

Legislative Compensation



**ISSUE
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Introduction

The types of compensation and the amount of compensation that a state legislator receives vary significantly from state to state. Just as there is not much consistency among the states as to the number of legislators or the length of legislative sessions, there is also little consistency in how legislators are compensated. What is consistent among all the states, however, is the public scrutiny that legislator compensation receives. Given that scrutiny, the challenge is to provide legislators with compensation that is fair and enticing to a broad range of potential candidates while at the same time affordable for the state and reasonable in the eyes of the electorate. It can be a tall order to fill and a continuous struggle.

Legislative Compensation in South Dakota

In South Dakota, the state constitution gives the Legislature the authority to fix the salaries for its members. S.D. Const., Art. XXI, Section 2 states that the Legislature by two-thirds vote may fix the salary of the constitutional officers including the members of the Legislature. This language was approved by the voters in November 1946. Prior to the 1946 amendment, the section contained specific salaries for most constitutional officers, but not for legislators.

S.D. Const., Art. III, Section 6 originally established a salary of five dollars for each day of session for each legislator and also authorized a mileage reimbursement for each legislator in the amount of ten cents per mile for one round trip between the legislator's home and the State Capitol. In 1892, the voters approved an amendment to this section that reduced the mileage reimbursement to five cents per mile, and, oddly enough, that remains unchanged today. Currently, the section states that the salary of members of the Legislature shall be fixed by law pursuant to S.D. Const., Art. XXI, Section 2. This language was approved by voters in November 1962.

It is interesting to note that between 1946 and 1962, after S.D. Const., Art. XXI, Section 2 was amended and before S.D. Const., Art. III, Section 6 was amended, the two provisions appeared to be in conflict. The 1962 amendment to Art. III, Section 6, however, cleared up any confusion by specifically referring to Art. XXI, Section 2 as the provision that establishes the means to fix legislator salaries.

Following the 1946 general election when S.D. Const., Art. XXI, Section 2 was amended by the voters, the Legislature enacted SDCL 2-4-2 to fix the salary for legislators. This section fixes the salary of each member of the Legislature, reimbursement for travel expenses, the per diem allowance, and the per diem compensation for any special session. It has been amended periodically since being enacted. The following chart indicates the changes to salary and per diem that have been made through the years. The provisions are highlighted in yellow in years when they were changed.

Legislative Session	Legislative Salary Odd year/Even year	Salary in 2016 dollars	Per Diem	Special Session Pay
1947	\$1,050*	\$11,763*		
1957	\$1,800*	\$15,708*		
1965	\$1,800/\$1,200	\$13,895/\$9,264		\$10
1969	\$3,000/\$2,000	\$20,297/\$13,531		\$10
1970	\$3,000/\$2,000			Average Compensation for Previous Session
1974	\$3,000/\$2,000		\$25	" "
1976	\$3,000/\$2,000		\$25	" "
1978	\$3,600/\$2,400	\$13,873/\$9,249	\$50	" "

Legislative Session	Legislative Salary Odd year/Even year	Salary in 2016 dollars	Per Diem	Special Session Pay
1981	\$3,200/\$2,800	\$8,859/\$7,752	\$50	" "
1983	\$3,200/\$2,800		\$75	" "
1988	\$4,267/\$3,733	\$8,883/\$7,771	\$75	" "
1997	\$4,267/\$3,733		\$95	" "
1998	\$6,000/\$6,000	\$8,943/\$8,943	\$95	" "
2000	\$6,000/\$6,000		\$110	" "
2013	\$6,000/\$6,000		\$123	" "
2014	\$6,000/\$6,000		\$129	" "
2015	\$6,000/\$6,000		\$140	" "
2016	\$6,000/\$6,000		\$142	" "

*In 1947 and 1957, the legislative salary is for a biennial legislative session.

As the chart illustrates, the per diem paid to legislators in South Dakota was increased in 2000 and again in 2013. Since 2014, the per diem has been linked to the Internal Revenue Service non-itemized per diem allowance. However, the legislators have not had an increase in salary since 1998. They do not receive any retirement benefits. They are not compensated for office supplies or staff. Those who serve in leadership roles are not provided with any extra compensation. The only insurance benefit they receive is accidental death and dismemberment insurance which is provided to them during their time in office and is fully paid by the state.

Since 1998, there have been many attempts by legislators to increase legislative salaries, but the attempts have not been successful. For example, one legislative proposal in 2008 would have increased legislative salaries to \$7,000 per year; another would have increased the salaries to \$8,000 per year. In 2014, there was an attempt to increase legislative salaries to \$10,000 per year. In 2007, 2008, and 2015, legislation was introduced that would have given legislators the same across-the-board salary increase that is given each year, by law, to the other constitutional officers and judges. In 2016, there was a legislative proposal that would have provided additional compensation to legislators during the months outside of session to cover the costs associated with constituent services. The legislation would have also provided legislative leaders and members of the Joint Appropriations Committee with additional compensation during those months. Conversely, in 2009, 2010, and 2011, during a time of economic downturn, there were even attempts by legislators to temporarily decrease the salary of legislators, but those also did not pass.

Legislative Compensation in Other States

Salaries of state legislators are generally determined in three different ways. Legislators in most states approve their own salaries. A commission of some kind determines a fair salary in several states, and in a few states, increases in legislative salaries are tied to other factors such as the salaries of other state officials or employees or the consumer price index. Among the states, legislators in California earn the highest salary at \$100,113 per year. On the low end are New Hampshire legislators who earn just \$200 for a two-year term, and legislators in New Mexico who do not earn a salary at all, but do earn a per diem of \$163 per day.

Like the South Dakota Legislature, most legislatures in neighboring states also determine legislative compensation. North Dakota, until recently, had a legislative compensation commission that met biennially to make recommendations on legislative compensation. The recommendations were then incorporated into a bill for the review of the Legislature, but the commission was eliminated by the North Dakota Legislature in 2011. Minnesota, until recently, had a commission that made recommendations on legislative compensation to the Legislature. That changed, however, when a legislatively referred constitutional amendment was passed by the voters there in November 2016. The amendment provides for the creation of an independent board that will set the salaries of state legislators. Legislative salaries are set by the full Legislature in Iowa, and in Nebraska, the annual legislative salary is set in the state constitution, thus requiring voter approval for any changes.



The National Conference of State Legislatures (NCSL) annually surveys the states to gather legislative compensation data. See **Attachment A** at the end of this memo for a breakdown of legislator salaries in all states, including the amount legislators receive in mileage reimbursement and per diem.

The survey data gathered by NCSL indicates that only South Dakota and a handful of other states do not provide legislators with retirement benefits that are either optional or mandatory. See **Attachment B** at the end of this memo for a breakdown of the retirement benefits afforded to legislators in all states.

The insurance coverage provided to legislators in most other states is also much more extensive than what is provided in South Dakota. Legislators in many states are provided with health, life, dental, and vision insurance coverage that matches what state employees receive. Some of the coverage is paid by the state and other coverage is available to legislators at their own expense. See **Attachment C** for a breakdown of the insurance coverage provided for or offered to legislators by state.

Legislators in thirty-two states receive compensation for office supplies and other staffing and office expenses. Full-time legislators typically receive a sizeable annual allowance, while part-time legislators are more likely to receive a monthly allotment or a set amount for each day they are in session. Some states compensate only the presiding officers while in other states all leaders and even committee chairs receive additional compensation. South Dakota, New Mexico, and Texas are the only states in which no presiding officer or any other legislative leaders are provided with additional compensation.

States with Compensation Commissions

In an attempt to take the politics out of the legislative compensation issue, at least eighteen states have created compensation commissions to provide independent recommendations. Members of these commissions are typically appointed by the Governor, legislative leaders, or a combination of the two. Commission members are often required to come from differing backgrounds and differing political parties to ensure diversity. Some commissions only make recommendations on legislative compensation while others also make salary recommendations for the Governor and other state officials.

The level of influence a commission has varies from state to state. Some of these commissions serve only in an advisory role. They make recommendations that the Legislature can then accept, reject, or modify. In other states, commission recommendations are binding unless lawmakers or the Governor specifically reject them. In yet other states, the legislators may only modify a salary recommendation of the commission by reducing it, not increasing it. In Arizona and Nebraska, legislative salary recommendations need voter approval before they can take effect. In contrast, commissions in California and Washington have the authority to independently raise or lower legislative salaries without needing approval from anyone.

The effect these commissions have had on legislative compensation is not consistent. For example, in 2009, California's Citizens Compensation Commission reduced the salary of its legislators by almost \$21,000. The same year, the Alaska State Officers Compensation Commission recommended a \$26,000 increase for the legislators in Alaska, and it was adopted by the Alaska Legislature.

Following is a chart listing states that have a compensation commission, the appointing authority for each of the commissions, the public officials included in each commission's recommendations, and also the level of influence of each commission.

STATE	Name of Commission	Appointing Authorities	Public Officials Included in Recommendations	Authority of Commission
AK	State Officers Compensation Commission	Gov	Gov, Lt. Gov, Exec. Dept. heads, Legislature	Recommendations take effect unless a bill disapproving is enacted.
AZ	Commission on Salaries for Elective State Officers	Gov, Pres of Senate, Speaker of House, Chief Justice	All elected state officials	Recommendations on legislative salaries take effect if approved by voters at next election.



STATE	Name of Commission	Appointing Authorities	Public Officials Included in Recommendations	Authority of Commission
CA	Citizens' Compensation Commission	Gov	All state officers	Recommendations are binding.
CT	Compensation Commission	Gov, Pres Pro Tem, Speaker of House, Senate minority leader, House minority leader	Gov, Lt Gov, Sec of State, Atty Gen, Comptroller, and Legislature	Recommendations must be enacted by the Legislature to take effect.
DE	Compensation Commission*	Gov, Pres Pro Tem, Speaker of House	Constitutional officers, Gov's cabinet, Supreme Court Justices, judges, chancellors & vice-chancellors	Recommendations take effect unless rejected by joint resolution of the Legislature.
HI	Commission on Salaries	Gov, Pres of Senate, Speaker of House, Chief Justice	Gov, Lt Gov, Judges, exec dept heads, deputy dept heads, Legislature	Recommendations are effective unless Legislature disapproves of them as a whole.
ID	Citizens' Committee on Legislative Compensation	Gov and Supreme Court	Legislature	Recommendations take effect unless Legislature rejects by resolution.
ME	State Compensation Commission	Pres of Senate, Speaker of House	Legislature, Atty Gen, Sec of State, St. Treas, St Aud, representative of Indian tribes	Recommendations take effect if implemented by legislation.
MD	General Assembly Compensation Commission	Gov, Pres of Senate, Speaker of House	Gov, Lt Gov, Legislature, Atty Gen, Sec of State, Supreme Ct. justices	Recommendations require legislative approval; Legislature may reject or reduce recommendations
MI	State Officers Compensation Commission	Gov	Gov, Lt Gov, Atty Gen, Sec of State, Supreme Ct. Justices, Legislature	Recommendations take effect if approved by legislative resolution.
MN	Compensation Council	Gov, Speaker of House, Sen. Majority leader, House & Sen. Minority leaders, Chief Justice	Constitutional officers, Supreme Court Justices, district judges, state agency heads	Recommendations require legislative approval; Legislature may modify or reject them.
NJ	Public Officers Salary Review Commission	Gov, Pres of Senate, Speaker of House, Sen. & House Minority leaders, Chief Justice	Gov, cabinet officers, Legislature, Supreme Court Justices, judges	Recommendations require legislative approval.
NY	Commission on Legislative, Judicial & Executive Compensation	Gov, Pres Pro Tem, Speaker of House, Chief Judge	Legislature, state justices & judges, statewide elected officials, and certain state officials	Recommendations take effect unless abrogated or modified by legislation.
OK	Board on Legislative Compensation**	Gov, Pres Pro Tem, Speaker of House	Legislature	Recommendations are binding.
OR	Public Officials Compensation Commission	Gov, Pres of Senate, Speaker of House, Sec of State, Chief Justice	Constitutional officers, state judges, Commissioner of the Bureau of Labor & Industries	Recommendations require legislative approval; Legislature may modify.
TX	Ethics Commission	Gov, Lt. Gov, Speaker of House	Legislature	Recommendations would need voter approval, but none have been made so far.
UT	Legislative Compensation Commission	Gov	Legislature	Recommendations require legislative approval; Legislature may reject or reduce recommendations.
WA	Citizens' Commission on Salaries for Elected Officials	Gov, Pres of Senate, Speaker of House***	Elected executive branch officials, Legislature, Supreme Court justices and judges	Recommendations are binding.
WV	Citizens Legislative Compensation Commission	Gov	Legislature	Recommendations require legislative approval; Legislature may reduce recommendations, but not increase.

*The membership includes two ex officio members: President of Delaware Round Table and Director of the Office of Mgmt & Budget.

**The membership includes two ex officio members: Chair of the OK Tax Commission and the Director of State Finance.

***The Governor appoints one member from each congressional district who is selected by the Secretary of State; the President of the Senate and Speaker of the House jointly select seven additional members.

States with Automatic Salary Adjustments

In four states, legislative salaries are automatically adjusted every year or two. Florida legislators receive the same annual percentage salary increase that is given to state employees. In Massachusetts, legislators receive an automatic increase or decrease every two years that is based on median household income in the commonwealth.



The annual cost-of-living increase given to Pennsylvania legislators is based on the Consumer Price Index, and in Indiana, legislative pay is set at eighteen percent of that of trial court judges. The trial court judges receive an annual adjustment that mirrors certain raises given in the executive branch of government.

There are also state officials in South Dakota whose salaries are automatically adjusted. In 1992, the Legislature enacted SDCL 3-8-2.1 that provides constitutional officers, other than the legislators, and Supreme Court Justices and circuit judges with an annual salary adjustment that mirrors the across-the-board increase that state employees receive through the General Appropriations Act. Thus, since that time, those salaries have increased each year while the annual salary of legislators increased to \$6,000 in 1998, but has remained at that level since. The chart below shows the salaries the constitutional officers received in 1992 compared to their current salaries.

Constitutional Office	1992 Salary	2016 Salary
Governor	\$63, 232	\$112,214
Lt. Governor*	\$ 8,219	\$ 68,681
Attorney General	\$51,639	\$112,096
Comm. Of School & Public Lands	\$41,311	\$ 89,700
Secretary of State	\$41,311	\$ 89,700
State Treasurer	\$41,311	\$ 89,700
State Auditor	\$41,311	\$ 89,700
Supreme Court Justices	\$64,700	\$135,270
Circuit Court Judges	\$60,423	\$126,346
Legislator	\$4,000**	\$6,000

*Through FY 1992, the Lt. Governor's statutory salary was for duties as performed during the legislative session as presiding officer of the Senate. Since 2004, the salary is part-time.

**This is the average annual salary for the two-year term.

How Determining Legislator Compensation Might Be Changed in South Dakota

As previously stated, the South Dakota Constitution gives the Legislature the authority to fix the salaries for its members. In fact, that authority is referenced in three separate sections of the state constitution. See **Attachment D** for the full text of those sections. If the Legislature were to grant that authority to another entity or to change the setting of salaries in other ways, those changes could be in conflict with the state constitution.

In Art. XXI, Section 2 of the state constitution, the Legislature is delegated the authority to fix legislative salaries by a two-thirds vote of each house. Therefore, if a commission is created and given the authority to determine the salaries independently, it would potentially conflict with that constitutional provision. Alternately, however, if an independent commission is created and given the authority to make salary recommendations that are then required to be adopted by the Legislature by a two-thirds vote, it would likely not create a conflict.

If the Legislature were to provide for an automatic annual or biennial adjustment of legislative salaries based on an outside factor like some other states do, it would also potentially conflict with Art. XXI, Section 2. However, in 1992, when the legislation providing across-the-board salary increases for the other constitutional officers and judges was enacted, it passed with a two-thirds vote in each house of the Legislature. Proponents at the time argued that the passage met the requirements of Art. XXI, Section 2. The validity of the legislation has never been challenged in court. Therefore, the argument could be made that if it is permissible to adjust the salaries of certain



constitutional officers and judges in this way, it is also permissible to adjust the salaries of legislators in a similar way.

Factors to Consider

No matter how the determination is made or who makes it, many challenges exist in setting legislative salaries. One of the most significant is determining what constitutes a fair salary. In a few states, like in Michigan, New York, and Pennsylvania, where legislators are full-time, the wages they are paid can be compared to professional salaries found in the private sector. In states that do not have full-time legislators, however, such comparisons generally do not work because there are no similar jobs in the private sector. Citizen legislators, or those who typically hold full-time jobs outside of the Legislature, are often thought to work only seasonally at legislating when, in reality, most spend significant time on legislative duties and constituent services year-round. Drawing comparisons to legislative salaries in other states seems logical, but it also does not work in many cases because of the large variances among the legislatures in terms of workload, staff assistance, length of sessions, and the other types and levels of compensation that legislators may receive including per diem, and insurance and retirement benefits.

Legislatures with the authority to set legislative salaries are faced with the added challenge of getting legislators to support a salary increase. Even legislators who believe a salary increase is justified and necessary often do not have the political will to vote for one. They know that pay raises for politicians are never popular with the electorate.

Conclusion

Few, if any, legislators run for office with the expectation of getting rich. They should also not have to suffer a financial hardship to do so, but, in reality, some of them do. Low pay limits who can serve in the Legislature and who will run for the office. Legislative salaries, in general, have not kept pace with inflation, and they have also not kept pace with increases in the workload and the time commitment involved in legislating. Taking the politics out of the process of determining legislative compensation, either through the formation of an independent commission or by some other means, is likely the only way that legislative salaries will ever begin to keep pace.

This issue memorandum was written by Clare Charlson, Principal Research Analyst on 11/16/2016 for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.

