

1 **Judicial Performance Evaluation Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brady Brammer**

House Sponsor:

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**LONG TITLE****General Description:**

5 This bill makes changes related to the Judicial Performance Evaluation Commission.

**Highlighted Provisions:**

7 This bill:

8 ▶ amends definitions;

9 ▶ renumbers statutes in Title 78A, Chapter 12, Judicial Performance Evaluation

10 Commission;

11 ▶ addresses the requirements for a meeting of the Judicial Performance Evaluation  
12 Commission (Commission);

13 ▶ requires the Commission to allow a judge to appear and speak at a commission meeting in  
14 certain circumstances;

15 ▶ modifies the requirements for the judicial performance survey, including the contents of  
16 the survey;

17 ▶ modifies the certification standards for judicial performance, including the certification  
18 standards for a justice of the Utah Supreme Court and a judge of the Utah Court of  
19 Appeals;

20 ▶ allows a retention report on judicial performance to include the number of times that the  
21 judge has been overturned on appeal for an abuse of discretion for the current reporting  
22 period; and

23 ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

25 None

**Other Special Clauses:**

27 None

**Utah Code Sections Affected:****AMENDS:**

30 **63G-2-305**, as last amended by Laws of Utah 2025, First Special Session, Chapter 17

31       **78A-12-102**, as last amended by Laws of Utah 2022, Chapter 11  
32       **78A-12-203**, as last amended by Laws of Utah 2022, Chapter 11  
33       **78A-12-204**, as last amended by Laws of Utah 2017, Chapters 81, 374  
34       **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

36       RENUMBERS AND AMENDS:

37       **78A-12-103**, (Renumbered from 78A-12-201, as last amended by Laws of Utah 2025,  
38       Chapter 57)  
39       **78A-12-104**, (Renumbered from 78A-12-202, as last amended by Laws of Utah 2010,  
40       Chapter 286)

41       REPEALS:

42       **78A-12-101**, as enacted by Laws of Utah 2008, Chapter 248

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

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

46       **63G-2-305 . Protected records.**

47       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  
49       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  
51       if:  
52           (a) disclosure of the information could reasonably be expected to result in unfair  
53           competitive injury to the person submitting the information or would impair the  
54           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  
56           the public in obtaining access; and  
57           (c) the person submitting the information has provided the governmental entity with the  
58           information specified in Section 63G-2-309;  
59       (3) commercial or financial information acquired or prepared by a governmental entity to  
60       the extent that disclosure would lead to financial speculations in currencies, securities, or  
61       commodities that will interfere with a planned transaction by the governmental entity or  
62       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  
64       competitive advantage upon a potential or actual competitor of, a commercial project

65 entity as defined in Subsection 11-13-103(4);

66 (5) test questions and answers to be used in future license, certification, registration,

67 employment, or academic examinations;

68 (6) records, the disclosure of which would impair governmental procurement proceedings

69 or give an unfair advantage to any person proposing to enter into a contract or agreement

70 with a governmental entity, except, subject to Subsections (1) and (2), that this

71 Subsection (6) does not restrict the right of a person to have access to, after the contract

72 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

74 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

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

82 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not

83 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

85 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

87 subject of the request for information; and

88 (ii) at least two years have passed after the day on which the request for information

89 is issued;

90 (8) records that would identify real property or the appraisal or estimated value of real or

91 personal property, including intellectual property, under consideration for public

92 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

94 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

96 duty of confidentiality to the entity;

97 (c) in the case of records that would identify property, potential sellers of the described

98 property have already learned of the governmental entity's plans to acquire the

property;

- (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
- (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; 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:
  - (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
  - (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;
- ) 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:
  - (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
  - (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
  - (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
  - (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
  - (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;
- ) 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  
134 property, governmental programs, or governmental recordkeeping systems from  
135 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  
137 facility, or records relating to incarceration, treatment, probation, or parole, that would  
138 interfere with the control and supervision of an offender's incarceration, treatment,  
139 probation, or parole;

140 (14) records that, if disclosed, would reveal recommendations made to the Board of  
141 Pardons and Parole by an employee of or contractor for the Department of Corrections,  
142 the Board of Pardons and Parole, or the Department of Health and Human Services that  
143 are based on the employee's or contractor's supervision, diagnosis, or treatment of any  
144 person within the board's jurisdiction;

145 (15) records and audit workpapers that identify audit, collection, and operational procedures  
146 and methods used by the State Tax Commission, if disclosure would interfere with  
147 audits or collections;

148 (16) records of a governmental audit agency relating to an ongoing or planned audit until  
149 the final audit is released;

150 (17) records that are subject to the attorney client privilege;

151 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
152 employee, or agent of a governmental entity for, or in anticipation of, litigation or a  
153 judicial, quasi-judicial, or administrative proceeding;

154 (19)(a)(i) personal files of a state legislator, including personal correspondence to or  
155 from a member of the Legislature; and

156 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
157 legislative action or policy may not be classified as protected under this section;  
158 and

159 (b)(i) an internal communication that is part of the deliberative process in connection  
160 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  
165 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

167 General Counsel, that, if disclosed, would reveal a particular legislator's  
168 contemplated legislation or contemplated course of action before the legislator has  
169 elected to support the legislation or course of action, or made the legislation or course  
170 of action public; and

171 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
172 Office of Legislative Research and General Counsel is a public document unless a  
173 legislator asks that the records requesting the legislation be maintained as protected  
174 records until such time as the legislator elects to make the legislation or course of  
175 action public;

176 (21) a research request from a legislator to a legislative staff member and research findings  
177 prepared in response to the request;

178 (22) drafts, unless otherwise classified as public;

179 (23) records concerning a governmental entity's strategy about:

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  
183 be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
184 Uninsured Employers' Fund, or similar divisions in other governmental entities;

185 (25) records, other than personnel evaluations, that contain a personal recommendation  
186 concerning an individual if disclosure would constitute a clearly unwarranted invasion  
187 of personal privacy, or disclosure is not in the public interest;

188 (26) records that reveal the location of historic, prehistoric, paleontological, or biological  
189 resources that if known would jeopardize the security of those resources or of valuable  
190 historic, scientific, educational, or cultural information;

191 (27) records of independent state agencies if the disclosure of the records would conflict  
192 with the fiduciary obligations of the agency;

193 (28) records of an institution of higher education defined in Section 53H-1-101 regarding  
194 tenure evaluations, appointments, applications for admissions, retention decisions, and  
195 promotions, which could be properly discussed in a meeting closed in accordance with  
196 Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final  
197 decisions about tenure, appointments, retention, promotions, or those students admitted,  
198 may not be classified as protected under this section;

199 (29) records of the governor's office, including budget recommendations, legislative  
200 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;

(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;

(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;

(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;

(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;

(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;

(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;

(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;

(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:

(a) the donor requests anonymity in writing;

(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

(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,

235 charitable, or artistic endeavors, and has no regulatory or legislative authority over  
236 the donor, a member of the donor's immediate family, or any entity owned or  
237 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  
240 34A-2-205;

241 (40) subject to Subsections (40)(g) and (h), the following records of an institution of higher  
242 education defined in Section 53H-1-101, which have been developed, discovered,  
243 disclosed to, or received by or on behalf of faculty, staff, employees, or students of the  
244 institution:

245 (a) unpublished lecture notes;

246 (b) unpublished notes, data, and information:

247 (i) relating to research; and

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; [and]

254 (f) confidential information contained in research proposals;

255 (g) this Subsection (40) may not be construed to prohibit disclosure of public  
256 information required [pursuant to] in accordance with Subsection 53H-14-202(2)(a)  
257 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  
260 that would reveal the name of a particular legislator who requests a legislative audit  
261 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  
263 Office of the Legislative Auditor General is a public document unless the legislator  
264 asks that the records in the custody or control of the Office of the Legislative Auditor  
265 General that would reveal the name of a particular legislator who requests a  
266 legislative audit be maintained as protected records until the audit is completed and  
267 made public;

268 (42) records that provide detail as to the location of an explosive, including a map or other

269 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

273 Services created by Section 26B-6-210;

274 (44) information contained in the Licensing Information System described in Title 80,

275 Chapter 2, Child Welfare Services;

276 (45) information regarding National Guard operations or activities in support of the

277 National Guard's federal mission;

278 (46) records provided by any pawn or secondhand business to a law enforcement agency or

279 to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand

280 Merchandise, and Catalytic Converter Transaction Information Act;

281 (47) information regarding food security, risk, and vulnerability assessments performed by

282 the Department of Agriculture and Food;

283 (48) except to the extent that the record is exempt from this chapter ~~[pursuant to]~~ in

284 accordance with Section 63G-2-106, records related to an emergency plan or program, a

285 copy of which is provided to or prepared or maintained by the Division of Emergency

286 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

292 Management information;

293 (49) records of the Department of Agriculture and Food that provides for the identification,

294 tracing, or control of livestock diseases, including any program established under Title

295 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control

296 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

299 to a complaint regarding a provider, program, or facility which the department is

300 unable to substantiate; and

301 (b) information or records related to a complaint received by the Department of Health

302 and Human Services from an anonymous complainant regarding a provider, program,

or facility;

- (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:
  - (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
  - (b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:
    - (i) the nature of the law, ordinance, rule, or order; and
    - (ii) the individual complying with the law, ordinance, rule, or order;
- (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:
  - (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;
  - (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
  - (c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;
- (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:
  - (a) conducted within the state system of higher education, as described in Section 53H-1-102; and
  - (b) conducted using animals;
- (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);
- (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;
- (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  
340 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  
342 municipality;

343 (59) the following records in the custody or control of the Office of Inspector General of  
344 Medicaid Services, created in Section 63A-13-201:

345 (a) records that would disclose information relating to allegations of personal  
346 misconduct, gross mismanagement, or illegal activity of a person if the information  
347 or allegation cannot be corroborated by the Office of Inspector General of Medicaid  
348 Services through other documents or evidence, and the records relating to the  
349 allegation are not relied upon by the Office of Inspector General of Medicaid  
350 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  
352 person who, during the course of an investigation or audit, communicated the  
353 existence of any Medicaid fraud, waste, or abuse, or a violation or suspected  
354 violation of a law, rule, or regulation adopted under the laws of this state, a political  
355 subdivision of the state, or any recognized entity of the United States, if the  
356 information was disclosed on the condition that the identity of the person be  
357 protected;

358 (c) before the time that an investigation or audit is completed and the final investigation  
359 or final audit report is released, records or drafts circulated to a person who is not an  
360 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,  
362 or audit program; or

363 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
364 investigation or audit;

365 (60) records that reveal methods used by the Office of Inspector General of Medicaid  
366 Services, the fraud unit, or the Department of Health and Human Services, to discover  
367 Medicaid fraud, waste, or abuse;

368 (61) information provided to the Department of Health and Human Services or the Division  
369 of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections  
370 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

373 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

375 Section 77-7a-103, that records sound or images inside a hospital or health care facility

376 as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider,

377 as that term is defined in Section 78B-3-403, or inside a human service program as that

378 term is defined in Section 26B-2-101, except for recordings that:

379 (a) depict the commission of an alleged crime;

380 (b) record any encounter between a law enforcement officer and a person that results in

381 death or bodily injury, or includes an instance when an officer fires a weapon;

382 (c) record any encounter that is the subject of a complaint or a legal proceeding against a

383 law enforcement officer or law enforcement agency;

384 (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f);

385 or

386 (e) have been requested for reclassification as a public record by a subject or authorized

387 agent of a subject featured in the recording;

388 (65) a record pertaining to the search process for a president of an institution of higher

389 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

392 piece of equipment designed or intended for resuscitating an individual or for treating

393 an individual with a life-threatening condition;

394 (b) produced during an emergency event when an individual employed to provide law

395 enforcement, fire protection, paramedic, emergency medical, or other first responder

396 service:

397 (i) is responding to an individual needing resuscitation or with a life-threatening

398 condition; and

399 (ii) uses a device or piece of equipment designed or intended for resuscitating an

400 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

402 their response to an emergency situation;

403 (67) records submitted by or prepared in relation to an applicant seeking a recommendation

404 by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the

405 Legislative Audit Subcommittee, established under Section 36-12-8, for an employment  
406 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  
409 under Section 61-1-206;

410 (70) a record submitted to the Insurance Department in accordance with Section  
411 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  
414 58-37f-304(5) or 58-37f-702(2)(a)(ii);

415 (73) a record described in Section 72-16-306 that relates to the reporting of an injury  
416 involving an amusement ride;

417 (74) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a  
418 political petition, or on a request to withdraw a signature from a political petition,  
419 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  
426 voter registration record;

427 (76) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature  
428 described in Subsection (74) or (75), in the custody of the lieutenant governor or a local  
429 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,  
431 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  
434 prohibited under Section 63G-26-103;

435 (80) an image taken of an individual during the process of booking the individual into jail,  
436 unless:

437 (a) the individual is convicted of a criminal offense based upon the conduct for which  
438 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  
441 individual or to public safety and releasing or disseminating the image will assist  
442 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  
444 to a criminal investigation or criminal proceeding for the purpose of identifying or  
445 locating an individual in connection with the criminal investigation or criminal  
446 proceeding;

447 (c) a judge orders the release or dissemination of the image based on a finding that the  
448 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  
450 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  
454 representative from another state or the federal government as provided in Section  
455 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  
458 Colorado River system;

459 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to  
460 negotiate the best terms and conditions regarding the use of water in the Colorado  
461 River system; or

462 (iii) give an advantage to another state or to the federal government in negotiations  
463 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  
465 of Economic Opportunity determines is nonpublic, confidential information that if  
466 disclosed would result in actual economic harm to the applicant, but this Subsection (82)  
467 may not be used to restrict access to a record evidencing a final contract or approval  
468 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;  
471 and

472 (b) except as provided in Section 63G-2-106, a record detailing tools or processes the

473 drinking water or wastewater facility uses to secure, or prohibit access to, the records  
474 described in Subsection (83)(a);

475 (84) a statement that an employee of a governmental entity provides to the governmental  
476 entity as part of the governmental entity's personnel or administrative investigation into  
477 potential misconduct involving the employee if the governmental entity:

478 (a) requires the statement under threat of employment disciplinary action, including  
479 possible termination of employment, for the employee's refusal to provide the  
480 statement; and  
481 (b) provides the employee assurance that the statement cannot be used against the  
482 employee in any criminal proceeding;

483 (85) any part of an application for a Utah Fits All Scholarship account described in Section  
484 53F-6-402 or other information identifying a scholarship student as defined in Section  
485 53F-6-401;

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  
489 person concerning the claim, including a representative from another state or the  
490 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  
493 Great Salt Lake;  
494 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms  
495 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  
497 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  
499 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  
503 representative from another state, a tribe, the federal government, or other  
504 government entity as provided in Title 73, Chapter 10g, Part 7, Utah Water Agent;  
505 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  
509 regarding the use of water; or  
510 (iii) give an advantage to another state, a tribe, the federal government, or other  
511 government entity in negotiations regarding the use of water; and  
512 (89) a record created or maintained for an investigation of the Prosecutor Conduct  
513 Commission, created in Section 63M-7-1102, that contains any personal identifying  
514 information of a prosecuting attorney, including:  
515 (a) a complaint, or a document that is submitted or created for a complaint, received by  
516 the Prosecutor Conduct Commission; or  
517 (b) a finding by the Prosecutor Conduct Commission.

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

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

### **Part 1. General Provisions**

#### **78A-12-102 . Definitions for chapter.**

As used in this chapter:

523 (1) "Commission" means the Judicial Performance Evaluation Commission established [by  
524 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  
528 does not meet or exceed minimum performance standards is not overcome by  
529 substantial countervailing evidence; or  
530 (b) a judge meets the certification standards under Section 78A-12-205, but the  
531 presumption, described in Subsection 78A-12-203(4)(b)(i), that the judge meets or  
532 exceeds minimum performance standards is overcome by substantial countervailing  
533 evidence.

534 (3) [Except as provided in Section 78A-12-207, "judge" means] "Judge" means, except as  
535 provided in Section 78A-12-207, a state court judge or a state court justice who is  
536 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  
539 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

543 standards, described in Subsection 78A-12-203(4)(b)(i), is not overcome by

544 substantial countervailing evidence; or

545 (b) a judge does not meet the certification standards under Section 78A-12-205, but the

546 presumption described in Subsection 78A-12-203(4)(b)(ii), that the judge does not

547 meet or exceed minimum performance standards, is overcome by substantial

548 countervailing evidence.

549 Section 3. Section **78A-12-103**, which is renumbered from Section 78A-12-201 is renumbered  
550 and amended to read:

551 **[78A-12-201] 78A-12-103 . Judicial Performance Evaluation Commission --**

552 **Creation -- Membership.**

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

555 (a) two members appointed by the president of the Senate, only one of whom may be a  
556 member of the Utah State Bar;

557 (b) two members appointed by the speaker of the House of Representatives, only one of  
558 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  
560 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  
562 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  
565 confer when appointing members under Subsections (1)(a) and (b) to ensure that  
566 there is at least one member from among their four appointees who is a member of  
567 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  
572 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

574 appointed for the unexpired term by the same appointing authority that appointed the  
575 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,  
578 except that the commission may not make a determination that a judge meets or  
579 exceeds minimum performance standards, or that a judge does not meet or exceed  
580 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  
582 in Subsection (6)(b) by at least six votes, the commission may meet a second time to  
583 make a determination.  
584 (d) If a vote on the question of whether a judge meets or exceeds minimum performance  
585 standards or does not meet or exceed minimum performance standards ends in a tie  
586 or does not pass by at least six votes, the record shall reflect that the commission  
587 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  
589 Public Meetings Act, including any electronic meeting.

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

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

596 Section 4. Section **78A-12-104**, which is renumbered from Section 78A-12-202 is renumbered  
597 and amended to read:

598 **[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  
600 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  
604 63A-3-107.  
605 (2) The commission shall elect a chair from among its members.  
606 (3) The commission shall employ an executive director and may employ additional staff as  
607 necessary within budgetary constraints.

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

610 Section 5. Section **78A-12-203** is amended to read:

611 **Part 2. Judicial Performance Evaluation**

612 **78A-12-203 . Judicial performance evaluation.**

613 (1) [Beginning with the 2012 judicial retention elections, the] The commission shall prepare  
614 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  
616 the Supreme Court; and  
617 (b) each justice of the Utah Supreme Court in the third, seventh, and ninth year of the  
618 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  
621 Subsection (1) shall consider only the following information[ but shall give primary  
622 emphasis to the information that is gathered and relates to the performance of the  
623 judge during the period subsequent to the last judicial retention election of that judge  
624 or if the judge has not had a judicial retention election, during the period applicable  
625 to the first judicial retention election]:

626 [(a)] (i) the results of the judge's most recent judicial performance survey that is  
627 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 [  
629 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  
634 judge[ except that the commission shall give primary emphasis to information  
635 gathered subsequent to the last judicial retention election]; and

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

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

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

641 (b) The judicial performance evaluation for a judge under Subsection (1) shall give

642 primary emphasis to the information that is gathered and relates to the performance  
643 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  
646 a judicial retention election.

647 (3) The commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative  
648 Rulemaking Act, make rules concerning the conduct of courtroom observation under  
649 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  
652 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  
655 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  
657 minimum performance standards;  
658 (ii) determine, by a vote of at least six members, that the judge does not meet or  
659 exceed minimum performance standards;  
660 (iii) determine, by a majority vote, that the information concerning the judge is  
661 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  
663 number of votes required for one of those determinations.

664 (b)(i) If a judge meets the certification standards established in accordance with  
665 Section 78A-12-205, there is a rebuttable presumption that the judge meets or  
666 exceeds minimum performance standards.  
667 (ii) If a judge fails to meet the certification standards established in accordance with  
668 Section 78A-12-205, there is a rebuttable presumption that the judge does not  
669 meet or exceed minimum performance standards.  
670 (c) If the commission deviates from a presumption described in Subsection (4)(b), the  
671 commission shall provide a detailed explanation of the reason for that deviation in the  
672 commission's report under Section 78A-12-206.  
673 (d) If the commission makes the determination described in Subsection (4)(a)(iii) or fails  
674 to make a determination described in Subsection (4)(a)(i), (ii), or (iii) by the number  
675 of votes required for those determinations, the commission shall note that fact in the

676 commission's report.

677 (5)[(a) The commission shall allow a judge who is the subject of a judicial performance  
678 retention evaluation, and who has not passed one or more of the certification  
679 standards on the retention evaluation, to appear and speak at any commission meeting  
680 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  
682 of the certification standards for that performance evaluation, the commission shall  
683 grant the judge time to appear and speak at a commission meeting during which the  
684 judge's performance evaluation will be considered.

685 (b) The commission may invite any judge to appear before the commission to discuss  
686 concerns about the judge's judicial performance.

687 [(e)(i) The commission may meet in a closed meeting to discuss a judge's judicial  
688 performance evaluation by complying with Title 52, Chapter 4, Open and Public  
689 Meetings Act.]

690 [(ii) The commission may meet in an electronic meeting by complying with Title 52,  
691 Chapter 4, Open and Public Meetings Act.]

692 [(d) Any record of an individual commissioner's vote under Subsection (4) is a protected  
693 record under Title 63G, Chapter 2, Government Records Access and Management Act.]

694 [(e)] (c)(i) A member of the commission, including a member of the Utah State Bar,  
695 may not be disqualified from voting under Subsection (4) solely because the  
696 member appears before the judge as an attorney, a fact witness, or an expert,  
697 unless the member is a litigant in a case pending before the judge.

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

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

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

705 (6)(a) If the Utah Supreme Court issues a public sanction of a judge after the  
706 commission makes or fails to make a determination described in Subsection (4), but  
707 before the publication of the voter information pamphlet in accordance with Section  
708 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

710 before the commission during a closed meeting for the purpose of reconsidering the  
711 commission's action.

712 (c) The judge described in Subsection (6)(a) may provide a written statement, not to  
713 exceed 100 words, that shall be included in the judge's judicial performance  
714 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  
721 lieutenant governor by no later than August 31 of a regular general election year  
722 for publication in the voter information pamphlet[, and] ; and  
723 (ii) publish the revisions on the commission's website, and through any other means  
724 the commission considers appropriate and within budgetary constraints.

725 (7)(a) The commission shall compile a midterm report of the commission's judicial  
726 performance evaluation of a judge.  
727 (b) The midterm report of a judicial performance evaluation shall include information  
728 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  
730 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  
732 to the chair of the board of judges for the court level on which the evaluated judge  
733 serves.  
734 (d)(i) The commission may provide a partial midterm evaluation to a judge whose  
735 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  
737 midterm evaluation is missing a respondent group, including attorneys, court staff,  
738 court room observers, or intercept survey respondents.  
739 (iii) A judge who receives partial midterm evaluation data may receive a statement in  
740 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  
742 shall inform the Judicial Council of the name of any judge who receives a partial  
743 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  
746 established by rule; or

747 (b) otherwise demonstrates to the commission that the judge's performance would be of  
748 such concern if the performance occurred in a retention evaluation that the judge  
749 would be invited to appear before the commission in accordance with Subsection  
750 (5)(b).

751 (9) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
752 Administrative Rulemaking Act, as necessary to administer the evaluation required by  
753 this section.

754 Section 6. Section **78A-12-204** is amended to read:

755 **78A-12-204 . Judicial performance survey.**

756 (1) A third party under contract to the commission shall conduct, on an ongoing basis  
757 during the judge's term in office, the judicial performance survey required by Section  
758 78A-12-203 concerning a judge who is subject to a retention election.

759 (2)(a) The judicial performance survey shall include as respondents a sample of each of  
760 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; [and]

763 (iii) court staff who have worked with the judge[.] ; and

764 (iv) 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  
766 state and in good standing with the Utah State Bar may evaluate a judge's legal [  
767 ability] competence under Subsection (7)(a).

768 (3) The commission may include an additional classification of respondents if the  
769 commission:

770 (a) considers a judicial performance survey of that classification of respondents helpful  
771 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  
774 comments included with a survey response.

775 (5) If the commission provides information to a judge or the Judicial Council, the  
776 commission shall provide the information in such a way as to protect the anonymity of a  
777 survey respondent.

778 [({6) A survey shall be provided to a potential survey respondent within 30 days of the day  
779 on which the case in which the person appears in the judge's court is closed, exclusive of  
780 any appeal, except for court staff and attorneys, who may be surveyed at any time during  
781 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  
784 survey period;
- 785 (b) if the potential survey respondent is a juror, within 30 days after the verdict is  
786 reached; and
- 787 (c) if the potential survey respondent is an individual who appeared before the judge as a  
788 party, within 90 days after the day on which the case is closed excluding any time for  
789 an appeal.

790 (7) [Survey categories shall include questions concerning a judge's] A judicial performance  
791 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  
794 relevant rules of procedure and evidence;
  - 795 (ii) attentiveness to factual and legal issues before the court;
  - 796 (iii) adherence to precedent and ability to clearly explain departures from precedent;  
797 and
  - 798 (iv) [grasp] awareness of the practical impact on the parties of the judge's rulings,  
799 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,  
804 age, sexual orientation, political affiliation, socioeconomic status, legal  
805 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  
808 decision; and
- 809 (iv) respect and dignified treatment, given equally and without favoritism, towards  
810 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  
813 law, and other orders;  
814 (ii) ability to write a clear factual and legal basis for judicial opinions and decisions;  
815 and  
816 (iii) demonstrated ability to adapt the judge's communication style, including the use  
817 of plain language, when needed to communicate with specific individuals, parties,  
818 or audiences;  
819 [(b)] (d) the judge's judicial temperament[ and integrity, including the following] ,  
820 including:  
821 (i) [demonstration of] demonstrated courtesy toward attorneys, court staff, and others  
822 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  
825 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]  
831 (vii) ability to clearly communicate, including the ability to explain the basis for  
832 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  
838 to manage cases, court filings, and otherwise discharge judicial duties;  
839 (ii) timely issuance of opinions, orders, and other judicial rulings without  
840 unnecessary delay; and  
841 (iii) ability to set clear expectations and timelines and to regularly monitor cases and  
842 streamline procedures.  
843 (8) If the commission determines that a certain survey question or category of questions is  
844 not appropriate for a respondent group, the commission may omit that question or  
845 category of questions from the judicial performance survey provided to that respondent

846 group.

847 [§9(a) The survey shall allow respondents to indicate responses in a manner determined  
848 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  
851 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  
853 affirmative or negative, the commission may allow respondents to provide written  
854 comments.]

855 [(ii) The executive director may not provide the commission a comment that would  
856 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  
858 responses through various means, including the ability to:

- (a) rank individuals and activities on a numerical scale;
- (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;
- (c) answer nonrestrictive questions that explain or expand upon the survey categories  
described in Subsection (7) by providing additional written comments; and
- (d) supplement answers based on a numerical scale or that call for an affirmative or  
negative answer by providing an option that allows a survey respondent to write a  
comment.

867 (10) The executive director may not provide the commission with any response that would  
868 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  
870 judicial performance survey results with each of the judge's judicial performance  
871 evaluations.

872 [(11)] (12) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
873 Administrative Rulemaking Act, as necessary to administer the judicial performance  
874 survey.

875 Section 7. Section **78A-12-205** is amended to read:

876 **78A-12-205 . Certification standards.**

877 (1) As used in this section:

- (a) "Opinions" means the decisions authored by a judge for the calendar year.
- (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  
881 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  
883 argument concluded; or  
884 (iii) if further briefing is required in the case after a hearing or oral argument, all  
885 briefing is completed, a request to submit is filed, or the matter is placed in the  
886 judge's personal electronic queue or inbox, personal possession, or any other  
887 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  
890 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  
893 Subsection 78A-12-204(7); and  
894 (ii) if the commission includes a question on the survey that does not use the  
895 numerical scale, [the commission shall establish the certification standard for all  
896 questions that do not use the numerical scale to be substantially equivalent] a  
897 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  
899 judge of the Supreme Court or Court of Appeals that address timely management of the  
900 judge's caseload, including:

901 (a) for a justice of the Supreme Court, a certification standard that requires the justice to  
902 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  
907 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  
912 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

(b) adopts the standard.

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

Section 8. Section **78A-12-206** is amended to read:

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

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

(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.

(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.

(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.

(2) Within 15 days of receiving a copy of the commission's report under Subsection (1)(b):

(a) a judge who is the subject of an unfavorable action under Subsection 78A-12-203(4) may:

(i) provide a written response to the commission about the report; and

(ii) request an interview with the commission for the purpose of addressing the report; and

(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.

(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.

(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

948 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,

952 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

954 subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct

955 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

959 78A-12-203(4); and

960 (g) any other information the commission considers necessary to include in the report to

961 explain the certification standards and the determination or lack of a determination

962 made.

963 (5) The retention report of a judicial performance evaluation may include the number of

964 times that the judge has been overturned on appeal for an abuse of discretion for the

965 current reporting period.

966 [(5)] (6)(a) The commission may not include in the commission's retention report

967 specific information concerning an earlier judicial performance evaluation.

968 (b) The commission may refer to information from an earlier judicial performance

969 evaluation concerning the judge in the commission's report only if necessary to

970 explain performance in the current reporting period and giving primary emphasis to

971 the information gathered during the current reporting period.

972 [(6)] (7) The retention report of the commission's judicial performance evaluation shall be

973 made publicly available on an [Internet] internet website.

974 [(7)] (8) The commission may make the report of the judicial performance evaluation

975 immediately preceding the judge's retention election publicly available through other

976 means within budgetary constraints.

977 [(8)] (9) The commission shall provide a summary of the judicial performance evaluation

978 for each judge to the lieutenant governor for publication in the voter information

979 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 [40] (11) The Judicial Council shall provide information obtained concerning a judge  
984 under Subsection (9) to the subject judge's presiding judge, if any.

985 **Section 9. Repealer.**

986 This bill repeals:

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

988 **Section 10. Effective Date.**

989 This bill takes effect on May 6, 2026.