

compensation, the legislature is free to establish compensation for any public officers, including its own members.

Synopsis of HFl#1 Amendment

The House Floor Amendment #1 to the House Judiciary Committee Substitute for House Joint Resolution 5 expands the scope of the provision in Subsection (E) to allow the Public Officer Salary Commission to increase or diminish the compensation for any public officer within its purview during that officer's term of office.

Synopsis of Joint Resolution

The House Judiciary Committee Substitute for House Joint Resolution 5 proposes to amend Article 4, Section 10 of the New Mexico Constitution to repeal legislative per diem and mileage and the prohibition of legislative compensation, effective January 1, 2023. It would create a Public Officer Salary Commission to establish and limit salaries of elected state officers and other public officers as the legislature may provide.

If passed by the voters, the resolution would create the Public Officer Salary Commission of seven members with not more than four from the same political party. Two shall be appointed by the governor, two by the Chief Justice of the Supreme Court, one by the President Pro Tempore of the Senate, one by the Speaker of the House, and one appointed by the six other commissioners. There are specified restrictions on who may serve on the Commission, including no serving public official whose salary would be set by the Commission, no current employee of the state, no current or former lobbyist, and no household member or family of those persons.

The Commission shall establish and limit salaries by October 1 of each odd-numbered year for governor, lieutenant governor, attorney general, secretary of state, state treasurer, state auditor and commissioner of public lands; justices of the supreme court, judges of the court of appeals and district court judges; legislators; members of the public regulation commission; and other public officers as the legislature may provide. The Commission shall take into account any other compensation, perquisite, allowance or reimbursement provided to each public officer by the state, which are also subject to the powers of the Commission.

The resolution is to be submitted for approval by the voters of the state in the next general election (November 2020) or any special election called for that purpose.

FISCAL IMPLICATIONS

The SOS is constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in one newspaper in every county in the state. In 2018, the SOS spent \$16,200 for the required newspaper publications; however, the cost is dependent upon the number and length of the constitutional amendments proposed. For planning purposes, SOS advises \$21.13 per word be used to represent the costs realized in the 2018 general election to estimate the cost of publishing each constitutional amendment. The number appearing in the operating budget impact table as a cost against the election fund is based on that estimate.

Additionally, if this amendment is approved by the people, there likely will be increased costs to the general fund once compensation for public officers is set by the Commission presumably by

October, 2023, which is not reflected in the table because it would occur for the first time in FY 24.

SIGNIFICANT ISSUES

The National Conference of State Legislatures' report "2017 Legislator Compensation Information" indicates no state uses a commission to determine legislative salaries. The same report indicates New Mexico is the only state that does not pay legislators a salary. Salaries for legislators range from \$7,200 in Texas to \$104,118 in California. In addition, 39 states pay per diem while their legislatures are in session, in addition to salaries. Five states pay legislative leadership positions (Speaker and President pro tempore) an additional amount over the base legislative salary. One state pays senators \$360 more than representatives and one state pays more for a year with a long session than a year with a short session.

Under CS/HJR5, the commission is established as a state agency under the direction of the commission's seven members. NMAG notes that it is unclear what action the commission is to take in establishing and limiting public officers' compensation by October 1 of each odd-numbered year: is it by a simple vote, or would it need to be done through a formal administrative rulemaking process.

According to NMAG, CS/HJR5 if passed would conflict with Article VI, Section 17 which states the legislature shall provide by law for the compensation of the judges of the district court. Similarly, Article V, Section 12 provides for the compensation of executive officers and Article VI, Section 11 for Supreme Court justices to be fixed by law, so the conflict may be less clear.

AOC also calls attention to another conflict with existing Section 34-1-10 NMSA 1978 which created the Judicial Compensation Commission, which makes recommendations on judicial salaries, as well as Sections 34-1-9 and 10, which currently govern judicial salaries. In addition, the provisions of CS/HJR5 could conflict with Section 8-1-1 and 8-3-3, which set compensation for certain elected officials whose compensation under CS/HJR5 would be set by the new commission. However, any statutes in conflict with a new constitutional provision would be unenforceable.

TECHNICAL ISSUES

AOC notes that the repeal of the existing version of Art. IV, Sec. 10 does not become effective until January 1, 2023, although the voters may approve the amendment as early as November, 2020. In order to clarify when any action taken by the new commission would be effective, inserting "2023" following "October 1" in line 18 on page 3 might be considered.

MD/sb/al