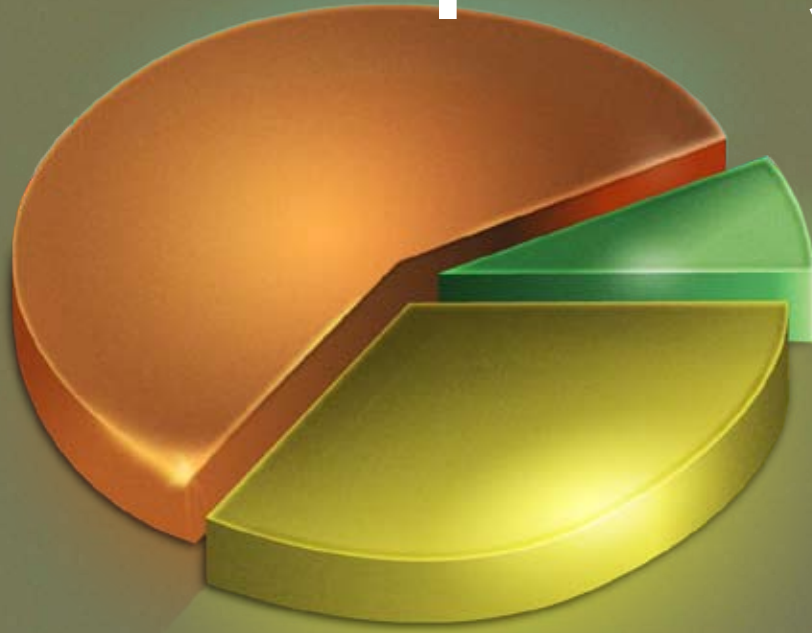


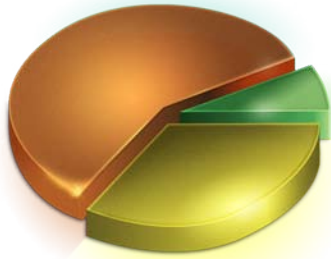
NC Transparency



POLICY REPORT

Trust But Verify Open Government Is Better Government

JOSEPH COLETTI
DECEMBER 2009



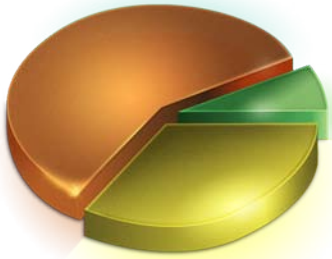
Trust But Verify

Open government is better government

JOE COLETTI
DECEMBER 2009

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*E*xecutive Summary

Governments have been seeking ways to adopt or advertise their efforts at open government, sunshine, and transparency. Recent history is rife, however, with examples of how they have failed – such as Gov. Mike Easley’s financial dealings and the hole in the state health plan.

Open government helps build trust with taxpayers. Tools that improve openness with taxpayers have also helped government officials and managers better use their resources. Some state and local governments found ways to save money through improved transparency.

Financial transparency is an important step toward open government. Online budgets, contracts, salaries, and check registers make information more accessible. Corporate financial statements provide a model in clarity and accessibility. Too many government documents are not searchable in any way. When tied to outcome measures such as test scores in education, this greater accessibility can provide better insight about which government programs work and which ones do not.

Process transparency opens the closed doors elected officials try to hide behind when drafting laws. Putting bills online 72 hours before debate and voting begin, instead of in the middle of the night the day of a vote, would leave fewer surprises in legislation. Five-year fiscal projections for state and local budgets would also make clear the impacts of program changes over time, not just for the year

or two a budget is in effect. Governments should also take further steps to publicize their meetings beforehand, record their proceedings, and make minutes or archived recordings available online.

Regulatory transparency means making the proceedings of non-elected bodies as open as those of the legislature, county commissions, and town councils. Proposed regulations should be easier to find and understand for those with an interest. The state auditor or an independent body should perform any audits or performance reviews. Reviews should cover not just how well an agency or program accomplishes its mission, but also whether the mission is appropriate for government.

*W*hy Transparency Matters

Open government is needed for a healthy democracy. Yet much of how government operates is unknown. *Carolina Journal* first reported on Gov. Easley’s financial dealings in 2006,¹ but it took until Bev Perdue took office and opened state police records for details to emerge.² The state spent as much as \$226 million in excess cost for mental health services over three years. It took months for the costs to become large enough to gain attention and the full extent of the problem was not realized until the legislature’s Program Evaluation Division presented its findings in July 2009.³ The \$250 million hole for 2009 in the state health plan also caught legislators by surprise.⁴

Open government builds trust and improves government operations. It can even save money, as witnessed in Texas, where the state comptroller found \$73,000 dollars in savings just through cutting the number of contracts for toner cartridges.

There are many facets of open government. The John Locke Foundation created the web site *NCTransparency.com* to improve online fiscal transparency, and the response from local governments has been very promising. The Greensboro *News & Record* complained that Guilford County commissioners work behind closed doors too much. Guilford is not alone. Few governments broadcast their meetings online or on television. Fewer still post proposed ordinances, rule changes, or even agendas online in advance of their meetings. Open contracting with competitive bidding is another essential element of open government.

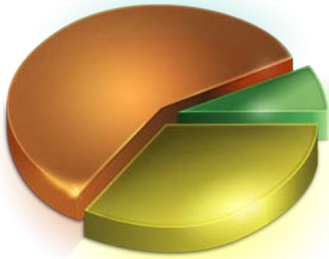
Making information accessible is about more than making it available. Citizens need to be able to understand it. Elected and unelected officials need to change their approach to information. It is not simply about responding to citizen requests for information. The problem is that government documents are often difficult to understand even

for those who use them on a daily basis. Is it any wonder that few citizens ask for budget information when that information comes in a form that is almost unintelligible?

Asheville, for example, has its budget available in twelve sections plus a glossary. Wake County Commissioner Stan Norwalk voted against putting information online because he worried about both the cost of putting data online and the effect on county employees who would “be bombarded with so many requests for information ... that they will spend too much time dealing with frivolous inquiries.”⁵

The answer, however, is neither to avoid making the information available nor just to put it online in any format. The answer is to present the information online in a way that can be easily understood.

The remainder of this paper will examine the three aspects of open government – fiscal transparency, process transparency, and regulatory transparency. Each section will provide examples of what transparency means in that area, steps governments are taking to become more transparent, and opportunities to improve transparency.



We might 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.

— Thomas Jefferson

Financial Transparency

Government finances in North Carolina do not begin to approach the level of Jeffersonian clarity. Spending is spread among a number of special funds in addition to the general fund. Intergovernmental transfers are sometimes counted as revenue, sometimes counted as spending cuts, and sometimes are considered “off budget” within the same budget document.

Compare the financial statements for the \$40 billion enterprise of state government with those of the Target Corporation with \$65 billion in revenue. Where public companies make their annual financial reports available in searchable PDFs, the state's financial statements are scanned PDFs that cannot be searched or analyzed. The public companies show at least two years' worth of financial information to provide some context for the numbers. The government only provides the current year. Public companies are transparent to meet government regulations and investor demands. The government itself faces neither market nor regulatory pressures (see Figure 1).

In some states, third-party providers — for example, *MaineOpenGov.org* — have taken raw government data and created easily understandable graphs of spending. Web sites that report on stimulus projects (*ncrecovery.gov*, *recovery.gov*, and

ncstimuluswatch.com, among others) have put the data in searchable tables or maps that facilitate tracking where the money has gone (see Figure 2).

Financial transparency is important for the very reasons Jefferson stated two centuries ago. Governments operate on money. If it is difficult to understand how that money is spent and to what end, then there is no way to control it. For those reasons, the John Locke Foundation's open government web site, *NCTransparency.com*, focuses first on financial transparency. In order to maintain the support of their citizens and taxpayers, governments at all levels must be able to demonstrate cost-effective results.

Some examples of how transparency has highlighted excessive costs and led to actions that helped improve results may be instructive. In Texas the state comptroller used transparency to save 36 percent of the \$10.5 million the state was spending in overnight and express mail service costs. The state also expects to save \$5.7 million on fleet vehicles through negotiations, which will include other costs of ownership besides the purchase price — costs that could have been hidden.⁶

North Carolina state agencies, meanwhile, paid millions of dollars in mileage charges for parked vehicles in part because they did not submit reports on time.⁷ Transparency efforts would make these situations obvious to managers before

Figure 1.

Corporate numbers can be copied into other programs and analyzed ...

Consolidated Statements of Operations			
Items, except per share data	2008	2007	2006
Sales	\$82,884	\$81,471	\$57,878
Credit card revenues	2,004	1,896	1,812
Total revenues	84,888	83,367	59,690
Cost of sales	44,157	42,959	40,366
Selling, general and administrative expenses	12,954	12,670	11,652
Credit card expenses	1,600	837	707
Depreciation and amortization	1,828	1,650	1,406
Earnings before interest expense and income taxes	4,402	5,272	5,069
Net interest expense			
Nonrecourse debt collateralized by credit card receivables	167	133	60
Other interest expense	727	535	499
Interest income	(28)	(21)	(25)
Net earnings	868	847	872
Earnings before income taxes	3,530	4,625	4,467
Provision for income taxes	1,302	1,776	1,710
Net earnings	\$ 2,214	\$ 2,649	\$ 2,787
Basic earnings per share	\$ 2.87	\$ 3.37	\$ 3.23
Diluted earnings per share	\$ 2.86	\$ 3.33	\$ 3.21
Weighted average common shares outstanding			
Basic	770.4	845.4	861.0
Diluted	773.8	850.8	868.0

	B	C	D	E	F
BACET					
(Millions, except per share data)		2008	2007	2006	
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Weighted average common shares outstanding					
Basic		770.4	845.4	861.0	
Diluted		773.8	850.8	868.0	
Gross Margin		32.6%	32.3%	32.1%	
Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)		8,238	8,931	8,885	
Net Margin		3.4%	4.5%	4.7%	

Consolidated Statements of Operations			
Items, except per share amounts	Apr 30, 2009	Jul 29, 2008	Jul 29, 2007
NET SALES			
Product	\$6,319	\$3,986	\$6,860
Service	36,117	35,546	34,333
Total net sales	42,436	39,532	41,193
EDS OF SALES			
Product	30,883	31,880	30,387
Service	3,944	2,939	3,089
Total cost of sales	34,827	34,819	33,476
GROSS MARGIN			
Product	11,553	7,652	10,806
Service	32,173	32,607	31,244
Total gross margin	43,726	40,259	42,050
OPERATING EXPENSES			
Research and development	2,308	2,300	4,688
Sales and marketing	4,823	5,982	5,421
General and administrative	1,253	1,387	1,151
Amortization of purchased intangible assets	75	99	—
Business research and development	82	—	81
Total operating expenses	9,341	10,068	12,341
OPERATING INCOME			
Product	8,745	5,872	8,425
Service	25,028	26,735	22,819
Total operating income	33,773	32,607	31,244
Interest and other income, net	491	424	713
Interest and other expense, net	(86)	(111)	(84)
Income before provision for income taxes	34,428	33,920	32,873
Provision for income taxes	1,259	2,202	2,123
Net income	33,169	31,718	30,750
Net income per share—basic	\$ 3.89	\$ 3.63	\$ 3.51
Net income per share—diluted	\$ 3.88	\$ 3.61	\$ 3.51
Basic	8,528	8,781	8,761
Diluted	8,571	8,824	8,804

Class	A	B	C	D	E
Consolidated Statements of Operations					
(In millions, except per share amounts)					
4	See Notes to Consolidated Financial Statements.				
5	42 Class Systems, Inc.	25-Jul-09	26-Jul-08	28-Jul-07	
6	Years Ended				
7	NET SALES				
8	Product	\$25,131	\$33,099	\$26,487	
9	Service	3,909	4,441	5,400	
10	Total net sales	29,117	39,540	34,902	
11	COST OF SALES:				
12	Product	12,481	11,680	10,567	
13	Service	2,642	2,534	2,096	
14	Total cost of sales	15,023	14,214	12,663	
15	GROSS MARGIN	23,094	25,346	22,239	
16	OPERATING EXPENSES:				
17	Research and development	6,208	5,325	4,508	
18	Sales and marketing	4,403	6,095	7,451	
19	General and administrative	1,600	1,387	1,151	
20	Amortization of purchased intangible assets	633	490	47	
21	In-process research and development	63	—	—	
22	Total operating expenses	15,772	16,304	15,638	
23	OPERATING INCOME	7,322	9,042	6,601	
24	Other income (expense), net	499	424	713	
25	Other income (expense), net	(128)	(111)	(84)	
26	Interest and other income, net	371	493	840	
27	INCOME BEFORE PROVISION FOR INCOME TAXES	7,666	10,258	8,481	
28	Provision for income taxes	1,659	2,202	2,128	
29	NET INCOME	\$6,007	\$8,056	\$6,353	
30	Net income per share—basic	\$1.26	\$1.26	\$1.21	
31	Net income per share—diluted	\$1.25	\$1.21	\$1.17	
32	Shares used in per share calculation—basic	4,828	6,398	5,250	
33	Shares used in per share calculation—diluted	4,857	6,353	5,205	
34	Gross Margin	61.8%	64.1%	63.7%	
35	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	7,844	8,941	8,828	
36	Net Margin	17.8%	20.4%	21.8%	

Corporate data selected, copied, then pasted into a spreadsheet for analysis.

... but state numbers are in a picture file and have to be re-entered by hand.

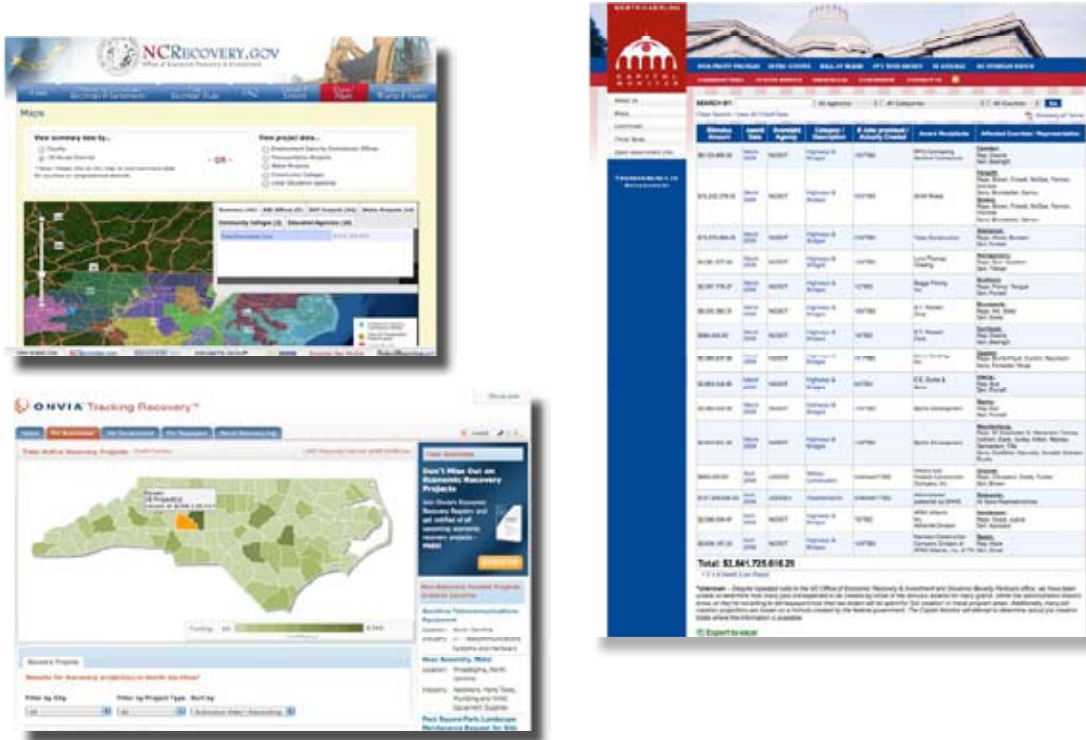
STATEMENT OF ACTIVITIES				
For the Fiscal Year Ended June 30, 2008				
(Dollars in Thousands)				
Functions/Programs	Expenses	Program Revenues	Capital Grants and Contributions	Net (Expense) Revenue
Primary Government:				
Governmental Activities:				
General government	\$ 1,345,228	\$ 365,301	\$ 243,967	\$ 1,321,860
Health and human services	10,635,028	12,386	1,254,211	(9,368,000)
Higher education	4,207,421	423	20,071	(4,186,927)
Health and human services	14,896,864	275,322	8,423,238	(4,711,062)
Economic development	740,880	30,442	321,475	(388,963)
Environment and natural resources	771,763	189,960	142,020	98,009
Public safety, corrections, and regulation	2,823,820	511,427	186,340	3,500
Transportation	1,893,384	777,028	244,364	740,012
Agriculture	119,381	17,334	14,403	3,632
Interest on long-term debt	384,020	—	—	(384,020)
Total Governmental Activities	\$ 21,211,248	\$ 2,911,028	\$ 10,206,201	\$ 8,093,001
Business-type Activities:				
Unemployment Compensation	1,502,888	1,291,820	21,379	170,289
R.C. State Lottery	712,718	1,953,191	4,897	348,370
EPA Revolving Loan	12,454	17,297	44,921	49,764
Regulatory commissions	34,791	37,123	1,124	3,256
Insurance programs	17,238	16,881	6,478	6,300
North Carolina State Fair	12,831	10,028	373	2,430
Other business-type activities	6,139	6,449	677	987
Total Business-type Activities	1,789,159	2,227,089	87,099	525,129
Total Primary Government	\$ 23,000,407	\$ 5,138,117	\$ 10,293,300	\$ 8,618,130
Component Units:				
The Center for Public Safety	\$ 149,822	\$ 34	\$ (14,676)	\$ —
The University of North Carolina System	7,881,720	4,036,183	812,685	440,801
Community Colleges	1,706,114	263,017	486,365	216,722
N.C. Housing Finance Agency	387,878	288,384	49,258	22,369
State Education Assistance Authority	408,830	303,131	88,830	(118,933)
Other component units	203,728	56,932	5,979	117,457
Total Component Units	\$ 10,647,092	\$ 5,336,781	\$ 1,417,933	\$ 6,926,823
Total	\$ 33,647,500	\$ 10,474,900	\$ 11,711,233	\$ 15,534,253

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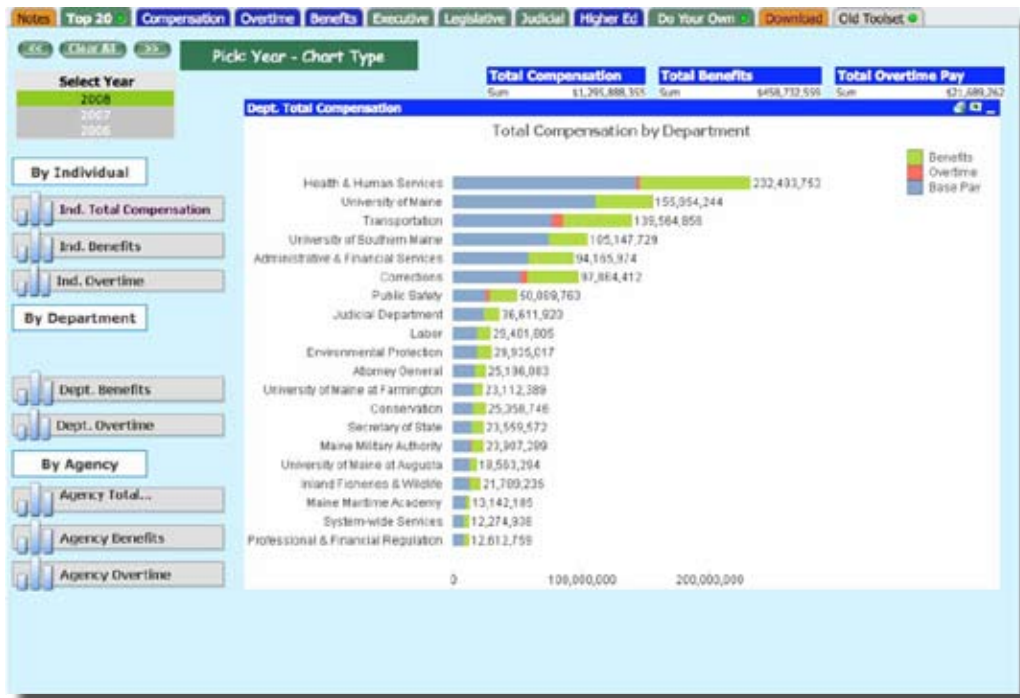
The accompanying Notes to the Financial Statements are an integral part of this statement.

Figure 2.

Information on the stimulus bill is relatively well presented on government and third-party sites.



MaineOpenGov.org provides easy-to-understand graphs of government data.



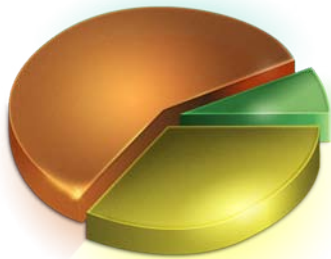
they wound up making the evening news.

Managers in government need the tools to run their agencies efficiently. Taxpayers need the tools to determine how their tax dollars are being used. Requests for information are inefficient and riddled with opportunities for misunderstanding. Financial transparency should be a priority for governments. As they try to provide essential services in an uncertain economy, elected officials need the insights of professional staff in the executive branch, of taxpayers with particular expertise, and of vendors who can provide products or services in a more cost-effective way. Transparency opens the books to all three groups, increasing the likelihood that someone will find a way to make a program more efficient or find a program that does not achieve its objectives.

In education and other areas, results can be quantified and measured against the cost of pro-

grams. The John Locke Foundation took a step in that direction with its report on Taxpayer Return on Investment in 2008.⁸ Four-year graduation rates and standardized test scores are better measures of the value taxpayers get for their education dollars than student/teacher ratios. A reasonable intermediary measure would be the share of spending that goes to the classroom. Making these improved measures available to parents, teachers, principals, other staff, school board members, and county commissioners would shine a light on what actually works to educate a child. Successful efforts, once recognized, could be more easily replicated.

Even when tied to results, fiscal transparency is not enough because it looks backward to decisions that have already been made. Government must also be more open in its decision-making process so it can improve future decisions.



When I'm elected president you're going to see this healthcare legislation written in the open. It's going to be on C-SPAN, and you'll be able to see all the different people arguing to see whether they're on your side or they're on the side of the drug companies and the insurance companies and so on. But you'll be able to see that process on C-SPAN.

— Barack Obama

*P*rocess Transparency

C-SPAN was a tremendous step forward in opening the national policymaking process to taxpayers and voters. Proposed bills or ordinances should be made available online for at least 72 hours before debate begins, not in the middle of the night before a vote is taken as was the case with the North Carolina state budget in August 2009. Debates and important committee hearings should be conducted in public and available online. And votes should be in public with a way to compare a legislator's recorded votes across bills. North Carolina state and local governments have inconsistent records on these items.

The lack of transparency has been an issue in the state budget and in federal health care legislation. In reference to the original 1,000-plus-page HR3200, Rep. John Conyers, a Michigan Democrat, asked incredulously, "What good is reading the bill if it's a thousand pages and you don't have two days and two lawyers to find out what it means after you read the bill?"⁹

North Carolina state budgets do not provide adequate information on the long-term impact

of spending and tax provisions. Such projections are sometimes done for sections of the budget and frequently for other bills, but almost never for the entire budget. Worse, budget debates largely focus on changes from the baseline spending projection, which includes a factor for growth; they rarely if ever focus on the previous year's spending.

For fiscal year 2010, the baseline was \$22 billion, a three percent increase from the previous year's budgeted appropriations, but 12 percent more than actual appropriations of \$19.65 billion. Most commentary on the budget focused on a claimed \$3 billion in cuts from the baseline, instead of the \$750 million increase in appropriations above what was spent in the 2009 budget year or the rest of the \$20.4 billion appropriated, including federal funds.

There is also no larger debate about whether programs are effective. Legislators, the media, and citizens deserve a full accounting of the full proposal to spend \$20 billion in state funds. A section of the proposed budget for 2010, stripped out of the final bill, would have done that by requiring state agencies to prioritize every dollar of their spending, not just the last ten percent.

Figure 3.

The web site for the North Carolina General Assembly does a good job of advertising and providing audio feeds from public meetings.

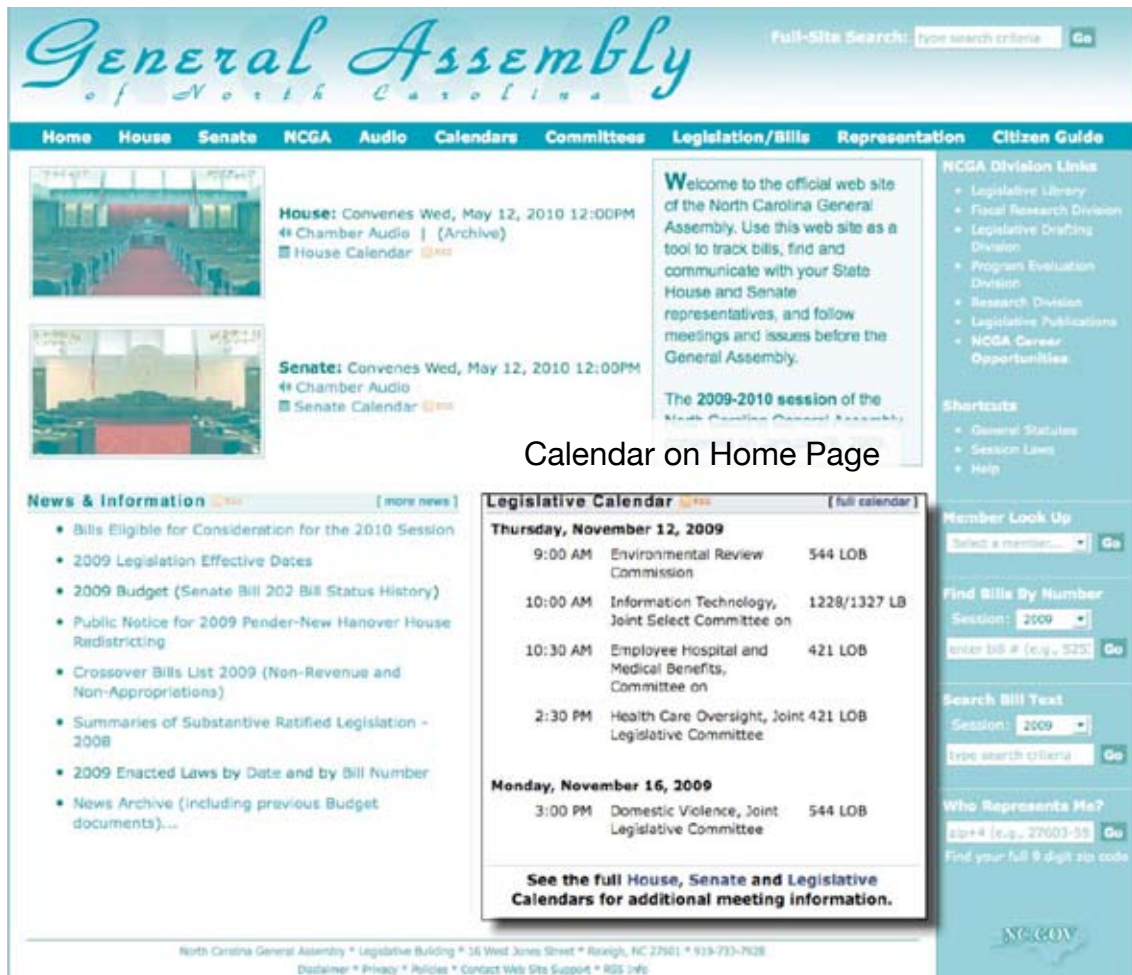
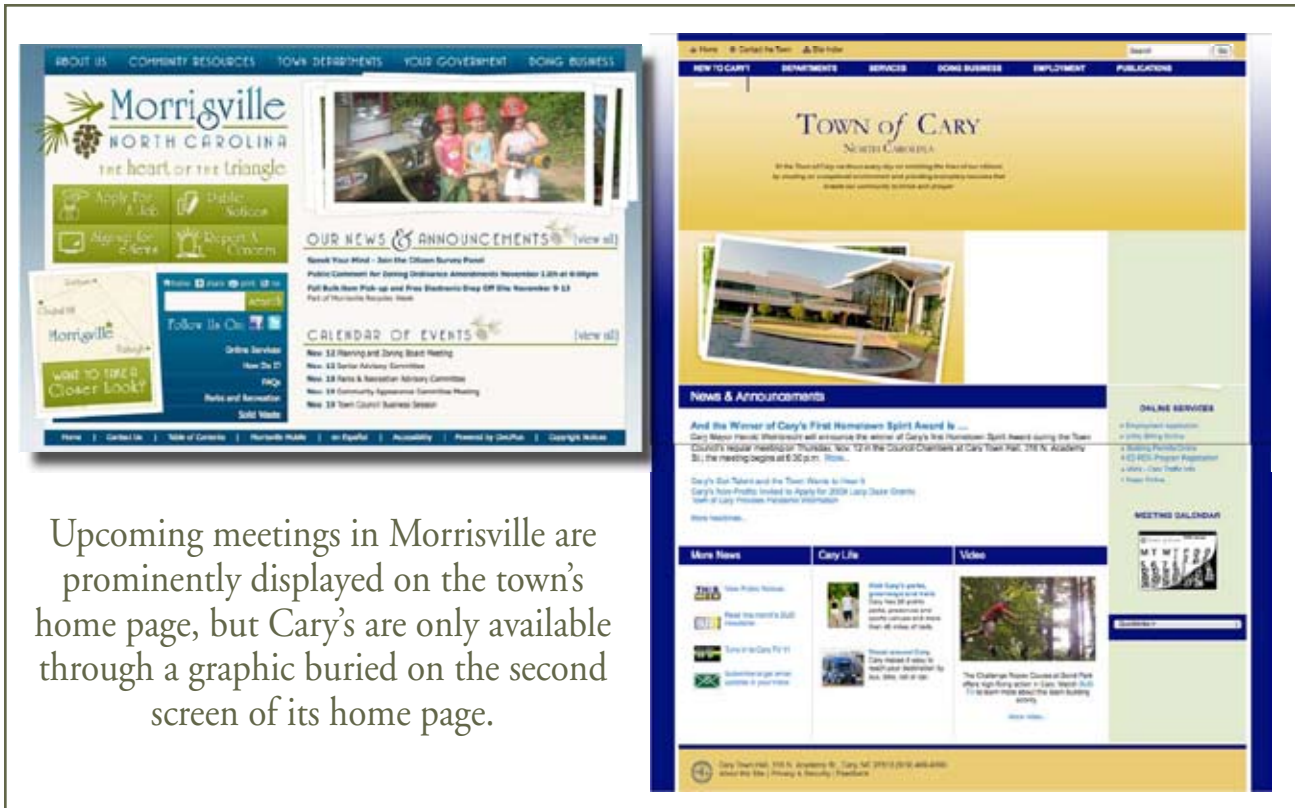


Figure 4.



Upcoming meetings in Morrisville are prominently displayed on the town's home page, but Cary's are only available through a graphic buried on the second screen of its home page.

What debate does occur on the budget or other issues should be done in public, not behind closed doors. Such closed-door meetings are so engrained in the General Assembly that during his 2008 gubernatorial campaign former Treasurer Richard Moore vowed to end meetings in “the infamous Room 612”¹⁰ where a handful of legislators negotiate the final state budget. Those secretive negotiations continue there under Gov. Perdue.

In addition to being held in public, meetings should also be prominently advertised beforehand in every communication platform available to the government entity. The North Carolina General Assembly does this well. Its home page provides a list of upcoming meetings, those interested can download a full calendar for each chamber of the legislature, and individuals can also sign up for email alerts for specific committees or all of them. The calendars are also available for subscription in RSS feeds, although they still require downloading a separate PDF for details. Audio from each cham-

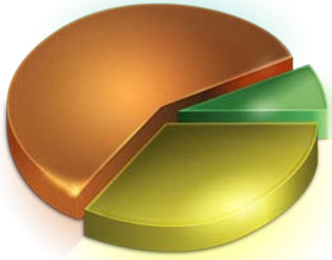
ber and from the public finance and appropriations committee rooms is also available through the web site (see Figure 3).

While the General Assembly often provides ample notice of committee meetings, it is less proficient at posting agendas ahead of time or at archiving debates and minutes. Local governments, which have generally been even less open about upcoming events or opening meetings, have been better than the state at making information available after the fact (see Figure 4).

New programs also need to be held responsible for their stated objectives with sunset provisions when applicable. If a program fails to deliver the promised outcomes, the legislative body – whether town council, county commission, or state legislature – should reform it or abandon it. Contracted services also should be bid in the open with requests for proposal that are broad enough to allow more than a single company to qualify as a contractor.

Those who advocate more and more government regulation have been experimenting for 40 years, trying to create an economic system in which everyone can somehow be made more prosperous by the toil of someone else.

— Ronald Reagan



If you have ten thousand regulations you destroy all respect for the law.

— Winston Churchill

The problem is that agencies sometimes lose sight of common sense as they create regulations.

— Fred Thompson

Regulatory Transparency

Given the amount of flexibility executive branch agencies and local government professional staff have in crafting the details of laws and ordinances, regulations also need to be more open to public scrutiny. This applies to the creation of new regulations, their review, and their availability to the public once they are created.

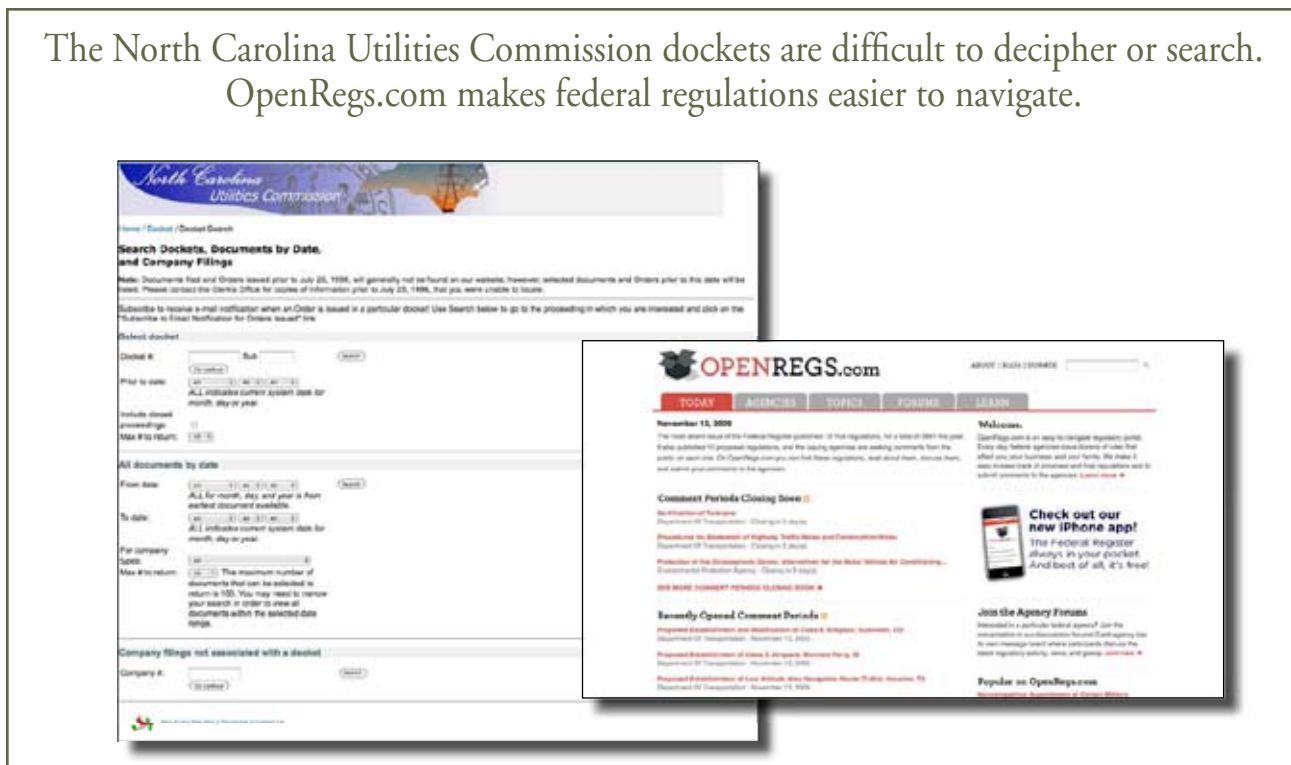
Regulatory agency web sites are difficult to decipher and too complicated to be used by all but a few people who have experience or time to search. Agencies sometimes lose common sense when they make information available to the public, not just when they create regulations. At the national level, OpenRegs.com has taken steps to open the regulatory black box (see Figure 5).

Proposed zoning changes, when they are made public, are also hard to decipher. Why would anyone living in Raleigh think to look at Z-003-10 unless they already knew about the case? Few supporters of zoning changes or new development will make the effort. Opponents will sometimes organize, such as those in the High House and Davis Drive section of Cary, where residents failed to stop a development but subsequently helped defeat the mayor and incumbent town council members. On the other hand, those being involuntarily annexed, such as those in Monkey Junction who were absorbed into the city of Wilmington,¹¹ are quite aware of the additional costs they will bear from a larger government presence.

Maps and architectural renderings are only sporadically available online, though physical

Figure 5.

The North Carolina Utilities Commission dockets are difficult to decipher or search. OpenRegs.com makes federal regulations easier to navigate.



documents are held at city hall. In the real estate market, sites such as Padmapper have overlaid apartment advertisements from Craigslist and other sources on Google Maps, making the online apartment shopping process simpler and more visual¹² (see Figure 6). Similar steps could be taken with zoning so residents (and planning and zoning commission members) can have a quick overview of where development is planned.

Elected officials have abdicated their role as representatives for their constituents by passing bills and ordinances that grant excessive flexibility to government staff. They exponentially increase the work of citizens and advocates who must not only pay attention to a bill as it goes through legislative deliberations once, but then must track every future action of the professional staff as the legislation is implemented and the regulations are promulgated.

Independent effectiveness reviews, performed by an independent state auditor, program evaluation division, or nongovernmental entity, are important additional steps in regulatory transparency. Reviews that simply ask about the negative effects

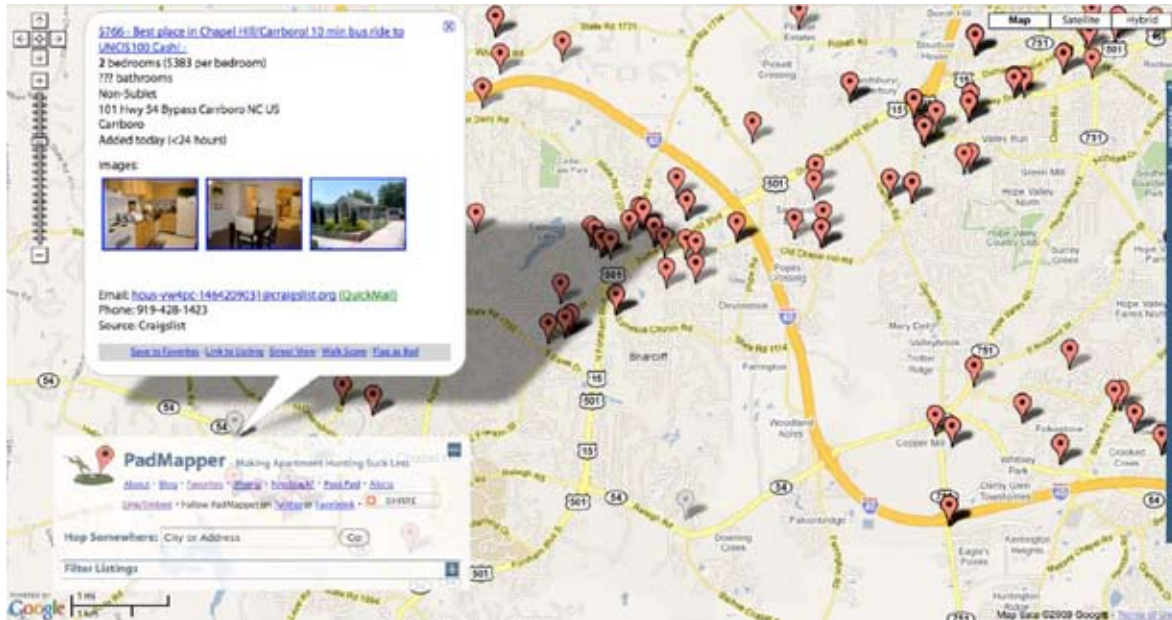
of a program's disappearance, without also probing whether the purported benefits actually exist, can mislead decision-makers. North Carolina has both an independent state auditor and a program evaluation division, but the auditor's office rarely asks the fundamental questions about a program's purpose, and the program evaluation division's scope of work is dictated by the legislature, which limits its ability to examine questionable programs.

An example of a biased review, however, is the state's 2008 continuation review of Juvenile Crime Prevention Councils. The agency responsible for the councils completed the review, made unproven assertions about their effectiveness, and spun disaster tales if the councils disappeared.¹³ Funding was extended in the budget,¹⁴ which passed shortly before the state auditor issued a report citing potential conflicts of interest in the program's grant distribution procedures.¹⁵

Ultimately, state agencies and their subunits (and local government departments) must develop mission and vision statements tied to measurable outcomes, not inputs. If regulations do not achieve the objectives claimed, they should be open to

Figure 6.

Padmapper combines structured data from Craigslist and other apartment sites with Google Maps to make apartment hunting easier.



repeal. For example, certificate of need regulations do nothing to improve the health of North Carolinians. To the extent they reduce costs, they do so only by offsetting other regulations that distort prices in health care.¹⁶ Research suggests, however, that eliminating certificate of need would not increase costs.¹⁷

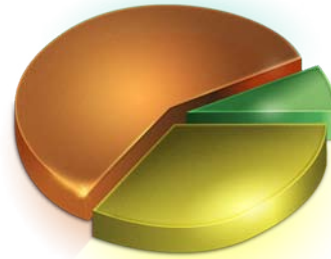
A case in which a public agency focuses on its mission more than its size can be found in Washington, D.C. Michelle Rhee, the District's chancellor of public schools, has made it a priority to educate students in the nation's capital, whether in traditional public schools with union teachers or

in charter schools that are outside her regulatory purview.¹⁸

Explicit, outcome-based mission and vision statements that are publicly available in every communication format would connect transparency and accountability in a fundamental way for taxpayers, voters, government employees, and elected officials. It would facilitate Gov. Perdue's Budget Reform and Accountability Commission's (BRAC) work by giving commission members objective standards against which to measure government activities. Accountability is, after all, the reason for transparency in any dimension.

Conclusion

Government at all levels needs to be more open and accountable to voters and taxpayers. Greater accountability depends in part on being more open about how government spends its money and what it gets for that spending. The John Locke Foundation has emphasized financial transparency at *NCTransparency.com*. Local governments have put more emphasis on process transparency. Improvements are needed in both areas as well as in regulatory transparency if government is to regain trust.



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About the Author

Joseph Coletti is policy analyst for the John Locke Foundation's transparency initiative, including NCTransparency.com. He has reviewed best practices on transparency in other states and within North Carolina. His writing has appeared in state and national publications. He has presented to national policy organizations and been interviewed on radio and television stations across the state. Prior to joining the John Locke Foundation, Coletti worked in the automotive industry and handled policy and communications for an international trade association. He received degrees from the University of Michigan and the Johns Hopkins University.

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The John Locke Foundation is a nonprofit, nonpartisan policy institute based in Raleigh. Its mission is to develop and promote solutions to the state'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.

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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.”*

JOHN LOCKE (1632-1704)

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



John Locke Foundation
200 West Morgan St.
Raleigh, NC 27601
V: 919-828-3876
F: 919-821-5117
www.JohnLocke.org
info@johnlocke.org