

1 **JUDICIAL PERFORMANCE EVALUATION COMMISSION**

2 **MODIFICATIONS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

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



8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to judicial performance.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ addresses appointments to the commission;
- 14 ▶ requires a certain number of members to vote on recommendations to retain or not
- 15 retain a judge;
- 16 ▶ amends provisions related to judicial performance evaluations;
- 17 ▶ addresses judicial performance surveys;
- 18 ▶ amends provisions related to publication of judicial performance evaluations;
- 19 ▶ enacts provisions related to self-improvement plans for certain judges; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **20A-7-702**, as last amended by Laws of Utah 2016, Chapter 348



- 28 **78A-12-201**, as enacted by Laws of Utah 2008, Chapter 248
- 29 **78A-12-203**, as last amended by Laws of Utah 2013, Chapter 209
- 30 **78A-12-204**, as last amended by Laws of Utah 2011, Chapter 80
- 31 **78A-12-205**, as last amended by Laws of Utah 2011, Chapter 80
- 32 **78A-12-206**, as last amended by Laws of Utah 2011, Chapter 80

33 ENACTS:

34 **78A-12-208**, Utah Code Annotated 1953



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

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

38 **20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.**

39 (1) The lieutenant governor shall ensure that all information submitted for publication  
40 in the voter information pamphlet is:

- 41 (a) printed and bound in a single pamphlet;
- 42 (b) printed in clear readable type, no less than 10 point, except that the text of any  
43 measure may be set forth in eight-point type; and
- 44 (c) printed on a quality and weight of paper that best serves the voters.

45 (2) The voter information pamphlet shall contain the following items in this order:

- 46 (a) a cover title page;
- 47 (b) an introduction to the pamphlet by the lieutenant governor;
- 48 (c) a table of contents;
- 49 (d) a list of all candidates for constitutional offices;
- 50 (e) a list of candidates for each legislative district;
- 51 (f) a 100-word statement of qualifications for each candidate for the office of governor,  
52 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the  
53 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before  
54 the date of the election;
- 55 (g) information pertaining to all measures to be submitted to the voters, beginning a  
56 new page for each measure and containing, in the following order for each measure:
  - 57 (i) a copy of the number and ballot title of the measure;
  - 58 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by

59 the Legislature or by referendum;

60 (iii) the impartial analysis of the measure prepared by the Office of Legislative  
61 Research and General Counsel;

62 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the  
63 measure, the arguments against the measure, and the rebuttal to the arguments against the  
64 measure, with the name and title of the authors at the end of each argument or rebuttal;

65 (v) for each constitutional amendment, a complete copy of the text of the constitutional  
66 amendment, with all new language underlined, and all deleted language placed within brackets;

67 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the  
68 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section  
69 [20A-7-202.5](#); and

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

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

75 (i) a description of the judicial selection process;

76 (ii) a description of the judicial performance evaluation process;

77 (iii) a description of the judicial retention election process;

78 (iv) a list of the criteria of the judicial performance evaluation and the minimum  
79 performance standards;

80 (v) the names of the judges standing for retention election; and

81 (vi) for each judge:

82 (A) a list of the counties in which the judge is subject to retention election;

83 (B) a short biography of professional qualifications and a recent photograph;

84 (C) a narrative concerning the judge's performance;

85 (D) for each standard of performance, a statement identifying whether or not the judge  
86 met the standard and, if not, the manner in which the judge failed to meet the standard;

87 (E) a statement identifying whether or not the Judicial Performance Evaluation  
88 Commission recommends the judge be retained or declines to make a recommendation and the  
89 number of votes for and against the commission's recommendation;

90 (F) any statement provided by a judge who is not recommended for retention by the  
91 Judicial Performance Evaluation Commission under Section 78A-12-203;

92 (G) in a bar graph, the average of responses to each survey category, displayed with an  
93 identification of the minimum acceptable score as set by Section 78A-12-205 and the average  
94 score of all judges of the same court level; [~~and~~]

95 (H) a dissenting report if one is submitted under Section 78A-12-206; and

96 [~~(H)~~] (I) a website address that contains the Judicial Performance Evaluation  
97 Commission's report on the judge's performance evaluation;

98 (i) for each judge, a statement provided by the Utah Supreme Court identifying the  
99 cumulative number of informal reprimands, when consented to by the judge in accordance with  
100 Title 78A, Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of  
101 censure and suspension issued by the Utah Supreme Court under Utah Constitution, Article  
102 VIII, Section 13, during the judge's current term and the immediately preceding term, and a  
103 detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct  
104 that the judge has received;

105 (j) an explanation of ballot marking procedures prepared by the lieutenant governor,  
106 indicating the ballot marking procedure used by each county and explaining how to mark the  
107 ballot for each procedure;

108 (k) voter registration information, including information on how to obtain an absentee  
109 ballot;

110 (l) a list of all county clerks' offices and phone numbers; and

111 (m) on the back cover page, a printed copy of the following statement signed by the  
112 lieutenant governor:

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

117 SEAL

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

120 (signed) \_\_\_\_\_

Lieutenant Governor"

121  
122 (3) No earlier than 75 days, and no later than 15 days, before the day on which voting  
123 commences, the lieutenant governor shall:

124 (a) (i) distribute one copy of the voter information pamphlet to each household within  
125 the state;

126 (ii) distribute to each household within the state a notice:

127 (A) printed on a postage prepaid, preaddressed return form that a person may use to  
128 request delivery of a voter information pamphlet by mail;

129 (B) that states the address of the Statewide Electronic Voter Information Website  
130 authorized by Section 20A-7-801; and

131 (C) that states the phone number a voter may call to request delivery of a voter  
132 information pamphlet by mail; or

133 (iii) ensure that one copy of the voter information pamphlet is placed in one issue of  
134 every newspaper of general circulation in the state;

135 (b) ensure that a sufficient number of printed voter information pamphlets are available  
136 for distribution as required by this section;

137 (c) provide voter information pamphlets to each county clerk for free distribution upon  
138 request and for placement at polling places; and

139 (d) ensure that the distribution of the voter information pamphlets is completed 15 days  
140 before the election.

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

144 Section 2. Section 78A-12-201 is amended to read:

145 **78A-12-201. Judicial Performance Evaluation Commission -- Creation --**  
146 **Membership -- Salary -- Staff.**

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

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

151 (b) two members appointed by the speaker of the House of Representatives, only one

152 of whom may be a member of the Utah State Bar;

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

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

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

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

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

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

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

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

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

169 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
170 appointed for the unexpired term using the same procedure used to appoint the member being  
171 replaced.

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

173 (b) The action of a majority of the quorum constitutes the action of the commission,  
174 except that a decision of the commission to recommend that a judge be retained or not be  
175 retained may not be made except by a vote of at least six members.

176 (c) If a vote on the question of whether to recommend a judge be retained or not be  
177 retained ends in a tie or if a decision does not have six votes required by Subsection (6)(b), the  
178 commission may make no recommendation concerning the judge's retention.

179 Section 3. Section **78A-12-203** is amended to read:

180 **78A-12-203. Judicial performance evaluations.**

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

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

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

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

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

194 (b) information concerning the judge's compliance with minimum performance  
195 standards established in accordance with Section 78A-12-205;

196 (c) courtroom observation;

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

198 (e) public comment solicited by the commission;

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

202 (g) any other factor that the commission:

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

205 (ii) establishes by rule.

206 (3) The commission shall make rules concerning the conduct of courtroom observation  
207 under Subsection (2), which shall include the following:

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

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

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

212 (4) (a) As part of the evaluation conducted under this section, the commission shall  
213 determine whether to recommend that the voters retain the judge.

214 (b) (i) If a judge meets the minimum performance standards established in accordance  
215 with Section 78A-12-205, there is a rebuttable presumption that the commission will  
216 recommend the voters retain the judge.

217 (ii) If a judge fails to meet the minimum performance standards established in  
218 accordance with Section 78A-12-205, there is a rebuttable presumption that the commission  
219 will recommend the voters not retain the judge.

220 (c) The commission may elect to make no recommendation on whether the voters  
221 should retain a judge if the commission determines that the information concerning the judge is  
222 insufficient to make a recommendation.

223 (d) (i) If the commission deviates from a presumption for or against recommending the  
224 voters retain a judge or elects to make no recommendation on whether the voters should retain  
225 a judge, the commission shall provide a detailed explanation of the reason for that deviation or  
226 election in the commission's report under Section 78A-12-206.

227 (ii) If the commission makes no recommendation because of a tie vote, the commission  
228 shall note that fact in the commission's report.

229 (5) (a) The commission shall allow a judge who is the subject of a judicial performance  
230 retention evaluation and who has not passed one or more of the minimum performance  
231 standards on the midterm evaluation or on the retention evaluation to appear and speak at any  
232 commission meeting, except a closed meeting, during which the judge's judicial performance  
233 evaluation is considered.

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

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

238 (d) Any record of an individual commissioner's vote on whether or not to recommend  
239 that the voters retain a judge is a protected record under Title 63G, Chapter 2, Government  
240 Records Access and Management Act.

241 (e) (i) A member of the commission, including a member of the Utah State Bar, may  
242 not be disqualified from voting on whether to recommend that the voters retain a judge solely  
243 because the member appears before the judge as an attorney, a fact witness, or an expert, so  
244 long as the member is not a litigant in a case pending before the judge.



245 (ii) Notwithstanding Subsection (5)(e)(i), a member of the commission shall disclose  
246 any conflicts of interest with the judge being reviewed to the other members of the commission  
247 before the deliberation and vote of whether to recommend that a judge be retained or not be  
248 retained.

249 (iii) Information disclosed under this Subsection (5)(e) is a protected record under Title  
250 63G, Chapter 2, Government Records Access and Management Act.

251 ~~[(e)]~~ (f) The commission may only disclose the final commission vote on whether or  
252 not to recommend that the voters retain a judge.

253 (6) (a) The commission shall compile a midterm report of its judicial performance  
254 evaluation of a judge.

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

257 (c) The report shall be provided to the evaluated judge ~~[and]~~, the presiding judge of the  
258 district in which the evaluated judge serves, and the Judicial Council. If the evaluated judge is  
259 the presiding judge, the midterm report shall be provided to the chair of the board of judges for  
260 the court level on which the evaluated judge serves.

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

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

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

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

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

272 (a) fails to meet minimum performance standards in accordance with Section  
273 78A-12-205 or as established by rule; or

274 (b) otherwise demonstrates to the commission that the judge's performance would be of  
275 such concern if the performance occurred in a retention evaluation that the judge would be

276 invited to appear before the commission in accordance with Subsection (5)(b).

277 ~~[(7)]~~ (8) The commission may make rules in accordance with Title 63G, Chapter 3,  
278 Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by  
279 this section.

280 Section 4. Section **78A-12-204** is amended to read:

281 **78A-12-204. Judicial performance survey.**

282 (1) The judicial performance survey required by Section **78A-12-203** concerning a  
283 judge who is subject to a retention election shall be conducted on an ongoing basis during the  
284 judge's term in office by a third party under contract to the commission.

285 (2) (a) Notwithstanding any contrary provision, if a judge is receiving only a partial  
286 evaluation for the judge's first retention report that includes information from the first two  
287 years after a judge is appointed, any information gathered during a judicial performance survey  
288 conducted pursuant to this section may be considered as part of a judicial performance  
289 evaluation under Section **78A-12-203** if the judge chooses that the information be considered.

290 (b) If a judge chooses to not have the first two years after the judge is appointed  
291 included in a judicial performance survey published as part of a judicial performance  
292 evaluation for the first unopposed election for the judge, the retention report shall state that the  
293 judge chose to not have the information included. However, notwithstanding Section  
294 **20A-12-201**, if the judge chooses to not have the information included in the retention report  
295 for the first unopposed retention election, the judge shall be on the ballot for an unopposed  
296 retention election:

297 (i) on the next general election held after the first general election the judge is  
298 considered for an unopposed retention election; and

299 (ii) after the election described in Subsection (2)(b)(i), on the regular general election  
300 ballot for an unopposed retention election:

301 (A) every sixth year after the first unopposed retention election; or

302 (B) for a Supreme Court justice, every tenth year after the first unopposed retention  
303 election.

304 ~~[(2)]~~ (3) (a) The judicial performance survey shall include as respondents a sample of  
305 each of the following groups as applicable:

306 ~~[(a)]~~ (i) attorneys who have appeared before the judge as counsel;

307           ~~[(b)]~~ (ii) jurors who have served in a case before the judge; and

308           ~~[(c)]~~ (iii) court staff who have worked with the judge.

309           (b) Only a respondent under Subsection (3)(a)(i) who is admitted to practice law in the  
310 state and in good standing with the Utah State Bar may evaluate a judge's legal ability under  
311 Subsection (8)(a).

312           ~~[(3)]~~ (4) The commission may include an additional classification of respondents if the  
313 commission:

314           (a) considers a survey of that classification of respondents helpful to voters in  
315 determining whether to vote to retain a judge; and

316           (b) establishes the additional classification of respondents by rule.

317           ~~[(4)]~~ (5) All survey responses are anonymous, including comments included with a  
318 survey response.

319           ~~[(5)]~~ (6) If the commission provides any information to a judge or the Judicial Council,  
320 the information shall be provided in such a way as to protect the confidentiality of a survey  
321 respondent.

322           ~~[(6)]~~ (7) A survey shall be provided to a potential survey respondent within 30 days of  
323 the day on which the case in which the person appears in the judge's court is closed, exclusive  
324 of any appeal, except for court staff and attorneys, who may be surveyed at any time during the  
325 survey period.

326           ~~[(7)]~~ (8) Survey categories shall include questions concerning a judge's:

327           (a) legal ability, including the following:

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

330           (ii) attentiveness to factual and legal issues before the court;

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

332           (iv) grasp of the practical impact on the parties of the judge's rulings, including the  
333 effect of delay and increased litigation expense;

334           (v) ability to write clear judicial opinions; and

335           (vi) ability to clearly explain the legal basis for judicial opinions;

336           (b) judicial temperament and integrity, including the following:

337           (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's

338 court;

339 (ii) maintenance of decorum in the courtroom;

340 (iii) demonstration of judicial demeanor and personal attributes that promote public

341 trust and confidence in the judicial system;

342 (iv) preparedness for oral argument;

343 (v) avoidance of impropriety or the appearance of impropriety;

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

345 (vii) ability to clearly communicate, including the ability to explain the basis for

346 written rulings, court procedures, and decisions; and

347 (c) administrative performance, including the following:

348 (i) management of workload;

349 (ii) sharing proportionally the workload within the court or district; and

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

351 ~~[(8)]~~ (9) If the commission determines that a certain survey question or category of

352 questions is not appropriate for a respondent group, the commission may omit that question or

353 category of questions from the survey provided to that respondent group.

354 ~~[(9)]~~ (10) (a) The survey shall allow respondents to indicate responses in a manner

355 determined by the commission, which shall be:

356 (i) on a numerical scale from one to five, with one representing inadequate

357 performance and five representing outstanding performance; or

358 (ii) in the affirmative or negative, with an option to indicate the respondent's inability

359 to respond in the affirmative or negative.

360 (b) (i) To supplement the responses to questions on either a numerical scale or in the

361 affirmative or negative, the commission may allow respondents to provide written comments.

362 (ii) The executive director may not provide the commission a comment that would be

363 prohibited in relation to taking an employment action under federal or state law.

364 ~~[(10)]~~ (11) The commission shall compile and make available to each judge that

365 judge's survey results with each of the judge's judicial performance evaluations.

366 ~~[(11)]~~ (12) The commission may make rules in accordance with Title 63G, Chapter 3,

367 Utah Administrative Rulemaking Act, as necessary to administer the judicial performance

368 survey.

369 Section 5. Section **78A-12-205** is amended to read:

370 **78A-12-205. Minimum performance standards.**

371 (1) The commission shall establish minimum performance standards requiring that:

372 (a) the judge have no more than one public reprimand issued by the Judicial Conduct

373 Commission or the Utah Supreme Court during the judge's current term; and

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

375 (i) an average score of no less than 65% on each survey category as provided in

376 Subsection [78A-12-204](#)~~(7)~~(8); and

377 (ii) if the commission includes a question on the survey that does not use the numerical

378 scale, the commission shall establish the minimum performance standard for all questions that

379 do not use the numerical scale to be substantially equivalent to the standard required under

380 Subsection (1)(b)(i).

381 (2) The commission may establish an additional minimum performance standard if the  
382 commission by at least two-thirds vote:

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

385 (b) adopts the standard.

386 (3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
387 Administrative Rulemaking Act, to establish a minimum performance standard.

388 Section 6. Section **78A-12-206** is amended to read:

389 **78A-12-206. Publication of the judicial performance evaluation -- Response by**  
390 **judge.**

391 (1) (a) The commission shall compile a retention report of its judicial performance  
392 evaluation of a judge.

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

396 (c) A report prepared in accordance with Subsection (1)(b) and information obtained in  
397 connection with the evaluation becomes a public record under Title 63G, Chapter 2,  
398 Government Records Access and Management Act, on the day following the last day on which  
399 the judge who is the subject of the report may file a declaration of the judge's candidacy in the

400 judge's scheduled retention election if the judge declares the judge's candidacy for the retention  
401 election.

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

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

407 (a) a judge who is the subject of an unfavorable retention recommendation under this  
408 section may:

409 (i) provide a written response to the commission about the report; and

410 (ii) request an interview with the commission for the purpose of addressing the report;  
411 and

412 (b) a judge who is the subject of a favorable retention recommendation under this  
413 section may provide a written response to the commission about the commission's report.

414 (3) (a) After receiving a response from a judge in any form allowed by Subsection (2),  
415 the commission may meet and reconsider its decision to recommend the judge not be retained.

416 (b) If the commission does not change its decision to recommend the judge not be  
417 retained, the judge may provide a written statement, not to exceed 100 words, that shall be  
418 included in the commission's report.

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

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

421 (b) information concerning the judge's compliance with the minimum performance  
422 standards, including stating how many of the minimum performance standards the judge met;

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

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

427 (e) the commission's recommendation concerning whether the judge should be  
428 retained, or the statement required of the commission if it declines to make a recommendation;

429 (f) the number of votes for and against the commission's recommendation; [~~and~~]

430 (g) subject to Subsection (11), a dissenting report, if desired by one or more members

431 of the commission, not to exceed 100 words, if the vote is not unanimous; and

432 ~~[(g)]~~ (h) any other information the commission considers [appropriate] necessary to  
 433 include in the report to explain the performance standards and the recommendation made.

434 (5) (a) The commission may not include in its retention report specific information  
 435 concerning an earlier judicial performance evaluation.

436 (b) The commission may refer to information from an earlier judicial performance  
 437 evaluation concerning the judge in the commission's report only if ~~[the reference is in general~~  
 438 ~~terms]~~ necessary to explain performance in the current reporting period and giving primary  
 439 emphasis to the information gathered during the current reporting period.

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

442 (7) ~~[The]~~ In addition to publishing the report on the commission's Internet website, the  
 443 commission may also make the report of the judicial performance evaluation immediately  
 444 preceding the judge's retention election publicly available through [other means within  
 445 budgetary constraints] the regular process conducted by the lieutenant governor for the  
 446 dissemination of voter information referred to in Subsection (8).

447 (8) The commission shall provide a summary of the judicial performance evaluation,  
 448 including a dissenting report if one is submitted under Subsection (4)(g), for each judge to the  
 449 lieutenant governor for publication in the voter information pamphlet in the manner required by  
 450 Title 20A, Chapter 7, Issues Submitted to the Voters.

451 ~~[(9) The commission may also provide any information collected during the course of a~~  
 452 ~~judge's judicial performance evaluation immediately preceding the judge's retention election to~~  
 453 ~~the public to the extent that information is not otherwise subject to restrictions on disclosure.]~~

454 ~~[(10)]~~ (9) The commission shall provide the Judicial Council with:

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

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

457 ~~[(11)]~~ (10) The Judicial Council shall provide information obtained concerning a judge  
 458 under Subsection ~~[(10)]~~ (9) to the subject judge's presiding judge, if any.

459 (11) The author of a dissenting report shall be confidential and is not on record subject  
 460 to Title 63G, Chapter 2, Government Records Access and Management Act.

461 Section 7. Section **78A-12-208** is enacted to read:

462            **78A-12-208. Self-improvement plan.**

463            (1) The Judicial Council shall develop and implement a self-improvement plan, subject  
464 to budget constraints, for a judge whose midterm evaluation is identified by the commission in  
465 accordance with Subsection 78A-12-203(7).

466            (2) A self-improvement plan shall be confidential and disclosed only to the judge, the  
467 presiding judge, and the Judicial Council.

468            (3) A judge may decline to receive any service provided as part of the judge's  
469 self-improvement plan under this section.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**