

The Difficulty of Setting Legislator Pay

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Because setting or changing legislator pay is a controversial subject, state legislatures have come up with various ways to try to set compensation and some have found ways to shield themselves from the difficult task of setting their own pay.

There are basically three different methods of setting legislative pay. The first method is to have the compensation set in statute which requires the legislature to make any changes. The second method is to set the compensation automatically and tie it to something, such as judges' pay or the Consumer Price Index. The third method is to have a third party set the pay, such as a compensation commission.

The provisions for the Montana Legislature's compensation are in statute and comprise a combination of statutory amounts, automatic changes, and a third party, the Department of Administration. Compensation is different for the session and the time between sessions, the interim. Legislators receive salary and a per diem during session. During the interim, legislators receive salary, mileage, meals, and lodging when traveling for interim committees.

Montana Constitution. Article V, section 5. Compensation. Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

Statute provides that the salary must be adjusted by any statutorily required pay increase passed by the Legislature. The most recent statutory revision was effective in July 2007 and first applied to the 61st Legislature convening in January 2009. Because of the many years of either pay freezes or salary increases granted through the broadband system that are not "statutory", the salaries remained the same from 2007 to 2015. Beginning with the 2017 Session, Senate Bill 418 (2015) raised state employee salaries by 50 cents an hour in January of 2016 and January of 2017. The salary adjustment for legislators took effect for the 2017 Session, making the salary \$11.33 an hour. The 2017 Legislature provided a statutory pay raise of 1% in February 2018, and 1% in February 2019. The first 1% statutory raise will be applied for the preparations and beginning of the 2019 Legislative Session. The second 1% will be applied in February 2019.

Per diem during the session is calculated by the Department of Administration pursuant to 5-2-301, MCA, based on a five-state average daily rate, including the state of Montana. Legislators are allowed mileage for the round trip coming to and from session, and three additional round trips during session. Mileage and lodging are tied to a federal rate that changes annually and is adopted by the Department of Administration. Meal reimbursements are fixed amounts in statute and apply to all state and local government employees in addition to legislators.

An Information Technology (IT) Allowance started in 2007 at \$1,500 for each eligible legislator. It decreased to \$1,000 in 2011 and increased back to \$1,500 during the 2015 biennium. It allowed legislators to be reimbursed every 4 years for information technology equipment, including laptops, printers, and other communication costs.

The 2015 Legislature passed Senate Bill 283 (Ch. 452) providing for all legislators a stipend and allowing for reimbursement of constituent services expenses not paid from a constituent services account or otherwise reimbursed. The IT allowance was rolled into the stipend. The legislation provides a primary \$3,000 stipend for each legislator, and a secondary reimbursement amount up to \$4,000, depending on the square mileage of a legislator's district, for districts over 100 square miles. This stipend became effective July 1, 2017.

In conclusion, the compensation is a mixed method. The Montana Legislature is responsible for setting its salary indirectly by adopting state employee pay, although it cannot go into effect until the following session. In the past, some pay increases were not statutory but through appropriation, and there were no changes contemplated for legislator pay through broadband. By starting with the rate placed in statute when broadband was adopted and any increase in the salary amount tied to other state employees' pay, it has not increased significantly. The per diem amounts are calculated by the Department of Administration, while mileage and lodging are tied to a federal rate, and meals are in statute.

Other States

Information from the National Conference of State Legislatures (NCSL) indicates that there are numerous variations to the basic methods of setting compensation.

States that have a compensation commission include Alaska, Arizona, Connecticut, Delaware, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, and Minnesota. Compensation may require positive legislative action or may be automatically implemented unless rejected by the Legislature.

Alaska's commission makes recommendations for the compensation, benefits, and allowances. Unless a bill disapproving all the recommendations is enacted into law within 60 days after the recommendations are submitted to the governor and to the presiding officers of each house, the recommendations become law if fully funded for all officers. Sen. Sue Malek (D-Missoula) presented a bill in 2017 based on the Alaska model.

Idaho has a Citizen's Committee on Legislative Compensation. The rates established are the rates applicable for the 2-year period specified unless by concurrent resolution the senate and house of representatives reject the rates of compensation and expenses prior to the 25th legislative day of the next regular biennial session.

Arizona's commission makes recommendations that are put on the ballot for a vote of the people. Connecticut's general assembly must take action on the commission's recommendations. Maine's recommendations are presented to the legislature in the form of legislation, but the legislature must enact and the governor must sign it into law. Maryland's commission meets before every 4-year term and the recommendations must be presented to and may be reduced or rejected by the general assembly. In Michigan, if a resolution is offered, it is put to a legislative vote, and if the legislature does not vote the recommendations down, the new salaries take effect on January 1 of the new year. In Minnesota, by May 1 in odd-numbered years, the council submits salary recommendations to the presiding officers.

The Delaware commission's recommendations are implemented automatically if not rejected by resolution. Hawaii's commission recommendations take effect unless rejected by concurrent resolution or by the governor and they do not apply to the legislature to which the recommendation was submitted.

Other states are similar to Montana. Florida's members receive the same percentage increase in salary as state employees. The salary for Illinois members is tied to an employment cost index, wages, and salaries for state and local government workers. Massachusetts, through legislative referendum, voted that members will receive an automatic increase or decrease according to the median household income for the commonwealth for the preceding 2-year period.

Montana History and Legislation

Constitution

In the new 1972 Constitution, there was a provision for a Salary Commission that recommended compensation for the judiciary and elected members of the legislative and executive branches. It was repealed by vote of the people in 1986 by a margin of 3 to 2. The reason offered by the proponents for repeal was that it was totally ineffective as the Legislature was required to enact all recommendations and it consistently ignored the recommendations and approved salaries substantially lower than recommended. The rebuttal argued that it provided citizen involvement and an objective, impartial review that the commission reviews the whole area of adequate compensation to ensure the Montana Legislature continues to have broad citizen representation, and that it provides information for responsible decision-making by providing other similarly situated state information.

Originally part of the salary commission model and currently in statute, salaries of supreme court justices are surveyed for the five-state area by the Department of Administration. If the average salaries are greater than the salaries for a supreme court justice or the chief justice in Montana, then beginning July 1 of the year following the year in which the survey is conducted, the average salaries are the new salaries for a supreme court justice or the chief justice (2-16-403, MCA). Salaries for the governor, lieutenant governor, attorney general, state auditor, superintendent of public instruction, public service commission presiding officer and public service commissioners, secretary of state, and clerk of the supreme court are surveyed and set in a similar manner (2-16-405, MCA).

Legislation

In 2017, Sen. Sue Malek introduced a bill (Senate Bill 141) to establish a citizen commission to study and make recommendations to the Montana Legislature regarding legislative compensation. The bill was crafted using Alaska's commission as a model. The bill died in the Senate State Administration Committee.

Also, a draft bill (LC 1199) contemplated providing that legislator salaries be set based on a 5-state average of legislator salaries for the next biennium to parallel the elected officials mechanism for determining salary. Although the bill was proposed as a temporary reduction in salaries of the elected and appointed officials of the executive branch, the method of setting compensation may provide an alternative option to consider.

Past Studies

In 2016, the Department of Labor and Industry assisted the Legislative Council in studying various data regarding legislator compensation. Also, an "Overview of Montana State & Legislator Pay Information" was prepared for the council in the same interim. Options presented at that time included changes to the base wage and tying it to the average hourly or weekly wage or a percentage of the wage, and providing for a wage adjustment based on inflation. Another resource is the "History of Legislator Salary Rates and Session Per Diem Rates."

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