



## LEGISLATIVE ANALYSIS

### The New Health Agency: Efficiency? YES. Czar? NO.

#### *Answering Concerns About Health Agency Restructuring Bills (S.915; H.4927)*

After the South Carolina General Assembly passed legislation separating the Department of Health & Environmental Control into separate agencies ([Act 60, 2023](#)), the legislature began work on a comprehensive measure that would **streamline health functions** across state government. The Senate has passed [S.915](#) and the House has passed [H.4927](#), each combining health functions across numerous currently freestanding state agencies into a new Executive Office of Health and Policy. The result could be the most **significant realignment** of state government agencies since [2014](#), and perhaps even since [1993](#). [The changes proposed](#) represent a significant opportunity—not only to **save taxpayer dollars** by the elimination of duplication, but **to serve citizens more effectively**, particularly those with complex health needs who have been underserved by unaligned agencies in the past.

Unfortunately, some **unfounded concerns** have been raised about the origins of the effort to create a new streamlined Executive Office of Health and Policy. There has also been a knowledge gap about the new **post-2014 oversight functions** of the legislative branch over executive actions. We addressed some of these concerns in [our initial analysis of the OHP legislation](#) but find it necessary to analyze others here.

#### 1. **Concern: The legislation transfers appointment power from the Governor to the new Secretary of Health and Policy for all directors of the current five departments.**

**Answer:** Yes, this is what happens when there are *fewer state agencies*. Restructuring *reduces the number of agencies*. The directors of each component department (think of them as divisions) would be appointed by the Secretary and the directors would not be operating free-standing, independent agencies. This streamlining has been an important goal of all government restructuring in South Carolina since the Campbell Administration (1987-1995). [S.915](#), the Senate version of the restructuring bill, requires that each component “department director [be] appointed by the secretary *with the advice and consent of the Senate.*” (§44-12-50(B)). We support this provision. With it, these department directors are even more accountable, but even without it, directors would still be public officials and would therefore answer to others beyond just the Secretary. We should also note that the Secretary would be accountable to the *Governor*, not to a *board*. This was a part of the 1993 restructuring that was unfortunately left on the cutting room floor. Executives are more accountable for their actions when they have one boss, not multiple bosses.

2. **Concern: The Secretary would review and approve or disapprove all regulations before submission to the General Assembly.**

**Answer:** Yes, this is how regulations work. Regulations are recommended by agencies, not the General Assembly, but the General Assembly must affirmatively approve all regulations (although, this was not always the case in South Carolina.) This restructuring changes nothing except *how many agencies* send regulations to the Statehouse. The bill's language simply ensures that each component department is not recommending regulations on their own, separate from the rest of the Executive Office of Health and Policy and its overarching mission, which is determined *directly by the Governor*.

3. **Concern: The appointed directors will have no one to approach with concerns since the directors are hired by this one Secretary.**

**Answer:** As previously mentioned, the Senate version of the bill requires that appointed *directors* must also be confirmed by the Senate. Citizens can go to the General Assembly with concerns about the Secretary nominee or his performance as Secretary, and the General Assembly can direct the Governor to remove any cabinet member with a 2/3 vote in each chamber (SC Constitution, Article XV, Section 3). Citizens can also go to the Governor with their concerns about the Office of Health and Policy's leadership, and the Governor can remove the Secretary at will. All the component department directors can be removed at will by the Secretary, who answers to the Governor. Division directors in state agencies who are hired by agency directors operate in this manner currently.

4. **Concern: There are no qualifications, requirements, or term limits for this very powerful individual Secretary.**

**Answer:** The Secretary would have the same term limit as (be "coterminous" with) the Governor, as the Secretary is appointed by the Governor and is a member of the Governor's cabinet. The Senate would determine what qualifications are necessary, as they are the body that confirms the Governor's appointment. This is how most cabinet secretaries are handled in the code of laws. The incredibly important Department of Labor, Licensing, and Regulation (LLR) director, for example, does not have a codified list of qualifications for the office; the law leaves it up to the Governor and the confirming body to decide who is qualified to serve in the role. General qualifications for all agency directors were a part of the historic 1993 restructuring, putting in state law that the Governor "shall endeavor to appoint individuals who have demonstrated exemplary managerial skills in either the public or private sector" (§1-30-10(B)(2)). This language was designed to provide an expectation of competence without allowing the legislature to micromanage the pool of potential options of a Governor for a member of his cabinet.

5. **Concern: The new agency transfers power regarding emergency assistance from Sheriffs and National Guard to the Secretary.**

**Answer:** It is important to note that, under DHEC, the Governor-appointed board had the power to request assistance from law enforcement in health emergency situations. Law enforcement can then request assistance from the National Guard. But only the Governor may declare a Public Health State of Emergency (see §1-3-420), and only the Governor may authorize any participation from the National Guard. Members of the SC House even addressed these concerns on the floor with an

amendment clarifying that the Office of Health and Policy's health emergency power does not extend to the National Guard, which can only be called up by the Governor. The Secretary is accountable for his actions, both in a public health emergency and otherwise, to the Governor and to the General Assembly, either of whom can remove him.

**6. Concern: The Boston Consulting Group (BCG) works with liberal clients on liberal, "woke" policies.**

**Answer:** Section 13 of [Act 60](#) (2023), the statute splitting DHEC, clearly states that a consultant must be chosen according to strict guidelines (to recommend ideas to "*improve health services delivery in the State, recognize operational efficiencies, and maximize resource utilization*"). The efficiency consultant is clearly *advisory* to the Department of Administration (ADMIN). It is ADMIN that then makes recommendations. Consultants that have expertise in governmental restructuring are mostly for-profit businesses that have clients from the left, center, and right. South Carolina state government has used precisely these types of consultants in the past who have worked within the guardrails provided by the state and the General Assembly. Furthermore, the [results released](#) by BCG so far can be easily replicated by anyone who takes the time to study the structure of South Carolina health agencies looking for inefficiencies.

**A Note on Oversight:** In 2015, the General Assembly stepped up its oversight role over state agencies significantly with the establishment of legislative committees tasked with [oversight of executive departments](#). These committees of [the House](#) and [the Senate](#), mandated by the 2014 statute restructuring of state government, review the work of all cabinet agencies (and other agencies) on a schedule. This review requires agency heads and their staffs to appear before Oversight committees of the legislature and answer questions. Standing committees of the legislature other than the Oversight Committees are also able to summon agency heads to answer for their actions when those committees have concerns. This means that accountability is now built into the legislative committee system not once, but *twice*. Citizens also [have the ability to lodge a complaint](#) with the Oversight Committees about a particular agency under review. South Carolina citizens have also successfully utilized the courts to push back on agency actions they find harmful or unlawful.

*The establishment of the Executive Office of Health & Policy represents an opportunity for the State of South Carolina to finally address streamlining issues that were not addressed in the historic 1993-1995 restructuring or the subsequent reforms of 2014. With oversight and confirmation procedures already in place, and additional safeguards being built into legislation currently on the table in the General Assembly, South Carolinians should see their rights protected, their health outcomes improved, and their tax dollars more efficiently and effectively spent. If not, there are political, legal, and administrative recourses.*

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