



POLICY REPORT

South Carolina Policy Council

1323 Pendleton St., Columbia, SC 29201 • 803-779-5022 • scpolicycouncil.com

Reform the South Carolina Legislature

One of the primary obstacles to good government in South Carolina is a state constitution that concentrates power in the Legislature—at the expense of both the executive and judicial branches, as well as ordinary taxpayers. This power structure goes back to colonial times and is rooted in the control exercised by large plantation owners over the state’s government and economy.¹ Today, not much has changed. The Legislature still overshadows the executive branch and controls who serves in the judicial branch. Likewise, the Legislature directs South Carolina’s economy by means of numerous boards and regulations, as well as by distributing billions of dollars in economic incentives and targeted tax breaks to special interests.

Legislative Control over the Executive Branch

South Carolina’s gubernatorial office has long been recognized as the weakest in the country. And although executive authority has increased somewhat over the past few decades, the Legislature is generally able to pursue its own aims, regardless of what the governor, or even the voters, of South Carolina might want. Routine encroachments of legislative power include:

- Undermining the governor’s authority to make and remove appointments—for instance, to the Ports Authority; the Aeronautics Commission; the S.C. Research Authority; and the Office of Small and Minority Business Assistance.
- Allowing local delegations consisting of as few as one legislator in each chamber to [override gubernatorial vetoes](#) of local bills.
- Using the Budget & Control Board to control state finances, as well as executive agency operations.

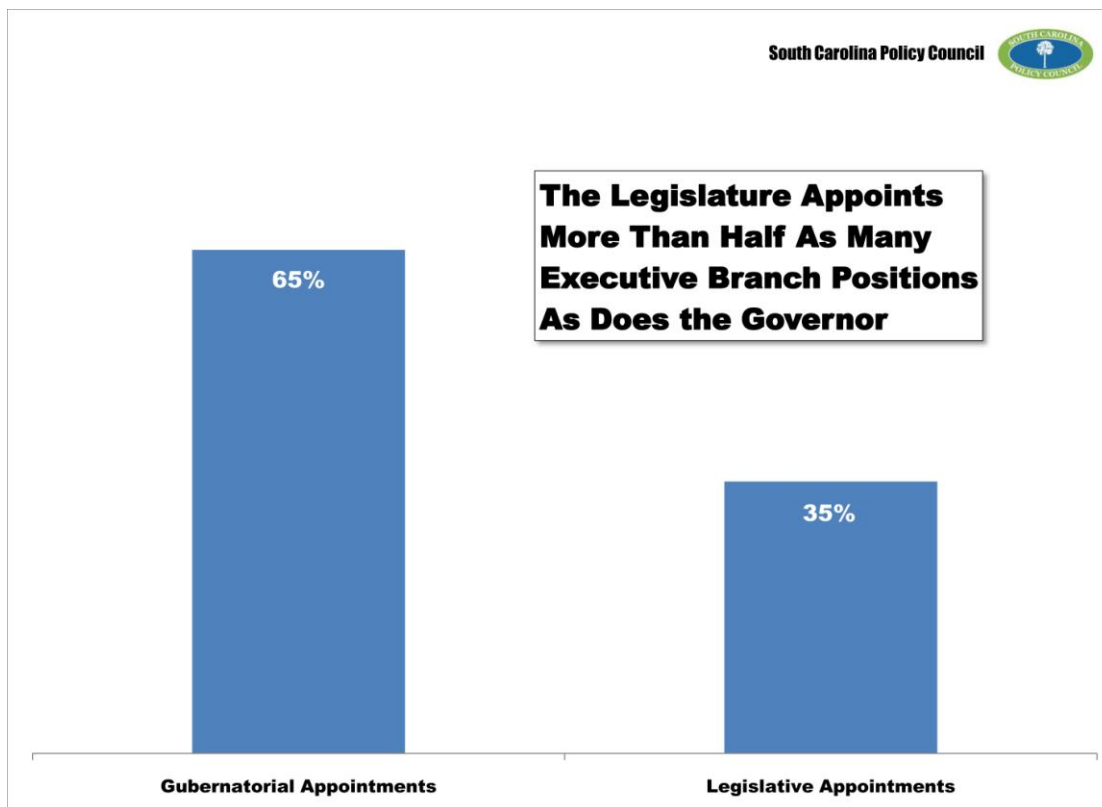
During the 118th General Assembly, legislators considered creating several new boards aimed at regulating interior designers (S 45); music therapists (H 4624); repo men (S 1073); taxi drivers (H 4469); and talent agencies (H 4235).

¹See C. Blease Graham, “[South Carolina’s Constitutions](#),” citing David D. Wallace, *South Carolina: A Short History*, p. 345.

In particular, the Legislature exercises tacit control over the state’s government and economy by means of the 250-plus boards and commissions that regulate nearly every activity in the state. There is an Education Board, Energy Board, Medical Examiners Board, even a Board of Distribution of Dead Human Bodies and a Perpetual Care Cemetery Board.

If both the legislative and executive branches share blame for this vast proliferation of regulatory bodies, the Legislature is ultimately responsible for creating these agencies and their corresponding regulatory and licensing/fee requirements. In particular, the Legislature uses these regulatory boards to control various executive branch functions. We have already mentioned legislative attempts to manipulate appointments to the Ports Authority, the S.C. Research Authority and other boards. Even more telling is the sheer number of appointments made by the Legislature. Based on our analysis, the Legislature makes more than 420 appointments to executive branch boards and commissions. This is compared to more than 780 by the governor.² In other words, the Legislature makes more than half as many appointments as does the governor.

Gubernatorial vs. Legislative Appointments to Executive Branch Boards/Commissions



²This calculation is based on analysis of appointment powers made to 165 boards and commissions, as identified in the [2010 Legislative Manual](#) and crosschecked against state statutes. The [governor’s office](#), however, reports that there are more than 250 statewide boards and commissions. We have excluded agencies and departments from our count—such as the Department of Insurance and the S.C. Law Enforcement Division. We have also excluded Budget & Control Board divisions, such as the Office of Human Resources and Information Technology; although the BCB itself is included in the final count.

Properly speaking, the legislative branch is responsible for making the law while the executive branch is responsible for enforcing the law. Accordingly, the executive branch is supposed to exercise sole responsibility over routine administrative government activities. At the very least, the governor should have controlling authority over every board and commission, with the power to make a majority of appointments and to remove these appointments at will. In South Carolina, that is not the case. In fact, the Speaker of the House and Senate President Pro Tempore combined make more than 120 executive branch appointments, 15 percent as many as the governor himself.

Legislative Control over the Judicial Branch

The Legislature exercises significant control over the judicial branch through its exclusive control over upper-level judiciary appointments. In fact, South Carolina is the only state in the country that gives its legislature such power. (Virginia's General Assembly also appoints judges, but the governor may fill unexpired terms.) In practice, this means the judiciary is subordinate to the Legislature.

Judicial Appointments Made Exclusively by the General Assembly

Supreme Court Judges: 5

All candidates must be found qualified and nominated by the Judicial Merit Selection Commission. Only nominated candidates—cap of three for each seat—may be voted on by the General Assembly. Election occurs during a joint session.

Court of Appeals Judges: 9

All candidates must be found qualified and nominated by the Judicial Merit Selection Commission. Only nominated candidates—cap of three for each seat—may be voted on by the General Assembly. Election occurs during a joint session.

Circuit Court Judges: 51*

All candidates must be found qualified and nominated by the Judicial Merit Selection Commission. Only nominated candidates—cap of three for each seat—may be voted on by the General Assembly. Election occurs during a joint session.

Family Court Judges: 59*

All candidates must be found qualified and nominated by the Judicial Merit Selection Commission. Only nominated candidates—cap of three for each seat—may be voted on by the General Assembly. Election occurs during a joint session.

Administrative Law Court Judges (formally part of the executive branch): 6

All candidates must be found qualified and nominated by the Judicial Merit Selection Commission. Only nominated candidates—cap of three for each seat—may be voted on by the General Assembly. Election occurs during a joint session.

*Includes active/retired judges.

Only Masters-in-Equity and Magistrates are appointed by the governor, with the advice and consent of the General Assembly. Masters have jurisdiction in equity matters, such as foreclosures, referred to them by the Circuit Court. Magistrates likewise are courts of limited civil and criminal jurisdiction, handling matters such as small claims disputes, traffic cases, and issuing warrants.

Theoretically, the Judicial Merit Selection Commission provides guidance and vets potential judges, who are then elected in a joint session of the General Assembly. But the 10-member commission itself is controlled by the legislative leadership, with the Speaker of the House making five appointments, the chairman of the Senate Judiciary Committee making three appointments, and the Senate President Pro Tempore making two appointments. In addition, the Legislature exercises control over the judiciary by means of the state budget (the department's [budget has been cut](#) by more than \$20 million since 2000).

Legislative Control over State and Local Government

The Budget & Control Board

In addition to the budget, the primary means by which the Legislature controls state government is via the Budget & Control Board (BCB). The BCB is the [only entity of its kind](#) in the country. The board is made up of five elected officials: the governor, the treasurer, the comptroller general, the chairman of the Senate Finance Committee, and the chairman of the House Ways & Means Committee. In addition to making a wide array of state budgetary decisions, the BCB also holds power over many functions that in other states belong to a cabinet-level Department of Administration. These functions include: building and operational maintenance, administration of the State Health Plan and state employee retirement systems, procurement for all agencies, and some human resources duties. Moreover, while its own agency budget is relatively small, the BCB actually controls billions in state funding.

Research by the Policy Council has detailed some of the inefficiencies arising from the BCB's administrative control over executive agencies.³ The BCB also exercises significant power over state finances and, when the Legislature is out-of-session, is even empowered to make budget cuts.

The BCB undermines gubernatorial authority by delegating executive functions to five individuals, two of whom are not elected to statewide office and are drawn from the legislative leadership.

The deeper problem is that the BCB undermines gubernatorial authority by delegating executive functions to five individuals, two of which are drawn from the legislative leadership. The result is a fragmentation of executive authority and a resulting loss of accountability. In practice, a coalition comprised of the chairman of the Senate Finance Committee, the chairman of the House Ways & Means Committee, and the state treasurer have consistently used their BCB voting powers to override the governor's policies—a constitutionally questionable practice.

³Cf. "[Budget & Control Board Billing Should Be Transparent, Competitive](#)" (June 2009).

Reform the Committee Selection Process to Make BCB More Accountable

Of the five members of the Budget & Control Board, two are not directly elected by voters statewide. These are the House Ways & Means Committee chairman and the Senate Finance Committee chairman. Because of the power vested in these two chairmen by virtue of their positions on the BCB, it is worth considering how the House and Senate appoint committee members and choose committee chairs.

In the House, the Speaker appoints all committees and each committee elects its own chairman. Indirectly, then, the Speaker has some control over who the chairman of each committee will be.

Accordingly, the Speaker appoints all the members of the Ways & Means Committee. In turn, these appointees elect the chair. In that respect, the Ways & Means chair is at least indirectly answerable to the Speaker. In turn, each House member is responsible for voting for the Speaker, who is elected the opening day of the organizational session in December.

In the Senate, however, committee appointment and chairmanship is based on seniority. The President Pro Tempore of the Senate does not select the chair of the Finance Committee. Thus, in spite of holding one of the most powerful positions in state government, the Senate Finance chair is in no way accountable to voters statewide.

Along with Arkansas, South Carolina is the only state in the country that bases Senate committee appointments and leadership exclusively on seniority. Changing the committee selection process in the Senate to parallel that of the House would be one reform that could make the BCB more accountable by making the Senate Finance chairman indirectly answerable to the Senate President Pro Tempore.

The Senate
Finance Committee
chair is in no way
accountable to
voters statewide.

Education and Other Local Matters

The General Assembly has frequently passed legislation that interferes in local matters. Examples from the 2010 session include: dictating county budget priorities (cf. FY2011 budget, [proviso 86.6](#)); intervening in local school board controversies ([H 4431](#) and [H 4432](#)); and passing constitutionally questionable laws tailored for individual counties ([H 3624](#)).

Especially as it relates to education, the General Assembly exercises a great deal of control over school policy via the State Board of Education. The Board's 16 members are elected by their respective legislative delegations, with the governor appointing only 1 at-large member. In addition, the legislative leadership plays a significant role in administering education policy via the Education Oversight Committee. The leadership itself appoints 8 of the committee's 18 members.

Legislative control over South Carolina's higher educational system is even more complete. According to the Association of Governing Boards of Universities and Colleges, 71 percent of higher education board members nationwide are appointed by governors, typically with legislative confirmation of gubernatorial appointees. In South Carolina this ratio is reversed, with the Legislature appointing 78 percent of higher-ed board trustees at the state's 10 leading public universities and colleges. As such, South Carolina is one of only three states (along with Minnesota and North Carolina) in which the majority of public higher-educational board trustees are directly appointed by the Legislature.

Legislative Control over the State's Economy

Here it is only possible to provide a sketch of how the Legislature directs South Carolina's economy. This control is essentially exercised in two ways:

- 1) By means of numerous regulatory bodies and licensing requirements
- 2) By using public dollars to invest in and subsidize research not supported by the free market; and to award targeted tax breaks and special incentives to private entities

We have already mentioned how the Legislature exercises control over the state's economy by means of numerous regulatory boards. [Unleashing Capitalism](#), an economic blueprint for restoring free-market principles to South Carolina, explains how this tangle of regulations impacts business:

Although not elected to statewide office, the Chairman of the Senate Finance Committee makes appointments to numerous boards and commissions, including the S.C. Centers of Economic Excellence Review Board, the Retirement System Investment Commission, and the Patriots Point Development Authority.

Many citizens are unaware of the extent to which the federal and state government intervenes in our daily lives. Indeed, government affects almost everything we do,

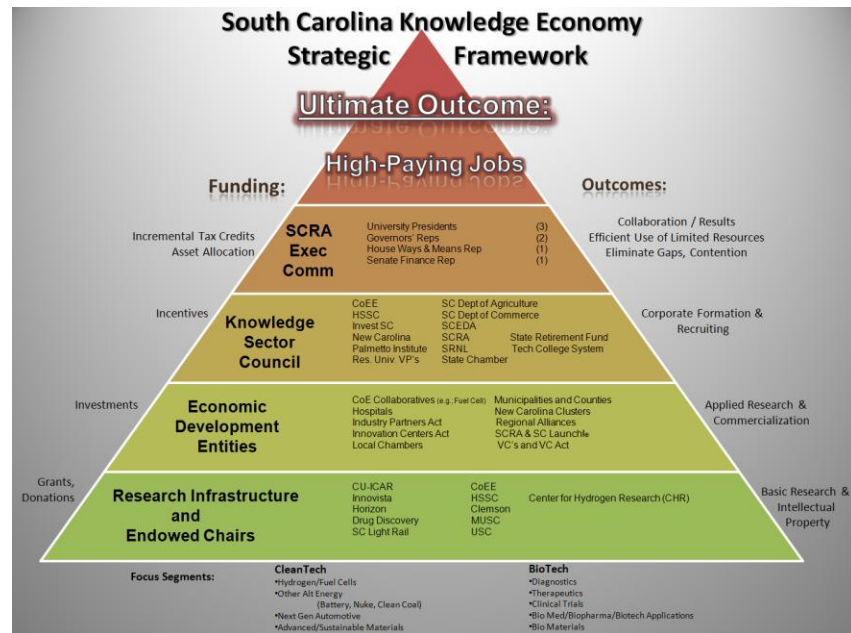
either directly or indirectly. Government taxes almost all monetary transactions, it licenses workers in a wide variety of industries, it regulates technical aspects of many types of consumer products, and government even controls individuals' behavior on private property. Seldom do voters consider the aggregate monetary and non-monetary costs of government regulation.

All in all, the regulatory burden imposed by the Legislature, and accompanying boards and commissions, costs state businesses billions in lost productivity—with small businesses impacted the most.⁴ This is in addition to the federal regulatory burden, which is estimated at between \$1.1 trillion and \$1.2 trillion nationwide.

The second way in which the Legislature controls the economy is via government driven economic development policies. More precisely, such policies entail using government power (via grants, taxes, fees, regulations, etc.) to provide or promote services that are better left to the free market. By interfering in the economy, government not only wastes tax dollars (by inefficiently allocating resources), it also picks winners and losers in the marketplace. Thus, the objections to a state-run economy are both economic and moral.

Legislative leaders make no secret of their desire to create a top-down economy in South Carolina. Unveiled as part of a “knowledge-economy jobs plan,” the legislative leadership has proposed using a [pyramid](#) of 35 state and local entities to essentially plan the state’s economy.

At the top of the pyramid is the South Carolina Research Authority (SCRA). The Authority is a nonprofit entity that manages federal research projects and collaborates with industry and universities. Thus far the Authority has developed several research parks in an attempt to imitate the success of such



⁴The fines/fees, or Other Funds, portion of the budget alone runs about \$7 billion each year. These fines/fees do not directly correlate with the cost of the state’s regulatory burden, but give a sense of the fiscal impact of such regulations. At the federal level, the regulatory burden is estimated at 40 percent to 50 percent of total government spending (see “[Ten Thousand Commandments: 2009](#),” Competitive Enterprise Institute). A 2005 study by the [Small Business Administration](#) found that the cost of federal regulatory burdens are much higher for small businesses: \$7,647 per employee, compared to \$5,282 per employee for firms with 500 employees or more.

places as Research Triangle Park in North Carolina and Silicon Valley in California. “Think of the SCRA as the central nervous system of state government’s involvement in the economy,” writes investigative reporting Web site [The Nerve](#). “Created in 1983 under state legislation, the Research Authority extends far-reaching tentacles throughout the business world in South Carolina.”

The Legislative leadership directly appoints two members of the SCRA’s Board. But the Board also includes five university presidents, as well as the chairman of the Commission on Higher Education. As indicated above, the Legislature appoints the majority of trustees on the state’s higher-education boards.

The Legislature also exercises influence over SCRA by means of the state budget. To begin with, the SCRA was created with a taxpayer funded grant of 1,400 undeveloped acres of land and \$500,000. More recently, during the 2010 legislative session, lawmakers passed a joint resolution ([S 1190](#)) transferring 109 acres of [land to the SCRA](#). Originally dedicated to a failed farmer’s market project, the land is being paid for via a 2 percent tax increase on prepared food/beverages sold in Richland County. In addition, the 2010 Legislature also tried to give the SCRA the power to conduct economic development and educational improvement activities in counties along I-95, in conjunction with a proposed I-95 Corridor Authority (cf. [S 1323](#)). The endeavor failed, but may be resurrected next session.

Another agency being used by the Legislature to direct the state’s economy is the S.C. Centers of Economic Excellence (CoEE). Also known as the Endowed Chairs Program, the CoEE allows USC, Clemson and the Medical University of South Carolina to tap into more than \$200 million in taxpayer funds to hire research experts with the goal of spurring economic development.

In the end, both the SCRA and the Endowed Chairs Program are trying to hit upon the “next big thing” that will bring prosperity to South Carolina. The likely result will be wasted tax dollars as state bureaucrats prop up companies the private sector is unwilling to support.

[Unleashing Capitalism](#) extensively documents the state’s attempts to pick winners and losers in the marketplace by means of targeted tax cuts and subsidies. In the name of “job creation,” legislators have allocated more than \$1.5 billion in economic incentives to favored business interests. This system of patronage benefits lobbyists and lawmakers at the expense of ordinary businessmen who would be better served by broad based tax cuts and regulatory reform.

In the name of “job creation,” legislators have allocated more than \$1.5 billion in economic incentives to favored business interests.

Finally, the Legislature exercises influence over numerous economic sectors and activities by means of various agencies over which it has

appointment power, such as the Ports Authority Review and Oversight Commission, the Transportation Infrastructure Bank, the Public Service Commission, and the Retirement System Investment Commission.

Conclusion

It is likely that good government in South Carolina will ultimately require constitutional reform. But even as we work toward this reform, there are several statutory changes that would go a long way toward breaking the Legislature’s control over our state’s government and economy. They include:

- Eliminating the Budget & Control Board
- Limiting session length to 45 legislative days
- Requiring a recorded vote on every bill and joint resolution
- Reforming the Senate committee selection and chairman appointment process
- Reviewing all boards and commissions and increasing gubernatorial appointments to various agencies
- Reviewing and sunseting onerous regulations and licensing requirements (such as the required 1,500 hours of training for cosmetologists)
- Abolishing the [Education Oversight Committee](#)
- Enacting [economic incentive transparency legislation](#)

The consolidation of power in the legislative branch makes reforming state government more difficult in South Carolina than anywhere else. Given the impotence of the executive and judicial branches, the best chance for reform must come from within the Legislature itself. In practice, this means reform-minded legislators being held accountable by the people they represent. In other words, the best chance for reform in South Carolina lies with the people of South Carolina.

Appendix: Legislative Appointments to Select Boards and Commissions

	Total Appointments	Senate Pres. Pro Tem	Speaker of House	Chairman of House Ways & Means Cmte.	Chairman of Senate Finance Cmte.	Other General Assembly Members	Governor
Budget and Control Board	5	0	0	1	1	0	1

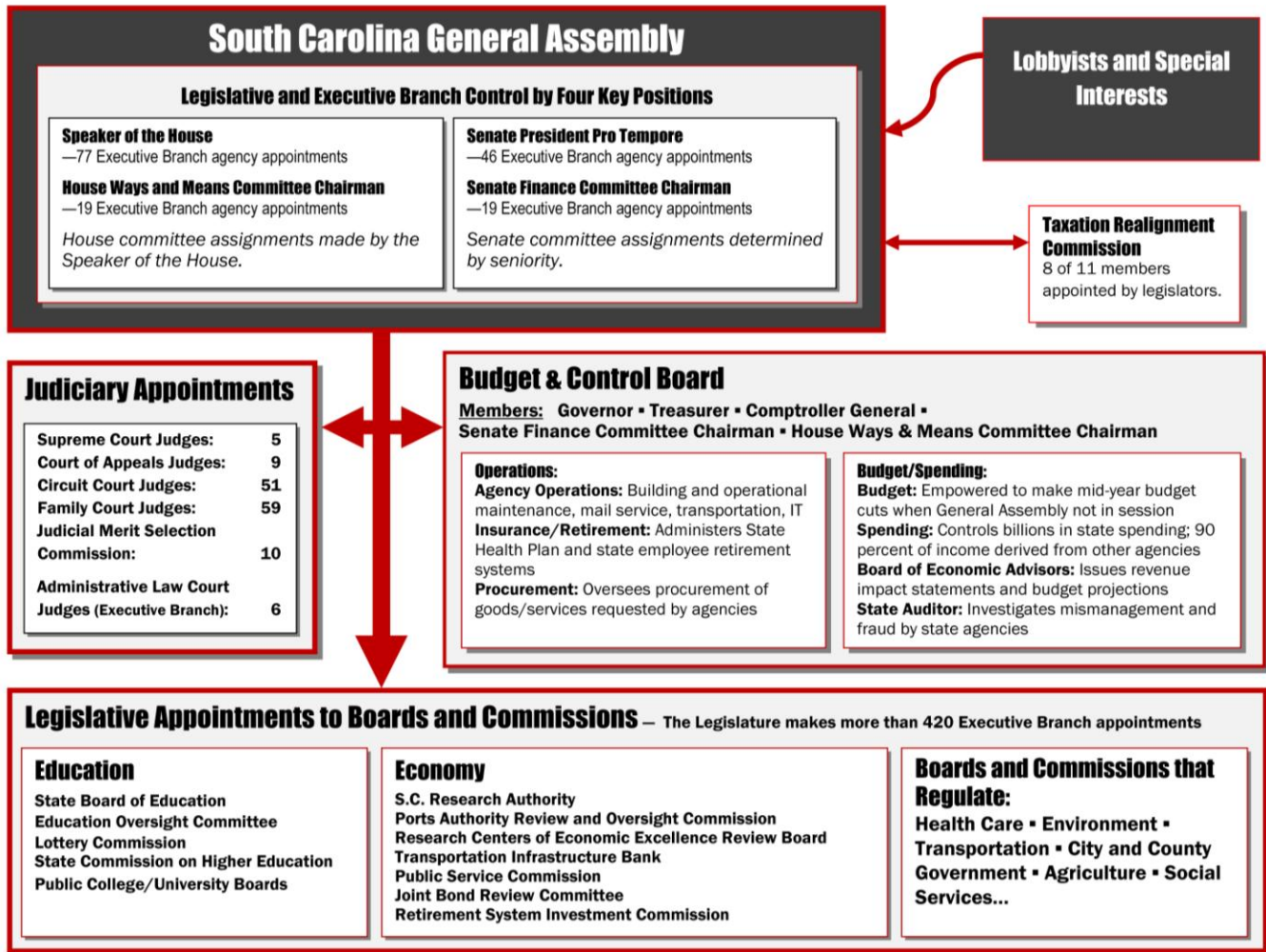
Economy	Total Appointments	Senate Pres. Pro Tem	Speaker of House	Chairman of House Ways & Means Cmte.	Chairman of Senate Finance Cmte.	Other General Assembly Members	Governor
S.C. Research Authority	24	0	0	1	1	0	1
Ports Authority Review and Oversight Commission	10	2	2	1	1	0	0

Research Centers of Economic Excellence Review Board	14	3	3	1	1	0	3
Transportation Infrastructure Bank	7	2	2	0	0	0	2
Public Service Commission	7	0	0	0	0	7	0
Joint Bond Review Committee	10	0	0	5	5	0	0
Retirement System Investment Commission	6	0	0	1	1	0	1
TOTAL	78	7	7	9	9	7	7

Education	Total Appointments	Senate Pres. Pro Tem	Speaker of House	Chairman of House Ways & Means Cmte.	Chairman of Senate Finance Cmte.	Other General Assembly Members	Governor
State Board of Education	17	0	0	0	0	0	1
Education Oversight Committee	18	3	3	1	1	0	3
Lottery Commission	9	3	3	0	0	0	3
State Commission on Higher Education	14	0	0	0	0	0	14
Public College/University Boards	156	0	0	0	0	122	17
TOTAL	214	6	6	1	1	122	38

Other	Total Appointments	Senate Pres. Pro Tem	Speaker of House	Chairman of House Ways & Means Cmte.	Chairman of Senate Finance Cmte.	Other General Assembly Members	Governor
Taxation Realignment Commission	11	1	2	2	1	0	2
Judicial Merit Selection Commission	10	2	5	0	0	0	0
Patriots Point Development Authority	6	1	1	0	0	0	3
War Between the States Heritage Trust Commission	9	3	3	0	0	0	3
The Hunley Commission	9	3	3	0	0	0	3
Joint Committee on Municipal Incorporation	7	3	3	0	0	0	1
TOTAL	52	13	17	2	1	0	12

Legislative Power in South Carolina



*Nothing in the foregoing should be construed as an attempt to aid or hinder passage of any legislation.
Copyright © 2010 South Carolina Policy Council.*

