

1 **JUDICIAL PERFORMANCE EVALUATION**

2 **COMMISSION**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: D. Chris Buttars**

6 House Sponsor: Curtis Oda

7

LONG TITLE

8 **General Description:**

9
10 This bill establishes a judicial performance evaluation program and creates a
11 commission to administer the program.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ eliminates a provision requiring the Judicial Council to evaluate judicial
15 performance;
- 16 ▶ creates the Judicial Performance Evaluation Commission;
- 17 ▶ requires a judicial performance evaluation to be conducted for a judge who is
18 subject to a retention election;
- 19 ▶ establishes the components of a judicial performance evaluation;
- 20 ▶ requires the commission to establish minimum performance standards as part of the
21 judicial performance evaluation;
- 22 ▶ requires the commission to conduct a judicial performance evaluation survey;
- 23 ▶ establishes the manner of reporting and publishing judicial performance
24 evaluations;
- 25 ▶ requires the commission to provide information concerning the evaluation to the
26 lieutenant governor for inclusion in the voter information pamphlet; and
- 27 ▶ makes technical changes.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **20A-7-702**, as last amended by Laws of Utah 2005, Chapter 236

35 **63-2-304**, as last amended by Laws of Utah 2007, Chapters 66 and 352

36 **78-3-21**, as last amended by Laws of Utah 2003, Chapters 51 and 332

37 ENACTS:

38 **78-63-101**, Utah Code Annotated 1953

39 **78-63-102**, Utah Code Annotated 1953

40 **78-63-201**, Utah Code Annotated 1953

41 **78-63-202**, Utah Code Annotated 1953

42 **78-63-203**, Utah Code Annotated 1953

43 **78-63-204**, Utah Code Annotated 1953

44 **78-63-205**, Utah Code Annotated 1953

45 **78-63-206**, Utah Code Annotated 1953



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

48 Section 1. Section **20A-7-702** is amended to read:

49 **20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.**

50 (1) The lieutenant governor shall ensure that all information submitted for publication
51 in the voter information pamphlet is:

52 (a) printed and bound in a single pamphlet;

53 (b) printed in clear readable type, no less than ten-point, except that the text of any
54 measure may be set forth in eight-point type; and

55 (c) printed on a quality and weight of paper that best serves the voters.

56 (2) The voter information pamphlet shall contain the following items in this order:

57 (a) a cover title page;

58 (b) an introduction to the pamphlet by the lieutenant governor;

- 59 (c) a table of contents;
- 60 (d) a list of all candidates for constitutional offices;
- 61 (e) a list of candidates for each legislative district;
- 62 (f) a 100-word statement of qualifications for each candidate for the office of governor,
63 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the
64 candidate to the lieutenant governor's office before July 15 at 5 p.m.;
- 65 (g) information pertaining to all measures to be submitted to the voters, beginning a
66 new page for each measure and containing, in the following order for each measure:
- 67 (i) a copy of the number and ballot title of the measure;
- 68 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by
69 the Legislature or by referendum;
- 70 (iii) the impartial analysis of the measure prepared by the Office of Legislative
71 Research and General Counsel;
- 72 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the
73 measure, the arguments against the measure, and the rebuttal to the arguments against the
74 measure, with the name and title of the authors at the end of each argument or rebuttal;
- 75 (v) for each constitutional amendment, a complete copy of the text of the constitutional
76 amendment, with all new language underlined, and all deleted language placed within brackets;
77 and
- 78 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the
79 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section
80 20A-7-202.5;
- 81 (h) a description provided by the Judicial [~~Council~~] Performance Evaluation
82 Commission of the selection and retention process for judges, including, in the following order:
- 83 (i) a description of the judicial selection process;
- 84 (ii) a description of the judicial performance evaluation process;
- 85 (iii) a description of the judicial retention election process;
- 86 (iv) a list of the criteria [~~and minimum standards~~] of the judicial performance
87 evaluation and the minimum performance standards;
- 88 (v) the names of the judges standing for retention election; and
- 89 (vi) for each judge:

- 90 (A) a list of the counties in which the judge is subject to retention election;
- 91 (B) a short biography of professional qualifications and a recent photograph;
- 92 (C) for each standard of performance, a statement identifying whether or not the judge
93 met the standard and, if not, the manner in which the judge failed to meet the standard;
- 94 (D) a statement provided by the Utah Supreme Court identifying the cumulative
95 number of informal reprimands, when consented to by the judge in accordance with Subsection
96 78-8-107(2), formal reprimands, and all orders of censure and suspension issued by the Utah
97 Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term
98 and the immediately preceding term, and a detailed summary of the supporting reasons for each
99 violation of the Code of Judicial Conduct that the judge has received; ~~and]~~
- 100 (E) a statement identifying whether or not the ~~[judge was certified by the]~~ Judicial
101 ~~[Council;]~~ Performance Evaluation Commission recommends the judge be retained or declines
102 to make a recommendation; and
- 103 (F) any statement provided by a judge who is not recommended for retention by the
104 Judicial Performance Evaluation Commission under Section 78-63-203;
- 105 (vii) ~~[(A) except as provided in Subsection (2)(h)(vii)(B);]~~ for each judge, in ~~[graphic~~
106 ~~format, the]~~ a bar graph, the average of responses [for each attorney, jury, and other] to each
107 survey [question used by the Judicial Council for certification of judges] category, displayed
108 [in 1% increments;] with an identification of the minimum acceptable score as set by Section
109 78-63-205 and the average score of all judges of the same court level; and
- 110 ~~[(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a~~
111 ~~particular judge is too small to provide statistically reliable information in 1% increments, the~~
112 ~~survey results for that judge shall be reported as being above or below 70% and a statement by~~
113 ~~the surveyor explaining why the survey is statistically unreliable shall also be included; and]~~
- 114 (viii) an Internet website address that contains the Judicial Performance Evaluation
115 Commission's report on the judge's judicial performance evaluation;
- 116 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,
117 indicating the ballot marking procedure used by each county and explaining how to mark the
118 ballot for each procedure;
- 119 (j) voter registration information, including information on how to obtain an absentee
120 ballot;

121 (k) a list of all county clerks' offices and phone numbers; and

122 (l) on the back cover page, a printed copy of the following statement signed by the
123 lieutenant governor:

124 "I, _____ (print name), Lieutenant Governor of Utah, certify that the
125 measures contained in this pamphlet will be submitted to the voters of Utah at the election to
126 be held throughout the state on ____ (date of election), and that this pamphlet is complete and
127 correct according to law. SEAL

128 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day
129 of ____ (month), ____ (year)

130 (signed) _____
131 Lieutenant Governor"

132 (3) The lieutenant governor shall:

133 (a) ensure that one copy of the voter information pamphlet is placed in one issue of
134 every newspaper of general circulation in the state not more than 40 nor less than 15 days
135 before the day fixed by law for the election;

136 (b) ensure that a sufficient number of printed voter information pamphlets are available
137 for distribution as required by this section;

138 (c) provide voter information pamphlets to each county clerk for free distribution upon
139 request and for placement at polling places; and

140 (d) ensure that the distribution of the voter information pamphlets is completed 15 days
141 before the election.

142 Section 2. Section **63-2-304** is amended to read:

143 **63-2-304. Protected records.**

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

145 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
146 has provided the governmental entity with the information specified in Section 63-2-308;

147 (2) commercial information or nonindividual financial information obtained from a
148 person if:

149 (a) disclosure of the information could reasonably be expected to result in unfair
150 competitive injury to the person submitting the information or would impair the ability of the
151 governmental entity to obtain necessary information in the future;

152 (b) the person submitting the information has a greater interest in prohibiting access
153 than the public in obtaining access; and

154 (c) the person submitting the information has provided the governmental entity with
155 the information specified in Section 63-2-308;

156 (3) commercial or financial information acquired or prepared by a governmental entity
157 to the extent that disclosure would lead to financial speculations in currencies, securities, or
158 commodities that will interfere with a planned transaction by the governmental entity or cause
159 substantial financial injury to the governmental entity or state economy;

160 (4) records the disclosure of which could cause commercial injury to, or confer a
161 competitive advantage upon a potential or actual competitor of, a commercial project entity as
162 defined in Subsection 11-13-103(4);

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

165 (6) records the disclosure of which would impair governmental procurement
166 proceedings or give an unfair advantage to any person proposing to enter into a contract or
167 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
168 of a person to see bids submitted to or by a governmental entity after bidding has closed;

169 (7) records that would identify real property or the appraisal or estimated value of real
170 or personal property, including intellectual property, under consideration for public acquisition
171 before any rights to the property are acquired unless:

172 (a) public interest in obtaining access to the information outweighs the governmental
173 entity's need to acquire the property on the best terms possible;

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

176 (c) in the case of records that would identify property, potential sellers of the described
177 property have already learned of the governmental entity's plans to acquire the property;

178 (d) in the case of records that would identify the appraisal or estimated value of
179 property, the potential sellers have already learned of the governmental entity's estimated value
180 of the property; or

181 (e) the property under consideration for public acquisition is a single family residence
182 and the governmental entity seeking to acquire the property has initiated negotiations to acquire

183 the property as required under Section 78-34-4.5;

184 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
185 compensated transaction of real or personal property including intellectual property, which, if
186 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
187 of the subject property, unless:

188 (a) the public interest in access outweighs the interests in restricting access, including
189 the governmental entity's interest in maximizing the financial benefit of the transaction; or

190 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
191 the value of the subject property have already been disclosed to persons not employed by or
192 under a duty of confidentiality to the entity;

193 (9) records created or maintained for civil, criminal, or administrative enforcement
194 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
195 release of the records:

196 (a) reasonably could be expected to interfere with investigations undertaken for
197 enforcement, discipline, licensing, certification, or registration purposes;

198 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
199 proceedings;

200 (c) would create a danger of depriving a person of a right to a fair trial or impartial
201 hearing;

202 (d) reasonably could be expected to disclose the identity of a source who is not
203 generally known outside of government and, in the case of a record compiled in the course of
204 an investigation, disclose information furnished by a source not generally known outside of
205 government if disclosure would compromise the source; or

206 (e) reasonably could be expected to disclose investigative or audit techniques,
207 procedures, policies, or orders not generally known outside of government if disclosure would
208 interfere with enforcement or audit efforts;

209 (10) records the disclosure of which would jeopardize the life or safety of an
210 individual;

211 (11) records the disclosure of which would jeopardize the security of governmental
212 property, governmental programs, or governmental recordkeeping systems from damage, theft,
213 or other appropriation or use contrary to law or public policy;

214 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
215 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
216 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

217 (13) records that, if disclosed, would reveal recommendations made to the Board of
218 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
219 Board of Pardons and Parole, or the Department of Human Services that are based on the
220 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
221 jurisdiction;

222 (14) records and audit workpapers that identify audit, collection, and operational
223 procedures and methods used by the State Tax Commission, if disclosure would interfere with
224 audits or collections;

225 (15) records of a governmental audit agency relating to an ongoing or planned audit
226 until the final audit is released;

227 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
228 litigation that are not available under the rules of discovery;

229 (17) records disclosing an attorney's work product, including the mental impressions or
230 legal theories of an attorney or other representative of a governmental entity concerning
231 litigation;

232 (18) records of communications between a governmental entity and an attorney
233 representing, retained, or employed by the governmental entity if the communications would be
234 privileged as provided in Section 78-24-8;

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

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

239 (b) (i) an internal communication that is part of the deliberative process in connection
240 with the preparation of legislation between:

241 (A) members of a legislative body;

242 (B) a member of a legislative body and a member of the legislative body's staff; or

243 (C) members of a legislative body's staff; and

244 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of

245 legislative action or policy may not be classified as protected under this section;

246 (20) (a) records in the custody or control of the Office of Legislative Research and
247 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
248 legislation or contemplated course of action before the legislator has elected to support the
249 legislation or course of action, or made the legislation or course of action public; and

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

254 (21) research requests from legislators to the Office of Legislative Research and
255 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
256 in response to these requests;

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

258 (23) records concerning a governmental entity's strategy about collective bargaining or
259 pending litigation;

260 (24) records of investigations of loss occurrences and analyses of loss occurrences that
261 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
262 Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

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

271 (28) records of an institution within the state system of higher education defined in
272 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
273 retention decisions, and promotions, which could be properly discussed in a meeting closed in
274 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
275 the final decisions about tenure, appointments, retention, promotions, or those students

276 admitted, may not be classified as protected under this section;

277 (29) records of the governor's office, including budget recommendations, legislative
278 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
279 policies or contemplated courses of action before the governor has implemented or rejected
280 those policies or courses of action or made them public;

281 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
282 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
283 recommendations in these areas;

284 (31) records provided by the United States or by a government entity outside the state
285 that are given to the governmental entity with a requirement that they be managed as protected
286 records if the providing entity certifies that the record would not be subject to public disclosure
287 if retained by it;

288 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
289 except as provided in Section 52-4-206;

290 (33) records that would reveal the contents of settlement negotiations but not including
291 final settlements or empirical data to the extent that they are not otherwise exempt from
292 disclosure;

293 (34) memoranda prepared by staff and used in the decision-making process by an
294 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
295 other body charged by law with performing a quasi-judicial function;

296 (35) records that would reveal negotiations regarding assistance or incentives offered
297 by or requested from a governmental entity for the purpose of encouraging a person to expand
298 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
299 person or place the governmental entity at a competitive disadvantage, but this section may not
300 be used to restrict access to a record evidencing a final contract;

301 (36) materials to which access must be limited for purposes of securing or maintaining
302 the governmental entity's proprietary protection of intellectual property rights including patents,
303 copyrights, and trade secrets;

304 (37) the name of a donor or a prospective donor to a governmental entity, including an
305 institution within the state system of higher education defined in Section 53B-1-102, and other
306 information concerning the donation that could reasonably be expected to reveal the identity of

307 the donor, provided that:

308 (a) the donor requests anonymity in writing;

309 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
310 classified protected by the governmental entity under this Subsection (37); and

311 (c) except for an institution within the state system of higher education defined in
312 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
313 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
314 over the donor, a member of the donor's immediate family, or any entity owned or controlled
315 by the donor or the donor's immediate family;

316 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
317 73-18-13;

318 (39) a notification of workers' compensation insurance coverage described in Section
319 34A-2-205;

320 (40) (a) the following records of an institution within the state system of higher
321 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
322 or received by or on behalf of faculty, staff, employees, or students of the institution:

323 (i) unpublished lecture notes;

324 (ii) unpublished notes, data, and information:

325 (A) relating to research; and

326 (B) of:

327 (I) the institution within the state system of higher education defined in Section
328 53B-1-102; or

329 (II) a sponsor of sponsored research;

330 (iii) unpublished manuscripts;

331 (iv) creative works in process;

332 (v) scholarly correspondence; and

333 (vi) confidential information contained in research proposals;

334 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
335 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

336 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

337 (41) (a) records in the custody or control of the Office of Legislative Auditor General

338 that would reveal the name of a particular legislator who requests a legislative audit prior to the
339 date that audit is completed and made public; and

340 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
341 Office of the Legislative Auditor General is a public document unless the legislator asks that
342 the records in the custody or control of the Office of Legislative Auditor General that would
343 reveal the name of a particular legislator who requests a legislative audit be maintained as
344 protected records until the audit is completed and made public;

345 (42) records that provide detail as to the location of an explosive, including a map or
346 other document that indicates the location of:

347 (a) a production facility; or

348 (b) a magazine;

349 (43) information contained in the database described in Section 62A-3-311.1;

350 (44) information contained in the Management Information System and Licensing
351 Information System described in Title 62A, Chapter 4a, Child and Family Services;

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

354 (46) records provided by any pawn or secondhand business to a law enforcement
355 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
356 Secondhand Merchandise Transaction Information Act;

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

359 (48) except to the extent that the record is exempt from this chapter pursuant to Section
360 63-2-106, records related to an emergency plan or program prepared or maintained by the
361 Division of Homeland Security the disclosure of which would jeopardize:

362 (a) the safety of the general public; or

363 (b) the security of:

364 (i) governmental property;

365 (ii) governmental programs; or

366 (iii) the property of a private person who provides the Division of Homeland Security
367 information;

368 (49) records of the Department of Agriculture and Food relating to the National

369 Animal Identification System or any other program that provides for the identification, tracing,
 370 or control of livestock diseases, including any program established under Title 4, Chapter 24,
 371 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
 372 Quarantine;

373 (50) as provided in Section 26-39-109:

374 (a) information or records held by the Department of Health related to a complaint
 375 regarding a child care program or residential child care which the department is unable to
 376 substantiate; and

377 (b) information or records related to a complaint received by the Department of Health
 378 from an anonymous complainant regarding a child care program or residential child care; ~~and~~

379 (51) unless otherwise classified as public under Section 63-2-301 and except as
 380 provided under Section 41-1a-116, an individual's home address, home telephone number, or
 381 personal mobile phone number, if:

382 (a) the individual is required to provide the information in order to comply with a law,
 383 ordinance, rule, or order of a government entity; and

384 (b) the subject of the record has a reasonable expectation that this information will be
 385 kept confidential due to:

386 (i) the nature of the law, ordinance, rule, or order; and

387 (ii) the individual complying with the law, ordinance, rule, or order[-]; and

388 (52) information collected and a report prepared by the Judicial Performance
 389 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78, Chapter 63,
 390 Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the
 391 information or report.

392 Section 3. Section **78-3-21** is amended to read:

393 **78-3-21. Judicial Council -- Creation -- Members -- Terms and election --**
 394 **Responsibilities -- Reports.**

395 (1) The Judicial Council, established by Article VIII, Section 12, Utah Constitution,
 396 shall be composed of:

397 (a) the chief justice of the Supreme Court;

398 (b) one member elected by the justices of the Supreme Court;

399 (c) one member elected by the judges of the Court of Appeals;

400 (d) five members elected by the judges of the district courts;
401 (e) two members elected by the judges of the juvenile courts;
402 (f) three members elected by the justice court judges; and
403 (g) a member or ex officio member of the Board of Commissioners of the Utah State
404 Bar who is an active member of the Bar in good standing elected by the Board of
405 Commissioners.

406 (2) (a) The chief justice of the Supreme Court shall act as presiding officer of the
407 council and chief administrative officer for the courts. The chief justice shall vote only in the
408 case of a tie.

409 (b) All members of the council shall serve for three-year terms. If a council member
410 should die, resign, retire, or otherwise fail to complete a term of office, the appropriate
411 constituent group shall elect a member to complete the term of office. In courts having more
412 than one member, the members shall be elected to staggered terms. The person elected to the
413 Judicial Council by the Board of Commissioners shall be a member or ex officio member of
414 the Board of Commissioners and an active member of the Bar in good standing at the time the
415 person is elected. The person may complete a three-year term of office on the Judicial Council
416 even though the person ceases to be a member or ex officio member of the Board of
417 Commissioners. The person shall be an active member of the Bar in good standing for the
418 entire term of the Judicial Council.

419 (c) Elections shall be held under rules made by the Judicial Council.

420 (3) The council is responsible for the development of uniform administrative policy for
421 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
422 the implementation of the policies developed by the council and for the general management of
423 the courts, with the aid of the administrator. The council has authority and responsibility to:

424 (a) establish and assure compliance with policies for the operation of the courts,
425 including uniform rules and forms; and

426 (b) publish and submit to the governor, the chief justice of the Supreme Court, and the
427 Legislature an annual report of the operations of the courts, which shall include financial and
428 statistical data and may include suggestions and recommendations for legislation.

429 [~~(4) (a) The Judicial Council shall make rules establishing:~~]

430 [~~(i) standards for judicial competence; and~~]

431 ~~[(ii) a formal program for the evaluation of judicial performance containing the~~
432 ~~elements of and meeting the requirements of this Subsection (4).]~~

433 ~~[(b) The Judicial Council shall ensure that the formal judicial performance evaluation~~
434 ~~program has improvement in the performance of individual judges, court commissioners, and~~
435 ~~the judiciary as its goal.]~~

436 ~~[(c) The Judicial Council shall ensure that the formal judicial performance evaluation~~
437 ~~program includes at least all of the following elements:]~~

438 ~~[(i) a requirement that judges complete a certain number of hours of approved judicial~~
439 ~~education each year;]~~

440 ~~[(ii) a requirement that each judge certify that he is:]~~

441 ~~[(A) physically and mentally competent to serve; and]~~

442 ~~[(B) in compliance with the Codes of Judicial Conduct and Judicial Administration;~~
443 ~~and]~~

444 ~~[(iii) a requirement that the judge receive a satisfactory score on questions identified by~~
445 ~~the Judicial Council as relating to judicial certification on a survey of members of the Bar~~
446 ~~developed by the Judicial Council in conjunction with the American Bar Association.]~~

447 ~~[(d) The Judicial Council shall ensure that the formal judicial performance evaluation~~
448 ~~program considers at least the following criteria:]~~

449 ~~[(i) integrity;]~~

450 ~~[(ii) knowledge;]~~

451 ~~[(iii) understanding of the law;]~~

452 ~~[(iv) ability to communicate;]~~

453 ~~[(v) punctuality;]~~

454 ~~[(vi) preparation;]~~

455 ~~[(vii) attentiveness;]~~

456 ~~[(viii) dignity;]~~

457 ~~[(ix) control over proceedings; and]~~

458 ~~[(x) skills as a manager.]~~

459 ~~[(e) (i) The Judicial Council shall provide the judicial performance evaluation~~
460 ~~information and the disciplinary data required by Subsection 20A-7-702(2) to the Lieutenant~~
461 ~~Governor for publication in the voter information pamphlet.]~~

462 ~~[(ii) Not later than August 1 of the year before the expiration of the term of office of a~~
463 ~~justice court judge, the Judicial Council shall provide the judicial performance evaluation~~
464 ~~information required by Subsection 20A-7-702(2) to the appointing authority of a justice court~~
465 ~~judge.]~~

466 ~~[(5)]~~ (4) The council shall establish standards for the operation of the courts of the state
467 including, but not limited to, facilities, court security, support services, and staff levels for
468 judicial and support personnel.

469 ~~[(6)]~~ (5) The council shall by rule establish the time and manner for destroying court
470 records, including computer records, and shall establish retention periods for these records.

471 ~~[(7)]~~ (6) (a) Consistent with the requirements of judicial office and security policies,
472 the council shall establish procedures to govern the assignment of state vehicles to public
473 officers of the judicial branch.

474 (b) The vehicles shall be marked in a manner consistent with Section 41-1a-407 and
475 may be assigned for unlimited use, within the state only.

476 ~~[(8)]~~ (7) (a) The council shall advise judicial officers and employees concerning ethical
477 issues and shall establish procedures for issuing informal and formal advisory opinions on
478 these issues.

479 (b) Compliance with an informal opinion is evidence of good faith compliance with the
480 Code of Judicial Conduct.

481 (c) A formal opinion constitutes a binding interpretation of the Code of Judicial
482 Conduct.

483 ~~[(9)]~~ (8) (a) The council shall establish written procedures authorizing the presiding
484 officer of the council to appoint judges of courts of record by special or general assignment to
485 serve temporarily in another level of court in a specific court or generally within that level.
486 The appointment shall be for a specific period and shall be reported to the council.

487 (b) These procedures shall be developed in accordance with Subsection 78-3-24(10)
488 regarding temporary appointment of judges.

489 ~~[(10)]~~ (9) The Judicial Council may by rule designate municipalities in addition to
490 those designated by statute as a location of a trial court of record. There shall be at least one
491 court clerk's office open during regular court hours in each county. Any trial court of record
492 may hold court in any municipality designated as a location of a court of record. Designations

493 by the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

494 ~~[(11)]~~ (10) The Judicial Council shall by rule determine whether the administration of a
 495 court shall be the obligation of the administrative office of the courts or whether the
 496 administrative office of the courts should contract with local government for court support
 497 services.

498 ~~[(12)]~~ (11) The Judicial Council may by rule direct that a district court location be
 499 administered from another court location within the county.

500 ~~[(13)]~~ (12) The Judicial Council shall establish and supervise the Office of Guardian
 501 Ad Litem Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912,
 502 and assure compliance of the guardian ad litem program with state and federal law, regulation,
 503 and policy, and court rules.

504 ~~[(14)]~~ (13) The Judicial Council shall establish and maintain, in cooperation with the
 505 Office of Recovery Services within the Department of Human Services, the part of the state
 506 case registry that contains records of each support order established or modified in the state on
 507 or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
 508 654a.

509 ~~[(15)]~~ (14) (a) On or before November 1, 2003, the Judicial Council, by rule, shall
 510 select one or more districts as pilot districts for purposes of Sections 78-3a-115, 78-3a-115.1,
 511 and 78-3a-116.

512 (b) Prior to the 2005 Annual General Session, the Judicial Council shall report to the
 513 Child Welfare Legislative Oversight Panel and the Judiciary Interim Committee on the effects
 514 of Chapter 332, Laws of Utah 2003 and recommend whether the provisions of Chapter 332,
 515 Laws of Utah 2003 should be continued, modified, or repealed.

516 Section 4. Section **78-63-101** is enacted to read:

517 **CHAPTER 63. JUDICIAL PERFORMANCE EVALUATION COMMISSION ACT**

518 **Part 1. General Provisions**

519 **78-63-101. Title.**

520 This chapter is known as the "Judicial Performance Evaluation Commission Act."

521 Section 5. Section **78-63-102** is enacted to read:

522 **78-63-102. Definitions.**

523 As used in this chapter:

524 (1) "Commission" means the Judicial Performance Evaluation Commission established
525 by this chapter.

526 (2) "Judge" means a judge or justice who is subject to a retention election.

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

528 Section 6. Section **78-63-201** is enacted to read:

529 **Part 2. Judicial Performance Evaluation**

530 **78-63-201. Judicial Performance Evaluation Commission -- Creation --**

531 **Membership -- Salary -- Staff.**

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

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

536 (b) two members appointed by the speaker of the House of Representatives, only one
537 of whom may be a member of the Utah State Bar;

538 (c) four members appointed by the members of the Supreme Court, at least one of
539 whom, but not more than two of whom, may be a member of the Utah State Bar;

540 (d) four members appointed by the governor, at least one of whom, but not more than
541 two of whom may be a member of the Utah State Bar; and

542 (e) the executive director of the Commission on Criminal and Juvenile Justice.

543 (2) (a) The president of the Senate and the speaker of the House of Representatives
544 shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is
545 at least one member from among their four appointees who is a member of the Utah State Bar.

546 (b) Each of the appointing authorities may appoint no more than half of the appointing
547 authority's members from the same political party.

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

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

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

552 (4) At the time of appointment, the terms of commission members shall be staggered
553 so that approximately half of commission members' terms expire every two years.

554 (5) When a vacancy occurs in the membership for any reason, the replacement shall be

555 appointed for the unexpired term.

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

557 (b) The action of a majority of the quorum constitutes the action of the commission.

558 (c) If a vote on the question of whether to recommend a judge be retained or not be
559 retained ends in a tie, the commission may make no recommendation concerning the judge's
560 retention.

561 Section 7. Section **78-63-202** is enacted to read:

562 **78-63-202. Salary and expenses -- Staff.**

563 (1) (a) (i) A member who is not a government employee receives no compensation or
564 benefits for the member's service, but may receive per diem and expenses incurred in the
565 performance of the member's official duties at the rates established by the Division of Finance
566 under Sections 63A-3-106 and 63A-3-107.

567 (ii) A member may decline to receive per diem and expenses for the member's service.

568 (b) (i) A state government officer or employee member who does not receive salary,
569 per diem, or expenses from the member's agency for the member's service may receive per
570 diem and expenses incurred in the performance of their official duties from the commission at
571 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

572 (ii) A state government officer or employee member may decline to receive per diem
573 and expenses for the member's service.

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

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

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

579 Section 8. Section **78-63-203** is enacted to read:

580 **78-63-203. Judicial performance evaluations.**

581 (1) Beginning in 2012, the commission shall prepare a performance evaluation for:

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

584 (b) each justice of the Supreme Court in the third, sixth, and ninth year of the justice's
585 term.

586 (2) Except as provided in Subsection (3), the performance evaluation for a judge under
587 Subsection (1) shall consider only:

588 (a) the results of the judge's most recent judicial performance survey that is conducted
589 by a third party in accordance with Section 78-63-204;

590 (b) information concerning the judge's compliance with minimum performance
591 standards established in accordance with Section 78-63-205;

592 (c) courtroom observation;

593 (d) the judge's judicial disciplinary record, if any;

594 (e) public comment solicited by the commission;

595 (f) information from an earlier judicial performance evaluation concerning the judge;

596 and

597 (g) any other factor that the commission:

598 (i) considers relevant to evaluating the judge's performance for the purpose of a
599 retention election; and

600 (ii) establishes by rule.

601 (3) The commission shall make rules concerning the conduct of courtroom observation
602 under Subsection (2), which shall include the following:

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

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

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

607 (4) (a) As part of the evaluation conducted under this section, the commission shall
608 determine whether to recommend that the voters retain the judge.

609 (b) (i) If a judge meets the minimum performance standards established in accordance
610 with Section 78-63-205 there is a rebuttable presumption that the commission will recommend
611 the voters retain the judge.

612 (ii) If a judge fails to meet the minimum performance standards established in
613 accordance with Section 78-63-205 there is a rebuttable presumption that the commission will
614 recommend the voters not retain the judge.

615 (c) The commission may elect to make no recommendation on whether the voters
616 should retain a judge if the commission determines that the information concerning the judge is

617 ~~§~~→ ~~[not sufficiently clear]~~ **insufficient** ←~~§~~ to make a recommendation.

618 (d) ~~§~~→ (i) ←~~§~~ If the commission deviates from a presumption for or against recommending the
 619 voters retain a judge or elects to make no recommendation on whether the voters should retain
 620 a judge, the commission shall provide a detailed explanation of the reason for that deviation or
 621 election in the commission's report under Section 78-63-206.

621a ~~§~~→ **(ii) If the commission makes no recommendation because of a tie vote, the commission shall**
 621b **note that fact in the commission's report.** ←~~§~~

622 (5) (a) Before considering the judicial performance evaluation of any judge, the
 623 commission shall notify the judge of the date and time of any commission meeting during
 624 which the judge's judicial performance evaluation will be considered.

625 (b) The commission shall allow a judge who is the subject of a judicial performance
 626 evaluation to appear and speak at any commission meeting, except a closed meeting, during
 627 which the judge's judicial performance evaluation is considered.

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

630 (6) The commission may make rules in accordance with Title 63, Chapter 46a, Utah
 631 Administrative Rulemaking Act, as necessary to administer the evaluation required by this
 632 section.

633 Section 9. Section **78-63-204** is enacted to read:

634 **78-63-204. Judicial performance survey.**

635 (1) The judicial performance survey required by Section 78-63-203 concerning a judge
 636 who is subject to a retention election shall be conducted on an ongoing basis during the judge's
 637 term in office by a third party under contract to the commission.

638 (2) The judicial performance survey shall include as respondents a sample of each of
 639 the following groups as applicable:

640 (a) attorneys who have appeared before the judge as counsel;

641 (b) jurors who have served in a case before the judge;

642 (c) litigants whose cases have been considered by the judge;

643 (d) witnesses who have testified in cases considered by the judge; and

644 (e) court staff who have worked with the judge.

645 (3) The commission may include an additional classification of respondents if the
 646 commission:

647 (a) considers a survey of that classification of respondents helpful to voters in

648 determining whether to vote to retain a judge; and

649 (b) establishes the additional classification of respondents by rule.

650 (4) All survey responses are anonymous, including comments included with a survey
651 response.

652 (5) If the commission provides any information to a judge or the Judicial Council, the
653 information shall be provided in such a way as to protect the confidentiality of a survey
654 respondent.

655 (6) A survey shall be provided to a potential survey respondent within 30 days of the
656 day on which the case in which the person appears in the judge's court is closed, exclusive of
657 any appeal, except for court staff, who may be surveyed at any time during the survey period.

658 (7) Survey topics shall include questions concerning a judge's:

659 (a) legal ability, including the following:

660 (i) demonstration of understanding of the substantive law and any relevant rules of
661 procedure and evidence;

662 (ii) attentiveness to factual and legal issues before the court;

663 (iii) adherence to precedent and ability to clearly explain departures from precedent;

664 and

665 (iv) grasp of the practical impact ~~§~~ on the parties ~~←§~~ of the judge's rulings ~~§~~ ,

665a including the effect of delay and increased litigation expense ~~←§~~ ;

666 (b) integrity, including the following:

667 (i) avoidance of impropriety or the appearance of impropriety; and

668 (ii) display of fairness and impartiality toward all parties;

669 (c) communication skills, including clearly articulating the basis for written rulings;

670 (d) judicial temperament, including the following:

671 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's

672 court;

673 (ii) maintenance of decorum in the courtroom; and

674 (iii) preparedness for oral argument; and

675 (e) administrative performance, including the following:

676 (i) management of workload;

677 (ii) sharing proportionally the workload within the court or district; and

678 (iii) issuance of opinions and orders without unnecessary delay.

679 ~~(8) §→ [The survey shall also include a question that inquires whether the respondent would~~
 680 ~~recommend that the judge be retained.]~~

681 ~~——(9) ←§~~ (a) If the commission determines that a certain survey question or topic is not
 682 appropriate for a category of respondents, the commission may omit that question or topic from
 683 the survey provided to that category of respondents.

684 (b) Litigants and witnesses may be surveyed only about judicial temperament.

685 (c) The commission shall, by rule, determine appropriate litigants and witnesses to be
 686 surveyed.

687 ~~§→ [(10) With the exception of the question concerning whether a respondent would~~
 688 ~~recommend that the judge be retained, the] (9) The ←§~~ survey shall allow respondents to indicate
 688a responses

689 in a manner determined by the commission, which shall be:

690 (a) on a numerical scale from one to five, with one representing inadequate
 691 performance and five representing outstanding performance; or

692 (b) in the affirmative or negative, with an option to indicate the respondent's inability
 693 to respond in the affirmative or negative.

694 ~~§→ [(11) (10) ←§~~ The commission shall compile and make available to each judge that
 694a judge's
 695 survey results with each of the judge's judicial performance evaluations.

696 ~~§→ [(12) (11) ←§~~ The commission may make rules in accordance with Title 63, Chapter
 696a 46a, Utah
 697 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

698 Section 10. Section **78-63-205** is enacted to read:

699 **78-63-205. Minimum performance standards.**

700 (1) The commission shall establish a minimum performance standard requiring that:

701 (a) the judge have no more than one formal disciplinary action taken against the judge
 702 by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current
 703 term; and

704 (b) the judge receive a minimum score on the judicial performance survey as follows:

705 (i) an average score of at least a 3.0 on at least 80% of the questions, excluding litigant
 706 and witness respondents, for questions scored on the numerical scale; and

707 (ii) ~~§→ [affirmative responses by at least 70% of respondents, excluding litigant and witness~~
 708 ~~respondents, to all questions that do not use the numerical scale] if the commission includes a~~
 708a ~~question on the survey that does not use the numerical scale, the commission shall establish ←§~~

708b **§→ the minimum performance standard for all questions, excluding any question to litigant**
708c **and witness respondents, that do not use the numerical scale to be substantially equivalent to**
708d **the standard required under Subsection (1)(b)(i) ←§ .**
709 **(2) The commission may establish an additional minimum performance standard if the**

710 commission by at least two-thirds vote:

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

713 (b) adopts the standard.

714 (3) The commission may make rules in accordance with Title 63, Chapter 46a, Utah
715 Administrative Rulemaking Act, to establish a minimum performance standard.

716 Section 11. Section **78-63-206** is enacted to read:

717 **78-63-206. Publication of the judicial performance evaluation.**

718 (1) (a) The commission shall compile a report of its judicial performance evaluation of
719 a judge.

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

723 (c) A report prepared in accordance with Subsection (1)(b) and information obtained in
724 connection with the evaluation become a public record under Title 63, Chapter 2, Government
725 Records Access and Management Act, on the day following the last day on which the judge
726 who is the subject of the report may file a declaration of the judge's candidacy in the judge's
727 scheduled retention election if the judge declares the judge's candidacy for the retention
728 election.

729 (d) A report that is not public under Subsection (1)(c) is a protected record under Title
730 63, Chapter 2, Government Records Access and Management Act.

731 (2) A judge who is the subject of a report under this section, within 15 days of
732 receiving a copy of the commission's report under Subsection (1)(b), may:

733 (a) provide a written response to the report; and

734 (b) request an interview with the commission for the purpose of addressing the report.

735 (3) (a) After receiving a response from a judge in any form allowed by Subsection (2),
736 the commission may meet and reconsider its decision to recommend the judge not be retained.

737 (b) If the commission does not change its decision to recommend the judge not be
738 retained, the judge may provide a written statement, not to exceed 100 words, that shall be
739 included in the commission's report.

740 (4) The report of a judicial performance evaluation shall include:

741 (a) the results of the judicial performance survey, in both raw and summary form;

742 (b) information concerning the judge's compliance with the minimum performance
 743 standards;

744 (c) information concerning any formal or informal discipline against a judge that is not
 745 subject to restrictions on disclosure under Title ~~§~~→ [78] 78A ←~~§~~ , Chapter ~~§~~→ [8] 11 ←~~§~~ .
 745a Judicial Conduct Commission

746 ~~§~~→ [and Supreme Court Oversight of Judges] ←~~§~~ ;

747 (d) a narrative concerning the judge's performance;

748 (e) the commission's recommendation concerning whether the judge should be
 749 retained, or the statement required of the commission if it declines to make a recommendation;

750 (f) the number of votes for and against the commission's recommendation; and

751 (g) any other information the commission considers appropriate to include in the
 752 report.

753 (5) (a) The commission may not include in its report specific information concerning
 754 an earlier judicial performance evaluation.

755 (b) The commission may refer to information from an earlier judicial performance
 756 evaluation concerning the judge in the commission's report only if the reference is in general
 757 terms.

758 (6) The report of the commission's judicial performance evaluation shall be made
 759 publicly available on an Internet website.

760 (7) The commission may make the report of the judicial performance evaluation
 761 immediately preceding the judge's retention election publicly available through other means
 762 within budgetary constraints.

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

766 (9) The commission may also provide any information collected during the course of a
 767 judge's judicial performance evaluation immediately preceding the judge's retention election to
 768 the public to the extent that information is not otherwise subject to restrictions on disclosure.

769 (10) The commission shall provide the Judicial Council with:

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

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

772 (11) The Judicial Council shall provide information obtained concerning a judge under
773 Subsection (10) to the subject judge's presiding judge, if any.

Legislative Review Note
as of 12-11-07 1:39 PM

Office of Legislative Research and General Counsel

S.B. 105 - Judicial Performance Evaluation Commission

Fiscal Note

2008 General Session
State of Utah

State Impact

The Judicial Performance Evaluation Commission created in the bill will require a one-time appropriation of \$9,000 and an ongoing appropriation of \$386,000 from the General Fund beginning FY 2009. The Courts will discontinue a similar but smaller judicial performance survey at a cost savings of \$37,000 annually also beginning in FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$349,000	\$349,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$9,000	\$0	\$0	\$0	\$0
Total	\$0	\$358,000	\$349,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

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