

## SB0129S03 compared with SB0129S01

~~text~~ shows text that was in SB0129S01 but was deleted in SB0129S03.

text shows text that was not in SB0129S01 but was inserted into SB0129S03.

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Senator Kirk A. Cullimore proposes the following substitute bill:

### JUDICIARY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions related to the judiciary.

##### Highlighted Provisions:

This bill:

- ▶ provides a repeal date for Title 78A, Chapter 10, Judicial Selection Act;
- ▶ defines terms related to judicial nominating commissions;
- ▶ addresses the selection, appointment, and confirmation of judges to the appellate, district, and juvenile courts of this state;
- ▶ addresses partisan political consideration in regard to the selection, appointment, and confirmation of judges;
- ▶ clarifies the transition process in regard to the creation of new judicial nominating commissions;

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- ▶ allows the State Criminal and Juvenile Justice Commission to make rules for judicial nominating commissions;
- ▶ clarifies the process and timeline for the selection, appointment, and confirmation of judges to the appellate, district, and juvenile courts of this state;
- ▶ addresses the procedures, meetings, and certification process for judicial nominating commissions;
- ▶ addresses the process for the appointment of a judge by the governor;
- ▶ amends provisions regarding the Senate confirmation process;
- ▶ creates the Appellate Court Nominating Commission;
- ▶ provides the purpose and membership of the Appellate Court Nominating Commission;
- ▶ addresses the appointment, vacancy, or removal of commissioners on the Appellate Court Nominating Commission;
- ▶ addresses procedures and expenses for the Appellate Court Nominating Commission;
- ▶ creates a district and juvenile court nominating commission for each geographical division of the district and juvenile courts;
- ▶ provides the purpose and membership of a district and juvenile court nominating commission;
- ▶ addresses the appointment, vacancy, or removal of commissioners on a district and juvenile court nominating commission;
- ▶ addresses procedures and expenses for a district and juvenile court nominating commission; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides ~~{a}~~ coordination ~~{clause}~~clauses.

### **Utah Code Sections Affected:**

AMENDS:

**53B-1-501**, as enacted by Laws of Utah 2020, Chapter 365 and last amended by

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Coordination Clause, Laws of Utah 2020, Chapter 365

**63I-2-278**, as last amended by Laws of Utah 2022, Chapter 470

**67-1-1.5**, as last amended by Laws of Utah 2021, Chapter 394

**67-1-2**, as last amended by Laws of Utah 2020, Chapters 352, 373 and last amended by

Coordination Clause, Laws of Utah 2020, Chapters 352, 365 and 373

**78A-10-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78A-10-104**, as last amended by Laws of Utah 2010, Chapter 134 and last amended by

Coordination Clause, Laws of Utah 2010, Chapter 134

### ENACTS:

**78A-10a-101**, Utah Code Annotated 1953

**78A-10a-102**, Utah Code Annotated 1953

**78A-10a-103**, Utah Code Annotated 1953

**78A-10a-201**, Utah Code Annotated 1953

**78A-10a-202**, Utah Code Annotated 1953

**78A-10a-203**, Utah Code Annotated 1953

**78A-10a-204**, Utah Code Annotated 1953

**78A-10a-301**, Utah Code Annotated 1953

**78A-10a-302**, Utah Code Annotated 1953

**78A-10a-303**, Utah Code Annotated 1953

**78A-10a-304**, Utah Code Annotated 1953

**78A-10a-305**, Utah Code Annotated 1953

**78A-10a-401**, Utah Code Annotated 1953

**78A-10a-402**, Utah Code Annotated 1953

**78A-10a-403**, Utah Code Annotated 1953

**78A-10a-404**, Utah Code Annotated 1953

**78A-10a-405**, Utah Code Annotated 1953

### **Utah Code Sections Affected by Coordination Clause:**

~~{ [31A-5-414](#), as enacted by Laws of Utah 1985, Chapter 242~~

~~— [31A-5-415](#), as last amended by Laws of Utah 2000, Chapter 300~~

~~— [31A-16-111](#), as last amended by Laws of Utah 2000, Chapter 114~~

‡ **78A-10-101.5**, Utah Code Annotated 1953

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78A-10-401, Utah Code Annotated 1953

78A-10-402, Utah Code Annotated 1953

78A-10-403, Utah Code Annotated 1953

78A-10-404, Utah Code Annotated 1953

78A-10-405, Utah Code Annotated 1953

78A-10a-101, Utah Code Annotated 1953

78A-10a-203, Utah Code Annotated 1953

78A-10a-501, Utah Code Annotated 1953

~~{ 78A-10a-502, Utah Code Annotated 1953~~

{ 78A-10a-503, Utah Code Annotated 1953

78A-10a-504, Utah Code Annotated 1953

~~{ 78A-10a-505, Utah Code Annotated 1953~~

}

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

Section 1. Section **53B-1-501** is amended to read:

**53B-1-501. Establishment of initial board membership.**

(1) (a) The governor shall appoint, with the advice and consent of the Senate, individuals to the board, to ensure that beginning July 1, 2020, the board consists of 18 members, including:

(i) at least six individuals who were members of the State Board of Regents on May 12, 2020;

(ii) at least six individuals who were members of the Utah System of Technical Colleges Board of Trustees on May 12, 2020; and

(iii) two student members appointed to the board in accordance with Section 53B-1-404.

(b) Before making an appointment described in Subsection (1)(a), the governor shall consult:

(i) for an appointment described in Subsection (1)(a)(i), with State Board of Regents leadership; and

(ii) for an appointment described in Subsection (1)(a)(ii), with Utah System of Technical Colleges Board of Trustees leadership.

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(2) (a) Except for an appointment described in Subsection (1)(a)(iii), the governor shall appoint an individual to a two-year, four-year, or six-year term to ensure that one-third of the members complete the members' terms on June 30 of each even number year.

(b) The governor may appoint an individual described in Subsection (1)(a) to a second term without the individual being considered by the nominating committee described in Section 53B-1-406 if, at the time of the individual's initial appointment to the board, the individual:

(i) is serving the individual's first full term on the State Board of Regents or the Utah System of Technical Colleges Board of Trustees; or

(ii) is not a member of the State Board of Regents or the Utah System of Technical Colleges Board of Trustees.

(c) An appointment described in Subsection (2)(b) is for a six-year term.

(3) Following the appointments described in this section, a vacancy on the board shall be filled in accordance with Section 53B-1-404.

(4) Notwithstanding Section 67-1-2, for an appointment described in this section:

(a) a majority of the president of the Senate, the Senate majority leader, and the Senate minority leader may waive the 30-day requirement described in Subsection [~~67-1-2(1)~~]  
67-1-2(2); and

(b) the Senate is not required to hold a confirmation hearing.

Section 2. Section **63I-2-278** is amended to read:

**63I-2-278. Repeal dates: Title 78A and Title 78B.**

(1) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

(2) If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.

~~(2)~~ (3) Sections 78B-12-301 and 78B-12-302 are repealed on January 1, 2025.

Section 3. Section **67-1-1.5** is amended to read:

**67-1-1.5. Gubernatorial appointment powers.**

(1) As used in this section:

(a) "Board member" means each gubernatorial appointee to any state board, committee, commission, council, or authority.

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(b) "Executive branch management position" includes department executive directors, division directors, and any other administrative position in state government where the person filling the position:

- (i) works full-time performing managerial and administrative functions;
- (ii) is appointed by the governor with the advice and consent of the Senate.

(c) (i) "Executive branch policy position" means any person other than a person filling an executive branch management position, who is appointed by the governor with the advice and consent of the Senate.

(ii) "Executive branch policy position" includes each member of any state board and commission appointed by the governor with the advice and consent of the Senate.

(2) (a) Whenever a vacancy occurs in any executive branch policy position or in any executive branch management position, the governor shall submit the name of a nominee to the Senate for advice and consent no later than three months after the day on which the vacancy occurs.

(b) If the Senate fails to consent to that person within 90 days after the day on which the governor submits the nominee's name to the Senate for consent:

- (i) the nomination is considered rejected; and
- (ii) the governor shall resubmit the name of the nominee described in Subsection (2)(a) or submit the name of a different nominee to the Senate for consent no later than 60 days after the date on which the nomination was rejected by the Senate.

(3) Whenever a vacancy occurs in any executive branch management position, the governor may either:

(a) appoint an interim manager who meets the qualifications of the vacant position to exercise the powers and duties of the vacant position for three months, pending consent of a person to permanently fill that position by the Senate; or

(b) appoint an interim manager who does not meet the qualifications of the vacant position and submit that person's name to the Senate for consent as interim manager within one month of the appointment.

(4) Except for an interim manager appointed to a position described in Subsection [~~67-1-2(3)(b)(i) through (vii)~~] 67-1-2(2)(a), if the Senate fails to consent to the interim manager appointed under Subsection (3)(b) within 30 days after the day on which the governor submits

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the nominee's name to the Senate for consent:

(a) the nomination is considered rejected; and

(b) the governor may:

(i) (A) reappoint the interim manager to whom the Senate failed to consent within 30

days; and

(B) resubmit the name of the person described in Subsection (4)(b)(i)(A) to the Senate for consent as interim manager; or

(ii) appoint a different interim manager under Subsection (3).

(5) For an interim manager appointed to a position described in Subsection [~~67-1-2(3)(b)(i) through (vii)~~] 67-1-2(2)(a), if the Senate fails to consent to the interim manager appointed under Subsection (3)(b) within 60 days after the day on which the governor submits the nominee's name to the Senate for consent:

(a) the nomination is considered rejected; and

(b) the governor may:

(i) (A) reappoint the interim manager to whom the Senate failed to consent; and

(B) resubmit the name of the person described in Subsection (5)(b)(i)(A) to the Senate for consent as interim manager; or

(ii) appoint a different interim manager under Subsection (3).

(6) If, after an interim manager has served three months, no one has been appointed and received Senate consent to permanently fill the position, the governor shall:

(a) appoint a new interim manager who meets the qualifications of the vacant position to exercise the powers and duties of the vacant position for three months; or

(b) submit the name of the first interim manager to the Senate for consent as an interim manager for a three-month term.

(7) If the Senate fails to consent to a nominee whose name is submitted under Subsection (6)(b) within 30 days after the day on which the governor submits the name to the Senate:

(a) the nomination is considered rejected; and

(b) the governor shall:

(i) (A) reappoint the person described in Subsection (6)(b); and

(B) resubmit the name of the person described in Subsection (6)(b) to the Senate for

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consent as interim manager; or

(ii) appoint a different interim manager in the manner required by Subsection (3).

(8) The governor may not make a temporary appointment to fill a vacant executive branch policy position.

(9) (a) Before appointing any person to serve as a board member, the governor shall ask the person whether the person wishes to receive per diem, expenses, or both for serving as a board member.

(b) If the person declines to receive per diem, expenses, or both, the governor shall notify the agency administering the board, commission, committee, council, or authority and direct the agency to implement the board member's request.

(10) A gubernatorial nomination upon which the Senate has not acted to give consent or refuse to give consent is void when a vacancy in the office of governor occurs.

Section 4. Section **67-1-2** is amended to read:

**67-1-2. Senate confirmation of gubernatorial nominees -- Verification of nomination requirements -- Consultation on appointments -- Notification of anticipated vacancies.**

~~[(1) Until October 1, 2020, unless waived by a majority of the president of the Senate, the Senate majority leader, and the Senate minority leader, 15 days before any Senate session to confirm any gubernatorial nominee, except a judicial appointment, the governor shall send to each member of the Senate and to the Office of Legislative Research and General Counsel:]~~

~~[(a) a list of each nominee for an office or position made by the governor in accordance with the Utah Constitution and state law; and]~~

~~[(b) any information that may support or provide biographical information about the nominee, including resumes and curriculum vitae.]~~

~~[(2) (1) (a) Except as provided in Subsection (3), [beginning October 1, 2020,] at least 30 days before the day of an extraordinary session of the Senate to confirm a gubernatorial nominee, the governor shall send to each member of the Senate and to the Office of Legislative Research and General Counsel the following information for each nominee:~~

~~[(a) (i) the nominee's name and biographical information, including a resume and curriculum vitae with personal contact information, including home address, email address, and telephone number, redacted, except that the governor shall send to the Office of Legislative~~



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Research and General Counsel the contact information for the nominee;

~~[(b)]~~ (ii) a detailed list, with citations, of the legal requirements for the appointed position;

~~[(c)]~~ (iii) a detailed list with supporting documents explaining how, and verifying that, the nominee meets each statutory and constitutional requirement for the appointed position;

~~[(d)]~~ (iv) a written certification by the governor that the nominee satisfies all requirements for the appointment; and

~~[(e)]~~ (v) public comment information collected in accordance with Section 63G-24-204.

(b) This Subsection (1) does not apply to a judicial appointee.

~~[(3)(a) Subsection (2) does not apply to a judicial nominee.]~~

~~[(b) Beginning October 1, 2020, a]~~

(2)(a) A ~~f~~ majority of the president of the Senate, the Senate majority leader, and the Senate minority leader may waive the 30-day requirement described in Subsection ~~[(2)]~~ (1) for a gubernatorial nominee other than a nominee for the following:

- (i) the executive director of a department;
- (ii) the executive director of the Governor's Office of Economic Opportunity;
- (iii) the executive director of the Labor Commission;
- (iv) a member of the State Tax Commission;
- (v) a member of the State Board of Education;
- (vi) a member of the Utah Board of Higher Education; or
- (vii) an individual:
  - (A) whose appointment requires the advice and consent of the Senate; and
  - (B) whom the governor designates as a member of the governor's cabinet.

~~[(4) Beginning October 1, 2020, the]~~

(b) The ~~f~~ Senate shall hold a confirmation hearing for a nominee for an individual described in Subsection ~~[(3)(b)(i) through (vii)]~~ (2)(a).

~~[(5) Beginning on October 1, 2020, the]~~

(3) The ~~f~~ governor shall:

(a) if the governor is aware of an upcoming vacancy in a position that requires Senate confirmation, provide notice of the upcoming vacancy to the president of the Senate, the Senate

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minority leader, and the Office of Legislative Research and General Counsel at least 30 days before the day on which the vacancy occurs; and

(b) establish a process for government entities and other relevant organizations to provide input on gubernatorial appointments.

~~[(6)]~~ (4) When the governor makes a judicial appointment, the governor shall immediately provide to the president of the Senate and the Office of Legislative Research and General Counsel:

(a) the name of the judicial appointee; and

(b) the judicial appointee's:

(i) resume;

(ii) complete file of all the application materials the governor received from the ~~[Judicial Nominating Commission]~~ judicial nominating commission; and

(iii) any other related documents, including any letters received by the governor about the appointee, unless the letter specifically directs that ~~[it]~~ the letter may not be shared.

~~[(7)]~~ (5) The governor shall inform the president of the Senate and the Office of Legislative Research and General Counsel of the number of letters withheld pursuant to Subsection ~~[(6)(b)(iii)]~~ (4)(b)(iii).

~~[(8)]~~ (6) (a) Letters of inquiry submitted by any judge at the request of any judicial nominating commission ~~[shall be]~~ are classified as private in accordance with Section 63G-2-302.

(b) All other records received from the governor pursuant to this Subsection ~~[(8)]~~ (6) may be classified as private in accordance with Section 63G-2-302.

~~[(9)]~~ (7) The Senate shall consent or refuse to give ~~[its]~~ the Senate's consent to ~~[the]~~ a nomination or judicial appointment.

~~[(10)] A judicial nominating commission shall, at the time the judicial nominating commission certifies a list of the most qualified judicial applicants to the governor under Section 78A-10-104, submit the same list to the president of the Senate, the Senate minority leader, and the Office of Legislative Research and General Counsel.]~~

Section 5. Section **78A-10-102** is amended to read:

**78A-10-102. Nomination, appointment, and confirmation of judges -- Judicial nomination commissions.**

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~~[Judges]~~ Before July 1, 2023, judges for courts of record in Utah ~~[shall be]~~ are nominated, appointed, and confirmed ~~[as provided in]~~ in accordance with this chapter, Section 67-1-2, and Utah Constitution Article VIII, Section 8~~[, and this chapter]~~.

Section 6. Section **78A-10-104** is amended to read:

### **78A-10-104. Convening of judicial nominating commissions -- Certification to governor of nominees -- Meetings to investigate prospective candidates.**

(1) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the governor shall ensure that:

(a) the recruitment period to fill a judicial vacancy begins 235 days before the effective date of a vacancy, unless sufficient notice is not given, in which case the recruitment period shall begin within 10 days of receiving notice;

(b) the recruitment period is a minimum of 30 days but not more than 90 days, unless fewer than nine applications are received, in which case the recruitment period may be extended up to 30 days; and

(c) the chair of the judicial nominating commission having authority over the vacancy shall convene a meeting not more than 10 days after the close of the recruitment period.

(2) The time limits in Subsection (1) shall begin to run the day the hiring freeze ends.

(3) The nominating commission may:

(a) meet as necessary to perform its function; and

(b) investigate prospective candidates.

(4) Not later than 45 days after convening, the:

(a) appellate court nominating commission shall certify to the governor a list of the seven most qualified applicants per vacancy; and

(b) trial court nominating commission shall certify to the governor a list of the five most qualified applicants per vacancy.

(5) A commission shall, at the time that the commission certifies a list of the most qualified applicants to the governor, submit the same list to the president of the Senate, the Senate minority leader, and the Office of Legislative Research and General Counsel.

~~(5)~~ (6) The governor shall fill the vacancy within 30 days after receiving the list of nominees.

~~(6)~~ (7) If the governor fails to fill the vacancy within 30 days of receiving the list of

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nominees from the nominating commission, the chief justice of the Supreme Court shall, within 20 days, appoint a person from the list of nominees certified to the governor.

~~(7)~~ (8) A nominating commission may not nominate a person who has served on a nominating commission within six months of the date that the commission was last convened.

Section 7. Section **78A-10a-101** is enacted to read:

### CHAPTER 10a. JUDICIAL SELECTION

#### Part 1. General Provisions

##### **78A-10a-101. Definitions.**

As used in this part:

(1) "Commission" means a judicial nominating commission created under Section 78A-10a-302 or 78A-10a-402.

(2) "Commissioner" means an individual appointed by the governor to serve on a judicial nominating commission created under Section 78A-10a-302 or 78A-10a-402.

Section 8. Section **78A-10a-102** is enacted to read:

##### **78A-10a-102. Nomination, appointment, and confirmation of judges.**

(1) On and after July 1, 2023, judges for courts of record in this state are nominated, appointed, and confirmed in accordance with this chapter, Section 67-1-2, and Utah Constitution, Article VIII, Section 8.

(2) A commission, the governor, the chief justice of the Supreme Court, and the Senate shall nominate and select judges based solely upon consideration of fitness for office without regard to any partisan political consideration.

Section 9. Section **78A-10a-103** is enacted to read:

##### **78A-10a-103. Judicial nominating commissions -- Transition clause.**

(1) Except as provided in Subsection (2), an individual appointed by the governor to serve on a judicial nominating commission before July 1, 2023, is removed from the judicial nominating commission on June 30, 2023.

(2) On or after May 3, 2023, but before July 1, 2023, the governor may appoint a commissioner to serve on a commission in accordance with this chapter.

(3) A commissioner appointed by the governor under Subsection (2) may not begin the commissioner's term of service until July 1, 2023.

(4) Nothing in this chapter prevents the governor from appointing an individual

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removed from a judicial nominating commission under Subsection (1) to serve as a commissioner under this chapter on or after July 1, 2023, if the individual's appointment meets the requirements of this chapter.

Section 10. Section **78A-10a-201** is enacted to read:

### **Part 2. Judicial Selection Process**

#### **78A-10a-201. State Commission on Criminal and Juvenile Justice -- Duties --**

##### **Rulemaking.**

The State Commission on Criminal and Juvenile Justice shall:

(1) enact rules establishing procedures for the meetings of a commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(2) ensure that the rules described in Subsection (1):

(a) comply with the requirements of this chapter;

(b) include standards that:

(i) maintain the confidentiality of applications for a judicial vacancy and related documents;

(ii) address destroying the records of the names of applicants, applications, and related documents upon the completion of the judicial nomination process; and

(iii) govern a commissioner's disqualification and inability to serve;

(c) allow for public comment concerning the judicial nomination process, qualifications for judicial office, and individual applicants;

(d) include evaluation criteria for the selection of judicial nominees; and

(e) address procedures for:

(i) taking summary minutes at a commission meeting;

(ii) simultaneously forwarding the names of nominees to the governor, the president of the Senate, and the Office of Legislative Research and General Counsel as described in Subsection 78A-10a-203(5); and

(iii) requiring the Administrative Office of the Courts to immediately inform the governor when a judge is removed, resigns, or retires.

Section 11. Section **78A-10a-202** is enacted to read:

#### **78A-10a-202. Time periods -- Recruitment period for judicial vacancy --**

##### **Convening a judicial nominating commission.**

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(1) (a) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the governor shall ensure that:

(i) except as provided in Subsection (1)(a)(ii), the recruitment period to fill a judicial vacancy begins 235 days before the effective date of the judicial vacancy;

(ii) if sufficient notice of a judicial vacancy is not given to the governor, the recruitment period to fill a judicial vacancy begins within 10 days after the day on which the governor receives notice;

(iii) except as provided in Subsection (1)(b), the recruitment period is a minimum of at least 30 days but no more than 90 days; and

(iv) the chair of the commission having authority over the vacancy ~~shall convene~~ convenes a meeting not more than 10 days after the close of the recruitment period.

(b) If fewer than nine applications are received for a judicial vacancy, the governor may extend the recruitment period described in Subsection (1)(b)(iii) up to 30 days.

(2) If there is a hiring freeze implemented in accordance with Section 78A-2-113, the time periods described in Subsection (1) shall begin to run on the day that the hiring freeze ends.

Section 12. Section **78A-10a-203** is enacted to read:

**78A-10a-203. Procedures for judicial nomination commission -- Meetings -- Certification -- Governor appointment.**

(1) (a) A commission may:

(i) meet as necessary to perform the commission's function; and

(ii) investigate the applicants of a judicial vacancy, including seeking input from members and employees of the judiciary and the community.

(b) A commission may consult with the Judicial Council regarding the applicants for a judicial vacancy.

(c) A commission is exempt from the requirements of Title 52, Chapter 4, Open and Public Meetings Act.

(2) In determining which of the applicants are the most qualified, a commission shall determine by a majority vote of the commissioners present which of the applicants best possess the ability, temperament, training, and experience that qualifies an applicant for the office.

(3) (a) Except as provided under Subsection (3)(b):

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(i) the appellate court nominating commission shall certify to the governor a list of the seven most qualified applicants per judicial vacancy; and

(ii) a district and juvenile court nominating commission shall certify to the governor a list of the five most qualified applicants per judicial vacancy.

(b) If a commission is considering applicants for more than one judicial vacancy existing at the same time and for the same court, the commission shall include one additional applicant for each additional judicial vacancy in the court in the list of applicants the commission certifies to the governor.

(4) A commission shall certify a list to the governor under Subsection (3) no more than 45 days after convening in accordance with Section 78A-10a-202.

(5) A commission shall, at the time that the commission certifies a list of the most qualified applicants to the governor, submit the same list to the president of the Senate, the Senate minority leader, and the Office of Legislative Research and General Counsel.

(6) A commission shall ensure that the lists of applicants certified to the governor:

(a) meet the qualifications required by law to fill the office; and

(b) are willing to serve.

(7) In determining which of the applicants are the most qualified, a commission may not decline to certify an applicant's name to the governor because:

(a) the commission declined to submit that applicant's name to the governor to fill a previous judicial vacancy;

(b) a previous commission declined to submit that applicant's name to the governor; or

(c) the commission or a previous commission submitted the applicant's name to the governor and the governor selected another individual to fill the judicial vacancy.

(8) A commission may not certify:

(a) an applicant who is a justice or judge that was not retained by the voters for the office for which the justice or judge was defeated until after the expiration of that justice's or judge's term of office; and

(b) an applicant who has served on a commission within six months after the day on which the commission was last convened.

(9) The governor shall fill a judicial vacancy within 30 days after the day on which the governor received the list of nominees from the commission.

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(10) If the governor fails to fill a judicial vacancy within 30 days after the day on which the governor received the list of nominees from the commission, the chief justice of the Supreme Court shall, within 20 days, appoint an applicant from the list of nominees certified to the governor by the commission.

Section 13. Section **78A-10a-204** is enacted to read:

### **78A-10a-204. Senate confirmation of judicial appointments -- Courts of record.**

(1) The Senate shall:

(a) consider and render a decision on each judicial appointment within 60 days after the day of the judicial appointment; and

(b) if necessary, convene the Senate in an extraordinary session to consider the judicial appointment.

(2) If the Senate fails to approve a judicial appointment, the office is considered vacant and a new nominating process begins.

(3) A judicial appointment is effective upon approval of a majority of all members of the Senate.

Section 14. Section **78A-10a-301** is enacted to read:

### **Part 3. Appellate Court Nominating Commission**

#### **78A-10a-301. Definitions.**

As used in this part:

(1) "Commission" means the Appellate Court Nominating Commission created under Section 78A-10a-302.

(2) "Commissioner" means an individual appointed by the governor to serve on the Appellate Court Nominating Commission created under Section 78A-10a-302.

Section 15. Section **78A-10a-302** is enacted to read:

#### **78A-10a-302. Creation -- Purpose.**

(1) There is created the Appellate Court Nominating Commission.

(2) The Appellate Court Nominating Commission shall nominate individuals to fill judicial vacancies on the Supreme Court and the Court of Appeals.

Section 16. Section **78A-10a-303** is enacted to read:

#### **78A-10a-303. Membership -- Vacancies -- Removal.**

(1) The Appellate Court Nominating Commission shall consist of seven



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commissioners, each appointed by the governor to serve a four-year term.

(2) A commissioner shall:

(a) be a United States citizen;

(b) be a resident of Utah; and

(c) serve until the commissioner's successor is appointed.

(3) The governor shall appoint at least two attorneys currently or previously licensed to practice law in this state to serve as commissioners.

~~(3)~~4) The governor may not appoint:

(a) a commissioner to serve successive terms; or

(b) a member of the Legislature to serve as a commissioner.

~~(4)~~5) In determining whether to appoint an individual to serve as a commissioner, the governor shall consider whether the individual's appointment would ensure that the commission selects applicants without any regard to partisan political consideration.

~~(5)~~6) The governor shall appoint the chair of the commission from among the membership of the commission.

~~(6)~~7) The governor shall fill any vacancy on the commission caused by the expiration of a commissioner's term.

~~(7)~~8) (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

(b) A replacement commissioner appointed under Subsection ~~(6)~~8)(a) may not be reappointed upon expiration of the term of service.

~~(8)~~9) The governor may remove a commissioner from the commission at any time with or without cause.

Section 17. Section **78A-10a-304** is enacted to read:

### **78A-10a-304. Procedure -- Staff.**

(1) Four commissioners are a quorum.

(2) The governor shall appoint a member of the governor's staff to serve as staff to the commission.

(3) The governor shall:

(a) ensure that the commission follows the rules promulgated by the State Commission

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on Criminal and Juvenile Justice under Section 78A-10a-201; and

(b) resolve any questions regarding the rules described in Subsection (3)(a).

(4) A commissioner who is a licensed attorney may recuse oneself if there is a conflict of interest that makes the commissioner unable to serve.

Section 18. Section **78A-10a-305** is enacted to read:

### **78A-10a-305. Expenses -- Per diem and travel.**

A commissioner may not receive compensation or benefits for the commissioner's service but may receive per diem and travel expenses in accordance with:

(1) Section 63A-3-106;

(2) Section 63A-3-107; and

(3) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Section 19. Section **78A-10a-401** is enacted to read:

### **Part 4. District and Juvenile Court Nominating Commissions**

#### **78A-10a-401. Definitions.**

As used in this part:

(1) "Commission" means a district and juvenile court nominating commission created under Section 78A-10a-402.

(2) "Commissioner" means an individual appointed by the governor to serve on a district and juvenile court nominating commission created under Section 78A-10a-402.

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‡ Section 20. Section **78A-10a-402** is enacted to read:

#### **78A-10a-402. Creation -- Purpose.**

(1) There is a district and juvenile court nominating commission created for each geographical division of the district and juvenile courts.

(2) A district and juvenile court nominating commission shall nominate individuals to fill judicial vacancies for the district court and the juvenile court within the commission's geographical division.

Section 21. Section **78A-10a-403** is enacted to read:

#### **78A-10a-403. Membership -- Vacancies -- Removal.**

(1) A district and juvenile court nominating commission shall consist of seven

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commissioners, each appointed by the governor to serve a four-year term.

(2) A commissioner shall:

(a) be a United States citizen;

(b) be a resident of Utah; and

(c) serve until the commissioner's successor is appointed.

(3) The governor shall appoint at least two attorneys currently or previously licensed to practice law in this state to serve as commissioners.

~~(3)~~4 The governor may not appoint:

(a) a commissioner to successive terms; and

(b) a member of the Legislature to serve as a commissioner.

~~(4)~~5 In determining whether to appoint an individual to serve as a commissioner, the governor shall consider whether the individual's appointment would ensure that the commission selects applicants without any regard to partisan political consideration.

~~(5)~~6 The governor shall appoint the chair of each commission from among the membership of the commission.

~~(6)~~7 The governor shall fill any vacancy on the commission caused by the expiration of a commissioner's term.

~~(7)~~8 (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

(b) A replacement commissioner appointed under Subsection ~~(6)~~8(a) may not be reappointed upon expiration of the term of service.

~~(8)~~9 The governor may remove a commissioner from the commission at any time with or without cause.

Section 22. Section **78A-10a-404** is enacted to read:

### **78A-10a-404. Procedure -- Staff.**

(1) Four commissioners are a quorum.

(2) The governor shall appoint a member of the governor's staff to serve as staff for each commission.

(3) The governor shall:

(a) ensure that each commission follows the rules promulgated by the State

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Commission on Criminal and Juvenile Justice under Section 78A-10a-201; and

(b) resolve any questions regarding the rules.

(4) A commissioner who is a licensed attorney may recuse oneself if there is a conflict of interest that makes the commissioner unable to serve.

Section 23. Section **78A-10a-405** is enacted to read:

### **78A-10a-405. Expenses -- Per diem and travel.**

A commissioner may not receive compensation or benefits for the commissioner's service but may receive per diem and travel expenses in accordance with:

(1) Section 63A-3-106;

(2) Section 63A-3-107; and

(3) rules made by the Division of Finance in accordance with Sections 63A-3-106 and 63A-3-107.

Section 24. **Coordinating S.B. 129 with H.B. 216 -- Superseding technical and substantive amendments.**

If this S.B. 129 and H.B. 216, Business and Chancery Court Amendments, both pass and become law, the Legislature intends that, on July 1, 2024, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) not enacting Section 78A-10-101.5 in H.B. 216, Business and Chancery Court Amendments;

(2) amending Section 78A-10a-101 in this S.B. 129 to read:

"As used in this part:

(1) "Commission" means a judicial nominating commission created under Section 78A-10a-302, 78A-10a-402, or 78A-10a-502.

(2) "Commissioner" means an individual appointed by the governor to serve on a judicial nominating commission created under Section 78A-10a-302, 78A-10a-402, or 78A-10a-502.";

(3) amending Subsection 78A-10a-203(3)(a) in this S.B. 129 to read:

~~f~~"(3) (a) Except as provided under Subsection (3)(b):

(i) the appellate court nominating commission shall certify to the governor a list of the seven most qualified applicants per judicial vacancy;

(ii) a district and juvenile court nominating commission shall certify to the governor a

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list of the five most qualified applicants per judicial vacancy; and

(iii) the business and chancery court nominating commission shall certify to the governor a list of the seven most qualified applicants per judicial vacancy.";

(4) renumbering Section 78A-10-401 in H.B. 216 to Section 78A-10a-501 and amending Subsection 78A-10a-501(1) to read:

""Commission" means the Business and Chancery Court Nominating Commission created in Section 78A-10a-502.";

(5) renumbering Section 78A-10-402 in H.B. 216 to Section 78A-10a-502;

(6) renumbering Section 78A-10-403 in H.B. 216 to Section 78A-10a-503 and amending Section 78A-10a-503 to read:

"(1) The Business and Chancery Court Nominating Commission shall consist of seven commissioners, each appointed by the governor to serve a four-year term.

(2) A commissioner shall:

(a) be a United States citizen;

(b) be a resident of Utah; and

(c) serve until the commissioner's successor is appointed.

(3) The governor shall appoint at least two attorneys currently or previously licensed to practice law in this state to serve as commissioners.

~~(3)~~(4) The governor may not appoint:

(a) a commissioner to serve successive terms; or

(b) a member of the Legislature to serve as a member of the commission.

~~(4)~~(5) In determining whether to appoint an individual to serve as a commissioner, the governor shall consider whether the individual's appointment would ensure that the commission selects applicants without any regard to partisan political consideration.

~~(5)~~(6) The governor shall appoint the chair of the commission from among the membership of the commission.

~~(6)~~(7) The governor shall fill any vacancy in the commission caused by the expiration of a commissioner's term.

~~(7)~~(8) (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

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(b) A replacement commissioner appointed under Subsection (~~f6~~8)(a) may not be reappointed upon expiration of the term of service.

(~~f8~~9) The governor may remove a commissioner from the commission at any time with or without cause.";

(7) renumbering Section 78A-10-404 in H.B. 216 to Section 78A-10a-504 and amending:

(a) the reference in Section 78A-10a-504 from "Section 78A-10-103" to "Section 78A-10a-201"; and

(b) Subsection 78A-10a-504(4) to read:

"A commissioner who is a licensed attorney may recuse oneself if there is a conflict of interest that makes the commissioner unable to serve."; and

(8) renumbering Section 78A-10-405 in H.B. 216 to Section 78A-10a-505.

**Section 25. Coordinating S.B. 129 with H.B. ~~f216~~251 -- Superseding technical and substantive amendments.**

If this S.B. 129 and H.B. 251, Court Amendments, both pass and become law, the Legislature intends that, on July 1, 2024, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication, the Office of Legislative Research and General Counsel not implement the coordination clause affecting Sections 31A-5-414, 31A-5-415, and 31A-16-111 in H.B. 251.