

Senator Scott K. Jenkins proposes the following substitute bill:

JUDICIAL NOMINATING COMMISSION

STAFF AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill requires trial court nominating commissions to submit five names to the governor, appellate court nominating commissions to submit seven names to the governor, and that all nominating commissions to 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 to enact rules regarding judicial nominating commissions;
- ▶ requires appellate court nominating commissions to submit seven names to the governor per vacancy; and
- ▶ requires trial court nominating commissions to submit five names to the governor per vacancy.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill takes effect on July 1, 2010.

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

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **78A-10-103**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
35 amended by Laws of Utah 2008, Chapter 3

36 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3

37 **78A-10-203**, as enacted by Laws of Utah 2008, Chapter 3

38 **78A-10-303**, as enacted by Laws of Utah 2008, Chapter 3

39 ENACTS:

40 **78A-10-105**, Utah Code Annotated 1953

41 REPEALS:

42 **20A-1-505**, as last amended by Laws of Utah 1994, Chapter 227

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

44 **78A-10-104**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

48 **78A-10-103. Procedures governing meetings of judicial nominating commissions.**

49 (1) The ~~[Judicial Council]~~ governor shall:

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

53 (b) ensure that those procedures include:

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

57 extended up to 30 days;

58 (ii) standards for maintaining the confidentiality of the applications and related
59 documents;

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

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

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

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

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

67 (viii) procedures for simultaneously forwarding the names of nominees to the
68 governor, the president of the Senate, and the Office of Legislative Research and General
69 Counsel; and

70 (ix) standards governing a nominating commissioner's disqualification and inability to
71 serve.

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

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

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

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

83 **§→ [candidates] applicants ←§** best possess the ability, temperament, training, and experience that
83a qualifies them
84 for the office.

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

87 (b) the trial court nominating commissions shall certify to the governor a list of the five

88 most qualified applicants per vacancy.

89 (4) The nominating commissions shall ensure that the list of applicants submitted to
90 the governor:

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

92 (b) are willing to serve.

93 (5) In determining which of the applicants are the most qualified, the nominating
94 commissions may not decline to submit a candidate merely because:

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

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

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

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

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

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

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

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

118 [(3)] (6) A judicial nominating commission may not nominate a justice or judge who

119 was not retained by the voters for the office for which the justice or judge was defeated until
120 after the expiration of that term of office.

121 ~~[(4)] (7)~~ Judicial nominating commissions are exempt from the requirements of Title
122 52, Chapter 4, Open and Public Meetings Act~~[, and Title 63G, Chapter 3, Utah Administrative~~
123 ~~Rulemaking Act].~~

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

125 **78A-10-104. Convening of recruitment period -- Convening of judicial**
126 **nominating commissions -- Certification to governor of nominees -- Meetings to**
127 **investigate prospective candidates.**

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

131 (1) The governor shall ensure that:

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

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

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

140 (2) The nominating commission may:

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

142 (b) investigate prospective candidates.

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

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

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

150 ~~[(i) have the qualifications required by law to fill the office;]~~
151 ~~[(ii) are willing to serve; and]~~
152 ~~[(iii) possess the ability, temperament, training, and experience that fits them for the~~
153 ~~office.]~~

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

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

157 ~~[(iii) The commission may not certify more than seven nominees per vacancy to the~~
158 ~~governor.]~~

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

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

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

169 ~~[(4)]~~ (6) A nominating commission may not~~[, during a commissioner's term of office;]~~
170 nominate a person who has served ~~[as a replacement for that commission member]~~ on a
171 nominating commission within six months of the date that the commission was last convened.

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

173 **78A-10-105. Senate confirmation of judicial appointments -- Courts of record.**

174 (1) The Senate shall:

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

177 (b) if necessary, convene itself in extraordinary session to consider a judicial
178 appointment.

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

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

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

186 Section 4. Section **78A-10-203** is amended to read:

187 **78A-10-203. Procedure.**

188 (1) Except for the chief justice of the Supreme Court, each commissioner is a voting
189 member of the Appellate Court Nominating Commission.

190 (2) Four commissioners are a quorum.

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

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

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

196 (b) resolve any questions regarding those rules.

197 (5) A member of the commission who is also a member of the Utah State Bar may
198 recuse himself if there is a conflict of interest that makes the member unable to serve.

199 Section 5. Section **78A-10-303** is amended to read:

200 **78A-10-303. Procedure.**

201 (1) Except for the chief justice of the Supreme Court, each trial court nominating
202 commissioner is a voting member of the commission.

203 (2) Four commissioners are a quorum.

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

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

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

209 (b) resolve any questions regarding those rules.

210 (5) A member of a Trial Court Nominating Commission who is also a member of the
211 Utah State Bar may recuse himself if there is a conflict of interest that makes the member

212 unable to serve.

213 Section 6. **Repealer.**

214 This bill repeals:

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

216 Section 7. **Effective date.**

217 This bill takes effect on July 1, 2010.

218 Section 8. **Coordinating S.B. 108 with S.B. 232 -- Substantive amendments.**

219 If this S.B. 108 and S.B. 232, Judicial Administration Amendments, both pass, it is the
220 intent of the Legislature that the Office of Legislative Research and General Counsel in
221 preparing the Utah Code database for publication to amend Section 78A-10-104 to read as
222 follows:

223 **"78A-10-104. Convening of judicial nominating commissions -- Certification to**
224 **governor of nominees -- Meetings to investigate prospective candidates.**

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

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

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

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

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

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

239 [~~(2)~~] (3) The nominating commission may:

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

241 (b) investigate prospective candidates.

242 [~~(3)-(a)~~] (4) Not later than 45 days after convening, the [commission shall certify to the

243 governor a list of nominees who a majority of the members of the commission have
244 determined]:

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

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

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

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

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

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

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

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

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

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

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

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

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

266 [~~(4)~~] (7) A nominating commission may not[, ~~during a commissioner's term of office,~~]
267 nominate a person who has served [~~as a replacement for that commission member~~] on a
268 nominating commission within six months of the date that the commission was last convened."

Fiscal Note**S.B. 108 3rd Sub. (Ivory) - Judicial Nominating Commission Staff
Amendments**

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.
