

SB0274S01 compared with SB0274

~~{deleted text}~~ shows text that was in SB0274 but was deleted in SB0274S01.

inserted text shows text that was not in SB0274 but was inserted into SB0274S01.

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Senator Todd D. Weiler proposes the following substitute bill:

ADMINISTRATIVE LAW JUDGE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill ~~{modifies provisions relating to}~~ requires a report for an agency that utilizes an administrative law ~~{judges}~~ judge.

Highlighted Provisions:

This bill:

~~{~~ → modifies definitions;

~~}~~ ▶ requires ~~{all}~~ an agency that employs or utilizes an administrative law ~~{judges hired~~ on or after June 30, 2025, to be employees of the Office of the Attorney General;

~~→~~ → requires all administrative law judges to be employed by the Office of the Attorney General no later than July 1, 2026;

~~→~~ → creates a position of director of administrative law judges in the Office of the Attorney General;

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- modifies provisions relating to the supervision and management of administrative law judges;
- modifies the membership and procedures of the Administrative Law Judge Conduct Committee; and
- modifies provisions related to the hiring, supervision, and management of administrative law judges; judge to submit a report to the Legislature.

Money Appropriated in this Bill:

None

Other Special Clauses:

{~~This bill provides a special effective date.~~} None

Utah Code Sections Affected:

ENACTS:

~~{67-5-1003}~~ 63A-17-711, Utah Code Annotated 1953

{~~67-5-1006~~, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

—~~67-5-1001~~, (Renumbered from 63A-17-701, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1002~~, (Renumbered from 63A-17-702, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1004~~, (Renumbered from 63A-17-703, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1005~~, (Renumbered from 63A-17-704, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1009~~, (Renumbered from 63A-17-705, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1010~~, (Renumbered from 63A-17-706, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1011~~, (Renumbered from 63A-17-710, as renumbered and amended by Laws of Utah 2021, Chapter 344)

—~~67-5-1015~~, (Renumbered from 63A-17-708, as renumbered and amended by Laws of Utah 2021, Chapter 344)

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~~67-5-1016, (Renumbered from 63A-17-707, as renumbered and amended by Laws of Utah 2021, Chapter 344)~~

~~67-5-1017, (Renumbered from 63A-17-709, as renumbered and amended by Laws of Utah 2021, Chapter 344)~~

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

~~{ Section 1. Section 67-5-1001, which is renumbered from Section 63A-17-701 is renumbered and amended to read:~~

~~Part 10 - Administrative Law Judges.~~

~~[63A-17-701]. 67-5-1001. Definitions.~~

~~[In addition to the definitions found in Section 63A-17-102, as] As used in this part:~~

~~(1) (a) "Administrative law judge" means an individual who [is employed or contracted by a state agency who]:~~

~~(i) presides over or conducts formal administrative hearings on behalf of an agency;~~

~~(ii) has the power to administer oaths, rule on the admissibility of evidence, take testimony, evaluate evidence, and make determinations of fact; and~~

~~(iii) issues written orders, rulings, or final decisions on behalf of an agency.~~

~~(b) "Administrative law judge" does not mean:~~

~~(i) an individual who reviews an order or ruling of an administrative law judge; or~~

~~(ii) the executive director of a state agency.~~

~~(2) "Committee" means the Administrative Law Judge Conduct Committee created in Section [63A-17-708] 67-5-1015.~~

~~(3) "Director" means the director of administrative law judges as established in Section 67-5-1003.~~

~~Section 2. Section 67-5-1002, which is renumbered from Section 63A-17-702 is renumbered and amended to read:~~

~~[63A-17-702]. 67-5-1002. Administrative law judges -- Employment by Office of Attorney General -- Destruction of evidence.~~

~~(1) [(a) Except as provided in Subsections (1)(b) and (2), the] The provisions of this part apply to an administrative law judge [who conducts formal adjudicative proceedings] regardless of the agency for which the administrative law judge provides services.~~

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~~—— [(b) Except as provided in Subsection (2), the provisions of this part do not apply to an administrative law judge who is employed by or contracts with:]~~

~~—— [(i) the Board of Pardons and Parole;]~~

~~—— [(ii) the Department of Corrections; or]~~

~~—— [(iii) the State Tax Commission.]~~

~~—— [(2) The code of conduct established by the division under Subsection 63A-17-703(4) applies to all administrative law judges.]~~

~~—— [(3)] (2) (a) Any administrative law judge hired on or after June 30, 2025, shall be employed by the Office of the Attorney General:~~

~~—— (b) Beginning no later than July 1, 2026, every administrative law judge shall be an employee of the Office of the Attorney General, and shall serve under the supervision of the director of administrative law judges established in Section 67-5-1003:~~

~~—— (3) (a) An administrative law judge who tampers with or destroys evidence submitted to the administrative law judge is subject to the provisions of Section 76-8-510.5. [This section does not apply to documents destroyed in accordance with]~~

~~—— (b) An administrative law judge is required to comply with the document management, disclosure, and preservation requirements of Title 63G, Chapter 2, Government Records Access and Management Act.~~

‡ Section ~~{3}~~1. Section ~~{67-5-1003}~~63A-17-711 is enacted to read:

~~{67-5-1003. Director of administrative law judges:~~

~~—— (1) The attorney general shall appoint an individual to serve as the director of administrative law judges.~~

~~—— (2) The director shall be employed by the Office of the Attorney General.~~

~~—— (3) The director shall:~~

~~—— (a) supervise and evaluate each administrative law judge;~~

~~—— (b) determine general job responsibilities and agency assignments for each administrative law judge;~~

~~—— (c) assign each administrative law judge to an agency or agencies;~~

~~—— (d) approve agency-specific job standards, duties, workload, and duties for}~~63A-17-711. Report.

(1) As used in this section, "agency" means a department, division, office, bureau,

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board, commission, or other administrative law judges, in consultation with an agency for which the administrative law judge serves;

~~_____ (e) consult with agencies that use~~ unit of the state.

~~_____ (2) An agency that employs, pays for the services of~~ an administrative law judge in order to determine agency personnel and workload needs;

~~_____ (f) conduct evaluations and surveys as provided for in this part; and~~

~~_____ (g) report on the performance and activities of administrative law judges to the attorney general.~~

~~_____ Section 4. Section 67-5-1004, which is renumbered from Section 63A-17-703 is renumbered and amended to read:~~

~~_____ [63A-17-703].~~ 67-5-1004. Rulemaking authority.

~~_____ The [division] director shall make rules required in order to administer the requirements of this part, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:~~

~~_____ (1) establishing minimum performance standards for all administrative law judges;~~

~~_____ (2) providing procedures for filing, addressing, and reviewing complaints against administrative law judges;~~

~~_____ (3) providing standards for complaints against administrative law judges;~~

~~_____ (4) promulgating a code of conduct [for all administrative law judges in all state agencies] that applies to each administrative law judge, regardless of the agency for which the administrative law judge serves; and~~

~~_____ (5) establishing a procedural fairness training program as described in Section [63A-17-709] 67-5-1011.~~

~~_____ Section 5. Section 67-5-1005, which is renumbered from Section 63A-17-704 is renumbered and amended to read:~~

~~_____ [63A-17-704].~~ 67-5-1005. Hiring of administrative law judges.

~~_____ (1) [Except as provided in Subsection (6), each] Each administrative law judge hired on or after [May 10, 2016] June 30, 2025, shall be hired in accordance with this section.~~

~~_____ (2) If an applicant for an administrative law judge position is selected for an interview in accordance with applicable law and division rule, the [agency] Office of the Attorney General shall interview the applicant by means of a hiring panel.~~

~~_____ (3) The hiring panel described in Subsection (2) shall consist of:~~

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~~_____ (a) the head of the [hiring] agency for which the administrative law judge will primarily perform services;~~

~~_____ (b) the head of another agency[, appointed by the director] that}, or otherwise uses the services of an administrative law judge {, as selected by the director of} shall provide a report described in this section to the Government Operations Interim Committee and to the Rules Review and General Oversight Committee on or before June 1, 2024.~~

(3) The report described in Subsection (2) shall provide:

(a) the number of full time administrative law judges {; and

~~_____ (c) the director of} currently employed by, paid for, or utilized by the agency;~~

(b) the number of part-time administrative law judges currently employed by, paid for, or utilized by the agency; {;}

{4}c) {Each} for each individual {described in Subsection (3) may designate another individual to serve on the hiring panel on the individual's behalf.

~~_____ (5) After the hiring panel completes the interviews for an administrative law judge position:~~

~~_____ (a) the hiring panel shall select the top three applicants} referenced under Subsection (2)(a) or (b), the employment arrangement for the administrative law judge {position; and~~

~~_____ (b) the head of the hiring agency shall:~~

~~_____ (i) consider any opinions or feedback from the other members of the hiring panel with respect to the top three applicants; and~~

~~_____ (ii) (A) hire an applicant from the top three applicants to fill }, including whether the administrative law judge {position; or~~

~~_____ (B) decide not to hire any of the top three applicants and restart the hiring process to fill the} is employed by the agency, employed by multiple agencies, temporarily assigned to the agency, or another employment arrangement, which the agency shall describe;~~

(d) the number of employees of the agency that act as support or administrative staff for administrative law judge {position.

~~_____ [(6) This section does not apply to} functions engaged in by the agency, and for each such employee:~~

(i) a title or job description for each such employee; and

(ii) whether each such employee has full or part time duties in relation to

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administrative law judge functions:

(e) a listing and description of each rule, policy, or practice that the agency uses to ensure the independence of an administrative law judge who is ~~{appointed by the governor.}~~

~~Section 6. Section 67-5-1006 is enacted to read:~~

~~67-5-1006. Assignment of}~~ employed by, assigned to, or working on behalf of the agency; and

(f) whether the agency requires an administrative law ~~{judges.~~

~~(1) An agency may request the assignment of an administrative law judge by submitting a request to the director of administrative law judges.~~

~~(2) An agency may request the services of an administrative law judge on a specific hearing or matter by submitting a request to the director of administrative law judges.~~

~~Section 7. Section 67-5-1009, which is renumbered from Section 63A-17-705 is renumbered and amended to read:~~

~~[63A-17-705].~~ 67-5-1009. Performance evaluation of administrative law judges:

~~(1) The [division] director of administrative law judges shall [prepare] conduct a performance evaluation for each administrative law judge [contracted or employed by a state agency] during the year that is set for a performance evaluation under Section 63A-17-706, which shall be scheduled in a manner that ensures that a performance evaluation is conducted at least every four years of the administrative law judge's employment.~~

~~(2) The performance evaluation for an administrative law judge shall include:~~

~~(a) the results of [the administrative law judge's performance evaluations conducted by the employing agency since the administrative law judge's last performance evaluation conducted by the division in accordance with the performance evaluation procedure for the agency] a performance evaluation, which shall include information showing the administrative law judge's compliance with minimum performance standards, that is conducted and provided by:~~

~~(i) the agency at which the administrative law judge primarily serves; and~~

~~(ii) if the administrative law judge conducts at least one third of their caseload at a second agency, that second agency;~~

~~(b) information from the employing agency concerning the administrative law judge's~~

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~~compliance with minimum performance standards;~~

~~—— [(c)] (b) the administrative law judge's disciplinary record, if any;~~

~~—— [(d)] (c) the results of any performance surveys conducted since the administrative law judge's last performance review [conducted by the division]; and~~

~~—— [(e)] (d) any other factor that the [division] director of administrative law judges considers relevant to evaluating the administrative law judge's performance.~~

~~—— (3) If the director of administrative law judges determines that an administrative law judge [fails] has failed to meet the minimum performance standards, the [division] director of administrative law judges shall provide a copy of the performance evaluation and survey to [the employing agency] each agency at which the administrative law judge serves.~~

~~—— [(4) The division shall conduct performance reviews every four years for administrative law judges contracted or employed by an agency.]~~

~~—— Section 8. Section **67-5-1010**, which is renumbered from Section 63A-17-706 is renumbered and amended to read:~~

~~—— **[63A-17-706].** **67-5-1010. Performance surveys.**~~

~~—— (1) All administrative law judges shall be on a four-year staggered cycle for performance evaluations.~~

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

~~—— (a) attorneys who have appeared before the administrative law judge as counsel; and~~

~~—— (b) staff who have worked with the administrative law judge.~~

~~—— (3) The [division] director of administrative law judges may include an additional classification of respondents if the [division] director:~~

~~—— (a) considers a survey of that classification of respondents helpful to the [division] director's evaluation; and~~

~~—— (b) establishes the additional classification of respondents by rule [made] in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (4) A survey response is anonymous, including any comment included with a survey response.~~

~~—— (5) If the [division] director of administrative law judges provides any information to an administrative law judge or [the committee] to another entity, the information shall be~~

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~~provided in a manner to protect the confidentiality of a survey respondent.~~

~~—— (6) If the [division] director of administrative law judges establishes an additional classification, in accordance with Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of the day on which the case in which the person appeared before the administrative law judge is closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the survey period.~~

~~—— (7) The performance survey shall include questions relating to whether the administrative law judge's behavior furthers the following elements of procedural fairness:~~

~~—— (a) neutrality, including:~~

~~—— (i) consistent and equal treatment of the individuals who appear before the administrative law judge;~~

~~—— (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and~~

~~—— (iii) careful deliberation;~~

~~—— (b) respectful treatment of others; and~~

~~—— (c) providing individuals a voice and opportunity to be heard.~~

~~—— (8) The performance survey may include questions concerning an administrative law judge's:~~

~~—— (a) legal ability, including the following:~~

~~—— (i) demonstration of understanding of the substantive law and any relevant rules of procedure and evidence;~~

~~—— (ii) attentiveness to factual and legal issues before the administrative law judge;~~

~~—— (iii) adherence to precedent and ability to clearly explain departures from precedent;~~

~~—— (iv) grasp of the practical impact on the parties of the administrative law judge's rulings, including the effect of delay and increased litigation expense;~~

~~—— (v) ability to write clear opinions and decisions; and~~

~~—— (vi) ability to clearly explain the legal basis for opinions;~~

~~—— (b) temperament and integrity, including the following:~~

~~—— (i) demonstration of courtesy toward attorneys, staff, and others in the administrative law judge's department;~~

~~—— (ii) maintenance of decorum in the courtroom;~~

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~~— (iii) demonstration of judicial demeanor and personal attributes that promote public trust and confidence in the administrative law judge system;~~

~~— (iv) preparedness for oral argument;~~

~~— (v) avoidance of impropriety or the appearance of impropriety;~~

~~— (vi) display of fairness and impartiality toward all parties; and~~

~~— (vii) ability to clearly communicate, including the ability to explain the basis for written rulings, court procedures, and decisions; and~~

~~— (c) administrative performance, including the following:~~

~~— (i) management of workload;~~

~~— (ii) sharing proportionally the workload within the division; and~~

~~— (iii) issuance of opinions and orders without unnecessary delay.~~

~~— (9) If the [division] director of administrative law judges determines that a certain survey question or category of questions is not appropriate for a respondent group, the [division] director may omit that question or category of questions from the survey provided to that respondent group:~~

~~— (10) (a) The survey shall allow respondents to indicate responses in a manner determined by the [division] director, which shall be:~~

~~— (i) on a numerical scale from one to five; or~~

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

~~— (b) To supplement the responses to questions on either a numerical scale or in the affirmative or negative, the [division] director may allow respondents to provide written comments:~~

~~— (11) The [division] director of administrative law judges shall compile and make available to each administrative law judge that administrative law judge's survey results with each of the administrative law judge's performance evaluations:~~

~~— Section 9. Section ~~67-5-1011~~, which is renumbered from Section 63A-17-710 is renumbered and amended to read:~~

~~— ~~[63A-17-710]~~. ~~67-5-1011. Required training:~~~~

~~— (1) Each year that an administrative law judge receives a performance evaluation conducted by the [division] director of administrative law judges under this chapter, the~~

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~~administrative law judge shall complete the procedural fairness training program described in this section.~~

~~— (2) The [division] director shall establish a procedural fairness training program that includes training on how an administrative law judge's actions and behavior influence others' perceptions of the fairness of the adjudicative process.~~

~~— (3) The procedural fairness training program shall include discussion of the following elements of procedural fairness:~~

~~— (a) neutrality, including:~~

~~— (i) consistent and equal treatment of the individuals who appear before the administrative law judge;~~

~~— (ii) concern for the individual needs of the individuals who appear before the administrative law judge; and~~

~~— (iii) unhurried and careful deliberation;~~

~~— (b) respectful treatment of others; and~~

~~— (c) providing individuals a voice and opportunity to be heard.~~

~~— (4) The [division] director may contract with a public or private person to develop or provide the procedural fairness training program.~~

~~— (5) The [division] director shall ensure that the procedural fairness training program complies with Title 63G, Chapter 22, State Training and Certification Requirements.~~

~~Section 10. Section 67-5-1015, which is renumbered from Section 63A-17-708 is renumbered and amended to read:~~

~~[63A-17-708]. **67-5-1015. Administrative Law Judge Conduct Committee.**~~

~~— (1) There is created the Administrative Law Judge Conduct Committee to investigate, review, and hear complaints filed against administrative law judges.~~

~~— (2) The committee shall be composed of:~~

~~— (a) the director of administrative law judges, or the director's designee, as chair; and~~

~~— (b) four executive directors, or their designees, of agencies that [employ or contract with] use the services of administrative law judges, to be selected by the director, and replaced to fill vacancies as needed.~~

~~— (3) The [division] Office of the Attorney General shall provide staff for the committee as needed.~~

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~~Section 11. Section 67-5-1016, which is renumbered from Section 63A-17-707 is renumbered and amended to read:~~

~~[63A-17-707]. **67-5-1016. Complaints.**~~

~~(1) A complaint against an administrative law judge shall be filed with the [division] director of administrative law judges:~~

~~(2) Upon receipt of a complaint, the [division] director shall conduct an investigation:~~

~~(3) If the [division's] director's investigation determines that the complaint is frivolous or without merit, [it] the director may dismiss [it] the complaint without further action. A complaint that merely indicates disagreement, without further misconduct, with the administrative law judge's decision shall be treated as without merit.~~

~~(4) The contents of all complaints and subsequent investigations are classified as protected under Title 63G, Chapter 2, Government Records Access and Management Act:~~

~~Section 12. Section 67-5-1017, which is renumbered from Section 63A-17-709 is renumbered and amended to read:~~

~~[63A-17-709]. **67-5-1017. Procedure for review of complaint by conduct committee.**~~

~~(1) Upon a determination that a complaint requires further action, the director [shall select four executive directors or their designees and] of administrative law judges shall convene the committee to review the complaint. The executive director of [the agency that employs or contracts with] an agency where the administrative law judge who is the subject of the complaint performs services may not be a member of the committee. The director of administrative law judges shall appoint an executive director of an agency that uses the services of administrative law judges, or their designee, to temporarily serve in the place of any commission member that is disqualified to review a complaint under this Subsection (1):~~

~~(2) The [division] director shall provide a copy of the complaint, along with the results of the [division's] director's investigation, to the committee and the administrative law judge who is the subject of the complaint. If the committee directs, a copy of the complaint and investigation may also be provided to the attorney general:~~

~~(3) The committee shall allow an administrative law judge who is the subject of a complaint to appear and speak at any committee meeting, except a closed meeting, during which the committee is deliberating the complaint.~~

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~~———— (4) The committee may meet in a closed meeting to discuss a complaint against an administrative law judge by complying with Title 52, Chapter 4, Open and Public Meetings Act.~~

~~———— (5) After deliberation and discussion of the complaint and all information provided, the committee shall provide a report, with a recommendation, to the [agency] Office of the Attorney General, with a copy to each agency at which the administrative law judge serves.~~

~~The recommendation shall include:~~

~~———— (a) a brief description of the complaint and results of the [division's] director's investigation;~~

~~———— (b) the committee's findings; and~~

~~———— (c) a recommendation from the committee whether action should be taken against the administrative law judge.~~

~~———— (6) Actions recommended by the committee may include no action, disciplinary action, termination, or any other action an employer may take against an employee.~~

~~———— (7) The record of an individual committee member's vote on recommended actions against an administrative law judge is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~———— Section 13} judge to comply with any rules, policies, guidelines, or other agency requirements when making a decision, and if so, a complete list of each of those requirements, and as applicable, a citation to or copy of the rule, policy, guideline, or requirement.~~

Section 2. Effective date.

~~This bill takes effect on {July}May 1, {2025}2024.~~