

## POLICY OPTIONS ON LEGISLATOR CONSTITUENT SERVICES STIPEND AND REIMBURSEMENT

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For the Legislative Council

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### Background

The 2015 Legislature passed Senate Bill No. 283 (Ch. 452) providing for a stipend for legislators and allowing for reimbursement of constituent services expenses not paid from a constituent services account or otherwise reimbursed. The legislation provided a \$3,000 stipend for each legislator and an additional stipend of between \$1,000 and \$4,000 depending on the square mileage of a legislator's district. The effective date was delayed until July 1, 2017, as a Legislature is not allowed to set its own compensation.

The legislation did not specify that receipts were required for the first \$3,000. The primary stipend may be used for providing constituent services, which include but are not limited to:

- unreimbursed expenses for mileage, per diem (meals), or lodging;
- telecommunications/internet, computer hardware and software;
- postage; and
- education-related expenses.

For the secondary stipend, the law specifies that legislators must apply for reimbursement to the Legislative Services Division by submitting written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, which apply to meals, lodging, and transportation for otherwise unreimbursed expenses related to the legislator's expenses incurred for providing constituent services. The secondary stipend is a variable amount that is determined by square mileage of a district and would require the Legislative Services Division to inform legislators by July 1, 2017, of the amount authorized in SB 283, section 1(2).

The primary reimbursement amount, if provided up front, would be considered taxable and reported on the W-2 form as gross income for tax purposes, including but not limited to federal taxes, Social Security, Medicare taxes, and other employment taxes. If, on the other hand, the reimbursements are part of an accountable plan and reimbursed upon submitting a receipt, many of the reimbursements would not be taxed or considered income.<sup>1</sup>

### Recommendation:

The recommendation is to treat both the primary and secondary stipend reimbursements similar to the interim reimbursement method, requiring receipts for any item currently requiring receipts. For items that are not covered by state law (other than miles, meals, lodging), the Council could develop rules that certain reimbursements would be considered as part of an accountable plan, and if the items cannot be included, consider the reimbursement as taxable income. This may require legislators to account for the

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<sup>1</sup>This relates to information provided regarding a legislator's "tax home." The rules will be different for legislators who live in or within 50 miles of Helena and will depend on where the constituent services take place.

use of the item for legislative or personal purposes, i.e., for home internet or laptop, it may be more difficult to determine percentages of legislative use vs. personal use.

By July 1, 2017, Legislative Services would develop a packet of information, including a brochure, expense log, and multiple reimbursement forms for each legislator. It would contain information on the primary and secondary (if any) stipend, limitations on expenditures or reimbursements, tax ramifications and information on how to submit a claim, etc. A sample packet could be prepared for the May 2016 Council meeting.

There would not be a need for leadership approval for any reimbursement provided (once policy was set), only LSD review for appropriateness of type of expense, taxable status, and amount available. This option would be the most efficient as staff would not need to create or learn new procedures, and the current state accountable plan rules would mean that we would not have to create a new system from scratch.

### Option

The other option would be to provide each legislator \$3,000 up front in a biennium, and then have them seek reimbursement for the second amount, as determined by the square mileage of their district, between \$1,000 and \$4,000. This will have the more significant tax ramifications mentioned above. This option may also make it more difficult for legislators to track whether expenses were otherwise reimbursed from other sources, such as interim committees or their constituent services account. It would also require record-keeping and any amount not accounted for may have to be returned, or reported and taxed.

### Rules

It may be helpful to adopt some policies or rules - examples to follow:

- A legislator must use the authorized form for unreimbursed expenses for mileage, per diem, lodging, or education-related expenses for either the primary or secondary amount.
- A legislator must use a separate form for communications and information technology, and for telecommunications, internet, computer hardware and software, and postage. Currently for the IT allowance, we allow a signed affidavit. The entire amount is taxed. Legislators may then deduct it as a business expense when they file their taxes.
- Receipts would be required for lodging and registration.
- On the forms, the legislator must indicate that these expenses were not reimbursed by any other legislative or state fund, organization, or a constituent services account provided for in 13-37-402, MCA.
- We could provide a quarterly report to legislators on the status and use of their account.

### Funding

The total anticipated cost of SB 283 is \$450,000, resulting in an increased cost of \$270,000, if the past amounts for the technology allowance are used to offset the total. This amount will be required next biennium to fund the legislative constituent services amounts. Currently in HB 1, as passed by the 64th

Legislature, there are funds for 120 legislators to receive up to \$1,500 for expenses incurred related to information technology. The total funds appropriated for the information technology allowance is \$180,000.

Currently in HB 2 that passed in 2015, there are appropriated funds for interim committees found in Legislative Branch Program 21, Interim Committees and Activities. We have allocated specific funds for the Legislative Council, interim committees, and for interstate and international organizations.

This budget needs to continue to pay for legislator expenses, for participation in interim committees, and to pay for dues for interstate organizations. However, for participation in interstate activities that do not involve specific membership appointments, of the total program amount (\$735,441) appropriated, \$69,636 was funded for NCSL and CSG participation that is at the discretion of the president, speaker, and minority leaders. Council will be able to make a decision on whether to keep those funds in the same format - participation for two legislators/each year of the biennium/for each organization/for each caucus - or roll that funding into the new constituent services account.

There are also leadership funds of \$10,000 for the speaker and president, and \$5,000 for each minority leader. These funds have sometimes been used to assist legislators with some training or travel expenses; however, there are other expenses for which leaders have used these funds. With the SB 283 funds, leaders would no longer have to use these funds to assist legislators with other expenses not otherwise covered.

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