

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: _____

LONG TITLE

General Description:

This bill requires judicial 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; and
- ▶ requires the governor to enact rules regarding judicial nominating commissions

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2010.

Utah Code Sections Affected:



26 AMENDS:

27 **78A-10-103**, as last amended by Laws of Utah 2008, Chapter 382 and renumbered and
28 amended by Laws of Utah 2008, Chapter 3

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

32 ENACTS:

33 **78A-10-105**, Utah Code Annotated 1953

34 REPEALS:

35 **20A-1-505**, as last amended by Laws of Utah 1994, Chapter 227

36

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

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

39 **78A-10-103. Procedures governing meetings of judicial nominating commissions.**

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

41 (a) enact rules establishing procedures governing the meetings of the judicial
42 nominating commissions in accordance with Title 63G, Chapter 3, Utah Administrative
43 Rulemaking Act; and

44 (b) ensure that those procedures include:

45 (i) a minimum recruitment period of 30 days and a procedure to extend that period for
46 an additional 30 days if fewer than nine applications are received for a judicial vacancy;

47 (ii) standards for maintaining the confidentiality of the applications and related
48 documents;

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

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

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

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

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

56 (viii) procedures for simultaneously forwarding the names of nominees to the

57 governor, the president of the Senate, and the Office of Legislative Research and General
58 Counsel; and

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

61 (2) (a) (i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating
62 commission receives 15 or more applications to fill a judicial vacancy, the nominating
63 commission shall submit at least five names to the governor.

64 (ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required
65 number of votes as specified in Subsection (2)(c) from the nominating commission, the
66 commission shall submit only the names of applicants that received the required number of
67 votes, but must submit the names of at least three applicants.

68 (b) In determining whether or not to submit an applicant's name to the governor, a
69 commission may not decline to consider an applicant merely because:

70 (i) the nominating commission had declined to submit that candidate's name to the
71 governor to fill a previous vacancy;

72 (ii) a previous nominating commission had declined to submit that candidate's name to
73 the governor; or

74 (iii) that nominating commission or a previous nominating commission had submitted
75 the applicant's name to the governor and the governor selected someone else to fill the vacancy.

76 (c) The vote required to submit an applicant's name to the governor is as follows:

77 (i) if all seven members of the nominating commission are present and considering
78 applicants, a vote in favor of the applicant by four commissioners submits the candidate's name
79 to the governor;

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

84 (iii) if only five members of the nominating commission are present and considering
85 applicants because two members are unable to attend, have recused themselves, or are
86 otherwise disqualified, a vote in favor of the applicant by three commissioners submits the
87 candidate's name to the governor; and

88 (iv) if only four members of the nominating commission are present and considering
89 applicants because three members are unable to attend, have recused themselves, or are
90 otherwise disqualified, a vote in favor of the applicant by three commissioners submits the
91 candidate's name to the governor.

92 (3) A judicial nominating commission may not nominate a justice or judge who was
93 not retained by the voters for the office for which the justice or judge was defeated until after
94 the expiration of that term of office.

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

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

99 **78A-10-104. Convening of judicial nominating commissions -- Certification to**
100 **governor of nominees -- Meetings to investigate prospective candidates.**

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

104 (1) A vacancy occurs when a justice or judge of any court of record:

105 (a) retires;

106 (b) voluntarily leaves office;

107 (c) is removed from office; or

108 (d) dies while in office.

109 (2) The governor shall ensure that the chair of the judicial nomination commission
110 responsible for the vacancy convenes a meeting:

111 (a) not more than 135 days before the retirement becomes effective when justice or
112 judge retires; or

113 (b) not more than 90 days after the justice or judge voluntarily leaves office, is
114 removed from office, or dies while in office.

115 ~~[(2)]~~ (3) The nominating commission may:

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

117 (b) investigate prospective candidates.

118 ~~[(3)]~~ (4) (a) Not later than 45 days after convening, the commission shall certify to the

119 governor a list of nominees who a majority of the members of the commission have
120 determined:

121 (i) have the qualifications required by law to fill the office;
122 (ii) are willing to serve; and
123 (iii) possess the ability, temperament, training, and experience that fits them for the
124 office.

125 (b) (i) The appellate court nominating commission shall certify a list of at least five
126 appellate nominees per vacancy to the governor.

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

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

130 (c) (i) The trial court nominating commission shall certify a list of at least three
131 nominees per vacancy to the governor.

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

133 (iii) The commission may not certify more than five nominees per vacancy to the
134 governor.

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

137 (6) If the governor fails to fill the vacancy within 30 days of receiving the list of
138 nominees from the nominating commission, the chief justice of the Supreme Court shall,
139 within 20 days, appoint a person from the list of nominees who meets the qualifications for the
140 office.

141 [~~4~~] (7) A nominating commission may not, during a commissioner's term of office,
142 nominate a person who has served as a replacement for that commission member within six
143 months of the date that the commission was last convened.

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

145 **78A-10-105. Senate confirmation of judicial appointments -- Courts of record.**

146 (1) The Senate shall:

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

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

150 appointment.

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

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

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

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

159 **78A-10-203. Procedure.**

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

162 (2) Four commissioners are a quorum.

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

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

166 (a) ensure that the commission follows the rules promulgated by the Judicial Council;
167 and

168 (b) resolve any questions regarding those rules.

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

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

172 **78A-10-303. Procedure.**

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

175 (2) Four commissioners are a quorum.

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

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

179 (a) ensure that each Trial Court Nominating Commission follows the rules
180 promulgated by the Judicial Council; and

181 (b) resolve any questions regarding those rules.

182 (5) A member of a Trial Court Nominating Commission who is also a member of the
183 Utah State Bar may recuse himself if there is a conflict of interest that makes the member
184 unable to serve.

185 Section 6. **Repealer.**

186 This bill repeals:

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

188 Section 7. **Effective date.**

189 This bill takes effect on July 1, 2010.