

ADMINISTRATIVE LAW JUDGE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill provides for appointment, reappointment, complaints, performance standards, and recommendations regarding administrative law judges.

Highlighted Provisions:

This bill:

- defines terms;
- requires that administrative law judges be appointed to specified terms of not more than four years;
- requires the Department of Human Resource Management to create a code of conduct for administrative law judges;
- imposes a penalty for destruction of evidence by an administrative law judge;
- provides for preappointment and reappointment evaluation of administrative law judges by the Department of Human Resource Management, including:
 - conducting a performance survey;
 - establishing minimum performance standards; and
 - recommending to the agency whether to reappoint an administrative law judge;
- addresses protected records related to performance evaluations and complaints regarding administrative law judges;
- provides a method for complaints against administrative law judges;
- creates an administrative law judge conduct committee within the Department of



Human Resource Management;

▸ requires the department to investigate complaints against administrative law judges;
and

▸ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

67-19e-101, Utah Code Annotated 1953

67-19e-102, Utah Code Annotated 1953

67-19e-103, Utah Code Annotated 1953

67-19e-104, Utah Code Annotated 1953

67-19e-105, Utah Code Annotated 1953

67-19e-106, Utah Code Annotated 1953

67-19e-107, Utah Code Annotated 1953

67-19e-108, Utah Code Annotated 1953

67-19e-109, Utah Code Annotated 1953

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

Section 1. Section **67-19e-101** is enacted to read:

CHAPTER 19e. ADMINISTRATIVE LAW JUDGES

67-19e-101. Title.

This chapter is known as "Administrative Law Judges."

Section 2. Section **67-19e-102** is enacted to read:

67-19e-102. Definitions -- Application of chapter -- Exceptions.

(1) In addition to the definitions found in Section 67-19-3, the following definitions apply to this chapter.

(a) "Administrative law judge" means an individual, regardless of title, who is employed, appointed, or contracted by a state agency that:

59 (i) presides over or conducts formal administrative hearings on behalf of an agency;
60 (ii) has the power to administer oaths, rule on the admissibility of evidence, take
61 testimony, evaluate evidence, and make determinations of fact; and
62 (iii) issues written orders, rulings, or final decisions on behalf of an agency.
63 (b) "Administrative law judge" does not mean an individual who reviews an order or
64 ruling of an administrative law judge or the executive director of a state agency.
65 (c) "Committee" means the Administrative Law Judge Conduct Committee created in
66 Section 67-19e-108.

67 (2) This chapter applies to all agencies of the state except the:

68 (a) Board of Pardons and Parole;

69 (b) Department of Corrections; and

70 (c) State Tax Commission.

71 Section 3. Section **67-19e-103** is enacted to read:

72 **67-19e-103. Administrative law judges -- Appointment by agency -- Terms --**
73 **Standard of conduct.**

74 (1) Any agency may appoint administrative law judges for the purpose of handling
75 administrative hearings.

76 (2) (a) An administrative law judge appointed under this chapter is appointed to a
77 four-year term.

78 (b) An administrative law judge who is contracted or employed by a state agency after
79 July 1, 2013, shall be appointed to a specified term of not more than four years, commencing
80 July 1 of the year of appointment and ending not later than June 30 of the fourth year after
81 appointment.

82 (3) All administrative law judges are subject to a code of conduct promulgated by the
83 department in accordance with Section 67-19e-104.

84 (4) An administrative law judge who destroys evidence submitted to the administrative
85 law judge is guilty of a class B misdemeanor.

86 Section 4. Section **67-19e-104** is enacted to read:

87 **67-19e-104. Rulemaking authority.**

88 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
89 Administrative Rulemaking Act:

- 90 (1) establishing minimum performance standards for all administrative law judges;
91 (2) providing procedures for filing, addressing, and reviewing complaints against
92 administrative law judges;
93 (3) providing standards for complaints against administrative law judges; and
94 (4) promulgating a code of conduct for all administrative law judges in all state
95 agencies.

96 Section 5. Section **67-19e-105** is enacted to read:

97 **67-19e-105. Performance evaluation of administrative law judges.**

98 (1) Beginning January 1, 2014, the department shall prepare a performance evaluation
99 for each administrative law judge contracted, employed, or appointed by a state agency.

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

101 (a) the results of the administrative law judge's performance evaluations conducted by
102 the employing agency since the administrative law judge's last appointment in accordance with
103 the performance evaluation procedure for the agency;

104 (b) information concerning the administrative law judge's compliance with minimum
105 performance standards;

106 (c) the administrative law judge's disciplinary record, if any;

107 (d) the results of any performance surveys conducted since the administrative law
108 judge's last appointment or performance review; and

109 (e) any other factor that the department considers relevant to evaluating the
110 administrative law judge's performance for the purpose of reappointment.

111 (3) (a) As part of the evaluation, the department shall determine whether to recommend
112 reappointment of the administrative law judge to the agency.

113 (b) (i) If an administrative law judge meets the minimum performance standards there
114 is a rebuttable presumption that the department will recommend reappointment.

115 (ii) If an administrative law judge fails to meet the minimum performance standards
116 there is a rebuttable presumption that the department will recommend that the administrative
117 law judge not be reappointed.

118 (c) The department may elect to make no recommendation on whether an
119 administrative law judge should be reappointed if the department determines that the
120 information concerning the administrative law judge is insufficient to make a recommendation.

121 (d) If the department deviates from a presumption for or against recommending
122 reappointment or elects to make no recommendation, the department shall provide a written
123 explanation of the reason for that deviation or election.

124 (4) The department shall conduct performance reviews every four years for
125 administrative law judges contracted or employed by an agency before July 1, 2013, but may
126 not make a recommendation regarding continued employment.

127 Section 6. Section **67-19e-106** is enacted to read:

128 **67-19e-106. Performance survey.**

129 (1) The performance survey required by this section concerning an administrative law
130 judge shall be conducted on an ongoing basis during the administrative law judge's term in
131 office by a third party under contract to the department. For administrative law judges
132 contracted or employed before July 1, 2013, performance surveys shall be conducted on a
133 four-year cycle.

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

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

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

138 (3) The department may include an additional classification of respondents if the
139 department:

140 (a) considers a survey of that classification of respondents helpful to the department in
141 determining whether to reappoint an administrative law judge; and

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

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

146 (5) If the department provides any information to an administrative law judge or the
147 commission, the information shall be provided in such a way as to protect the confidentiality of
148 a survey respondent.

149 (6) A survey shall be provided to a potential survey respondent within 30 days of the
150 day on which the case in which the person appeared before the administrative law judge is
151 closed, exclusive of any appeal, except for court staff and attorneys, who may be surveyed at

any time during the survey period.

(7) Survey categories 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;

(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 department; and

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

(8) If the department determines that a certain survey question or category of questions is not appropriate for a respondent group, the department may omit that question or category of questions from the survey provided to that respondent group.

(9) (a) The survey shall allow respondents to indicate responses in a manner determined by the department, which shall be:

(i) on a numerical scale from one to five, with one representing inadequate performance and five representing outstanding performance; 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 department may allow respondents to provide written comments.

(10) The department 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 7. Section **67-19e-107** is enacted to read:

67-19e-107. Complaints.

(1) A complaint against an administrative law judge shall be filed with the department.

(2) Upon receipt of a complaint, the department shall conduct an investigation.

(3) If the department's investigation determines that the complaint is frivolous or without merit, it may dismiss it 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 8. Section **67-19e-108** is enacted to read:

67-19e-108. 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 executive director of the department, or the executive director's designee, as chair; and

(b) four executive directors, or their designees, of agencies that employ or contract with administrative law judges, to be selected by the executive director as needed.

(3) The department shall provide staff for the committee as needed.

Section 9. Section **67-19e-109** is enacted to read:

67-19e-109. Procedure for review of complaint by conduct committee.

214 (1) Upon a determination that a complaint requires further action, the executive
215 director shall select four executive directors and convene the committee. The executive
216 director of the agency that employs or contracts with the administrative law judge who is the
217 subject of the complaint may not be a member of the committee.

218 (2) The department shall provide a copy of the complaint, along with the results of the
219 department's investigation, to the committee and the administrative law judge who is the
220 subject of the complaint. If the committee directs, a copy of the complaint and investigation
221 may also be provided to the attorney general.

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

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

228 (5) After deliberation and discussion of the complaint and all information provided, the
229 committee shall provide a report, with a recommendation, to the agency. The recommendation
230 shall include:

231 (a) a brief description of the complaint and results of the department's investigation;

232 (b) the committee's findings; and

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel