General Assembly Compensation Commission

Draft Minutes – December 18, 2017 Meeting

Commissioners in Attendance: Lisa First-Willis, Chair; Laurence C. Daniels; Lyn A. Dippel; Joshua C. Greene; Robert A. Liberto; Wendell G. Rakosky; Gene M. Ransom III; and Joe Rubino.

Staff in Attendance: Simon G. Powell, Dana K. Tagalicod, and Laura M. Vykol.

Others in Attendance: Phillip Anthony, Department of Legislative Services (DLS); Anne E. Gawthrop, State Retirement Agency (SRA); and Matthew Palmer, Office of the Governor.

Ms. First-Willis convened the meeting at 1:15 p.m. After introductions, the chair consulted with other members to set the next meeting of the commission, which was agreed for January 16, 2018, at 9:30 a.m. in Annapolis.

The meeting proceeded with staff providing information on the charge of the commission, a comparison of the structures adopted by states to determine legislative compensation, and the process in Maryland for the development and disposition of the compensation resolution.

In presenting the framework for thinking about legislator compensation, staff presented various data concerning the categorizations of State legislatures: full-time versus part-time and professional versus citizen. In presenting the data, staff acknowledged that there is no good way to measure the time taken by legislators to fulfill their duties and responsibilities. Mr. Rakosky noted that, in terms of bills introduced and passed, there has not been a substantial increase in workload. Staff concurred, although noting that the trend was generally pointing to an increase in legislation. It was also noted that the General Assembly of Maryland has developed organizationally in recent years; for example, standing committees establishing subcommittees, the addition of professional committee staff resources, and increasing access to data and information, all of which tends to mean that more time and attention is paid to legislation. Mr. Ransom also noted that much more work is done during the interim (*i.e.*, out of session).

The question of the relative time dedicated to being a legislator was discussed further after presentation of data drawn from national and academic sources. Mr. Rakosky was particularly interested in data that identifies the occupations of Maryland legislators and whether legislators actually perform in those occupations while serving as legislators. Staff noted that the data was self-reported and agreed that some legislators might identify as a certain profession but at that point be retired or no longer are in the profession.

Mr. Rakosky asked if there was any difficulty in getting people to run for office. Staff presented charts, which noted that competition for office appears healthy and tenure levels, particularly in the House of Delegates, reflects significant turnover that could be seen as a sign of competition. While it could also be argued that this level of turnover is due to the difficulty of juggling the role of legislator with another career, there is little evidence that this is directly due to compensation issues. Certainly, the level of uncontested elections in primary and general elections appears not to have changed markedly and is more reflective of typical political and geographical issues than lack of interest.

In discussing actual salaries, after staff presented data on State and local salary levels and salary trends, discussion centered on how to appropriately consider the salary paid in an annualized sense based on the part-time status of the legislature against the recognition that Maryland has a relatively high cost of living. This question also prompted a discussion of whether the commission had any particular strategy that should be adopted in developing salary recommendations.

In response, staff reiterated that lack of meaningful data on the time taken by legislators to perform their jobs precludes a clear sense of how to annualize legislative salaries. However, in response to a request from Ms. First-Willis, staff agreed to provide the commission with more information on salaries in comparison to relative cost of living at the next meeting. In terms of overall strategy, staff noted that any overarching strategy is set by each commission. Mr. Ransom noted that generally each commission is largely comprised of new members, and each makes its own way. As a member of the previous commission, for example, he noted that there was concern about the lack of a salary increase over the prior eight years and also the need to reconsider the legislative pension plan in the context of recent reforms in the State employee plan. While there was still concern about the actual basis for the current salary level, none of the commission members expressed interest in fundamentally changing salaries to either align with what are considered full-time legislatures or those that are closer to the bottom of the current range of State legislative salary levels.

Moving to a discussion of legislative expenses, staff noted that most of the expense levels were tied to external reimbursement schedules (either State or federal) to allow for timely changes and also to rely on the analysis that is used to develop those schedules. Members seemed to generally concur that this was sensible. Mr. Daniels did ask if there were any issues with the hotel rates allowed currently. Staff noted that consideration had been asked to allow for reimbursement of hotels at the General Services Administration or conference rate when members attend conferences, as there had been occasions when the difference between the two had dissuaded members from attending conferences.

Staff then presented data on health coverage levels. In response to various questions raised by Mr. Rakosky, staff noted that the employer (the State) and employees share the cost of coverage with the precise share varying according to the plan; cost sharing for active legislators is the same as for active State employees; and that the commission has the authority to change coverage and cost sharing arrangements, although that would mean effectively creating a legislative health and benefits plan separate to that of State employees.

After a short break, the commission turned to a presentation on legislative retirement benefits. In reviewing the components of the legislative pension plan, specifically the time for vesting in the legislative plan, it was noted that this had remained unchanged in the prior resolution at 8 years despite the change to the State employee plan (from 5 to 10 years) under the 2011 pension reforms. Ms. First-Willis asked if there had been discussion of changing the vesting provision by the previous commission. Staff replied that there was a discussion. However, the prior commission felt that while the vesting period for legislators was now less than for State employees, previously, it had been greater. Further, there was a desire to align the vesting period around the length of a legislative term (*i.e.*, multiples of 4 years). It was felt that 12 years was too long a vesting period, so the decision was made to retain the 8-year provision.

In response to questions from Mr. Rakosky, staff also clarified provisions about the pension plan, specifically if the overall funding requirement would be decreased if the member contribution was increased (it would); if a member receives his/her own contributions back if leaving the plan prior to vesting (yes, upon request); if you can claim a legislative pension while still serving (a member may not); and the overall health of the pension system (not as well funded as the pension funds of other AAA-rated states but significantly improved in terms of funding status compared to what was expected after 2011 pension reforms).

Mr. Ransom asked staff if there had been any concerns raised by legislatures after the significant changes to the legislative retirement plan in the 2014 Resolution. Staff noted that since the changes were prospective in nature, nobody has yet retired under the new provisions; so in that regard, comment was unlikely. While a small number of legislators had not been participating in the plan (participation was made mandatory in 2014), there had been no complaints raised within DLS or SRA about this issue.

Staff then presented a chart detailing relative benefits for legislators and State employees earning the same salary, both pre- and post-pension reform/resolution change. Discussion around the chart included (1) whether the salary itself was appropriate for the status of the legislature; and (2) that it was important to remember that State employees have a greater opportunity to increase salary beyond that of legislators. Mr. Ransom also made the point that the last commission did try and balance the changes made to overall compensation, *i.e.*, increasing salaries but changing retirement benefits by increasing mandatory contributions that mitigated the benefit of the salary increase and increasing retirement age.

Staff then presented a number of issues concerning the legislative pension plan for the consideration of the commission, issues that could require changes to the current resolution.

- The need to amend the current provision that allows the purchase of "air time", *i.e.*, service credit in order to become vested. The cost of the purchase includes both the employee and employer contribution. Ms. Gawthrop of SRA noted that the legislative pension plan is the only plan in the State system that allows this type of purchase. It is a long-standing provision that recognizes that legislators can lose their job in an election and not reach the vesting period. Counsel for SRA has advised that this provision does not comply with the Internal Revenue Services' (IRS) regulations, which only allow air time purchase if a member has already accrued 5 years of service and can only purchase up to 5 years.

In response to questions from Mr. Ransom, Ms. Gawthrop noted that the largest purchase of air time was 7.5 years, and 16 legislators have purchased air time, 12 of which would not be allowed under IRS regulations. Ms. Dippel asked if air time purchase was only available if a member ran for reelection and lost. Ms. Gawthrop noted that it was available to any member who wanted to purchase credit in order to vest regardless of why the member left public office.

The members agreed that, at the very least, consideration must be given to adopting a provision consistent with IRS guidelines and adopting further options and clarifications beyond that. Both Mr. Rubino and Mr. Daniels noted that changing the provision to be consistent with IRS guidelines would essentially preclude one-term members who lose reelection from accessing a retirement benefit. In other words, undermining the original policy consideration for the provision in the first place. In response to a question from Mr. Daniels about retroactivity, Ms. Gawthrop said that any change should be prospective and those that current fall foul of IRS guidelines would have to be dealt with on a case-by-case basis.

- ***Death Benefits –*** A number of issues were raised around death benefits.

    - Staff noted that, in the legislative pension plan, benefits are available to children under 18 whereas other plans have recently extended benefits to age 26 and disabled children. Mr. Rakosky asked what the likely cost would be to make such a change. Staff noted that it would be slight as the situation rarely happens.

    - It was also noted that, while the prior commission altered the early retirement benefits and retirement age, it did not alter when beneficiaries can get benefits. Conforming when beneficiaries can access benefits to that of the member, would be consistent with the overall actions of the prior commission.

    - A legislator has raised the issue to staff about naming a nonprofit organization as a beneficiary, something that is not currently allowed under the legislative pension plan. Ms. Gawthrop noted that this option was available to State employees but only for a lump-sum payment.

- ***Transfer of Service Credit –*** Staff presented an issue bought up under the prior commission about allowing transfer of service credit from another State pension plan into the legislative pension plan. This is currently prohibited (similar to the Judges Pension plan), not least because the multiplier for the legislative plan is higher than other plans.

- ***Military Service Credit –*** Each of the past two commissions have considered the question of whether to allow some credit for military service. All other plans allow some form of credit except for the legislative pension plan.

  Mr. Ransom noted that for both the military service credit issue and transfer of service credit that the prior commission deferred because of, among other things, the many other changes being considered by the commission to the legislative pension plan. Mr. Rubino asked if a member would get military credit even if you have used that credit as part of another military pension and how it would benefit the State. Mr. Ransom thought it might encourage more people to run. Staff agreed to collect additional data on the issue and provide language that was included in the final 2010 General Assembly Compensation Commission Resolution (all of the changes made in that resolution were ultimately rejected by the General Assembly) for consideration at the next meeting.

- ***Forfeiture of Benefits –*** The current provision was added to the 2010 Resolution by the legislature and affirmed by the 2014 commission without change. In 2016, the General Assembly passed forfeiture provisions for constitutional officers. Those provisions go into effect at the beginning of the next term. The current forfeiture provision is silent on a number of issues including having no provision for innocent spouses/beneficiaries and process.

  The commissioners were generally wary about making changes to this provision at a time when a number of current and former members of the legislature have pled guilty to, or are facing charges of, corruption. However, there was also some concern about the current provision not allowing for any exceptions for certain beneficiaries.

Prior to adjournment, Ms. First-Willis asked staff that, in the preparation of decision documents, especially on retirement changes that the commission wishes to consider, information is provided comparing changes to the State employee retirement plan and also a sense of cost. The meeting was adjourned at 4:20 p.m.