

MINUTES
Approved by the Committee
Citizens' Committee on Legislative Compensation
Wednesday, June 01, 2016
10:00 A.M.
House Wing - EW42
Boise, Idaho

In attendance were Committee members Debora Kristensen, William "Bud" Yost, Bill Daniels, and Eva Gay Yost. Committee members John Goedde and Reed Larsen were present via video teleconference.

Others in attendance included: Chief Deputy Controller Dan Goicoechea, Assistant Chief Deputy/Counsel Brian Benjamin, and Deputy Controller Audrey Musgrave, State Controller's Office; Deputy Attorney General Michael Gilmore, Idaho Attorney General; Mary Sue Jones, Senate Staff; Jim Haddock and Tom Haddock, private citizens; Betsy Russell, The Spokesman-Review; and Robert L. Geddes, Director, and Keith Reynolds, Deputy Director of the Department of Administration. Legislative Services Office (LSO) staff present were: Director Eric Milstead, Kristin Ford, Robyn Lockett, and Ana Lara.

Ms. Debora Kristensen opened the meeting at 10:05 a.m. The committee members introduced themselves. Ms. Kristensen called upon the committee to elect a chair. **Mr. Reed Larsen made a motion to reelect Ms. Kristensen as chairperson. The motion was seconded by Mr. William Yost. The motion passed by voice vote with one abstention (Ms. Kristensen).**

Chair Kristensen asked whether the committee members had reviewed the meeting minutes dated May 6, 2014. The members responded in the affirmative. **Mr. Bill Daniels made a motion to approve the minutes. The motion was seconded by Ms. Eva Yost. The motion passed unanimously by voice vote.**

2016 Change in Employee Compensation Overview

The Chair proceeded to the first presentation, an overview by LSO staff member Robyn Lockett on the 2016 Change in Employee Compensation (CEC) for state employees and elected officials. Ms. Lockett stated that the Legislature's Joint Committee on Change in Employee Compensation had recommended 3% increases for Fiscal Years 2016 and 2017 (FY 2016 and FY 2017). The increases are funded in the individual appropriation bill for each state agency and the agency directors have the latitude to provide increases to employees based on merit (work performance). She emphasized that the agency directors are making those decisions together with the assistance of the Division of Human Resources and the Division of Financial Management to ensure there is equity in distribution. The Division of Human Resources also recommended the 3% increase in their statutorily required annual report to the Governor on state employee compensation and benefits published on December 1st prior to the start of the legislative session. The Governor recommended that the 3% increase be distributed based on merit.

For FY 2017, Ms. Lockett continued, the Governor recommended a 3% increase for judges and other appointed officials which required statutory changes. With the exception of the Attorney General, the state-wide elected officials will receive a 1.5% pay increase in January 2017. The Attorney General's pay was adjusted to match that of the state district judges' salary which begins at each term of office. She emphasized, however, that for FY 2017, there will be no increase for the Attorney General as there was a significant increase in pay of 15% three years ago and again, the increases are to happen at the start of each four year term. Ms. Lockett stated that for FY 2017, the Governor recommended funding to cover a 9.3% increase in the cost of health insurance, making the total that each employer pays for each employee \$12,240; the CEC Committee supported that recommendation as well. To clarify, she said, the premium increase in the insurance cost will only

be paid by the employer. There was no increase to PERSI (Public Employee Retirement System of Idaho) contributions.

Chair Kristensen asked what the net effect was for the Attorney General's salary to be tied to the district judges' salaries. Ms. Lockett elaborated that for FY 2015, the salary was increased by \$10,300 from FY 2014. In FY 2017, the district judges' salaries, with the exception of the salary for the Attorney General, is scheduled to be increased by \$4,100. Mr. John Goedde asked if the Legislature had approved the recommended increases from CEC and Human Resources for the last few fiscal years and if they had also appropriated the funds. Ms. Lockett responded that JFAC (Joint Finance-Appropriations Committee) had indeed funded the recommended increases from CEC and the Division of Human Resources in FY 2015, FY 2016, and FY 2017.

Honoraria for Legislators

LSO Director Eric Milstead began his presentation on legislators who are appointed to state boards or commissions to fill a designated legislative position and their receipt of honoraria from those respective boards or commissions. He stated that the State Controller's Office, and a follow up with the state Attorney General's Office, suggested that the Citizens' Committee on Legislative Compensation consider reviewing and taking action on this topic. In accordance with Art. III, Section 23 of the Idaho Constitution, he said, no member of the legislature may receive compensation for services rendered as a legislator except as set by this committee. Presently, he explained, this committee is silent regarding honoraria for legislators for their service on boards and commissions when they are acting in their specific capacity as a legislator. He asked for the committee to consider making an authorization to allow those legislative members to receive the same honoraria that their co-members on the boards receive.

Chair Kristensen asked whether, if a board had been established during a legislator's term of service, would it be appropriate for that legislator to receive an honorarium for service on that same board. And if not, and the same legislator were to continue to serve for 10 years, would that legislator be prohibited from collecting payment during that entire time or just the initial two year term. Director Milstead opined that the prohibition would exist only for the initial two year term during which the board was created. Deputy Attorney General Michael Gilmore stated his agreement with Director Milstead's interpretation. Ms. Yost asked how honoraria had been handled in the past. Director Milstead responded that it was his understanding that in some instances it had been paid, but there was a misunderstanding about whether it should have been paid, absent any specific action by the committee.

Ms. Yost asked how this would apply to any expenses that may be incurred in serving on such a board, in addition for expenses that would be paid normally for travel as a legislator, suggesting that expense payments should not overlap. Chair Kristensen clarified that the committee would not like to see actual expenses incurred reimbursed by both the legislature and a board as well. Director Milstead responded that although he did not know the particulars, he would suggest that this does not occur; if a request is made to a fiscal officer it has to be in regard to legislative work. Mr. Goedde gave an example that when he, as a former state senator, had been in town for the legislative session, and there was a board meeting, he did not submit expenses for travel or any other expenses. He asked if the honoraria was specifically listed in statute. Director Milstead replied that it is indeed listed and defined in statute. Mr. Goedde stated that it was his understanding that there had been an issue with honoraria and PERSI and he inquired if this issue had been investigated. Deputy Controller Brian Benjamin answered that in looking at the PERSI statutes, it excluded honoraria from income withholding purposes for PERSI.

Mr. Larsen asked the rest of the committee members if they were aware of any public perception of an overlap by receiving honoraria since the legislature is already being paid for their legislative work during session. Mr. Goedde replied that he is unaware of any criticism, but he also does not know how aware of honoraria the public is. He suggested that the easiest solution would be to

make those positions created by the legislature ineligible for honoraria and emphasized that he was unsure as to whether this would be the right thing to do, but it would be the easiest. Chair Kristensen asked whether, if the committee were to approve the payment of honoraria, except where expressly prohibited, they would need to address this at each meeting or just once. Director Milstead replied that it was his understanding that the committee's approval could be part of an ongoing authorization with the ability for the committee to review it thereafter.

Director Milstead clarified that the question today was whether a legislator who sits on a board or commission in their official capacity as a legislator due to a specific statute requirement, not as a individual citizen, should be able to receive honoraria. Director Milstead submitted suggested language, which specifically defines the term "legislative position" as referring to "instances where a state board or commission is required to have one or more legislative members and the legislator is appointed to satisfy that requirement." Mr. Goedde asked if vouchered expenses were part of this discussion. Director Milstead replied that vouchered expenses were not part of this discussion, only honoraria.

Compensation or Expenses for Temporary or Substitute Legislators

Chief Deputy Controller Dan Goicoechea stated that the State Controller's Office (SCO) is requesting clarification on how temporary replacement legislators are to be compensated. He explained that the goal of the Controller's Office is to avoid any inconsistencies regarding temporary replacement legislators in how they are coded into the state's system, payroll system, and the reporting that is required to both PERSI and the federal government. Section 1 of the Citizens' Report makes clear that a temporary replacement legislator shall receive no salary. However, Mr. Goicoechea explained, the remaining sections, particularly sections 2 and 3 regarding vouchered and unvouchered expense allowances, are silent with regard to temporary replacement legislators. If Article 3, Section 23 of the Idaho Constitution and Section 67-406b, Idaho Code, are strictly followed, he said, they should receive no compensation for their expenses since it's not provided for in the Citizens' Report. Currently, he explained, the Controller's Office has requested that the House and the Senate set up temporary replacement legislators as temporary employees on the state payroll system. Mr. Goicoechea reiterated that the State Controller's Office is asking for guidance and clarification on whether they should be receiving vouchered expense allowances, unvouchered expense allowances, or any compensation at all.

Mr. Goedde asked if there was a definition for a temporary replacement legislator. He also asked, if a legislator were to be ill during session and would be absent for a month, would that be any different from a temporary replacement legislator who would only be serving for a few days. Mr. Goicoechea replied that there is no difference to the State Controller's Office regarding time frames. He further stated that there had been instances of legislators taking their pay, incurring the tax liability, and giving a portion of their salary to the temporary replacement legislator. Chair Kristensen asked for clarification on whether this was an agreement between the legislator and the temporary replacement or a policy and whether the SCO had any concerns regarding this practice. Mr. Goicoechea replied that it would be an agreement between those two individuals of which the SCO would not be aware. He also said that there are some concerns about this practice such as possible workers compensation issues for temporary replacement legislators who are injured, for example.

Chair Kristensen asked Mr. Gilmore if the Attorney General believes that the committee would be able to define what a temporary replacement legislator is. Mr. Gilmore replied that he did not believe that the committee had the ability to define it and that it was his understanding that by operation of law that when the Governor appoints temporary replacement legislators they officially become a temporary replacement legislator. Chair Kristensen asked if the appointment was for a set time or whether it was open. Mr. Gilmore replied that he had not researched this topic of how the legislator would return and the temporary replacement would cease. Mr. Goedde offered that the legislator might report for rollcall and be acknowledged. Mr. Gilmore offered that the journal may

be the record for the House or the Senate to show that the legislator had returned. He cautioned the committee that he had not researched this topic but was speaking from his general knowledge.

Ms. Yost asked Ms. Mary Sue Jones how a temporary replacement legislator comes to replace a legislator who is ill for example, and any time frame differentiation that would be made regarding expenses. Ms. Jones spoke to the Senate practice which is that a legislator must be absent for a minimum of 3 days before a temporary replacement legislator can be appointed; there is no pay provided by the Senate to temporary replacement legislators. Ms. Jones said she would need to verify if travel expenses had been paid and would return with a response for the committee.

Mr. Goedde asked whether the State Controller's Office's concerns would be satisfied if the committee were to recommend that the respective legislative bodies pay for vouchered expenses, but that unvouchered expenses were left to the discretion of the legislative bodies. Mr. Goicoechea responded that they would; clarity of why some items are paid and others are not, and that each person is treated the same within their respective legislative body would suffice.

Citizen Presentation on Legislative Retirement Calculation

Mr. Jim Haddock began his presentation explaining his background as a mathematician and former teacher as well as stating Mr. Tom Haddock's background as a certified public accountant and former legislative auditor. He stated their request to change the wording regarding retirement benefits in the Committee Compensation letter from "retirement benefits as provided for other state employees" to "retirement benefits as provided for other part time elected and appointed officials." Mr. Jim Haddock then explained that they would request that the Legislature and Committee initiate legislation to amend the current law and remove the exemption for members of the Legislature. Finally, he explained, in accordance with the Attorney General's opinion on the 2015 House Bill 100, to ensure all constitutional issues are resolved, they would request the committee specifically approve this potential new law.

In 1990, Mr. Jim Haddock explained, the Legislature passed a law to specifically exempt itself from laws governing retirement benefits for other part time elected and appointed officials. He continued to read his presentation from pages 1 through 2 and referenced his attached documentation which included:

- Explanation of increased benefits;
- Attorney General's opinion regarding House Bill 100;
- Attorney General's opinion from 1985; and
- 2015 House Bill 100.

In reading his testimony, he stated an example of retirement benefits for a part time legislator who becomes a director of a state agency would be about \$65,000 a year; the retirement benefits for a part time county commissioner would only be about \$17,000 a year. He then stated where their action plan could be found on page 2 of his presentation.

Mr. Goedde asked if they requested this be done for all benefits or just PERSI retirement. Mr. Jim Haddock responded that their request pertains specifically to retirement benefits through PERSI. Mr. Goedde asked if part-time state public employees are eligible for health insurance benefits. Deputy Director Keith Reynolds from the Department of Administration responded that some part-time state employees who work between 20-30 hours a week are eligible for health insurance benefits.

Chair Kristensen stated that she had read the Attorney General's opinion from 2015 and understood that this committee is the appropriate committee to recommend compensation which also includes retirement benefits, and she asked Mr. Gilmore whether retirement benefit calculations was under the purview of this committee. Mr. Gilmore responded that until the Court states otherwise, it should be considered shared responsibility; if the committee would like to alter the status quo it should be contingent on legislation that is also consistent. Chair Kristensen stated that none of the present committee members were present in the 1990 committee and cannot know the

reasons for or against adopting it, but clearly this is a benefit that is available for legislators who continue their service. The more concerning legal question, she stated, is whether this body has the authority to set policy.

Mr. Goedde asked Mr. Gilmore if he knew if the 1990 Citizens' Committee had acted on the bill that passed in 1990 that carved out the retirement benefits for legislators. Mr. Gilmore responded that he did not know. Mr. Haddock added that there was no information regarding the 1990 bill provided in the 1990 minutes. Ms. Yost asked if this retirement issue would be resolved if the Legislature were to pass a statute declaring itself a full time legislature. Mr. Gilmore answered that without having researched this issue, he believed that action would resolve this issue.

2016 Citizens' Committee Recommendations

- **Salary**

Chair Kristensen began to refer to the 2014 Citizens' Committee Report to use as a template to make their 2016 recommendations. She stated that in Section 1.1, the committee had approved a base salary of \$16,684 for each legislator in 2014. **Mr. Goedde made a motion to increase the base salary by 2 percent each year for the next 2 years, in keeping with previous historical increases. Mr. Larsen seconded the motion. The motion passed with Mr. Yost and Ms. Yost dissenting.**

Chair Kristensen proceeded to Section 1.2 which in the 2014 Citizens' Report stated that no temporary replacement legislators shall receive a salary. Chair Kristensen read the definition of a temporary replacement legislator found in Section 67-412, Idaho Code. She clarified that in this definition, there is no mention of time constraints. **Mr. Bill Daniels made a motion to keep the current recommendation that no person appointed to the Legislature as a temporary replacement shall receive a salary. Mr. Goedde seconded the motion. The motion passed unanimously.**

The committee moved on to Section 1.3 regarding the additional salary of \$4000 to the President Pro Tem and the Speaker of the House. Chair Kristensen stated that the additional sums were in recognition for the additional duties required of their positions. Mr. Larsen stated that there had not been an increase since 2007 when it was raised from \$3000 to \$4000. Mr. Yost mentioned that two years ago leadership had not recommended an increase and the committee had not heard differently this year. **Mr. Goedde made a motion to keep the current salary recommendation of \$4000 a year. Mr. Larsen seconded the motion. The motion passed unanimously.**

- **Unvouchered Expense Allowances**

The committee proceeded to Section 2.1 regarding unvouchered expense allowances of \$129 per day for each day of the regular session for those legislators whose primary residence is outside of Ada County and who maintain a second residence in Ada County during the regular session. Ms. Ford detailed the history of the rates from the last 10 years stating that there had been a \$7 increase 2 years ago, but before that there had been no change, and that during the recession it had actually dropped from \$134. She also stated that the current federal per diem rate for Idaho was \$140. Chair Kristensen reminded the committee that in the past they had tied the federal per diem rate to the rate for unvouchered expenses. Chair Kristensen asked if any of the committee members had heard from any of the legislators regarding the rate. Mr. Daniels responded that they had not received a report this year from leadership with any concerns. **Mr. Daniels made a motion to keep the unvouchered expense at \$129 per day. Ms. Yost seconded the motion. The motion passed unanimously.**

Chair Kristensen proceeded to Section 2.2 regarding unvouchered expenses for legislators that do not maintain a second residence within 50 miles of the Statehouse. **Mr. Larsen made a motion to keep the expense at \$49. Mr. Daniels seconded the motion. The motion passed unanimously.**

The next item was found in Section 2.3 regarding an unvouchered constituent service allowance of \$2250 paid annually. Chair Kristensen reiterated that it was set at \$2,500 from 2009 to 2010. She noted that for reasons likely related to the economy and budget constraints, it had been decreased

to the amount of \$1,875 in 2011. The allowance was increased 2 years ago to \$2250. **Ms. Yost made a motion to keep the unvouchered service allowance at \$2250. Mr. Larsen seconded the motion. The motion passed unanimously.**

Chair Kristensen reminded the committee members of the request made to the committee to address temporary replacement legislators in each section as done previously in the salary section. Mr. Goedde opined that some unvouchered expenses for temporary replacement legislators may be legitimate in certain extenuating circumstances and should be at the discretion of leadership to decide whether those sums should be paid. Mr. Larsen stated that as it relates to the unvouchered expenses for temporary replacement legislators, it seemed to him that the taxpayers would possibly be paying twice for unvouchered expenses. Mr. Yost also expressed his concern for possible double unvouchered expenses.

Ms. Yost asked if a temporary replacement legislator was to be assigned, would unvouchered expenses continue for the elected legislator. Ms. Jones responded that in the Senate, the unvouchered expenses would be continued for the elected legislator. She stated that a temporary replacement legislator does not get added to the Senate payroll and is not reimbursed for anything. In the past, she clarified, they have told the senators that if they choose to take the funds they have received (i.e. unvouchered per diem), they may choose to give those funds to the temporary replacement legislator. **Mr. Larsen made a motion that temporary replacement legislators are not eligible for unvouchered expenses, but are eligible for vouchered expenses. Mr. Goedde seconded the motion. The motion passed unanimously.**

- **Vouchered Expense Allowance**

The committee moved to Section 3.1 regarding travel expenses including: transportation, food, and lodging. Mr. Goedde voiced his concern that travel expenses were being abused. He suggested striking "whenever possible" from Section 5.2, which recommends that legislators use the most economical means of travel, including advance purchase fares. **Mr. Goedde made a motion to adopt the entire Section 3 in the 2014 Citizens' Report with the exception of the issue that he had just addressed. Mr. Larsen seconded the motion.** Chair Kristensen noted the motion and read the remaining sections to remind the committee of what that motion would entail. **The motion passed unanimously.** Chair Kristensen clarified that to the extent a legislator may be eligible for vouchered expenses, so too would a temporary replacement legislator. **Chair Kristensen made a motion that any person appointed to the Legislature as a temporary replacement legislator shall be entitled to vouchered expenses allowances as provided in Section 3, 1 thru 5 above. Mr. Goedde seconded the motion. The motion passed unanimously.**

- **Requirements for Payment**

Chair Christensen read aloud Section 4 regarding procedural requirements for payments. **Mr. Goedde made a motion to keep Section 4 requirements the same. Mr. Larsen seconded the motion. The motion passed unanimously.**

- **Additional Benefits: Retirement, Medical, Dental and Life Insurance**

Mr. Yost made a motion to keep the current recommendations with regard to medical, dental, and life insurance in Section 5 the same, with the exception of retirement. Mr. Larsen seconded the motion. The motion passed unanimously. Chair Kristensen asked the committee if it was their will to make any recommendations to the Legislature regarding retirement. She reminded them that it would only be a recommendation, and any recommendations would need to be contingent on legislation. Mr. Yost suggested that the committee maintain the current retirement benefits and ask the Legislature to revisit the retirement issue. Mr. Goedde asked if anything was done during the 2016 session to address this issue. Ms. Ford responded that none to her knowledge but she would look into it (there wasn't). Mr. Larsen stated his disapproval of enhanced retirement benefits for the Legislature and suggested that the committee should give the Legislature a strong recommendation to revisit this issue. He clarified that the ability of the Legislature to take advantage of this carve-out

to have enhanced retirement benefits without having given enhanced contributions is what he does not agree with. Chair Kristensen reminded the committee that they can voice their opinions of what they think of the statute, but they cannot change law; if the Legislature passes a new statute about retirement benefits to alter it in some way, and it falls under their purview to approve it, the committee could then approve it or reject it. **Mr. Goedde made a motion that they insert a new point that states that the committee recommends retirement benefits continue, but that they strongly recommend that the Legislature revisit the issues encompassed in House Bill 100 from the 2015 session. Mr. Larsen seconded the motion. The motion passed unanimously.**

The committee proceeded to Section 5.2 to provide clarification on the language written. **Mr. Goedde made a motion for continuance of Section 5.2 with a period after "advance purchase fares" and deletion of the words "whenever possible." Mr. Yost seconded the motion. The motion passed unanimously.**

Honorarium

Chair Kristensen read the proposed language provided by Mr. Milstead to approve honoraria for legislators who serve on boards or commissions in their capacity as a legislator in the same manner as the other board or commission members. Mr. Larsen voiced his concern with the general principal as legislators are already being paid a salary for their work. **Mr. Daniels made a motion to approve this proposal. Ms. Yost seconded the motion. The motion passed with Mr. Larsen dissenting.**

Ms. Ford asked for clarification regarding whether the base salary increases for the Legislature were 1% for each year for a total of 2% or if it was an increase of 2% for each year for a total of 4%. The committee clarified that the approved increase was 2% for each year for a total of 4% in increased base salary.

The meeting adjourned at 1 p.m.