

What's Coming in the 2019 Legislative Session

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By SC Policy Council

The recurring themes in the over 700 pieces of prefiled legislation this year are more spending, more legislative control, and eroding individual rights. Here is a broad overview of what lawmakers are proposing in the new session, focusing on the areas of utilities, roads, education, taxes, and governmental accountability and transparency.

Utilities

One of the most concerning bills so far in the 2019 session is [S.110](#). This bill would authorize a new charge on Southeast Energy Group (formerly SCANA) customers to go toward the V.C. Summer debt. This new revenue stream would be used to refinance the debt, but there is no guarantee that the V.C. Summer charges currently on customers' bills would be lifted or reduced. In the end, it appears likely that SCANA customers will be hit with another increase. Furthermore, the bill contains a legislative guarantee of the new ratepayer charge – promising that the state of South Carolina would not touch the charge until the refinanced debt is paid. This bears a striking similarity to the Base Load Review Act – [the law that created](#) the ratepayer guarantee backing SCANA's V.C. Summer debt in the first place.

None of the other energy-related bills would actually address the underlying problem with South Carolina's energy system – the lack of consumer choice and the legislative control of the system. One bill, [H.3443](#), would put additional requirements on the approval of utility sales and mergers, while another ([S.137](#)) would require the Public Service Commission to tie a utility's revenue to its performance (rather than its investments). Finally, [H.3145](#) would place additional transparency requirements on electric cooperatives, would regulate their board elections, and give the Office of Regulatory Staff audit authority.

The only bill to at all address the energy system's control structure is [H.3408](#), which merely tweaks the existing system instead of dissolving lawmakers' centralized control (except for one provision which would allow the governor to fire Santee Cooper board members).

Roads

Lawmakers prefiled a handful of infrastructure-related bills, the most prominent of which ([S.5](#)) would divert gas-tax-bill revenue away from road repair and toward new construction – despite assurances from lawmakers that the legislation they passed guaranteed that could not happen. While the gas tax increase was carefully [designed](#) to allow the money to, in fact, be diverted, the current bill does so blatantly – transferring revenue to a new fund to be used solely by the State Transportation Infrastructure Bank (STIB) for bonding to finance interstate widening.

Other transportation-related bills include [H.3418](#), which would put the Department of Transportation Commission in charge of STIB, [S.178](#), which would turn I-95 into a toll road, and [H.3111](#), which would eliminate the DOT Commission and place the DOT under a gubernatorial-appointed

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secretary. That last one is a much needed reform that would make the DOT accountable to the people of South Carolina through the statewide-elected Governor.
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Individual Rights

Lawmakers prefiled multiple anti-Second Amendment bills, but by far the worst attack on individual rights is [H.3275](#). If this bill passed, a probate judge could order the police to seize all guns and ammunition from any law-abiding citizen without a trial or even a hearing, if the judge thinks the owner poses a “risk of imminent injury” to himself or others. In determining the risk, the judge could consider an unlimited variety of criteria, including “reckless” display of the firearm and alcohol abuse. Other states have [already passed](#) similar legislation.

Two bills – [S.3](#) and [H.3045](#) – directly attack South Carolinians’ right to criticize politicians. This legislation would subject organizations and even individuals who spend over \$500 on paid advertisements that “oppose” a candidate – a term that is undefined – to onerous regulation – especially a requirement to force the disclosure of organization’s donors, exposing them to political harassment and even retaliation.

Another particularly concerning bill is [H.3446](#), which would allow legislative committees to subpoena private individuals – and even their banks – for financial records, a [direct attack](#) on privacy rights and possibly the Fifth Amendment (which protects individuals from being forced to self-incriminate). That’s a dangerous power to put in the hands of lawmakers who aren’t accountable statewide and should have no power to execute and enforce the laws.

Finally, [H.3439](#) would allow municipalities to annex small pieces of property by ordinance – regardless of the consent (or even the awareness) of the owner. This is a direct attack on property rights and would set a dangerous precedent if enacted.

Pension

Two prefiled bills attempt to restructure the unsustainable state pension system, but only one addresses the real problem – namely, that the current pension plan guarantees the amount of future employee benefits (a *defined benefit* plan) rather than a 401(k) style *defined contribution* plan. [S.167](#) replaces the current system with something very similar – including a new “shared risk” defined benefit plan. In contrast, [S.134](#) would end the defined benefit model for new employees, transitioning to a defined contribution model. This would, essentially, plug the primary leak causing South Carolina’s unfunded pension liability, estimated in 2017 at [\\$81.9 billion](#).

However, other bills lawmakers have prefiled would actually *increase* the pension deficit. One of the driving forces behind the current debt was the [“TERI” program](#), which allowed public employees to draw both retirement benefits and a state salary. That program was ended, but some lawmakers want to bring it back. Three bills would allow public employees to draw double benefits, two for police officers ([H.3185](#) & [H.3191](#)) and one for teachers ([H.3184](#)).

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~~Taxes~~
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Several of the prefilled bills would increase taxes – most notably [S.255](#), which would increase local property taxes by (among other things) removing the homestead exemption for owner-occupied property. In addition to that, several bills would allow other local taxes to be imposed or increased: [S.172](#) would allow counties to impose a gas tax, [S.171](#) would allow municipalities to impose a sales tax increase, and three bills ([S.113](#), [S.227](#), [H.3168](#)) would allow any municipalities that do not have an operating millage rate (a [property tax rate](#)) to impose one. Finally, [H.3109](#) would impose a new 7% tax on handguns sales, the proceeds of which would go towards the hire of school resource officers.

Criminal Justice

Lawmakers filed nearly 130 bills amending the criminal justice laws and system. These bills run the spectrum of adjusting penalties, dictating court and law enforcement procedure ([S.274](#) would require SLED to do background checks for local law enforcement at no charge, while [S.38](#) would give SLED exclusive jurisdiction to investigate officer-involved shootings), and most concerning, creating a host of new offenses including strangulation ([S.195](#)), bringing cell phones onto the grounds of correctional facilities ([S.156](#)), terrorism ([H.3046](#)), hate crimes ([H.3063](#), [H.3068](#), and [S.44](#)), and stealing packages from porches ([H.3071](#)). This latter bill (the “Defense against Porch Pirates Act”) is a perfect example of lawmakers’ tendency to over-criminalize and over-penalize: the bill makes porch package theft a felony with a mandatory minimum sentence of five years in prison – in addition to whatever penalties current law imposes.

Federal and state constitutional conventions

Five prefilled resolutions call for an [Article V convention](#) to amend the US Constitution to include restraints on the federal government’s spending and jurisdiction, congressional term limits, and campaign finance reform. This would essentially place state lawmakers in charge of rewriting the US Constitution – as [S.115](#) proves. The only one of the five to spell out how South Carolina’s delegates to the convention would be selected, this bill keeps that process firmly under the control of lawmakers (five delegates would be elected by the General Assembly, and two would be selected by the House speaker and Senate president).

[H.3022](#) is a joint resolution calling for a [state constitutional convention](#). The same concerns apply here: the entire process would be controlled by state legislators, who already write the laws and control state spending. Moreover, most of the [needed reforms](#) do not require constitutional amendments. In short, the convention approach – on both the federal and state levels – is dangerous, unnecessary, and unlikely to result in positive change.

Citizen-controlled government

A lot of prefilled legislation falls into this category, some of which would make government more accountable to citizens, and some that would make government less accountable. [S.1](#) would

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Under the Governor's power to make interim appointments when the legislature is not in session. If this bill becomes law, the Governor will not be able to make any interim appointments if a) the office became vacant before the previous legislative session, or b) if the Senate rejected his previous appointee. This is a direct attack on the Governor's constitutional duty to administer state government by the legislative branch. Unfortunately, the Senate fast-tracked this bill and passed it this week.

Another bill – [H.3057](#) – would strike at the heart of the roll-call voting reform passed in 2014 by eliminating the requirement to hold a roll call vote on each individual budget section (which was part of the reform proposal designed by the SC Policy Council). A series of proposed constitutional amendments would strengthen the executive branch by turning constitutional officers (Secretary of State, Comptroller General, Commissioner of Agriculture, Superintendent of Education, Attorney General, and Treasurer) into appointments by the governor. Six bills limiting lawmakers' terms have been filed, along with [one bill](#) lengthening legislative terms.

Another proposed constitutional amendment would allow citizens to file bills and constitutional amendments by petition and referendum – an approach both ill-advised and unnecessary in our representative form of government. Four bills require the replacement of voting machines with a paper-trailed backed system, and fifteen bills would amend elections themselves – from allowing same-day registration and voting ([H.3040](#)) to shifting around election dates ([S.261](#)) to removing the straight-ticket voting option from the ballot ([H.3033](#)). [H.3259](#) would extend the Freedom of Information Act exemption currently enjoyed by lawmakers to all public officials, elected and appointed – a major blow to transparency if passed.

Finally, a handful of bills would amend how judges are elected, but only one – [H.3070](#) – would move toward restoring actual balance of power. This bill is a proposed constitutional amendment allowing the governor to appoint judges with the advice and consent of the General Assembly, and striking the constitutional requirement for a Judicial Merit Selection Commission – although even this bill gives too much power to lawmakers by requiring confirmation by both houses rather than a simple Senate confirmation.

Ethics

There are a number of bills in this category, but very few that strike at the heart of legislative corruption. [S.284](#) would tweak legislative self-policing instead of eliminating it, and [S.111](#) would require public officials to disclose payments or reimbursements for events they merely attend (instead of just for events they speak at), whether those payments or reimbursements are made directly to the official or to the government entity the official works for/serves with. This, of course, does not address government sources of income that lawmakers and public officials should fully disclose. [H.3138](#) would require lawmakers to disclose direct sources of income from lobbyist principals, but not indirect sources of income – such as payments made to a lawmaker's LLC.

[S.83](#) would require candidates for and members of state boards and commissions to disclose any

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Donations they have made to legislative elections, and two bills ([H.3097](#), [S.231](#)) would prohibit lawmakers (and other elected officials – including the governor) from appointing any campaign donor from the last four years to a public office, regardless of the size of the donation. Lawmakers, in particular could not appoint or elect any individual who donated to a legislative campaign, regardless of whose campaign it was. This is essentially a cosmetic reform that could easily be subverted and would do little to change the level of control and influence exerted over boards and commissions.

Finally, two bills would stiffen penalties for ethical violations. [H.3387](#) states that any violation of the Ethics Act is grounds for removal from office, and [S.295](#) would make using a public office for personal gain a felony offense with a minimum sentence of a five-year prison sentence and/or a \$5,000 fine. For reference, the only other felony offense in the entire Ethics Act is direct bribery.

Education

This is perhaps the most active category of prefiled bills so far, lawmakers having filed roughly 80 bills that affect education. However, most of these bills focus on increasing state spending and new state mandates rather than eliminating the heavy legislative control of the state's education system. Several bills would change the education funding formula, while others would require more spending – such as [S.4](#), which gives teachers a five percent pay increase, and [S.245](#), which would require the presence of at least one school resource officer in every public school.

In terms of education structure, [one bill](#) would abolish the legislatively dominated [Education Oversight Committee](#) (though not the legislatively dominated State Board of Education, which more directly controls education policy), and several others would curb legislative power by removing cumbersome education mandates, such as [H.3327](#), which would allow school districts to pick their own start date. Unfortunately, other bills would create more state mandates for school districts. [H.3150](#) would impose a \$100 fine on teachers who don't report cases of bullying to the State Department of Education, adding even more paperwork for school administrators, and [H.3349](#) would add more end-of-year testing for foreign culture and language.

Finally, three bills ([H.3393](#), [H.3164](#) & [S.246](#)) would amend the state constitution to require the general assembly to provide a “high-quality education”, replacing the current standard of [“minimally adequate”](#). The bar for education in South Carolina is clearly lower than it should be, so holding lawmakers – who oversee the system – to a higher standard may be a step in the right direction.

In terms of higher education, one bill ([S.283](#)) would create unaccountable mini-governments (called “enterprise divisions”) within public colleges and universities with powers of bonding, construction, and acquisition of property – including eminent domain. A variety of other bills would create new scholarships ([S.25](#), [S.143](#)) or amend existing ones ([S.114](#), [S.212](#), [H.3140](#)), and [S.298](#) would require higher education spending to be increased proportionately to general fund revenue increases.

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These are the bills that were filed in advance of the 2019 session. Lawmakers will continue to file bills throughout the session, and we will continue to monitor these closely and keep our readership informed.