

MINUTES
Approved by the Committee
Citizens' Committee on Legislative Compensation
Thursday, November 08, 2018
9:30 A.M.
Room EW42
Boise, Idaho

Ms. Ford called the meeting to order at 9:34 a.m.; a silent rollcall was taken. In attendance were committee members Bill Daniels, Eva Gay Yost, John Goedde, Reed Larsen, Dennis Johnson, and Bruce Newcomb.

Others in attendance included: Representative Dorothy Moon - Idaho Legislature; Fred Birnbaum and Phil Haunschild - Idaho Freedom Foundation; Betsy Russell - Idaho Press; Brian Kane - Office of the Attorney General; Audrey Musgrave - State Controller's Office; Mary Sue Jones - Idaho Senate staff; Jim Haddock; and Tom Haddock.

Legislative Services Office (LSO) staff present were: Director Eric Milstead, Terri Kondeff, Kristin Ford, Robyn Lockett, and Ana Lara.

Ms. Ford invited the committee members to introduce themselves and to put forward nominations for a member to serve as the committee chair. **Mr. Goedde nominated Mr. Larsen to serve as chairman for the Citizens' Committee on Legislative Compensation. Mr. Newcomb seconded the motion. Ms. Ford called for a rollcall vote. The motion carried with six aye votes.**

Public Testimony

Representative Moon

Representative Dorothy Moon testified regarding the high cost of travel expenses incurred while performing legislative duties throughout her district, which is the largest in the state. She summarized the variety of issues facing her district that require her to attend various meetings with constituents. She referred to her personal ledger book in which she logged her travel expenses during her first year as a legislator and stated that she incurred over \$8,000 in unreimbursed travel expenses. She noted that while the legislators receive \$2,250 for travel expenses, she only received \$1,860 because the reimbursable expenses are treated as taxable income. She referred to her 2018 log for travel expenses and stated that, as of the end of October, she has incurred \$8,201.54 in travel expenses. She stated her opposition to using campaign funds for travel expenses.

Discussion

Mr. Goedde noted that most legislative districts are not nearly as large as her district and expressed discomfort in providing the same amount of reimbursement for travel expenses for districts that are very different in size. Representative Moon responded that most legislators are comfortable with the set amount. She asked that the committee potentially consider providing legislators from larger districts an increase in the amount of travel expense reimbursement based on the square miles of their districts.

Mr. Johnson inquired as to why reimbursement for travel expenses is treated as taxable income. Representative Moon responded that she did not know. Mr. Johnson asked whether Representative Moon had also logged her hours spent on legislative duties. Representative Moon estimated that she worked 40 hours a week performing her legislative duties and sometimes as much as 60 hours, depending on the issues.

Fred Birnbaum

Mr. Birnbaum, vice-president of the Idaho Freedom Foundation, testified regarding the legislative pension enhancement. He explained that the enhancement is when legislators, whose service is considered part-time, are credited for full-time service in their pension calculation if they take a full-time government position for a duration of 42 months following their legislative service. He noted that this law allows some lawmakers to increase their pensions from 500% to 800%. He also noted that many government officials are not entitled to this perk; it only applies to legislators. He referred to the committee's [2016 final report](#) that asked the Legislature to reconsider changes to the calculation of the legislator retirement benefits proposed under [2015 HB100](#); no further action had been taken by the Legislature in either the 2017 legislative session or the 2018 legislative session.

Mr. Birnbaum summarized the Assistant Chief Deputy Attorney General Brian Kane's [2015 opinion](#) regarding 2015 HB100. Mr. Birnbaum advocated for the committee to recommend that the Legislature pass an updated version of 2015 HB100 with a grandfather clause for legislators who are currently serving.

Discussion

Mr. Johnson asked Mr. Birnbaum whether he believes that the committee has authority to enact this proposal without it proceeding to the Legislature rather than recommending changes. Mr. Birnbaum responded that he was unsure. He suggested the committee could more forcefully recommend the Legislature to address the pension issue and, if unsuccessful, political pressure could be applied by the citizens of Idaho or by the new Governor.

Mr. Goedde referred to the committee's [2016 minutes](#) and final report and clarified that the committee had not recommended that the Legislature pass an updated version of 2015 HB100, only that the Legislature reconsider changes to the calculations of legislative retirement benefits.

Ms. Yost asked how many former legislators had been affected by this law within the last ten years. Mr. Birnbaum estimated about 12 to 15 former legislators.

Jim Haddock

Mr. Jim Haddock provided a summary of the legislative history behind the carve-out for retirement benefits for legislators. He stated that, in 1985, the calculation for retirement benefits for part-time PERSI employees who transition to full-time employees changed, which meant that those employees would no longer receive full-time credit for their part-time service. He used Director Cameron, from the Dept. of Insurance, as an example and explained that under the retirement carve-out for legislators, Director Cameron would receive \$65,000 a year instead of \$19,000 a year after serving an additional five years. He stated that while some may consider the difference in amount inconsequential, he opined that the carve-out was not proper and unfair.

Discussion

Mr. Johnson asked whether it would be fair to grandfather current legislators and provide a different model for new legislators after a certain date. Mr. Jim Haddock responded in the affirmative. Mr. Johnson inquired whether Director Cameron could have been recruited without the carve-out, given the technical expertise needed for an executive position in the public sector. Mr. Jim Haddock responded that, if a retirement carve-out is necessary for someone to accept a three-figure salary in the public sector, then it seemed to him that the real issue is the salary.

Mr. Goedde noted Representative Moon's testimony regarding the full-time work she performs as a legislator and asked whether legislators in Idaho should be considered full-time employees. Mr. Jim Haddock stated that the retirement carve-out and legislative compensation are two different issues. He opined that legislators are undercompensated and would support increasing their compensation, but the matter had nothing to do with the retirement carve-out.

Chairman Larsen asked whether the Citizens' Committee on Legislative Compensation had addressed this issue prior to the carve-out in 1990. Mr. Jim Haddock responded that the committee had not made any mention to the Legislature about changing the law.

Remarks: A Legislative Leadership Perspective - Pro Tem Brent Hill and Speaker Scott Bedke

Pro Tem Hill referred to the [letter](#) provided to the committee by both the majority and minority leadership. He noted that the percentage in increase in pay for state legislators was substantially lower when compared to state employees. Pro Tem Hill stated that leadership suggested a 6% increase for legislative compensation. He also stated their request for an additional \$2,000 for both the majority leadership and minority leadership, given their workload and additional duties, as well as a \$1,000 increase for both the Pro Tem and the Speaker.

Pro Tem Hill noted leadership's suggestion to modify the definition for maintaining a second home on page 3 of the letter, as well as increasing the unvouchered expense allowance for legislators who live more than 50 miles away from the capitol from \$129 a day to \$138 a day. Leadership requested increasing the constituent allowance to \$2,500, which is the amount it was prior to the 2008 recession. Pro Tem Hill noted the high cost of travel and asked that the committee consider an additional unvouchered constituent expense allowance as outlined on page 4 of the letter.

Pro Tem Hill expressed his desire for Idaho to retain a part-time citizen legislature. He emphasized the significant time and effort that legislators spend performing their duties into the interim including serving on interim committees, attending conferences and meetings, addressing constituent concerns, etc.

Speaker Bedke said that the citizens had wisely removed from the legislative branch the issue of compensation. He stated that the committee had the authority and responsibility to set legislative compensation, including retirement benefits. He emphasized that any changes to retirement benefits can only be made by the committee. He concurred with Representative Moon's testimony regarding the high cost of travel for larger districts. He suggested that the committee could prorate an additional unvouchered constituent expense allowance to address this concern.

Discussion

Chairman Larsen expressed his concern regarding the lack of compensation for legislators. He asked for input regarding how the state can, from a policy standpoint, increase the compensation for legislators in an effort to make serving in the Legislature more attractive and competitive. Pro Tem Hill noted that most legislators across the country are undercompensated. He stated that Chairman Larsen's concern is valid, but believed that most legislators do not serve for monetary reasons. Speaker Bedke concurred with Pro Tem Hill's comments.

Mr. Newcomb referred to the Office of the Attorney General's (OAG) opinion regarding the committee's authority and asked Mr. Kane to provide further explanation. Mr. Kane read from Section 23, Article 3 of the Idaho Constitution and opined that the committee had the authority to make decisions regarding PERSI calculations that affect the legislators' retirement package. He noted that the Legislature has the ability to reject in total or to reduce the rates established by the committee through concurrent resolution in the following legislative session. He emphasized the inherent need for stability, continuity, and predictability regarding the compensation package and reminded the committee that while each committee operates in an independent two-year period, they are dealing with legislators who serve for several terms.

Mr. Goedde inquired as to whether the Legislature rejected or reduced the committee's 2008 recommendation to increase legislative salaries. Mr. Kane stated that this information could be provided to the committee fairly easily because the Legislature would have adopted a concurrent resolution for either option.

Mr. Johnson inquired how the Legislature could potentially proceed if the committee were to remove the pension enhancement for new legislators going forward. Mr. Kane said that the Legislature could potentially reduce the benefit and not allow any current or future legislator to receive this pension enhancement. Mr. Kane said that the Legislature could also reject the entire compensation package including salary and per diem. He clarified that none of these matters are settled law though; a group of legislators could potentially file a lawsuit for the court to determine these matters further and to define what "reduction" and "rejection" actually mean.

Chairman Larsen asked whether Mr. Kane was aware of whether the committee had taken up the issue of pension enhancement prior to or in 1990. Mr. Kane responded that he had not found any record of the committee discussing the matter during that time. He suggested that the lack of definition within the constitutional provision affords the committee a great deal of discretion, especially given that the Idaho Constitution authorizes the committee to set legislative compensation and states that the Legislature has no authority to set its own salary.

Chairman Larsen stated that if the pension enhancement for legislators was not adopted by the Legislative Compensation Committee at the time it was enacted, then people who receive the benefit of the pension enhancement are at risk for a lawsuit on constitutional grounds. He asked Mr. Kane how this potential liability underscores the committee's need to take action in this area. Mr. Kane pointed out that only about 24 legislators have been affected by the pension enhancement over the last 30 years, so it's not a large potential liability. Also, since a new Legislative Compensation Committee operates every two years, the argument can be made that the committees that met after the enactment of the pension enhancement incorporated and adopted the Legislature's action by continuing the previous Legislature's retirement benefits.

Mr. Johnson asked whether it would be true that, if a future committee did not change the reduction of the pension enhancement and the Legislature rejected the work of the committee, the legislative compensation would revert to the rates authorized by the previous committee. The previous committee, in effect, sets a baseline for the future and, in this example, the pension enhancement would not exist, unless a future committee allowed for the pension enhancement. Mr. Kane responded in the affirmative.

Mr. Newcomb inquired as to whether the Legislature would need to change the language adopted in 1990, which provided for the pension enhancement, in the event the committee chose to eliminate the pension enhancement. Mr. Kane did not believe the committee could direct the Legislature to modify the language in the statute. He explained that if the committee chose to void the pension enhancement, the committee's direction would overrule what is written in Idaho Code regarding the pension enhancement. He added that the Legislature could conform Idaho Code to match the committee's decision, or the Idaho Code Commission could make an annotation stating that the provision in Idaho Code was rendered inoperative due to the committee's decision. He further added that there could potentially be a lawsuit and the court's decision would occupy the field. He emphasized that the committee is not bound by any legislative statute that sets forth the compensation for the Legislature.

Mr. Goedde inquired about any potential implications regarding potentially classifying legislators as full-time employees. Mr. Kane reminded the committee of Pro Tem Hill's comments regarding the state's citizen Legislature. He noted that if the goal is to incrementally transition the Legislature into a body that works full-time in Boise, then the designation of full-time employee status is monumental. He emphasized that the designation of full-time status would have more implications to other areas aside from benefits; it could affect how the state refers to and quantifies the Legislature.

The committee recessed for a break at 11:58 a.m.

The committee reconvened at 12:15 p.m.

2018 Citizens' Committee On Legislative Compensation

Chairman Larsen explained that, in the past, the committee has used the prior committee's rates of legislative compensation as a template to set the new rates of compensation. He asked the committee members to express their thoughts and opinions during the discussion regarding each specific category for compensation.

1. Salary

1.1 Mr. Goedde made a motion to increase the Legislature's base salary by 3% each year during the period from December 1, 2019, through November 30, 2020. Mr. Daniels seconded the motion. The motion carried by voice vote. Mr. Johnson suggested that going forward, the next committee should consider benchmarking and reviewing the legislative compensation established by other states and the demands of the elected office.

1.2 Mr. Newcomb made a motion to adopt the previous committee's provision that no person appointed to the Legislature as a temporary replacement shall receive a salary. Mr. Johnson seconded the motion. The motion carried by voice vote.

1.3 Ms. Yost made a motion to increase the additional salary provided to the President Pro Tempore and the Speaker to \$5,000 per year. Mr. Goedde seconded the motion. The motion carried by voice vote.

1.4 Mr. Johnson made a motion to provide an additional salary of \$2,000 per year to the majority leaders and minority leaders in both the Senate and the House of Representatives. Mr. Daniels seconded the motion. The motion carried by voice vote. Mr. Goedde and Ms. Yost asked to be recorded as voting nay.

2. Unvouchered Expense Allowances

2.1 & 2.2 Mr. Goedde made a motion that each member of the Legislature whose primary residence is over 50 miles from the Statehouse during a regular session shall be paid an unvouchered expense allowance of \$139 for each day of that regular session and that any legislator living 50 miles or less from the Statehouse in Boise, Idaho, during a regular session shall be paid an unvouchered expense allowance equal to the federal per diem rate then in effect for Boise, Idaho, for each day of that regular session. Ms. Yost seconded the motion. The motion carried by voice vote.

2.3 Mr. Goedde made a motion to increase the unvouchered constituent service allowance to \$2,500 and that each member of the Legislature whose legislative district is composed of 1,000 square miles or more but less than 2,000 square miles shall receive an additional unvouchered constituent service allowance of \$400. A legislator whose legislative district is composed of 2,000 square miles or more shall receive \$400 plus \$200 for each additional 1,000 square mile increment over 1,000 square miles. Mr. Johnson seconded the motion. The motion carried by voice vote. Ms. Yost asked to be recorded as voting nay.

2.4 Mr. Goedde made a motion that any person appointed to the Legislature as a temporary replacement shall not be entitled to reimbursement of unvouchered expenses but shall be entitled to reimbursement of vouchered expenses, as provided below in section three (7) of the report. Mr. Johnson seconded the motion. The motion carried by voice vote.

3. Vouchered Expense Allowances

Mr. Goedde made a motion to adopt the provisions in section three of the previous committee report, with modifications made to the language regarding residences to conform to the language approved by the present committee, and to include that airfare will be compensated only for the value of economy class seats. Ms. Yost seconded the motion. The motion carried. Mr. Johnson expressed hesitation regarding restricting compensation for airfare to only economy class seats under the current rules of airlines, especially given that airlines are choosing to purposely make economy

seating uncomfortable in an effort to force people to upgrade their seating to economy plus. Mr. Goedde expressed concern that airfare compensation is being abused at the cost of taxpayers.

The committee recessed for a break at 12:51 p.m.

The committee reconvened at 12:59 p.m.

Follow-up Discussion Regarding Travel Expense Reimbursement

Representative Moon expressed appreciation toward the committee for providing an additional unvouchered constituent service allowance to compensate legislators who represent larger districts and incur significant travel expenses. She asked that the committee, however, reduce the allowance (potentially by 50%) that it had just adopted. Mr. Johnson appreciated Representative Moon's sentiments, but felt that the compensation the committee set forth was fair and affected more than just one legislator. Mr. Goedde concurred with Mr. Johnson and asked that the minutes reflect Representative Moon's comments.

4. Requirements for Payment

Mr. Goedde made a motion to adopt the provisions in section four of the previous committee report. Mr. Daniels seconded the motion. The motion carried by voice vote.

5. Additional Benefits: Medical, Dental and Life Insurance, Retirement and Honoraria

Mr. Johnson pointed out the cost for medical benefits provided to the legislators by the state, and while the costs are not detailed in the committee report, the medical compensation cost could be close to the base amount that is being paid. He explained that he took this into account when considering the legislative compensation package. He suggested grandfathering former and current legislators into the current pension enhancement and voiding pension enhancement for future legislators beginning July 1, 2019. He stated that many former legislators who have received this pension enhancement have been criticized and cautioned the public from doing so. He noted that many of these former legislators had served the government well and had provided a great level of experience from their time working in the Legislature. He noted that, perhaps, these former legislators had not been provided the salary in their current government role that could have been afforded to them in the private sector.

Mr. Johnson made a motion to adopt items one and three as provided by the previous committee report, and to adopt item two with the modification that the retirement pension for legislators shall no longer have the enhancement benefit and shall be consistent with 2015 HB100 with an enactment date of July 1, 2019. Mr. Newcomb seconded the motion. Mr. Johnson noted that the motion was not a recommendation, but a statement from the committee on what legislative compensation will be. **The motion carried by voice vote. Ms. Yost asked to be recorded as voting nay.**

Ms. Ford asked for clarification regarding whether a person first elected prior to July 1, 2019 would continue receiving the pension enhancement benefit. The committee responded in the affirmative.

The committee adjourned at 1:17 p.m.