



# Policy Analysis

South Carolina Policy Council

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## Getting Restructuring Right – or Wrong?

*The state Senate is currently debating what could turn out to be the most important piece of government restructuring legislation to come along in a quarter-century. Among other things, the bill would create a Department of Administration, putting some executive functions where they belong (under the governor), and eliminate the Budget and Control Board. A new amendment has just been added to the bill, and that amendment would give South Carolinians more ability to hold state government accountable. Unfortunately, it doesn't fully achieve the separation of powers that ought to exist in any American government. Consider:*

- (1) The legislature gives itself a loophole to avoid taking responsibility for mid-year budget cuts.** Under the current plan, if the legislature fails to act within 15 days of a recognized budget shortfall, budget cut decisions will be made by an unelected state official in the Office of State Budget. That “out” ought to be removed so that legislators have no choice but to return to session and make responsible cuts to state spending for which they will be held fully accountable by the public.
- (2) Senators created a new “hybrid board” with authority to approve bonds.** Indebting taxpayers is a clear function of the General Assembly, but for decades the virtually anonymous Budget and Control Board took the heat off of lawmakers to publicly vote to authorize bonds. While there is an executive branch role in administering the funds from the bonds, there should be no more unaccountable “boards” that shield either the governor or the legislature from their duties. Bonding decisions involve revenue collection and appropriation, and should go through a public legislative committee process and then to a full floor vote. Under the new plan, the Authority will consist of the governor, treasurer, comptroller general and two legislators – virtually the same system we currently have for bond approval. Furthermore, the amendment specifically exempts some bond issuers from approval by the Authority, including the Jobs and Economic Development Alliance, or JEDA, and political subdivisions. There is no reason that any entity indebting taxpayers shouldn't have to receive approval by the legislature by public vote.
- (3) The Chairman of the Board of Economic Advisors, or BEA, reports to three politicians, only one of whom is directly accountable to the whole state's taxpayers.** The BEA provides revenue forecasts to the legislature – essentially telling lawmakers how much revenue they have to work with. The new plan has the BEA chairman reporting to the governor, but also to the chairmen of the House Ways and Means and Senate Finance committees. It's not clear why those charged with forecasting revenue should report to those who spend revenue. Nor is it clear why the BEA chairman should report to officials who are elected only by the residents of their districts. Those charged with revenue forecasts should be accountable to the entire state's taxpayers. Anything else will result in more revenue shell games that benefit specific districts for political reasons. The governor should appoint the BEA chairman, with advice and consent of the senate.

- (4) The legislature is given broad power to investigate state agencies, and the decision as to which agencies are investigated lies entirely with legislative leaders who are not accountable to citizens statewide.** Too much power is vested with the legislature under the guise of “oversight.” The Senate passed a stand-alone amendment to give lawmakers power to investigate state agencies. While the legislature is able to infer such powers from the Constitution, this new law goes far beyond simple oversight and determination of duties. It gives legislative committees broad power to acquire information through “any lawful means,” including the power to subpoena and take depositions. A deposition or oral examination “may be taken from any person that the investigative committee has reason to believe has knowledge of the activities under investigation.” Does that mean these committees can investigate private citizens? The answer is unclear.

Needless to say, the legislature itself is specifically exempted from any investigation into its activities.

Such authority goes far beyond oversight. If lawmakers are serious about true oversight, then our original recommendation of mandatory, regular and objective audits by the Legislative Audit Council should serve that purpose. The LAC should audit all agencies on a rolling schedule, which should be presented to the public at the beginning of the year.

- (5) The Retirement system becomes a new state agency for which the governing structure is not addressed.** The retirement system will be part of a new agency, but it isn’t clear how the agency will be governed. In the meantime, it’s managed by the Budget and Control Board for another year while a “transition” committee comprised largely of government employees will make recommendations as to how the new agency should be managed. The legislature should address the governing structure by making the new agency a cabinet agency with the director appointed by the governor with advice and consent of the Senate. Taxpayers and participants in the system deserve to hold the governor directly accountable for the management of the pension system, which is currently in dire straits and must be reformed quickly to protect taxpayers and retirees.
- (6) There are agencies and functions that are placed under authorities that do not make sense and do not allow full transparency and accountability.** For example, all precinct demographic information is placed under the clerks of the House and Senate – that data should not be housed in the entity that draws the maps and thus has a direct interest in the data, but rather with the Election Commission, which is more objective and can be responsive to the public should any questions arise regarding the validity of the data. Another example is the State Energy Office, a vaguely defined agency that should belong under the Department of Administration but is inexplicably placed with the Office of Regulatory Staff, the agency that ostensibly represents the public in the Public Service Commission process. Lawmakers should explain why this Energy Office shouldn’t be accountable to the governor and thus to the public.