

1                   **JUDICIAL PERFORMANCE EVALUATION COMMISSION**

2                                   **AMENDMENTS**

3   2022 GENERAL SESSION

4   STATE OF UTAH

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

6                                   Senate Sponsor: Jani Iwamoto

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8   **LONG TITLE**

9   **General Description:**

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

12 **Highlighted Provisions:**

13           This bill:

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

21 **Money Appropriated in this Bill:**

22           None

23 **Other Special Clauses:**

24           This bill provides a special effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27           **20A-7-702**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

28           **63G-2-305**, as last amended by Laws of Utah 2021, Chapters 148, 179, 231, 353, 373,

29 and 382

30 78A-12-102, as last amended by Laws of Utah 2014, Chapter 152

31 78A-12-201, as last amended by Laws of Utah 2017, Chapter 374

32 78A-12-203, as last amended by Laws of Utah 2017, Chapters 81 and 374

33 78A-12-205, as last amended by Laws of Utah 2017, Chapter 81

34 78A-12-206, as last amended by Laws of Utah 2017, Chapter 374

35 ENACTS:

36 20A-7-702.5, Utah Code Annotated 1953



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

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

40 **20A-7-702. Voter information pamphlet -- Form -- Contents.**

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

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

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

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

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

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

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

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

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

50 August before the date of the election;

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

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

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

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

55 submitted by the Legislature or by referendum;

56            [(iii)] (c) the impartial analysis of the measure prepared by the Office of Legislative  
57 Research and General Counsel;

58            [(iv)] (d) the arguments in favor of the measure, the rebuttal to the arguments in favor  
59 of the measure, the arguments against the measure, and the rebuttal to the arguments against  
60 the measure, with the name and title of the authors at the end of each argument or rebuttal;

61            [(v)] (e) for each constitutional amendment, a complete copy of the text of the  
62 constitutional amendment, with all new language underlined, and all deleted language placed  
63 within brackets;

64            [(vi)] (f) for each initiative qualified for the ballot:

65            [(A)] (i) a copy of the measure as certified by the lieutenant governor and a copy of the  
66 fiscal impact estimate prepared according to Section [20A-7-202.5](#); and

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

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

71            [(vii)] (g) for each referendum qualified for the ballot, a complete copy of the text of  
72 the law being submitted to the voters for their approval or rejection, with all new language  
73 underlined and all deleted language placed within brackets, as applicable;

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

76            [(i)] (a) a description of the judicial selection process;

77            [(ii)] (b) a description of the judicial performance evaluation process;

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

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

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

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

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

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

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

86           ~~[(D)]~~ (iv) for each certification standard ~~[of performance]~~ under Section 78A-12-205, a

87 statement identifying whether ~~[or not]~~, under Section 78A-12-205, the judge met the standard

88 and, if not, the manner in which the judge failed to meet the standard;

89           ~~[(E)]~~ a statement identifying whether or not the Judicial Performance Evaluation

90 Commission recommends the judge be retained or declines to make a recommendation and the

91 number of votes for and against the commission's recommendation;]

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

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

94           (B) has determined that the judge does not meet or exceed minimum performance

95 standards; or

96           (C) has not made a determination regarding whether the judge meets or exceeds

97 minimum performance standards;

98           ~~[(F)]~~ (vi) any statement, described in Subsection 78A-12-206(3)(b), provided by a

99 judge ~~[who is not recommended for retention by]~~ whom the Judicial Performance Evaluation

100 Commission ~~[under Section 78A-12-203]~~ determines does not meet or exceed minimum

101 performance standards;

102           ~~[(G)]~~ (vii) in a bar graph, the average of responses to each survey category, displayed

103 with an identification of the minimum acceptable score as set by Section 78A-12-205 and the

104 average score of all judges of the same court level; and

105           ~~[(H)]~~ (viii) a website address that contains the Judicial Performance Evaluation

106 Commission's report on the judge's performance evaluation;

107           ~~[(I)]~~ (9) for each judge, a statement provided by the Utah Supreme Court identifying

108 the cumulative number of informal reprimands, when consented to by the judge in accordance

109 with Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders

110 of censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article  
111 VIII, Section 13, during the judge's current term and the immediately preceding term, and a  
112 detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct  
113 that the judge has received;

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

117 ~~[(k)]~~ (11) voter registration information, including information on how to obtain a  
118 ballot;

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

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

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

125 ~~[(o)]~~ (15) on the back cover page, a printed copy of the following statement signed by  
126 the lieutenant governor:

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

131 SEAL

132 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this \_\_\_\_ day  
133 of \_\_\_\_ (month), \_\_\_\_ (year)

134 (signed) \_\_\_\_\_

135 Lieutenant Governor"

136 ~~[(2) No earlier than 75 days, and no later than 15 days, before the day on which voting~~

137 commences, the lieutenant governor shall make all information provided in the voter  
138 information pamphlet available on the Statewide Electronic Voter Information Website  
139 Program described in Section [20A-7-801](#).]

140 [~~(3) The lieutenant governor may distribute a voter information pamphlet at a location~~  
141 ~~frequented by a person who cannot easily access the Statewide Electronic Voter Information~~  
142 ~~Website authorized by Section [20A-7-801](#).~~]

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

144 **20A-7-702.5. Publication of voter information pamphlet.**

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

149 (2) The lieutenant governor may distribute a voter information pamphlet at a location  
150 frequented by a person who cannot easily access the Statewide Electronic Voter Information  
151 Website authorized by Section [20A-7-801](#).

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

153 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

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

182 (i) an invitation for bids;

183 (ii) a request for proposals;

184 (iii) a request for quotes;

185 (iv) a grant; or

186 (v) other similar document; or

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

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

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

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

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

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

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

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

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

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

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

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

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



218 transaction; or

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

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

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

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

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

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

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

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

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

243 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
244 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere

245 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

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

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

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

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

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

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

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

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

266 (A) members of a legislative body;

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

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

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

271 (20) (a) records in the custody or control of the Office of Legislative Research and

272 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
273 legislation or contemplated course of action before the legislator has elected to support the  
274 legislation or course of action, or made the legislation or course of action public; and  
275 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
276 Office of Legislative Research and General Counsel is a public document unless a legislator  
277 asks that the records requesting the legislation be maintained as protected records until such  
278 time as the legislator elects to make the legislation or course of action public;

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

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

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

284 (a) collective bargaining; or  
285 (b) imminent or pending litigation;

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

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

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

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

297 (28) records of an institution within the state system of higher education defined in  
298 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,

299 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
300 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
301 the final decisions about tenure, appointments, retention, promotions, or those students  
302 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

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

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

334 (a) the donor requests anonymity in writing;

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

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

342 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
343 73-18-13;

344 (39) a notification of workers' compensation insurance coverage described in Section  
345 34A-2-205;

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

349 (i) unpublished lecture notes;

350 (ii) unpublished notes, data, and information:

351 (A) relating to research; and

352 (B) of:

353 (I) the institution within the state system of higher education defined in Section  
354 [53B-1-102](#); or  
355 (II) a sponsor of sponsored research;  
356 (iii) unpublished manuscripts;  
357 (iv) creative works in process;  
358 (v) scholarly correspondence; and  
359 (vi) confidential information contained in research proposals;  
360 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
361 information required pursuant to Subsection [53B-16-302\(2\)\(a\)](#) or (b); and  
362 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
363 (41) (a) records in the custody or control of the Office of the Legislative Auditor  
364 General that would reveal the name of a particular legislator who requests a legislative audit  
365 prior to the date that audit is completed and made public; and  
366 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
367 Office of the Legislative Auditor General is a public document unless the legislator asks that  
368 the records in the custody or control of the Office of the Legislative Auditor General that would  
369 reveal the name of a particular legislator who requests a legislative audit be maintained as  
370 protected records until the audit is completed and made public;  
371 (42) records that provide detail as to the location of an explosive, including a map or  
372 other document that indicates the location of:  
373 (a) a production facility; or  
374 (b) a magazine;  
375 (43) information:  
376 (a) contained in the statewide database of the Division of Aging and Adult Services  
377 created by Section [62A-3-311.1](#); or  
378 (b) received or maintained in relation to the Identity Theft Reporting Information  
379 System (IRIS) established under Section [67-5-22](#);

380 (44) information contained in the Licensing Information System described in Title  
381 62A, Chapter 4a, Child and Family Services;

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

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

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

389 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
390 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
391 prepared or maintained by the Division of Emergency Management, and the disclosure of  
392 which would jeopardize:

- 393 (a) the safety of the general public; or
- 394 (b) the security of:
  - 395 (i) governmental property;
  - 396 (ii) governmental programs; or
  - 397 (iii) the property of a private person who provides the Division of Emergency  
398 Management information;

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

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

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

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

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

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

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

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

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

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

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

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

425 (c) a notice of intent to gather signatures for candidacy, described in Section  
426 20A-9-408;

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

429 (a) conducted within the state system of higher education, as defined in Section  
430 53B-1-102; and

431 (b) conducted using animals;

432 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance  
433 Evaluation Commission concerning an individual commissioner's vote [~~on whether or not to~~



434 ~~recommend that the voters retain a judge including~~], in relation to whether a judge meets or  
435 exceeds minimum performance standards under Subsection 78A-12-203(4), and information  
436 disclosed under Subsection 78A-12-203(5)(e);

437 (55) information collected and a report prepared by the Judicial Performance  
438 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
439 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
440 the information or report;

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

443 (57) information requested by and provided to the 911 Division under Section  
444 63H-7a-302;

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

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

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

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

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

458 (b) records and audit workpapers to the extent they would disclose the identity of a  
459 person who, during the course of an investigation or audit, communicated the existence of any  
460 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or

461 regulation adopted under the laws of this state, a political subdivision of the state, or any  
462 recognized entity of the United States, if the information was disclosed on the condition that  
463 the identity of the person be protected;

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

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

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

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

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

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

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

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

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

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

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

487 (65) an audio or video recording created by a body-worn camera, as that term is

488 defined in Section 77-7a-103, that records sound or images inside a hospital or health care  
489 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care  
490 provider, as that term is defined in Section 78B-3-403, or inside a human service program as  
491 that term is defined in Section 62A-2-101, except for recordings that:

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

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

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

497 (d) contain an officer involved critical incident as defined in Subsection  
498 76-2-408(1)(f); or

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

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

504 (67) an audio recording that is:

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

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

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

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

514 (c) intended and used for purposes of training emergency responders how to improve

515 their response to an emergency situation;

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

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

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

523 (71) a record submitted to the Insurance Department in accordance with Section  
524 31A-37-201;

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

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

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

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

533 (a) Title 10, Utah Municipal Code;

534 (b) Title 17, Counties;

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

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

537 (e) Title 20A, Election Code;

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

540 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a  
541 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a

542 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;  
543 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part  
544 5, Victims Guidelines for Prosecutors Act;  
545 (79) a record submitted to the Insurance Department under Subsection  
546 31A-48-103(1)(b);  
547 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is  
548 prohibited under Section 63G-26-103;  
549 (81) ~~(a)~~ an image taken of an individual during the process of booking the individual  
550 into jail, unless:  
551 ~~(i)~~ (a) the individual is convicted of a criminal offense based upon the conduct for  
552 which the individual was incarcerated at the time the image was taken;  
553 ~~(ii)~~ (b) a law enforcement agency releases or disseminates the image after  
554 determining that:  
555 ~~(A)~~ (i) the individual is a fugitive or an imminent threat to an individual or to public  
556 safety; and  
557 ~~(B)~~ (ii) releasing or disseminating the image will assist in apprehending the  
558 individual or reducing or eliminating the threat; or  
559 ~~(iii)~~ (c) a judge orders the release or dissemination of the image based on a finding  
560 that the release or dissemination is in furtherance of a legitimate law enforcement interest[-];  
561 (82) a record:  
562 (a) concerning an interstate claim to the use of waters in the Colorado River system;  
563 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a  
564 representative from another state or the federal government as provided in Section  
565 63M-14-205; and  
566 (c) the disclosure of which would:  
567 (i) reveal a legal strategy relating to the state's claim to the use of the water in the  
568 Colorado River system;

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

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

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

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

579 **78A-12-102. Definitions.**

580 As used in this chapter:

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

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

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

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

587 countervailing evidence; or

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

591 [~~2~~] (3) Except as provided in Section 78A-12-207, "judge" means a state court judge  
592 or a state court justice who is subject to a retention election.

593 [~~3~~] (4) "Justice" means a judge who is a member of the Supreme Court.

594 [~~4~~] (5) "Justice court judge" means a judge appointed pursuant to Title 78A, Chapter  
595 7, Justice Court.

596 (6) "Meets or exceeds minimum performance standards" means that:  
597 (a) (i) a judge meets the certification standards under Section 78A-12-205; and  
598 (ii) the presumption that the judge meets or exceeds minimum performance standards,  
599 described in Subsection 78A-12-203(4)(b)(i), is not overcome by substantial countervailing  
600 evidence; or  
601 (b) a judge does not meet the certification standards under Section 78A-12-205, but the  
602 presumption described in Subsection 78A-12-203(4)(b)(ii), that the judge does not meet or  
603 exceed minimum performance standards, is overcome by substantial countervailing evidence.

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

605 **78A-12-201. Judicial Performance Evaluation Commission -- Creation --**  
606 **Membership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

644 ~~[(c)]~~ (d) ~~If a vote on the question of whether [to recommend a judge be retained or not~~  
645 ~~be retained ends in a tie or if a decision does not have six votes required by Subsection (6)(b);~~  
646 ~~the commission may make no recommendation concerning the judge's retention]~~ a judge meets  
647 or exceeds minimum performance standards or does not meet or exceed minimum performance  
648 standards ends in a tie or does not pass by at least six votes, the record shall reflect that the  
649 commission made no determination in relation to that judge.



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

651 **78A-12-203. Judicial performance evaluations.**

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

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

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

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

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

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

667 (c) courtroom observation;

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

669 (e) public comment solicited by the commission;

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

673 (g) any other factor that the commission:

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

676 (ii) establishes by rule made in accordance with Title 63G, Chapter 3, Utah

677 Administrative Rulemaking Act.

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

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

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

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

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

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

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

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

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

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

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

703 ~~[(c) The commission may elect to make no recommendation on whether the voters~~

704 ~~should retain a judge if the commission determines that the information concerning the judge is~~  
705 ~~insufficient to make a recommendation.]~~

706 ~~[(d) (i)] (c)~~ If the commission deviates from a presumption ~~[for or against~~  
707 ~~recommending the voters retain a judge or elects to make no recommendation on whether the~~  
708 ~~voters should retain a judge]~~ described in Subsection (4)(b), the commission shall provide a  
709 detailed explanation of the reason for that deviation ~~[or election]~~ in the commission's report  
710 under Section [78A-12-206](#).

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

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

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

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

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

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

728 (e) (i) A member of the commission, including a member of the Utah State Bar, may  
729 not be disqualified from voting ~~[on whether to recommend that the voters retain a judge]~~ under  
730 Subsection (4) solely because the member appears before the judge as an attorney, a fact

731 witness, or an expert, ~~[so long as]~~ unless the member is ~~[not]~~ a litigant in a case pending before  
732 the judge.

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

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

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

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

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

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

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

752 (i) the date of the reconsideration;

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

755 (iii) a brief statement explaining the reconsideration.

756 (e) The commission shall submit revisions to the judge's evaluation report to the  
757 lieutenant governor by no later than August 31 of a regular general election year for publication

758 in the voter information pamphlet, and publish the revisions on the commission's website, and  
759 through any other means the commission considers appropriate and within budgetary  
760 constraints.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

795 (i) an average score of no less than 65% on each survey category as provided in  
796 Subsection **78A-12-204(7)**; and

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

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

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

805 (b) adopts the standard.

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

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

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

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

812 judicial performance evaluation of a judge.

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

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

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

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

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

829 (i) provide a written response to the commission about the report; and  
830 (ii) request an interview with the commission for the purpose of addressing the report;  
831 and

832 (b) a judge who is the subject of a favorable [~~retention recommendation under this~~  
833 ~~section~~] action under Subsection [78A-12-203\(4\)](#) may provide a written response to the  
834 commission about the commission's report.

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

838 (b) If the commission does not change [~~its decision to recommend the judge not be~~

839 ~~retained]~~ the commission's action, the judge may provide a written statement, not to exceed 100  
840 words, that shall be included in the commission's report.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

877 Section 9. **Effective date.**

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