



Carolina Cronyism

Introduction, Overview, and Reform

JON SANDERS
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Executive Summary



Every policy and decision by government has economic costs, and more so when the policy interferes with or, worse, prevents some market choices. Such negative economic effects are what make even more pernicious the practice of cronyism. Also called “crony capitalism,” a misnomer suggesting kinship rather than enmity to free-market capitalism, cronyism is reviled across the political spectrum — outside the chambers of power.

Cronyism is an umbrella term covering a host of government activities by which an industry or even a single firm or speculator is given favors and support that they could not attain in market competition. Such activities include, for example, regulations that help favored businesses, harm their competitors, or both; laws that restrict new competitors from entering a market or that raise the cost of remaining in the market; government-sponsored cartels and monopolies; wasteful and unnecessary spending programs; direct subsidies and loan guarantees to favored businesses; mandates requiring consumers to buy favored products; and high nominal corporate income tax rates with tax breaks, reimbursements, or other incentives targeted to specific businesses.

The problem isn’t just the recognizable corruption of politicians tipping the scales for their friends, however. It is when the political system itself is situated in ways that make corrupt — or at least ethically questionable — actions tempting. The failure of good-government safeguards opens the door: government straying into overregulation, usurping from consumers the right to pick market “winners” and paving the way for ever more intense lobbying; regulators becoming captured by the regulated

industry to the enrichment of both at the expense of everyone else; special interests taking advantage of voter indifference to reap concentrated benefits against their diffuse costs; and media neglecting or subverting their role as watchdogs.

Political rewards, favoritism, use of politics for personal enrichment, and arbitrary doling out of tax revenues have been with North Carolina since it began under the rule of eight political cronies of King Charles II responsible for helping restore the monarchy to England. This report offers a brief rundown of recent, and sometimes notorious, examples of cronyism in North Carolina: former N.C. House Speaker Jim Black’s many machinations, former Gov. Mike Easley’s land deals and associations, the Currituck Ferry, the Randy Parton Theatre, a promise of state money to a cooking school, the Global TransPark, and multiple slush funds and incentives packages.

Overall, the state distinctly lacks transparency in government. Being able to conduct public business out of sight of the public invites corruption. North Carolina received an F grade overall on public access to information by the State Integrity Investigation, a project of the Center for Public Integrity, Global Integrity, and Public Radio International. NC Transparency, a project of the John Locke Foundation, gave every state agency but one a grade of D or F, and that one agency — the Department of Public Instruction — received a C.

Overregulation, a major factor driving cronyism, has been a growing problem in North Carolina. Over the past decade business leaders appeared to grow increasingly alarmed at North Carolina’s regulatory burden, ranking it second only to taxes in

harming the business climate. In comparison with other states' regulatory climates, North Carolina's fared poorly, lacking mandates for cost/benefit analysis, periodic review, and small-business flexibility. By 2005, four out of five N.C. businessmen thought their state's regulations weren't justifiable based on costs and benefits.

The General Assembly has passed major regulatory reforms twice in the past two years, and Senate President Pro Tempore Phil Berger has promised more regulatory reforms in the coming years.

This report offers several reforms for consideration: 1) make state spending fully transparent; 2) make the processes of state governing open and transparent; 3) expand the Regulatory Reform Act of 2011's fix of the administrative appeals process to apply to all agencies, not just environmental agencies; 4) strengthen the Rules Review Com-

mission; 5) require agencies to conduct cost/benefit analysis of all proposed regulations and require rejection of rules for which the costs exceed the benefits; 6) require a periodic review of existing state regulations, using cost/benefit analysis, and rewrite or discard those for which the costs exceed the benefits; 7) implement small-business flexibility analysis for prospective rules to prevent regulations from running roughshod over small employers; and 8) eliminate the corporate income tax.

With this paper, the John Locke Foundation launches a series of brief and targeted research papers on different aspects of cronyism in North Carolina. This introductory paper defines the problem and gives an overview of the state's recent experiences with cronyism. Future papers will examine state and local policies and programs that promote cronyism over good government.

Introduction

It is error alone which needs the support of government. Truth can stand by itself.

THOMAS JEFFERSON¹

In the marketplace of ideas, error is hopelessly outclassed by truth. It takes the coercive power of government to keep error competing, and it requires even more coercive power to suppress truth.

As in the marketplace of ideas, so in markets in general. Consider the energy market, for example. The administration of Pres. Barack Obama decided to use the coercive power of government to favor so-called green energy. Nevertheless, despite three years of easy money to green energy and tightening regulations on fossil fuels, green energy has been bleeding jobs while oil and gas have been adding jobs. Meanwhile, the very real economic costs of the president's green energy policies are staggering and still continue to mount.²

After all, government does not bestow favoritism in a vacuum; its every policy and decision has economic costs, the more so when the policy interferes with or, worse, prevents some market choices.³

Such negative economic effects are what make even more pernicious the practice of cronyism. Also called “crony capitalism,” a misnomer suggesting kinship rather than enmity to free-market capitalism, cronyism is reviled across the political spectrum — outside the chambers of power.

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Part I

What Is Cronyism?



Cronyism is an umbrella term covering a host of government activities by which an industry or even a single firm or speculator is given favors and support that they could not attain in market competition. Such activities include, for example, regulations that help favored businesses, harm their competitors, or both; laws that restrict new competitors from entering a market or that raise the cost of remaining in the market; government-sponsored cartels and monopolies; wasteful and unnecessary spending programs; direct subsidies and loan guarantees to favored businesses; mandates requiring consumers to buy favored products; and high nominal corporate income tax rates with tax breaks, reimbursements, or other incentives targeted to specific businesses.

COZY RELATIONSHIPS

The web site Investopedia describes the consequence of such a relationship between business and government: “Instead of success being determined by a free market and the rule of law, the success of a business is dependent upon the favoritism that is shown to it by the ruling government in the form of tax breaks, government grants and other incentives.”⁴

In practice cronyism is, according to Nobel laureate economist Joseph E. Stiglitz, “old-fashioned corporate welfare: give to those with the appropriate connections.”⁵ *The New York Times*’ Nicholas D. Kristof called it “a government-backed featherbed ... socialism for tycoons and capitalism for the rest of us,” adding that it involves “featherbedding by both unions and tycoons, and both are impediments to a well-functioning market economy.”⁶

John Stossel describes it as a marketplace “substantially shaped by a cozy relationship among government, big business and big labor” in which “government bestows a variety of privileges that are simply unattainable in the free market, including import restrictions, bailouts, subsidies and loan guarantees.”⁷

The problem isn’t just the recognizable corruption of politicians tipping the scales for their friends, however. It is when the political system itself is situated in ways that make corrupt — or at least ethically questionable — actions tempting.

FAILED SAFEGUARDS

When safeguards fail, cronyism is swift to enter. The first failure is when government disregards its own boundaries, straying into areas belonging to private entrepreneurs and consumers. When a government neglects to respect unenumerated rights inherent in individuals⁸ (i.e., assuming it can take on whatever power it pleases so long as it is not expressly forbidden in its constitution or its prohibition lacks judicial protection), it takes on excessive regulatory powers far afield of its proper scope.

Regulatory overreach changes market incentives from winning over consumers to winning over regulators and rule-makers. Such an environment dissuades innovation and finding efficiency, which means it works against entrepreneurs offering consumers better or lower-cost (or, not infrequently, both) goods. In the end, consumers lose out, disfavored enterprises lose out, and economic growth is kept artificially low.

When the politicians usurp from consumers the right to pick “market” winners, they create an en-

vironment of ever more intense lobbying since so much power and money are at stake in the halls of government rather than the aisles of commerce. *The Economist* painted the scene:

*The government's drive to micromanage so many activities creates a huge incentive for interest groups to push for special favours. When a bill is hundreds of pages long, it is not hard for congressmen to slip in clauses that benefit their chums and campaign donors. The health-care bill included tons of favours for the pushy. Congress's last, failed attempt to regulate greenhouse gases was even worse.*⁹

Higher stakes lead to more skin in the game from businesses and industries big enough to afford it. As Gene Healy of Cato Institute explained:

*According to the latest Census figures, Washington, D.C. is now the wealthiest metropolitan area in the United States. ... This city's wealth is largely based on what public choice economists call "rent-seeking," using the political process to rig the game in one's favor — through subsidies, tariffs, regulatory advantages, and other benefits unavailable via free and fair competition.*¹⁰

In such an environment, the story of the captured regulator — another governmentally instituted safeguard corrupted — is all too familiar. Writing in *The Wall Street Journal*, Gerald P. O'Driscoll Jr. described such regulatory failure:

Congressional committees overseeing industries succumb to the allure of campaign contributions, the solicitations of industry lobbyists, and the siren song of experts whose livelihood is beholden to the industry. The interests of industry and government become intertwined and it is regulation that binds those interests together. Business succeeds by getting along with politicians and regulators. And vice-versa through the revolving door.

We call that system not the free-market, but crony capitalism. It owes more to Benito Mussolini than to Adam Smith. ...

Distorted prices and interest rates no longer serve

*as accurate indicators of the relative importance of goods. Crony capitalism ensures the special access of protected firms and industries to capital. Businesses that stumble in the process of doing what is politically favored are bailed out. That leads to moral hazard and more bailouts in the future. And those losing money may be enabled to hide it by accounting chicanery.*¹¹

Public-choice theory yields another faulty safeguard: the voters themselves. With so little discernible impact on an election, but with so much cost in terms of time and effort to stay informed about potential legislation, regulation, and other acts of government, an individual voter often has little incentive to scrutinize government. In general, therefore, voters tend to be ignorant of government. Furthermore it is the nature of special-interest issues and cronyist policies that the benefits are large and limited to a few, while the costs are diffuse and small per voter. So even when voters would en masse bear the brunt of the cost of a new government policy, the cost would be spread out among them all. Meanwhile, those who would measurably benefit from the new policy have a decided incentive to be involved.

Economists James D. Gwartney, Richard L. Stroup, and Russel S. Sobel described the policy-making implications of this setup:

*If you were a vote-seeking politician, what would you do? Clearly, little gain would be derived from supporting the interest of the largely uninformed and uninterested majority. In contrast, support for the interests of easily identifiable, well-organized groups would generate vocal supporters, campaign workers, and, most important, campaign contributors. **Predictably, politicians will be led as if by an invisible hand to support legislation that provides concentrated benefits to interest groups at the expense of the disorganized groups (such as taxpayers and consumers). This will often be true even if the total community benefit from the special-interest program is less than its costs. Even if the policy is counter-productive, it may still be a political winner.***

*The rational ignorance of voters strengthens the power of special interests. Since the cost imposed on individual voters for each specific issue is small, and since the individual is unable to avoid the cost even by becoming informed on the issue, voters bearing the cost of special-interest legislation tend to be uninformed on the issue. This will be particularly true if the complexity of the issue makes it difficult for voters to think through how the issue affects their personal welfare. Thus, politicians often make special-interest legislation complex in order to hide the cost imposed on the typical voter. (Emphasis in original.)*¹²

Nevertheless, a sizable portion of voters is interested in and passionate about government, and they are concerned with keeping informed. News media, by acting as political information aggregators, can make it easier for people to stay informed. They are therefore an important good-government safeguard. Unfortunately, news media can choose to look the other way, subvert their role by keeping information *from* the public, or grow lazy. Consider *Politico*'s description of a complaisant media willing to suspend suspicion of cronyism when their narrative¹³ is that the president is no friend to Big Business:

When Vice President Dick Cheney met privately with oil company executives to talk about energy policy, he was excoriated for being an industry stooge and wound up on the receiving end of lawsuits that went all the way to the Supreme Court.

Yet, Obama has repeatedly met with CEOs behind closed doors with little outcry about whether he's in the tank for business interests.

*Last February, he had a sit-down in Silicon Valley with the CEOs of Twitter, Netflix, Apple, Facebook and Google. In August, the heads of American Express, Xerox, Wells Fargo and Johnson & Johnson were among those who won a cozy Roosevelt Room meeting with Obama. And in 2010, JPMorgan Chase CEO Jamie Dimon had a one-on-one with Obama in the Oval Office. All had the chance to plead their case, and their companies' case, privately with the president.*¹⁴

A recent Associated Press article about how “Conservative Republicans have roughed up the business community this year” shows just how lazy media can get. Consider the man-bites-dog theme of these paragraphs:

Republicans like to tout themselves as the best friends of business, and the rhetoric only grows louder in an election year. They talk forcefully about their job-creation agenda and determination to undo the burdensome regulations they say arise out of President Barack Obama's policies.

Yet when it comes to many of industry's top legislative priorities, conservative Republican lawmakers and like-minded groups including the Club for Growth and Heritage Action have thrown up roadblocks to tasks that had been easy before the 2010 elections sent a large class of conservative tea party insurgents to Congress.

*They and their ideological leaders argue that the marketplace should dictate what businesses thrive and falter, not Washington.*¹⁵

The article actually equates friendship to business with letting Washington dictate market outcomes — which only makes sense when it is cronyism for Big Business. Small businesses, however, represent 99.7 percent of all employers in the U.S., and they employ half the private-sector workforce.¹⁶ Over the past two decades they have outperformed large firms in job creation.¹⁷ Their interests are often different from those of large firms (with whom, of course, they often compete) and can be decidedly hurt when Washington rather than the marketplace “dictates what businesses thrive and falter.”¹⁸ The marketplace represents consumers' interests. Letting consumers choose which businesses succeed brings about greater market efficiency, which creates greater economic growth, which suits the general interest of consumers and industry.

For media to conflate the interests of small businesses, consumers, and industry in general with that of Big Business is lazy. To do so to the point of championing cronyism is dangerously negligent.

Part II

Cronyism in North Carolina



In a way, North Carolina was founded on cronyism. In 1649, King Charles I of England was beheaded by the forces of Oliver Cromwell, leading to an 11-year period of republican government that ended in 1660 when Charles, the exiled Prince of Wales, returned to the throne. Charles II was greatly indebted to many people for his return, and his gratitude included titles, positions, estates at home, and land abroad. Eight men in particular who had helped restore the English monarchy were uniquely rewarded by Charles, who in 1663 in response to their request made them the original Lords Proprietors of the colony of Carolina. Their government, however, was weak, unstable, and inefficient. South Carolina became a royal colony in 1719, but North Carolina remained governed by the Proprietors until 1729, when seven Proprietors signed over their shares to the Crown and made North Carolina a royal colony.¹⁹

Four decades later North Carolinians grew resentful under an arrogant and arbitrary system of government. The legislature's 1766 act to construct the royal governor's residence in New Bern (derided as "Tryon Palace" after then-Gov. William Tryon) included diverting money already appropriated for schools, a poll tax, and new taxes on imported wine, rum, and liquor. These effects were especially hard on the residents in backcountry North Carolina, who were already oppressed by provincial government officials selected and sent in by the Crown, whom they frequently accused of excessive and arbitrary taxation, dishonesty, and extortion. The character of Edmund Fanning provoked the most outrage. A recent arrival to Orange County from Yale College, Fanning became a legislator,

registrar of deeds, judge of the superior court, and colonel of the militia. To Fanning, North Carolina politics was a source of wealth, and he openly despised and dominated the common people.²⁰

These injustices and indignities led to a public protest movement known as the Regulators, whose members demanded a public accounting from public officials and were resolved, unless forced to do otherwise, that "we will pay no taxes until we are satisfied they are agreeable to law, and applied to the purposes therein mentioned" and that "we will pay no officer any more fees than the law allows."²¹

Fast forward about two and a half centuries, and North Carolina's recent history is still littered with cronyism. The king-making may be metaphorical now, but rewards, favoritism, use of politics for personal enrichment, and arbitrary doling out of tax revenues are still taking place and still damaging to good, strong, fair, and efficient government.

THE STATE LOTTERY AND THE JIM BLACK MACHINE

There was no starker example of cronyism run amok in the Old North State than the personalities involved in the passage of the North Carolina Education Lottery, especially House Speaker Jim Black. Gov. Mike Easley, who was the state's top executive from 2001 to 2008, had long sought a state lottery, but the state House was considered the more difficult chamber for a lottery to win approval. In April of 2005, Black rushed the lottery to approval, getting it through a special committee stacked with lottery supporters the morning of the 6th, then bringing it to the floor for narrow approval by electronic vote, and following that with a second, voice vote.²²



Former N.C. House Speaker Jim Black at a January 2006 hearing of the State Board of Elections. (Photo by Don Carrington.)

Two votes on an item of revenue legislation the same day appeared to violate House rules, but a lawsuit brought by the North Carolina Institute of Constitutional Law and others over that issue was denied by the N.C. Court of Appeals in a 2-1 decision,²³ which ruled that the lottery bill was not a revenue bill. An appeal of the ruling to the state Supreme Court failed when that Court split evenly, 3-3, over the question, with one justice having recused himself.²⁴

State Senate approval followed in August, one week after Senate President Pro Tem Marc Basnight announced that the Senate was finished for the year.²⁵ With two anti-lottery legislators out of town — Sen. Harry Brown (R-Jacksonville) was on a long-delayed honeymoon, and Sen. John Garwood (R-North Wilkesboro) was out because of illness — the Senate achieved a 24-24 tie vote that was broken by Lieutenant Gov. Beverly Perdue.

Once the lottery became the law, the hitherto unseen seams of cronyism began to rip. Reporters J. Andrew Curliss and Dan Kane for *The News & Observer* of Raleigh discovered that longtime Black

aide Meredith Norris, who was working for Black as an unpaid political director, was also employed by lottery vendor Scientific Games and that she had arranged meetings between Black and Scientific Games vice president Alan Middleton, helped Middleton recruit House and Senate members for a yacht outing days before the lottery vote, and put Middleton directly in touch with Black staffers writing the lottery legislation.²⁶ In short, Norris' activities for the lottery company were indistinguishable from those of a lobbyist, even though she was not a registered lobbyist for Scientific Games. Norris also took money from other groups while working for Black on related legislation.²⁷

In 2006 Norris was found guilty of a misdemeanor lobbying law violation. Meanwhile, the discovery of Black's coziness with the lobbying vendor while pushing for the state lottery eventually revealed a thick knot of corruption. For instance, Kevin Geddings, who was appointed to the state lottery commission by Black, had failed to disclose a past relationship with Scientific Games. He was fined and sentenced to four years in prison, and he was later convicted of violating lobbying law.²⁸

Middleton was also found guilty of violating the lobbying law and sentenced and fined.²⁹

The revelations encompassed more than the lottery, however:

- Shortly after the 2002 elections gave Republicans a bare, two-vote majority in the House (61-59), Rep. Michael Decker (R-Forsyth) met Black in an interstate International House of Pancakes' bathroom, where he agreed to accept \$50,000 and a legislative job for his son in exchange for switching parties. The evenly split House led to a co-speakership for Black and Republican Richard Morgan. Decker switched back to the Republican Party but lost re-election in 2004; however, Black requested and received a job for him in the Department of Cultural Resources. In 2006 Decker pleaded guilty to a federal conspiracy charge and was fined \$50,000 and sentenced to four years in prison.³⁰
- Black accepted illegal payments from chiro-

practitioners and optometrists (Black was also an optometrist) and inserted language in the state budget that lowered insurance co-payments for chiropractors and required all children entering kindergarten to receive comprehensive eye exams. Similar arrangements were alleged between the speaker and other businesses, such as payday lenders, strip-club owners, and landfill operators. Black was convicted on felony corruption charges and sentenced to 63 months in federal prison and fined \$50,000.³¹

- Former Charlotte Regional Partnership president Michael Almond and his wife, Helen Ruth Almond, had given Black \$6,500 in political contributions since 2002. Black appointed Mr. Almond to the board of directors of the Golden LEAF Foundation, the fund that distributes half of North Carolina's share of the 1998 tobacco settlement agreement. Mrs. Almond helped Norris find work through the North Carolina Partnership for Economic Development, a coalition of the state's seven regional partnerships, and she was given a job as a heritage tourism official in western N.C.³²
- In 2007 Black admitted in Wake County Superior Court to accepting a loan of \$500,000 from lobbyist Don Beason, supposedly intended to help with a real-estate deal, that wound up in his campaign account instead. Black's explanation for it included the former House Speaker saying "You and I know there are all kinds of shenanigans that go on in money and politics."³³ Black had entered an Alford Plea (not admitting guilt but acknowledging that the prosecution would likely prove its case) on state charges of bribing Decker and obstructing justice, and his sentence included a \$1 million fine plus \$54,000 in restitution, with additional jail time suspended so long as Black paid the fine by year's end.³⁴
- After receiving an extension on paying the fine and with \$500,000 still outstanding, Black received the court's approval in 2009 to deed over two vacant tracts of land in Matthews valued

at \$150,000 to Wake County Public Schools. Black retained at least \$2 million's worth of property in Mecklenburg County alone.³⁵ By early 2012 the school system was still unable to find a buyer for the land at a price the school board found acceptable. The board's commissioned appraisal for the land valued it at \$341,000; a tax revaluation in 2011 had it at \$143,000.³⁶

A GOVERNOR'S UNDESIRABLE FIRST

In 2010, former Gov. Mike Easley attained the dubious distinction of becoming the first N.C. governor to be convicted of a felony for conduct in office after a plea agreement between prosecutors and his attorneys allowed him to enter an Alford Plea to the charge he violated campaign finance laws. The conviction could have netted the former governor and attorney general up to 15 months in prison, but instead he received no jail time and a \$1,000 fine plus court costs and had his law license revoked. The conviction was over a single, undisclosed helicopter ride Easley received from longtime friend McQueen Campbell during the 2006 campaign. Easley's campaign had been fined \$100,000 by the N.C. Board of Elections for receiving free flights from private aircraft.³⁷

Easley's plea deal meant the end of state and federal investigations into his many other suspicious activities, including:

- Dozens of other free flights provided by Campbell to Easley, going back to his days as attorney general, that were valued at \$87,000.³⁸
- A sinecure and then a huge raise for his wife, Mary Easley, at North Carolina State University, while Campbell, Easley's appointment to the N.C. State Board of Trustees, served as chairman. As director of a university speakers program in the office of the provost, Mrs. Easley's annual salary was increased from \$90,300 to \$170,000 in 2008. Revelation of the deal led to the resignations of Campbell, N.C. State Provost Larry Nielsen, and N.C. State Chancellor James Oblinger. Mary Easley was fired.³⁹

- The lease of the state-owned Southport Marina to developer Charles “Nick” Garrett Jr. and associates. Easley had called a Council of State vote on the lease without disclosing his personal business relationship with Garrett, who had a \$250,000 remodeling contract for Easley’s Southport home. Garrett had also built several luxury condominiums across from the marina.⁴⁰



- An exclusive corner lot at a discount price in the Cannonsgate community on Bogue Sound in Carteret County. In 2005 Easley obtained the Cannonsgate lot on the corner of the Intracoastal Waterway and a new marina, valued in 2006 at \$1.2 million, for less than \$550,000.⁴¹ He also received a 25 percent “seller discount” that reduced the price by an additional \$137,470. Easley bought it from R.A. North Development Inc. of Matthews, headed by the brothers Randolph M. and William G. Allen. Campbell represented Easley in the transaction. He later boasted to a potential client that his connections helped the Allens get crucial permits in half the time they normally would take.⁴² The company financing the project, Cannonsgate Investments LLC, was headed by real estate developer Lanny Wilson, who shared a Wilmington office with Garrett, with whom he had a business partnership in developing the condominiums across from the Southport Marina.⁴³
- Personalities involved in the Southport Marina/Cannonsgate scandals had either been given or received numerous state plums:⁴⁴
 - Easley had appointed William G. Allen to the N.C. Wildlife Resources Commission.

The Cannonsgate development in 2006, with the addition of roads and other amenities. Gov. Easley’s lot is indicated on the left bordering the Intracoastal Waterway and the entry to the marina. (Photo by Don Carrington.)

- Easley appointed Randolph M. Allen to the N.C. Wildlife Resources Commission in 2005.
- Easley appointed Lanny Wilson to the Real Estate Commission and the N.C. Board of Transportation.
- Easley appointed Charles “Nick” Garrett Jr. to the N.C. Board of Architecture and to the Clean Water Management Trust Fund. Garrett also later attained an automobile license tag franchise from the N.C. Department of Transportation, even though a DOT official recommended against it.
- Easley had twice appointed D. McQueen Campbell to the N.C. State Board of Trustees.
- Easley had appointed Campbell’s father, D. M. Campbell Jr., to the N.C. Board of Transportation.
- Easley appointed Campbell’s brother, Brian Campbell, to the Aeronautics Council, an aviation advisory board.
- An apparent discount on an island resort home.

In the early 1990s, the southern beach of Bald Head Island was facing erosion, but state environmental laws banned the construction of hard anti-erosion structures. Bald Head landowners petitioned the state leaders to renourish the beach and install groins. The state agreed to the renourishment, but not the hard structures, so millionaire property owner Walter Davis sued the state in 1994. As attorney general at the time, Easley reached an agreement with Davis in 1995 in which Davis dropped the lawsuit and the state renourished the sand and installed 16 groins. The following year, Easley purchased a home from the island's developer, Bald Head Island Limited, for \$250,000, a price that was \$77,000 lower than a comparable home on the same street sold at the same time.⁴⁵

As for his \$100,000 Elections Board fine, by January 2012 the Easley campaign had paid just over \$5,000. Meanwhile the former governor had paid off \$494,000 on the Cannonsgate property and borrowed hundreds of thousands of dollars against his Raleigh home. Regardless of the nonpayment of the fine, the State Bar will restore Easley's law license at the end of 2012, justifying it on the basis of Easley's claim of accepting responsibility.⁴⁶

Easley's dealings were apparently mimicked by others in his administration. For example, then-Lt. Gov. Bev Perdue received over 40 flights from privately owned aircraft without paying for them while campaigning for governor in 2008 as well as other flights in 2007-08 for official state business. The Board of Elections fined the Perdue campaign \$30,000 over the irregularities. Meanwhile, trials of her associates and fundraisers are ongoing.⁴⁷

Easley's closest aide, Ruffin Poole, was indicted in 2010 on 57 corruption

counts, including bribery, money laundering, racketeering, monetary transactions involving property obtained in a criminal enterprise, and income-tax evasion. After originally pleading not guilty to all counts, Poole pleaded guilty to a single income-tax evasion charge, for which the other charges were dropped in exchange for his cooperation with prosecutors. Poole was sentenced to a year and a day in federal prison, given two years' probation, and fined \$30,000.⁴⁸ U.S. District Court Judge Terrence Boyle seemed dissatisfied with prosecutors. *Carolina Journal* reported:

Boyle asked why charges that focused on corruption and public integrity evolved into a simple failure to pay income taxes. He said that Poole appeared to have expedited four coastal real-estate deals through environmental regulatory agencies: Oyster Harbor (Brunswick County), Cannonsgate (Carteret County), Summer House (Onslow County), and Cutter Bay (Pamlico County). "It is not a secret who these other people are," he said, mentioning "the Allens, Wilson, Campbell."⁴⁹

THE CURRITUCK FERRY

In 2002, the Currituck County Board of Commissioners sought Senate President Pro Tem Bas-



The pontoon boat that the N.C. Department of Transportation purchased for the Currituck Ferry Route has never been used. (Photo by Don Carrington.)

night's help in establishing a ferry service ostensibly to move students from the Outer Banks across the Currituck Sound to school on the mainland. The main factor behind the project, however, was an elaborate scheme to move tourists and resort workers.⁵⁰

As the number of affected students dwindled from 40 to 10 to seven, finally arriving at one, DOT Ferry Division director Jerry Gaskill spearheaded the ferry project, purchasing a 50-foot, 49-passenger pontoon at just under \$300,000 that failed to meet specifications to operate in the channel.⁵¹ The DOT then dredged the channel at Corolla in an area designated an essential marine habitat, triggering a federal investigation.

On April 15, 2005, Danny Noe, a key state official involved in the pontoon purchase and a witness in the investigation, was found dead with a plastic bag over his head and his hands tied behind his back. His death was ruled a suicide.⁵²

Over the ensuing years, Gaskill, former Superintendent of Dredge and Maintenance Billy R. Moore, and three other ferry officials were convicted for their roles in the illegal dredging but were able to avoid serving time in prison.⁵³ Ongoing attempts by state officials to sell the unused pontoon boat have so far failed.⁵⁴

A THEATER, A COOKING SCHOOL, AND A TRANSPARK

Randy Parton Theatre

In 2007 Basnight, Black, and Dept. of Transportation (DOT) Secretary Lyndo Tippet worked with economic developer Rick Watson to bring Moonlight Bandit Productions to build a Branson, Mo.-style theater in Roanoke Rapids. The theater project, backed with \$21.5 million in city-financed Tax



The Randy Parton Theatre (now the Roanoke Rapids Theatre) as seen from across Interstate 95. (Photo by Don Carrington.)

Increment Financing and \$5 million in state funds, was managed by Randy Parton, famous for being the brother of entertainer Dolly Parton, would bear his name, and showcased his band, Moonlight Bandits. Parton had no experience managing a theater. Watson had not only obtained ownership interests in several Bandit-related interests, but also he was under contract to work for them. The whole enterprise collapsed under its own weight, with Watson terminated from his economic development work and severed of his Moonlight Bandits ties, Parton stripped of theater management, and Roanoke Rapids left with a revenue sink on which it would be making debt payments through 2027.⁵⁵

Numerous attempts to sell the theater have fallen through.⁵⁶

Johnson & Wales

A \$10 million promise from Black was instrumental in bringing the culinary arts school Johnson & Wales University to Charlotte in 2002. Easley and Basnight had also pledged their support for the move and for a \$10 million commitment from the state. Black had committed his promise to writing; a letter dated May 23, 2002, to J&W president John A. Yena said, "You have my personal commitment

of support for a \$10 million investment over the next five years by the State of North Carolina for this project.” Black later attempted to sell a state-owned building valued at \$5.25 million to J&W for one dollar, but that was blocked by the governor and the Council of State (which comprises the lieutenant governor, state treasurer, state auditor, commissioner of labor, attorney general, secretary of state, commissioner of insurance, superintendent of public instruction, and the commissioner of agriculture). Meanwhile, beginning in June 2003 state money began to go toward the culinary arts school in fulfillment of Black’s promise.⁵⁷

Even now state budget writers feel obliged to honor Black’s pledge of state money; the latest state budget included \$500,000 for J&W.⁵⁸

Global TransPark

In 1991-92, the General Assembly created the N.C. Global TransPark Authority as a state agency under (but independent of) the DOT and chose Kinston as the site of the Global TransPark, envisioning that the all-cargo airport flanked by just-in-time manufacturers would be an economic engine for Eastern N.C. Then-state Treasurer Richard Moore authorized a loan of \$25 million from the state Escheat Fund to the TransPark in 1993, but two decades later the TransPark was still unable to repay it, with the unpaid liability of the loan ballooning up to \$40 million. In 2008, after offering \$180 million’s worth in incentives, including \$100 million from Golden LEAF, Spirit AeroSystems, a maker of aircraft components, agreed to conduct operations in Kinston.⁵⁹ At a ribbon-cutting ceremony in 2010, Gov. Perdue told the TransPark’s directors, “We do not have and will not take 18 more years for the next Spirit.”⁶⁰ But in April 2011 the Program Evaluation Division of the General Assembly had determined that the TransPark could never support itself nor repay the loan and should therefore be sold off piecemeal.⁶¹

SLUSH FUNDS

In 1997, *Carolina Journal* uncovered a secret slush fund established in 1996 by legislative lead-

ers and the governor. The fund comprised the \$21.3 million “surplus” from the 1995-96 budget that the legislature reappropriated to the Office of State Budget and Management — a surplus that was generated by changing a formula for determining the set-aside in the Repairs and Renovations Reserve Account for fixing state properties. There were essentially no discretionary limits on how the funds could be distributed. The funds were controlled by Senate President Pro Tem Basnight (D-Dare), House Speaker Harold Brubaker (R-Randolph), and Gov. Jim Hunt (D). Basnight and Brubaker each controlled 45 percent of the \$21.3 million, and Hunt, whose budget office handled the transactions, controlled the remaining 10 percent.⁶²

Approximately 250 groups received money from the fund. In some cases legislators were asked by their leaders if they knew of deserving organizations, and many recipients had not even applied for grants. In several instances, legislators requested unrestricted grants to their own organizations.⁶³

Upon the slush fund being publicly known, Basnight said to *The News & Observer*, “You’ve got me thinking. Somehow or other, you’ve got to help these areas in the state that need the money. But it shouldn’t be left in my hands to decide or Brubaker’s hands to decide.”⁶⁴

Nevertheless, in 2005 *Carolina Journal* and *The News & Observer* uncovered other slush funds:

- One diverted money in so-called contingency funds in the N.C. DOT for safety projects. DOT Secretary Tippet controlled the \$15 million fund, giving Basnight and Black \$5 million each to spend on projects of their choosing. Meanwhile, 173 road safety projects identified by DOT engineers were placed on hold for lack of funds.⁶⁵ It was later learned that this three-way division of Contingency Fund monies among the transportation secretary, House speaker, and Senate president pro tem is at least two decades old.⁶⁶
- Another secret spending plan let Black and his fellow co-Speaker Morgan split control of \$7.5 million in discretionary funds appropriated to

the Department of Health and Human Services, the Office of State Budget and Management, and the Department of Cultural Resources.⁶⁷

- Yet another gave Basnight control of \$6.5 million in discretionary funds appropriated to Cultural Resources.⁶⁸
- Morgan also controlled \$1.5 million in Health and Human Services funds.⁶⁹

Three separate funds were created out of the 1998 Master Settlement Agreement with tobacco companies, which Easley helped negotiate as attorney general: the Golden Long-term Economic Advancement Foundation (Golden LEAF), the Health and Wellness Trust Fund, and the Tobacco Trust Fund. Golden LEAF was designated to disburse 50 percent of the projected \$4.6 billion the state would receive over the 25 years covered by the settlement

agreement. Ostensibly those funds are “to provide economic impact assistance to economically affected or tobacco-dependent regions of North Carolina,” but such a nebulous mission has made them open to numerous forays of manipulation and plunder for political favors and cronyism, as *Carolina Journal* and other media have documented.⁷⁰

In 2010, North Carolina voters placed Republicans in control of both houses of the General Assembly for the first time since 1870.⁷¹ Change in party control of the legislature did not, however, bring an end to legislative leaders’ use of the DOT Contingency Fund as a slush fund. Starting in fiscal year 2010, however, the amount of the fund was reduced to \$12 million from \$15 million.⁷²

Senate President Pro Tem Phil Berger (R-Rockingham), House Speaker Thom Tillis (R-Mecklenburg), and DOT Secretary Gene Conti still continue

Examples of 1995-96 Discretionary Slush Fund Grantees

As reported by Carolina Journal in April/May 1997

<i>Legislator</i>	<i>Grantee</i>	<i>Amount</i>	<i>Relationship</i>
Sens.-elect Eric Reeves (D-Raleigh) and Brad Miller (D-Raleigh)	Several nonprofits	\$100,000	District
Rep. Richard Morgan (R-Moore)	Village of Pinehurst (purchase of a firetruck)	\$100,000	Hometown
Rep. David Miner (R-Wake)	Town of Fuquay-Varina (downtown revitalization)	\$100,000	District
Rep. Bill Ives (R-Transylvania)	Brevard Music Center	\$250,000	Hometown
Sen. Aaron Plyler (D-Union)	Andrew Jackson Memorial, Waxhaw	\$200,000	On the Board of Directors
Rep. James Crawford Jr. (D-Granville)	Granville Medical Center Foundation	\$100,000	Vice Chairman
Sen. David Hoyle (D-Gaston)	Gaston County Art & History Museum	\$50,000	Wife on the Board of Trustees
Sen. Charlie Albertson (D-Duplin)	Lucius P. Best House	\$30,000	District
Sen. Aaron Plyler (D-Union)	Turning Point of Union County	\$20,000	On the Board of Directors
Sen. John Kerr (D-Wayne)	Boys and Girls Club of Wayne County	\$5,000	On the Board of Directors
Sens. Richard Condor (D-Richmond) and Aaron Plyler (D-Union)*	Richmond County Historical Society	\$100,000	District
	Richmond County Fine Arts Center	\$500,000	
	Stanly County Airport	\$250,000	
	Town of Hamlet (Babe Ruth event)	\$8,000	
	John Blue House (Laurinburg)	\$20,000	
	Scotland Place (Laurinburg)	\$20,000	

* *CJ* reported: “An obscure folder in the Office of State Management and Budget contained a list of projects labeled at the top with “Condor/Plyler =1,183,000.”

to control that \$12 million, divided evenly, from the fund.⁷³

Furthermore, North Carolina maintains a high corporate income tax rate and numerous incentives and tax credits. At 6.9 percent, the state's corporate income tax rate is highest among its bordering states and second highest in the South. Including federal and state tax rates on dividends, capital gains, and corporate income would make North Carolina's top marginal rate on corporate investment the fourth highest in the industrialized world.⁷⁴

Not all corporations pay at 6.9 percent, however. North Carolina offers a dizzying menu of incentives⁷⁵ to offset taxes for favored industries (see below).

Those special exemptions from the taxes others have pay are examples of cronyism. Essentially, the nominal corporate income tax rate can be characterized as a *negative slush fund*, allowing favored businesses to keep more of their income than the tax rate would normally allow as opposed to giving them state funds directly.⁷⁶

North Carolina's Many Corporate Income Tax Credits

- William S. Lee (Article 3A) tax incentives for new and expanding businesses (replaced by Article 3J tax incentives)
- Business and Energy Tax Credits (Article 3B)
 - Investing in Business Property
 - Renewable Energy Property
 - Constructing Renewable Fuel Facilities
 - Small Business Employee Health Insurance
 - Biodiesel Producers
 - Work Opportunity
 - Donations to Nonprofit Organization or Unit of State or Local Government for Acquisition of Renewable Energy Property
- Tax Incentives for Recycling Facilities (Article 3C)
- Historic Rehabilitation Tax Credits (Article 3D)
- Low-Income Housing Tax Credits (Article 3E)
- Research and Development Tax Credit (Article 3F)
- Tax Incentives for Major Computer Manufacturing Facilities (Article 3G)
- Mill Rehabilitation Tax Credit (Article 3H)
- Tax Credits for Growing Businesses (Article 3J)
- Tax Incentive for Railroad Intermodal Facility (Article 3K)
- General Tax Credits
 - Dwelling Units for Handicapped Persons
 - Construction of Cogenerating Power Plant
 - Real Property Donated for Conservation Purposes
 - Conservation Tillage Equipment
 - Gleaned Crop
 - Certain Telephone Subscriber Line Charges
 - Supervisory Fees Paid by Savings and Loan Associations
 - Use of North Carolina Ports
 - Poultry Composting Facility
 - Manufacturing Cigarettes for Exportation
 - Manufacturing Cigarettes for Exportation While Increasing Employment and Utilizing State Ports
 - Qualifying Expenses of a Production Company
 - Recycling Oyster Shells

Source: N.C. Dept. of Revenue

LACKING SAFEGUARDS, INVITING TROUBLE

A study of states’ “Corruption Risk” by the State Integrity Investigation, a project of the Center for Public Integrity, Global Integrity, and Public Radio International, gave North Carolina an F grade for public access to information. North Carolina was ranked lower than many other states on other measures in the study, including executive accountability, the state budget process, and procurement. Thanks in large part to reforms in the wake of the Speaker Black scandals, however, N.C. had the best ranking among all the states in lobbying disclosure.⁷⁷

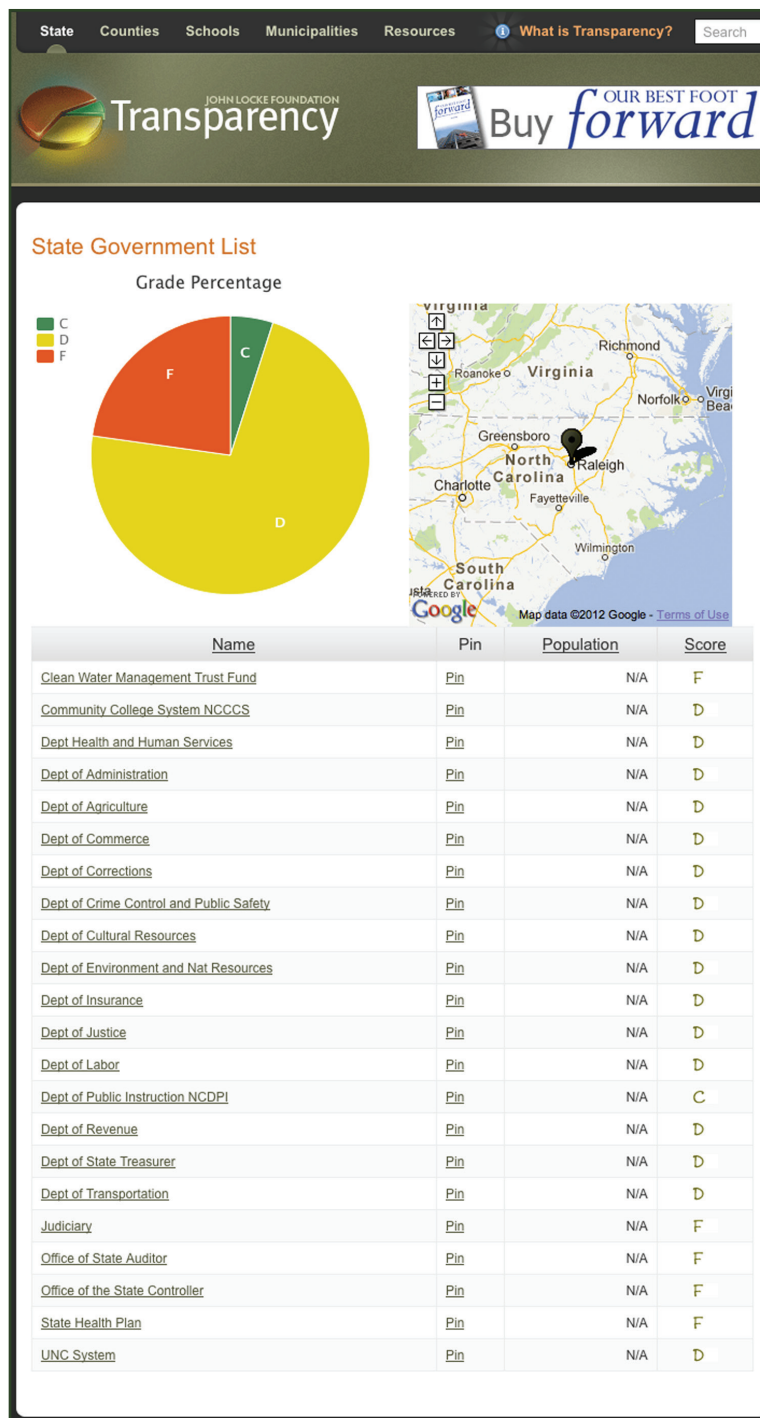
Transparency is sorely lacking. NC Transparency, a project of the John Locke Foundation, gave every state agency but one a grade of D or F, and that one agency — the Department of Public Instruction — received a C.⁷⁸

Being able to conduct public business out of sight of the public invites corruption. When that cloak of bureaucracy envelops governmental forays into the marketplace beyond its traditional bounds, it gives rise to the sorts of excesses North Carolina has witnessed of late.

The disposition of the political system itself is what matters. Cronyism doesn’t necessarily require politicians with corruption in their hearts; it is likely that oftentimes they intend to serve what they perceive is the public good. Basnight’s slush fund admission shows the rationale: “Somehow or other, you’ve got to help these areas in the state that need the money.” Immediately following was the moral: “But it shouldn’t be left in my hands to decide.”

Introducing transparency and respecting and protecting private enterprise (rather than playing favorites) would help protect not just the

How State Agencies Grade on Openness (NCTransparency.com Screen Capture)



integrity of the government in general, but also the particular integrity of well-meaning public officials.

Part III

Lifting the Regulatory Burden



As discussed above, regulatory overreach is a major factor driving cronyism. It redirects entrepreneurial efforts to pleasing policymakers over consumers. It drives down economic growth and especially harms small businesses and potential consumers and workers.

SECOND ONLY TO TAXES IN HARMING BUSINESS

Overregulation is a significant hindrance to business, especially small businesses through which most net job creation comes about. Surveys by the John Locke Foundation of North Carolina business leaders throughout the 2000s consistently found that the state's regulatory burden ranked very high as a factor reducing the state's competitiveness.⁷⁹

Over the last 20 years, N.C. lawmakers have added an average 2,360 new pages to the *North Carolina Register* every year. The Register provides a snapshot of the state's regulatory activity. It "is published twice a month and contains information relating to agency rulemaking, executive orders, contested case decisions and other notices required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register."⁸⁰

Business leaders appeared to grow more alarmed at North Carolina's regulatory burden as the decade progressed, ranking it second only to taxes in harming the business climate. In comparison with other states' regulatory climates, North Carolina's fared poorly, lacking mandates for cost/benefit analysis, periodic review, and small-business flexibility.⁸¹ By 2005, four out of five N.C. businessmen thought

their state's regulations weren't justifiable based on costs and benefits.⁸²

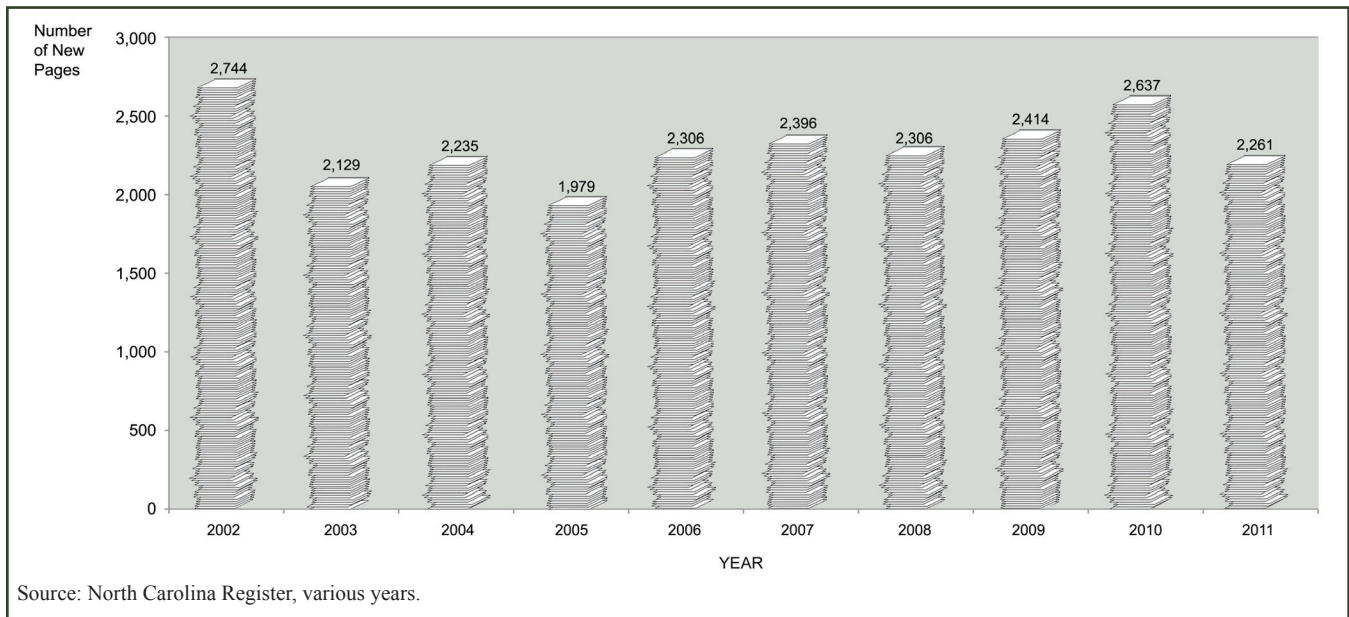
CRONYISM ON WHEELS

The effects of cronyism are hidden not just when legislators have secret slush funds, backroom deals, or bathroom bribes. Government mandates and regulations weigh on those forced to bear them, but they are a windfall for others who provide services they necessitate. For example, a state mandate that forces consumers to buy a certain service or product brings a windfall for current providers and offers an incentive for other providers to get in the bolstered market. Those providers then have a financial incentive to keep that mandate in place, regardless of its usefulness.

North Carolina's approach to automobiles offers several examples. For one, the state has a Relevant Market Area (RMA) law that restricts the creation and location of automobile dealerships. The law requires manufacturers to notify the Commissioner of Motor Vehicles when they plan to franchise a new dealer or relocate an existing one into the "relevant market area" — generally a 20-mile radius of a dealership of the same make of car. The pre-existing dealer of that make of car may protest the proposed new dealer. The manufacturer has the burden of proof to show "good cause" to add the new dealer.⁸³

Such a law obviously limits competition among automobile dealers, which resounds to strengthen the existing dealers at the expense of prospective dealers and, more directly, harms consumers. As under other restrictions of trade, the consumers face higher prices when supplies are artificially limited.

Number of New Pages Added to the North Carolina Register, 2002–2011



Once a consumer in North Carolina has purchased an automobile, state law mandates he purchase insurance for it. This mandated purchase also includes a hidden tax. To be clear, it is a tax that insurers are expressly forbidden from disclosing on policyholder statements. This tax, which averages about 6 percent per automobile insurance policy, goes to support the mandated Reinsurance Facility, in which private insurers dump “risky” drivers. It offers a virtual guarantee of profits to insurers, since they can place any driver they wish into the tax-subsidized pool. While nationally fewer than 2 percent of policyholders are in high-risk pools, one-fourth of North Carolina policyholders are.⁸⁴

Mandated purchases for drivers don’t end at insurance. North Carolina has since 1966 required car owners to pay for annual automobile safety inspections. The cost for inspection is \$13.60, with an additional \$16.40 tacked on for emissions inspection in 48 counties, plus the time spent in getting the inspection. A failed inspection means additional repair costs for drivers. Service stations, however, net \$12.75 per inspection — \$23.75 in the 48 counties with emissions inspections — and possibly the repair work as well. North Carolina motorists spend \$106 million annually just on the inspection fees,

\$99 million of which stays with the service stations and garages.⁸⁵

Cars have greatly improved in safety since 1966, and several states have relaxed or dropped entirely their auto safety inspections. Research casts doubt on the inspections’ actual usefulness. North Carolina is one of 17 states still requiring auto inspections, though there have been efforts for years to get the state to drop or at least modify them. In 1999, for example, Rep. James Carpenter (R-Macon) proposed a bill to eliminate the safety inspections. In 2008 the N.C. Program Evaluation Division came out in favor of eliminating the inspections or, barring that, exempting newer cars from the inspections since they rarely fail them. In 2009 Sen. Charlie Albertson (D-Beulaville) proposed ending the safety inspections. In 2011 Sen. Stan Bingham (R-Denton) proposed the same, which was especially notable because Bingham is part owner of a service station that performs inspections. In November 2011, Gov. Bev Perdue ordered a full review of the auto inspection program and spoke in favor of exempting newer cars and trucks from inspections.⁸⁶ Perdue’s order came after an investigation by the *Charlotte Observer* and *The News & Observer* found, in the words of a *Charlotte Observer*

editorial, “the N.C. system is so mired in corruption — bribery, cheating, falsifying documents — that the auto inspection process has become a sham,” further calling it “a waste of time and money” and applauding exempting newer vehicles.⁸⁷

Nevertheless, attempts at ending or reforming the system failed. Bingham’s bill failed in the Commerce Committee headed by Sen. Harry Brown (R-Jacksonville), a former chairman of the N.C. Automobile Dealers Association and owner or part owner of three auto dealerships that also perform inspections. Legislators were warned that eliminating the program would make the roads unsafe — and devastate the industry.⁸⁸

In May, a bill that would have exempted cars less than four years old from inspections was voted down 7-5 in the House/Senate Joint Transportation Oversight Committee. As reported in *The News & Observer*,

Sen. Jerry W. Tillman, a Randolph County Republican, protested that the measure would hurt garages, tire dealers and inspection stations — whose trade associations had lobbyists in attendance at the crowded meeting room.

“I know a lot of people who do this, and they sell some gas on the side, but most of their profit comes from these inspections,” Tillman said. “We have 7,500 small businesses that do these inspections.”⁸⁹

In both instances, several trade organizations opened intense lobbying, phone-calling, and letter-writing campaigns against the measures. Automotive industry interests had donated over \$400,000 to candidates in 2010.⁹⁰

In July 2012 the General Assembly did approve legislation eliminating *emissions* testing on automobiles that either have fewer than 70,000 miles or are less than four model years old. Bingham, Brown, and Tillman were among the measure’s supporters. No change was made with respect to safety inspections, however.⁹¹

With state agencies, the governor, members of both parties, news media, and presumably drivers as well all supporting reforming the safety inspec-

tions, their persistence is a triumph of cronyism: a good-government reform beneficial to most North Carolinians being blocked out of concern for the very industry being propped up by state mandate.

THE REGULATORY REFORM ACTS OF 2011 AND 2012

Most recently, state leaders on both sides of the political aisle have recognized the problem of overregulation. In October 2010, Gov. Bev Perdue signed an executive order to reduce the costs of regulation and reform the rulemaking process. The order applied only to executive agencies over which the governor has control, including Cabinet agencies, but not Council of State agencies. Perdue’s order mandated cost/benefit analysis of regulations, required agencies to find alternatives to regulation, created an annual review process for regulations already on the books, required agencies to justify their regulations with sound data, and gave the Office of State Budget and Management oversight to ensure agencies follow proper procedures. It did not, however, provide small-business flexibility (i.e., recognize that small businesses lack the resources and legal staff that larger firms have to manage regulations, which is a protection offered by 35 other states) or protect against agencies overstepping their bounds.⁹²

The following year, the North Carolina General Assembly overwhelmingly passed the Regulatory Reform Act (RRA) of 2011,⁹³ which borrowed heavily from Perdue’s executive order.⁹⁴ The act made it so that state environmental rules can be no more stringent than federal rules. It also required the state to review existing rules and encouraged the elimination of those that are burdensome, outdated, unnecessary, or vague. RRA 2011 furthermore required agencies to provide cost estimates for many kinds of rules as well as give at least two alternatives to any proposal with “substantial economic impact” (over \$500,000).

Significantly, for disputes between a regulated party and a state environmental agency that are heard by the state Office of Administrative Hearings (OAH), the RRA changed the way appeals are handled. Before RRA 2011, if the OAH decision

went against the agency, the agency could simply overrule it. Now both parties have to appeal to Superior Court. Still, the administrative-court appeals reform applies only to environmental agencies. Other state agencies can still overrule any unfavorable OAH decision.

Notably, however, after pressure from environmental lobbies,⁹⁵ the governor vetoed the measure. The General Assembly succeeded, however, in overriding her veto.⁹⁶

In June 2012, the General Assembly passed the Regulatory Reform Act of 2012. RRA 2012 made several technical changes and additional reforms to state rulemaking procedures. Importantly, it required that agencies within the governor's cabinet or within departments of the Council of State must submit any proposed rule change and analysis of it to the proper oversight body (the Office of State Budget and Management for cabinet agencies and

the Rules Review Commission for the others) and obtain certification from that body that the agency adhered to state rulemaking principles, such as: express, not implied, authorization by federal or state law; deliberate attempt to reduce the burden on the regulated parties; reasonably necessary to implement; sound scientific, technical, economic, etc., basis; and properly focused to achieve the regulatory purpose in a cost-effective and timely manner.⁹⁷

Senate President Pro Tem Berger promised a conference of the N.C. Chamber of Commerce that more regulation reform is coming. *Carolina Journal* summarized Berger's comments that "The 2011 General Assembly passed Regulation Reform I, the 2012 short session would pass Regulation Reform II, Regulation Reform III would pass in 2013, and reforms would continue until regulations in North Carolina are lean, fair, equitable, and help rather than hurt citizens, taxpayers, and business."⁹⁸

Conclusion

By our honest and judicious reformations, we may be able, within the limits of our time, to bring things back to that simple and intelligible system on which they should have been organized at first.

THOMAS JEFFERSON⁹⁹

Pres. Jefferson expressed that hope in 1802 to Secretary of the Treasury Albert Gallatin, after noting that “Our predecessors have endeavored by intricacies of system, and shuffling the investigator over from one officer to another, to cover everything from detection. I hope we shall go in the contrary direction.”

It is in that same spirit of hope that this report offers the following reforms. They are intended to chart a new direction for state government contrary to an intricate system whose design effectively works as a cloak between the public and the public’s business, to foster honest government through openness, and to reduce the opportunities and temptations for hidden cronyism.

Reform: *Make state spending fully transparent.*

Put all state spending online — budgets, contracts, salaries, check registers, etc. Make sure the published data are in a structured, searchable, and exportable format, and require it to be updated frequently, at least monthly.

As discussed above, such transparency would protect not only the integrity of the political system, but also the integrity of politicians and public employees. In that same letter to Gallatin, Jefferson expressed his “hope to see the finances of the Union as clear and intelligible as a merchant’s books, so that every member of Congress, and every man of any mind in the Union, should be able to comprehend them to investigate abuses, and consequently to control them.”¹⁰⁰ Transparency empowers thoughtful citizens, media watchdogs, and honest legislators.

Reform: *Make the processes of state governing open and transparent.*

Transparency is important for the processes of state governing for the same reasons as above. Put proposed bills and ordinances online for at least 72 hours prior to debate (note: the current General Assembly did place the budget online five days before the first House vote and six days before the first Senate vote,¹⁰¹ but future General Assemblies are not bound to such transparency.) Forbid budget negotiations to be conducted in secret, closed-door meetings. Require a five-year forecast (fiscal note) on a budget’s effects on spending and taxes. Also, open the regulatory process — rulemaking, reviews, and publication — to the public.¹⁰²

Reform: *Expand RRA 2011’s fix of the administrative appeals process to apply to all agencies, not just environmental agencies.*

That reform was an important step, but more needs to be done. Good government demands not keeping a slacker standard of appeals for the other state agencies. This change is a simple, obvious reform.

Reform: *Strengthen the Rules Review Commission.*

State agencies’ rulemaking power is legislative power delegated by the legislature to the executive branch. Bureaucrats, not elected officials, head the agencies, and they are not directly accountable to the people for their decisions. Sometimes this lack of direct accountability can be tempting to legislators, to let bureaucrats make major policy decisions on politically sensitive matters. Other times agencies take advantage of vague authorization language to expand their power well beyond the bounds of legislative intent.

The Rules Review Commission, established by North Carolina’s Administrative Appeals Act, is a 10-member commission appointed by House and Senate leaders whose approval is needed to finalize regulations. Though tasked with reviewing regulations and keeping agencies from exceeding their authority, the commission’s practical authority is highly limited.¹⁰³

The commission needs a clearer standard in determining how much authority the legislature has delegated. Daren Bakst proposed amending the APA so that the commission’s standard is that a rule is “*clearly* within the authority delegated to the agency by the General Assembly” (emphasis added), with a clarification that clear statutory authority exists when no reasonable argument can be made that denies statutory authority. Furthermore, when a reasonable argument can be made against the existence of clear statutory authority, the commission should reject the rule.¹⁰⁴

Reform: Require agencies to conduct cost/benefit analysis of all proposed regulations and require rejection of rules for which the costs exceed the benefits.

RRA 2011 includes a requirement that state agencies quantify a proposed rule’s costs and benefits to all parties but does not contain explicit cost/benefit analysis nor a rejection requirement. The Office of State Budget and Management (OSBM), but not the APA, contains a cost/benefit analysis requirement in limited circumstances; i.e., when a “significant” rule change would have substantial economic impact, or when a significant or non-significant rule change would affect state or local funds. By OSBM definition, a significant rule change would “have a significant effect on the economy, state, or local funds,” “create an inconsistency with an action taken or planned by another agency,” or “raise novel policy issues.” Only in the first instance — which requires the OSBM to decide a priori the rule change would have a significant economic impact — is any cost/benefit analysis required. The federal government has required cost/benefit analysis of proposed regulations for nearly 40 years.¹⁰⁵

Reform: Require periodic review of existing state regulations, using cost/benefit analysis, and rewrite or discard those for which the costs exceed the benefits.

Not only should agencies be required to justify new rules, but they should also be required to justify existing ones. Ineffective regulations are burdens without a purpose, and they can provoke additional regulations, leading to problem-chasing like the old woman of song who swallowed the fly.¹⁰⁶ Regulations may outlive their usefulness, owing to new laws, technological change, societal change, etc. Thirty-two states require periodic review of existing state regulations.¹⁰⁷

Reform: Implement small-business flexibility analysis for prospective rules to prevent regulations from running roughshod over small employers.

According to the most recent data from the Small Business Administration (SBA), 98 percent of employers in North Carolina — employing 47.9 percent of the state’s workforce — were small businesses.¹⁰⁸ Small businesses bear the costs of one-size-fits-all state regulations disproportionately, however; unlike their larger competitors, they generally lack the in-house compliance and legal staff to handle state and federal mandates. The SBA estimates that small businesses’ compliance costs with just federal mandates are 60 percent greater than large businesses’.¹⁰⁹

Small-business flexibility analysis tests whether rules have a disproportionate impact on small businesses and asks whether agencies should consider less stringent compliance requirements or even exemption for small businesses. The federal government and 35 states require agencies to conduct small-business flexibility analysis, and the SBA web site offers model regulatory flexibility analysis legislation.¹¹⁰

Reform: Abolish the corporate income tax.

Doing so would eliminate a major tool for cronyism used by politicians and state officials to dole out special favors and pick market winners and losers.¹¹¹

Future reports in this series will identify further areas for reform.

END NOTES

1. Thomas Jefferson, *Notes on the State of Virginia*, “Query XVII: The different religions received into that State?”, etext.virginia.edu/etcbin/toccer-new2?id=JefVirg.sgm&images=images/modeng&data=/texts/english/modeng/parsed&tag=public&part=17&division=div1.
2. See, e.g., “Obama Doubles Down on More Solyndras,” editorial, *Investors Business Daily*, April 18, 2012, news.investors.com/article/608263/201204181753/first-solar-and-fisker-announce-layoffs.htm; Andy Sullivan, “Analysis: Obama’s ‘green jobs’ have been slow to sprout,” Reuters, April 13, 2012, www.reuters.com/article/2012/04/13/us-usa-campaign-green-idUSBRE83C08D20120413; and James Pethokoukis, “The entire Obama presidency, in one anecdote,” March 13, 2012, blog.american.com/2012/03/the-entire-obama-presidency-in-one-anecdote. Also see the discussions in Jon Sanders, “The Green Emperor Has No Sprouts,” John Locke Foundation *Rights & Regulation Update*, April 19, 2012, johnlocke.org/newsletters/research/2012-04-19-0lvh6h93koonpo2g9to9doieo6-regulation-update.html; Sanders, “How utterly complete Obama’s green energy failure has been: good job creation is in oil and gas,” The Locker Room blog, John Locke Foundation, March 13, 2012, lockerroom.johnlocke.org/2012/03/13/job-creation-in-oil-and-gas-despite-obama; and Sanders, “So-called green industry means paying folks NOT to produce,” The Locker Room blog, John Locke Foundation, March 12, 2012, lockerroom.johnlocke.org/2012/03/12/green-industry-not-producing.
3. The president himself appears to have been hamstrung by failing to understand such a fundamental reality:

Energy was a particular obsession of the president-elect’s, and therefore a particular source of frustration. Week after week, [White House economic adviser Christina] Romer would march in with an estimate of the jobs all the investments in clean energy would produce; week after week, Obama would send her back to check the numbers. “I don’t get it,” he’d say. “We make these large-scale investments in infrastructure. What do you mean, there are no jobs?” But the numbers rarely budged.

— Noam Scheiber, *The Escape Artists: How Obama’s Team Fumbled the Recovery*, Simon & Schuster: February 28, 2012, as quoted in Pethokoukis, “The entire Obama presidency, in one anecdote.”
4. “Crony Capitalism,” Investopedia.com, accessed March 9, 2012, www.investopedia.com/terms/c/cronycapitalism.asp.
5. Joseph E. Stiglitz, “Crony capitalism American-style,” Project Syndicate, February 11, 2002, www.project-syndicate.org/commentary/stiglitz11/English.
6. Nicholas D. Kristof, “Crony Capitalism Comes Home,” *The New York Times*, October 26, 2011, www.nytimes.com/2011/10/27/opinion/kristof-crony-capitalism-comes-homes.html.
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Obamanomics is the political strategy of partnering government with the biggest businesses in order to create new regulations, taxes, and subsidies. ... The economic law underlying Obamanomics — opaque to most journalists and contrary to conventional wisdom — is this: increased government control centralizes industries and favors the biggest businesses.

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*“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.”*

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