

Who Runs South Carolina State Government?

POLITICIANS YOU DIDN'T VOTE FOR. THAT'S WHO.

From education to road funding, from the judicial system to your electric bill, the important decisions are made by state lawmakers who represent only their districts. Most South Carolinians don't vote for them – or even know their names. So when your power bill goes up again, or when your child's college tuition increases, or when you suspect a state judge is on the take, or when your county's roads are allowed to crumble . . . who do you hold accountable? Good question.

- ▶ A few legislators can decide, almost by themselves, how much you pay to heat and cool your home.
- ▶ Lawmakers – elected only by the people of their districts – hold the lion's share of power in deciding which roads get built, which roads get repaired, and which roads get ignored.
- ▶ Lawmakers – and especially a few legislative leaders – have unqualified power to decide who will interpret the laws they write.
- ▶ The power to impose educational standards on public schools, and the power to raise tuition at public colleges, rests almost entirely with lawmakers and their appointees.

Who Controls S.C.'s Energy Policy?

South Carolina public utilities raise rates on customers at a far faster clip than utilities in other states. Why? Because much of what public utilities can and can't do is determined by a few legislative leaders.

What is the Public Service Commission, and what does it do?

The PSC, established by the state code, is “vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.” In other words, it has the power to regulate public utilities. That's a very big deal. Why? Because public utilities are defined by law to include just about everything: telephone service carriers, government-owned

telecommunications service providers, radio common carriers, railroads and railways, motor vehicle carriers, and electrical utilities.

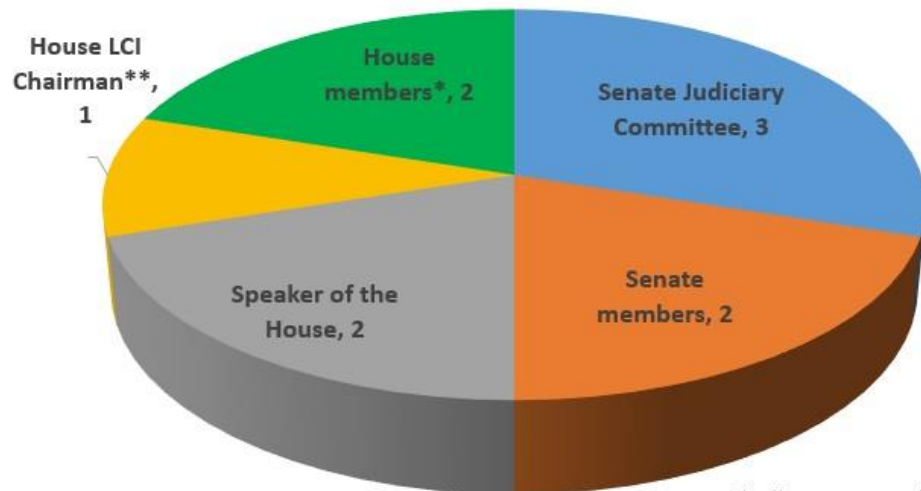
The PSC approves, for example, most of the rate hikes that South Carolinians have no choice but to pay.

How does that happen? The utility first requests permission from the PSC to raise rates. Frequently, utilities justify a proposed rate increase by invoking “advance cost recovery,” a process by which utilities are allowed to pass the costs of construction of new facilities on to customers in the form of rate increases. While the PSC considers the request, the Office of Regulatory Staff (ORS) acts as the “people’s representative” to counterbalance the utilities.

Who controls the PSC and ORS?

The seven members of the PSC are elected by the General Assembly. Those nominees, however – as well as other candidates for the position – must first be approved by a body known as the Public Utility Review Committee (PURC). State law requires that the PURC be composed entirely of legislators and their appointees. *Nine out of the ten board members tasked with nominating the individuals who help determine all South Carolinians’ energy bills owe their positions to two legislative leaders – the Senate Judiciary chairman and the House Speaker.* The House Speaker also has an indirect say over the tenth member (the Labor Commerce and Industry Chairman) through his House committee appointments.

Who Controls the PURC?



*All House members are selected by the speaker

** All committee chairmen owe their position to the speaker via committee assignment

To make matters worse, the Director of the ORS, while technically appointed by the governor, is actually chosen by the PURC. That's because the PURC nominates *one* candidate for the governor to consider in making his or her appointment. Hence the PURC nominates *both the regulator who deals directly with the utilities (the PSC) and the body that's supposed to advocate for the consumer's interest against the utilities.*

Who can you hold accountable?

Members of the PURC

- *3 House members:* 2 representatives (speaker determines selection process), and the House LCI Chairman
- *2 members of the public,* appointed by the speaker
- *3 Senate members:* 2 Senators (selected by the Judiciary chairman), and the Judiciary chairman
- *2 members of the public,* appointed by the Judiciary chairman

Sure, South Carolinians are unhappy about the repeated rate hikes to which they've been subjected.

Unfortunately, there isn't a single person or agency to hold accountable for these hikes. The members of the PSC are accountable only to the PURC and 170 members of the General Assembly. Because their accountability is so diffused, it's unlikely that any effort to express citizens' grievances could have any effect on PSC policy.

Why does any of this matter?

The state body regulating the energy market – including rate hikes – is controlled by legislative leaders. As if that weren't bad enough, the state entity tasked with representing the people's interests is controlled by those same legislators. Rate-payers and taxpayers – the vast majority of whom cannot vote for these legislators – therefore have no one to hold accountable. So the next time your rates go up, don't call state regulators. Call your lawmaker and ask who's responsible.

What are new developments in accountability?

Until recently, there was no movement to restructure any of this. The recent failure of the nuclear reactor construction project – leaving ratepayers for South Carolina's two largest energy

providers on the hook for billions of dollars – has at least brought the topic under scrutiny. The failed project was funded under a process known as advanced cost recovery (enabled by the 2007 Base Load Review Act) which allows utilities to finance construction projects through rate hikes. While lawmakers filed two bills this year dealing with advanced cost recovery for utilities, no legislation has been filed to address the root problem: the concentrated, unaccountable power structure that controls the energy sector.

Who Controls S.C.'s Transportation System?

The one thing people know, or think they know, about the Department of Transportation (DOT) and the State Transportation Infrastructure Bank (STIB) is that they need more money. What ails South Carolina's roads system, however, isn't a lack of money but bad priorities – and those priorities are set by lawmakers.

Who really runs South Carolina roads?

The DOT is, at least in theory, a cabinet agency. That *should* mean that it's under the governor's control, and that a statewide elected official could set priorities for the state's roads. The STIB, meanwhile, is not a cabinet agency or even a regular executive agency, though it performs executive functions in tandem with the DOT.

Unfortunately, the governor has little control over either the DOT or the STIB. These entities are controlled largely by the General Assembly – and especially by legislative leaders.

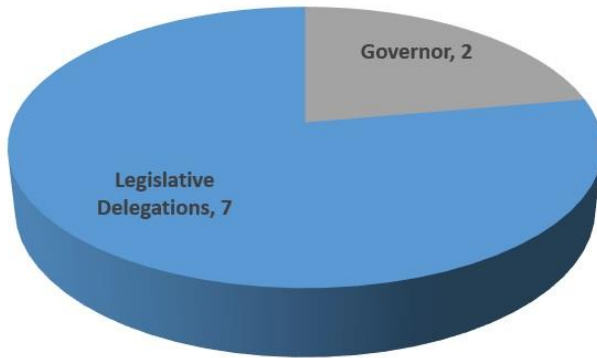
What does the DOT do?

The DOT is tasked with the building and maintenance of the state road system, as well as coordinating state and federal highway programs.

Who controls the DOT, and to whom is it accountable?

The DOT has a nine-member DOT commission which controls department policy and appoints the secretary. The commission has two at-large members and a member from each of the seven federal congressional districts. All are appointed by the governor, with the at-large members confirmed by a separate vote in both houses of the General Assembly. The rest are confirmed by the state legislative delegations of their respective congressional districts. The governor also has the power to fire commissioners at-will.

Who Controls the DOT Commission?



This structure diffuses the accountability for infrastructure decisions. Only two of the governor's appointments are approved by regular, public votes in the House and Senate respectively. The legislative congressional delegations are not required by law to hold meetings to vote on the governor's other appointees, which means it can happen out of the public eye with no accountability whatsoever. The list of legislators in each congressional district is not even posted on the State House

website and [took a lot of work for *The Nerve*](#) to uncover.

This condition makes the governor less likely to attempt to hold DOT commissioners accountable by firing them, as his replacement appointments are dependent on legislative groups that are nearly impossible to hold accountable for how they vote on his appointees.

What does the STIB do?

The STIB contributes to financing eligible transportation projects (road, bridges, or transit projects) as chosen by the STIB board and/or the DOT commission. The STIB funds projects through both loans and other assistance.

Who controls the STIB, and to whom is it accountable?

The STIB board (which bonds out and loans millions of dollars each year) is comprised of seven members: the chairman of the DOT Commission; two members appointed by the governor; two members appointed by the Senate president pro Tem; and two members appointed by the House speaker.

Once again, the speaker and Senate president pro tem wield the majority of the power over this board, with direct control over four of the appointments and indirect influence over a fifth member (the DOT Commission chairman).

STIB loans must be approved by the DOT commission, but this could hardly be called accountability since the DOT commission itself is largely unaccountable.

Why does any of this matter?

South Carolinians are outraged at the decrepit state of their roads and bridges. But who can they hold accountable? The governor, who is accountable to the entire state, has little say in how our roads are funded. All the important decisions are made, not by the governor, but by the proxies of powerful lawmakers who answer only to the 38,000 residents of their districts.

What are new developments in accountability?

This year's Act 40 (the gas tax hike) did eliminate the Joint Transportation Review Committee (JTRC), a ten-member board composed entirely of legislators and legislative appointees and was tasked with screening and approving DOT commission candidates before they could be officially appointed by the legislative congressional districts. This was one of the key sources of the legislative stranglehold on the transportation system, although lawmakers still hold considerable influence over the DOT commission through the appointment confirmation process.

[S. 301](#) and [H.3703](#) (filed earlier this year) [would eliminate the DOT Commission](#) and place the Department of Transportation fully under the purview of the Governor. As neither bill has yet to make any movement towards becoming law, the DOT will likely continue to operate in a haphazard and unaccountable manner for the foreseeable future.

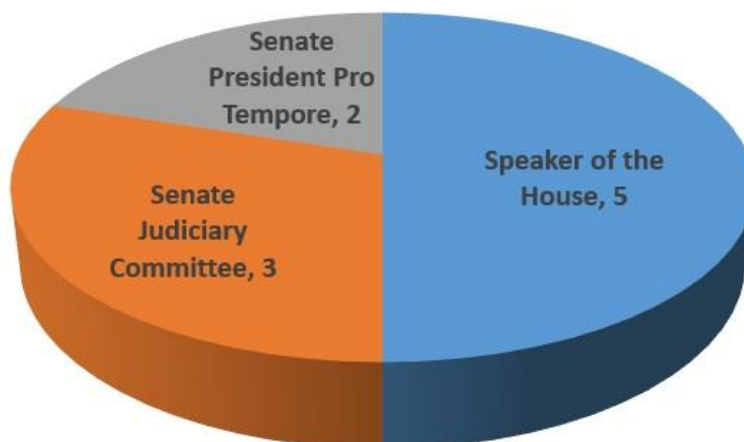
Who Controls S.C.'s Judicial Branch?

In South Carolina, the legislature controls the judiciary. Most judges in South Carolina owe their jobs to the lawmakers they canvassed in order to be elected by the General Assembly. So who can hold lawmakers accountable to the law? Certainly not the judges they appoint.

What is the Judicial Merit Selection Commission, and why is it so powerful?

Prior to the election of judges by the legislature, a ten-member panel – the Judicial Merit Selection Commission (JMSC) – nominates qualified candidates to the General Assembly. That usually involves narrowing the field from some larger pool of applicants to three candidates. This process is used for appointments to the Supreme Court, court of appeals, circuit court, family court, and the administrative law judge divisions.

Who Controls the Committee that Screens our Judges?



Who controls judicial elections?

Appointment power is “equally” divided among the two legislative chambers, but since the House is numerically superior to the Senate, the Speaker of the House wields proportionally more power over the commission than anyone else: he controls five of its ten appointments. The other five are split between the Senate Judiciary chairman and the Senate president pro tempore, who control three and two appointments respectively (at one time, these appointment powers were held by just two legislators, because for many years the Judiciary chairman and president pro tempore were the same senator). Beyond the fact that three lawmakers appoint the commission to screen judges, the state law establishing the JMJC requires that six of its ten appointments actually be current members of the General Assembly. Six members also happens to constitute a quorum at any meeting.

Is this power unique to South Carolina?

Though judges are elected in a joint session of the General Assembly, state law only requires that a candidate receive a simple majority of votes to win election. Given that House membership far outnumbers the Senate (124-46), it is possible that the House, controlled by the speaker, could elect a judge without a single vote from the other chamber. This power is unique to our speaker. Even in Virginia – one of two other states where judges are elected by the legislature (Connecticut’s legislature elects judges, too, but only those nominated by the governor) – a candidate can only win his seat by majority vote in each chamber.

Who can you hold accountable for this system?

As if it were not egregious enough that three legislative leaders – most specifically, the speaker – control the judges who preside over a majority of our courts, several legislative leaders can also serve on a board known as the Judicial Council of the State. The Council is statutorily tasked to “make a continuous study and survey of the administration of justice in this State, and of the organization, procedure, practice, rules and methods of administration and operation of each and all of the courts of the State, whether of record or not of record, and of each and all of the agencies, boards, commissions, bodies and officers of the State having and exercising quasi-judicial functions and powers.”

While state law prohibits members of the General Assembly from serving on state boards and commissions, a section of the law code makes certain **exemptions**, and the Judicial Council is one of these. The judicial council has eight *ex officio* members including the following legislators or their designees: the Speaker of the House, the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, the chairman of the Senate Judiciary Committee, and the chairman of the House Judiciary Committee. Of course, committee membership is assigned by the speaker, and chairmen exercise vast powers over state government – including most of the judicial branch. In addition to these *ex officio* members, the Judicial Council is also comprised of the Chief Justice of the Supreme Court and [20 of his appointments.](#)

The majority of the council’s members owe their position to the General Assembly. So, when councilors are asked to “investigate criticisms and suggestions pertaining to the administration of justice in the State,” impartiality can’t be assumed.

Why does any of this matter?

There is no reason to believe that court decisions made in South Carolina are made objectively and independently. That's especially true of decisions affecting the legislature, but it's also true of decisions affecting individuals.

What are new developments in accountability?

Several bills were proposed this legislative session to change the appointment process for judges. [H.3204](#), [H.3207](#), [H.3746](#) and [H.4042](#), among others, would give the governor more appointments to the JMSC and/or would require the commission to release the full list of qualified candidates to the legislature for approval instead of its top three picks. [S.386](#) would end [the legislative domination over the judicial selection process](#) by eliminating the JMSC and placing [judicial appointments under the Governor](#). Unfortunately, only one of these bills – H.3204 – made it out of committee. It was sent back to committee before it could be voted on by the full House – which typically means the bill is dead.

Who Runs S.C.'s Education System?

Trying to determine just who sets education policy in South Carolina can be a profoundly frustrating experience. State law has established a confusing and largely unaccountable system of three often conflicting entities charged with running K-12 education. Meanwhile higher education is dominated by the legislature, and specifically by a special legislative committee whose members are chosen by a method to which the public is not privy.

K-12 policymakers

Statewide K-12 education is managed by three different entities in South Carolina: the Department of Education (DOE), led by the state Superintendent of Education; the State Board of Education; and the Education Oversight Committee (EOC).

What does the DOE do?

The authority of the DOE is actually quite limited. The legal role of the superintendent is an administrative one, tasking the position with general supervision of schools and administering the policies adopted by the State Board of Education.

Who controls the DOE, and to whom is it accountable?

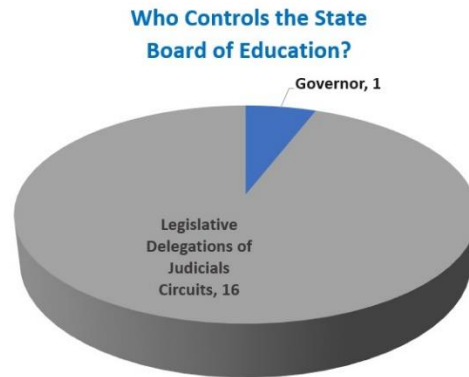
The Department of Education is the only one of these three entities that is accountable in any way to all South Carolina voters – and yet it's the least powerful. The DOE is administered by the Superintendent of Education, who is elected statewide, which helps to ensure the position's accountability.

What does the State Board do?

The board's expansive powers include: adopting policies for the government of public schools, adopting standards for any phase of education, approving budget requests for institutions/agencies under the board, granting and revoking teaching certificates, and prescribing the course of study and use of textbooks and other instructional materials for all public schools.

Who controls the State Board, and to whom is it accountable?

The board is far less accountable than the DOE, and far more powerful. It is comprised of one member from each of the state's judicial circuits, and one member appointed by the governor, for a total of 17 members. The 16 members from the state's judicial circuits are elected by the legislative delegations representing the counties of each judicial circuit. It's easy to see the difficulty in holding anyone accountable in a system like this. With the exception of one member, the members of the board are answerable to regional, not statewide, representatives. Further, it isn't even possible for constituents to hold any one representative responsible for the actions of a board member, as each member is elected by an entire legislative delegation.



What does the EOC do?

The EOC's powers include reviewing and monitoring the implementation of the Education Accountability Act (EAA) and the Education Improvement Act, and making programmatic and funding recommendations to the General Assembly. These are highly significant responsibilities. Part of the EOC's powers in implementing the EAA include reviewing and recommending changes (which are to be complied with and implemented by the DOE) to any statewide education assessments. State standards require statewide assessments both legally, and for measurement purposes. Thus, the EOC can have a great deal of say in what federal education standards are adopted in South Carolina by approving or disapproving assessments that are aligned to those standards.

Who controls the EOC, and to whom is it accountable?

While the EOC is not as powerful as the State Board, it still possesses more power than the DOE and is equally unaccountable. The EOC is made up of the following 18 individuals.

EOC Membership

- Governor & appointments: *3 members*
- Speaker of the House and appointments: *3 members*
- Senate President Pro Tempore & appointments: *3 members*
- House Ed. & Public Works Chairman & appointments: *3 members*
- Senate Education Chairman and appointments: *3 members*
- House Ways & Means Chairman: *1 member*
- Senate Finance Chairman: *1 member*
- State Superintendent: *1 member*

** The Governor and legislative chairmen may all appoint a designee to serve in their stead*

The EOC is consistent with most other powerful boards and agencies in South Carolina: the majority of its members are accountable only to a few legislative leaders. Although the state superintendent serves on the board, it is only as an *ex officio* non-voting member.

University policymakers

When you consider the board of trustees of every higher education institution in South Carolina, the sheer size of the higher education policy machine seems to dwarf the K-12 establishment. But despite all these boards, only two entities exercise substantial power over the state of higher education in South Carolina: the Commission on Higher Education (CHE), and the Joint Legislative Committee to Screen Candidates for College and University Boards of Trustees.

What does the CHE do?

The CHE is tasked with: approving academic programs at public institutions, maintaining higher education funding and data systems, approving higher education capital projects, and overseeing the administration of student financial aid.

Who controls the CHE, and to whom is it accountable?

The CHE consists of 15 members. Seven of those 15 are effectively chosen by lawmakers, and the remaining eight are nominated by the governor pending the advice and consent of the Senate.

- 7 members to represent each of the congressional districts, with each member recommended by the majority of the district's state legislative delegation.
- 3 members from the state at-large, appointed with the advice and consent of the Senate.
- 3 members who are representatives of the public colleges and universities, appointed with the advice and consent of the Senate.
- 1 *ex officio* member to represent the independent colleges and universities, appointed with the advice and consent of the Senate.

- 1 at-large member to serve as chairman, appointed with the advice and consent of the Senate.

While the governor technically makes all the appointments to the CHE, almost half the members are effectively chosen by the legislature. With its gubernatorial appointments, the CHE has a clearer line of accountability than many other boards and committees, but it's legislatively "recommended" members make the Commission yet another state entity accountable to no one in particular.

What does the Joint Screening Committee do?

The other body with substantial control over higher education is the Joint Legislative Committee to Screen Candidates for College and University Boards of Trustees (which we'll call the Joint Committee). All public university trustees elected by the General Assembly must first be screened and approved by the Joint Committee prior to their election. The governor sits on some university boards, but the majority of trustees at almost all public universities are elected by the General Assembly. This means one legislative committee has nearly all the power to determine who will have the chance to make policy at all of the state's public colleges and universities.

Who controls the Joint Committee, and to whom is it accountable?

Currently the Joint Committee is comprised of eight members – four representatives and four senators (three of whom are chairmen of other committees). The legal authority (see [2-20-10](#) of the code) provides for the creation of a committee of four representatives and four senators to consider the qualifications of candidates "whenever the General Assembly is to hold an election in joint session." The code does not specify how the members are chosen, only that each body can determine their own process. In short: the Joint Committee has one of the least transparent membership selection methods of any government entity in South Carolina.

Why does any of this matter?

Virtually all the decisions affecting our children's education are made by people appointed by lawmakers – especially legislative leaders – each of whom represents only approximately 38,000 people. When the system doesn't work and/or becomes grossly expensive, taxpayers have no one to hold accountable.

What are new developments in accountability?

Lawmakers are in the process of making the Superintendent of Education an appointment by the governor. There are two elements to this: A constitutional amendment removing the superintendent from the list of generally elected officers, and a bill enacting the necessary statutory changes. [H.3146](#) (the constitutional amendment) and [S.27](#) (the statutory changes) both passed their respective chambers and crossed over to the other, where debate will no doubt resume in next year. While giving the governor power to appoint the superintendent would be a marginal improvement, it would do little to reform the educational system as a whole.

The Commission on Higher Education has begun exercising pushback to higher education spending and debt proposals, [only to be circumvented and overruled by lawmakers](#). This

year's budget [contained a proviso stripping the CHE](#) of some of its oversight authority. This proviso passed both houses and was vetoed by the governor. Lawmakers will vote to override or sustain that veto when they return in January.

Conclusion

South Carolina government is characterized by the concentration of power in a handful of lawmakers. The instances detailed above do not properly belong in the legislative branch to begin with. Most South Carolinians can't vote for the legislative leaders and select groups of lawmakers that hold the majority of control – nor should they.

The legislature's proper role is to *make* the laws in a process where individual and local interests are freely debated and considered, but the government should be run by a strong executive branch representing every citizen of the state. The judges who interpret the laws should be appointed by the executive and confirmed by the Senate, giving each branch enough influence to hold the other in check. The balance of power is currently non-existent in South Carolina, and will remain so as long as citizens allow their legislature to control the majority of state government.