

Judicial Performance Evaluation Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

House Sponsor:

LONG TITLE**General Description:**

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

Highlighted Provisions:

This bill:

- amends definitions;
- renumbers statutes in Title 78A, Chapter 12, Judicial Performance Evaluation Commission;
- addresses the requirements for a meeting of the Judicial Performance Evaluation Commission (Commission);
- requires the Commission to allow a judge to appear and speak at a commission meeting in certain circumstances;
- modifies the requirements for the judicial performance survey, including the contents of the survey;
- 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;
- 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
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

43

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

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

- (5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;
- (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:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

- (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:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b)(i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

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

- (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:

(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;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(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

- 99 property;
- 100 (d) in the case of records that would identify the appraisal or estimated value of
- 101 property, the potential sellers have already learned of the governmental entity's
- 102 estimated value of the property; or
- 103 (e) the property under consideration for public acquisition is a single family residence
- 104 and the governmental entity seeking to acquire the property has initiated negotiations
- 105 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
- 107 transaction of real or personal property including intellectual property, which, if
- 108 disclosed prior to completion of the transaction, would reveal the appraisal or estimated
- 109 value of the subject property, unless:
- 110 (a) the public interest in access is greater than or equal to the interests in restricting
- 111 access, including the governmental entity's interest in maximizing the financial
- 112 benefit of the transaction; or
- 113 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
- 114 the value of the subject property have already been disclosed to persons not
- 115 employed by or under a duty of confidentiality to the entity;
- 116 (10) records created or maintained for civil, criminal, or administrative enforcement
- 117 purposes or audit purposes, or for discipline, licensing, certification, or registration
- 118 purposes, if release of the records:
- 119 (a) reasonably could be expected to interfere with investigations undertaken for
- 120 enforcement, discipline, licensing, certification, or registration purposes;
- 121 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
- 122 proceedings;
- 123 (c) would create a danger of depriving a person of a right to a fair trial or impartial
- 124 hearing;
- 125 (d) reasonably could be expected to disclose the identity of a source who is not generally
- 126 known outside of government and, in the case of a record compiled in the course of
- 127 an investigation, disclose information furnished by a source not generally known
- 128 outside of government if disclosure would compromise the source; or
- 129 (e) reasonably could be expected to disclose investigative or audit techniques,
- 130 procedures, policies, or orders not generally known outside of government if
- 131 disclosure would interfere with enforcement or audit efforts;
- 132 (11) records the disclosure of which would jeopardize the life or safety of an individual;

- (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;
- (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;
- (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;
- (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;
- (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- (17) records that are subject to the attorney client privilege;
- (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;
- (19)(a)(i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and
- (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
- (b)(i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:
- (A) members of a legislative body;
- (B) a member of a legislative body and a member of the legislative body's staff; or
- (C) members of a legislative body's staff; and
- (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;
- (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

(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;

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

(22) drafts, unless otherwise classified as public;

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

(a) collective bargaining; or

(b) imminent or pending litigation;

(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;

(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;

(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;

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

(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;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's

- 201 contemplated policies or contemplated courses of action before the governor has
202 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,
204 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
205 recommendations in these areas;
- 206 (31) records provided by the United States or by a government entity outside the state that
207 are given to the governmental entity with a requirement that they be managed as
208 protected records if the providing entity certifies that the record would not be subject to
209 public disclosure if retained by it;
- 210 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
211 public body except as provided in Section 52-4-206;
- 212 (33) records that would reveal the contents of settlement negotiations but not including final
213 settlements or empirical data to the extent that they are not otherwise exempt from
214 disclosure;
- 215 (34) memoranda prepared by staff and used in the decision-making process by an
216 administrative law judge, a member of the Board of Pardons and Parole, or a member of
217 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
219 requested from a governmental entity for the purpose of encouraging a person to expand
220 or locate a business in Utah, but only if disclosure would result in actual economic harm
221 to the person or place the governmental entity at a competitive disadvantage, but this
222 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
224 governmental entity's proprietary protection of intellectual property rights including
225 patents, copyrights, and trade secrets;
- 226 (37) the name of a donor or a prospective donor to a governmental entity, including an
227 institution of higher education defined in Section 53H-1-101, and other information
228 concerning the donation that could reasonably be expected to reveal the identity of the
229 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
232 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
234 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;
- (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- (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:
- (a) unpublished lecture notes;
 - (b) unpublished notes, data, and information:
 - (i) relating to research; and
 - (ii) of:
 - (A) the institution of higher education defined in Section 53H-1-101; or
 - (B) a sponsor of sponsored research;
 - (c) unpublished manuscripts;
 - (d) creative works in process;
 - (e) scholarly correspondence; ~~and~~
 - (f) confidential information contained in research proposals;
 - (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
 - (h) this Subsection (40) may not be construed to affect the ownership of a record;
- (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
- (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;
- (42) records that provide detail as to the location of an explosive, including a map or other

document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210;

(44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(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;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(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:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(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;

(50) as provided in Section 26B-2-709:

(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

(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,

- 303 or facility;
- 304 (51) unless otherwise classified as public under Section 63G-2-301 and except as provided
- 305 under Section 41-1a-116, an individual's home address, home telephone number, or
- 306 personal mobile phone number, if:
- 307 (a) the individual is required to provide the information in order to comply with a law,
- 308 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
- 310 kept confidential due to:
- 311 (i) the nature of the law, ordinance, rule, or order; and
- 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
- 314 mailing address, if the candidate provides to the filing officer another address or phone
- 315 number where the candidate may be contacted:
- 316 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
- 317 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405,
- 318 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
- 322 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
- 324 53H-1-102; and
- 325 (b) conducted using animals;
- 326 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
- 327 Evaluation Commission concerning an individual commissioner's vote, in relation to
- 328 whether a judge meets or exceeds minimum performance standards under Subsection
- 329 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
- 331 Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12,
- 332 Judicial Performance Evaluation Commission[-Aet], requires disclosure of, or makes
- 333 public, the information or report;
- 334 (56) records provided or received by the Public Lands Policy Coordinating Office in
- 335 furtherance of any contract or other agreement made in accordance with Section
- 336 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(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

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

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

(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 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;

(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;

(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;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

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

(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;

(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
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

Legislative Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(68) work papers as defined in Section 31A-2-204;

(69) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(70) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(71) a record described in Section 31A-37-503;

(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);

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

(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:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Special Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(75) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(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;

(77) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(78) a record submitted to the Insurance Department under Section 31A-48-103;

(79) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

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

(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
- 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:

- (i) reveal a legal strategy relating to the state's claim to the use of the water;
 - (ii) harm the ability of the Utah water agent to negotiate the best terms and conditions regarding the use of water; or
 - (iii) give an advantage to another state, a tribe, the federal government, or other government entity in negotiations regarding the use of water; and
- (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:
- (a) a complaint, or a document that is submitted or created for a complaint, received by the Prosecutor Conduct Commission; or
 - (b) a finding by the Prosecutor Conduct Commission.

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:

- (1) "Commission" means the Judicial Performance Evaluation Commission established [~~by this chapter~~] in Section 78A-12-103.
- (2) "Does not meet or exceed minimum performance standards" means that:
 - (a)(i) a judge does not meet the certification standards under Section 78A-12-205; and
 - (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
 - (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.
- (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.
- (4) "Justice" means a judge who is a member of the Supreme Court.
- (5) "Justice court judge" means a judge appointed pursuant to Title 78A, Chapter 7, Justice Court.

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

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

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

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

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

- (a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;
- (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;
- (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;
- (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
- (e) the executive director of the State Commission on Criminal and Juvenile Justice.

(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.

(b) A sitting legislator or a sitting judge may not serve as a commission member.

(3)(a) A member appointed under Subsection (1) shall be appointed for a four-year term.

(b) A member may serve no more than three consecutive terms.

(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.

(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.

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

(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.

(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.

(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.

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

(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.

(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.

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

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

(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:

(a) Section 63A-3-106;

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

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

(2) The commission shall elect a chair from among its members.

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

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

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

Part 2. Judicial Performance Evaluation

78A-12-203 . Judicial performance evaluation.

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

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

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

- (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]:~~

~~[(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;

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

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

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

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

~~[(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~~

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

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

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

- (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:

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

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

(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:

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

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

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

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

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

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

(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

(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.

(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.

(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.

(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.

(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.

- (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.]
- (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.
- (b) The commission may invite any judge to appear before the commission to discuss concerns about the judge's judicial performance.
- ~~[(c)(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.]~~
- ~~[(ii) The commission may meet in an electronic meeting by complying with Title 52, Chapter 4, Open and Public Meetings Act.]~~
- ~~[(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.]~~
- [(e)] (c)(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 attorney, a fact witness, or an expert, unless the member is a litigant in a case pending before the judge.
- (ii) Notwithstanding Subsection ~~[(5)(e)(i)]~~ (5)(c)(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).
- (iii) Information disclosed under this Subsection ~~[(5)(e)]~~ (5)(c) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- ~~[(f) The commission may only disclose the final commission vote described in Subsection (4).]~~
- (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.
- (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.

- (8) The commission shall identify a judge whose midterm evaluation:
- (a) fails to meet certification standards in accordance with Section 78A-12-205 or as established by rule; or
 - (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).
- (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.
- Section 6. Section **78A-12-204** is amended to read:
- 78A-12-204 . Judicial performance survey.**
- (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.
 - (2)(a) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:
 - (i) attorneys who have appeared before the judge as counsel;
 - (ii) jurors who have served in a case before the judge; ~~and~~
 - (iii) court staff who have worked with the judge~~[-]~~ ; and
 - (iv) individuals who have appeared before the judge as a party in a case.
 - (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).
 - (3) The commission may include an additional classification of respondents if the commission:
 - (a) considers a judicial performance survey of that classification of respondents helpful to voters in determining whether to vote to retain a judge; and
 - (b) establishes the additional classification of respondents by rule.
 - (4) All survey responses for a judicial performance survey are confidential, including comments included with a survey response.
 - (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~~
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

group.

~~[(9)(a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:]~~

~~[(i) on a numerical scale from one to five; or]~~

~~[(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.]~~

~~[(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:]~~

~~[(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.]~~

(9) The commission may formulate questions that allow survey respondents to provide 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.

(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.

~~[(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.

~~[(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.

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

78A-12-205 . Certification standards.

(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:

- (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;
- (ii) if a hearing or oral argument is set for a matter in the case, the hearing or oral argument concluded; or
- (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.

~~[(1)]~~ (2) The commission shall establish certification standards requiring that:

- (a) the judge have no more than one public sanction issued by the ~~[Utah]~~ Supreme Court during the judge's current term; and
- (b) the judge receive a minimum score on the judicial performance survey as follows:
- (i) an average score of no less than 65% on each survey category as provided in Subsection 78A-12-204(7); and
- (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 scale to be substantially equivalent]~~ a substantial equivalent to the standard required under Subsection ~~[(1)(b)(i)]~~ (2)(b)(i).

(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:

- (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:
- (i) no more than 25% of opinions more than 150 days after submission;
- (ii) no more than 10% of opinions more than 210 days after submission; and
- (iii) 100% of all opinions within one year after submission; and
- (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:
- (i) no more than 25% of opinions more than 120 days after submission;
- (ii) no more than 10% of opinions more than 180 days after submission; and
- (iii) 100% of all opinions within 270 days after submission.

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

- (a) determines that satisfaction of the standard is necessary to the satisfactory

914 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
917 Administrative Rulemaking Act, to establish a certification standard.

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

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

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

923 (b) The report of a judicial performance evaluation nearest the judge's next scheduled
924 retention election shall be provided to the judge at least 45 days before the last day on
925 which the judge may file a declaration of the judge's candidacy in the retention
926 election.

927 (c) A report prepared in accordance with Subsection (1)(b) and information obtained in
928 connection with the evaluation becomes a public record under Title 63G, Chapter 2,
929 Government Records Access and Management Act, on the day following the last day
930 on which the judge who is the subject of the report may file a declaration of the
931 judge's candidacy in the judge's scheduled retention election if the judge declares the
932 judge's candidacy for the retention election.

933 (d) Information collected and a report that is not public under Subsection (1)(c) is a
934 protected record under Title 63G, Chapter 2, Government Records Access and
935 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)
938 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
941 report; and

942 (b) a judge who is the subject of a favorable action under Subsection 78A-12-203(4)
943 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),
945 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
947 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 [(10)] (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.