Legislative Analysis

South Carolina Policy Council
1323 Pendleton St., Columbia, SC 29201 ● 803-779-5022 ● scpolicycouncil.com

Restructuring Done Right, Part II – A guide to the perplexed

The original legislation, the amended version, and the best options for taxpayers

The Senate is currently debating potentially the most important government restructuring legislation in decades (H.3066). The bill is intended to concentrate accountability by separating executive from legislative functions. But what's "intended" and what gets signed into law are often two different things, and for that reason it's worth taking a closer look at what the bill would actually do and whether it can be improved.

The first and most fundamental problem with the bill is that it perpetuates the hybrid semi-legislative, semi-executive system that has plagued South Carolina's state government for generations. While the bill technically dissolves the Budget and Control Board – the five-member hybrid agency in charge of administering state government – it creates another agency with many of the same problems. The State Financial Affairs Authority, or SFAA, would also be run by five members from different branches of government.

But the whole problem with the Budget and Control Board is that taxpayers can't hold a five-member board accountable for bad decisions.

Furthermore, as it stands now the legislation proposes several unwarranted checks by the legislature on the executive. For example: the legislation sets up automatic "committees" by which the legislature could "investigate" executive agencies for any reason or no reason. This goes well beyond necessary legislative oversight and opens the door to legislative dominance – one of the very problems the legislation seeks to solve.

What follows is an overview of the legislation – its original version, is (current) amended version, and the best or ideal version. We've divided the analysis into four major areas – **procurement**, **bonds**, **retirement**, and **deficit recognition**.

	Procurement	Bonds	Retirement	Deficit Recognition
House 3066	SFAA	BCB	BCB & Legislature	SFAA
Amended Version	Legislative Oversight of Dept. of Administration	Joint Bond Review Committee and Dept. of Administration	PEBA Board	Legislature
Ideal Version	Dept. of Administration	Legislature	Dept. of Administration	Legislature

Mixed Accountability	Legislative Branch	Executive Branch

Procurement

The original bill: Instead of placing procurement (the purchasing of goods and services) within the executive branch, where the governor would be accountable for government contracts, H 3066 puts that power under the SFAA. Allowing legislators to have power over the state procurement process perpetuates the wasteful and non-accountable system we have now – no-bid contracts, legislative favors for friends, *etc.*

As currently amended by the Senate: Procurement review would move to the Administrative Law Court, an executive branch agency. However, the six judges that make up the court are elected by the General Assembly and serve five year terms – putting procurement under significant legislative control. Another problem with the amended version is that the executive is required to report all large procurements to the chairmen of the House Ways and Means and Senate Finance Committees. There's no good reason why the executive Department of Administration should be beholden to legislators for its decision – the executive is accountable to the voters, not to the legislature.

A better option: Procurement should be an exclusively executive function. If goods and services are purchased for unwise or ethically questionable reasons, accountability lines should be clear.

Bonds

The original bill: The authority to issues bonds should lie solely in the hands of the General Assembly: lawmakers alone should be responsible for overseeing state debt. Currently, however, the legislative Joint Bond Review Committee recommends bonds to the Budget and Control Board – allowing lawmakers to avoid direct responsibility for bond debt. The only thing this bill would change is that, instead of the BCB, approval would come from the State Financial Affairs Authority.

As currently amended by the Senate: The Joint Bond Review Committee would recommend bonds to the Department of Administration. So, under the amended bill, lawmakers would be even less accountable for issuing debt, and there's little guarantee that the process would be any more transparent.

A better option: The Joint Bond Review Committee should make recommendations to the General Assembly, and legislators, in turn, should vote on stand-alone bond legislation that's fully transparent.

Retirement

The original bill: The bill creates the Public Employee Benefit Agency and gives it control over the state's pension plan. A transitional committee would advise the legislature on what the structure and governance of the new agency would be. This doesn't clarify whether the agency would be an arm of the executive or legislative branch. In any case, the legislature would have significant influence – it would retain the power to set employee contributions – but the lines are blurry.

As currently amended by the Senate: The amended legislation still has language creating a retirement board whose members are appointed by the governor and various members of the House and Senate. Worse, the amended version closely circumscribes the governor's appointment power: one appointee must be a representative of local government, and for others the governor "must consult with and receive nominations from" organizations like the Municipal Association. (Strange, too, is the provision that appointees would get subsistence and mileage reimbursements as well as salaries.)

A better option: The current legislation's creation of a Public Employee Benefit Agency is a step in the right direction, but it should be a cabinet-level agency, and shouldn't be run by yet another board whose members are appointed by the legislature and the governor. A board should assist the agency's director (and we've commented on what that board should like in previous research).

Deficits

The original bill: Fiscal impact analyses are currently conducted by the Office of State Budget (OSB) and the Bureau of Economic Advisors (BEA). This bill moves OSB to the Department of Administration and strips it of its power to write fiscal impact statements, moving it to a Legislative Fiscal Office. Fiscal impact statements should be done by the LAC. While the LAC is *de jure* a legislative office, but it's independent from the General Assembly and required by national standards to remain objective. In effect, moving fiscal impact analysis to the LAC would remove it from the legislature.

As currently amended by the Senate: The latest amendment puts fiscal impact analysis with a new agency called the Legislative Fiscal Office. But there seems to be little justification for creating new agencies when current agencies are equipped to do the job.

A better option: The LAC should be doing fiscal impact analysis and it should be required to do it on all relevant legislation – not simply upon request of the General Assembly. The OSB, meanwhile, moved to DOA, should be required to do fiscal impact analysis, but from the perspective of the taxpayer. This moves us towards a "dynamic impact analysis" approach that enables us to show how government activity – taxes and regulations – influences individual behavior and the economy.

*

In summary: There are other problems with the legislation – for example, it does nothing to eliminate what are clearly unnecessary state agencies currently under the Budget and Control Board like the State Energy Office. Still, the Senate is moving in the right direction.

What's important now is that senators, and especially taxpayers, distinguish real reform from rhetorical reform. Stay tuned for more analysis from the Policy Council.