

1 **JUDICIAL PERFORMANCE EVALUATION COMMISSION**

2 **MODIFICATIONS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Mike K. McKell

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; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **63G-2-305**, as last amended by Laws of Utah 2015, Chapters 147, 283, and 411

26 **78A-12-201**, as enacted by Laws of Utah 2008, Chapter 248

27 **78A-12-203**, as last amended by Laws of Utah 2013, Chapter 209

28 **78A-12-204**, as last amended by Laws of Utah 2011, Chapter 80

29 [78A-12-206](#), as last amended by Laws of Utah 2011, Chapter 80



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

32 Section 1. Section **63G-2-305** is amended to read:

33 **63G-2-305. Protected records.**

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

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

37 (2) commercial information or nonindividual financial information obtained from a
38 person if:

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

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

44 (c) the person submitting the information has provided the governmental entity with
45 the information specified in Section [63G-2-309](#);

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

50 (4) records, the disclosure of which could cause commercial injury to, or confer a
51 competitive advantage upon a potential or actual competitor of, a commercial project entity as
52 defined in Subsection [11-13-103\(4\)](#);

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

55 (6) records, the disclosure of which would impair governmental procurement

56 proceedings or give an unfair advantage to any person proposing to enter into a contract or
57 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
58 Subsection (6) does not restrict the right of a person to have access to, after the contract or
59 grant has been awarded and signed by all parties, a bid, proposal, application, or other
60 information submitted to or by a governmental entity in response to:

- 61 (a) an invitation for bids;
- 62 (b) a request for proposals;
- 63 (c) a request for quotes;
- 64 (d) a grant; or
- 65 (e) other similar document;

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

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

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

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

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

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

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

82 (c) in the case of records that would identify property, potential sellers of the described

83 property have already learned of the governmental entity's plans to acquire the property;

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

87 (e) the property under consideration for public acquisition is a single family residence
88 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
89 the property as required under Section 78B-6-505;

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

94 (a) the public interest in access is greater than or equal to the interests in restricting
95 access, including the governmental entity's interest in maximizing the financial benefit of the
96 transaction; or

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

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

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

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

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

109 (d) reasonably could be expected to disclose the identity of a source who is not

110 generally known outside of government and, in the case of a record compiled in the course of
111 an investigation, disclose information furnished by a source not generally known outside of
112 government if disclosure would compromise the source; or

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

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

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

121 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
122 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
123 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

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

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

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

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

135 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
136 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,

137 quasi-judicial, or administrative proceeding;

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

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

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

144 (A) members of a legislative body;

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

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

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

149 (20) (a) records in the custody or control of the Office of Legislative Research and
150 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
151 legislation or contemplated course of action before the legislator has elected to support the
152 legislation or course of action, or made the legislation or course of action public; and

153 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
154 Office of Legislative Research and General Counsel is a public document unless a legislator
155 asks that the records requesting the legislation be maintained as protected records until such
156 time as the legislator elects to make the legislation or course of action public;

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

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

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

162 (a) collective bargaining; or

163 (b) imminent or pending litigation;

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

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

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

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

175 (28) records of an institution within the state system of higher education defined in
176 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
177 retention decisions, and promotions, which could be properly discussed in a meeting closed in
178 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
179 the final decisions about tenure, appointments, retention, promotions, or those students
180 admitted, may not be classified as protected under this section;

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

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

188 (31) records provided by the United States or by a government entity outside the state
189 that are given to the governmental entity with a requirement that they be managed as protected
190 records if the providing entity certifies that the record would not be subject to public disclosure

191 if retained by it;

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

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

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

200 (35) records that would reveal negotiations regarding assistance or incentives offered
201 by or requested from a governmental entity for the purpose of encouraging a person to expand
202 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
203 person or place the governmental entity at a competitive disadvantage, but this section may not
204 be used to restrict access to a record evidencing a final contract;

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

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

212 (a) the donor requests anonymity in writing;

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

215 (c) except for an institution within the state system of higher education defined in
216 Section [53B-1-102](#), the governmental unit to which the donation is made is primarily engaged
217 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority

218 over the donor, a member of the donor's immediate family, or any entity owned or controlled
219 by the donor or the donor's immediate family;

220 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
221 73-18-13;

222 (39) a notification of workers' compensation insurance coverage described in Section
223 34A-2-205;

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

227 (i) unpublished lecture notes;

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

229 (A) relating to research; and

230 (B) of:

231 (I) the institution within the state system of higher education defined in Section
232 53B-1-102; or

233 (II) a sponsor of sponsored research;

234 (iii) unpublished manuscripts;

235 (iv) creative works in process;

236 (v) scholarly correspondence; and

237 (vi) confidential information contained in research proposals;

238 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
239 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

240 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

241 (41) (a) records in the custody or control of the Office of Legislative Auditor General
242 that would reveal the name of a particular legislator who requests a legislative audit prior to the
243 date that audit is completed and made public; and

244 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

245 Office of the Legislative Auditor General is a public document unless the legislator asks that
246 the records in the custody or control of the Office of Legislative Auditor General that would
247 reveal the name of a particular legislator who requests a legislative audit be maintained as
248 protected records until the audit is completed and made public;

249 (42) records that provide detail as to the location of an explosive, including a map or
250 other document that indicates the location of:

251 (a) a production facility; or

252 (b) a magazine;

253 (43) information:

254 (a) contained in the statewide database of the Division of Aging and Adult Services
255 created by Section [62A-3-311.1](#); or

256 (b) received or maintained in relation to the Identity Theft Reporting Information
257 System (IRIS) established under Section [67-5-22](#);

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

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

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

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

267 (48) except to the extent that the record is exempt from this chapter pursuant to Section
268 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
269 prepared or maintained by the Division of Emergency Management, and the disclosure of
270 which would jeopardize:

271 (a) the safety of the general public; or

272 (b) the security of:
273 (i) governmental property;
274 (ii) governmental programs; or
275 (iii) the property of a private person who provides the Division of Emergency
276 Management information;
277 (49) records of the Department of Agriculture and Food that provides for the
278 identification, tracing, or control of livestock diseases, including any program established under
279 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control
280 of Animal Disease;
281 (50) as provided in Section 26-39-501:
282 (a) information or records held by the Department of Health related to a complaint
283 regarding a child care program or residential child care which the department is unable to
284 substantiate; and
285 (b) information or records related to a complaint received by the Department of Health
286 from an anonymous complainant regarding a child care program or residential child care;
287 (51) unless otherwise classified as public under Section 63G-2-301 and except as
288 provided under Section 41-1a-116, an individual's home address, home telephone number, or
289 personal mobile phone number, if:
290 (a) the individual is required to provide the information in order to comply with a law,
291 ordinance, rule, or order of a government entity; and
292 (b) the subject of the record has a reasonable expectation that this information will be
293 kept confidential due to:
294 (i) the nature of the law, ordinance, rule, or order; and
295 (ii) the individual complying with the law, ordinance, rule, or order;
296 (52) the name, home address, work addresses, and telephone numbers of an individual
297 that is engaged in, or that provides goods or services for, medical or scientific research that is:
298 (a) conducted within the state system of higher education, as defined in Section

299 [53B-1-102](#); and
300 (b) conducted using animals;
301 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
302 Private Proposal Program, to the extent not made public by rules made under that chapter;
303 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
304 Evaluation Commission concerning an individual commissioner's vote on whether or not to
305 recommend that the voters retain a judge including information disclosed under Subsection
306 [78A-12-203\(5\)\(e\)](#);
307 (55) information collected and a report prepared by the Judicial Performance
308 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
309 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
310 the information or report;
311 (56) records contained in the Management Information System created in Section
312 [62A-4a-1003](#);
313 (57) records provided or received by the Public Lands Policy Coordinating Office in
314 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);
315 (58) information requested by and provided to the 911 Division under Section
316 [63H-7a-302](#);
317 (59) in accordance with Section [73-10-33](#):
318 (a) a management plan for a water conveyance facility in the possession of the Division
319 of Water Resources or the Board of Water Resources; or
320 (b) an outline of an emergency response plan in possession of the state or a county or
321 municipality;
322 (60) the following records in the custody or control of the Office of Inspector General
323 of Medicaid Services, created in Section [63A-13-201](#):
324 (a) records that would disclose information relating to allegations of personal
325 misconduct, gross mismanagement, or illegal activity of a person if the information or

326 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
327 through other documents or evidence, and the records relating to the allegation are not relied
328 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
329 report or final audit report;

330 (b) records and audit workpapers to the extent they would disclose the identity of a
331 person who, during the course of an investigation or audit, communicated the existence of any
332 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
333 regulation adopted under the laws of this state, a political subdivision of the state, or any
334 recognized entity of the United States, if the information was disclosed on the condition that
335 the identity of the person be protected;

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

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

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

343 (61) records that reveal methods used by the Office of Inspector General of Medicaid
344 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
345 abuse;

346 (62) information provided to the Department of Health or the Division of Occupational
347 and Professional Licensing under Subsection 58-68-304(3) or (4);

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

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

351 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
352 victim, including:

- 353 (a) a victim's application or request for benefits;
- 354 (b) a victim's receipt or denial of benefits; and
- 355 (c) any administrative notes or records made or created for the purpose of, or used to,
- 356 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
- 357 Reparations Fund.

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

359 **78A-12-201. Judicial Performance Evaluation Commission -- Creation --**
360 **Membership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

387 (b) The action of a majority of the quorum constitutes the action of the commission,
388 except that a decision of the commission to recommend that a judge be retained or not be
389 retained may not be made except by a vote of at least six members. If because of absences the
390 commission is unable to have at least six votes recommending that a judge be retained or not
391 retained, the commission may meet a second time to consider whether to recommend that the
392 judge be retained or not retained.

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

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

397 **78A-12-203. Judicial performance evaluations.**

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

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

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

404 (2) Except as provided in Subsection (3), the performance evaluation for a judge under
405 Subsection (1) shall consider only the following information but shall give primary emphasis to
406 the information that is gathered and relates to the performance of the judge during the period

407 subsequent to the last judicial retention election of that judge or if the judge has not had a
408 judicial retention election, during the period applicable to the first judicial retention election:

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

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

413 (c) courtroom observation;

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

415 (e) public comment solicited by the commission;

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

419 (g) any other factor that the commission:

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

422 (ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

460 (e) (i) A member of the commission, including a member of the Utah State Bar, may

461 not be disqualified from voting on whether to recommend that the voters retain a judge solely
462 because the member appears before the judge as an attorney, a fact witness, or an expert, so
463 long as the member is not a litigant in a case pending before the judge.

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

468 (iii) Information disclosed under this Subsection (5)(e) is a protected record under Title
469 63G, Chapter 2, Government Records Access and Management Act.

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

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

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

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

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

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

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

487 (iv) On or before the beginning of the retention evaluation cycle, the commission shall

488 inform the Judicial Council of the name of any judge who receives a partial midterm
489 evaluation.

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

491 (a) fails to meet minimum performance standards in accordance with Section
492 78A-12-205 or as established by rule; or

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

496 ~~[(7)]~~ (8) The commission may make rules in accordance with Title 63G, Chapter 3,
497 Utah Administrative Rulemaking Act, as necessary to administer the evaluation required by
498 this section.

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

500 **78A-12-204. Judicial performance survey.**

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

504 (2) (a) The judicial performance survey shall include as respondents a sample of each
505 of the following groups as applicable:

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

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

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

509 (b) Only a respondent under Subsection (2)(a)(i) who is admitted to practice law in the
510 state and in good standing with the Utah State Bar may evaluate a judge's legal ability under
511 Subsection (7)(a).

512 (3) The commission may include an additional classification of respondents if the
513 commission:

514 (a) considers a survey of that classification of respondents helpful to voters in

515 determining whether to vote to retain a judge; and

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

517 (4) All survey responses are anonymous, including comments included with a survey
518 response.

519 (5) If the commission provides any information to a judge or the Judicial Council, the
520 information shall be provided in such a way as to protect the confidentiality of a survey
521 respondent.

522 (6) A survey shall be provided to a potential survey respondent within 30 days of the
523 day on which the case in which the person appears in the judge's court is closed, exclusive of
524 any appeal, except for court staff and attorneys, who may be surveyed at any time during the
525 survey period.

526 (7) Survey categories shall include questions concerning a judge's:

527 (a) legal ability, including the following:

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

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

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

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

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

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

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

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

539 (ii) maintenance of decorum in the courtroom;

540 (iii) demonstration of judicial demeanor and personal attributes that promote public
541 trust and confidence in the judicial system;

- 542 (iv) preparedness for oral argument;
- 543 (v) avoidance of impropriety or the appearance of impropriety;
- 544 (vi) display of fairness and impartiality toward all parties; and
- 545 (vii) ability to clearly communicate, including the ability to explain the basis for
- 546 written rulings, court procedures, and decisions; and
- 547 (c) administrative performance, including the following:
- 548 (i) management of workload;
- 549 (ii) sharing proportionally the workload within the court or district; and
- 550 (iii) issuance of opinions and orders without unnecessary delay.
- 551 (8) If the commission determines that a certain survey question or category of
- 552 questions is not appropriate for a respondent group, the commission may omit that question or
- 553 category of questions from the survey provided to that respondent group.
- 554 (9) (a) The survey shall allow respondents to indicate responses in a manner
- 555 determined by the commission, which shall be:
- 556 (i) on a numerical scale from one to five, with one representing inadequate
- 557 performance and five representing outstanding performance; or
- 558 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
- 559 to respond in the affirmative or negative.
- 560 (b) (i) To supplement the responses to questions on either a numerical scale or in the
- 561 affirmative or negative, the commission may allow respondents to provide written comments.
- 562 (ii) The executive director may not provide the commission a comment that would be
- 563 prohibited in relation to taking an employment action under federal or state law.
- 564 (10) The commission shall compile and make available to each judge that judge's
- 565 survey results with each of the judge's judicial performance evaluations.
- 566 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah
- 567 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.
- 568 Section 5. Section **78A-12-206** is amended to read:

569 **78A-12-206. Publication of the judicial performance evaluation -- Response by**
570 **judge.**

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

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

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

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

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

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

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

590 (ii) request an interview with the commission for the purpose of addressing the report;

591 and

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

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

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

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

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

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

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

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

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

609 (f) the number of votes for and against the commission's recommendation; and

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

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

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

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

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

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

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

629 ~~[(10)]~~ (9) The commission shall provide the Judicial Council with:

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

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

632 ~~[(11)]~~ (10) The Judicial Council shall provide information obtained concerning a judge
633 under Subsection ~~[(10)]~~ (9) to the subject judge's presiding judge, if any.