

**JUDICIAL PERFORMANCE EVALUATION AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes to the statute governing the Judicial Performance Evaluation Commission.

**Highlighted Provisions:**

This bill:

- removes a provision requiring the Judicial Performance Evaluation Commission to allow a judge who is the subject of a judicial performance evaluation to appear and speak at commission meetings before the judge's judicial performance is considered;

- excludes juror responses from being included in the minimum performance standards; and

- makes technical corrections.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:

**78A-12-203**, as last amended by Laws of Utah 2011, Chapter 80

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



28           **78A-12-205 (Effective 01/01/13)**, as last amended by Laws of Utah 2011, Chapter 80



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

31           Section 1. Section **78A-12-203** is amended to read:

32           **78A-12-203. Judicial performance evaluations.**

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

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

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

39           (2) Except as provided in Subsection (3), the performance evaluation for a judge under  
40 Subsection (1) shall consider only:

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

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

45           (c) courtroom observation;

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

47           (e) public comment solicited by the commission;

48           (f) information from an earlier judicial performance evaluation concerning the judge;

49 and

50           (g) any other factor that the commission:

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

53           (ii) establishes by rule.

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

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

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

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

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

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

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

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

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

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

77 ~~[(5) (a) Before considering the judicial performance evaluation of any judge, the  
78 commission shall notify the judge of the date and time of any commission meeting during  
79 which the judge's judicial performance evaluation will be considered.]~~

80 ~~[(b) The commission shall allow a judge who is the subject of a judicial performance  
81 evaluation to appear and speak at any commission meeting, except a closed meeting, during  
82 which the judge's judicial performance evaluation is considered.]~~

83 ~~[(e)]~~ (5) (a) The commission may meet in a closed meeting to discuss a judge's judicial  
84 performance evaluation by complying with Title 52, Chapter 4, Open and Public Meetings Act.

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

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

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

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

94 (c) The report shall be provided to the evaluated judge and the presiding judge of the  
95 district in which the evaluated judge serves. If the evaluated judge is the presiding judge, the  
96 midterm report shall be provided to the chair of the board of judges for the court level on which  
97 the evaluated judge serves.

98 (7) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
99 Administrative Rulemaking Act, as necessary to administer the evaluation required by this  
100 section.

101 Section 2. Section **78A-12-204** is amended to read:

102 **78A-12-204. Judicial performance survey.**

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

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

108 (a) attorneys who have appeared before the judge as counsel;

109 (b) jurors who have served in a case before the judge; and

110 (c) court staff who have worked with the judge.

111 (3) The commission may include an additional classification of respondents if the  
112 commission:

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

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

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

118 (5) If the commission provides any information to a judge or the Judicial Council, the  
119 information shall be provided in such a way as to protect the [confidentiality] anonymity of a  
120 survey respondent.

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

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

126 (a) legal ability, including the following:

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

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

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

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

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

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

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

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

138 (ii) maintenance of decorum in the courtroom;

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

141 (iv) preparedness for oral argument;

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

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

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

146 (c) administrative performance, including the following:

147 (i) management of workload;

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

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

150 (8) If the commission determines that a certain survey question or category of  
151 questions is not appropriate for a respondent group, the commission may omit that question or

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

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

155 (i) on a numerical scale from one to five, with one representing inadequate  
156 performance and five representing outstanding performance; or

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

159 (b) To supplement the responses to questions on either a numerical scale or in the  
160 affirmative or negative, the commission may allow respondents to provide written comments.

161 (10) The commission shall compile and make available to each judge that judge's  
162 survey results with each of the judge's judicial performance evaluations.

163 (11) The commission may make rules in accordance with Title 63G, Chapter 3, Utah  
164 Administrative Rulemaking Act, as necessary to administer the judicial performance survey.

165 Section 3. Section **78A-12-205 (Effective 01/01/13)** is amended to read:

166 **78A-12-205 (Effective 01/01/13). Minimum performance standards.**

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

168 (a) the judge have no more than one public reprimand issued by the Judicial Conduct  
169 Commission or the Utah Supreme Court during the judge's current term; and

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

171 (i) an average score of no less than 65%, excluding juror responses, on each survey  
172 category as provided in Subsection 78A-12-204(7); and

173 (ii) if the commission includes a question on the survey that does not use the numerical  
174 scale, the commission shall establish the minimum performance standard for all questions that  
175 do not use the numerical scale to be substantially equivalent to the standard required under  
176 Subsection (1)(b)(i).

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

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

181 (b) adopts the standard.

182 (3) The commission may make rules in accordance with Title 63G, Chapter 3, Utah

183 Administrative Rulemaking Act, to establish a minimum performance standard.

184 Section 4. **Effective date.**

185 (1) Except as provided in Subsection (2), this bill takes effect on May 8, 2012.

186 (2) The amendments to Section 78A-12-205 (Effective 01/01/13) take effect on

187 January 1, 2013.

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**Legislative Review Note**

as of 1-27-12 6:10 AM

**Office of Legislative Research and General Counsel**