

SB0233 compared with SB0233S01

- 17 ▶ modifies the certification standards for judicial performance, including the certification standards
for a justice of the Utah Supreme Court and a judge of the Utah Court of Appeals;and
- 20 ▶ {~~allows a retention report on judicial performance to include the number of times that the
judge has been overturned on appeal for an abuse of discretion for the current reporting period;
and~~}
- 23 ▶ makes technical and conforming changes.

23 Money Appropriated in this Bill:

24 None

25 Other Special Clauses:

26 None

27 Utah Code Sections Affected:

28 AMENDS:

29 **63G-2-305** , as last amended by Laws of Utah 2025, First Special Session, Chapter 17

30 **78A-12-102** , as last amended by Laws of Utah 2022, Chapter 11

31 **78A-12-203** , as last amended by Laws of Utah 2022, Chapter 11

32 **78A-12-204** , as last amended by Laws of Utah 2017, Chapters 81, 374

33 **78A-12-205** , as last amended by Laws of Utah 2022, Chapter 11

35 ~~**78A-12-206** , as last amended by Laws of Utah 2022, Chapter 11~~}

34 ENACTS:

35 **78A-12-105** , Utah Code Annotated 1953

36 **78A-12-106** , Utah Code Annotated 1953

37 RENUMBERS AND AMENDS:

38 **78A-12-103** , (Renumbered from 78A-12-201, as last amended by Laws of Utah 2025, Chapter 57)

40 **78A-12-104** , (Renumbered from 78A-12-202, as last amended by Laws of Utah 2010, Chapter
286)

42 REPEALS:

43 **78A-12-101** , as enacted by Laws of Utah 2008, Chapter 248

44

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

46 Section 1. Section **63G-2-305** is amended to read:

47 **63G-2-305. Protected records.**

SB0233 compared with SB0233S01

The following records are protected if properly classified by a governmental entity:

- 48 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the
governmental entity with the information specified in Section 63G-2-309;
- 50 (2) commercial information or nonindividual financial information obtained from a person if:
- 52 (a) disclosure of the information could reasonably be expected to result in unfair competitive injury
to the person submitting the information or would impair the ability of the governmental entity to
obtain necessary information in the future;
- 55 (b) the person submitting the information has a greater interest in prohibiting access than the public in
obtaining access; and
- 57 (c) the person submitting the information has provided the governmental entity with the information
specified in Section 63G-2-309;
- 59 (3) commercial or financial information acquired or prepared by a governmental entity to the extent that
disclosure would lead to financial speculations in currencies, securities, or commodities that will
interfere with a planned transaction by the governmental entity or cause substantial financial injury
to the governmental entity or state economy;
- 63 (4) records, the disclosure of which could cause commercial injury to, or confer a competitive
advantage upon a potential or actual competitor of, a commercial project entity as defined in
Subsection 11-13-103(4);
- 66 (5) test questions and answers to be used in future license, certification, registration, employment, or
academic examinations;
- 68 (6) records, the disclosure of which would impair governmental procurement proceedings or give an
unfair advantage to any person proposing to enter into a contract or agreement with a governmental
entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right
of a person to have access to, after the contract or grant has been awarded and signed by all parties:
- 73 (a) a bid, proposal, application, or other information submitted to or by a governmental entity in
response to:
- 75 (i) an invitation for bids;
- 76 (ii) a request for proposals;
- 77 (iii) a request for quotes;
- 78 (iv) a grant; or
- 79 (v) other similar document; or

SB0233 compared with SB0233S01

- 80 (b) an unsolicited proposal, as defined in Section 63G-6a-712;
- 81 (7) information submitted to or by a governmental entity in response to a request for information,
except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a
person to have access to the information, after:
- 84 (a) a contract directly relating to the subject of the request for information has been awarded and signed
by all parties; or
- 86 (b)
- (i) a final determination is made not to enter into a contract that relates to the subject of the request for
information; and
- 88 (ii) at least two years have passed after the day on which the request for information is issued;
- 90 (8) records that would identify real property or the appraisal or estimated value of real or personal
property, including intellectual property, under consideration for public acquisition before any rights
to the property are acquired unless:
- 93 (a) public interest in obtaining access to the information is greater than or equal to the governmental
entity's need to acquire the property on the best terms possible;
- 95 (b) the information has already been disclosed to persons not employed by or under a duty of
confidentiality to the entity;
- 97 (c) in the case of records that would identify property, potential sellers of the described property have
already learned of the governmental entity's plans to acquire the property;
- 100 (d) in the case of records that would identify the appraisal or estimated value of property, the potential
sellers have already learned of the governmental entity's estimated value of the property; or
- 103 (e) the property under consideration for public acquisition is a single family residence and the
governmental entity seeking to acquire the property has initiated negotiations to acquire the property
as required under Section 78B-6-505;
- 106 (9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction
of real or personal property including intellectual property, which, if disclosed prior to completion
of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
- 110 (a) the public interest in access is greater than or equal to the interests in restricting access, including the
governmental entity's interest in maximizing the financial benefit of the transaction; or

113

SB0233 compared with SB0233S01

- (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
- 116 (10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit
purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
- 119 (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline,
licensing, certification, or registration purposes;
- 121 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
- 123 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
- 125 (d) reasonably could be expected to disclose the identity of a source who is not generally known outside
of government and, in the case of a record compiled in the course of an investigation, disclose
information furnished by a source not generally known outside of government if disclosure would
compromise the source; or
- 129 (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or
orders not generally known outside of government if disclosure would interfere with enforcement or
audit efforts;
- 132 (11) records the disclosure of which would jeopardize the life or safety of an individual;
- 133 (12) records the disclosure of which would jeopardize the security of governmental property,
governmental programs, or governmental recordkeeping systems from damage, theft, or other
appropriation or use contrary to law or public policy;
- 136 (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or
records relating to incarceration, treatment, probation, or parole, that would interfere with the
control and supervision of an offender's incarceration, treatment, probation, or parole;
- 140 (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and
Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons
and Parole, or the Department of Health and Human Services that are based on the employee's or
contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- 145 (15) records and audit workpapers that identify audit, collection, and operational procedures and
methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- 148 (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit
is released;

SB0233 compared with SB0233S01

- 150 (17) records that are subject to the attorney client privilege;
- 151 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or
agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or
administrative proceeding;
- 154 (19)
- (a)
- (i) personal files of a state legislator, including personal correspondence to or from a member of the
Legislature; and
- 156 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or
policy may not be classified as protected under this section; and
- 159 (b)
- (i) an internal communication that is part of the deliberative process in connection with the preparation
of legislation between:
- 161 (A) members of a legislative body;
- 162 (B) a member of a legislative body and a member of the legislative body's staff; or
- 163 (C) members of a legislative body's staff; and
- 164 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or
policy may not be classified as protected under this section;
- 166 (20)
- (a) records in the custody or control of the Office of Legislative Research and General Counsel, that,
if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course
of action before the legislator has elected to support the legislation or course of action, or made the
legislation or course of action public; and
- 171 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of
Legislative Research and General Counsel is a public document unless a legislator asks that the
records requesting the legislation be maintained as protected records until such time as the legislator
elects to make the legislation or course of action public;
- 176 (21) a research request from a legislator to a legislative staff member and research findings prepared in
response to the request;
- 178 (22) drafts, unless otherwise classified as public;
- 179 (23) records concerning a governmental entity's strategy about:

SB0233 compared with SB0233S01

- 180 (a) collective bargaining; or
181 (b) imminent or pending litigation;
- 182 (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered
by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund,
or similar divisions in other governmental entities;
- 185 (25) records, other than personnel evaluations, that contain a personal recommendation concerning
an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or
disclosure is not in the public interest;
- 188 (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources
that if known would jeopardize the security of those resources or of valuable historic, scientific,
educational, or cultural information;
- 191 (27) records of independent state agencies if the disclosure of the records would conflict with the
fiduciary obligations of the agency;
- 193 (28) records of an institution of higher education defined in Section 53H-1-101 regarding tenure
evaluations, appointments, applications for admissions, retention decisions, and promotions, which
could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open
and Public Meetings Act, provided that records of the final decisions about tenure, appointments,
retention, promotions, or those students admitted, may not be classified as protected under this
section;
- 199 (29) records of the governor's office, including budget recommendations, legislative proposals,
and policy statements, that if disclosed would reveal the governor's contemplated policies or
contemplated courses of action before the governor has implemented or rejected those policies or
courses of action or made them public;
- 203 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue
estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in
these areas;
- 206 (31) records provided by the United States or by a government entity outside the state that are given
to the governmental entity with a requirement that they be managed as protected records if the
providing entity certifies that the record would not be subject to public disclosure if retained by it;
- 210 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body
except as provided in Section 52-4-206;

SB0233 compared with SB0233S01

- 212 (33) records that would reveal the contents of settlement negotiations but not including final settlements
or empirical data to the extent that they are not otherwise exempt from disclosure;
- 215 (34) memoranda prepared by staff and used in the decision-making process by an administrative law
judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law
with performing a quasi-judicial function;
- 218 (35) records that would reveal negotiations regarding assistance or incentives offered by or requested
from a governmental entity for the purpose of encouraging a person to expand or locate a business
in Utah, but only if disclosure would result in actual economic harm to the person or place the
governmental entity at a competitive disadvantage, but this section may not be used to restrict access
to a record evidencing a final contract;
- 223 (36) materials to which access must be limited for purposes of securing or maintaining the
governmental entity's proprietary protection of intellectual property rights including patents,
copyrights, and trade secrets;
- 226 (37) the name of a donor or a prospective donor to a governmental entity, including an institution of
higher education defined in Section 53H-1-101, and other information concerning the donation that
could reasonably be expected to reveal the identity of the donor, provided that:
- 230 (a) the donor requests anonymity in writing;
- 231 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified
protected by the governmental entity under this Subsection (37); and
- 233 (c) except for an institution of higher education defined in Section 53H-1-101, the governmental unit
to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors,
and has no regulatory or legislative authority over the donor, a member of the donor's immediate
family, or any entity owned or controlled by the donor or the donor's immediate family;
- 238 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- 239 (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- 241 (40) subject to Subsections (40)(g) and (h), the following records of an institution of higher education
defined in Section 53H-1-101, which have been developed, discovered, disclosed to, or received by
or on behalf of faculty, staff, employees, or students of the institution:
- 245 (a) unpublished lecture notes;
- 246 (b) unpublished notes, data, and information:
- 247 (i) relating to research; and

SB0233 compared with SB0233S01

- 248 (ii) of:
- 249 (A) the institution of higher education defined in Section 53H-1-101; or
- 250 (B) a sponsor of sponsored research;
- 251 (c) unpublished manuscripts;
- 252 (d) creative works in process;
- 253 (e) scholarly correspondence; ~~[{f} and]~~
- 254 (f) confidential information contained in research proposals;
- 255 (g) this Subsection (40) may not be construed to prohibit disclosure of public information required
[pursuant to] in accordance with Subsection 53H-14-202(2)(a) or (b); and
- 258 (h) this Subsection (40) may not be construed to affect the ownership of a record;
- 259 (41)
- (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal
the name of a particular legislator who requests a legislative audit prior to the date that audit is
completed and made public; and
- 262 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the
Legislative Auditor General is a public document unless the legislator asks that the records in the
custody or control of the Office of the Legislative Auditor General that would reveal the name of
a particular legislator who requests a legislative audit be maintained as protected records until the
audit is completed and made public;
- 268 (42) records that provide detail as to the location of an explosive, including a map or other document
that indicates the location of:
- 270 (a) a production facility; or
- 271 (b) a magazine;
- 272 (43) information contained in the statewide database of the Division of Aging and Adult Services
created by Section 26B-6-210;
- 274 (44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child
Welfare Services;
- 276 (45) information regarding National Guard operations or activities in support of the National Guard's
federal mission;

278

SB0233 compared with SB0233S01

- (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
- 281 (47) information regarding food security, risk, and vulnerability assessments performed by the
Department of Agriculture and Food;
- 283 (48) except to the extent that the record is exempt from this chapter [~~pursuant to~~] in accordance with
Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to
or prepared or maintained by the Division of Emergency Management, and the disclosure of which
would jeopardize:
- 287 (a) the safety of the general public; or
- 288 (b) the security of:
- 289 (i) governmental property;
- 290 (ii) governmental programs; or
- 291 (iii) the property of a private person who provides the Division of Emergency Management
information;
- 293 (49) records of the Department of Agriculture and Food that provides for the identification, tracing, or
control of livestock diseases, including any program established under Title 4, Chapter 24, Utah
Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;
- 297 (50) as provided in Section 26B-2-709:
- 298 (a) information or records held by the Department of Health and Human Services related to a complaint
regarding a provider, program, or facility which the department is unable to substantiate; and
- 301 (b) information or records related to a complaint received by the Department of Health and Human
Services from an anonymous complainant regarding a provider, program, or facility;
- 304 (51) unless otherwise classified as public under Section 63G-2-301 and except as provided under
Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone
number, if:
- 307 (a) the individual is required to provide the information in order to comply with a law, ordinance, rule,
or order of a government entity; and
- 309 (b) the subject of the record has a reasonable expectation that this information will be kept confidential
due to:
- 311 (i) the nature of the law, ordinance, rule, or order; and

SB0233 compared with SB0233S01

- 312 (ii) the individual complying with the law, ordinance, rule, or order;
- 313 (52) the portion of the following documents that contains a candidate's residential or mailing address,
if the candidate provides to the filing officer another address or phone number where the candidate
may be contacted:
- 316 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section
20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502,
or 20A-9-601;
- 319 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
- 320 (c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;
- 321 (53) the name, home address, work addresses, and telephone numbers of an individual that is engaged
in, or that provides goods or services for, medical or scientific research that is:
- 323 (a) conducted within the state system of higher education, as described in Section 53H-1-102; and
- 325 (b) conducted using animals;
- 326 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation
Commission concerning an individual commissioner's vote, in relation to whether a judge meets
or exceeds minimum performance standards under Subsection 78A-12-203(4), and information
disclosed under Subsection 78A-12-203(5)(e);
- 330 (55) information collected and a report prepared by the Judicial Performance Evaluation Commission
concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance
Evaluation Commission[~~Aet~~], requires disclosure of, or makes public, the information or report;
- 334 (56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any
contract or other agreement made in accordance with Section 63L-11-202;
- 337 (57) information requested by and provided to the 911 Division under Section 63H-7a-302;
- 338 (58) in accordance with Section 73-10-33:
- 339 (a) a management plan for a water conveyance facility in the possession of the Division of Water
Resources or the Board of Water Resources; or
- 341 (b) an outline of an emergency response plan in possession of the state or a county or municipality;
- 343 (59) the following records in the custody or control of the Office of Inspector General of Medicaid
Services, created in Section 63A-13-201:
- 345 (a) records that would disclose information relating to allegations of personal misconduct, gross
mismanagement, or illegal activity of a person if the information or allegation cannot be

SB0233 compared with SB0233S01

corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

- 351 (b) records and audit workpapers to the extent they would disclose the identity of a person who, during
the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste,
or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws
of this state, a political subdivision of the state, or any recognized entity of the United States, if the
information was disclosed on the condition that the identity of the person be protected;
- 358 (c) before the time that an investigation or audit is completed and the final investigation or final audit
report is released, records or drafts circulated to a person who is not an employee or head of a
governmental entity for the person's response or information;
- 361 (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit
program; or
- 363 (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or
audit;
- 365 (60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the
fraud unit, or the Department of Health and Human Services, to discover Medicaid fraud, waste, or
abuse;
- 368 (61) information provided to the Department of Health and Human Services or the Division of
Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and
(4);
- 371 (62) a record described in Section 63G-12-210;
- 372 (63) captured plate data that is obtained through an automatic license plate reader system used by a
governmental entity as authorized in Section 41-6a-2003;
- 374 (64) an audio or video recording created by a body-worn camera, as that term is defined in Section
77-7a-103, that records sound or images inside a hospital or health care facility as those terms are
defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in
Section 78B-3-403, or inside a human service program as that term is defined in Section 26B-2-101,
except for recordings that:
- 379 (a) depict the commission of an alleged crime;

380

SB0233 compared with SB0233S01

- 382 (b) record any encounter between a law enforcement officer and a person that results in death or bodily
injury, or includes an instance when an officer fires a weapon;
- 384 (c) record any encounter that is the subject of a complaint or a legal proceeding against a law
enforcement officer or law enforcement agency;
- 386 (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
- 388 (e) have been requested for reclassification as a public record by a subject or authorized agent of a
subject featured in the recording;
- (65) a record pertaining to the search process for a president of an institution of higher education
described in Section 53H-3-302;
- 390 (66) an audio recording that is:
- 391 (a) produced by an audio recording device that is used in conjunction with a device or piece of
equipment designed or intended for resuscitating an individual or for treating an individual with a
life-threatening condition;
- 394 (b) produced during an emergency event when an individual employed to provide law enforcement, fire
protection, paramedic, emergency medical, or other first responder service:
- 397 (i) is responding to an individual needing resuscitation or with a life-threatening condition; and
- 399 (ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for
treating an individual with a life-threatening condition; and
- 401 (c) intended and used for purposes of training emergency responders how to improve their response to
an emergency situation;
- 403 (67) records submitted by or prepared in relation to an applicant seeking a recommendation by the
Research and General Counsel Subcommittee, the Budget Subcommittee, or the Legislative Audit
Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;
- 407 (68) work papers as defined in Section 31A-2-204;
- 408 (69) a record made available to Adult Protective Services or a law enforcement agency under Section
61-1-206;
- 410 (70) a record submitted to the Insurance Department in accordance with Section 31A-37-201;
- 412 (71) a record described in Section 31A-37-503;
- 413 (72) any record created by the Division of Professional Licensing as a result of Subsection
58-37f-304(5) or 58-37f-702(2)(a)(ii);

415

SB0233 compared with SB0233S01

- (73) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;
- 417 (74) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political
petition, or on a request to withdraw a signature from a political petition, including a petition or
request described in the following titles:
- 420 (a) Title 10, Utah Municipal Code;
- 421 (b) Title 17, Counties;
- 422 (c) Title 17B, Limited Purpose Local Government Entities - Special Districts;
- 423 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- 424 (e) Title 20A, Election Code;
- 425 (75) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter
registration record;
- 427 (76) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described
in Subsection (74) or (75), in the custody of the lieutenant governor or a local political subdivision
collected or held under, or in relation to, Title 20A, Election Code;
- 430 (77) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims
Guidelines for Prosecutors Act;
- 432 (78) a record submitted to the Insurance Department under Section 31A-48-103;
- 433 (79) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited
under Section 63G-26-103;
- 435 (80) an image taken of an individual during the process of booking the individual into jail, unless:
- 437 (a) the individual is convicted of a criminal offense based upon the conduct for which the individual
was incarcerated at the time the image was taken;
- 439 (b) a law enforcement agency releases or disseminates the image:
- 440 (i) after determining that the individual is a fugitive or an imminent threat to an individual or to
public safety and releasing or disseminating the image will assist in apprehending the individual or
reducing or eliminating the threat; or
- 443 (ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal
investigation or criminal proceeding for the purpose of identifying or locating an individual in
connection with the criminal investigation or criminal proceeding;
- 447

SB0233 compared with SB0233S01

- (c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest; or
- 449 (d) the image is displayed to a person who is permitted to view the image under Section 17-72-802;
- 451 (81) a record:
- 452 (a) concerning an interstate claim to the use of waters in the Colorado River system;
- 453 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and
- 456 (c) the disclosure of which would:
- 457 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
- 459 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
- 462 (iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
- 464 (82) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (82) may not be used to restrict access to a record evidencing a final contract or approval decision;
- 469 (83) the following records of a drinking water or wastewater facility:
- 470 (a) an engineering or architectural drawing of the drinking water or wastewater facility; and
- 472 (b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (83)(a);
- 475 (84) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:
- 478 (a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and
- 481 (b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding;
- 483 (85) any part of an application for a Utah Fits All Scholarship account described in Section 53F-6-402 or other information identifying a scholarship student as defined in Section 53F-6-401;

SB0233 compared with SB0233S01

- 486 (86) a record:
- 487 (a) concerning a claim to the use of waters in the Great Salt Lake;
- 488 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a person concerning
the claim, including a representative from another state or the federal government; and
- 491 (c) the disclosure of which would:
- 492 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Great Salt Lake;
- 494 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms and conditions
regarding the use of water in the Great Salt Lake; or
- 496 (iii) give an advantage to another person including another state or to the federal government in
negotiations regarding the use of water in the Great Salt Lake;
- 498 (87) a consumer complaint described in Section 13-2-11, unless the consumer complaint is reclassified
as public as described in Subsection 13-2-11(4);
- 500 (88) a record of the Utah water agent, appointed under Section 73-10g-702:
- 501 (a) concerning a claim to the use of waters;
- 502 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative
from another state, a tribe, the federal government, or other government entity as provided in Title
73, Chapter 10g, Part 7, Utah Water Agent; and
- 506 (c) the disclosure of which would:
- 507 (i) reveal a legal strategy relating to the state's claim to the use of the water;
- 508 (ii) harm the ability of the Utah water agent to negotiate the best terms and conditions regarding the use
of water; or
- 510 (iii) give an advantage to another state, a tribe, the federal government, or other government entity in
negotiations regarding the use of water; and
- 512 (89) a record created or maintained for an investigation of the Prosecutor Conduct Commission, created
in Section 63M-7-1102, that contains any personal identifying information of a prosecuting attorney,
including:
- 515 (a) a complaint, or a document that is submitted or created for a complaint, received by the Prosecutor
Conduct Commission; or
- 517 (b) a finding by the Prosecutor Conduct Commission.

519 Section 2. Section **78A-12-102** is amended to read:

519 **CHAPTER 12. Judicial Performance Evaluation Commission**

SB0233 compared with SB0233S01

520

Part 1. General Provisions

522

78A-12-102. Definitions for chapter.

As used in this chapter:

523

(1) "Commission" means the Judicial Performance Evaluation Commission established [~~by this chapter~~] in Section 78A-12-103.

525

(2) "Does not meet or exceed minimum performance standards" means that:

526

(a)

(i) a judge does not meet the certification standards under Section 78A-12-205; and

527

(ii) the presumption, described in Subsection 78A-12-203(4)(b)(ii), that the judge does not meet or exceed minimum performance standards is not overcome by substantial countervailing evidence; or

530

(b) a judge meets the certification standards under Section 78A-12-205, but the presumption, described in Subsection 78A-12-203(4)(b)(i), that the judge meets or exceeds minimum performance standards is overcome by substantial countervailing evidence.

534

(3) [~~Except as provided in Section 78A-12-207, "judge" means~~] "Judge" means, except as provided in Section 78A-12-207, a state court judge or a state court justice who is subject to a retention election.

537

(4) "Justice" means a judge who is a member of the Supreme Court.

538

(5) "Justice court judge" means a judge appointed pursuant to Title 78A, Chapter 7, Justice Court.

540

(6) "Meets or exceeds minimum performance standards" means that:

541

(a)

(i) a judge meets the certification standards under Section 78A-12-205; and

542

(ii) the presumption that the judge meets or exceeds minimum performance standards, described in Subsection 78A-12-203(4)(b)(i), is not overcome by substantial countervailing evidence; or

545

(b) a judge does not meet the certification standards under Section 78A-12-205, but the presumption described in Subsection 78A-12-203(4)(b)(ii), that the judge does not meet or exceed minimum performance standards, is overcome by substantial countervailing evidence.

550

Section 3. Section **78A-12-103** is renumbered and amended to read:

552

~~[78A-12-201]~~ **78A-12-103. Judicial Performance Evaluation Commission -- Creation --**

Membership.

553

(1) There is created an independent commission called the Judicial Performance Evaluation Commission consisting of 13 members, as follows:

555

SB0233 compared with SB0233S01

- (a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;
- 557 (b) two members appointed by the speaker of the House of Representatives, only one of whom may be a member of the Utah State Bar;
- 559 (c) four members appointed by the members of the Supreme Court, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar;
- 561 (d) four members appointed by the governor, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar; and
- 563 (e) the executive director of the State Commission on Criminal and Juvenile Justice.
- 564 (2)
- (a) The president of the Senate and the speaker of the House of Representatives shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is at least one member from among their four appointees who is a member of the Utah State Bar.
- 568 (b) A sitting legislator or a sitting judge may not serve as a commission member.
- 569 (3)
- (a) A member appointed under Subsection (1) shall be appointed for a four-year term.
- 570 (b) A member may serve no more than three consecutive terms.
- 571 (4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.
- 573 (5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the same appointing authority that appointed the member creating the vacancy.
- 576 ~~(6)~~
- (a) ~~Eight members of the commission constitute a quorum.~~
- 577 ~~(b) The action of a majority of the quorum constitutes the action of the commission, except that the commission may not make a determination that a judge meets or exceeds minimum performance standards, or that a judge does not meet or exceed minimum performance standards, by a vote of less than six members.~~
- 581 ~~(c) If, because of absences, the commission is unable to make a determination described in Subsection (6)(b) by at least six votes, the commission may meet a second time to make a determination.~~
- 584

SB0233 compared with SB0233S01

~~[(d) If a vote on the question of whether a judge meets or exceeds minimum performance standards or does not meet or exceed minimum performance standards ends in a tie or does not pass by at least six votes, the record shall reflect that the commission made no determination in relation to that judge.]~~

588 {~~(7)~~}

~~{(a) Any meeting of the commission shall comply with Title 52, Chapter 4, Open and Public Meetings Act, including any electronic meeting.}~~

590 ~~{(b) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.}~~

593 ~~{(c) Notwithstanding Subsection (7)(b), any vote of the commission on whether a judge meets or exceeds minimum performance standards shall occur in a meeting open to the public.}~~

589 Section 4. Section **78A-12-104** is renumbered and amended to read:

591 ~~[78A-12-202]~~ **78A-12-104. Salary and expenses -- Staff.**

599 (1) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

601 (a) Section 63A-3-106;

602 (b) Section 63A-3-107; and

603 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

605 (2) The commission shall elect a chair from among ~~[its]~~ the commission's members.

606 (3) The commission shall employ an executive director and may employ additional staff as necessary within budgetary constraints.

608 (4) The commission shall be located in the State Commission on Criminal and Juvenile Justice.

603 Section 5. Section **5** is enacted to read:

604 **78A-12-105. Quorum -- Voting requirements -- Meetings.**

605 (1)

(a) Eight members of the commission constitute a quorum.

606 (b) The action of a majority of the quorum constitutes the action of the commission, except that the commission may not make a determination that a judge meets or exceeds minimum performance standards, or that a judge does not meet or exceed minimum performance standards, by a vote of less than six members.

610

SB0233 compared with SB0233S01

- 613 (c) If, because of absences, the commission is unable to make a determination described in Subsection (1)(b) by at least six votes, the commission may meet a second time to make a determination.
- (d) If a vote on the question of whether a judge meets or exceeds minimum performance standards or does not meet or exceed minimum performance standards ends in a tie or does not pass by at least six votes, the record shall reflect that the commission made no determination in relation to that judge.
- 617 (2)
- (a) A member of the commission, including a member of the Utah State Bar, may not be disqualified from voting on whether a judge meets or exceeds minimum performance standards solely because the member appears before the judge as an attorney, a fact witness, or an expert, unless the member is a litigant in a case pending before the judge.
- 622 (b) Notwithstanding Subsection (2)(a), a member of the commission shall disclose any conflicts of interest with a judge being reviewed to the other members of the commission before the deliberation and vote on whether the judge meets or exceeds minimum performance standards.
- 626 (c) Information disclosed under this Subsection (2) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- 628 (3)
- (a) Any meeting of the commission shall comply with Title 52, Chapter 4, Open and Public Meetings Act, including any electronic meeting.
- 630 (b) The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.
- 633 (c) Notwithstanding Subsection (3)(b), any vote of the commission on whether a judge meets or exceeds minimum performance standards shall occur in a meeting open to the public.
- 636 (d) The commission may only disclose the final commission vote under Subsection (3)(c).
- 637 (4) Any record of an individual commissioner's vote on whether a judge meets or exceeds minimum performance standards is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

640 Section 6. Section 6 is enacted to read:

641 **78A-12-106. Report to Judiciary Interim Committee.**

642

SB0233 compared with SB0233S01

(1) Before October 1, 2026, the commission shall study whether the number of times that a judge is overturned on appeal for an abuse of discretion should be included in a judicial performance evaluation.

645 (2) No later than November 1, 2026, the commission shall provide a written report to the Judiciary Interim Committee regarding the outcome of the study described in Subsection (1).

648 Section 7. Section **78A-12-203** is amended to read:

611 **Part 2. Judicial Performance Evaluation**

650 **78A-12-203. Judicial performance evaluation.**

613 (1) [~~Beginning with the 2012 judicial retention elections, the~~] The commission shall prepare a judicial performance evaluation for:

615 (a) each judge in the third and fifth year of the judge's term if the judge is not a justice of the Supreme Court; and

617 (b) each justice of the Utah Supreme Court in the third, seventh, and ninth year of the justice's term.

619 (2) [~~Except as provided in Subsection (3), the~~]

620 (a) Subject to Subsection (2)(b), the judicial performance evaluation for a judge under Subsection (1) shall consider only the following information[~~but shall give primary emphasis to the information that is gathered and relates to the performance of the judge during the period subsequent to the last judicial retention election of that judge or if the judge has not had a judicial retention election, during the period applicable to the first judicial retention election~~]:

626 [(a)] (i) the results of the judge's most recent judicial performance survey that is conducted by a third party [~~in accordance with~~] as described in Section 78A-12-204;

628 [(b)] (ii) information concerning the judge's compliance with certification standards [~~established in accordance with~~] described in Section 78A-12-205;

630 [(c)] (iii) courtroom observation;

631 [(d)] (iv) the judge's judicial disciplinary record, if any;

632 [(e)] (v) public comment solicited by the commission;

633 [(f)] (vi) information from an earlier judicial performance evaluation concerning the judge[~~except that the commission shall give primary emphasis to information gathered subsequent to the last judicial retention election~~]; and

636 [(g)] (vii) any other factor that the commission:

637

SB0233 compared with SB0233S01

[†] (A) considers relevant to evaluating the judge's performance for the purpose of a retention election;
and

639 [†] (B) establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
Rulemaking Act.

641 (b) The judicial performance evaluation for a judge under Subsection (1) shall give primary emphasis to
the information that is gathered and relates to the performance of the judge during:

644 (i) the period subsequent to the last judicial retention election of that judge; or

645 (ii) the period applicable to the first judicial retention election if the judge has not had a judicial
retention election.

647 (3) The commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
Act, make rules concerning the conduct of courtroom observation under Subsection (2), [~~which shall
include the following~~] including:

650 (a) an indication of who may perform the courtroom observation;

651 (b) a determination of whether the courtroom observation shall be made in person or may be made by
electronic means; and

653 (c) a list of principles and standards used to evaluate the behavior observed.

654 (4)

(a) As part of [~~the evaluation~~] a judicial performance evaluation conducted under this section, the
commission shall[~~do one of the following~~]:

656 (i) determine, by a vote of at least six members, that the judge meets or exceeds minimum
performance standards;

658 (ii) determine, by a vote of at least six members, that the judge does not meet or exceed minimum
performance standards;

660 (iii) determine, by a majority vote, that the information concerning the judge is insufficient to make
a determination described in Subsection (4)(a)(i) or (ii); or

662 (iv) fail to make a determination described in Subsection (4)(a)(i), (ii), or (iii) by the number of
votes required for one of those determinations.

664 (b)

(i) If a judge meets the certification standards established in accordance with Section 78A-12-205, there
is a rebuttable presumption that the judge meets or exceeds minimum performance standards.

667

SB0233 compared with SB0233S01

- (ii) If a judge fails to meet the certification standards established in accordance with Section 78A-12-205, there is a rebuttable presumption that the judge does not meet or exceed minimum performance standards.
- 670 (c) If the commission deviates from a presumption described in Subsection (4)(b), the commission shall provide a detailed explanation of the reason for that deviation in the commission's report under Section 78A-12-206.
- 673 (d) If the commission makes the determination described in Subsection (4)(a)(iii) or fails to make a determination described in Subsection (4)(a)(i), (ii), or (iii) by the number of votes required for those determinations, the commission shall note that fact in the commission's report.
- 677 (5)
- ~~[(a) The commission shall allow a judge who is the subject of a judicial performance retention evaluation, and who has not passed one or more of the certification standards on the retention evaluation, to appear and speak at any commission meeting during which the judge's judicial performance evaluation is considered.]~~
- 681 (a) If a judge is the subject of a performance evaluation and has not passed one or more of the certification standards for that performance evaluation, the commission shall grant the judge time to appear and speak at a commission meeting during which the judge's performance evaluation will be considered.
- 685 (b) The commission may invite any judge to appear before the commission to discuss concerns about the judge's judicial performance.
- 687 [(e)
- (i) ~~The commission may meet in a closed meeting to discuss a judge's judicial performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.]~~
- 690 [(ii) ~~The commission may meet in an electronic meeting by complying with Title 52, Chapter 4, Open and Public Meetings Act.]~~
- 692 [(d) ~~Any record of an individual commissioner's vote under Subsection (4) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.]~~
- 694 [(e){ ~~(e)~~ }
- (i) A member of the commission, including a member of the Utah State Bar, may not be disqualified from voting under Subsection (4) solely because the member appears before the judge as an

SB0233 compared with SB0233S01

attorney, a fact witness, or an expert, unless the member is a litigant in a case pending before the judge.]

698 [(ii) Notwithstanding Subsection {f} (5)(e)(i) { } (5)(e)(i)}, a member of the commission shall disclose
any conflicts of interest with the judge being reviewed to the other members of the commission
before the deliberation and vote under Subsection (4).]

701 [(iii) Information disclosed under this Subsection {f} (5)(e) { } (5)(e)} is a protected record under Title
63G, Chapter 2, Government Records Access and Management Act.]

703 [(f) The commission may only disclose the final commission vote described in Subsection (4).]

705 (6)

(a) If the Utah Supreme Court issues a public sanction of a judge after the commission makes or fails to make a determination described in Subsection (4), but before the publication of the voter information pamphlet in accordance with Section 20A-7-702, the commission may elect to reconsider the commission's action.

709 (b) The commission shall invite the judge described in Subsection (6)(a) to appear before the commission during a closed meeting for the purpose of reconsidering the commission's action.

712 (c) The judge described in Subsection (6)(a) may provide a written statement, not to exceed 100 words, that shall be included in the judge's judicial performance evaluation report.

715 (d) The commission shall include in the judge's judicial performance evaluation report:

716 (i) the date of the reconsideration;

717 (ii) any change in the action of the commission; and

718 (iii) a brief statement explaining the reconsideration.

719 (e) The commission shall:

720 (i) submit revisions to the judge's judicial performance evaluation report to the lieutenant governor by no later than August 31 of a regular general election year for publication in the voter information pamphlet~~[, and]~~ ; and

723 (ii) publish the revisions on the commission's website, and through any other means the commission considers appropriate and within budgetary constraints.

725 (7)

(a) The commission shall compile a midterm report of the commission's judicial performance evaluation of a judge.

727

SB0233 compared with SB0233S01

- (b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.
- 729 (c)
- (i) The report shall be provided to the evaluated judge, the presiding judge of the district in which the evaluated judge serves, and the Judicial Council.
- 731 (ii) If the evaluated judge is the presiding judge, the midterm report shall be provided to the chair of the board of judges for the court level on which the evaluated judge serves.
- 734 (d)
- (i) The commission may provide a partial midterm evaluation to a judge whose appointment date precludes the collection of complete midterm evaluation data.
- 736 (ii) For a newly appointed judge, a midterm evaluation is considered partial when the midterm evaluation is missing a respondent group, including attorneys, court staff, court room observers, or intercept survey respondents.
- 739 (iii) A judge who receives partial midterm evaluation data may receive a statement in acknowledgment of that fact on the judge's voter information pamphlet page.
- 741 (iv) On or before the beginning of the retention evaluation cycle, the commission shall inform the Judicial Council of the name of any judge who receives a partial midterm evaluation.
- 744 (8) The commission shall identify a judge whose midterm evaluation:
- 745 (a) fails to meet certification standards in accordance with Section 78A-12-205 or as established by rule; or
- 747 (b) otherwise demonstrates to the commission that the judge's performance would be of such concern if the performance occurred in a retention evaluation that the judge would be invited to appear before the commission in accordance with Subsection (5)(b).
- 751 (9) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.
- 792 Section 8. Section **78A-12-204** is amended to read:
- 793 **78A-12-204. Judicial performance survey.**
- 756 (1) A third party under contract to the commission shall conduct, on an ongoing basis during the judge's term in office, the judicial performance survey required by Section 78A-12-203 concerning a judge who is subject to a retention election.
- 759 (2)

SB0233 compared with SB0233S01

- (a) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:
- 761 (i) attorneys who have appeared before the judge as counsel;
- 762 (ii) jurors who have served in a case before the judge; ~~[{f}] and~~
- 763 (iii) court staff who have worked with the judge ~~[-]~~ ; and
- 764 (iv) to the extent practical, individuals who have appeared before the judge as a party in a case.
- 765 (b) Only a respondent under Subsection (2)(a)(i) who is admitted to practice law in the state and in good standing with the Utah State Bar may evaluate a judge's legal ~~[ability]~~ competence under Subsection (7)(a).
- 768 (3) The commission may include an additional classification of respondents if the commission:
- 770 (a) considers a judicial performance survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and
- 772 (b) establishes the additional classification of respondents by rule.
- 773 (4) All survey responses for a judicial performance survey are confidential, including comments included with a survey response.
- 775 (5) If the commission provides information to a judge or the Judicial Council, the commission shall provide the information in such a way as to protect the anonymity of a survey respondent.
- 778 ~~[(6) A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.]~~
- 782 (6) A judicial performance survey shall be provided to a potential survey respondent:
- 783 (a) if the potential survey respondent is court staff or an attorney, at any time during the survey period;
- 785 (b) if the potential survey respondent is a juror, within 30 days after the verdict is reached; and
- 787 (c) if the potential survey respondent is an individual who appeared before the judge as a party and to the extent practical, within 90 days after the day on which the case is closed excluding any time for an appeal.
- 790 (7) ~~[Survey categories shall include questions concerning a judge's]~~ A judicial performance survey shall provide a survey respondent with the ability to evaluate:
- 792 (a) ~~[legal ability, including the following]~~ a judge's legal competence, including:
- 793 (i) ~~[demonstration of]~~ demonstrated understanding of the substantive law and any relevant rules of procedure and evidence;

SB0233 compared with SB0233S01

- 795 (ii) attentiveness to factual and legal issues before the court;
- 796 (iii) adherence to precedent and ability to clearly explain departures from precedent; and
- 798 (iv) ~~[grasp]~~ awareness of the practical impact on the parties of the judge's rulings, including the effect of
delay and increased litigation expense;
- 800 ~~[(v) ability to write clear judicial opinions; and]~~
- 801 ~~[(vi) ability to clearly explain the legal basis for judicial opinions;]~~
- 802 (b) a judge's impartiality, including:
- 803 (i) absence of bias or prejudice based on race, sex, religion, national origin, disability, age, sexual
orientation, political affiliation, socioeconomic status, legal representation, or mental health or
competency;
- 806 (ii) demonstrated fairness and neutrality towards all parties;
- 807 (iii) consideration given to all arguments and viewpoints before rendering a final decision; and
- 809 (iv) respect and dignified treatment, given equally and without favoritism, towards attorneys, court
staff, and all other individuals appearing before the judge;
- 811 (c) a judge's ability to communicate clearly, including:
- 812 (i) ability to write clear judicial opinions or decisions, findings of fact, conclusions of law, and other
orders;
- 814 (ii) ability to write a clear factual and legal basis for judicial opinions and decisions; and
- 816 (iii) demonstrated ability to adapt the judge's communication style, including the use of plain language,
when needed to communicate with specific individuals, parties, or audiences;
- 819 ~~[(b)]~~ (d) the judge's judicial temperament~~[and integrity, including the following]~~ , including:
- 821 (i) ~~[demonstration of]~~ demonstrated courtesy toward attorneys, court staff, and others in the judge's
court;
- 823 ~~[(ii) maintenance of decorum in the courtroom;]~~
- 824 ~~[(iii)]~~ (ii) ~~[demonstration of]~~ the ability to maintain judicial demeanor and personal attributes that
promote public trust and confidence in the judicial system;
- 826 ~~[(iv) preparedness for oral argument;]~~
- 827 (iii) ability to maintain courtroom decorum;
- 828 ~~[(v)]~~ (iv) avoidance of impropriety or the appearance of impropriety; and
- 829 (v) attentiveness towards the proceedings and all parties; and
- 830 ~~[(vi) display of fairness and impartiality toward all parties; and]~~

SB0233 compared with SB0233S01

- 831 [~~(vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court
procedures, and decisions; and]~~
- 833 [~~(e) (e) administrative [performance, including the following] capacity, including:~~
- 834 [~~(i) management of workload;~~
- 835 [~~(ii) sharing proportionally the workload within the court or district; and]~~
- 836 [~~(iii) issuance of opinions and orders without unnecessary delay.]~~
- 837 (i) effective management of workload and the competent use of technology necessary to manage cases,
court filings, and otherwise discharge judicial duties;
- 839 (ii) timely issuance of opinions, orders, and other judicial rulings without unnecessary delay; and
- 841 (iii) ability to set clear expectations and timelines and to regularly monitor cases and streamline
procedures.
- 843 (8) If the commission determines that a certain survey question or category of questions is not
appropriate for a respondent group, the commission may omit that question or category of questions
from the judicial performance survey provided to that respondent group.
- 847 [~~(9)~~
- (a) ~~The survey shall allow respondents to indicate responses in a manner determined by the
commission, which shall be:]~~
- 849 [~~(i) on a numerical scale from one to five; or]~~
- 850 [~~(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in
the affirmative or negative.]~~
- 852 [~~(b)~~
- (i) ~~To supplement the responses to questions on either a numerical scale or in the affirmative or
negative, the commission may allow respondents to provide written comments.]~~
- 855 [~~(ii) The executive director may not provide the commission a comment that would be prohibited in
relation to taking an employment action under federal or state law.]~~
- 857 (9) The commission may formulate questions that allow survey respondents to provide responses
through various means, including the ability to:
- 859 (a) rank individuals and activities on a numerical scale;
- 860 (b) evaluate judicial performance using affirmative or negative responses, including the option to
indicate the respondent's inability to respond in the affirmative or negative;
- 862

SB0233 compared with SB0233S01

- (c) answer nonrestrictive questions that explain or expand upon the survey categories described in Subsection (7) by providing additional written comments; and
- 864 (d) supplement answers that rank individuals or activities based on a numerical scale or that call for an affirmative or negative answer by {providing an option that allows} allowing a survey respondent to {write a} commentin writing.
- 867 (10) The executive director may not provide the commission with any response that would be prohibited in relation to taking an employment action under federal or state law.
- 869 ~~[(10)]~~ (11) The commission shall compile and make available to each judge that judge's judicial performance survey results with each of the judge's judicial performance evaluations.
- 872 ~~[(11)]~~ (12) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.
- 914 Section 9. Section **78A-12-205** is amended to read:
- 915 **78A-12-205. Certification standards.**
- 877 (1) As used in this section:
- 878 (a) "Opinions" means the decisions authored by a judge for the calendar year.
- 879 (b) "Submission" means the later of the day on which:
- 880 (i) staff placed a matter in the case needing a decision from the court in the judge's personal electronic queue or inbox, personal possession, or any other equivalent;
- 882 (ii) if a hearing or oral argument is set for a matter in the case, the hearing or oral argument concluded;
or
- 884 (iii) if further briefing is required in the case after a hearing or oral argument, all briefing is completed, a request to submit is filed, or the matter is placed in the judge's personal electronic queue or inbox, personal possession, or any other equivalent.
- 888 ~~[(1)]~~ (2) The commission shall establish certification standards requiring that:
- 889 (a) the judge have no more than one public sanction issued by the ~~[Utah]~~Supreme Court during the judge's current term; and
- 891 (b) the judge receive a minimum score on the judicial performance survey as follows:
- 892 (i) an average score of no less than 65% on each survey category as provided in Subsection 78A-12-204(7); and
- 894 (ii) if the commission includes a question on the survey that does not use the numerical scale, ~~[the commission shall establish the certification standard for all questions that do not use the numerical~~

SB0233 compared with SB0233S01

scale to be substantially equivalent] a substantial equivalent to the standard required under Subsection [(1)(b)(i)] (2)(b)(i).

898 (3) In addition to Subsection (2), the commission shall establish certification standards for a judge of
the Supreme Court or Court of Appeals that address timely management of the judge's caseload,
including:

901 (a) for a justice of the Supreme Court, a certification standard that requires the justice to have
distributed to other members of the Supreme Court:

903 (i) no more than 25% of opinions more than 150 days after submission;

904 (ii) no more than 10% of opinions more than 210 days after submission; and

905 (iii) 100% of all opinions within one year after submission; and

906 (b) for a judge of the Court of Appeals, a certification standard that requires the judge to have
distributed to other members of a Court of Appeals' panel:

908 (i) no more than 25% of opinions more than 120 days after submission;

909 (ii) no more than 10% of opinions more than 180 days after submission; and

910 (iii) 100% of all opinions within 270 days after submission.

911 [(2)] (4) The commission may establish an additional certification standard if the commission by at least
two-thirds vote:

913 (a) determines that satisfaction of the standard is necessary to the satisfactory performance of the judge;
and

915 (b) adopts the standard.

916 [(3)] (5) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative
Rulemaking Act, to establish a certification standard.

957 Section 10. **Repealer.**

This Bill Repeals:

958 This bill repeals:

959 Section **78A-12-101, Title.**

918 ~~{Section 8. Section 78A-12-206 is amended to read: }~~

919 **78A-12-206. Publication of the judicial performance evaluation -- Response by judge.**

921 (1)

(a) The commission shall compile a retention report of the commission's judicial performance
evaluation of a judge.

SB0233 compared with SB0233S01

- 923 (b) The report of a judicial performance evaluation nearest the judge's next scheduled retention election shall be provided to the judge at least 45 days before the last day on which the judge may file a declaration of the judge's candidacy in the retention election.
- 927 (c) A report prepared in accordance with Subsection (1)(b) and information obtained in connection with the evaluation becomes a public record under Title 63G, Chapter 2, Government Records Access and Management Act, on the day following the last day on which the judge who is the subject of the report may file a declaration of the judge's candidacy in the judge's scheduled retention election if the judge declares the judge's candidacy for the retention election.
- 933 (d) Information collected and a report that is not public under Subsection (1)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- 936 (2) Within 15 days of receiving a copy of the commission's report under Subsection (1)(b):
- 937 (a) a judge who is the subject of an unfavorable action under Subsection 78A-12-203(4) may:
- 939 (i) provide a written response to the commission about the report; and
- 940 (ii) request an interview with the commission for the purpose of addressing the report; and
- 942 (b) a judge who is the subject of a favorable action under Subsection 78A-12-203(4) may provide a written response to the commission about the commission's report.
- 944 (3)
- (a) After receiving a response from a judge in any form allowed by Subsection (2), the commission may meet and reconsider the commission's action.
- 946 (b) If the commission does not change the commission's action, the judge may provide a written statement, not to exceed 100 words, that shall be included in the commission's report.
- 949 (4) The retention report of a judicial performance evaluation shall include:
- 950 (a) the results of the judicial performance survey, in both raw and summary form;
- 951 (b) information concerning the judge's compliance with the certification standards, including stating how many of the certification standards the judge met;
- 953 (c) information concerning any public discipline that a judge has received that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct Commission;
- 956 (d) a narrative concerning the judge's performance;
- 957 (e) the commission's determination under Subsection 78A-12-203(4);
- 958 (f) the number of votes for and against a determination described in Subsection 78A-12-203(4); and
- 960

SB0233 compared with SB0233S01

(g) any other information the commission considers necessary to include in the report to explain the certification standards and the determination or lack of a determination made.

963 (5) The retention report of a judicial performance evaluation may include the number of times that the
judge has been overturned on appeal for an abuse of discretion for the current reporting period.

966 [~~5~~] (6)

(a) The commission may not include in the commission's retention report specific information concerning an earlier judicial performance evaluation.

968 (b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if necessary to explain performance in the current reporting period and giving primary emphasis to the information gathered during the current reporting period.

972 [~~6~~] (7) The retention report of the commission's judicial performance evaluation shall be made publicly available on an [~~Internet~~] internet website.

974 [~~7~~] (8) The commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

977 [~~8~~] (9) The commission shall provide a summary of the judicial performance evaluation for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

980 [~~9~~] (10) The commission shall provide the Judicial Council with:

981 (a) the judicial performance survey results for each judge; and

982 (b) a copy of the retention report of each judicial performance evaluation.

983 [~~10~~] (11) The Judicial Council shall provide information obtained concerning a judge under Subsection (9) to the subject judge's presiding judge, if any.

960 Section 11. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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