

# Office of the Inspector General

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## **Review of Hiring Process of the Executive Director for The South Carolina Commission on Higher Education**

## **I. Executive Summary**

The South Carolina Office of the Inspector General (SIG) initiated a review of the processes utilized by the South Carolina Commission on Higher Education (CHE) to hire a permanent executive director, and establish the salary for the position at the maximum of the pay band without going through the Agency Head Salary Commission. The SIG initiated this review at the request of the Agency Head Salary Commission on 10/24/2018.

The scope and objectives of this review were to document the processes the CHE followed to set the CHE executive director's salary at the highest end of the pay band, and to address the following questions:

1. Did the CHE follow proper and prudent steps in its decision to hire the interim executive director as its permanent director?
2. Did the CHE follow the proper steps prescribed in state law in adjusting the interim executive director's salary at the top of the pay range as set by the Agency Head Salary Commission?
3. Whether supplemental funds from any foundation or external organization were included as a part of the salary compensation to the interim executive director, and if so, were proper authorizations and procedures followed in compliance with applicable state laws?

### **Background**

The [Agency Head Salary Commission](#) (AHSC), created by the General Assembly in 1984, is an independent body designed to oversee agency head performance evaluations, approve agency head salaries, and provide transparency to the public on agency head performance and salary. Every three to four years the AHSC conducts a job analysis to ensure the salary ranges are in line with the market for comparable positions. This process protects both employer and employee from claims of cronyism, and allows South Carolina to be competitive with other states while protecting against exorbitant pay for any one individual. ([Applicable SC Code of Laws and Provisos](#)) Based on the latest study, South Carolina agency heads received performance raises effective 1/5/2017. For the CHE executive director's position, the current salary range was established as: minimum – \$166,280; midpoint – \$211,284; and maximum – \$257,767.

The CHE, established in 1967, serves as the coordinating state agency for South Carolina's 33 public institutions of higher learning. The CHE operates pursuant to the SC Code of Laws, as amended, §59-103-5, et seq., and is governed by a 15-member board of commissioners (Board). The CHE Board is responsible for conducting an annual performance review of the CHE executive director and submitting this evaluation to the AHSC for review. Annual performance reviews are not required for interim executive directors. The CHE Board can establish the salary of the CHE executive director at the minimum of the pay band without AHSC approval. All other salary increases must be sent to the AHSC for approval prior to any adjustment in salary. The CHE Board is currently comprised of eleven commissioners with four vacant positions. The former board chair resigned on Friday, 10/26/2018. The interim executive director submitted his resignation from the CHE on 11/27/2018. His final day in the office was 1/2/2019.

The [SC Higher Education Foundation Inc.](#) (Foundation) was established in 2000 as the CHE's affiliated foundation "to champion higher education and to develop and support programs that benefit higher education statewide." The Foundation is a separately chartered corporation; independent of CHE mandated functions and governed by a separate board of directors comprised of five members. The current board includes the former CHE Board chair, a former CHE commissioner, and a current CHE commissioner. The Foundation was classified in 2001 under section 501(c)(3) of the Internal Revenue Code, as a public charity [170(b)(1)(A)(vi)] tax-exempt organization, rather than a private foundation.

The Foundation is a virtual corporation, without a physical location or staff. However, the Foundation utilizes a CHE employee to maintain the financial records of the Foundation, record the minutes of the Foundation's board meetings, and serve as the Foundation's registered agent. The SIG determined there is no operating agreement between the CHE and the Foundation establishing the roles and responsibilities for the use of the CHE employee in this Foundation role.

The Foundation has an Affiliation Agreement with the University of South Carolina Educational Foundation (USC-EF) to record donations, issue receipts, and process disbursements as approved by the Foundation treasurer, and/or its board chair. The USC-EF has been the Foundation's fiscal agent for the past five years.

### Chronology of Events

Beginning in April 2015, three consecutive interim executive directors have occupied the CHE executive director's position. The CHE Board hired the interim executive director on 4/6/2017. Consistent with AHSC policies and procedures, and SC Code of Laws the CHE Board set the interim executive director's salary at the minimum of the pay band – \$166,280. Concurrent with this hiring, the Foundation board approved an annual salary supplement of \$73,720 for the interim executive director, effective 4/8/2017, which brought the combined annual salary to \$240,000. However, the salary supplement was not put before the CHE Board for approval, nor was the salary supplement disclosed as required by statute and Proviso 93.14.

In August 2017, the CHE entered into a Memorandum of Agreement (MOA) with the South Carolina Department of Administration (DOA) to provide all human resource (HR) functions for the CHE. This inter-agency services arrangement was the result of deficiencies identified in a DOA, Division of State Human Resources (DSHR) review of CHE's HR processes requested by the interim executive director. A subsequent audit by the Office of the State Auditor of the agency confirmed these same deficiencies.

Beginning on 8/23/2018, the former CHE Board chair communicated directly with a DOA staff member and a CHE staff member about the salary range for the interim executive director. **(Appendix J)** On 8/24/2018, the former CHE Board chair was informed of the minimum, midpoint, and maximum salary figures of the pay band. By email dated 8/24/2018, the former CHE Board chair instructed the CHE staff member to *"Please forward this request to [DOA staff] and ask him to slot the position at the \$257,767 per year, the Commission voted unanimously on this initiative at our August meeting in Executive session."* **(Appendix L)** This email was also sent to the interim executive director and a CHE Board member who was also a member of the Foundation board.

Subsequent email correspondence on 8/24/2018 discussed ending the salary supplement and the effective date of the salary increase. **(Appendix K)** The DOA staff member acknowledged informing the former CHE Board chair the effective date of the salary increase would be 8/2/2018. On the same date, the former CHE Board chair emailed the Foundation president advising of the CHE Board's approval to remove "interim" from the executive director's title, and to terminate the salary supplement. **(Appendix G)**

On 8/24/2018, the DOA staff member entered a Personnel/Budget Action Request (PBR) for the salary increase with an effective date of 8/2/2018. On the same date, a CHE letter was sent to the interim executive director confirming the salary increase from \$6,928.33 to \$10,740.29 per pay period, effective 8/2/2018, starting with the 8/31/2018 pay date. **(Appendix H)**

On 10/18/2018, a senior DOA staff member reversed the pay increase with a subsequent PBR, with an effective date of 10/2/2018, and returned the interim executive director's salary to the minimum of the pay band - \$166,280. It was determined the CHE Board had not sought AHSC approval for the salary increase, and the DOA staff member did not follow prescribed DOA procedures of obtaining AHSC documentation prior to submitting the PBR for the salary increase. **(Appendix P)**

## Summary Analysis

### CHE Appointment of an Executive Director

The first area of review was for the SIG to determine if the CHE followed proper and prudent procedures when it hired the current interim executive director as its permanent executive director. The SIG determined through a review of the CHE Board meeting minutes for 2017 and 2018, and interviews of each CHE Board member, the CHE Board never voted to offer the permanent position to the interim executive director. This was not consistent with SC Code of Laws §59-103-90, which directs the CHE Board to appoint an executive director to manage and carry out the duties of the commission.

It was widely reported in the public domain, and documented in email correspondence among the former CHE Board chair, CHE and DOA staff members that the CHE Board voted to remove the “interim” title of current occupant of the position while in “executive session.” The SIG interviews determined CHE Board members frequently discussed in executive session the idea of removing “interim” from the current interim executive director’s title, beginning in July 2018 and continuing through the CHE Board’s two-day retreat in August 2018. However, no vote was taken in executive session, which would have violated the state’s open records laws. Furthermore, the CHE Board interviews and meeting minutes confirmed no vote was taken in open session on this issue at its 8/2/2018 meeting or subsequent meetings in September, October and November 2018.

### Establishing the CHE Executive Director Salary at the Maximum Level of the Pay Band

The second area of review was for the SIG to determine if proper steps prescribed in state law were followed in adjusting the interim executive director’s salary to the top of the pay range as set by the AHSC. The SIG determined the CHE did not follow the proper steps outlined in the SC Code of Laws and legislative provisos in setting the interim executive director’s salary at the maximum of the pay band.

As set forth in SC Code of Laws §8-11-160 and Proviso 104.9, all boards and commissions are required to submit justification of an agency head’s performance and salary recommendations to the AHSC, in particular if the appointing authority seeks to pay a salary above the minimum of the pay band established by the AHSC. The SIG determined the CHE Board did not provide justification and obtain AHSC approval to increase the interim executive director’s salary in August 2018. Similarly, the DOA staff member who performed HR duties for the CHE pursuant to its service agreement with CHE did not follow prescribed DOA processes when the PBR was submitted for the salary increase without prior AHSC approval. When senior DOA staff identified the error in October 2018, the personnel action was reversed and the salary was reset to the minimum of the pay band for the position. The interim executive director has since reimbursed the state for the over payment of salary for the period of 8/2/2018 - 10/2/2018.

### Salary Supplements

The third area of review was for the SIG to determine if (a) supplemental funds from any foundation or external organization were included as part of the salary compensation to the interim executive director, and if so, (b) were proper authorizations and procedures followed in compliance with applicable state laws.

The SIG determined the Foundation board approved a salary supplement for the interim executive director at the inception of his employment in April 2017. The Foundation board approved an annual \$73,780 salary supplement without the knowledge or approval of the full CHE Board. For the period of 4/8/2017 – 7/31/2018, the interim executive director received a total of \$96,655.11 in salary supplements. The combined annual salary of state salary and salary supplement was \$240,000. The salary supplement was terminated on 8/24/2018, by the former CHE Board chair and Foundation board member when the state salary was increased to \$257,767.

The SIG determined the majority of the CHE Board members were unaware of the salary supplement. However, the former CHE Board chair and vice-chair were voting members of the Foundation board and had prior knowledge of the salary supplement approval. This salary supplement did not comply with Proviso 93.14, which required the prior approval of the CHE Board and the reporting of the salary supplement source to the DOA by August 31 for the preceding fiscal year. (*Appendix M*)

For reporting purposes, the salary supplement information was reported in SCEIS by the former CHE HR manager and the subsequent DOA staff member. However, a majority of the CHE Board membership was unaware of the salary supplement until October 2018 when news of the salary increase was reported in the media. For FY2017, the total salary supplement was \$16,791.78 and \$73,719.95 for FY2018. The remaining balance of \$6,153.38 was paid in the current FY2019 and will be reported by 8/31/2019.

#### Other Areas of Non-Compliance

The SIG identified a need for the CHE Board to obtain AHSC training as set forth in SC Code of Laws §8-11-165. While the AHSC had previously provided training to the CHE Board in 2011, only two current CHE Board members had received this prior training due to turnover in CHE Board membership.

Additionally, the CHE and Foundation do not have an operating agreement or MOA in place to set forth the roles and responsibilities of the CHE staff member assigned to handle the financial records and Foundation board meeting minutes. This is an essential element of good governance for any inter-agency relationship, as evidenced by the CHE-DOA services agreement.

#### Conclusion and Way Forward

The SIG conducted 26 interviews of current and former CHE leadership and staff, board members, DOA leadership and staff, and Foundation board members. These interviews, combined with the review of communications and documentation, did not establish the CHE Board's actions were conducted in a manner to intentionally circumvent the AHSC and its authorities prescribed in statute.

While the DOA accepted responsibility for the breakdown in the process, it was the CHE Board's ultimate responsibility to ensure the necessary approvals and processes were followed, as set forth in statute. Although the DOA was not making administrative decisions, the CHE relied upon DOA to advise on how to carry out the administrative processes involved with implementing these decisions. A valuable lesson to be learned by all state agencies and employees is "Process Protects" when processes and procedures defined in statute are followed.

In light of these events, the DOA is evaluating two options to eliminate future missteps when an agency board or commission seeks to increase or adjust an agency head's salary:

1. Upon AHSC approval for an increase in agency head salary, the AHSC letter would go to the DSHR to make the necessary salary adjustments, which would limit the agency's ability to access and make any agency head salary changes in SCEIS; or
2. The DSHR contact for the agency would authorize the agency HR manager to make the change once the DSHR had received the AHSC approval letter.

The SIG extends its appreciation for the cooperation and courtesies provided by the CHE Board and staff, DOA leadership and staff, and the Foundation board who participated in this review and the production of documents.

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Appendices located at Internet Link: [CHE Report Appendices A-P](#)

Administrative Note: [Commission on Higher Education Response to IG Report](#)

## **II. Background**

### **A. Predicate**

The South Carolina Office of the Inspector General (SIG) initiated a review of the processes utilized by the South Carolina Commission on Higher Education to hire a permanent executive director, and establish the salary for the position at the highest end of the pay band without going through the Agency Head Salary Commission. The SIG initiated this review at the request of the Agency Head Salary Commission on 10/24/2018.

### **B. Scope and Objectives**

The SIG's scope of review was to determine answers to the following questions:

1. Whether the CHE followed proper and prudent steps in its decision to hire the interim executive director as its permanent executive director?
2. Whether the proper steps prescribed in state law were followed in adjusting the executive director's salary to the top of the pay range as set by the Agency Head Salary Commission?
3. Whether supplemental funds from any foundation or external organization were included as a part of the salary compensation to the interim executive director; and if so, were proper authorizations and procedures followed in compliance with applicable state laws?

### **C. South Carolina Commission on Higher Education**

The South Carolina Commission on Higher Education (CHE), established in 1967, serves as the coordinating state agency for South Carolina's 33 public institutions of higher learning. The CHE operates pursuant to the SC Code of Laws, as amended, §59-103-5, et seq., and is governed by a 15-member board of commissioners (Board). Board commissioners are appointed by the Governor including: one at-large member as the Board chair; three other statewide at-large members; seven members, one from each of the state's congressional districts; and three members from the college and university trustees representing: the research institutions; four-year comprehensive institutions; and the independent higher learning institutions.

The CHE Board is currently comprised of eleven commissioners with four vacant positions. The [former board chair](#) resigned on 10/26/2018. The current Board chair was appointed on 11/28/2018. (*Appendix A*)

The agency provides direction on policy, planning, management and oversight of public higher education concerning academic affairs; student affairs; financial affairs; facilities; and roles of public colleges and universities, including approval of new academic programs, missions, capital projects, leases, and land purchases. The agency also administers the state's lottery scholarships, and need-based scholarships and grants.

The CHE staff is composed of 31 full time employees, and 19 temporary/temporary grant positions. In addition, CHE is the fiscal agent for PASCAL (Partnership among South Carolina Academic Libraries) and houses its seven employees. PASCAL, a separate entity governed by a separate board of directors, is a consortium of colleges and universities working to provide electronic academic resources for students and faculty in South Carolina.

## D. Agency Head Salary Commission

The [Agency Head Salary Commission](#) (AHSC), created by the General Assembly in 1984, implemented the AHSC process to provide transparency and recommend agency head salary based on performance. The board/commission of an agency is responsible for conducting an annual [performance evaluation](#) of the agency head. The AHSC, as an independent body, reviews the performance appraisal and sets a salary. Additionally, a job analysis is conducted every three to four years to ensure the salary ranges are in line with the market for comparable positions. This process protects both employer and employee from claims of cronyism. The review process allows South Carolina to be competitive with other states while protecting against exorbitant pay for any one individual. ([Applicable SC Code of Laws and Provisos](#))

The AHSC is composed of four appointees by the Senate Finance Committee chairman, four appointees by the House Ways and Means Committee chairman, and three appointees by the Governor. The State Fiscal Accountability Authority provides the support and administrative functions for the AHSC.

The AHSC reviews all requests to hire agency heads above the minimum of their salary ranges, and requests for dual employment for agency heads. Any decision to hire an agency head above the minimum of the pay band is vetted and approved by the AHSC. In addition, the AHSC is responsible for recommending salary increases for agency heads.

Based upon the most current report by Korn Ferry Institute (Korn Ferry Hay Group Compensation Study), an international consulting firm specializing in executive pay, a pay range structure was established by the AHSC. This structure blends private sector pay data along with national public sector pay data. This structure was intended to reflect duties, responsibilities, and performance. The intent of the AHSC has been to conduct a study to adjust the ranges to keep up with trends in executive salary data. The minimum threshold reflects the market pay for an individual with little or no experience in directing an organization. The mid-point and maximum salary ranges reflects the market salary for an individual with varying levels of experience in leading an organization.

Based on the latest study performed, South Carolina agency heads received performance raises effective 1/5/2017. The new CHE salary range was set at: \$166,280 (minimum); \$211,284 (midpoint); and \$257,767 (maximum).

The AHSC, provided training to the CHE Board in 2011 on the processes of the AHSC. This training included specifics on how the AHSC and a state agency interacted with each other on the performance evaluation process and establishing the salary for the agency head. (*Appendix D*) The CHE has been operating under its third consecutive interim executive director since 2015. Since an annual evaluation is not required by the AHSC if the position is in an interim status, the CHE has not interacted with the AHSC in a meaningful fashion for over three years.

## III. Review of CHE's Hiring Process of the Interim Executive Director

To determine whether the CHE followed proper and prudent steps in deciding to hire the interim executive director as its permanent executive director, the SIG process included interviews; review of CHE Board and committee minutes, personnel records, and email correspondence; and requests for applicable supporting documents. The SIG interviewed 26 individuals to include: ten current CHE Board members (as of [11/1/2018](#)), two former CHE Board members, the former CHE Board chair current and former CHE employees, current and former South Carolina Department of Administration (DOA) staff, and SC Higher Education Foundation board members to document this process. Based on information provided during interviews and documents reviewed, the SIG has provided a chronology of the relevant information.

## A. CHE Executive Director Search Committee

At the beginning of the SIG review, the CHE was operating under its third consecutive interim executive director. The last permanent director resigned from the CHE on [4/3/2015](#), after serving for two years. At its [6/18/2015 meeting](#), the CHE Board voted to establish an executive director search committee (committee) to conduct a national search for a new executive director. The committee was charged with providing to the CHE Board the names of at least three qualified candidates for the position, unless extraordinary circumstances caused the committee to bring forward less than three candidates. ([6/18/2015 meeting agenda](#))

The committee was comprised of five CHE Board members, and an advisory group from various colleges, representatives from the school district, state government, and the business sector. During the process, the committee enlisted assistance from the DOA, Division of State Human Resources (DSHR), State Procurement, and a professional search firm. Key information identified from the committee's meeting minutes is as follows:

- [7/27/2015 minutes](#): indicated the committee voted that as a part of its process it would thoroughly vet the finalist candidates for education, criminal, employment, credit, civil litigation, and social media backgrounds.
- [8/12/2015 minutes](#): indicated the committee chair assessed that an appropriate pool of viable applicants was now in place. The former CHE Board chair agreed with the assessment and commented on the excellent quality of the applicants' skill sets.
- [10/8/2015 minutes](#): indicated the committee authorized and engaged in the hiring of a professional search firm to supplement its ongoing recruitment efforts. Also discussed was the level of the salary and the possibility of seeking an upwards adjustment.
- [10/29/2015 minutes](#): indicated per discussion with the AHSC "there is no justification for a salary range change due to the fact that there had been no change to the position description."
- 12/1/2015 draft minutes, the DSHR reported that 113 applications for the executive director position were received to date (within 60 days). The committee decided no longer to pursue a relationship with the professional search firm, and to discontinue advertising for the position in anticipation of revisiting the position description when the committee reconvened in January 2016. (*Appendix B*)

The committee did not reconvene in 2016. However, as reflected in its [1/7/2016](#) CHE Board meeting minutes, the CHE Board voted to change the title of this position to reflect it as executive director and president of CHE.<sup>1</sup> The committee had received feedback from various candidates the salary was too low for the position and that the title of president should be added to the position to attract candidates more qualified.

As indicated in the board minutes, and discussions with the committee members, the committee endeavored to secure the best leadership for the agency. However, based on the qualifications of the candidates and willingness to accept the position presented at the salary level extended for the position, no candidates were selected and presented to the full Board for consideration as the new executive director for the agency. (See [CHE Executive Director Search Committee](#))

## B. Appointments of CHE Interim Executive Directors

Following the resignation of the last permanent CHE executive director in April 2015, the first of three consecutive interim executive directors was appointed to lead CHE. However, after serving five months in the dual role of interim executive director and legislative liaison the CHE employee requested to step down from the role.

At its [9/3/2015](#) meeting, the CHE Board appointed the agency's chief financial officer (CFO) as the interim

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<sup>1</sup> While the CHE Board undertook action to add the title of president to the agency head role, the SC Code of Laws only identifies the position as executive director. See SC Code of Laws, §59-103-90.

executive director and established the salary at \$150,480, the minimum level of the pay band. This was consistent with AHSC policy and did not require AHSC approval. This salary was adjusted to \$166,280 in accordance with the AHSC directive effective 1/5/2017. (*Appendix C*) The former CFO continued to serve as interim executive director until his retirement on [4/6/2017](#).

On the same date as the former interim executive director's retirement, the CHE Board voted to appoint its third consecutive interim executive director. The interim executive director previously served as a CHE consultant for approximately six months prior to his appointment. According to the [4/6/2017](#) CHE Board meeting minutes and [press release](#), the position carried the title of interim executive director and president. The salary was set at \$166,280, the minimum level in accordance with the AHSC directive effective 1/5/2017. (*Appendix I*)

During the interviews, each CHE commissioner commented that they had discussed on several occasions during either executive sessions of a board meeting or the annual strategic planning session ([8/13/2018 - 8/14/2018](#)), the current interim executive director was performing well and it was their intent to make the position permanent. However, no vote was ever taken by the CHE Board to make the position permanent.

### **C. Memorandum of Agreements with the SC Department of Administration**

In August 2017, the CHE entered into a Memorandum of Agreement (MOA) with the DOA to provide all human resource (HR) functions for the CHE. This inter-agency services arrangement was the result of deficiencies identified in an audit conducted by DSHR for the period 7/1/2015 – 6/30/2017. (*Appendix E*)

The audit, initiated at the request of the interim executive director, encompassed the delegated transactions of CHE that included:

- Reclassification Actions
- Temporary Salary Adjustment Actions
- Hire Above Minimum Actions

As a result, CHE entered into a MOA with DOA on 8/18/2017, to provide HR administrative services to the CHE, to include:

- Employee recruitment, selection, classification and compensation, employee relations, benefits, discipline, grievances, appeals, complaints, investigations and separations;
- HR transaction processing and reporting; policies and procedures, and training and guidance;
- Payroll processing and reporting; and
- Access to and use of the South Carolina Enterprise Information System (SCEIS), appropriate use of the Employee Performance Management System and other executive level functions related to HR and payroll issues.

Subsequently, all access to SCEIS was terminated for the CHE HR manager, and the DOA performed all HR functions for the agency.

On 7/9/2018, CHE entered into an expanded MOA with DOA to provide the following administrative services based on deficiencies identified by the State Auditor's Office [report](#) of the agency for FY2016-17:

- Finance and accounting services in the form of accounts payable processing and support;
- HR services in the form of employee recruitment and selection, classification and compensation, employee relations, benefits and payroll processing, reporting, training and guidance;
- Budgetary services in the form of budget reporting and guidance; and
- Procurement services for the analysis and guidance of procurement policies and processes.

However, as stipulated in each MOA, while the DOA provided services, support and advice, the ultimate responsibility for administrative decisions resided with the CHE. (*Appendices N & O*)

#### **D. Gaps Identified in the Process**

The SIG determined through interviews and review of the CHE Board minutes, the CHE never voted in open forum to offer the position as permanent executive director to the interim executive director. Contrary to correspondence and public statements made by the former CHE Board chair, no vote was taken in open or executive session on this matter. This was not consistent with SC Code of Laws §59-103-90, which directs the CHE Board to appoint an executive director to manage and carry out the duties of the commission.

The SIG's review of the interim executive director's personnel file found no documentation related to his initial hiring as a CHE consultant. The interim executive director commented that a resume was provided to the CHE Board members prior to interviewing with the Board. Further review of the personnel records did not identify an initial application for the position of the interim executive director or resume, any of the background information normally requested of a job applicant or candidate, or an offer letter for the acceptance of the position detailing any of the specifics of the position such as salary, benefits, and responsibilities.

### **IV. Evaluation of the Interim Executive Director's Salary Increase**

The SIG conducted interviews with relevant individuals; reviewed CHE board minutes, email correspondence, and applicable supporting documents, to document and evaluate the process undertaken by CHE and the DOA in the August 2018 salary increase of the interim executive director at the maximum level of the pay range established by the AHSC to determine if the process followed state law.

The SIG determined the AHSC provided training to the CHE Board in 2011 on the processes of the AHSC. This training included specifics on how the AHSC and a state agency interacted with each other on the performance evaluation process and establishing the salary for the agency head. (*Appendix D*) Two of the current CHE Board members attended the training session. Additionally, several of the CHE Board members by virtue of their current state positions or roles on other Boards shared they were aware of the AHSC processes, but acknowledged that since the interim executive director had not been approved as the permanent director, it was not necessary to involve the AHSC until the position was made permanent.

#### **A. Assessment of the Process to Increase the Interim Executive Director's Salary**

As set forth in SC Code of Laws §8-11-160 and Proviso 104.9, all boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the AHSC, in particular if the appointing authority seeks to pay a salary above the minimum of the pay band established by the AHSC.

The SIG determined the CHE Board did not provide justification or requested AHSC approval to increase in salary of the interim executive director in August 2018. Similarly, the DOA staff member who performed HR duties for the CHE pursuant to its service agreement with CHE did not follow prescribed DOA processes when the personnel action was submitted for the salary increase without prior AHSC approval. While the DOA was not making administrative decisions, the CHE relied upon DOA to advise on how to carry out the administrative processes involved with implementing these decisions.

When senior DOA staff identified the error in October 2018, the personnel action was reversed and the salary was reset to the minimum of the pay band for the position. The interim executive director has since reimbursed the state for the over payment of salary for the period of 8/2/2018 - 10/2/2018. (*A chronology of the process is detailed in Appendix F*)

## **B. Gaps Identified in the Process**

Through interviews and review of documentation surrounding the request to increase the interim executive director's salary, the SIG identified the following gaps in the process:

- No CHE Board vote of approval was obtained to increase the salary of the interim executive director by the former CHE Board chair. One-hundred percent (100%) of the CHE Board members confirmed no vote was taken in executive session at the 8/2/2018 [CHE Board meeting](#).
- No approval was requested from the AHSC for the salary increase as required by statute. Sufficient knowledge, training, experience was present among current CHE Board members to know of this requirement.
- The DOA staff person that handled most of CHE HR administrative service needs, was contacted by the former CHE Board chair requesting the salary change based on the AHSC salary ranges for an agency head [\$166,280 minimum; \$211,284 midpoint; and \$257,767 maximum] as of 1/5/2017.
- No supporting documentation was provided by the CHE to the DOA staff acknowledging the AHSC's approval of the salary increase.
- DOA staff did not follow its internal processes, to include written instructions to refer all CHE communication to the staff member's immediate supervisor for approval. (*Appendix P*)
- The interim executive director was not involved in the decision to increase his salary. When notified by the former CHE Board chair about the decision to name him permanent executive director and increase his salary, he directed the former CHE Board chair to consult with the DOA point of contact for HR assistance. The interim executive director stated he was not aware of the salary adjustment amount until he received notification from the DOA on 8/24/2018, the date the increase was processed detailing the amount and effective date of the increase. (*Appendix H*)
- A salary supplement for FY2017-2018 of \$73,720 from the SC Higher Education Foundation, Inc. (Foundation) was obtained without CHE Board approval. Additionally, there was no documentation indicating the AHSC was apprised of the salary supplement at the time of the interim executive director's appointment. With the supplement from the Foundation (\$73,720) and the state base salary (\$166,280), the total compensation to the interim executive director for FY2017-2018 was \$240,000. The salary supplement was terminated on 8/24/2018 by the former CHE Board chair and the Foundation president when the state salary was increased to \$257,767. (*Appendix G*)

## **V. Evaluation of Supplemental Funds Paid to the Interim Executive Director**

The SIG identified the relevant funding sources, researched the aspects of the salary compensation paid and applicable state law requirements to determine whether supplemental funds from any foundation or external organization were included as a part of the salary compensation to the interim executive director, and whether proper authorizations and procedures were followed in compliance with state laws.

### **A. SC Higher Education Foundation, Inc.**

The CHE's affiliated foundation, [SC Higher Education Foundation, Inc.](#) (Foundation), was "founded in 2000 to champion higher education and to develop and support programs that benefit higher education statewide." The Foundation was classified in 2001 under section 501(c)(3) of the Internal Revenue Code, as a public charity [170(b)(1)(A)(vi)] tax-exempt organization, rather than a private foundation.

The Foundation is a separately chartered corporation, independent of the CHE mandated functions and governed by a separate board of directors composed of five members. The current board includes the former CHE Board Chair, a former CHE Commissioner, and a current CHE Commissioner. The Foundation is a virtual corporation, without a physical location or any staff. However, CHE has an employee assigned to maintain the financial records of the Foundation and record minutes of the Foundation's board meetings. This state employee is the registered agent for the Foundation, has maintained the Foundations finances since 2004.

The SIG determined there is no operating agreement between the CHE and the Foundation establishing the roles and responsibilities for the use of the CHE employee in this Foundation role, nor defines the relationship, accountability, and reporting structure between the state agency and the Foundation.

The SIG reviewed minutes for the five Foundation board meetings for the period of 11/8/2016 through 11/25/2018. The minutes reflected the Foundation provided direct support to the CHE and higher education, and highlighted certain events it was involved with in the past. These events included 1) Professor of the Year; 2) Campus Safety Conferences; 3) Know<sub>2</sub> Pilot program; 4) the Competing through Knowledge initiative; 5) Trustee Conferences; 6) Summer Institute Teaching Professors How to Teach; 7) the Higher Education Hall of Fame; and 8) President's Dinners.

The SIG reviewed the Foundation's financial statements prepared by the CHE employee for FYs 2016 – 2018. The SIG also obtained and reviewed the Foundation's 990s prepared by an independent audit firm for FYs 2015 – 2018. The SIG was not engaged to, nor did it perform an audit of the affiliated Foundation.

Over the past two years, the Foundation assisted the CHE by covering costs for the following (based on the Foundation's check register of expenses from 1/1/2017 – 8/22/2018):

- \$1,221 refreshments related to town hall meetings held in various counties
- \$651 CHE commissioners' retreats
- \$250 CHE staff training/team building (provided by DSHR)
- \$3,061 CHE staff appreciations & catered X-mas parties
- \$96,655 CHE interim executive director salary supplement

However, the funding maintained by the Foundation has decreased significantly over the past two years, with very limited contributions coming to the organization. Below is a summary chart of the Foundation's 990s for FYs 2015 – 2018.

Summary	FY2014-15	FY2015-16	FY2016-17	FY2017-18
Contributions & grants	79,250	3,655	132	
Program service revenue	15,000			
Investment income	82	75	62	19
Other revenue	9,840	(803)		
<b>Total Revenue</b>	<b>\$104,172</b>	<b>\$2,927</b>	<b>\$194</b>	<b>\$19</b>
Grants paid/Property		221,100		
Professional fees	100	1,310	1,472	500
Occupancy			2,191	
Other expenses	84,408	7,785	14,320	78,025
<b>Total Expenses</b>	<b>\$84,508</b>	<b>\$230,195</b>	<b>\$17,983</b>	<b>\$78,525</b>
<b>Revenue less Expenses</b>	<b>\$19,664</b>	<b>(\$227,268)</b>	<b>(\$17,789)</b>	<b>(\$78,506)</b>
<b>Net Assets</b>	<b>\$367,220</b>	<b>\$139,952</b>	<b>\$122,163</b>	<b>\$43,657</b>

Total Expenses Categorized	FY2014-15 Expenses	FY2015-16 Expenses	FY2016-17 Expenses	FY2017-18 Expenses
Competing through Knowledge	68,840			
Property Taxes	5,095	5,075		
LBF Campus Safety Conference	2,500			
Presidents Dinner	1,616			
Staff Meetings/Meals		922	2,465	847
Meals & Events		636		1,780
Office Expenses	1,610	172	234	278
Accounting/professional fees	1,250	1,310	1,472	1,050
Conferences & Conventions	2,747			
Insurance	850	851	850	850
<b>Supplement*</b>			<b>10,648</b>	<b>73,720</b>
Bank Fees		129	123	
Occupancy (Know <sub>2</sub> Program)			2,191	
Property		221,100		
<b>Total Expenses</b>	<b>\$84,508</b>	<b>\$230,195</b>	<b>\$17,983</b>	<b>\$78,525</b>

Source: GuideStar Profile EIN: 57-1112286

\*Total supplements paid to the CHE interim executive director was \$96,655.

## **B. SC Higher Education Foundation, Inc., Transaction Process**

The Foundation has an Affiliation Agreement with the University of South Carolina Educational Foundation (USC-EF) to record donations; issue receipts; and process disbursements as approved by the Foundation treasurer, and/or its board chair. The USC-EF has been the Foundation's fiscal agent for the past five years.

The agreement with the USC-EF was initiated with the assumption of possibly investing the Foundation's funds with USC's Foundation to generate a better return on investment. The Foundation's fund balance was \$60,000 (cash) in 2013. The Foundation funds are not commingled with CHE's funds.

The USC-EF maintains the Foundation's checkbook, and writes the checks. The CHE staff assigned to maintain the Foundation's records, also retrieves the mail, prepares the check requests, and has signature authority.

According to the Foundation's minutes, both of the previous CHE CFOs were considered trustees of the Foundation and directed to endorse the check requests as a part of their duties until leaving their positions with CHE. Currently, the Foundation's president endorses the check requests, and gives it to the CHE staff person (registered agent of the Foundation), both of whom have signature authority. The check requests are taken to the USC-EF to record the transaction and issue the check. The check is physically returned to the CHE staff to sign the check in the presence of the USC-EF staff member. All checks go through this process.

## **C. SC Higher Education Foundation, Inc., Salary Supplement**

On 4/17/2017, by acclamation the Foundation board voted to pay \$73,720 annually (12 payments / \$6,143.33) to supplement the salary of the CHE executive director. The Foundation Board paid a total of \$96,655 in supplements to the interim executive director for the period of 4/8/2017 – 7/31/2018. The two preceding interim executive directors did not receive a salary supplement from the Foundation.

The former CHE Board chair's correspondence to the Foundation's president indicated that on 8/2/2018, the CHE Board voted to remove "interim" from the executive director's title, and to cease the Foundation's supplement as it was no longer necessary. Neither the CHE Board members, nor the [8/2/2018 CHE Board minutes](#) corroborated this statement. (*Appendix G*)

There was no CHE Board approval consenting to allow a supplemental salary from the Foundation or any other external organization. Although the former CHE Board chair referred there was a consensus of the Board members during informal discussions with Board members, the CHE Board members did not corroborate this.

## **VI. Compliance with SC Code of Laws and Legislative Provisos**

### **[SC Code of Laws § 8-11-160](#)**

All boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the AHSC. Salary increases for agency heads must be based on recommendations by each agency board or commission to the AHSC and their recommendations to the General Assembly.

#### **Non-Compliance**

*The SIG determined through a review of CHE Board meeting minutes and interviews of CHE Board members, the CHE Board did not vote to approve an increase in the interim executive director's salary above the minimum of the salary range, which was further confirmed through the [11/1/2018](#)*

*CHE Board minutes. The SIG further determined the CHE did not seek or obtain AHSC approval for the salary increase as set forth in SC Code of Laws §8-11-160.*

### **SC Code of Laws § 8-11-165**

The AHSC 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 AHSC.

All new members appointed to a governing board of an agency where the performance of the agency head is reviewed and ranked by the AHSC 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 AHSC.

#### **Non-Compliance**

*The last training the CHE received from the AHSC on its processes and requirements was in 2011. However, the agency has not had a permanent executive director since 2015. The new board should request training routinely in conjunction with its annual strategic planning retreats.*

### **Proviso 104.9**

The governing board of the agency or the Governor, or the appointing authority, must have the prior favorable recommendation of the AHSC to set, discuss, offer, or pay a salary for the agency head at a rate that exceeds the minimum of the range established by the AHSC. No agency head shall be paid a salary higher than that recommended by the commission. The funding of the salaries of any agency head should come from resources within the agency.

#### **Non-Compliance**

*A salary increase recommendation above the minimum salary with written justification was not submitted to the AHSC for consideration. The proper steps were not taken by the CHE Board to increase the interim executive director's salary above the minimum agency head salary range.*

### **Proviso 93.14**

No supplement shall be paid to an agency head/college and university president, unless their board of trustees has approved the conditions and amount of salary supplement. Any compensation, excluding travel reimbursement, from an affiliated public charity, foundation, other public source or a private source to the salary appropriated must be reported by the employing agency to the DOA. The employing agency must report this information by 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.

#### **Non-Compliance**

*The SIG determined that the CHE Board minutes reflected the Board did not vote to approve a salary supplement from the Foundation for the interim executive director. Nine of the ten CHE Board members interviewed indicated they were not aware that a salary supplement was being paid by the Foundation.*

*The interim executive director received a \$96,655.11 salary supplement from the SC Higher Education Foundation, Inc. The interim executive director was paid \$4,505.12 for April 2017 (prorated), and \$6,143.33 monthly for (15 months) May 2017 through July 2018.*

*For the reporting periods of FY2016-2017 and FY2017-2018, the supplemental salaries were reported in SCEIS to the DOA by the CHE. However, the source of the salary supplement funds received by the interim executive director for FY2016-2017 (\$16,791.78) was not reported to the DOA.*

## **VII. Conclusion and Way Forward**

The SIG conducted 26 interviews of current and former CHE leadership and staff, board members, DOA leadership and staff, and Foundation board members. These interviews, combined with the review of communications and documentation, did not establish the CHE Board's actions were conducted in a manner to intentionally circumvent the AHSC and its authorities prescribed in statute.

As a part of the MOU between CHE and DOA, the DOA was responsible for the administration of CHE's HR functions. While the DOA accepted responsibility for the breakdown in the process, it was the CHE Board's ultimate responsibility to ensure the necessary approvals and processes were followed, as set forth in statute. Although the DOA was not making administrative decisions, the CHE relied upon DOA to advise on how to carry out the administrative processes involved with implementing these decisions. A valuable lesson to be learned by all state agencies and employees is "Process Protects" when processes and procedures defined in statute are followed.

The AHSC process was put in place to provide transparency and recommend agency head salary based on performance. The CHE Board is responsible for evaluating the performance of each agency head. The AHSC, as an independent body, reviews the performance appraisal and sets salary ranges in line with the market for comparable positions. This process protects both the employer and employee from claims of cronyism. The review process allows South Carolina to be competitive with other states while protecting against exorbitant pay for any one individual.

In light of these events the DOA is evaluating two options to eliminate future missteps when an agency board or commission seeks to increase or adjust an agency head's salary:

1. Upon AHSC approval for an increase in agency head salary, the AHSC letter would go to the DSHR to make the necessary salary adjustments, which would limit the agency's ability to access and make any agency head salary changes in SCEIS; or
2. The DSHR contact for the agency would authorize the agency HR manager to make the change once the DSHR had received the AHSC approval letter.

The SIG extends its appreciation for the cooperation and courtesies provided by the CHE Board and staff, DOA leadership and staff, and the Foundation board who participated in this review and the production of documents.

## **VIII. Findings and Recommendations**

**Finding #1:** As set forth in SC Code of Laws §8-11-160 and Proviso 104.9, all boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the AHSC. The CHE did not provide justification nor seek AHSC approval to increase the salary of the interim executive director above the minimum of the pay band established by the AHSC.

**Recommendation #1:** In accordance with statute, a salary increase recommendation above the minimum salary must be submitted to the AHSC with written justification for consideration and approval by the AHSC before a salary adjustment should be processed.

**Finding #2:** As set forth in SC Code of Laws §8-11-165, all new members appointed to a governing board of an agency where the performance of the agency head is reviewed and ranked by the AHSC 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 AHSC. The last training the CHE received from the AHSC on its processes and requirements was in 2011.

**Recommendation #2:** In accordance with statute, new board members should attend the training in agency head performance appraisal provided within the first year of their appointment. The new CHE Board should request training routinely in conjunction with its annual strategic planning retreats.

**Finding #3:** The CHE and Foundation do not have an operating agreement or Memorandum of Agreement (MOA) in place to set forth the roles and responsibilities of the CHE staff member assigned to handle the financial records and Foundation board meeting minutes. This is an essential element of good governance for any inter-agency relationship.

**Recommendation #3:** The development of an MOA should be completed collaboratively by the CHE and the Foundation to set forth the roles and responsibilities of the CHE staff member assigned to handle the financial records and Foundation board meeting minutes.

**Finding #4:** The DOA staff member who performed HR duties for the CHE pursuant to its service agreement with CHE did not follow prescribed DOA processes when submitting the salary increase for the interim executive director without prior AHSC approval.

**Recommendation #4:** DOA management should ensure staff follow prescribed processes when submitting a salary increase for an agency head.

## List of Appendices

- A.** CHE Board of Commissioners 10/31/2018
- B.** Executive Director Search Committee 12/1/2015 Draft Minutes
- C.** AHSC Salary Ranges Effective 1/5/2017
- D.** Agency Head Salary Commission Training Presented in 2011
- E.** DSHR Report on CHE
- F.** Time-line of Process to Increase the Interim Executive Director's Salary
- G.** 8/24/2018 Email from the CHE Board Chair to the Foundation President
- H.** 8/24/2018 Special Salary Adjustment Increase Letter
- I.** 4/7/2017 Email from CHE CFO to CHE HR Manager
- J.** 8/23/2018 CHE Board Chair Contacted DOA Staff and CHE Staff Concerning Salary Range for the Interim Executive Director
- K.** 8/24/2018 Email Ending Salary Supplement from the Foundation
- L.** 8/24/2018 Email from CHE Board Chair: Slot the Position at the Maximum Salary Range
- M.** 8/13/2018 Email from DOA to the Interim Executive Director Confirming Continuance of Salary Supplement
- N.** 8/17/2017 DOA Memorandum of Agreement with CHE for Human Resources Services
- O.** 7/09/2018 DOA Memorandum of Agreement with CHE for Human Resources & Financial Services
- P.** DOA Internal Processes Related to CHE

Appendices located at Internet Link: [CHE Report Appendices A-P](#)