

**Representative Curtis Oda** proposes the following substitute bill:

**JUDICIAL NOMINATING COMMISSION**

**AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires trial court nominating commissions to submit five names to the governor, the appellate court nominating commission to submit seven names to the governor, and that all nominating commissions meet within a specified period of time.

**Highlighted Provisions:**

This bill:

- ▶ requires judicial nominating commissions to meet within a specified period from the effective date of a judicial vacancy;
- ▶ requires the governor to ensure that the nominating commissions follow statutes and rules;
- ▶ requires the governor to appoint the staff of the judicial nominating commissions;
- ▶ requires the governor to enact rules regarding judicial nominating commissions;
- ▶ requires the appellate court nominating commission to submit seven names to the governor per vacancy;
- ▶ requires trial court nominating commissions to submit five names to the governor per vacancy; and
- ▶ removes the chief justice of the Supreme Court from the nominating commissions.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2010.

30 This bill coordinates with S.B. 232, Judicial Administration Amendments, to account  
31 for a judicial hiring freeze.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **78A-10-103**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and  
35 amended by Laws of Utah 2008, Chapter 3

36 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

37 **78A-10-202**, as enacted by Laws of Utah 2008, Chapter 3

38 **78A-10-203**, as enacted by Laws of Utah 2008, Chapter 3

39 **78A-10-302**, as enacted by Laws of Utah 2008, Chapter 3

40 **78A-10-303**, as enacted by Laws of Utah 2008, Chapter 3

41 ENACTS:

42 **78A-10-105**, Utah Code Annotated 1953

43 REPEALS:

44 **20A-1-505**, as last amended by Laws of Utah 1994, Chapter 227

45 **Utah Code Sections Affected by Coordination Clause:**

46 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3



48 *Be it enacted by the Legislature of the state of Utah:*

49 Section 1. Section **78A-10-103** is amended to read:

50 **78A-10-103. Procedures governing meetings of judicial nominating commissions.**

51 (1) The [~~Judicial Council~~] governor shall:

52 (a) in consultation with the Judicial Council, enact rules establishing procedures  
53 governing the meetings of the judicial nominating commissions in accordance with Title 63G,  
54 Chapter 3, Utah Administrative Rulemaking Act; and

55 (b) ensure that those procedures include:

56 (i) a minimum recruitment period of at least 30 days [~~and a procedure to extend that~~

57 ~~period for an additional 30 days if] but not more than 90 days, unless~~ fewer than nine  
58 applications are received for a judicial vacancy, in which case the recruitment period may be  
59 extended up to 30 days;

60 (ii) standards for maintaining the confidentiality of the applications and related  
61 documents;

62 (iii) standards governing the release of applicant names before nomination;

63 (iv) standards for destroying the records of the names of applicants, applications, and  
64 related documents upon completion of the nominating process;

65 (v) an opportunity for public comment concerning the nominating process,  
66 qualifications for judicial office, and individual applicants;

67 (vi) evaluation criteria for the selection of judicial nominees;

68 (vii) procedures for taking summary minutes at nominating commission meetings;

69 (viii) procedures for simultaneously forwarding the names of nominees to the  
70 governor, the president of the Senate, and the Office of Legislative Research and General  
71 Counsel; ~~[and]~~

72 (ix) standards governing a nominating commissioner's disqualification and inability to  
73 serve~~[-]; and~~

74 ~~[(2)(a)(i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating~~  
75 ~~commission receives 15 or more applications to fill a judicial vacancy, the nominating~~  
76 ~~commission shall submit at least five names to the governor.]~~

77 ~~[(ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required~~  
78 ~~number of votes as specified in Subsection (2)(c) from the nominating commission, the~~  
79 ~~commission shall submit only the names of applicants that received the required number of~~  
80 ~~votes, but must submit the names of at least three applicants.]~~

81 ~~[(b) In determining whether or not to submit an applicant's name to the governor, a~~  
82 ~~commission may not decline to consider an applicant merely because:]~~

83 (x) procedures that require the Administrative Office of the Courts to immediately  
84 inform the governor when a judge is removed, resigns, or retires.

85 (2) In determining which of the applicants are the most qualified, the nominating  
86 commissions shall determine by a majority vote of the commissioners present which of the  
87 applicants best possess the ability, temperament, training, and experience that qualifies them

88 for the office.

89 (3) (a) The appellate court nominating commission shall certify to the governor a list of  
90 the seven most qualified applicants per vacancy; and

91 (b) trial court nominating commissions shall certify to the governor a list of the five  
92 most qualified applicants per vacancy.

93 (4) Nominating commissions shall ensure that the list of applicants submitted to the  
94 governor:

95 (a) meet the qualifications required by law to fill the office; and

96 (b) are willing to serve.

97 (5) In determining which of the applicants are the most qualified, nominating  
98 commissions may not decline to submit a candidate's name to the governor merely because:

99 [(i)] (a) the nominating commission had declined to submit that candidate's name to the  
100 governor to fill a previous vacancy;

101 [(ii)] (b) a previous nominating commission had declined to submit that candidate's  
102 name to the governor; or

103 [(iii)] (c) that nominating commission or a previous nominating commission had  
104 submitted the applicant's name to the governor and the governor selected someone else to fill  
105 the vacancy.

106 ~~[(c) The vote required to submit an applicant's name to the governor is as follows:]~~

107 ~~[(i) if all seven members of the nominating commission are present and considering~~  
108 ~~applicants, a vote in favor of the applicant by four commissioners submits the candidate's name~~  
109 ~~to the governor;]~~

110 ~~[(ii) if only six members of the nominating commission are present and considering~~  
111 ~~applicants because one member is unable to attend, has recused himself or is otherwise~~  
112 ~~disqualified, a vote in favor of the applicant by four commissioners submits the candidate's~~  
113 ~~name to the governor;]~~

114 ~~[(iii) if only five members of the nominating commission are present and considering~~  
115 ~~applicants because two members are unable to attend, have recused themselves, or are~~  
116 ~~otherwise disqualified, a vote in favor of the applicant by three commissioners submits the~~  
117 ~~candidate's name to the governor; and]~~

118 ~~[(iv) if only four members of the nominating commission are present and considering~~

119 applicants because three members are unable to attend, have recused themselves, or are  
 120 otherwise disqualified, a vote in favor of the applicant by three commissioners submits the  
 121 candidate's name to the governor.]

122 ~~[(3)]~~ (6) A judicial nominating commission may not nominate a justice or judge who  
 123 was not retained by the voters for the office for which the justice or judge was defeated until  
 124 after the expiration of that term of office.

125 ~~[(4)]~~ (7) Judicial nominating commissions are exempt from the requirements of Title  
 126 52, Chapter 4, Open and Public Meetings Act[, and Title 63G, Chapter 3, Utah Administrative  
 127 Rulemaking Act].

128 Section 2. Section **78A-10-104** is amended to read:

129 **78A-10-104. Convening of recruitment period -- Convening of judicial**  
 130 **nominating commissions -- Certification to governor of nominees -- Meetings to**  
 131 **investigate prospective candidates.**

132 ~~[(1) When a vacancy occurs or is about to occur in the office of a justice or judge of~~  
 133 ~~any court of record, the chair of the judicial nominating commission for the office to be filled~~  
 134 ~~shall convene the commission as soon as practicable.]~~

135 (1) The governor shall ensure that:

136 (a) the recruitment period to fill a judicial vacancy begins 235 days before the effective  
 137 date of a vacancy, unless sufficient notice is not given, in which case the recruitment period  
 138 shall begin within 10 days of receiving notice;

139 (b) the recruitment period is a minimum of 30 days but not more than 90 days, unless  
 140 fewer than nine applications are received, in which case the recruitment period may be  
 141 extended up to 30 days; and

142 (c) the chair of the judicial nominating commission having authority over the vacancy  
 143 shall convene a meeting not more than 10 days after the close of the recruitment period.

144 (2) The nominating commission may:

145 (a) meet as necessary to perform its function; and

146 (b) investigate prospective candidates.

147 (3) ~~[(a)]~~ Not later than 45 days after convening, the ~~[commission shall certify to the~~  
 148 ~~governor a list of nominees who a majority of the members of the commission have~~  
 149 ~~determined]:~~

150 (a) appellate court nominating commission shall certify to the governor a list of the  
151 seven most qualified applicants per vacancy; and

152 (b) trial court nominating commission shall certify to the governor a list of the five  
153 most qualified applicants per vacancy.

154 [~~(i) have the qualifications required by law to fill the office;~~]

155 [~~(ii) are willing to serve; and~~]

156 [~~(iii) possess the ability, temperament, training, and experience that fits them for the~~  
157 ~~office.]~~

158 [~~(b) (i) The appellate court nominating commission shall certify a list of at least five~~  
159 ~~appellate nominees to the governor.]~~

160 [~~(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

161 [~~(iii) The commission may not certify more than seven nominees to the governor.]~~

162 [~~(c) (i) The trial court nominating commission shall certify a list of at least three~~  
163 ~~nominees to the governor.]~~

164 [~~(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

165 [~~(iii) The commission may not certify more than five nominees to the governor.]~~

166 (4) The governor shall fill the vacancy within 30 days after receiving the list of  
167 nominees.

168 (5) If the governor fails to fill the vacancy within 30 days of receiving the list of  
169 nominees from the nominating commission, the chief justice of the Supreme Court shall,  
170 within 20 days, appoint a person from the list of nominees certified to the governor.

171 [~~(4)~~] (6) A nominating commission may not [~~-, during a commissioner's term of office,]~~  
172 nominate a person who has served [~~as a replacement for that commission member~~] on a  
173 nominating commission within six months of the date that the commission was last convened.

174 Section 3. Section **78A-10-105** is enacted to read:

175 **78A-10-105. Senate confirmation of judicial appointments -- Courts of record.**

176 (1) The Senate shall:

177 (a) consider and decide on each judicial appointment within 60 days of the date of  
178 appointment; and

179 (b) if necessary, convene itself in extraordinary session to consider a judicial  
180 appointment.

181           (2) If the Senate fails to approve the appointment, the office is considered vacant and a  
182 new nominating process begins.

183           (3) An appointment is effective upon approval of a majority of all members of the  
184 Senate.

185           (4) The judicial nominating commission, the governor, the chief justice, and the Senate  
186 shall nominate and select judges based solely upon consideration of their fitness for office  
187 without regard to any partisan political considerations.

188           Section 4. Section **78A-10-202** is amended to read:

189           **78A-10-202. Membership.**

190           (1) The Appellate Court Nominating Commission shall consist of seven  
191 commissioners, each appointed by the governor to serve a single four-year term.

192           (2) Each commissioner shall:

193           (a) be a United States citizen;

194           (b) be a resident of Utah; and

195           (c) serve until the commissioner's successor is appointed.

196           (3) The governor may not appoint:

197           (a) a commissioner to serve successive terms;

198           (b) a member of the Legislature to serve as a member of the Appellate Court

199 Nominating Commission; or

200           (c) more than four commissioners from the same political party to the Appellate Court

201 Nominating Commission.

202           (4) (a) The Utah State Bar shall submit to the governor a list of six nominees to serve  
203 as Appellate Court Nominating Commissioners.

204           (b) The governor shall appoint two commissioners from the list of nominees provided  
205 by the Utah State Bar.

206           (c) The governor may reject the list submitted by the Utah State Bar and request a new  
207 list of nominees.

208           (5) The governor may not appoint more than four persons who are members of the  
209 Utah State Bar to the Appellate Court Nominating Commission.

210           ~~[(6) (a) The chief justice of the Supreme Court is an ex officio, nonvoting member of~~  
211 ~~the Appellate Court Nominating Commission.]~~

212 ~~[(b) If the chief justice cannot serve on the commission, the chief justice shall appoint~~  
213 ~~another justice of the Supreme Court to serve.]~~

214 ~~[(7)]~~ (6) The governor shall appoint the chair of the Appellate Court Nominating  
215 Commission from among the membership.

216 Section 5. Section **78A-10-203** is amended to read:

217 **78A-10-203. Procedure.**

218 (1) Except for the chief justice of the Supreme Court, each commissioner is a voting  
219 member of the Appellate Court Nominating Commission.

220 (2) Four commissioners are a quorum.

221 (3) The ~~[state court administrator shall]~~ governor shall appoint a member of the  
222 governor's staff to serve as [secretary] staff to the Appellate Court Nominating Commission.

223 (4) The ~~[chief justice of the Supreme Court]~~ governor shall:

224 (a) ensure that the commission follows the rules promulgated by the ~~[Judicial Council]~~  
225 governor; and

226 (b) resolve any questions regarding those rules.

227 (5) A member of the commission who is also a member of the Utah State Bar may  
228 recuse himself if there is a conflict of interest that makes the member unable to serve.

229 Section 6. Section **78A-10-302** is amended to read:

230 **78A-10-302. Membership.**

231 (1) The Trial Court Nominating Commission shall consist of seven commissioners,  
232 each appointed by the governor to serve a single four-year term.

233 (2) Each commissioner shall:

234 (a) be a United States citizen;

235 (b) be a resident of Utah;

236 (c) be a resident of the geographic division to be served by the commission to which  
237 the commissioner is appointed; and

238 (d) serve until the commissioner's successor is appointed.

239 (3) The governor may not appoint:

240 (a) a commissioner to serve successive terms;

241 (b) a member of the Legislature to serve as a member of a Trial Court Nominating  
242 Commission; or

243 (c) more than four commissioners from the same political party to a Trial Court  
244 Nominating Commission.

245 (4) The governor shall appoint two commissioners from a list of nominees provided by  
246 the Utah State Bar.

247 (5) The Utah State Bar shall submit:

248 (a) six nominees from Districts 2, 3, and 4; and

249 (b) four nominees from Districts 1, 5, 6, 7, and 8.

250 (6) The governor may reject any list and request a new list of nominees.

251 (7) The governor may not appoint more than four persons who are members of the  
252 Utah State Bar to a Trial Court Nominating Commission.

253 ~~[(8) (a) The chief justice of the Supreme Court is an ex officio, nonvoting member of~~  
254 ~~each Trial Court Nominating Commission.]~~

255 ~~[(b) If the chief justice cannot serve on the commission, the chief justice shall appoint~~  
256 ~~another justice of the Supreme Court to serve.]~~

257 ~~[(9)]~~ (8) The governor shall appoint the chair of each Trial Court Nominating  
258 Commission from among its membership.

259 Section 7. Section **78A-10-303** is amended to read:

260 **78A-10-303. Procedure.**

261 (1) Except for the chief justice of the Supreme Court, each trial court nominating  
262 commissioner is a voting member of the commission.

263 (2) Four commissioners are a quorum.

264 (3) The ~~[state court administrator shall]~~ governor shall appoint a member of the  
265 governor's staff to serve as [secretary] staff to each Trial Court Nominating Commission.

266 (4) The ~~[chief justice of the Supreme Court]~~ governor shall:

267 (a) ensure that each Trial Court Nominating Commission follows the rules  
268 promulgated by the ~~[Judicial Council]~~ governor; and

269 (b) resolve any questions regarding those rules.

270 (5) A member of a Trial Court Nominating Commission who is also a member of the  
271 Utah State Bar may recuse himself if there is a conflict of interest that makes the member  
272 unable to serve.

273 Section 8. **Repealer.**

274 This bill repeals:

275 Section **20A-1-505, Judicial vacancies -- Courts of record.**

276 Section 9. **Effective date.**

277 This bill takes effect on July 1, 2010.

278 Section 10. **Coordinating H.B. 289 with S.B. 232 -- Substantive amendments.**

279 If this H.B. 289 and S.B. 232, Judicial Administration Amendments, both pass, it is the  
280 intent of the Legislature that the Office of Legislative Research and General Counsel in  
281 preparing the Utah Code database for publication amend Section 78A-10-104 to read as  
282 follows:

283 **"78A-10-104. Convening of judicial nominating commissions -- Certification to**  
284 **governor of nominees -- Meetings to investigate prospective candidates.**

285 [~~(1) When a vacancy occurs or is about to occur in the office of a justice or judge of~~  
286 ~~any court of record, the chair of the judicial nominating commission for the office to be filled~~  
287 ~~shall convene the commission as soon as practicable.].~~

288 (1) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the  
289 governor shall ensure that:

290 (a) the recruitment period to fill a judicial vacancy begins 235 days before the effective  
291 date of a vacancy, unless sufficient notice is not given, in which case the recruitment period  
292 shall begin within 10 days of receiving notice;

293 (b) the recruitment period is a minimum of 30 days but not more than 90 days, unless  
294 fewer than nine applications are received, in which case the recruitment period may be  
295 extended up to 30 days; and

296 (c) the chair of the judicial nominating commission having authority over the vacancy  
297 shall convene a meeting not more than 10 days after the close of the recruitment period.

298 (2) The time limits in Subsection (1) shall begin to run the day the hiring freeze ends.

299 [~~(2)~~] (3) The nominating commission may:

300 (a) meet as necessary to perform its function; and

301 (b) investigate prospective candidates.

302 [~~(3)(a)~~] (4) Not later than 45 days after convening, the [commission shall certify to the  
303 governor a list of nominees who a majority of the members of the commission have  
304 determined].

305           ~~[(i) have the qualifications required by law to fill the office;]~~  
306           ~~[(ii) are willing to serve; and]~~  
307           ~~[(iii) possess the ability, temperament, training, and experience that fits them for the~~  
308 ~~office.]~~  
309           ~~[(b) (i) The appellate court nominating commission shall certify a list of at least five~~  
310 ~~appellate nominees to the governor.]~~  
311           ~~[(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~  
312           ~~[(iii) The commission may not certify more than seven nominees to the governor.]~~  
313           ~~[(c) (i) The trial court nominating commission shall certify a list of at least three~~  
314 ~~nominees to the governor.]~~  
315           ~~[(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~  
316           ~~[(iii) The commission may not certify more than five nominees to the governor.]~~  
317           (a) appellate court nominating commission shall certify to the governor a list of the  
318 seven most qualified applicants per vacancy; and  
319           (b) trial court nominating commission shall certify to the governor a list of the five  
320 most qualified applicants per vacancy.  
321           (5) The governor shall fill the vacancy within 30 days after receiving the list of  
322 nominees.  
323           (6) If the governor fails to fill the vacancy within 30 days of receiving the list of  
324 nominees from the nominating commission, the chief justice of the Supreme Court shall,  
325 within 20 days, appoint a person from the list of nominees certified to the governor.  
326           ~~[(4)]~~ (7) A nominating commission may not~~[, during a commissioner's term of office,]~~  
327 nominate a person who has served ~~[as a replacement for that commission member]~~ on a  
328 nominating commission within six months of the date that the commission was last convened."

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**H.B. 289 1st Sub. (Buff) - Judicial Nominating Commission Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

In FY 2011, \$39,000 in ongoing General Funds will shift from the Courts to the Commission on Criminal and Juvenile Justice.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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