples include local business alliances, business advisory groups, and chamber of commerce committees serving as links between the business and child development communities.

Local government can support local businesses coming together to consider other creative strategies such as the following:

- Creating a pool of funds for new employees who need assistance with the first month or two of child care expenses until receiving a full paycheck
- Establishing a grant pool for existing child care facilities to upgrade space and equipment and create additional slots for employees of participating businesses
- Hosting a child care fair to ensure that working families know about local resources for early care and education
- Working with child care providers to support special needs for care, such as coverage during second and third shifts, during part-time work, and on weekends

Leveraging New Resources

By including child care as part of the economic infrastructure of the community, local leaders can consider and leverage a much broader set of resources. Funding sources available to local governments, such as the U.S. Department of Agriculture's Community Facilities Funds, can be used for child care facilities as well as for other community infrastructure needs.

Also, local leaders can consider other resources to leverage funds for child care and education. As part of its recruiting incentives, Travis County, Texas, offers companies that provide a child care benefit to low-wage employees a local property tax abatement. The county used such an incentive in recruiting Samsung to its jurisdiction.

Other local governments have taken advantage of opportunities to leverage new resources—for example:

- Communities in Maine have used tax increment financing to support child care in areas targeted for redevelopment and community development projects. (Under "tax increment financing," future tax revenues of the redeveloped area are used to pay for the improvement costs.)
- Other communities, including several in California, have incorporated child care into large-scale redevelopment efforts and leveraged redevelopment financing resources.
- Aspen, Colorado, and Ames, Iowa, have a dedicated stream from their sales tax revenue to support child care resources.
- Deerfield Beach, Florida, provides the building and covers the costs of employee benefits for a high-quality multigenerational care center that addresses both the child care and the elder care needs of the community.

Supporting Creative Ideas

Local governments face tremendous challenges in trying to meet increasing needs with decreasing or stagnant revenues. They need creative ideas to help maximize the use of existing community resources and assets. Local governments play an important role in supporting the implementation of new ideas. In several communities, local government officials

have facilitated an increase in the availability of child care simply by easing barriers to creative solutions. Examples follow:

- Communities in California and Pennsylvania have reviewed and changed their land-use and zoning regulations to better support people seeking to start family child care businesses.
- Kentucky and New Jersey local governments have allowed the establishment of child care facilities in or near industrial parks. This strategy has created the benefits of onsite care for employees, an employee recruiting tool for businesses already in the parks, and an incentive for local developers to use in recruiting new businesses. It also eases transportation issues for workers, especially in rural areas.

Encouraging Long-Term Strategies and Investments

The need for high-quality early care and education will continue to demand the attention of local and state government leaders. Local governments can work to meet this need by encouraging strategic thinking and long-term investments in their communities. Even small efforts that begin to integrate child care into the thinking of planning, economic, workforce, and business development professionals will create opportunities for innovative solutions.

Following are some ways in which local governments are paving the road for long-term investments:

- In Madison, Wisconsin, local officials are modeling child- and family-friendly practices in the community by providing access to parental leave and flex-time options and offering dependent care accounts, direct subsidies, and scholarship funds for low-wage employees.
- In Seattle, state officials collect data and conduct research on the child care workforce and its career linkages within the city, as well as other factors that affect the industry and its workforce.
- In Vermont, local municipal plans must address financing, facilities, and business assistance for child care providers.

North Carolina Local Governments Leading by Example

In the *Strengthening Families in American Cities Survey*, conducted by the National League of Cities, one in four elected city officials named child care as the most critical program or service need for children and families in their communities. Child care was second only to affordable housing. In addition to care for children under age three, preschool and early childhood education were listed among the top ten community needs. The same survey found that four in ten city officials dedicated funds to early childhood development, despite the fact that child care has not traditionally been a municipal function. Municipal leaders cited the benefits of increased school readiness, the future benefits of decreased juvenile delinquency, and

a moral responsibility as the main reasons for their investment.[29]

Supporting Access to, Availability of, and Affordability of High-Quality Child Care

Local governments in North Carolina at both the county and the city level already are hard at work with local Smart Start partnerships and other local organizations leveraging new or existing resources creatively for child care or linking child care to community economic development. A few illustrations follow.

Cashiers and Jackson County

Heavily reliant on the tourism industry, Cashiers, in Jackson County, was facing a child care crisis. The rural nature of the community made it difficult for small child care centers to be economically viable, and the community found itself dependent on the one center run by the Southwestern Child Development Commission, a nonprofit organization serving the seven counties in the far western part of the state. This center was in danger of closing. Parents and local businesses alike were worried about what its closing would mean to the community. Working parents would be challenged to find care so that they could work. The small businesses relying on these workers were concerned about having employees for the tourist season.

Officials of the Southwestern Child Development Commission approached the county commissioners with a request for funding for the child care center and shared the concerns of the business community about the center's closing. The commissioners questioned why they should have a role in supporting a child care business. Officials of the Southwestern Child Development Commission challenged the commissioners to view child care as a critical part of their community's infrastructure. Just as water and sewer service and roads were necessary for businesses to thrive, they said, so was child care, and that infrastructure was in desperate need of an investment.

The Jackson County commissioners approved an investment of $30,000 that enabled the center to get on its feet, hire additional staff, and increase the number of slots for children. This increased the center's cash flow and set it on a more secure financial footing.

The center now is doing well and serving even more families, for it was able nearly to double the number of children enrolled, from twenty-three to forty-five. The county commissioners also have left the door open for future investments.[30]

Onslow County

Facing natural disaster requires the very best from first responders, lines people, health professionals, and other emergency workers called to the front line. This truth is well known in Onslow County. In a county action report completed after Hurricane Isabel, the Onslow County Emergency Management Services (EMS) found that child care for members of the disaster team was a frequent issue, with most facilities being closed and unavailable to meet the needs of emergency workers. The EMS, along with the local Smart Start partnership, the Onslow County government, and others, began to consider ways to address this need.

> Community infrastructure needed for thriving businesses = water and sewer service + roads + a solid child care system.

Family child care homes now are applying to be designated as child care service providers for essential personnel during emergency operations. Centers must meet certain criteria, and an operator must become a certified emergency response team member under a program of the U.S. Department of Homeland Security. County leaders are working with the Federal Emergency Management Agency to secure funding for this effort and to ensure that cost does nor serve as a barrier to participation by families with an emergency worker. Emergency workers are relieved that they will be able to focus on their tasks in the event of an emergency, knowing that their children are in safe places.[31]

Orange County

Orange Counry is one of many with a growing waiting list for child care subsidies. Changes in the economy and the circumstances of families have made it more difficult for working families to afford high-quality child care. That development, in turn, has affected their ability to remain in the workforce.

The Orange County commissioners are strong supporters of Smart Start and agencies such as the Department of Social Services that are working on behalf of children and families. To help address the child care needs of low-wage working families, the commissioners appropriated $50,000 of county funds in fiscal year 2005 to help establish the Orange County Day Care Trust Fund. The fund serves as a bridge for families who have secured full-time employment and qualify for the subsidy but face a wait of six months, on average, to receive it.

The average cost of the six-month scholarship is $1,800. This investment is significantly less than the staff turnover costs of up to $9,000 that a business faces to replace an employee who is leaving for lack of affordable child care. Businesses, nonprofits, other organizations, and individuals are encouraged to help sponsor families by supplementing scholarships from the trust fund with donations of their own. Donations may be made in any amount and may be designated to a specific family. This long-term investment by Orange County and its partners is not only supporting children but enabling working parents to remain productive members of the workforce.[32]

Finding New Strategies to Start Children on a Path to School Readiness

The national research on linking child care and economic development, spearheaded by Dr. Mildred Warner at Cornell University, shows that communities must consider the connections between children, working parents, and the local economy if gains are to be made in the communities' well-being. North Carolina has many examples of local governments working with local organizations to strengthen these connections and to create new opportunities for starting children on a path to school readiness. Several examples follow.[33]

Resources on Linking Child Care and Economic Development

Following are some resources to learn more about linking economic development and child care.

Websites

Child Care Partnership Project
www.nccic.org/ccpartnerships/home.htm
The Child Care Partnership Project provides materials and toolkits on ways in which local governments, the business community, and other agencies can engage in the early care and education efforts of their communities.

Child Care Services Association
www.childcareservices.org/
The Child Care Services Association administers programs to increase wage rates of child care workers across the state and spearheads research efforts, such as the studies of the North Carolina child care workforce and system.

Linking Economic Development and Child Care Research Project
http://government.cce.cornell.edu/doc/reports/childcare
The Linking Economic Development and Child Care Research Project focuses on identifying the economic linkages of child care and supporting the work of localities interested in using an economic development approach to financing child care.

Local Investment in Child Care
www.lincc-childcare.com
Local Investment in Child Care encourages public and private investments and policies to meet the child care needs of California's children and families. It currently is working on linking child care, transportation, and land use.

National Economic Development and Law Center
www.nedlc.org/
The National Economic Development and Law Center developed the Early Care and Education Economic Impact Model for analyzing the economic impact of the child care industry. Since then it has been producing reports for states across the country, including North Carolina.

North Carolina Partnership for Children
www.ncsmartstart.org
The North Carolina Partnership for Children is the state nonprofit organization responsible for the Smart Start Initiative (see the sidebar on page 9). In 2001 the partnership established Smart Start's National Technical Assistance Center to provide training and information to other states looking to implement a comprehensive, community-based, statewide early childhood system modeled after the Smart Start Initiative.

Articles and Reports

Child Care and Parent Productivity: Making the Business Case, by Karen Shellenback (Ithaca, N.Y.: Department of City and Regional Planning, Cornell University, December 2004), available at http://government.cce.cornell.edu/doc/pdf/ChildCareParentProductivity.pdf.

"Early Childhood Development = Economic Development," by Rob Grunewald & Art Rolnick, *fedgazette,* March 2003, available at www.minneapolisfed.org/pubs/fedgaz/03-03/opinion.cfm.

How Does High Quality Child Care Benefit Business and the Local Economy? by Jen Brown (Seattle, Wash.: Economic Opportunity Institute, July 2002), available at www.eoionline.org/ELC/Proposals/ECEChildcareEconomyBenefits.htm.

Supporting Early Childhood Success: Action Kit for Municipal Leaders, by Julie Bosland et al. (Washington, D.C.: Institute for Youth, Education, and Families, National League of Cities, n.d.), available at www.nlc.org/content/Files/ECE%20Action%20Kit.pdf.

Charlotte
In the Charlotte area, the Centralina Workforce Development Board has provided a worker training grant to upgrade the skills of teachers at a large child care business. The grant also has helped build awareness of the special needs of the child care workforce.

Clay County
The three public schools in Clay County share an on-campus child care center for the system's employees. The center serves as an incentive in recruiting new teachers and as a benefit in retaining existing teachers.

Durham
In Durham, Smart Start and the chamber of commerce have partnered to provide reduced membership fees to child care businesses. This strategy is helping strengthen the connection between the child care and business communities. Also, it is helping increase awareness that child care centers are small businesses facing the same challenges as other small businesses in the community.

Hyde and Montgomery Counties
In Hyde and Montgomery counties, Smart Start partnerships are working with local officials as part of the 21st Century Communities Program sponsored by the North Carolina Department of Commerce. The goal is to include child care in each county's long-term strategic plan for economic development.

(For more resources on linking child care and economic development, see the sidebar on this page.)

The $7.5 billion impact of the child care industry in North Carolina challenges the often-held perception that early care and education are a private, family matter. High-quality child care provides a significant economic benefit to every community in the state. Its impact on current and future workforces makes it a critical component of the economic infrastructure. Helping build the strength of the child care system in North Carolina is an effort that will require child care and education professionals to work with local government, private business, economic, workforce, and policy professionals at the state and local levels. Local government officials can serve as critical partners, lending their voices in policy discussions and decision making, providing opportunities to local businesses, and setting a direction for community engagement that will help ensure a smart start for North Carolina's children.

Notes

1. Saskia Traill & Jen Wohl, The Economic Impact of the Child Care Industry in North Carolina (Oakland, Cal.: Nat'l Econ. Dev. and Law Ctr., 2004), available at www.nedlc.org/Publications/publications_eir.htm.

2. In North Carolina, to start school in the fall of a given year, children must be turning five years old before October 16 of that year.

3. Traill & Wohl, The Economic Impact.

4. *Id.*

5. *Id.*

6. Art Rolnick & Rob Grunewald, *Early Childhood Development: Economic Development with a High Public Return*, fedgazette, Mar. 2003, available at http://minneapolisfed.org/pubs/fedgaz/03-03/earlychild.cfm (last visited July 5, 2006).

7. Carolina Abecedarian Project, www.fpg.unc.edu/~abc/index.cfm.

8. Lawrence J. Schweinhart et al., Significant Benefits: The High/Scope Perry Preschool Study through Age 27 (Ypsilanti, Mich.: High/Scope Press, 1993).

9. Donna Bryant et al., Smart Start and Preschool Child Care Quality in NC: Change over Time and Relation to Children's Readiness (Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2003), available at www.fpg.unc.edu/smartstart/reports/Child_Care_Quality_2003.pdf.

10. Ellen S. Peisner-Feinberg et al., *The Relation of Preschool Child-Care Quality to Children's Cognitive and Social Developmental Trajectories through Second Grade*, 72 Child Development 1534 (2001).

11. Julie Bosland et al., Supporting Early Childhood Success: Action Kit for Municipal Leaders (Washington, D.C.: Inst. for Youth, Education, and Families, Nat'l League of Cities, n.d.), available at www.nlc.org/content/Files/ECE%20Action%20Kit.pdf (last visited July 5, 2006).

12. Kindergarten Readiness Issues Group, Partners in Research Forum, North Carolina Early Grade Retention in the Age of Accountability (Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2003), available at www.fpg.unc.edu/~pir/Retention_Brief.pdf.

13. Karen Shellenback, Child Care and Parent Productivity: Making the Business Case (Ithaca, N.Y.: Dep't of City and Regional Planning, Cornell Univ., Dec. 2004), available at http://government.cce.cornell.edu/doc/pdf/ChildCareParentProductivity.pdf (last visited July 13, 2006).

14. Harris Interactive, The 2002 CCH Unscheduled Absence Survey (Riverwoods, Ill.: CCH, 2003), as cited in Traill & Wohl, The Economic Impact.

15. William Bliss, The Business Cost and Impact of Employee Turnover (Butler, N.J.: Bliss & Associates, 1999), as cited in Traill & Wohl, The Economic Impact.

16. Bright Horizons Family Solutions, The Real Savings from Employer-Sponsored Child Care: Investment Impact Study Results (Boston, Mass.: Bright Horizons, 2003), as cited in Traill & Wohl, The Economic Impact.

17. Traill & Wohl, The Economic Impact.

18. Anne Mitchell et al., The Respective Roles of Market and Non-Market Care in an Early Care & Education System, Issue Brief Presented at the 2006 Learning Community on Early Childhood Finance Reform (Mar. 5–6, 2006), available at www.earlychildhoodfinance.org/briefs.htm.

19. Traill & Wohl, The Economic Impact.

20. Working in Child Care in North Carolina: The North Carolina Child Care Workforce Survey 2003 (N.C. Early Childhood Needs and Resources Assessment; Child Care Services Ass'n and Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2004), available at www.childcareservices.org/_downloads/NC2003wfreport.pdf.

21. Traill & Wohl, The Economic Impact.

22. *Id.*

23. Smart Start Celebrating 10 Years: Report to the Community (Raleigh: N.C. Partnership for Children, 2004), available at www.smartstart-nc.org/Information/10yearreport.pdf.

24. N.C. Div. of Child Dev., Star Rating website at http://ncchildcare.dhhs.state.nc.us/providers/pv_sn2_isr.asp (last visited July 27, 2006).

25. Donna Bryant et al., Smart Start and Child Care in North Carolina: Effects on Quality and Changes over Time (Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2002), available at www.fpg.unc.edu/smartstart/reports/Child_Care_May2002.pdf; Donna Bryant et al., *Effects of a Community Initiative on the Quality of Child Care*, 14 Early Childhood Research 449; Karen Taylor & Donna Bryant, Demonstrating Effective Child Care Quality Improvement (Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 2002), available at www.fpg.unc.edu/smartstart/reports/TA_Study_Quality_Improvement.pdf.

26. Bryant et al., Smart Start and Preschool Child Care Quality; Peisner-Feinberg et al., *The Relation of Preschool Child-Care Quality*; Kelly Maxwell et al., A Six-County Study of the Effects of Smart Start Child Care on Kindergarten Entry Skills (Frank Porter Graham Child Dev. Inst., Univ. of N.C. at Chapel Hill, 1999), available at www.fpg.unc.edu/~smartstart/reports/six-county.pdf.

27. Traill & Wohl, The Economic Impact.

28. The examples come from multiple articles, briefs, and manuals that I have gathered, Internet sites that I have visited, meetings that I have attended, and discussions that I have had with individuals, all as part of my research on efforts to link child care and economic development.

29. Inst. for Youth, Education, and Families, Nat'l League of Cities, Strengthening Families in America's Cities: Early Childhood Development (Washington, D.C.: the League, 2003), available at www.nlc.org/content/Files/ECEsurvery.pdf.

30. Telephone Interview with Sheila Hoyle, Executive Director, Southwest Child Dev. Comm'n (Sept. 7, 2005).

31. Child Care Service for Essential Personnel during [Emergency Operations Center] Operations, Project Description, from Onslow County Partnership for Children, Jacksonville, N.C. (2004).

32. Nancy Coston, Presentation at Child Care and Today's Workforce Forum, sponsored by Orange County Partnership for Young Children (Nov. 29, 2005).

33. The examples come from online newsletters and articles that I have gathered, and from discussions that I have had with Smart Start directors and others in the early childhood field, all as part of my research on efforts to link child care and economic development.

Do North Carolina Local Governments Need Home Rule?

Frayda S. Bluestein

North Carolina local governments do not have home rule. North Carolina often is described as a Dillon's rule state, but recent court decisions have made clear that this designation is not accurate.[1] So if North Carolina is neither a home rule state nor a Dillon's rule state, what kind of state is it, and how does it compare with other states? Would North Carolina local governments be better off with home rule authority?

North Carolina local governments are created by the state and derive all their powers by delegation from it. In this respect they are just like local governments in other states. Nationally, however, the scope and structure of local government powers varies. States often are characterized as being either home rule or Dillon's rule states.[2] "Home rule" refers to a state delegation of broad authority to local governments over matters of local concern. Dillon's rule, developed in the late 1800s by Judge John F. Dillon, is a rule governing judicial review of local government actions. The rule requires that the scope of authority delegated to local governments be narrowly construed. Unlike home rule, Dillon's rule does not actually describe the structure of local government powers in a state. Rather, when used to describe a state, it usually means that local powers are interpreted narrowly in the absence of a legislative directive for a broad interpretation.

This article describes how local government authority in North Carolina compares with local government authority in home rule states. North Carolina local governments have been delegated powers that probably are equivalent to those enjoyed by local governments in home rule states. But North Carolina's system of specific enabling legislation, together with inconsistent standards of judicial interpretation, contributes to a lack of clarity in local government administration. This article recommends legislative changes that, if implemented, would promote flexibility, efficiency, and predictability for local governments in carrying out the authority and responsibility the legislature has delegated to them under current law.

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Home Rule

The U.S. Constitution allocates power between the federal government and the states. It does not mention local governments. Local governments are created by states and have no inherent rights either to their existence or to any particular grant of authority. As described by the U.S. Supreme Court in the landmark case *Hunter v. City of Pittsburgh*,

> *Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be [e]ntrusted to them . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, . . . expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent*


Person County


New Hanover County


Randolph County


Davidson County

Courthouse photos by Mitchell Yirchick

of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.[3]

Local government powers are established in state constitutions, state statutes, or some combination of the two. In home rule states, local government authority over local matters is delegated in broad terms, and local governments are not generally required to obtain specific authority for particular activities.[4]

All but a few states have some form of home rule authority.[5] The difference between states with and without home rule may be stated simply: in a state with home rule, local governments may act on matters of local concern unless a statute preempts local action; in a state without home rule, local governments may act on a matter only if a statute authorizes local action.

In addition to its eliminating the need for specific enabling authority, home rule often is understood to create a limitation on interference by the state legislature in matters of local concern.[6] A review of the constitutional and statutory provisions, judicial interpretations, and commentary about home rule suggests that home rule does not in fact create significant limitations on state legislative control over local government authority. As described later, both the legal structure in most home rule states and the judicial interpretations of home rule provisions preserve significant authority for statewide legislation preempting local authority.

Examination of the specific language of home rule delegations reveals that many of them actually reserve to the state substantial authority to legislate through general laws. A typical home rule grant authorizes a local government to "make and enforce local police, sanitary and other regulations *as are not in conflict with its charter or with the general laws.*"[7] Similar formulations grant authority to local governments to determine their local affairs and government "not inconsistent with the laws of the General Assembly," and to authorize local charters "subject to and controlled by the general laws."[8] Other expressions of home rule provide authority over all local matters "not expressly denied by general law or charter" or "subject to such limitations as may be prescribed by the legislature."[9]

In some states, home rule is not provided for in the constitution but is purely a matter of legislative creation.[10] In these states the legislature has complete discretion in developing and modifying the scope of home rule authority that it has granted. Indeed, whether the home rule power originates in the constitution or in legislation, home rule powers often are shaped by lists of specific delegations, to which the local charters must conform.[11]

Clearly, then, the home rule authority granted is not absolute. Judicial interpretations about what issues are statewide and what issues are local, and about which local provisions are in conflict with general laws, sometimes have a narrowing impact on the scope of the home rule delegation. Litigation involving the scope of home rule authority also is affected by whether courts use Dillon's rule or a more generous standard of judicial review when analyzing the scope of local authority.

Most of the litigation in home rule states involves the issue of what constitutes a matter of statewide versus local concern. According to an authoritative treatise on local government law, "[t]here is no clear or workable test separating local from general concerns. Courts have acknowledged that there is considerable overlap in these two categories."[12] Matters of local concern sometimes are defined as those whose results affect "only the municipality itself, with no extraterritorial effects."[13] Although courts have generally concluded that structural and administrative functions internal to the local government are matters of local concern, a wide range of local government activities may be viewed as involving matters of statewide concern.[14] These may include police power regulations as well as local employment compensation and employment policies.[15]

As noted earlier, home rule delegations that require consistency with general laws reserve to the state substantial preemptive authority. Courts use the following analysis to determine whether local provisions conflict with general laws: a conflict exists if the local provision allows what state law prohibits, or prohibits what state law allows.[16] In some states the analysis tracks implied preemption, under which the local action is invalid if the court concludes that general laws indicate a legislative intent to foreclose local regulations on particular subjects.[17] Courts determining whether particular local actions conflict with general laws have reached different conclusions about whether a home rule provision authorizes local governments to go beyond a general law, or whether such action constitutes a conflict.[18]

Many home rule charters are limited by statewide general laws, so another important issue is whether these laws may preempt matters of purely local concern. A few constitutions specify the areas in which the state may regulate by general law, to which local charters must conform. In other states, courts have assumed that the state's authority is limited to matters of statewide concern.[19] In still other states, however, the law provides that the state legislature may enact laws on local matters as long as it does so by general laws, rather than by local or special laws.[20]

The Colorado Constitution is one of only a few specifically providing that local ordinances on matters of local concern override conflicting state laws.[21] In interpreting this provision, courts have acknowledged that some issues involve matters of mixed state and local concern, and a complex judicial standard has evolved. When the matter is of mixed concern, the local government may act as long as there is no conflict with state law. In the event of a conflict, state law supersedes.[22]

The Colorado Supreme Court applied this analysis in a case brought by two home rule cities challenging state uniform laws governing the use of red-light cameras.[23] Although prior case law held that traffic enforcement on local streets was a matter of local concern, the court found that the interest in uniformity justified state preemption. Strong dissents in this and another recent Colorado case suggest that, despite the court's attempt to set a definitive standard, clear delineations of appropriate spheres of authority in home rule states remain elusive.[24]

In addition to these structural limitations, judicial interpretation of home rule authority sometimes has had a limiting effect. Although the prevailing notion is that states have either home rule or Dillon's rule, courts in home rule states sometimes use Dillon's rule to interpret the scope of local government authority.[25] Some courts have held that the grant of home rule itself constitutes a rejection of Dillon's rule.[26] The presence of home rule authority, however, has not consistently guaranteed deferential review of local authority by the courts. Some states have enacted constitutional or statutory provisions that specify the appropriate standard for reviewing the scope of authority granted, in some cases explicitly rejecting the Dillon's rule formula in favor of a more liberal construction.[27]

In home rule states, local governments may act on matters of local concern unless state law prevents their doing so.

Despite structural and judicially created limitations, local governments in home rule states have successfully relied on their broad authority to support even controversial local initiatives. The Pennsylvania Supreme Court recently upheld a local policy extending employee benefits to employees' life partners against a challenge that the policy conflicted with state law defining marriage.[28] Home rule authority has supported city regulation and litigation regarding firearms use and manufacturing.[29] On the other hand, restrictions on lawsuits against gun manufacturers are among the general laws that limit local authority, even in home rule states.[30]

Home rule also has been interpreted to include the authority to use eminent domain for economic development purposes and to impose special assessments and fees to offset the cost of development.[31] Recent reaction to the U.S. Supreme Court decision in *Kelo v. City of New London*, however, has included proposed legislation that would limit use of eminent domain for economic development and would expressly preempt local authority even in home rule jurisdictions.[32]

Contemporary assessments of home rule in some states indicate that it provides much flexibility within the scope of powers that are not preempted.[33] However, *Home Rule in America: A Fifty-State Handbook*, based on a recent comprehensive national survey of local government home rule, suggests that expectations of autonomy through home rule have been largely disappointed. Numerous entries in this publication begin or end by noting such disappointment, referring to home rule as "more myth than reality" and observing that it has not resulted in freedom from "state interference."[34] The publication also notes that citizens in some home rule states have chosen not to pursue local government charters even when they have the option to do so by local initiative, and that the usefulness of home rule may be more influenced by the political, economic, historical, and other social factors present in a particular state than by the governing legal structures.[35]

Local Government Authority in North Carolina

Despite their lack of broad home rule delegation, North Carolina local governments have been delegated powers substantially equivalent to and in some cases greater than those enjoyed by local governments in states with home rule. As noted earlier, North Carolina local government authority exists by statutory delegation. Some provisions in the state constitution relate to local governments, but most of them either authorize the legislature to enact provisions relating to local governments or limit local government actions.[36] As the North Carolina Supreme Court has stated, "It is a well-established principle that municipalities, as creatures of statute, can exercise only that power which the legislature has conferred upon them."[37] Nothing in the constitution or other law limits the extent to which the state can withdraw or preempt authority previously delegated to local governments. Also, the scope of authority delegated and the possibility of implicit preemption are subject to interpretation by the courts.

In comparison with the broad delegations typical of home rule states, the requirement for specific statutory authority


Anson County


Alexander County


Cabarrus County

Courthouse photos by Mitchell Virchick


Edgecombe County

in North Carolina local governments may seem restrictive. However, the statutory delegations in North Carolina—enabling laws in Chapters 160A (governing cities) and 153A (governing counties) of the North Carolina General Statutes (hereinafter G.S.)—actually encompass quite a broad range of powers and authority.

Most significant is a broad grant of regulatory authority. Under this delegation a city or a county may, by ordinance, "define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the [city or county]; and may define and abate nuisances."[38] For cities the statute requires that ordinances be consistent with the laws and the constitutions of North Carolina and the United States.[39] State courts have held that the same limitation applies to counties.[40] Beyond this limitation the broad grant of regulatory authority does not contain specific procedural or other limitations.

More specific statutes authorizing regulation also exist, such as those related to begging, sexually oriented businesses, noise, possession or harboring of dangerous animals, and removal and disposal of abandoned and junked motor vehicles.[41] Further, both cities and counties have extensive authority to regulate land use and development.[42] A separate statute provides that the enumeration of specific regulatory powers is not intended to limit the general authority granted in the broad-delegation statute.[43]

State statutes also authorize local governments to operate listed public enterprises and to operate other facilities, including libraries, public recreation facilities, hospitals, and animal shelters.[44]

Although the activities authorized for cities and counties have increasingly become overlapping, some activities only cities are authorized to conduct, and some activities, only counties.[45] Most notably, road construction and maintenance are limited to cities and the state, and counties have exclusive local responsibility for schools and a number of state-mandated functions, such as public health, mental health, and social services. Counties also have primary local responsibility for courts.

Local governments in North Carolina have authority to generate revenue through the property tax (subject to specific limitations regarding uses and amounts), local option sales taxes, special assessments (for listed purposes), user fees, and miscellaneous other local taxes and charges.[46] Cities and counties have specific authority to engage in a wide range of activities to promote local economic development.[47] North Carolina cities have authority to annex property, by petition from affected property owners and on their own initiative without approval of the property owners, subject to certain conditions relating to degree of development and ability to deliver services.[48]

North Carolina city and county governments have powers substantially equivalent to those enjoyed by their counterparts in home rule states.

Local governments, including cities and counties, have broad authority for interlocal cooperation, including the authority to exercise powers and engage in undertakings jointly, through joint agencies or through contracts.[49]

Cities and counties have authority for some purposes to establish separate entities, such as service districts or authorities, governed by the city council or the county board of commissioners, or its appointees, but with separate authority to tax, borrow, or regulate.[50] They also have authority to establish regional authorities to address issues as provided by specific statutes.[51]

With regard to certain structural aspects of local government, the legislature has delegated what might be considered home rule–type authority. City and county governing boards have authority to change, without legislative approval, specified aspects of the local government organization and structure, including the number, terms, and method of election of governing board members.[52] Cities have authority to change their name and "style"—that is, whether they are called city, town, or village.[53] These changes may be made by the governing board by ordinance, or on citizen initiative subject to a referendum.[54]

State laws are restrictive, however, regarding local government administrative functions, including public records, open meetings, finance (including budget preparation and adoption, and accounting and disbursement of funds), procurement, property disposal, conflicts of interest, and voting by the local governing board.[55] These laws generally apply to local governments (and in some cases, to state agencies) uniformly, without regard to the size of the jurisdiction, and they contain specific minimum requirements.

This summary of delegated authority in North Carolina illustrates the wide range of subjects that are both specifically and generally addressed in state law. For each process or activity to be undertaken by a local government, local attorneys and other officials must understand both the scope of authority granted and any procedural requirements that apply.

Thus, although the state legislature has delegated significant authority to address local and even extraterritorial matters, the form in which these delegations are made includes, in many cases, specific substantive and procedural limitations. The dual nature of these statutes, being both enabling and limiting, is of particular significance given the default presumption against inherent authority. Situations inevitably arise in which it is not clear whether a specific statute encompasses authority for a desired program or activity, and whether specific substantive or procedural limitations exclude similar options that are not enumerated.

When the authority for a particular activity is not clear, local governments may seek special legislation—a "local act"—to provide clear authority. Local governments also regularly seek special legislation to make local modifications to specific procedural limitations contained in the general law. Although the constitution prohibits local acts on certain subjects, local modifications affecting a wide range of subjects are easy to obtain.[56] As long as the legislators who represent the local government support the proposed change, the rest of the legislature will rarely oppose it. Indeed, legislators often view their support of

local legislation as a tangible constituent service. Also, the local act system, when used to authorize new or innovative programs or activities, arguably provides a kind of pilot system, allowing a few jurisdictions to try out new ideas before they are authorized statewide.

On the other hand, the legislative landscape that shapes local authority is made somewhat more complicated by the presence of local acts that modify authority for one or more units through provisions that are not incorporated into the codified general statutes. Local attorneys sometimes fear that the presence of a local bill specifically authorizing a particular power for a particular jurisdiction implies that the power does not otherwise exist in the general law.

Judicial Interpretation

Judicial review of local government authority also complicates matters for North Carolina local governments. Inconsistency in state court decisions on whether a challenged activity is authorized by state law has added to the complexity of the specific delegation system in North Carolina.

In a case involving an allegation that a local government action is invalid for lack of statutory authority, the role of the court often is to determine whether the challenged action is within the scope of authority granted, even though it may not be expressly enumerated in a statute. Also, a case may require an analysis of whether the action is preempted, either explicitly or implicitly, by other state legislation.

The basic job of the court, then, is to determine whether the legislature intended to authorize the challenged local action. Courts have created various rules for construing statutes, through which they determine how narrowly or broadly they should interpret specific delegations. In the absence of legislative statements expressing the legislature's intent regarding the standard of review, courts have historically applied a narrow standard.

As noted earlier, Dillon's rule was specifically developed to address questions about the scope of local government authority. It states that local governments have and may exercise only those powers that are "granted in express words; . . . those necessarily or fairly implied in, or incident to the powers expressly granted; . . . and those essential to the declared objects and purposes of the corporation —not simply convenient, but indispensable."[57] The rule further provides that "any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."[58]

Although North Carolina courts have historically applied Dillon's rule in cases involving the scope of local government authority, since the early 1970s, state law has contained a provision expressing the legislature's intention that local government authority be broadly construed. The city provision reads as follows:

> *It is the policy of the General Assembly that the cities of this State should have adequate authority to exercise the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably expedient to carry them into execution and effect . . .*[59]

The statute contains the proviso that "exercise of such additional or supplemental powers shall not be contrary to the State or federal law or to the public policy of this State."[60] As noted earlier, statutes for both cities and counties also explicitly indicate that specific enumerations of regulatory powers are not exclusive and do not limit authority under the broader delegation of general ordinance-making authority.[61]

Despite this directive, North Carolina courts have continued intermittently to apply Dillon's rule (and other limiting constructions), even though the rule appears to be entirely inconsistent with the more generous standard in the statute.[62] As shown in a recent comprehensive analysis of Dillon's rule in North Carolina, the record of cases is quite mixed, both in terms of outcomes (that is, which activities have been held to be within the local government's authority and which have not) and,

Wayne County


Union County


Washington County

Polk County

Courthouse photos by Mitchell Virchick

more importantly, in terms of the legal standards applied by the court.[63]

A watershed decision was rendered in 1994 when, in *Homebuilders Association of Charlotte v. City of Charlotte*, the North Carolina Supreme Court upheld Charlotte's imposition of fees for regulatory permits, specifically relying on the broad-construction statute and refusing to apply Dillon's rule.[64] This case did not end the judiciary's pattern of variable approaches, however. Later that year, in *Bowers v. City of High Point*, the supreme court used Dillon's rule to invalidate a local government employment benefit policy that went beyond the provisions of the statute governing benefits.[65] More recently, in *Smith Chapel Baptist Church v. City of Durham*, the supreme court ruled that imposition of fees for stormwater *programs* exceeded the authority granted to local governments to charge fees for utility *systems*.[66]

The most significant recent case in this area, *Bellsouth Telecommunications v. City of Laurinburg*, exhibits a valiant effort by the state's appellate court finally to bury Dillon's rule and to reconcile prior seemingly inconsistent rulings under a unifying standard for judicial review.[67] Followers of local government law may be cautiously optimistic about some strong statements in this case but hesitant to see them as a major step toward predictability.

In *Bellsouth Telecommunications* the North Carolina Court of Appeals held that the use of a municipal cable system for a fiber optic network was within the scope of authority granted to operate a "cable television system." Placing its rationale clearly within the *Homebuilders Association* precedent, the court relied on the broad-construction statute, holding that its language has replaced Dillon's rule and should be applied in cases in which there is an ambiguity in the authorizing language, or the powers clearly authorized reasonably necessitate "'*additional and supplementary powers*' *to carry them into execution and effect.*"[68] In reconciling the prior rulings in the *Bowers* and *Smith Chapel* cases, the court explained that Dillon's rule is appropriate "where the plain meaning of the statute is without ambiguity."[69]

The broad-construction statute has replaced Dillon's rule and should be applied in cases in which there is an ambiguity in the authorizing language.

Although the court's opinion provides a refreshingly honest look at the variable records of prior cases, how much predictability the newly enunciated standard will provide is uncertain. The focus will be on whether a particular statute is ambiguous or whether, instead, it has a plain meaning on which the court can rely to determine whether the authority in question has clearly been delegated.

Also, courts will be responsible for deciding when powers authorized "necessitate additional and supplementary power to carry them into execution and effect." What evidence the court will rely on in making this determination is difficult to discern. In the *Bellsouth Telecommunications* case, the court applied the new standard to determine whether a fiber optic network fell within the plain meaning of "cable television system" as defined in the enabling statute. Concluding that the language of the statute was ambiguous, the court applied the broad-construction rule. Although it recognized that the legislature could not have anticipated the technological developments that led to the issue presented, the court upheld the city's authority, concluding that "the legislature's intent in 1971 was to enable the municipality's public enterprise to grow in reasonable stride with technological advancements, as it is this advancement which marks the ever-approaching horizon of necessity."[70] A less sympathetic court might have concluded that the legislature could not possibly have intended to authorize technology that did not exist when the enabling law was enacted.

In cases analyzed under the new standard, the determination of whether a contested provision is ambiguous or clear may have a significant effect on the outcome. When statutes are clear, local governments are likely to argue (as they most certainly would have, had the *Smith Chapel* case been reviewed under this standard) that the challenged action is an "additional or supplemental power" necessary to carry the delegated authority into execution and effect. As noted earlier, the basis on which courts will determine the necessity of such power is not clear. The particular choice of wording in enabling legislation will acquire a new significance, and the legislature will not find it any easier to anticipate future local activities or innovations when developing that wording. Nor is the legislative process likely to provide more information that a court can use in determining whether additional or supplemental authority is necessary or whether the authority granted should be limited to its plain meaning using Dillon's rule.[71]

Recommendations

There are many subjective considerations involved in answering the question of whether North Carolina local governments need home rule. Some of these considerations are discussed in an expanded report of this research.[72] North Carolina local governments do not appear to *need* home rule, at least in the form that it exists in most states, in order to secure broader or more comprehensive authority over key local government issues. As stated earlier, the authority that local governments in North Carolina have is probably as broad as, and in some cases broader than, that in many home rule states. To the extent that home rule is seen as an avenue to freedom from state involvement in issues perceived to be local in nature, the sense of a need for home rule is probably misplaced. Home rule as it exists in most states simply does not place significant limitations on state preemption of local authority.

From a practical standpoint, any major change in the basic structure of state-local relations in North Carolina is unlikely. Local governments have been delegated substantial and broad powers, and the state relies on local governments to deliver essential services to the citizens of the state. North Carolina is known for having politically strong local governments that have historically enjoyed a good working relationship with the legislature. There is no political call for a constitutional amendment, and the legislature is unlikely to support any significant diminution in its ability to make statewide law in its discretion.

The specific delegation system in North Carolina, however, is complicated and may create more uncertainty in implementation than is necessary. The following recommendations are intended to improve flexibility, efficiency, and predictability for local governments in carrying out the powers delegated to them. These recommendations do not argue in favor of more substantive authority. Instead, they suggest ways of improving the system under which local governments carry out currently authorized activities.

1. Reduce unnecessary statutory detail. The legislature should impose on itself a practice of wording enabling legislation as broadly as possible, specifically avoiding substantive or procedural detail that does not promote important statewide policies. This practice would be consistent with the already stated policy that the legislature intends to delegate sufficient authority to "carry into execution and effect" the authorized activity.[73]

Particularly with respect to internal administrative functions, leaving procedural details to the local units seems appropriate. For issues such as when to require governing board approval of certain transactions and what methods to use for soliciting bids or disposing of property, local units should have flexibility to establish procedures appropriate to their size, staffing, and management philosophy. Even the author of the restrictive Dillon's rule believed that a more deferential standard of judicial review should apply to the mode adopted for carrying out authorized powers and that there should be no presumption against such decisions as long as they are reasonable.[74]

This recommendation could be implemented prospectively. Also, a process could be undertaken to review and recommend changes in existing law in order to establish a consistent degree of specificity. Implementation of this practice in drafting and amending enabling legislation could provide flexibility in local administration and might reduce the need for local bills modifying mandated procedures. The purpose of this recommendation is to draw attention at the state level to the trade-off between specificity in enabling statutes and flexibility in local administration.

2. Clarify the standard of judicial review. The legislature should clarify the scope and applicability of the broad-construction approach that courts must use in reviewing cases challenging local government authority. As noted earlier, the courts continue to struggle with the meaning of the broad-construction statute. Even the most recent interpretation, though perhaps more consistent with the statute's intent, requires use of Dillon's rule in cases in which the statute in question is not ambiguous. The use of ambiguity as a standard for determining when broad construction applies is unlikely to improve predictability and does not appear to be consistent with the legislative directive to include *additional powers* necessary to carry into effect the activity authorized.[75]

First, the legislature should clarify whether the broad-construction provision applies to authority granted outside the scope of G.S. Chapters 160A and 153A. As currently written, the directive for broad construction relates only to powers granted in those chapters and in local acts, including local charters. In reality, local government authority can be found in many important provisions outside the basic city and county statutes.[76] Although the legislature may not intend to extend the broad-construction language to some delegations, such as the authority to levy taxes, there is no logical basis for concluding that the standard should not apply to police power regulations that are authorized in other chapters. The legislature should revise the broad-construction directive so that it applies to all delegated powers except those exempted. Through this approach the legislature could specifically list any subjects, chapters, or specific grants of authority to which the directive would not apply, rather than letting the courts determine the statute's application beyond the basic city and county chapters.

Second, the legislature should revise the broad-construction statute to correct the ongoing variability in judicial review of local government authority. As noted earlier, even the most recent judicial interpretation of the statute falls short of fully implementing its language. Without diminishing the state's role in creating local government authority, or its power of explicit and implicit preemption, the legislature could clarify that courts must interpret broadly the powers that are delegated. This would mean explicitly stating that the plain meaning of the statute is not restrictive and that powers beyond those plainly delegated are included if they are necessary to carry out the authority delegated or if they are reasonably and appropriately related and not in conflict with other laws.[77]

Another approach would be to amend the broad-construction statute to create a presumption in favor of local authority. A statement that additional and supplemental powers shall be considered to be included unless specifically or implicitly preempted would, in effect, reverse the provision in Dillon's rule requiring any fair, reasonable doubt about whether authority exists, to be resolved against the local government. As noted earlier, this approach has been taken in several home rule states. The formulation seems more consistent with the legislative directive of broad construction than the approach most recently enunciated by the court. The effect of the presumption would be to place on a challenger the burden of demonstrating that the action is not reasonably related to delegated authority or is in conflict with other law.

This recommendation gives meaning and effect to the decades-old legislative statement of intention for broad construction. It suggests that, given a legislative directive for broad construction, it is more efficient for the legislature to preempt the areas in which authority is not intended, than for local governments to seek to delineate the scope of authority already granted.

3. Authorize local ordinances to conform city charters and county local acts to the general law. This final recommendation is for a minor procedural improvement that could be made with an amendment to the current statutes that allow local governments to make structural changes without legislative approval (discussed on page 18).[78] The legislature regularly approves local acts to align city charters and other local acts with the general law, but the need for legislative involvement is purely technical.[79] Charters are local acts of the legislature and can be amended only by

another local act. There should be no need for legislative approval, however, when the purpose of the amendment is to allow the local unit to follow the existing general laws.

Conclusion

Despite their lack of official recognition in the nation's federalist structure, local governments across the country, in states with and without home rule, clearly carry out important functions that affect the daily lives of citizens and are essential in the administration of state and federal programs. Authority granted to local governments is quite broad in both kinds of states. If the notion that local governments in North Carolina *need* home rule is based on an assumption that home rule would provide greater freedom from state preemption of local authority, the assumption is false. However, incorporation of some aspects of home rule authority into the North Carolina statutory structure could better effectuate the existing legislative directive for broad construction of local authority. The changes suggested in this article are designed to bring the law of local government authority in North Carolina, as it exists in statutes and cases, more in line with expressed legislative intent and to improve the ability of local governments to carry into effect the many functions and responsibilities that they have been delegated.

Notes

This is an abridged version of Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?* 84 North Carolina Law Review 1983 (2006).

1. *See* Bellsouth Telecomms. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721 (2005); Land Owners Ass'n v. Durham County, 630 S.E.2d 200, ___ N.C. App. ___ (2006).

2. *See* Jesse J. Richardson Jr. et al., Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management 1 (Washington, D.C.: Brookings Inst., 2003), available at www.brookings.edu/es/urban/publications/dillonsrule.pdf (hereinafter Brookings Report)("[M]ost writers, government officials and laypersons classify a state as either a Dillon [sic] Rule state or a home rule state").

3. Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907). This case involved a constitutional challenge by citizens of a town that was consolidated with Pittsburgh pursuant to the provisions of a state statute authorizing consolidation.

4. "Home rule" has been defined as "[t]he power of local self-government, or the power of local governments to deal with matters of local concern without having to turn to the state legislature for approval, as long as their actions do not contravene already defined state policies." Dale Krane et al., Home Rule in America: A Fifty-State Handbook 495 (Washington, D.C.: CQPress, 2000).

5. Only North Carolina and Virginia have no home rule provisions in either their constitutions or their statutes. Home Rule in America, a comprehensive analysis of local government authority in each state, identifies six of the fifty states as having no effective home rule. *Id.* at 476–77.

6. *See* Antieau on Local Government Law § 21.02 (Sandra M. Stevenson ed., 2d ed., New York: Matthew Bender, 1997).

7. Idaho Const. art. XII, § 2 (emphasis added).

8. Iowa Const. art. II, § 38A ("not inconsistent with . . ."); *see also* Ky. Const. § 156(b); Ohio Const. art XVIII, § 3; R.I. Const. art. XIII, § 2; Utah Const. art. XI, § 5. Wash. Const. art. XI, § 10 ("subject to and controlled by . . .").

9. N.M. Const. art X, § 6D ("not expressly denied by . . ."); *see also* Mo. Const. art. VI, § 19(a) (conferring all powers that legislature can confer if they are consistent with constitution and not limited or denied by statute); Mont. Const. art. XI, § 6 (conferring any power not prohibited by constitution, law, or charter); Neb. Const. art. XI, § 2 (conferring powers consistent with and subject to laws of state); Pa. Const. art. IX, § 2 (conferring on charter city "any power not denied by the charter, the General Assembly, or the constitution"). Tex. Const. art. II, § 5 ("subject to such limitations as . . .").

10. For examples of legislative home rule provisions, *see* Del. Code Ann. tit. 22, ch. 8; Ind. Code ch. 36.

11. *See, e.g.*, Ga. Const. art. IX, § III (listing specific powers granted); La. Const. art. VI, § 5(E) (conferring on home rule cities powers and functions necessary for management of local affairs "not denied by general law or inconsistent with the constitution" and listing specific powers granted); Mich. Const. art. VII, § 22 (listing specific powers granted, including procedural requirements, but with statement that enumeration is not limit on general grant of authority).

12. Antieau § 21.05.

13. Am. Fin. Servs. Ass'n v. Toledo, 830 N.E.2d 1233, 1242 (Ohio Ct. App. 2005).

14. Eugene McQuillin, Law of Municipal Corporations § 4.113 (Clark A. Nichols et al., rev., Wilmette, Ill.: Callaghan, 1949–).

15. Regarding police power regulations, under the standard in Ohio, "[a] state statute takes precedence over a local ordinance when 1) the ordinance is in conflict with the statute, 2) the ordinance is an exercise of the police power, rather than of local self-government, and 3) the statute is a general law." Canton v. State, 766 N.E.2d 963, 966 (Ohio 2002). Louisiana's constitutional home rule provision states, "Notwithstanding any provision of this Article, the police power of the state shall never be abridged." La. Const. art. VI, § 9(B). In New Orleans Campaign for a Living Wage v. City of New Orleans, 825 So. 2d 1098 (La. 2002), the Louisiana Supreme Court relied on this provision to uphold a state statute that prohibited local governments from establishing minimum wage requirements for private employers. Regarding local employment compensation and employment policies, *see* City of Enid v. Public Empl. Relations Bd., 133 P.3d 281 (Okla. 2006) (holding that collective bargaining is matter of statewide concern); City of Buffalo v. N.Y. Public Empl. Relations Bd., 376 N.Y.S.2d 896, 898 (N.Y. 1975) (holding that compensation of public safety employees is matter of statewide concern).

16. City of New York v. Bloomberg, 846 N.E.2d 433 (N.Y. 2006) (invalidating local provision prohibiting city from doing business with vendors that discriminated between spouses and domestic partners in providing benefits, as inconsistent with general law requiring award of contracts on basis of price or quality).

17. *See, e.g.*, Nordmarken v. City of Richfield, 641 N.W.2d 343, 348 (Minn. Ct. App. 2002); Sherwin-Williams Co. v. City of L.A., 844 P.2d 534, 536 (Cal. 1993).

18. *Compare* City of Portland v. Dollarhide, 714 P.2d 220, 228 (Or. 1986) (holding that higher penalty under local ordinance was invalid), *with* Savage v. Prator, 921 So. 2d 51, 54–56 (La. 2006) (summarizing cases under home rule upholding local regulations that created higher penalties or prohibitions), *and* Coastal Recycling v. Connors, 854 A.2d 711, 715 (R.I. 2004) (holding that argument that state has preempted by occupying field with statewide legislation was at odds with home rule provision in constitution).

19. *See* S.C. State Ports Auth. v. Jasper County, 629 S.E.2d 624 (2006) (2005 WL3941459 at 4) (concluding that permissive language indicates no legislative intent to occupy field to exclusion of local action).

20. *See* R.I. Const. art. XIII, § 3 (allowing legislation on local matters as long as it is done by general law); S.C. Const. art. VIII, § 14 (limiting general law to matters of statewide concern).

21. Colo. Const. art. XX, § 6.

22. Courts first determine whether the challenged law (state or local) involves a matter

of local, state, or mixed state and local concern. In cases involving a conflict between a state and a local provision on a matter of local control, the local provision supersedes, as provided in the constitution. If the matter is determined to be of statewide concern, the local provision is preempted unless the constitution or state statutes provide specific authorization to the locality to legislate in this area.

23. City of Commerce v. State, 40 P.3d 1273 (Colo. 2002).

24. *See id.* (Mullarky, J., dissenting). In Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003), the court determined that a local ordinance prohibiting unrelated or unmarried sex offenders from living together in a single family residence conflicted with and was preempted by state law (because it affected a statewide rather than a mixed state and local matter) regarding adjudicated children living in state-created foster homes. A dissenting judge wrote, "In my view, the majority analysis subtly misapplies our precedent in this area in a way that radically alters the relationship between home rule cities and the state, by virtually eliminating the area of mixed concern, in which both city and state had previously been permitted to legislate. Because I believe our well-established precedent requires not only that Northglenn's ordinance be considered the regulation of a matter of mixed state and local concern, but also that it be found to be consistent with state law, I would uphold the validity of the ordinance and reverse the district court." *Id.* (Coats, J., dissenting).

25. *See* Brookings Report at 17–18, finding that thirty-nine states employ Dillon's rule.

26. *See* Williams v. Town of Hilton Head, 429 S.E.2d 802, 805 (S.C. 1993).

27. *See* ALASKA CONST. art. X, § 1 (stating intention to provide for maximum local self-government and requiring that power granted be given liberal construction). Indiana's statutory home rule provisions and Iowa's constitution explicitly abrogate Dillon's rule. *See* IND. CODE ch. 36, § 1-3-4; IOWA CONST. art. II, § 38A.

28. Devlin v. City of Phila., 862 A.2d 1234 (Pa. 2004).

29. *See* City of New York v. Berretta, 315 F. Supp. 2d 256 (E.D. N.Y. 2004) (upholding city's authority to sue gun manufacturers); *see generally* Richard Briffault, *Home Rule for the Twenty-First Century,* 36 URBAN LAWYER 253, 254 (2004) n. 7 (summarizing cases upholding local gun regulations).

30. *See* IOWA CODE tit. IX; KY. REV. STAT. ANN. § 65.045; MONT. CODE ANN. § 7-1-115.

31. Gen. Bldg. v. Shawnee County, 66 P.3d 873 (Kans. 2003) (use of eminent domain); Boca Raton v. State, 595 So. 2d 25 (1992) (imposition of special assessments); Hospitality v. County of Charleston, 464 S.E.2d 113 (S.C. 1995) (imposition of special fees).

32. Kelo v. City of New London, 125 S. Ct. 2655 (2005). Examples of proposed legislation include S. 2683, 94th G.A., Reg. Sess. (Ill. 2006), available at www.ilga.gov/legislation/billstatus.asp?DocNum=2683&GAID=8&GA=94&DocTypeID=SB&LegID=23628&SessionID=50 (last visited July 14, 2006) (proposing preemption of home rule powers relating to use of eminent domain for economic development, and creation of statewide prohibition on use of eminent domain for economic development); and LEGISLATIVE TASK FORCE TO STUDY EMINENT DOMAIN AND ITS USE AND APPLICATION IN THE STATE, OHIO GENERAL ASSEMBLY, INITIAL FINDINGS (Columbus, Ohio: the Task Force, 2006), available at www.greaterohio.org/documents/ohio-ed-tf-inital-findings.pdf (last visited July 14, 2006) (proposing statewide definition of blight for use of eminent domain).

33. *See* Briffault, *Home Rule*, at 254 (summarizing cases upholding exercise of local authority under home rule in matters involving controversial issues such as local tobacco and firearm regulation, gay and lesbian rights, domestic partnership ordinances, campaign finance reform, and living-wage provisions).

34. From KRANE ET AL., HOME RULE IN AMERICA: Connecticut: "In many respects, local autonomy is a popular myth in Connecticut" (at 84); Florida: "[T]he meaning of home rule is dubious . . . [H]ome rule powers . . . are less than what they appear to be on paper" (at 94); Idaho: "Home rule in Idaho is more myth than reality" (at 120); Iowa: "For cities, the promise of home rule has been disappointing because it has not resulted in any significant independence from state interference" (at 148); Minnesota: "[I]n practice, the powers and form of governing in most home rule cities are similar to those found in statutory cities" (at 226); Mississippi: "[I]t is difficult to ascertain the implications of [home rule] provisions, since the constitution and statutes micromanage or mandate so many policies" (at 239); Nebraska: "[M]any observers believe that 'for all practical purposes, home rule in Nebraska does not really exist'" (citing Arthur B. Winter, *Nebraska Home Rule: The Record and Some Recommendations*, 59 Nebraska Law Review 626 (1980) (at 258); Nevada: "Home rule exists in name only" (at 269); New Mexico: "The notion that broad functional home rule exists is an exaggeration" (at 301); Tennessee: "[H]ome rule is just a concept, and one of limited importance in the realm of state-local relations . . . [I]t is difficult to argue that home rule municipalities have fared better fiscally or politically than their general law or private act counterparts" (at 397); Wyoming: "[M]any local officials believe that home rule has not turned out to be the gift originally intended" (at 462).

35. *See* HOME RULE IN AMERICA at 259, 383, 392 (Nebraska, South Dakota, and Tennessee) as examples of the trend of not pursuing charters.

36. *See, e.g.*, N.C. CONST. art. VII, § 1 ("The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable"); art. VII, § 3 (delineating authority of merged or consolidated local governments); art. V, § 2 (delineating scope of local authority to levy taxes and authorizing legislature to enact laws allowing local governments to contract with private parties for public purpose); art. V, § 4 (establishing limitations on local debt); art. II, § 24 (establishing limitations on local legislation).

37. Bowers v. City of High Point, 339 N.C. 413, 417, 451 S.E.2d 284, 287 (1994).

38. G.S. 160A-174(a); G.S. 153A-121(a).

39. G.S. 160A-174(b). The statute enumerates conditions that would constitute inconsistency, essentially codifying the tests for explicit and implicit preemption that a court would apply.

40. *See* Craig v. County of Chatham, 356 N.C. 40, 45, 565 S.E.2d at 176 (2002); State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

41. G.S. 160A-179 (begging); G.S. 160A-181.1 (sexually oriented businesses); G.S. 160A-184 (noise); G.S. 153A-131 (dangerous animals); G.S. 160A-303 (cities), 153A-132 (counties) (abandoned or junked motor vehicles).

42. G.S. 160A art. 19 (cities); G.S. 153A art. 18 (counties). For an analysis of the statutory authority of North Carolina local governments in the area of smart growth initiatives, *see* David W. Owens, *Local Government Authority to Implement Smart Growth Programs: Dillon's Rule, Legislative Reform, and the Current State of Affairs in North Carolina*, 35 WAKE FOREST LAW REVIEW 671 (2000).

43. G.S. 160A-177 (cities); G.S. 153A-124 (counties).

44. G.S. 160A-311 (cities), 153A-274 (counties) (public enterprises). Authorized public enterprises for both cities and counties are wastewater, water, public transportation, solid waste collection and disposal, off-street parking, airports, and stormwater management programs; and for cities only, electricity, cable television, and gas. G.S. 160A art. 18 (cities), 153A-444 (counties) (parks and recreation); G.S. 160A-493 (cities), 153A-442 (counties) (animal shelters);

G.S. 131E-7 (cities and counties, hospitals); G.S. 153A-263 (cities and counties, libraries).

45. *See* DAVID M. LAWRENCE & WARREN JAKE WICKER, MUNICIPAL GOVERNMENT IN NORTH CAROLINA tab. 1-4 (2d ed., Inst. of Gov't, Univ. of N.C. at Chapel Hill, 1995), listing 44 services authorized for both cities and counties, 15 for counties only, and 8 for cities only.

46. G.S. 160A-209 (cities), 153A-149 (counties) (property tax); G.S. 105-465, -483 (cities and counties, local option sales taxes); G.S. 160A-216 (cities), 153A-185 (counties) (special assessments). Specific statutes authorize some user fees, as in the case of public enterprises (G.S. 160A-314, cities; G.S. 153A-277, counties). In Homebuilders Ass'n of Charlotte v. City of Charlotte, 336 N.C. 37, 442 S.E.2d 45 (1994), the North Carolina Supreme Court held that local governments have implicit authority to charge fees for regulatory programs.

47. G.S. 158-7.1 (authorizing construction of infrastructure, acquisition of property, and appropriation of funds to promote local industrial or commercial development). Current law does not authorize the use of eminent domain for economic development.

48. G.S. 160A art. 4A, pts. 1, 4 (noncontiguous areas, by petition of owners); G.S. 160A, art. 4A, pts. 2, 3 (on their own initiative).

49. G.S. 160A art. 20.

50. *See* G.S. 160A art. 23 (municipal service districts), art. 24 (parking authorities), art. 25 (public transportation authorities); G.S. 153A art. 16, pt. 1 (county service districts).

51. *See, e.g.*, G.S. 153A art. 22 (regional solid waste management authorities); G.S. 160A art. 27 (regional transportation authorities).

52. G.S. 160A art. 5, pt. 4 (cities); G.S. 153A art. 4, pt. 4 (counties).

53. G.S. 160A-101(1), (2). There are no classes of cities in North Carolina, so different styles do not indicate different levels of authority and do not have any other legal significance.

54. G.S. 160A-104 (cities); G.S. 153A-60 (counties). There are no other provisions for citizen initiative, recall, or referendum in the general laws governing North Carolina local governments, although a few local charters contain such provisions. *See* David M. Lawrence, *Initiative, Referendum, and Recall in North Carolina*, POPULAR GOVERNMENT, Fall 1997, at 8.

55. G.S. 132 (public records); G.S. 143 art. 33C (open meetings); G.S. 159 art. 3 (finance); G.S. 143 art. 8 (procurement); G.S. 160A art. 12 (property disposal); G.S. 14-234 (conflicts of interest); G.S. 160A-75 (cities), 153A-44, 45 (counties) (voting).

56. N.C. CONST. art. II, § 24.

57. JOHN F. DILLON, THE LAW OF MUNICIPAL CORPORATIONS § 5, at 173 (2d ed., New York: James Cockcroft, 1873).

58. *Id.*

59. G.S. 160A-4; *see also* G.S. 153A-4 (counties).

60. G.S. 160A-4. The proviso is consistent with the preemption limitation contained in the general delegation of police power, as described earlier.

61. G.S. 160A-177 (cities); G.S. 153A-124 (counties).

62. *See, e.g.*, Porsh Builders v. City of Winston-Salem, 302 N.C. 550, 553–54, 276 S.E.2d 443, 445 (1981); Owens, *Local Government Authority*, at 694–96.

63. *See* Owens, *Local Government Authority*, at 679–700.

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

65. Bowers v. City of High Point, 451 S.E.2d 284 (1994). The reaction of local government attorneys to this apparent turnaround was well captured in the title of a review of the two decisions by A. Fleming Bell, II: *Dillon's Rule Is Dead: Long Live Dillon's Rule!* LOCAL GOVERNMENT LAW BULLETIN no. 66 (1995). The directive to use a broad construction is in G.S. Chapters 160A (cities) and 153A (counties). Bowers involved a narrow interpretation of a statute in G.S. Chapter 143. A court may well determine that even if broad construction displaces Dillon's rule or another restrictive default standard of judicial interpretation, it does so only with respect to power explicitly contained in G.S. Chapters 160A and 153A.

66. Smith Chapel Baptist Church v. City of Durham, 350 N.C. 805, 517 S.E.2d 874 (1999). In this case the decision relied on application of the "plain meaning" rule of statutory interpretation.

67. Bellsouth Telecomms. v. City of Laurinburg, 168 N.C. App. 75, 606 S.E.2d 721 (2005).

68. *Id.* at 83, 606 S.E.2d at 726 (emphasis in original).

69. *Id.* ("[W]here the plain meaning of the statute is without ambiguity, it 'must be enforced as written'"), quoting *Bowers*, 339 N.C. at 419–20, 451 S.E.2d at 289.

70. *Bellsouth Telecomms.*, 168 N.C. App. at 86–87, 606 S.E.2d at 728.

71. The new standard was applied in Durham Land Owners Ass'n v. Durham County, 630 N.C. App. 200 (2006), which held that the county lacked statutory authority to collect school impact fees. Noting its responsibility to determine legislative intent of the enabling legislation, the court stated that "there is little case law or legislative action surrounding the statute." No. COA05-736 at 3 (June 6, 2006).

72. *See* Bluestein, *Do North Carolina Local Governments Need Home Rule?*

73. G.S. 160A-4 (cities); G.S. 153A-4 (counties).

74. JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 453 (5th ed., Boston: Little, Brown, 1911).

75. *See* G.S. 160A-4 (cities); G.S. 153A-4 (counties).

76. *See, e.g.*, G.S. 20 (motor vehicles); G.S. 108, social services; G.S. 113, 113A, 143 (environmental regulation and pollution control); G.S. 143 (competitive bidding); G.S. 143 (public safety officer employment benefits); G.S. 122C (mental health); G.S. 130A (public health); G.S. 157 (housing authorities); G.S. 158 (economic development); G.S. 159 (local government finance); G.S. 162 (water and sewer systems).

77. As noted earlier, this approach was used by North Carolina courts earlier in the state's history (*see* Owens, *Local Government Authority*, at n. 81, *citing* Smith v. City of New Bern, 70 N.C. 14, 19 (1874) ("[local governments] must have the choice of means adopted to ends and are not confined to any one mode of operation").

78. See G.S. 160A art. 5, pt. 4 (cities); G.S. 153A art. 4, pt. 4 (counties).

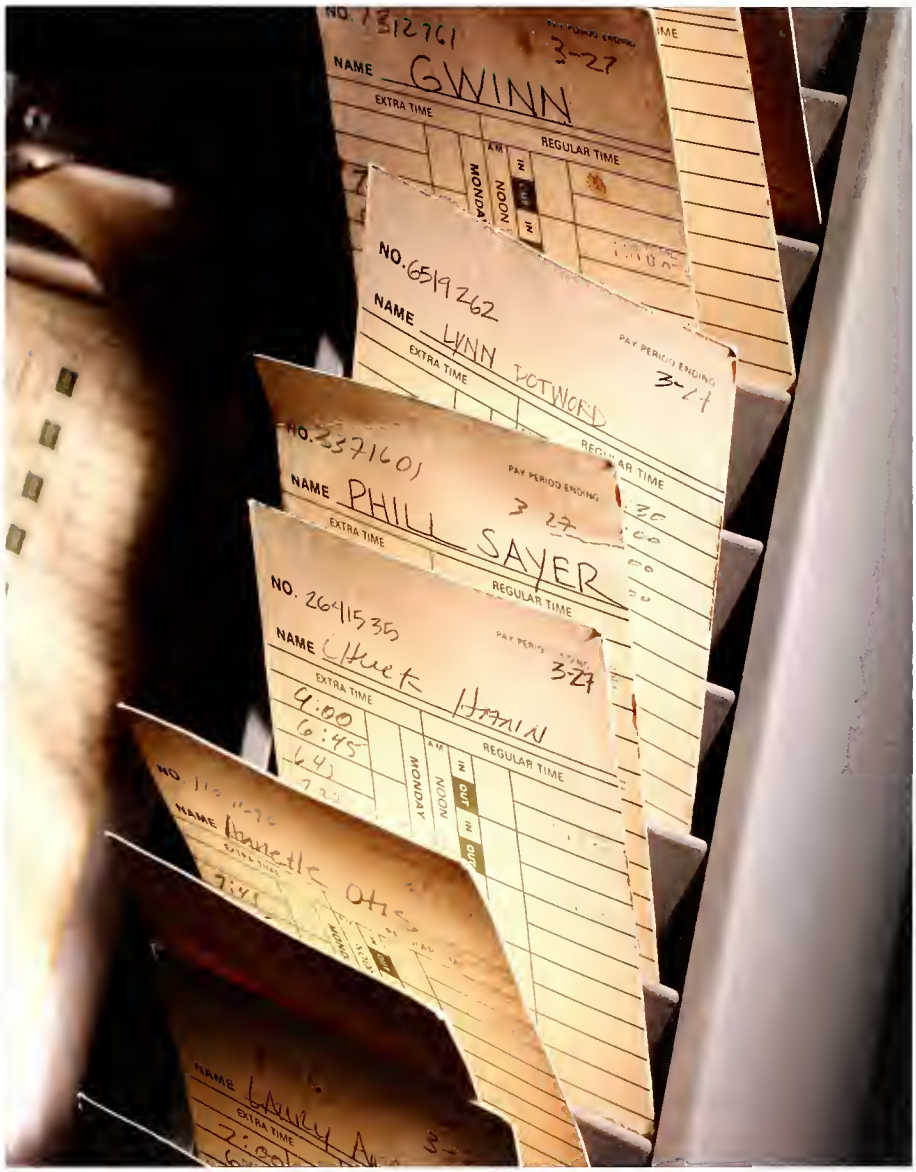
79. See, e.g., N.C. Sess. Laws 2005-143 (2005 Adv. Leg. Serv. no. 4) (repealing Beaufort County local act in order to conform law in that county to general laws); N.C. Sess. Laws 2005-145 (2005 Adv. Leg. Serv. no. 4) (conforming Town of Wrightsville Beach Charter to general law regarding appointment of board of adjustment).

Determining Whether a Worker Is an Independent Contractor or an Employee

Diane M. Juffras

Following the lead of the private sector, which is increasingly outsourcing core functions, government employers are more often turning to independent contractors (sometimes referred to as "contract employees") to perform work traditionally done by employees. Some of the advantages that employers see are these:

- **Having more flexibility in matching workers' skills to employers' needs.** Engaging workers as independent contractors allows employers to add and subtract personnel on an as-needed basis for shorter-term projects requiring specific skills.
- **Not having to pay benefits.** Employees are generally entitled to participate in the fringe benefit plans that the employer offers. In North Carolina this includes participation in the Local Government Employee Retirement System (LGERS) or the Teachers and State Employees Retirement System (TSERS), as well as in the employer's health insurance benefit plan. Independent contractors are not generally eligible for participation in benefit plans.
- **Being able to tap the expertise of retired employees.** Engaging former employees as independent contractors allows employers to obtain the services of experienced workers familiar with the organization who do not want to jeopardize their retirement benefits by returning to work full-time as employees.



Not just any worker can be classified as an independent contractor, however. "Independent contractor" is a distinct legal status determined by factors that go beyond an employer and an employee's common desire to contract for work on that basis. For example, both the U.S. Department of Labor, which administers federal overtime law, and the Internal Revenue Service (IRS), which oversees employee federal income tax withholding and Social Security and Medicare payroll contributions, have specific tests for determining whether a worker is an employee or an independent contractor for overtime and tax purposes. Federal and state antidiscrimination laws and state statutes governing who qualifies

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for workers' compensation and unemployment benefits use similar tests.

Few hiring relationships meet the legal test for independent contractor status. Employers who misclassify workers as independent contractors may incur significant (and unbudgeted) liabilities, such as back overtime pay, IRS penalties, and liability for the value of lost benefits.

This article summarizes the factors that a public employer should consider in determining whether a worker legally qualifies for independent contractor status or must be classified as an employee.[1] Each of the relevant legal factors is discussed through the example of a hypothetical North Carolina county that has just engaged the services of three new workers. The article concludes with a discussion of certain government positions whose correct classification is sometimes difficult.

Agreement to Work as an Independent Contractor Not Legally Significant

Paradise County's Dilemma

Paradise County needs an additional sanitation worker in its public works department, an additional visiting nurse in its health department, and an additional accounting technician in its finance department. In each case the new position would have the same job duties as already-existing positions. The county commissioners do not think it possible to fund all three requests. Rather than choose among the requests, they allocate enough money for each of the three departments to add an additional worker on what the commissioners call an "independent contractor" basis: the workers are to be paid at an hourly rate but will not receive any benefits from the county. The public works, health, and finance departments advertise for and hire workers, who sign agreements stating that they understand they have been hired as independent contractors and, as such, will not receive benefits. The payroll office, seeing that the workers are not receiving benefits, does not withhold income or Social Security and Medicare (Federal Insurance Contributions Act, or FICA) taxes or make employer-required FICA contributions.

After the new workers have been on the job for several months, one of them approaches the head of the payroll office and complains that she often works more than forty hours per week but does not receive overtime. She also complains that the county has not withheld Social Security and Medicare taxes from her paycheck. The worker is concerned that she is not receiving credit with the Social Security Administration for her time working for Paradise County and that she will not receive all the Social Security benefits to which she would otherwise be entitled at retirement.

The head of the payroll office tells the worker that because she was classified as an independent contractor, (1) she is not covered by the Fair Labor Standards Act (FLSA) and is not entitled to overtime pay and (2) the county is not required to withhold Social Security and Medicare taxes. Dissatisfied with this answer, the worker complains to her supervisor. The supervisor reminds her that she agreed to work as an independent contractor and tells her that if she does not like the arrangement, she can quit.

The worker files complaints with the U.S. Department of Labor and the IRS. They each begin an investigation into Paradise County's worker classifications.

Independent contractors are not entitled to overtime pay, and employers do not have to withhold Social Security and Medicare taxes.

This hypothetical situation illustrates one of the most common misconceptions about who is and who is not an independent contractor. Many employers believe that as long as a worker wants or agrees to be paid as an independent contractor, the employer is not responsible for paying for overtime or for withholding taxes for that worker. That simply is not so. All three workers whom Paradise County has hired as independent contractors are, as far as the law is concerned, employees.

The Right-to-Control Test

To determine whether a worker is an employee or an independent contractor for purposes of tax withholding and Social Security and Medicare contribution withholdings, the courts use a common-law test generally known as the "right-to-control" test. For FLSA overtime purposes, the courts use a version of the right-to-control test called the "economic reality" test.[2] Under both the right-to-control and the economic reality test, the essence of the relationship between a hiring organization and an independent contractor is the agreement by the independent contractor to do a discrete job according to the independent contractor's own judgment and methods, without supervision by the hiring organization. The hiring organization retains approval only of the results of the work. In contrast, an employer may require an employee to perform his or her duties in particular ways using particular methods at particular times. An employee may be disciplined—even discharged—for failing to follow the employer's instructions about how to perform a task. An independent contractor may not.

The Classic Independent Contractor

Imagine that a city wants to build a swimming pool. Officials of the city have opinions about what features they want in a swimming pool, but they do not know how to construct a swimming pool, and no one in the city's regular employ has experience in swimming pool construction. So the city engages a swimming pool contractor.

This is a classic example of the independent contractor relationship. The city will tell the swimming pool contractor what result it wants: a swimming pool of a particular size, in a particular layout, with specified depths, complete with certain accessories like diving boards, stairs, and ladders. The city and the contractor will agree on a price for the final product. Although the city may negotiate with the contractor and even have a price above which it will not go, the city will not be able to set the price unilaterally. The contractor, who will supply all the materials, equipment, and workers needed to construct the swimming pool, will estimate the time it will take to construct the pool, and the cost. The contractor will then determine how

much or how little profit he is willing to make to take this job.

Contrast this with the hypothetical Paradise County situation set forth earlier. The county did not set out to hire someone with specialized skills for a discrete job with respect to either the sanitation worker, the visiting nurse, or the accounting technician. What each department head asked for was funding to hire one additional employee. What each got was permission to hire someone to perform the job functions of an employee under an alternative compensation arrangement.

Five Key Factors

The test for independent contractor status looks at a number of factors, which may be grouped into five general categories: (1) the nature and the degree of the hiring organization's control over the worker; (2) the nature of the work performed—whether it is an integral part of the hiring organization's business; (3) the worker's opportunity for profit or loss; (4) the exclusivity and the duration of the relationship between the hiring organization and the worker; and (5) the hiring organization's right to discharge the worker. No single factor is ever controlling. Instead, the importance of a given factor varies depending on both the occupation at issue and the circumstances under which the services are rendered.[3]

A closer look at these factors makes clear that unlike the swimming pool contractor, the Paradise County workers cannot be classified as independent contractors. They must be classified as employees.

The Nature and the Degree of Control over the Worker

The more control that a hiring organization has over a worker, the more likely it is that the worker is an employee. A hiring organization has control over a worker when it has the right unilaterally to assign the worker a task or to require something of the worker at any given time. The hiring party does not have to exercise that right for the worker to be an employee as a matter of law.[4]

Working conditions that indicate employer control include the following:

- **Training** in the actual methods that the worker is to use or, more generally, in the hiring organization's policies and procedures.[5]
- **A requirement that the worker submit written or oral reports.** These may be reports of time spent on certain tasks or on the project as a whole. The worker may be required to give a detailed description of the work performed, or of clients or patients seen in a given period. A hiring organization does not have to monitor a worker's performance on a daily basis in order to exercise control.[6]
- **Payment of any kind of regular wage,** whether by the hour, the week, or the month. In contrast, payment by the job or on a commission basis is evidence of an independent contractor relationship.[7] Courts also consider the fact that the hiring organization has unilaterally set a worker's hourly wage as evidence that the hiring organization controls the worker.[8]

Think again about the construction of the swimming pool. Although city officials will no doubt be curious about how the work is progressing and may well visit the job site, they will not be telling the contractor how to excavate the earth or what method to use in mixing the concrete. Nor do they have the right to tell the contractor that when he is done with this swimming pool, they have another one for him to construct at the same price on the other side of town—although they and the contractor

may well come to some agreement on a second job. City officials may worry that the contractor is not working fast enough, but until the contractor misses a contractual deadline, they must hold their tongues.

Now think about Paradise County's "independent contractors." The sanitation worker, the visiting nurse, and the accounting technician each work under the supervision of another county employee. The sanitation worker has a route, a truck, and co-workers assigned to him by a supervisor. The visiting nurse has to follow the health department's guidelines for patient care and is required to adhere to applicable state and federal regulations governing the treatment and the billing of patients.[9] The accounting technician is told how the county tracks and records accounts payable and must use the software program already in place.[10]

All three workers have to abide by county work rules governing personal behavior. All are expected to work scheduled hours. They are not allowed to take care of personal or other business while working for Paradise County. Further, they are held to the same workplace standards for job performance and personal conduct as employees working for the county.

The conditions under which Paradise County's so-called independent contractors work make clear that in each case the county has the right to control the performance of their work.

An Integral Part of the Hiring Organization's Business

Whenever a worker performs services that are a core or integral part of the hiring organization's operation, the worker is more likely to be an employee than an independent contractor.[11] The courts use two measures to determine whether a specific job is central to an organization. One is whether the worker provides services that the employing organization exists to provide. For example, one federal court ruled that nurses who were hired by a crisis clinic to provide mental health crisis intervention and referral services to the public were performing the core services of the clinic.[12] Another federal court ruled that a housing coordinator who supervised one of three programs administered by a housing authority was an integral part of the housing authority's organization.[13] In a third case, a court found that treating patients was the reason that a group of psychologists had created a professional practice.[14] None of the positions in these examples were entitled to independent contractor status; all the workers were employees.

Another measure that courts use to determine whether a specific job is central to a hiring organization's business is whether the person doing the job performs the same work as people who are classified as employees. When "independent contractors" perform the same work as employees, they are considered to be integrated into the employer's hierarchy and are likely to be employees.[15]

In the case of the swimming pool contractor, the contractor clearly does not provide services that are basic to the employer's mission (because even if providing recreational services is basic to a city's business, building swimming pools is not). Nor does the contractor do work similar to that done by employees. Indeed, the whole point of bringing in the swimming pool contractor is to tap into expertise and experience that are both lacking in the city's workforce and unlikely to be needed again.

The situation in Paradise County is markedly different. Two of the new workers perform some of the "mission work" of the county (sanitation and public health), and the third performs work essential to the county's business operations (paying its bills). All three perform the same work as others hired as employees. A court would likely find all three to be integral parts of the county's operations. This factor also weighs heavily in favor of employee status.

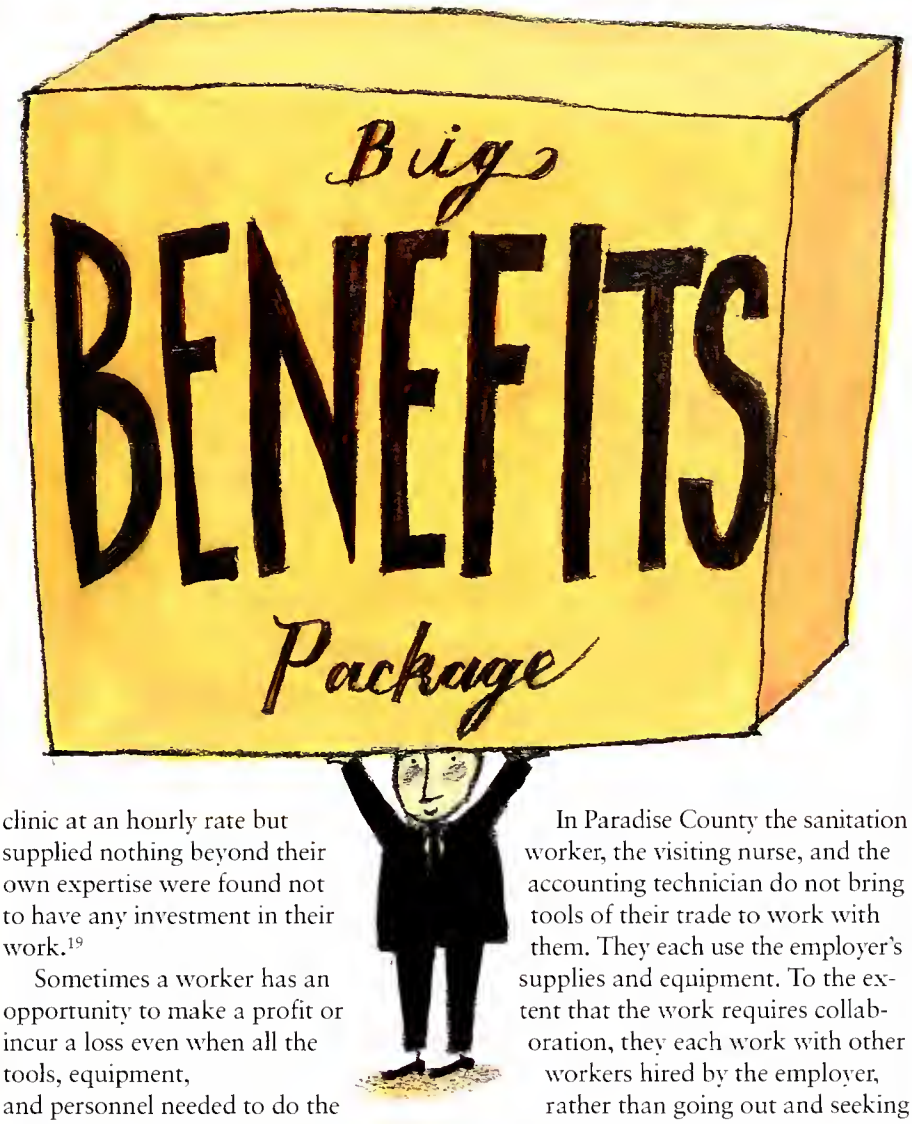
The Worker's Opportunity for Profit or Loss

Consider again the construction of the city swimming pool. The contractor will come to work having already purchased everything he needs to do the job. The city is unlikely to supply anything. Because the construction of a pool usually requires more labor than that of a single worker, the contractor will supply and pay his own assistants. He will factor the cost of the material, the equipment, and the assistants into the price of the job. Whether the contractor accurately assesses his direct and indirect costs determines whether he makes a profit or incurs a loss on the job.

When a worker has the opportunity to make a profit or incur a loss on a job—either by completing the work faster or more slowly than the worker anticipated, or at greater or lesser cost than estimated—the courts are likely to find that the worker is an independent contractor. Employees do not typically have the opportunity to make a profit or incur a loss because they are usually paid a straight salary or an hourly wage and do not normally supply their own materials, equipment, and personnel. A worker who has no investment in the work cannot make a profit or incur a loss.[16]

The facts of *Chao v. Mid-Atlantic Installation Services*, a Fourth Circuit Court of Appeals case, illustrate a real-world application of this factor. At issue was whether cable installers were independent contractors or employees entitled to overtime pay. The cable installers' opportunity for profit or loss manifested itself in a number of ways. First, the hiring company could charge the installers if they failed to comply with either the technical requirements of an installation or local ordinances regulating cable installation. Second, the installers' supplying their own trucks and tools, and having responsibility for their own liability and automobile insurance, showed that they incurred expenses of a type that was not normally borne by employees and that affected the amount they ultimately earned from a set of jobs. So too did their having responsibility for paying any assistants that they hired and for reporting payments made to the assistants to the IRS. These factors weighed heavily in the court's conclusion that the cable installers were independent contractors.[17]

In contrast, in another case a court found that when a hospital provided psychologists with staff, office space, and all the supplies necessary for them to see patients, the psychologists were employees, not independent contractors.[18] Similarly, in *Richardson v. Genesee County Community Mental Health Services*, nurses who worked at a crisis



clinic at an hourly rate but supplied nothing beyond their own expertise were found not to have any investment in their work.[19]

Sometimes a worker has an opportunity to make a profit or incur a loss even when all the tools, equipment, and personnel needed to do the job are supplied by the hiring organization. This is the case with certain kinds of service providers who control how many clients or patients they will see in a given day (physicians, for example) and thus how much the hiring organization may bill third-party payors like insurance companies. In two contrasting cases, the IRS found that a hospital physician whose compensation consisted solely of a percentage of his department's gross receipts was an independent contractor, whereas a hospital physician whose compensation also was a percentage of charges attributable to his department but who was guaranteed a minimum salary as well, was an employee.[20] The distinction was that the first physician ran a risk that his compensation might not be enough to cover his expenses, whereas the second physician ran no such risk.

In Paradise County the sanitation worker, the visiting nurse, and the accounting technician do not bring tools of their trade to work with them. They each use the employer's supplies and equipment. To the extent that the work requires collaboration, they each work with other workers hired by the employer, rather than going out and seeking assistants themselves. Their individual lack of investment in the resources needed to perform their respective jobs also weighs in favor of employee status for each of these workers, as does the fact that their compensation is entirely a function of the number of hours worked. They have no opportunity for profit or loss.[21]

The Exclusivity and the Duration of the Relationship

Independent contractors usually have a special skill and exercise initiative in seeking out assignments or clients. For example, electricians, carpenters, and construction workers, like swimming pool contractors, have special skills.[22] Registered nurses also are skilled workers.[23]

However, having a special skill is not in and of itself indicative of independent contractor status. What counts is whether the worker exercises significant initiative in locating work opportunities or clients. Thus, electricians and carpenters who serve the needs of a single hiring organization (like a city or a county) over a long period will likely be considered employees, rather than independent contractors. But when a worker advertises his or her services to the public on a regular and consistent basis, and performs services for a number of unrelated persons or businesses at the same time, that fact generally indicates that the worker is an independent contractor.[24] The swimming pool contractor is a case in point: The relationship between the city and the contractor will not be exclusive and long-lasting. It will last only as long as constructing the pool takes, although the contractor will continue to construct swimming pools for others.

Neither the job of sanitation worker nor the job of accounting technician requires any special skill or initiative. Individual sanitation workers do not generally offer their services to the public: trash collection is usually a municipal service or a service provided by a company under contract. If an accounting technician provided services to a variety of different clients at the same time, he or she could be an independent contractor. In Paradise County, however, the technician's working a regular forty-hour week for the county under direct supervision argues against such status.

The visiting nurse does have a special skill. This factor will not weigh heavily in favor of independent contractor status, however, because the nurse does not seek out clients on her own. Rather, she is assigned patients by the health department and is paid by the county, rather than by the patient.

Paradise County's expectation of a continuing relationship with its three new workers further indicates that they should be classified as employees.

The Right to Discharge the Worker

An employer typically exercises control over an employee through the threat of dismissal, which causes the employee to obey the employer's instructions. A true independent contractor, on the other hand, cannot be fired as long as he or she produces a result that meets the

hiring organization's specifications. So a hiring organization's right to fire a worker is usually treated as evidence that the worker is an employee, not an independent contractor.[25]

Summing Up: Three New Employees in Paradise County

In engaging the services of the sanitation worker, the visiting nurse, and the accounting technician, Paradise County has taken on three new employees, notwithstanding how the county or the workers describe the relationship. Why? Because Paradise County has (1) retained the right to control their work, (2) has the right to fire each of them, and (3) has not provided them with the opportunity to make a profit or incur a loss.

Further, for their part the workers (1) individually have made no investment in the performance of their services for the county and (2) do not seek out client opportunities on their own.

Finally, with respect to each of the workers, (1) both Paradise County and the worker envision a continuing relationship, and (2) the work done is an integral part of the business of county government.

As a matter of law, the workers are employees, not independent contractors.

Some Hard Cases

Positions Funded through Grants

Most workers hired to fill grant-funded positions will be employees rather than independent contractors. The IRS found that even when a worker paid out of grant funds had discretion with respect to the means and the methods of carrying out the grant activity, the employing organization had broad general supervision over the way the grant money was spent and a right to exercise direction and control. The worker, the IRS held, was an employee.[26]

Except for certain kinds of scientific research, most grants are made to an organization—sometimes to the individual who will carry out the project *and* the organization but rarely to the individual alone. This means that the hiring organization will usually have the right to exercise direction and control over the activities funded by the grant. As explained earlier, the right to control a worker's activities weighs heavily in favor of employee status, even if the hiring organization does not exercise that right.

Adjunct or Part-Time Instructors

Although educational institutions make the greatest and most obvious use of adjunct or part-time instructors, local governments also hire part-time workers to teach physical education and activity classes and other subjects. Use of adjunct instructors such as these appears, on its face, to be a textbook example of the proper classification of a worker as an independent contractor. First, adjunct instructors are generally engaged for a limited duration to do a defined job. Second, adjunct instructors typically have a particular expertise for which they are hired, and usually perform similar or related services for other organizations or individuals. Third, for both colleges and local government recreation programs, the hiring organization charges a fixed fee for the courses or sessions that adjunct instructors teach and typically pays them some percentage of that as a fixed fee for their services.

The IRS takes a different view, however. It has held that part-time instructors are employees when (1) the hiring organization (a) determines the courses that are offered, (b) determines the content and the hours of each course, (c) enrolls the students, and (d) provides the facilities at which the instruction is offered; and (2) the instructor (a) is required to perform his or her services personally, (b) has no investment in the facilities, and (c) does not bear a risk of profit or loss (that is, he or she is paid the same amount whether or not tuition and fee payments cover the hiring organization's expenses).[27]

Physicians in Local Health Departments

In the case of physicians, the right to control is a less important factor than is the extent to which they are economically independent of the hiring organizations. Because they have a high level of specialized training, physicians generally exercise almost complete discretion in their treatment of patients and are subject to relatively little day-to-day supervision.

The most significant factors in determining physicians' status are (1) how they are paid for their services—that is, on a percentage basis, a salary basis, or a percentage basis with a guaranteed minimum; (2) whether they are permitted to employ associate physicians or to engage substitutes when they are absent from work; (3) if they are permitted to engage substitutes, whether they or the hiring organizations are responsible for compensating the substitutes; and (4) whether they are permitted to engage in the private practice of medicine or to perform professional services for others.[28] When a physician's compensation from a local health department is a percentage of billings, and therefore variable and not guaranteed, the physician may usually be classified as an independent contractor. When the physician is paid a salary, either in whole or in part, or is paid an hourly wage, he or she almost always is an employee.[29]

A Price to Pay

An employer that misclassifies workers as independent contractors when they do not meet the legal test for that status may be subject to significant penalties under both the FLSA and the Internal Revenue Code. For workers covered by the FLSA, penalties include the following:

- Liability for overtime compensation going back two years—or three years if the employer has reason to know it has misclassified the worker
- Liquidated damages in an amount equal to the amount of overtime pay owed[30]

When the IRS determines that a worker previously classified as an independent contractor does not meet the right-to-control test and is legally an employee, the employer will be liable for the following:

- 1.5 percent of each worker's federal income tax liability when the misclassification was unintentional
- Both the employer's share of the FICA contribution and up to 20 percent of the employee's missing FICA contribution
- Interest on the amounts not withheld and other IRS penalties

The employer may not seek reimbursement from the worker for taxes, penalties, or fines imposed by the IRS.[31]

These liabilities make illusory the projected savings that caused the organization to engage workers as independent contractors in the first place.

A Possible Defense

Section 530 of the Revenue Act of 1978 provides employers with a complete defense against liability for failure to withhold employees' federal income taxes. To avail itself of the Section 530 defense (known as the "Section 530 Safe Harbor"), an employer must show that it has (1) treated a worker as an independent contractor, (2) filed all required federal employment tax returns on a basis consistent with the classification as an independent contractor (that is, the employer has filed Form 1099), and (3) had a reasonable basis for not treating the worker as an employee.[32] Section 530 relief is not available, however, for past-due Social Security and Medicare contributions.[33] Nor is it available when the employer has treated another worker holding a substantially similar position as an employee.[34]

Worker Classification and Employee Benefits

In several private-sector cases, workers engaged as independent contractors have sued their hiring organizations, claiming that they are common-law employees and therefore entitled to participate in the hiring organization's employee benefit plans.[35] In some cases the workers have sought the value of benefits retrospectively.

Whether such a suit could be successful against a North Carolina public employer is unclear. There are no reported cases from North Carolina state courts or federal courts involving claims of this kind against a public employer. But public employers should consider the following: Although TSERS, LGERS, the North Carolina Workers' Compensation Act, and the North Carolina Employment Security Act require workers to be employees before they are entitled to benefits, the North Carolina Supreme Court has defined "employee" in the context of workers' compensation and unemployment benefits by recourse to the common-law right-to-control test for employee status.[36] It would likely do the same in the case of TSERS and LGERS, as it would in interpreting a promise of retiree health benefits to "employees" meeting certain eligibility requirements.

Conclusion

Most people performing services for a public-sector organization are employees within the common-law definition of that term. True independent contractors are few. Government employers can unwittingly accrue substantial unfunded liabilities in unpaid overtime, unpaid employer FICA contributions, penalties for violating the FLSA and the Internal Revenue Code, and the value of unpaid benefits, when they misclassify employees as independent contractors. For this reason it is crucial that each public employer establish a procedure for individually analyzing any proposed relationship with a worker whom it plans to engage as an independent contractor. Whether that worker legally qualifies as an independent contractor will depend on

A Model Checklist to Help Determine Independent Contractor or Employee Status

Employers should modify this checklist as appropriate to the nature of their organization as a whole or the nature of a particular department. Every proposal to engage a worker as an independent contractor must be assessed individually. Whether that worker legally qualifies as an independent contractor will depend on the facts and the circumstances of the individual situation.

PART 1: **Yes** indicates that the factor weighs in favor of employee status. **No** indicates that the factor weighs in favor of independent contractor status.

Yes	No	Factor
Y__	N__	1. Does the hiring organization have the right to control when, where, and how the worker will do the job, or the order and the sequence in which the worker will perform services? (Check yes if the organization has the right, even if it does not intend to exercise that right.)
Y__	N__	2. Does the hiring organization set the worker's hours and schedule?
Y__	N__	3. Must the work be performed personally by the worker (as opposed to the worker subcontracting it out or furnishing his or her own substitute)?
Y__	N__	4. Is the hiring organization providing training of any kind?
Y__	N__	5. Does the hiring organization provide the worker with the tools, the supplies, and/or the equipment needed to do the job (as opposed to requiring the worker to bring his or her own tools, equipment, and supplies to the job)?
Y__	N__	6. Does an employee of the hiring organization supervise the worker?
Y__	N__	7. Does the worker have to submit written reports or make oral reports?
Y__	N__	8. Is the work performed on the hiring organization's premises or at a site controlled or designated by the hiring organization?
Y__	N__	9. If the worker is performing services off-site, does the hiring organization have the right to send supervisors to the site to check up on the worker? (Check yes if the organization has the right, even if it does not intend to exercise that right.)
Y__	N__	10. Can the worker be fired at the will of the hiring organization?
Y__	N__	11. Can the worker quit the job at will without incurring any liability?
Y__	N__	12. Will the hiring organization hire, fire, and pay the worker's assistants?
Y__	N__	13. Will the worker be paid by the hour, the week, or the month (as opposed to being paid for the successful completion of the job or the piece)?
Y__	N__	14. Has the hiring organization unilaterally set the worker's rate of pay?
Y__	N__	15. Does the hiring organization reimburse the worker for expenses and travel?
Y__	N__	16. Is the relationship between the hiring organization and the worker going to be a continuing one?
Y__	N__	17. Does anyone else perform the same or similar services for the organization as an employee?
Y__	N__	18. Are the services performed by the worker part of the core or day-to-day operations of the hiring organization?
Y__	N__	19. Is the worker a current employee of the hiring organization in another capacity?
Y__	N__	20. Was the worker an employee of the hiring organization at any time during the past year, and if so, did the worker provide the same or similar services as an employee?

PART 2: **Yes** indicates that the factor weighs in favor of independent contractor status. **No** indicates that the factor weighs in favor of employee status.

Yes	No	Factor
Y__	N__	21. Does the worker perform similar services for others as an independent contractor?
Y__	N__	22. Does the worker advertise his or her services to the public?
Y__	N__	23. Has the worker made any investment in facilities or equipment needed to do the work?
Y__	N__	24. Does the arrangement between the hiring organization and the worker allow the worker to make a profit or suffer a loss?

the particular facts and circumstances of the arrangement. Employers might consider using a checklist to help guide their evaluations of individual positions (see sidebar on page 32).

Notes

1. For a more detailed discussion of the factors applicable to an independent contractor analysis and of the consequences of misclassification, *see* Diane M. Juffras, *Independent Contractor or Employee? The Legal Distinction and Its Consequences*, PUBLIC EMPLOYMENT LAW BULLETIN no. 32 (May 2005).

2. For the Internal Revenue Code, *see* 26 U.S.C. § 3121(d)(2). The code does not formally define the term "employee" for the purpose of determining federal income tax liability. Instead, it provides that the usual common-law rules apply in determining the employer-employee relationship. *See also* Weber v. Comm'r, 60 F.3d 1104, 1110 (4th Cir. 1995); Eren v. Comm'r, 180 F.3d 594, 596–97 (4th Cir. 1999) (holding that because Internal Revenue Code section addressing tax exclusion for foreign earned income does not define "employee," common-law rules apply in distinguishing employees and independent contractors under federal tax law), *citing* Nationwide Mutual Ins. Co. v. Darden, 503 U.S. 318, 322–23 (1992). For the FLSA, *see* Rutherford Food Corp. v. McComb, 331 U.S. 722, 726–28, 730 (1947).

3. *See* Rev. Rul. 87-41 (1987), 1987-1 C.B. 296 (listing twenty factors that courts have considered over time in applying right-to-control test); *see also Weber*, 60 F.3d at 1110 (looking at seven of twenty factors to determine whether minister was employee of church); Hospital Resource Personnel, Inc. v. United States, 68 F.3d 421, 427 (11th Cir. 1995) ("Although no one factor is definitive on its own, collectively the factors define the extent of an employer's control over the time and manner in which a worker performs. This control test is fundamental in establishing a worker's status").

4. *See* 26 C.F.R. § 31.3401(c)-1(b) (employment tax regulations); *Weber*, 60 F.3d at 1110.

5. An architect was required to follow the procedures and the directives in the hiring organization's handbook, could not exceed budget, and had his hours, leave, and pay set by the employer. The court found that (1) the hiring organization had a right to control the architect's activities and (2) the architect was an employee for tax purposes. *See Eren*, 180 F.3d at 597. Similarly the IRS has held that a park attendant hired on a seasonal basis by a government agency was an employee, in part because the agency provided training and instructions on methods to be used, and set specific hours. *See* Priv. Ltr. Rul. 200323023 (Feb. 24, 2003). In the context of medical professionals, the right of the hiring organization to require compliance with its general policies is indicated by whether or not a physician or a registered nurse is subject to the direction and the control of a chief of staff, a medical director, or some other authority. *See* Rev. Rul. 66-274, 1966-2 C.B. 446 (holding that physician director of hospital pathology department was not subject to direction and control of any hospital representative such as chief of staff and thus was independent contractor); *see also* Rev. Rul. 73-417, 1973-2 C.B. 332 (holding that physician director of hospital laboratory was employee, in part because he had to comply with all rules and regulations of hospital); Richardson v. Genesee County Comty. Mental Health Serv., 45 F. Supp. 2d 610, 614 (E.D. Mich. 1999) (holding that employing agency providing nurses with guidelines for patient care as well as work rules governing employee conduct, exercised supervisory control for purposes of determining whether nurses were employees within meaning of FLSA).

6. *See* Brock v. Superior Care, 840 F.2d 1054, 1057, 1060 (2d Cir. 1988) (holding that when nurses work off-site with individual patients needing home or specialized care, employer still exercises control and supervision when it visits job sites even as infrequently as once or twice a month and requires nurses to keep and submit to it patient care notes required by federal and state law); *see also* Donovan v. DialAmerica Marketing, 757 F.2d 1376, 1383–84 (3d Cir.), *cert. denied*, 474 U.S. 919 (1985) (holding that home researchers who distributed research cards to other home researchers were subject to minimal control and thus were not employees under FLSA); Mathis v. Hous. Auth. of Umatilla County, 242 F. Supp. 2d 777, 783 (D. Or. 2002) (holding that housing coordinator was under housing authority's control when she worked at housing authority offices, she was subject to direction of executive director, and housing authority reserved right to change or reassign job duties). On the IRS side, *compare Weber*, 60 F.3d at 1110.

7. *See* Priv. Ltr. Rul. 9320038 (Feb. 22, 1993) (holding that department of corrections medical director paid hourly rate was employee); *see also* Priv. Ltr. Rul. 200339006 (June 9, 2003) (holding that accounting technician paid hourly wage was employee); Priv. Ltr. Rul. 9728013 (Apr. 9, 1997) (holding that part-time lifeguard paid hourly wage was employee); Priv. Ltr. Rul. 9326015 (Mar. 31, 1993) (holding that physician in university health clinic was employee); *Eren*, 180 F.3d at 597 (holding that payment of architect on salary basis was evidence of employee status); *Weber*, 60 F.3d at 1111 (holding that payment of minister on salary basis weighed in favor of employee status).

8. *See Brock*, 840 F.2d at 1060; *see also* U.S. Dep't of Labor Wage and Hour Op. Ltr. dated Dec. 7, 2000, 2000 WL 33126542 (holding that company's control of rate at which package-delivery drivers were compensated was factor leading to conclusion that drivers were employees rather than independent contractors); *Eren*, 180 F.3d at 597 (holding that architect whose pay and leave were set by hiring organization was employee).

9. *See* U.S. Dep't of Labor Wage and Hour Op. Ltr. dated Aug. 24, 1999, 1999 WL 1788146 (holding that hospital was likely joint employer of private-duty nurses with nurse registry).

10. *See* Priv. Ltr. Rul. 200339006 (June 9, 2003) (holding that accounting technician who was paid hourly wage; was given all necessary supplies and equipment and materials needed to perform her services; and received assignments from supervisor who determined methods by which services were to be performed was employee rather than independent contractor); Priv. Ltr. Rul. 200222005 (Feb. 15, 2002) (holding that clerical worker who was hired because she submitted lowest bid, but who worked under similar conditions to accounting technician in Priv. Ltr. Rul. 200339006, was employee).

11. *See* Thomas v. Global Home Prod., 617 F. Supp. 526, 535 (W.D. N.C. 1985), *aff'd in part, modified, and remanded*, 810 F.2d 448 (4th Cir. 1987) (holding that local distributor for cookie and candy company was employee).

12. *See* Richardson v. Genesee County Comty. Mental Health Serv., 45 F. Supp. 2d 610, 614 (E.D. Mich. 1999); *see also* U.S. Dep't of Labor Wage and Hour Op. Ltr. dated Aug. 24, 1999, 1999 WL 1788146 (holding that hospital was likely joint employer of private-duty nurses with nurse registry).

13. *See* Mathis v. Hous. Auth. of Umatilla County, 242 F. Supp. 2d 777, 785 (D. Or. 2002).

14. *See* Priv. Ltr. Rul. 8937039 (Sept. 15, 1989).

15. *See* Brock v. Superior Care, 840 F.2d 1054, 1057–58 (2d Cir. 1988); *Mathis*, 242 F. Supp. 2d at 785.

16. *See Richardson*, 45 F. Supp. 2d at 614 (FLSA case holding that nurses at mental health crisis clinic who had no opportunity for profit or loss were employees); Eren v. Comm'r, 180 F.3d 594, 597 (4th Cir. 1999) (Internal Revenue Code case holding that salaried architect who was not paid commission or percentage of profits had no opportunity for profit or loss); Weber v. Comm'r, 60 F.3d 1104, 1111 (4th Cir. 1995)

Internal Revenue Code case holding that minister paid salary and provided with parsonage, utility expense allowance, and travel allowance had no opportunity for profit or loss); *see also* Rev. Rul. 70-309, 1970-1 C.B. 199 (holding that oil-well pumpers who worked in field and assumed no business risks were employees); Priv. Ltr. Rul. 9251032 (Sept. 21, 1992) (holding that nurse in state tuberculosis outreach program who assumed no risk of profit or loss was employee).

17. *See* Chao v. Mid-Atlantic Installation Serv., 16 Fed. Appx. 104, 107, 2001 WL 739243 *3 (4th Cir. 2001); *see also* U.S. Dep't of Labor Wage and Hour Op. Ltr. dated Sept. 5, 2002, 2002 WL 32406602.

18. *See* Kentfield Med. Hosp. Corp., 215 F. Supp. 2d 1064, 1070 (N.D. Cal. 2002).

19. *See Richardson*, 45 F. Supp. 2d at 614; *see also Weber*, 60 F.3d at 1111 (holding that church's providing minister with office weighed in favor of employee status).

20. *See* Rev. Rul. 66-274, 1966-2 C.B. 446 (independent contractor); Rev. Rul. 73-417, 1973-2 C.B. 332 (employee).

21. *See* Priv. Ltr. Rul. 200339006 (June 9, 2003) (holding that accounting technician who was paid by hour and could not hire assistants or substitutes had no opportunity for profit or loss).

22. *See Chao*, 16 Fed. Appx. at 107, 2001 WL 739243 at *3; *see also Richardson*, 45 F. Supp. 2d at 614 (holding that nurse working after regularly scheduled hours at crisis clinic run by same employer did not locate clients independently), *citing* Brock v. Superior Care, 840 F.2d 1054, 1060 (2d Cir. 1988) (holding that nurses paid hourly rate by employing organization, rather than directly by patient, were likely to be employees); Mathis v. Hous. Auth. of Umatilla County, 242 F. Supp. 2d 777, 784 (D. Or. 2002) (holding that special-skills factor weighed toward employee status when housing coordinator's work and client contact took place at housing authority during regular business hours; coordinator did not use skills in any independent way).

23. *See Richardson*, 45 F. Supp. 2d at 614.

24. Performing services for two or more persons or businesses simultaneously, however, is not conclusive evidence of independent contractor status: a person can work for two organizations or persons as an employee of each.

25. The right of the worker to terminate his or her services at any time without incurring any liability is also characteristic of an employment relationship. In contrast, an independent contractor who quits without completing the job for which he or she was hired might have to forfeit some of the contract price. The hiring party also could sue the independent contractor either for specific performance (an order from the court to the worker to do the work agreed on) or for breach of contract, provided that the hiring party could show damages resulting from the failure to complete the work as agreed. *See* Weber v. Comm'r, 60 F.3d 1104, 1111, 1113 (4th Cir. 1995) (holding that although minister could not be fired at will, his failure to follow Book of Discipline could have resulted in termination by fellow members of clergy); Rev. Rul. 75-41, 1975-1 C.B. 323 (holding that physicians working for physician services corporation who could be fired at will were employees); Priv. Ltr. Rul. 9320038 (Feb. 22, 1993) (holding that medical director who could be fired with thirty days' notice was employee).

26. *See* Rev. Rul. 55-583, 1955-2 C.B. 405.

27. *See* Rev. Rul. 70-308, 1970-1 C.B. 199; Tech. Adv. Mem. 91-05-007 (Feb. 1, 1991); Tech. Adv. Mem. 89-25-001 (June 23, 1989); Priv. Ltr. Rul. 8728022 (Apr. 10, 1987).

28. *See* Rev. Rul. 66-274, 1966-2 C.B. 446; *see also Weber*, 60 F.3d at 1112 (holding that minister's work clearly was part of regular work of United Methodist Church); Priv. Ltr. Rul. 9320038 (Feb. 22, 1993) (holding that department of corrections medical director paid hourly rate was employee); Priv. Ltr. Rul. 8937039 (Sept. 15, 1989) (holding that psychologists treating patients for professional firm were employees).

29. *See* Rev. Rul. 66-274, 1966-2 C.B. 446; Rev. Rul. 73-417, 1973-2 C.B. 332.

30. *See* 29 U.S.C. §§ 216(b), 255(a); *see also* Brock v. Superior Care, 840 F.2d 1054, 1061 (2d Cir. 1988). Conduct that is merely unreasonable or negligent with respect to ascertaining an employer's obligations under the FLSA is not considered to be willful. *See* McLaughlin v. Richland Shoe Co., 486 U.S. 128, 131, 133–35 (1988), *overruling* Donovan v. Bel-Loc Diner, 780 F.2d. 1113 (4th Cir. 1985); *see also* Troutt v. Stavola Bros., 905 F. Supp. 295, 302 (M.D. N.C. 1995), *aff'd*, 107 F.3d 1104 (4th Cir. 1997) (holding that failure to seek legal advice, standing alone, was insufficient to establish willfulness when there was no pattern of complaints to employer or in industry that could establish knowledge or recklessness on part of employer). But an employer's failure to investigate whether its policies violate FLSA when employees have questioned those policies would be reckless. *See* Davis v. Charoen Pokphand (USA), Inc., 302 F. Supp. 2d 1314, 1327 (M.D. Ala. 2004); LaPorte v. Gen. Elec. Plastics, 838 F. Supp. 549, 558 (M.D. Ala. 1993). In the Fourth Circuit, whether a violation was willful or not under Title 29, Section 255(a), of the U.S. Code and thus whether the employer's liability for overtime pay extends back three or merely two years, will be determined by a jury. *See* Fowler v. Land Mgmt. Group, 978 F.2d 158, 162–63 (4th Cir. 1992); Soto v. McLean, 20 F. Supp. 2d 901, 913 (E.D. N.C. 1998) (denying defendants' motion for summary judgment).

31. *See* 26 U.S.C. §§ 3509, 6601, 6651, 6662, 6721.

32. Section 530(a)(2) provides that a taxpayer has a reasonable basis for not treating an individual as an employee if it has relied on either (1) judicial precedent, published rulings, technical advice with respect to the employer, or a letter ruling to the employer; (2) a past IRS audit of the employer in which there was no assessment attributable to the employer's treatment of individuals holding positions substantially similar to the position in question, as independent contractors; or (3) longstanding recognized practice of a significant segment of the industry in which the individual was engaged.

33. Private-sector employers may assert a Section 530 defense against liability for past-due FICA contributions. For the IRS reasoning behind denying this defense to the public sector with respect to FICA liability, *see* IRS Tech. Adv. Mem. 91-05-007 (Feb. 1, 1991) and Tech. Adv. Mem. 91-51-004 (Dec. 20, 1991). *See also* INTERNAL REVENUE SERV., INDEPENDENT CONTRACTOR OR EMPLOYEE? TRAINING MATERIALS, Training 3320-102 (10-96), at 1–37 (Washington, D.C.: IRS, Oct. 1996), available at www.irs.gov/pub/irs-utl/emporind.pdf.

34. *See* Kentfield Med. Hosp. Corp., 215 F. Supp. 2d 1064, 1068 (N.D. Cal. 2002); Select Rehab, Inc. v. United States, 205 F. Supp. 2d 376, 380 (M.D. Pa. 2002); Halfhill v. U.S. Internal Revenue Serv., 927 F. Supp. 171, 175 (W.D. Pa. 1996).

35. *See, e.g.*, Vizcaino v. Microsoft Corp., 120 F.3d 1006 (9th Cir. 1997), *cert. denied*, 522 U.S. 1098 (1998). For a detailed discussion of the arguments that workers might make for the value of benefits they should have received if they had been properly classified as employees, rather than as independent contractors, *see* Juffras, *Independent Contractor or Employee?*

36. *See* N.C. Gen. Stat. §§ 135-3(1), -1(10) (hereinafter G.S.) (TSERS); G.S. 128-21(10) (LGERS); G.S. 97-2(2), McGown v. Hines, 353 N.C. 683, 686 (2001), and Hughart v. Dasco Transp., 606 S.E.2d 379, 385 (N.C. App. 2005) (N.C. Workers' Compensation Act); G.S. 96-8(6)a and Employment Security Comm'n v. Huckabee, 120 N.C. App. 217, 219 (1995), *aff'd*, 343 N.C. 297 (N.C. Employment Security Act). For the right-to-control test under North Carolina law, see Hayes v. Elon College, 224 N.C. 11, 15 (1944).

Searching for Cost-Effectiveness in Emergency Medical Services

Douglas J. Watson and Floun'say R. Caver

Most local governments in North Carolina provide ambulance and emergency medical services (EMS) using various arrangements. Growth in population, changes for first responders in the post–9/11 era, and changes in Medicare's fee schedules for reimbursement for ambulance services have created pressures to manage the costs and the efficiency of ambulance services and EMS in many counties.

This article reports on the efforts of three local governments and a county-supported regional medical center in Lee County, Alabama, to find an intergovernmental solution to provision of these vital services. In Lee County, pressures to reduce the appropriations for ambulance services and EMS led an ad hoc committee consisting of representatives of the four entities in the county to propose funding of a comprehensive study using industrial engineering techniques. The results may be of value to North Carolina officials as they struggle with similar cost situations.

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Comparison of Lee County and North Carolina Counties

Lee County and its towns have important similarities with one out of five North Carolina counties. First, Lee County's overall population of about 123,000 is comparable to that of twenty North Carolina counties with populations from 90,000 to 170,000.

Second, the challenge of serving one or two large cities and a more sparsely populated area of county residents is similar to that faced by seventeen North Carolina counties. Lee County's population density is 189 persons per square mile. North Carolina counties ranging from Pasquotank and Wayne in the east, to Caldwell, Cleveland, and Iredell in the center and the west, have densities of 150–225 persons per square mile.

Finally, the overall land area of Lee County is more than 600 square miles, much like that in fourteen North Carolina counties whose land area is 550–700 square miles. (For the particular counties that are comparable on these various measures, see the sidebar on this page.)

Background

Like many growing southern counties, Lee County has faced escalating costs for the government services demanded by its increasingly urban population. As a result, local officials are interested in finding ways to provide services more efficiently. Lee County consists of several incorporated areas and a vast expanse of small rural developments and farmland. Two contiguous major cities—Auburn, a jurisdiction of about 47,000 people and the home of Auburn University, and Opelika, a jurisdiction of about 24,000 people and the county seat—make up the urban population. Opelika has stagnated for several decades, but Auburn has doubled its population in the past twenty-five years. The county and the two cities have worked together for two decades to provide some services, such as an airport, jails, visitors' services, and ambulance services. The cooperation has resulted in cost savings and greater effectiveness.

EMS, however, has been difficult to provide efficiently and effectively to Lee County's diverse population. Auburn–Opelika, the urban center, represents only a small percentage of the land area of the county and is relatively easy to serve, but the county's sparsely populated rural area is spread in all four directions from the urban area. Smiths Station, a recently incorporated city of a few thousand, is on the eastern border of the county but still depends heavily on the county government to provide urban services.

Before 1980, several private ambulance services served the county, primarily the two cities. The mayors of the two cities and Lee County's probate judge (who by virtue of that position served as chair of the county commission) considered the services inadequate because of their lack of professionalism, training, and dependability. In the early 1980s, Auburn's mayor led an effort to improve ambulance services by contracting with the East Alabama Medical Center, the only hospital in the county, located in Opelika. Through months of skillful negotiation and support building, the mayor developed a consensus to upgrade ambulance services.

As a result, the cities and the county developed a joint ambulance service to serve the entire county from one central location—the hospital. However, the two cities did not want to give up separate EMS divisions in their fire departments. Instead, they agreed to cover emergency calls in designated rural sections of the county at no cost to the county government.

In the late 1980s, Auburn city leaders approached hospital administrators and Opelika officials with a plan to consolidate the EMS operations of both cities with the hospital's ambulance service. Auburn policy analysts had determined that in more than 90 percent of the calls

Comparison of Lee County, Alabama, with North Carolina Counties

Lee County, Alabama
Population: 123,254
Population of municipalities: Auburn, 46,923; Opelika, 23,498
Area: 609 square miles
Population density: 189.1 persons/square mile

North Carolina Counties

Population of 90,000–170,000	*Population Density of 150–225 Persons/ Square Mile*	*Land Area of 550–700 Square Miles*
Alamance	Burke	Bertie
Cabarrus	Caldwell	Buncombe
Catawba	Cleveland	Chatham
Cleveland	Iredell	Davidson
Craven	Johnston	Guilford
Davidson	Lee	Harnett
Harnett	Lincoln	Haywood
Henderson	Nash	Hyde
Iredell	Onslow	Iredell
Johnston	Pasquotank	Moore
New Hanover	Pitt	Pitt
Onslow	Randolph	Rockingham
Orange	Rockingham	Union
Pitt	Union	Wayne
Randolph	Vance	
Robeson	Wayne	
Rockingham	Wilson	
Rowan		
Union		
Wayne		

Source: U.S. Census Bureau, State & County QuickFacts, available at http://quickfacts.census.gov (last visited June 28, 2006).

in which an ambulance was needed, the emergency response team was not needed. However, both responded to every call. In addition, the fire chief generally sent a fire truck, and the police dispatched a patrol car. The result was four emergency vehicles arriving at the home of a heart attack victim when only an ambulance was needed. Auburn city leaders questioned the practice of sending fire trucks to every emergency scene.

The fire chief in Opelika convinced the mayor and other city leaders that the consolidated service proposed by Auburn city leaders would lead to a lessening of service in his city. Although the chief's argument was not based on analysis, the elected officials were not willing to override him.

As a result, Auburn proceeded alone to contract with the hospital for a consolidated EMS system that included both ambulance services and emergency response. Auburn's ten employees (all paramedics) were given the option of joining the new EMS organization at the hospital or remaining as firefighters with the fire department. Most of the paramedics accepted employment with the hospital. A few opted to remain with Auburn as firefighters. Auburn's immediate savings in personnel costs were about $350,000 per year.

In more than 90 percent of 911 calls, an ambulance and three other emergency vehicles were sent when only an ambulance was needed.

Further, Auburn provided space in one of its fire stations for the hospital's EMS crew so that an ambulance could be stationed in the city for the first time. This action eliminated a five-mile commute for the ambulance from the hospital to downtown Auburn and lessened response time by 5–7 minutes on most calls.

By the late 1990s, the hospital's management of the combined EMS–ambulance service was judged to be a success, with significant savings accruing to Auburn. Opelika continued to provide duplicate service, even though its budget was strained.

In 2002, Medicare established a new fee schedule for reimbursement for ambulance services. They now were to be paid on the basis of the type of call, with a separate charge for mileage.[1] Also, the payments required by Auburn and Opelika to subsidize the county ambu-

Table 1. [illegible]

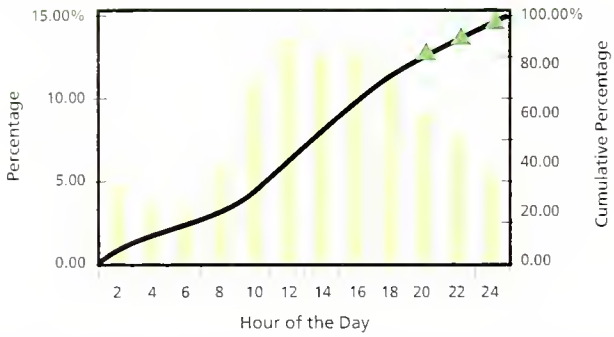
Site	Percentage of Calls	Percentage of Units
Opelika	41	40
Auburn	38	40
Smiths Station	21	20
Total	100	100

lance service had increased by 60 percent in ten years and were projected to rise 20 percent over the next five years.[2]

As a result, Auburn officials suggested a comprehensive study of the EMS–ambulance service to see if it could be made more efficient. At the annual meeting of the ad hoc oversight committee, Opelika and Lee County representatives readily supported the Auburn officials' suggestion, as did the hospital administrators. Each group agreed to pay one-fourth of the cost of the study.

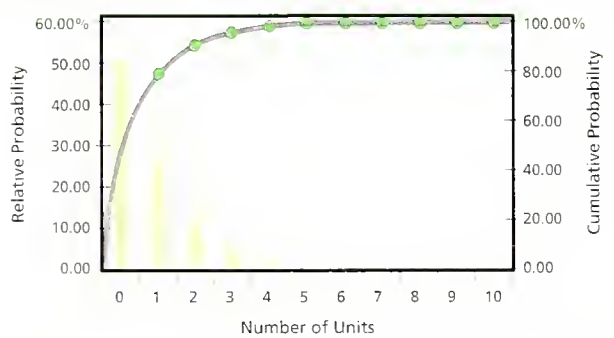
In response to a request for proposals, the Industrial and Systems Engineering Department at Auburn University submitted a proposal to conduct the study. A research professor and two graduate students would be the principal investigators. In the previous year, the same group had conducted an in-depth analysis of the Auburn Police Department that had been helpful to the city manager and the city council in responding to the police chief's demands for extra staff.[3] After discussing all the proposals, the decision-making group decided to contract with the university.

Figure 1. Demand, in Two-Hour Intervals, for Emergency and Nonemergency Calls Combined



Source: From Jerry A. Davis et al., *Evaluating Emergency Medical Services: Controlling the Rising Cost of Saving Lives*, 26 JOURNAL OF HEALTH AND HUMAN SERVICES ADMINISTRATION 485 (2004). Reprinted by permission.

Figure 2. Probability of Simultaneous Deployment for Emergency and Nonemergency Calls Combined



Source: From Jerry A. Davis et al., *Evaluating Emergency Medical Services: Controlling the Rising Cost of Saving Lives*, 26 JOURNAL OF HEALTH AND HUMAN SERVICES ADMINISTRATION 485 (2004). Reprinted by permission.

Note: The five reserve units are included, for a total of ten.

Table 2. [illegible]

	EMTs	Supervisors	Billing Office	Dispatchers
Productive work	21%	67%	88%	22%
Additional work	7	8	4	3
Voluntary idle [time]	70	25	8	74
Involuntary idle [time]	2	0	0	0

Source: From Jerry A. Davis et al., *Evaluating Emergency Medical Services: Controlling the Rising Cost of Saving Lives*, 26 JOURNAL OF HEALTH AND HUMAN SERVICES ADMINISTRATION 485 (2004). Reprinted by permission.

The Efficiency Study

The study commissioned by the local governments was coordinated by the ad hoc oversight committee, which included the mayor, the city manager, and the public safety director of Auburn; the mayor and the fire chief of Opelika; the probate judge of Lee County; and hospital administrators. Working with the committee, the Auburn University researchers defined the study's key objectives as follows:

- To observe and document the current EMS delivery method
- To develop key indicators of system performance
- To evaluate and interpret the key indicators
- To identify and quantify expenses and revenue associated with the ambulance service
- To identify areas of possible improvement and to quantify associated cost savings
- To discuss alternative methods of providing the ambulance services and EMS[4]

The ad hoc committee and the researchers agreed on a research methodology that would center on proven industrial engineering techniques, such as historical data analysis and elemental time studies. Historical data analysis is used to document and quantify current demand patterns. Elemental time studies are used to study repetitious job duties, breaking them down in order to define

key elements and recommend cost-saving changes. The merging of historical data and observational data (elemental time studies) offers a basis for an accurate description of a work environment and for quantifiable, valid, and realistic recommendations.

Historical Data Analysis

To begin the data analysis, the researchers first had to identify and choose potential data sources. In EMS, important data are collected in run logs, patient care reports (PCRs), and insurance documents, among others. For this study the researchers decided that the PCRs would be the primary data source. The PCRs contain data on time of dispatch, time of arrival on scene, time of departure from scene, time of arrival at destination, and severity type (emergency versus nonemergency).[5]

From the PCRs the researchers calculated and analyzed the following metrics:

- Dispatch time—the time elapsed from call receipt to dispatch
- Service time—the total time from dispatch until return to service
- Time spent on scene—the difference between the arrival time and the departure time
- Call volume and severity type by site
- Time of call per twenty-four-hour day
- Number of units simultaneously deployed

These performance metrics allowed the researchers to analyze service efficiency, the efficiency of the allocation of human resources and equipment, and scheduling (peak-demand) efficiency. Findings for service efficiency were a mean emergency response time of 8.6 minutes and a mean service time of 34.0 minutes. Although the response time was slightly higher than Ammons's findings on response time for cities with populations greater than 100,000, the ad hoc committee deemed both metrics acceptable.[6]

The results of the analysis of the efficiency of allocations indicated about a 40-40-20 split of human resources and equipment among Opelika, Auburn, and Smiths Station (see Table 1).[7] The similarity between site demand and equipment dispersion suggested that the equipment was efficiently allocated.

The peak-demand analysis captured, in two-hour intervals, the number and the percentage of emergency and nonemergency calls received, by time of day (see Figure 1). In military time, peak demand was between 1000 hours (10 A.M.) and 2000 hours (8 P.M.). This finding resulted in the researchers recommending reduction of coverage at Stations 1 and 2 by one unit during the night shift (midnight to 6 A.M.). By doing so, the system could realize a savings per station of $82,600, resulting in a total savings of more than $160,000 per year.

The researchers conducted similar demand analyses for days of the week and months of the year. For emergency calls, the results indicated that Friday

and Saturday experienced the highest demand, with the other days receiving relatively equal demand. For nonemergency calls, Friday again experienced the highest demand, and Sunday experienced the lowest demand. As for months of the year, September and October were the months of highest demand for emergency and nonemergency calls combined.[8] (Each fall, more than 90,000 students return to Auburn University, and even more people attend the Auburn University football games.)

Bureaucrats and politicians are prone to overestimation or neglect of cues from the environment because of human beings' inability to process and decode such cues efficiently.[9] The result is inefficient decisions. In EMS one of the strongest arguments for increased staffing levels centers on the possibility of simultaneous deployment. This argument puts too much weight on the likelihood of a crisis. Thus an important analysis for local EMS and ambulance service providers is the probability of simultaneous deployment.

The Auburn University researchers' analysis of the relative and cumulative probabilities of multiple-unit deployment in Lee County showed about a 50 percent probability that no unit would be deployed at any one time, about an 80 percent probability that one unit or less would be deployed, and a more than 90 percent probability that two units or less would be deployed (see Figure 2). This finding indicates that simultaneous deployment, although possible, should not dominate arguments for continuing inefficient staffing arrangements. In the post–9/11 environment, such a metric also should be used by other emergency services to ensure an informed discussion of emergency response staffing.

Elemental Time Studies

The ad hoc committee insisted on moving beyond historical data analysis. The region had been changing quickly, so the committee believed that observational data were needed to make informed decisions. As a result, the researchers conducted "shift time studies," in which the researchers spent entire work shifts with the employees, studying major job functions. They performed about 405 hours of observation, 325 of which were dedicated to observing the work of emergency medical technicians (EMTs). The time studies focused on identifying and analyzing the job functions of EMTs, dispatchers, supervisors, and billing personnel. The job tasks were identified as productive work, additional work, voluntary idle time, and involuntary idle time. "Productive work" was defined as work directly related to EMS (communications, administration, travel, patient care, and dispatch); "additional work," as station and unit cleanup and miscellaneous tasks; "voluntary idle time," as time for sleeping, personal hygiene, and socializing; and "involuntary idle time," as idle time over which the individual being srudied had no control.[10]

EMS staff and equipment were situated throughout Lee County: 2 units at Station I (Opelika), 2 at Station II (Auburn), and 1 at Station III (Smiths Station). A unit was normally staffed by two paramedics (EMT–Ps), the highest EMT level and highest pay grade. The 2002 workforce consisted of 3 dispatchers, 5 supervisors, 2 billing personnel, and 51 EMTs, 84 percent of whom were EMT–Ps, 12 percent EMT–II's (intermediate), and 4 percent EMT–I's (basic).[11]

The time studies identified several areas of opportunity in staffing allocation and job functions. For example, units were normally staffed by EMT–Ps. This practice created units with maximum costs. Thus, one recommendation was to move to a tiered response system relying on units with mixed EMT levels and pay grades—say, an EMT–P, an EMT–I, and a driver, instead of two EMT–Ps and a driver. By diversifying the units, the system could save more than $100,000, depending on the cost to hire new EMT–I's or EMT–II's.

Savings also could come from combining the job functions of various office personnel. The productive time worked by the billing office, the supervisors, and the dispatchers suggested an interesting opportunity (see Table 2). The billing office used 88 percent of its time in productive work. However, the dispatchers spent 77 percent of their time in unproductive work (additional work plus voluntary idle time), and the supervisors were involved in voluntary idle tasks 25 percent of the time. Improved efficiency could result from the supervisors and the dispatchers using their voluntary idle time to perform billing tasks, eliminating or reducing the need for the billing office. Also, merging the ambulance dispatch service with existing local government dispatch operations in Auburn and Opelika might result in savings.[12]

The Intergovernmental Cooperation

Between 1980 and 2000, Auburn and the East Alabama Medical Center experienced a successful intergovernmental relationship in providing consolidated EMS and ambulance service. Auburn

realized an immediate savings of about $350,000 per year, and the hospital received additional revenue with just a small increment in workload (because only about 10 percent of ambulance calls required rescue equipment).

However, Opelika was reluctant to enter the cooperative, resulting in duplicate services and budget inefficiency. Opelika's hesitance was predicated on overestimation of worst-case occurrences, in particular on the judgment that a combined operation would result in reduced service to Opelika.

In light of this, in 2002 the ad hoc committee acknowledged the continuing need for the several entities to work together in order to provide a more efficient ambulance service. Although most of the findings of the study supported the current personnel structure and station location, the committee requested that the hospital administrators implement several recommendations to forestall future increases in the annual operating budget supplement paid by the local governments. Specifically, the committee asked that the number of personnel be reduced during the early morning hours, when call volume was at its lowest.

However, the ad hoc committee was reluctant to implement recommendations that required true cooperation. For example, the study identified potential savings from consolidation of the hospital's ambulance dispatch services with Auburn's and Opelika's existing dispatch services. For various reasons related to trust and turf, the committee did not call for this consolidation. As a result, the potential savings were not realized.

Through their analysis of the Lee County ambulance services, the researchers identified the following enablers and constraints to intergovernmental cooperation:

Enablers

- The willingness of all governments to cooperate for a workable solution that would benefit all parties
- The use of independent and reputable consultants to obtain objective recommendations on service efficiency
- The researchers' regular reporting to the ad hoc committee on their progress

Constraints

- Perceptions of a power imbalance among the parties (representatives of one government sensing that representatives of another government were having too much influence on the outcome of the study), in an otherwise competitive environment among the governments
- A fear that one party would benefit at the expense of the others
- Personal dislike or distrust based on previous efforts to cooperate

Conclusion

An interesting element of the study was its use of industrial engineering techniques such as elemental time studies and historical data analysis to evaluate the county's EMS structure. These kinds of techniques are rarely used in the public sector, despite constant pressure on local government officials to be more efficient.[13] Objective data-collection measures (time studies) provide an accurate representation of the system, and they serve as a solid foundation from which to continue generating recommendations for improvement.

An unusual outcome of the study was the hospital administrators' conclusion that the EMS–ambulance service did not generate enough money or good will for the hospital. As a result, they encouraged the ad hoc committee to consider alternative means of providing the service. Since 2003 the committee has met occasionally and studied various options, including privatization. As of this writing, serious discussions are under way about alternative arrangements beyond privatization, including creation of an EMS special district directly supported by the taxpayers. This development suggests a willingness to consider a long-term arrangement that would institutionalize intergovernmental cooperation in order to provide efficient ambulance services. Moreover, it illustrates awareness that competition among multiple service providers, public or private, might not be efficient and that an EMS district (a service monopoly) might produce the most cost-effective structure.

Intergovernmental cooperation in a Lee County EMS will likely result in a more rational and cost-effective approach to the performance of this vital service. In a more stable political environment, the study might have resulted in immediate implementation and savings. However, in a situation involving three local governments, a hospital, and rural interests, developing a long-term solution is more difficult. Regardless of future steps, the detailed study of the EMS operations provides a solid basis for decision making.

Notes

1. Section 4531(b)(2) of the Balanced Budget Act of 1997 added Section 1834(1) to the Social Security Act. It mandated a national fee schedule for ambulance services performed under Medicare Part B. The fee schedule went into effect on April 1, 2002. *See* Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to Physician Certification Requirements for Coverage of Nonemergency Ambulance Services, 67 Fed. Reg. 9100 (2002) (to be codified at 42 CFR pts. 410, 414).

2. Jerry A. Davis et al., *Evaluating Emergency Medical Services: Controlling the Rising Cost of Saving Lives*, 26 JOURNAL OF HEALTH AND HUMAN SERVICES ADMINISTRATION 485 (2004); Jerry A. Davis, LEE COUNTY EMS EFFICIENCY STUDY, PARTS I & II. TECHNICAL REPORT (Auburn, Ala.: Auburn Univ. College of Eng'g, 2002), available at City of Auburn Public Library, 749 East Thach Ave., Auburn, AL 36830 (Reference 352.9 LEE).

3. Douglas J. Watson et al., *Use of Industrial Engineering in Measuring Police Manpower: A Small City Case Study*, 26 PUBLIC PERFORMANCE & MANAGEMENT REVIEW 132 (2002).

4. Davis et al., *Evaluating Emergency Medical Services*.

5. *Id.*

6. DAVID N. AMMONS, MUNICIPAL BENCHMARKS (2d ed., Thousand Oaks, Cal.: Sage Publications, 2001).

7. Davis et al., *Evaluating Emergency Medical Services*.

8. *Id.*

9. *See* BRYAN D. JONES, POLITICS AND THE ARCHITECTURE OF CHOICE: BOUNDED RATIONALITY AND GOVERNANCE (Chicago: Univ. of Chicago Press, 2001).

10. Davis et al., *Evaluating Emergency Medical Services*.

11. *Id.*

12. *Id.*

13. Watson et al., *Use of Industrial Engineering*.

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willingness of the members of the General Assembly to commit this funding says a lot about how important the courts are to the state, and we are appreciative of the support they have offered."

Brannon Retires

On June 30, 2006, Joan G. Brannon retired from full faculty service as the Charles Edwin Hinsdale Professor of Public Law and Government (a title she earned in 1998).

Joan G. Brannon

Brannon arrived at the School of Government in 1971 fresh from achieving high honors at the UNC at Chapel Hill School of Law. For the ensuing thirty-five years, she devoted her considerable intellect and good humor to education, advising, and research on behalf of magistrates, clerks of superior court, and sheriffs. Her career has had a positive and lasting effect on the state.

As a young faculty member, Brannon explored several areas of work before joining Charles Edwin Hinsdale in court administration. "Ed was doing everything with the courts but criminal law," she recalled. "It was a large and growing field, and I enjoyed the breadth of cases that magistrates were dealing with."

Brannon soon began teaching, advising, and writing for magistrates and clerks of superior court. In a natural progression, she eventually taught, advised, and wrote for sheriffs, too. Over the years she has answered thousands of questions, taught innumerable new court and law enforcement officials about the parameters and duties of their jobs, and provided expert counsel to officials faced with difficult situations.

Magistrates are required by law to take and pass the Basic School for Magistrates, which was in Brannon's hands from the 1970s until her retirement. During her years on the job, she expanded this and other professional training available, including the magistrates' association conferences; update schools for magistrates; a small claims school; annual conferences for clerks of superior court; an annual conference for assistant and deputy clerks of superior court; a school for new clerks of superior court; and, as needed, civil process schools for sheriffs.

Brannon's articles and book chapters are numerous, some published by the Institute of Government and others appearing in publications such as the *Administration of Justice Bulletin* and clerks' procedures manuals. Her books include *Trying Summary Ejectment Cases, North Carolina Sheriffs' Civil Duties: Handling Writs of Execution, North Carolina Clerks of Superior Court Procedures Manual, North Carolina Manual for Magistrates,* and *The Judicial System in North Carolina.* She edited *Popular Government* from 1974 to 1976 and *North Carolina Legislation* from 1974 to 1979.

Brannon also found time for substantial work on committees devoted to improving the judicial system, mental health services, and the University. Of particular note was her long service on the Pattern Jury Committee (twenty-two years), on the Administrative Office of the Courts Forms Committee (twenty-one years), as co-counsel to the North Carolina Courts Commission, and on a series of University committees studying the implementation of Title IX on campus and in collegiate athletics.

For the next three years, Brannon will work part-time teaching and advising sheriffs on civil process issues, completing a comprehensive small-claims book for magistrates, and thoroughly updating the *North Carolina Clerks of Superior Court Procedures Manual.*

"This job has been ideal," Brannon says, explaining how she was attracted to the Institute by the unusual opportunity to apply academic research to practical teaching. "To have a connection with people doing the work, and still teach and write," she muses, "has been a perfect situation."

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Behind the Scenes at the School of Government

Staff of the School's 15,000-volume Joseph Palmer Knapp Library expertly field hundreds of requests for assistance each year. *Left to right:* Marsha Lobacz, assistant librarian; Alex Hess III, librarian; and Yadira Conyers, library assistant.

Behind the Scenes at the School of Government

The work of the School's Publications Division is much in evidence, but its staff are rarely seen. Books and course materials flow from the division, along with bulletins, program flyers, annual reports, catalogs, and Web postings. Thousands of people in North Carolina benefit from the staff's work every year but do not know who they are.

Angela Williams, director of publications, and Kevin Justice, production manager, oversee the School's busy and complex world of editing, design, printing, distribution, and sales. The division produces up to 100 major publications each year and myriad smaller publications.

Books, bulletins, reports, flyers, posters, banners, and much more fall under the creative purview of talented and award-winning graphic designers Robby Poore and Dan Soileau.

An experienced hand at deciphering handwriting and laying out course agendas, Lisa Wright has more than eighteen years of experience in word processing and desktop publishing.

Associate editors Jennifer Henderson, Lucille Fidler, and Roberta Clark are masters at correcting faulty grammar, supplying just the right word, creating indexes that make faculty research as accessible as possible, and ensuring that even the most technical publications leave the division clearly written and error-free. Not pictured: Nancy Dooly.

Christopher Toenes, bookstore manager, and Katrina Hunt, marketing and sales manager, are the people to contact if you have questions about School of Government publications and how to purchase them. The renovation of the Knapp-Sanders Building created a new bookstore on the School's main floor, so finding faculty publications when you are attending a class in the building is easier than ever. And the School's online bookstore and secure shopping cart provide twenty-four-hour access to publications.

Steve Rogers, copy services supervisor (center right) and Ernest Thompson, copy services assistant (center left), keep their Canon ImageRunner 110 busy as they produce more than six million copies of educational materials for the School's clients every year. Thomas Buske, distribution assistant (far left), and Mark Jarrell, mail services assistant (far right), ensure that publications are received and shipped promptly and in good order.

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Vogt Retires

On July 1, 2006, A. John "Jack" Vogt retired from regular University service.

A short list of courses taught and developed by Vogt over his thirty-three years at the Institute—annual budget preparation, capital planning and finance, capital budgeting for smaller local governments, budgeting for local elected officials, cash management and investment of public funds, evaluation of local governments' financial conditions, risk management and insurance, and financial analysis techniques—instantly reveals why his teaching and advising have become legendary.

Ann Jones, budget director of Winston-Salem, said in a 2006 article, "If a mild-mannered Midwesterner with a charming, self-deprecating wit can be called a 'budget guru,' that would be our Jack Vogt . . . He has earned a devoted following from grateful students and colleagues in North Carolina and beyond."

A. John Vogt

Thousands of students, ranging from mayors, city council members, and county commissioners to state and local budget and financial officials, have benefited from Vogt's expertise. In addition to teaching his regular courses, Vogt directed the Institute's Municipal and County Administration courses from 1991 to 1995, and he designed and directed the nationally acclaimed North Carolina Local Government Performance Measurement Project (now called the Benchmarking Project).

As a faculty member in the UNC Master of Public Administration (MPA) Program since 1973, Vogt has helped new generations of managers, finance and budget officers, nonprofit directors, and others prepare for successful careers in public service.

"I've always liked teaching and the almost daily interaction I have with both public officials and MPA students," says Vogt. "Calls from officials about current issues they are dealing with have helped me bring real situations into the classroom and blend the worlds of practice and theory. I don't think I would have been happy doing all one or the other."

Throughout his career he has created and taught innumerable short seminars and conference sessions for local, state, and national organizations across the United States. He also has advised state legislative committees on capital budgeting, and from 1986 to 1989, he directed the Institute's Summer Intern Program in State and Local Government for undergraduates.

No less prolific in publishing, Vogt has produced major works, among them, *Capital Improvement Programming: A Handbook for Local Government Officials*; *Capital Budgeting and Finance: A Guide for Local Governments*; and the award-winning *Guide to Municipal Leasing*. From 1976 to 1981, he edited *Popular Government*.

Vogt's career accomplishments were recognized in 2003 with the Kenneth Howard Career Achievement Award of the Association for Budgeting and Financial Management (a special interest section of the American Society for Public Administration) and more recently with the A. John Vogt Award for Outstanding Commitment to the Advancement of Local Government Budgeting and Evaluation, bestowed by the North Carolina Local Government Budget Association. The association especially honored Vogt by naming him the first recipient of this new annual award.

In looking back over his career, Vogt credits his success to preparing carefully for classes, enlisting class participation, and, when calls came in, listening carefully and responding quickly. No doubt his students would agree, but they would add to the list his warmth, friendship, and genuine interest in their welfare.

In retirement, Vogt plans to spend more time with his family and community. He will work part-time at the Institute for the next three years, teaching and writing on capital budgeting and finance.

Smith Recognized for Teaching Excellence

Associate Professor Jessica Smith has been selected as the next recipient of the School of Government's Albert and Gladys Coates Term Professorship for Teaching Excellence. Smith will hold the two-year professorship from September 2006 through August 2008.

"Jessie is a wonderful choice," said Michael R. Smith, dean of the School.

Smith joined the School in 2000 with a goal of working to improve the administration of justice in the North Carolina court system. She researches, teaches, and writes in the area of criminal law, working primarily with judges of the superior court. Each year, Smith teaches in and coordinates two conferences for superior court judges and several seminars. She also provides extensive advising on matters of law and changes in legislation. In addition to her print publications, she has created an innovative series of Internet-based training materials that are available on demand to superior court judges.

Jessica Smith

Before her work at the School, Smith practiced law at Covington & Burling, in Washington, D.C. She also clerked for U.S. District Judge W. Earl Britt in the U.S. District Court for the Eastern

District of North Carolina and for Senior U.S. Circuit Judge J. Dickson Phillips Jr. in the U.S. Court of Appeals for the Fourth Circuit.

Smith was one of eleven nominees considered by the School's Teaching Development Committee. The committee's recommendation of Smith was unanimous, citing her as "a truly outstanding, committed, and skilled teacher—a role model for the excellence in teaching to which all faculty members at the Institute and School of Government aspire."

The teaching award is named for Albert Coates, who founded the Institute of Government (now part of the School) in 1931 and served as its director until 1962, and his wife, Gladys, who was a partner in the Institute's development and an authority on student government in North Carolina.

School Welcomes New Faculty Members

Dona Lewandowski joined the faculty in June 2006 as a lecturer in public law and government, specializing in non-criminal-law issues for magistrates. These issues include summary ejectment, small claims procedure, performing of marriages, and appointment and removal matters.

Lewandowski previously served on the faculty from 1985 to 1990, working with district court judges in the area of family law. In the intervening years, she focused on raising her children, taught extensively in the Raleigh homeschool community, and served as an adjunct faculty member at Duke University.

Before her first term on the faculty, Lewandowski worked as a research assistant to Chief Judge R. A. Hedrick of the North Carolina Court of Appeals. She holds a B.S., summa cum laude, and an M.A. from Middle Tennessee State University and a J.D., with honors, from The University of North Carolina at Chapel Hill, where she was elected to the Order of the Coif.

Dale J. Roenigk became director of the North Carolina Benchmarking Project on July 1, 2006, replacing William C. Rivenbark. From 2005 to the present, he served as the coordinator of the project and an adjunct lecturer.

Dona Lewandowski

Dale J. Roenigk

The Benchmarking Project, which is located in the School's Institute of Government, was created in 1995 to provide comparative data and assessments of service delivery and costs for North Carolina counties and municipalities. It allows local governments to compare their performance and costs with those of other participating units and with those of their own internal operations over time. The project currently collects and reports benchmarking data for ten service areas covering sixteen municipalities. Roenigk also teaches advanced program evaluation in the School's Master of Public Administration Program.

Before joining the School, Roenigk was a planner and evaluator with the North Carolina Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in Raleigh. He holds a B.A. in public policy and economics, magna cum laude, from Duke University and a Ph.D. in city and regional planning from The University of North Carolina at Chapel Hill.

Pervine Is 2006–2007 Wicker Scholar

The School of Government congratulates Amanda Nicole Pervine of Gastonia, this year's recipient of the Jake Wicker Scholarship.

Pervine is a 2006 graduate of Hunter Huss High School in Gastonia. She intends to study political science at UNC at Chapel Hill. While in high school, she was president of the moot court team, president and cofounder of the debate team, and vice-president and cofounder of the Young Republicans' Club. Pervine attended many summer leadership programs, including Tar Heel Girls' State, the Hugh O'Brian Youth Leadership Seminar, and Summer Ventures in Science and Mathematics. She also has been an active community volunteer with Southwest Middle School, the Interact Club, and the West Gastonia Boys and Girls Club. Her mother is employed by the Gaston County School System.

The $1,000 scholarship is awarded annually to an entering first-year

Amanda Nicole Pervine

student at UNC at Chapel Hill with a parent who has worked at the local government level for five or more years. The next application deadline is April 1, 2007. For more information, contact Meredith Horne, UNC Office of Scholarships, at (919) 962-9494 or meredith_horne@unc.edu.

The scholarship was created by the 1990 Municipal and County Administration class at the Institute of Government to honor the course director, Warren Jake Wicker. Wicker was a member of the School faculty for forty-eight years—until his death in 2003.

Teaching North Carolina Government

The Institute of Government launched its first training course for local government officials in September 1932. According to Institute founder, Albert Coates, the 300 city and county officials who attended, freely discussed problems that they were encountering and "showed how the movement getting under way could help them in their jobs."

Governor O. Max Gardner presided at the opening of the two-day course, saying that he "knew of no single program initiated by the University of North Carolina that carried greater promise for the people of this state."

Gardner's confidence was well placed. An estimated 500,000 students have attended Institute classes, seminars, and conferences since that inaugural offering. Today 10,000–14,000 public officials annually take courses in Chapel Hill and at sites throughout North Carolina.

UNC at Chapel Hill created the School of Government in 2001 to house the Institute, the Master of Public Administration Program, and specialized services and teaching centers related to the administration of government in North Carolina. The School's educational programs for local and state government officials still are offered through the Institute, its oldest and largest component. They are comple-

The Statewide School of Governmental Officers for the Study of Governmental Institutions and Processes in the Cities, Counties, and State of North Carolina, held on September 9–10, 1932, was the first course sponsored by the Institute.

Participants in a 1946 School for Public Recreation Officials pose at the original Institute building.

North Carolina clerks of court attended an Institute training course in 1944.

Partial List of School of Government Clients, Past and Present

ABC boards
Administrative Office of the Courts personnel
Adult probation parole personnel
Appellate defenders and their assistants
Appellate judges
Auditors
Building inspectors
Chambers of commerce personnel
Chief juvenile court counselors
City and county accountants
City and county attorneys
City and county budget administrators
City and county clerks and their deputies
City and county education board chairs
City and county finance directors and officers
City and county fire chiefs and marshals
City and county jail supervisors
City and county managers and assistant managers
City and county nursing supervisors
City and county personnel directors
City and county planning administrators
City and county planning board chairs
City and county planning directors, chief planners, and planners
City and county police chiefs
City and county public information officers
City and county purchasing agents
City and county tax collectors
City and county zoning administrators
City and county zoning board chairs
City council members
City police attorneys
Civic organizations
Clerks of court and their assistants and deputies
Community action agency personnel
Community college trustees, presidents, attorneys, and department heads
Community development directors
Councils of government directors and program managers
County commission chairs
County commissioners
County jail health professionals
County land records managers
County property mappers
County public health board chairs and members
County public health directors
County registers of deeds
County sheriffs
County sheriffs' attorneys
County social services attorneys
County social services board chairs and members
County social services directors
County tax assessors and appraisers
District attorneys and their assistants and administrative staff
District court judges
Division of youth services training center directors
Drivers' education coordinators
Economic development personnel
Election board chairs, members, and supervisors
Engineers and licensed surveyors
Environmental health specialists
Health care attorneys
Historic district commission chairs
Hospital administrators and attorneys
Human resource directors
Law enforcement trainers
Local and state government managers
Local and state information technology managers and professionals
Magistrates
Mayors
Mental health board chairs
Mental health directors, finance directors, and clinicians
News media personnel
Nonprofit service providers
North Carolina Association of County Commissioners
North Carolina engineering departments
North Carolina Council of State members and executive department secretaries
North Carolina legislators
North Carolina League of Municipalities
North Carolina Local Government Commission
North Carolina Wildlife Resources Commission personnel
Nurses
Police, fire, and rescue personnel
Private development agency personnel
Public defenders and their assistants
Public information officers
Public library directors and librarians
Public school officials
Public-sector attorneys
Public works administrators
Purchasing officials
Regional planning and intergovernmental unit personnel
Risk management personnel
Sanitary district board members
School board attorneys
School boards
School district superintendents and other administrators
Soil and water conservation district supervisors and employees
State Bureau of Investigation personnel
State education board members
State election officials
superior court judges
UNC administrative officers (e.g., members of the Board of Governors, members of the Board of Trustees, and chancellors)
UNC at Chapel Hill administrators, faculty, and staff
Water and sewer authority board members

mented and informed by the faculty's extensive research, writing, and advising, as Coates envisioned.

The steadfast dedication of School faculty to understanding and meeting the changing educational needs of local government officials is a hallmark of the School's successful service to North Carolina. The Institute's 2006 course catalog, for example, offers 127 educational programs spanning ten broad categories of local government law and administration: attorneys and legal issues;

Amy Joseph

Ben Brown (left), assistant city manager of Greensboro, and Mitchell Johnson, city manager, confer at the July 2006 Public Executive Leadership Academy reunion. Brown was a member of the 2006 class, and Johnson, a member of the inaugural class, in 2005.

budgeting, finance, and accounting; elected officials; environmental services and management; health and social services; judicial branch education; management, administration, and personnel; planning, land use, and economic development; property tax assessment and administration; and purchasing and contracts. Just as in the early days of the Institute, course content remains highly practical and focused on the real problems that public officials face every day.

A typical Institute course is held at the Knapp-Sanders Building in Chapel Hill or at a regional site, runs for 1–3 days, and serves 40–60 students. Content ranges from orientation for new employees or elected officials to advanced career training in a variety of fields.

Specialized in-depth educational opportunities also are available. The Municipal and County Administration courses, now in their fifty-second and forty-second years respectively, together attract about 100 students annually and offer 150 hours of training over eight months. The Public Executive Leadership Academy, the Chief Information Officers Certification Program, and an international certification institute for city and county clerks, all established in 2005, are offered in multiday sessions over many months. In the coming years, a judicial college recently funded by the North Carolina General Assembly will broaden the Institute's teaching for court officials (see the article on page 3).

Three-quarters of a century after Coates encouraged faculty members to go out and "crawl through the bloodstream"—that is, visit government offices, talk with officials about their concerns, learn their practices and customs, and understand deeply their day-to-day work—School faculty still subscribe to this vision for the structure of their work and as their ethic for teaching, research, advising, and writing. They arrive as scholars well versed in law, finance, management, or public administration, and then they "crawl through the bloodstream" to become experts in the practical work of improving government for North Carolina's citizens.

Amy Joseph

In March 2006, Professor Anita R. Brown-Graham taught in the innovative new Small Towns, Big Ideas workshop, aimed at helping small towns create effective economic development strategies.

Guest speakers often are invited to share their experiences. Janet Reno (left), former attorney general of the United States, spoke to Associate Professor Richard Whisnant's annual Public Law for the Public's Lawyers Conference in 2004. She is shown here with Kelly Chambers of the North Carolina Department of Justice.

Section II participants in the 2004–05 Municipal and County Administration courses directed by Gregory S. Allison (front row, far left) and managed by Brian Newport (front row, far right) pose in front of the School's Knapp-Sanders Building.

Note: All quotations are from *The Story of the Institute of Government*, by Albert Coates.

Visit www.sog.unc.edu for information on courses, seminars, and related publications offered at the School. To order a course catalog, call (919) 966-5381.

Off the Press

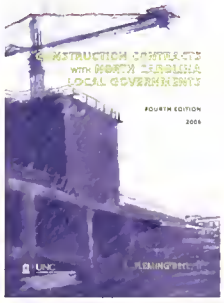
Public Intersection Toolkit

September 2006 • $51.00*
Gordon P. Whitaker, Margaret F. Henderson, and Lydian Altman-Sauer

The *Public Intersection Toolkit*, a collection of background readings and training exercises developed by the Public Intersection Project, is designed for facilitators who are helping diverse groups (governments, nonprofits, faith-based organizations, philanthropies, and businesses) work together on challenging communitywide issues. The looseleaf workbook format, produced in large print, makes the publication easy to use and provides ample space for notetaking. The materials assist readers in addressing community problems, identifying shared goals, and designing programs for implementing them.

Construction Contracts with North Carolina Local Governments

Fourth edition, Winter 2007 • Please visit our website for more information.
A. Fleming Bell, II



This important handbook for those involved in North Carolina local government construction presents relevant construction law in a readable format designed for quick reference. It explains formal and informal bidding, standards for awarding bids, procedures for bid withdrawals, exceptions to the bidding procedures, and procedures for handling contract disputes. It also covers change orders, design and bidding rules for public buildings, and avoidance of favoritism in public contracts. The new, expanded edition updates and replaces the third edition, published in 1996.

Land Use Law in North Carolina

Winter 2007 • Please visit our website for more information.
David W. Owens

This comprehensive legal-reference work is designed for those interested in the law of development regulation in North Carolina. It builds on and considerably expands the material covered in two previous editions entitled *Legislative Zoning Decisions: Legal Aspects*. Topics include local government's jurisdiction for development regulation, procedures for adopting and amending ordinances, spot zoning, contract zoning, vested rights, nonconformities, quasi-judicial zoning decisions, ordinance administration, and enforcement. The book also covers state and federal statutory and constitutional limitations on development regulation, with a particular emphasis on expanded coverage of First Amendment issues and with detailed consideration of judicial review of related ordinances. The book includes digests of more than 600 North Carolina court opinions and a case index.

Recent Publications

North Carolina Civil Commitment Manual
Summer 2006 • $65.00*
Lou A. Newman

Notary Public Guidebook for North Carolina, Tenth Edition, 2006
September 2006 • $16.00*
Charles A. Szypszak

An Inventory of Local Government Land Use Ordinances in North Carolina
Spring 2006 • $16.50*
David W. Owens and Nathan Branscome

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