

Senator Kirk A. Cullimore proposes the following substitute bill:

JUDICIARY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kirk A. Cullimore

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ provides a repeal date for Title 78A, Chapter 10, Judicial Selection Act;
- ▶ defines terms related to judicial nominating commissions;
- ▶ addresses the selection, appointment, and confirmation of judges to the appellate, district, and juvenile courts of this state;
- ▶ addresses partisan political consideration in regard to the selection, appointment, and confirmation of judges;
- ▶ clarifies the transition process in regard to the creation of new judicial nominating commissions;
- ▶ allows the State Criminal and Juvenile Justice Commission to make rules for judicial nominating commissions;
- ▶ clarifies the process and timeline for the selection, appointment, and confirmation of judges to the appellate, district, and juvenile courts of this state;
- ▶ addresses the procedures, meetings, and certification process for judicial nominating commissions;



- 26 ▶ addresses the process for the appointment of a judge by the governor;
- 27 ▶ amends provisions regarding the Senate confirmation process;
- 28 ▶ creates the Appellate Court Nominating Commission;
- 29 ▶ provides the purpose and membership of the Appellate Court Nominating
- 30 Commission;
- 31 ▶ addresses the appointment, vacancy, or removal of commissioners on the Appellate
- 32 Court Nominating Commission;
- 33 ▶ addresses procedures and expenses for the Appellate Court Nominating
- 34 Commission;
- 35 ▶ creates a district and juvenile court nominating commission for each geographical
- 36 division of the district and juvenile courts;
- 37 ▶ provides the purpose and membership of a district and juvenile court nominating
- 38 commission;
- 39 ▶ addresses the appointment, vacancy, or removal of commissioners on a district and
- 40 juvenile court nominating commission;
- 41 ▶ addresses procedures and expenses for a district and juvenile court nominating
- 42 commission; and
- 43 ▶ makes technical and conforming changes.

44 **Money Appropriated in this Bill:**

45 None

46 **Other Special Clauses:**

47 This bill provides a coordination clause.

48 **Utah Code Sections Affected:**

49 AMENDS:

50 **53B-1-501**, as enacted by Laws of Utah 2020, Chapter 365 and last amended by

51 Coordination Clause, Laws of Utah 2020, Chapter 365

52 **63I-2-278**, as last amended by Laws of Utah 2022, Chapter 470

53 **67-1-1.5**, as last amended by Laws of Utah 2021, Chapter 394

54 **67-1-2**, as last amended by Laws of Utah 2020, Chapters 352, 373 and last amended by

55 Coordination Clause, Laws of Utah 2020, Chapters 352, 365 and 373

56 **78A-10-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

57 **78A-10-104**, as last amended by Laws of Utah 2010, Chapter 134 and last amended by
58 Coordination Clause, Laws of Utah 2010, Chapter 134

59 ENACTS:

60 **78A-10a-101**, Utah Code Annotated 1953

61 **78A-10a-102**, Utah Code Annotated 1953

62 **78A-10a-103**, Utah Code Annotated 1953

63 **78A-10a-201**, Utah Code Annotated 1953

64 **78A-10a-202**, Utah Code Annotated 1953

65 **78A-10a-203**, Utah Code Annotated 1953

66 **78A-10a-204**, Utah Code Annotated 1953

67 **78A-10a-301**, Utah Code Annotated 1953

68 **78A-10a-302**, Utah Code Annotated 1953

69 **78A-10a-303**, Utah Code Annotated 1953

70 **78A-10a-304**, Utah Code Annotated 1953

71 **78A-10a-305**, Utah Code Annotated 1953

72 **78A-10a-401**, Utah Code Annotated 1953

73 **78A-10a-402**, Utah Code Annotated 1953

74 **78A-10a-403**, Utah Code Annotated 1953

75 **78A-10a-404**, Utah Code Annotated 1953

76 **78A-10a-405**, Utah Code Annotated 1953

77 **Utah Code Sections Affected by Coordination Clause**

78 **31A-5-414**, as enacted by Laws of Utah 1985, Chapter 242

79 **31A-5-415**, as last amended by Laws of Utah 2000, Chapter 300

80 **31A-16-111**, as last amended by Laws of Utah 2000, Chapter 114

81 **78A-10-101.5**, Utah Code Annotated 1953

82 **78A-10-401**, Utah Code Annotated 1953

83 **78A-10-402**, Utah Code Annotated 1953

84 **78A-10-403**, Utah Code Annotated 1953

85 **78A-10-404**, Utah Code Annotated 1953

86 **78A-10-405**, Utah Code Annotated 1953

87 **78A-10a-101**, Utah Code Annotated 1953

- 88 [78A-10a-203](#), Utah Code Annotated 1953
- 89 [78A-10a-501](#), Utah Code Annotated 1953
- 90 [78A-10a-502](#), Utah Code Annotated 1953
- 91 [78A-10a-503](#), Utah Code Annotated 1953
- 92 [78A-10a-504](#), Utah Code Annotated 1953
- 93 [78A-10a-505](#), Utah Code Annotated 1953

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

96 Section 1. Section [53B-1-501](#) is amended to read:

97 **53B-1-501. Establishment of initial board membership.**

98 (1) (a) The governor shall appoint, with the advice and consent of the Senate,
99 individuals to the board, to ensure that beginning July 1, 2020, the board consists of 18
100 members, including:

101 (i) at least six individuals who were members of the State Board of Regents on May
102 12, 2020;

103 (ii) at least six individuals who were members of the Utah System of Technical
104 Colleges Board of Trustees on May 12, 2020; and

105 (iii) two student members appointed to the board in accordance with Section
106 [53B-1-404](#).

107 (b) Before making an appointment described in Subsection (1)(a), the governor shall
108 consult:

109 (i) for an appointment described in Subsection (1)(a)(i), with State Board of Regents
110 leadership; and

111 (ii) for an appointment described in Subsection (1)(a)(ii), with Utah System of
112 Technical Colleges Board of Trustees leadership.

113 (2) (a) Except for an appointment described in Subsection (1)(a)(iii), the governor shall
114 appoint an individual to a two-year, four-year, or six-year term to ensure that one-third of the
115 members complete the members' terms on June 30 of each even number year.

116 (b) The governor may appoint an individual described in Subsection (1)(a) to a second
117 term without the individual being considered by the nominating committee described in
118 Section [53B-1-406](#) if, at the time of the individual's initial appointment to the board, the

119 individual:

120 (i) is serving the individual's first full term on the State Board of Regents or the Utah
121 System of Technical Colleges Board of Trustees; or

122 (ii) is not a member of the State Board of Regents or the Utah System of Technical
123 Colleges Board of Trustees.

124 (c) An appointment described in Subsection (2)(b) is for a six-year term.

125 (3) Following the appointments described in this section, a vacancy on the board shall
126 be filled in accordance with Section 53B-1-404.

127 (4) Notwithstanding Section 67-1-2, for an appointment described in this section:

128 (a) a majority of the president of the Senate, the Senate majority leader, and the Senate
129 minority leader may waive the 30-day requirement described in Subsection [~~67-1-2(1)~~]
130 67-1-2(2); and

131 (b) the Senate is not required to hold a confirmation hearing.

132 Section 2. Section 63I-2-278 is amended to read:

133 **63I-2-278. Repeal dates: Title 78A and Title 78B.**

134 (1) Title 78A, Chapter 10, Judicial Selection Act, is repealed on July 1, 2023.

135 (2) If Title 78B, Chapter 6, Part 22, Cause of Action to Protect Minors from Unfiltered
136 Devices, is not in effect before January 1, 2031, Title 78B, Chapter 6, Part 22, Cause of Action
137 to Protect Minors from Unfiltered Devices, is repealed January 1, 2031.

138 [~~2~~] (3) Sections 78B-12-301 and 78B-12-302 are repealed on January 1, 2025.

139 Section 3. Section 67-1-1.5 is amended to read:

140 **67-1-1.5. Gubernatorial appointment powers.**

141 (1) As used in this section:

142 (a) "Board member" means each gubernatorial appointee to any state board, committee,
143 commission, council, or authority.

144 (b) "Executive branch management position" includes department executive directors,
145 division directors, and any other administrative position in state government where the person
146 filling the position:

147 (i) works full-time performing managerial and administrative functions;

148 (ii) is appointed by the governor with the advice and consent of the Senate.

149 (c) (i) "Executive branch policy position" means any person other than a person filling

150 an executive branch management position, who is appointed by the governor with the advice
151 and consent of the Senate.

152 (ii) "Executive branch policy position" includes each member of any state board and
153 commission appointed by the governor with the advice and consent of the Senate.

154 (2) (a) Whenever a vacancy occurs in any executive branch policy position or in any
155 executive branch management position, the governor shall submit the name of a nominee to the
156 Senate for advice and consent no later than three months after the day on which the vacancy
157 occurs.

158 (b) If the Senate fails to consent to that person within 90 days after the day on which
159 the governor submits the nominee's name to the Senate for consent:

160 (i) the nomination is considered rejected; and

161 (ii) the governor shall resubmit the name of the nominee described in Subsection (2)(a)
162 or submit the name of a different nominee to the Senate for consent no later than 60 days after
163 the date on which the nomination was rejected by the Senate.

164 (3) Whenever a vacancy occurs in any executive branch management position, the
165 governor may either:

166 (a) appoint an interim manager who meets the qualifications of the vacant position to
167 exercise the powers and duties of the vacant position for three months, pending consent of a
168 person to permanently fill that position by the Senate; or

169 (b) appoint an interim manager who does not meet the qualifications of the vacant
170 position and submit that person's name to the Senate for consent as interim manager within one
171 month of the appointment.

172 (4) Except for an interim manager appointed to a position described in Subsection
173 ~~[67-1-2(3)(b)(i) through (vii)]~~ 67-1-2(2)(a), if the Senate fails to consent to the interim manager
174 appointed under Subsection (3)(b) within 30 days after the day on which the governor submits
175 the nominee's name to the Senate for consent:

176 (a) the nomination is considered rejected; and

177 (b) the governor may:

178 (i) (A) reappoint the interim manager to whom the Senate failed to consent within 30
179 days; and

180 (B) resubmit the name of the person described in Subsection (4)(b)(i)(A) to the Senate

181 for consent as interim manager; or

182 (ii) appoint a different interim manager under Subsection (3).

183 (5) For an interim manager appointed to a position described in Subsection

184 [~~67-1-2(3)(b)(i) through (vii)~~] 67-1-2(2)(a), if the Senate fails to consent to the interim manager
185 appointed under Subsection (3)(b) within 60 days after the day on which the governor submits
186 the nominee's name to the Senate for consent:

187 (a) the nomination is considered rejected; and

188 (b) the governor may:

189 (i) (A) reappoint the interim manager to whom the Senate failed to consent; and

190 (B) resubmit the name of the person described in Subsection (5)(b)(i)(A) to the Senate

191 for consent as interim manager; or

192 (ii) appoint a different interim manager under Subsection (3).

193 (6) If, after an interim manager has served three months, no one has been appointed
194 and received Senate consent to permanently fill the position, the governor shall:

195 (a) appoint a new interim manager who meets the qualifications of the vacant position
196 to exercise the powers and duties of the vacant position for three months; or

197 (b) submit the name of the first interim manager to the Senate for consent as an interim
198 manager for a three-month term.

199 (7) If the Senate fails to consent to a nominee whose name is submitted under
200 Subsection (6)(b) within 30 days after the day on which the governor submits the name to the
201 Senate:

202 (a) the nomination is considered rejected; and

203 (b) the governor shall:

204 (i) (A) reappoint the person described in Subsection (6)(b); and

205 (B) resubmit the name of the person described in Subsection (6)(b) to the Senate for
206 consent as interim manager; or

207 (ii) appoint a different interim manager in the manner required by Subsection (3).

208 (8) The governor may not make a temporary appointment to fill a vacant executive
209 branch policy position.

210 (9) (a) Before appointing any person to serve as a board member, the governor shall
211 ask the person whether the person wishes to receive per diem, expenses, or both for serving as

212 a board member.

213 (b) If the person declines to receive per diem, expenses, or both, the governor shall
214 notify the agency administering the board, commission, committee, council, or authority and
215 direct the agency to implement the board member's request.

216 (10) A gubernatorial nomination upon which the Senate has not acted to give consent
217 or refuse to give consent is void when a vacancy in the office of governor occurs.

218 Section 4. Section **67-1-2** is amended to read:

219 **67-1-2. Senate confirmation of gubernatorial nominees -- Verification of**
220 **nomination requirements -- Consultation on appointments -- Notification of anticipated**
221 **vacancies.**

222 [~~(1) Until October 1, 2020, unless waived by a majority of the president of the Senate,~~
223 ~~the Senate majority leader, and the Senate minority leader, 15 days before any Senate session to~~
224 ~~confirm any gubernatorial nominee, except a judicial appointment, the governor shall send to~~
225 ~~each member of the Senate and to the Office of Legislative Research and General Counsel:]~~

226 [~~(a) a list of each nominee for an office or position made by the governor in accordance~~
227 ~~with the Utah Constitution and state law; and]~~

228 [~~(b) any information that may support or provide biographical information about the~~
229 ~~nominee, including resumes and curriculum vitae.]~~

230 [~~(2)~~] (1) (a) Except as provided in Subsection (3), [~~beginning October 1, 2020,~~] at least
231 30 days before the day of an extraordinary session of the Senate to confirm a gubernatorial
232 nominee, the governor shall send to each member of the Senate and to the Office of Legislative
233 Research and General Counsel the following information for each nominee:

234 [~~(a)~~] (i) the nominee's name and biographical information, including a resume and
235 curriculum vitae with personal contact information, including home address, email address, and
236 telephone number, redacted, except that the governor shall send to the Office of Legislative
237 Research and General Counsel the contact information for the nominee;

238 [~~(b)~~] (ii) a detailed list, with citations, of the legal requirements for the appointed
239 position;

240 [~~(c)~~] (iii) a detailed list with supporting documents explaining how, and verifying that,
241 the nominee meets each statutory and constitutional requirement for the appointed position;

242 [~~(d)~~] (iv) a written certification by the governor that the nominee satisfies all

243 requirements for the appointment; and

244 ~~[(e)]~~ (v) public comment information collected in accordance with Section

245 63G-24-204.

246 (b) This Subsection (1) does not apply to a judicial appointee.

247 ~~[(3)(a) Subsection (2) does not apply to a judicial nominee.]~~

248 ~~[(b) Beginning October 1, 2020, a]~~

249 (2) (a) A majority of the president of the Senate, the Senate majority leader, and the
250 Senate minority leader may waive the 30-day requirement described in Subsection ~~[(2)]~~ (1) for

251 a gubernatorial nominee other than a nominee for the following:

252 (i) the executive director of a department;

253 (ii) the executive director of the Governor's Office of Economic Opportunity;

254 (iii) the executive director of the Labor Commission;

255 (iv) a member of the State Tax Commission;

256 (v) a member of the State Board of Education;

257 (vi) a member of the Utah Board of Higher Education; or

258 (vii) an individual:

259 (A) whose appointment requires the advice and consent of the Senate; and

260 (B) whom the governor designates as a member of the governor's cabinet.

261 ~~[(4) Beginning October 1, 2020, the]~~

262 (b) The Senate shall hold a confirmation hearing for a nominee for an individual

263 described in Subsection ~~[(3)(b)(i) through (vii)]~~ (2)(a).

264 ~~[(5) Beginning on October 1, 2020, the]~~

265 (3) The governor shall:

266 (a) if the governor is aware of an upcoming vacancy in a position that requires Senate
267 confirmation, provide notice of the upcoming vacancy to the president of the Senate, the Senate
268 minority leader, and the Office of Legislative Research and General Counsel at least 30 days
269 before the day on which the vacancy occurs; and

270 (b) establish a process for government entities and other relevant organizations to
271 provide input on gubernatorial appointments.

272 ~~[(6)]~~ (4) When the governor makes a judicial appointment, the governor shall

273 immediately provide to the president of the Senate and the Office of Legislative Research and

274 General Counsel:

275 (a) the name of the judicial appointee; and

276 (b) the judicial appointee's:

277 (i) resume;

278 (ii) complete file of all the application materials the governor received from the

279 ~~[Judicial Nominating Commission]~~ judicial nominating commission; and

280 (iii) any other related documents, including any letters received by the governor about
281 the appointee, unless the letter specifically directs that ~~[it]~~ the letter may not be shared.

282 ~~[(7)]~~ (5) The governor shall inform the president of the Senate and the Office of
283 Legislative Research and General Counsel of the number of letters withheld pursuant to
284 Subsection ~~[(6)(b)(iii)]~~ (4)(b)(iii).

285 ~~[(8)]~~ (6) (a) Letters of inquiry submitted by any judge at the request of any judicial
286 nominating commission ~~[shall be]~~ are classified as private in accordance with Section
287 63G-2-302.

288 (b) All other records received from the governor pursuant to this Subsection ~~[(8)]~~ (6)
289 may be classified as private in accordance with Section 63G-2-302.

290 ~~[(9)]~~ (7) The Senate shall consent or refuse to give ~~[its]~~ the Senate's consent to ~~[the]~~ a
291 nomination or judicial appointment.

292 ~~[(10) A judicial nominating commission shall, at the time the judicial nominating
293 commission certifies a list of the most qualified judicial applicants to the governor under
294 Section 78A-10-104, submit the same list to the president of the Senate, the Senate minority
295 leader, and the Office of Legislative Research and General Counsel.]~~

296 Section 5. Section **78A-10-102** is amended to read:

297 **78A-10-102. Nomination, appointment, and confirmation of judges -- Judicial**
298 **nomination commissions.**

299 ~~[Judges]~~ Before July 1, 2023, judges for courts of record in Utah ~~[shall be]~~ are
300 nominated, appointed, and confirmed ~~[as provided in]~~ in accordance with this chapter, Section
301 67-1-2, and Utah Constitution Article VIII, Section 8~~[, and this chapter]~~.

302 Section 6. Section **78A-10-104** is amended to read:

303 **78A-10-104. Convening of judicial nominating commissions -- Certification to**
304 **governor of nominees -- Meetings to investigate prospective candidates.**

305 (1) Unless a hiring freeze is implemented in accordance with Section 78A-2-113, the
306 governor shall ensure that:

307 (a) the recruitment period to fill a judicial vacancy begins 235 days before the effective
308 date of a vacancy, unless sufficient notice is not given, in which case the recruitment period
309 shall begin within 10 days of receiving notice;

310 (b) the recruitment period is a minimum of 30 days but not more than 90 days, unless
311 fewer than nine applications are received, in which case the recruitment period may be
312 extended up to 30 days; and

313 (c) the chair of the judicial nominating commission having authority over the vacancy
314 shall convene a meeting not more than 10 days after the close of the recruitment period.

315 (2) The time limits in Subsection (1) shall begin to run the day the hiring freeze ends.

316 (3) The nominating commission may:

317 (a) meet as necessary to perform its function; and

318 (b) investigate prospective candidates.

319 (4) Not later than 45 days after convening, the:

320 (a) appellate court nominating commission shall certify to the governor a list of the
321 seven most qualified applicants per vacancy; and

322 (b) trial court nominating commission shall certify to the governor a list of the five
323 most qualified applicants per vacancy.

324 (5) A commission shall, at the time that the commission certifies a list of the most
325 qualified applicants to the governor, submit the same list to the president of the Senate, the
326 Senate minority leader, and the Office of Legislative Research and General Counsel.

327 [~~5~~] (6) The governor shall fill the vacancy within 30 days after receiving the list of
328 nominees.

329 [~~6~~] (7) If the governor fails to fill the vacancy within 30 days of receiving the list of
330 nominees from the nominating commission, the chief justice of the Supreme Court shall,
331 within 20 days, appoint a person from the list of nominees certified to the governor.

332 [~~7~~] (8) A nominating commission may not nominate a person who has served on a
333 nominating commission within six months of the date that the commission was last convened.

334 Section 7. Section 78A-10a-101 is enacted to read:

335 **CHAPTER 10a. JUDICIAL SELECTION**

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Part 1. General Provisions

78A-10a-101. Definitions.

As used in this part:

(1) "Commission" means a judicial nominating commission created under Section 78A-10a-302 or 78A-10a-402.

(2) "Commissioner" means an individual appointed by the governor to serve on a judicial nominating commission created under Section 78A-10a-302 or 78A-10a-402.

Section 8. Section **78A-10a-102** is enacted to read:

78A-10a-102. Nomination, appointment, and confirmation of judges.

(1) On and after July 1, 2023, judges for courts of record in this state are nominated, appointed, and confirmed in accordance with this chapter, Section 67-1-2, and Utah Constitution, Article VIII, Section 8.

(2) A commission, the governor, the chief justice of the Supreme Court, and the Senate shall nominate and select judges based solely upon consideration of fitness for office without regard to any partisan political consideration.

Section 9. Section **78A-10a-103** is enacted to read:

78A-10a-103. Judicial nominating commissions -- Transition clause.

(1) Except as provided in Subsection (2), an individual appointed by the governor to serve on a judicial nominating commission before July 1, 2023, is removed from the judicial nominating commission on June 30, 2023.

(2) On or after May 3, 2023, but before July 1, 2023, the governor may appoint a commissioner to serve on a commission in accordance with this chapter.

(3) A commissioner appointed by the governor under Subsection (2) may not begin the commissioner's term of service until July 1, 2023.

Section 10. Section **78A-10a-201** is enacted to read:

Part 2. Judicial Selection Process

78A-10a-201. State Commission on Criminal and Juvenile Justice -- Duties -- Rulemaking.

The State Commission on Criminal and Juvenile Justice shall:

(1) enact rules establishing procedures for the meetings of a commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

- 367 (2) ensure that the rules described in Subsection (1):
368 (a) comply with the requirements of this chapter;
369 (b) include standards that:
370 (i) maintain the confidentiality of applications for a judicial vacancy and related
371 documents;
372 (ii) address destroying the records of the names of applicants, applications, and related
373 documents upon the completion of the judicial nomination process; and
374 (iii) govern a commissioner's disqualification and inability to serve;
375 (c) allow for public comment concerning the judicial nomination process,
376 qualifications for judicial office, and individual applicants;
377 (d) include evaluation criteria for the selection of judicial nominees; and
378 (e) address procedures for:
379 (i) taking summary minutes at a commission meeting;
380 (ii) simultaneously forwarding the names of nominees to the governor, the president of
381 the Senate, and the Office of Legislative Research and General Counsel as described in
382 Subsection [78A-10a-203\(5\)](#); and
383 (iii) requiring the Administrative Office of the Courts to immediately inform the
384 governor when a judge is removed, resigns, or retires.
385 Section 11. Section **78A-10a-202** is enacted to read:
386 **78A-10a-202. Time periods -- Recruitment period for judicial vacancy --**
387 **Convening a judicial nominating commission.**
388 (1) (a) Unless a hiring freeze is implemented in accordance with Section [78A-2-113](#),
389 the governor shall ensure that:
390 (i) except as provided in Subsection (1)(a)(ii), the recruitment period to fill a judicial
391 vacancy begins 235 days before the effective date of the judicial vacancy;
392 (ii) if sufficient notice of a judicial vacancy is not given to the governor, the
393 recruitment period to fill a judicial vacancy begins within 10 days after the day on which the
394 governor receives notice;
395 (iii) except as provided in Subsection (1)(b), the recruitment period is a minimum of at
396 least 30 days but no more than 90 days; and
397 (iv) the chair of the commission having authority over the vacancy shall convene a

398 meeting not more than 10 days after the close of the recruitment period.

399 (b) If fewer than nine applications are received for a judicial vacancy, the governor
400 may extend the recruitment period described in Subsection (1)(b) up to 30 days.

401 (2) If there is a hiring freeze implemented in accordance with Section [78A-2-113](#), the
402 time periods described in Subsection (1) shall begin to run on the day that the hiring freeze
403 ends.

404 Section 12. Section **78A-10a-203** is enacted to read:

405 **78A-10a-203. Procedures for judicial nomination commission -- Meetings --**

406 **Certification -- Governor appointment.**

407 (1) (a) A commission may:

408 (i) meet as necessary to perform the commission's function; and

409 (ii) investigate the applicants of a judicial vacancy, including seeking input from
410 members and employees of the judiciary and the community.

411 (b) A commission may consult with the Judicial Council regarding the applicants for a
412 judicial vacancy.

413 (c) A commission is exempt from the requirements of Title 52, Chapter 4, Open and
414 Public Meetings Act.

415 (2) In determining which of the applicants are the most qualified, a commission shall
416 determine by a majority vote of the commissioners present which of the applicants best possess
417 the ability, temperament, training, and experience that qualifies an applicant for the office.

418 (3) (a) Except as provided under Subsection (3)(b):

419 (i) the appellate court nominating commission shall certify to the governor a list of the
420 seven most qualified applicants per judicial vacancy; and

421 (ii) a district and juvenile court nominating commission shall certify to the governor a
422 list of the five most qualified applicants per judicial vacancy.

423 (b) If a commission is considering applicants for more than one judicial vacancy
424 existing at the same time and for the same court, the commission shall include one additional
425 applicant for each additional judicial vacancy in the court in the list of applicants the
426 commission certifies to the governor.

427 (4) A commission shall certify a list to the governor under Subsection (3) no more than
428 45 days after convening in accordance with Section [78A-10a-202](#).

429 (5) A commission shall, at the time that the commission certifies a list of the most
430 qualified applicants to the governor, submit the same list to the president of the Senate, the
431 Senate minority leader, and the Office of Legislative Research and General Counsel.

432 (6) A commission shall ensure that the lists of applicants certified to the governor:

433 (a) meet the qualifications required by law to fill the office; and

434 (b) are willing to serve.

435 (7) In determining which of the applicants are the most qualified, a commission may
436 not decline to certify an applicant's name to the governor because:

437 (a) the commission declined to submit that applicant's name to the governor to fill a
438 previous judicial vacancy;

439 (b) a previous commission declined to submit that applicant's name to the governor; or

440 (c) the commission or a previous commission submitted the applicant's name to the
441 governor and the governor selected another individual to fill the judicial vacancy.

442 (8) A commission may not certify:

443 (a) an applicant who is a justice or judge that was not retained by the voters for the
444 office for which the justice or judge was defeated until after the expiration of that justice's or
445 judge's term of office; and

446 (b) an applicant who has served on a commission within six months after the day on
447 which the commission was last convened.

448 (9) The governor shall fill a judicial vacancy within 30 days after the day on which the
449 governor received the list of nominees from the commission.

450 (10) If the governor fails to fill a judicial vacancy within 30 days after the day on which
451 the governor received the list of nominees from the commission, the chief justice of the
452 Supreme Court shall, within 20 days, appoint an applicant from the list of nominees certified to
453 the governor by the commission.

454 Section 13. Section **78A-10a-204** is enacted to read:

455 **78A-10a-204. Senate confirmation of judicial appointments -- Courts of record.**

456 (1) The Senate shall:

457 (a) consider and render a decision on each judicial appointment within 60 days after the
458 day of the judicial appointment; and

459 (b) if necessary, convene the Senate in an extraordinary session to consider the judicial

460 appointment.

461 (2) If the Senate fails to approve a judicial appointment, the office is considered vacant
462 and a new nominating process begins.

463 (3) A judicial appointment is effective upon approval of a majority of all members of
464 the Senate.

465 Section 14. Section **78A-10a-301** is enacted to read:

466 **Part 3. Appellate Court Nominating Commission**

467 **78A-10a-301. Definitions.**

468 As used in this part:

469 (1) "Commission" means the Appellate Court Nominating Commission created under
470 Section [78A-10a-302](#).

471 (2) "Commissioner" means an individual appointed by the governor to serve on the
472 Appellate Court Nominating Commission created under Section [78A-10a-302](#).

473 Section 15. Section **78A-10a-302** is enacted to read:

474 **78A-10a-302. Creation -- Purpose.**

475 (1) There is created the Appellate Court Nominating Commission.

476 (2) The Appellate Court Nominating Commission shall nominate individuals to fill
477 judicial vacancies on the Supreme Court and the Court of Appeals.

478 Section 16. Section **78A-10a-303** is enacted to read:

479 **78A-10a-303. Membership -- Vacancies -- Removal.**

480 (1) The Appellate Court Nominating Commission shall consist of seven
481 commissioners, each appointed by the governor to serve a four-year term.

482 (2) A commissioner shall:

483 (a) be a United States citizen;

484 (b) be a resident of Utah; and

485 (c) serve until the commissioner's successor is appointed.

486 (3) The governor may not appoint:

487 (a) a commissioner to serve successive terms; or

488 (b) a member of the Legislature to serve as a commissioner.

489 (4) In determining whether to appoint an individual to serve as a commissioner, the
490 governor shall consider whether the individual's appointment would ensure that the

491 commission selects applicants without any regard to partisan political consideration.

492 (5) The governor shall appoint the chair of the commission from among the
493 membership of the commission.

494 (6) The governor shall fill any vacancy on the commission caused by the expiration of
495 a commissioner's term.

496 (7) (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the
497 governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

498 (b) A replacement commissioner appointed under Subsection (6)(a) may not be
499 reappointed upon expiration of the term of service.

500 (8) The governor may remove a commissioner from the commission at any time with
501 or without cause.

502 Section 17. Section **78A-10a-304** is enacted to read:

503 **78A-10a-304. Procedure -- Staff.**

504 (1) Four commissioners are a quorum.

505 (2) The governor shall appoint a member of the governor's staff to serve as staff to the
506 commission.

507 (3) The governor shall:

508 (a) ensure that the commission follows the rules promulgated by the State Commission
509 on Criminal and Juvenile Justice under Section [78A-10a-201](#); and

510 (b) resolve any questions regarding the rules described in Subsection (3)(a).

511 (4) A commissioner who is a licensed attorney may recuse oneself if there is a conflict
512 of interest that makes the commissioner unable to serve.

513 Section 18. Section **78A-10a-305** is enacted to read:

514 **78A-10a-305. Expenses -- Per diem and travel.**

515 A commissioner may not receive compensation or benefits for the commissioner's
516 service but may receive per diem and travel expenses in accordance with:

517 (1) Section [63A-3-106](#);

518 (2) Section [63A-3-107](#); and

519 (3) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
520 [63A-3-107](#).

521 Section 19. Section **78A-10a-401** is enacted to read:

522 **Part 4. District and Juvenile Court Nominating Commissions**

523 **78A-10a-401. Definitions.**

524 As used in this part:

525 (1) "Commission" means a district and juvenile court nominating commission created
526 under Section [78A-10a-402](#).

527 (2) "Commissioner" means an individual appointed by the governor to serve on a
528 district and juvenile court nominating commission created under Section [78A-10a-402](#).

529 Section 20. Section **78A-10a-402** is enacted to read:

530 **78A-10a-402. Creation -- Purpose.**

531 (1) There is a district and juvenile court nominating commission created for each geographical
532 division of the district and juvenile courts.

533 (2) A district and juvenile court nominating commission shall nominate individuals to
534 fill judicial vacancies for the district court and the juvenile court within the commission's
535 geographical division.

536 Section 21. Section **78A-10a-403** is enacted to read:

537 **78A-10a-403. Membership -- Vacancies -- Removal.**

538 (1) A district and juvenile court nominating commission shall consist of seven
539 commissioners, each appointed by the governor to serve a four-year term.

540 (2) A commissioner shall:

541 (a) be a United States citizen;

542 (b) be a resident of Utah; and

543 (c) serve until the commissioner's successor is appointed.

544 (3) The governor may not appoint:

545 (a) a commissioner to successive terms; and

546 (b) a member of the Legislature to serve as a commissioner.

547 (4) In determining whether to appoint an individual to serve as a commissioner, the
548 governor shall consider whether the individual's appointment would ensure that the
549 commission selects applicants without any regard to partisan political consideration.

550 (5) The governor shall appoint the chair of each commission from among the
551 membership of the commission.

552 (6) The governor shall fill any vacancy on the commission caused by the expiration of
553 a commissioner's term.

554 (7) (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the
555 governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

556 (b) A replacement commissioner appointed under Subsection (6)(a) may not be
557 reappointed upon expiration of the term of service.

558 (8) The governor may remove a commissioner from the commission at any time with
559 or without cause.

560 Section 22. Section **78A-10a-404** is enacted to read:

561 **78A-10a-404. Procedure -- Staff.**

562 (1) Four commissioners are a quorum.

563 (2) The governor shall appoint a member of the governor's staff to serve as staff for
564 each commission.

565 (3) The governor shall:

566 (a) ensure that each commission follows the rules promulgated by the State
567 Commission on Criminal and Juvenile Justice under Section [78A-10a-201](#); and

568 (b) resolve any questions regarding the rules.

569 (4) A commissioner who is a licensed attorney may recuse oneself if there is a conflict
570 of interest that makes the commissioner unable to serve.

571 Section 23. Section **78A-10a-405** is enacted to read:

572 **78A-10a-405. Expenses -- Per diem and travel.**

573 A commissioner may not receive compensation or benefits for the commissioner's
574 service but may receive per diem and travel expenses in accordance with:

575 (1) Section [63A-3-106](#);

576 (2) Section [63A-3-107](#); and

577 (3) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
578 [63A-3-107](#).

579 Section 24. **Coordinating S.B. 129 with H.B. 216 -- Superseding technical and**
580 **substantive amendments.**

581 If this S.B. 129 and H.B. 216, Business and Chancery Court Amendments, both pass
582 and become law, the Legislature intends that, on July 1, 2024, the Office of Legislative

583 Research and General Counsel prepare the Utah Code database for publication as follows:

584 (1) not enacting Section 78A-10-101.5 in H.B. 216, Business and Chancery Court

585 Amendments;

586 (2) amending Section 78A-10a-101 in this S.B. 129 to read:

587 "As used in this part:

588 (1) "Commission" means a judicial nominating commission created under Section

589 78A-10a-302, 78A-10a-402, or 78A-10a-502.

590 (2) "Commissioner" means an individual appointed by the governor to serve on a

591 judicial nominating commission created under Section 78A-10a-302, 78A-10a-402, or

592 78A-10a-502.";

593 (3) amending Subsection 78A-10a-203(3)(a) in this S.B. 129 to read:

594 "(3) (a) Except as provided under Subsection (3)(b):

595 (i) the appellate court nominating commission shall certify to the governor a list of the
596 seven most qualified applicants per judicial vacancy;

597 (ii) a district and juvenile court nominating commission shall certify to the governor a
598 list of the five most qualified applicants per judicial vacancy; and

599 (iii) the business and chancery court nominating commission shall certify to the
600 governor a list of the seven most qualified applicants per judicial vacancy.";

601 (4) renumbering Section 78A-10-401 in H.B. 216 to Section 78A-10a-501 and
602 amending Subsection 78A-10a-501(1) to read:

603 ""Commission" means the Business and Chancery Court Nominating Commission
604 created in Section 78A-10a-502.";

605 (5) renumbering Section 78A-10-402 in H.B. 216 to Section 78A-10a-502;

606 (6) renumbering Section 78A-10-403 in H.B. 216 to Section 78A-10a-503 and
607 amending Section 78A-10a-503 to read:

608 "(1) The Business and Chancery Court Nominating Commission shall consist of seven
609 commissioners, each appointed by the governor to serve a four-year term.

610 (2) A commissioner shall:

611 (a) be a United States citizen;

612 (b) be a resident of Utah; and

613 (c) serve until the commissioner's successor is appointed.

614 (3) The governor may not appoint:

615 (a) a commissioner to serve successive terms; or

616 (b) a member of the Legislature to serve as a member of the commission.

617 (4) In determining whether to appoint an individual to serve as a commissioner, the

618 governor shall consider whether the individual's appointment would ensure that the

619 commission selects applicants without any regard to partisan political consideration.

620 (5) The governor shall appoint the chair of the commission from among the

621 membership of the commission.

622 (6) The governor shall fill any vacancy in the commission caused by the expiration of a

623 commissioner's term.

624 (7) (a) If a commissioner is disqualified, removed, or is otherwise unable to serve, the

625 governor shall appoint a replacement commissioner to fill the vacancy for the unexpired term.

626 (b) A replacement commissioner appointed under Subsection (6)(a) may not be

627 reappointed upon expiration of the term of service.

628 (8) The governor may remove a commissioner from the commission at any time with

629 or without cause.";

630 (7) renumbering Section 78A-10-404 in H.B. 216 to Section 78A-10a-504 and

631 amending:

632 (a) the reference in Section 78A-10a-504 from "Section [78A-10-103](#)" to "Section

633 [78A-10a-201](#)"; and

634 (b) Subsection 78A-10a-504(4) to read:

635 "A commissioner who is a licensed attorney may recuse oneself if there is a conflict of

636 interest that makes the commissioner unable to serve."; and

637 (8) renumbering Section 78A-10-405 in H.B. 216 to Section 78A-10a-505.

638 **Section 25. Coordinating S.B. 129 with H.B. 216 -- Superseding technical and**

639 **substantive amendments.**

640 If this S.B. 129 and H.B. 251, Court Amendments, both pass and become law, the

641 Legislature intends that, on July 1, 2024, when the Office of Legislative Research and General

642 Counsel prepares the Utah Code database for publication, the Office of Legislative Research

643 and General Counsel not implement the coordination clause affecting Sections 31A-5-414,

644 31A-5-415, and 31A-16-111 in H.B. 251.