

**Senator:
Fiscal trans-
parency
website not
a problem/2**



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FROM THE JOHN LOCKE FOUNDATION

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STATEWIDE EDITION

I-77 Lawsuit: Toll Deal Unconstitutional

Cornelius woman
says the contractor
failed to disclose
legal problems

BY DON CARRINGTON
Executive Editor

RALEIGH

Even though Gov. Pat McCrory has said the tolling project along the Interstate 77 corridor north of Charlotte will go forward, it faces a challenge to its constitutionality, as well as allegations the contractor did not meet full-disclosure requirements.

The lawsuit, filed in January by the nonprofit organization Widen I77, claims the deal violates the state constitution. Among other allegations, the lawsuit charges that the General Assembly delegated too much authority to the N.C. Department of Transportation, which will allow the contractor to set toll rates without legislative oversight.

In addition, the lawsuit claims a provision in the contract for NCDOT to compensate I-77 Mobility Partners



This photo of I-77 at exit 31, taken at 3:48 p.m. on June 10, shows traffic, including many trucks, headed toward Charlotte slowing to a crawl. No trucks would be able to use the proposed toll lanes to be built in the median. (CJ photo by Don Carrington)

for state and federal tax liability if the state terminates the contract also is unconstitutional.

NCDOT closed the deal with I-77 Mobility Partners on May 20 to build what is officially called the I-77 Hot Lanes Project. The 26-mile-long project, running from Charlotte to Mooresville, is expected to cost \$648 million.

Mobility Partners will set toll rates, collect the tolls, and — for the most part — keep all the proceeds. This would be the second toll-road project built in North Carolina and the first using a public-private partnership.

In addition to the lawsuit, Diane Gilroy, a Cornelius resident and a Spanish professor at UNC-Charlotte,

lodged complaints in July with Attorney General Roy Cooper and NCDOT Inspector General Mary Morton, claiming that the parent companies and affiliates of I-77



Diane Gilroy

Mobility Partners failed to disclose fully all past legal problems as part of the bid process. An NCDOT spokesman acknowledged that the agency is looking into her concerns.

Opponents of the project want the state to build additional lanes without charging tolls and pay for them using existing funding mechanisms or with highway bonds McCrory has proposed.

Robert Poole, director of transportation policy at the Reason Foundation and a longtime advocate of privately financed toll roads, told *Carolina Journal* he continues to support the project as a way to relieve congestion along that segment of I-77. He also acknowledged that the proposal had sig-

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Stanly College Eatery Raises Ethics Concerns

Proposal calls for
community college
to operate for-profit
downtown restaurant

BY DAN WAY
Associate Editor

ALBEMARLE

A plan by Stanly County government and private institutions to place a profit-seeking community college culinary arts program in a vacant downtown Albemarle building faces scrutiny, as critics say the proposal may violate state law.



According to an inquiry filed with the North Carolina Ethics Commission, Stanly Community College wants the city of Albemarle to purchase the former Big Al's restaurant from Stanly Heritage Properties and lease it to the private Stanly Community College Foundation. The inquiry suggests that the deal runs afoul of the state Umstead Act, which prohibits state agencies from establishing com-

mercial operations that compete directly with private businesses.

The purchase and lease of the restaurant would erase Stanly Heritage Properties' debt on the property, which has had trouble keeping tenants. Stanly Heritage Properties is a subsidiary of Uwharrie Bank. Stanly Community College Board of Trustees chairman Nadine Bowers and members Thomas Hearne, Joe Brooks, James Nance, and Todd Swaringen are directors of Uwharrie Bank, its parent corporation Uwharrie Capital Corporation, or both.

"My local community college was trying to find a way around the Umstead [Act] that would basically al-

Continued as "Stanly," Page 15

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Brock: Fiscal Data Site Should Be No Problem

By DAN WAY
Associate Editor

RALEIGH

Concerns about the costs of a fiscal transparency measure in the Senate budget, raised by local governments and some officials in the McCrory administration, are misplaced, says Sen. Andrew Brock, R-Davie, who introduced the plan as an amendment to the Senate budget.

Brock's amendment requires the state budget office and the controller to work with the state chief information officer to make funding of a state budget transparency website a priority. The amendment passed the Senate by a vote of 47-2 and at press time was before the conference committee of House and Senate members negotiating a two-year General Fund budget.

The goal, beginning with the 2015-16 budget year, is for every state agency to provide its budget data, and for counties, cities, and local education agencies to post local budget and spending data on their websites while providing that information to the Local Government Commission.

"We've been talking about letting the people see the government's ledgers since Gov. [Jim] Holshouser's inaugural speech" in 1973, Brock told *Carolina Journal*. "It's the people's money we're talking about, and it's long past time we make this happen."

Brock's plan also has the backing of House leaders. "I believe Sen. Brock's amendment encompasses the kind of transparency in government that we all embrace," said Rep. Jason Saine, R-Lincoln, speaking on behalf of House Speaker Tim Moore, R-Cleveland.

"There is always a need for sunshine on governmental spending and operations, and I believe this is a great first step," Saine said. He added the measure both would enhance transparency and make it easier for policymakers to analyze the data.

Saine wants the new portal to work alongside the existing Government Data Analytics Center program housed within the state Office of Information Technology Services.

Even so, state CIO Chris Estes says there are "some concerns" about placing funding for the transparency website above other IT projects. "We are trying to address many needs with that money, including modernizing architecture standards and enhancing security, as protecting the security of citizen data is always a priority," Estes said. He also noted that local governments may publish data in computer languages that cannot be translated on the state's websites.

"We strongly support using information technology to increase transparency," Estes said. "We are doing that — and improving citizen interaction — with the Digital Commons project."

That project is intended to make state agency websites easier to read on mobile devices, and so they are "more intuitive and easy-to-use" on all platforms, Estes said.

State Controller Linda Combs "believes transparency is a key component to good government," said spokeswoman Sherri Johnson. "Dr. Combs looks forward to working with the state CIO, [the budget office], and the legislature on issues and projects that improve access to the state's financial information."

State Budget Director Lee Roberts said his office is "very supportive of the intent" of Brock's amendment and "fully committed to greater transparency."

He said the budget office and controller's office already have undertaken initiatives to post as much government information on their websites as possible. They included a full revamp of the state budget website.

However, he cautioned, IT personnel will need to

work with Brock "to make sure that what he's suggesting is doable, and something that we can actually do at a reasonable cost on that time frame outline."

Roberts said he doesn't have a cost estimate. "That's one of the key aspects of the amendment that we need to try to understand."

Data collection would be an issue for the local school districts, cities, and counties, he said.

"Unfortunately, even within state government we have a lot of different systems that don't talk to each other as well as they should, and it's a struggle to present data in a consistent and comprehensive way," Roberts said.

Gov. Pat McCrory proposed consolidating all IT functions in a new Department of Information Technology "in part to address these concerns," Roberts said. The budget did not include funding for a database that could share data among all agencies and governing units, he added.

While spending money on information technology is "not a necessarily politically appealing thing," Roberts said, "we find everywhere we look the legacy of decades of underinvestment in infrastructure, including our IT infrastructure, and that's something we need to address if we're going to be prudent and

effective stewards."

Kevin Leonard, executive director of the North Carolina Association of County Commissioners, said Brock's intentions "appear to be well-meaning, but the net effect is it creates more government regulation."

By law, counties must make their budgetary information available to the public, and that process is already in place, he said.

"With Internet access, anyone can access this information simply by visiting the county's website," Leonard said.

North Carolina League of Municipalities spokesman Scott Mooneyham said the League believes citizens should have easy access to information about how government is spending their money. He said the City of Raleigh's website "is a great example" that could serve as a model.

"At the same time, it is important to recognize that the overwhelming majority of the roughly 550 municipalities in North Carolina have fewer than 1,000 residents, and many have five employees or less," Mooneyham said. It is unclear how Brock's provision would affect them.

"We would hope that it would not create a new burden and unfunded mandate on those local taxpayers," Mooneyham said.

Ed Dunlap, executive director of the North Carolina School Boards Association, supports public access to government spending. He said school districts already provide financial information through a mandatory uniform budget document with a standard chart of accounts.

Dunlap is concerned about the mechanics of the proposed portal.

Brock said the plan should not impose any significant burdens on agencies or government units, even small ones. He noted that while the amendment requires entities to provide fiscal updates monthly, smaller municipalities that now issue updates quarterly simply can file a notice stating "no update" in the months between their quarterly reporting periods.

Brock added he finds these objections similar to those he's heard for years about making government finances more visible to taxpayers.

"I don't know how this is problematic," he said. "It's as if [agencies] are afraid to tell the people how much of their money they are spending. I think they are trying to overcomplicate a simple procedure."

CJ



Tech Companies Push for Mandates, Collect Subsidies, Too

Google, SAS, and Apple among firms collecting millions

BY DAN WAY
Associate Editor

RALEIGH

Internet giant Google collected \$262 million in incentives when it located a data center in North Carolina, and now is urging the General Assembly to continue offering hundreds of millions of dollars in subsidies to renewable energy investors.

Meantime, as the Cary-based, multibillion-dollar software company SAS Institute Inc. also asks the state to maintain subsidies for renewables, it appears that two of the company's co-founders — James H. Goodnight and John P. Sall — may have received more than \$3 million in state tax credits over the past five years from the renewable program.

On May 27, Google teamed with tech giants Apple and Facebook to issue a letter to Senate leader Phil Berger, R-Rockingham, and House Speaker Tim Moore, R-Cleveland, opposing House Bill 332, legislation that would have, among other things, capped mandates on utilities to purchase power from renewable sources. All three Internet companies have large data centers in the state that consume large amounts of electricity.

And on July 16, SAS sent a letter to Moore Berger, saying any change in the state law forcing utilities to purchase an increasing percentage of their energy from renewable sources

"would have a significant negative impact on the availability of renewable energy in the state."

Department of Revenue records show that Goodnight collected \$2,109,025 in renewable energy tax credits over the past five years and Sall received \$1,059,123 over the same period. Revenue privacy rules make it im-

possible to verify that the James H. Goodnight in the Revenue Department reports is the CEO of SAS or that John P. Sall is the SAS executive vice president with the same name. However, SAS public information officials did not respond to inquiries from *CJ* asking for confirmation of the identities of Goodnight and Sall.

State Rep. Chris Millis, R-Pender, is displeased that companies receiving taxpayer-funded support to locate in North Carolina are asking for more.

"It should be a testament to lawmakers that once you grant one business interest access to the taxpayers' pocketbook that they show the way for others, and that it is a truth that government gets more of what it subsidizes," Millis said.

"No conventional power station anywhere in the world has been closed down because of solar or wind. They are supplemental programs," said

Howard Hayden, professor of physics emeritus at the University of Connecticut and editor of *The Energy Advocate* newsletter.

"Sometimes they're adequate. Sometimes they do some good. Most often they line their owners' pockets with money from other ratepayers and taxpayers," Hayden said of renewable energy generating facilities.

N. C. State University professor Herb Eckerlin said some solar advocates, such as former Bank of America chairman and CEO

Hugh McColl, who wrote a recently published op-ed urging lawmakers not to curtail the subsidies, have a vested interest in maintaining taxpayer support for the industry.

"The banks are one of the biggest investors in solar farms, so they gain directly from these tax credits," Eckerlin said. "They gain, but everybody else in the state who's not in the solar business has to ante up."

Investors in renewable energy receive a 35 percent tax credit. *Carolina Journal* has reported that Bank of America received \$7,969,794 in solar tax credits over the past five years. In all, North Carolina has issued \$224.5 million in renewable tax credits since 2010, mostly to large banks and insurance companies.

Google, Apple, and Facebook oppose H.B. 332 because it would freeze the amount of renewable energy utilities are required to purchase at 6 percent, instead of allowing it to jump to 12.5 percent by 2021. The bill also would reduce the size of renewable projects eligible for state-mandated contracts with electric utilities.

TechNet, a self-described "policy and political network of CEOs and senior executives that promotes the innovation economy," sent the letter to Berger and Moore for the three Internet companies. It says H.B. 332 would hamper investment strategies and derail the companies' requirement for "a reliable, sustainable electricity supply ... from renewable energy."

Caroline Joiner, executive director of TechNet and listed on the letter as the contact person, did not respond to a request for an interview.

Research by Jonathan Morgan, an associate professor in the School of Government at UNC-Chapel Hill,

found that Google was pledged \$97.1 million in state incentives, including \$89 million in sales tax exemptions for the purchase of electricity and equipment, along with \$165 million in cash grants from Caldwell County and the town of Lenoir. The incentives are spread over 30 years.

"I am not as intimately familiar with the detailed numbers for Facebook and Apple," Morgan said. But using estimates derived from a Good Jobs First study, he believes Apple got an incentive arrangement valued at \$320.7 million to locate in North Carolina.

Spokesmen for Gov. Pat McCrory and the departments of Revenue and Commerce told *CJ* they had no records of state incentives for Facebook.

While Google, Apple, and Facebook believe "the right and ability to access power from renewable resources is not merely a goal, but an expectation," according to the TechNet letter, they're not all developing renewable projects in North Carolina.

"The only [company] that has its own solar facilities is Apple," said James McLawhorn, director of the North Carolina Public Utilities Commission's Electric Division. Apple has two 20-megawatt solar farms and a 10-megawatt fuel cell farm.

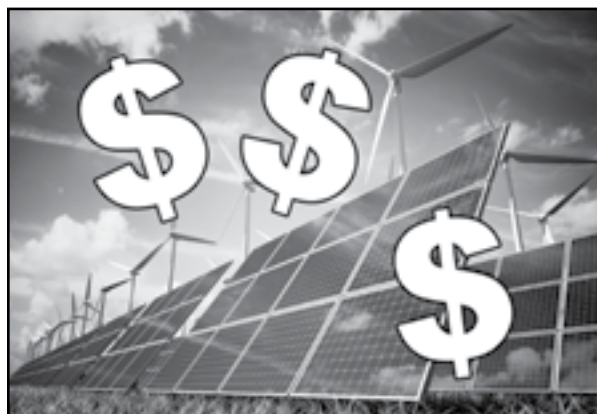
"According to our records, Google and Facebook have not developed their own solar resources," McLawhorn said.

The reason renewables cannot replace fossil fuel plants, Eckerlin says, is because the wind doesn't blow all the time and the sun doesn't always shine. Backup sources, generally provided by electric generating plants powered by fossil fuels or nuclear energy, are needed to provide power during those down times.

"Whenever there's green power available, the utility has to take it" under federal law, said Eckerlin, who designed and built the NCSU Solar House on the N.C. State campus and is a former treasurer of the North Carolina Sustainable Energy Association. "Even if [utilities] don't need it, they have to accept it. So that's a rather bizarre situation, and it puts the utility under a lot of stress."

Utility companies rather than solar developers have to build the electric generating systems, infrastructure, and controls that are capable of accepting solar electricity when it is available. These added costs are shifted to ratepayers, Eckerlin said.

Duke Energy spokesman Randy Wheelless said he did not have information about whether Apple, for example, profits from selling its solar farm power to Duke at a higher price than it buys power back off the grid, but agreed that is a possible scenario. *CJ*



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State Briefs

In mid-July, Gov. Pat McCrory signed House Bill 766, a law allowing more people suffering from “intractable epilepsy” to use a hemp extract to treat the disease.

The law would let certain neurologists treat intractable epilepsy using the extract known as CBD oil without participating in a pilot study. H.B. 766 eliminates references to medical studies needed for legal use of the extract.

Rep. Pat McElraft, R-Carteret, sponsor of the bill, said that patients using the extract would receive a letter from their authorized doctor allowing legal use of the product.

“The patients will keep the letter as their proof that they can use CBD oil,” McElraft said.

McElraft also said that the legally permitted amount of extract containing hallucinogenic substances in North Carolina would be less than allowed in many other states.

“You [could] drink the whole bottle and still not get high,” McElraft said.

In 2014, the General Assembly established the N.C. Epilepsy Alternative Treatment Act. The act defines intractable epilepsy as a seizure disorder that does not respond to three or more treatment options overseen by a neurologist.

Without the medical exemption, the possession of cannabis is a misdemeanor under state law. A number of North Carolina residents have traveled to states that allow the medicinal use of cannabis to get treatment for their children.

While the law removes requirements that patients and doctors participate in pilot programs and trials, the bill encourages the state’s medical research hospitals to continue their clinical trials.

Preliminary research released in April by the American Academy of Neurology showed one version of CBD oil, marketed under the name Epidiolex, reduced the frequency and severity of seizures in more than half the children and young adults tested.

The House approved the measure by a 112-2 vote after a 47-0 vote by the Senate. CJ

— BARRY SMITH



Guidelines Lacking for Shutting Down Solar Farms

By DAN WAY
Associate Editor

RALEIGH

North Carolina has no environmental rules for shutting down solar projects safely, state officials say, and may lack sufficient facilities to dispose of the glass, steel, industrial lubricants, and toxic elements after solar panels in the state’s expanding solar industry reach the end of their useful lives.

State Rep. Jimmy Dixon, R-Duplin, is alarmed at the lack of control over decommissioning solar arrays and solar farms. He also is concerned that solar developers might be duping unwitting landowners who lease their property for solar projects, saying some require property owners to cover the costs of disposal and land reclamation after the panels become ineffective.

Dixon has visited solar developments in his district, met with property owners leasing their land for the projects, and viewed some of their contracts.

He said in some lease agreements with schools, the company installs panels on the roof of a building, “and the arrangement is that the company ... gets the tax credits,” and eventually ownership of the solar panels transfers to the county, Dixon said. Owners must assume any decommissioning costs.

“There’s been some of that,” agreed James McLawhorn, director of the North Carolina Utilities Commission’s Electric Division. Some leases with private landowners “may be structured that way” as well. “I wouldn’t doubt it. But I know they’re not all structured that way.”

However, McLawhorn acknowledges, only the landowner and developer know the details of the leases. Solar developers are not required to share lease details with the Utilities Commission when applying for a certificate to build.

“I think the upfront enticement of such a large amount of [lease] money ... the \$850 an acre per year, with the company paying the property taxes, the company paying the penalty for coming out of present-use value on farmland, is awfully enticing to these folks out here who are in need of some income today,” Dixon said.

“The enormous amount of upfront money that they’re getting is distorting their judgment relative to 15, 20 years later” when the solar panels stop working efficiently and must be discarded, Dixon said.

“I haven’t seen anybody that can tell me who is ultimately responsible for cleaning up and disposing. That is problematic,” Dixon said.

“The danger that I foresee [is] that if a lot of these bad deals are made, and then we ask the government to bail out the people who made these bad deals, I have a problem with that,” Dixon said. He also worries if a solar company goes out of business, a landowner could get stuck with cleanup costs and may not be able to pay them.

“You’re right to raise the question about thinking about the [land] restoration of the sites, and the disposal of materials, and to the extent there are toxic materials, the handling of those, because some of the solar arrays have toxic materials in them,” said Mark Mills, a senior fellow at the Manhattan Institute and faculty fellow at Northwestern University’s McCormick School of Engineering and Applied Science.

At this point, Mills said, there is time to find disposal solutions before new-generation, longer-life solar panels begin wearing out, and closure of solar farms becomes necessary.

Lord Christopher Monckton, chief policy adviser to the Science and Public Policy Institute and a former policy adviser to British Prime Minister Margaret Thatcher, disagrees.

“Decommissioning is a big problem with all of these. It’s actually worse than for nuclear power stations, terawatt for terawatt-hour,” Monckton said.

“The big problem they’ve got, of course, is that these panels degrade much faster than they knew, and after about 10 years you’ve already lost half the power, and after 15 years you might as well throw them away because they’re not useful for anything,” Monckton said.

Disposing of solar panels poses its own problems, Monckton said. Some are made of a substance that contains, among other things, gallium arsenide, “which is a fairly strong poison,” he said. “So if you leave them in the environment, they degrade and get into the water table. So you actually have to be quite careful how you dispose of them. You basically have to store them.”

Like Dixon and McLawhorn, Monckton said property owners should make certain leases specify that the solar developer retains ownership and responsibility for decommissioning. Otherwise, Monckton said, “It’s a scam.”

Shutting down solar farms “warrants further study,” said Stephanie Hawco, a spokeswoman for the state Department of Environment and Natural Resources.

“Because there are no state laws or regulations that address decommissioning, there is no requirement for developers to submit a closure plan,” Hawco said. “DENR is discussing the closure issue and will enforce any directives we receive from the state level.” The General Assembly has given none, she said.

Currently there is “some small-scale recycling of solar panels, generally through electronics recyclers who handle similar components,” Hawco said. It is unclear how cleanup on a much larger scale would be handled as greater amounts of solar equipment wear out.

The volume of solar waste is small relative to other electronic waste streams, said Dustin Mulvaney, assistant professor of environmental studies at San Jose State University. He has researched cradle-to-grave deficiencies in California’s solar industry, the nation’s largest.

“More and more solar is going to create more and more waste, and that’s definitely an issue” for North Carolina, Mulvaney said. Neither the federal government nor any state government has solar decommissioning regulations to handle the scrap.

There is “a landfill crisis issue” of declining space nationwide at municipally operated and privately owned facilities, Mulvaney said. That is why local governments are pushing for a solar recycling infrastructure to prevent that material from crowding their landfills.

Some solar panels contain metals such as tellurium and silver. Conventional solar panels use crystalline silicon, and many contain lead. A landfill would have to be lined to accept those, Mulvaney said.

Some photovoltaic solar panels contain valuable materials such as cadmium telluride that can be reclaimed, but “if you want to get the valuable materials out, you’re going to be exposed to the toxic ones,” Mulvaney said.

Lawmakers, policymakers, and the solar industry could take a cue from the European Union, Mulvaney said. EU-wide directives regulate end-of-life management of all electronic materials, a classification that includes solar panels. CJ



State Counselor Licensing Board Hires Lobbyist to Oppose Changes

Bill would expand range of degrees that could qualify

BY BARRY SMITH
Associate Editor

RALEIGH
A state senator has taken up the cause of a North Carolina woman who left the state to earn a master's degree in counseling at a Seattle college, then returned only to learn that she couldn't practice her profession because the state licensing board said the school she attended did not have the proper accreditation.

Sue Richards approached Lt. Gov. Dan Forest's office with her story. The Board of Licensed Professional Counselors had told her that she couldn't be licensed in the state because the college she attended — which is nationally accredited — lacks regional accreditation as required by state law.

Sen. Chad Barefoot, R-Wake, filed a bill to require licensing of counseling programs from graduates of schools with either regional or national accreditation.

The board is fighting the bill and has hired a lobbyist to help fight the change, a move Barefoot doesn't like.

Richards and her husband moved to North Carolina about nine years ago. Several years later, at age 59, she decided to change careers.

"I followed a lifelong dream of going to school to be a counselor," Richards said. "It was a big step at this point in life to do something like that."

She and her husband attended the former Mars Hill Graduate School, now called the Seattle School of Theology and Psychology.

"It was an expensive thing to pick up and go across country like that," Richards said.

She and her husband returned to North Carolina in 2012. She did a year-long internship at the Salvation Army Homeless Shelter for Women and Children, and in June 2013 graduated from the Seattle school.

Richards then began the long process of applying for her counseling license. She sat for the national counseling exam, which she said she “passed with flying colors.”

Richards subsequently received a letter from the board saying she could not get a North Carolina professional counselors license because her master's degree did not come from a regionally accredited institution.

The Seattle school has received accreditation from several national organizations, including the Transnational Association of Christian Colleges and Schools and the Association of Theological Schools. But it does not have a regional accreditation.

Katherine Glenn, who chairs the North Carolina Board of Licensed Professional Counselors, said national accreditation groups certify colleges rather than particular programs.

"When you have regional accreditation, it is a little more stringent," Glenn said. "Regional accreditation is a more careful accreditation that the school must go through. They're not apples to apples."

Glenn said the board opposes the legislation. If the General Assembly insists on changing the law, the board would prefer expanding the rules to allow degrees from programs accredited by industry-specific organizations such as the Council for Accreditation of Counseling and Related Educational Programs. CACREP looks at spe-

cific counselor education programs to ensure graduates are trained and prepared properly.

Barefoot suggested that opponents of the change want to limit competition. "I would assume that they don't want the competition of having more professional counselors in the state," Barefoot said.

Barefoot said where counselors receive their degrees is just one part of the licensing process.

"Their claims of consistency are a sham," Barefoot said. "All we're talking about is where they get their master's degree from." People seeking a license have to do a lot more than that, including showing experience and passing a national board exam, he said.

"You could have the best counseling program in the nation, and if [your school is] not regionally accredited, you could not practice in North Carolina," Barefoot said.

Barefoot also questioned the decision by the board to hire a lobbyist to fight against the legislation.

"I was not aware that a board that is created to carry out the will of the General Assembly should be hiring lobbyists to fight the General Assembly," Barefoot said.

Glenn said that the board contracted with lobbyist Fred Bone for advice. She said it is common practice for legislators to notify state agencies or boards if they plan to introduce a bill changing the rules they enforce, and Barefoot had not done that.

"Sen. Barefoot did not call us and say that he was introducing a bill," Glenn said. "We have hired a legislative liaison to educate us."

The bill passed the Senate in April. At press time, it was in the House Rules Committee. *CP*



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Mercatus Scholar: N.C. Fiscal Standing Has Room to Improve

BY DAN WAY
Associate Editor

RALEIGH

Even though North Carolina ranks behind its four neighboring states in overall financial condition, the state's fiscal health is mostly sound, said the author of a national study.

Eileen Norcross, senior research fellow at the Mercatus Center at George Mason University, authored the center's annual *Ranking the States by Fiscal Condition*, pulling 2013 data, the most recent available, from the 50 states' Comprehensive Annual Financial Reports. Those are the states' official, audited financial statements.

"North Carolina is doing pretty well. But I think like all states, I would focus on pensions," Norcross said. She said the state's pension system has an unfunded liability that's \$61 billion larger than the liability the state reports. (Unfunded liability is an estimate of the amount of money needed to pay all future benefits above the fund's current cash value.)

The research looked at each state's short- and long-term debt, other major fiscal considerations, unfunded pensions, and health care benefits to come up with the rankings. Fourteen components were spread across five categories — cash solvency, budget solvency, long-run solvency, service-level solvency, and trust fund solvency — to compute an overall ranking.

North Carolina finished 27th overall. Tennessee ranked eighth, South Carolina 17th, Virginia 21st, and Georgia 26th.

Norcross said the overall state rankings are not as important as the individual categories.

"The states around North Carolina have got their own fiscal story going on. I wouldn't necessarily compare them and say South Carolina is better. You have to go behind the scenes, look at those individual ratios and what the CAFR is saying," she said.

She also noted that the study is a snapshot of fiscal activity. For example, any concerns over North Carolina's cash solvency are likely to be a one-year event, and once rectified its standing will improve when 2014 numbers come out.

North Carolina ranked ninth among all states for trust fund solvency, its best showing in any category. According to the state's figures for 2013, North Carolina's pension system had a \$3.8 billion unfunded liability, and was 96 percent funded.

"You're doing pretty well relative to the other states, and that has to do with the amount of the unfunded liabilities in the pension system relative to state personal income, [other post-employment benefits], and other debt as well," Norcross said.

RANKING OF STATES BY CASH SOLVENCY (FY 2013)

Rank	State	Cash Index	Rank	State	Cash Index
1	Alaska	14.36	26	Indiana	-0.99
2	Florida	6.17	27	Colorado	-1.22
3	South Dakota	5.71	28	Georgia	-1.25
4	Ohio	4.92	29	Kansas	-1.27
5	Wyoming	4.17	30	Virginia ¹⁰	-1.27
6	Montana	2.42	31	Minnesota	-1.29
7	North Dakota	2.26	32	Vermont	-1.38
8	Alabama	2.18	33	Texas	-1.41
9	Nebraska	1.68	34	Michigan	-1.42
10	Tennessee	1.62	35	West Virginia	-1.45
11	Utah	1.57	36	Kentucky	-1.51
12	Missouri	1.01	37	New Hampshire	-1.76
13	Idaho	0.51	38	New Jersey	-1.78
14	Delaware	0.14	39	Maryland	-1.79
15	Oklahoma ¹¹	0.14	40	Rhode Island	-1.90
16	Iowa	0.04	41	Wisconsin	-1.93
17	Nevada	-0.01	42	North Carolina	-1.98
18	South Carolina	-0.08	43	New York	-2.16
19	New Mexico ¹²	-0.10	44	Arizona	-2.27
20	Arkansas	-0.14	45	Pennsylvania	-2.29
21	Washington	-0.27	46	California	-2.60
22	Mississippi	-0.47	47	Massachusetts ¹³	-2.60
23	Oregon	-0.58	48	Connecticut	-2.67
24	Louisiana	-0.69	49	Illinois	-2.72
25	Hawaii	-0.89	50	Maine	-2.73

Source: Mercatus *Ranking the States by Fiscal Condition*, page 13

However, she believes the pension numbers are wrong.

"I recomputed them based on the idea that these should be valued like bonds, and when you value them like bonds, North Carolina has an unfunded liability of \$65 billion, and the system is only 55 percent funded, not as well funded as the state is reporting," Norcross said. "That's the area where probably some attention should be paid."

She said the other post-employment benefit liability "is large at \$23 billion, and it's only funded at 3 percent, which means it's practically on a pay-as-you-go basis."

"North Carolina's AAA bond rating from all three ratings agencies, and our status as one of the best-funded pensions in the country indicate North Carolina's solid financial underpinnings," Schorr Johnson, spokesman for state Treasurer Janet Cowell, said in response to the study.

"The Department of State Treasurer stands ready to work with the governor and the General Assembly to ensure the long-term fiscal stability of the State Health Plan," he said.

"I'm not familiar with this group's study nor the metrics they used for their interpretation," said Josh Ellis, spokesman for Gov. Pat McCrory.

"North Carolina has scored very well in other well-established rankings. The Cato Institute ranked Gov. McCrory first on its 2014 *Fiscal Policy Report Card on America's Governors*," Ellis said. "In addition, [the American

Legislative Exchange Council] ranked North Carolina fourth for its 2015 economic outlook."

North Carolina appears to be in no trouble in the short run.

"But as New Jersey, and Illinois, and some states have learned, if you continue to operate off of a wrong set of numbers, your choices are going to matter over time," Norcross said. "I think that's the lesson of what we're looking at in countries and places like Puerto Rico and Detroit, and places

that really did learn the hard way over many decades of making poor choices based on rosy assumptions."

An accurate valuation of the pensions and determining proper contributions "is a conversation they need to have" in North Carolina, she said. New government accounting standards that are coming online soon should reveal more, but not all, of the full liability of pension plans in future years.

According to the study, a state's cash solvency reflects the cash it can easily access to pay its bills over the next 30 to 60 days. North Carolina ranked 42nd there, its worst showing of the five categories.

"By the strictest measure of cash they have less cash than short-term liabilities, so that's where they get a little bit dinged in the rankings," Norcross said. North Carolina was one of only 14 states in that situation.

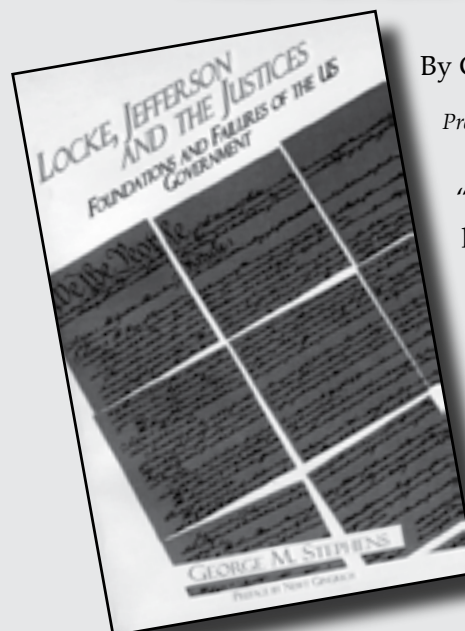
"In terms of the long-run solvency, the picture changes a little bit," she said. Long-run solvency measures each state's ability to cover yearly costs, including pension benefits and infrastructure, with incoming revenue, according to the study. North Carolina's long-term liabilities are 22 percent of total assets, ranking it 24th.

North Carolina was 18th among the states for budget solvency, a measure of whether a state can meet its spending obligations during the current fiscal year.

Service-level solvency is similar to a measure of the tax base — computing the level of taxes, expenses, and revenues relative to state personal income. That can be used to determine if a state has room to increase spending or raise taxes if conditions warrant. North Carolina was 24th in that category. CJ

Locke, Jefferson and the Justices:

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Former Speaker
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General Assembly Taking Fresh Look at State Asset Sales

Lawmakers looking at land and buildings state doesn't need

By BARRY SMITH
Associate Editor

RALEIGH

A General Assembly subcommittee is looking at state property with an eye toward selling land and buildings the state owns but doesn't need, and seeing if the state might save money by moving from leased spaces to unused or underused property it owns.

The subcommittee, a branch of the General Assembly's Program Evaluation Oversight Committee, already has begun looking at 49 state-owned properties, 17 of which have been found to be of no value to the state.

"This is going to take a little time," said Sen. Rick Gunn, R-Alamance, who will chair the new subcommittee. "I don't mind the time aspect as long as we're moving this thing forward."

Sens. Ben Clark, D-Hoke, and Shirley Randleman, R-Wilkes, will join Gunn on the committee, along with Reps. Becky Carney, D-Mecklenburg, Ted Davis, R-New Hanover, and Rena Turner, R-Iredell.

The Program Evaluation Division recommended that the state sell

17 of the 49 properties; 12 of the 17 are within a few blocks of the Legislative Building in downtown Raleigh. Other properties are in Rose Hill, Wilmington, Statesville, Greensboro, and Garner.

It would take about \$18 million to bring the properties up to usable condition, according to the division's report.

The division estimates that the state could garner one-time revenue of \$14.3 million by disposing of the properties. In addition, local governments would collect an estimated \$138,236 in annual tax proceeds once the properties are sold.

Among findings in the report to the Program Evaluation Division are:

- Along with the one-time money generated, disposing of unneeded real property and optimizing use of state-owned property is expected to save state taxpayers \$2.6 million.

- North Carolina lacks a systematic process to identify surplus real property.

- The Department of Administration does not control and manage the state's portfolio of real property effectively.

- Discrepancies in the property database and insufficient access controls jeopardize the completeness, accuracy, and security of the state's inventory of real property.

The report estimated that all of the property the state owns statewide could be valued at more than \$27.5 billion.

Many of the items contained in the report were readily identifiable pieces of property in the downtown Raleigh area.

"We are confident this is a portion of the iceberg, we just don't know how big that iceberg is," said Sean Hamel, senior program evaluator with the Program Evaluation Division.

The report notes that a "regular systematic review of state property could yield additional opportunities to dispose of or consolidate assets to reduce cost."

Several of the houses identified near the downtown legislative complex are historic properties and would require renovations before they could be sold or repurposed. But most aren't.

Much of the subcommittee's work on state property has yet to occur. Gunn said he expects his subcommittee to get geared up after the General Assembly adjourns its regular 2015 session.

The report also recommends that the General Assembly direct the Department of Administration, which oversees the State Property Office, to allocate underused state-owned space to meet needs of expiring leases. It also suggests that state agencies look for current property that is not being used or is underused before seeking or renewing leases.

This isn't the first time lawmakers have attempted to identify and sell off unused state property. The General Assembly had such an effort as recently as 2003. After some initial fanfare, it didn't gain a lot of traction.

"There were probably four different studies of different magnitudes" of potential asset sales, Gunn said, adding that he is determined not to let the current effort go to waste. *CJ*

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have been
found to be
of no value
to the state**

Committee: State Needs to Boost Retiree Health Funding

By BARRY SMITH
Associate Editor

RALEIGH

The state of North Carolina has unfunded liabilities for its retiree health benefit fund totaling \$25.5 billion, a legislative oversight committee learned on July 27.

"We found the unfunded actuarial liability for the retiree health benefit is large, but the state could save up to \$64 million annually by shifting costs to Medicare Advantage plans," said Kiernan McGorty, principal program evaluator for the General Assembly's Program Evaluation Division.

McGorty gave the report to the Joint Legislative Program Evaluation Oversight Committee, which evaluates whether public services are delivered effectively and in accordance with the law.

North Carolina ranks 41st in the nation in unfunded liabilities per state resident, McGorty said. Eight states are worse off than North Carolina. Nebraska didn't provide data.

While the state should have no problem paying retiree health care

benefits in the near future, if no action is taken, payments eventually could be jeopardized, McGorty said.

McGorty said several options would put the state on better footing. However, she said, all would require higher payments by the state, more contributions by retirees, or reduced benefits. Some alternatives also could pose legal challenges, she said.

Those options include moving some retirees to Medicare Advantage plans; increasing the state contribution to the fund; moving to defined contribution plans such as Health Reimbursement Arrangements or Health Savings Accounts; reducing the number of individuals eligible for benefits; or requiring active employees to pay for retirees' benefits.

Increasing the amount of time

workers are employed by the state before qualifying for retiree benefits could reduce the number eligible to receive them, McGorty said. For example, a state retiree now needs 20 years of service to receive retiree health benefits. Some states require 25 to 30 years of employment before qualifying, McGorty said.

McGorty said the potential for litigation exists if the state changes benefits for current state employees.

Rep. Pat Hurley, R-Randolph, recommended that the state proceed cautiously.

"Whatever we do, we need to go slowly and be sure that we're not going to have unintended consequences down the road, because I know many of us were told when we were hired that we would have health [benefits] forever," said Hurley, a retired deputy

clerk of court and teacher.

After the meeting, Rep. Nelson Dollar, R-Wake, senior chairman of the House Appropriations Committee, said the retiree health plan liability is a long-term issue.

"It is an issue that we need to take a look at," Dollar said. "We need to be attentive to it and working toward long-term solutions. There's no way you're going to resolve all of it in any sort of short time period. It's a liability that's projected out over 30 years. We need to work on solutions that are long-term solutions."

Flint Benson with the State Employees Association of North Carolina said lawmakers should be mindful that such benefits help in employee recruitment.

"If you want to attract and retain new employees, you need to take a hard look at that before you make a decision," Benson said.

The committee took no action on the recommendations. Committee members said they wanted to review the report more before making a decision. *CJ*

**North Carolina
ranks 41st
among the states
in unfunded
liabilities**

COMMENTARY

Why Opting Out Suddenly Is In

The new school year is fast approaching, but policymakers remain rattled by testing boycotts that swept the nation this spring. From New York to California, hundreds of thousands of parents pulled their children out of end-of-year tests. Just say no, a mantra from another era, has been rebranded — now as the rallying cry of the testing opt-out movement.

Implications for test-based accountability are obvious: Exams are useless if kids don't take them. Repercussions for parent-school partnerships are murkier, but worrying. Many parents feel disenfranchised. Ignored.

For them, top-down reform, testing excess, and interminable test prep have coalesced into an intolerable mix. Online, parents are blogging, sharing, and petitioning. Offline, they're taking action. Their message to those in charge is simple, succinct: Standardized testing is out of control. Stop it, or we will.

New York is at the core of the opt-out movement. This spring almost 200,000 students skipped Common Core exams. In New Jersey, news reports indicate 15 percent of high school juniors boycotted Common Core tests. In other states, opt-outs surged.

Certainly, Common Core wars have fanned flames of test opposition. In some states using Common Core exams developed by federally funded consortia, parental resistance is particularly high. But ire over testing predates Common Core. Opposition has grown steadily since No Child Left Behind's onerous testing requirements took effect over a decade ago. The federal law also mandates 95 percent student participation in annual exams, so schools feel the heat as opt-outs rise.

In North Carolina, the opt-out movement is still "small and scattered," says Pamela Grundy of Mecklenburg ACTS, a group opposed to high-stakes testing. Grundy, whose eighth-grade son hasn't taken end-of-grade tests for two years, explains why parents are turning to activism: "Everyone talks about involving parents, but no one really does it."

Unlike some states, North Carolina has no official opt-out

procedure. Instead, families "refuse" tests, sometimes with unclear consequences for students. According to Tammy Howard, director of accountability services for the N.C. Department of Public Instruction, DPI isn't tracking refusals in a database and is "not aware of a significant increase."

Could refusals build? Yes. Grundy says she hears from lots of dispirited parents of special-needs children, "for whom the tests are just torture." This spring in a

News and Observer op-ed, Mary Nelson, mother of a special-needs child, called on state lawmakers to pass an opt-out provision enabling her son and others like him to forgo end-of-grade exams they cannot pass.

Yet the wheels of change grind slowly. Nationally, Congress is debating long-overdue revisions to No Child Left Behind. Changes would provide states with

greater testing flexibility.

In North Carolina, a State Board of Education task force on assessment just concluded its review. Recommendations encompass a three-year plan, leveraging assessments to inform instruction more effectively. "We have to test smarter," says task force chairman Buddy Collins.

The task force is recommending a pilot study for this school year, looking at the "feasibility" of interim assessments for third- to eighth-graders. Replacing end-of-grade exams with a test that compares North Carolina students to their peers nationally also may be an option. For high school, the task force recommends "a national assessment suite" in core content areas.

Testing smarter makes sense. So does testing leaner. Some assessment is necessary — for accountability and objective feedback. But what we have now is much too much.

That, and more, is what parents nationwide are protesting. Isn't it time to listen? Common Core standards require students to "engage effectively in a range of collaborative discussions" with "diverse partners." Now would be the perfect time for policymakers to show kids what that looks like. *CJ*

Kristen Blair is a Chapel Hill-based education writer.



KRISTEN BLAIR

Audit: Robeson Misspent \$3.16M in Medicaid Funds

By DAN WAY
Associate Editor

RALEIGH

Public Schools of Robeson County misspent \$3.16 million of Medicaid-related money intended to provide education and medical services for disabled children from 2011-13, and that could signal an \$18 million annual problem statewide, according to a state audit.

Moreover, according to the audit findings released July 27 by State Auditor Beth Wood, the school district failed to claim more than \$364,000 in available Medicaid funding that would have helped students with special needs.

The problem was linked to misinformation from the state Department of Public Instruction and inadequate training of school district employees handling the funds.

The audit notes that the federal Individuals with Disabilities Education Improvement Act requires state education agencies to provide "education and related medical services to students who have disabilities that adversely affect their ability to obtain a free and appropriate public education."

The state's Exceptional Children Program allocates \$3,743 to school districts for each eligible student.

The money pays for transportation; speech-language pathology and audiology; interpreting; psychological, physical, and occupational therapy; and social work, school nurse, and counseling services, according to the audit.

If a special-needs child is on Medicaid, a school district can receive from Medicaid direct reimbursements for medical services provided to an individual, and administrative reimbursements for programming and support staff.

Under an interagency agreement between the state Department of Health and Human Services and DPI, school districts were required to return all Medicaid reimbursements for administrative costs back into the special-needs program, Wood said.

"DPI didn't tell them that they should put it back in the special-needs children's program," but instead said there were no restrictions on use of the money, Wood said.

"The school systems got reimbursed, and just dumped it in their general pot, and spent it on whatever they wanted to — school textbooks, or janitor services, or the cafeteria," Wood said.

There were no guidelines issued

on how to use the direct reimbursements.

Wood said DHHS did what it was supposed to do in engineering the interagency agreement.

"The [fault] is on DPI for not telling the school systems, and then not tracking them," Wood said.

As a result, according to the audit, "there is a statewide risk that [local school districts] are using about \$18 million per year in Medicaid administrative reimbursements for purposes other than the benefit of students with disabilities."

"The \$3,700 that the state gives the school systems is not enough" for all of the unique educational needs of children with disabilities, Wood said.

Robeson schools have about 4,000 students with disabilities eligible for the state Exceptional Children Program and receives on average \$12.5 million a year from the state to provide services to them.

The Robeson district received \$3.16 million in Medicaid administrative reimbursements during the three-year period audited, but spent only \$26,780 of that amount on special-needs services.

The district was selected for an audit because it has the highest population of students receiving free and reduced-price lunches of any district in the state, and therefore likely gets the most Medicaid reimbursement for special-needs children, Wood said.

"Some counties don't even get any [Medicaid reimbursement] at all, some get a lot less, and some get in between," Wood said.

The audit also concluded that "as a result of several organizational weaknesses" the Robeson district "did not claim Medicaid reimbursement" for more than \$364,000 on \$4.8 million of eligible expenses.

The audit recommended that DPI and DHHS work together "to clarify the intent and use of Medicaid administrative reimbursements in the interagency agreement and communicate those requirements to the School District."

It recommended that DPI monitor the spending of Medicaid administrative reimbursements to ensure compliance with the state interagency agreement.

DPI agreed with the audit findings and recommendations.

In its response, Robeson school officials said the board is "still in limbo" as to how to spend the money while it awaits notification from DPI.

At press time, DHHS had not responded to requests for comment. *CJ*



N.C. Supreme Court Upholds Opportunity Scholarship Program

By BARRY SMITH
Associate Editor

RALEIGH

The N.C. Supreme Court on July 23 gave a boost to school choice efforts by declaring that the state's fledgling Opportunity Scholarship Program met constitutional muster. The General Assembly approved the Opportunity Scholarship Program in 2013. The program provides up to \$4,200 in scholarships to children from lower-income families to attend a private school.

The high court's four Republicans voted to reverse an August 2014 ruling by Superior Court Judge Robert Hobgood declaring the vouchers unconstitutional. The three Democratic justices moved to uphold Hobgood's decision.

Supporters of the scholarship program hailed the ruling as a victory for school choice and for students who are not being served by the state's public schools. Opponents called the ruling a blow to public education.

"Five out of six low-income students in North Carolina don't pass either or both of their end-of-grade reading and math tests," said Renee Flaherty, an attorney for the Arlington, Va.-based Institute for Justice, which represented parents of students receiving vouchers.

"Today, the court recognized that a school system that was getting those results wasn't serving the needs of North Carolina families," Flaherty said. "The court emphasized that nothing in the North Carolina Constitution prohibits school choice."

Rodney Ellis, president of the N.C. Association of Educators, one of the plaintiffs in the lawsuit, said the decision was not a good one for public schools.

"This decision will continue the damage being done to our public schools and students by allowing private vouchers to drain money from our already underfunded schools," Ellis said. "We believe the constitution is clear; public funds for education should be used exclusively for public schools. NCAE will continue to fight for giving our students the resources to be successful like modern textbooks and technology, more one-on-one interaction with teachers, and a quality educator in every class."

Chief Justice Mark Martin wrote the majority opinion.

"Our constitutionally assigned role is limited to a determination of whether the legislation is plainly and clearly prohibited by the constitution," Martin wrote. "Because no prohibition in the constitution or in our precedent forecloses the General Assembly's enactment of the challenged legislation here, the trial court's order declaring the legislation unconstitutional is reversed."

Martin was joined in the majority by Justices Bob Edmunds, Paul Newby, and Barbara Jackson.

Justice Robin Hudson wrote a dissenting opinion. She was joined by Justices Cheri Beasley and Sam "Jimmy" Ervin IV. In addition, Beasley wrote a separate dissent.

"Because the Opportunity Scholarship Program provides for the spending of taxpayer money on private schools without incorporating

any standards for determining whether students receive a sound basic — or indeed, any — education, I conclude that the program violates the North Carolina Constitution in two respects," Hudson wrote.

Hudson said the main constitutional flaw was that there was no framework requiring any of the participating private schools to contribute to public purposes.

"Defendants assert that 'layers' of accountability standards are built into the Opportunity Scholarship Program," Hudson wrote. "I find none of these arguments convincing."

Hudson noted that the defendants, primarily the state, lawmakers, and parents, asserted that they would not send their children to private schools that did not provide for a solid education.

"This may be true, but marketplace standards are not a measure of constitutionality," Hudson wrote. She also lamented that the program did not provide any standards for teachers or education quality.

Beasley, in her dissent, alluded to the Pearsall Plan, a 1950s effort to use vouchers to avert desegregation mandated by the U.S. Supreme Court's *Brown v. Board of Education* decision.

"Without systemic and cultural adjustments to address social inequalities, the further cruel illusion of the Opportunity Scholarship Program is that it stands to exacerbate, rather than alleviate, educational, class, and racial divides," Beasley wrote. "In time, public schools may be left only with the students that private schools refuse to admit based on perceived lack of aptitude, behavioral concerns, economic status, religious affiliation, sexual orientation, or physical or other challenges, or public schools may become grossly disproportionately populated by minority children."

Martin's opinion responded to assertions made by opponents of the Opportunity Scholarship Program, saying that a clause often cited by voucher opponents regarding a certain fund being used "exclusively" for public schools didn't preclude other state revenues from being used for vouchers.

"Thus, within constitutional limits, the General Assembly determines how much of the revenue of the state will be appropriated for the purpose of 'establishing and maintaining a uniform system of free public schools,'" Martin wrote, adding that the constitution doesn't prohibit lawmakers from appropriating "general revenue to support other educational initiatives."

Martin dismissed the argument

that funds appropriated for private school vouchers did not serve a public purpose.

"The promotion of education generally, and educational opportunity in particular, is of paramount public importance to our state," Martin wrote. He noted that the constitution specifically envisions that children in the state may be educated by a means outside the public school system. He added that those who think that the voucher program is a bad policy decision should take that up with the legislature, not the courts.

Rep. Paul "Skip" Stam, R-Wake, who helped sponsor the voucher legislation, was pleased that the court upheld the program.

"Two-hundred and twenty-four schools worked with parents to allow students to attend the school of their choice while awaiting today's court decision," Stam said. "More families will now have realistic access to educational options for their children."

Flaherty noted the popularity with the program. "With this decision, there's definitely room for the program to grow," Flaherty said. "There's lots of demand."

Darrell Allison, president of Parents for Educational Freedom in North Carolina, which pushed for the voucher program, offered his appreciation to the Supreme Court justices for upholding the program.

"We applaud them for recognizing that education is ultimately a personal right belonging to our citizens, not a governmental agency or system," Allison said. "We join the thousands of families across the state who are celebrating today because the court has given them the legal right to exercise educational choice through the Opportunity Scholarship Program."

Republican Gov. Pat McCrory also applauded the court's ruling.

"Today's decision by the Supreme Court is a victory for every parent whose child is being underserved in North Carolina," McCrory said. "This is a victory for choice, and it's a victory for North Carolina students and their families."

Both House Speaker Tim Moore, R-Cleveland, and Senate leader Phil Berger, R-Rockingham, separately praised the decision.

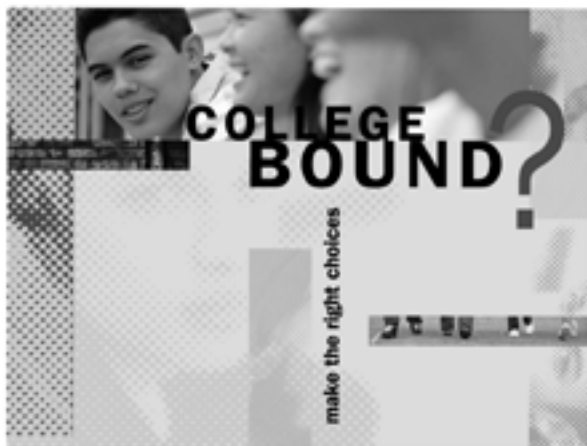
Stam noted that about 1,200 students attended 224 schools on the voucher program during the 2014-15 school year. More than 1,100 of those students reapplied for vouchers for the 2015-16 school year, along with 4,800 new applicants. Scholarships totaling \$6 million were awarded to students during the last school year, he said.

Both chambers of the General Assembly have allocated \$17.6 million for the scholarship program for 2015-16, enough to help 4,400 students attend private schools.

CJ



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Sen. Brown, Gov. McCrory Scuffle Over Local Sales Tax Changes

By BARRY SMITH
Associate Editor

RALEIGH

State Senate Majority Leader Harry Brown and Gov. Pat McCrory waged a war of words July 21 over the Onslow County Republican's proposal to rework the way local sales taxes are allocated.

"We believe our current sales tax system needs reform," said Brown at a press conference. "Today, retail is centered in a few prosperous urban areas. People from everywhere else travel there to buy everything from appliances to clothes to food, and they leave their tax dollars behind. As a result, the current system is inequitable."

A version of Brown's sales tax plan was included in the budget passed by the Senate in June. It would shift the distribution of sales tax revenues from the current formula favoring the location where sales are made to one emphasizing county population. At press time, House and Senate members were negotiating a final budget package.

McCrory, also a Republican, vowed to veto Brown's plan if it reaches his desk.

"This bill will result in a tax increase for millions of hard-working, middle-class families and small business owners throughout North Carolina," McCrory said later that day. "Redistribution and hidden tax increases are liberal tax-and-spend principles of the past that simply don't work. More importantly, this bill will cripple the economic and trade centers of our state that power our economy."

McCrory then went on to push for economic development alternatives, namely his "NC Competes" economic development programs and his proposed transportation and infrastructure bonds.

"This legislation will decimate our travel and tourism sector, particularly in our mountain and beach communities, shop owners and their employees who depend on tourism for their livelihood," McCrory said of Brown's sales tax redistribution proposal. "Instead of pursuing left-wing ideas that continually fail, it's time for the General Assembly to get to work on job creation for all North Carolina."

Brown wasn't done. In a statement issued that evening, he said, "I can't figure out if Pat thinks he is the governor of Charlotte or the mayor of North Carolina. Today, over 100 local officials from across the state came out in support of sales tax fairness."



Sen. Harry Brown, R-Onslow, at lectern, was joined by state lawmakers and local government officials at a July 21 press conference in the Legislative Building. (CJ photo by Barry Smith)

Calling the governor "tone-deaf," Brown continued, "Pat has spent 85 percent of our incentive money in the three richest urban counties and passed a transportation plan that diverts road money away from rural areas to urban areas, so it is hard to take his idea to help rural North Carolina by doing more of the same seriously. I have repeatedly asked the governor for a real plan to help the more than 80 counties across the state that benefit from the Sales Tax Fairness Act, and I am still waiting on his response."

Currently, three-fourths of the local sales tax collections are distributed based on their collection site, with the remaining one-fourth distributed based on population.

Brown's bill would phase in a change. By the 2019-20 fiscal year, 80 percent of local sales tax collections would be distributed based on population, and 20 percent would be distributed at the point of collection.

Brown acknowledged that while most rural counties would gain under his plan, some of the more urbanized counties with retail centers would lose. He said 83 of the 100 counties would benefit under the plan.

In the packed press conference room at the Legislative Building, Brown said people came from 40 North Carolina counties to support his plan.

One of them was Robeson County Manager Ricky Harris.

"Robeson County hasn't built a school since 1983," Harris said. "We have 114 mobile units that we use in

our schools." He said the change would help pay for building new schools.

Brenda Kays, president of Stanly Community College in Albemarle, said unequal tax distribution hurts her students.

"Currently, where you live as a community college student dictates the quality of your educational experience," Kays said. "The students who attend Stanly Community College pay the same tuition rate as those students who attend the larger community colleges in the state. However, while they pay the same tuition rates, they are placed at a distinct disadvantage because they do not have the same access to services, technology, or cutting-edge educational programming."

Hyde County Schools Superintendent Randolph Latimore said the

county needs money to build a school bus garage.

"We have in Hyde County a bus garage that was built in 1939," Latimore said. "We cannot get our buses into the bus garage for their inspections. We can get the hood part in, but the other part of the bus is outside." He said some residents drive two hours or more to find major retail outlets.

Jim Baker, a Madison County commissioner and retired Superior Court judge, said the lack of revenue from local sales taxes hurts county economic development efforts.

"We do not have industry moving in," Baker said. "We can't support industry. We can't afford to do any incentives to bring industry in."

The head of the N.C. Association of County Commissioners said his group prefers a solution that would not pit some counties against others.

"The association has been working with Sen. Brown and other legislative leaders throughout the session to find a plan that will benefit all 100 counties," said Kevin Leonard, executive director of the association. "We appreciate Sen. Brown's willingness to bring this issue to the forefront and include us in the conversations. The proposal creates winners and losers, and as an association that represents all 100 counties, it is our duty to strive to identify solutions that benefit all our members."

Paul Meyer, executive director of the N.C. League of Municipalities, praised Brown for his "passion about helping rural North Carolina. He is right. Rural North Carolina towns and cities need help finding ways to reinvigorate their economies after several decades of job losses associated with the decline of the textile and furniture industries."

CJ

Method of
distributing
sales tax among
counties
at issue

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JLF: County Incentives Total \$284M Over Five Years

BY CJ STAFF

RALEIGH

N.C. counties entered into incentives contracts totaling nearly \$284 million from 2009 to 2014, according to a first-of-its-kind John Locke Foundation policy report compiling statewide local incentives data. The report shows actual incentives payments totaled \$144 million over the same five-year period.

Report authors urge the N.C. General Assembly to consider changing state law to make local incentives information more transparent.

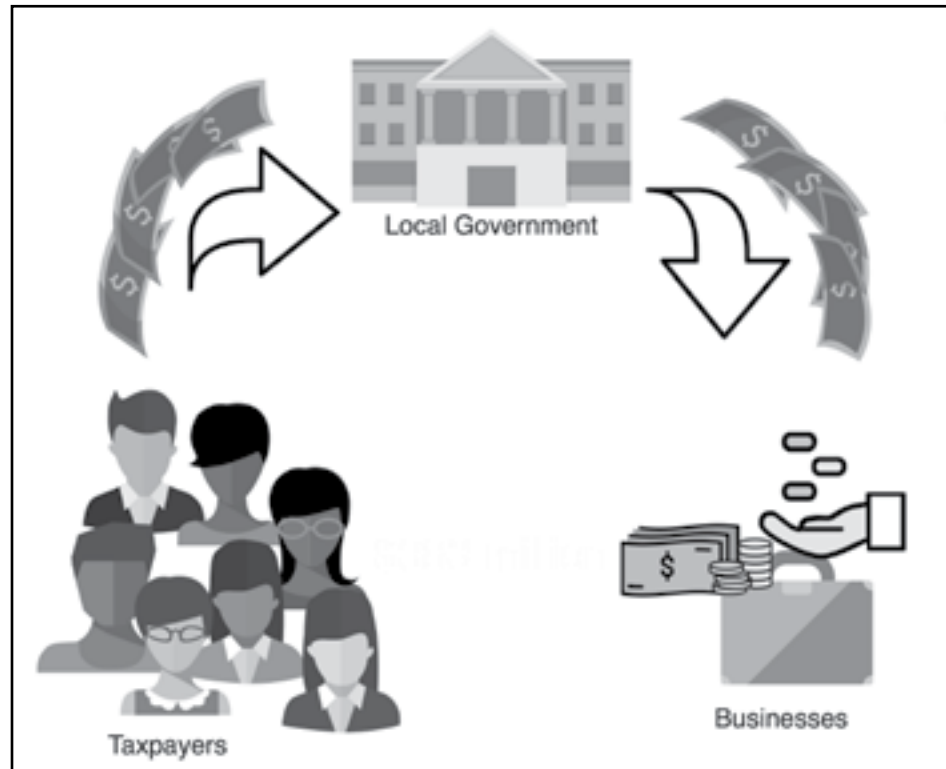
"Data for this report were much more difficult to collect and interpret than was anticipated," said report co-author Sarah Curry, JLF director of fiscal policy studies. "Each county has a different way of keeping records of their incentive activities, which makes it extremely difficult to make comparisons and capture the same data for every county."

The report calls on legislators to mandate that counties meet a standardized reporting requirement for all economic development activities.

"Legislators also should allocate funding for a Web portal that gives taxpayers access to aggregate and county-specific economic development expenditures and machine-readable documents," Curry said. "Elected officials should then use this information to evaluate whether the costs of incentives outweigh the benefits."

A provision of the state Senate's 2015-17 budget plan calls for state officials to "coordinate with" local governments to ensure posting of budget and spending data on local government websites and to provide the data to the state Local Government Commission.

Despite current reporting chal-



lenges, Curry and her co-author, JLF research intern Catherine Konieczny, assembled information from all 100 county governments. Eighty-one counties reported participating in county-level economic development activities.

The governments entered into 776 agreements promising nearly \$284 million to private-sector companies over the five-year study period. Counties actually paid out \$144 million in incentives from 2009 to 2014.

"In some cases, the difference between incentives promised and incentives paid is that not all recipients met the terms of their agreements," Curry said. "In other cases, the timing of the incentive agreement did not match the five-year study period. In other words,

some counties were making incentive payments for agreements they entered before 2009, while others granted incentives during the study period that did not lead to payments by 2014."

There was no obvious trend distinguishing reliance on incentives in larger versus smaller counties, Curry said. "The popular perception of economic development is that wealthier urban and suburban counties are able to leverage greater resources for these activities," Curry said. "Yet, on a per-capita basis, there is no evidence of a divide between large and small, or between urban and rural counties."

Iredell, Davie, Halifax, Lenoir, and Buncombe counties reported the highest-per capita totals approved for incentive agreements. Each budgeted more than \$100 per resident. Only Wilson County ended up paying out incentives of more than \$100 per person from 2009 to 2014. That was due to an agreement finalized before 2009.

"Several of the highest-paying counties had their numbers skewed by one or two exceptionally large incentives agreements," Curry said. "Those included Wilson County's \$5.7 million in payments related to Bridgestone-Firestone, Catawba County's \$8 million for Apple, Iredell County's \$3 million for Lowe's Home Improvement, and Randolph County's \$2.3 million for Malt-O-Meal."

Larger deals helped lead to some "notable outliers" among the counties, Curry said. "For instance, Iredell County approved, but did not pay, \$222.65 in incentives per capita over the five years, more than any other county in the state and 78 percent more than the next-highest county in its region," she said. "Iredell ended up paying \$47.41 per person."

North Carolina's largest county, Mecklenburg, ranked No. 4 in ap-

proved agreements of \$25.3 million. At \$26.89 per person, Mecklenburg ranked No. 31 in per-capita incentives approved. Wake County's \$18.5 million in approved incentives ranked No. 5. Its per-capita total of \$19.98 ranked No. 35.

At the other end of the population scale, Hertford County ranked No. 44 with nearly \$750,000 in incentives approved. At \$30.62 per person, Hertford ranked No. 26 on a per-capita basis.

Along with the county-by-county data, Curry and Konieczny spell out counties' legal authority to offer incentives. The authors also identify different types of incentives used across the state.

"Sixty-four counties used performance-based incentives, meaning that the private entity must meet benchmark requirements within a certain timeframe to get the incentive," Curry said. "The two most common performance measures used are the number of jobs created and the monetary investment in real property or existing infrastructure."

Nonperformance incentives include "unconditional" awards that cannot be classified as infrastructure, Curry said. A third category, infrastructure grants, helped private companies meet state building code requirements or connect to public utilities. These included fire hydrants, roadway intersections, and water and sewer lines. Seventeen counties reported using tax-based reimbursements, a category that includes any incentive that adjusts property tax valuation.

"Of the 81 counties that reported economic development expenditures, six had no performance requirements, five did not report any reason for the incentive, and another six awarded cash grants only for infrastructure investment," Curry said. "The remaining counties tied their incentive to various performance measures."

Despite the fact that most counties used performance requirements, many reported no results, Curry said. "Thirty-three counties did not disclose performance results or outcomes, even though these counties disclosed payment," she said. "This suggests that there are gaps in the data and reporting deficiencies."

A standardized reporting requirement would help address those gaps, Curry said. "There is no single data source now that tracks expenditure of tax revenue on economic development at the local level," she said. "A standardized reporting requirement would give local and state officials a helpful tool to evaluate incentives. We suspect that, in most cases, there are much better uses of tax revenue and much more efficient ways to spur economic growth, such as lower tax rates and reduced regulation." *CJ*

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It also features the blog Right Angles, featuring commentary on issues confronting Triangle residents.

Wilmington Debates Value of At-Large Council Districts

By MICHAEL LOWREY
Associate Editor

RALEIGH
Among North Carolina's 10 largest cities, only Wilmington elects all members of its city council at large. While no attempt has been made to change that arrangement in recent years, political leaders differ as to whether the current arrangement is desirable, reports the *Wilmington Star-News*.

A mayor and six council members constitute the Wilmington City Council. The city is divided into 26 precincts, with Mayor Bill Saffo and three council members living close enough to each other that they all reside in the same precinct.

Councilwoman Laura Padgett, one of the four city elected officials who live close to each other, doesn't see this as a problem.

"The Wilmington City Council has pretty well represented the different parts of the city — the diverse makeup of the citizens in both gender and race," Padgett said.

As the city continues to grow, she can envision a point when it might make sense to have some council members represent districts.

Former High Point Mayor Becky Smothers, meanwhile, argues that at-large districts are preferable.

"I think it makes for less tunnel

vision when it comes to looking at a complete city agenda," she said. "Each person that's elected needs to be accountable to everybody. It's just cleaner that way."

Councilman Earl Sheridan would prefer to see a mix of at-large and district representatives on the council.

"I think it leads to good representation for every part of the city," Sheridan said.

Meck commissioner terms

Of the state's 100 counties, only Mecklenburg elects its commissioners to two-year terms. County voters will get a chance this fall to determine whether commissioners' terms should be extended to four years, writes *The Charlotte Observer*.

Commissioner Jim Puckett, a Republican, had previously favored two-year terms but recently changed his mind.

"I would say [two-year terms] would be worth having if the seats were changing hands. But when I look across the dais, I see that the same people are elected over and over and over

again."

Puckett's motivation is also partly political. The county has become increasingly Democratic in recent years, with Democrats safely holding all three of the seats elected at-large and three of the six seats elected from districts.

Going to longer terms would, in Puckett's view, also slow down the pace of further Democratic gains on the board.

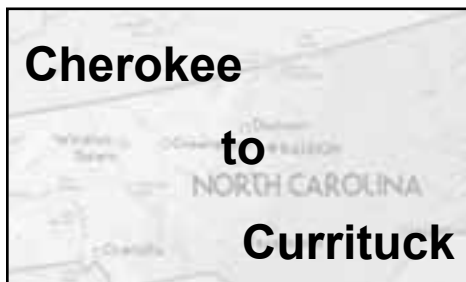
"There's something to be said politically to delaying the inevitable [with] longer terms," he said.

Democrat Pat Cotham favors sticking with two-year terms.

"I think people have a right to evaluate us," she said. "I think it's helpful we know where we stand with them."

She noted that a move to longer terms would be beneficial to those serving at large, as they are more likely to face opposition both in the primary and general elections.

Extending commissioners' terms to four years has been on the ballot before; county voters soundly rejected the concept in 1985 and 1992.



Asheville economy lags

Asheville would seem to have everything going for it. It's a tourist destination that's also frequently mentioned as an attractive relocation destination for young, upwardly mobile adults. Even so, Asheville-area incomes remain below both the state and national average. The *Asheville Citizen-Times* explains that the issue is the local economy has relative few companies producing high-value products.

Gross domestic product is the value of all final goods and services produced in an area over a period of time. GDP per worker nationally is \$86,189. In Buncombe, Haywood, Henderson, and Madison counties, the four counties comprising the Asheville metro area, the figure is much lower, at \$59,822.

"If you're producing lower than average, then you can't expect to be paid higher than average," said James Smith, chief economist for Asheville-based Parsec Financial Inc., a wealth management advising company.

Businesses in Asheville and its surrounding area aren't paying above average. In 2013, the metro area's median household income was \$43,916, nearly \$2,000 below the state figure of \$45,906. Median household income for the United States as a whole is \$52,250. *CJ*

Appeals Court: Counties Must Take Care With 'Spot Zoning'

By MICHAEL LOWREY
Associate Editor

RALEIGH
Rezoning hearings can be very contentious. The exact legal standards at play matter greatly, both to local boards and to courts when local rulings are appealed. In a July decision, the state's second-highest court again grappled with the meaning of one concept: "spot zoning."

Matt Behe and his father Philip owned 102 acres of land in Reidsville. Matt Behe also owns Rocky River Gun Dogs LLC, which trains bird dogs, and wished to subdivide a two-acre section of the property as a bird-dog training facility. In July and August 2013, the Rockingham County Planning Board and county commission approved the rezoning.

Several neighbors challenged the rezoning in court, and in November 2014 Superior Court Judge Patrice Hinnant ruled in their favor. The county then brought the issue before the appeals court.

On appeal, a critical issue was whether Rockingham County had engaged in "spot zoning," defined by the N.C. Supreme Court as:

"A zoning ordinance, or amendment, which singles out and reclassi-

fies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the small tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected."

Spot zoning is not illegal per se, but the locality engaged in the practice must make a "clear showing of a reasonable basis for the zoning." Ordinarily, a rezoning is presumed valid, and those challenging it must demonstrate that the locality involved erred in its decision.

Despite agreeing at trial with the plaintiffs that this was a spot rezoning, the county changed track on appeal, contending that this was not spot zoning, as two people owned the property.

"Defendant's argument has merit," wrote Judge Rick Elmore for the appeals court.

Both the N.C. Supreme Court in

a 2002 case, *Good Neighbors of South Davidson v. Town of Denton*, and the N.C. Court of Appeals in a 2009 case, *Musi v. Town of Shallotte*, held that "a single person" means just that; rezoning is not spot zoning if the property has two owners.

The court also found Hinnant's ruling inadequate in several respects.

"In its summary judgment order, the trial court did not set forth its standard of review; it weighed the evidence; and it

substituted its judgment for that of the board of commissioners," and this is not a spot zoning case, wrote Elmore.

"As such, we believe the trial court lacked a fundamental understanding of the nature of a summary judgment proceeding, and we are confident that the summary judgment order should not be upheld."

The appeals court ordered a new hearing on the rezoning. Judge Chris Dillon dissented.

"I recognize that our Supreme

Court has used the phrase a single 'tract owned by a single person' as part of a definition of spot zoning ... a phrase which has been repeated in subsequent cases, and, therefore, I understand how the majority reached its conclusion in the present case," Dillon wrote.

"I do not believe, however, that the Supreme Court intended by the use of this phrase to fashion a definitive rule whereby the question of whether the rezoning of a single tract of land constitutes 'spot zoning' turns on whether that tract is owned by a single person rather than by two people. Such a rule would allow a landowner to avoid the spot zoning analysis simply by conveying a partial interest in his land to a 'straw' entity."

Even so, Dillon would have upheld the rezoning.

"I believe that the county met its burden of clearly showing a reasonable basis for its decision by demonstrating that the rezoning was compatible with the existing zoning, that the benefits outweighed any detriments for the neighbors and the community, and that the new zoning was consistent with the county's long-range plans."

The case is *Good Neighbors Of Oregon Hill Protecting Property Rights v. County of Rockingham* (15-121). *CJ*



Local Map Act Law Lets Wilmington Dodge Legal Liability

By BARRY SMITH
Associate Editor

RALEIGH

The Wilmington Urban Area Metropolitan Planning Organization may have dodged a costly court fight after Gov. Pat McCrory signed Senate Bill 654, a measure relieving the MPO of legal liability regarding the organization's Hampstead Bypass.

The Senate passed S.B. 654 on July 14 by a 50-0 margin. It requires the state Department of Transportation to defend, indemnify, and hold harmless Wilmington's urban area MPO and its members for any claims resulting from a corridor map filed under the state's Map Act.

Following the enactment of a 2006 law, the Wilmington MPO filed a map under the Map Act.

The Map Act, enacted in 1987, allows the Department of Transportation and other governing bodies to adopt and file transportation corridor maps, allowing governing bodies to prevent building permits from being issued on property listed in those corridors.

By preventing further development, the Map Act holds down the property value that the state DOT would have to pay at the expense of the property owner.

The Map Act has been controversial and the subject of litigation across the state.

Sen. Michael Lee, R-New Hanover, who sponsored the bill, told the House Transportation Committee in late June that the Wilmington MPO was trying to select the best corridor for the bypass.

"While they were in that process, they saw the corridor developing

somewhat rapidly," Lee said. "So what they did was see this authority to get the map recorded so they could establish the corridor a little earlier, which was of benefit to obviously not just the WMPO but also to NCDOT. They were acting essentially as an agent of DOT because the WMPO doesn't have the eminent domain authority."

Lee noted that NCDOT is already involved in litigation involving the Map Act.

The MPO might have faced a separate court battle because construction along the corridor might not take place any time soon. According to

the *Wilmington Business Journal*, the Hampstead Bypass was not given a high priority in the McCrory administration's Transportation Improvement Plan, nor was funding for its construction included in the transportation bond package the administration is asking the General Assembly to put on the ballot.

In February, a three-judge panel of the N.C. Court of Appeals ruled that filings under the state's Map Act amounted to the taking of property, initiating requirements that the state pay just compensation to the landowners.

The appeals court case dealt with Map Act filings in Forsyth County but could lead to similar judgments in the Wilmington area lawsuit as well as other areas of the state. The transportation department has appealed that case to the N.C. Supreme Court.



Meanwhile, two bills aimed at eliminating the Map Act remain tied up in a Senate committee, and a bill letting property owners of condemned land collect interest from NCDOT during the period condemnation proceedings are under way was killed in early July by the Senate Transportation

Committee.

The two bills stuck in committee are House Bill 183, sponsored by Rep. Rayne Brown, R-Davidson — which passed the House by a vote of 118-0 — and Senate Bill 373, sponsored by Sen. Joyce Krawiec, R-Forsyth.

Krawiec said she has been bending the ear of the committee chairman, Sen. Bill Rabon, R-Brunswick, to get the bills considered but has not been successful.

Brown's and Krawiec's bills are not identical. Brown's bill addresses laws that reduce tax rates for people with property in the corridor, and

Krawiec's bill does not. Also, Brown's bill has other changes related to filing maps with the proper officials.

The third measure, House Bill 127, from Speaker Pro Tem Paul "Skip" Stam, R-Wake, would have allowed a property owner to add interest to the compensation received by property owners whose land was condemned by NCDOT. The interest would be charged from the date a condemnation proceeding starts until the time the settlement is paid. Rabon's committee killed that bill.

Krawiec said she's trying to get Rabon to substitute her bill for Brown's House bill.

Rabon did not respond to a request for a comment on the bills in his committee.

North Carolina is one of only 13 states with Map Act statutes. Other states with comparable laws give property owners more options. Some allow landowners to demand immediate acquisition of their property or release from an official map. Others limit the length of time an official corridor map can block building on or subdivision of the land. The limits range from 80 to 356 days.

In North Carolina, the limit is three years.

In March 2014, a John Locke Foundation report concluded that the Map Act virtually freezes property development within proposed road corridors by blocking building permit and subdivision applications for three years. The report concludes that the Map Act either should be repealed or the time period for delaying building permits should be shortened from between 80 and 120 days. *CJ*

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I-77 Lawsuit Claims Deal With Toll Contractor Unconstitutional

Continued from Page 1

nificant opposition. "This is perhaps the most in-depth opposition to a toll project I have seen in the country," he said.

Lawsuit

Charlotte attorney Matthew Arnold filed the lawsuit for Widen I77 on Jan. 20 in Mecklenburg County Superior Court. The goal of the lawsuit is to stop the project. At press time, according to the organization's founder, Kurt Naas, the case had not been scheduled for trial.

The lawsuit alleges the General Assembly unconstitutionally delegated NCDOT legislative powers to set toll rates without adequate standards or safeguards; to allow Mobility Partners, a private entity, to receive an unlimited rate of return on investment for a project intended for public benefit; and to compensate Mobility Partners for its tax liability.

The lawsuit claims that only the General Assembly can set toll rates and taxes, thus making the delegation of authority unconstitutional.

The lawsuit also claims the contract is illegal because under state law NCDOT is not allowed to convert an existing nontoll lane to a toll lane if such designation would reduce the number of existing nontoll general-purpose lanes. The lawsuit states that the construction of the high-occupancy-tolling project would convert a general-purpose, "free" lane into a toll lane.

The lawsuit also claims the contract is illegal because it does not require proper disclosure of proposed toll rates to state authorities. State law says prior to the effective date of any toll or fee for use of a turnpike facility, the North Carolina Turnpike Authority shall submit a description of the proposed fee to the Board of Transportation, the Joint Legislative Transportation Oversight Committee, and Joint Legislative Commission on Governmental Operations for review. The lawsuit states the contract does not require Mobility Partners to submit proposed tolls to these bodies.

Gilroy complaint

Diane Gilroy is the wife of Cornelius Town Commissioner Dave Gilroy, and one of many local opponents of the project. She claims in the two letters that the agreement between NCDOT and Mobility Partners should be invalid because the company failed to disclose to NCDOT all of its legal problems as required. She based her claims on reports from Spanish news organizations.

Gilroy told *CJ* the contractor failed to disclose six controversies involving its parent companies, Cintra and Ferrovial, or their affiliates.

In her letters to Cooper and Mor-



Current I-77 entrances and exits, like exit 28 in Cornelius, would not match up with the entrances and exits of the proposed toll lanes, which opponents say will hurt local businesses located at the current I-77 exits. (CJ photo by Don Carrington)

ton, dated July 12, Gilroy stated there were a number of "convictions, lawsuits, investigations, etc., against Ferrovial Agroman and the parent Ferrovial S.A.," and that these incidents were never disclosed to the public and elected officials before the contract with Mobility Partners was signed.

Her first example was a bribery case centered around the "Palau de la Musica," a concert hall in Barcelona, Spain. The independent Spanish news agency Europa Press alleged that Ferrovial paid more than 6 million euros to the music hall that were described publicly as donations but actually were kickbacks to a political party and senior music hall officials. The music hall officials have been indicted, but the fate of others is unclear. Europa Press and other news sources allege that the kickbacks helped Ferrovial land public works projects worth more than 1.2 billion euros. The case has not gone to trial.

NCDOT's I-77 website lists several public documents connected to the project. One is a three-page document titled "Form C Certification," but the form related to this project is blank. The unanswered questions on Form C asked for disclosure by bidders of indictments or convictions of bid contract or related crimes in the past 10 years. The form also included questions about bankruptcies or civil lawsuits involving bidders.

Gilroy said that six situations should have been disclosed on Form C Certification and that she had been unable to obtain the form as completed by Mobility Partners from NCDOT.

On July 24, NCDOT provided *CJ* nine completed versions of the three-page questionnaire from I-77 Mobility Partners or its affiliates dated Nov. 26, 2013, Feb. 12, 2014, and March 13, 2014.

In those answers, two of the six

situations raised by Gilroy were noted, including the "Palau de la Musica" situation described above.

NCDOT released the documents only after it notified Mobility Partners of *CJ*'s records request. Mobility Partners spokeswoman Jean Leier also sent *CJ* the following "corporate statement:"

"The allegations of systematic corruption made in the letter from Ms. Diane Gilroy dated July 12, 2015, are absolutely and categorically false," said Patrick Rhode, United States Vice President of Corporate Affairs for Ferrovial. "Furthermore, we have fully complied with all of the various disclosure requirements throughout the multiple-year procurement process for the I-77 project. As a result of the

severity and falseness of these allegations, we feel compelled to consider all appropriate legal action in respect of this matter."

When notified of Ferrovial's response, Gilroy told *CJ*, "I stand by what I wrote and I need to add more."

NCDOT spokesman Steve Abbott told *CJ*, "in accordance with standard policy, the Office of Inspector General is reviewing [Gilroy's] claims."

"At this time, NCDOT believes that I-77 Mobility Partners and all affiliated companies accurately completed all forms and fully disclosed all items in the I-77 Express Lanes contract process. The one item disclosed on the C Certification form does not prohibit the company from receiving the contract or completing the project." *CJ*

Stanly County-Owned For-Profit Eatery Raises Ethics Concerns

Continued from Page 1

low them to open up a restaurant and catering business to compete against privately owned restaurants and catering businesses" in downtown Albemarle, said state Rep. Justin Burr, R-Stanly.

Burr, whose mother is a trustee of the college, said he was aware of the Ethics Commission inquiry.

The Umstead Act declares it unlawful for state entities "to engage directly or indirectly in the sale of goods, wares, or merchandise in competition with citizens of the state, or to engage in the operation of restaurants, cafeterias, or other eating places in any building owned by or leased in the name of the state."

Stanly Community College "even came up with a business plan, listed out local caterers that they would be competing with, and they had a strategy of basically taking business away from the private sector," Burr said. "I just have a fundamental problem with government using ... our tax dollars ... to compete with privately owned businesses."

Burr offered an amendment to the state budget bill preventing Stanly Community College from opening the program off campus. The amendment passed the House by a vote of 80-34. The Senate budget did not include Burr's amendment. Its fate will be decided in budget negotiations, still under way at press time.

"I don't know how it got gone. I've learned in the process of government that things move in strange and mysterious ways," said state Sen. Tom McInnis, R-Richmond. "I did express my lack of enthusiasm for that issue" to some House members.

"We don't need to be micromanaging the Stanly County Community College Foundation or the college," Albemarle, or the Stanly County Board of Commissioners from Raleigh, McInnis said. If the deal goes through and voters don't like it, they can remove their elected officials, he said.

North Carolina State Board of Community Colleges spokeswoman Megan Hoenk said the board approved the Stanly Community College culinary arts program at its March meeting. It is one of 25 similar programs now approved. Hoenk said the state board does not track whether those programs are on campus or off campus, nor does it evaluate them for compliance with the Umstead Act.

"The problem at the community college, and the reason that being on that board was so frustrating for me, is that nothing was ever done in open meetings. There were clearly meetings where not everyone was invited," said former community college board member Karen Mock Phillips, who did not seek reappointment after her term expired June 30.

The trustees voted to approve



Stanly County wants to operate Big Al's as a for-profit restaurant, but opponents say this would violate the state's Umstead Act, which makes it unlawful for state entities to engage "directly or indirectly" in commerce in competition with citizens of North Carolina. (CJ photo by Don Carrington)

the concept of a culinary arts associate degree program at their Dec. 11, 2014, meeting. Phillips said she was "very frustrated" when she learned of the proposal to put the program in the Big Al's building.

"I'm on the Facilities Committee, so I should not have learned about that by listening to the local news radio station. But that's where I learned of it," Phillips said. "That's a real big problem."

Phillips said when she began asking questions about the proposal, "each and every finance or facility committee meeting that we had scheduled after that was canceled. ... They definitely wanted to keep me out of knowing what was going on."

Another person familiar with the proposed purchase and lease who did not wish to be identified corroborated Phillips' statements.

City Manager Michael Ferris downplayed Albemarle's involvement.

"There has never been a formal proposal or even a presentation on the matter made to the City Council," Ferris said. "There have been ideas, discussion, and comments from other entities about what the city might or could do, but none of this has come from the city."

However, minutes from a Feb. 2 special meeting of the Stanly County Board of Commissioners, at which community college President Brenda Kays presented a business plan for the culinary arts program, cast a different light.

"The City of Albemarle plans to purchase the building at a cost of \$225,000 and offer utilities to the com-

munity college at a reduced rate," with the commissioners asked to allocate \$300,000 to \$500,000 for renovations, the minutes state.

"There's been some talk by them that they would help with the program" if it located in the Big Al's building, Stanly Community College Trustee Joe Brooks said of Albemarle.

Brooks also is the registered agent for Stanly Heritage Properties. He is a director of both Uwharrie Bank and Uwharrie Capital Corp.

Asked if the bank would benefit by selling the vacant building to the city, getting out from under outstanding loan payments, and obtaining charitable tax deductions for donating the equity in the building, Brooks responded: "I assume so. I really don't know how that works."

But Brooks denies his community college and bank ties are a conflict of interest.

"It would be if there was any kind of a vote coming up, but there hasn't been," he said.

The county commissioners never voted on the proposal.

County Commissioner Gene McIntyre questioned the wisdom of offering a two-year degree program that projects potential earnings of little more than \$9 per hour. And he opposes using government money to compete against the private sector.

"Some of these restaurants struggle as it is, and some of these folks have worked hard for years and years and years to build their businesses, and this would take some of that away," McIntyre said.

"There's just lots of things in the business plan that just didn't add up,"

he said. A lending institution would "throw it in the garbage," business professionals told him after they reviewed the document.

Kays said the business plan was a preliminary draft involving one of "several scenarios." She said Stanly Heritage Properties approached the city, county, and Stanly Community College Foundation.

The college and private foundation "are two separate entities," Kays said.

Kays said community college attorney Connie Josey consulted with Norma Houston and Frayda Bluestein, faculty members at the UNC School of Government, and Shante Martin, general counsel of the North Carolina Community College System, and concluded the off-campus restaurant and catering facility would not violate the Umstead Act.

In a memorandum, Josey said the act would exempt the city and the foundation. Further, she said, the Umstead Act would exempt the culinary arts program as a "live project" because it would produce goods or services for sale that are "the normal and necessary product of learning activities of students."

Josey also met with North Carolina Ethics Commission staff attorney Kathy Edwards, Kays said.

Josey issued a memorandum saying college trustees serving as Uwharrie Bank directors must "abstain from 'official action' related to the catering and banquet facility which would result in a 'reasonably foreseeable financial benefit' or would impair the Trustees' 'independence of judgment.'" CJ

Root: Court's Libertarian Versus Conservative Split Longstanding

RALEIGH — Reporting about U.S. Supreme Court debates often revolves around disagreements between liberal and conservative voting blocs. But Damon Root, senior editor at *Reason* magazine and Reason.com, says most debates actually involve competing concepts of judicial activism and judicial restraint. Root has written a book on the topic titled *Overruled: The Long War for Control of the U.S. Supreme Court*. He discussed his work with Mitch Kokai for Carolina Journal Radio. (Head to <http://www.carolina-journal.com/cjradio/> to find a station near you or to learn about the weekly CJ Radio podcast.)

Kokai: This really is something that is not necessarily along the lines of Left versus Right, or conservative versus liberal. Tell us about this divide between those who want to see an activist or engaged court and those who think the court should be very restrained.

Root: It's a debate that [has] really been around since the founding of the country, but it's a debate that in my book I trace particularly from the end of the Civil War through the present day, and what we see is that sometimes it's left versus right, and left is on the side of judicial deference. That was the case during the Progressive era, and during the New Deal, when liberal judges and justices, they really wanted the courts to defer to the economic policy judgments of lawmakers.

But then, in the mid-20th century, liberals became much more interested in the court striking down the decisions of policymakers in the realms of civil rights and civil liberties. So we saw liberals very much behind an aggressive Supreme Court in a case like *Brown v. Board of Education*.

And then in the last 30 years or so, we have seen conservatives really take up the cause of judicial restraint, and that's in large part a response to the abortion ruling and Supreme Court decisions recognizing our right to privacy.

So then what I look at in the book is within the right, libertarians and conservatives, they are dividing over this question, where with conservatives, following the lead of people like Robert Bork favoring a much more deferential court, and libertarians really wanting the courts to aggressively police the government, police the other branches, and strike down what they see as government overreach.

Kokai: It sounds as if this is an area in which traditional conservatives and those who are libertarians really do have a very different view about what the courts ought to do. How have they ended up this way when they used to have been ideological allies on so many other fronts?

Root: Well, there's very much an

"It's a debate that [has] really been around since the founding of the country, but it's a debate that in my book I trace particularly from the end of the Civil War through the present day, and what we see is that sometimes it's left versus right. ... [I]n the last 30 years or so, we have seen conservatives really take up the cause of judicial restraint."

Damon Root
Senior Editor
Reason and Reason.com



alliance between libertarians and conservatives that's ongoing right now. But there is this fundamental disagreement, and when I say conservatives, I'm really referring to the Robert Bork school of legal conservatism that puts great emphasis on judicial deference. In his book, *The Tempting of America*, Robert Bork wrote, "In wide areas of life, majorities are entitled to rule if they wish, simply because they are majorities."

And he called that the first principle of our system, and the libertarian response is, well, the first principle is individual rights, and majority rule comes second. Those visions don't clash in every case, but in some very fundamental ways, they really are at odds. So we see this alliance holding together sometimes but then really butting heads other times.

Kokai: *Reason* magazine, for those who are unfamiliar, is a libertarian magazine, so I would suspect that you and folks who work with you would like to see the courts be active when it comes to protecting these individual rights, rather than just defer to the lawmaking branches.

Root: The libertarian legal view is basically that the Constitution is a liberty document. It protects a broad range of individual rights, both written down in the Constitution, but then also unenumerated rights, and that also the Constitution places strict limits on government power. And libertarians very much want to see the courts act as a check on the other branches of government and really have a fundamental problem with Bork's framing of majority rule first above individual rights.

Kokai: So how has this split between conservatives — or the Bork conservatives, as you have described them — and libertarians played out on some of the big issues of the day?

Root: A real surprising way it played out was in the debate over the Second Amendment and gun rights. In 2010, the Supreme Court heard this case called *McDonald v. City of Chicago*. The question was: Does the Second Amendment prevent Chicago from banning handguns? Two years before, in a case called *Heller*, the Supreme Court had overturned Washington, D.C.'s handgun ban, and said the Second Amendment protects an individual right to keep and bear arms.

So *McDonald* is the follow-up case. The Second Amendment applies against the federal government — Washington, D.C., is a federal enclave. Does it also apply against the states? So that brings in the 14th Amendment, which is the constitutional provision whereby the Bill of Rights [is] applied to the states.

And what we saw in that case was that libertarian lawyers were the ones pushing for the gun rights campaign. A lawyer named Alan Gura, a libertarian lawyer in Washington, D.C., argued that the original meaning of the privileges or immunities clause of the 14th Amendment protects a broad range of rights — economic rights, but also clearly protects the Second Amendment.

And then on the Supreme Court level, Justice [Antonin] Scalia in particular was very resistant, let's say. [He] was, in fact, kind of hostile to Alan Gura during the oral argument. Scalia said, "Why are you trying to overturn all these precedents? Why are you taking us into these uncharted waters?"

And so here he was presented with this opportunity to repudiate something that he had in fact repudiated, and to follow the original meaning of the 14th Amendment in a clear fashion, but it was a fashion that also led into some libertarian areas of the courts protecting unwritten economic rights. And he and the other conservatives really kind of balked at that.

And so Scalia, [Samuel] Alito,

[Anthony] Kennedy, and [John] Roberts all took this more traditional conservative route. And Justice Clarence Thomas, he agreed with them in the outcome, that the Second Amendment wins, but he reasoned to a different conclusion.

He said that the libertarians have the better argument, and it should be the privileges or immunities clause. So we saw Thomas really side with the libertarians [and] the other conservatives take more of the Borkian approach in that case.

Kokai: Since you've mentioned the justices, those who follow the Supreme Court often talk about a liberal bloc and a conservative bloc, and then Anthony Kennedy can kind of go either way. When it comes to this particular split, are there particular justices, whether it's Clarence Thomas or another, who would be more likely to take this libertarian argument? Or is it hard to tell, or are they all more now traditional conservatives?

Root: It depends on the issue, but in a few areas Thomas is very strongly in what we could call the libertarian camp. He would consider himself a conservative, not a libertarian, but he definitely is on the same page with the libertarian legal movement on issues such as the original meaning and the proper interpretation of the commerce clause, ... Congress' power to regulate interstate commerce, the takings clause, eminent domain and property rights cases, such as the *Kelo* case in 2005.

Thomas filed a dissent in that case that libertarians just love. And then also this question of the 14th Amendment and its original meaning, and the privileges or immunities clause. And those are three key areas that the libertarian legal movement has devoted a lot of time and resources to litigating.

Freshman Reading Selections Echo Current Social Themes

BY HARRY PAINTER
Contributor

RALEIGH

Freshman summer reading programs offer the outside observer clues about what universities consider important about the college experience. These reading programs often are the first interactions students have with their new school and their first actual assignments.

Students read less than they used to. A 2014 Common Sense Media study found that the number of 17-year-olds who “never” or “hardly ever” read for pleasure had tripled since 1984 — from 9 percent to 27 percent.

While universities may use summer reading programs to help students make the leap to the higher standard of scholarship that might be demanded of them in college, they also can serve other purposes. In the 2013-14 edition of the National Association of Scholars’ “Beach Books” report, NAS found colleges that said they assigned summer reading to build community, begin conversations, encourage critical thinking, or inspire social activism.

Among summer reading picks in North Carolina, themes surrounding activism and sociopolitical issues are pervasive.

Last year, the University of North Carolina at Chapel Hill chose *The Round House*, a novel featuring racial and sexual themes — trendy topics on campuses today. Those themes continued this year. Recently, national media drew attention to Duke University’s 2015 summer reading choice: Incoming freshmen are reading and discussing Alison Bechdel’s *Fun Home*, a book depicting graphic episodes of lesbian sex. UNC-Chapel Hill’s assigned reading is Bryan Stevenson’s *Just Mercy*, about racial disparities in the criminal justice system.

Books highlighting identity struggles of various kinds also were popular on campuses this year. For example, four North Carolina universities assigned *Enrique’s Journey* by Sonia Nazario. The book is an emotional nonfiction account documenting the journey of a teenager from Honduras who traveled alone to the United States to search for his mother.

Other choices involve similar stories and themes. Davidson College assigned *Americanah*, Chimamanda

Ngozi Adichie’s book about a Nigerian woman who struggles with racism and immigration issues while coming to the United States. Appalachian State University chose *A Long Way Gone*, Ishmael Beah’s memoir about his time as a child soldier in the Sierra Leone civil war. The University of Mount Olive chose *A Home on the Field* by Paul Cuadros, a book about a North Carolina Latino soccer team.

Incidents from the United States’

racial past are also popular. Meredith College selected *A Mighty Long Way*, a book by one of the famed Little Rock Nine, the first black students to attend a segregated Arkansas high school. N.C. Central University chose Scott Ellsworth’s

The Secret Game, about a 1944 basketball game between a black team and a white team when segregation prevented the teams from competing publicly.

Many of the chosen books share the theme of minorities overcoming social hardship.

A recent article by Gary Saul Morson at *Commentary* magazine (echoing a controversial classic by novelist Francine Prose in *Harper’s*) wonders if students have grown to detest reading because of the way it is taught. Rather than infusing them with love and respect for a classic work, for example, Morson says professors teach them to judge the morality of the author or what the work tells us about society at the time it was written.

While Morson’s criticism primarily applies to curriculum classes, would Morson have a similar complaint about freshman summer reading programs? Is reading simply a vehicle to discuss some pressing social issue, a goal some colleges claim to have for their programs?

If North Carolina’s colleges are indicative of a nationwide trend, freshman summer reading programs heavily promote similar issues. In recent years, North Carolina summer reading programs have given lopsided weight to books with themes of race and sex.

Even if students do not detest reading, one could argue that the books they are asked to read would trouble Morson and his admirers. CJ

Harry Painter is a writer for the John W. Pope Center for Higher Education Policy.



COMMENTARY

College Can Be A Bad Investment

Just over a year ago, *New York Times* economics writer David Leonhardt looked at some data on the “college wage premium” and stated, “The decision not to attend college for fear that it’s a bad deal is among the most economically irrational decisions anybody could make in 2014.”

But is that true?

I have often taken issue with that conclusion and am glad to see a new book taking issue with it — Peter Cappelli’s *Will College Pay Off?*

A professor at the Wharton School, Cappelli carefully looks at the relative costs and benefits of college and objects to “unqualified statements about the big payoff to a college degree.” For many Americans, it’s a bad decision.

He draws an analogy to medicine: Even though a certain drug will help a majority of patients, we know it can be very detrimental to others. If you wouldn’t take a drug just because it helps most people, neither should you go to college because it helps most people.

Moreover, the data that excite cheerleaders for universal college attendance aren’t especially relevant because they are backward looking. Cappelli writes, “The higher income of people with college degrees, which is the main evidence for a payoff, is based on data from individuals who on average have graduated from college decades ago.”

Instead of jumping to conclusions based on such statistics, Cappelli suggests looking at recent results. He finds that many young Americans have gone to college with little or nothing to show for it.

They don’t have much to show for it intellectually because many students devote little time to studying. While some work very hard to master demanding course material, lots of students get by with little effort.

And they don’t have much to show for college occupationally. Many end up competing for jobs “that may require less than a high school degree.”

Lots of those disappointed college grads (at least 10 percent of whom earn less than the average high school graduate) were lured into narrowly focused degree programs aimed at occupational niches such as casino management and court reporting.

Cappelli correctly observes that many colleges and universities, chiefly interested in keeping enrollments up, “persuade applicants and their parents that they can provide a job at graduation.”

That’s why the liberal arts have faded away and largely have been replaced with occupational coursework.

The jobs pitch works with the large percentage of students who aren’t really inclined toward academic studies and just want to get into a career, but this is a risky idea.

Some fields that are booming when a student enrolls can cool off by the time he or she graduates. That leaves the student with a very limited set of skills that will make it hard to find employment except in one of those “high school” jobs that’s open to everyone.

The book also provides some insight into the crucial question: What are employers looking for?

Much better than the sort of narrow college degree that amounts to hardly more than on-the-job training, Cappelli argues, is a good liberal arts education plus experience showing that the individual has a good attitude and some work skills.

The book’s subtitle is *A Guide to the Most Important Financial Decision You’ll Ever Make*, and its big points are: Don’t assume that college is a good investment; if you do think college is worthwhile, don’t focus narrowly on a single industry; and look for ways to show employers that you can do something besides accumulating course credits.

If people listen to Cappelli’s advice, the higher ed bubble will deflate faster. CJ

George Leef is director of research at the John W. Pope Center for Higher Education Policy.



GEORGE
LEEF

Commentary

The UNC Board of Governors may want to reconsider using Isaacson, Miller as the search firm in its hunt for a new system president. It appears that the governors are blowing a chance to bring a badly needed reform-minded president to the system.

The Pope Center for Higher Education Policy was concerned earlier this year that the board had picked Isaacson, Miller to conduct the search for a new president. Isaacson, Miller is a firm that specializes in finding "diversity" candidates:

The second distinguishing feature of our firm is our longstanding commitment to bringing women and people of color to senior management positions. For over 30 years we have established networks that support us in our efforts to build and present diverse pools of candidates. Over the life of the firm, 43 percent of our placements have been women and 23 percent have been people of color.

We would have preferred a firm that specialized in finding candidates less concerned with demographic characteristics like race and gender instead of more important qualities — like a long record of sound policymaking decisions.

But that was before we found something else about Isaacson: It was the search firm that brought the now-controversial UNC-Chapel Hill law professor Gene Nichol to the College of William and Mary. In fact, he was the only candidate not then already employed by W&M that Isaacson deemed worthy of the job. We all know how that turned out — Nichol performed so abysmally as president he was ousted after only three years on the job.

So now we're more than just concerned. And we have to wonder: If the (reasonable) aim of the governors was to stop outgoing president Tom Ross from continuing due to his liberal tendencies, then why would you hire a firm that specializes in placing liberal candidates? Why invite a public relations nightmare by getting rid of somebody for ideological reasons and then hiring a replacement who shares the same vision? CJ

— Jay Schalin, director of policy analysis at the John W. Pope Center for Higher Education Policy.



A Key Missing Ingredient: High School Counseling

BY HARRY PAINTER
Contributor

RALEIGH

Listen to mainstream education advocates, and you'll come away thinking that not enough people are going to college. But if you listen to higher education reformers, particularly political conservatives, you'll hear that too many are going to college.

Meanwhile, business owners and managers say they can't find workers with the skills they need, particularly in the skilled manual and technical fields.

Statistics show high college dropout rates, massive underemployment of college graduates, and huge student debt burdens from those who attend college, whether or not they get degrees. Many students change majors several times and take six or more years to graduate.

Why so much confusion and incoherence? One likely place to look is the advice students receive — or fail to receive — from high school guidance counselors.

A 2014 report from the U.S. Education Department's Office of Civil Rights found that nationally, one of five high schools has no guidance counselor. The American School Counselor Association finds that many schools with counselors don't have enough. The advocacy group recommends a counselor-to-student ratio of 1:250, while the national number is almost double that, at 1:478. Only three small states and the U.S. Virgin Islands come close to the recommended figure.

A single counselor can provide effective individual guidance to only so many students. Rather than achieving the ideal of a mentor who gets to know students and guides them into good decisions about their present and future, overburdened counselors may be able to offer little more than one-size-fits-all advice or simply process paperwork for college applications.

Furthermore, many counselors may not have the proper knowledge to do the job well. High school counselors have a lot of training: More than 80 percent have master's degrees, and most must pass a test and get licensed. But according to higher education analyst and author Lynn O'Shaughnessy, they might be earning a credential while getting the wrong kind of training.

According to the American School Counselor Association, counselors generally are required to take advanced degree courses in theory, human and growth development, social and cultural foundations, testing/appraisal, research and program evaluation, professional orientation, career development, and individual and group counseling. They also usually participate in a supervised internship and other supervised practical instruc-



Some feel a lack of counseling for high school students negatively impacts college performance and outcomes.

tion.

Despite all that education, in 2012 more than half of counselors reported that they felt only moderately trained, and more than 25 percent reported that their training did not prepare them at all.

According to O'Shaughnessy, graduate counseling programs rarely offer a class in planning for college.

Should counselors have more expertise in labor markets and more knowledge of the full range of options for graduates after high school? Might many young people be better off exploring apprenticeships and other on-the-job training, immediate employment, technical training, certificate and licensing programs, the military, or other options?

One way several states have addressed guidance shortcomings is embracing the concept of "Career Coaches" — advisers employed by the community college system to counsel high school students. The coaches are employed by community colleges, but they work at a high school.

Central Carolina Community College in Sanford has employed career coaches for a year, implemented as part of its Central Carolina Works program. The program embeds nine coun-

selors at high schools in the three counties surrounding the college. But while most counselors might be inclined to encourage students to attend four-year colleges, CCWorks places special emphasis on career and technical education. CCWorks is being considered as a model for the rest of the state; a bill in the state Senate would expand the Career Coaches program statewide under an initiative called NCWorks. The legislature is expected to set aside \$1.5 million for the cost of paying the coaches.

Other states have implemented similar programs, including Alabama, Arkansas, and Virginia, which has had a Career Coach program since 2005. Virginia's program began with 11 coaches in 13 high schools and has now expanded to 130 coaches in 180 high schools. Virginia's program is funded by a combination of the state community college system and local schools.

In the 2009-10 academic year, 71 percent of students who previously had no postsecondary plans did so after meeting with a coach. Virginia also reported that 28 percent of students who had planned to go to community college decided instead to plan for a four-year degree. Additionally, both students and principals expressed initial satisfaction with the coaches and became more satisfied as time progressed.

The Career Coaches model is growing in popularity and could signal a potential solution to a guidance gap. CJ

Harry Painter is a writer for the John W. Pope Center for Higher Education Policy.



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Opinion

Universities Are Not Sure-Thing Stimulators of Dull Economy

To hear some policymakers talk, one would think colleges and universities exist mainly to enhance economic growth rather than to educate. Politicians and higher education officials increasingly champion partnerships between universities and private firms; the hope is that they will spur commercial innovation and economic expansion.

Unfortunately, too many policymakers only see the few glittering successes and not the more numerous failures. The reasons for the rare success story are many and complex. There is no “one size fits all” template when it comes to stimulating an economically lackluster region. Yet promoters of these public-private partnerships are adamant that success is all but guaranteed.

In April, when the UNC system’s Board of Governors approved East Carolina University’s request to build a “millennial campus” (a public-private research commercialization park modeled after N.C. State University’s Centennial Campus), one ECU official proclaimed, “We know this is a proven model.”

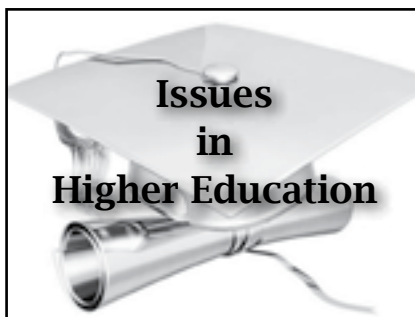
Data and case studies belie such confidence in university research hubs as economic drivers. In his 2009 report *The False Promise of the Entrepreneurial University*, Marc Levine, founding director of the University of Wisconsin-

sin-Milwaukee’s Center for Economic Development, noted that “even world-class research universities are neither necessary nor sufficient in promoting local economic development. University research parks are particularly oversold as engines of local economic growth.”

Levine highlighted Baltimore, a city with an economy fast approaching dysfunctional “Detroit status,” despite being home to Johns Hopkins University, which the author calls the “unambiguous powerhouse of U.S. academic research and development funding in science and engineering.” Indeed, between 1985 and 2006, Baltimore registered more than \$23 billion in research expenditures, \$20 billion of which came from Johns Hopkins.

During those years, Baltimore surpassed all other metropolitan areas in terms of academic research and development, beating out Boston, New York, Los Angeles, and Raleigh. Nevertheless, the region as a whole did not benefit from its proximity to Johns Hopkins and failed to produce the spin-off firms that many had hoped for.

Another case study, particularly relevant to ECU’s millennial campus, is the University of South Carolina’s Innovista, a research park designed to mimic N.C. State’s Centennial Campus. Roughly \$100 million has been funneled from the Palmetto State’s coffers to a planned research cluster in



Columbia aimed at exploiting patents, creating new businesses, and luring tech firms. After a decade, though, private-sector participation has not materialized, and many observers see the project

as a waste.

The lackluster performance of Innovista demonstrates a point made by the Pope Center’s Jay Schalin in his 2010 report *State Investment in Universities: Rethinking the Impact on Economic Growth*: “High-tech clusters are difficult if not impossible to create by government policies alone, tending to occur somewhat naturally because of favorable conditions in a particular area.”

The Greenville area, which will be home to ECU’s research park (formally titled the East Carolina Research and Innovation Campus), does not appear to possess such “favorable conditions.” In fact, many residents are packing up and leaving. UNC Board of Governors member Henry Hinton raised that issue when he advocated for the millennial campus in April, saying, “In the last census, all the contiguous counties to Pitt County lost population.” Compounding such emigration is the fact that only 30 percent of ECU’s graduating class of 2014 stayed in Greenville or nearby counties.

Furthermore, even positive developments in the region are not quite what they seem. For instance, Greenville is home to pharmaceutical com-

panies including Patheon and Metrics, which have had recent hiring surges. But some of those job increases have occurred not because of natural market forces, but because of multimillion-dollar incentive packages offered by the state government. If Greenville had a truly desirable business climate, such artificial stimulation would be unnecessary.

Still, many state officials are banking on their own version of artificial economic stimulation — ECU’s millennial campus — to turn Greenville’s problems around. But how much money ECU’s research campus will require — and where it will come from — remains to be seen. The university has only begun the process of negotiating with private firms and outside entities — a process that will take place over many years, even decades. Today, the plan is for four sites of university-owned land encompassing 328 acres to be revitalized and made attractive for development.

The approval of ECU’s millennial campus reveals major flaws in the approval process, as well as the university-as-economic savior model itself. The school is trying to be something it is not and cannot be, lured by a façade of fancy buildings that stimulate nothing. The reality is that research commercialization hubs are appropriate for only a few universities located in vibrant economic environments. ECU may not be in one of them.

CJ

Jesse Saffron is a senior writer for the John W. Pope Center for Higher Education Policy.

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Book review

Bowling Alone Author Putnam Tosses a Gutter Ball

• Robert Putnam, *Our Kids: The American Dream in Crisis*, Simon and Schuster, 2015, 400 pages, \$28.

BY DAVID N. BASS
Contributor

Former U.S. Sen. John Edwards used the imagery of “two Americas” to launch and sustain his campaign for president in 2004. Since then, the concept — the existence of two distinct Americas, the haves and the have-nots — has gained more and more steam. That’s why it wasn’t surprising to see renowned political scientist and Harvard professor Robert Putnam chime in on the topic.

Putnam is recognized widely for his seminal 2000 work *Bowling Alone*, which explored the growing demise of civic life in America, and attributed it to causes such as two-income families, long commutes, suburban sprawl, and the rise of television.

Our Kids: The American Dream in Crisis taps into the national discourse on economic inequality. Putnam explores the economic and cultural forces that tend to keep low-income, low-education individuals in poverty — forces that have grown and become more entrenched over the last few decades. He also catalogues the new upper class that has emerged and lists its defining characteristics.

To his credit, Putnam focuses more on a lack of economic mobility rather than equality. A key difference exists between the two. Economic equality, as espoused by the Left, suggests that outcomes should be the same for all, regardless of effort. Mobility, on the other hand, looks at tearing down barriers — low-performing public schools and lack of incentives for two-parent marriage, for example — that tend to result in those who come from low-income backgrounds being unable to escape.

Interestingly, Putnam argues that class divides, more than racial divides, pose the greatest mobility challenges for young people today. He notes that neighborhoods, schools, and social circles were less segregated in the 1950s compared to today. A rich boy and poor boy might live a few blocks from each other, whereas today the rich and poor tend to be clustered in their own zones.

Putnam defines this new upper class as “neo-traditionalists,” a close parallel to the traditional-values-oriented families of the 1950s, with a few notable exceptions: Both spouses work outside the home, childbearing is delayed until careers are underway, and domestic duties are more evenly split.

These upper-class marriages “have become nearly as durable as the 1950s model.” These are individuals with stable marriages, families, and careers who live in solid communities, enjoy access to high-caliber schools, and still tend toward religious involvement.

The lower class, on the other hand, Putnam labels “fragile families,” defined by out-of-wedlock childbirth, less durable sexual relationships, poor school quality, and community discord.

RALEIGH

Putnam attributes this growing chasm to several factors, but the two most significant are the decline of blue-collar labor (beginning aggressively in the 1970s) and the sharp rise in divorce and out-of-wedlock births around the same time.

One aspect that weighs down *Our Kids* is Putnam’s overreliance on complicated storytelling, a trait that *Bowling Alone* managed to avoid. This might appeal to some readers — the visceral contrast between kids growing up in low-income, frenetic households and high-income, stable households is powerful — but I didn’t pick up the book hoping to read anecdotal stories. I wanted facts, analysis, and arguments. I got some, but sandwiched between too many narratives.

Perhaps the biggest fault in *Our Kids*, however, is that the book was already largely written two years ago by sociologist Charles Murray of the American Enterprise Institute. His 2012 book *Coming Apart* chronicled the growing income, education, and home-life gap in America. And, not to put too fine a point on it, Murray tells this story better.

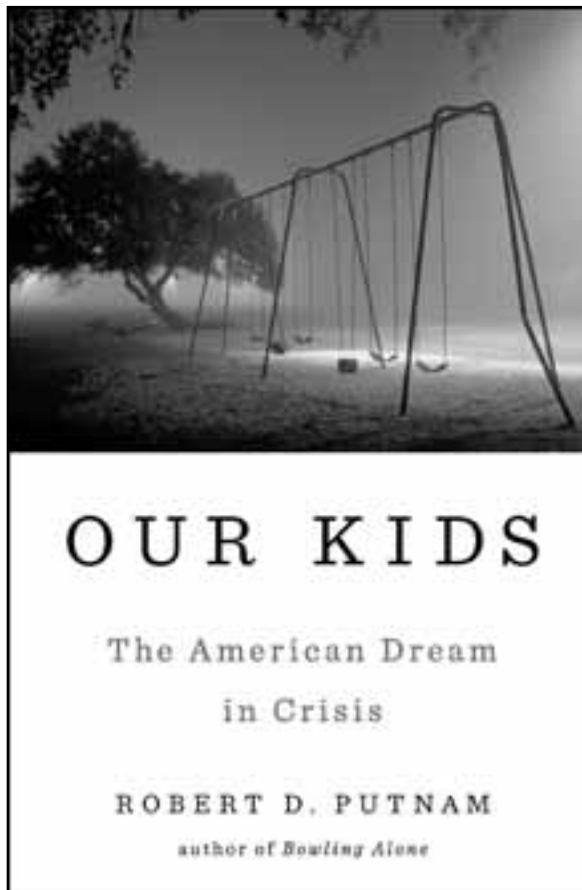
Although Murray was evenhanded, he tackled the issue from the Right; Putnam does so from a slightly left-of-center perspective, but he doesn’t offer much that’s new, certainly not enough to skip *Coming Apart* in favor of *Our Kids*.

In the end, while Putnam does a fair job diagnosing the problem, his solutions are lackluster. He can’t bring himself to advocate for the values-oriented solutions that would work: more stable families, less promiscuous sex, more emphasis on thrift and hard work, etc. These are the values that neo-traditional, higher-income families follow. Today’s poor are less likely to abide by these values, and Putnam says that the poor never will, nor, he suggests, should we encourage them. This amounts to hand wringing alongside an unwillingness, for the sake of political correctness, to acknowledge the real solutions.

The one golden takeaway from *Our Kids* is the encouragement to view children as the future resource that they are. Not just our own children — those in our family or immediate social circle — but all children. This underscores the need to encourage healthy family formation, stable home environments, and broader school choice that enables young people to excel.

“This is not the first time in our national history that widening socioeconomic gaps have threatened our economy, our democracy, and our values,” Putnam writes. “The specific responses we have pursued to successfully overcome these challenges and restore opportunity have varied in detail, but underlying them all was a commitment to invest in other people’s children. And underlying that commitment was a deeper sense that those kids, too, were our kids.”

In sum, I’ve enjoyed Putnam’s works immensely, particularly *Bowling Alone*, but I would recommend Murray’s *Coming Apart* over this current offering. Still, read this book, but begin with Murray for better analysis and a more considered toolbox of solutions. CJ



Tryon Had Major Impact on North Carolina's Colonial History

As I was driving the other day on Tryon Road in Cary, I wondered whether the street was named after North Carolina Royal Governor William Tryon. It was an educated guess, for Wake County, according to *The North Carolina Gazetteer*, is named for Margaret Wake, the wife of William Tryon.

A few days earlier I had been watching a television show about the Revolutionary War, in which Patriots were fighting the British in

New York. In the episode, Tryon was mentioned as a general. The combination of experiences prompted my revisiting some books and notes.

Tryon was born in 1729, the year North Carolina became a royal colony under direct authority of the crown. (That year seven of the Lord Proprietors sold their land to King George II. Lord Granville was the only holdout.)

Succeeding Royal Governor Arthur Dobbs in 1765, the 36-year-old Tryon was baptized by fire: His

first task was dealing with the messy aftermath of the Stamp Act. Tryon shrewdly discontinued the colonial assembly and prevented the session from reconvening until the act had been repealed.

In the Cape Fear area, the Sons of Liberty became prevalent, well-organized, and sometimes raucous. Even so, Tryon had underestimated the Sons of Liberty's resolve. Approximately 1,000 descended on Wilmington to protest, and the area's Sons of Liberty later compelled Tryon to ask for the resignation of the comptroller of Brunswick.

Earlier, Tryon had offered, for instance, to pay taxes on tavern licenses and some legal documents, but those offers were rejected. Leading merchants declined his invitations to dinner. After the act's repeal, business returned to normal.

To learn more about the colony, Tryon first traveled in the eastern part of the state. He later toured the Piedmont and soon learned he had an incomplete understanding of the colony. He encountered a far more diverse

variety of citizenry and denominational persuasions than he previously realized, and he noticed differences between the "backcountry" and the eastern part of the state. He soon would be reminded of the divide.

Tryon envisioned a permanent capital for the colony. He chose New Bern. With appropriated funds, he had built what became known as Tryon Palace. It was used as the royal governor's residence, a hall for the assembly and council, and a repository of records.

Even though there were advantages to a permanent capital, many in the Piedmont were irate. Construction necessitated increased taxation, and the eventual costs exceeded initial estimates. The group of Piedmont farmers known as the Regulators claimed the permanent capital was too far away (a similar complaint later motivated legislators to relocate the capital to Raleigh), and many considered Tryon Palace to be ostentatious. This debate emerged while allegations, including embezzlement of public money by local government

officials, abounded. Regulators eventually issued lists of grievances.

In 1768 and 1769, the Regulators met militia on several occasions. No major battle materialized, but opinions were becoming entrenched. Also, the Regulators performed targeted protests, such as dragging an allegedly corrupt lawyer through the streets and forcing a judge to leave his town. Tensions continued to escalate, and some leading Regulators were arrested. Though he had been appointed royal governor of New York, Tryon was committed to quelling the Regulator movement. Authorized by the assembly to use force, Tryon and the militia met the Regulators on May 16, 1771. In two hours, the two sides settled their differences at the Battle of Alamance. Tryon prevailed.

On June 30, he left Wilmington for New York. When war broke out, Tryon, a longtime soldier, positioned himself to obtain (and eventually achieve) the rank of major general in the British Army. After America defeated Britain in the war, Tryon died in 1788 in London. CJ

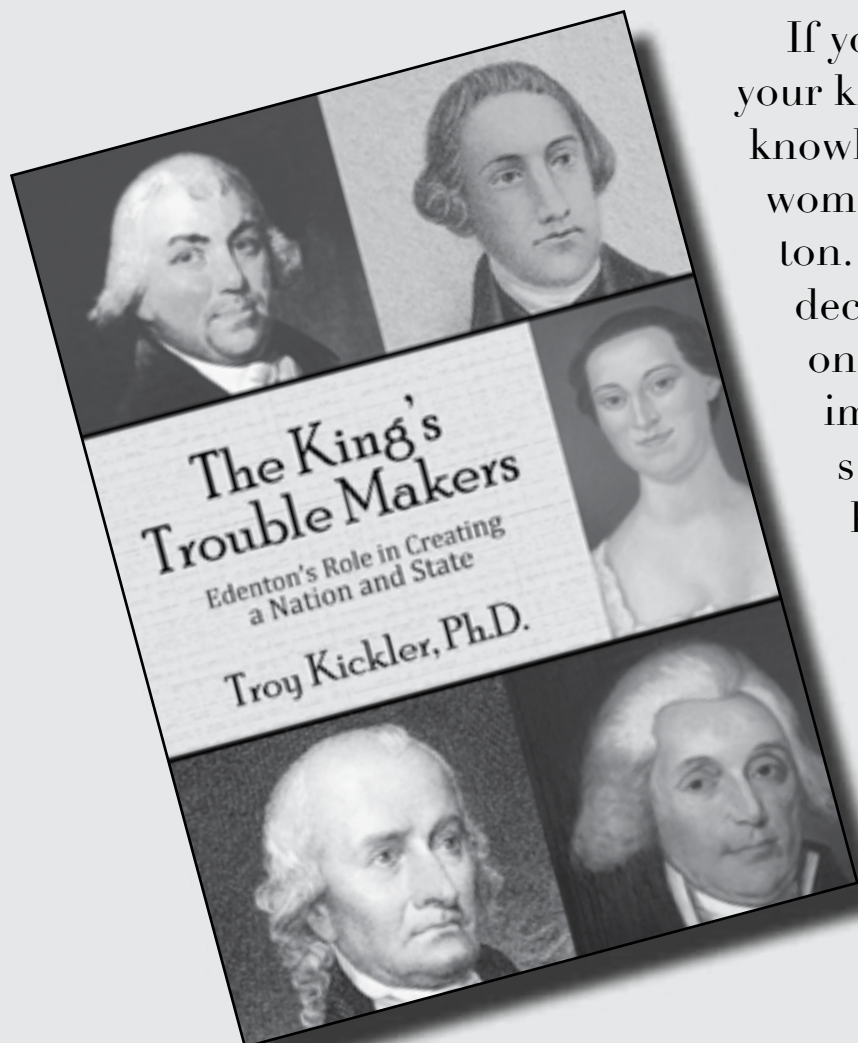
Dr. Troy Kickler is director of the North Carolina History Project (northcarolinahistory.org).



TROY KICKLER



BOOKS BY JOHN LOCKE FOUNDATION AUTHORS



If you don't know about Edenton, North Carolina, your knowledge of U.S. history is incomplete and your knowledge of North Carolina insufficient. Organized women's political activity in America was born in Edenton. The concept of judicial review—that courts can declare legislative acts unconstitutional—was championed here. Ideas for a national navy and defense were implemented here. Many passages of the N.C. Constitution (1776) and the U.S. Constitution originated here. Leading proponents of the U.S. Constitution (a.k.a. Federalists) lived in this small place, and so did nationally known jurists and politicians.

Dr. Troy Kickler, founding director of the North Carolina History Project, brings Edenton, its people, and its actions into proper and full focus in his book, *The King's Trouble Makers*.

Go to northcarolinahistory.org for more information.

Book review

David Boaz Explains How Big Government Undermines Society

• David Boaz, *The Libertarian Mind*, Simon & Schuster, 2015, 417 pages, \$27.95.

BY GEORGE LEEF
Contributor

Since the beginning of the so-called Progressive Era, advocates of big government have been on the offensive. They promised Americans more prosperity, better education, increased security, a cleaner environment, a society that's more fair, and so on — provided they would allow government much more power.

A great many fell for it. After all, wasn't it extremely important to move toward an improved country at what seemed to be little or no cost?

The progressives, however, tremendously exaggerated the benefits of big government — an "activist" government rather than the defensive one envisioned by the Founders. All of those visionary laws and programs that were supposed to give us a better society have backfired. Education, for example, is notably less effective today than before government central planners took it over.

At the same time, the costs of big government have proven not to be small. We now see that they are gigantic, both in monetary terms and in terms of lost freedom.

As a result, an intellectual counterattack has been building. Many books have been written on individual aspects of the case for restoring liberty and limited government, but in *The Libertarian Mind*, David Boaz gives readers a wide-ranging manifesto that covers the waterfront. Every major

problem caused by big government is exposed, and the need for America to embrace voluntary solutions is made crystal clear.

Boaz, executive vice president at the Cato Institute, has written a comprehensive, readable, and highly persuasive book rooted in the principles of libertarian thinking: peaceful cooperation, private property, capitalism, and individual rights. On page after page, he shows why the statism of the progressives failed to deliver on its promises and why the nation should return to its limited government roots.

He builds his case by starting with the basic need for and benefits of freedom. "Freedom leads to social harmony," Boaz notes. "We have less conflict when we have fewer specific commands and prohibitions about how we should live — in terms of class or caste, religion, dress, lifestyle, or schools."

We wouldn't have the nasty disputes over school curriculum or who may marry whom if government would leave such matters to individual choice and private contract. Boaz argues that the proper role of government is to protect our rights and property, but never to dictate other rules.

As for government itself, he offers readers an eye-opening (and, some would say, dangerous) view of its origins and nature. Governments didn't arise out of social contracts, but instead

developed as methods for rulers to extract wealth from the people without the constant need to employ force.

Taxes, say advocates of big government, are the price of civilization, but that's simply false. Taxes are not necessary for civilization, but are necessary for ruling elites (whether monarchs or elected officials) to maintain power and live well. The book is full of historical references, and Boaz notes that the finance minister for King Louis XIV laid out the essentials for maximizing the haul of taxes with the least resistance and invites you to compare it with the way we are taxed today.

Libertarian thinking clashes with other philosophies over the question of rights. Almost everyone claims to favor rights, but socialists, communarians, and others make a terrible mistake by calling many desires and interests "rights." That's why we hear about welfare rights, housing rights, and so on. Boaz responds that true rights involve the use of our liberty and property, but that all the other so-called rights can be given effect only through coercion. Trying to do that starts the unraveling of society.

One of the strongest, most memorable parts of the book is Boaz's contrast between the way people once formed voluntary societies and associations to deal with social problems and the way we now look mostly to

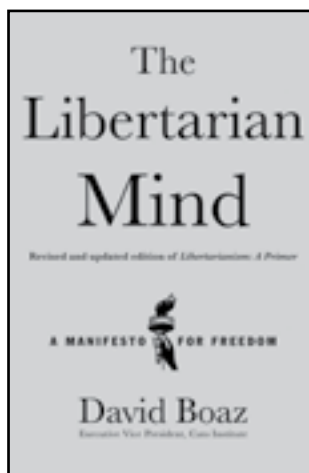
government. Prior to the New Deal, Americans had set up an astonishing number and array of organizations to help people in need and provide members with services they wanted, including medical care and insurance.

The key thing about them was that they operated on consent and contract and therefore could — and had to — refuse benefits to individuals who were shirking or trying to defraud the system. These organizations helped people build character. Boaz points out that members in good standing of many lodges could use that very fact to establish good credit if they moved to another city.

Once the welfare state was established, however, people began looking for ways to get unearned, undeserved benefits; the incentives were completely turned around so that the unscrupulous were the winners. And once people started expecting government to solve every social need, the voluntary associations began to wither.

At the same time big government enabled the poor to use government to get what they wanted, it also enabled many nonpoor people and groups to do the same. Washington, D.C., and our state capitals are overrun with lobbyists who want subsidies, regulations, and other goodies that come at other people's expense. The big reason we have suffered an economic slowdown in recent decades is the growth of what Boaz calls "the parasite economy."

Only readers who insist on keeping their socialistic blinders on won't get the big point of *The Libertarian Mind* — the government must be and can be cut back to proper size. CJ



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Book Review

Entertaining 'Spinglish' Dictionary Betrays Definite Spin of its Own

• Henry Beard and Christopher Cerf, *Spinglish: The Definitive Dictionary of Deliberately Deceptive Language*, Blue Rider Press, 2015, 341 pages, \$27.50.

BY LLOYD BILLINGSLEY
Contributor

RALEIGH

Like Eric Idle of Monty Python fame, most readers dislike those who vent their loquacity with extraneous bombastic circumlocution. So as national elections draw near, any book purporting to expose "deliberately deceptive language" is certainly welcome.

Right out of the gate, *Spinglish* has prompted glowing comparisons to George Orwell, and the back cover has the *Animal Farm* author, who died in 1950, saying, "I only wish I had lived long enough to read this incomparable book."

National Lampoon veterans Henry Beard and Christopher Cerf have uncovered "Spinocchios" at work everywhere, and readers will find much of their work familiar. "Adorable," for example, is a real-estate term for an extremely small house. "Academically fragile" is a reference to a student with poor grades and skimpy class attendance. "Aversion therapy," is actually shock treatment, even torture, something Jack Nicholson would recognize.

In similar style, many readers already will be aware that to "downsize" is to "lay off a significant percentage of one's employees," that "freelancer" can mean unemployed, and that "negative net worth" means bankruptcy. "Offered a package" means "fired," as many workers know full well. But some may have fallen for "marbled," an adjective used to make fatty beef

sound more appealing.

"Critically acclaimed" usually means a book with disappointing sales, and "Hemingwayesque" denotes short sentences. As journalists know, "noted authority" is anyone willing to return a reporter's phone calls, and unfounded statements often come prefaced with the term "arguably." In the hands of psychological specialists, shyness becomes "Social Anxiety Disorder." "Pre-owned" means used, "urban art" is graffiti, and of course a "water landing," as Jay Leno used to point out, is a plane crash at sea. Much of this material is great fun, and the book comes with illustrations, such as Janet Leigh in the famous shower scene, with a note advising that an emotionally disturbed person once meant a "psycho."

The Spinocchios are most active in politics, and many readers will find that *Spinglish* revolves to the port side. In fact, the authors telegraph it with a flare gun. The first entry, "Abortion Machine," goes after Rush Limbaugh, and Republican strategist Frank Luntz is a frequent target. "Birth pangs of a New Middle East," is a short essay on Condoleezza Rice, and George W. Bush gets similar huffy treatment in entries for "Coalition of the Willing," "Enemy Combatants," "Surge," and "Homicide bomber." That one doubles for Fox News, whose "fair and balanced" also gets a going over, as does the National Rifle Association in "Jackbooted government thugs." The entry

for "Death panels" amounts to a short, negative op-ed piece on Sarah Palin, and "job-killing regulations," like most of the book, is not kind to Republicans in general.

Prominent national Democrats and their support groups do not get equal treatment in *Spinglish*, but the authors do not entirely neglect them. As they note, Bill Clinton can work wonders with the word "is." In that spirit, Beard and Cerf might have taken on Hillary Clinton's "What does it matter?" a dismissal of terrorism on her watch as secretary of state.

President Obama duly shows up in "JV Team," which he used to disparage the ability of Islamic State fighters, and "Man-caused disasters," the president's rather curious term for terrorism. His most deceptive formulation, "Affordable Care Act," does not get an entry. The authors could have described it accurately as a "taking" and highly unaffordable to boot. Fortunately, they cover "incorrect promise," from *The New York Times*, which means "a lie." Contrary to the president's claim, Americans could not keep the health plans they liked.

The authors also explain that "affirmative action" means preferential treatment, racial quotas, and reverse discrimination. And "invest," as used by politicians, does indeed mean "spend," as the authors explain. East Berlin's "Anti-fascist bulwark," also known as the Berlin Wall, kept

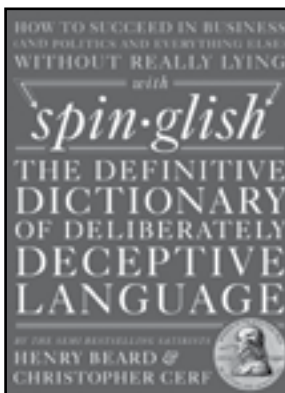
its own citizens from fleeing. On the other hand, they view "entitlement reform" as nothing more than "gutting" Social Security, Medicare, and Medicaid. A "freedom fighter" is not merely a terrorist who happens to be on your side, and in "pacification" the authors scrape the barrel on Vietnam.

Spinglish lacks an entry for "socialized medicine," a favorite of conservatives, which really means "government monopoly health care." The book avoids the "mainstream media," another conservative favorite, which really means "old-line establishment media," fond of formulations such as "incorrect promise."

To entertain and instruct at the same time is a daunting task, and the authors pull it off only in part. The biggest fans of *Spinglish* will be critics who agree with the authors' politics. This reviewer, however, is also going to compare Beard and Cerf's book to George Orwell. It's not nearly as good, and readers should be aware of a back story.

Christopher Cerf's father was Bennett Cerf, founder of Random House. During World War II, Bennett Cerf proposed a publishing ban on all books critical of the Soviet Union. One of those was George Orwell's *Animal Farm*, a work of genius rejected by 14 publishers, including T.S. Eliot on behalf of Faber and Faber, because it was too unkind to Joseph Stalin. Think about that as you read *Animal Farm*, 1984, *Homage to Catalonia*, and particularly Orwell's essay "Politics and the English Language." Then maybe have a go at *Spinglish*. CJ

Lloyd Billingsley is author of *Hollywood Party and Bill of Writes*, a forthcoming collection of his journalism.



BOOKS AUTHORED BY JLF STAFFERS



By John Hood
Chairman of the
John Locke Foundation

Selling the Dream

Why Advertising is Good Business



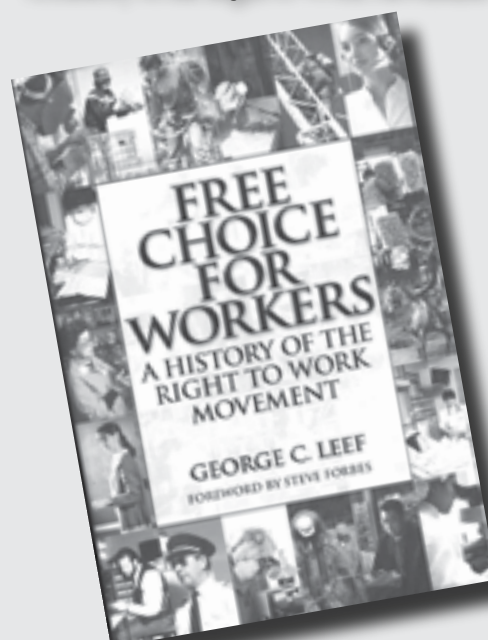
"[Selling the Dream] provides a fascinating look into the world of advertising and beyond ... Highly recommended."

Choice
April 2006

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Free Choice for Workers:

A History of the Right to Work Movement



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COMMENTARY

Mandating Our Way To Higher Health Costs

The U.S. Supreme Court might have saved Obamacare from having to operate as written, but the landmark decision in *King v. Burwell* has not deterred those on the right from focusing on making health insurance (and, more importantly, health care) more affordable for more Americans.

Doing away with many of Obamacare's expensive regulations imposed on patients, providers, and insurers ultimately falls on Congress. State lawmakers can do only so much to slow the rise in health insurance costs. One thing they can do, however, is re-examine the number of state health coverage mandates licensed insurance carriers must offer. Such laws require insurers to offer or expand upon specific services that benefit particular populations and providers.



KATHERINE RESTREPO

North Carolina currently imposes more than 55 coverage mandates — ranking in the top 15 states nationwide. The Council for Affordable Health Insurance estimates that each additional mandate increases premiums by an average of less than 1 percent, so the impact of any individual one seems small.

Consequently, additional coverage requirements are passed here and there, and collectively they contribute to rising premiums. The fact that there are now over 2,200 mandates nationwide — up from almost zero in 1970 — demonstrates that often it's politically feasible for special-interest groups to get their way.

Throughout North Carolina's present legislative session, a number of bills have been filed calling for insurers to expand coverage to include benefits such as oral cancer drugs, autism therapy, and reduced co-pays for chiropractic care. The Associated Press reports that the introduced bills could lead to an additional 16 percent rate increase if passed.

Keep in mind this doesn't factor in a potential 25 percent average premium increase Blue Cross and Blue Shield seeks for 2016 individual policy plans.

"Rep. Gary Pendleton, R-Wake, an independent insurance

agent handling employer health plans, stressed in an interview his sympathy for people with health needs seeking help. But he estimated that approving five pieces of pending legislation he considers mandates would increase insurance premiums by about 16 percent," the AP reported.

"It'll be a rate increase on everybody insured whether they use that benefit or not," Pendleton said, adding that even with the GOP protests about

President Barack Obama's health care law, "my fellow Republicans are not serious about reducing health care costs for corporations and nonprofits."

Proponents make the case that certain mandates like those requiring autism services curb overall health care expenditures in the long run. The Council of Affordable Health Insurance also cautions:

Some mandates have a more pronounced effect on premiums than do others. For example, a mental health parity mandate, which requires insurers to cover mental health care at the same levels as physical health care, has a greater impact on the cost of premiums than a collection of mandates for inexpensive procedures utilized by relatively few people.

Curiously, businesses that self-insure (approximately 60 percent of North Carolina's private firms) and the state government are let off the hook by the blessing of the 1974 Employee Retirement Income Security Act, so they don't have to meet all of the 55 state mandates. But this exemption for the self-insured puts an extra burden on everyone else — mostly policyholders in the individual market and small businesses that pick up 100 percent of their workers' insurance premiums. A recent study by the Mercatus Center at George Mason University finds that while more coverage mandates may not reduce employment, they do cause an employment shift from small to large businesses.

Perhaps the legislature should extend those exemptions to all, leveling the playing field for individuals and small businesses. CJ

Katherine Restrepo is health and human services policy analyst for the John Locke Foundation.



EDITORIAL

Release the Records, Gov. McCrory

In July, a host of media organizations and a couple of left-leaning advocacy groups filed a lawsuit against Gov. Pat McCrory and a number of his Cabinet officials, saying the administration effectively had stonewalled a series of requests under North Carolina's Public Records Law. In response, the governor issued a press release citing "exploitation" of public records requests by these organizations and saying his administration "is a champion of transparency and fair and legitimate news gathering."

Governor, that's not the way our system works. No public official has the power to determine what constitutes "legitimate news gathering." That's why the Founders and their successors insisted on the free-speech guarantees expressed in U.S. and N.C. constitutions and the open meetings and public records laws, among other measures of accountability. The government doesn't get to decide how the public's business is reported, nor whether it will comply with requests for public information.

The administration could have prevented this lawsuit merely by cooperating with inquiries from the media and other members of the public more openly. Too often, in *Carolina Journal's* 25 years of covering state and local government, the failure by public officials to answer basic questions can cause a simple query for information to escalate into a major document request — and, sometimes, costly lawsuits.

The current dispute names as defendants the governor and his secretaries of commerce, environment, health and human services, public safety, administration, transportation, cultural resources, and revenue,

claiming that these officials and their subordinates have — among other things — failed to provide copies of public records in a timely manner, charged excessive fees for copies of those records, failed to acknowledge requests for records, and denied or concealed the existence of public records. If proven in court, any of these would constitute violations of the Public Records Law.

The complaint cites 11 potential violations. Of particular interest to CJ readers, in January 2014 the Southern Environmental Law Center requested public records from the Department of Transportation related to the proposed tolling project along Interstate 77 north of Charlotte. After repeated follow-up requests, NCDOT surrendered the records in May 2015 — after the administration had signed a contract with a private party to build the project. (See Don Carrington's cover stories about the I-77 controversy in the July and August editions of CJ.)

The other violations as described in the complaint are egregious as well. The level of conflict between the executive branch and public watchdogs is unnecessary and avoidable — and the tendency to bicker about the volume of public records requests only fuels suspicions that the government is hiding something.

If we were betting types, we'd place a substantial wager that as this lawsuit moves forward, not only will the administration lose (and probably have to pay the media groups' legal costs), it also will be ordered to comply with future requests faster and more completely.

The governor may not like this outcome, but it's the cost of doing business if you're a public official. CJ

EDITORIALS

Tax Reform Teams

Three concepts debated

As the House and Senate negotiate the details of a new state budget, one of their biggest disagreements will be about taxes. Just to be clear: Conservatives who generally favor lower taxes and less spending growth than their Democratic predecessors lead both chambers. Both sides embraced the 2013 tax reform bill, signed by Gov. Pat McCrory, converting North Carolina's multirate income tax into a flat tax, eliminated or capping various tax deductions, and reducing marginal rates.

But now the General Assembly is deciding what to do next. Its debates are poorly understood in part because of the erroneous assumption that all conservatives envision the same tax-reform goal.

Roughly speaking, you can divide Republican lawmakers and other conservatives into three groups. The Fair Taxers seek to abolish North Carolina's personal income tax and substitute a broad-based sales tax on most or all goods and services sold at retail. They point to empirical evidence suggesting that income taxes are more harmful to job creation and income growth than sales taxes are.

The Flat Taxers would like to continue North Carolina's progress toward a properly structured Flat Tax — which is about both adopting a single

marginal rate and defining the tax base properly to avoid the double taxation of investment income. Thus they either favor universal tax-free savings accounts (imagine unlimited IRAs) or eliminating taxes on dividends and capital gains earned on investments made with after-tax dollars.

Finally, the Balanced Taxers prefer to maintain a broad portfolio of state revenue sources, even if it means distorting and slowing the economy through double taxation, because they believe the fiscal and political consequences of the Fair Tax or Flat Tax are too costly.

While the three groups have different end states in mind, they often agree on particular policies. The 2013 tax reform, for example, broadened the sales tax base to include some services sold by establishments that already collect sales tax on goods. That's not much of an extra regulatory burden. But as Fair Taxers seek to compel more people or businesses to become sales-tax collectors, they'll lose the support of many Flat Tax and Balanced Tax advocates.

Regardless of your personal views about tax reform, it's essential to understand the perspectives of these three groups if you would follow tax debates in Raleigh. *CJ*

N.C. Sets Higher Bar

Test results now rate in top five nationally

According to a recent report from the National Assessment of Educational Progress, five states — Texas, Massachusetts, Wisconsin, New York, and North Carolina — have the highest expectations for student proficiency in the country.

In the early 1990s, states began participating in NAEP's rigorous assessments for fourth- and eighth-graders. About the same time, North Carolina introduced its own annual testing program, known as end-of-grade and end-of-course exams.

Unfortunately, North Carolina's tests were both flawed and too easy to pass. As late as 2011, for example, 72 percent of our fourth-graders were scored by the state as proficient or better in reading. In the same year, only 34 percent of our fourth-graders were scored as proficient or better by NAEP.

In 2013, North Carolina launched a new testing program tied to the implementation of the national Common Core standards. Although Com-

mon Core has proved problematic in key respects, the idea of making North Carolina's testing program more rigorous was a good one. And according to NAEP, it's starting to work.

Its study compared student performance on 2013 NAEP and state exams across the country. Among fourth-graders, only New York and Wisconsin had proficiency standards for reading and math just as high as NAEP's. In the next tier, NAEP found Massachusetts, Texas, and North Carolina demanded true proficiency in math but a lower standard, "basic" skills, in reading. Among eighth-graders, only New York demanded true proficiency for both reading and math, with Texas and North Carolina demanding true proficiency in math and basic skills in reading.

In the past, North Carolina's standards and accountability system set the bar way too low. That's no longer true. And that's real progress. *CJ*

COMMENTARY

The Right Call
On Vouchers

There was absolutely nothing surprising about the North Carolina Supreme Court's 4-3 decision to uphold the constitutionality of the state's new Opportunity Scholarship Program. The outcome was welcome. The lack of surprise was disappointing.

The four justices signing onto the majority decision by Chief Justice Mark Martin are Republicans. The three justices dissenting are Democrats. Opponents of school choice are citing this fact as proof that the result was improper. I couldn't disagree more.

Given the last several decades of jurisprudence, in which the high court has rarely limited the power of the General Assembly to make policy in North Carolina, doing so with regard to this modest school-choice program would have stuck out like a sore thumb.

Is it constitutional for the General Assembly to give special tax breaks to politically favored big businesses while denying them to everyone else? Is it constitutional to appropriate tax dollars to church-owned day care centers, colleges, and charities? Is it permissible for state lawmakers to deny consumers the right to decide how they purchase automobiles, professional services, and medical care?

"Yes" is the answer to all these questions, based both on decisions handed down by courts or practices commonly engaged in by lawmakers without judicial intervention. The plaintiffs in the opportunity scholarship lawsuit had to engage in bizarre legal contortions to try to distinguish their case. Martin and the majority bloc refused to play Constitutional Twister with them.

For example, the plaintiffs argued it was illegal to spend tax dollars on programs assisting private-school parents because Article IX, Section 6 of the North Carolina Constitution required that tax dollars "shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools." This was a case of attempting to take a clause completely out of context.

The quoted section comes at the end of a much-longer enumeration of revenues such as fines, for-

feitures, and the sale of public lands that are required to be devoted to public schools "together with so much of the revenue of the state as may be set aside for that purpose" (meaning public schools). In other words, the General Assembly can supplement the earmarked revenue sources with other tax dollars to fund public schools. But it doesn't forbid lawmakers from funding other educational programs.

Another line of attack was to say that because private schools aren't regulated the same way district-run public schools are, programs assisting private-school students do not advance a "public purpose." Again, the majority didn't bite. According to precedent, the public purpose doctrine is about the intentions of policymakers. School choice clearly is intended to expand educational opportunities for children.

You may think school choice will fail, and you are free to oppose such programs, vote against lawmakers who support them, and perhaps even run for the legislature yourself to try to overturn them. You are not free, however, to obtain a judicial post and then strike such programs down because you believe them unwise. There is a separation of powers here — and if judges are in fact going to start striking down state laws as violating the public purpose doctrine, they really should start with obvious abuses such as corporate welfare.

Both the House and Senate budgets expand funding for opportunity scholarships. In the 2015-16 school year, some 4,300 students will benefit directly from the program, with thousands more benefiting indirectly (because there is good empirical evidence that competition prompts district-run public schools to get better). I'd favor expanding funding and eligibility for additional students.

As for choice opponents, I expect the Chicken Littles to continue to see phantasms falling from the sky. I'd love to be surprised, however. *CJ*

John Hood is chairman of the John Locke Foundation.



JOHN HOOD

MEDIA MANGLE

The Media And Planned Parenthood

It is beyond argument that the left long ago decided that abortion on demand was a key part of the liberal catechism. It's become the metric by which they measure all politicians.

It has been that way for a while. In 1992, Gov. Robert Casey of Pennsylvania was denied a speaking role in the Democratic National Convention for fear he would discuss his pro-life views. It was not always that way, however. Famous Democratic liberals such as Hubert Humphrey and Sargent Shriver were openly pro-life.

Second only to today's Democrats in fealty to abortion on demand is the media. Polls show that the media are pro-abortion to a far greater percentage than the population as a whole. To the media, the issue is as settled in their minds as man-made global warming.

So imagine the turmoil the left and the media are in due to the recent release of several undercover videos by the Center for Medical Progress that show Planned Parenthood officials discussing how best to maximize profit from the corpses of babies taken in abortions.

The media has vastly downplayed the videos or ignored them altogether. In 60 hours of news broadcasts (morning and evening news shows) in the 10 days after the first Planned Parenthood video was released, ABC devoted 46 seconds to the story, NBC a little over three minutes, and CBS a little over seven minutes.

In daily newspapers, in most cases it was relegated to a back page, unless, as in *The Washington Post*, the story attacked the makers of the video, which garnered front-page placement.

It always has baffled me why there is a political dimension to the abortion issue at all. As I've already said, liberal pro-life Democrats once were common on the political landscape. I was a liberal Democrat in January 1973, when I wrote the headline for the *Roe v. Wade* decision in my college daily newspaper, and yet I was then and still am anti-abortion.

Even if a reporter or editor is pro-abortion, you would think that the notion of a fetal chop shop for profit would give them pause. Not so, apparently. I've searched in vain for any journalistic introspection or concern about the practice. What I find are editorials like *The New York Times'* "The Campaign of Deception Against Planned Parenthood" and a story in *The Chicago Tribune* about the great demand for "fetal tissue," as if that excuses the carnage.

The media clearly are trying hard to keep this from becoming a huge national story, but word is that there are many more videos coming, each one more incriminating and damaging than the previous ones. If that's true, how long can the mainstream media ignore or downplay this story without looking completely irresponsible? CJ

Jon Ham is a vice president at the John Locke Foundation and publisher of Carolina Journal.



JON
HAM



Outside Forces Affect N.C. Economy

Some troubling news about North Carolina's economy recently made headlines. Numbers for an economic concept called "gross domestic product" — or GDP — were released for 2014. While North Carolina's GDP increased in 2014, it rose much less than the nation's. Does this mean it's time to worry about the state's economic rebound?

Before addressing this important question, let me explain the meaning of GDP. Economists like GDP because it comprehensively measures the size of an economy in a single number. It allows the production of farmers, factory workers, office workers, salespersons, and all other workers and firms to be combined. It also takes out general price inflation, so the number won't rise just because average prices are higher.

GDP also is the main metric used to denote and measure recessions. For an official recession to occur, the rule of thumb is a decline in GDP for two consecutive three-month periods. For a depression to be designated, the decline in GDP must be 10 percent or more or the decline must last for two or more years.

While North Carolina's 2014 GDP growth rate came up short compared to the nation's, the opposite was the case for 2013. In that year North Carolina's GDP grew 40 percent faster than national GDP. What happened between the two years? Essentially, the change was due to the impact of a stronger dollar on manufacturing.

Let me break down this answer into its parts. First, relative to other states, North Carolina is a manufacturing state. While manufacturing certainly isn't as dominant as it was decades ago, over 20 percent of North Carolina's GDP still comes from manufacturing. This is far higher than the 12 percent share attributed to manufacturing nationally.

Second, international trade is important in manufacturing. Almost half of U.S. manufactured products are exported. At the same time, the U.S. imports even more manufactured goods than it exports.

Third, the international value of the dol-

lar against foreign currencies has big impacts on exports, imports, and manufacturing. A "weaker" dollar against foreign currencies makes U.S. exports cheaper in foreign countries and foreign imports more expensive in the United States, resulting in more U.S. exports, fewer foreign imports, and more U.S. manufacturing. The opposite happens with a "stronger" dollar — fewer U.S. exports, more foreign imports, and less U.S. manufacturing.

Merging these three points gives a plausible explanation for North Carolina's GDP performance in 2013 and 2014. The U.S. dollar's international value weakened through much of 2013. North Carolina manufacturing production surged 6 percent, four times more than the production from national factories. The growth in North Carolina manufacturing was a big factor behind the state's superior GDP performance that year.

But the opposite happened in 2014. Due to several factors — among them concerns about recessions in Europe and Japan and slower growth in China — the U.S. economy was considered to be the strongest in the world. As a result, the international value of the dollar increased and manufacturing production in North Carolina stalled — with production at the same level in 2014 as in 2013.

If output from the state's factories had increased at the same rate in 2014 as in 2013, total GDP growth in North Carolina in 2014 would have almost doubled and would have exceeded the national pace.

There are two lessons here. The first is that the state's economy still can be moved by manufacturing; indeed, manufacturing's role in North Carolina is greater than in 46 other states. One out of five dollars in the state directly comes from manufacturing.

The second lesson is that forces well beyond North Carolina's control can have an impact — either positive or negative — on the state economy. In 2013 the dollar's lower international value helped North Carolina; in 2014 the dollar's higher value had a slowing effect on the state economy.

How we move — economically speaking — is not totally in our hands. CJ

Michael Walden is Reynolds Distinguished Professor at North Carolina State University. He does not speak for the university.



MICHAEL
WALDEN

Wake School Battles Tough to Pigeonhole

It may be a shameless plug, but I think many readers might be interested in my new book, *The End of Consensus*. In a truly collaborative effort, I, a political scientist from the right of center, teamed up with Toby Parcel, a sociologist colleague at N.C. State with more leftward views, to write about Wake County public schools and their politics over the past decade. We particularly were intrigued by the overthrow of the liberal status quo in 2009.



**ANDY
TAYLOR**

Many of you will remember that particular board election pivoting on the issue of the county's general assignment policy. Ever since Raleigh and the surrounding Wake systems were unified in 1976, children had been assigned to schools to diversify student bodies.

Initially, the metric used was racial, but in 2000 it was changed to prevent any one school from having more than 40 percent of its pupils in the free or reduced-price lunch programs and 25 percent who read below grade level. Opponents of the board's Democratic majority called to abandon this diversity policy and reassign children to schools based upon geographic proximity, or a neighborhood

approach.

The book shows, however, that the election was shaped by a broad dissatisfaction with the county's public schools stemming from issues in addition to diversity.

The frequent annual reassignments experienced by families inhabiting neighborhoods in the fast-growing areas of western Wake and north Raleigh during the 1990s and 2000s generated tremendous resentment and lingered even when the triggering issue had faded. The implementation of what was effectively a mandatory year-round schooling policy in places like Apex and Cary was similarly unpopular. The school board's decisions were seen as arbitrary and cold-hearted. Because of the deep recession, parents were increasingly fretful about their children's futures.

Interestingly, the Wake school board election in 2009 was unlike those in most other parts of the country that were driven by ideology. Generally when liberals and conservatives fought intense campaigns to influence local education policy, the issues were taxes and funding levels, vouchers, charter and home schools, the content of curricula, and the use of certain instructional materials. Wake County residents split along other lines as battles over these matters took place at the state level.

Several of our other findings are notable and contrary to popular understanding of the episode. Draw-

ing from a comprehensive survey of Wake County residents, focus groups, and interviews with policymakers and activists on both sides, we found that large numbers of people supported both diversity and neighborhood schools. Our analysis also demonstrates that whites in suburban western Wake and north Raleigh, so vilified by liberals, were no more supportive of neighborhood schools than those who lived inside the Beltline.

In fact, the whites who supported diversity most fervently were those who currently had no children in public schools.

There were clear racial differences in attitudes. African-Americans were more supportive of diversity. However, less-affluent blacks were decidedly more ambivalent about the policy. Some thought they were being used as pawns in a political game and wondered why their children had to be bused great distances. Despite the rather sanctimonious tone among some lifelong liberal residents of the county, the push for neighborhood schools did not emanate from the legions of newcomers to the area from places like New York and Ohio. Time living in Wake did not explain views about the issue.

It is also important to note that neither the Republican takeover in 2009 nor the Democratic reclamation in 2011 changed policy as much as the vitriolic rhetoric and divergent views of the two sides would suggest. It

took their entire term for the Republican majority elected in 2009 to come up with an assignment policy that moved the county somewhat toward a neighborhood model. The current Democratic majority continues to emphasize proximity in its policies and has begun to shrink the year-round program. The current board may well have learned some lessons from what drove the "revolution" of 2009.

Our book gives conservatives additional encouragement, despite almost total Democratic control after the 2013 election. School system politics need competitive elections and vigorous public debate before decision makers can be held accountable and policies made effective and legitimate. Schools in many urban areas are at the mercy of Democratic machine politics utterly incapable of solving their problems. Those on the right have shown they can check liberal impulses in Wake County, even if they are unable to take the helm.

Second, most residents do not want their public schools to be part of some kind of broader social policy. They believe education is critically important, but, like any other function of government, their primary expectation is competence. They just want their children to learn. *CJ*

Andy Taylor is a professor of political science at the School of Public and International Affairs at N.C. State University. He does not speak for the university.

Transparency Should Be a State Priority

There are some really good things on the table as budget conferees discuss, debate, compromise, and finalize the North Carolina's government spending plan for the next two years. Allocating more than \$22 billion each year in General Fund revenue is a big deal. Adding money from the federal government and other sources, state spending each year becomes a \$50 billion big deal.

Some things under consideration are very positive — restricting spending growth to 2.5 percent; raising starting teacher pay to \$35,000 and adding nearly 6,800 new teachers over the next two years to reduce the student-to-teacher ratio; ending the transfer of highway funds to the General Fund for nonhighway uses; doubling the amount of money set aside in reserve accounts; getting serious about



**BECKI
GRAY**

Medicaid reform; rolling back special treatment for special interests; and making smart energy plans. But one provision stands out as not only good but transformational.

Found in Section 7.17 of House Bill 97, aka the budget, you will find the Governmental Budgetary Transparency/Expenditures Online provision. This sets up a website on which all state agencies, counties, cities, and local education authorities will post their budgets and spending in a user-friendly, easy-to-search manner. Data will be provided in formats that easily can be downloaded and analyzed by citizens and decisionmakers. It will include budgeted amounts and actual spending by each state agency or local entity, as well as information on receipts and expenditures from and to all sources, including vendor payments, updated monthly. Yes, real open government and transparency would be just a click or two away.

The provision instructs the state controller, the Office of State Budget and Management, and the state chief information officer to prioritize information technology funding to estab-

lish and coordinate the transparency websites. The House has set aside \$6 million in recurring and nonrecurring funds over the next two years, while the Senate has allocated \$16 million. At some point between the two proposals, appropriate funding can be found.

The sites will be fully functional by April 1, 2016. Monthly updates are required, but smaller government entities that don't compile their budgets monthly can file a notice stating "no update at this time" for the months between their quarterly filings.

Sen. Andrew Brock, R-Davie, introduced the transparency provision as an amendment to the Senate budget. The provision passed the Senate 47-2, while Speaker Tim Moore, Majority Leader Mike Hager, and Reps. Jason Saine, Rick Glazier, and Chuck McGrady are just a few of the House members who have voiced support. State Controller Linda Combs "believes transparency is a key component to good government." Lee Roberts, the state budget director, is "fully committed to greater transparency." State CIO Chris Estes has said,

"We strongly support using information technology to increase transparency."

Budgets are a list of priorities. Are teachers a higher priority than film companies? What ranks higher — safe roads or solar companies? Is performance pay for teachers and other public employees a better investment with greater benefits than across-the-board pay hikes? The General Assembly and the governor will be finalizing North Carolina's priorities over the next few weeks through the state budget. What could be a higher priority than full disclosure of where that \$50 billion is spent?

What was a pipe dream for Gov. Jim Holshouser in his 1973 inaugural address — when he talked of opening government ledgers to everyone — is an idea whose time has come. The complexity and expense of government makes it necessary, the technology makes it possible, and now the commitment of today's leaders to open and transparent state government can make it a reality. *CJ*

Becki Gray is vice president for outreach at the John Locke Foundation.

Recyclers Envision Toxic Solar Panels as Coffee Tables (a *CJ* parody)

Industry officials see 'solar farm-to-table' as the next big fad

By BYRD ZAPPA
Energy Correspondent

RALEIGH

Hoping to fight off an impending disposal crisis, North Carolina solar industry leaders are developing ideas on how to reuse the glass, steel, industrial lubricants, and toxic elements in solar panels after they reach the end of their useful lives. One idea generating buzz would be to add legs, turning the spent panels into coffee tables.

"As you know, the farm-to-table food movement is huge right now," said spokeswoman Darlene Neidemeyer-Thomas of Solar Panel Innovative Transitions. "With SPIT, we're creating the solar farm-to-table movement."

Neidemeyer-Thomas said the new organization already has spent millions researching disposal alternatives, and the best idea they could come up with, without putting toxic materials in landfills, was to create a demand for solar-panel furniture.

Solar panels degrade much faster than most people realize, she said. After 10 years they typically have lost half



This Amish-designed solar dining table is expected to be one of the biggest sellers when production of the "solar farm-to-table" program begins. (CJ spoof photo)

of their power, and after 15 years they generate very little energy. Neither the federal government nor any state government has solar decommissioning regulations to handle the scrap.

North Carolina is a leader in the solar industry, and also is a leader in furniture, which, Neidemeyer-Thomas says, makes the combination "can't miss."

The state ranks third in the nation for the amount of solar power added to the electrical grid. But state lawmakers have recently expressed concern that solar developers might be duping unwitting landowners who lease their property for solar projects,

saying some require property owners to cover the costs of disposal and land reclamation after the panels become ineffective.

"We have come up with a number of possibilities, but the most promising idea so far is to create furniture, and we think coffee tables will be real winners," Neidemeyer-Thomas said. "North Carolina already has a great legacy in furniture production and the solar panel coffee tables should be a natural."

Neidemeyer-Thomas said SPIT is working with prominent Amish furniture designers from Pennsylvania to come up with a variety of leg designs

so the tables can blend in with almost any décor. Most solar panels are 65 inches by 40 inches, or 18 square feet, and weigh about 36 pounds.

"In addition to coffee tables, we think there will be a demand for dining tables and end tables. You just have to alter the length of the leg assembly, but of course all the tops will still look like a used solar panel, because that is what they are," Neidemeyer-Thomas said.

North Carolina has approximately 10 million people living in about 4 million households. "If we can get half of those households to buy at least one new solar panel table, we will have come a long way in dealing with the tremendous disposal problem looming on the horizon," she said.

According to Neidemeyer-Thomas, SPIT's take is that the new coffee tables could revitalize the furniture manufacturing industry in North Carolina.

"Since no state or federal agency has come up with guidelines to decommission the solar farms, we can be the resting place for the nation's excess panels," she said. "Imagine all the workers in Lexington, High Point, and Lenoir who will once again become the backbone of the furniture industry."

The future of the solar industry is not clear. The industry depends heavily on state and federal tax credits that may expire in the near future. But, as previously reported by *Carolina Journal's* Parting Shot, the job of "solar industry lobbyist" is the fastest growing occupation in the state. *CJ*

E.A. MORRIS

FELLOWSHIP FOR EMERGING LEADERS

The E.A. Morris Fellowship is seeking principled, energetic applicants for the 2016 Fellowship class. Applications available online or at the John Locke Foundation. Application deadline is December 8, 2015.

Please visit the E.A. Morris Fellowship Web site (www.EAMorrisFellows.org) for more information, including eligibility, program overview and application materials.

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- Must be willing to complete a special project requiring leadership and innovative thinking on a local level
- Must be willing to attend all program events associated with the fellowship
- Must not be the spouse of a current or past Fellow.

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Applications Open September 15, 2015

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