

## Independent Compensation Council Ad-hoc Group Final Report

In the weeks following conclusion of the 2023 legislative session, several current and former members of the Compensation Council (CC) discussed working on possible improvements to the newly created independent CC as defined in [www.revisor.mn.gov/statutes/cite/15A.082](http://www.revisor.mn.gov/statutes/cite/15A.082). With outreach assistance from the Legislative Coordinating Commission (LCC), all CC members from 2017 to 2023 were invited to participate in an Ad-hoc Independent Compensation Council Group. Nine members responded – seven fully participating and two monitoring (non-voting) – all with at least two terms of CC service, totaling 26 years of service. Former LCC executive director Greg Hubinger was assigned by the LCC to provide the Ad-hoc group technical assistance. His timely guidance was invaluable.

In preparation for the group's deliberations, substantive outreach efforts were extended to key public entities including the House and Senate State Government committees, Senate Finance Committee, minority leads of those three committees, state court administration, the Minnesota District Judges Association (MDJA), and the Walz Administration via the Minnesota Management and Budget (MMB) commissioner and staff. House State and Local Government Chair Ginny Klevorn indicated support for the Ad-hoc group deliberations, suggested topics for discussion, and urged the group to provide its recommendations before year-end 2023 so 15A.082 revisions could be introduced in legislation and given full consideration during the 2024 Legislative Session. At an early November meeting, Senate Finance Chair John Marty indicated support for the Ad-hoc group efforts, and offered constructive suggestions.

The Ad-hoc group organized in mid-August. A total of 12 updates were provided via email with deliberations taking place between each update. Updates were regularly shared with all key public entities based on significant progress toward recommendations. The resulting Final Report contains recommendations in eight categories based on 17 survey questions answered. After preliminary survey questions were answered, a Core Recommendation was developed incorporating both majority and minority viewpoints to successfully reach a strong consensus. The eight categories are Timetable, Inflation guidance, Binding carryover, Governor's appointees voting, Membership prohibitions, Legislative representation, Ex-parte communications and Minor changes. The following is the **Core Recommendation** addressing the first 4 of the 8 categories:

*"The Compensation Council must adopt a report prescribing executive branch and constitutional officer salaries by April 1 (of the current odd numbered year) to take effect on July 1 (of the same year). In a second report to the legislature, the Council must make compensation recommendations for supreme court justices, and judges of the appellate and district courts by Nov. 1 (of the following even year) to take effect in the following biennium. The second report may include additional executive branch and constitutional office salary prescriptions. Collective (i.e. "across-the-board") salary prescriptions and judicial compensation recommendations will be guided by widely recognized cost of labor inflation calculations such as Bureau of Labor Statistics (BLS) indices. Any Compensation Council-prescribed increase to the governor's salary must not take effect until the next term of the governor." (Remove governor's appointees voting restriction and remove the unlimited CC binding carryover language.)*

The collective "across-the-board" (ATB) term is broadly defined for any grouping the CC can apply to two-or-more salaried positions within its jurisdiction. ATB groupings are defined in any way the CC chooses. The CC can choose to use ATBs extensively, or not at all. The BLS inflation guidance can be applied to a specific ATB with an additional factor applied (such as a higher increase to district court judges as a group relative to other judges / justices, if the CC desires). The inflation factor is intended as a guideline in law, not as an overriding restriction. The Compensation Council would not be able to prescribe beyond the second biennium due to removal of the 2023 open-ended carryover language.

A key legislative member indicated that the Core Recommendation "sounds reasonable" overall - expressing support for delaying the governor's pay increase, but opposes removal of the restriction on governor's appointees voting on pay increases.

The final Core Recommendation proposal received no negative feedback from Ad-hoc group members.

### Final Report Recommendations by Category

*These groupings and section references are linked to the 2023 statutory changes contained in [www.revisor.mn.gov/statutes/cite/15A.082](http://www.revisor.mn.gov/statutes/cite/15A.082). Vote tallies are posted as Favor-Oppose-No Position.*

#### Timetable (15A.082, Subd. 3)

Expand timetable within current framework	7-0-0
Governor and Judicial appointees to be named in December of even-numbered year, Legislative appointees early in January (of the odd year) immediately after session organizes with leadership formalized.	
Extend Compensation Council service to even years	4-1-2
Recommendations due before November general election, prescriptions take effect the following July 1 with the new biennial budget.	

The Ad-hoc group unanimously supports expanding the timeframe for deciding on salaries applying to the many and diverse groupings of judges, constitutional officers and heads of executive agencies within CC jurisdiction. The earlier appointments (December) would apply to Governor and Supreme Court appointees, followed by legislative leader appointees to be made ASAP after formal biennial organizing. A second proposal – which drew contested majority support - expands deliberations to even-numbered years with a Nov. 1 deadline prior to the even-year election, and would implement salary changes in the following biennium.

The Core Recommendation incorporates the slightly earlier appointments and start, retains the April 1 deadline for next biennium prescribed salaries for Constitutional officers and agency heads, and requires a second report no later than Nov. 1 (even year) to take effect in the following biennium for judicial salary recommendations and possible supplemental prescribed salaries for Constitutional officers and agency heads. The Nov. 1 even-year second deadline is tentative, pending further feedback from the judiciary.

MDJA position (via its legislative liaison Nancy Haas): "We find great value in your deliberations and recommendations but have found the due date of April 1<sup>st</sup> in odd number years a really late date to help us educate legislative decisions makers about the report." The district judges' position effectively ended any consideration of setting a later first report date, but the CC members feel that April 1 is the earliest possible deadline to allow the CC adequate time for full deliberations. Preliminary biennial budgeting for the judiciary (and other departments) must be submitted to MMB by Oct.15 (even-numbered year), and would be useful for CC consideration prior to recommending judicial salaries for the following biennium. The two-report timetable gained preliminary support of six group members with no dissents expressed. Extended CC service to the even years had already gained majority support prior to the strong feedback expressed by the MDJA.

#### Inflation Guidance (15A.082, Subd. 3)

Inclusion of CPI indices in salary setting / LSC coordination	4-1-2
Includes Legislative Salary Council (LSC) coordination working with the LCC and MMB data presented, establishing a non-statutory custom-and-practice discipline to simplify and streamline the deliberations.	
Statutory defined inclusion of inflation	2-5-0

The Ad-hoc group struggled with the question of how best to apply some form of inflation guiderails on CC salary decisions. While much of state operations are relatively stable from year-to-year, some areas are more dynamic (MN-IT, Metropolitan governance, State Auditor vs. Secretary of State, etc.). Unlike all other questions, the inflation questions prompted significant partisan alignment.

Core Recommendation assigns statutory BLS cost-of-labor guidance to collective / across-the-board salary prescriptions in the first report on April 1, and for judiciary compensation recommendations contained in the second report delivered the following year. Consistent with the vote outcomes to the two inflation questions offered to the group, the term "guidance" is intended to apply generally to the CC deliberations process, and does not directly restrict prescribed and recommended salaries.

### **Binding Carryover (15A.082, Subd. 3)**

Eliminate binding carryover (*remove boldfaced statutory language below*) 5-1-1

"... salaries take effect on July 1 of that year and July 1 of the subsequent even-numbered year **and at whatever interval the council recommends thereafter, unless the legislature by law provides otherwise.**"

Legislative staff was asked for reasoning behind the indefinite interval beyond two biennia. The LCC inquiry indicated that the provision most likely did not originate at the legislative level. No response from MMB was forthcoming when inquiring if the wording was requested by the administration. Ad-hoc members expressed concerns that the "whatever interval" clause could cloud future term CC deliberations, and could draw a legal challenge on constitutional grounds.

Core Recommendation specifically allows for prescribed salaries in the next biennium (April 1) and the following biennium (Nov. 1 even-year report), and removes the open-ended "whatever interval" clause. A key legislator indicated support for removal of the "whatever interval" clause, and commented, "There's no reason for it."

### **Governor's Appointees Voting (15A.082, Subd. 2)**

Delay any Governor's salary increase to next biennium 4-3-0

Removes need for "*Members appointed by the governor may not vote to raise the governor's salary.*"

Simply eliminate Governor's appointees voting restriction 5-2-0

Core Recommendation requires that any prescribed increase for the governor must not take effect until the next four-year term – and removes the voting restriction.

If the Legislature chooses to retain the Governor's appointees voting restriction on increasing the Governor's salary, clarifying in statute what constitutes a clear majority required to prescribe the increase would remove uncertainty. In addition, the question of whether Governor's appointees can vote on Final Report adoption that includes the salary increase should be clarified.

One of the key legislators indicated support for restricting the Governor's appointees voting on the increase based on the apparent conflict of interest "regardless of when (the increase) takes effect." The lawmaker views the majority vote as being based on the majority of those who are allowed to vote on the question, and indicated that those appointees should be allowed to vote subsequently on adopting a final report that increases the Governor salary. In conclusion, the legislator commented, "If people find it unclear, clarify it" (regarding how to apply voting restrictions and what constitutes a voting majority).

**Membership Prohibitions (15A.082, Subd. 2)**

Eliminate most membership prohibitions	4-2-1
Allowing former and current constitutional officers, former and current legislators (and spouses of current legislators), former and current judges – but prohibiting current state employees of all three branches and lobbyists.	
Only eliminate prohibitions on former officeholders	5-1-0
Allowing for former constitutional officers, former legislators, and former judges.	
Eliminate some other combination of prohibitions	0-1-6
Allows Ad-hoc members to propose other possible options ( <i>none were offered</i> ).	

As the votes indicate, the group expresses a strong sentiment for eliminating prohibitions on former officeholders and former judges. A complication arises concerning senior (retired rotating temporary) judges who possibly would be required to take their names off of the call list permanently if selected to serve as a CC member. Concerns regarding judges serving on various councils with attorneys, as expressed by a key legislator, were communicated to the Ad-hoc group before taking up any votes on membership prohibitions.

MDJA position (via Haas): "I don't think we will want to weigh in on judges or former judges serving on the commission." Another key legislator indicated that they have no opposition to removing the prohibitions on former officeholders and former judges serving as long as the three core conflict-of-interest prohibitions stay in place (current lobbyists, current judges and state employees).

**Legislative Representation (15A.082, Subd. 2)**

Reduce Legislative leaders' representation	4-2-1
From 8 (2 per leader) to 4 (1 per leader)	
Entirely eliminate appointments by legislative leaders	1-6-0

A key legislator indicated that there had been some discussion indicating that the Legislature has ultimate authority, so it does not need to be represented on the CC. The eight additional CC members brings the total to 24 which may prove unwieldy in coming to the various decisions needed in a relatively short time span. If the intent of legislative representation is to provide the group feedback from all four caucuses, one representative from all four leaders would be adequate. This proposed modification received majority support with dissents.

**Ex-Parte Communications (15A.082, Subd. 2 & 7)**

Remove ex-parte communications prohibition	5-1-1
Clarify & narrow prohibition	2-1-4
Narrow to allow for restricted contact in day-to-day business with state agencies and courts, and better define the restrictions on state entities making contact with CC members.	

Ex-parte communications gained limited attention from the group, though some members indicated strong opposition to the prohibition, and others expressed concerns that it appeared to have been grafted from the earlier LSC statute without much thought about the ramifications.

MDJA submitted comment (via Haas): "Right now MDJA and some judges and court staff communicate with the Compensation Council to help secure data, reports, and the like. Would your changes there assist us in this area?" Staff noted that the MMB ex-parte carve-out (Subd. 2) could be extended to the judiciary for sharing budget-related data. Haas noted that the inability to contact CC members due to the ex-parte restriction directly adds to the workload for limited LCC staff.

A key legislator indicated that restricting ex-parte communications to only one way "is not appropriate" and supports statutory clarification that allows day-to-day activities such as when attorneys serving on the CC have matters before the court, etc.

The preliminary votes on ex-parte changes took place prior to the strong feedback provided by MDJA (via Haas) and a lawmaker who is seeking statutory clarification, as well as before the staff suggestion to add judiciary data reporting along with the existing MMB carve-out (Subd. 2).

**Relatively Minor Changes (Minn. Stat. [15A.0815](#), Subd. 2 & 15A.082, Subd. 1)**

Add newly created offices – Cannabis Management & Children, Youth and Families (15A.0815-2) 7-0-0

Replace "assist" with "recommend to" the Legislature regarding judicial salaries (15A.082-1) 6-1-0

The two newly created executive offices are added as a matter of statutory housekeeping and were approved without debate. Two Ad-hoc members expressed concerns about how the CC could "assist" the Legislature, and questioned the reasoning for imprecise wording rather than the commonly accepted "recommend to" terminology. The clarification may be needed because the Minnesota Constitution plainly states: "The compensation of all judges shall be prescribed by the legislature and shall not be diminished during their term of office."

**Conclusion**

Similar to Compensation Council final reports submitted over the years, the deliberations of this Ad-hoc group has produced recommendations for legislative consideration. The group does not plan to submit specific drafted legislation, but is urging House and Senate chief authors to formulate and introduce statutory changes based on the group's recommendations. At least one group member (James Robins) plans to monitor related legislative activities in 2024 and communicate progress to others who wish to remain engaged in the process.

**Ad-hoc group members – years of service**

Tom Berg - 2017, 2019

Richard Cohen - 2001, 2013, 2021, 2023

James Fox – 2017, 2019, 2021

Peter Gregory - 2019, 2021, 2023

Robert Meyerson - 2017, 2019, 2021, 2023

James Robins - 2017, 2019

Nick Zerwas - 2021, 2023

**Monitoring contributing members (non-voting)**

Gail Olson - 2017, 2019, 2021

Charlie Weaver - 2021, 2023