

HB0040S01 compared with HB0040

~~{deleted text}~~ shows text that was in HB0040 but was deleted in HB0040S01.

inserted text shows text that was not in HB0040 but was inserted into HB0040S01.

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Representative Nelson T. Abbott proposes the following substitute bill:

JUDICIAL PERFORMANCE EVALUATION COMMISSION

AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Jani ~~{}~~Iwamoto

LONG TITLE

~~{Committee Note:~~

~~—————The Government Operations Interim Committee recommended this bill.~~

~~—————Legislative Vote: 14 voting for 0 voting against 2 absent~~

~~{General Description:~~

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that the Judicial Performance Evaluation Commission will determine

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whether a judge meets or exceeds minimum performance standards, rather than making a recommendation regarding retaining a judge;

- ▶ makes conforming changes in the Election Code and the Government Records Access and Management Act; and
- ▶ makes other technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 20A-7-702**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20
- 63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373, and 382
- 78A-12-102**, as last amended by Laws of Utah 2014, Chapter 152
- 78A-12-201**, as last amended by Laws of Utah 2017, Chapter 374
- 78A-12-203**, as last amended by Laws of Utah 2017, Chapters 81 and 374
- 78A-12-205**, as last amended by Laws of Utah 2017, Chapter 81
- 78A-12-206**, as last amended by Laws of Utah 2017, Chapter 374

ENACTS:

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

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

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

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

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

- [(a)] (1) a cover title page;
- [(b)] (2) an introduction to the pamphlet by the lieutenant governor;
- [(c)] (3) a table of contents;
- [(d)] (4) a list of all candidates for constitutional offices;
- [(e)] (5) a list of candidates for each legislative district;

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~~[(f)]~~ ~~(6)~~ 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 first business day in August before the date of the election;

~~[(g)]~~ ~~(7)~~ 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:

~~[(+)]~~ ~~(a)~~ a copy of the number and ballot title of the measure;

~~[(+)]~~ ~~(b)~~ the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

~~[(+)]~~ ~~(c)~~ the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

~~[(+)]~~ ~~(d)~~ 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;

~~[(+)]~~ ~~(e)~~ 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;

~~[(+)]~~ ~~(f)~~ for each initiative qualified for the ballot:

~~[(A)]~~ ~~(i)~~ 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

~~[(B)]~~ ~~(ii)~~ if the initiative proposes a tax increase, the following statement in bold type:

"This initiative seeks to increase the current (insert name of tax) rate by (insert the tax percentage difference) percent, resulting in a(n) (insert the tax percentage increase) percent increase in the current tax rate."; and

~~[(+)]~~ ~~(g)~~ 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;

~~[(+)]~~ ~~(8)~~ a description provided by the Judicial Performance Evaluation Commission of the selection and retention process for judges, including, in the following order:

~~[(+)]~~ ~~(a)~~ a description of the judicial selection process;

~~[(+)]~~ ~~(b)~~ a description of the judicial performance evaluation process;

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~~[(iii)]~~ (c) a description of the judicial retention election process;

~~[(iv)]~~ (d) a list of the criteria of the judicial performance evaluation and the ~~[minimum performance]~~ certification standards;

~~[(v)]~~ (e) the names of the judges standing for retention election; and

~~[(vi)]~~ (f) for each judge:

~~[(A)]~~ (i) a list of the counties in which the judge is subject to retention election;

~~[(B)]~~ (ii) a short biography of professional qualifications and a recent photograph;

~~[(C)]~~ (iii) a narrative concerning the judge's performance;

~~[(D)]~~ (iv) for each certification standard ~~[of performance]~~ under Section 78A-12-205, a statement identifying whether ~~[or not]~~, under Section 78A-12-205, 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;]~~

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

(A) has determined that the judge meets ~~or exceeds~~ minimum performance standards;

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

(C) has not made a determination regarding whether the judge meets ~~or exceeds~~ minimum performance standards;

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

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

~~[(I)]~~ (9) 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

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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)]~~ (10) 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)]~~ (11) voter registration information, including information on how to obtain a ballot;

~~[(h)]~~ (12) a list of all county clerks' offices and phone numbers;

~~[(m)]~~ (13) the address of the Statewide Electronic Voter Information Website, with a statement indicating that the election officer will post on the website any changes to the location of a polling place and the location of any additional polling place;

~~[(n)]~~ (14) a phone number that a voter may call to obtain information regarding the location of a polling place; and

~~[(o)]~~ (15) on the back cover page, a printed copy of the following statement signed by the 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"

~~[(2) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall make all information provided in the voter information pamphlet available on the Statewide Electronic Voter Information Website Program described in Section 20A-7-801.]~~

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~~[(3) 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 Website authorized by Section 20A-7-801.]~~

Section 2. Section **20A-7-702.5** is enacted to read:

20A-7-702.5. Publication of voter information pamphlet.

(1) No earlier than 75 days, and no later than 15 days, before the day on which voting commences, the lieutenant governor shall make all information provided in the voter information pamphlet available on the Statewide Electronic Voter Information Website Program described in Section 20A-7-801.

(2) 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 Website authorized by Section 20A-7-801.

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

(4) records, the disclosure of which could cause commercial injury to, or confer a

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competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

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

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

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of

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an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

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

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

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

- (A) members of a legislative body;
- (B) a member of a legislative body and a member of the legislative body's staff; or
- (C) members of a legislative body's staff; and

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

- (a) collective bargaining; or
- (b) imminent or pending litigation;

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

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

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

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

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

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

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

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

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

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

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

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not

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be used to restrict access to a record evidencing a final contract;

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

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

(a) the donor requests anonymity in writing;

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

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

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

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

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(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

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

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

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

(a) a production facility; or

(b) a magazine;

(43) information:

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

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

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

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

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

(47) information regarding food security, risk, and vulnerability assessments performed

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by the Department of Agriculture and Food;

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

- (a) the safety of the general public; or
- (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or
 - (iii) the property of a private person who provides the Division of Emergency

Management information;

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

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

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

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

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

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

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

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or

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mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

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

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

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

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

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

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote [~~on whether or not to recommend that the voters retain a judge including~~], in relation to whether a judge meets **or exceeds** minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

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

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

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(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

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

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

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

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

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

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

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

(64) any record in the custody of the Utah Office for Victims of Crime relating to a

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victim, including:

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

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

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

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

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

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

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

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

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

(67) an audio recording that is:

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

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

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

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

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

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

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

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

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

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

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

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

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

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

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

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

(e) Title 20A, Election Code;

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

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

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

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

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

(81) ~~[(A)]~~ an image taken of an individual during the process of booking the individual into jail, unless:

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

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

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

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

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

(82) a record:

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

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

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

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

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

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

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

78A-12-102. Definitions.

As used in this chapter:

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

(2) "Does not meet **or exceed** minimum performance standards" means that:

(a) (i) a judge does not meet the certification standards under Section 78A-12-205; and

(ii) the presumption, described in Subsection 78A-12-203(4)(b)(ii), that the judge does not meet **or exceed** minimum performance standards is not overcome by substantial countervailing evidence; or

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

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

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

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

(6) "Meets **or exceeds** minimum performance standards" means that:

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

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

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

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

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

(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 by the same appointing authority that appointed the member creating the vacancy.

(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, 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. If because of absences the~~

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~~commission is unable to have at least six votes recommending that a judge be retained or not retained, the commission may meet a second time to consider whether to recommend that the judge be retained or not retained]~~ the commission may not make a determination that a judge meets ~~or exceeds~~ minimum performance standards, or that a judge does not meet ~~or exceed~~ minimum performance standards, by a vote of less than six members.

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

~~[(c)] (d) 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]~~ a judge meets ~~or exceeds~~ minimum performance standards or does not meet ~~or exceed~~ minimum performance standards ends in a tie or does not pass by at least six votes, the record shall reflect that the commission made no determination in relation to that judge.

Section 6. 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 Utah 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~~] certification standards established in accordance with Section 78A-12-205;

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- (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

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

(3) The commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 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.~~] do one of the following:

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

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

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

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

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

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standards.

(ii) If a judge fails to meet the [~~minimum performance~~] certification 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 does not meet ~~or exceed~~ minimum performance standards.

~~[(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)]~~ (c) 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~~] described in Subsection (4)(b), 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)]~~ (d) If the commission makes [~~no recommendation because of a tie vote~~] the determination described in Subsection (4)(a)(iii) or fails to make a determination described in Subsection (4)(a)(i), (ii), or (iii) by the number of votes required for those determinations, 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~~] certification standards on the retention evaluation, to appear and speak at any commission 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.

(c) (i) 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.

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

(d) Any record of an individual commissioner's vote [~~on whether to recommend that the voters retain a judge~~] under Subsection (4) 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

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not be disqualified from voting [~~on whether to recommend that the voters retain a judge~~] under Subsection (4) solely because the member appears before the judge as an attorney, a fact witness, or an expert, [~~so long as~~] unless 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~~] under Subsection (4).

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

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

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

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

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

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

(i) the date of the reconsideration;

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

(iii) a brief statement explaining the reconsideration.

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

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constraints.

(7) (a) The commission shall compile a midterm report of the commission's 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, 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 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 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.

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

(a) fails to meet [~~minimum performance~~] certification 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).

(9) 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 7. Section **78A-12-205** is amended to read:

78A-12-205. Certification standards.

(1) The commission shall establish [~~minimum performance~~] certification standards

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requiring that:

(a) the judge have no more than one public sanction issued by 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); 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~~] certification 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~~] certification 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~~] certification standard.

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

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

(1) (a) The commission shall compile a retention report of [~~its~~] the commission's 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.

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(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~~] action under Subsection 78A-12-203(4) 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~~] action under Subsection 78A-12-203(4) 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~~] the commission's action.

(b) If the commission does not change [~~its decision to recommend the judge not be retained~~] the commission's action, 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~~] certification standards, including stating how many of the [~~minimum performance~~] certification 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~~] determination under Subsection 78A-12-203(4);

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

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

(5) (a) The commission may not include in [~~its~~] the commission's 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 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 commission may make the report of the judicial performance evaluation immediately preceding the judge's retention election publicly available through other means within budgetary constraints.

(8) The commission shall provide a summary of the judicial performance evaluation 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 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.

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

Section 9. **Effective date.**

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