

**JUDICIAL NOMINATING COMMISSION**

**STAFF AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill requires judicial nominating commissions to meet within 30 days of the effective date of a judicial vacancy.

**Highlighted Provisions:**

This bill:

▸ requires judicial nominating commissions to meet within a specified period from the effective date of a judicial vacancy;

▸ allows the governor to appoint any person qualified under Article VIII, Section 7 of the Utah Constitution to fill a judicial vacancy if the judicial nominating commission fails to certify a list of nominees;

▸ requires the governor to ensure that the nominating commissions follow statutes and rules; and

▸ requires the governor to appoint the staff of the judicial nominating commissions.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 20A-1-505, as last amended by Laws of Utah 1994, Chapter 227

29 78A-10-104, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 78A-10-203, as enacted by Laws of Utah 2008, Chapter 3

31 78A-10-303, as enacted by Laws of Utah 2008, Chapter 3



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

34 Section 1. Section 20A-1-505 is amended to read:

35 **20A-1-505. Judicial vacancies -- Courts of record.**

36 (1) (a) When a vacancy occurs in a court of record, the governor shall ~~[, within 30 days~~  
37 ~~after]~~ ensure that the chair on the judicial nominating commission for the position to be filled  
38 convenes a meeting of the commission within 30 days of the effective date of the vacancy.  
39 After receiving the list of nominees~~[, fill the vacancy by appointing]~~ from the nominating  
40 commission, the governor shall appoint a person who meets the qualifications for the office  
41 from a list of at least three trial nominees and at least five appellate nominees certified to the  
42 governor by the judicial nominating commission that has authority over the vacancy.

43 (b) If the nominating commission fails to certify a list of nominees to the governor  
44 within 45 days of its first meeting, the governor may appoint any person who meets the  
45 qualifications of Article VIII, Section 7 of the Utah Constitution to fill the vacancy.

46 ~~[(b)]~~ (c) If the governor fails to fill the vacancy within 30 days after receiving the list of  
47 nominees from the nominating commission, the chief justice of the Supreme Court shall,  
48 within 20 days, appoint a person from the list of nominees who meets the qualifications for the  
49 office ~~[from the list of nominees]~~.

50 (2) (a) The Senate shall:

51 (i) consider and decide on each judicial appointment within 60 days of the date of  
52 appointment; and

53 (ii) if necessary, convene itself in extraordinary session to consider a judicial  
54 appointment.

55 (b) If the Senate fails to approve the appointment, the office is considered vacant and a  
56 new nominating process begins.

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

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

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

63 **78A-10-104. Convening of judicial nominating commissions -- Certification to**  
64 **governor of nominees -- Meetings to investigate prospective candidates.**

65 (1) (a) [When a vacancy occurs or is about to occur in the office of a justice or judge of  
66 any court of record, the chair of the judicial nominating commission for the office to be filled  
67 shall convene the commission as soon as practicable.] When a vacancy occurs in a court of  
68 record, the governor shall ensure that the chair of the judicial nominating commission for the  
69 position to be filled convenes a meeting of the commission within 30 days of the effective date  
70 of the vacancy.

71 (b) The judicial nominating commission shall certify a list of nominees to the governor  
72 within 45 days of convening its first meeting.

73 (c) After receiving the list of nominees from the nominating commission, the governor  
74 shall, within 30 days, appoint a person who meets the qualifications for the position from a list  
75 of at least three trial nominees and at least five appellate nominees certified to the governor by  
76 the judicial nominating commission that has authority over the vacancy.

77 (d) If the nominating commission fails to certify a list of nominees to the governor  
78 within 45 days of convening its first meeting, the governor may appoint any person who meets  
79 the qualifications of Article VIII, Section 7 of the Utah Constitution to fill the vacancy.

80 (e) If the governor fails to fill the vacancy within 30 days of receiving the list of  
81 nominees from the nominating commission, the chief justice of the Supreme Court shall,  
82 within 20 days, appoint a person from the list of nominees who meets the qualifications for the  
83 office.

84 (2) The nominating commission may:

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

86 (b) investigate prospective candidates.

87 (3) (a) Not later than 45 days after convening, the commission shall certify to the  
88 governor a list of nominees who a majority of the members of the commission have  
89 determined:

90 (i) have the qualifications required by law to fill the office;  
91 (ii) are willing to serve; and  
92 (iii) possess the ability, temperament, training, and experience that fits them for the  
93 office.

94 (b) (i) The appellate court nominating commission shall certify a list of at least five  
95 appellate nominees to the governor.

96 (ii) If there is a tie vote, the commission may certify both nominees to the governor.

97 (iii) The commission may not certify more than seven nominees to the governor per  
98 vacancy.

99 (c) (i) The trial court nominating commission shall certify a list of at least three  
100 nominees to the governor.

101 (ii) If there is a tie vote, the commission may certify both nominees to the governor.

102 (iii) The commission may not certify more than five nominees to the governor.

103 (4) A nominating commission may not, during a commissioner's term of office,  
104 nominate a person who has served as a replacement for that commission member within six  
105 months of the date that the commission was last convened.

106 Section 3. Section **78A-10-203** is amended to read:

107 **78A-10-203. Procedure.**

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

110 (2) Four commissioners are a quorum.

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

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

114 (a) ensure that the commission follows the rules promulgated by the Judicial Council;  
115 and

116 (b) resolve any questions regarding those rules.

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

119 Section 4. Section **78A-10-303** is amended to read:

120 **78A-10-303. Procedure.**

- 121 (1) Except for the chief justice of the Supreme Court, each trial court nominating  
122 commissioner is a voting member of the commission.
- 123 (2) Four commissioners are a quorum.
- 124 (3) The ~~[state court administrator shall]~~ governor shall appoint a member of the  
125 governor's staff to serve as [secretary] staff to each Trial Court Nominating Commission.
- 126 (4) The ~~[chief justice of the Supreme Court]~~ governor shall:
- 127 (a) ensure that each Trial Court Nominating Commission follows the rules  
128 promulgated by the Judicial Council; and
- 129 (b) resolve any questions regarding those rules.
- 130 (5) A member of a Trial Court Nominating Commission who is also a member of the  
131 Utah State Bar may recuse himself if there is a conflict of interest that makes the member  
132 unable to serve.

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**Legislative Review Note**

as of 1-26-10 10:28 AM

**Office of Legislative Research and General Counsel**

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**S.B. 108 - Judicial Nominating Commission Staff Amendments**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will shift judicial nominating commission staff responsibilities and costs from the Courts to the Commission on Criminal and Juvenile Justice (CCJJ). Beginning in FY 2011, ongoing General Funds from the Courts of \$39,000 will shift to CCJJ for a net neutral impact.

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**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.

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