

## Agency Head Laws and Provisos

### Related Code of Laws

#### **SECTION 8-11-135. Payment of moving expenses of new employees.**

A state agency may pay the cost of moving the personal and household effects for newly-employed personnel if all of the following conditions are met:

(a) The new employee's place of residence is outside of the State of South Carolina at the time of employment by the agency.

(b) The agency can demonstrate that paying these costs is necessary to fill the position.

(c) The maximum payment in any instance to any new employee may not exceed five thousand dollars.

(d) The payment is certified by the agency head (or the board or commission chairman if the new employee is the agency head) as the total paid by the agency toward the total moving cost incurred by the new employee.

(e) [Deleted]

#### **SECTION 8-11-160. Agency Head Salary Commission; salary increases for agency heads.**

(A) All boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the Agency Head Salary Commission.

(B) This commission consists of four appointees of the chairman of the House Ways and Means Committee, four appointees of the chairman of the Senate Finance Committee, and three appointees of the Governor with experience in executive compensation.

(C) Beginning with Fiscal Year 2022-2023:

(1) salaries for the term of state officers listed in Section 1-1-1210(A), with the exception of the Governor and Lieutenant Governor, must be based on recommendations by the Agency Head Salary Commission to the General Assembly; and

(2) the Agency Head Salary Commission shall authorize a study be conducted every four years to recommend a salary range for each state constitutional officer, with the exception of the Governor and Lieutenant Governor, based on their job duties and responsibilities as well as the pay of state constitutional officers in other states.

(D) Salary increases for agency heads must be based on recommendations by each agency board or commission to the Agency Head Salary Commission and their recommendations to the General Assembly.

**8-11-162. Technical College Presidents covered by authority of Agency Head Salary Commission.**

For purposes of Previous Section 8-11-160 and the other provisions related to the authority of the Agency Head Salary Commission, Technical College Presidents are covered by the authority of the commission.

**8-11-165. Salary and fringe benefit survey for agency heads; limits on salaries of agency employees and presidents of a technical college; agency head salary adjustments; new members of agency governing board to attend performance appraisal training.**

(A) It is the intent of the General Assembly that:

(1) A salary and fringe benefit survey for agency heads must be conducted by the State Fiscal Accountability Authority every four years. The staff of the authority shall serve as the support staff to the Agency Head Salary Commission.

(2) Beginning with the Fiscal Year 2022-2023 and every four years thereafter, the Agency Head Salary Commission shall commission a study to recommend a salary range for the term of each state constitutional officer listed in Section 1-1-1210, with the exception of the Governor and Lieutenant Governor, based on each state constitutional officer's job duties and responsibilities as well as the pay of other state constitutional officers in other states. The commission shall then determine a salary for the term of each such state constitutional officer within the recommended pay range subject to funding being provided in the annual appropriations act.

(B) No employee of agencies reviewed by the Agency Head Salary Commission may receive a salary in excess of ninety-five percent of the midpoint of the agency head salary range or the agency head actual salary, whichever is greater, except on approval of the Director of the Division of State Human Resources at the Department of Administration, and except for employees of higher education technical colleges, colleges, and universities.

(C) The Agency Head Salary Commission may recommend to the General Assembly that agency head salaries be adjusted to the minimum of their salary ranges and may recommend to the board that agency head salaries be adjusted when necessary up to the midpoints of their respective salary ranges. These increases must be based on

criteria developed and approved by the Agency Head Salary Commission.

(D) All new members appointed to a governing board of an agency where the performance of the agency head is reviewed and ranked by the Agency Head Salary Commission shall attend the training in agency head performance appraisal provided by the commission within the first year of their appointment unless specifically excused by the chairman of the Agency Head Salary Commission.

**SECTION 8-11-170. Agency head dually employed by another state agency; timely payment.**

(A) An agency head may not be dually employed by another state agency or institution of higher education without prior approval by the Agency Head Salary Commission and the State Budget and Control Board.

(B) An employee who is approved for dual employment must be paid in a timely manner. The secondary agency must make payment of funds approved for and earned under dual employment within forty-five days of the beginning of the employment.

**AHSC Related Provisos**

**104.8.** (SFAA: Compensation - Agency Head Salary) In the event of an agency head or technical college president vacancy, the governing board of the agency or the Governor, or the appointing authority of a technical college president, must have the prior favorable recommendation of the Agency Head Salary Commission to set, discuss, offer, or pay a salary for the agency head or technical college president at a rate that exceeds the minimum of the range established by the Agency Head Salary Commission. No agency head or technical college president shall be paid a salary higher than that recommended by the commission. Boards and commissions, or the Governor if he is the appointing authority, of newly created agencies or technical colleges shall not offer or pay a salary to a prospective agency head until a salary range has been established and the salary approved by the Agency Head Salary Commission. The funding of the salaries of any agency head or technical college president should come from resources within the agency. The State Fiscal Accountability Authority shall contract every four years for a study of agency head, technical college president, and constitutional officer compensation, as required under Sections 8-11-160 and 8-11-165. The cost of the study must be shared by the participating agencies, technical colleges, and constitutional offices. The staff of the State Fiscal Accountability Authority shall serve as the support staff to the Agency Head Salary Commission. Limited only by the maximum of the respective salary range, the General Assembly authorizes the respective appointing authority for an agency head or technical college president to provide salary increases for an agency head or technical college president not to exceed that recommended by the Agency Head Salary Commission. No agency head or technical

college president shall be paid less than the minimum of the pay range nor receive an increase that would have the effect of raising the salary above the maximum of the pay range.

**93.14.** (DOA: Compensation - Reporting of Supplemental Salaries) No supplement shall be paid to an agency's employee unless the agency head or designated official of the employing agency, or in the case of supplements paid to college and university presidents, their board of trustees, has approved the conditions and amount of salary supplement. Any compensation, excluding travel reimbursement, from an affiliated public charity, foundation, clinical faculty practice plan, or other public source or any supplement from a private source to the salary appropriated for a state employee and fixed by the State must be reported by the employing agency to the Department of Administration. The report must include the employee's base salary, amount of the supplement, source of the supplement, and any condition of the supplement. The employing agency must report this information on or before August thirty-first of each year and must include the total amount and source of the salary supplement received by the employee during the preceding fiscal year (July first through June thirtieth). The Department of Administration shall formulate policies and procedures to ensure compliance with the reporting provisions of this proviso. Copies of the reports shall be made available to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee, upon request.

**117.15.** (GP: Allowance for Residences & Compensation Restrictions) That salaries paid to officers and employees of the State, including its several boards, commissions, and institutions shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee. The charge for these items may be payroll deducted at the discretion of the Comptroller General or the chief financial officer at each agency maintaining its own payroll system. This shall not apply to the Governor's Mansion, nor to guards at any of the state's penal institutions and nurses and attendants at the Department of Disabilities and Special Needs, and registered nurses providing clinical care at the MUSC Medical Center, nor to the Superintendent and staff of John de la Howe School, nor to the cottage parents and staff of Wil Lou Gray Opportunity School, nor to full-time or part-time staff who work after regular working hours in the SLED Communications Center or Maintenance Area, nor to adult staff at the Governor's School for Science and Mathematics and the Governor's School for Arts and Humanities who are required to stay on campus by the institution because of job requirements or program participation. Any state institution of higher learning may provide complimentary membership privileges to employees who work at their wellness centers. The presidents of those state institutions of higher learning authorized to provide on-campus residential facilities for students may be permitted to occupy residences on the grounds of such institutions without charge.

Any state institution of higher learning may provide a housing allowance to the president in lieu of a residential facility, the amount to be approved by the State Fiscal Accountability Authority.

That the following may be permitted to occupy residences owned by the respective departments without charge: the Farm Director, Farm Managers, and Specialists employed at the Wateree River Correctional Institution; the South Carolina State Commission of Forestry fire tower operators, forestry aides, and caretaker at central headquarters; the Department of Natural Resources' Game Management Personnel, Fish Hatchery Personnel, and Fort Johnson Superintendent; the Department of Parks, Recreation and Tourism field personnel in the State Parks Division; Director of Wil Lou Gray Opportunity School; President of the School for the Deaf and the Blind; houseparents for the Commission for the Blind; South Carolina Department of Health and Environmental Control personnel at the State Park Health Facility and Camp Burnt Gin; Residence Life Coordinators at Lander University; Residence Life Directors, temporary and transition employees, student interns, and emergency personnel at Winthrop University; Farm Superintendent at Winthrop University; Residence Hall Directors at the College of Charleston; the Department of Disabilities and Special Needs' physicians and other professionals at Whitten Center, Clemson University Off-Campus Agricultural Staff and Housing Area Coordinators; and TriCounty Technical College's Bridge to Clemson Resident and Area Directors; and housing maintenance night supervisors, residence life directors, temporary and transition employees, and emergency medical personnel occupying residences owned by the University of South Carolina. Except in the case of elected officials, the fair market rental value of any residence furnished to a state employee shall be reported by the state agency furnishing the residence to the Agency Head Salary Commission, and the Department of Administration by October first of each fiscal year.

All salaries paid by departments and institutions shall be in accord with a uniform classification and compensation plan, approved by the Department of Administration, applicable to all personnel of the State Government whose compensation is not specifically fixed in this act. Such plan shall include all employees regardless of the source of funds from which payment for personal service is drawn. The Department of Administration is authorized to approve temporary salary adjustments for classified and unclassified employees who perform temporary duties which are limited by time and/or funds. When approved, a temporary salary adjustment shall not be added to an employee's base salary and shall end when the duties are completed and/or the funds expire. Academic personnel of the institutions of higher learning and other individual or group of positions that cannot practically be covered by the plan may be excluded therefrom but their compensations as approved by the Department of Administration shall, nevertheless, be subject to review by the State Fiscal Accountability Authority. Salary appropriations for employees fixed in this act shall be in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Fiscal Accountability Authority. With the exception of travel and subsistence, legislative study committees shall not compensate any person who is otherwise employed as a full-time state employee. Salaries of the heads of all agencies of the State Government shall be specifically fixed in this act and no salary shall be paid any

agency head whose salary is not so fixed. As long as there is no impact on appropriated funds, state agencies and institutions shall be allowed to spend public funds and/or other funds for designated employee award programs which shall have written criteria approved by the agency governing board or commission. For purposes of this section, monetary awards, if any, shall not be considered a part of an employee's base salary, a salary supplement, or a perquisite of employment. The names of all employees receiving monetary awards and the amounts received shall be reported annually to the Department of Administration.

In the case of lodging furnished by certain higher education institutions to employees, the prevailing local rate does not apply if the institution meets the exceptions for inadequate rent described in the current Internal Revenue Code Section 119(d)(2). To meet the exception, rental rates must equal the lesser of five percent of the appraised value of the qualified campus lodging, or the average of the rentals paid by individuals (other than employees or students of the educational institution) during the calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over the rent paid by the employee for the qualified campus lodging during the calendar year. The appraised value shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than one year, at any time during the calendar year in which the period begins.

**117.20.** (GP: Travel - Subsistence Expenses & Mileage) Travel and subsistence expenses, whether paid from state appropriated, federal, local or other funds, shall be allowed in accordance with the following provisions:

(A) Unless otherwise provided in paragraphs B through H of this section, all employees of the State of South Carolina or any agency thereof including employees and members of the governing bodies of each technical college while traveling on the business of the State shall, upon presentation of a paid receipt, be allowed reimbursement for actual expenses incurred for lodging, not to exceed the current maximum lodging rates, excluding taxes, established by the U.S. General Services Administration. The lodging reimbursement for employees of a school district must also conform to these rates when that employee's travel reimbursement is paid by state funds that are transferred to the school district. Agencies may contract with lodging facilities to pay on behalf of an employee. Failure to maintain proper control of direct payments for lodging may result in the revocation of the agency's authority by the Comptroller General or the State Auditor. The employee shall also be reimbursed for the actual expenses incurred in the obtaining of meals except that such costs shall not exceed \$25 per day within the State of South Carolina. For travel outside of South Carolina the maximum daily reimbursement for meals shall not exceed \$32. Agencies may contract with food or dining facilities to pay for meals on behalf of employees in accordance with rules and regulations established by the Office of Comptroller General. It shall be the responsibility of the agency head to monitor the charges for lodging which might be claimed by his employees in order to determine that such charges are following maximum lodging rates as established by the U.S. General Services Administration. Any exceptions must have the written approval of the agency head, taking into consideration location, purpose of travel or other extenuating circumstances. The provisions of this item shall not

apply to Section 42-3-40 of the 1976 Code, and when pertaining to institutions of higher learning, for travel paid with funds other than General Funds.

(B) That employees of the State, when traveling outside the United States, Canada, and Puerto Rico upon promotional business for the State of South Carolina shall be entitled to actual expenses for both food and lodging.

(C) The Governor, Lieutenant Governor, Secretary of State, Comptroller General, Attorney General, State Treasurer, Adjutant General, Superintendent of Education and the Commissioner of Agriculture shall be reimbursed actual expenses for subsistence.

(D) Non-legislative members of committees appointed pursuant to Acts and Resolutions of the General Assembly whose membership consists solely of members of the General Assembly or members of the General Assembly and other personnel who are not employees of the State of South Carolina shall be allowed subsistence expenses of \$35 per day while traveling on official business, unless otherwise designated by law. Members of such committees may opt to receive actual expenses incurred for lodging and actual expenses incurred in the obtaining of meals in lieu of the allowable subsistence expense.

(E) Members of the state boards, commissions, or committees whose duties are not full-time and who are paid on a per diem basis, shall be allowed reimbursement for actual expenses incurred at the rates provided in paragraph A and I of this section while away from their places of residence on official business of the State. One person accompanying a handicapped member of a state board, commission, or committee on official business of the State shall be allowed the same reimbursement for actual expenses incurred at the rates provided in paragraph A through I of this section.

(F) No subsistence reimbursement shall be allowed to a Justice of the Supreme Court or Judge of the Court of Appeals while traveling in the county of his official residence. When traveling on official business of said court within fifty miles outside the county of his official residence, a Supreme Court Justice and a Judge of the Court of Appeals shall be allowed subsistence expenses in the amount of \$35 per day plus such mileage allowance for travel as is provided for other employees of the State. When traveling on official business of said court fifty or more miles outside the county of his official residence, each Justice and Judge of the Court of Appeals shall be allowed subsistence expenses in the amount as provided in this act for members of the General Assembly plus such mileage allowance for travel as is provided for other employees of the State. The Chief Justice, or such other person as the Chief Justice designates, while attending the Conference of Chief Justices and one member of the Supreme Court while attending the National Convention of Appellate Court Judges, and three Circuit Judges while attending the National Convention of State Trial Judges shall be allowed actual subsistence and travel expenses.

Upon approval of the Chief Justice, Supreme Court Justices, Judges of the Court of Appeals, Circuit Judges, and Family Court Judges shall be reimbursed for actual expenses incurred for all other official business requiring out-of-state expenses at the rate provided in paragraph A of this section.

(G) No subsistence reimbursements are allowed to a Circuit Judge, a Family Court Judge, or an Administrative Law Judge while holding court within the county in which he resides. While holding court or on other official business outside the county, within fifty miles of his residence, a Circuit Court Judge, Family Court Judge, or an Administrative Law Judge is entitled to a subsistence allowance in the amount of \$35 per day plus such mileage allowance for travel as is provided for other employees of the State. While holding court or on other official business at a location fifty miles or more from his residence, a Circuit Court, Family Court or Administrative Law Judge is entitled to a subsistence allowance in the amount as provided in this act for members of the General Assembly plus such mileage allowance for travel as is provided for other employees of the State.

(H) Any retired Justice, Circuit Court Judge or Family Court Judge or Master-in-Equity appointed by the Supreme Court to serve as a Special Circuit Judge, Family Court Judge, Appeals Court Judge, or Acting Associate Justice shall serve without pay but shall receive the same allowance for subsistence, expenses, and mileage as provided in Part I for Circuit Court Judges.

(I) No expense shall be allowed an employee either at his place of residence or at the official headquarters of the agency by which he is employed except as provided in paragraph E, of this section. When an employee is assigned to work a particular territory or district, and such territory or district and his official headquarters are in different localities or sections of the State, expenses may be allowed for the necessary travel to his official headquarters. The members of the Workers' Compensation Commission may be reimbursed at the regular mileage rate of one round trip each week from their respective homes to Columbia. No subsistence reimbursement shall be allowed to a member of the Workers' Compensation Commission while traveling in the county of his official residence. When traveling on official business of the commission outside the county of his official residence, a member of the Workers' Compensation Commission shall be allowed subsistence expenses in the amount of \$35 per day. When traveling on official business of the commission fifty or more miles outside the county of his official residence, each member shall be allowed a subsistence allowance in the amount as provided in this act for members of the General Assembly. When out-of-state, members of the Workers' Compensation Commission and the members of the Appellate Panel of the Department of Employment and Workforce may claim the established amount of per diem, as stated in the General Appropriation Act, or actual expenses as deemed reasonable by the Comptroller General. The members of the Appellate Panel of the Department of Employment and Workforce may be reimbursed at the regular mileage rate when the member is on official business fifty miles or more outside of Columbia. The members of the Appellate Panel of the Department of Employment and Workforce shall be allowed subsistence allowance in the amount as provided in this act for members of the General Assembly when the member is on official business fifty miles or more outside of Columbia.

(J) When an employee of the State shall use his or her personal automobile in traveling on necessary official business, a charge to equal the standard business mileage rate as established by the Internal Revenue Service will be allowed for the use of such



automobile and the employee shall bear the expense of supplies and upkeep thereof. The standard business mileage rate used in this calculation shall be the current rate established by the Internal Revenue Service. Whenever state provided motor pool vehicles are reasonably available and their use is practical and an employee of the State shall request for his own benefit to use his or her personal vehicle in traveling on necessary official business, a charge of four cents per mile less than the standard business mileage rate as established by the Internal Revenue Service will be allocated for the use of such vehicle and the employee shall bear the expense of supplies and upkeep thereof. The standard business mileage rate used in this calculation shall be the current rate established by the Internal Revenue Service. When such travel is by a state-owned automobile, the State shall bear the expense of supplies and upkeep thereof but no mileage will be allowed. Agencies and employees are directed to use state fueling facilities to the maximum extent possible, when such use is cost beneficial to the State. When using commercial fueling facilities, operators of State-owned vehicles are directed to use self-service pumps. In traveling on the business of the State, employees are required to use the most economical mode of transportation, due consideration being given to urgency, schedules and like factors.

Mileage between an employee's home and his/her place of employment is not subject to reimbursement. However, when an employee leaves on a business trip directly from his/her home, and does not go by the employee's headquarters, the employee shall be eligible for reimbursement for actual mileage beginning at his/her residence.

(K) That a state agency may advance travel and subsistence expense monies to employees of that agency for the financing of ordinary and necessary travel required in the conducting of the business of the agency. The Office of Comptroller General is directed to develop and publish rules and regulations pertaining to the advancing of travel expenses and no state agency shall make such advances except under the rules and regulations as published. All advances for travel and subsistence monies shall be repaid to the agency within thirty days after the end of the trip or by July fifteenth, whichever comes first.

(L) That the state institutions of higher learning are authorized to reimburse reasonable relocation expenses for new employees when such reimbursements are considered by the agency head to be essential to successful recruitment of professionally competent staff members.

(M) The Office of Comptroller General is authorized to promulgate and publish rules and regulations governing travel and subsistence payments.

(N) No state funds may be used to purchase first class airline tickets.