

Representative Curtis Oda proposes the following substitute bill:

JUDICIAL NOMINATING COMMISSION

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill requires trial court nominating commissions to submit five names to the governor, the appellate court nominating commission to submit seven names to the governor, and that all nominating commissions meet within a specified period of time.

Highlighted Provisions:

This bill:

- ▶ requires judicial nominating commissions to meet within a specified period from the effective date of a judicial vacancy;
- ▶ requires the governor to ensure that the nominating commissions follow statutes and rules;
- ▶ requires the governor to appoint the staff of the judicial nominating commissions;
- ▶ requires the governor's staff to enact rules regarding judicial nominating commissions;
- ▶ requires the appellate court nominating commission to submit seven names to the governor per vacancy;
- ▶ requires trial court nominating commissions to submit five names to the governor per vacancy; and



26 ▶ removes the chief justice of the Supreme Court from the nominating commissions.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 This bill takes effect on July 1, 2010.

31 This bill coordinates with S.B. 232, Judicial Administration Amendments, to account
32 for a judicial hiring freeze.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78A-10-103**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
36 amended by Laws of Utah 2008, Chapter 3

37 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

38 **78A-10-202**, as enacted by Laws of Utah 2008, Chapter 3

39 **78A-10-203**, as enacted by Laws of Utah 2008, Chapter 3

40 **78A-10-302**, as enacted by Laws of Utah 2008, Chapter 3

41 **78A-10-303**, as enacted by Laws of Utah 2008, Chapter 3

42 ENACTS:

43 **78A-10-105**, Utah Code Annotated 1953

44 REPEALS:

45 **20A-1-505**, as last amended by Laws of Utah 1994, Chapter 227

46 **Utah Code Sections Affected by Coordination Clause:**

47 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

50 Section 1. Section **78A-10-103** is amended to read:

51 **78A-10-103. Procedures governing meetings of judicial nominating commissions.**

52 (1) The [~~Judicial Council~~] Commission on Criminal and Juvenile Justice shall:

53 (a) in consultation with the Judicial Council, enact rules establishing procedures
54 governing the meetings of the judicial nominating commissions in accordance with Title 63G,
55 Chapter 3, Utah Administrative Rulemaking Act; and

56 (b) ensure that those procedures include:

57 (i) a minimum recruitment period of at least 30 days [~~and a procedure to extend that~~
58 ~~period for an additional 30 days if]~~ but not more than 90 days, unless fewer than nine
59 applications are received for a judicial vacancy, in which case the recruitment period may be
60 extended up to 30 days;

61 (ii) standards for maintaining the confidentiality of the applications and related
62 documents;

63 (iii) standards governing the release of applicant names before nomination;

64 (iv) standards for destroying the records of the names of applicants, applications, and
65 related documents upon completion of the nominating process;

66 (v) an opportunity for public comment concerning the nominating process,
67 qualifications for judicial office, and individual applicants;

68 (vi) evaluation criteria for the selection of judicial nominees;

69 (vii) procedures for taking summary minutes at nominating commission meetings;

70 (viii) procedures for simultaneously forwarding the names of nominees to the
71 governor, the president of the Senate, and the Office of Legislative Research and General
72 Counsel; [~~and]~~

73 (ix) standards governing a nominating commissioner's disqualification and inability to
74 serve[-]; and

75 [~~(2) (a) (i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating~~
76 ~~commission receives 15 or more applications to fill a judicial vacancy, the nominating~~
77 ~~commission shall submit at least five names to the governor.]~~

78 [~~(ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required~~
79 ~~number of votes as specified in Subsection (2)(c) from the nominating commission, the~~
80 ~~commission shall submit only the names of applicants that received the required number of~~
81 ~~votes, but must submit the names of at least three applicants.]~~

82 [~~(b) In determining whether or not to submit an applicant's name to the governor, a~~
83 ~~commission may not decline to consider an applicant merely because:]~~

84 (x) procedures that require the Administrative Office of the Courts to immediately
85 inform the governor when a judge is removed, resigns, or retires.

86 (2) In determining which of the applicants are the most qualified, the nominating
87 commissions shall determine by a majority vote of the commissioners present which of the

88 applicants best possess the ability, temperament, training, and experience that qualifies them
89 for the office.

90 (3) (a) The appellate court nominating commission shall certify to the governor a list of
91 the seven most qualified applicants per vacancy; and

92 (b) trial court nominating commissions shall certify to the governor a list of the five
93 most qualified applicants per vacancy.

94 (4) Nominating commissions shall ensure that the list of applicants submitted to the
95 governor:

96 (a) meet the qualifications required by law to fill the office; and

97 (b) are willing to serve.

98 (5) In determining which of the applicants are the most qualified, nominating
99 commissions may not decline to submit a candidate's name to the governor merely because:

100 [(i)] (a) the nominating commission had declined to submit that candidate's name to the
101 governor to fill a previous vacancy;

102 [(ii)] (b) a previous nominating commission had declined to submit that candidate's
103 name to the governor; or

104 [(iii)] (c) that nominating commission or a previous nominating commission had
105 submitted the applicant's name to the governor and the governor selected someone else to fill
106 the vacancy.

107 ~~[(c) The vote required to submit an applicant's name to the governor is as follows:]~~

108 ~~[(i) if all seven members of the nominating commission are present and considering~~
109 ~~applicants, a vote in favor of the applicant by four commissioners submits the candidate's name~~
110 ~~to the governor;]~~

111 ~~[(ii) if only six members of the nominating commission are present and considering~~
112 ~~applicants because one member is unable to attend, has recused himself or is otherwise~~
113 ~~disqualified, a vote in favor of the applicant by four commissioners submits the candidate's~~
114 ~~name to the governor;]~~

115 ~~[(iii) if only five members of the nominating commission are present and considering~~
116 ~~applicants because two members are unable to attend, have recused themselves, or are~~
117 ~~otherwise disqualified, a vote in favor of the applicant by three commissioners submits the~~
118 ~~candidate's name to the governor; and]~~

119 ~~[(iv) if only four members of the nominating commission are present and considering~~
 120 ~~applicants because three members are unable to attend, have recused themselves, or are~~
 121 ~~otherwise disqualified, a vote in favor of the applicant by three commissioners submits the~~
 122 ~~candidate's name to the governor.]~~

123 ~~[(3)]~~ (6) A judicial nominating commission may not nominate a justice or judge who
 124 was not retained by the voters for the office for which the justice or judge was defeated until
 125 after the expiration of that term of office.

126 ~~[(4)]~~ (7) Judicial nominating commissions are exempt from the requirements of Title
 127 52, Chapter 4, Open and Public Meetings Act~~[-and Title 63G, Chapter 3, Utah Administrative~~
 128 ~~Rulemaking Act].~~

129 Section 2. Section **78A-10-104** is amended to read:

130 **78A-10-104. Convening of recruitment period -- Convening of judicial**
 131 **nominating commissions -- Certification to governor of nominees -- Meetings to**
 132 **investigate prospective candidates.**

133 ~~[(1) When a vacancy occurs or is about to occur in the office of a justice or judge of~~
 134 ~~any court of record, the chair of the judicial nominating commission for the office to be filled~~
 135 ~~shall convene the commission as soon as practicable.]~~

136 (1) The governor shall ensure that:

137 (a) the recruitment period to fill a judicial vacancy begins 235 days before the effective
 138 date of a vacancy, unless sufficient notice is not given, in which case the recruitment period
 139 shall begin within 10 days of receiving notice;

140 (b) the recruitment period is a minimum of 30 days but not more than 90 days, unless
 141 fewer than nine applications are received, in which case the recruitment period may be
 142 extended up to 30 days; and

143 (c) the chair of the judicial nominating commission having authority over the vacancy
 144 shall convene a meeting not more than 10 days after the close of the recruitment period.

145 (2) The nominating commission may:

146 (a) meet as necessary to perform its function; and

147 (b) investigate prospective candidates.

148 (3) ~~[(a)]~~ Not later than 45 days after convening, the ~~[commission shall certify to the~~
 149 ~~governor a list of nominees who a majority of the members of the commission have~~

150 determined]:

151 (a) appellate court nominating commission shall certify to the governor a list of the
152 seven most qualified applicants per vacancy; and

153 (b) trial court nominating commission shall certify to the governor a list of the five
154 most qualified applicants per vacancy.

155 [~~(i) have the qualifications required by law to fill the office;~~]

156 [~~(ii) are willing to serve; and~~]

157 [~~(iii) possess the ability, temperament, training, and experience that fits them for the~~
158 ~~office.]~~

159 [~~(b) (i) The appellate court nominating commission shall certify a list of at least five~~
160 ~~appellate nominees to the governor.]~~

161 [~~(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

162 [~~(iii) The commission may not certify more than seven nominees to the governor.]~~

163 [~~(c) (i) The trial court nominating commission shall certify a list of at least three~~
164 ~~nominees to the governor.]~~

165 [~~(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

166 [~~(iii) The commission may not certify more than five nominees to the governor.]~~

167 (4) The governor shall fill the vacancy within 30 days after receiving the list of
168 nominees.

169 (5) If the governor fails to fill the vacancy within 30 days of receiving the list of
170 nominees from the nominating commission, the chief justice of the Supreme Court shall,
171 within 20 days, appoint a person from the list of nominees certified to the governor.

172 [~~(4) (6) A nominating commission may not~~, ~~during a commissioner's term of office,~~]
173 ~~nominate a person who has served~~ ~~[as a replacement for that commission member]~~ on a
174 nominating commission within six months of the date that the commission was last convened.

175 Section 3. Section **78A-10-105** is enacted to read:

176 **78A-10-105. Senate confirmation of judicial appointments -- Courts of record.**

177 (1) The Senate shall:

178 (a) consider and decide on each judicial appointment within 60 days of the date of
179 appointment; and

180 (b) if necessary, convene itself in extraordinary session to consider a judicial

181 appointment.

182 (2) If the Senate fails to approve the appointment, the office is considered vacant and a
183 new nominating process begins.

184 (3) An appointment is effective upon approval of a majority of all members of the
185 Senate.

186 (4) The judicial nominating commission, the governor, the chief justice, and the Senate
187 shall nominate and select judges based solely upon consideration of their fitness for office
188 without regard to any partisan political considerations.

189 Section 4. Section **78A-10-202** is amended to read:

190 **78A-10-202. Membership.**

191 (1) The Appellate Court Nominating Commission shall consist of seven
192 commissioners, each appointed by the governor to serve a single four-year term.

193 (2) Each commissioner shall:

194 (a) be a United States citizen;

195 (b) be a resident of Utah; and

196 (c) serve until the commissioner's successor is appointed.

197 (3) The governor may not appoint:

198 (a) a commissioner to serve successive terms;

199 (b) a member of the Legislature to serve as a member of the Appellate Court
200 Nominating Commission; or

201 (c) more than four commissioners from the same political party to the Appellate Court
202 Nominating Commission.

203 (4) (a) The Utah State Bar shall submit to the governor a list of six nominees to serve
204 as Appellate Court Nominating Commissioners.

205 (b) The governor shall appoint two commissioners from the list of nominees provided
206 by the Utah State Bar.

207 (c) The governor may reject the list submitted by the Utah State Bar and request a new
208 list of nominees.

209 (5) The governor may not appoint more than four persons who are members of the
210 Utah State Bar to the Appellate Court Nominating Commission.

211 (6) [~~a~~] The chief justice of the Supreme Court [~~is~~] shall appoint another member of

212 the Judicial Council to serve as an ex officio, nonvoting member of the Appellate Court
213 Nominating Commission.

214 ~~[(b) If the chief justice cannot serve on the commission, the chief justice shall appoint~~
215 ~~another justice of the Supreme Court to serve.]~~

216 ~~[(7)]~~ (6) The governor shall appoint the chair of the Appellate Court Nominating
217 Commission from among the membership.

218 Section 5. Section **78A-10-203** is amended to read:

219 **78A-10-203. Procedure.**

220 ~~[(1) Except for the chief justice of the Supreme Court, each commissioner is a voting~~
221 ~~member of the Appellate Court Nominating Commission.]~~

222 ~~[(2)]~~ (1) Four commissioners are a quorum.

223 ~~[(3)]~~ (2) The ~~[state court administrator shall]~~ governor shall appoint a member of the
224 governor's staff to serve as [secretary] staff to the Appellate Court Nominating Commission.

225 ~~[(4)]~~ (3) The ~~[chief justice of the Supreme Court]~~ governor shall:

226 (a) ensure that the commission follows the rules promulgated by the ~~[Judicial Council]~~
227 governor; and

228 (b) resolve any questions regarding those rules.

229 ~~[(5)]~~ (4) A member of the commission who is also a member of the Utah State Bar may
230 recuse himself if there is a conflict of interest that makes the member unable to serve.

231 Section 6. Section **78A-10-302** is amended to read:

232 **78A-10-302. Membership.**

233 (1) The Trial Court Nominating Commission shall consist of seven commissioners,
234 each appointed by the governor to serve a single four-year term.

235 (2) Each commissioner shall:

236 (a) be a United States citizen;

237 (b) be a resident of Utah;

238 (c) be a resident of the geographic division to be served by the commission to which
239 the commissioner is appointed; and

240 (d) serve until the commissioner's successor is appointed.

241 (3) The governor may not appoint:

242 (a) a commissioner to serve successive terms;

243 (b) a member of the Legislature to serve as a member of a Trial Court Nominating
244 Commission; or

245 (c) more than four commissioners from the same political party to a Trial Court
246 Nominating Commission.

247 (4) The governor shall appoint two commissioners from a list of nominees provided by
248 the Utah State Bar.

249 (5) The Utah State Bar shall submit:

250 (a) six nominees from Districts 2, 3, and 4; and

251 (b) four nominees from Districts 1, 5, 6, 7, and 8.

252 (6) The governor may reject any list and request a new list of nominees.

253 (7) The governor may not appoint more than four persons who are members of the
254 Utah State Bar to a Trial Court Nominating Commission.

255 (8) ~~[(a)]~~ The chief justice of the Supreme Court ~~[is]~~ shall appoint another member of
256 the Judicial Council to serve as an ex officio, nonvoting member of each Trial Court
257 Nominating Commission.

258 ~~[(b) If the chief justice cannot serve on the commission, the chief justice shall appoint~~
259 ~~another justice of the Supreme Court to serve.]~~

260 ~~[(9)]~~ (8) The governor shall appoint the chair of each Trial Court Nominating
261 Commission from among its membership.

262 Section 7. Section **78A-10-303** is amended to read:

263 **78A-10-303. Procedure.**

264 ~~[(1) Except for the chief justice of the Supreme Court, each trial court nominating~~
265 ~~commissioner is a voting member of the commission.]~~

266 ~~[(2)]~~ (1) Four commissioners are a quorum.

267 ~~[(3)]~~ (2) The ~~[state court administrator shall]~~ governor shall appoint a member of the
268 governor's staff to serve as [secretary] staff to each Trial Court Nominating Commission.

269 ~~[(4)]~~ (3) The ~~[chief justice of the Supreme Court]~~ governor shall:

270 (a) ensure that each Trial Court Nominating Commission follows the rules
271 promulgated by the ~~[Judicial Council]~~ governor; and

272 (b) resolve any questions regarding those rules.

273 ~~[(5)]~~ (4) A member of a Trial Court Nominating Commission who is also a member of

274 the Utah State Bar may recuse himself if there is a conflict of interest that makes the member
275 unable to serve.

276 Section 8. **Repealer.**

277 This bill repeals:

278 Section **20A-1-505, Judicial vacancies -- Courts of record.**

279 Section 9. **Effective date.**

280 This bill takes effect on July 1, 2010.

281 Section 10. **Coordinating H.B. 289 with S.B. 232 -- Substantive amendments.**

282 If this H.B. 289 and S.B. 232, Judicial Administration Amendments, both pass, it is the
283 intent of the Legislature that the Office of Legislative Research and General Counsel in
284 preparing the Utah Code database for publication amend Section 78A-10-104 to read as
285 follows:

286 **"78A-10-104. Convening of judicial nominating commissions -- Certification to**
287 **governor of nominees -- Meetings to investigate prospective candidates.**

288 ~~[(1) When a vacancy occurs or is about to occur in the office of a justice or judge of~~
289 ~~any court of record, the chair of the judicial nominating commission for the office to be filled~~
290 ~~shall convene the commission as soon as practicable.]~~

291 (1) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the
292 governor shall ensure that:

293 (a) the recruitment period to fill a judicial vacancy begins 235 days before the effective
294 date of a vacancy, unless sufficient notice is not given, in which case the recruitment period
295 shall begin within 10 days of receiving notice;

296 (b) the recruitment period is a minimum of 30 days but not more than 90 days, unless
297 fewer than nine applications are received, in which case the recruitment period may be
298 extended up to 30 days; and

299 (c) the chair of the judicial nominating commission having authority over the vacancy
300 shall convene a meeting not more than 10 days after the close of the recruitment period.

301 (2) The time limits in Subsection (1) shall begin to run the day the hiring freeze ends.

302 ~~[(2)]~~ (3) The nominating commission may:

303 (a) meet as necessary to perform its function; and

304 (b) investigate prospective candidates.

305 ~~[(3)(a)]~~ (4) Not later than 45 days after convening, the ~~[commission shall certify to the~~
 306 ~~governor a list of nominees who a majority of the members of the commission have~~
 307 ~~determined]:~~

308 ~~[(i) have the qualifications required by law to fill the office;]~~

309 ~~[(ii) are willing to serve; and]~~

310 ~~[(iii) possess the ability, temperament, training, and experience that fits them for the~~
 311 ~~office.]~~

312 ~~[(b)(i) The appellate court nominating commission shall certify a list of at least five~~
 313 ~~appellate nominees to the governor.]~~

314 ~~[(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

315 ~~[(iii) The commission may not certify more than seven nominees to the governor.]~~

316 ~~[(c)(i) The trial court nominating commission shall certify a list of at least three~~
 317 ~~nominees to the governor.]~~

318 ~~[(ii) If there is a tie vote, the commission may certify both nominees to the governor.]~~

319 ~~[(iii) The commission may not certify more than five nominees to the governor.]~~

320 (a) appellate court nominating commission shall certify to the governor a list of the
 321 seven most qualified applicants per vacancy; and

322 (b) trial court nominating commission shall certify to the governor a list of the five
 323 most qualified applicants per vacancy.

324 (5) The governor shall fill the vacancy within 30 days after receiving the list of
 325 nominees.

326 (6) If the governor fails to fill the vacancy within 30 days of receiving the list of
 327 nominees from the nominating commission, the chief justice of the Supreme Court shall,
 328 within 20 days, appoint a person from the list of nominees certified to the governor.

329 ~~[(4)]~~ (7) A nominating commission may not ~~[, during a commissioner's term of office,]~~
 330 ~~nominate a person who has served [as a replacement for that commission member]~~ on a
 331 nominating commission within six months of the date that the commission was last convened."

H.B. 289 2nd Sub. (Gray) - Judicial Nominating Commission Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

In FY 2011, \$39,000 in ongoing General Funds will shift from the Courts to the Commission on Criminal and Juvenile Justice.

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.
