

SB0193S01 compared with SB0193

~~text~~ shows text that was in SB0193 but was deleted in SB0193S01.

Inserted text shows text that was not in SB0193 but was inserted into SB0193S01.

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Senator Todd Weiler proposes the following substitute bill:

JUDICIAL PERFORMANCE EVALUATION COMMISSION

MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to judicial performance.

Highlighted Provisions:

This bill:

- ▶ addresses appointments to the commission;
- ▶ requires a certain number of members to vote on recommendations to retain or not retain a judge;
- ▶ amends provisions related to judicial performance evaluations;
- ▶ addresses judicial performance surveys;
- ▶ amends provisions related to publication of judicial performance evaluations;~~text~~

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- ~~enacts provisions related to self-improvement plans for certain judges;}~~ and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- ~~{ 20A-7-702, as last amended by Laws of Utah 2016, Chapter 348~~
- ~~}~~ 78A-12-201, as enacted by Laws of Utah 2008, Chapter 248
- 78A-12-203, as last amended by Laws of Utah 2013, Chapter 209
- 78A-12-204, as last amended by Laws of Utah 2011, Chapter 80
- ~~{ 78A-12-205, as last amended by Laws of Utah 2011, Chapter 80~~
- ~~}~~ 78A-12-206, as last amended by Laws of Utah 2011, Chapter 80

~~{ENACTS:~~

~~78A-12-208, Utah Code Annotated 1953~~

~~}~~

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

Section 1. Section ~~{20A-7-702}~~78A-12-201 is amended to read:

~~{ 20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.~~

~~_____ (1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:~~

~~_____ (a) printed and bound in a single pamphlet;~~

~~_____ (b) printed in clear readable type, no less than 10 point, except that the text of any measure may be set forth in eight-point type; and~~

~~_____ (c) printed on a quality and weight of paper that best serves the voters.~~

~~_____ (2) The voter information pamphlet shall contain the following items in this order:~~

~~_____ (a) a cover title page;~~

~~_____ (b) an introduction to the pamphlet by the lieutenant governor;~~

~~_____ (c) a table of contents;~~

~~_____ (d) a list of all candidates for constitutional offices;~~

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- ~~—— (e) a list of candidates for each legislative district;~~
- ~~—— (f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before the date of the election;~~
- ~~—— (g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:~~
 - ~~—— (i) a copy of the number and ballot title of the measure;~~
 - ~~—— (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;~~
 - ~~—— (iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;~~
 - ~~—— (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;~~
 - ~~—— (v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets;~~
 - ~~—— (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor and a copy of the fiscal impact estimate prepared according to Section 20A-7-202.5; and~~
 - ~~—— (vii) for each referendum qualified for the ballot, a complete copy of the text of the law being submitted to the voters for their approval or rejection, with all new language underlined and all deleted language placed within brackets, as applicable;~~
 - ~~—— (h) a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:~~
 - ~~—— (i) a description of the judicial selection process;~~
 - ~~—— (ii) a description of the judicial performance evaluation process;~~
 - ~~—— (iii) a description of the judicial retention election process;~~
 - ~~—— (iv) a list of the criteria of the judicial performance evaluation and the minimum performance standards;~~
 - ~~—— (v) the names of the judges standing for retention election; and~~

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- ~~—— (vi) for each judge:~~
- ~~—— (A) a list of the counties in which the judge is subject to retention election;~~
- ~~—— (B) a short biography of professional qualifications and a recent photograph;~~
- ~~—— (C) a narrative concerning the judge's performance;~~
- ~~—— (D) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;~~
- ~~—— (E) a statement identifying whether or not the Judicial Performance Evaluation Commission recommends the judge be retained or declines to make a recommendation and the number of votes for and against the commission's recommendation;~~
- ~~—— (F) any statement provided by a judge who is not recommended for retention by the Judicial Performance Evaluation Commission under Section 78A-12-203;~~
- ~~—— (G) in a bar graph, the average of responses to each survey category, displayed with an identification of the minimum acceptable score as set by Section 78A-12-205 and the average score of all judges of the same court level; [and]~~
- ~~—— (H) a dissenting report if one is submitted under Section 78A-12-206; and~~
- ~~—— [(H)] (I) a website address that contains the Judicial Performance Evaluation Commission's report on the judge's performance evaluation;~~
- ~~—— (i) for each judge, a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article VIII, Section 13, during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received;~~
- ~~—— (j) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;~~
- ~~—— (k) voter registration information, including information on how to obtain an absentee ballot;~~
- ~~—— (l) a list of all county clerks' offices and phone numbers; and~~
- ~~—— (m) on the back cover page, a printed copy of the following statement signed by the~~

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lieutenant governor:

~~"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on _____ (date of election), and that this pamphlet is complete and correct according to law.~~

SEAL

~~_____ Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this _____ day of _____ (month), _____ (year)~~

~~_____ (signed) _____
_____ Lieutenant Governor"~~

~~_____ (3) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall:~~

~~_____ (a) (i) distribute one copy of the voter information pamphlet to each household within the state;~~

~~_____ (ii) distribute to each household within the state a notice:~~

~~_____ (A) printed on a postage prepaid, preaddressed return form that a person may use to request delivery of a voter information pamphlet by mail;~~

~~_____ (B) that states the address of the Statewide Electronic Voter Information Website authorized by Section 20A-7-801; and~~

~~_____ (C) that states the phone number a voter may call to request delivery of a voter information pamphlet by mail; or~~

~~_____ (iii) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state;~~

~~_____ (b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;~~

~~_____ (c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and~~

~~_____ (d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.~~

~~_____ (4) The lieutenant governor may distribute a voter information pamphlet at a location frequented by a person who cannot easily access the Statewide Electronic Voter Information~~

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~~Website authorized by Section 20A-7-801.~~

~~Section 2. Section 78A-12-201 is amended to read:~~

† **78A-12-201. Judicial Performance Evaluation Commission -- Creation --
Membership -- Salary -- Staff.**

(1) There is created an independent commission called the Judicial Performance Evaluation Commission consisting of 13 members, as follows:

(a) two members appointed by the president of the Senate, only one of whom may be a member of the Utah State Bar;

(b) two members appointed by the speaker of the House of Representatives, only one of whom may be a member of the Utah State Bar;

(c) four members appointed by the members of the Supreme Court, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar;

(d) four members appointed by the governor, at least one of whom, but not more than two of whom, may be a member of the Utah State Bar; and

(e) the executive director of the Commission on Criminal and Juvenile Justice.

(2) (a) The president of the Senate and the speaker of the House of Representatives shall confer when appointing members under Subsections (1)(a) and (b) to ensure that there is at least one member from among their four appointees who is a member of the Utah State Bar.

(b) Each of the appointing authorities may appoint no more than half of the appointing authority's members from the same political party.

(c) A sitting legislator or a sitting judge may not serve as a commission member.

(3) (a) A member appointed under Subsection (1) shall be appointed for a four-year term.

(b) A member may serve no more than three consecutive terms.

(4) At the time of appointment, the terms of commission members shall be staggered so that approximately half of commission members' terms expire every two years.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term using the same procedure used to appoint the member being replaced.

(6) (a) Eight members of the commission constitute a quorum.

(b) The action of a majority of the quorum constitutes the action of the commission.

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except that a decision of the commission to recommend that a judge be retained or not be retained may not be made except by a vote of at least six members.

(c) If a vote on the question of whether to recommend a judge be retained or not be retained ends in a tie or if a decision does not have six votes required by Subsection (6)(b), the commission may make no recommendation concerning the judge's retention.

Section ~~13~~2. Section **78A-12-203** is amended to read:

78A-12-203. Judicial performance evaluations.

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

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

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

(2) Except as provided in Subsection (3), the performance evaluation for a judge under Subsection (1) shall consider only the following information but shall give primary emphasis to the information that is gathered and relates to the performance of the judge during the period subsequent to the last judicial retention election of that judge or if the judge has not had a judicial retention election, during the period applicable to the first judicial retention election:

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

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

(c) courtroom observation;

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

(e) public comment solicited by the commission;

(f) information from an earlier judicial performance evaluation concerning the judge except that the commission shall give primary emphasis to information gathered subsequent to the last judicial retention election; and

(g) any other factor that the commission:

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

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(ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

(5) (a) The commission shall allow a judge who is the subject of a judicial performance retention evaluation and who has not passed one or more of the minimum performance standards on the midterm evaluation or on the retention evaluation to appear and speak at any commission meeting, except a closed meeting, during which the judge's judicial performance evaluation is considered.

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

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

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

(e) (i) A member of the commission, including a member of the Utah State Bar, may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, so long as the member is not a litigant in a case pending before the judge.

(ii) Notwithstanding Subsection (5)(e)(i), a member of the commission shall disclose any conflicts of interest with the judge being reviewed to the other members of the commission before the deliberation and vote of whether to recommend that a judge be retained or not be retained.

(iii) Information disclosed under this Subsection (5)(e) is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

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

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

(b) The midterm report of a judicial performance evaluation shall include information that the commission considers appropriate for purposes of judicial self-improvement.

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

(d) (i) The commission may provide a partial midterm evaluation to a judge whose appointment date precludes the collection of complete midterm evaluation data.

(ii) For a newly appointed judge, a midterm evaluation is considered partial when the midterm evaluation is missing a complete respondent group, including attorneys, court staff, court room observers, or intercept survey respondents.

(iii) A judge who receives partial midterm evaluation data may receive a statement in

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acknowledgment of that fact on the judge's voter information pamphlet page.

(iv) On or before the beginning of the retention evaluation cycle, the commission shall inform the Judicial Council of the name of any judge who receives a partial midterm evaluation.

(7) The commission shall identify a judge whose midterm evaluation:

(a) fails to meet minimum performance standards in accordance with Section 78A-12-205 or as established by rule; or

(b) otherwise demonstrates to the commission that the judge's performance would be of such concern if the performance occurred in a retention evaluation that the judge would be invited to appear before the commission in accordance with Subsection (5)(b).

~~[(7)]~~ (8) The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by this section.

Section ~~{4}~~3. Section **78A-12-204** is amended to read:

78A-12-204. Judicial performance survey.

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

~~{(2) (a) Notwithstanding any contrary provision, if a judge is receiving only a partial evaluation for the judge's first retention report that includes information from the first two years after a judge is appointed, any information gathered during a judicial performance survey conducted pursuant to this section may be considered as part of a judicial performance evaluation under Section 78A-12-203 if the judge chooses that the information be considered:~~

~~—— (b) If a judge chooses to not have the first two years after the judge is appointed included in a judicial performance survey published as part of a judicial performance evaluation for the first unopposed election for the judge, the retention report shall state that the judge chose to not have the information included. However, notwithstanding Section 20A-12-201, if the judge chooses to not have the information included in the retention report for the first unopposed retention election, the judge shall be on the ballot for an unopposed retention election:~~

~~—— (i) on the next general election held after the first general election the judge is~~

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~~considered for an unopposed retention election; and~~

~~—— (ii) after the election described in Subsection (2)(b)(i), on the regular general election ballot for an unopposed retention election;~~

~~—— (A) every sixth year after the first unopposed retention election; or~~

~~—— (B) for a Supreme Court justice, every tenth year after the first unopposed retention election;~~

~~——~~ ~~(2)~~ ~~(3)~~ (2) (a) The judicial performance survey shall include as respondents a sample of each of the following groups as applicable:

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

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

~~(c)~~ ~~(iii)~~ court staff who have worked with the judge.

(b) Only a respondent under Subsection (~~(3)~~2)(a)(i) who is admitted to practice law in the state and in good standing with the Utah State Bar may evaluate a judge's legal ability under Subsection (~~(8)~~7)(a).

~~(3)~~ ~~(4)~~ The commission may include an additional classification of respondents if the commission:

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

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

~~(4)~~ ~~(5)~~ All survey responses are anonymous, including comments included with a survey response.

~~(5)~~ ~~(6)~~ If the commission provides any information to a judge or the Judicial Council, the information shall be provided in such a way as to protect the confidentiality of a survey respondent.

~~(6)~~ ~~(7)~~ A survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appears in the judge's court is closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at any time during the survey period.

~~(7)~~ ~~(8)~~ Survey categories shall include questions concerning a judge's:

(a) legal ability, including the following:

(i) demonstration of understanding of the substantive law and any relevant rules of

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procedure and evidence;

- (ii) attentiveness to factual and legal issues before the court;
- (iii) adherence to precedent and ability to clearly explain departures from precedent;
- (iv) grasp of the practical impact on the parties of the judge's rulings, including the

effect of delay and increased litigation expense;

- (v) ability to write clear judicial opinions; and
- (vi) ability to clearly explain the legal basis for judicial opinions;
- (b) judicial temperament and integrity, including the following:

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

court;

- (ii) maintenance of decorum in the courtroom;
- (iii) demonstration of judicial demeanor and personal attributes that promote public

trust and confidence in the judicial system;

- (iv) preparedness for oral argument;
- (v) avoidance of impropriety or the appearance of impropriety;
- (vi) display of fairness and impartiality toward all parties; and
- (vii) ability to clearly communicate, including the ability to explain the basis for

written rulings, court procedures, and decisions; and

- (c) administrative performance, including the following:

- (i) management of workload;
- (ii) sharing proportionally the workload within the court or district; and
- (iii) issuance of opinions and orders without unnecessary delay.

~~(8)~~ ~~(9)~~ If the commission determines that a certain survey question or category of questions is not appropriate for a respondent group, the commission may omit that question or category of questions from the survey provided to that respondent group.

~~(9)~~ ~~(10)~~ (a) The survey shall allow respondents to indicate responses in a manner determined by the commission, which shall be:

(i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; or

(ii) in the affirmative or negative, with an option to indicate the respondent's inability to respond in the affirmative or negative.

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(b) (i) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the commission may allow respondents to provide written comments.

(ii) The executive director may not provide the commission a comment that would be prohibited in relation to taking an employment action under federal or state law.

~~§§(10)-(11)}~~ The commission shall compile and make available to each judge that judge's survey results with each of the judge's judicial performance evaluations.

~~§§(11)-(12)}~~ The commission may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

Section ~~{5}~~4. Section ~~{78A-12-205}~~78A-12-206 is amended to read:

~~{~~ **~~78A-12-205. Minimum performance standards:~~**

~~—— (1) The commission shall establish minimum performance standards requiring that:~~

~~—— (a) the judge have no more than one public reprimand issued by the Judicial Conduct Commission or the Utah Supreme Court during the judge's current term; and~~

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

~~—— (i) an average score of no less than 65% on each survey category as provided in Subsection 78A-12-204~~[(7)](8)~~; and~~

~~—— (ii) if the commission includes a question on the survey that does not use the numerical scale, the commission shall establish the minimum performance standard for all questions that do not use the numerical scale to be substantially equivalent to the standard required under Subsection (1)(b)(i):~~

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

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

~~—— (b) adopts the standard.~~

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

~~—— Section 6. Section 78A-12-206 is amended to read:~~

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

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

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

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

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

(2) Within 15 days of receiving a copy of the commission's report under Subsection (1)(b):

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

(i) provide a written response to the commission about the report; and

(ii) request an interview with the commission for the purpose of addressing the report;

and

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

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

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

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

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

(b) information concerning the judge's compliance with the minimum performance

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standards, including stating how many of the minimum performance standards the judge met;

(c) information concerning any public discipline that a judge has received that is not subject to restrictions on disclosure under Title 78A, Chapter 11, Judicial Conduct

Commission;

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

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

(f) the number of votes for and against the commission's recommendation; ~~{and}~~

~~— (g) subject to Subsection (11), a dissenting report, if desired by one or more members of the commission, not to exceed 100 words, if the vote is not unanimous; and~~

~~— [(g)] (h) and~~

(g) any other information the commission considers ~~[appropriate]~~ necessary to include in the report to explain the performance standards and the recommendation made.

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

(b) The commission may refer to information from an earlier judicial performance evaluation concerning the judge in the commission's report only if ~~[the reference is in general terms]~~ necessary to explain performance in the current reporting period and giving primary emphasis to the information gathered during the current reporting period.

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

(7) ~~[The]~~ In addition to publishing the report on the commission's Internet website, the commission may also make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through ~~[other means within budgetary constraints]~~ the regular process conducted by the lieutenant governor for the dissemination of voter information referred to in Subsection (8).

(8) The commission shall provide a summary of the judicial performance evaluation ~~+~~ including a dissenting report if one is submitted under Subsection (4)(g), for each judge to the lieutenant governor for publication in the voter information pamphlet in the manner required by Title 20A, Chapter 7, Issues Submitted to the Voters.

~~[(9) The commission may also provide any information collected during the course of a~~

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judge's judicial performance evaluation immediately preceding the judge's retention election to the public to the extent that information is not otherwise subject to restrictions on disclosure.]

~~[(10)]~~ (9) The commission shall provide the Judicial Council with:

- (a) the judicial performance survey results for each judge; and
- (b) a copy of the retention report of each judicial performance evaluation.

~~[(11)]~~ (10) The Judicial Council shall provide information obtained concerning a judge under Subsection ~~[(10)]~~ (9) to the subject judge's presiding judge, if any.

~~{~~ ~~(11) The author of a dissenting report shall be confidential and is not on record subject to Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~Section 7. Section **78A-12-208** is enacted to read:~~

~~**78A-12-208. Self-improvement plan:**~~

~~(1) The Judicial Council shall develop and implement a self-improvement plan, subject to budget constraints, for a judge whose midterm evaluation is identified by the commission in accordance with Subsection 78A-12-203(7).~~

~~(2) A self-improvement plan shall be confidential and disclosed only to the judge, the presiding judge, and the Judicial Council.~~

~~(3) A judge may decline to receive any service provided as part of the judge's self-improvement plan under this section.~~

Legislative Review Note

Office of Legislative Research and General Counsel