

Task Force on Government Restructuring and Campaign Finance Reform



**TASK FORCE REPORT
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TABLE OF CONTENTS

Task Force Members	1
Executive Summary	2
Introduction	5
Executive Branch	5
Campaign Finance Reform.....	8
Agency Operations	10
Home Rule	12

**TASK FORCE ON GOVERNMENT RESTRUCTURING AND
CAMPAIGN FINANCE REFORM**

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EXECUTIVE SUMMARY

The Task Force has identified the following possible reforms which are addressed more fully in the body of this report:

Executive Branch

- O Change the following constitutional offices from statewide-elected offices to “cabinet-type” agencies headed by individuals appointed by the Governor (and approved with the advice and consent of the state Senate): the Adjutant General, the Superintendent of Education and the Commissioner of Agriculture.
- O Eliminate the constitutional offices of the Secretary of State and the Comptroller General and have the duties and responsibilities of that office reconstituted under the control of the Governor.
- O Consider having the Lieutenant Governor run on the same ticket as the Governor. *Note:* Members of the task force held a range of views on this issue, as is more fully discussed in the body of this report.
- O Have the Attorney General continue to be a statewide-elected constitutional officer.
- O Consider having the Treasurer changed from a statewide-elected office to a “cabinet-type” agency headed by an individual appointed by the Governor (and approved with the advice and consent of the state Senate). *Note:* Members of the task force held a range of views on this issue, as is more fully discussed in the body of this report.

Campaign Finance Reform

- O Require political parties and legislative caucuses (and their respective committees) to disclose anything of value received after it reaches a threshold of \$500.
- O Require political parties and legislative caucuses (and their respective committees) to disclose anything of value received after it reaches a threshold of \$500.
- O Require political parties and legislative caucuses (and their respective committees) to provide itemized disclosure of all expenditures and in-kind contributions made by them.
- O Broaden the definition of “influence outcome of an elective office” to promote disclosure.
- O More clearly define “coordinated with” (as it relates to expenditures coordinated with candidates).

- O Require “ballot measure committees” to abide by the same campaign finance laws applicable to candidate committees.
- O Eliminate the current \$500 cap on civil penalties for failure to file disclosure reports.
- O Make the State Ethics Commission the sole agency for filing contribution, disclosure and expenditure reports.
- O Require electronic filing of campaign finance disclosure forms.
- O Require state’s custodian of campaign finance records to make disclosure reports available online and in a searchable format.
- O Extend rules governing disclosure of activity by lobbyists and lobbyist’s principals to include cabinet and other executive branch personnel. Prohibit lobbyists from “deregistering” for portions of calendar year when General Assembly is not in session.

Agency Operations

- O Reorganize the executive branch into a configuration of approximately 15 cabinet departments.
- O Make all health and human services agencies (including DHEC, DMH, DDSN) cabinet departments to better coordinate service delivery and to avoid duplication of effort.
- O Move the health services units of DHEC to HHS.
- O Reassign programs housed in Governor’s Office of Executive Policy & Programs to appropriate cabinet departments.
- O Include the State Museum, State Library and other literary and cultural resources into a single state agency.
- O Create an Administrative cabinet department responsible for providing centralized administrative support services to all cabinet departments and other state agencies. The Governor should appoint a Chief Information Officer and require the CIO to administer information technology functions and procurements across all cabinet departments and other state agencies.
- O Strengthen the Commission on Higher Education to be a governing body rather than a coordinating body.
- O Consolidate local offices of cabinet departments that deliver services to the same or similar populations.

- O Reform the budgeting process to end the “automatic funding” of established agency programs and, instead, apply “zero-based” budgeting principles.
- O Prohibit public funds from being used to pay for contract lobbyists.
- O Adjust state personnel regulations to ensure that cabinet secretaries have flexibility to hire and fire the two tiers subordinate to their positions so that cabinet secretaries can effectively manage their departments.

Home Rule

As a general rule, all government functions that can effectively be performed at the local level *should* be performed at the local level, where government is closest to the people it serves. Some possible reforms:

- O Empower counties, at their election, to eliminate special purpose districts.
- O Diversify local government revenue-raising options to reduce pressure on property taxes.
- O Establish an economic development infrastructure bank so that local governments, particularly those in rural areas, have a reliable, stable funding source for infrastructure necessary and critical to supporting economic growth; continue to identify and restrict unfunded mandates.
- O Streamline state interaction with local government for tax administration.
- O Consolidate smaller school districts to reduce administrative costs, produce efficiencies of scale, and promote better management of resources and initiatives.
- O End the legislative delegation’s role in approving appointments to boards, agencies and commissions that provide services of vital interest to local governments.

INTRODUCTION

On December 13, 2002, Governor-elect Mark Sanford appointed a 21-member task force to identify reform initiatives to improve the operation of state and local government in South Carolina and to strengthen the State's campaign finance laws. The initiatives identified by the task force are organized into four groups:

- Executive branch
- Campaign finance
- Agency operations
- Local government

I. Executive Branch: Moving away from a “long ballot”

General statement of the problem:

The Constitution of 1895 provided for the “*long ballot*” election of a myriad of constitutional officers with whom the governor would share executive authority. At a time when a majority of other states and the federal government were moving toward executive centrality, South Carolina grudgingly allowed for a separate executive branch with limited checks over the legislature and power diffused over nine elected executive officials -- namely the Governor, the Lieutenant Governor, the Secretary of State, the Treasurer, the Comptroller General, the Attorney General, the Adjutant General, the Superintendent of Education and the Commissioner of Agriculture, each of whom is elected for a four-year term. By and large, these plural executives are fairly entrenched officers having built up statewide constituencies and considerable political clout, and, aside from the Governor (who is limited to two consecutive terms), each of these executive officers is allowed to serve an unlimited number of terms, which can be an enormous source of “amassed and sustainable” power. As a result of this “*long ballot*” approach, the executive branch is fragmented structurally and uncoordinated operationally in its delivery of services, activities and programs. It is frequently unresponsive to citizens’ needs and, on the whole, unaccountable to the Governor. (*Note:* this “general statement of the problem” borrows heavily from Luther Carter’s “*The Transformation of Gubernatorial Power and Privilege in South Carolina*,” printed in the *Journal of Political Science*, Volume XXIV (1996).)

General statement of possible reforms:

Generally speaking, the number of statewide constitutional officers must be reduced so that the Governor can: 1) effectively coordinate operational and programmatic activities of the executive branch; 2) be responsive to the changing needs of the citizenry of South Carolina; and, 3) establish clear lines of authority and responsibility. This could be accomplished by: changing the constitutional offices of the Adjutant General, the Superintendent of Education, the Treasurer and the Commissioner of Agriculture from statewide-elected offices to “cabinet-type” agencies headed by individuals appointed by the Governor (and approved with the advice and consent of the state Senate); eliminating the constitutional offices of the Secretary of State and the Comptroller General and having the duties and responsibilities of these offices reconstituted under the control of the Governor; and having the Lieutenant Governor run on the same ticket as

the Governor.

Specific breakdown of possible reforms:

Adjutant General: All other states appoint this key government official, and in 1991 the South Carolina Commission on Government Restructuring (the “1991 Restructuring Commission”) recommended that the governor should appoint the Adjutant General, with advice and consent of the state Senate, to serve in the capacity as a cabinet secretary. The state constitution already states that the Governor is its commander-in-chief and the line of authority for military operations should extend to a civilian (the Governor), not an elected military person with the rank of general. This change could improve accountability and de-politicize the state’s militia.

Superintendent of Education: The 1991 Restructuring Commission also recommended - as did five previous studies and the South Carolina Education Oversight Committee and as does the current Superintendent of Education- that the Superintendent of Education should be an appointed position of the Governor; again, with advice and consent of the state Senate. The 1991 Restructuring Commission further recommended that a Public Instruction cabinet department be established to include the State Department of Education, the Educational Television Committee, the John de la Howe School, the School for the Deaf and Blind and the Wil Gray Opportunity School. Hence, the Governor would by law be the single point of accountability, the spokesperson and the key executive leader for all public education in the state. The cabinet secretary for the Department of Public Instruction would be an expert in the field of education and be free from the politics of running for office.

Commissioner of Agriculture: The 1991 Restructuring Commission recommended that an Agriculture cabinet department be established, headed by a qualified cabinet secretary, subject to state Senate confirmation, who would report directly to the governor, and that Clemson University’s public service regulatory and meat and poultry inspection programs be incorporated into the cabinet structure. The Governor is considered the “prime mover” of state economic progress and the agricultural business and industry component of this mix should be in the governor’s hands.

Treasurer: The Treasurer is the “custodian” of the state’s funds, and the duties of the State Treasurer include receipt and disbursement of state revenues, investment of state funds and the issuance of state bonds - executive duties that could also be handled by the office of the Governor. Changing the statewide-elected office of the Treasurer and devolving that office’s duties unto the office of the Governor could help promote three critical executive branch-strengthening goals: 1) coordinated operational and programmatic activities of the executive branch; 2) improved responsiveness to the changing needs of the citizenry of South Carolina; and 3) clearer clear lines of authority and responsibility in the executive branch.

It is important to note that the task force was not unanimous in its views regarding the office of the Treasurer. In fact, members of the task force offered a broad range of views as to whether office of the Treasurer should be changed and, if so, how. Specifically, several members of the task force believed that the functions of the Treasurer are better suited being separate and apart from the Governor for financial integrity and independence purposes, and that these concerns

outweighed those relating to the strengthening the executive branch.

Secretary of State and the Comptroller General: The Secretary of State's mandated functions are largely executive or administrative ones that could easily be carried out by the office of the Governor. Similarly, the duties of the Comptroller General should be reconstituted under the control of the Governor.

Lieutenant Governor: Unlike the situation in South Carolina, the Governor and Lieutenant Governor run on the same ticket in more than 20 states. In South Carolina, however, the Lieutenant Governor is elected independently for a four-year term. The Lieutenant Governor's prescribed duties and powers are limited when compared to the state's other constitutional officers. Because the Lieutenant Governor is the immediate successor to the governor should the governor die, resign or for other reasons fail to complete a term of office, executive branch continuity is an important consideration. Having the Lieutenant Governor run on the same ticket with the Governor would promote coordination within the executive branch, and it also would help ensure a continuity of policy if the Governor became unable to serve.

It is important to note that the task force was not unanimous in its views regarding the office of the Lieutenant Governor. Specifically, several members of the task force believed that the Lieutenant Governor should *not* run on the same ticket as the Governor since (they argued) the state has historically split the ticket and voted their preferences according to the substance and character of the candidate, regardless of party affiliation.

Attorney General: The Attorney General should continue to be elected by the voters. States throughout the nation have recognized the importance of having an independently elected attorney general - and state attorney generals are currently elected in 43 out of 50 states. In South Carolina, the office of Attorney General is an ancient one, dating back to 1698. The Attorney General in South Carolina is the state's chief legal officer and is required to represent and give legal opinions not only to the Governor, but also to the General Assembly and other public officials.

(Note: some of the narrative in this "specific breakdown of possible reforms" is taken from Richard Young's "*State Reorganization in South Carolina: Theories, History, Practices and Further Implications,*" Columbia, SC: USC, Center for Governmental Services, Institute for Public Service and Policy Research (2002).)

Process for implementing possible reform:

Amendments to the state constitution would be necessary to: allow for the appointment by the Governor (with the advice and consent of the state Senate), rather than election, of the Adjutant General, the Superintendent of Education, the Treasurer, and the Commissioner of Agriculture; eliminate the office of Secretary of State; and allow the Lieutenant Governor to run on the same ticket as the Governor.

II. Campaign Finance Reform

General Statement of the Problem:

South Carolinians are deeply concerned about the role and influence of money upon government and politics. In recent years, the cost of campaigns has skyrocketed at both the federal and state level. Presidential and congressional candidates spent approximately \$3 billion on the 2000 elections, compared to \$2.2 billion in 1996 and \$1.8 billion in 1992, according to the Center for Responsive Politics, a nonpartisan group that focuses on fund raising and its effects on public policy. (See <http://www.opensecrets.org>) And here in South Carolina, candidates for statewide office set new records for campaign spending in 2002. Now, with so much money changing hands in politics, the public's trust and confidence in the political process is being challenged. What does all this money in politics buy and who is paying for it?

Campaign finance laws are designed, among other things, to promote greater confidence in the electoral process and to strengthen the public's trust in its government. By preventing corruption, promoting fair elections, and minimizing the impact of money on public policy, strong campaign finance laws can increase the public's confidence in the electoral process and in government itself. Effective campaign finance laws also can promote voter participation and encourage citizens to run for elective office.

General Statement of Possible Reforms:

Reporting Contributions and Expenditures

- O Require political parties and legislative caucuses (and their respective committees) to disclose anything of value received after it reaches a threshold of \$500. This disclosure requirement should include all funds received for campaigns, as well as operating expenses, party building expenses, and any other source of soft money.
- O To the extent allowed by law, require political parties and legislative caucuses (and their respective committees) to provide itemized disclosure of all expenditures and in-kind contributions made by them, including all expenditures made from their operating accounts. Require disclosure of payee's name, address and business, and the purpose of each expenditure.
- O Require contributors to candidates, political parties, legislative caucuses (and their respective committees) to provide their full name, address, occupation, and employer.
- O To the extent allowable by law, broaden the definition of "influence outcome of an elective office" to include: (1) express words advocating the election or defeat of a candidate; (2) campaign slogans or words that have no other meaning than to urge the election or defeat of a candidate; and (3) communications about a public issue that reference a clearly identifiable candidate, that but for the reference would not as a whole

^b This narrative draws heavily on Richard D. Young, *State Reorganization in South Carolina* (2002).

convey a clear message concerning the public issue, and that is reasonably suggestive of primarily advocating the election or defeat of a candidate.

- O To the extent possible by law, define “coordinated with” (as it relates to expenditures coordinated with candidates) to include negotiations or discussions between a candidate and persons concerning political communications, their contents, timing, etc. Ensure that activity by an agent of a candidate or a campaign is included within the definition of “coordinated with.”
- O Create a new statutory definition for “ballot measure committees” and require such committees to abide by the same campaign finance laws applicable to candidate committees. Require ballot measure committees to dissolve and distribute contributions within sixty (60) days after the ballot measure election takes place to the original contributors on a *pro rata* basis, a 501(c)(3) charitable organization, or the State’s general fund. Ensure that existing groups that address public issues are not affected by the dissolution requirements for ballot measure committees.
- O Eliminate the current \$500 cap on civil penalties for failure to file disclosure reports.
- O Make State Ethics Commission the sole agency for filing contribution disclosure and expenditure reports, for both statewide and legislative races.

Filing Requirements and Public Access

- O Require electronic filing of campaign finance disclosure forms by all candidates, political parties, legislative caucuses (and their respective committees), and ballot measure committees. Require expedited electronic filing (within 24 hours) of all disclosure reports in the ten (10) days immediately preceding any election.
- O Require state’s custodian of campaign finance records (e.g., State Ethics Commission and/or House and Senate ethics committees) to make disclosure reports available online and in searchable and transferable format.
- O Reduce the per-page copying charge assessed by the State Ethics Commission for paper copies of disclosure reports and other records.

Enforcement

- O In the fifty (50) day period before an election when complaints may not be accepted by the various ethics commissions and committees, allow any person to petition the Court of Common Pleas for appropriate relief by way of mandamus or injunction. Require the Court of Common Pleas to award attorneys’ fees and costs to the non-petitioning party if the court determines the petition to be frivolous.
- O To the extent permitted by law, the Ethics Commission should have exclusive enforcement powers for campaign finance law violations for all elected officials in South

Carolina. The Commission's enforcement proceedings should be open to the public to the extent possible.

Miscellaneous

- O Extend rules governing disclosure of activity by lobbyists and lobbyist's principals to include cabinet and other executive branch personnel.
- O Prohibit lobbyists from "deregistering" for portions of calendar year when General Assembly is not in session.
- O Require candidates, committees, and others to clearly identify themselves by name in any print advertising, mail, or broadcast advertising conducted.

Process for Implementation of Possible Reforms:

Legislative action is required to enact each of the campaign finance reforms set forth above. Efforts to address "coordinated expenditures" and so-called "issue advocacy" necessarily trigger First Amendment issues and will require careful drafting to ensure constitutionality.

III. Agency Operations

General Statement of the Problem:^b

"In the past 82 years, the State of South Carolina has conducted 13 major reorganization studies. These studies consistently have found that state government in South Carolina is too numerous in terms of governmental units, fragmented, unwieldy, and unaccountable."^c Several of these studies have indicated that overlapping functions and duplication of efforts are serious problems in state government. In fact, at least four (4) of these studies have recommended a reorganization of governmental agencies into 12 to 15 key departments. As recently as 1991, the South Carolina Commission on Government Restructuring made this same general finding. Today, there is a serious need for accountability in the executive branch. Much of state government is run by part-time governing boards or commissions that are largely unknown to the general public. There are approximately 55 independent agencies, boards and/or commissions whose members are appointed or selected by a variety of methods. This cumbersome process leads to duplication of effort that is both unnecessary and costly.

Summary of Possible Reforms:

Strengthened Cabinet Form of Government

- O Reorganize the executive branch into a configuration of approximately 15 cabinet departments, with each cabinet department directed by a cabinet secretary appointed by the governor with the advice and consent of the Senate.
- O Make the health and human services agencies - *i.e.*, Department of Health &

^c Young at p. 7.

Environmental Control (“DHEC”), Department of Mental Health (“DMH”) and Department of Disabilities and Special Needs (“DDSN”) - cabinet agencies to better coordinate service delivery, avoid duplication of effort and better control Medicaid.

- O Move the health service components of DHEC to HHS, which would enable DHEC to better coordinate its core environmental regulatory functions with the Department of Commerce.
- O Reassign programs housed in Governor’s Office of Executive Policy & Programs to appropriate cabinet departments.
- O Consider inclusion of the State Museum, State Library, and other literary and cultural resources into a single agency.
- O Create an Administrative cabinet department responsible for providing centralized administrative support services to all cabinet departments and other state agencies. The Administrative cabinet department would be responsible for most of the services currently provided by the Budget & Control Board including: budgeting and planning; personnel services; general services; insurance services and risk management; internal management; and the State Retirement System. The Department of Motor Vehicles should be included in the Administrative cabinet department. The Budget & Control Board would continue its responsibilities relating to the State’s fiscal policies.
- O The Governor should appoint a Chief Information Officer and require the CIO to administer information technology functions and procurements across all cabinet departments and other state agencies. The CIO should be included in the Administrative cabinet department.
- O Strengthen the Commission on Higher Education to be a governing body rather than a coordinating body so that higher education resources can be utilized most effectively. Strengthen coordination between and governance of South Carolina’s research institutions.

Efficient Service Delivery

- O Consider consolidating local offices of cabinet departments that deliver services to the same or similar populations to create a more efficient, one-stop-shop for such services.
- O After reorganization, conduct a thorough intra-cabinet department and inter-cabinet department review of services to eliminate duplication of effort.
- O Enact legislation to ensure that government performs no function that a private business can do better and at a lower cost. Require cabinet departments to convert targeted percentages of operations to the private sector.
- O Reform budgeting process to end the “automatic funding” of established agency

programs and, instead, apply “zero-based” budgeting principles to ensure efficient use of public resources. Require cabinet secretaries to justify department spending on a regular basis, prioritize their budget requests, “sunset” certain programs and develop alternative options or levels of funding for accomplishing a goal.

- O Prohibit public funds from being used to pay for contract lobbyists.
- O Adjust state personnel regulations to ensure that cabinet secretaries have flexibility to hire and fire the two tiers subordinate to their positions so that cabinet secretaries can effectively manage their departments.

Process for Implementation of Reforms:

Legislative action will be required in order to implement the reforms set forth above.

IV. Home Rule

General Statement of the Problem:

In South Carolina, the role of the central (state) government in local affairs has historically been overbearing. The enactment of the Home Rule Act in 1975 lessened the heavy hand of the state on local governance, but it is important to continually monitor the relationship between the state and the local governments, and, whenever practical, to empower local governments. As a general rule, all government functions that can effectively be performed at the local level should be performed at the local level, where government is closest to the people it serves. There needs to be a bias toward empowering local governments - not state government – to address problems that can be handled locally. In as many instances as practical, power should devolve to the lowest, most local level, and the state’s role should be to support and assist the local body in carrying out its tasks.

Summary of Possible Reforms:

- O Empower counties, at their election, to eliminate special purpose districts. By conservative estimates, there are approximately 300 special purpose districts throughout the state providing water, sewer, fire, ambulatory, and other services. In the past, these special purpose districts provided services that the county could not or would not provide; however, with the advent of “home rule,” the counties are now in a position to provide necessary services to their citizens, and they should.

Numerous special purpose districts result in a redundancy of administrative positions, and multiple taxing layers throughout the state impede the efficient provision of local services. This “hodge-podge” of taxing authorities adversely impacts economic development efforts by adding an unnecessary level of bureaucracy to industrial and business location decisions. The process of dissolving special purpose districts and devolving their responsibilities unto the counties would be a complicated one because of issues relating to the issuance of bonds, county debt limitations, the impact of pending

condemnations, etc. Nevertheless, counties should be empowered, at their election, to eliminate special purpose districts.

- O Diversify local government revenue-raising options to reduce pressure on property taxes. Possible revenue alternatives could be examined, with careful consideration being given to whether the proposed alternative conflicts with comprehensive state goals and needs.
- O Establish an economic development infrastructure bank so that local governments, particularly those in rural areas, have a reliable, stable funding source for infrastructure necessary and critical to supporting economic growth. While the state has an infrastructure bank for building roads, there is no comparable funding source for other vital infrastructure components (*e.g.*, water and sewer).
- O Continue to identify and restrict unfunded mandates. Unfunded mandates imposed by the state are still a problem, particularly given the limited revenue sources for local governments. Examples: infrastructure maintenance costs; environmental requirements; and criminal justice costs.
- O Consolidation of state interaction for tax administration. Currently, local governments must interact with multiple state agencies and departments in the area of property tax administration. One possible reform is consolidating and streamlining, possibly within a single state agency, the state's duties in assisting local governments with property tax collection and administration.
- O Consolidation of some school districts. There are now 86 school districts in the state. Smaller districts should be merged to reduce administrative costs, produce efficiencies of scale, and promote better management of resources and initiatives.
- O End the legislative delegation's role in approving appointments to boards, agencies and commissions that provide services of vital interest to local governments and provide the local governments with greater influence on who serves on such entities. Power over local issues that is currently vested by law or by practice in the local delegations should be devolved to the local governments.