

# Popular Government

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Facts about Immigrants in North Carolina



# 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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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 strengthen state and local government. Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to a nationally ranked graduate program in public administration and specialized centers focused on information technology, environmental finance, and civic education for youth.

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

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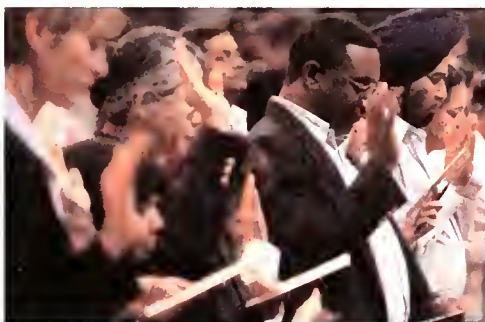
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Harry Lynch / Raleigh News & Observer



Leslie Barbour / Raleigh News & Observer



John Rotter / Raleigh News & Observer

ON THE COVER: Defenders of indigent people work in a fast-paced, high-pressure setting where an error may have devastating consequences for the client. North Carolina is pioneering a university-state collaboration to train these defenders. Illustration by Michael Brady.

## Local Government Service Corps to Help Rural Communities in Need

**T**he Master of Public Administration (MPA) programs at the UNC at Chapel Hill School of Government and Appalachian State University (ASU) have come together to create the North Carolina Local Government Service Corps, a three-year initiative to assist economically distressed communities in the state. The pilot phase of the corps will deploy four MPA graduates into the service of up to twelve North Carolina rural communities through full-time positions shared by two or three communities.

Funding and other support for the corps is being provided by the Golden LEAF Foundation, the North Carolina Rural Economic Development Center, and the North Carolina League of Municipalities.

The corps members will provide hands-on economic development and capacity-building assistance. To be selected from the current class of second-year MPA students at both universities, they will begin two-year service terms in July 2009. Both the corps members and the communities will be supported by UNC at Chapel Hill and ASU before and during the terms of service. The corps members will receive advanced training in economic development, local government management, and proposal writing and grant administration. Public officials in the host communities will receive scholarships to attend Essentials of Economic Development workshops offered by the School of Government in partnership with ASU and other universities as regionally appropriate.

Training for public officials and two years of service from a corps member are expected to demonstrate a sustainable impact in the rural communities served by the corps. To learn more, contact the program director for the corps, Will Lambe, at 919.966.4247 or [whlambe@sog.unc.edu](mailto:whlambe@sog.unc.edu).



## Assistance Available in Meeting New Federal Funding Rules Related to Sexual Assault Prevention and Intervention

**S**exual assault and domestic violence programs face heightened challenges for cooperation among law enforcement officials, health care providers, and other stakeholders in the face of new federal funding regulations. The School of Government's Public Intersection Project (PIP) is a resource to help communities adjust to the changes.

Effective January 2009, local programs to stop sexual assault and domestic violence in North Carolina must meet two requirements on reporting and investigating offenses in order to

sustain the approximately \$2.9 million in federal monies flowing to the states.

First, according to the U.S. Department of Justice, Office on Violence Against Women, states may not require that "a victim of sexual assault . . . participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both." This rule implies a need for anonymous reporting systems for victims of sexual violence.

## Local Elected Leaders Academy Announces Winter 2008 Offerings

The Local Elected Leaders Academy will offer both focused, in-depth courses and an orientation course in winter 2008–9 for North Carolina's municipal and county elected officials:

### *Focused, In-Depth Courses*

*December 12, 2008*

Planning Strategically for the Future  
(School of Government, Chapel Hill)

*December 13, 2008*

Capital Budgeting for Local Governing Boards  
(School of Government, Chapel Hill)

*January 14, 2009*

Leading Your County Governing Board—for newly appointed county board chairs (Greenville)

### *Orientation Course: Essentials of County Government*

The Essentials course is offered in alternate years to municipal and county elected officials, depending on the election cycle.

*December 9–11, 2008*

Lake Junaluska, Haywood County

*January 20–22, 2009*

New Bern, Craven County

*February 10–12, 2009*

Winston-Salem, Forsyth County

*February 24–26, 2009*

Raleigh, Wake County

Created by the School of Government in partnership with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, the academy helps experienced and newly elected local leaders lead and govern their communities in the twenty-first century. Through the academy, elected officials learn how to lead in this monumental time of change; respond in new and innovative ways to economic, political, and demographic transformations; and think creatively and act collaboratively when making decisions that will shape North Carolina's future. The academy's programs provide timely and relevant information about major issues affecting local government, as well as tools and best practices that elected officials can use in their communities.

To learn more about these courses and to register, visit [www.lela.unc.edu](http://www.lela.unc.edu), or contact Donna Warner at 919.962.1575 or [warner@sog.unc.edu](mailto:warner@sog.unc.edu).

## School Sponsors Information Sharing on Workforce and Succession Planning

In August 2008, human resource professionals from sixteen jurisdictions in North Carolina gathered at the School of Government to share information on workforce and succession planning. Participants represented governments that were engaged in workforce and succession planning in varying degrees.

The exodus of baby boomers, the challenge of retaining workers, and organizations' needs for new skills continue to provide the impetus for governments to engage in workforce planning. The forum allowed participants to share challenges that they are facing, and to identify tentative lessons from their workforce- and succession-planning efforts.

School faculty member Willow Jacobson coordinated the exchange. She coedited the Winter 2007 special issue of *Popular Government* on workforce planning. It is available free of charge at the online archive of the magazine, [www.sog.unc.edu/popgov/](http://www.sog.unc.edu/popgov/).

For notification about future sessions on information exchange, contact Gail Wilkins at 919.962.9754 or [wilkins@sog.unc.edu](mailto:wilkins@sog.unc.edu).

Second, neither law enforcement officials nor other governmental personnel may ask or require any victim of an alleged sexual offense to submit to a polygraph examination or another truth-telling device as a condition of proceeding with the investigation of the offense. A victim's choosing not to be polygraphed should not affect the investigation, charging, or prosecution of the offense.

Margaret Henderson and Lydian Altman, associate directors of PIP, have facilitated community planning meetings and provided individual consultations for sexual assault and domestic

violence advocates and professionals in Caldwell, Catawba, Hoke, Mecklenburg, Moore, Orange, Pitt, Robeson, and Union counties. Their services remain available at no charge through December 31, 2008, because of financial support from the North Carolina Governor's Crime Commission. Beginning in January 2009, Altman and Henderson will be available to work with communities on a contract basis.

PIP's training and consulting results were reported in the winter 2008 edition of *Popular Government*, available at [www.sog.unc.edu/popgov](http://www.sog.unc.edu/popgov).



## Judicial College Inaugurates Advanced Criminal Evidence Course for North Carolina Judges

In May 2008 the North Carolina Judicial College inaugurated an intensive, four-day, skill-based course on criminal evidence for superior court judges. Twenty-three judges enhanced their knowledge of topics such as character and prior bad acts evidence, opinion testimony, the Confrontation Clause, evidence issues in cases involving child victims and sexual assault, and hearsay. Participants benefited from role-playing, video demonstrations, case problems, work groups, and panel discussions in developing skills to deal with tough evidentiary issues that arise in criminal cases.

The course, taught by School of Government faculty members, law professors, and judges from the superior court

*The best judicial course I have attended at the SOG. Should be a required course for all trial judges, superior and district.*

bench, the North Carolina Court of Appeals, and the North Carolina Supreme Court, is illustrative of the Judicial College's approach to judicial education. Its courses have small classes, usually focused on a single topic, and are always highly participatory. Before the course, judge faculty members attended a one-day faculty development seminar that focused on designing effective teaching sessions.

Several participants reported that it was the best judicial training they had attended and that it was on a par with offerings from national judicial-training organizations.

The Judicial College was established in 2006. School faculty work with the Administrative Office of the Courts, the Chief Justice of the North Carolina Supreme Court, and judicial officials to develop, oversee, and evaluate a compre-

hensive educational program for judicial officials and their support staff. Ten courses have been designed to date, and more are in the planning stages. To obtain additional information and to learn about upcoming programs, visit [www.sog.unc.edu/programs/judicialcollege/](http://www.sog.unc.edu/programs/judicialcollege/).

*This is the best seminar I have attended in my 21 years on the bench. You guys did a great job!*



## Wayne County Moves to Four-Day Workweek

In August 2008, Wayne County became the first North Carolina local government to shift a large portion of its employees to a four-day workweek. County officials project a savings of \$300,000 in utility costs by assigning about half of their 1,032 employees to work four 10-hour days. Other North Carolina local governments are investigating similar arrangements for their workforces.

Wayne County offices covered under the four-day workweek are closed on Fridays. To achieve the optimal savings in utilities—adjusting thermostats for three days in a row—offices must be closed on Mondays or Fridays. The one office closed on Wednesdays is the Solid Waste Department, because that day was the least disruptive for customers' needs. Departments exempted from the four-day workweek, such as the Sheriff's Office and paramedic services, provide services twenty-four hours a day, seven days a week.

Recently the Utah state government and the Birmingham, Alabama, municipal government implemented four-day workweeks. In Birmingham, city offices remain open five days a week, with

## School Graduates First Class of National Certified Government Chief Information Officers

In June 2008 the first class of National Certified Government Chief Information Officers (NCGCIO) graduated from the School of Government's Center for Public Technology (CPT). Currently the only provider of NCGCIO certification, CPT has established a strong partnership with GMIS (formerly Government Management Information Sciences, now using only the abbreviation), the international association of public-sector information technology (IT) professionals, to ensure that the program is available to students across the United States. Among the twenty-one graduates were three from Mecklenburg County and one from Guilford County.

The purpose of the ten-month NCGCIO program is to prepare IT professionals to improve their organizational technology assets by learning about IT governance, project management, strategic IT planning, leadership, and change management, among other topics.

The NCGCIO program builds on CPT's mission to improve public services and strengthen communities through strategic investment in IT. CPT focuses on three major areas: education and training, advice and technical assistance, and research and publications.

A state-level program run by the School, certifying chief information officers of state agencies, graduated twenty-



## School Receives Grant to Document Hunger in North Carolina

**I**n May 2008 the School of Government received a seed funding grant of \$10,400 to document and evaluate the prevalence of food insecurity and hunger in North Carolina. The UNC at Chapel Hill Center on Poverty, Work and Opportunity provided the grant. School faculty member Maureen Berner is the principal investigator.

In 2005 the U.S. Department of Agriculture reported that North Carolina ranked higher than the national average in rates of both prevalence of food insecurity (13.8 percent) and prevalence of hunger (4.9 percent). Those rates had increased significantly from previous reports. "Food insecurity" means uncertainty about having enough food because of insufficient money or other resources.

"I am particularly interested in how local governments and nonprofits are taking on more of the burden of providing a social safety net for our citizens," said Berner. "How food pantries address hunger in our country is a prime example."

Berner, Sharon Paynter, a Public Policy Fellow of the Taubman Center at Brown University, and Emily Anderson, a student in UNC at Chapel Hill's Mas-

ter of Public Administration Program, will work with the Food Bank of Central and Eastern North Carolina to gather information at up to forty food pantries across the state. Additional funding will be sought to extend the work beyond the pilot phase.



employees scheduled for four 10-hour days per week.

Still to be addressed are Wayne County employees whose offices are in buildings shared with state government offices. For details on implementation of the new hours, go to [www.waynegov.com](http://www.waynegov.com) and click on "4-day work week."

three students from a variety of North Carolina agencies in December 2007. This program also is the first in the nation of its kind, focusing on the unique issues faced by state agency IT personnel. The second cohort of the state agency CGCIO program began in February 2008 and will finish in December.

The original CGCIO program, targeting local government IT professionals—primarily in North Carolina—has graduated more than 100 students since 2005. Its fourth cohort, consisting of thirty-four students, began classes in January 2008 and will graduate in November.

For more information about the national, state, and local CGCIO programs, visit [www.sog.unc.edu/c4pt/cio.htm](http://www.sog.unc.edu/c4pt/cio.htm), or contact Stacey Everett at 919.962.4248.



*The first cohort to graduate from the state agency CGCIO program.*

Stacey Everett

## Delivering on *Gideon's* Promise: North Carolina's Efforts to Enhance Legal Representation for the Poor

*Alyson Grine*

In *To Kill a Mockingbird*, the State of Alabama appointed Atticus Finch to represent Tom Robinson because Robinson was too poor to hire an attorney. An African-American man falsely accused of raping a white woman in the Jim Crow South, Robinson sorely needed counsel. Finch was all that stood between him and an angry lynch mob. Finch held fast, putting himself and his children in harm's way to defend Robinson. He believed in the presumption of innocence, zealous advocacy, and a fair hearing. He rejected the notion that race and economic status should play a role in determining guilt or innocence. For these reasons, Finch has been embraced as a moral hero for nearly fifty years. Ironically, when Harper Lee penned the Pulitzer Prize-winning novel in 1960, states were not required to provide attorneys to poor people such as the fictional Robinson. Real people faced incarceration without the benefit of counsel.

Although it has always been clear that the Sixth Amendment to the U.S. Constitution guarantees the right to appointed counsel to people accused in federal court of committing a crime, until 1963, people accused in state court were not guaranteed this right. In 1963, in the landmark case of *Gideon v. Wainwright*, the U.S. Supreme Court held that the states must provide an attorney to every indigent person accused in state court of committing a felony.<sup>1</sup> The right to counsel has since been extended to many

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Michael Brady

misdemeanor offenses and to all critical stages of criminal proceedings.

This article reviews the cases leading up to *Gideon*, *Gideon* itself, and subsequent cases related to the quality of representation. It then provides an overview of the various systems in place across the states for representation of indigent defendants, and it describes North Carolina's system in that context. Next, it discusses the need for training of defenders, and it identifies guidelines and standards that have been promulgated in support of quality training. The article concludes with a description of a unique collaboration in North Carolina to provide training for defenders.

### **The Right to Counsel**

The Sixth Amendment to the U.S. Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." The U.S. Supreme Court initially interpreted this language to mean that in *federal* courts, counsel had to be provided for people accused of crimes who could not afford to hire an attorney.<sup>2</sup> In 1942, in *Betts v. Brady*, the Court considered whether the guarantee of counsel for indigent defendants applied to defendants in *state* courts under the Due Process Clause of the Fourteenth Amendment. The Court concluded that "appointment of counsel is not a fundamental right, essential to a fair trial."<sup>3</sup> Therefore the Fourteenth Amendment did not require appointment of counsel in state court in the way that the Sixth Amendment required appointment in federal court.<sup>4</sup> Under *Betts* an indigent defendant in a state criminal matter was entitled to counsel only in special circumstances, such as in capital cases

(those in which the state was seeking the death penalty) in which the accused was illiterate or mentally challenged.

Twenty-one years later, a handwritten letter to the U.S. Supreme Court from a prisoner was the catalyst for toppling the holding in *Betts*. In 1963 the Court accepted a petition written in pencil on prison stationery by a man who was too poor to pay the court filing fee. Clarence Earl Gideon was serving time in a Florida penitentiary for breaking into a pool hall and taking coins from vending machines. At trial he asked that counsel be appointed to represent him because he could not afford to hire an attorney, and his request was denied.

The COURT: *Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.*

The DEFENDANT: *The United States Supreme Court says I am entitled to be represented by Counsel.*<sup>5</sup>

Forced to represent himself, Gideon, a semilliterate drifter, was quickly convicted and sentenced to prison for five years.

Reversing *Betts*, the U.S. Supreme Court unanimously ruled in *Gideon v. Wainwright* that every person charged with a serious criminal offense is entitled to counsel and that the state must provide an attorney to any person who cannot afford to hire one. Justice Hugo Black wrote for the majority:

*That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and sub-*

*stantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.*<sup>6</sup>

The Court vacated Gideon's conviction and sent the case back to state court. Gideon was retried with the benefit of appointed counsel, and acquitted.

The impact of *Gideon* was far-reaching. In its wake, the U.S. Supreme Court has extended the right to counsel to direct appeals, initial appearance, custodial police interrogation, critical stages of preliminary proceedings, misdemeanors in which imprisonment is imposed, and misdemeanors in which a suspended sentence of imprisonment is imposed.<sup>7</sup> In the 1977 case of *Massiah v. United States*, the Court held that the Sixth and Fourteenth amendments require counsel at all critical stages of a criminal prosecution.<sup>8</sup> Further, the Court has held that due process requires appointment of counsel in noncriminal proceedings that involve loss of liberty or significant deprivations of rights, such as juvenile proceedings and, in some instances, proceedings for termination of parental rights.<sup>9</sup>

North Carolina statutes also provide a right to counsel for parents in abuse, neglect, or dependency proceedings; proceedings on termination of parental rights; and certain other proceedings.<sup>10</sup> Additionally, the North Carolina Supreme Court has recognized a due process right to counsel in civil contempt proceedings for failure to pay child support when the respondent is facing incarceration.<sup>11</sup>

In today's climate, the right to counsel is accepted as integral to the American system of justice and is rarely called into question despite the multimillion-dollar cost to taxpayers each year. Robert F. Kennedy summarized the impact of *Gideon* as follows:

*If an obscure Florida convict named Clarence Earl Gideon had not sat*

*down in his prison cell . . . to write a letter to the Supreme Court, . . . the vast machinery of American law would have gone on functioning undisturbed.*

*But Gideon did write that letter, the Court did look into his case[,] . . . and the whole course of American legal history has been changed.*<sup>12</sup>

## The Constitutional Minimum for Quality Representation

Although *Gideon* triggered a monumental change in the law, it did not instantaneously create sound systems across the country for providing representation for indigent defendants. Media accounts of breakdowns since 1963 have at times shocked the collective conscience: the man who languished in a Mississippi jail for eight months before counsel was appointed to represent him, the Texas lawyer who slept throughout his client's capital murder case, the Alabama lawyer who was so impaired during a capital trial that the trial had to be delayed for a day while he recovered in jail.<sup>13</sup> "*Gideon* is of immense symbolic importance," according to Abe Krash, one of the attorneys who worked on the case, "but in practice there's a great gap between the promise and how it's been realized."<sup>14</sup> Krash noted that the Court's decision did not address critical issues

such as what quality of legal representation is required to protect the constitutional rights of indigent defendants, what level of funding is necessary to ensure adequate legal defense, what system of defense is

best suited to ensuring quality representation, and how such a system should be managed.<sup>15</sup>

Although *Gideon* inspired hope that every person would receive capable representation regardless of economic status, ensuring quality representation continues to be a challenge. In 1984 the U.S. Supreme Court handed down its decision in *Strickland v. Washington*, a case establishing the minimum constitutional requirements for attorney

### The Strickland test of defense counsel's ineffectiveness: (1) demonstration of deficient performance and (2) resulting prejudice of the outcome.



performance.<sup>16</sup> In setting out a test for whether a conviction or a sentence should be set aside on the basis of ineffective assistance of counsel, *Strickland* set the bar low, presuming that the attorney acted reasonably under the circumstances.

In *Strickland*, the defendant, David Washington, pled guilty to three capital murder charges. The judge told Washington that he respected people who were willing to admit responsibility, but he made no promise about the sentence that he would impose. Washington's lawyer presented no evidence during the sentencing hearing, merely asserting that Washington's life should be spared because he had shown remorse, had no criminal history, and had committed the crimes under duress. The judge found numerous aggravating circumstances and sentenced Washington to death on all three counts of murder.

On appeal, Washington submitted that his attorney had been ineffective in that the attorney did not (1) request additional time to prepare for the sentencing hearing, (2) request a psychiatric evaluation of Washington, (3) investigate and

present character witnesses, (4) seek a presentence investigation report, (5) present meaningful arguments to the sentencing judge, and (6) investigate the medical examiner's report and cross-examine the State's medical experts.<sup>17</sup>

The Supreme Court announced a two-part test for determining whether counsel was ineffective. First, to have a conviction or a death sentence set aside, the defendant had to demonstrate that counsel's performance was deficient, falling below "an objective standard of reasonableness."<sup>18</sup> Counsel must be given wide latitude to make tactical decisions, the Court cautioned, and the defendant must overcome the presumption that counsel was employing sound trial strategy under the circumstances.<sup>19</sup>

Second, the defendant had to show that counsel's ineffectiveness substantially prejudiced the outcome of the case, by demonstrating "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."<sup>20</sup> In other words, the defendant had to establish a reasonable probability that he or she would not have been convicted or,

in this case, sentenced to death, but for counsel's errors. Ultimately the *Strickland* Court decided that Washington's claim failed both prongs of the test in that his lawyer's actions were not unreasonable and he did not show prejudice that would require setting aside Washington's death sentences.

Between 1984 and 2000, the *Strickland* standard for ineffectiveness was applied strictly to capital cases as well as noncapital cases. James Messer was executed in Georgia in 1988 after his trial attorney made no opening statement, presented no evidence, made no objections to the State's admission of fifty-three items of physical evidence, cross-examined only nine of the State's twenty-three witnesses, and presented only Messer's mother at the sentencing phase.<sup>21</sup> Keith Messiah was sentenced to death in Louisiana in 1988 following a one-day trial and a twenty-minute sentencing hearing.<sup>22</sup> Jesus Romero was executed in Texas in 1992 after his trial attorney failed to present any evidence at the sentencing phase and made a single closing argument to the jury: "You've got that man's life in your hands. You



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can take it or not.”<sup>23</sup> Larry Heath was executed in 1992 after his appellate attorney wrote a one-page brief to the Alabama Supreme Court, citing one case and raising one claim, the quality of which was “unreasonably deficient,” according to the federal court that reviewed the matter on appeal.<sup>24</sup> In each of these cases, the courts found that counsel’s conduct did not violate the standard established by *Strickland*.

**Nationally, the system of providing representation to indigent defendants is a patchwork. Even in the best statewide systems, funding may not be adequate.**

ground and prepare for the penalty phase of a capital case.<sup>25</sup> The Court found in *Williams* that had counsel done adequate investigation, he would have uncovered voluminous circumstances that would

In 2000, however, the U.S. Supreme Court began to examine attorney performance in a slightly different light. In *Williams v. Taylor*, attorney conduct was similar to that in *Strickland*: counsel failed to investigate the client’s back-

ground and prepare for the penalty phase of a capital case.<sup>25</sup> The Court found in *Williams* that had counsel done adequate investigation, he would have uncovered voluminous circumstances that would have mitigated the defendant’s conduct, such as evidence of physical abuse as a child and borderline mental retardation. *Williams* was notable in that it looked to the *ABA Standards for Criminal Justice* as a means of evaluating counsel’s performance. Although the *Strickland* Court had acknowledged the standards, it had admonished that they did not have sufficient authority to override the presumption that counsel acted reasonably:

*Prevailing norms of practice as reflected in American Bar Association*



standards and the like, e.g., ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed 1980) (“The Defense Function”), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.<sup>26</sup>

The *Williams* Court, in contrast, used no such qualifying language in relying

on the ABA standard regarding counsel’s obligation to conduct a thorough investigation of the defendant’s background.<sup>27</sup> Had counsel adhered to such a standard, the Court concluded, the defendant might not have been sentenced to die.

In 2003 the U.S. Supreme Court echoed its holding in *Williams*, finding in two capital cases that attorneys had been ineffective in failing to investigate their clients’ history. In both *Wiggins v. Smith* and *Rompilla v. Beard*, the Court once again cited the ABA standards as a measure of attorney performance.<sup>28</sup> In *Wiggins*, the Court cited the ABA standards for the proposition that counsel must discover all reasonably available mitigating evidence, inform the prosecutor of any mitigating circumstances, and argue them before the court at sentencing.<sup>29</sup> Quoting *Strickland*, the *Wiggins* Court characterized the ABA standards as “guides to determining what is reasonable,” but omitted the *Strickland* language regarding the limitations of such standards.<sup>30</sup>

In *Rompilla*, three justices dissented from the majority’s conclusion that counsel was ineffective, complaining that the majority had departed from precedent by giving the ABA standards too much weight:

*For this reason, while we have referred to the ABA Standards for Criminal Justice as a useful point of reference, we have been careful to say these standards “are only guides” and do not establish the constitutional baseline for effective assistance of counsel. The majority, by parsing the guidelines as if they were binding statutory text, ignores this admonition. The majority’s analysis contains barely a mention of Strickland and makes little effort to square today’s holding with our traditional reluctance to impose rigid requirements on defense counsel.<sup>31</sup>*

Despite the complaints of the dissenting justices, the Supreme Court had begun to use national standards as an objective measure of effectiveness. The standards provided a means of rebutting the *Strickland* presumption that counsel had acted reasonably. As a

result, counsel was subjected to greater scrutiny, and the defendants who were prejudiced by counsel’s deficiencies in *Williams*, *Wiggins*, and *Rompilla* obtained relief.

The cases following 2000 might be read as implicitly recognizing that the promise of *Gideon* is not realized by the mere appointment of counsel. Zealous representation is essential when a person of meager resources is pitted against the resources of the government and when the stakes include conviction, loss of liberty, and sometimes death.

Ultimately, however, the challenge falls to the states to deliver representation beyond what is minimally tolerable under the Constitution. Although relief for ineffective assistance of counsel may be more available under recent U.S. Supreme Court cases than it was under *Strickland*, relief on a case-by-case basis does not ensure that all defendants are receiving adequate representation. Instead, the states bear the responsibility

### *Public Defenders and Appointed Attorneys in North Carolina*

- Public defenders: salaried employees of a public defender office who represent indigent clients exclusively. The head of the office is referred to as the “chief public defender,” and the staff attorneys are referred to as “assistant public defenders.”
- Appointed attorneys, also called “private assigned counsel” or “PACs”: lawyers in private practice who accept the cases of indigent defendants and are typically paid an hourly fee of \$75 in exchange for their services. In districts where there is a public defender office, appointed attorneys handle the cases that the public defender cannot accept because of a conflict of interest. In districts without a public defender office, appointed attorneys handle the entire caseload of indigent defendants.

of establishing sound systems of delivering, overseeing, and enhancing representation of indigent defendants.

## The Importance of Systems and Oversight

The nation currently is made up of a patchwork of systems for providing representation to indigent defendants. Nineteen states have statewide public defender systems, in which representation is provided at state expense by salaried staff attorneys throughout the state.<sup>32</sup> Of these, twelve also have an independent commission with authority over representation statewide.<sup>33</sup> Duties of the commission may include determining the method or methods of delivering services for the state, establishing appropriate compensation rates for appointed counsel,

and developing standards for performance. Six states do not have statewide public defender services, but do have commissions.<sup>34</sup> All six have some public defender offices, but the offices either do not serve the greater part of the state or accept limited types of cases, such as felonies.<sup>35</sup> In other states, either the county is responsible for funding and delivering services, or the responsibility is divided between local and state governments.<sup>36</sup>

Within the states that do not have comprehensive public defender services, the system of providing representation varies from one locale to another. One judicial district may have a public defender office with staff attorneys on salary, whereas a neighboring district may appoint private attorneys to represent indigent defendants (for a comparison of public defenders and appointed attorneys, see the sidebar on page 11). Private attorneys typically are appointed on a case-by-case basis and paid an hourly rate or a flat fee. Other districts within a given state may use a contract system under which private attorneys or firms assume the responsibility for representing indigent defendants over a longer time span.<sup>37</sup>

Private appointed attorneys are an important component of the system, even within a public defender district. They handle “conflict cases,” those that arise when multiple people are charged with committing a given crime. For example, if three men are charged with robbing a store, the public defender can represent only one of them because they may have incompatible defenses. That is, each may assert that the other two participants forced him to participate in the crime. Appointed attorneys also help by shouldering a portion of the caseload when the public defender office is overwhelmed. In districts without public defender offices, some private attorneys handle appointed cases exclusively, devoting themselves to representing indigent defendants just as public defenders do, but without the supportive office setting.

**Defenders of indigent clients need timely, comprehensive, continuing education of high quality. The ABA recommends that government fund such training to protect the right to counsel.**

The states with commissions have an advantage in that a body is in place to evaluate the big picture and set the bar for attorney performance by adopting guidelines or standards and employing various oversight mechanisms. Public defender systems also provide a level of oversight in that within the public defender office, a supervisor, or chief public defender, screens attorneys who apply to work in the office and super-

vises attorneys on staff. Public defender offices have the additional advantage of specialization in a few areas of law, typically criminal and juvenile delinquency. For reasons such as these, there is a clear trend across the country toward creating

statewide commissions and expanding public defender offices.<sup>38</sup>

The states that have succeeded in creating statewide public defender services or commissions still face problems, particularly if those systems are not adequately funded.<sup>39</sup> Without adequate funding, systems can become overburdened. In public defender offices, attorneys may carry daunting caseloads, representing hundreds of clients simultaneously. In this climate, attorneys are hard-pressed to provide effective representation in the form of conducting a thorough pretrial investigation, filing and litigating motions, retaining expert witnesses, and regularly taking cases to trial. Instead, many public defenders encounter pressure from judges, prosecutors, and sometimes their own offices to dispose of cases quickly. Before long, attorneys working in such an environment may experience burnout, leading to high turnover rates. Often, recent law school graduates step into the shoes of departing public defenders, and the office loses the benefit of the departing attorneys’ accumulated knowledge and experience.

Public defenders and private appointed attorneys also may not be compensated adequately. The inadequate compensation makes recruiting and retaining quality professionals to serve indigent defendants a continuing

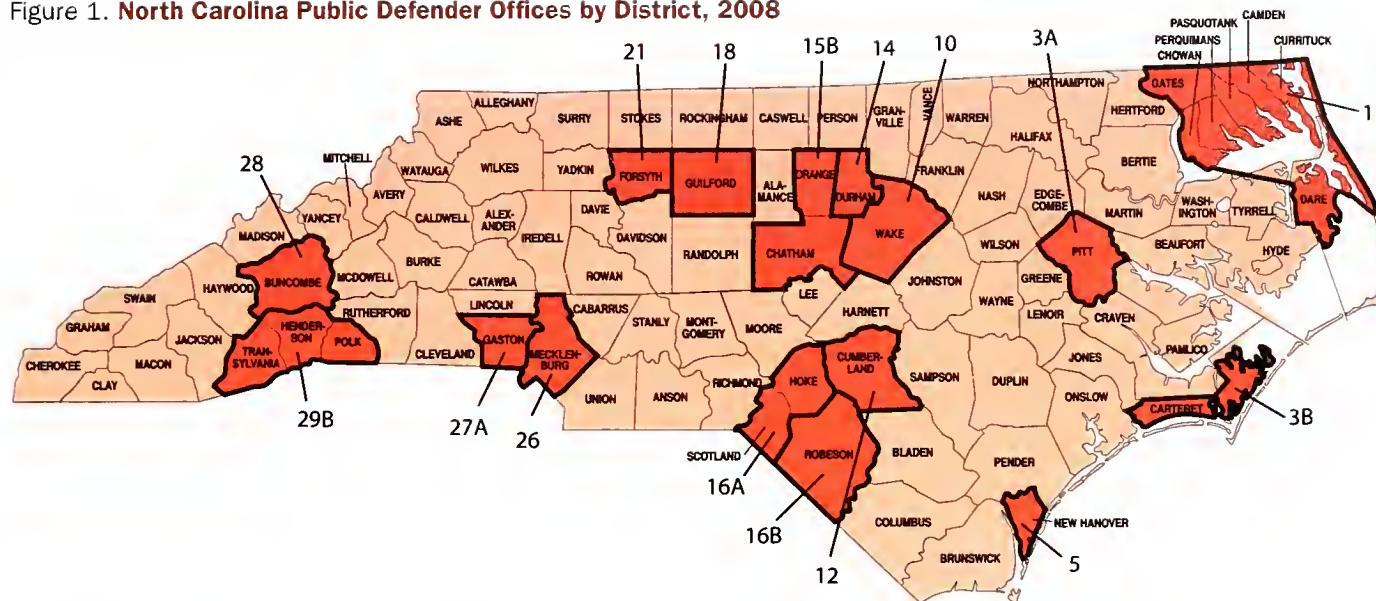
## Goals of the North Carolina Commission on Indigent Defense Services

The goals of the North Carolina Commission on Indigent Defense Services are as follows:

- “[T]o recruit the best and brightest North Carolina attorneys to represent indigent defendants;
- [T]o ensure that every attorney representing indigent defendants has the qualifications, training, support, resources, and consultation services [he or she] need[s] to be [an] effective advocate[];
- [T]o create a system that will eliminate the many recognized problems and conflicts caused by judges appointing and compensating defense attorneys; and
- [T]o manage the state’s indigent defense fund in a more efficient and equitable manner.”

Source: North Carolina Court System, Office of Indigent Defense Services, [www.ncids.org](http://www.ncids.org).

Figure 1. North Carolina Public Defender Offices by District, 2008



challenge. Appointed attorneys in North Carolina provide representation at a deeply discounted rate compared with the market rate for private legal services. Currently, an attorney who is appointed to a noncapital case is paid \$75 per hour, less than half the average hourly rate that a private defense attorney would charge in most parts of the state.<sup>40</sup> For example, a private lawyer would typically charge between \$1,000 and \$3,000 to represent a client charged with driving while impaired. In contrast, appointed lawyers are paid an average of \$280 for handling such a case. When the cost of operating a law practice is factored in, attorneys who are appointed to noncapital cases in North Carolina net \$22 per hour, on average, for their professional services.<sup>41</sup>

### The Organization of North Carolina's System for Representing Indigent Defendants

North Carolina's size, diversity, and rapid growth are strengths in many respects, but present challenges in providing representation for indigent defendants. The Tar Heel State stretches five hundred miles from west to east, or "from Murphy to Manteo," as the popular saying goes. It is made up of one hundred counties and divided into forty-one judicial districts.<sup>42</sup> With more than 8.5 million people, North Carolina is the eleventh-most-populous state in

the nation. The state has experienced rapid population growth in recent years, as well as a proliferation of cases in the criminal justice system, and the number of dispositions of cases involving indigent defendants has grown more than 50 percent in the past five years.<sup>43</sup>

North Carolina has a mixed system for representation of indigent defendants, consisting of public defender offices, appointed counsel, and a small number of contracts with private attorneys.<sup>44</sup> Sixteen of the forty-one judicial districts

in North Carolina have public defender offices. Some of the public defender districts encompass multiple counties, with the result that twenty-six counties are covered by public defender offices (see Figure 1).<sup>45</sup>

In districts without public defenders, private attorneys are appointed on a case-by-case basis, or, in limited instances, they enter into contracts with the state's Office of Indigent Defense Services (IDS) to handle cases in their district on an ongoing basis. Overall, the number

### Performance Guidelines

In 2004 the North Carolina Commission on Indigent Defense Services (IDS Commission) adopted *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level*. The guidelines identify issues that may arise at each stage of a noncapital criminal proceeding, and recommend effective approaches to resolving those issues. They are designed to be a resource for defense counsel as well as a training tool. Following is an excerpt from the guidelines:

#### Guideline 1.2 Role of Defense Counsel

*(a) The paramount obligations of criminal defense counsel are to provide zealous and quality representation to their clients at all stages of the criminal process, and to preserve, protect, and promote their clients' rights and interests throughout the criminal proceedings. Attorneys also have an obligation to conduct themselves professionally, abide by the Revised Rules of Professional Conduct of the North Carolina State Bar and other ethical norms, and act in accordance with all rules of court.*

Source: North Carolina Commission on Indigent Defense Services, *Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at the Trial Level* (Raleigh: North Carolina Commission on Indigent Defense Services, November 2004), 1, [www.ncids.org/](http://www.ncids.org/) (click on IDS Rules and Procedures).

## *Selected Training Programs for Defenders of Indigent People*

Training programs offered through the School of Government and funded by the Office of Indigent Defense Services include the following:

### **New Misdemeanor Defender Program**

This annual introductory program provides training in substantive law and procedure in criminal district court, where misdemeanor cases are primarily heard. Participants develop client-counseling, negotiating, and bench-trial skills through role-play and small-group work, and they engage in a discussion with prison inmates about the role of counsel and attorney-client relationships.

### **New Felony Defender Program**

This annual program is an introduction to representing clients charged with felonies in superior court. It covers topics such as discovery, motions practice, and preservation of the record for appeal. Clients work in small groups to prepare a mock case for trial.

### **North Carolina Defender Trial School**

This annual five-day program is designed to help defenders hone their criminal trial skills. Participants practice opening statements, closing arguments, examination of witnesses, and other trial skills based on their own cases.

### **Juvenile Defender Training Programs**

- The New Juvenile Defender Program is an introductory program that covers topics such as communicating with child and adolescent clients and crafting appropriate dispositions for juveniles adjudicated delinquent. The program includes role-play and small-group work as well as a visit to a juvenile detention center.
- The Annual Juvenile Defender Conference covers topics of current interest, such as school-related offenses and the constitutional rights afforded to juveniles.

### **Parent-Attorney Conference**

This annual conference provides training for attorneys representing parents in cases of abuse, neglect, and dependency and termination of parental rights. The inaugural conference in 2007 was a nuts-and-bolts training event on representing parents. Future programs will address current topics of interest, such as representing chemically dependent parents.

### **Civil Commitment and Guardianship Training**

Civil commitment and guardianship programs alternate each year and focus on issues specific to those kinds of cases, such as determining capacity.

A full calendar of events is available at [www.indigentdefense.unc.edu](http://www.indigentdefense.unc.edu).

of attorneys working in public defender offices is 213, and the number of private attorneys appointed to represent indigent defendants is about 2,800.

Each district is a unique culture. Carteret County, on the east coast, has a small public defender office, consisting

of two attorneys and one support staff. Criminal offenses there often relate to the county's status as a tourist locale: impaired driving abounds in the warmer months, and breaking and entering is frequent in the winter, when vacation houses are left empty.

In contrast, the Mecklenburg County office, in the western part of the state, employs more than 50 attorneys, 7 investigators, and numerous support staff. Mecklenburg County includes the Queen City of North Carolina, Charlotte, and thus encounters more criminal offenses that arise from urban problems such as gangs and firearms.

The District 1 public defender office covers seven counties in the northeast part of the state. Public defenders there travel over bridges and waterways to appear in three courthouses.

In contrast, the District 14 office serves only one county, Durham. The office is located in the same high-rise building as the court.

All the public defender offices handle both felony and misdemeanor cases at the trial level. About half of them accept juvenile delinquency cases, and a few represent parents in abuse, neglect, and dependency proceedings. Public defenders do not handle their cases on appeal to the North Carolina Court of Appeals or Supreme Court. This function is housed in North Carolina's Office of the Appellate Defender.

Each public defender office is supervised by a chief public defender. Selection of the chief is a local matter. The senior resident superior court judge appoints the chief after receiving recommendations from the local bar association.

Overseeing this vast, complex system is the IDS (for the goals of IDS, see the sidebar on page 12). Created by the North Carolina General Assembly in 2000, IDS is charged with overseeing the provision of legal representation to people entitled to counsel at state expense, and with managing the indigent defense fund, which now totals \$108.5 million per year.<sup>46</sup> IDS carries out its statutory mandate with a central staff of 8 full-time employees, 3 part-time employees, and a small financial services division. IDS is governed by the Commission on Indigent Defense Services, made up of thirteen members selected by various appointing authorities, including the governor, the chief justice of the North Carolina Supreme Court, the speaker of the North Carolina House, the president pro tem of the North Carolina Senate, and various bar groups in North Carolina.<sup>47</sup>





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Since it began operating in July 2001, IDS has implemented a series of reforms. For example, it has developed statewide attorney rosters—lists of attorneys who are qualified for appointment in various practice areas such as capital trials and cases on appeal. It has raised the rate of compensation to \$95 per hour in cases that may result in capital punishment, and to \$75 per hour in noncapital cases. Also,

it has created performance guidelines for representing clients at each stage of the proceedings for criminal cases; juvenile delinquency cases; abuse, neglect, and dependency cases; and cases involving termination of parental rights (for an excerpt from the performance guidelines, see the sidebar on page 13).

Further, IDS has created public defender offices to serve five additional districts and is conducting an ongoing evaluation to determine whether more public defender offices would be cost-effective or are necessary because of a shortage of private attorneys available to handle appointed cases.<sup>48</sup>

**The collaboration between IDS and the School of Government places the training of defenders in a university. This is unique in the nation.**

### National Attention to Education of Defenders

Training for defenders of indigent people is recognized as a critical part of ensuring high-quality legal representation. Law school alone cannot sufficiently prepare a new attorney for the rigors of a defender's job because it must provide a general, substantive education in a wide

array of civil and criminal subjects in only three academic years. A recent law school graduate may have taken only a few courses germane to his or her practice area. Criminal de-

fense is a specialized area that requires in-depth knowledge of crimes and sentencing guidelines as a starting point. Beyond that, practitioners must be well versed in constitutional law to know whether their clients' rights have been violated, perhaps by an unlawful search or a coercive police interrogation. They must have a firm grasp of the evidentiary rules that govern what is admissible at trial so that they can prevent unlawful

evidence from being introduced, and they must have honed trial-advocacy skills to screen prospective jurors, examine witnesses, and deliver persuasive arguments. Criminal attorneys also must be aware of collateral consequences, such as whether a conviction may result in eviction from public housing or deportation from the country. Defenders of indigent people in particular work in a fast-paced, high-pressure setting where an error may have devastating consequences for the client.

National standards and guidelines have emphasized the importance of timely, comprehensive, ongoing, quality education. In its 1992 Standards, subtitled *Providing Defense Services*, the ABA declared that defenders must receive should fund such training to protect the right to counsel for indigent people. The relevant standard, 5-1.5, states,

*The legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. Continuing education programs should be available, and*

public funds should be provided to enable all counsel and staff to attend such programs.<sup>49</sup>

In 2002 the ABA went further in its *Ten Principles of a Public Defense Delivery System*, a practical guide for creating, funding, and improving public defense delivery systems.<sup>50</sup> The ten principles represent “the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for defendants who are unable to afford an attorney.”<sup>51</sup> Included among them is Principle 9, which mandates all-inclusive training on a par with that offered to prosecutors:

*Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.*<sup>52</sup>

The National Legal Aid and Defender Association, an organization of lawyers dedicated specifically to representing indigent defendants, promulgated the *Defender Training and Development Standards* as “another attempt to promote and improve quality and competence in the delivery of criminal defense services to the poor.”<sup>53</sup> Standard 1.1, titled “Training is Essential,” states, “The defender organization must provide training opportunities that insure the delivery of zealous and quality representation to clients.”<sup>54</sup> Standard 1.3, “Adequate Financial Resources,” states, “Defender organizations must have adequate governmental funding for the resources to provide high quality training opportunities consistent with these standards.”<sup>55</sup>

Although the necessity of training is recognized, the means of providing education in representation of indigent defenders in different states is as varied as the defense systems in place there. Some states boast a sophisticated, statewide training system, whereas others have no organized, state-supported training function. The states with statewide public defender systems and/or commissions in place are more likely than those without such structures to have developed comprehensive, effective training for the state.

## Indigent Defense Manual Series

The North Carolina Indigent Defense Manual Series, produced by the School of Government and funded by the Office of Indigent Defense Services, currently includes the following titles, in order of publication:

### North Carolina Defender Manual (Criminal Law)

This loose-leaf manual is a reference for public defenders and others who work in the criminal courts. Volume 1, *Pretrial*, covers such topics as capacity to proceed, obtaining of experts, motions practice, and the right to counsel. Volume 2, *Trial*, is partially complete and includes chapters on guilty pleas, the right to a jury trial, and jury selection.

### North Carolina Civil Commitment Manual

Designed to assist the attorney representing an adult or a minor in civil commitment proceedings, this manual reviews North Carolina mental health and substance abuse laws pertaining to inpatient and outpatient commitments and admissions.

### North Carolina Guardianship Manual

This manual discusses the role and the responsibilities of attorneys who are appointed to represent allegedly incapacitated adults in adult guardianship proceedings. It summarizes and analyzes relevant provisions of North Carolina’s guardianship law and discusses the legal standards for determination of incapacity, appointment of guardians, and other significant aspects of guardianship proceedings.

### Immigration Consequences of a Criminal Conviction in North Carolina

Using a step-by-step approach to the immigration consequences of a criminal conviction, this guide explains the different types of immigration status and the various criminal convictions that trigger removal of a person from the country (deportation) in light of his or her immigration status. Included is a detailed chart of immigration consequences of various North Carolina offenses.

### North Carolina Juvenile Defender Manual

Relevant law and practice pointers are provided for attorneys representing juveniles in delinquency proceedings. Topics include initiation of proceedings, custody hearings, probable cause and transfer hearings, discovery, motions to suppress, plea negotiations, adjudicatory hearings, dispositional hearings, probation, commitment, appeals, and expunction of records.

All the manuals are available for personal use, at no charge, on the School’s indigent defense education website, [www.indigentdefense.unc.edu](http://www.indigentdefense.unc.edu). They also are available for purchase at a nominal price on the School’s Publications website, <http://shopping.netsuite.com/s.nl/c.433425/sc.7/category.-107/f>.

## North Carolina’s Response to the Need for Education of Defenders

Recognizing the importance of education to providing quality representation, the North Carolina General Assembly included among IDS’s statutorily enu-

merated duties the following proviso: “Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article.”<sup>56</sup> To fulfill that responsibility, IDS has partnered with the School of Government at the University of North Carolina at Chapel Hill to provide ed-



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education for public defenders and other attorneys representing indigent defendants in North Carolina. This collaboration is unique in the nation. In no other state is the training function for representation of indigent defendants centered in a university.

Established in 1931 as the Institute of Government, the School has a long tradition of serving public officials and the court system by providing advice, research, and education. More than 12,000 public officials attend training programs at the School each year. Housed within the School is a “courts group” of scholars that promotes justice in North Carolina by providing education to judges, magistrates, prosecutors, clerks of court, and other participants in the court system. The School is dedicated to practical scholarship and public service. Supporting IDS in its efforts to provide quality legal representation for the poor is a natural outgrowth of the School’s mission.

By availing itself of the resources of North Carolina’s largest research organization, IDS is able to improve the state’s overall system of providing indigent representation by offering a high

standard of training in an efficient, cost-effective way. The current cost to IDS of training defenders of indigent people through the School is approximately \$300,000 per year, which represents less than one-third of one percent of IDS’s overall budget of \$108.5 million. IDS fully funds training for public defenders out of its budget. Private appointed attorneys who attend programs at the School are charged only for the cost of providing the training; neither IDS nor the School profits from registration fees.

The School meets the need for education of defenders in several ways. It provides formal educational opportunities, such as training programs, reference manuals, and online educational materials, and it assists IDS in developing internal training and identifying training opportunities that other organizations provide.<sup>57</sup>

The School sponsors about twelve training programs per year, with IDS funding the development and the administration of the events. Many of the programs are geared toward trial attorneys defending clients accused of crimes. Introductory programs for defenders who are new to a given practice area are followed by programs targeting

experienced defenders. For example, a new attorney may attend the New Misdemeanor Defender Program in his or her first year to develop bench-trial skills for district court, and graduate to the New Felony Defender Program once he or she begins to handle proceedings in superior court. Experienced trial attorneys typically return to the School for the Defender Trial School to hone their advocacy skills for all stages of trial.

The School also has developed programs in noncriminal practice areas for which there is a right to counsel, including appellate practice; juvenile delinquency; abuse, neglect, and dependency; and civil commitment. As with criminal trial practice, a two-tier system is used in these specialized practice areas. An attorney who has started practicing in delinquency court will attend the New Juvenile Defender Program and then the annual special-topic seminar for more experienced juvenile defenders.

Management training is offered annually to leadership in the IDS office and public defender districts to develop skills such as giving feedback to employees.

Program structures vary from one-day seminars to a five-day workshop,



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and favor interactive methods of teaching to increase skill development. Although some programs are open only to public defenders in order to control class size and maximize learning, many are open to private appointed counsel as well. Following each program, training materials are posted on the IDS website, indexed by subject matter and program. (For examples of training programs, see the sidebar on page 14.)

With funding from IDS, the School has produced the North Carolina Indigent Defense Manual Series, a collection of reference-quality manuals on law and practice in representation of indigent defendants in North Carolina, including criminal trials, civil commitment, guardianship, and juvenile delinquency. (For more details about the manual series, see the sidebar on page 16.) All the manuals are available online at no cost. In this way, appointed attorneys across the state, numbering about 2,800, have on hand a synthesis of complex legal issues, even if they are unable to attend the training programs.

To meet the needs of such a large, diverse group, the School has begun developing online training in collaboration with organizations like the North Carolina Administrative Office of the Courts and the North Carolina Bar Association. Further, IDS has forged connections with other organizations that provide training and reference materials. Currently, all public defenders are

entitled to the benefits of membership in the North Carolina Academy of Trial Lawyers and may attend one of that organization's seminars free of charge each year. On request and when funds are available, IDS sponsors defenders of indigent persons to attend continuing legal education programs offered by the North Carolina Bar Association and other organizations in the Southeast.

### Conclusion

North Carolina has a more structured system of providing and overseeing representation of indigent defendants than many states do. Such a system has distinct advantages. Among other things, it has led to collaboration between the School and IDS. This collaboration has helped to fulfill the promise of counsel articulated in *Gideon* by supporting and enhancing quality legal representation through education, which is essential to ensuring justice for all people regardless of socioeconomic status.

### Notes

1. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
2. *Johnson v. Zerbst*, 304 U.S. 458 (1938).
3. *Betts v. Brady*, 316 U.S. 455, 471 (1942).
4. Before *Betts*, the U.S. Supreme Court held in *Powell v. Alabama*, 287 U.S. 45, 68 (1932), that the right to counsel was a fundamental right. In overruling *Betts*, the

*Gideon* Court reasoned that the Court in *Betts* had "made an abrupt break with its own well-considered precedents." *Gideon*, 372 U.S. at 344.

5. *Gideon*, 372 U.S. at 337.
6. *Id.* at 344.
7. *Douglas v. California*, 372 U.S. 353 (1963) (direct appeals); *Rothgery v. Gillespie County, Texas*, 554 U.S. \_\_\_ (2008) (Slip Opinion No. 07-440, decided June 23, 2008) (right attaches at initial appearance); *Miranda v. Arizona*, 384 U.S. 436 (1966) (custodial police interrogation); *Coleman v. Alabama*, 399 U.S. 1 (1970) (critical stages of preliminary proceedings); *Argersinger v. Hamlin*, 407 U.S. 25 (1972) (misdemeanors in which imprisonment is imposed); *Shelton v. Alabama*, 535 U.S. 654 (2002) (misdemeanors in which suspended sentence of imprisonment is imposed).

8. *Massiah v. United States*, 377 U.S. 201 (1977).

9. *In re Gault*, 387 U.S. 1 (1967) (juvenile proceedings). See *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981) (failure to appoint counsel for indigent parents in termination-of-parental-rights proceeding did not deprive them of due process under the specific facts of the cases, but appointment of counsel was wise policy not only in such cases, but also in dependency and neglect proceedings).

10. N.C.G.S. § 7B-602(a) (abuse, neglect, or dependency proceedings) (hereinafter G.S.); G.S. 7B-1101.1 (proceedings on termination of parental rights). See G.S. 7A-451 (scope of entitlement of indigent person to counsel).

11. *McBride v. McBride*, 334 N.C. 124 (1993).

12. Robert F. Kennedy, speech at the New England Law Institute, November 1, 1963, as quoted in National Association of Criminal Defense Lawyers, *Gideon at 40: Understand-*

ing the Right to Counsel (Washington, DC: National Association of Criminal Defense Lawyers, 2002), [www.landmarkcases.org/gideon/pdf/gideon\\_lesson\\_plan.pdf](http://www.landmarkcases.org/gideon/pdf/gideon_lesson_plan.pdf).

13. Virginia E. Sloan et al., "Gideon's Unfulfilled Mandate: Time for a New Consensus," *Human Rights*, Winter 2004, 3-4, 13, [www.abanet.org/irrr/hr/winter04/gideon.html](http://www.abanet.org/irrr/hr/winter04/gideon.html); Stephen B. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer," *Yale Law Journal* 103 (1994): 1835-36.

14. Abe Krash, as quoted in Douglas McCollam, "The Ghost of 'Gideon,'" *Law.com*, [www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005534390](http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005534390).

15. Sloan et al., "Gideon's Unfulfilled Mandate."

16. *Strickland v. Washington*, 466 U.S. 668 (1984).

17. *Id.* at 676.

18. *Id.* at 688.

19. *Id.* at 689.

20. *Id.* at 694.

21. *Messer v. Kemp*, 760 F.2d 1080 (1985), *cert. denied*, 474 U.S. 1088 (1986).

22. *State v. Messiah*, 538 So.2d 175, 187 (La. 1988), *cert. denied*, 493 U.S. 1063 (1990).

23. *Romero v. Lynaugh*, 884 F.2d 871, 875 (1989), *cert. denied*, 494 U.S. 1012 (1990).

24. *Heath v. Jones*, 941 F.2d 1126, 1131 (1991) (holding that defendant failed to show he was prejudiced by counsel's deficient performance), *cert. denied*, 502 U.S. 1077 (1992).

25. *Williams v. Taylor*, 529 U.S. 362 (2000).

26. *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).

27. *Williams*, 529 U.S. at 396 (citing 1 *ABA Standards for Criminal Justice* 4-4.1, commentary, p. 4-55 (2d ed., 1980)).

28. *Wiggins v. Smith*, 539 U.S. 510 (2003) (counsel failed to present evidence that defendant's mother deprived him of food as child, forced him to eat garbage, had sex with men while he was in same bed, and put his hand on hot stove; counsel also failed to uncover that defendant was raped while in foster care and was living on streets at age sixteen); *Rompilla v. Beard*, 545 U.S. 374 (2003) (counsel failed to look at prosecutor's file, even though counsel knew it contained evidence of defendant's prior convictions for rape and assault that State intended to introduce, as well as mitigating evidence).

29. *Wiggins*, 539 U.S. at 524-25.

30. *Id.* at 524 (citing *Strickland*, 466 U.S. at 688).

31. *Rompilla*, 545 U.S. at 400 (Kennedy, J., dissenting, joined by C.J. Rehnquist, J. Scalia, and J. Thomas).

32. The nineteen are Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont,

Wisconsin, and Wyoming. Spangenberg Group, *Statewide Indigent Defense Systems: 2005* (West Newton, MA: the Spangenberg Group, 2005), [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewide\\_indeffsystems2005.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewide_indeffsystems2005.pdf).

33. Arkansas, Colorado, Connecticut, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, New Hampshire, and Wisconsin. *Id.*

34. Massachusetts, North Carolina, Oregon, Virginia, and West Virginia. *Id.* Since the Spangenberg Group's report was issued, Louisiana has established a public defender board with authority over indigent defense services statewide. LA. REV. STAT. ANN. §§ 15-141 *et seq.* (West 2007).

35. Spangenberg Group, *Statewide Indigent Defense Systems: 2005*.

36. *Id.*

37. Sloan et al., "Gideon's Unfulfilled Mandate."

38. Spangenberg Group, *Statewide Indigent Defense Systems: 2005*.

39. In one dramatic example, the Mississippi legislature passed a sweeping reform act in 1998 to create a statewide system for representing indigent defendants, but was forced to repeal the act because of inadequate funding. Sloan et al., "Gideon's Unfulfilled Mandate."

40. E-mail from Danielle Carman, Assistant Director of the Office of Indigent Defense Services, April 23, 2008.

41. *Id.*

42. This number refers to administrative districts.

43. Between fiscal year 2001-2 and fiscal year 2006-7, total dispositions by public defenders and appointed counsel grew from 175,833 to 266,527, a 51.5 percent increase. Data provided by the North Carolina Office of Indigent Defense Services, Research Department, from the March 2008 study, *Distribution of Indigent Defense Cases by PAC and PD Offices*.

44. North Carolina Office of Indigent Defense Services, *The Challenge: Evaluating Indigent Defense*, Conference Report (Raleigh: North Carolina Office of Indigent Defense Services, March 2005), 2. About twenty-eight appointed attorneys are currently under contract, according to IDS.

45. Defender District 1, covering Camden, Chowan, Currituck, Dare, Gates, Pasquotank, and Perquimans counties; Defender District 3A, covering Pitt County; Defender District 3B, covering Carteret County; Defender District 5, covering New Hanover County; Defender District 10, covering Wake County; Defender District 12, covering Cumberland County; Defender District 14, covering Durham County; Defender District 15B, covering Chatham and Orange counties; Defender District 16A, covering Hoke and

Scotland counties; Defender District 16B, covering Robeson County; Defender District 18, covering Guilford County; Defender District 21, covering Forsyth County; Defender District 26, covering Mecklenburg County; Defender District 27A, covering Gaston County; Defender District 28, covering Buncombe County; and Defender District 29B, covering Henderson, Polk, and Transylvania counties.

46. Indigent Defense Services Act of 2000 (S.L. 2000-144; G.S. 7A-498 *et seq.*).

47. Executive Summary, *Report of the Commission on Indigent Defense Services*, (Raleigh: Commission on Indigent Defense Services, March 2008), 1, [www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/final%20legislature%20report%202008.pdf](http://www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/final%20legislature%20report%202008.pdf).

48. *Id.*

49. American Bar Association, *ABA Standards for Criminal Justice: Providing Defense Services* (3d ed. Washington, DC: American Bar Association, 1992), Standard 5-1.5, [www.abanet.org/crimjust/standards/defsvcs\\_toc.html](http://www.abanet.org/crimjust/standards/defsvcs_toc.html).

50. American Bar Association, Introduction, *Ten Principles of a Public Defense Delivery System* (Washington, DC: American Bar Association, 2002), [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf).

51. *Id.*

52. *Id.*, Principle 9.

53. National Legal Aid and Defender Association, Preface, *The Defender Training and Development Standards* (Washington, DC: National Legal Aid and Defender Association, n.d.), [www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

54. *Id.*, Standard 1.1.

55. *Id.*, Standard 1.3. NLADA's training standards are to be read in conjunction with its previously published standards, such as Guideline 1.2 of *Performance Guidelines for Criminal Defense Representation*, "Education, Training and Experience of Defense Counsel": "(a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the particular jurisdiction. Counsel has a continuing obligation to stay abreast of changes and developments in the law. Where appropriate, counsel should also be informed of the practices of the specific judge before whom a case is pending. (b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation."

56. G.S. 7A-498.6(8).

57. More information about resources provided by the School is available on its indigent defense education website, [www.indigentdefense.unc.edu](http://www.indigentdefense.unc.edu).

## Evaluating New Revenue Sources for Counties

Karl W. Smith



**A**s part of landmark legislation, North Carolina counties now have conditional access to one of two new sources of revenue: a one-quarter-cent increase in the sales tax or a 0.4 percent land transfer tax.

During its 2007 session, the General Assembly approved a comprehensive relief package that will eliminate the entire county share of Medicaid funding for services by 2010. Medicaid is a health services program similar to Medicare. Whereas Medicare is a federal program

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that covers eligible Americans over the age of sixty-five, Medicaid is a shared federal and state

program that covers people who are poor or disabled. About 1.25 million of North Carolina's residents are eligible for Medicaid.<sup>1</sup>

At the time the legislation passed, North Carolina was the only state requiring its counties to contribute a fixed percentage to Medicaid. At one time, most states required counties to cover some part of Medicaid funding, but by 2005 all other states had assumed responsibility for the county portion.

**County revenue choices:  
a one-quarter-cent sales tax or  
a 0.4 percent land transfer tax.**

North Carolina counties still will be responsible for the administrative costs of Medicaid, but after a multiyear campaign by the counties, the state has agreed to assume all funding for services. To support this transfer of funding liabilities, the state is shifting one-half cent of the county sales tax to the state. By fiscal year 2009–10, the baseline county sales tax rate will be reduced to two cents.

The state, however, has offered the counties the option of adopting one of the two new revenue sources. Counties do not have to adopt either one, but they

may not adopt both. The county commissioners make the decision to adopt one of the new revenue sources after the voters approve an advisory referendum. The referendum may include both tax options. However, if both pass, the county commissioners must choose one. Although the commissioners may not enact either revenue option unless the voters approve it, the county is not required to adopt the new tax if the referendum is successful.

Because the county can adopt only one of the taxes, a careful analysis of the costs and the benefits of each option is prudent. Some features of the sales tax are familiar to all counties, but most county officials have little if any experience with a land transfer tax.

This article examines what the economic implications of the two taxes are and how they compare with each other along six dimensions: short-term revenue projections, long-term revenue projections, revenue stability, tax incidence, the effect on local economic growth, and tax fairness.

### Short-Term Revenue Projections

One way to evaluate the two revenue sources is on the total revenue each will yield in the first year. The most data are available on this criterion, and it affects county budgets most immediately.

Yet even first-year estimates of revenues from a land transfer tax are difficult to obtain because the U.S. housing market is in transition from a period of unprecedented growth to what is likely to be a period of significant decline.<sup>2</sup> As discussed later, revenues from a land transfer tax are much more sensitive to the state of the housing market than revenues from a property tax or a sales tax.

Table 1 shows the estimated revenues from an additional one-quarter-cent sales tax and from a 0.4 percent land transfer tax in fiscal years 2005–6 and 2006–7. Clearly, for some counties, the 0.4 percent land transfer tax would have yielded more revenue, whereas for other counties, the one-quarter-cent sales tax would have yielded more revenue. However, even over the last two years, estimates for revenues from a land transfer tax have been highly volatile. In Jones County, for example, esti-

Table 1. **Estimated Revenue from Tax Options**

County	2006-7 1/4¢ Sales Tax	2005-6 0.4% Land Transfer Tax	2006-7 0.4% Land Transfer Tax	Change in Estimated Land Transfer Tax Revenue from 2005-6 to 2006-7
Alamance	\$ 3,841,857	\$ 3,251,750	\$ 2,729,468	- 16%
Alexander	467,394	451,304	399,216	- 12%
Alleghany	204,203	434,558	466,432	7%
Anson	313,232	267,848	238,096	- 11%
Ashe	549,707	1,126,440	1,134,040	1%
Avery	543,762	1,332,874	1,109,368	- 17%
Beaufort	1,186,875	1,113,084	1,034,928	- 7%
Bertie	205,275	213,012	345,012	62%
Bladen	458,603	313,386	302,900	- 3%
Brunswick	3,112,319	14,041,348	8,745,684	- 38%
Buncombe	8,436,602	9,894,652	10,256,468	4%
Burke	1,590,672	1,054,402	1,170,936	11%
Cabarrus	5,267,593	6,860,952	6,779,188	- 1%
Caldwell	1,476,042	1,217,068	1,507,160	24%
Camden	158,392	276,154	230,260	- 17%
Carteret	2,552,628	6,262,066	3,846,744	- 39%
Caswell	168,401	189,664	199,808	5%
Catawba	4,836,544	3,386,124	3,090,216	- 9%
Chatham	994,185	2,671,990	2,875,192	8%
Cherokee	845,047	1,691,628	992,280	- 41%
Chowan	304,496	388,200	267,000	- 31%
Clay	212,267	942,798	564,044	- 40%
Cleveland	1,906,886	1,159,962	1,281,344	10%
Columbus	934,330	443,968	577,284	30%
Craven	2,400,049	3,030,396	2,540,752	- 16%
Cumberland	8,141,461	5,911,688	6,072,256	3%
Currituck	929,877	1,966,616	1,304,236	- 34%
Dare	3,153,888	4,318,868	2,874,928	- 33%
Davidson	2,748,945	2,432,254	2,538,416	4%
Davie	658,486	1,016,194	1,040,204	2%
Duplin	822,800	666,810	446,212	- 33%
Durham	9,206,212	10,281,965	9,764,416	- 5%
Edgecombe	782,520	537,170	411,564	- 23%
Forsyth	11,418,327	8,295,714	8,283,944	0%
Franklin	785,570	1,336,866	1,485,908	11%
Gaston	4,445,691	3,718,896	4,477,704	20%
Gates	98,974	128,564	179,716	40%

*continued on page 22*

mates surged nearly three times in value, while in Perquimans County, they declined by almost a half, and in Watauga County, there was no statically meaningful change.

Counties that choose the land transfer tax must be prepared for revenue surprises even in the short term. Next

year's revenue from the sales tax is much easier to predict.

### Long-Term Revenue Projections

Forecasting revenue far into the future is even more difficult than forecasting

one year in advance. However, some trends can be explored. Sales tax revenue is driven largely by personal income. Although year-to-year spending fluctuates, over time, people spend and save predictable portions of their salary. Economists can project sales tax revenue by using estimates of the growth in personal income. On that basis, they expect the strongest growth to occur in the urban and suburban counties.

Both the population gap and the income gap between urban and rural counties have been growing over time. However, rural counties that border a major urban center—such as Union County, which borders Mecklenburg County, and Chatham County, which borders Durham and Wake counties—should see strong growth in commercial shopping as well as residents.

As time goes on, however, the sales tax will likely not keep up with income growth in the county or with the cost of school construction. The sales tax in North Carolina is levied mostly on manufactured goods that can be purchased in a store. High-growth industries like health care and retirement planning are not covered by the sales tax. As the economy continues to move from manufacturing toward services, growth in sales tax revenue will slow.

For example, lawnmowers and weed eaters are taxed under the sales tax, but lawn care services are not. As more residents contract for their lawn care needs, the sales tax will begin to cover a smaller and smaller portion of the lawn-care sector of the economy.

Over a longer horizon, a county can expect current operating and capital expenditures and general salary expenditures for public schools to slowly outpace the revenue that it receives from a sales tax increase. Unless a county has limited construction needs, a one-time increase in the sales tax is not likely to be a long-term solution. The time horizon is quite long, perhaps 15–20 years in some cases, but the trends in construction costs and sales tax revenues are steady.

Like growth in revenue from the sales tax, growth in revenue from the land transfer tax depends on population and income. Yet growth in revenue from the land transfer tax also depends on local amenities. That is, revenue from

Table 1. **Estimated Revenue from Tax Options** (continued from page 21)

County	2006–7 1/4c Sales Tax	2005–6 0.4% Land Transfer Tax	2006–7 0.4% Land Transfer Tax	Change in Estimated Land Transfer Tax Revenue from 2005–6 to 2006–7
Graham	\$ 151,697	\$ 253,202	\$ 195,056	– 23%
Granville	842,627	1,052,944	1,218,236	16%
Greene	173,320	119,616	140,004	17%
Guilford	15,673,853	13,596,148	13,072,804	– 4%
Halifax	1,135,918	612,078	981,728	60%
Harnett	1,505,336	1,877,684	2,063,884	10%
Haywood	1,613,812	2,246,888	2,062,508	– 8%
Henderson	2,553,967	4,214,018	3,896,004	– 8%
Hertford	528,074	196,466	296,236	51%
Hoke	341,644	828,736	924,304	12%
Hyde	133,649	231,896	169,548	– 27%
Iredell	4,908,336	6,855,846	6,963,820	2%
Jackson	1,035,437	3,616,940	3,404,268	– 6%
Johnston	3,428,087	4,496,488	4,450,992	– 1%
Jones	88,575	91,770	256,762	180%
Lee	1,517,896	958,334	1,135,724	19%
Lenoir	1,307,049	388,390	477,860	23%
Lincoln	1,489,937	2,310,316	2,293,000	– 1%
Macon	1,230,402	2,269,592	1,863,892	– 18%
Madison	227,647	830,008	722,228	– 13%
Martin	496,596	166,492	187,052	12%
McDowell	815,667	812,310	1,022,900	26%
Mecklenburg	33,040,341	44,781,832	49,416,096	10%
Mitchell	368,970	485,242	365,628	– 25%
Montgomery	428,562	712,956	591,920	– 17%
Moore	2,473,222	3,366,042	3,101,740	– 8%
Nash	2,834,317	1,559,404	1,485,548	– 5%
New Hanover	8,719,284	13,997,492	9,032,612	– 35%
Northampton	187,597	304,188	324,256	7%
Onslow	3,934,310	4,525,258	4,776,580	6%
Orange	3,031,453	4,192,222	4,113,088	– 2%
Pamlico	194,740	737,856	672,680	– 9%
Pasquotank	1,167,495	1,150,724	926,312	– 20%
Pender	826,380	3,037,918	2,497,692	– 18%
Perquimans	151,188	478,268	273,372	– 43%
Person	745,479	625,808	617,448	– 1%
Pitt	4,584,613	3,697,888	3,389,016	– 8%
Polk	274,500	1,030,936	1,006,812	– 2%
Randolph	2,442,154	1,961,362	2,002,704	2%
Richmond	877,791	428,512	457,428	7%
Robeson	2,239,943	725,152	755,240	4%
Rockingham	1,673,750	1,075,322	1,125,472	5%
Rowan	2,597,696	1,982,686	2,280,928	15%
Rutherford	1,296,835	1,954,906	1,976,552	1%

continued on page 23



Table 1. **Estimated Revenue from Tax Options** (continued from page 22)

County	2006-7 1/4¢ Sales Tax	2005-6 0.4% Land Transfer Tax	2006-7 0.4% Land Transfer Tax	Change In Estimated Land Transfer Tax Revenue from 2005-6 to 2006-7
Sampson	\$ 1,080,272	\$ 456,708	\$ 432,860	- 5%
Scotland	761,301	322,756	263,336	- 18%
Stanly	1,344,973	830,872	864,872	4%
Stokes	518,731	503,532	539,356	7%
Surry	1,931,278	897,684	770,284	- 14%
Swain	244,696	608,306	371,996	- 39%
Transylvania	848,348	1,730,626	1,539,320	- 11%
Tyrrell	51,858	101,494	83,724	- 18%
Union	3,672,624	10,326,782	10,569,080	2%
Vance	1,037,014	426,722	397,952	- 7%
Wake	27,963,291	42,829,792	44,786,400	5%
Warren	192,708	555,526	639,020	15%
Washington	202,305	131,606	120,428	- 8%
Watauga	1,844,185	3,063,760	3,060,852	0%
Wayne	2,570,523	1,486,384	1,290,244	- 13%
Wilkes	1,397,974	962,820	974,644	1%
Wilson	2,016,771	1,186,820	1,154,880	- 3%
Yadkin	541,171	278,618	351,351	26%
Yancey	329,720	830,748	853,496	3%
<b>Total</b>	<b>\$250,000,000</b>	<b>\$310,996,925</b>	<b>\$299,615,353</b>	<b>- 4%</b>

Source: North Carolina Association of County Commissioners, "Estimated Additional County Revenue Authority," [www.ncacc.org/documents/revenueauthority\\_073107.pdf](http://www.ncacc.org/documents/revenueauthority_073107.pdf). Sales taxes were estimated using revenues from the point-of-delivery portion of the Article 44 sales tax. Before the current legislation, four existing provisions in the North Carolina General Statutes authorized sales taxes for all one hundred counties. Those provisions are known as Article 39, Article 42, Article 43, and Article 44. They have slightly different characteristics. The sales tax option now available to counties is most similar to a portion of Article 44. Article 44 authorizes a sales tax to be collected in all counties. One-half of the proceeds is to be distributed on the basis of county population; this is known as the "per capita portion." The other half of the proceeds is to be distributed to the county in which the item was purchased; this is known as the "point-of-delivery portion." Land transfer taxes were estimated using measures of deed stamp revenue. The county land transfer tax is designed to yield twice the revenue of the existing deed stamp tax. The deed stamp tax also is known as the "excise stamp tax on conveyances."

the land transfer tax is influenced by how desirable a county is as a vacation, retirement, or commuter community. Rural counties, such as Dare County, which have many outside visitors, have experienced large increases in revenue from the land transfer tax over the past five years.

Rapidly growing counties will likely see rates of growth in revenues from the land transfer tax that exceed the rates of growth in their population. As a county becomes denser, property values in the central core tend to grow faster than they do on the periphery. This growth causes revenues from the land transfer tax to grow ever faster.

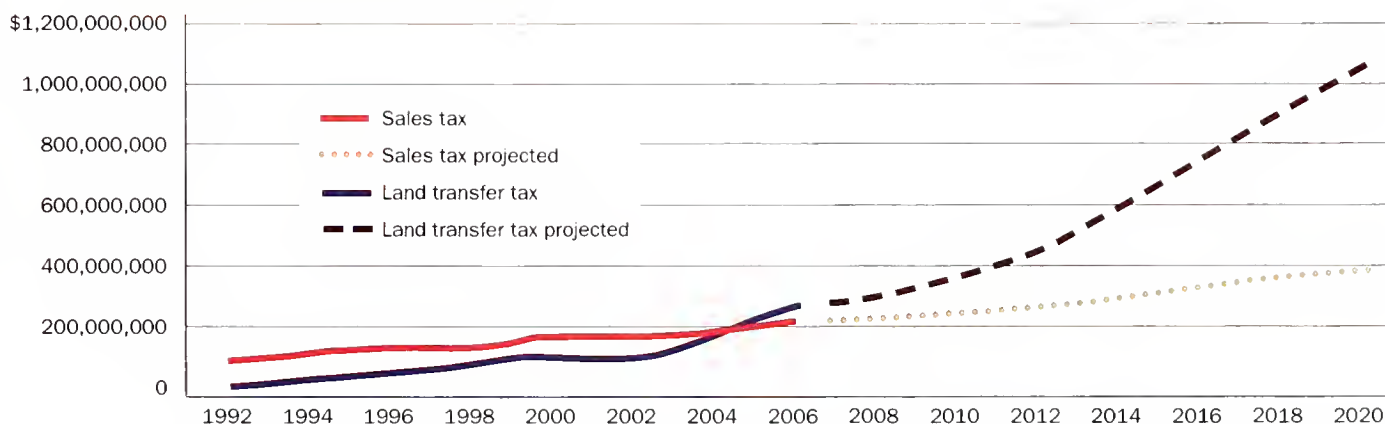
Rural counties without a retirement or vacation base can expect slow growth in revenue from land transfer taxes over the long term. In the short term, they may experience some of the same unexpected surges and declines that urban counties will, but the growth will be slower, on average.

Although each county's experience will be different under a land transfer tax, projected statewide revenues from a land transfer tax are growing faster than construction costs and can be expected at least to keep pace with construction costs over the next twenty-five years. (For actual and projected revenues from both taxes statewide, see Figure 1.)

### Revenue Stability

Many county leaders consider the sales tax to be a volatile revenue source, com-

Figure 1. **Statewide Revenue from the One-Quarter-Cent Sales Tax and the 0.4 Percent Land Transfer Tax, Actual and Projected, 1992-2020**



Source: North Carolina Department of Revenue, "Part III: State Tax Collections," [www.dor.state.nc.us/publications/abstract/2007/part3.html](http://www.dor.state.nc.us/publications/abstract/2007/part3.html). Land transfer taxes were estimated using a measure of deed stamp revenue.

pared with the property tax. The sales tax truly is less predictable than the property tax. Property values rarely fall, and there is little reason to think that North Carolina will experience falling property values anytime soon. In addition, property is re-valued every four to eight years. Therefore a government can have a very accurate estimate of its tax base between revaluations.

The sales tax, on the other hand, responds to the performance of the overall economy (see Figure 2). When North Carolina's economy goes into recession, growth in sales tax revenue slows down, and sales tax revenue may even decrease.

During a recession, sales tax revenue does not decline as fast as the overall economy or the state government's total budget because even when times are tough, consumers and businesses spend money on necessities. They may spend down savings or borrow to cover costs if their incomes fall.

Revenue from land transfer taxes, however, is highly sensitive to the performance of the economy. Almost all U.S. recessions begin in the housing market.<sup>3</sup> Slowdowns in housing sales drag the entire economy down. Rather than being linked just to home prices, as the property tax is, the land transfer tax

is linked to prices and the number of sales. Although prices are slow to fall, sales of homes can plummet. Few homeowners will sell their homes for a loss, and builders have no incentive to start homes that they do not think they can sell. So when

the housing market becomes weak, prices remain stable, but the number of homes that are sold each month declines drastically, and homes stay on the market for much longer periods.

Therefore a county that depends on the land transfer tax to meet spending needs could find itself facing a budget crisis going into a recession (see Figure 3).

#### North Carolina's Economic Outlook for 2008 and 2009

If both revenue sources are sensitive to economic conditions, what kind of economy can the state expect over the next few years? Economic forecasting has always been more art than science, but a few developments are predictable.

The downturn in the national housing market probably will continue at least through 2008 and into 2009. Increases in home prices nationally have followed a pattern similar to that in the late 1980s in Los Angeles County. Los Angeles County experienced what at the time was an unprecedented boom in housing prices. They peaked in 1990.

From 1990 to 1996, they fell roughly 27 percent, according to data compiled by Standard and Poor's.<sup>4</sup>

The national increase in home prices from 2002 to 2006 was similar in size and shape to the Los Angeles bubble. Nationally, housing prices fell a record 8.9 percent in 2007 from their peak in 2006. They would have to fall an additional 19.9 percent in 2008 to match the 27 percent total decline seen in the aftermath of the Los Angeles boom.<sup>5</sup> Home prices must therefore fall significantly faster than the record decline set in 2007 if the likely bottom in the housing market is to be reached by the end of 2008. This makes it quite probable that the housing bust will continue at least into early 2009.

To compound matters, the government has limited resources for combating the decline in housing prices. Typically, booms and busts in the housing market are driven in part by changes in mortgage interest rates. Mortgage interest rates are in turn driven by inter-bank lending rates, set by the Federal Reserve Board.

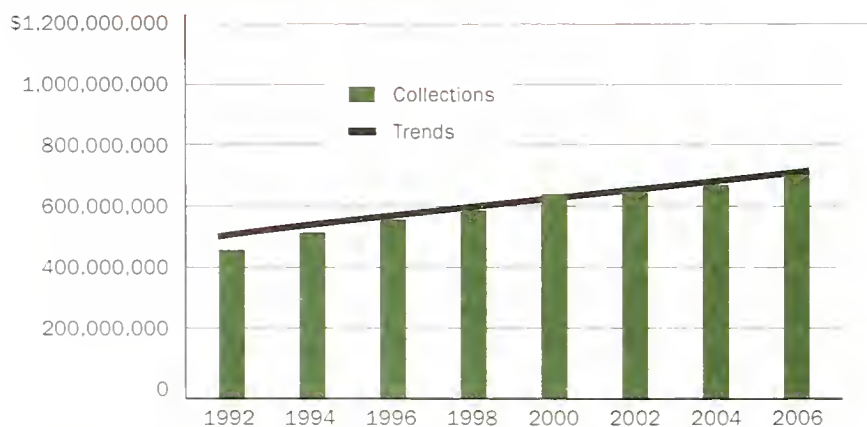
This housing boom has been different, though. The Federal Reserve Board began raising rates in 2004, in part to stop the housing bubble while it was still small.<sup>6</sup> The bubble, however, accelerated throughout 2004, 2005, and the beginning of 2006 because of a change in how mortgages were financed on Wall Street. These changes made it easier for borrowers with poor credit histories to obtain loans and borrowers with good credit histories to obtain much larger loans than in the past. More borrowers meant more buyers and an increasing demand for homes.

Unfortunately, those borrowers began to default on their loans in much larger numbers than ever before. Throughout the second half of 2007 and into 2008, banks and other institutions began undoing the changes that made loans easy to obtain and, indeed, instituted new guidelines that made some loans even more difficult to obtain than before 2004.

These higher loan standards are shrinking the pool of borrowers and causing the demand for housing to fall. Just as the Federal Reserve Board was unable to stop the rise in housing prices

**Revenue from the sales tax is less predictable than that from the property tax. But revenue from the sales tax is more responsive to the economy's performance.**

Figure 2. Collections and the Trend in Revenue from the One-Cent Sales Tax, 1992–2006



Source: North Carolina Department of Revenue. "Part III: State Tax Collections." [www.dor.state.nc.us/publications/abstract/2007\\_part3.html](http://www.dor.state.nc.us/publications/abstract/2007_part3.html).



associated with looser lending standards, it seems unable to stop the fall in housing prices associated with more stringent lending standards.

This situation offers further reason to think that the decline in housing prices

will continue for some time. It also suggests that states such as North Carolina, which experienced little in the way of a housing bubble, may not be completely spared from the housing bust. Home prices in North Carolina did not rise

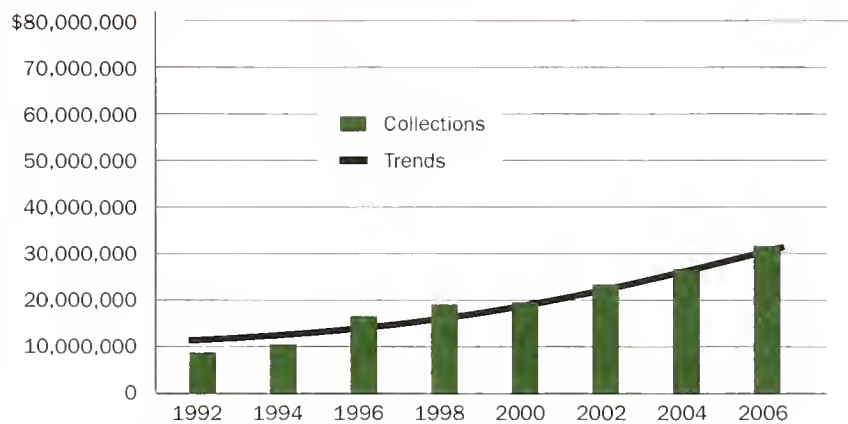
dramatically, in part because a steady supply of new home building absorbed increases in demand. As those buyers disappear, however, there may be a glut of housing in the state, which will drive down prices.

Yet North Carolina has a growing population. Therefore, any excess inventory in new homes is likely to sell off faster in North Carolina than in the rest of the country. Relative to the nation as a whole, the outlook for housing in North Carolina is better than average, but there still will be significant challenges in 2008 and 2009.

As a result, revenue from a land transfer tax may grow more slowly, on average, for the next couple of years and be much less predictable. After the storm passes, the state should return to steadier growth in potential receipts from the land transfer tax, but that revenue source will always be sensitive.

Regarding the sales tax, recessions usually begin in housing and then spread

Figure 3. **Collections and the Trend in Revenue from the Land Transfer Tax, 1992–2006**



Source: North Carolina Department of Revenue, "Part III: State Tax Collections," [www.dor.state.nc.us/publications/abstract/2007/part3.html](http://www.dor.state.nc.us/publications/abstract/2007/part3.html). Land transfer taxes were estimated using a measure of deed stamp revenue.

to the rest of the economy. Only twice in the nation's history has a housing downturn not led to a national recession: once at the beginning of the Korean War and again at the beginning of the Vietnam War. At this time, signs point toward a recession.

Recessions are typically associated with slower growth in sales tax revenue and, in some cases, an outright decline. The decline is not as severe as that associated with the land transfer tax. However, counties should be aware that sales tax growth may be lower than projected in 2008 and 2009.

### Tax Incidence

Determining who bears the burden of a tax can be complex. For example, even though gasoline distributors have the statutory responsibility to pay an excise tax per gallon of gasoline, they simply raise the price of gasoline to recoup the tax. Gasoline consumers end up paying most of the tax.

On the other hand, sales taxes are charged directly to consumers. Yet con-

sumers have a limited budget. The more in sales tax they pay, the smaller their budget for goods and services. Therefore an increase in the sales tax will typically lower the total amount that consumers purchase. So an increase in the sales tax will mean less revenue for some businesses.

For example, if a family spends \$100 a week on groceries plus 2 percent in a sales tax, its total expenditure is \$102. If the sales tax is raised to 5 percent, that same family must pay \$105 a week for the same groceries. Therefore it has \$3 less for some other purchase. In this way, the sales tax affects not only consumers but also businesses.

Changing prices or shopping behavior in response to taxes is called "shifting the burden." Stores shift the burden of excise taxes onto consumers by raising prices. Consumers shift the burden of sales taxes onto stores by reducing the amount of their purchases.

So who will end up paying for the new sales or land transfer taxes?

The degree to which sales tax burdens are shifted depends on whether the goods

being taxed are necessities or discretionary purchases. Sales taxes on necessities are generally borne by consumers. When faced with higher taxes on necessities, consumers have little choice but to pay them. In addition, retailers such as Wal-Mart tend to operate on thin margins to begin with and have little room to lower prices further when their shoppers face higher taxes.

When the sales tax falls on discretionary items, however, consumers will reduce their overall purchases. They may reduce the number of times per month that they eat at restaurants or go to the movies. So restaurants, movie theaters, and other discretionary retailers may see a decrease in revenues after an increase in the sales tax.

The land transfer tax tends to be more straightforward. It is charged to the seller of the property, and in most cases, the seller actually bears the cost. Sellers of land cannot shift the burden as easily to buyers because sellers are accepting the highest bid. If the buyer already is paying more than the next-highest bidder, why should he or she pay any more?

The seller's only alternative is to threaten to take the property off the market unless the buyer pays a higher price to include the land transfer tax. Most sellers do not have the option of taking their properties off the market.

A few sellers, however, are likely to have that kind of negotiating power. Sellers of commercial real estate and homebuilders can choose not to develop land if doing so is not profitable. In this case, they may hold back property from the market unless buyers are willing to incur a portion of the land transfer tax.

Like the sales tax, the land transfer tax is relatively small, and the burden, relatively light. However, the land transfer tax falls on a smaller group of taxpayers and therefore is a somewhat heavier burden per taxpayer than the sales tax.

As a general principle, each additional dollar of tax burden is harder on a taxpayer. Thus, taxes will be less onerous if they are spread across as wide a group as possible. If a county already has high property taxes, it might make taxes less burdensome by increasing sales taxes than by initiating a land transfer tax, which also falls on property owners



when they sell their property. On the other hand, counties with low property tax burdens may find it less onerous to increase the land transfer tax than to add a quarter of a cent to the combined state and local sales tax rate.

### The Effect on Local Economic Growth

Concerns have long been raised that high tax rates slow economic growth. Indeed, some international evidence suggests that nations with high taxes grow more slowly than nations with low taxes.<sup>8</sup> In the United States, however, the evidence has been mixed. The longest sustained period of growth in modern U.S. history was during the 1990s, which coincided with relatively high national tax rates.

Nonetheless, a community may be rightfully concerned that relatively higher taxes will put it at a disadvantage in attracting businesses and residents. On this issue, there are two points to keep in mind.

First, the proposed tax increases are both rather small, and any effect on

growth is likely to be relatively small as well. The studies that indicate the largest increase in growth rates from a decrease in taxes suggest that an increase of 10 percent in the total tax burden could result in a total decrease in growth of 4.8 percentage points over a fifty-year horizon, or less than 0.1 percentage point of growth per year. The proposed tax increases would represent an increase in the total tax burden for the average North Carolinian of 1.2 percent. The resulting decrease in growth would then be approximately 0.6 percentage point over fifty years, or roughly 0.01 percent per year.<sup>9</sup> Therefore, even the largest estimate produces a rather small effect on growth.

Second, and more important, the effect of taxes on growth depends on how the revenue is used. If it is used for projects that do little to enhance a community's desirability as a place to live and work, then the tax is more likely to have a negative impact on growth. If the

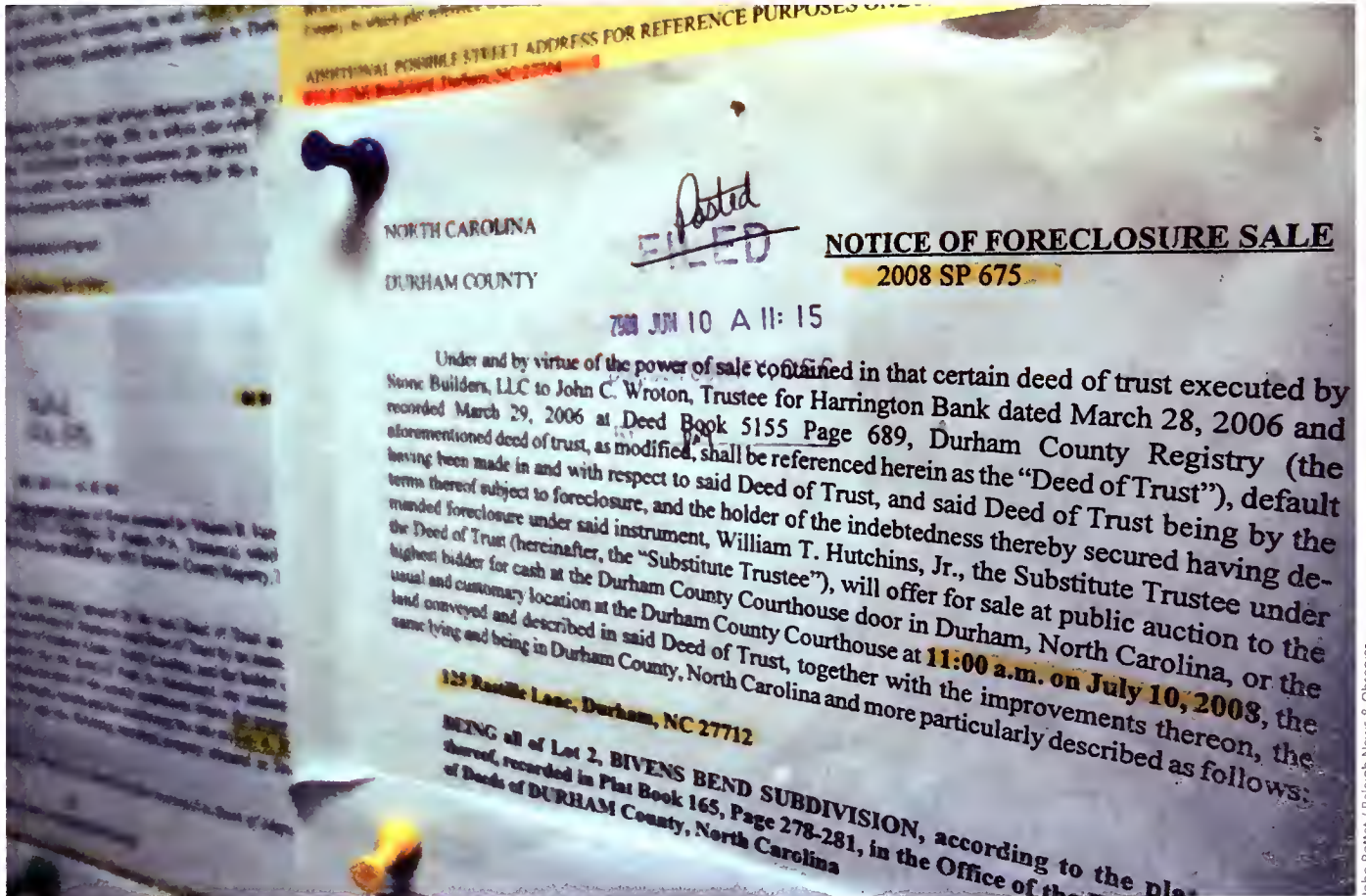
revenue is spent on critical construction needs or other high-value projects, however, then a tax increase may lead to more rapid growth.

Concerns about growth are typically most acute in relation to the land transfer tax. The land transfer tax by itself does make it less profitable for developers to build new housing. The proposed tax would reduce a developer's revenue by 0.4 percent. However, this disincentive to develop could potentially be offset if the increase in tax revenue is used to fund projects that increase demand for housing in the county.

New school construction, for example, could raise the quality of education in a county and increase the demand for housing there. This increase in demand might outweigh the negative effects of the tax on growth.

Suppose that a developer is considering building a house that costs \$95,000 to construct and will sell for \$100,000. The builder will make a profit of \$5,000.

**A common concern is that higher taxes will hurt economic growth.**



John Rottet / Raleigh News & Observer

Table 2. **Results of 2007 Referendums**

County	Revenue Option	Result
Brunswick	0.4% land transfer tax	Failed
Catawba	1/4¢ sales tax	Passed
Chatham	0.4% land transfer tax	Failed
Columbus	1/4¢ sales tax	Failed
Cumberland	1/4¢ sales tax	Failed
Davie	0.4% land transfer tax	Failed
Davie	1/4¢ sales tax	Failed
Gates	0.4% land transfer tax	Failed
Graham	0.4% land transfer tax	Failed
Graham	1/4¢ sales tax	Failed
Greene	1/4¢ sales tax	Failed
Harnett	0.4% land transfer tax	Failed
Harnett	1/4¢ sales tax	Failed
Henderson	0.4% land transfer tax	Failed
Hertford	1/4¢ sales tax	Failed
Hoke	0.4% land transfer tax	Failed
Johnston	0.4% land transfer tax	Failed
Johnston	1/4¢ sales tax	Failed
Lenoir	1/4¢ sales tax	Failed
Macon	0.4% land transfer tax	Failed
Martin	1/4¢ sales tax	Passed
Moore	0.4% land transfer tax	Failed
Pender	0.4% land transfer tax	Failed
Pitt	1/4¢ sales tax	Passed
Robeson	1/4¢ sales tax	Failed
Rutherford	0.4% land transfer tax	Failed
Rutherford	1/4¢ sales tax	Failed
Sampson	1/4¢ sales tax	Passed
Surry	1/4¢ sales tax	Passed
Swain	0.4% land transfer tax	Failed
Union	0.4% land transfer tax	Failed
Washington	1% land transfer tax	Failed

Source: North Carolina Association of County Commissioners, "Six Counties to Pursue Sales Tax in November," [www.ncacc.org/2008revenueoptions.html](http://www.ncacc.org/2008revenueoptions.html).

If the county introduces a land transfer tax of 0.4 percent, the builder will pay an extra \$400 to build and sell the home, reducing the profit to \$4,600.

However, if the county uses the tax revenue to construct a new school, the sale price of houses in the community may rise to \$101,000 or more. The builder then would have costs of \$95,000 plus \$404 in a land transfer tax, but the home would sell for \$101,000. Thus the builder would make a profit of

\$101,000 minus \$95,404, or \$5,596—more than the original \$5,000. By using the revenue from the land transfer tax to enhance the community's value, the county has contributed to an increase in builders' profits and encouraged faster growth. Therefore the key question is whether or not the tax revenue can be put to use in a way that increases the quality of life of the community and the demand of potential residents to live there.

## Tax Fairness

The evaluation of tax fairness, or tax equity, depends as much on personal values as it does on data. However, economists use three metrics to measure the fairness of a tax code: horizontal equity, vertical equity, and ability to pay.

"Horizontal equity" means that the tax code treats similar taxpayers in the same way. A tax code has more horizontal equity if it does not contain specialized exemptions or deductions that only a select group of taxpayers can claim. To qualify as horizontally equitable, a tax code must base its existing exemptions or deductions on material circumstances rather than political clout.

The sales tax has been criticized as horizontally inequitable because it applies to the sellers of tangible goods but not the sellers of services. For example, a company that rents landscaping equipment has to charge its customers a sales tax, whereas a company that performs landscaping services does not. The companies are similar in terms of the market they serve, but one faces a higher tax burden.

At first glance, the land transfer tax seems to fall on homeowners, but not renters. However, this is not exactly the case. Real estate developers are one of the few groups that are able to pass some of the land transfer tax on to consumers. Developers who build apartment complexes may be able to pass the tax on to apartment management companies, which may then pass it on to renters. The extent to which they can pass it on depends on the particulars of the market, but renters may bear some of the burden of the land transfer tax.

Vertical equity measures the progressivity of a tax code. A tax code has more vertical equity if wealthier taxpayers pay a larger share of their income than poorer taxpayers pay of their income.

The desirability of vertical equity is hotly debated. However, the economic intuition is that it is more difficult for poorer residents to afford taxes. Therefore the overall burden of taxation is reduced if the wealthy pay a larger share.

Because economists cannot know for sure how hard it is for any family or individual to meet a tax bill, they cannot know how much progressivity, if any, is best. They can, however, analyze



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which taxes are more progressive and which are less.

Sales taxes are among the least progressive taxes. They apply only to the portion of a person's income that he or she uses to purchase tangible goods. Lower-income residents use a larger fraction of their income for purchasing than for saving or investing, and their purchases tend to be weighted heavily toward goods rather than services. Therefore a lower-income family often pays a larger fraction of its income in sales tax than a wealthy family does, resulting in low vertical equity for the sales tax.

The land transfer tax, on the other hand, is one of the most progressive taxes. As income rises, households spend an ever-greater fraction of it on property (whether as a home or for an investment). Wealthier families may own many times the value of property that low- and middle-income families own.

Ability to pay is similar to progressivity, but there is a subtle difference.

**Spreading taxes across as wide a group as possible makes them less burdensome on the individual taxpayer.**

A tax conforms to the ability-to-pay standard if everyone who is required to pay taxes has sufficient income to do so. The sales tax, for example, is low in progressivity, but meets the ability-to-pay standard because a person pays the sales tax only if he or she is purchasing a product. If the person does not have the necessary funds to pay the sales tax, then he or she will not buy the product.

Property taxes, on the other hand, do not meet the ability-to-pay standard. A resident's property tax bill may exceed his or her entire income. Therefore the resident may face a tax that he or she does not have the ability to pay.

The land transfer tax is charged only when a property changes ownership in exchange for money, not when it is transferred through gifts or inheritance. As a result, the land transfer tax almost always meets the ability-to-pay standard.

In a few cases, a landowner may be forced to sell a property for less than he or she owes on the mortgage, and the

mortgage holder will attempt to collect the difference. Such cases are rare because mortgage holders typically do not attempt to collect the difference. When these cases arise, however, the proposed land transfer tax would add to the amount that the mortgage holder attempts to collect.

**Results of Referendums on Sales and Land Transfer Taxes**

In 2007, fifteen counties held a referendum on the 0.4 percent land transfer tax, and one held a referendum on a previously authorized 1.0 percent land transfer tax. In all sixteen counties, the referendum failed. Sixteen counties also held a referendum on the one-quarter-cent sales tax. In five counties, the referendum passed. (For the type of tax involved in the referendums and the results by county, see Table 2.)

As of June 2008, twenty-one more counties had held a referendum on the one-quarter-cent sales tax. In three counties, the referendum passed. Also, four more counties had held a refer-

Table 3. **Referendums Scheduled for 2008 and Results to Date**

County	Revenue Option	Date	Outcome
Alexander	1/4¢ sales tax	January 8	Passed
Ashe	0.4% land transfer tax	May 6	Failed
Burke	1/4¢ sales tax	November 4	—
Columbus	1/4¢ sales tax	November 4	—
Cumberland	1/4¢ sales tax	May 6	Passed
Duplin	1/4¢ sales tax	May 6	Failed
Edgecombe	1/4¢ sales tax	May 6	Failed
Gaston	1/4¢ sales tax	May 6	Failed
Gates	0.4% land transfer tax	May 6	Failed
Greene	1/4¢ sales tax	May 6	Failed
Guilford	1/4¢ sales tax	May 6	Failed
Haywood	1/4¢ sales tax	May 6	Passed
Henderson	1/4¢ sales tax	May 6	Failed
Hertford	1/4¢ sales tax	May 6	Failed
Lee	1/4¢ sales tax	May 6	Failed
Lincoln	1/4¢ sales tax	May 6	Failed
Moore	1/4¢ sales tax	May 6	Failed
Nash	1/4¢ sales tax	May 6	Failed
Onslow	1/4¢ sales tax	May 6	Failed
Orange	0.4% land transfer tax	May 6	Failed
Polk	0.4% land transfer tax	November 4	—
Randolph	1/4¢ sales tax	May 6	Failed
Rockingham	1/4¢ sales tax	May 6	Failed
Stanly	1/4¢ sales tax	May 6	Failed
Tyrrell	0.4% land transfer tax	May 6	Failed
Wayne	1/4¢ sales tax	May 6	Failed
Wilkes	1/4¢ sales tax	May 6	Failed
Wilson	1/4¢ sales tax	May 6	Failed

Source: North Carolina Association of County Commissioners, "Six Counties to Pursue Sales Tax in November." [www.ncacc.org/2008revenueoptions.html](http://www.ncacc.org/2008revenueoptions.html).

endum on the land transfer tax, and in all four, the referendum failed. Three additional counties plan a referendum in 2008, two on the sales tax and one on the land transfer tax. (For the type of tax involved in the referendums and the results by county, see Table 3.)

## Conclusion

Counties may choose between two new revenue options, a one-quarter-cent increase in the sales tax and a 0.4 percent land transfer tax. Statewide, the sales tax would yield more revenue, yet some counties would receive greater revenue in the

first year from the land transfer tax. In general, revenue from the land transfer tax will grow faster than revenue from the sales tax, and the land transfer tax is more likely to keep pace with rising construction costs. However, the land transfer tax is less stable than the sales tax because it is tied to the real estate market, which is likely to be turbulent over the next few years. The tax tends to fall on wealthier residents more heavily. However, the poor are not exempt, for the tax is sometimes shifted into rental costs.

The sales tax is both steadier and more familiar, yet on a statewide basis, it is projected to grow more slowly than

the economy as a whole. Also, it tends to be regressive and can hit the poor particularly hard.

In analyzing tax options, economists deal with mathematical models and statistical evidence. Most policy makers find these tools helpful. Major policy decisions, however, depend crucially on values that no statistical analysis can answer. For a given county, one of the taxes may raise more money now, raise more money in the future, and have growth and economic-sensitivity properties that match that county's needs. Yet if that tax increases the burden on a group that the county's leaders feel is already overburdened, then choosing another revenue source is perfectly appropriate for the county.

## Notes

1. North Carolina Department of Health and Human Services, Division of Medical Assistance, "North Carolina Medicaid: Carolina ACCESS Statewide Enrollment Report (April 2008)," [www.dhhs.state.nc.us/dma/ca/enroll/caenr0408.pdf](http://www.dhhs.state.nc.us/dma/ca/enroll/caenr0408.pdf).

2. Office of Federal Housing Enterprise Oversight, [www.ofheo.gov/hpi.aspx](http://www.ofheo.gov/hpi.aspx).

3. Edward E. Leamer, "Housing Is the Business Cycle," paper presented at a symposium sponsored by the Federal Reserve Bank of Kansas City, Jackson Hole, WY, August 30–September 1, 2007 (revised October 11, 2007), [www.kansascityfed.org/publicat/sympos/2007/PDF/2007.10.11.Leamer.pdf](http://www.kansascityfed.org/publicat/sympos/2007/PDF/2007.10.11.Leamer.pdf).

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5. I multiplied year-over-year percentage declines to calculate the total decline—in this case:  $(1 - .089) \times (1 - .199) = .911 \times .878 = .730 = (1 - .270)$ . In other words, a decline of 8.9 percent times a decline of 19.9 percent equals a decline of 27.0 percent.

6. Federal Reserve Board, "Intended Federal Funds Rate, Change and Level, 1990 to Present," [www.federalreserve.gov/fomc/fundrate.htm](http://www.federalreserve.gov/fomc/fundrate.htm).

7. Chris Reese and John Parry, "NBER's Feldstein Says U.S. Sliding into Recession," Reuters, April 7, 2008, [www.reuters.com/article/ousiv/idUSN0747602120080407](http://www.reuters.com/article/ousiv/idUSN0747602120080407).

8. Young Lee and Roger H. Gordon, "Tax Structure and Economic Growth," *Journal of Public Economics* 89 (2005): 1027–1043, <http://scholar.google.com/scholar?hl=en&lr=&cluster=10719518669212326631>.

9. These are my calculations. Details are available on request.



# A Balanced Approach to Implementing the Balanced Scorecard

William C. Rivenbark and Eric J. Peterson

**R**obert S. Kaplan and David P. Norton introduced the balanced scorecard to the private sector in 1992 as a methodology for measuring an organization's performance beyond profit margins and dividend yields.<sup>1</sup> They realized that executives rely on more than financial indicators when making decisions, and they concluded that a wider range of performance measures was needed to capture the financial and operational performance of an organization. They also observed that performance measurement systems often are designed to measure specific employee tasks with workload indicators, which

can create an environment of behavior control rather than creative thinking. The balanced scorecard, which measures four dimensions of an organization—financial, internal business, innovation and learning, and customer—is designed to promote a culture that emphasizes strategy development for maximizing the efficiency and the effectiveness of service delivery.

Although originally designed for the private sector, the balanced scorecard soon found its way into local government. By 1998 at least twenty-three municipal governments had adopted the balanced scorecard because performance in the public sector always has been a multidimensional concept.<sup>2</sup> However, organizational barriers to this manage-

ment tool have tended to make it an option only for large local governments. These barriers include inadequate management sponsorship, organizational resistance to change, lack of employee skills, and difficulty in measuring service effectiveness.<sup>3</sup>

In response, this article presents a case study of how a smaller local government in North Carolina adopted the balanced scorecard. The town of Hillsborough, with a population of 6,240,

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*Hillsborough seeks to preserve its unique heritage and small-town character.*



Leslie Barbour / Raleigh News & Observer

had advanced its performance measurement system for some time, but needed an approach that linked departmental performance and organizational goals. After describing how Charlotte, North Carolina, modified the balance scorecard to make this connection, the article discusses the process that Hillsborough used in adopting the management tool. It then presents Hillsborough's balanced scorecard, including how the town's vision, mission, and strategic priorities (goals) are supported with town objectives from a balanced scorecard perspective, and how specific departmental balanced scorecards are designed to support these objectives with performance measures. The article concludes with examples of how Hillsborough has used the balanced scorecard to support funding decisions and with a discussion on understanding "balanced" in the context of implementing the balanced scorecard.

## Overview of the Balanced Scorecard

In 1996, when Charlotte became the first municipality in the United States to adopt the balanced scorecard, city officials realized that they had to modify the management tool in order to make it fit the public sector.<sup>4</sup> An overall modification was to align the balanced scorecard with the city's vision and strategic themes (see Figure 1), ensuring that objectives and measures selected for each of the four dimensions would provide feedback on the overall direction of the organization.

The city also had to modify the four dimensions of the balanced scorecard.<sup>5</sup> To address the customer dimension, the private sector can rely primarily on proxy measures that are calculated from sales data. Although proxy or administrative measures often are used in the public sector, some local governments use citizen surveys to assess service quality directly.<sup>6</sup> Charlotte changed this dimension to "Serve the customer," reflecting the city government's proactive organizational culture. It identified a blend of administrative and customer-satisfaction indicators to measure six objectives in this dimension: "Reduce crime," "Increase the perception of public safety," "Strengthen neighborhoods," "Provide

transportation choices," "Safeguard the environment," and "Promote economic opportunity." An example of an administrative indicator is average on-time performance for the transit system, which supports the objective of providing transportation choices. An example of a customer-satisfaction indicator is the percentage of citizens who report feeling safe in neighborhoods, which supports the objective of increasing the perception of public safety.

The internal business dimension did not require major modification. Kaplan and Norton envisioned that organizations would turn to their performance measurement systems to select or develop measures for this dimension, which focuses on the efficiency and the effectiveness of processes and procedures. Charlotte merely renamed this dimension "Run the business." It relies primarily on effectiveness measures to support three objectives: "Develop collaborative solutions," "Enhance customer service," and "Improve technology efficiencies." For example, the measure of percentage of 911 calls answered within thirty seconds was selected as part of the objective of enhancing customer service.

Kaplan and Norton proposed measures like sales growth, operating income, and market share for measuring the financial dimension of the organization. Because organizations in the public sector are not profit driven, Charlotte broadened this perspective to "Manage resources" and identified four objectives: "Maintain its AAA bond rating," "Deliver competitive services," "Expand its tax base and revenues," and "Invest in infrastructure." It then selected performance measures to track progress toward achieving each objective. For example, the city's street-resurfacing cycle as calculated by annual funding is used to measure the objective of investing in infrastructure.

Finally, Charlotte needed to make substantial modifications in the innovation-and-learning dimension. Kaplan and Norton designed this dimension primarily to capture product development. The public sector is more involved in

providing labor-intensive services than in developing products, and this requires a different philosophical approach to measuring innovation and learning. Charlotte renamed the dimension "Develop employees" and selected three objectives: "Achieve a positive employee climate," "Recruit and retain a skilled, diverse workforce," and "Promote learning and growth." A key performance measure for tracking recruitment and retention is the rate of voluntary turnover.

Charlotte's successful experience with modifying, adopting, and implementing the balanced scorecard suggests that certain management tools designed for the private sector can be used in the public sector. But as with any management tool, local governments must be prepared to make further modifications to the balanced scorecard during the adoption process in order to align it with their individual needs. Also, local governments with experience in performance measurement are better candidates for the balanced scorecard, because they are more experienced at responding to the complexity of tracking performance within four dimensions that are not mutually exclusive. In other words, understanding what the different types of measures are, what service aspects they capture, and how they can be used to make decisions helps officials place the measures in the appropriate dimension.

Organizations need a champion of the balanced scorecard to enhance the likelihood of success. The city manager of Charlotte embraced that role, believing that the management tool would aid in meeting the city's needs for better performance and greater accountability.<sup>7</sup> However, Charlotte did not adopt the new management tool simply as another way to measure and report performance. It embraced the tool within the larger framework of new public management, which was partially being driven by the reinventing government movement of the early 1990s. The mayor and the council strongly supported this change in organizational philosophy, which included cost reduction, innovation, and reduction of hierarchy.

**The balanced scorecard calls for strategies to make service delivery as efficient and effective as possible.**

Figure 1. **Charlotte's Balanced Scorecard Template**

<b>Vision</b>		Community of Choice for Living, Working, and Leisure				
<b>Strategic Themes</b>		<u>City Council Focus Issues</u>				
		Community Safety	Communities within a City	Environment	Transportation	Economic Development
<b>Strategic Principle</b>		Comprehensive Citizen Service				
<u>Corporate Scorecard</u>						
Serve the Customer	Reduce crime	Increase perception of public safety	Strengthen neighborhoods	Provide transportation choices	Safeguard environment	Promote economic opportunity
Run the Business	Develop collaborative solutions		Enhance customer service		Improve technology efficiencies	
Manage Resources	Maintain AAA bond rating		Deliver competitive services	Expand tax base and revenues	Invest in infrastructure	
Develop Employees	Achieve positive employee climate		Recruit and retain skilled, diverse workforce		Promote learning and growth	

Source: For more information, see City of Charlotte, Budget and Evaluation Office, *Strategic Planning Handbook: Charlotte's Model for Integrating Budget and Performance Management*, FY 2009 (6th ed., Charlotte, NC: October 2007), [www.charmeck.org](http://www.charmeck.org). Click on "Budget" (in the City Manager/Budget/Clerk" line), then "Publications."

### Hillsborough's Adoption Process

Hillsborough made significant progress in performance and financial management between 1998 and 2004. Departments were encouraged to develop performance measures and to use them in decision making. Budget development was changed from a line-item, incremental process to a planning process that includes program budgeting, plus two years of financial forecasting to anticipate future problems and needs.<sup>8</sup> These changes were fundamental in setting the stage for a management tool like the balanced scorecard. The organizational environment was moving in the direction of accepting change rather than resisting it, and employees were developing the skills necessary for performance measurement.

The manager suggested to the board in a September 2005 memorandum that it consider creating a mission statement and strategic priorities, including having departments conduct annual operational reviews to identify efficiency gains, as the next steps in an overall theme of making Hillsborough a high-performing organization.<sup>9</sup> The manager wanted to build on the momentum developed between 1998 and 2004 and to avoid organizational complacency. The strategic

priorities and the operational reviews would become the drivers of the annual board retreat for establishing budgetary goals and objectives. The memorandum also introduced the board to the balanced scorecard, based on the model developed by Charlotte.

The board was interested in the annual operating reviews by departments because efficiency was a value shared by a majority of board members. However, the board was not interested in identifying a mission statement and strategic priorities at that time because its decision-making processes were focused on the immediate needs of resource allocation and service delivery. The manager responded by implementing the annual operating reviews at the departmental level. These consisted of (1) having departments review their operations and identify opportunities for improvement; (2) providing better information to the manager on service performance, strategies for change, and resource allocation; (3) communicating funding needs to the board in the context of performance; and (4) creating an evaluation process to identify and respond to strengths, weaknesses, opportunities, and threats.

The board's reaction to the September memorandum was not unusual, given the constant pressure on elected officials to address immediate problems and needs facing their communities. In addition, board members often campaign on how they can immediately affect the community by transforming government rather than how they can guide the community toward its long-term vision. Citizens want results. On the other hand, governing is a shared responsibility, and having board consensus on mission and priorities can substantially strengthen the decision-making processes at all organizational levels.

The board experienced turnover in late 2005, including the election of a new mayor who immediately embraced long-term planning. One of the first priorities of the new board was to create strategic priorities for Hillsborough, which continued the process of building the framework for the balanced scorecard. The strategic priorities addressed quality of life, growth management, economic development, superior services, and community safety.

However, the town faced the same problem that other local governments often do after they adopt long-term goals:

how did they connect these broad goals to departmental services, and how did they measure progress? The manager, in his role as champion of the balanced scorecard, reintroduced the management tool to the board in November 2006 as a methodology for making these connections. The board gave the manager a green light on this initiative in December 2006.

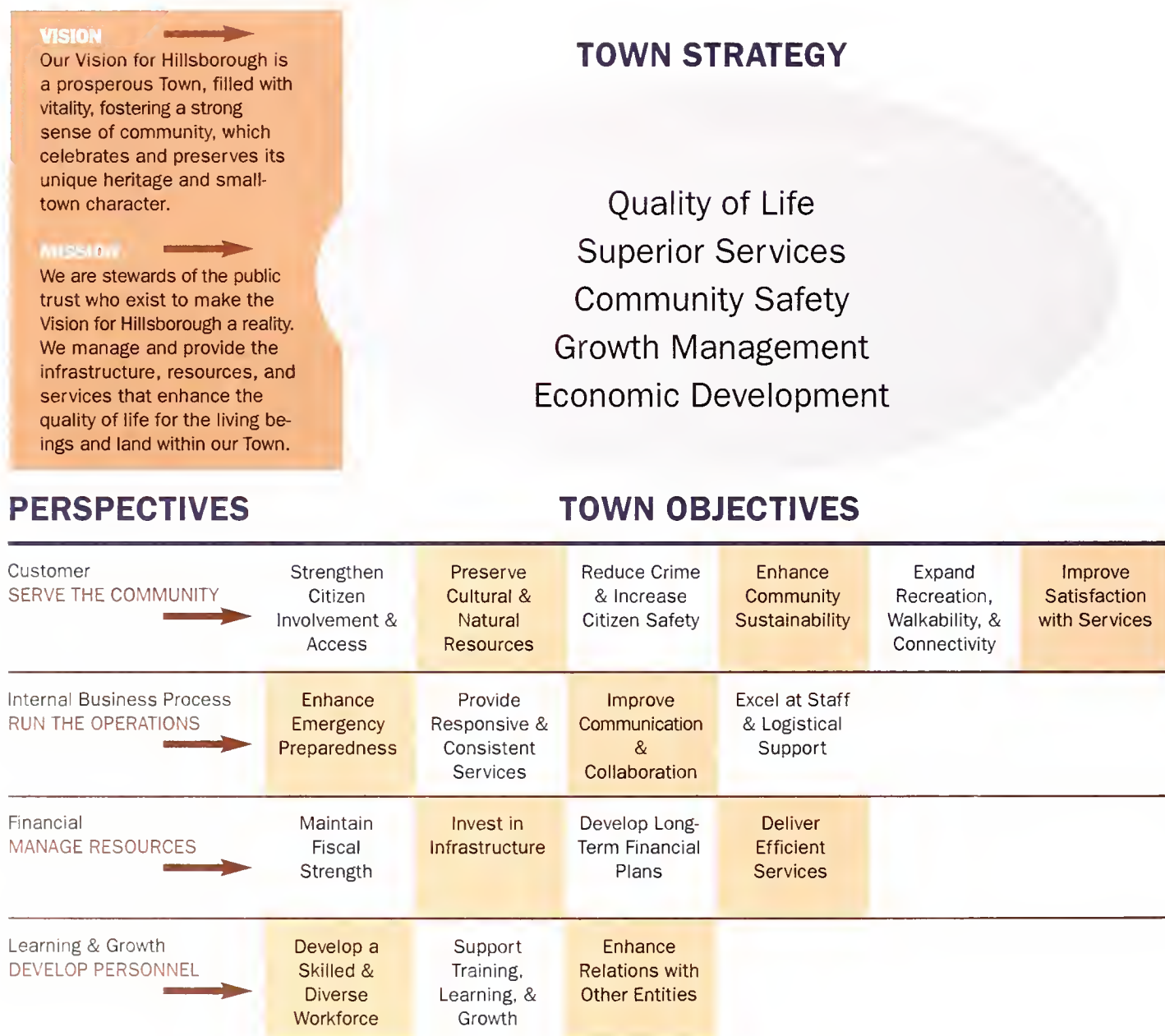
The board held a retreat in February 2007 to create a balanced scorecard for Hillsborough. In preparation for the re-

treat, board members received information on key definitions and components of the management tool. A common problem in local government is the lack of generally accepted definitions of the multiple and overlapping terms used for performance measurement. For example, “effectiveness measures” often is used interchangeably with “outcome and quality indicators.” Board members also received additional information on Charlotte’s balanced scorecard as a general roadmap for the retreat.

### Hillsborough’s Balanced Scorecard

At the retreat, the board and the staff developed a balanced scorecard (see Figure 2). The board started by developing a vision for the town, a mission for the organization, and a set of core values (see the sidebar on page 35) to complement the strategic priorities that already were in place.<sup>10</sup> The board then focused on identifying the objectives that the town would use to make progress

Figure 2. A Balanced Scorecard for Hillsborough



Source: Town of Hillsborough, FY 08 Annual Budget and FY 08–10 Financial Plan, adopted June 11, 2007, [www.ci.hillsborough.nc.us/documents/MasterBudgetDocument-FY08.pdf](http://www.ci.hillsborough.nc.us/documents/MasterBudgetDocument-FY08.pdf).



*Public Works staff in Hillsborough plant trees at a site that is to become a park.*

on the strategic priorities. An important part of this process was that the board used the strategic priorities, not the four dimensions of the scorecard, to guide development of objectives. In other

### *Core Values*

- Maintain small-town nature and strong sense of community.
- Serve as a catalyst for change.
- Build on Hillsborough's unique "sense of place" including its history, architecture, citizens, river, and mountains.
- Recognize the community's diversity.
- Promote a sense of unity among neighborhoods—Hillsborough is for everyone.
- Foster a sense of vibrancy—"Happening Hillsborough" is an alive community where things are growing, happening, with lots of positive energy.
- Recognize those citizens who are not able to pay by looking at ways to keep services affordable.
- Provide high-quality customer service by supplying basic services.

words, the board focused on identifying the most important objectives for the town rather than constraining themselves to an equal number of objectives for each dimension. After the retreat, staff placed the objectives in the dimensions, and through several iterations, the board reached a consensus on them.

Harry Hatry, a nationally recognized expert in performance measurement, has expressed concern that the word "balanced" may equate to placing equal value on the four dimensions, which could hinder the profession's work on performance measurement and its push for measuring service effectiveness.<sup>11</sup> The goal during Hillsborough's adoption process was not to develop a truly balanced scorecard, but to ensure that the four dimensions—"Serve the community," "Run the operations," "Manage resources," and "Develop personnel"—were addressed. Although Hatry's concern about not losing sight of service effectiveness is reasonable, the reality is that implementing strategies for service improvement can affect multiple dimensions of the organization. It can alter an organization's financial condition, change the way in which it provides services to customers, and require employees to acquire new skill sets.

The next step was to align the balanced scorecard with departmental performance. Charlotte approached this step by having departments identify and

support the objectives over which they had the most influence. Hillsborough modified this step by having each department develop a set of performance measures for each of the four dimensions, including targets for the next fiscal year.

The manager used this approach for two reasons. First, he wanted the departments to develop a robust set of performance measures, moving them beyond workload indicators.<sup>12</sup> Second, he wanted each department to understand how its services ultimately affected the strategic priorities, mission, and vision of the organization.

The town also implemented an annual survey of citizens to help develop measures for the dimension of "Serve the community." The first survey was conducted in summer 2007 to start the process of monitoring and benchmarking key issues related to public safety, communication, town management, governing, and customer service.<sup>13</sup>

An internal service function like fleet maintenance, which provides services to other town departments, has the ability to influence town objectives in each of the four dimensions. An abbreviated balanced scorecard for Hillsborough's motor pool illustrates this point (see Table 1). Two of the more interesting measures are amount of used motor oil and antifreeze recycled and percentage of parts and supplies purchased locally. These measures show how the motor pool supports the town objectives of preserving cultural and natural resources and enhancing community sustainability, respectively.

The motor pool is currently below its performance target for percentage of services performed on schedule. This performance measure is important to the motor pool (and to other departments that rely on rolling stock units for service delivery—for example, the police department, which aims to maintain an active presence in the community, and the public works department, which aims to complete routes on schedule). The motor pool now is responsible for identifying and selecting strategies for

Table 1. **Abbreviated Version of Balanced Scorecard for Motor Pool, FY 2007–2008**

Perspective	Townwide Objective	Motor Pool Initiatives “What will the department do?”	Measures	Performance Data	
			“How will the department know when the desired results are being achieved?”	Prior-Year Actual	Target
Serve Community	Preserve cultural and natural resources	Prevent contamination of stormwater by capturing and recycling used oil and antifreeze	Amount of used motor oil and antifreeze recycled	501 gallons	500 gallons
	Enhance community sustainability	Buy parts and supplies locally when cost-effective, thereby supporting local businesses	Percentage of parts and supplies purchased locally	59%	60%
Run Operations	Excel at staff and logistical support	Manage efficient and effective preventative maintenance program	Percentage of services performed on schedule	88%	90%
Manage Resources	Deliver efficient services	Provide efficient services by preparing monthly report listing repair and service cost per vehicle	Average maintenance cost per vehicle	\$855	\$850
Develop Employees	Develop skilled and diverse workforce	Emphasize completion of Automotive Service Excellence (ASE) certification program	ASE certifications obtained	11	24

exceeding its target of 90 percent of services performed on schedule.

### Support of Budget Decisions

The balanced scorecard is a critical part of Hillsborough’s budget process. In preparation for the town’s annual retreat to begin the budget process, board members receive information on midyear performance results and the annual operational reviews. They use this information to reevaluate the scorecard and to help prioritize funding initiatives for the coming fiscal year, which the manager incorporates into the proposed budget.

An example is how the board used the town objectives to fund an energy audit of all its main facilities, which resulted in an additional funding request to implement energy efficiency improvements. This decision responded to the objective of preserving cultural and natural resources, from the serving-the-

community dimension, and the objective of delivering efficient services, from the managing-resources dimension. The performance indicator used by the administration department to measure preserving cultural and natural resources was tons of carbon dioxide emitted from town buildings.

Another example of using the balanced scorecard to make funding decisions comes from the utilities department. The department decided to install generators at several sewer pump stations that lacked emergency stand-by power. This decision has directly affected two of the four dimensions of the balanced scorecard. The new generators should lower the number of sewer overflows, which links to the serving-the-community dimension through the objective of preserving cultural and natural resources. Also, the generators will improve the staff’s ability to respond more effectively to emergencies when a crisis arises in the

community, which links to the running-the-operations dimension through the objective of providing responsive and consistent services.

### Achievement of Balance in the Balanced Scorecard

Although there are numerous overarching benefits to using the balanced scorecard, the primary factor that motivated Hillsborough’s town manager to pursue its implementation was the possibility of developing a management-and-budgeting system that would help the town focus on accomplishing its most important strategic priorities and objectives. With so many competing demands coming from citizens and community groups, local governments can easily get distracted and inadvertently redirect attention from top priorities.

The town manager was concerned that Hillsborough, as an organization,

was spending a disproportionate amount of time addressing low-priority problems, including responding to the problem of the day. Ideally the scorecard helps to balance the competition between short-term demands and long-term priorities by reminding administrators and elected officials how resources should be allocated if the organization is to be successful in fulfilling its mission. The town's finance director may have said it best when he commented that the scorecard serves as an "alarm clock" during busy times, reminding him of the most important issues that he and his department must accomplish.

The scorecard also adds balance to the complementary roles of administrators, elected officials, and citizens. Once a scorecard is adopted, elected officials know that their strategic priorities and objectives have been clearly communicated to internal and external stakeholders (administrators and citizens, respectively). There is less pressure on administrators because departmental action plans have been established via these strategic priorities and objectives, with initiatives, performance measures, and targets. Micromanagement from above should be less of a concern for departments because they have clarity on the desired results. With greater understanding from all perspectives, departments have additional freedom to operate, experiment, and encourage creativity in finding ways to implement their initiatives to hit the targets identified in their scorecards. Also, citizens can more readily understand what problems their local governments are addressing and where their local governments are allocating resources. Having this understanding makes it easier for them to be more informed and provide feedback during budgetary preparation and enactment.

Further, Hillsborough's annual performance report creates an opportunity for balance in adjusting strategies and measures and in providing feedback on which efforts have been successful and which ones need to be reassessed. It is a time to consider adjusting measures that do not accurately reflect what the organization is trying to accomplish, eliminating measures that generate more work than benefit, and adjusting targets that

may have been overly optimistic or not sufficiently challenging. The ultimate goal of using the scorecard is not to create a surgically precise management instrument, but to encourage practical discussions that help everyone make well-informed decisions.

## Summary

This article describes how a smaller local government has used the balanced scorecard as an effective management tool. Using Charlotte's experience with the balanced scorecard as a model for implementation, Hillsborough has successfully adopted the management tool and used it to identify areas that need improvement and to allocate resources among competing demands.

Hillsborough's experience provides additional support to the previous finding that the success of the balanced scorecard, like any management tool, is correlated with having strong management sponsorship. The managers in Charlotte and Hillsborough embraced this role. Arguably, the most important aspect of successfully implementing the balanced scorecard is supportive elected officials. A visionary elected body that is mission driven, as was the case in Charlotte and Hillsborough, is most likely to see the scorecard as a balanced way to accomplish its community's top strategic priorities.<sup>14</sup>

## Notes

1. Robert S. Kaplan and David P. Norton, "The Balanced Scorecard—Measures That Drive Performance," *Harvard Business Review* 70, no. 1 (1992): 71–79.

2. Shih-Jen Kathy Ho and Linda Achey Kidwell, "A Survey of Management Techniques," *Government Accountants Journal* 49, no. 1 (2000): 46–51.

3. Shih-Jen Kathy Ho and Yee-Ching Lilian Chan, "Performance Measurement and the Implementation of Balanced Scorecards in Municipal Governments," *Journal of Government Financial Management* 51, no. 4 (2002): 9–16. There is no agreed-on definition of a large local government. However, researchers often use the population range of 25,000 and above when seeking survey data from larger organizations.

4. Paul R. Niven, *Balanced Scorecard: Step-by-Step for Government and Nonprofit Agencies* (Hoboken, NJ: John Wiley & Sons, 2003).

5. The information presented in this article on Charlotte's balanced scorecard measures was obtained from *City of Charlotte Corporate Performance Report FY 2007 Year End*. For the most current report, visit [www.charmeck.org](http://www.charmeck.org) and click on "Budget" (in the "City Manager/Budget/Clerk" line), then "Performance Reports."

6. Janet M. Kelly, "The Dilemma of the Unsatisfied Customer in a Market Model of Public Administration," *Public Administration Review* 65, no. 1 (2005): 76–84.

7. For a comprehensive overview of Charlotte's administrative reform efforts in the context of new public management, see Pamela A. Syfert and Kim S. Eagle, "The Context and Implications of Administrative Reform," in *Performance Management and Budgeting*, edited by F. Stevens Redburn et al. (Armonk, NY: M. E. Sharpe, 2008), 149–169.

8. Program budgeting organizes governmental activities into programs and emphasizes the total resources consumed by a program to accomplish its goals and objectives. For more information, see Robert L. Bland, *A Budgeting Guide for Local Government* (2d ed., Washington, DC: International City/County Management Association, 2007).

9. Part of the reinventing government movement of the 1990s involves the use of strategies to become a high-performing organization. For more information, see David Osborne and Ted Gaebler, *Reinventing Government* (New York, NY: Penguin Group, 1992).

10. The town objectives shown within the four dimensions represent the balanced scorecard for the town of Hillsborough. The complete figure is referred to as the strategy map. For more information on this subject, see Robert S. Kaplan and David P. Norton, *Strategy Maps* (Boston, MA: Harvard Business School Publishing Corporation, 2004).

11. Jonathan Walters, "The Buzz over Balance," *Governing* 13, no. 8 (2000): 56–62.

12. Research has shown that local officials are more likely to use performance data when they move beyond workload measures and focus on the higher-order measures of efficiency and effectiveness. See David N. Ammons and William C. Rivenbark, "Factors Influencing the Use of Performance Data to Improve Municipal Services: Evidence from the North Carolina Benchmarking Project," *Public Administration Review* 68 (2008): 304–318.

13. For a copy of the survey, contact the town of Hillsborough.

14. For more information on how the balanced scorecard supports the mission of an organization, see Dee Ann Ellingson and Jacob R. Wambsgans, "Modifying the Approach to Planning and Evaluation in Governmental Entities: A 'Balanced' Scorecard Approach," *Journal of Public Budgeting, Accounting & Financial Management* 13, no. 1 (2001): 103–120.



## Immigrants in North Carolina: A Fact Sheet

*Sejal Zota*

Over the last two decades, newcomers to North Carolina have included large numbers of immigrants, particularly from Latin America and Asia. In recent years, attention and concern have focused on how immigrants affect the state, including state and local government functions. This fact sheet provides information on the size and the composition of North Carolina's immigrant population, and data on its economic impact. Specifically, the fact sheet covers the following questions:

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- How many immigrants live in North Carolina?
- How many of North Carolina's immigrants are U.S. citizens?
- How many people of Hispanic origin reside in North Carolina? How many are in the state legally?
- How many immigrants speak English?
- Do immigrants in North Carolina pay taxes?
- Do immigrants receive public benefits?
- How many immigrants attend public schools? What are the associated costs?
- What kind of impact do immigrants have on the economy?
- Do unauthorized immigrants affect employment outcomes of U.S.-born workers?

This fact sheet will be updated regularly. (For access to the most current version and for other School resources on immigration, see the sidebar on page 39.)

### **How many immigrants live in North Carolina?**

In 2006, according to the U.S. Census Bureau, North Carolina was home to 614,198 foreign-born people, making up 6.9 percent of the state's total population (roughly 1 of every 15 people).<sup>1</sup> (For definitions of terms like "foreign-born



people,” see the sidebar on page 40.) They came from at least forty-five countries. The regional breakdown was as follows (see Figure 1):

- Latin America—59.8 percent
- Asia—20.5 percent
- Europe—11.5 percent
- Africa—5.1 percent
- Northern America (Canada, Bermuda, Greenland, and Saint Pierre and Miquelon)—2.7 percent
- Oceania (countries and islands in the Pacific Ocean, including Australia)—0.4 percent

### How many of North Carolina’s immigrants are U.S. citizens?

In 2006, about 26 percent of North Carolina’s immigrants were naturalized citizens, according to the U.S. Census Bureau.<sup>2</sup>

### How many people of Hispanic origin reside in North Carolina? How many are in the state legally?

People of Hispanic origin include both those who are foreign-born and those who are U.S.-born.<sup>3</sup> In 2004 they numbered 600,193, or 7 percent of North Carolina’s total population, according to a study by the Kenan Institute, the University of North Carolina at Chapel Hill.<sup>4</sup> The study indicated that 55.0 percent of Hispanic residents were residing in North Carolina legally in 2004: 41.4 percent were U.S. citizens by birth, and 13.6 percent were naturalized citizens or had a lawful immigration status. Forty-

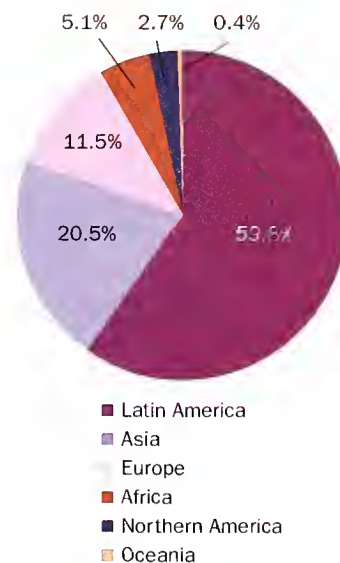
five percent of Hispanic residents were in North Carolina without authorization. Some of the countries of origin were Colombia, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Peru.

This fact sheet discusses immigrants generally, but it often refers to data on Hispanic residents specifically, because statistics on that demographic group are more easily found and because Hispanics are the largest immigrant group. Statistics on Hispanics may be helpful in certain contexts, but they are not a proxy for data on all immigrants, for two reasons. First, they are underinclusive of the true resident-immigrant population because Hispanic immigrants (foreign-born Hispanics) make up only 59.8 percent of North Carolina’s total immigrant population. Second, statistics on Hispanics are overinclusive of the immigrant population because they generally include many people who are U.S.-born citizens, as well as authorized and unauthorized immigrants (see Figure 2).

### How many immigrants speak English?

The number of immigrants who speak English evolves over time. Scholars assert that historically, within three generations, immigrants to the United States have shifted from use of their native tongue as their dominant language to use of English.<sup>5</sup> Typically, first-generation immigrants learn some English, but their native language remains dominant; second-generation immigrants are bi-

Figure 1. North Carolina Immigrants by Region of Origin, 2006



Source: U.S. Census Bureau, 2006 American Community Survey (Washington, DC: U.S. Census Bureau, 2006), [http://factfinder.census.gov/servlet/ADPTable?\\_bm=y&-geo\\_id=04000US37&-qr\\_name=ACS\\_2006\\_EST\\_G00\\_DP2&-ds\\_name=ACS\\_2006\\_EST\\_G00&-lang=en&-sse=on](http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US37&-qr_name=ACS_2006_EST_G00_DP2&-ds_name=ACS_2006_EST_G00&-lang=en&-sse=on).

lingual; and third-generation immigrants predominantly speak English only.

In 2006, about 10 percent of North Carolina residents spoke a language other than English at home, according to the U.S. Census Bureau.<sup>6</sup> Of that group, half spoke English “very well,” and half had limited proficiency in English.

### Do immigrants in North Carolina pay taxes?

Both authorized and unauthorized immigrants in North Carolina pay several taxes.

They are required to pay sales taxes when they purchase goods (including gas, food, and clothes). Further, they must pay property taxes if they own property.

Many immigrants also pay income taxes. Authorized immigrants who are legally employed have wages withheld for tax purposes. Between one-half and three-quarters of unauthorized immigrants are thought to pay federal and state income taxes, Social Security taxes, and Medicare taxes.<sup>7</sup> Unauthorized immigrants who use false Social Security numbers to work “on the books” pay

## School of Government Resources on Immigration

Immigration increasingly affects state and local government across a broad spectrum of policies, such as education, law enforcement, health care, and employment. The School of Government has created resources to aid local and state governments on issues related to immigration, including the publication *Immigration Consequences of a Criminal Conviction in North Carolina*. It is available online at no charge from [www.ncids.org/Other%20Manuals/Immigration%20Manual/Text.htm](http://www.ncids.org/Other%20Manuals/Immigration%20Manual/Text.htm) or for purchase at <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.1229/.f?sc=7&category=4101>. Additional resources, including a current version of the accompanying fact sheet, may be found at the School’s immigration home page, [www.sog.unc.edu/programs/immigration](http://www.sog.unc.edu/programs/immigration). Readers also may contact Sejal Zota, an immigration law specialist, at [szota@sog.unc.edu](mailto:szota@sog.unc.edu) or 919.843.8404.

payroll taxes when their wages are withheld. A study by the Center for Immigration Studies estimated that in 2002 these unauthorized immigrants contributed more than \$7 billion in taxes to Social Security and Medicare, federal programs from which they cannot receive benefits.<sup>8</sup> Unauthorized immigrants who work “off the books” can file tax returns, make payments, and apply for refunds through a special identification tax number created by the Internal Revenue Service to collect taxes from people ineligible for a Social Security number.

No data are available on the amount of taxes paid generally by immigrants in North Carolina, but there are specific data on Hispanic residents. The Kenan Institute study found that Hispanic residents in North Carolina, including U.S.-born citizens, authorized immigrants, and unauthorized immigrants, paid an estimated \$756 million in state and local taxes in 2004.<sup>9</sup>

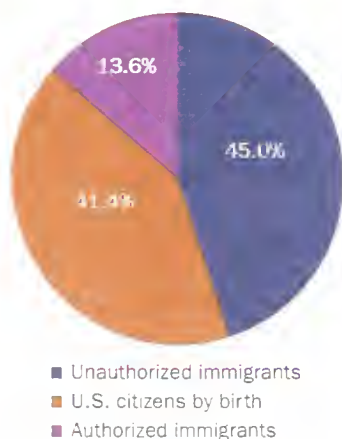
### Do immigrants receive public benefits?

Certain immigrants, including refugees and long-term legal residents, are eligible for federal and local public benefits. Unauthorized immigrants and certain groups of authorized immigrants (including legal immigrants who have been in the United States for less than five years) are ineli-

gible for many federal public benefits, including Medicaid, Supplemental Security Income (SSI), Food Stamps, Temporary Assistance for Needy Families (Work First), and the State Children’s Health Insurance Program (Health Choice).<sup>10</sup> How-

ever, these groups are eligible for limited federal public benefits, including school lunches, Medicaid in certain emergency situations (Emergency Medicaid), and certain services provided by local North Carolina health departments.<sup>11</sup>

Figure 2. Hispanics in North Carolina by Legal Status, 2004



Source: John D. Kasarda and James H. Johnson Jr., *The Economic Impact of the Hispanic Population on the State of North Carolina* (Chapel Hill, NC: Frank Hawkins Kenan Institute of Private Enterprise, University of North Carolina at Chapel Hill, 2006).

Table 1. The Nine North Carolina Counties with the Largest Public School Hispanic Enrollment, 2004

County	No. of Hispanic Students	Percentage of Statewide Total of Hispanic Students	Percentage of Total County Enrollment
Mecklenburg	12,360	12.2	10.4
Wake	9,388	9.3	8.2
Forsyth	5,976	5.9	12.4
Guilford	4,050	4.0	6.0
Durham	3,602	3.6	11.7
Cumberland	3,197	3.2	6.1
Johnston	3,079	3.0	11.8
Alamance	2,731	2.7	12.6
Union	2,589	2.6	9.0

Source: State Board of Education and North Carolina Department of Public Instruction, *North Carolina Public Schools Statistical Profile, 2005* (Raleigh, NC: State Board of Education and North Carolina Department of Public Instruction, 2005), [www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2005profile.pdf](http://www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2005profile.pdf).

## Definitions of Terms

The term “**foreign-born person**” refers to a person who was not a U.S. citizen at birth. It includes naturalized citizens, lawful permanent residents, refugees, people granted asylum, legal nonimmigrants, and people residing in the country without authorization. This fact sheet uses the term synonymously with “**immigrant**.”

The fact sheet also uses the terms “**authorized**” and “**unauthorized**” to describe immigrants. “**Authorized immigrants**” are foreign-born people who are residing in the United States legally, including naturalized citizens, lawful permanent residents, refugees, people granted asylum, and nonimmigrants admitted for a temporary stay. Members of this population also are commonly referred to as “**legal immigrants**” or “**legal aliens**.”

“**Unauthorized immigrants**” are foreign-born people residing in the United States without the permission of the federal government, including people who entered the United States illegally (without inspection or by using false documents) and people who entered the United States on a valid visa, but stayed past their authorized period of stay. Members of this population also are commonly referred to as “**illegal immigrants**,” “**illegal aliens**,” “**undocumented immigrants**,” or “**undocumented aliens**.”

“**Illegal immigrants**” is a widely used term, but it implies illegal entry. In fact, as just noted, some in this group entered legally and then failed to satisfy the terms of their visa. The fact sheet uses “**unauthorized immigrant**” because of its common use by the U.S. Department of Homeland Security’s Office of Immigration Statistics and other governmental entities.



John Rottet / Raleigh News & Observer

No data are available on all the costs of public benefits for immigrants in North Carolina, but data are available on the costs of Medicaid. According to the North Carolina Department of

Health and Human Services, the cost of Medicaid in fiscal year 2006 for qualifying authorized immigrants was \$3.4 million. In the same year, the cost of Emergency Medicaid in North Carolina for both unauthorized immigrants and nonqualifying authorized immigrants was \$57.7 million.<sup>12</sup> According to a 2007 study, the majority of Emergency Medicaid services in North Carolina from 2001 to 2004 were for childbirth and pregnancy complications.<sup>13</sup> In fiscal year 2006, the combined costs of Medicaid and Emergency Medicaid for immigrants in North Carolina were less than 1 percent of the total North Carolina Medicaid program costs of \$8.5 billion.

In fiscal year 2009, the majority of costs associated with the Medicaid program are being covered by the federal government (64.60 percent).<sup>14</sup> The remaining costs are covered by the state

**More than half of the state's Hispanic students are concentrated in twenty counties, nine of them largely metropolitan, four of them with specialty industries that attract Hispanics.**

(32.74 percent) and counties (2.66 percent).<sup>15</sup> Under newly enacted legislation, county contributions are to be phased out completely by fiscal year 2010, to be assumed by the state.<sup>16</sup>

**How many immigrants attend public schools? What are the associated costs?**

All children, including unauthorized immigrants, are entitled to attend K–12 public schools under the Equal Protection Clause of the Fourteenth Amendment.<sup>17</sup> No data are available on the number of immigrant children who attend K–12 public schools because the North Carolina Department of Public Instruction (DPI) does not track the immigration status of students. According to the DPI, statewide, more than 150 languages are spoken by public school students, and 5 percent of the student population is “limited English proficient.”<sup>18</sup>

The DPI does track student populations by race (see Figure 3). In 2006, of 1.4 million public school students,

9.3 percent were Hispanic.<sup>19</sup> According to the DPI, the Hispanic student population has increased more than any other group over the last ten years. In 2004, more than half of the state’s Hispanic students were concentrated in twenty counties, according to the Kenan Institute study.<sup>20</sup> The counties with the largest absolute numbers of Hispanic students were largely metropolitan (see Table 1).

The other counties included non-metropolitan jurisdictions where specialty industries were magnets for Hispanic population growth. In four of these counties, Hispanic students accounted for about 20 percent of the total county enrollment in 2004 (see Table 2).

The Kenan Institute study estimated that in 2004 the state costs of K–12 education for Hispanic students (who then composed 7.5 percent of the total student population) were about \$467 million, of total costs of \$6.2 billion. The study noted that the large majority of Hispanic schoolchildren were U.S. citizens, even if their parents were not.

In 2006, Asian students made up 2.2 percent of the student population.<sup>21</sup> The largest enrollments of Asian students occurred in Wake, Mecklenburg, Guilford, Orange, Burke, and Catawba

counties (in descending order of size of enrollment). Applying the methodology used in the Kenan Institute study, state K–12 costs in 2004 were an estimated \$126 million for Asian students (who then composed 2.1 percent of the student population).

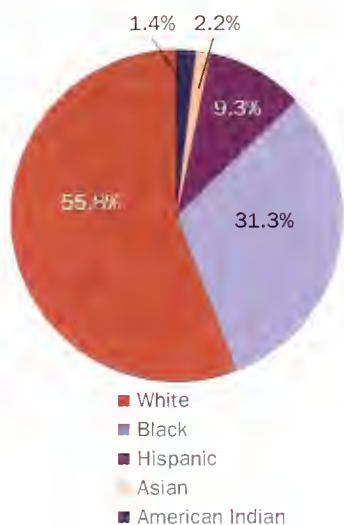
### What kind of impact do immigrants have on the economy?

The majority of economists claim that the net effects of immigration are positive.<sup>22</sup> These economists argue that immigrant labor is vital to the U.S. economy and that it raises the productivity of U.S. companies and lowers the costs of goods and services to consumers.

They also argue that immigrants create new jobs in the United States through start-up of new businesses and through their demand for goods and services.

A 2007 White House economic report also concluded that the net effects of immigration are positive. It found that immigrants increase the size of the total labor force, complement the U.S.–born workforce, and stimulate capital investment by adding workers to the labor pool, thereby increasing the

Figure 3. North Carolina Public School Population by Race, 2006



Source: State Board of Education and North Carolina Department of Public Instruction, *North Carolina Public Schools Statistical Profile, 2007* (Raleigh, NC: State Board of Education and North Carolina Department of Public Instruction, 2007), [www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2007profile.pdf](http://www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2007profile.pdf).

Table 2. The Four North Carolina Counties with the Highest Proportion of Hispanic Students in Public Schools, 2004

County	No. of Hispanic Students	Percentage of Statewide Total of Hispanic Students	Percentage of Total County Enrollment
Duplin	2,061	2.0	23.2
Montgomery	943	0.9	20.8
Lee	1,873	1.8	20.5
Sampson	1,593	1.6	19.2

Source: State Board of Education and North Carolina Department of Public Instruction, *North Carolina Public Schools Statistical Profile, 2005* (Raleigh, NC: State Board of Education and North Carolina Department of Public Instruction, 2005), [www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2005profile.pdf](http://www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2005profile.pdf).

U.S. gross domestic product by roughly \$37 billion each year.<sup>23</sup>

Opponents of this view argue that unauthorized immigrants produce a negative effect on the economy because they may receive more in services than they pay in taxes and because they depress wages for low-skilled workers.<sup>24</sup>

No data are available on the specific economic impact of immigrants generally in North Carolina. The Kenan Institute study assessed such data for Hispanic residents. In 2004, Hispanic residents, including U.S.–born citizens, authorized immigrants, and unauthorized immigrants, contributed an estimated \$756 million in taxes while costing the state an estimated \$817 million for K–12 education, medical care, and corrections, resulting in a net cost to the state of about \$61 million.<sup>25</sup> The state and local costs did not reflect the economic impact of Hispanic consumer spending, which had a total impact of \$9.2 billion on the state economy, according to the study. The study found that this spending helped generate 89,000 jobs.

### Do unauthorized immigrants affect employment outcomes of U.S.–born workers?

Among economists, there is a debate over whether immigrants take jobs from U.S.–born workers and thus reduce their earnings and employment levels.<sup>2</sup> George Borjas of Harvard University found that immigration between 1980 and 2000 might have reduced the earnings of U.S.–born workers by 3 to 4 percent,

with larger negative impacts among high school dropouts, but smaller impacts among all other education groups.<sup>27</sup>

Borjas's estimates are at the high end of those generated by labor economists. Others, including David Card of the University of California, Berkeley, have found fairly negligible negative effects.<sup>28</sup> Using a different approach, Giovanni Peri of the University of California, Davis, found that immigration between 1990 and 2004 slightly increased the average wages of all U.S.–born workers (by 1.8 percent) and slightly reduced the wages of high school dropouts (by 1.1 percent).<sup>29</sup>

There is no consensus on this issue in general, but there is some agreement among labor economists that immigration may negatively affect U.S.–born workers with less education, in particular high school dropouts, by a modest amount. Estimates range from an 8 percent wage reduction to no loss in wages at all.<sup>30</sup>

Immigrants in North Carolina, both authorized and unauthorized, made up roughly 9.1 percent of the overall workforce in 2006 and considerably more in certain economic sectors, including construction, agriculture, leisure and hospitality, manufacturing, and maintenance.<sup>31</sup> No data are available generally on how immigrants in North Carolina affect the employment of U.S.–born workers, but there are some data about Hispanic residents. A 2001 North Carolina State University study indicated that Hispanic immigrants in North Carolina were concentrated in low-skill, low-wage industries and that the domi-

nant trend in these industries in the 1990s was that Hispanics had replaced, not displaced, U.S.-born workers who had moved on to better positions.<sup>32</sup> The more recent Kenan Institute study suggested that Hispanics may have depressed the wages of some U.S.-born workers in 2004, especially in lower-wage, labor-intensive sectors.<sup>33</sup>

## Notes

1. U.S. Census Bureau, *2006 American Community Survey* (Washington, DC: U.S. Census Bureau, 2006), [http://factfinder.census.gov/servlet/ADPTable?\\_bm=y&-geo\\_id=04000US37&-qr\\_name=ACS\\_2006\\_EST\\_G00\\_DP2&-ds\\_name=ACS\\_2006\\_EST\\_G00\\_&-\\_lang=en&-\\_sse=on](http://factfinder.census.gov/servlet/ADPTable?_bm=y&-geo_id=04000US37&-qr_name=ACS_2006_EST_G00_DP2&-ds_name=ACS_2006_EST_G00_&-_lang=en&-_sse=on). This fact sheet relies on U.S. census data for certain population estimates. Other sources may provide different estimates, depending in part on their collection or estimation methods.

2. Ibid.

3. The U.S. Census Bureau uses the terms "Hispanic" and "Latino" to describe people of Mexican, Puerto Rican, Cuban, South or Central American, or other Spanish culture or origin.

4. John D. Kasarda and James H. Johnson Jr., *The Economic Impact of the Hispanic Population on the State of North Carolina* (Chapel Hill, NC: Frank Hawkins Kenan Institute of Private Enterprise, University of North Carolina at Chapel Hill, 2006).

5. Alejandro Portes and Rubén G. Rumbaut, *Immigrant America: A Portrait* (3d ed. Berkeley, CA: University of California Press, 2006), chap. 7; "The Evolution of Language Competencies, Preferences and Use among Immigrants and Their Children in the United States Today," testimony of Rubén G. Rumbaut, Professor of Sociology, University of California, Irvine, before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, May 16, 2007; Kristin Collins, "Non-English Speakers Struggle," *News & Observer* (Raleigh), September 22, 2007.

6. U.S. Census Bureau, *2006 American Community Survey*.

7. The Bush administration estimates that more than half of unauthorized immigrants pay payroll taxes, and Social Security Administration officials estimate that about three-quarters of unauthorized immigrants pay payroll taxes. *Economic Report of the President* (Washington, DC: U.S. Government Printing Office, 2005); Eduardo Porter, "Illegal Immigrants Are Bolstering Social Security with Billions," *New York Times*, April 5, 2005.

8. Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* (Washington, DC: Center for Immigration Studies, 2004). The amount of Social Security and Medicare taxes paid by unauthorized immigrants who use false Social Security numbers also can be gauged by looking at the "earnings suspense file" of the Social Security Administration (SSA). The earnings suspense file is the SSA's record of annual wage reports for workers whose Social Security numbers and names do not match SSA records. The SSA estimates that about \$7.2 billion in Social Security and Medicare taxes was paid in 2003 on about \$58 billion in wages from people who filed W-2 forms with incorrect or mismatched data. SSA officials think that a major portion of these taxes was collected from unauthorized immigrants using false Social Security numbers. "Strengthening Employer Wage Reporting," statement of James B. Lockhart III, Deputy Commissioner of Social Security, before the U.S. House of Representatives, Committee on Ways and Means, Subcommittees on Oversight and Social Security, February 16, 2006; "Social Security Number High-Risk Issues," statement of Patrick P. O'Carroll, Inspector General, SSA, before the U.S. House of Representatives, Committee on Ways and Means, Subcommittees on Oversight and Social Security, February 16, 2006; Porter, "Illegal Immigrants."

9. Kasarda and Johnson, *The Economic Impact*.

10. Jill Moore, "Are Immigrants Eligible for Publicly Funded Benefits and Services?" *Local Government Law Bulletin* no. 110 (May 2007), [www.sog.unc.edu/pubs/electronicversions/pdfs/lglb110.pdf](http://www.sog.unc.edu/pubs/electronicversions/pdfs/lglb110.pdf).

11. For a complete list of federal public benefits for which unauthorized immigrants and certain authorized immigrants remain eligible, see *ibid*.

12. North Carolina Department of Health and Human Services, Division of Medical Assistance, *County Specific Snapshots for NC Medicaid Services*, [www.ncdhhs.gov/dma/countryreports/AllCounties.pdf](http://www.ncdhhs.gov/dma/countryreports/AllCounties.pdf).

13. C. Annette DuBard and Mark W. Massing, "Trends in Emergency Medicaid Expenditures for Recent and Undocumented Immigrants," *Journal of the American Medical Association* 297 (2007): 1085-1092.

14. "Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages, FY 2009," *Federal Register* 72, no. 228 (November 28, 2007): 67304-67306, <http://aspe.hhs.gov/health/fmap09.htm>.

15. S.L. 2007-323 (H.R. 1473), effective July 1, 2007.

16. Ibid.

17. In *Plyler v. Doe*, 457 U.S. 202 (1982), the U.S. Supreme Court established that public schools may not refuse to enroll or

provide services to a person on the basis of immigration status.

18. North Carolina Department of Public Instruction, "Quick Facts: Students and Achievement," [www.ncpublicschools.org/quickfacts/students/](http://www.ncpublicschools.org/quickfacts/students/); North Carolina Department of Public Instruction, "No Child Left Behind: Student Groups," [www.ncpublicschools.org/nclb/faqs/studentgroups/](http://www.ncpublicschools.org/nclb/faqs/studentgroups/).

19. State Board of Education and North Carolina Department of Public Instruction, *North Carolina Public Schools Statistical Profile, 2007* (Raleigh, NC: State Board of Education and North Carolina Department of Public Instruction, 2007), [www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2007profile.pdf](http://www.ncpublicschools.org/docs/fbs/resources/data/statisticalprofile/2007profile.pdf).

20. Kasarda and Johnson, *The Economic Impact*.

21. State Board of Education and North Carolina Department of Public Instruction, *North Carolina Public Schools Statistical Profile, 2007*.

22. For example, in June 2006, when Congress was deliberating on federal immigration reform, about five hundred economists, including five Nobel laureates and other prominent people, signed an open letter to President George W. Bush highlighting the overall economic benefits of immigration. Alexander Tabarrok and David J. Theroux, "Open Letter on Immigration" (Oakland, CA: Independent Institute, June 19, 2006), [www.independent.org/newsroom/article.asp?id=1727](http://www.independent.org/newsroom/article.asp?id=1727). According to Tabarrok, research director of the Independent Institute, "the consensus is that most Americans benefit from immigration and that the negative effects on low-skilled workers are somewhere between an 8% wage reduction to no loss in wages at all." "500-Plus Economists Sign Open Letter Reminding President Bush of the Benefits of Immigration" (press release) (Oakland, CA: Independent Institute, June 19, 2006), [www.independent.org/newsroom/news\\_detail.asp?newsID=74](http://www.independent.org/newsroom/news_detail.asp?newsID=74).

The open letter was consistent with a survey of economists conducted by the Cato Institute in the mid-1980s and updated in 1990. Eighty-one percent of the economists reporting felt that, on balance, twentieth-century immigration had had very favorable effects on U.S. economic growth, and 74 percent felt that illegal immigration had had positive effects. The survey is discussed in Julian L. Simon, *The Economic Consequences of Immigration* (Oxford, England: Basil Blackwell, 1989).

23. The White House, Council of Economic Advisors, *Immigration's Economic Impact* (Washington, DC: Council of Economic Advisors, The White House, June 20, 2007), [www.whitehouse.gov/cea/cea\\_immigration\\_062007.html](http://www.whitehouse.gov/cea/cea_immigration_062007.html).

24. Lamar Smith, "Immigration: Many Questions, a Few Answers," Heritage

Lecture 1047, July 30, 2007 (Washington, DC: Heritage Foundation, October 3, 2007), [www.heritage.org/Research/Immigration/hl1046.cfm](http://www.heritage.org/Research/Immigration/hl1046.cfm).

25. In estimating the costs to the state of the Hispanic population, the Kenan Institute study focused on what it deemed to be three of the major and most-often-discussed public sectors in studies of immigrants: K-12 public education, health services delivery, and corrections. The study indicated that there may be other significant costs, but these three are generally agreed to be the primary ways to measure the impact of an immigrant group on state budgets. Kasarda and Johnson, *The Economic Impact*.

26. Tyler Cowen and Daniel Rothschild, "Hey, Don't Bad-Mouth Unskilled Immigrants," *Los Angeles Times*, May 15, 2006; Roger Lowenstein, "The Immigration Equation," *New York Times Magazine*, July 9, 2006.

27. George J. Borjas, *Increasing the Supply of Labor through Immigration: Assessing the Impact on Native-Born Workers* (Washington, DC: Center for Immigration Studies, 2004).

28. David Card, "Is the New Immigration Really So Bad?" *Economic Journal* 115 (2005): F300-F323.

29. Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004* (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, 2006); Gianmarco I. P. Ottaviano and Giovanni Peri, *Rethinking the Effects of Immigration on Wages*, Working Paper no. 12497 (Cambridge, MA: National Bureau of Economic Research, 2006).

30. "The Economic Impacts of Immigration," testimony of Harry J. Holzer, Visiting Fellow, Urban Institute, and Professor of Public Policy, Georgetown University, before the U.S. House of Representatives, Committee on Education and the Workforce, November 16, 2005; Tabarrok and Theroux, "Open Letter on Immigration."

31. U.S. Census Bureau, *2006 American Community Survey: Migration Policy Institute, Fact Sheet on the Foreign Born: Workforce Characteristics, North Carolina* (Washington, DC: Migration Policy Institute, 2008), [www.migrationinformation.org/DataHub/state3.cfm?ID=NC](http://www.migrationinformation.org/DataHub/state3.cfm?ID=NC).

32. Sheryl Skaggs et al., *Latino Employment Growth in North Carolina: Ethnic Displacement or Replacement?* (Raleigh, NC: North Carolina State University, 2000), <http://sasw.chass.ncsu.edu/jeff/latinos/latino.htm>.

33. The study reports that Hispanic below-market wages are concentrated in the agriculture and construction industries and may have depressed the wages in those industries by \$1.1 billion in 2004.

at the  
School



## Campaign to Name Local Government Wing Successfully Completed

**O**n June 30, 2008, the campaign to name the Local Government Wing at the School of Government officially ended with more than \$808,000 donated or pledged by 72 counties, 308 municipalities, the North Carolina Association of County Commissioners (NCACC), the North Carolina League of Municipalities (NCLM), and a number of individuals.

The campaign was launched by the NCACC and the NCLM during the School's extensive building renovation and expansion that ended in 2004. The Local Government Wing is a permanent testament to the historic and significant relationship between the School and local governments in North Carolina. The wing contains the two largest classrooms in the building, as well as a sunny, two-story enclosed atrium used as a gathering place at class and meeting breaks.

*Right, the Local Government Wing; below, the atrium in the Local Government Wing.*

Thanks to support from local governments, individuals, the North Carolina General Assembly, and many others, the Knapp-Sanders Building was expanded during construction from 65,000 square feet to 126,000. A variety of classroom sizes and configurations and improved audiovisual technology now allow instructors much greater flexibility to meet the learning needs of all course participants. Visitors especially appreciate the School bookstore and the 180-space parking deck conveniently located beside the building.

The School offers its deepest thanks to North Carolina local governments, the NCLM, and the NCACC for helping commemorate a uniquely beneficial relationship of more than seventy-five years with this naming. A special plaque will be installed at the entrance to the wing acknowledging the School's gratitude and celebrating the extraordinary generosity of all those who contributed to the success of the campaign.

—Faith Thompson,  
assistant dean for development



Ann Cary Simpson

Ann Cary Simpson



Michael Zirkle

## McLaughlin Joins School Faculty

**C**hristopher B. McLaughlin joined the School of Government faculty in August 2008 as an assistant professor of public law and government, specializing in the law of property tax listing, assessment, and collection, and in other local taxes such as privilege license, occupancy, prepared food and beverage, rental car excise, local ABC, and motor vehicle license. Previously, McLaughlin practiced law with Wilmer Hale, in Boston, and Verrill Dana, in Portland, Maine. Most recently, he served as adjunct professor and assistant dean for student affairs at Duke Law School. McLaughlin is a *magna cum laude* graduate of the Wharton School of Business

at the University of Pennsylvania, and of Duke Law School, where he also was elected to the Order of the Coif. He is a member of the Maine, Massachusetts, and North Carolina state bars.

McLaughlin takes over the area of local taxes from Shea Denning, who has been with the School of Government since 2003 and whose areas of interest have shifted to motor vehicle law, including legal aspects of impaired driving and driver's license revocations, and alcoholic beverage control law.

## School of Government Publications Receive Magnum Opus Awards

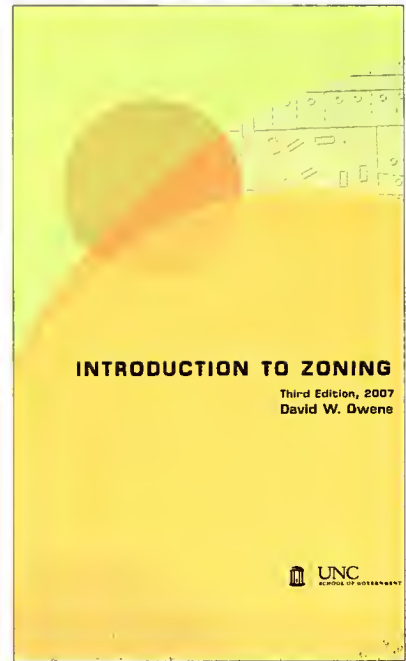
**I**n July 2008 the School of Government was awarded a 2008 Gold Magnum Opus Award for Best Public Service Series for *Incorporation of a North Carolina Town* and an Honorable Mention for Best All-Around Government Publication for *Introduction to Zoning*. The Magnum Opus Award competition, sponsored by ContentWise in conjunction with the Missouri School of Journalism, is the publishing industry's leading custom-publishing award.

Designed by Dan Soileau, *Incorporation of a North Carolina Town* (third edition) was written by faculty members David M. Lawrence, William Rand Kenan Jr., Professor of Public Law and Government, and Kara A. Millonzi, assistant professor of public law and government. Roberta Clark was lead editor.

*Introduction to Zoning* (third edition) was designed by Robby Poore and written by faculty member David W. Owens, Gladys Hall Coates Professor of Public Law and Government. Lucille Fidler was lead editor.

In selecting recipients of the Magnum Opus Awards, judges evaluate submissions in 201 categories on the basis of editorial, design, and publishing strategies, and they issue prizes based on how effectively entrants share their vision with their clients.

For information about similar accomplishments by the School in 2007, see "SOG Publications Earn Two National Awards," *Popular Government*, Fall 2007, pages 24–25, available at [www.sog.unc.edu/pubs/electronicversions/pg/pgfal07/article3a.pdf](http://www.sog.unc.edu/pubs/electronicversions/pg/pgfal07/article3a.pdf).



INTRODUCTION TO ZONING

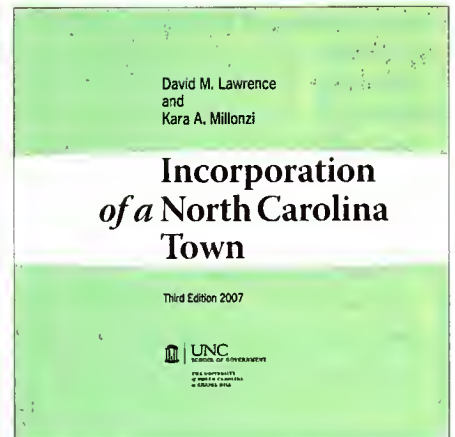
Third Edition, 2007  
David W. Owens

UNC  
UNIVERSITY OF NORTH CAROLINA



Michael Zirkle

Left to right:  
Robby Poore,  
Roberta Clark,  
and Dan Soileau.  
Not pictured:  
Lucille Fidler.



David M. Lawrence  
and  
Kara A. Millonzi

Incorporation  
of a North Carolina  
Town

Third Edition 2007

UNC  
SCHOOL OF GOVERNMENT  
PUBLISHED BY THE  
UNIVERSITY OF NORTH CAROLINA  
AT CHAPEL HILL

## In Memory of William I. Thornton

I am deeply sorry to report that Bill Thornton, our good friend and colleague, died on September 22, 2008. Bill had been with the School in a volunteer role since 1997 as an adjunct instructor of public law and government.

He served for twenty years as the Durham city attorney. That is how many of us got to know and admire him. He was an absolutely first-rate lawyer, and he made a significant contribution to the School by advising on and teaching about issues of municipal law and attorney ethics. We will miss Bill greatly, and we extend our deepest sympathy to his family.

—Michael R. Smith, dean,  
School of Government

*An effort is under way to establish a lasting tribute to Bill at the School by permanently naming his office in his memory. Gifts toward this memorial may be sent to the SOG Foundation —Thornton, CB# 3330 Knapp-Sanders Building, Chapel Hill, NC 27599-3330. For credit card or pledge forms, e-mail carter@sog.unc.edu.*



Michael Zirkle

Small Grants program has awarded \$537,000 to eighty-nine outstanding youth civic engagement programs in eighty-one of North Carolina's counties. These programs have provided more than 245,000 children with opportunities to learn how to be active, engaged citizens.

The foundation was established in 1936 as a memorial to the youngest son of the founder of R. J. Reynolds Tobacco Company. It currently gives special attention to several areas: community economic development; democracy and civic engagement; the environment; precollegiate education; and social justice and equity. It is headquartered in Winston-Salem.

—Kelley O'Brien, director, North Carolina Civic Education Consortium

## Parkland High School Graduate Is Wicker Scholar for 2008–2009

**T**iffany Johnson, an entering first-year student at UNC at Chapel Hill and a 2008 graduate of Parkland High School in Winston-Salem, is this year's recipient of the Jake Wicker Scholarship.

An energetic student, Johnson participated in her high school beta, German, tennis, and art clubs and worked on the newspaper and the yearbook. She volunteered at the Forsyth animal shelter and the Winston-Salem Ronald McDonald House and provided extensive tutoring to her peers in math sub-



Ann Cary Simpson

Tiffany Johnson

## Reynolds Foundation Supports Civic Education

**T**he Z. Smith Reynolds Foundation recently awarded funds to the School's North Carolina Civic Education Consortium to support its general operations and Small Grants program. The foundation has been a long-time supporter of the consortium's work. It provided seed money to start the program in 1998. Since that time, the foundation's funding has enabled the consortium to

create a database of civic resources, available at [www.civics.org](http://www.civics.org); offer professional development programs for North Carolina educators, including a recent training with author Tim Tyson and gospel singer Mary D. Williams; and create classroom resources on North Carolina's executive, judicial, and legislative branches of government. Through its support of the consortium's Small Grants program, the foundation has helped encourage innovative, collaborative civic education programs across the state. Over the past nine years, the

*The consortium funded Students United for a Responsible Global Environment to sponsor the North Carolina Youth Climate Advocacy Day Project, which involved 100 middle and high school students in a series of trainings on climate change, citizenship, and the legislative process. The students applied what they learned by organizing and participating in a climate advocacy day at the North Carolina General Assembly.*



Michael Zirkle



*Among the paintings in the original series is "Meeting of Queen Elizabeth and Walter Raleigh," by Francis Vanderveer Kugbler, commissioned in 1954.*

jects ranging from algebra to calculus and statistics. Johnson was a regional winner of the New Jersey Poets Society Annual Poetry Contest in 2008 and a semifinalist in Poetry.com's International Open Poetry Contest. Johnson's father is employed with the Forsyth County Sheriff's Office.

The \$1,000 Wicker scholarship is awarded annually to an entering first-year 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, 2009. For more information, contact Torie Davis at 919.843.1619 or [torie\\_davis@unc.edu](mailto:torie_davis@unc.edu), or the UNC at Chapel Hill Office of Scholarships and Student Aid, P.O. Box 1080, Chapel Hill, NC 27514.

The scholarship was created by the 1990 Municipal and County Administration class to honor the course director, Warren Jake Wicker. Wicker was a member of the School faculty for forty-eight years.

## Regional Council Update and Recognition Luncheon Held in Wilmington

**T**he School of Government held a Regional Council Update and Recognition Luncheon at beautiful Thalian Hall in Wilmington on September 19, 2008. Public officials from Wilmington and as far away as Greenville enjoyed an opportunity to network and to hear from featured speakers Maurice Smith, president of the Local Government Federal Credit Union (LGFCU), and Michael R. Smith, vice chancellor and dean of the School.

In a welcome surprise during his remarks, Maurice Smith announced that the LGFCU board had recently voted to increase the LGFCU School of Government scholarship program to \$50,000 annually beginning in 2009. The scholarship program, which began



## New Art Project Planned for School

**I**n 1954 a benefactor of the Institute of Government commissioned fourteen large oil paintings for its then-new auditorium. The paintings interpreted North Carolina's history as a series of major events or themes from the state's colonial beginnings through the space exploration of 1957. The School currently displays eight of the original paintings in the Knapp-Sanders Building.

School faculty, staff, and clients have expressed concern that the paintings, while part of the School's history, lack important recognition of the perspectives and the achievements of the state's African-American and American Indian residents. The School recently assembled a committee of arts profes-

sionals and School faculty and staff representatives to select one or more artists to create new visual works of art that will address the vacancies in the collection's interpretation of state history. These new works will be permanently exhibited at the School.

As the project is currently defined, up to four new works will be commissioned depicting major figures and events from North Carolina's African-American and American Indian histories and extending the historical timeline of the collection. The first work in the new series is expected to be started in 2009. For more information on the art project, contact Ann Simpson at 919.966.9780 or [simpson@sog.unc.edu](mailto:simpson@sog.unc.edu).



*Maurice Smith, president of the Local Government Federal Credit Union, speaks at the SOG regional council luncheon in Wilmington.*

John W. Davis

in 2002, has provided tuition assistance to hundreds of local government officials attending courses offered by the School.

Michael Smith discussed the strategic planning process now under way at the School. Local and state government leaders, faculty, staff, and others across

the state have been helping the School examine its educational priorities, including how to identify and address the state's most pressing needs.

The School thanks the contributors who helped make the luncheon possible: the City of Wilmington, the Thalian Hall Center for Performing Arts, the Barnhill



*Associate Professor Maureen Berner covers a point in class with first-year students Kate Mulvaney, Sarah Banks, and Eric Moore.*

Ann Cary Simpson

## MPA Program Welcomes New Class

In August the School's Master of Public Administration Program welcomed twenty-nine new students to the two-year curriculum. The incoming class is divided almost evenly between men and women and in-state and out-of-state residents. It includes one Local Government Fellow, Lana Hygh, who is the assistant to the city manager in Cary, and four students who are pursuing dual degrees, three in social work, and one in city and regional planning. Thanks to many generous donors, eleven of the students received scholarships ranging from \$1,500 to \$5,000. Altogether, fifty-five students are enrolled in the program for the 2008-9 academic year.

Contracting Company, Ken Weeden & Associates, the Hilton Wilmington Riverside, Bernita Demery, Breeden Blackwell, and John H. Jackson.

The School is pleased to work with four regional councils that provide active regional fund-raising assistance; promote School programs, projects, and courses; and advise the School on better serving the state's public officials.

For information on the School's regional councils, contact Faith Thompson at 919.962.8477 or fmthomps@sog.unc.edu.

**LGFCU**  
LOCAL GOVERNMENT  
FEDERAL CREDIT UNION

**Need Help to Attend  
an SOG Course?**

**LGFCU Scholarships  
Are Available!**

The Local Government Federal Credit Union (LGFCU) offers a special scholarship program to help nurture the career development of its members who are employed in local government in North Carolina. Members who plan to attend a class, a conference, or a seminar at the School of Government may apply for scholarships to cover the cost of tuition.

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

# Off the Press

## North Carolina Guide to Animal Control Law

2008 • \$28.00\*

Aimee N. Wall

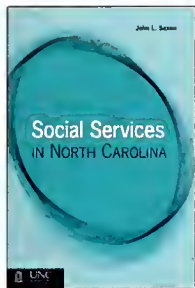


This book summarizes and analyzes animal control laws that apply in North Carolina. It will be of interest to animal control officers, health directors, shelter operators, city and county attorneys, city and county managers, and animal welfare organizations. Chapters cover subjects such as animal cruelty, rabies control, dangerous dogs, and regulation of animal shelters. The book revises, expands, and replaces previous editions of *Animal Control Law for North Carolina Local Governments*, by Ben F. Loeb Jr.

## Social Services in North Carolina

2008 • \$25.00\*

John L. Saxon



This book provides a general description of social services agencies and programs in North Carolina and the state and federal laws that affect them. A resource for county social services directors, state and county social services employees, social services attorneys, and county social services board members, the book also may be useful to county commissioners, county managers, and others who want to gain a better understanding of North Carolina's complex social services system. This title completely revises, rewrites, updates, and supersedes the fourth edition of *A Guidebook to Social Services in North Carolina*, written by Mason P. Thomas Jr. and Janet Mason in 1989.



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*Economics Bulletin* no. 1, September 2008  
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Questions about Tax Increment Financing in North Carolina  
*Community and Economic Development Bulletin* no. 5,  
August 2008  
Joseph Blocher and Jonathan Q. Morgan

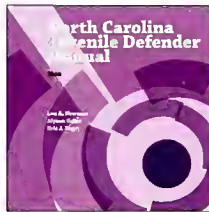
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The Criminal Indictment: Fatal Defect, Fatal Variance,  
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## North Carolina Juvenile Defender Manual

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This useful handbook provides relevant law and practice pointers for attorneys representing juveniles in delinquency proceedings, from intake to disposition and beyond. The topics include petition and summons, custody hearings, probable cause and transfer hearings, discovery, motions to suppress, plea negotiations, adjudicatory hearings, dispositional hearings, probation, commitment, appeals, and expunction.

## Leading Performance Management in Local Government

2008 • \$59.00\*

Edited by David N. Ammons



This book provides a brief overview of performance measurement and delves into successful performance management practices. It reports impressive results of performance management efforts by local governments of many large U.S. cities, provides a step-by-step guide for establishing a system designed to get results, relates lessons learned in a North Carolina benchmarking study, and stresses the importance of tying performance measures to the nuts and bolts of service delivery systems. Further, it describes the growth of gainsharing as an approach to rewarding employees for achieving results, the success of Compstat (a statistical approach to performance management), success factors in CitiStat (a promising data-tracking and management tool), and key options for local governments wishing to adopt CitiStat. Packed with strategies and guidance from experts on leadership in government, the book is a must read for every local government manager and student of public administration who seeks solid guidance in developing an effective performance management program. The book is a completely new edition of the 1995 ICMA title, *Accountability for Performance: Measurement and Monitoring in Local Government*, also edited by David Ammons.

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