

Representative Curtis Oda proposes the following substitute bill:

JUDICIAL PERFORMANCE EVALUATION

COMMISSION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Butters

House Sponsor: Curtis Oda

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ eliminates a provision requiring the Judicial Council to evaluate judicial performance;
- ▶ creates the Judicial Performance Evaluation Commission;
- ▶ requires a judicial performance evaluation to be conducted for a judge who is subject to a retention election;
- ▶ establishes the components of a judicial performance evaluation;
- ▶ requires the commission to establish minimum performance standards as part of the judicial performance evaluation;
- ▶ requires the commission to conduct a judicial performance evaluation survey;
- ▶ establishes the manner of reporting and publishing judicial performance evaluations;
- ▶ 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 This bill provides an effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **20A-7-702**, as last amended by Laws of Utah 2008, Chapter 3

35 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

36 **78A-2-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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 Title 78A,
 - 96 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and
 - 97 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13
 - 98 during the judge's current term and the immediately preceding term, and a detailed summary of
 - 99 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has
 - 100 received; ~~and~~
 - 101 (E) a statement identifying whether or not the ~~[judge was certified by the Judicial~~
 - 102 ~~Council;]~~ Judicial Performance Evaluation Commission recommends the judge be retained or
 - 103 declines to make a recommendation; and
 - 104 (F) any statement provided by a judge who is not recommended for retention by the
 - 105 Judicial Performance Evaluation Commission under Section 78-63-203;
 - 106 (vii) (A) ~~[except as provided in Subsection (2)(h)(vii)(B);]~~ for each judge, in ~~[graphic~~
 - 107 ~~format, the responses for each attorney, jury, and other survey question used by the Judicial~~
 - 108 ~~Council for certification of judges, displayed in 1% increments;]~~ a bar graph, the average of
 - 109 responses to each survey category, displayed with an identification of the minimum acceptable
 - 110 score as set by Section 78-63-205 and the average score of all judges of the same court level;
 - 111 and
 - 112 ~~[(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a~~
 - 113 ~~particular judge is too small to provide statistically reliable information in 1% increments, the~~
 - 114 ~~survey results for that judge shall be reported as being above or below 70% and a statement by~~
 - 115 ~~the surveyor explaining why the survey is statistically unreliable shall also be included;]~~
 - 116 (viii) an Internet website address that contains the Judicial Performance Evaluation
 - 117 Commission's report on the judge's performance evaluation;
 - 118 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,

119 indicating the ballot marking procedure used by each county and explaining how to mark the
120 ballot for each procedure;

121 (j) voter registration information, including information on how to obtain an absentee
122 ballot;

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

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

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

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

132 (signed) _____
133 Lieutenant Governor"

134 (3) The lieutenant governor shall:

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

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

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

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

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

145 **63-2-304. Protected records.**

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

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

149 (2) commercial information or nonindividual financial information obtained from a

150 person if:

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

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

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

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

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

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

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

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

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

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

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

180 (d) in the case of records that would identify the appraisal or estimated value of

181 property, the potential sellers have already learned of the governmental entity's estimated value
182 of the property; or

183 (e) the property under consideration for public acquisition is a single family residence
184 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
185 the property as required under Section 78B-6-505;

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

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

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

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

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

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

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

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

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

211 (10) records the disclosure of which would jeopardize the life or safety of an

212 individual;

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

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

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

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

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

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

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

234 (18) records of communications between a governmental entity and an attorney
235 representing, retained, or employed by the governmental entity if the communications would be
236 privileged as provided in Section 78B-1-137;

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

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

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

- 243 (A) members of a legislative body;
- 244 (B) a member of a legislative body and a member of the legislative body's staff; or
- 245 (C) members of a legislative body's staff; and
- 246 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
- 247 legislative action or policy may not be classified as protected under this section;
- 248 (20) (a) records in the custody or control of the Office of Legislative Research and
- 249 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
- 250 legislation or contemplated course of action before the legislator has elected to support the
- 251 legislation or course of action, or made the legislation or course of action public; and
- 252 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
- 253 Office of Legislative Research and General Counsel is a public document unless a legislator
- 254 asks that the records requesting the legislation be maintained as protected records until such
- 255 time as the legislator elects to make the legislation or course of action public;
- 256 (21) research requests from legislators to the Office of Legislative Research and
- 257 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
- 258 in response to these requests;
- 259 (22) drafts, unless otherwise classified as public;
- 260 (23) records concerning a governmental entity's strategy about collective bargaining or
- 261 pending litigation;
- 262 (24) records of investigations of loss occurrences and analyses of loss occurrences that
- 263 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
- 264 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 265 (25) records, other than personnel evaluations, that contain a personal recommendation
- 266 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
- 267 personal privacy, or disclosure is not in the public interest;
- 268 (26) records that reveal the location of historic, prehistoric, paleontological, or
- 269 biological resources that if known would jeopardize the security of those resources or of
- 270 valuable historic, scientific, educational, or cultural information;
- 271 (27) records of independent state agencies if the disclosure of the records would
- 272 conflict with the fiduciary obligations of the agency;
- 273 (28) records of an institution within the state system of higher education defined in

274 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
275 retention decisions, and promotions, which could be properly discussed in a meeting closed in
276 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
277 the final decisions about tenure, appointments, retention, promotions, or those students
278 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

303 (36) materials to which access must be limited for purposes of securing or maintaining
304 the governmental entity's proprietary protection of intellectual property rights including patents,

305 copyrights, and trade secrets;

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

310 (a) the donor requests anonymity in writing;

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

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

318 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
319 73-18-13;

320 (39) a notification of workers' compensation insurance coverage described in Section
321 34A-2-205;

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

325 (i) unpublished lecture notes;

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

327 (A) relating to research; and

328 (B) of:

329 (I) the institution within the state system of higher education defined in Section
330 53B-1-102; or

331 (II) a sponsor of sponsored research;

332 (iii) unpublished manuscripts;

333 (iv) creative works in process;

334 (v) scholarly correspondence; and

335 (vi) confidential information contained in research proposals;

336 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
337 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
338 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
339 (41) (a) records in the custody or control of the Office of Legislative Auditor General
340 that would reveal the name of a particular legislator who requests a legislative audit prior to the
341 date that audit is completed and made public; and
342 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
343 Office of the Legislative Auditor General is a public document unless the legislator asks that
344 the records in the custody or control of the Office of Legislative Auditor General that would
345 reveal the name of a particular legislator who requests a legislative audit be maintained as
346 protected records until the audit is completed and made public;
347 (42) records that provide detail as to the location of an explosive, including a map or
348 other document that indicates the location of:
349 (a) a production facility; or
350 (b) a magazine;
351 (43) information contained in the database described in Section 62A-3-311.1;
352 (44) information contained in the Management Information System and Licensing
353 Information System described in Title 62A, Chapter 4a, Child and Family Services;
354 (45) information regarding National Guard operations or activities in support of the
355 National Guard's federal mission;
356 (46) records provided by any pawn or secondhand business to a law enforcement
357 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
358 Secondhand Merchandise Transaction Information Act;
359 (47) information regarding food security, risk, and vulnerability assessments performed
360 by the Department of Agriculture and Food;
361 (48) except to the extent that the record is exempt from this chapter pursuant to Section
362 63-2-106, records related to an emergency plan or program prepared or maintained by the
363 Division of Homeland Security the disclosure of which would jeopardize:
364 (a) the safety of the general public; or
365 (b) the security of:
366 (i) governmental property;

367 (ii) governmental programs; or
368 (iii) the property of a private person who provides the Division of Homeland Security
369 information;

370 (49) records of the Department of Agriculture and Food relating to the National
371 Animal Identification System or any other program that provides for the identification, tracing,
372 or control of livestock diseases, including any program established under Title 4, Chapter 24,
373 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
374 Quarantine;

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

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

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

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

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

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

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

389 (ii) the individual complying with the law, ordinance, rule, or order.

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

394 Section 3. Section **78-63-101** is enacted to read:

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

396 **Part 1. General Provisions**

397 **78-63-101. Title.**

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

399 Section 4. Section **78-63-102** is enacted to read:

400 **78-63-102. Definitions.**

401 As used in this chapter:

402 (1) "Commission" means the Judicial Performance Evaluation Commission established
403 by this chapter.

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

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

406 Section 5. Section **78-63-201** is enacted to read:

407 **Part 2. Judicial Performance Evaluation**

408 **78-63-201. Judicial Performance Evaluation Commission -- Creation --**

409 **Membership -- Salary -- Staff.**

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

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

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

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

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

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

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

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

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

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

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

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

432 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
433 appointed for the unexpired term.

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

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

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

439 Section 6. Section **78-63-202** is enacted to read:

440 **78-63-202. Salary and expenses -- Staff.**

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

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

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

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

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

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

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

457 Section 7. Section **78-63-203** is enacted to read:

458 **78-63-203. Judicial performance evaluations.**

459 (1) Beginning with the 2012 judicial retention elections, the commission shall prepare

460 a performance evaluation for:

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

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

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

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

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

471 (c) courtroom observation;

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

473 (e) public comment solicited by the commission;

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

475 and

476 (g) any other factor that the commission:

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

479 (ii) establishes by rule.

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

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

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

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

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

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

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

494 (c) The commission may elect to make no recommendation on whether the voters
495 should retain a judge if the commission determines that the information concerning the judge is
496 insufficient to make a recommendation.

497 (d) (i) If the commission deviates from a presumption for or against recommending the
498 voters retain a judge or elects to make no recommendation on whether the voters should retain
499 a judge, the commission shall provide a detailed explanation of the reason for that deviation or
500 election in the commission's report under Section 78-63-206.

501 (ii) If the commission makes no recommendation because of a tie vote, the commission
502 shall note that fact in the commission's report.

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

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

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

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

514 Section 8. Section **78-63-204** is enacted to read:

515 **78-63-204. Judicial performance survey.**

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

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

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

- 522 (b) jurors who have served in a case before the judge;
523 (c) litigants whose cases have been considered by the judge;
524 (d) witnesses who have testified in cases considered by the judge; and
525 (e) court staff who have worked with the judge.
526 (3) The commission may include an additional classification of respondents if the
527 commission:
528 (a) considers a survey of that classification of respondents helpful to voters in
529 determining whether to vote to retain a judge; and
530 (b) establishes the additional classification of respondents by rule.
531 (4) All survey responses are anonymous, including comments included with a survey
532 response.
533 (5) If the commission provides any information to a judge or the Judicial Council, the
534 information shall be provided in such a way as to protect the confidentiality of a survey
535 respondent.
536 (6) A survey shall be provided to a potential survey respondent within 30 days of the
537 day on which the case in which the person appears in the judge's court is closed, exclusive of
538 any appeal, except for court staff, who may be surveyed at any time during the survey period.
539 (7) Survey topics shall include questions concerning a judge's:
540 (a) legal ability, including the following:
541 (i) demonstration of understanding of the substantive law and any relevant rules of
542 procedure and evidence;
543 (ii) attentiveness to factual and legal issues before the court;
544 (iii) adherence to precedent and ability to clearly explain departures from precedent;
545 and
546 (iv) grasp of the practical impact on the parties of the judge's rulings, including the
547 effect of delay and increased litigation expense;
548 (b) integrity, including the following:
549 (i) avoidance of impropriety or the appearance of impropriety; and
550 (ii) display of fairness and impartiality toward all parties;
551 (c) communication skills, including clearly articulating the basis for written rulings;
552 (d) judicial temperament, including the following:

- 553 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's
554 court;
- 555 (ii) maintenance of decorum in the courtroom; and
556 (iii) preparedness for oral argument; and
- 557 (e) administrative performance, including the following:
- 558 (i) management of workload;
559 (ii) sharing proportionally the workload within the court or district; and
560 (iii) issuance of opinions and orders without unnecessary delay.
- 561 (8) (a) If the commission determines that a certain survey question or topic is not
562 appropriate for a category of respondents, the commission may omit that question or topic from
563 the survey provided to that category of respondents.
- 564 (b) Litigants and witnesses may be surveyed only about judicial temperament.
- 565 (c) The commission shall, by rule, determine appropriate litigants and witnesses to be
566 surveyed.
- 567 (9) The survey shall allow respondents to indicate responses in a manner determined by
568 the commission, which shall be:
- 569 (a) on a numerical scale from one to five, with one representing inadequate
570 performance and five representing outstanding performance; or
- 571 (b) in the affirmative or negative, with an option to indicate the respondent's inability
572 to respond in the affirmative or negative.
- 573 (10) The commission shall compile and make available to each judge that judge's
574 survey results with each of the judge's judicial performance evaluations.
- 575 (11) The commission may make rules in accordance with Title 63, Chapter 46a, Utah
576 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.
- 577 Section 9. Section **78-63-205** is enacted to read:
- 578 **78-63-205. Minimum performance standards.**
- 579 (1) The commission shall establish a minimum performance standard requiring that:
- 580 (a) the judge have no more than one formal disciplinary action taken against the judge
581 by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current
582 term; and
- 583 (b) the judge receive a minimum score on the judicial performance survey as follows:

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

586 (ii) if the commission includes a question on the survey that does not use the numerical
587 scale, the commission shall establish the minimum performance standard for all questions,
588 excluding any question to litigant and witness respondents, that do not use the numerical scale
589 to be substantially equivalent to the standard required under Subsection (1)(b)(i).

590 (2) The commission may establish an additional minimum performance standard if the
591 commission by at least two-thirds vote:

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

594 (b) adopts the standard.

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

597 Section 10. Section **78-63-206** is enacted to read:

598 **78-63-206. Publication of the judicial performance evaluation.**

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

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

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

610 (d) A report that is not public under Subsection (1)(c) is a protected record under Title
611 63, Chapter 2, Government Records Access and Management Act.

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

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

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

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

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

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

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

623 (b) information concerning the judge's compliance with the minimum performance
624 standards;

625 (c) information concerning any formal or informal discipline against a judge that is not
626 subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct

627 Commission;

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

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

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

632 (g) any other information the commission considers appropriate to include in the
633 report.

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

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

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

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

644 (8) The commission shall provide a summary of the judicial performance evaluation
645 for each judge to the lieutenant governor for publication in the voter information pamphlet in

646 the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

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

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

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

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

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

655 Section 11. Section **78A-2-104** is amended to read:

656 **78A-2-104. Judicial Council -- Creation -- Members -- Terms and election --**
657 **Responsibilities -- Reports.**

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

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

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

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

663 (d) five members elected by the judges of the district courts;

664 (e) two members elected by the judges of the juvenile courts;

665 (f) three members elected by the justice court judges; and

666 (g) a member or ex officio member of the Board of Commissioners of the Utah State
667 Bar who is an active member of the Bar in good standing at the time of election by the Board of
668 Commissioners.

669 (2) The Judicial Council shall have a seal.

670 (3) (a) The chief justice of the Supreme Court shall act as presiding officer of the
671 council and chief administrative officer for the courts. The chief justice shall vote only in the
672 case of a tie.

673 (b) All members of the council shall serve for three-year terms.

674 (i) If a council member should die, resign, retire, or otherwise fail to complete a term
675 of office, the appropriate constituent group shall elect a member to complete the term of office.

676 (ii) In courts having more than one member, the members shall be elected to staggered

677 terms.

678 (iii) The person elected by the Board of Commissioners may complete a three-year
679 term of office on the Judicial Council even though the person ceases to be a member or ex
680 officio member of the Board of Commissioners. The person shall be an active member of the
681 Bar in good standing for the entire term of the Judicial Council.

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

683 (4) The council is responsible for the development of uniform administrative policy for
684 the courts throughout the state. The presiding officer of the Judicial Council is responsible for
685 the implementation of the policies developed by the council and for the general management of
686 the courts, with the aid of the administrator. The council has authority and responsibility to:

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

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

692 [~~(5)(a) The Judicial Council shall make rules establishing:~~]

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

694 [~~(ii) a formal program for the evaluation of judicial performance containing the
695 elements of and meeting the requirements of this Subsection (5).]~~

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

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

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

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

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

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

707 [~~(iii) a requirement that the judge receive a satisfactory score on questions identified by~~

708 the Judicial Council as relating to judicial certification on a survey of members of the Bar
709 developed by the Judicial Council in conjunction with the American Bar Association.]

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

712 [(i) integrity;]

713 [(ii) knowledge;]

714 [(iii) understanding of the law;]

715 [(iv) ability to communicate;]

716 [(v) punctuality;]

717 [(vi) preparation;]

718 [(vii) attentiveness;]

719 [(viii) dignity;]

720 [(ix) control over proceedings; and]

721 [(x) skills as a manager.]

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

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

729 [(6) (5) The council shall establish standards for the operation of the courts of the state
730 including, but not limited to, facilities, court security, support services, and staff levels for
731 judicial and support personnel.

732 [(7) (6) The council shall by rule establish the time and manner for destroying court
733 records, including computer records, and shall establish retention periods for these records.

734 [(8) (7) (a) Consistent with the requirements of judicial office and security policies,
735 the council shall establish procedures to govern the assignment of state vehicles to public
736 officers of the judicial branch.

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

739 ~~[(9)]~~ (8) (a) The council shall advise judicial officers and employees concerning ethical
740 issues and shall establish procedures for issuing informal and formal advisory opinions on
741 these issues.

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

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

746 ~~[(10)]~~ (9) (a) The council shall establish written procedures authorizing the presiding
747 officer of the council to appoint judges of courts of record by special or general assignment to
748 serve temporarily in another level of court in a specific court or generally within that level.
749 The appointment shall be for a specific period and shall be reported to the council.

750 (b) These procedures shall be developed in accordance with Subsection 78A-2-107(10)
751 regarding temporary appointment of judges.

752 ~~[(11)]~~ (10) The Judicial Council may by rule designate municipalities in addition to
753 those designated by statute as a location of a trial court of record. There shall be at least one
754 court clerk's office open during regular court hours in each county. Any trial court of record
755 may hold court in any municipality designated as a location of a court of record. Designations
756 by the Judicial Council may not be made between July 1, 1997, and July 1, 1998.

757 ~~[(12)]~~ (11) The Judicial Council shall by rule determine whether the administration of a
758 court shall be the obligation of the administrative office of the courts or whether the
759 administrative office of the courts should contract with local government for court support
760 services.

761 ~~[(13)]~~ (12) The Judicial Council may by rule direct that a district court location be
762 administered from another court location within the county.

763 ~~[(14)]~~ (13) The Judicial Council shall establish and supervise the Office of Guardian
764 Ad Litem Director, in accordance with Title 78A, Chapter 6, Part 9, Guardian Ad Litem, and
765 assure compliance of the guardian ad litem program with state and federal law, regulation,
766 policy, and court rules.

767 ~~[(15)]~~ (14) The Judicial Council shall establish and maintain, in cooperation with the
768 Office of Recovery Services within the Department of Human Services, the part of the state
769 case registry that contains records of each support order established or modified in the state on

770 or after October 1, 1998, as is necessary to comply with the Social Security Act, 42 U.S.C. Sec.
771 654a.

772 Section 12. **Effective date.**

773 This bill takes effect on May 5, 2008, except that the amendments to Section

774 20A-7-702 and Section 78A-2-104 take effect on January 1, 2012.

S.B. 105 2nd Sub. (Salmon) - 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.
