

1 **JUDICIAL PERFORMANCE EVALUATION AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: V. Lowry Snow**

5 Senate Sponsor: Stephen H. Urquhart

6

7 **LONG TITLE**

8 **General Description:**

9 This bill clarifies when a judge may appear before the Judicial Performance Evaluation
10 Commission.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ clarifies the conditions when a judge may appear before the Judicial Performance
14 Evaluation Commission.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **78A-12-203**, as last amended by Laws of Utah 2011, Chapter 80

22

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

24 Section 1. Section **78A-12-203** is amended to read:

25 **78A-12-203. Judicial performance evaluations.**

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



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

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

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

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

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

38 (c) courtroom observation;

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

40 (e) public comment solicited by the commission;

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

42 and

43 (g) any other factor that the commission:

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

46 (ii) establishes by rule.

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

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

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

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

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

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

58 (ii) If a judge fails to meet the minimum performance standards established in

59 accordance with Section 78A-12-205₂ there is a rebuttable presumption that the commission
60 will recommend the voters not retain the judge.

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

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

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

70 ~~[(5) (a) Before considering the judicial performance evaluation of any judge, the~~
71 ~~commission shall notify the judge of the date and time of any commission meeting during~~
72 ~~which the judge's judicial performance evaluation will be considered.]~~

73 ~~[(b)]~~ (5) (a) The commission shall allow a judge who is the subject of a judicial
74 performance retention evaluation and who has not passed any minimum performance standard
75 on the midterm evaluation or on the retention evaluation to appear and speak at any
76 commission meeting, except a closed meeting, during which the judge's judicial performance
77 evaluation is considered.

78 (b) The commission may invite any judge to appear before the commission to discuss
79 concerns about the judge's judicial performance.

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

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

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

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

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

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

91 (c) The report shall be provided to the evaluated judge and the presiding judge of the
92 district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the
93 midterm report shall be provided to the chair of the board of judges for the court level on which
94 the evaluated judge serves.

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

Legislative Review Note
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Office of Legislative Research and General Counsel