



Issue Guide 2007

Promoting Freedom and Prosperity
for All North Carolinians

Issue Guide 2007

Promoting Freedom and Prosperity for All North Carolinians

North Carolina policymakers face many important challenges. This issue guide offers solutions to problems faced by the citizens of the state. The common thread in these recommendations is freedom. By increasing individual freedom, the state can foster the prosperity of all North Carolinians.

The John Locke Foundation Research Staff offers the following policy recommendations. Please feel free to contact the policy expert associated with each recommendation or Becki Gray, director of the State Policy Resource Center, (919/828.3876 or bgray@johnlocke.org) or visit www.JohnLocke.org and click on "Issue Guide 2007: Further Reading."

Table of Contents

GENERAL GOVERNMENT

Spending Reform	2
State Employee Compensation	4

EDUCATION

Teacher Pay	6
Charter Schools	8
Accountability and Testing	10

ENVIRONMENT

Climate Change Commission	12
Energy and Electricity	14

HEALTH CARE

County Medicaid Relief	16
Health Tax Credits	18

PROPERTY RIGHTS

Eminent Domain	20
Forced Annexation	22

TRANSPORTATION

Highway Funding	24
Rail Transit	26

VOTING AND ELECTIONS

Open Government	28
Taxpayer-Financed Elections	30

The views expressed in this report are solely the author's and do not necessarily reflect those of the staff or board of the John Locke Foundation. For more information, call 919/828.3876 or visit www.JohnLocke.org. ©2007 by the John Locke Foundation.

SPENDING REFORM

RECOMMENDATION

Freeze real per-capita General Fund spending to keep spending growth for Fiscal Year 2007-08 to five percent.

BACKGROUND

Recent spending trends

- Debt service grew from \$40.10 per person in FY 2001-02 to an expected \$78.13 per person in FY 2006-07.
- Spending on services unrelated to education, health care, and roads is the fastest growing portion of the budget.
- In 2006-07, the legislature spent \$2,100 per capita (or \$8,400 per family of four) out of the General Fund.

The spend-and-tax roller coaster

- North Carolina's Constitution requires the governor to balance the budget each year.
- Tax collections grow faster than the economy in good times and shrink faster than the economy in bad times.
- Typically, the legislature spends all the money available, and then raises taxes to cover the costs of earlier promises.

WHY SPENDING REFORM IS NEEDED

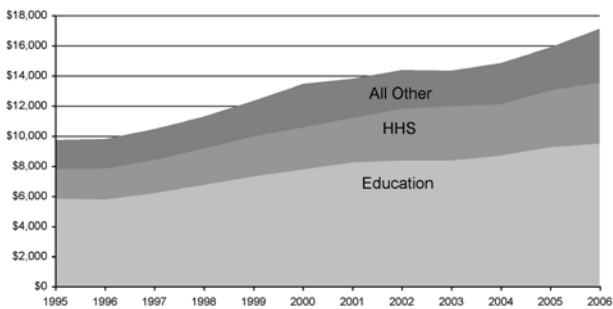
Get off the spend-and-tax roller coaster. Legislative commitments last year mean spending cuts or tax hikes to balance the budget in FY 2007-08.

Families decide when politicians can't. When legislators fail to restrain spending they imply that every item in the budget is more important than the individual choices of families. Tax and fee increases to pay for government programs mean families have less money to spend on their needs.

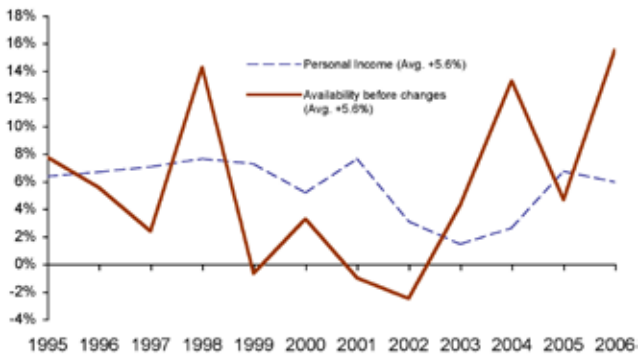
A vote for the budget as usual is a vote against essential services. Every dollar spent on Google, Dell, the Global TransPark, or the Kannapolis Biotech Center is a dollar not spent on roads, schools, public safety, public health, or any of the other legitimate government needs.

Tax reform does not matter without spending reform. Regardless of the shape of taxes, they still must balance with what the legislature spends.

GENERAL FUND SPENDING, FY 1995 - FY 2006



ANNUAL PERCENT CHANGE IN PERSONAL INCOME AND GENERAL FUND AVAILABILITY, 1995-2006



Reform provides for current and future needs. If this recommendation were adopted, General Fund spending in FY 2007-08 would total \$19.8 billion, five percent higher than the \$18.6 billion spent in FY 2006-07. With a cap on spending, excess tax and fee collections could be set aside to avoid future fiscal crises or pay for disaster relief.

Analyst: Joseph Coletti
 Fiscal and Health Care Policy Analyst
 919/828.3876 • jcoletti@johnlocke.org

STATE EMPLOYEE COMPENSATION

RECOMMENDATION

Change state employee compensation to recruit and reward strong contributors and to reduce future state liabilities.

BACKGROUND

Compensation

- State government provides more and different benefits to employees than private employers provide.
- Compensation patterns affect recruitment and retention.
- Government compensation is based more on tenure than on job performance.
- Government compensation includes higher levels of deferred wages in defined benefit pensions and health benefits for retirees than private sector compensation.
- Although average wages for state employees are equal to or higher than those for private sector workers, some positions in state government have compensation 30 percent below comparable wages in the private sector.
- The range of wages is much narrower in state government than in the private sector.
- State employee pay formulas have not been followed and pay increases have been smaller than raises for teachers.

State Funding

- Merit pay provisions have been unfunded while the legislature has spent more on across-the-board pay raises.
- Even after diversion of pension fund deposits to fund other government activities in 2001, state employee pensions are funded at 107 percent of liabilities.
- New reporting rules (GASB 45) mean the state must determine its unfunded liability for other post-employment benefits, namely retiree health benefits.
- The most recent actuarial estimate of this unfunded liability is \$23.8 billion of a total \$23.9 billion liability.

WHY REFORM IS NEEDED

Reduce problems with collective bargaining. Union representatives are the only ones who benefit from collective bargaining. Individual merit pay with freedom to pay market rates is more important.

Focus on keeping the right employees. Some jobs have 24 percent vacancy rates, but turnover in state government is less than half that in the private sector. The key is keeping the right employees.

North Carolina has a \$24 billion unfunded liability for retiree health benefits. State government has expensive promises to keep. Changing compensation methods will help with reduce this liability, too.

Currently, the state is more likely to retain less-productive employees. High turnover in critical jobs and among some of the best people hurts the effectiveness of state government. Productive employees are more likely to leave state employment, and less-productive employees are more likely to remain on the state payroll for shorter hours and better benefits.

High costs of pay-as-you-go financing. If the state continues pay-as-you-go financing of retiree health benefits, the unfunded liability will reach \$44.6 billion in 2014.

Obtain benefits of health savings accounts. Besides contributing more per year to cover the future health benefits of retired state employees, a Health Savings Account (HSA) option in the state employee health plan could offset future liabilities.

Give employees more flexibility. Defined contribution pensions and health benefits, such as IRAs or HSAs, make employees less reliant on employers and help with transitions.

Analyst: Joseph Coletti
Fiscal and Health Care Policy Analyst
919/828.3876 • jcoletti@johnlocke.org

TEACHER PAY

RECOMMENDATION

Implement a merit pay system for teachers that will pay a portion of their salary based on the value they add to their students' academic performance, rather than on years of experience and credentials.

BACKGROUND

Across-the-board raises and ABC bonuses reward both good teachers and mediocre ones, thus doing little to help students learn. ABC bonuses are an incentive program for teachers that are part of the state's school accountability program, the ABCs of Public Education.

North Carolina's average teacher salary is above the national average. Adjusted for cost of living, pension contribution, and teacher experience, the state's average teacher salary for a teacher on a 10-month contract is \$993 higher than the U.S. adjusted median salary and \$2,733 higher than the U.S. adjusted average salary.

THE NEED TO CHANGE HOW TEACHERS ARE PAID

- **Teacher pay increases have outpaced inflation and state employee pay raises.** Since the 1991-92 school year, teacher pay has increased by 85.9 percent, while the Consumer Price Index (CPI) increased by 47.5 percent. State employee compensation increased by 35.2 percent during the same period.
- **Across-the-board raises will not improve recruitment and retention.** Higher pay may only be able to reduce North Carolina's already below-average annual turnover rate from 12.3 percent to 11.9 percent.
- **ABC bonuses have failed in their stated intention.** ABC bonuses were supposed to connect teacher rewards to real gains in student achievement. Based on last year's testing results, the state will award bonuses to all administrators and instructional personnel in over 100 schools that had less than 60 percent of their students achieve a passing score on end-of-grade or end-of-course tests. Over 700 schools will receive bonuses despite a 60-80 percent pass rate.
- **An entitlement program is tied to a weak accountability system.** Considering North Carolina's history of low state testing standards, the ABC bonuses have been easy to earn. The system does not reward individual excellence. In the past, ABC bonuses have been awarded to as many as 94 percent of the schools in the state.

PERCENTAGE PAY RAISES (CUMULATIVE), 1991–2006



- **ABC bonuses have drained valuable resources from our schools.** Between 1997 and 2007, the General Assembly appropriated \$988 million for ABC bonuses, money better spent on a merit pay system that rewards our best teachers.
- **Merit pay could be used as an incentive for the best teachers.** Merit pay could lure our best teachers into low-performing schools. Guilford County has implemented a promising merit pay program that awarded bonuses of \$9,000 or more to experienced math teachers in 11 schools with low-income students.

Analyst: Terry Stoops
 Education Policy Analyst
 919/828.3876 • tstoops@johnlocke.org

CHARTER SCHOOLS

RECOMMENDATION

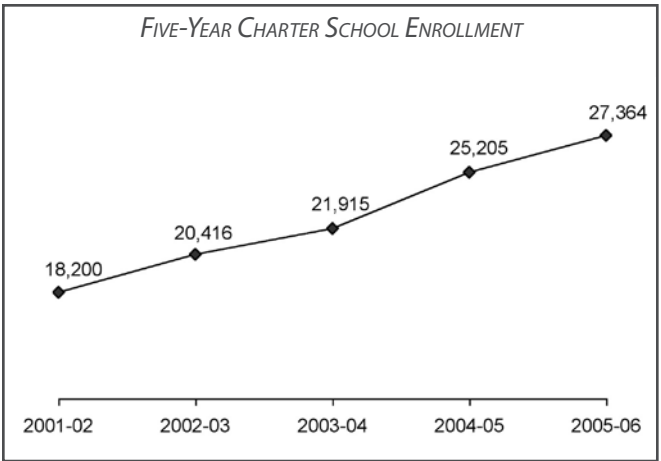
Remove the 100-charter-school cap.

BACKGROUND

The state has reached the maximum of 100 charter schools allowed by law, and additional charter schools would begin to satisfy the public's demand for more educational options.

THE NEED TO REMOVE THE CHARTER SCHOOL CAP

- **Demand for existing charter schools remains strong.** In 2006, there were 17 applications for new charter schools but only three vacancies. In some cases, charter schools have long student waiting lists and must use a lottery admissions process.
- **Many students do not have access to a charter school.** For the 2006-07 school year, only 48 out of 115 school systems will have a charter school. In eastern North Carolina, 28 counties share nine charter schools. There are no charter schools in the 14 counties in the northeastern corner of the state.
- **Charter schools improve district schools.** Researchers found that charter school competition raised the performance of students at traditional schools who were at or near the cutoff scores for passing state tests.
- **Students excel in charter schools.** Charter schools had a higher percentage of Schools of Excellence and a higher percentage meeting Adequate Yearly Progress under No Child Left Behind than district schools.
- **Charter schools serve our most at-risk students.** Seven alternative charter schools serve students who have emotional or mental disabilities. Charter schools and district schools serve the same percentage of students who have a specific learning disability (5%).
- **Charter schools promote diversity.** Charter schools serve a higher percentage of African American students than district schools (34.6 percent and 31.4 percent, respectively).
- **Charter schools can lower school construction costs.** Because charter schools do not receive state funds for capital expenditures, additional charter schools could reduce a portion of the school facilities needs that strain the resources of our fastest growing counties.



- **Charter schools save taxpayers money.** Charter schools receive an average of \$690 less per student than district schools because they do not receive funds for capital expenditures.
- **The public supports legislators who work to remove the cap.** In a July 2006 poll, the John William Pope Civitas Institute found that 62 percent of respondents were more likely to vote for candidates who promised to remove the cap on charter schools.

Analyst: Terry Stoops
Education Policy Analyst
919/828.3876 • tstoops@johnlocke.org

ACCOUNTABILITY AND TESTING

RECOMMENDATION

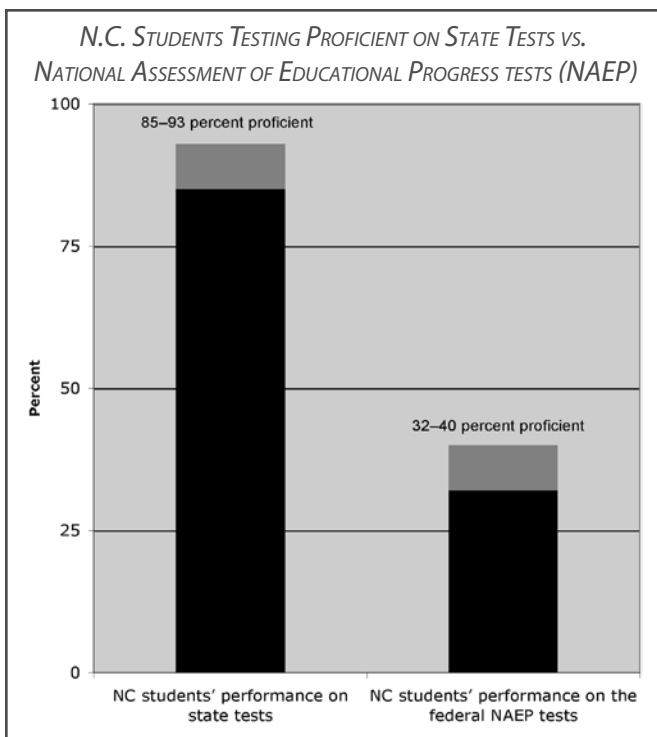
The state's end-of-year and end-of-course tests should be replaced with an independent, field-tested, and credible national test of student performance, such as the Iowa Test of Basic Skills, the California Achievement Test, or the Stanford 10 exam.

BACKGROUND

State Board of Education officials recently admitted that, from the beginning, they set low standards for the state accountability program, the ABCs of Public Education, in order to gain support for comprehensive statewide testing. Unfortunately, since the program's inception in 1997, state officials never satisfactorily raised standards.

THE NEED TO CHANGE HOW STUDENTS ARE ASSESSED

- **There has been a history of problems with our testing program.** In 2001, state education officials were embarrassed to discover their new math tests were absurdly easy to pass — a product of poor judgment and a flawed system of field-testing. In addition, statistical problems with the 6th-grade reading scores in 2004 and 2005 prompted the State Board of Education to approve changes to the growth formulas used by the Department of Public Instruction to predict the performance of students from one grade to the next.
- **Math standards are not demanding enough.** While the 2005-06 revised math standards are an improvement over past years' standards, they are hardly rigorous. To be classified as proficient on the 2004-05 end-of-grade math tests, students were required to answer an average of 40.7 percent of the questions correctly. To be classified as proficient on the 2005-06 end-of-grade math tests, students were required to answer an average of 49.4 percent of the questions correctly.
- **Guessing can vastly improve the chances that a student passes a state test.** Students could be classified as proficient on the 2005-06 math tests if they knew the answers to just 32.5 percent of the questions (17 out of 50) and guessed on the rest. That percentage dropped to an average of 24 percent (12 out of 50) for students who could eliminate one of the four multiple choice test options before guessing.



- North Carolina's standards do not square with federal standards.** While a high percentage of North Carolina's students are categorized as proficient on state tests (between 85 and 93 percent in 2005), a low percentage of North Carolina's students are categorized as proficient on the federal National Assessment of Educational Progress tests (between 32 and 40 percent in 2005).
- The state testing program lacks transparency.** The Department of Public Instruction has conducted their testing program in near absolute secrecy. Past editions of the tests are not made public.
- North Carolina's testing results are confusing.** Each school's results include the following terms and measurements: "growth designation," "ABCs status," "average growth," "achievement level," "c-ratio," and "performance composite." Parents must read a nine-page background packet just to understand what those terms and designations mean.
- North Carolina is one of only six states that oversee all aspects of state testing.** Forty other states have contracts with testing companies, and 18 other states use an off-the-shelf/norm-referenced test.

Analyst: Terry Stoops
 Education Policy Analyst
 919/828.3876 • tstoops@johnlocke.org

CLIMATE CHANGE COMMISSION

RECOMMENDATION

Policymakers should protect citizens from improperly considered policies that attempt to address global warming.

BACKGROUND

The North Carolina Legislative Commission on Global Climate Change plans to issue interim policy recommendations that it believes North Carolina should implement to alleviate possible future global warming. When viewed in light of the tasks charged to the Commission by the legislature in 2005, it is clear that any policy recommendations will necessarily be premature.

HOW THE COMMISSION HAS IGNORED ITS OWN MANDATE

The Commission is not following the law. The legislation creating the Commission, S.L. 2005-242 (SB 1134), states that the Commission “shall conduct an in-depth examination” of several areas as listed in the table on page 13. The Commission has not only failed to make an “in depth examination” in the majority of these areas, it has also ignored several of the most crucial issues.

The Commission has not heard direct testimony on the most important question. The most important area for examination is “the extent to which reductions in the emissions of [greenhouse] gases in the State, region, and worldwide could be expected to affect global climate change.” The effectiveness of any policy proposal hinges on this question. To date, the Commission has not heard any direct expert testimony on this question.

The Commission seems to be ignoring what it has heard. Indirect testimony on whether certain policies could have an impact on global climate change came as part of general presentations by the only two climatologists to speak to the Commission. They suggested that even a worldwide effort along the lines proposed for North Carolina would not have a measurable impact over a time frame of 100 to 200 years.

The Commission has neglected other parts of its mandate. For example, it has heard no testimony from climate scientists regarding possible natural causes of global warming, as required in § 5(1)(a). This is in spite of research arguing that half the warming experienced in the last century has been caused by increased intensity of the sun.

TEXT FROM S.L. 2005-242 § 5(1)(A-G)

This examination shall include all of the following:

- a. A review of current scientific literature on the possible natural and anthropogenic causes of global climate change.
- b. A review of actions taken by the federal government and by other states to address global warming.
- c. An examination of the emissions of greenhouse gases from within the State and the extent to which reductions in the emissions of these gases in the State, region, nation, and worldwide could be expected to affect global climate change.
- d. An evaluation of the economic opportunities for the State that may result from international, national, and State action to address global climate change and the emerging carbon market.
- e. The potential impacts of global climate change on the citizens, natural resources, and economy of the State, including agriculture, travel and tourism, recreation, coastal real estate, insurance, and other economic sectors.
- f. The costs of any action taken by the State to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.
- g. The benefits of any action taken by or within the State or other states and at the national or international levels to address global climate change on individuals, individual households, local governments, businesses, educational institutions, agricultural operations, the State government, and other institutions and economic sectors.

The Commission has not considered the costs and benefits. It has not heard testimony regarding the costs and benefits of proposals that they are considering, as mandated in §§ (1)(e-g). Any policy recommendations would be justified only if, in light of sound economic cost/benefit analysis, the benefits to current and future North Carolinians outweighed the costs that the policy would impose.

The Commission's actions are troubling. The Commission has either been lazy in pursuing its legislative mandate or, worse, willfully negligent in an attempt to advance a preordained policy agenda. In either case, the General Assembly should insure that its original mandate is adhered to.

Analyst: Dr. Roy Cordato
Vice President for Research and Resident Scholar
919/828.3876 • rcordato@johnlocke.org

ENERGY AND ELECTRICITY

RECOMMENDATION

Policymakers should protect electric utility consumers from extra taxes and charges.

BACKGROUND

Public benefits fund

- The Public Staff is an independent government agency that is supposed to represent the interests of electricity consumers before the North Carolina Utilities Commission. Unfortunately, this agency is supporting higher consumer taxes.
- The Public Staff is recommending that electricity consumers pay, in addition to rates, an add-on fee that has nothing to do with the supply of electricity. The money raised by the fee would go into a “public benefits fund” that could be used for almost anything.
- There may be an attempt to have this fee passed by the Utilities Commission without ever going to the legislature for approval — a move that is likely illegal.

Renewable portfolio standard

- A renewable portfolio standard would require utilities to provide a certain percentage of electricity through renewable sources, such as wind and solar, even though it would mean higher costs for electricity.

HOW A PUBLIC BENEFITS FUND WOULD HURT CONSUMERS

A public benefits fund gets its money from an *electricity sin tax*. The extra fee that will be charged is similar to a sin tax for cigarettes. It is an extra charge unrelated to the good (electricity) that consumers are required to pay in order to receive the good. The money collected then goes to a fund to reduce the use of the good—to reduce the sin. In this case, the sin is electricity usage.

The electricity sin tax that would finance the “public benefits fund” could be at least \$181 million annually. This \$181 million number is from the “North Carolina State Energy Plan” and is based on national averages.

This fund likely would be run by an unelected and unaccountable third party. The last thing North Carolina needs, especially in an era of governmental ethics problems, is another open-ended slush fund controlled by an unaccountable third party.

WHY LEGISLATORS SHOULD ELIMINATE THE PUBLIC STAFF

If the state electric utility consumer advocate believes raising taxes is beneficial, then it obviously is not doing its job. The Public Staff exists, according to the law that created the agency, to represent the interests of consumers—not the interests of utilities, environmental groups, or even the public interest.

WHY A RENEWABLE PORTFOLIO STANDARD IS BAD FOR CONSUMERS

There is a lack of support for renewable sources of energy. NC GreenPower is a program that allows North Carolinians to voluntarily contribute money to produce electricity through renewable sources. The Utilities Commission's recent report on a renewable portfolio standard states "the NCGP [NC GreenPower] program thus far has been able to provide 0.011% of the State's energy needs."

Most renewable sources cost much more than traditional sources. This is true even though they are heavily subsidized on the state and federal level.

Consumers should not be forced to pay more for electricity. A renewable portfolio standard (RPS) will mean higher costs for electricity. Utilities will pass on any of the extra costs to consumers.

Solar and wind power have serious environmental problems. They both use a significant amount of land. Wind power is a major enemy of birds, killing them in large numbers. It also kills endangered birds.

Biomass has serious environmental problems as well. According to the Utilities Commission's report on an RPS, "From an environmental standpoint, combustion of biomass leads to many of the same kinds of emissions as the combustion of fossil fuels, including air pollutants, greenhouse gases, and solid wastes (ash)."

Analyst: Daren Bakst, J.D., LL.M.
Legal and Regulatory Policy Analyst
919/828.3876 • dbakst@johnlocke.org

COUNTY MEDICAID RELIEF

RECOMMENDATION

The state should take over the county share of Medicaid within five years without a tax increase.

BACKGROUND

Sales tax swap

- Sen. Tony Rand proposed that the state take over county Medicaid in exchange for a penny of the local sales tax. Counties would then have the option to add a penny to their local sales tax. This would amount to a hidden \$1 billion tax increase.
- Complicating the sales tax swap is that the local sales tax is collected by the state and distributed to counties in three different ways, each with a different impact on county revenues.

Outdated Medicaid policy

- Since the 1970 creation of Medicaid in North Carolina, the state has shifted 15 percent of its program costs to counties.
- North Carolina is the last state that makes counties pay a fixed share of non-federal Medicaid costs.

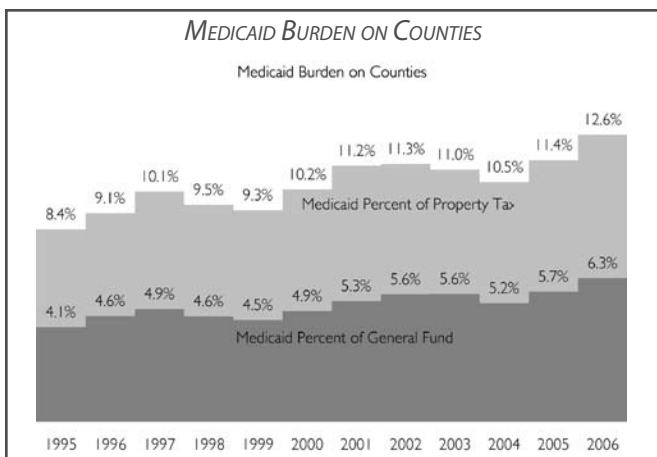
Unfair to counties

- Counties have no policy control over Medicaid. Program expansions are decided at the state and federal level.
- Half of North Carolina counties spend more on Medicaid than they do on school facilities.
- Half of North Carolina Medicaid spending is for optional populations or optional services.
- On the high end, Robeson County devoted 39.1 percent of its property tax and 14.9 percent of its General Fund to Medicaid.
- On the low end, Dare County used 3.8 percent of its property tax and 1.8 percent of its General Fund for Medicaid.

WHY TAX-FREE COUNTY MEDICAID RELIEF IS NECESSARY

State government makes the policy. It was a bad idea to stick counties with 15 percent of the state's Medicaid bill with little ability to affect the bill.

Medicaid has room to shrink. State expansions of Medicaid as recently as 2005 have contributed to the 85 percent



increase in county Medicaid costs this decade. Rolling back these expansions will help make the program more affordable, no matter who pays.

Taxpayers are innocent bystanders. State and county officials should be able to set priorities instead of foisting the decisions on North Carolina's families. Putting the burden on those with no say in policy is where the problem started.

The burden on counties is growing. In fact:

- County Medicaid spending grew 85 percent from FY 2000 to FY 2007 — 9 percent a year.
- Medicaid program costs for counties totaled \$460 million in FY 2006.
- State legislators included \$27 million in the FY 2007 budget to cap county costs.
- From 1979 to 2003, North Carolina's Medicaid enrollment more than tripled and expenditures grew by 1,859 percent, while total population grew by 45 percent.
- Medicaid took on average 6.3 percent of counties' General Fund spending and 12.6 percent of property tax revenue in FY 2006.

Analyst: Joseph Coletti
Fiscal and Health Care Policy Analyst
919/828.3876 • jcoletti@johnlocke.org

HEALTH TAX CREDITS

RECOMMENDATION

Provide \$1,000 per person (up to \$4,000 per family) refundable tax credits to individuals who purchase health insurance in the non-group market.

BACKGROUND

Employers and insurance coverage

- Sixty percent of non-elderly Americans have insurance through their employer, while just nine percent purchase insurance on their own.
- Employer-based health insurance is an anomaly of World War Two-era wage controls and IRS rules that did not count benefits as wages.
- Self-employed persons, those whose employers do not provide them insurance, and those who choose to purchase a more suitable policy for their needs must pay income taxes, payroll taxes, or both, on top of the money they use to buy insurance.

Tax problems

- The tax exemption for employer-provided insurance is worth more to those with higher incomes and higher tax rates.
- North Carolina can address this problem in the federal tax code with state tax credits for individuals who purchase insurance in the non-group market.

Insurance options exist

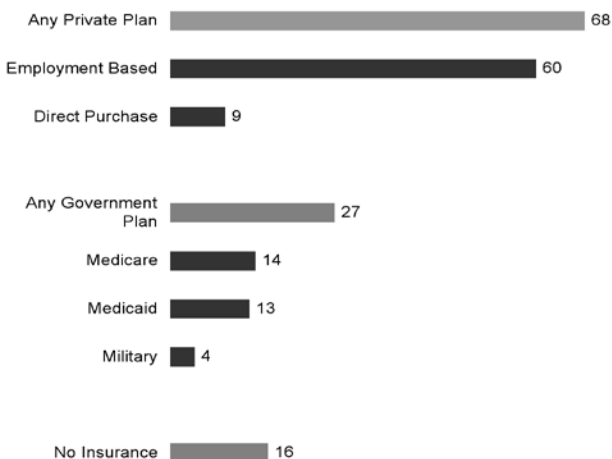
- Research suggests that if more people knew their options, they would purchase insurance on their own.
- A 45-year-old male in Raleigh can find, for example, 58 plans through *ehealthinsurance.com* with premiums as low as \$95 per month. Blue Cross/Blue Shield offers a number of plans, including an HSA with premiums of \$101 per month.
- Coverage for a family of four with two teenage children is available for as little as \$218 per month.

WHY HEALTH TAX CREDITS ARE NEEDED

Current federal tax law is unfair. Individuals with higher incomes receive more benefit from tax exemption because of the progressive tax rates at the state and federal levels.

HEALTH INSURANCE BY TYPE OF COVERAGE, 2005 (PERCENT)

Health Insurance by Type of Coverage - 2005
(Percent)



Source: U.S. Census Bureau

Tying insurance to employment is inefficient and ineffective, with the following ill effects: 1) *Job lock*. Employees stick with a job to keep insurance, which limits innovation and growth throughout the economy. 2) *More uninsured*. When a person switches jobs, COBRA coverage can be too expensive to purchase and insurance through the new employer may have a waiting period, so the number of uninsured grows. 3) *Product mismatch*. With few options available from their employer, workers have too much or too little insurance for their needs. They also may have to change doctors when their employer changes plan options. 4) *Third-party payment*. Health insurers and government pay 86 percent of medical costs, leaving just 14 percent for the individual to pay. This influences individuals to choose more — and more expensive — care, tests, and medications. 5) *Higher health care prices and health insurance premiums for all*.

Health credits can complement the tax advantages of Health Savings Accounts (HSAs). HSAs provide individuals with affordable health insurance and the ability to save for future long-term care needs.

Analyst: Joseph Coletti
Fiscal and Health Care Policy Analyst
919/828.3876 • jcoletti@johnlocke.org

EMINENT DOMAIN

RECOMMENDATION

North Carolina needs comprehensive eminent domain reform, including a new constitutional amendment.

BACKGROUND

What is Eminent Domain?

- Eminent domain refers to the government's power to seize private property without the owner's consent. The Fifth Amendment of the United States Constitution states, "Nor shall private property be taken for public use, without just compensation."
- This means that a person's property can be seized only if it is for a "public use" and "just compensation" is provided to the owner.

Kelo v. City of New London

- In 2005, in the now infamous case *Kelo v. City of New London*, the United States Supreme Court held that the government could seize private property for economic development reasons (economic development takings).
- If the government thinks your house would generate more tax revenue as a shopping mall, it can seize your house and transfer it to a shopping-mall developer.

Developments after the *Kelo* case

- This case was a wake-up call for citizens across the country. All of the eminent domain abuse that has gone on for years is now in the spotlight.
- Other states have taken action to protect their citizens from eminent domain abuse. North Carolina, unfortunately, has done very little to protect property rights.

THE NEED FOR A CONSTITUTIONAL AMENDMENT

North Carolina's Constitution has very weak property rights protection. The state constitution says property rights are whatever is the "law of the land." The United States Supreme Court therefore defines property rights for the state. North Carolinians do not have a constitution that protects them from *Kelo*-type takings.

State statutes are inadequate. A statute is inadequate protection against *Kelo*-type takings and other eminent domain abuses. When a statute can be changed at the whim of political interests, this is not legitimate protection.

Property rights should be treated like other fundamental rights. If freedom of speech rights were gutted, we never would rely on statutes to protect this fundamental right.

THE NEED FOR COMPREHENSIVE EMINENT DOMAIN REFORM

“Public Use” has been interpreted to mean almost anything. It should be clearly defined to mean a use by the government or by the general public as a matter of right (e.g., roads and schools).

“Just Compensation” is not just. Receiving fair market value, which generally has been considered just compensation, is far from just. Compensation should restore affected property owners to the same position were their property not taken.

Kelo-type takings should be prohibited. The legislature did remove provisions that expressly *allowed* for economic development takings; however, it still has not created a blanket prohibition clearly *prohibiting* all economic development takings. *If North Carolinians are protected from Kelo, then why should anyone oppose a blanket prohibition on economic development takings?*

Economic development taking authority often is hidden. For example, it is possible for a regional transportation authority to take property as long as it is “*useful* for the purposes of public transportation” (N.C. Gen. Stat. §160A-601, emphasis added). This could mean almost anything, including takings for economic development reasons.

The burden always should be on the government. Eminent domain is a very powerful tool that should be used only when the government can demonstrate it is necessary and no reasonable alternatives exist.

Analyst: Daren Bakst, J.D., LL.M.
Legal and Regulatory Policy Analyst
919/828.3876 • dbakst@johnlocke.org

FORCED ANNEXATION

RECOMMENDATION

Reform N.C. statutes to require approval of two-thirds of the property owners in areas to be annexed.

BACKGROUND

- North Carolina is one of only four states that permits municipalities to annex property without a vote of the citizens in the affected area.
- Forty-six states provide a mechanism for property owners to vote on whether they want to be annexed. South Carolina requires 75 percent of the property owners, representing at least 75 percent of the property value, to provide their consent.

WHY ANNEXATION LAWS NEED REFORM

Forced annexation violates principles of democracy. The American system of government is based on the principle that government must be controlled by the “consent of the governed.” Forced annexation violates this principle by not allowing citizens to vote on whether or not they want to be annexed.

There are unreasonable and unfair costs. When municipalities forcibly annex areas, homeowners are often assessed so-called development fees. These fees often cost thousands of dollars for the extension of services that residents neither need nor want.

Municipalities simply want to expand their tax base. While supporters of the current law argue that cities need forced annexation to plan growth, the reality is that most N.C. cities that use forced annexation are motivated by the desire to expand their tax base in order to pay for inefficient service delivery or extravagant spending projects.

Non-residents already finance municipalities. Supporters of forced annexation argue that non-residents are using services without paying for them. Although they do use city services when they work and shop in the city, non-residents also pay taxes both directly in sales taxes and indirectly in the prices they pay for purchases at businesses in the city.

Non-resident user fees can address concerns. Even assuming that non-resident funding is insufficient, the answer is not to force non-residents into the city, but to charge appropriate non-resident user fees for city services. Obviously, forced annexation supporters do not favor this

option because they want the city to have monopoly power over new residents, forcing them to pay taxes for services they neither want nor need.

Forced annexation weakens citizen control and creates inefficiencies. By encouraging cities to expand, forced annexation weakens citizen control over city government and creates inefficient delivery of services by large city bureaucracies. Some research examples:

- Columbia law professor Edward Zelinsky found that large urban governments are less responsive to citizen preferences than smaller towns and cities.
- USC professor Robert Bish and Indiana University professor Vincent Ostrom concluded that large urban governments are often less efficient in providing public services than smaller city and suburban governments.
- Harvard researcher Howard Husack found that despite the claim that cities need taxes from wealthy suburbanites to help poor inner-city residents, city spending flows to areas that have the most political influence (which are rarely the poorest neighborhoods). Raleigh's extravagant spending on its downtown and relatively low spending on poorer Southeast Raleigh seems to bear out Husack's finding.

Forced annexation reduces the competition between municipalities. Many economists argue that a multiplicity of jurisdictions (county, city and suburban) encourages local governments to compete for residents based on efficient delivery of services that residents desire and demand. Large consolidated city governments that are created by forced annexation promote government monopoly power over residents and are less efficient and less responsive.

Analyst: Dr. Michael Sanera
 Research Director and Local Government Policy Analyst
 919/828.3876 • msanera@johnlocke.org

HIGHWAY FUNDING

RECOMMENDATION

Dedicate the Highway Fund and Highway Trust Fund to cost-effective road projects, instead of the General Fund, public transportation, and road projects with low returns.

BACKGROUND

State funding process

- North Carolina ranks second in the nation in miles of state-owned roads with 78,871.
- State funds maintain 77 percent of roads in North Carolina.
- Seventy-six percent of North Carolina Department of Transportation spending uses Highway Fund and Highway Trust Fund money. The other 24 percent is from driver-paid federal funds.

State funding problems

- The General Assembly created the Highway Trust Fund in 1989 to pay for construction of a four-lane intrastate system and urban loop highways. All projects were to be completed by 2003.
- Each year, \$170 million would transfer to the General Fund from the Highway Trust Fund to make up for lost revenue from sales taxes on new vehicle sales.
- Beginning in FY 2001-02, the transfer from the Highway Trust Fund climbed to \$250 million per year. An additional \$125 million taken in FY 2002-03 was to be repaid with interest.
- Transfers to the General Fund accounted for nine percent of Highway Fund and Highway Trust Fund revenues. Another five percent paid for ferries, railroads, public transportation, and other items unrelated to roads. Only 68 percent of the Highway Fund and Highway Trust Fund expenditures went to road construction and maintenance.
- Just two-thirds of construction related to the Highway Trust Fund is complete, and progress on the remaining mileage is slow.

WHY HIGHWAY FUNDING NEEDS REFORM

Money should not be diverted to the General Fund. Transferring money to the General Fund to make up for revenue lost due to elimination of the sales tax on motor

*EXCESS TRANSFERS TO GENERAL FUND
FROM HIGHWAY TRUST FUND*

<i>Fiscal Year</i>	<i>Amount (\$ millions)</i>
2001-02	\$80.0
2002-03	\$207.4
2003-04	\$252.4
2004-05	\$242.6
2005-06	\$252.6
2006-07	\$57.5
Total	\$1,092.5

Source: NC General Assembly Fiscal Research Division

vehicles may have been reasonable for a time, but has lost its rationale since 2003, when the projects were originally supposed to be completed.

There is a major shortfall. The North Carolina Department of Transportation estimates a \$920 million shortfall to build and maintain roads over the next three years. The projected shortfall over the next 25 years is \$65 billion.

Road conditions are some of the worst in the country. North Carolina once ranked 23rd on road conditions, but now ranks 47th.

Poor spending choices can have safety implications. Much of the spending on roads is distributed away from the areas with greatest need for road construction and maintenance. Diverting money from needed road maintenance and construction projects is unsafe and potentially fatal. For example, guardrails throughout the state are in disrepair.

State government is too involved in local projects. Ferries, public transportation, and other non-road spending should be the responsibility of local governments or private operators.

Transit is critical to the economy. Reliable — and reliably prompt — transit is a key infrastructure need for continued economic growth in the state.

Analyst: Joseph Coletti
Fiscal and Health Care Policy Analyst
919/828.3876 • jcoletti@johnlocke.org

RAIL TRANSIT

RECOMMENDATION

Policymakers should stop supporting local rail projects and instead support cost-effective modes of transportation that meet the needs of the public.

BACKGROUND

- The “romance” of rail impairs the judgment of many state and local policymakers, especially given the notion that the federal government might help subsidize rail systems.
- North Carolina has paid a significant amount for rail projects without seeing results. Consider, for example, the Triangle Transit Authority’s (TTA) regional rail project, which is — for all practical purposes — dead and has been dead for some time. About \$148 million in federal, state, and local funds have already been spent on the TTA project, and an additional \$15 to \$20 million are obligated to be spent.

WHY RAIL TRANSIT IS A BAD IDEA FOR NORTH CAROLINA

Rail serves very few people. The small market share of rail is surprising. Even in markets that have far larger population densities and employment centers than any N.C. city, rail transit has a surprisingly small ridership. In urban areas that have rail systems, rail accounts for only 1.26 percent of total passenger travel. Automobiles account for 97.43 percent.

One highway lane carries far more passengers than rail. Outside of New York, no rail transit line carries as many people as even one highway lane. Proponents of rail often make claims that rail can carry more people than four or more highway lanes. They focus on “capacity” and what rail could do in theory, not on how rail works in reality. According to the Thoreau Institute (“Federal Transit Data Show that Rail Doesn’t Work”), a highway lane carries:

- Six times more passengers than the most productive commuter-rail line.
- About three times more passengers than the most productive light-rail line.
- Over 50% more passengers than the most productive heavy-rail line.

*RAIL AND AUTOMOBILE SHARES OF ALL MOTORIZED PASSENGER TRAVEL,
BY URBANIZED AREA*

Urbanized Area	Rail Share	Automobile Share
Atlanta	0.95%	98.50%
Baltimore	1.05%	97.79%
Boston	4.03%	95.03%
Buffalo	0.12%	99.39%
Chicago	2.76%	96.20%
Cleveland	0.40%	98.71%
Dallas-Ft. Worth	0.29%	99.25%
Denver	0.23%	98.56%
Ft. Lauderdale	0.34%	99.02%
Hartford	0.07%	98.50%
Los Angeles	0.37%	98.42%
Miami	0.42%	93.43%
New York	8.28%	89.20%
Philadelphia	2.00%	96.97%
Pittsburgh	0.16%	98.16%
Portland	0.76%	97.88%
Sacramento	0.26%	99.14%
Salt Lake City	0.35%	98.85%
San Diego	0.84%	98.55%
San Francisco	3.01%	95.33%
San Jose	0.36%	98.81%
Seattle	0.05%	97.36%
St. Louis	0.27%	99.28%
Washington, DC	2.81%	95.98%
Average	1.26%	97.43%

Source: This table was developed using data provided by the American Dream Coalition and Thoreau Institute compiling fields from the 2001 National Transit Database. The rail share was calculated by dividing total rail passenger miles by total passenger miles (all transit, including rail, plus automobile).

Analyst: Daren Bakst, J.D., LL.M.
Legal and Regulatory Policy Analyst
919/828.3876 • dbakst@johnlocke.org

OPEN GOVERNMENT

RECOMMENDATION

Enforce current legislative rules and open the legislative process.

BACKGROUND

Citizens' knowledge of the legislature

- According to a 2003 National Conference of State Legislatures report entitled "Citizenship," 72 percent of individuals over the age of 26 could name the party of their state governors. However, only one-third of this same group could identify the party in control of their legislature. This low number is the same percentage as would have existed if they had simply guessed.
- In a Civitas Institute poll in February of 2006, only 40 percent of respondents knew what party controlled the North Carolina Senate, and only 35 percent knew what party controlled the House.
- Most citizens simply do not know what is happening in the state legislature. For those legislators that believe in open government, it is clear that extra steps need to be taken to reach out to the public and let them know what is happening in Raleigh.

Two important overarching questions

- What rules will allow for better dissemination of information to the public?
- What rules will help the public know *why* decisions are being made? If there is a true deliberative process, the public likely will have more confidence in policymakers and the entire legislature.

HOW THE LEGISLATURE CAN OPEN THE LEGISLATIVE PROCESS

Follow the rules. The first and most important rule of the legislature should be to follow its own rules. All presiding officers should have to follow and enforce the rules of the legislative body. Failure to do so should be an ethics violation.

Improve the procedural-related rules. Examples include:

- Roll-call votes should be required on all votes, including those in committees.
- The House and Senate ethics committees should review whether any meetings have taken place in violation of the state's open-meetings law.

- Committee substitute bills should be given to committee members at least two days in advance of a meeting.
- Any committee that issues a report should give committee members a chance to develop a dissenting report that will be disseminated with the main report.

Improve information dissemination. Examples include:

- As is done in South Carolina, the daily journal for both the House and Senate should be made available daily on the legislature's web site.
- The audio of all meetings should be archived on the legislature's web site.
- The majority and minority parties in the House and Senate should also have web sites of their own that would be accessed easily from the legislature's web site.

Improve budget-related rules. Examples include:

- The budget should contain only spending and tax items.
- There should be no discretionary legislative funds or funds in the executive branch that are subject to direction from any legislator.
- Once the budget is referred to the floor, there should be at least three days before consideration of the bill.
- Budget conference and committee meetings should be open to the public.
- All spending and taxing provisions should be itemized clearly in the text of the budget bill itself (and not explained in attachments such as committee reports).

Analyst: Daren Bakst, J.D., LL.M.
Legal and Regulatory Policy Analyst
919/828.3876 • dbakst@johnlocke.org

TAXPAYER-FINANCED ELECTIONS

RECOMMENDATION

Policymakers should eliminate the existing judicial taxpayer-financed campaign system and protect citizens against similar proposals for other races.

BACKGROUND

North Carolina's history of taxpayer-financing campaign systems

- North Carolina had a failed partial taxpayer-financed system (public financing) for governor races.
- Despite this failure, in 2002, the money was taken from this program and put into a taxpayer-financed judicial campaign system. This program provides taxpayer funding to candidates that agree to limit their spending.

The failure of the judicial taxpayer-financed campaign system

- The legislation creating the system expressly stated that no money would come from the General Fund to support the program.
- The program was supposed to be funded by taxpayers voluntarily diverting \$3 of their taxes to the judicial campaign-finance system. The system also was supposed to be funded by attorney contributions.
- As is the case with taxpayer-financed systems across the country, the public did not support the program. Only 6-7 percent of taxpayers decided to divert \$3 of their taxes to the system.
- Not surprisingly, the legislature did exactly what it said it would not do. It took money from the General Fund (general taxpayer dollars) to fund the program. It also required attorneys to make \$50 contributions.
- Despite all this failure, there is even talk of a pilot test for legislative races. These systems likely are unconstitutional, and at best are unethical.

WHY TAXPAYER-FINANCED ELECTIONS SHOULD BE ELIMINATED

The lack of public support is clear. When only 6-7 percent of taxpayers give \$3 to a program, even though it means no increase in taxes, the public is making its opinion known loud and clear.

Forced speech. Taxpayers are forced to support candidates that they oppose. Even if a candidate's position on an issue is repugnant or against an individual's religious beliefs, the taxpayer still must support the candidate.

The system chills the speech of traditional candidates. When candidates who decide not to receive taxpayer subsidies for their campaigns (traditional candidates) exceed a certain amount of spending, their subsidized opponents receive "rescue funds" to equalize the spending. As a result, by trying to get their message out, traditional candidates will find they are helping their opposition.

It is an incumbency protection law. Challengers often need to overcome built-in advantages that incumbents have, such as name recognition, by spending more than incumbents. Through the "rescue fund" scheme, these systems prevent challengers from being able to do that.

Chills the speech of independent groups. Even independent groups that spend a certain amount of money on what are called independent expenditures can trigger rescue funds for a subsidized candidate. Independent expenditures mean communications that expressly support or oppose a candidate.

For many candidates, taking taxpayer dollars is involuntary. The system would be voluntary if traditional candidates were not punished for their choice not to take taxpayer dollars. From chilling speech to excessive reporting requirements, the judicial campaign system punishes traditional candidates so that they, for all practical purposes, have to take taxpayer dollars.

Fallacy of the high-participation rate. System proponents argue that a high participation rate of candidates is evidence that the system works. Given the stacked deck against traditional candidates, it is amazing that participation is not 100 percent.

Analyst: Daren Bakst, J.D., LL.M.
Legal and Regulatory Policy Analyst
919/828.3876 • dbakst@johnlocke.org

ABOUT THE JOHN LOCKE FOUNDATION

The John Locke Foundation is a nonprofit, nonpartisan public policy institute based in Raleigh. Its mission is to develop and promote solutions to North Carolina's most critical challenges. The Locke Foundation seeks to transform state and local government through the principles of competition, innovation, personal freedom, and personal responsibility in order to strike a better balance between the public sector and private institutions of family, faith, community, and enterprise.

To pursue these goals, the Locke Foundation operates a number of programs and services to provide information and observations to legislators, policymakers, business executives, citizen activists, civic and community leaders, and the news media. These include the foundation's monthly newspaper, *Carolina Journal*; its daily online news service, CarolinaJournal.com; the Locke Letter, a quarterly newsletter for donors; regular events and conferences on important public policy issues; and research reports of varying lengths on topics facing state and local governments. The Foundation is a 501(c)(3) research institute and is funded solely from voluntary contributions from individuals, corporations, and charitable foundations. It was founded in 1990. For more information, visit www.JohnLocke.org.

“To prejudge other men’s notions
before we have looked into them
is not to show their darkness
but to put out our own eyes.”

JOHN LOCKE (1632–1704)

Author, *Two Treatises of Government* and
Fundamental Constitutions of Carolina



200 West Morgan St., #200
Raleigh, NC 27601
V: 919-828-3876; F: 919-821-5117
www.johnlocke.org
info@johnlocks.org