

James Robins: Senate Finance Committee Submitted Testimony 4/26/2024 - [SF 5335](#)

Thank you to Chair Marty and committee members for the opportunity to submit testimony regarding the Compensation Council –related provisions in [SF 5335](#). Specifically, Article 5, sections 7-10 (pages 80.27-83.14 of the 1st engrossment) improperly assigns authority and restrictions to the Council relating to the newly created Direct Care and Treatment executive board. This Governor's recommendation is in direct conflict with the unanimously approved recommendation of the Minnesota Judicial Council (passed 2/15/2024), and the report of the interim 2023-24 Compensation Council Ad-Hoc Group.

A year ago, major changes were made to Chapter 15A pertaining to expanded Compensation Council salary-setting authority, allowing the Council to set agency-head salaries, constitutional officers and recommend salaries for judges and justices. The Governor's controversial request would add unprecedented executive board salary-setting duties within a state agency that does not belong under the authority of the Compensation Council. In addition, the 15A.0815-15A.082 statutes are clearly under the jurisdiction of the State and Local Government Committee which has had no opportunity to review this significant departure in authority for the Council.

In Sec. 9, the Compensation Council is asked to set daily compensation rates for executive board members taking 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.**" This language originated in 2023 was opposed by the interim Ad Hoc Group due to its potentially binding language that hands over unlimited reach to the unelected Compensation Council. This committee also should guard against turning over "power of the purse" far into the future to an unelected body. The solution to this labored language is to set up a full 20-month Compensation Council timeline for more thorough budget deliberations by the Compensation Council limited to two biennia as approved by both the Minnesota Judicial Council and the Ad-Hoc Group.

In Sec. 10, the bill further expands the 2023 ex parte communications ban to prohibit the Compensation Council from all dialogue with Direct Care and Treatment executive board members, adding to the long list of unreasonable communications bans on the judiciary, various executive agencies and elected officials. The elimination of the ex parte communications ban was unanimously approved by the Minnesota Judicial Council, following up on the earlier recommendation of the Ad Hoc Group. Further expanding these communications bans flies in the face of recommendations made by those who have most closely studied the various Compensation Council concerns.

In an in-depth bipartisan effort during the legislative interim, I joined eight other recent Compensation Council members in an Ad-Hoc Group tasked with reviewing the 2023 restructuring and providing remedial revisions where needed. Our group included judicial and governor appointees who have served a total of 25 terms from 2017-2023. We sought participation from all interested parties, including state judicial administration, the Minnesota District Judges Association (MDJA), key legislators and MMB staff who answer to the governor.

In my view, three essential changes are needed as soon as possible. First, extend the existing timeline deadline of less than three months for Council deliberations to 20 months to allow for more thorough deliberations and judicial branch budget coordination (15A.082, Subd. 3) - aligning with the formal recommendations of the Minnesota Judicial Council and MDJA. Failure to act in 2024 will delay budget coordination by two full years to FY 2030-31 at the earliest. Second, repeal the 2023 ban on ex parte communications between council members and the judiciary (15A.082, Subd. 2 & 7) – another provision unanimously passed by the Minnesota Judicial Council and fully supported by MDJA. The judiciary communications ban unreasonably concentrates information-sharing authority within the MMB, and is likely to discourage qualified attorneys from participating in the Compensation Council. Finally, the Legislature should limit the extent of authority it relinquished in 15A.082, Subd. 3 by removing the "whatever interval the council recommends thereafter" clause and restore appropriate long-term power of the purse to the Legislature.

The Ad-Hoc Group recommended several other corrective revisions in statute that can be addressed at a later date, if necessary. Those provisions are contained in HF3707 / SF3863 which was drafted with the assistance of the Legislative Coordinating Commission along with the three essential changes referenced above. The other changes will be helpful to the Compensation Council in the long run, but can wait for full legislative review when time allows. The timeline expansion, repeal of communications ban and repeal of unrestricted Compensation Council authority into the future require your attention this year.

Thank you to Chair Marty, Ranking Committee member Pratt and committee members for considering my concerns with the Compensation Council-related provisions of this bill.

Sincerely,



James Robins

James Robins was appointed by the Supreme Court to serve Compensation Council terms in 2017 and 2019 (designated DFL slots). He declined an invitation to apply for a third term in 2021 and was replaced by former Senator Richard Cohen representing the Fourth Congressional District.