

**JUDICIAL EVALUATION AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: D. Chris Butters**

House Sponsor: Curtis Oda

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**LONG TITLE**

**General Description:**

This bill makes amendments to the Judicial Performance Evaluation Commission.

**Highlighted Provisions:**

This bill:

- ▶ allows the Judicial Performance Evaluation Commission to vote in a closed meeting on whether or not to recommend that the voters retain a judge;
- ▶ requires that any record of an individual commissioner's vote be a protected record under Title 63G, Chapter 2, Government Records Access and Management Act;
- ▶ removes litigants from the judicial performance evaluation survey;
- ▶ reduces the number of categories to be included in the performance evaluation survey;
- ▶ allows survey respondents to supplement responses to survey questions with written comments;
- ▶ establishes a clear minimum performance standard;
- ▶ establishes that the judicial performance evaluation survey is to be reported in three categories: legal ability, judicial temperament and integrity, and administrative abilities;
- ▶ allows only a judge who is the subject of an unfavorable retention recommendation to meet with the commission about its recommendation;
- ▶ allows the judicial performance evaluation commission to only report public discipline that a judge has received; and
- ▶ makes technical corrections.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

37 **78A-12-203**, as last amended by Laws of Utah 2010, Chapter 98

38 **78A-12-204**, as last amended by Laws of Utah 2010, Chapter 98

39 **78A-12-205**, as last amended by Laws of Utah 2010, Chapter 98

40 **78A-12-206**, as last amended by Laws of Utah 2010, Chapter 98



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

43 Section 1. Section **63G-2-305** is amended to read:

44 **63G-2-305. Protected records.**

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

46 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
47 has provided the governmental entity with the information specified in Section 63G-2-309;

48 (2) commercial information or nonindividual financial information obtained from a  
49 person if:

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

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

55 (c) the person submitting the information has provided the governmental entity with  
56 the information specified in Section 63G-2-309;

57 (3) commercial or financial information acquired or prepared by a governmental entity

58 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
59 commodities that will interfere with a planned transaction by the governmental entity or cause  
60 substantial financial injury to the governmental entity or state economy;

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

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

66 (6) records the disclosure of which would impair governmental procurement  
67 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
68 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
69 Subsection (6) does not restrict the right of a person to have access to, once the contract or  
70 grant has been awarded, a bid, proposal, or application submitted to or by a governmental  
71 entity in response to:

72 (a) a request for bids;

73 (b) a request for proposals;

74 (c) a grant; or

75 (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

113 (e) reasonably could be expected to disclose investigative or audit techniques,

114 procedures, policies, or orders not generally known outside of government if disclosure would  
115 interfere with enforcement or audit efforts;

116 (10) records the disclosure of which would jeopardize the life or safety of an  
117 individual;

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

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

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

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

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

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

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

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

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

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

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

148 (A) members of a legislative body;

149 (B) a member of a legislative body and a member of the legislative body's staff; or

150 (C) members of a legislative body's staff; and

151 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
152 legislative action or policy may not be classified as protected under this section;

153 (20) (a) records in the custody or control of the Office of Legislative Research and  
154 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
155 legislation or contemplated course of action before the legislator has elected to support the  
156 legislation or course of action, or made the legislation or course of action public; and

157 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
158 Office of Legislative Research and General Counsel is a public document unless a legislator  
159 asks that the records requesting the legislation be maintained as protected records until such  
160 time as the legislator elects to make the legislation or course of action public;

161 (21) research requests from legislators to the Office of Legislative Research and  
162 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
163 in response to these requests;

164 (22) drafts, unless otherwise classified as public;

165 (23) records concerning a governmental entity's strategy about collective bargaining or  
166 pending litigation;

167 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
168 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
169 Uninsured Employers' Fund, or similar divisions in other governmental entities;

170 (25) records, other than personnel evaluations, that contain a personal recommendation  
171 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
172 personal privacy, or disclosure is not in the public interest;

173 (26) records that reveal the location of historic, prehistoric, paleontological, or  
174 biological resources that if known would jeopardize the security of those resources or of  
175 valuable historic, scientific, educational, or cultural information;

176 (27) records of independent state agencies if the disclosure of the records would  
177 conflict with the fiduciary obligations of the agency;

178 (28) records of an institution within the state system of higher education defined in  
179 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
180 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
181 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
182 the final decisions about tenure, appointments, retention, promotions, or those students  
183 admitted, may not be classified as protected under this section;

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

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

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

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

197 (33) records that would reveal the contents of settlement negotiations but not including

198 final settlements or empirical data to the extent that they are not otherwise exempt from  
199 disclosure;

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

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

208 (36) materials to which access must be limited for purposes of securing or maintaining  
209 the governmental entity's proprietary protection of intellectual property rights including patents,  
210 copyrights, and trade secrets;

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

215 (a) the donor requests anonymity in writing;

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

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

223 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
224 73-18-13;

225 (39) a notification of workers' compensation insurance coverage described in Section



226 34A-2-205;

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

230 (i) unpublished lecture notes;

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

232 (A) relating to research; and

233 (B) of:

234 (I) the institution within the state system of higher education defined in Section  
235 53B-1-102; or

236 (II) a sponsor of sponsored research;

237 (iii) unpublished manuscripts;

238 (iv) creative works in process;

239 (v) scholarly correspondence; and

240 (vi) confidential information contained in research proposals;

241 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
242 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

243 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

244 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
245 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
246 date that audit is completed and made public; and

247 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
248 Office of the Legislative Auditor General is a public document unless the legislator asks that  
249 the records in the custody or control of the Office of Legislative Auditor General that would  
250 reveal the name of a particular legislator who requests a legislative audit be maintained as  
251 protected records until the audit is completed and made public;

252 (42) records that provide detail as to the location of an explosive, including a map or  
253 other document that indicates the location of:

- 254 (a) a production facility; or
- 255 (b) a magazine;
- 256 (43) information:
  - 257 (a) contained in the statewide database of the Division of Aging and Adult Services
  - 258 created by Section 62A-3-311.1; or
  - 259 (b) received or maintained in relation to the Identity Theft Reporting Information
  - 260 System (IRIS) established under Section 67-5-22;
  - 261 (44) information contained in the Management Information System and Licensing
  - 262 Information System described in Title 62A, Chapter 4a, Child and Family Services;
  - 263 (45) information regarding National Guard operations or activities in support of the
  - 264 National Guard's federal mission;
  - 265 (46) records provided by any pawn or secondhand business to a law enforcement
  - 266 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
  - 267 Secondhand Merchandise Transaction Information Act;
  - 268 (47) information regarding food security, risk, and vulnerability assessments performed
  - 269 by the Department of Agriculture and Food;
  - 270 (48) except to the extent that the record is exempt from this chapter pursuant to Section
  - 271 63G-2-106, records related to an emergency plan or program prepared or maintained by the
  - 272 Division of Homeland Security the disclosure of which would jeopardize:
    - 273 (a) the safety of the general public; or
    - 274 (b) the security of:
      - 275 (i) governmental property;
      - 276 (ii) governmental programs; or
      - 277 (iii) the property of a private person who provides the Division of Homeland Security
      - 278 information;
      - 279 (49) records of the Department of Agriculture and Food relating to the National
      - 280 Animal Identification System or any other program that provides for the identification, tracing,
      - 281 or control of livestock diseases, including any program established under Title 4, Chapter 24,

282 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
283 Quarantine;

284 (50) as provided in Section 26-39-501:

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

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

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

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

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

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

298 (ii) the individual complying with the law, ordinance, rule, or order;

299 (52) the name, home address, work addresses, and telephone numbers of an individual  
300 that is engaged in, or that provides goods or services for, medical or scientific research that is:

301 (a) conducted within the state system of higher education, as defined in Section  
302 53B-1-102; and

303 (b) conducted using animals;

304 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement  
305 Private Proposal Program, to the extent not made public by rules made under that chapter;

306 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance  
307 Evaluation Commission concerning an individual commissioner's vote on whether or not to  
308 recommend that the voters retain a judge;

309 [~~54~~] (55) information collected and a report prepared by the Judicial Performance

310 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
311 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
312 the information or report;

313       ~~[(55)]~~ (56) (a) records of the Utah Educational Savings Plan created under Section  
314 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

315       (b) proposals submitted to the Utah Educational Savings Plan; and

316       (c) contracts entered into by the Utah Educational Savings Plan and the related  
317 payments;

318       ~~[(56)]~~ (57) records contained in the Management Information System created in  
319 Section 62A-4a-1003;

320       ~~[(57)]~~ (58) records provided or received by the Public Lands Policy Coordinating  
321 Office in furtherance of any contract or other agreement made in accordance with Section  
322 63J-4-603;

323       ~~[(58)]~~ (59) information requested by and provided to the Utah State 911 Committee  
324 under Section 53-10-602;

325       ~~[(59)]~~ (60) recorded Children's Justice Center investigative interviews, both video and  
326 audio, the release of which are governed by Section 77-37-4; and

327       ~~[(60)]~~ (61) in accordance with Section 73-10-33:

328       (a) a management plan for a water conveyance facility in the possession of the Division  
329 of Water Resources or the Board of Water Resources; or

330       (b) an outline of an emergency response plan in possession of the state or a county or  
331 municipality.

332       Section 2. Section **78A-12-203** is amended to read:

333       **78A-12-203. Judicial performance evaluations.**

334       (1) Beginning with the 2012 judicial retention elections, the commission shall prepare  
335 a performance evaluation for:

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

338 (b) each justice of the Supreme Court in the third, seventh, and ninth year of the  
339 justice's term.

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

342 (a) the results of the judge's most recent judicial performance survey that is conducted  
343 by a third party in accordance with Section 78A-12-204;

344 (b) information concerning the judge's compliance with minimum performance  
345 standards established in accordance with Section 78A-12-205;

346 (c) courtroom observation;

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

348 (e) public comment solicited by the commission;

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

350 and

351 (g) any other factor that the commission:

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

354 (ii) establishes by rule.

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

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

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

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

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

363 (b) (i) If a judge meets the minimum performance standards established in accordance  
364 with Section 78A-12-205 there is a rebuttable presumption that the commission will  
365 recommend the voters retain the judge.

366 (ii) If a judge fails to meet the minimum performance standards established in  
367 accordance with Section 78A-12-205 there is a rebuttable presumption that the commission  
368 will recommend the voters not retain the judge.

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

372 (d) (i) If the commission deviates from a presumption for or against recommending the  
373 voters retain a judge or elects to make no recommendation on whether the voters should retain  
374 a judge, the commission shall provide a detailed explanation of the reason for that deviation or  
375 election in the commission's report under Section 78A-12-206.

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

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

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

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

386 (d) Any record of an individual commissioner's vote on whether or not to recommend  
387 that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government  
388 Records Access and Management Act.

389 (e) The commission may only disclose the final commission vote on whether or not to  
390 recommend that the voters retain a judge.

391 (6) (a) The commission shall compile a midterm report of its judicial performance  
392 evaluation of a judge.

393 (b) The midterm report of a judicial performance evaluation shall include information

394 that the commission considers appropriate for purposes of judicial self-improvement.

395 (c) The report shall be provided to the evaluated judge and the presiding judge of the  
396 district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the  
397 midterm report shall be provided to the chair of the board of judges for the court level on which  
398 the evaluated judge serves.

399 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
400 Administrative Rulemaking Act, as necessary to administer the evaluation required by this  
401 section.

402 Section 3. Section **78A-12-204** is amended to read:

403 **78A-12-204. Judicial performance survey.**

404 (1) The judicial performance survey required by Section 78A-12-203 concerning a  
405 judge who is subject to a retention election shall be conducted on an ongoing basis during the  
406 judge's term in office by a third party under contract to the commission.

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

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

410 (b) jurors who have served in a case before the judge; and

411 [~~(c) litigants whose cases have been considered by the judge; and~~]

412 [~~(d)~~] (c) court staff who have worked with the judge.

413 (3) The commission may include an additional classification of respondents if the  
414 commission:

415 (a) considers a survey of that classification of respondents helpful to voters in  
416 determining whether to vote to retain a judge; and

417 (b) establishes the additional classification of respondents by rule.

418 (4) All survey responses are anonymous, including comments included with a survey  
419 response.

420 (5) If the commission provides any information to a judge or the Judicial Council, the  
421 information shall be provided in such a way as to protect the confidentiality of a survey

422 respondent.

423 (6) A survey shall be provided to a potential survey respondent within 30 days of the  
424 day on which the case in which the person appears in the judge's court is closed, exclusive of  
425 any appeal, except for court staff and attorneys, who may be surveyed at any time during the  
426 survey period.

427 (7) Survey [~~topics~~] categories shall include questions concerning a judge's:

428 (a) legal ability, including the following:

429 (i) demonstration of understanding of the substantive law and any relevant rules of  
430 procedure and evidence;

431 (ii) attentiveness to factual and legal issues before the court;

432 (iii) adherence to precedent and ability to clearly explain departures from precedent;

433 [~~and~~]

434 (iv) grasp of the practical impact on the parties of the judge's rulings, including the  
435 effect of delay and increased litigation expense;

436 (v) ability to write clear judicial opinions; and

437 (vi) ability to clearly explain the legal basis for judicial opinions;

438 [~~(b) integrity, including the following:~~]

439 [~~(i) avoidance of impropriety or the appearance of impropriety; and~~]

440 [~~(ii) display of fairness and impartiality toward all parties;~~]

441 [~~(c) communication skills, including clearly articulating the basis for written rulings;~~]

442 [~~(d)~~] (b) judicial temperament and integrity, including the following:

443 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's  
444 court;

445 (ii) maintenance of decorum in the courtroom;

446 (iii) demonstration of judicial demeanor and personal attributes that promote public  
447 trust and confidence in the judicial system; [~~and~~]

448 (iv) preparedness for oral argument; [~~and~~]

449 (v) avoidance of impropriety or the appearance of impropriety;



450 (vi) display of fairness and impartiality toward all parties; and  
451 (vii) ability to clearly communicate, including the ability to explain the basis for  
452 written rulings, court procedures, and decisions; and  
453 ~~[(e)]~~ (c) administrative performance, including the following:  
454 (i) management of workload;  
455 (ii) sharing proportionally the workload within the court or district; and  
456 (iii) issuance of opinions and orders without unnecessary delay.  
457 (8) ~~[(a)]~~ If the commission determines that a certain survey question or ~~[topic]~~ category  
458 of questions is not appropriate for a ~~[category of respondents]~~ respondent group, the  
459 commission may omit that question or ~~[topic]~~ category of questions from the survey provided  
460 to that ~~[category of respondents]~~ respondent group.  
461 ~~[(b) Litigants may be surveyed only about judicial temperament, integrity, and~~  
462 ~~communication skills.]~~  
463 ~~[(c) The commission shall, by rule, determine appropriate litigants to be surveyed.]~~  
464 (9) (a) The survey shall allow respondents to indicate responses in a manner  
465 determined by the commission, which shall be:  
466 ~~[(a)]~~ (i) on a numerical scale from one to five, with one representing inadequate  
467 performance and five representing outstanding performance; or  
468 ~~[(b)]~~ (ii) in the affirmative or negative, with an option to indicate the respondent's  
469 inability to respond in the affirmative or negative.  
470 (b) To supplement the responses to questions on either a numerical scale or in the  
471 affirmative or negative, the commission may allow respondents to provide written comments.  
472 (10) The commission shall compile and make available to each judge that judge's  
473 survey results with each of the judge's judicial performance evaluations.  
474 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
475 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.  
476 Section 4. Section **78A-12-205** is amended to read:  
477 **78A-12-205. Minimum performance standards.**

478 (1) The commission shall establish [a] minimum performance [~~standard~~] standards  
479 requiring that:

480 (a) the judge have no more than one [~~formal disciplinary action taken against the~~  
481 ~~judge~~] public reprimand issued by the Judicial Conduct Commission or the Utah Supreme  
482 Court during the judge's current term; and

483 (b) the judge receive a minimum score on the judicial performance survey as follows:

484 (i) an average score of [~~at least a 3.0~~] no less than 65% on [~~at least 80% of the~~  
485 ~~questions, excluding litigant respondents, for questions scored on the numerical scale~~] each  
486 survey category as provided in Subsection 78A-12-204(7); and

487 (ii) if the commission includes a question on the survey that does not use the numerical  
488 scale, the commission shall establish the minimum performance standard for all questions[;  
489 ~~excluding any question to litigant respondents;~~] that do not use the numerical scale to be  
490 substantially equivalent to the standard required under Subsection (1)(b)(i).

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

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

495 (b) adopts the standard.

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

498 Section 5. Section **78A-12-206** is amended to read:

499 **78A-12-206. Publication of the judicial performance evaluation -- Response by**  
500 **judge.**

501 (1) (a) The commission shall compile a retention report of its judicial performance  
502 evaluation of a judge.

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

506 (c) A report prepared in accordance with Subsection (1)(b) and information obtained in  
507 connection with the evaluation [~~become~~] becomes a public record under Title 63G, Chapter 2,  
508 Government Records Access and Management Act, on the day following the last day on which  
509 the judge who is the subject of the report may file a declaration of the judge's candidacy in the  
510 judge's scheduled retention election if the judge declares the judge's candidacy for the retention  
511 election.

512 (d) [~~A~~] Information collected and a report that is not public under Subsection (1)(c) is a  
513 protected record under Title 63G, Chapter 2, Government Records Access and Management  
514 Act.

515 (2) [~~A judge who is the subject of a retention report under this section, within~~] Within  
516 15 days of receiving a copy of the commission's report under Subsection (1)(b)[~~;~~may]:

517 (a) a judge who is the subject of an unfavorable retention recommendation under this  
518 section may:

519 [~~(a)~~] (i) provide a written response to the commission about the report; and

520 [~~(b)~~] (ii) request an interview with the commission for the purpose of addressing the  
521 report[~~;~~]; and

522 (b) a judge who is the subject of a favorable retention recommendation under this  
523 section may provide a written response to the commission about the commission's report.

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

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

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

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

531 (b) information concerning the judge's compliance with the minimum performance  
532 standards;

533 (c) information concerning any [~~formal or informal discipline against~~] public discipline

534 that a judge [~~that~~] has received that is not subject to restrictions on disclosure under Title 78A,  
535 Chapter 11, Judicial Conduct Commission;

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

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

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

540 (g) any other information the commission considers appropriate to include in the  
541 report.

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

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

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

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

552 (8) The commission shall provide a summary of the judicial performance evaluation  
553 for each judge to the lieutenant governor for publication in the voter information pamphlet in  
554 the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

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

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

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

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

561 (11) The Judicial Council shall provide information obtained concerning a judge under

562 Subsection (10) to the subject judge's presiding judge, if any.

563 Section 6. **Effective date.**

564 This bill takes effect on May 10, 2011, except that the amendments to Subsection

565 78A-12-205(1)(b)(i) in this bill take effect on January 1, 2013.