

1                   **JUDICIAL PERFORMANCE EVALUATION COMMISSION**

2                                   **AMENDMENTS**

3   2022 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Nelson T. Abbott**

6   Senate Sponsor: Jani Iwamoto

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8   **LONG TITLE**

9   **Committee Note:**

10           The Government Operations Interim Committee recommended this bill.

11           Legislative Vote: 14 voting for 0 voting against 2 absent

12   **General Description:**

13           This bill amends provisions relating to the Judicial Performance Evaluation  
14 Commission.

15   **Highlighted Provisions:**

16           This bill:

- 17           ▶ defines terms;
- 18           ▶ provides that the Judicial Performance Evaluation Commission will determine  
19 whether a judge meets minimum performance standards, rather than making a  
20 recommendation regarding retaining a judge;
- 21           ▶ makes conforming changes in the Election Code and the Government Records  
22 Access and Management Act; and
- 23           ▶ makes other technical and conforming changes.

24   **Money Appropriated in this Bill:**

25           None

26   **Other Special Clauses:**

27           This bill provides a special effective date.



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **20A-7-702**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

31 **63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373,

32 and 382

33 **78A-12-102**, as last amended by Laws of Utah 2014, Chapter 152

34 **78A-12-201**, as last amended by Laws of Utah 2017, Chapter 374

35 **78A-12-203**, as last amended by Laws of Utah 2017, Chapters 81 and 374

36 **78A-12-205**, as last amended by Laws of Utah 2017, Chapter 81

37 **78A-12-206**, as last amended by Laws of Utah 2017, Chapter 374

38 ENACTS:

39 **20A-7-702.5**, Utah Code Annotated 1953



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

42 Section 1. Section **20A-7-702** is amended to read:

43 **20A-7-702. Voter information pamphlet -- Form -- Contents.**

44 [(+)] The voter information pamphlet shall contain the following items in this order:

45 [(a)] (1) a cover title page;

46 [(b)] (2) an introduction to the pamphlet by the lieutenant governor;

47 [(c)] (3) a table of contents;

48 [(d)] (4) a list of all candidates for constitutional offices;

49 [(e)] (5) a list of candidates for each legislative district;

50 [(f)] (6) a 100-word statement of qualifications for each candidate for the office of

51 governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by

52 the candidate to the lieutenant governor's office before 5 p.m. on the first business day in

53 August before the date of the election;

54 [(g)] (7) information pertaining to all measures to be submitted to the voters, beginning

55 a new page for each measure and containing, in the following order for each measure:

56 [(i)] (a) a copy of the number and ballot title of the measure;

57 [(ii)] (b) the final vote cast by the Legislature on the measure if it is a measure

58 submitted by the Legislature or by referendum;

- 59           ~~[(iii)]~~ (c) the impartial analysis of the measure prepared by the Office of Legislative  
60 Research and General Counsel;
- 61           ~~[(iv)]~~ (d) the arguments in favor of the measure, the rebuttal to the arguments in favor  
62 of the measure, the arguments against the measure, and the rebuttal to the arguments against  
63 the measure, with the name and title of the authors at the end of each argument or rebuttal;
- 64           ~~[(v)]~~ (e) for each constitutional amendment, a complete copy of the text of the  
65 constitutional amendment, with all new language underlined, and all deleted language placed  
66 within brackets;
- 67           ~~[(vi)]~~ (f) for each initiative qualified for the ballot:
- 68           ~~[(A)]~~ (i) a copy of the measure as certified by the lieutenant governor and a copy of the  
69 fiscal impact estimate prepared according to Section [20A-7-202.5](#); and
- 70           ~~[(B)]~~ (ii) if the initiative proposes a tax increase, the following statement in bold type:  
71           " This initiative seeks to increase the current (insert name of tax) rate by (insert the tax  
72 percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent  
73 increase in the current tax rate."; and
- 74           ~~[(vii)]~~ (g) for each referendum qualified for the ballot, a complete copy of the text of  
75 the law being submitted to the voters for their approval or rejection, with all new language  
76 underlined and all deleted language placed within brackets, as applicable;
- 77           ~~[(h)]~~ (8) a description provided by the Judicial Performance Evaluation Commission of  
78 the selection and retention process for judges, including, in the following order:
- 79           ~~[(i)]~~ (a) a description of the judicial selection process;
- 80           ~~[(ii)]~~ (b) a description of the judicial performance evaluation process;
- 81           ~~[(iii)]~~ (c) a description of the judicial retention election process;
- 82           ~~[(iv)]~~ (d) a list of the criteria of the judicial performance evaluation and the ~~[minimum~~  
83 ~~performance]~~ certification standards;
- 84           ~~[(v)]~~ (e) the names of the judges standing for retention election; and
- 85           ~~[(vi)]~~ (f) for each judge:
- 86           ~~[(A)]~~ (i) a list of the counties in which the judge is subject to retention election;
- 87           ~~[(B)]~~ (ii) a short biography of professional qualifications and a recent photograph;
- 88           ~~[(C)]~~ (iii) a narrative concerning the judge's performance;
- 89           ~~[(D)]~~ (iv) for each certification standard ~~[of performance]~~ under Section [78A-12-205](#), a

90 statement identifying whether ~~[or not]~~, under Section [78A-12-205](#), the judge met the standard  
91 and, if not, the manner in which the judge failed to meet the standard;

92 ~~[(E)] a statement identifying whether or not the Judicial Performance Evaluation  
93 Commission recommends the judge be retained or declines to make a recommendation and the  
94 number of votes for and against the commission's recommendation;]~~

95 (v) a statement that the Judicial Performance Evaluation Commission:

96 (A) has determined that the judge meets minimum performance standards;

97 (B) has determined that the judge does not meet minimum performance standards; or

98 (C) has not made a determination regarding whether the judge meets minimum  
99 performance standards;

100 ~~[(F)]~~ (vi) any statement, described in Subsection [78A-12-206\(3\)\(b\)](#), provided by a  
101 judge ~~[who is not recommended for retention by]~~ whom the Judicial Performance Evaluation  
102 Commission ~~[under Section [78A-12-203](#)]~~ determines does not meet minimum performance  
103 standards;

104 ~~[(G)]~~ (vii) in a bar graph, the average of responses to each survey category, displayed  
105 with an identification of the minimum acceptable score as set by Section [78A-12-205](#) and the  
106 average score of all judges of the same court level; and

107 ~~[(H)]~~ (viii) a website address that contains the Judicial Performance Evaluation  
108 Commission's report on the judge's performance evaluation;

109 ~~[(I)]~~ (9) for each judge, a statement provided by the Utah Supreme Court identifying  
110 the cumulative number of informal reprimands, when consented to by the judge in accordance  
111 with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders  
112 of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article  
113 VIII, Section 13, during the judge's current term and the immediately preceding term, and a  
114 detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct  
115 that the judge has received;

116 ~~[(J)]~~ (10) an explanation of ballot marking procedures prepared by the lieutenant  
117 governor, indicating the ballot marking procedure used by each county and explaining how to  
118 mark the ballot for each procedure;

119 ~~[(K)]~~ (11) voter registration information, including information on how to obtain a  
120 ballot;



152 frequented by a person who cannot easily access the Statewide Electronic Voter Information  
153 Website authorized by Section 20A-7-801.

154 Section 3. Section 63G-2-305 is amended to read:

155 **63G-2-305. Protected records.**

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

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

159 (2) commercial information or nonindividual financial information obtained from a  
160 person if:

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

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

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

168 (3) commercial or financial information acquired or prepared by a governmental entity  
169 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
170 commodities that will interfere with a planned transaction by the governmental entity or cause  
171 substantial financial injury to the governmental entity or state economy;

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

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

177 (6) records, the disclosure of which would impair governmental procurement  
178 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
179 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
180 Subsection (6) does not restrict the right of a person to have access to, after the contract or  
181 grant has been awarded and signed by all parties:

182 (a) a bid, proposal, application, or other information submitted to or by a governmental

183 entity in response to:

184 (i) an invitation for bids;

185 (ii) a request for proposals;

186 (iii) a request for quotes;

187 (iv) a grant; or

188 (v) other similar document; or

189 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

190 (7) information submitted to or by a governmental entity in response to a request for  
191 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
192 the right of a person to have access to the information, after:

193 (a) a contract directly relating to the subject of the request for information has been  
194 awarded and signed by all parties; or

195 (b) (i) a final determination is made not to enter into a contract that relates to the  
196 subject of the request for information; and

197 (ii) at least two years have passed after the day on which the request for information is  
198 issued;

199 (8) records that would identify real property or the appraisal or estimated value of real  
200 or personal property, including intellectual property, under consideration for public acquisition  
201 before any rights to the property are acquired unless:

202 (a) public interest in obtaining access to the information is greater than or equal to the  
203 governmental entity's need to acquire the property on the best terms possible;

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

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

208 (d) in the case of records that would identify the appraisal or estimated value of  
209 property, the potential sellers have already learned of the governmental entity's estimated value  
210 of the property; or

211 (e) the property under consideration for public acquisition is a single family residence  
212 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
213 the property as required under Section [78B-6-505](#);

214 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
215 compensated transaction of real or personal property including intellectual property, which, if  
216 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
217 of the subject property, unless:

218 (a) the public interest in access is greater than or equal to the interests in restricting  
219 access, including the governmental entity's interest in maximizing the financial benefit of the  
220 transaction; or

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

224 (10) records created or maintained for civil, criminal, or administrative enforcement  
225 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
226 release of the records:

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

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

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

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

237 (e) reasonably could be expected to disclose investigative or audit techniques,  
238 procedures, policies, or orders not generally known outside of government if disclosure would  
239 interfere with enforcement or audit efforts;

240 (11) records the disclosure of which would jeopardize the life or safety of an  
241 individual;

242 (12) records the disclosure of which would jeopardize the security of governmental  
243 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
244 or other appropriation or use contrary to law or public policy;



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

248 (14) records that, if disclosed, would reveal recommendations made to the Board of  
249 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
250 Board of Pardons and Parole, or the Department of Human Services that are based on the  
251 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
252 jurisdiction;

253 (15) records and audit workpapers that identify audit, collection, and operational  
254 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
255 audits or collections;

256 (16) records of a governmental audit agency relating to an ongoing or planned audit  
257 until the final audit is released;

258 (17) records that are subject to the attorney client privilege;

259 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
260 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
261 quasi-judicial, or administrative proceeding;

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

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

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

268 (A) members of a legislative body;

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

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

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

273 (20) (a) records in the custody or control of the Office of Legislative Research and  
274 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
275 legislation or contemplated course of action before the legislator has elected to support the

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

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

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

285 (23) records concerning a governmental entity's strategy about:

286 (a) collective bargaining; or  
287 (b) imminent or pending litigation;

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

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

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

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

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

305 (29) records of the governor's office, including budget recommendations, legislative  
306 proposals, and policy statements, that if disclosed would reveal the governor's contemplated

307 policies or contemplated courses of action before the governor has implemented or rejected  
308 those policies or courses of action or made them public;

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

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

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

318 (33) records that would reveal the contents of settlement negotiations but not including  
319 final settlements or empirical data to the extent that they are not otherwise exempt from  
320 disclosure;

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

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

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

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

336 (a) the donor requests anonymity in writing;

337 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

338 classified protected by the governmental entity under this Subsection (37); and  
339 (c) except for an institution within the state system of higher education defined in  
340 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
341 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
342 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
343 by the donor or the donor's immediate family;  
344 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
345 73-18-13;  
346 (39) a notification of workers' compensation insurance coverage described in Section  
347 34A-2-205;  
348 (40) (a) the following records of an institution within the state system of higher  
349 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
350 or received by or on behalf of faculty, staff, employees, or students of the institution:  
351 (i) unpublished lecture notes;  
352 (ii) unpublished notes, data, and information:  
353 (A) relating to research; and  
354 (B) of:  
355 (I) the institution within the state system of higher education defined in Section  
356 53B-1-102; or  
357 (II) a sponsor of sponsored research;  
358 (iii) unpublished manuscripts;  
359 (iv) creative works in process;  
360 (v) scholarly correspondence; and  
361 (vi) confidential information contained in research proposals;  
362 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
363 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and  
364 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
365 (41) (a) records in the custody or control of the Office of the Legislative Auditor  
366 General that would reveal the name of a particular legislator who requests a legislative audit  
367 prior to the date that audit is completed and made public; and  
368 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

369 Office of the Legislative Auditor General is a public document unless the legislator asks that  
370 the records in the custody or control of the Office of the Legislative Auditor General that would  
371 reveal the name of a particular legislator who requests a legislative audit be maintained as  
372 protected records until the audit is completed and made public;

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

375 (a) a production facility; or

376 (b) a magazine;

377 (43) information:

378 (a) contained in the statewide database of the Division of Aging and Adult Services  
379 created by Section [62A-3-311.1](#); or

380 (b) received or maintained in relation to the Identity Theft Reporting Information  
381 System (IRIS) established under Section [67-5-22](#);

382 (44) information contained in the Licensing Information System described in Title  
383 62A, Chapter 4a, Child and Family Services;

384 (45) information regarding National Guard operations or activities in support of the  
385 National Guard's federal mission;

386 (46) records provided by any pawn or secondhand business to a law enforcement  
387 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
388 Secondhand Merchandise Transaction Information Act;

389 (47) information regarding food security, risk, and vulnerability assessments performed  
390 by the Department of Agriculture and Food;

391 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
392 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
393 prepared or maintained by the Division of Emergency Management, and the disclosure of  
394 which would jeopardize:

395 (a) the safety of the general public; or

396 (b) the security of:

397 (i) governmental property;

398 (ii) governmental programs; or

399 (iii) the property of a private person who provides the Division of Emergency

400 Management information;

401 (49) records of the Department of Agriculture and Food that provides for the  
402 identification, tracing, or control of livestock diseases, including any program established under  
403 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
404 of Animal Disease;

405 (50) as provided in Section [26-39-501](#):

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

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

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

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

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

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

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

420 (52) the portion of the following documents that contains a candidate's residential or  
421 mailing address, if the candidate provides to the filing officer another address or phone number  
422 where the candidate may be contacted:

423 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,  
424 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),  
425 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);

426 (b) an affidavit of impecuniosity, described in Section [20A-9-201](#); or

427 (c) a notice of intent to gather signatures for candidacy, described in Section  
428 [20A-9-408](#);

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

- 431 (a) conducted within the state system of higher education, as defined in Section  
432 [53B-1-102](#); and
- 433 (b) conducted using animals;
- 434 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance  
435 Evaluation Commission concerning an individual commissioner's vote [~~on whether or not to~~  
436 ~~recommend that the voters retain a judge including~~], in relation to whether a judge meets  
437 minimum performance standards under Subsection [78A-12-203\(4\)](#), and information disclosed  
438 under Subsection [78A-12-203\(5\)\(e\)](#);
- 439 (55) information collected and a report prepared by the Judicial Performance  
440 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter  
441 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
442 the information or report;
- 443 (56) records provided or received by the Public Lands Policy Coordinating Office in  
444 furtherance of any contract or other agreement made in accordance with Section [63L-11-202](#);
- 445 (57) information requested by and provided to the 911 Division under Section  
446 [63H-7a-302](#);
- 447 (58) in accordance with Section [73-10-33](#):
- 448 (a) a management plan for a water conveyance facility in the possession of the Division  
449 of Water Resources or the Board of Water Resources; or
- 450 (b) an outline of an emergency response plan in possession of the state or a county or  
451 municipality;
- 452 (59) the following records in the custody or control of the Office of Inspector General  
453 of Medicaid Services, created in Section [63A-13-201](#):
- 454 (a) records that would disclose information relating to allegations of personal  
455 misconduct, gross mismanagement, or illegal activity of a person if the information or  
456 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
457 through other documents or evidence, and the records relating to the allegation are not relied  
458 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
459 report or final audit report;
- 460 (b) records and audit workpapers to the extent they would disclose the identity of a  
461 person who, during the course of an investigation or audit, communicated the existence of any

462 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
463 regulation adopted under the laws of this state, a political subdivision of the state, or any  
464 recognized entity of the United States, if the information was disclosed on the condition that  
465 the identity of the person be protected;

466 (c) before the time that an investigation or audit is completed and the final  
467 investigation or final audit report is released, records or drafts circulated to a person who is not  
468 an employee or head of a governmental entity for the person's response or information;

469 (d) records that would disclose an outline or part of any investigation, audit survey  
470 plan, or audit program; or

471 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
472 investigation or audit;

473 (60) records that reveal methods used by the Office of Inspector General of Medicaid  
474 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
475 abuse;

476 (61) information provided to the Department of Health or the Division of Occupational  
477 and Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections  
478 58-68-304(3) and (4);

479 (62) a record described in Section 63G-12-210;

480 (63) captured plate data that is obtained through an automatic license plate reader  
481 system used by a governmental entity as authorized in Section 41-6a-2003;

482 (64) any record in the custody of the Utah Office for Victims of Crime relating to a  
483 victim, including:

484 (a) a victim's application or request for benefits;

485 (b) a victim's receipt or denial of benefits; and

486 (c) any administrative notes or records made or created for the purpose of, or used to,  
487 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim  
488 Reparations Fund;

489 (65) an audio or video recording created by a body-worn camera, as that term is  
490 defined in Section 77-7a-103, that records sound or images inside a hospital or health care  
491 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care  
492 provider, as that term is defined in Section 78B-3-403, or inside a human service program as



493 that term is defined in Section 62A-2-101, except for recordings that:

494 (a) depict the commission of an alleged crime;

495 (b) record any encounter between a law enforcement officer and a person that results in  
496 death or bodily injury, or includes an instance when an officer fires a weapon;

497 (c) record any encounter that is the subject of a complaint or a legal proceeding against  
498 a law enforcement officer or law enforcement agency;

499 (d) contain an officer involved critical incident as defined in Subsection  
500 76-2-408(1)(f); or

501 (e) have been requested for reclassification as a public record by a subject or  
502 authorized agent of a subject featured in the recording;

503 (66) a record pertaining to the search process for a president of an institution of higher  
504 education described in Section 53B-2-102, except for application materials for a publicly  
505 announced finalist;

506 (67) an audio recording that is:

507 (a) produced by an audio recording device that is used in conjunction with a device or  
508 piece of equipment designed or intended for resuscitating an individual or for treating an  
509 individual with a life-threatening condition;

510 (b) produced during an emergency event when an individual employed to provide law  
511 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

512 (i) is responding to an individual needing resuscitation or with a life-threatening  
513 condition; and

514 (ii) uses a device or piece of equipment designed or intended for resuscitating an  
515 individual or for treating an individual with a life-threatening condition; and

516 (c) intended and used for purposes of training emergency responders how to improve  
517 their response to an emergency situation;

518 (68) records submitted by or prepared in relation to an applicant seeking a  
519 recommendation by the Research and General Counsel Subcommittee, the Budget  
520 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an  
521 employment position with the Legislature;

522 (69) work papers as defined in Section 31A-2-204;

523 (70) a record made available to Adult Protective Services or a law enforcement agency

524 under Section 61-1-206;

525 (71) a record submitted to the Insurance Department in accordance with Section  
526 31A-37-201;

527 (72) a record described in Section 31A-37-503;

528 (73) any record created by the Division of Occupational and Professional Licensing as  
529 a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

530 (74) a record described in Section 72-16-306 that relates to the reporting of an injury  
531 involving an amusement ride;

532 (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual  
533 on a political petition, or on a request to withdraw a signature from a political petition,  
534 including a petition or request described in the following titles:

535 (a) Title 10, Utah Municipal Code;

536 (b) Title 17, Counties;

537 (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

538 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

539 (e) Title 20A, Election Code;

540 (76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in  
541 a voter registration record;

542 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a  
543 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a  
544 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

545 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part  
546 5, Victims Guidelines for Prosecutors Act;

547 (79) a record submitted to the Insurance Department under Subsection  
548 31A-48-103(1)(b);

549 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is  
550 prohibited under Section 63G-26-103;

551 (81) ~~(a)~~ an image taken of an individual during the process of booking the individual  
552 into jail, unless:

553 ~~(i)~~ (a) the individual is convicted of a criminal offense based upon the conduct for  
554 which the individual was incarcerated at the time the image was taken;

555           ~~[(i)]~~ (b) a law enforcement agency releases or disseminates the image after  
556 determining that:

557           ~~[(A)]~~ (i) the individual is a fugitive or an imminent threat to an individual or to public  
558 safety; and

559           ~~[(B)]~~ (ii) releasing or disseminating the image will assist in apprehending the  
560 individual or reducing or eliminating the threat; or

561           ~~[(iii)]~~ (c) a judge orders the release or dissemination of the image based on a finding  
562 that the release or dissemination is in furtherance of a legitimate law enforcement interest.

563           (82) a record:

564           (a) concerning an interstate claim to the use of waters in the Colorado River system;

565           (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a  
566 representative from another state or the federal government as provided in Section

567 [63M-14-205](#); and

568           (c) the disclosure of which would:

569           (i) reveal a legal strategy relating to the state's claim to the use of the water in the  
570 Colorado River system;

571           (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to  
572 negotiate the best terms and conditions regarding the use of water in the Colorado River  
573 system; or

574           (iii) give an advantage to another state or to the federal government in negotiations  
575 regarding the use of water in the Colorado River system; and

576           (83) any part of an application described in Section [63N-16-201](#) that the Governor's  
577 Office of Economic Opportunity determines is nonpublic, confidential information that if  
578 disclosed would result in actual economic harm to the applicant, but this Subsection (83) may  
579 not be used to restrict access to a record evidencing a final contract or approval decision.

580           Section 4. Section **78A-12-102** is amended to read:

581           **78A-12-102. Definitions.**

582           As used in this chapter:

583           (1) "Commission" means the Judicial Performance Evaluation Commission established  
584 by this chapter.

585           (2) "Does not meet minimum performance standards" means that:

586 (a) (i) a judge does not meet the certification standards under Section 78A-12-205; and  
587 (ii) the presumption, described in Subsection 78A-12-203(4)(b)(ii), that the judge does  
588 not meet minimum performance standards is not overcome by substantial countervailing  
589 evidence; or

590 (b) a judge meets the certification standards under Section 78A-12-205, but the  
591 presumption, described in Subsection 78A-12-203(4)(b)(i), that the judge meets minimum  
592 performance standards is overcome by substantial countervailing evidence.

593 ~~[(2)]~~ (3) Except as provided in Section 78A-12-207, "judge" means a state court judge  
594 or a state court justice who is subject to a retention election.

595 ~~[(3)]~~ (4) "Justice" means a judge who is a member of the Supreme Court.

596 ~~[(4)]~~ (5) "Justice court judge" means a judge appointed pursuant to Title 78A, Chapter  
597 7, Justice Court.

598 (6) "Meets minimum performance standards" means that:

599 (a) (i) a judge meets the certification standards under Section 78A-12-205; and

600 (ii) the presumption that the judge meets minimum performance standards, described  
601 in Subsection 78A-12-203(4)(b)(i), is not overcome by substantial countervailing evidence; or

602 (b) a judge does not meet the certification standards under Section 78A-12-205, but the  
603 presumption described in Subsection 78A-12-203(4)(b)(ii), that the judge does not meet  
604 minimum performance standards, is overcome by substantial countervailing evidence.

605 Section 5. Section 78A-12-201 is amended to read:

606 **78A-12-201. Judicial Performance Evaluation Commission -- Creation --**  
607 **Membership.**

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

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

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

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

616 (d) four members appointed by the governor, at least one of whom, but not more than

617 two of whom, may be a member of the Utah State Bar; and

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

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

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

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

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

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

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

630 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
631 appointed for the unexpired term by the same appointing authority that appointed the member  
632 creating the vacancy.

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

634 (b) The action of a majority of the quorum constitutes the action of the commission,  
635 except that ~~[a decision of the commission to recommend that a judge be retained or not be~~  
636 ~~retained may not be made except by a vote of at least six members. If because of absences the~~  
637 ~~commission is unable to have at least six votes recommending that a judge be retained or not~~  
638 ~~retained, the commission may meet a second time to consider whether to recommend that the~~  
639 ~~judge be retained or not retained]~~ the commission may not make a determination that a judge  
640 meets minimum performance standards, or that a judge does not meet minimum performance  
641 standards, by a vote of less than six members.

642 (c) If, because of absences, the commission is unable to make a determination  
643 described in Subsection (6)(b) by at least six votes, the commission may meet a second time to  
644 make a determination.

645 ~~[(c)]~~ (d) ~~If a vote on the question of whether [to recommend a judge be retained or not~~  
646 ~~be retained ends in a tie or if a decision does not have six votes required by Subsection (6)(b);~~  
647 ~~the commission may make no recommendation concerning the judge's retention]~~ a judge meets

648 minimum performance standards or does not meet minimum performance standards ends in a  
649 tie or does not pass by at least six votes, the record shall reflect that the commission made no  
650 determination in relation to that judge.

651 Section 6. Section **78A-12-203** is amended to read:

652 **78A-12-203. Judicial performance evaluations.**

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

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

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

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

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

666 (b) information concerning the judge's compliance with [~~minimum performance~~]  
667 certification standards established in accordance with Section [78A-12-205](#);

668 (c) courtroom observation;

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

670 (e) public comment solicited by the commission;

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

674 (g) any other factor that the commission:

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

677 (ii) establishes by rule made in accordance with Title 63G, Chapter 3, Utah  
678 Administrative Rulemaking Act.

679 (3) The commission shall, in accordance with Title 63G, Chapter 3, Utah  
 680 Administrative Rulemaking Act, make rules concerning the conduct of courtroom observation  
 681 under Subsection (2), which shall include the following:

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

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

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

686 (4) (a) As part of the evaluation conducted under this section, the commission shall  
 687 ~~[determine whether to recommend that the voters retain the judge.]~~ do one of the following:

688 (i) determine, by a vote of at least six members, that the judge meets minimum  
 689 performance standards;

690 (ii) determine, by a vote of at least six members, that the judge does not meet minimum  
 691 performance standards;

692 (iii) determine, by a majority vote, that the information concerning the judge is  
 693 insufficient to make a determination described in Subsection (4)(a)(i) or (ii); or

694 (iv) fail to make a determination described in Subsection (4)(a)(i), (ii), or (iii) by the  
 695 number of votes required for one of those determinations.

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

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

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

706 ~~[(d)-(i)]~~ (c) If the commission deviates from a presumption ~~[for or against~~  
 707 ~~recommending the voters retain a judge or elects to make no recommendation on whether the~~  
 708 ~~voters should retain a judge]~~ described in Subsection (4)(b), the commission shall provide a  
 709 detailed explanation of the reason for that deviation ~~[or election]~~ in the commission's report

710 under Section [78A-12-206](#).

711 ~~[(ii)]~~ (d) If the commission makes ~~[no recommendation because of a tie vote]~~ the  
712 determination described in Subsection (4)(a)(iii) or fails to make a determination described in  
713 Subsection (4)(a)(i), (ii), or (iii) by the number of votes required for those determinations, the  
714 commission shall note that fact in the commission's report.

715 (5) (a) The commission shall allow a judge who is the subject of a judicial performance  
716 retention evaluation<sub>2</sub> and who has not passed one or more of the ~~[minimum performance]~~  
717 certification standards on the retention evaluation<sub>2</sub>, to appear and speak at any commission  
718 meeting during which the judge's judicial performance evaluation is considered.

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

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

723 (ii) The commission may meet in an electronic meeting by complying with Title 52,  
724 Chapter 4, Open and Public Meetings Act.

725 (d) Any record of an individual commissioner's vote ~~[on whether to recommend that~~  
726 ~~the voters retain a judge]~~ under Subsection (4) is a protected record under Title 63G, Chapter 2,  
727 Government Records Access and Management Act.

728 (e) (i) A member of the commission, including a member of the Utah State Bar, may  
729 not be disqualified from voting ~~[on whether to recommend that the voters retain a judge]~~ under  
730 Subsection (4) solely because the member appears before the judge as an attorney, a fact  
731 witness, or an expert, ~~[so long as]~~ unless the member is ~~[not]~~ a litigant in a case pending before  
732 the judge.

733 (ii) Notwithstanding Subsection (5)(e)(i), a member of the commission shall disclose  
734 any conflicts of interest with the judge being reviewed to the other members of the commission  
735 before the deliberation and vote ~~[of whether to recommend that a judge be retained or not be~~  
736 ~~retained]~~ under Subsection (4).

737 (iii) Information disclosed under this Subsection (5)(e) is a protected record under Title  
738 63G, Chapter 2, Government Records Access and Management Act.

739 (f) The commission may only disclose the final commission vote ~~[on whether or not to~~  
740 ~~recommend that the voters retain a judge]~~ described in Subsection (4).



741 (6) (a) If the Utah Supreme Court issues a public sanction of a judge after the  
742 commission [~~makes a decision on whether to recommend the judge for retention~~] makes or  
743 fails to make a determination described in Subsection (4), but before the publication of the  
744 voter information pamphlet in accordance with Section [20A-7-702](#), the commission may elect  
745 to reconsider the commission's [~~recommendation~~] action.

746 (b) The commission shall invite the judge described in Subsection (6)(a) to appear  
747 before the commission during a closed meeting for the purpose of reconsidering the  
748 commission's [~~recommendation~~] action.

749 (c) The judge described in Subsection (6)(a) may provide a written statement, not to  
750 exceed 100 words, that shall be included in the judge's evaluation report.

751 (d) The commission shall include in the judge's evaluation report:

752 (i) the date of the reconsideration;

753 (ii) any change in the [~~decision of whether to recommend that the voters retain the~~  
754 ~~judge~~] action of the commission; and

755 (iii) a brief statement explaining the reconsideration.

756 (e) The commission shall submit revisions to the judge's evaluation report to the  
757 lieutenant governor by no later than August 31 of a regular general election year for publication  
758 in the voter information pamphlet, and publish the revisions on the commission's website, and  
759 through any other means the commission considers appropriate and within budgetary  
760 constraints.

761 (7) (a) The commission shall compile a midterm report of the commission's judicial  
762 performance evaluation of a judge.

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

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

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

771 (ii) For a newly appointed judge, a midterm evaluation is considered partial when the

772 midterm evaluation is missing a respondent group, including attorneys, court staff, court room  
773 observers, or intercept survey respondents.

774 (iii) A judge who receives partial midterm evaluation data may receive a statement in  
775 acknowledgment of that fact on the judge's voter information pamphlet page.

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

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

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

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

785 (9) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
786 Administrative Rulemaking Act, as necessary to administer the evaluation required by this  
787 section.

788 Section 7. Section 78A-12-205 is amended to read:

789 **78A-12-205. Certification standards.**

790 (1) The commission shall establish [~~minimum performance~~] certification standards  
791 requiring that:

792 (a) the judge have no more than one public sanction issued by the Utah Supreme Court  
793 during the judge's current term; and

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

795 (i) an average score of no less than 65% on each survey category as provided in

796 Subsection 78A-12-204(7); and

797 (ii) if the commission includes a question on the survey that does not use the numerical  
798 scale, the commission shall establish the [~~minimum performance~~] certification standard for all  
799 questions that do not use the numerical scale to be substantially equivalent to the standard  
800 required under Subsection (1)(b)(i).

801 (2) The commission may establish an additional [~~minimum performance~~] certification  
802 standard if the commission by at least two-thirds vote:

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

805 (b) adopts the standard.

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

808 Section 8. Section **78A-12-206** is amended to read:

809 **78A-12-206. Publication of the judicial performance evaluation -- Response by**  
810 **judge.**

811 (1) (a) The commission shall compile a retention report of [~~its~~] the commission's  
812 judicial performance evaluation of a judge.

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

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

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

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

827 (a) a judge who is the subject of an unfavorable [~~retention recommendation under this~~  
828 ~~section~~] action under Subsection 78A-12-203(4) may:

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

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

831 and

832 (b) a judge who is the subject of a favorable [~~retention recommendation under this~~  
833 ~~section~~] action under Subsection 78A-12-203(4) may provide a written response to the

834 commission about the commission's report.

835 (3) (a) After receiving a response from a judge in any form allowed by Subsection (2),  
836 the commission may meet and reconsider [~~its decision to recommend the judge not be retained]~~  
837 the commission's action.

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

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

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

843 (b) information concerning the judge's compliance with the [~~minimum performance]~~  
844 certification standards, including stating how many of the [~~minimum performance]~~ certification  
845 standards the judge met;

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

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

850 (e) the commission's [~~recommendation concerning whether the judge should be~~  
851 ~~retained, or the statement required of the commission if it declines to make a recommendation]~~  
852 determination under Subsection 78A-12-203(4);

853 (f) the number of votes for and against [~~the commission's recommendation]~~ a  
854 determination described in Subsection 78A-12-203(4); and

855 (g) any other information the commission considers necessary to include in the report  
856 to explain the [~~performance]~~ certification standards and the [~~recommendation]~~ determination or  
857 lack of a determination made.

858 (5) (a) The commission may not include in [~~its]~~ the commission's retention report  
859 specific information concerning an earlier judicial performance evaluation.

860 (b) The commission may refer to information from an earlier judicial performance  
861 evaluation concerning the judge in the commission's report only if necessary to explain  
862 performance in the current reporting period and giving primary emphasis to the information  
863 gathered during the current reporting period.

864 (6) The retention report of the commission's judicial performance evaluation shall be

865 made publicly available on an Internet website.

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

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

872 (9) The commission shall provide the Judicial Council with:

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

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

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

877 Section 9. **Effective date.**

878 If approved by two-thirds of all the members elected to each house, this bill takes effect  
879 upon approval by the governor, or the day following the constitutional time limit of Utah  
880 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
881 the date of veto override.