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The South Carolina Policy Council is the only organization of its kind in the state. We exist to PROMOTE AND PROTECT FREEDOM, and we analyze everything state government does with that goal in mind. SCPC, a 501(c)(3) non-profit, accepts no government funding. We rely on donors from across South Carolina to support our work – individuals, businesses, and foundations. Your contribution is tax deductible to the extent allowed by law.

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For questions about SCPC membership or how to make a donation with stocks/assets, please call Emily Gould at 803-779-5022 ext. 116.
The 2015 legislative session was not a productive one. Indeed, it was even less productive than the unproductive sessions of the previous four or five years. As usual, there was much talk of “ethics reform” at the outset, and many vows to “do something” about South Carolina’s deteriorating roads and bridges, but in the end lawmakers couldn’t even pass a weak ethics bill, and various “roads plans” died because they weren’t roads plans at all – they were tax hikes.

But the bills lawmakers tried and failed to pass weren’t just weak; they were actually destructive. These measures would have infringed on constitutional rights, given government agents power to bully citizens into silence, and given agencies further powers to raise taxes and fees. Apart from a few low-priority bills and the usual empty gestures (resolutions memorializing Congress, congratulating local sports teams and beauty queens, declaring certain days in honor of certain counties, etc., etc.), the legislature almost totally neglected its duties to protect citizens and limit governmental power.

So – not a lot of good news came out of the 2015 legislative session.

Even so, a number of excellent bills were filed, and some even received debate and media attention. Two thousand fifteen was the first year of a two-year session, so all these bills – the good, the bad, and the deplorable – are still “alive” and may well be debated in 2016.

But which bills would and wouldn’t make a positive difference in your life or the life of your neighbors? Which ones would and wouldn’t expand and protect your personal and economic freedoms? Answering those questions is what The Best and Worst of the General Assembly is for, and I hope it helps you negotiate the dizzying array of legislation introduced in 2015 and potentially debated in 2016.

This annual guide to state legislation is the only publication of its kind. No other source, online or print, examines all the year’s major legislation; and no other source analyzes so many bills with special attention on how those bills affect your freedoms.

As in past years, we’ve labeled each bill as among the “best” or the “worst.” We’ve briefly described what each bill is intended to do (and what it would actually do) and explained whether it’s a step toward liberty or away from it. Along the way, we’ve included a few stories about what really happened inside the legislature.

I hope you find it instructive and useful. And I hope –as I know you do – that next year’s session will be better for the cause of freedom.

E. Ashley Landess
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CONSTITUTIONAL RIGHTS

Lawmakers everywhere have a tendency to pass unconstitutional legislation. It’s an even bigger problem in South Carolina, where lawmakers appoint the judges who are supposed to consider the constitutionality of the bills lawmakers pass. The result is predictable: the legislature routinely passes unconstitutional bills, and the judiciary offers only weak resistance. South Carolinians’ constitutional rights have therefore become a major area of concern for the Policy council and others who keep an eye on the legislature.

WORST – H.3177

ARTICLE V CONVENTION OF THE STATES (S.198)

STATUS: Referred to House Judiciary Committee

This bill and others with similar aims attempt to organize a constitutional convention to propose amendments to the U.S. constitution. Attempts by state lawmakers to “do something” about out-of-control spending in Washington, D.C. merely distract from the clearer, more direct solution to these problems. That solution? Lessening South Carolina’s dependence on the federal government. State lawmakers constantly expand the state’s reach and power, though normally it’s over the other branches of government. In this case, they would be trying to expand their power over the U.S. constitution. The last thing we need is for South Carolina lawmakers, who’ve recently amped up efforts to restrict our constitutional rights through state law, to have any role in rewriting the U.S. constitution.

BEST – S.90

NO WARRANTLESS SEARCHES OF CELL PHONES

STATUS: Referred to Senate Judiciary Committee

The bill would prohibit law enforcement from searching the contents of an individual’s cell phone without a warrant or the express consent of the owner. This protection is already afforded to citizens under the Fourth Amendment’s prohibition against unreasonable searches and seizures. The U.S. Supreme Court agrees: witness the unanimous decision on warrantless searches of cell phones. The value of S.90 would be to further clarify what constitutes a proper cell phone search in South Carolina.

BEST – S.647

POLICE MAY NOT HARASS INDIVIDUALS FOR RECORDING THEM

STATUS: Referred to Senate Judiciary Committee

The bill would clarify that it is indeed legal for a private citizen to film the police in public. Citizens already have the right to record in public places. S.647 would only further clarify that it is illegal for a police officer to do any of the following to someone attempting to record a police officer in the performance of official duties:

- intentionally hinder, prevent, or obstruct the person from taking a photograph or making a recording
- detain, arrest, threaten, intimidate, or otherwise harass the person
- search or seize the photograph, recording, or device used to take the photograph or make the recording without the person’s permission or a warrant
- damage or destroy the photograph, recording, or device used to take the photograph or make the recording

Private recording of interactions between law enforcement and civilians helps to promote accountability and shine a light on abuses that would otherwise remain hidden. Recordings can also help police officers disprove frivolous complaints of police abuse. Any measure that promotes accountability among public employees is a good thing.
**WORST – S.250**

**RELEASE OF MEDICAL RECORDS**

**STATUS:** Passed Senate, Passed House, Act No. 75

South Carolina’s Department of Social Services (DSS) has come under fire recently for failing to prevent the death and/or repeated abuse of children who are the subject of an open case with the department. The bill would change state law, which currently prohibits the release of a child’s medical records without the permission of a parent or guardian, so that in certain cases – specifically when a child is the subject of an abuse or neglect report – these records could be released without parental consent. In such a case, photographs could be taken and medical examinations conducted without parental consent. The legislation is driven by noble intentions, but it’s dangerous. Simply put, it requires too many government officials to get involved, and the more officials get involved, the likelier it becomes that sensitive information will be leaked or otherwise disclosed. Some children are prone to accidents; their parents would be subject to DSS investigations. In general, allowing state authorities to access children and their records without parental involvement is a dangerous precedent to set.

**WORST – H.3669**

**PERMITS REQUIRED FOR “CASUAL” HANDGUN SALES**

**STATUS:** Referred to House Judiciary Committee

The bill would increase regulations on firearms by requiring a license to engage in the “casual” sale of a handgun. “Casual” in this context means the sale of a handgun by a person not engaged in the business of selling handguns. An applicant must go through SLED to obtain the license and must be prepared to post a bond in favor of the state with surety in the amount of $5,000. Once a license is paid for and obtained, a biennial fee of $200 is imposed. The proposal raises a number of troublesome questions. In the first place, does the term “casual” mean to encompass any non-business-related exchange involving a handgun? The proposal does not clearly state whether an exchange between two family members would require the $5,000 license. It does state, however, that violators of the bill would be guilty of a felony and subject to a $2,000 fine or 5 years of imprisonment. Secondly, the bill states that SLED “may grant a license” to any person engaged in casual handgun sales. If licensure is at the discretion of SLED, is it possible that some members of the community may not be granted a license? Simply put, this bill proposes more regulations on the already grossly overregulated sphere of firearm sales. Requiring licensure is a classic method for reducing the supply of participants engaging in an activity. In this case, regulations would clearly reduce the number of persons engaging in “casual” handgun sales. Proponents may argue that an increase in overall public safety justifies the regulation. While we cannot know for sure if this measure would increase overall public safety, we have yet another reason to believe that state government is actively infringing upon South Carolinians’ individual liberties.

**BEST – S.380**

**ASSET FORFEITURE REFORM**

**STATUS:** Referred to Senate Judiciary Committee

This bill reforms South Carolina’s asset forfeiture laws by stipulating that all property subject to forfeiture reform may not be seized by an investigating agency prior to a criminal conviction. Another provision in the bill require any monetary proceeds from forfeiture be remitted to the state General Fund by way of the state treasurer. The code currently allows law enforcement to keep 95 percent of the proceeds from the sale of seized assets, 75 percent being remitted to the law enforcement agency and 20 percent going to prosecutors. The incentive for abuse is clear. The reform could go even further, though: Law enforcement should have to publish data on the revenue from forfeiture and its specific sources, and state law should prohibit SLED and local law enforcement from participating in any federal forfeiture programs that enable law enforcement to seize and retain the value of seized property by going around state law. As it stands, though, S.380 would bring real improvement to an area of law fraught with both the potential for abuse and actual abuse.

**BEST – S.105**

**CONSTITUTIONAL CARRY (H.3716, S.570)**

**STATUS:** Referred to Senate Judiciary Committee

If passed, the bill would turn South Carolina into the seventh state to enact “constitutional carry.” Anyone who is legally allowed to own a handgun in the state would be able to carry that handgun in public either openly (in plain
To see how your legislator voted on bills in Best & Worst 2015, please visit scstatehouse.gov/votehistory.php.

sight) or concealed, without the requirement of a concealed weapons permit. Citizens that still want to obtain a CWP in order to carry in other states that have reciprocity with South Carolina can do so. The bill would still allow private employers, owners, or persons to restrict weapons on their premises if they have legally posted a sign stating the prohibition (such as “No Weapons Allowed”). Also, the bill would still prohibit someone from carrying a weapon into the residence or dwelling place of another person without the permission of the owner. This bill would help to restore the promise of the 2nd amendment in South Carolina, and stands in contrast to H.3025, which would allow for the unlicensed carrying of a concealed firearm, but would continue to forbid citizens from openly carrying handguns.

**WORST – H.4326 and S.868**

**EXTENDING EMINENT DOMAIN TO PIPELINE COMPANIES**

**STATUS:** Referred to Judiciary Committee

These companion bills would allow the condemnation of private property for the benefit of private companies constructing pipelines for transporting petroleum products. The bills would require a petroleum pipeline company to receive certificates and permits from the Public Service Commission (PSC) and the Department of Health and Environmental Control (DHEC) before exercising the power of eminent domain. The most significant aspect of the legislation is the granting of powers unsanctioned by existing law. A recent opinion from the state attorney general’s office held that under current law, eminent domain cannot be exercised for the purpose of petroleum pipelines.

**WORST – S.194 and H.3039**

**DILAPIDATED BUILDINGS ACT**

**STATUS:** Referred to Senate Judiciary Committee

This bill would empower government to seize private property if the building, structure, or condition is not in substantial compliance with one or more municipal ordinances regarding prevention of substantial risk of injury to a person; or condition of the property constituting an imminent danger to the public health or safety. The property can be seized, given to a court-appointed receiver to repair or demolish, and then the original owner can either be billed for repairs or, if the owner is unable to pay, the structure or property may be sold. This idea remains a flagrant violation of property rights.

**WORST – H.3414**

**DESIGNATING THE COLLEGE OF CHARLESTON A RESEARCH UNIVERSITY (S.377)**

**STATUS:** Referred to House Education and Public Works Committee

This bill would continue a legislative push begun in 2014 by allowing the Board of Trustees of the College of Charleston (COC) to designate the institution a research university. Last year’s push began shortly after outgoing Lieutenant Governor (and former Senate President Pro Tempore) Glenn McConnell became President of the College. As The Nerve pointed out in 2014, designating the C of C a research university would potentially allow the college to use the South Carolina Research University Infrastructure Act to gain millions more in new funding. Using the Act, a research university can finance “research infrastructure projects” with state general obligation bonds, bonds that must be paid back by all state taxpayers. Despite some claims of poverty, the majority of South Carolina’s public universities are doing extremely well financially, and the few that aren’t are suffering because of gross financial mismanagement. Lawmakers should be easing colleges and universities off state support, not increasing the size of their subsidies.

**WORST – H.3209**

**MORE LOTTERY FUNDING FOR SCHOOLS**

**STATUS:** Referred to House Ways and Means Committee

The bill would require either a new state lottery game to be created with all revenues going towards K-12 education, or the revenues of an existing state lottery be dedicated entirely to K-12 education. Shortsighted attempts to infuse more cash into our public education system are fraught with danger and never lead to the happy results predicted. Increasing education funding is not sufficient by itself.
to improve academic outcomes. Even if the link between funding and performance was clearly established, H.3209 contains no promise that K-12 funding will increase overall. Even more to the point, legislators should not be funding any core government services with unstable streams of state-run gambling revenues.

**BEST – S.43**

**CREATING A SOUTH CAROLINA COLLEGE AND UNIVERSITY BOARD OF REGENTS (RELATED H.3249)**

**STATUS:** Referred to Senate Education Committee

This bill seeks to consolidate the governance of public institutions of higher education in South Carolina into the new South Carolina College and University Board of Regents. The board would be comprised of 17 members: two members would be elected by the General Assembly from each congressional district, and three members would be appointed by the governor. The regents would be tasked with developing a coordinated system of higher education, and university board of trustees would advise and assist the Board of Regents. Applying a consolidated governance structure to the state’s public colleges and universities is a long overdue reform. SCPC and the American Council of Trustees and Alumni (ACTA) jointly issued a report that concluded the current diffuse governing structure of state colleges and universities has contributed to rising tuition, duplicative programs, and unnecessary expansions. Instead of a bevy of independent boards competing for state resources with no regard for the needs of the state as a whole, there would be one body governing the state higher education system, and that board would be charged with ensuring that the system served the needs of all South Carolinians.

**WORST – S.239**

**MANDATING MINIMUM PAY FOR TEACHERS**

**STATUS:** Referred to Senate Education Committee

The bill would mandate that public teachers and administrators in South Carolina be paid, at minimum, the Southeast region’s average salary for their positions. Presumably the thinking behind these bills is that South Carolina’s pay must be commensurate with surrounding states in order to attract the best teaching talent and ensure positive educational outcomes. But even if an increase in teacher pay attracted more teachers at the top of their field, they would still be stuck teaching under restrictive state and federal standards. These standards provide disincentives to different approaches to education, and this problem will be exacerbated with the implementation of Common Core or other “college and career ready standards” that closely resemble Common Core. S.239 may increase expenditures on teachers and administrators, but it would do nothing to solve the problems that lie at the heart of South Carolina education. A more appropriate reform is to permit decisions to be made at the level closest to the students and their parents, allowing principals to pay teachers based on their value and the quality of their teaching abilities.

One of the most significant threats to our constitutional rights in 2015 was a provision buried in a weak but insidious ethics bill. The provision would classify certain communications some nonpolitical groups like the Policy Council produce as “electioneering.” The definition used in the bill goes far beyond what the U.S. Supreme Court has ruled states can regulate, and was a clear attempt to silence us and/or force us to expose our supporters. We published a detailed analysis for other 501c3 groups, SCPC president Ashley Landess published an op-ed in the Wall Street Journal on how this and similar provisions are intended to insulate politicians from criticism, and in May SCPC hosted a public debate on the issue on USC’s Columbia campus. The bill didn’t pass in 2015, but its backers in the legislature are certain to bring it back up in 2016.
Ethics Reform Restructuring

It looked as though lawmakers might actually make South Carolina’s weak ethics laws weaker in 2015 with the consideration of S.1 – an omnibus ethics bill. However, after failing to pass S.1 in February of 2015, the Senate at the very least, kept the status quo and didn’t make matters worse.

S.1 would have eroded the few income disclosure requirements currently in place, and it the bill included a flatly unconstitutional provision to regulate the political speech of non-political organizations.

Unfortunately, however, the House passed H.3722 – an omnibus ethics bill comprised of several standalone measures previously passed by the House – and sent it to the Senate where it was unsurprisingly gutted and replaced with a nearly identical version of S.1. The House measure had many of the same flaws as the Senate: legislative self-policing remained, the requirement to disclose government income was weakened, and the unconstitutional speech provision was included.

In 2016, the bill to watch will be H.3722. It has already favorably passed out of the Senate Judiciary committee. With nearly every effort by lawmakers to reform our ethics laws resulting in weaker laws and/or restrictions on citizens’ ability to hold their politicians accountable, in 2016 the focus has to change. The way forward on ethics reform is not to add and subtract details to Ethics Act. The way forward is to remove laws that give politicians (and especially lawmakers) special sets of rules to follow in order to remain “legal.” Laws on embezzlement, for instance, should apply to politicians who use campaign funds for personal expenses. Lawmakers charged with ethics violations ought, similarly, to answer to law enforcement authorities – not to their colleagues in the General Assembly.
Citizen-Controlled Government

South Carolina’s government structure places enormous power in the hands of a few legislative leaders. Many of those powers are executive in function – they pertain to the running of state government, not the passing of laws. And since those legislative leaders are only elected by small districts – unlike the governor, who is elected by the entire state – the great majority of South Carolinians have no way to hold accountable many officials whose decisions affect their lives. Unless you live in Florence, for example, you are not a constituent of the President Pro Tempore of the Senate – a lawmaker whose power vastly exceeds that of the governor. The bottom line: South Carolinians don’t control their own government. Robust legislation aimed at changing that – often boringly called “government restructuring” legislation – is therefore hugely important to the state’s future.

BEST – H.3566

ELIMINATE THE DEPARTMENT OF TRANSPORTATION (DOT) COMMISSION

The bill would eliminate the transportation system’s policymaking body – the DOT Commission – and would place DOT policy decisions in the hands of the Secretary of Transportation, who is appointed by the governor. This excellent reform – a major part of the Policy Council’s Reform Agenda, published originally in 2012 – would help restore accountability to the DOT. The current system of legislative control leaves citizens without anyone to take their concerns to – without anyone to hold accountable when poor decisions are made – and prioritizes politically influential counties over those without clout in Columbia. Vesting full DOT governing authority to one official appointed by the state’s chief executive, by contrast, would let citizens know exactly who they should take their concerns to: the governor. Establishing a clear line of accountability for road-related decisions would go a long way towards ensuring that (a) road funding is equitable and rational, and (b) maintenance work receives proper attention.

BEST – S.111 and S.112

EMPOWERING THE GOVERNOR TO NOMINATE JUDGES WITH ADVICE AND CONSENT OF SENATE

STATUS: Referred to Senate Judiciary Committee

These are two bills that would take significant steps toward creating an independent judiciary. Collectively, the two bills would eliminate the unilateral power of the legislature to control the judicial branch by requiring the governor to appoint judges with the advice and consent of the Senate. (Confer the first item on the Policy Council’s Reform Agenda.) A related bill, H.3123, would give the House advice-and-consent powers as well. That reform is unnecessary and seems designed to allow the legislature to hold on to its power. But H.3123 would be a welcome reform over the current system.

WORST – S.264

ALLOWING BILLS TO BYPASS SENATE COMMITTEE PROCESS

STATUS: Referred to Senate Rules Committee

This is a Senate resolution that would create a Senate rule to allow bills and joint resolutions that have 27 or more cosponsors in the Senate to go “without reference” and be placed directly on the calendar. Citizens would no longer have the ability to speak on the proposals during public committee meetings. This appears to be nothing more than an attempt to make it easier for the legislature to rush through unpopular and/or controversial legislation – as some members of the House did last year.
**WORST – S.242**

**ALTERING THE MEMBERSHIP OF THE JMSC**

**STATUS:** Referred to Senate Judiciary Committee

The bill is an attempt to reform the judicial screening process by changing the membership of the Judicial Merit Selection Commission (JMSC), a body tasked with nominating candidates for judicial posts to be voted on by the General Assembly. Under current law, all ten members of the committee are chosen by three legislative leaders, the House Speaker, the Senate Judiciary Chairman, and the Senate President Pro Tempore. This bill would add five members to the JMSC for a total of 15 members. Legislative delegations would nominate two members from each of the state’s seven congressional district to be appointed by the governor, and the governor would appoint the one remaining member with the advice and consent of the Senate. This alteration of the JMSC fails to fix the true problem in the way South Carolina selects its judges. South Carolina is one of only two states where the legislature nominates and elects judges. The governor should be appointing judges with the advice and consent of the Senate in order to ensure clear accountability.
**BEST – S.134**

TRANSPARENCY IN INCENTIVES

**STATUS:** Referred to Senate Finance Committee

This bill would take a huge step toward ending the state's secretive economic incentives process by requiring all taxpayer-backed incentive agreements to be considered as standalone legislation, subject to a recorded vote on second and third reading. The agreement would also be subject to public input during a mandatory waiting period, and subject to an independent analysis (i.e., to analysis by someone other than the state). Further, this bill would implement a five-year sunset provision on all targeted incentives unless specifically renewed by the General Assembly in a public process. In an effort to create even more accountability, the bill also establishes reporting requirements and mechanisms on the back end of these deals to hold both the state and the businesses accountable. SCPC has been calling for a measure like S.134 for several years; indeed the reform is one of our Reform Agenda’s eight points.

**BEST – H.3228**

BARRING PUBLIC FUNDS FROM BEING SPENT ON LOBBYISTS

**STATUS:** Referred to House Judiciary Committee

This bill would prohibit any “state agency, instrumentality, or department” from expending public funds to contract with a lobbyist. This prohibition would help to prevent the astronomically wasteful practice of agencies hiring lobbyists to promote their budgetary interests to legislators. In short, government should not be allowed to lobby itself.

**BEST – S.123**

SHORTEN SESSION AND IMPLEMENT BIENNIAL BUDGET

**STATUS:** Referred to Senate Judiciary Committee

The bill would shorten the legislative session and implement a biennial budget process, thus accomplishing one of the eight reforms on SCPC’s Reform Agenda. South Carolina’s legislative session is among the longest in the nation, which means lawmakers have more face-time with lobbyists and special interests and more time to dream up bogus government “solutions” to problems better solved in the private sector. S.123 would help. In even-numbered years the General Assembly would adjourn the second Thursday in March, and in odd-numbered years it would adjourn the prior to meeting. A new provision would also prohibit a public body from adding any item upon which a vote may be taken to an agenda less than 24 hours before a meeting unless two thirds of the body’s members vote to make the addition. Items that don’t require a vote could still be added to an agenda within 24 hours of a meeting as “expressly provided under the rules or procedures for meetings lawfully adopted by the public body.” This bill comes in response to a state Supreme Court ruling stating that public bodies don’t need to post any agenda. The implications for transparency and accountability in this bill are too obvious to name.

**WORST – H.3191**

CREATING THE OFFICE OF FOIA REVIEW

**STATUS:** Passed House, Referred to Senate Judiciary Committee

On the surface, this looks like an excellent attempt to reform the state’s FOIA law. There are several solid reforms in it. But one of these provisions outweighs the rest: it would allow public bodies to petition the Office of FOIA Review to seek relief from (read: stop) unduly burdensome, overly broad, or otherwise improper requests. Whether a request falls into any of the preceding categories is of course completely subjective. Public bodies will almost certainly use this provision to avoid the disclosure of information they’d rather keep secret. In short, one provision violates the whole premise of the Freedom of Information Act.
second Thursday in April. If this were state law in 2014, it would have cut the session by 12 weeks – and it could cut the 2015 session down by eight weeks.

**WORST – H.3190**

**ADDRESSING EXEMPTIONS TO FOIA**

**STATUS:** Referred to House Judiciary Committee

At first glance the bills seems to narrow the near-total exemption legislators currently enjoy from FOIA, but on closer inspection it’s not clear that this exception is being reduced at all. Even worse: it’s being expanded to other members of the government. The bill amends current law by extending the FOIA exemption of “working papers” of legislators and staff to the working papers of any elected or appointed public official or their staff. “Working papers” is also further defined to mean “internally created deliberative precursors to legislation, amendments to introduced legislation, or an ordinance.” Because we don’t know how “working papers” was interpreted before, this new definition may not be restricting the exemption at all. The legislation would also create a new FOIA exemption for written or electronic correspondence sent from a member of the public to a public official, provided the member of the public isn’t a lobbyist, public official, corporation, partnership, or association. What’s notable about this provision is that it would still allow individuals representing special interests to contact a legislator without public knowledge, so long as he or she is acting as a “private individual.” Legislators should eliminate this exemption – not expand or redefine it.

**BEST – S.263**

**MAKING SENATE EARMARK REQUESTS OPEN RECORDS**

**STATUS:** Referred to Senate Rules Committee

The resolution would amend the Senate rules to require senators making an earmark request in any budget bill do so through a form designed by the Senate Finance Committee. The form would at minimum contain “the member’s name, the specifics of the earmark request, including the county or municipality to which the earmark is steered if not statewide, the purpose to be accomplished by the earmark request, and such other information as the form may require.” Once filled out, the form must be filed with the Senate Finance Committee or the senior senator serving on a free conference committee, depending on which stage the budget bill is in. All of these forms would be available online to the public within three business days of being filed. This is an outstanding reform.

**BEST – S.62**

**NO NEW FEES WITHOUT LEGISLATIVE APPROVAL (S.230)**

**STATUS:** Referred to Senate Finance Committee

The bill would prohibit state agencies from imposing any new fines or fees, or increasing existing fines and fees, by regulation or administrative action – i.e. without legislative authorization. The provision wouldn’t apply to internal charges between government bodies or to fees imposed on students by institutions of higher education. (It would appear that lobbyists for the state’s major public universities had a hand in that exception.) The bill would also prohibit the General Assembly from authorizing the creation or increase of a fine or fee in any budgetary bill. This would be a welcome reform that would help to return the power to tax where it belongs (the legislative branch), and would further allow citizens to hold someone accountable for the size of the fines and fees imposed on them by the state.

For several successive years, lawmakers have introduced legislation that would have infringed on private citizens’ First Amendment right to engage in political speech. Efforts to increase transparency, meanwhile, have been blocked at every turn. Somehow our politicians have forgotten that, as SCPC president Ashley Landess has put it, transparency is for government, and privacy is for citizens.
OPPORTUNITY TO PROSPER

Too often, politicians and policymakers think their job is to support “business” or to pass “pro-business” legislation. But their job isn’t to protect some rather than others; it’s rather to protect the right of all citizens to better their conditions by law-abiding and wealth-creating work. That’s not complicated and almost always involves taking down barriers rather than creating new laws.

BEST – S.407

UNEMPLOYMENT INSURANCE REFORM

STATUS: Passed Senate, Passed House, Act No. 77

A follow-up to a significant 2014 reform that exempted business owners from paying unemployment insurance on themselves (if you lose your business, you can’t claim unemployment benefits), this bill would ensure that all business owners – not just owners of “S corps” and “C corps” – could benefit from the reform. S.407 was needed after last year’s reform was unfairly applied by the Department of Employment and Workforce. While the bill was signed into law in June of 2015, it’s retroactive to January 2015 – which is when the reform from 2014 was set to take effect.

WORST – H.3525

UBER

STATUS: Passed House, Passed Senate, Act No. 88

This bill is intended to solve the regulatory problem presented by ride-sharing companies – companies like Uber that provide on-demand personal transportation but that use freelance drivers with their own cars and so circumvent the regulations imposed on traditional cab companies. Unfortunately, though, the bill will make the problem worse in the long run. Rather than simply removing the onerous restrictions imposed on taxi companies and making them unable to compete with companies like Uber, the bill will impose these same restrictions on ride-sharing firms and subject them to the same regulatory bodies. The only notable regulatory differences between the two industries will be an easier certification application process for ride-sharing firms and more freedom to determine fares. In short, legislators are imposing most of the same regulations that stifle entrepreneurship and drive up costs in the taxi industry on the ride-sharing industry, too – all while excluding just enough of those regulations to give a slight advantage to ride-sharing companies over traditional taxi companies. Supporters claimed credit for not allowing ride-sharing companies like Uber to be banned from the state, but refraining from actually banning innovative companies is hardly a triumph for the free market.
**WORST – S.429**

**ADDING “STRESS” TO ELIGIBILITY FOR WORKER’S COMPENSATION CLAIM (H.3699)**

**STATUS:** Senate Judiciary Committee Report
Favorable w/amendment

This bill would add stress, mental injury, or mental illness experienced by first responders under normal working conditions to the definitions of “injury” or “personal injury” for which the individual can make a worker’s compensation claim. Currently, the law requires that these types of injuries be “extraordinary and unusual in comparison to the normal conditions of the particular employment” in order to be a valid claim. This bill creates a bad precedent for reasonable worker’s compensation insurance claims. If similar claims were extended into the private sector, they could easily bankrupt small businesses that would be forced to pick up additional insurance coverage for this mandate. The accompanying Fiscal Impact Statement performed by the Revenue and Fiscal Affairs Office states that the State Accident Fund believes the bill would increase claim costs and awards for state agencies and local governments and “could have a significant impact on the general fund”. This bill establishes a slippery slope for reasonable worker’s compensation insurance claims. If similar claims were extended into the private sector, they could almost certainly bankrupt small businesses that would be forced to pick up additional insurance coverage for this mandate.

The accompanying Fiscal Impact Statement performed by the Revenue and Fiscal Affairs Office states that the State Accident Fund believes the bill would increase claim costs and awards for state agencies and local governments and “could have a significant impact on the general fund”. This bill establishes a slippery slope for reasonable worker’s compensation insurance claims. If similar claims were extended into the private sector, they could almost certainly bankrupt small businesses that would be forced to pick up additional insurance coverage for this mandate.

**WORST – S.93**

**A WEAK SUNSET LAW FOR REGULATIONS (H.3006, S.283, S.425)**

**STATUS:** Referred to Senate Judiciary Subcommittee

On the surface the bill appears to eliminate the law requiring agencies to review regulations every five years and instead stipulate that all regulations expire five years after their enactment. But it includes many loopholes. One critical flaw in the bill is the preservation of an existing exception for legislative approval of regulations promulgated to maintain compliance with federal law, including grant programs. Current law requires the legislature to review all strings tied to the acceptance of federal money, but the enforcement of that law is weak. Specifically exempting legislative review of such regulations in this bill only perpetuates an already severe problem. Further, the bill allows for regulations to become effective within 120 days of being referred to a standing legislative committee if a joint resolution approving or denying the regulation is not enacted by such time. Any effective sunset law, moreover, should expressly require that no regulation go into effect without express legislative approval, since after all regulations have the force of law and it’s the legislature’s job to approve laws. While this reform may help to reduce regulations promulgated at the state level that restrict citizen freedom and hinder economic wellbeing, the bill falls far short of tearing down the regulatory barrier to freedom.
CREATING A MUSIC THERAPY LICENSE AND ADVISORY GROUP

**STATUS:** Referred to Senate Labor, Commerce and Industry Committee

The bill would create a music therapy license and a Music Therapy Advisory Group, which will serve under the Director of the Department of Labor, Licensing, and Regulation. This bill is nothing more than an excuse to regulate another industry and collect licensing fees. There are already music therapy courses, associations, and boards that provide the necessary education, training, and certification to practice music therapy. In fact, certification and examination by these associations and boards would be a necessary prerequisite to obtaining a Music Therapy license. That being the case, this plan is unnecessary and redundant. Additionally, this bill specifies guidelines for education and work experience of music therapy license applicants, meaning that as the medical landscape changes, the state law code will need to be adjusted to reflect those changes, creating a severe hindrance to industry flexibility and innovation.

REQUIRING FULL SENATE APPROVAL FOR NEW REGULATIONS

**STATUS:** Referred to Senate Rules Committee

The resolution would create a new Senate rule requiring a committee to report the regulation to the full Senate within 60 days of any proposed agency regulation being submitted to the appropriate Senate committee for review (as is currently required). If the committee does not report the regulation in the appropriate time frame, “a Joint Resolution disapproving the proposed regulation must be introduced in the name of the committee and referred in order to toll the 120-day period for automatic approval.” This rule would not help prevent agency regulations from gaining the force of law absent approval from the legislature because it would only apply to the Senate. Permanent law should not be changed through chamber rules. Each potential regulation that would have the force of law should be approved by the entire General Assembly on a recorded vote.

REGULATING THE FUNERAL INDUSTRY

**STATUS:** Passed Senate, Referred to House Labor, Commerce and Industry Committee

More often than not, state licensing laws have little to do with protecting the public and everything to do with insulating currently entrenched businesses from competition. S.160 is a perfect example of this generalization. The legislation would require the licensure of all third-party funeral service providers. It would also define third-party providers as anyone who “advertises the practice of funeral services to the public but who contracts with or otherwise engages another licensee to provide, assist, or otherwise participate in the practice of funeral service that he has agreed to perform for a fee.” Like all occupational licensure laws, this new regulation will only serve to drive up prices for consumers and decrease opportunities for would-be entrepreneurs.

NEW REGULATIONS ON OUT OF STATE PHARMACIES

**STATUS:** Recommitted to House Medical, Military, Public and Municipal Affairs Committee

Here is yet another bill regulating pharmacies filed by a pharmacist lawmaker. The bill would require any pharmacy located outside of South Carolina that engages in the “manufacture, production, sale, distribution, possession, or dispensing of prescription drugs or devices” in South Carolina to obtain a permit from the South Carolina Board of Pharmacy. This permit process would require out-of-state pharmacies to designate an official representative (which would require a good deal of paperwork), consent to South Carolina Board of Pharmacy inspections, and pay special out of state permit fees. This kind of law benefits existing in-state businesses by insulating them from out-of-state competition. Established businesses no doubt appreciate the favor, but over time consumers will pay the price.
WORST – S.144

RAISING THE MINIMUM WAGE (S.145, S.146, AND H.3031)

STATUS: Referred to Senate Judiciary Committee

This bill proposes an amendment to the state constitution that would make the state minimum wage one dollar higher than the federal minimum wage. Every subsequent year after passage the state minimum wage would be adjusted upward by the rate of inflation. The amendment would also prohibit an employer discriminating or taking adverse action against a person in retaliation for exercising the right to be paid a minimum wage. A person could seek civil relief for violation of this right; that could include back wages and reinstatement in employment. The principal effect of increasing the minimum wage is – inevitably – to increase unemployment, particularly among the less skilled segments of the population. Legal efforts to prohibit employers from releasing employees rather than increasing their pay (as this amendment attempts) will not help in the long run. Employers may be stuck paying some of their current employees more than they otherwise would, but they will offset this by restricting their new hiring, particularly among the less skilled who most need entry-level jobs. Legislators may not like the law of supply and demand, but noble intentions will not make it go away.

WORST – S.406

ALLOWING THE SFAA TO DETERMINE A NEW GAS TAX EVERY YEAR

STATUS: Referred to Senate Finance Committee

This bill may be the worst gas-tax-hike-for-road-repair bill introduced this session. Not only does it propose levying an additional “surcharge” (a tax) on gasoline purchases in addition to the existing motor fuel tax; it would devolve the power to determine the rate of the surcharge to the State Fiscal Accountability Authority (SFAA) – a hybrid legislative and executive five-member board. This is a clear violation of separation of powers, and an attempt to evade responsibility for a politically risky decision.

The bill also perpetuates the lack of accountability for spending and project prioritization at DOT by allowing the new surcharge to be “set at an amount necessary” to meet the agency’s funding requirements for the fiscal year that may be associated with continuing or new projects – allowing the tax to increase every year.

BEST – H.3164

REPLACING THE INCOME TAX WITH A FLAT TAX

STATUS: Referred to House Ways and Means Committee

This bill would replace the income tax with a 3.5 percent tax on adjusted gross income, and allow a tax forgiveness credit based on income level and dependents. The bill creates a set of income level brackets determining the percentage of the tax forgiveness credit issued. Cutting South Carolina’s top income tax bracket in half (it’s currently at 7 percent) would save citizens hundreds of millions, even billions of dollars collectively. This change would be a vast improvement over the state’s current uncompetitive income tax which imposes the highest marginal tax rate on the lowest level of taxable income in the Southeast (third in the nation), and the 13th highest income tax rate in the nation. The bill could be improved if it entirely eliminated the state’s income tax (as seven other states have done), but even unaltered it would remain a significant improvement over South Carolina’s current tax system.

BEST – S.155

ELIMINATING THE STATE INCOME TAX (H.3678)

STATUS: Referred to Senate Finance Committee

Each bill would gradually reduce South Carolina’s individual income tax over a five-year period by reducing each bracket’s rate by 1.4 percent each year, starting in 2016, until all brackets reach 0 percent. Though the goal of the bill is to eliminate the income tax, that cannot be ensured given that one General Assembly cannot bind the next, and therefore tax reductions beyond one two-year session is not guaranteed. Currently, there are six brackets of income taxed at higher rates as the level of income rises. At a top rate of 7 percent on income just over $14,000, South Carolina has the highest marginal tax rate on the lowest level of
taxable income in the Southeast (third in the nation), and the 13th highest income tax rate in the nation. Eliminating the individual income tax means more money in citizens’ pockets, more opportunity for job creation, smaller government budgets, less government intrusion in the economy, and less government power in general.

**Worst – S.170**

**Imposing an Internet Sales Tax**

**Status:** Passed Senate, Referred to House Ways and Means Committee

The bill would make internet retailers who make at least $10,000 from South Carolina consumers in a given year responsible for collecting and remitting sales tax on these purchases. Retailers who meet these criteria would also have to obtain a retail license. The tax would not be collected until January of 2016 in order to let a special tax exemption crafted for Amazon run until its previously legislated end date at the close of the year. Apart from the damage this bill would do to online sales in South Carolina, the bill is blatantly unconstitutional. The state constitution prohibits the Senate from originating bills that raise revenue.

**Worst – H.3725**

**Increased Tax Credits for Revitalizing Buildings (S.532 and H.3908)**

**Status:** Passed House, Passed Senate, Act No. 68

The bill would create or expand several tax credits relating to abandoned buildings. First, it would lift the cap on the tax credit for rehabilitation of a state-owned building. The $500,000 tax credit cap for rehabilitating all other abandoned buildings would not apply to state-owned abandoned buildings. It would also increase the size of an income tax credit for making rehabilitation expenditures to a certified historic structure. The credit would be increased from 10 percent of the expenditures that qualify for a similar federal credit to 25 percent of such expenditures. Such bills distort the market by encouraging investors to choose buildings they wouldn’t otherwise choose.

**Worst – H.3919**

**Incentives for Freight Railroads**

**Status:** Referred to House Ways and Means Committee

This bill would allow the Department of Revenue (DOR) to use non-ordinary methods when allocating a taxpayer’s income (i.e. determining the taxpayer’s total amount of taxable income) if that taxpayer “is planning to build or expand industrial freight railroads into an industrial park and invest at least two million dollars.” In other words, certain business ventures get rewarded simply by virtue of a special tax break. The bill would also exempt from sales tax “building materials necessary to build or expand industrial freight railroads into an industrial park in this state.” This is the worst sort of taxpayer-financed cronyism.

**Worst – H.3773**

**Tax Favors for Gas Pipelines**

**Status:** Referred to House Ways and Means Committee

The bill would allow the Department of Revenue to enter into an agreement with a taxpayer establishing the allocation and apportionment of his or her income, if the he or she is planning to build or expand a natural gas pipeline and invest at least $10 million. It would also exempt from sales tax “building materials necessary to build or expand natural gas pipelines in this state.” As with H.3919 immediately above, this bill arbitrarily rewards certain investors for reasons that are unclear and unexplained. On the surface, at least, the bills look like government-backed favors to specific people.
WORST – S.427

A PLETHORA OF TAX FAVORS FOR AGRICULTURE

**STATUS:** Passed Senate, Referred to House Ways and Means Committee

The bill would allow firms in the agriculture business to take advantage of multiple new targeted tax breaks and subsidies. The first provision of the legislation would allow job creation tax credits for agricultural packaging jobs. Building off this last provision, another section of the bill would allow agricultural packaging and agribusiness operations to claim job creation credits for seasonal as well as full-time employees. A third provision exempts machines used in agricultural packaging from sales tax. Finally, the bill mandates that when awarding benefits for economic development – including benefits from the deal closing fund – the Department of Commerce and Coordinating Council must consider agricultural businesses. In S.427, we see a classic attempt by government authorities to manage the private economy: precisely the kind of market-distorting intrusion that harms the economy by trying to help a few well-connected interests.

WORST – H.3105

ALLOWING CERTAIN PROFESSIONS TO DEDUCT ALL INCOME FROM INCOME TAXES

**STATUS:** Referred to House Ways and Means Committee

This bill would allow individuals employed in certain areas and residing in a tier-4 county (i.e. one of the poorest counties) to deduct 100 percent of their income from their state income tax. Eligible taxpayers would include K-12 teachers; members of a profession licensed by the Department of Labor, Licensing and Regulation; and attorneys in a circuit solicitor’s office. Taxpayers would only be able to claim this deduction for the first five years they are licensed to perform one of the above qualifying jobs. But once claimed, a taxpayer can continue to claim the deduction as long as he or she continues to reside and work in the same county, even if during the taxpayer’s five-year deduction eligibility the county is reclassified as no longer a tier 4 county. The bill is well intentioned, but prosperity does not come from cleverly (and unfairly) targeted tax breaks.

WORST – S.350

EXTENDING THE COMMUNITY ECONOMIC DEVELOPMENT ACT (H.3398)

**STATUS:** Passed Senate, Passed House, Act No. 46

The bill would extend the expiration date of the Community Economic Development Act from June of 2015 to June of 2020. The Act in question provides loans and grants to, and offers tax credits for investments in certified community development corporations or certified community development financial institutions. These institutions are defined as organizations that provide grants or loans under a certain dollar amount to small businesses. In other words the act is a roundabout way of providing state assistance to business. While these policies have no doubt enriched a few, the Policy Council has documented their repeated failure to improve the economic well-being of citizens as a whole. Businesses should have to prove their worthiness for loans and investments on their own merits. The Community Economic Development Act should be allowed to die.

WORST – H.3026

SUBSIDIZING WIND ENERGY RESEARCH AND DEVELOPMENT (RELATED: S.166)

**STATUS:** Referred to House Labor, Commerce and Industry Committee

The bill instructs the South Carolina Public Service Commission to adopt regulations that would, among other things, provide incentives (amounts unspecified) and cost recovery (in effect, subsidies) for energy suppliers and distributors who invest in offshore wind research and development activities. The state already subsidizes non-renewable energy sources such as nuclear energy through advanced cost recovery, and to a lesser degree subsidizes renewable energy through tax favors and grants to research facilities. The legislature combined both policies last year by granting utilities the right to apply for advanced cost recovery for investments in solar energy. None of these policies has generated favorable results for taxpayers or South Carolina’s economy. Legislators should be dismantling, not adding to, our flawed system of energy subsidies.
ECONOMIC INDEPENDENCE

If the state owes money it doesn’t have in the form of bond debt or unfunded liabilities, or if its laws dictate that large amounts of money go to unnecessary or unknown government entities, its taxpayers are not free to allocate resources to the services they believe are most important. In this sense, South Carolinians are dangerously unfree. A recent report estimates the state’s outstanding debt at $71 billion when all forms of liability are included, and many parts of the state law code and state budget involve byzantine requirements that nebulous programs and entities be given millions of public dollars. The bills that follow would either lessen or increase citizens’ ability to spend public money in ways they choose.

BEST – S.94

BARRING SCHOOL DISTRICTS FROM ISSUING GENERAL OBLIGATION BONDS FOR GENERAL EXPENSES

STATUS: Referred to Senate Education Committee

The bill would prohibit the governing board of any school district from issuing general obligations bonds for the purpose of general operating expenses. The effect of a school district defaulting on obligations is not only harmful to all the children in that district, but also to the state’s taxpayers who would be responsible for ensuring payment. This reform is a sensible clarification that will make school district defaults less likely by preventing the unwise and potentially disastrous fiscal policy of financing day to day operations with debt.

WORST – H.3785 and S.389

EXPANDING THE ACTIVITIES OF BUSINESS DEVELOPMENT CORPORATIONS

STATUS: Passed Senate, Passed House, Act No. 60

These companion bills would expand the scope of activities that business development corporations (BDCs) can legally engage in. BDCs are quasi-public, quasi-private entities that receive state and federal funds from the federal Small Business Administration and the State Jobs Economic Development Authority. BDCs take these government funds and bond them into higher dollar amounts that they then loan either directly to businesses or to banks that will in turn loan the funds to businesses. Under this proposal, a number of provisions that restrict the activities of BDCs would be either amended or removed outright. For example, BDCs would no longer be required to “advance business prosperity” by providing loans and investment only in their state; they would now be allowed to invest in their “area of operations.” That phrase is defined to include any states in Federal Reserve districts 5 and 6, meaning BDCs in South Carolina are now authorized to issue loans and invest in out-of-state businesses. That means more money taken form South Carolina taxpayers and placed in the hands of anonymous bureaucrats for nebulous purposes. If a business can’t receive financing on the private market, it is not the state’s place to rescue it.

WORST – H.3374

REDUCING OBLIGATIONS TO LOCAL GOVERNMENTS

STATUS: Passed House, Referred to Senate Finance Committee

This proposal would rename the Local Government Fund the “Local Government Revenue Sharing Fund” and would eliminate a requirement that the
fund be appropriated an amount not less than 4.5 percent of General Fund revenues of the last completed fiscal year. The bill further states that the appropriation to the fund should be increased by two percent in any fiscal year in which General Fund revenues are projected to increase by at least four percent. The bill, however, does not specify what the initial appropriation to the Revenue Sharing Fund should be. If the base appropriation to the fund is determined by the current year’s appropriation for the Local Government Fund, this will be a significant reduction in the legal funding requirement for the fund, since the legislature has failed to meet its legal obligation year after year. Lawmakers should simply follow the law as it’s written, not invent new convoluted ways of circumventing it.

It is not the state’s responsibility to encourage its citizens to pursue certain careers paths, or to provide a steady stream of trained workers for favored industry. Between the Workforce Investment Act and ReadySC, South Carolina already spends roughly $58 million yearly on workforce training with little appreciable effect to the state economy.

**WORST - H.4145**

**GOVERNMENT DIRECTION OF THE LABOR FORCE**

H.4145 is even more ambitious than H.3373 and H.3774. It would create a “Workforce Development Council” comprised of the heads or former heads of many powerful state agencies (Education, Commerce, the technical colleges, DEW, CHE). In addition to gathering a plethora of data and regularly evaluating existing state workforce training, the Council would be charged with creating a state comprehensive plan for workforce training and education, and developing a plan to ensure there is an adequate number of health care workers. The bill, among many other things, would create programs called “Pathways to First Careers” and “Pathways to New Opportunities,” tasked with subsidizing career training programs for students and adults. These bills fall just shy of direct central planning of our state’s labor force. Heads of government agencies cannot accurately predict the natural growth of various industries in our state and their future demand for workers. Attempts to push the state’s future labor force into favored industries will most likely result in a surplus of workers in some industries (meaning unemployment and reduced wages), and a shortage in others, both outcomes will combine to hinder overall economic growth.

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**WORST – H.3373 and H.3774**

**CREATING A MANUFACTURING CAREER PATHWAY**

**STATUS:** Referred to House Education and Public Works Committee

These companion bills would require the Board of Technical and Comprehensive Education to collaborate with the Department of Employment and Workforce (DEW), the Commission on Higher Education (CHE), and the Department of Education (DOE), and other alphabet soup agencies to establish a “manufacturing career pathway” for students within the manufacturing sector, and a “construction career pathway” for students in the construction sector. The pathway created by these agencies would be required to include “industry-validated stackable certifications and multiple entry and exit points that allow students of all ages to seek additional opportunities in the manufacturing sector.” Once the “pathway” is created, the CHE and DEW will post information online and programs in the manufacturing career pathway, salary and wage information for manufacturing careers, and a manufacturing sector employment forecast. These bills are little more than corporate handouts for companies engaged in the manufacturing or construction sectors.
WORST – S.2

A NEW FUND FOR THE INFRASTRUCTURE BANK

STATUS: Referred to Senate Finance Committee

The bill establishes the Interstate Lane Expansion Fund that will annually receive fine and fee revenues equal to the projected revenue from the sale, use, or titling of a motor vehicle. The bill would transfer these tax revenues in all but name, revenues currently dedicated to schools and the General Fund. Once in the new fund, the money would be used by the State Transportation Infrastructure Bank (STIB) to issue revenue bonds for the purpose of constructing an increased number of lanes on mainline interstates. The particular interstates to be expanded would be solely at the discretion of the STIB. It’s a terrible idea for two main reasons. First, the state should be focused on road maintenance, not expansion, and the STIB has historically been focused exclusively on expansions in a few select counties. Second, any funds transferred from one dedicated source to another will most likely be made up through increased taxes/fees or through borrowing which is simply a delayed form of taxation.

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**MAXIMIZING CHOICE**

It’s an iron law of economics: Monopolies produce inferior products. Without competition, there is no incentive to produce excellent goods and services at lower prices. The same is true in health care, education, and in many other area where government limits choices in a well-meaning but misguided attempt to regulate the private market or provide a service to everyone. Government activity that curtails the choices available in a free market hurts citizens — especially poor citizens — and ought to be abolished wherever possible.

### HEALTH CARE

**BEST – S.246**

**ALLOWING CERTIFIED NURSES TO PERFORM MORE SERVICES (H.3078)**

**STATUS:** Referred to Senate Medical Affairs Committee

S.246 would allow nurse practitioners, certified nurse midwives, and clinical nurse specialists to perform an increased number of medical services without the express written approval of a state board or licensed physician, and without a physician present to supervise. These services include prescribing pharmaceuticals to patients (the level of drug depending on the nurse’s training), referring patients to physical therapists, and certifying the claims of an individual applying for a handicap placard. It should be noted, these individuals already have the ability and necessary training to perform these services; however, they are restricted from doing so by state law. Allowing a greater number of appropriately trained professionals to provide medical services will help to drive down health care costs by increasing the supply of these services. This is one of many ways to drive down health care costs: paring back government restrictions increases availability, and increased availability brings down prices.

**BEST – H.3508**

**THE MEDICAL ASPECTS OF ADVANCED PRACTICE OF REGISTERED NURSING ACT**

**STATUS:** Referred to House Medical, Military, Public and Municipal Affairs Committee

This bill is similar to H.3078 and S.246 (see above) but adds additional regulations on nurse practitioners. Medical doctors tend to favor this version of the legislation, largely because of the tighter restrictions on nurse practitioners.

**BEST – H.3250**

**REFORM OF SOUTH CAROLINA’S CERTIFICATE OF NEED LAW**

**STATUS:** Passed House, Senate Calendar with Minority Report

This was the most significant health care reform debated this session. The bill would, beginning in 2018, repeal state laws that establish and regulate the Certificate of Need (CON) program in South Carolina. There are currently a combined 20 different medical services and pieces of medical equipment requiring CON approval in South Carolina. In addition to the repeal of CON laws in 2018, H.3250 would institute reforms to make the laws less burdensome in the interim period before their full repeal. The bill would also abolish the 14-member health planning committee that currently advises in the creation of the state health plan – the planning document that helps to determine how the state will allocate CONs – and permit DHEC to prepare that plan internally. One objectionable provision of the bill would require accreditation and certification maximising choice

It’s an iron law of economics: Monopolies produce inferior products. Without competition, there is no incentive to produce excellent goods and services at lower prices. The same is true in health care, education, and in many other areas where government limits choices in a well-meaning but misguided attempt to regulate the private market or provide a service to everyone. Government activity that curtails the choices available in a free market hurts citizens — especially poor citizens — and ought to be abolished wherever possible.
(by an agency approved by DHEC) as a prerequisite for applying to install and register an MRI machine. The bill would also impose an annual fee for the registration of an MRI machine. Higher quality and lower costs always accompany entrepreneurial freedom: entrepreneurs should therefore have the right to create new businesses or facilities providing medical services without government permission. Repealing South Carolina’s CON laws would be a major step towards achieving these goals, and a significant victory in the fight for health care freedom.

**BEST – H.3451**

**ALLOWING ANESTHESIOLOGISTS TO SUPERVISE FOUR ASSISTANTS**

*STATUS: Referred to House Medical, Military, Public and Municipal Affairs Committee*

The bill would allow an anesthesiologist to supervise up to four anesthesiologist assistants instead of the two currently allowed by state law. Permitting anesthesiologists to supervise an increased number of assistants will allow them to become more productive and will raise the effective cap on anesthesiologist assistants dictated by the number of licensed practicing anesthesiologists. Both of these changes will increase the supply of anesthesiologist services. And an increase in supply of a good or service will necessarily bring down the price of that good or service.

**WORST – H.3448**

**AIR AMBULANCE PERMIT AND HEALTH INSURANCE MANDATE TO COVER AIR TRANSPORTATION**

*STATUS: Referred to House Medical, Military, Public and Municipal Affairs Committee*

H.3448 would require the owner of an air ambulance to obtain a permit from the Department of Health and Human Services to operate the aircraft as an air ambulance. Moreover, it mandates that health insurance providers must provide coverage for air ambulance transportation to a hospital or medical facility when air transport is deemed necessary by a physician. More regulation and licensing requirements create barriers to entry into the market, creating higher costs for the provider and thus in higher costs for the consumer. And this is exactly the kind of intervention in health insurance practices – requiring all health insurance plans to cover certain services – that has driven up the cost of health care for everyone. Insurers should be free to determine what services their plans cover and consumers should be free to choose among these plans.

**BEST – S.128**

**AUTHORIZING PREPAID MEDICAL SERVICE AGREEMENTS**

*STATUS: Referred to Senate Banking and Insurance Committee*

This bill would legally authorize the issuance of prepaid medical services, as a product distinct from health insurance. Prepaid medical services are defined as medical services provided by one or more individuals licensed to practice medicine in a contractual agreement for a periodic fee. Under S.128, a business or individual could pay a doctor or group representing doctors a set fee in exchange for those doctors performing medical services over a certain length of time, with no cost at the time of service. Contracts would establish the range of medical services that are covered by the contract and fee. Any contractual disputes between the provider and patron could be taken up by the department of consumer affairs or the administrative law court. There are a number of benefits to prepaid plans. Fees under prepaid contracts may be less expensive than insurance premiums because the contracts wouldn’t be required to cover all of the different medical services the state mandates insurance policies to cover. Prepaid medical service plans may also help restrain costs and expenditures in the health care sector by removing the incentive to perform more medical tests or procedures than are necessary to ensure a patients well-being. Unlike
under an insurance system, a prepaid contract will not pay health care providers for every procedure they conduct or test they run; instead providers will receive a flat fee that will encourage providers to avoid unnecessary expenses. Prepaid medical services are just one example of many market innovations that could improve health care in the U.S. if the government would stop inhibiting the market.

**WORST – H.3021 & H.3867**

FORCING HEALTH PLANS TO REIMBURSE ANY LICENSED HEALTH CARE PROVIDER

**STATUS:** Referred to House Labor, Commerce and Industry Committee

These bills would require that any health insurer that provides for directly payable benefits to preferred healthcare providers also allow directly payable benefits to non-preferred licensed providers who have a written assignment of benefits (a form typically filled out by the insured). In essence these bills would force certain health plans that have a network of preferred health service providers – typically HMOs – to cover the cost of health services performed by providers outside of that network. While this may give an individual insured by an HMO more choices, it’s also likely to drive up the costs of the plan. The more services and providers required to be covered by a plan, the more expensive the plan will be. Increasing insurance coverage requirements may actually harm many individuals by driving up their health insurance costs or by making all the available health insurance plans too expansive to participate in at all.

**BEST – S.102**

ALLOWING LICENSED FOREIGN PHARMACIES TO SELL PRESCRIPTION DRUGS IN SOUTH CAROLINA

**STATUS:** Referred to Senate Medical Affairs Committee

S.102 would permit pharmacies licensed in Canada, under an insurance system, a prepaid contract will not pay health care providers for every procedure they conduct or test they run; instead providers will receive a flat fee that will encourage providers to avoid unnecessary expenses. Prepaid medical services are just one example of many market innovations that could improve health care in the U.S. if the government would stop inhibiting the market.

**BEST – H.3686**

SCHOOL CHOICE FOR DISABLED STUDENTS

**STATUS:** Referred to House Education and Public Works Committee

The bill would establish a system by which South Carolina education funds follow the child, at least in the case of disabled children. The bill would allow the parents of a disabled child to enroll their child in any public or private school of their choosing. The state base student cost appropriation for a disabled child would follow the child to the school of his or her parent’s choosing. In the case of private schools students would still have to meet any other privately established criteria for admittance. This bill would open a world of options to disabled students. Every public school would now be open to them, and private schools would now be more easily affordable. Comprehensive reviews have found that this approach – allowing parents to send their child to the school of their choice – has a positive effect on student achievement. H.3686 would go a long way towards making this policy of options a reality for disabled students. That benefit should then be afforded to all students in South Carolina.
BEST – H.3339

TAX CREDITS FOR HOME-SCHOOLING AND INDEPENDENT SCHOOL TUITION COSTS

STATUS: Referred to House Ways and Means Committee

If passed, the bill would be a significant step on the road to school choice for all South Carolina children and parents. The bill would allow for up to $5,000 in annual tax relief for parents or guardians who either home-school their children or pay tuition for their children to attend an independent school. Unlike past reform efforts, the tax relief provided in this bill would come in the form of a credit rather than a deduction. That will allow lower income families to take full advantage of the tax relief and enable them to actually pay the entire average independent school tuition. It is also worth noting that the tax credit is not limited to any specific South Carolina population (see H.3686 above) but would be available to all families with students eligible for South Carolina elementary or secondary public schools. While not a panacea or a full-blown school choice reform, this bill would effect one of the strongest policies in favor of school choice that has been introduced by the legislature so far.

The Gas Tax Debate

Gov. Nikki Haley set the tone for the 2015 legislative session when, in her State of the State address, she proposed a tax swap in which the gas tax would rise by 10 cents over three years and the income tax would drop by 2 percent over ten years. This proposal was often referred to as the governor’s “roads plan” because the added revenue would supposedly go to road maintenance. That raised a tough question: If it was a tax swap, not a mere tax hike, why would there be added revenue? In any case, there was never any serious attempt to determine if a lack of revenue was even the problem – a study paid for by the Department of Transportation made that conclusion, but that was all – and so the governor’s proposal couldn’t accurately be called a “roads plan.” It was a tax and spending plan. Although the governor’s plan made vague allusions to reforming the Department of Transportation, it was never clear what that meant, and so the chief problem would have remained unaddressed: the problem, that is, that a cabal of unaccountable legislative leaders are in charge of transportation funding in South Carolina.

The Senate “roads plan” was similarly little more than a tax increase. S.523 would have raised several taxes and fees, and created several more. Supporters claimed it would generate $800 million in revenue. Maybe, but the state constitution explicitly forbids the Senate from introducing revenue-raising bills.

The House, however, introduced and voted overwhelmingly for a tax increase, and had the constitutional authority to do so. The House bill would levy a $360 million tax increase on South Carolinians, and preserve legislative control over the transportation system while making a tweak to the way DOT commissioners are appointed.

The Senate quickly struck the House language from the bill and re-inserted the language from S.523, which meant citizens were once again looking at the largest tax increase in history. After failing once to set this bill for priority debate, enough votes flipped to get the bill in Special Order status, making it the first issue senators could address in 2016.

If the House bill passes in 2016, lawmakers will not only be raising taxes by $800 million. They will also be abdicating their responsibility to reform a road-funding system that virtually everyone outside the legislature agrees is a broken system. In 2015, moreover, lawmakers could not even guarantee that the money raised from higher taxes would actually result in any specific roads being repaired. In effect, the proposal as it now stands would make the current system more expensive – and that’s about it.

The bill stalled, however, after the attorney general issued an opinion on its constitutional problem – a problem first raised by the Policy Council.
Total Bills & Joint Resolutions: 1,336

Budget Numbers

BY THE NUMBERS

TOTAL FUNDS
$26,426,373,261

OTHER FUNDS
$9,541,979,043

FEDERAL FUNDS
$9,579,143,889

GENERAL FUNDS
$7,305,250,329

INCREASED BY
$876,002,448

INCREASED BY
$295,302,719

INCREASED BY
$168,837,901

INCREASED BY
$411,861,828

INCREASED BY
$26,426,373,261

PASSED
131

SIGNED
114

VETOED
2

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