

1 **ADMINISTRATIVE LAW JUDGE APPOINTMENT**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to administrative law judges.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ provides that the Division of Administrative Rules shall employ certain
- 14 administrative law judges;
- 15 ▶ establishes a hiring and review procedure for certain administrative law judges;
- 16 ▶ addresses the creation of an internal service fund to pay the administrative law
- 17 judges employed by the Division of Administrative Rules;
- 18 ▶ moves certain responsibilities relating to administrative law judges from the
- 19 Department of Human Resource Management to the Department of Administrative
- 20 Services, including establishing a standard of conduct, conducting performance
- 21 surveys, conducting performance evaluations, and processing complaints; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 This bill appropriates in fiscal year 2016:

- 25 ▶ to the Department of Human Resource Management:
 - 26 • from the General Fund, (\$75,200).
 - 27 • from the General Fund, One-time, \$37,600.



- 28 ▶ to the Department of Administrative Services -- Administrative Rules:
- 29 • from the General Fund, \$75,200.
- 30 • from the General Fund, One-time, (\$37,600).

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35 **31A-2-404**, as last amended by Laws of Utah 2013, Chapters 43 and 319
- 36 **35A-3-302**, as last amended by Laws of Utah 2013, Chapter 112
- 37 **53-2a-209**, as renumbered and amended by Laws of Utah 2013, Chapter 295
- 38 **53C-1-201**, as last amended by Laws of Utah 2014, Chapter 426
- 39 **63G-3-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 40 **63G-3-401**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 41 **63G-3-402**, as last amended by Laws of Utah 2010, Chapter 341
- 42 **63J-1-602.4**, as last amended by Laws of Utah 2014, Chapters 37, 186, and 189

43 ENACTS:

- 44 **63A-15-101**, Utah Code Annotated 1953
- 45 **63A-15-102**, Utah Code Annotated 1953
- 46 **63A-15-201**, Utah Code Annotated 1953
- 47 **63A-15-202**, Utah Code Annotated 1953
- 48 **63A-15-203**, Utah Code Annotated 1953
- 49 **63A-15-301**, Utah Code Annotated 1953

50 RENUMBERS AND AMENDS:

- 51 **63A-15-103**, (Renumbered from 67-19e-104, as enacted by Laws of Utah 2013,
- 52 Chapter 165)
- 53 **63A-15-302**, (Renumbered from 67-19e-103, as enacted by Laws of Utah 2013,
- 54 Chapter 165)
- 55 **63A-15-303**, (Renumbered from 67-19e-105, as enacted by Laws of Utah 2013,
- 56 Chapter 165)
- 57 **63A-15-304**, (Renumbered from 67-19e-106, as enacted by Laws of Utah 2013,
- 58 Chapter 165)

59 **63A-15-305**, (Renumbered from 67-19e-107, as enacted by Laws of Utah 2013,
60 Chapter 165)

61 **63A-15-306**, (Renumbered from 67-19e-108, as enacted by Laws of Utah 2013,
62 Chapter 165)

63 **63A-15-307**, (Renumbered from 67-19e-109, as enacted by Laws of Utah 2013,
64 Chapter 165)

65 REPEALS:

66 **67-19e-101**, as enacted by Laws of Utah 2013, Chapter 165

67 **67-19e-102**, as enacted by Laws of Utah 2013, Chapter 165



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

70 Section 1. Section **31A-2-404** is amended to read:

71 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

72 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
73 part, the commissioner shall administer and enforce the provisions in this title related to:

74 (a) title insurance; and

75 (b) escrow conducted by a title licensee or title insurer.

76 (2) The commission shall:

77 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
78 subject to Subsection (4), make rules for the administration of the provisions in this title related
79 to title insurance including rules related to:

80 (i) rating standards and rating methods for a title licensee, as provided in Section
81 **31A-19a-209**;

82 (ii) the licensing for a title licensee, including the licensing requirements of Section
83 **31A-23a-204**;

84 (iii) continuing education requirements of Section **31A-23a-202**; and

85 (iv) standards of conduct for a title licensee;

86 (b) concur in the issuance and renewal of a license in accordance with Section
87 **31A-23a-105** or **31A-26-203**;

88 (c) in accordance with Section **31A-3-103**, establish, with the concurrence of the
89 commissioner, the fees imposed by this title on a title licensee;

- 90 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
91 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;
- 92 (e) conduct an administrative hearing not delegated by the commission to an
93 administrative law judge related to the:
- 94 (i) licensing of an applicant;
95 (ii) conduct of a title licensee; or
96 (iii) approval of a continuing education program required by Section 31A-23a-202;
- 97 (f) with the concurrence of the commissioner, approve a continuing education program
98 required by Section 31A-23a-202;
- 99 (g) with the concurrence of the commissioner, impose a penalty:
- 100 (i) under this title related to:
101 (A) title insurance; or
102 (B) escrow conducted by a title licensee;
- 103 (ii) after investigation by the commissioner in accordance with Part 3, Procedures and
104 Enforcement; and
- 105 (iii) that is enforced by the commissioner;
- 106 (h) advise the commissioner on the administration and enforcement of any matter
107 affecting the title insurance industry;
- 108 (i) advise the commissioner on matters affecting the commissioner's budget related to
109 title insurance; and
- 110 (j) perform other duties as provided in this title.
- 111 (3) The commission may make rules establishing an examination for a license that will
112 satisfy Section 31A-23a-204:
- 113 (a) after consultation with the commissioner and the commissioner's test administrator;
114 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
115 (c) subject to Subsection (4).
- 116 (4) The commission may make a rule under this title only if at the time the commission
117 files its proposed rule and rule analysis with the Division of Administrative Rules and
118 Administrative Law Judges in accordance with Section 63G-3-301, the commission provides
119 the Real Estate Commission that same information.
- 120 (5) (a) The commissioner shall annually report the information described in Subsection

- 121 (5)(b) in writing to the commission.
- 122 (b) The information required to be reported under this Subsection (5):
- 123 (i) may not identify a person; and
- 124 (ii) shall include:
- 125 (A) the number of complaints the commissioner receives with regard to transactions
- 126 involving title insurance or a title licensee during the calendar year immediately proceeding the
- 127 report;
- 128 (B) the type of complaints described in Subsection (5)(b)(ii)(A); and
- 129 (C) for each complaint described in Subsection (5)(b)(ii)(A):
- 130 (I) any action taken by the commissioner with regard to the complaint; and
- 131 (II) the time-period beginning the day on which a complaint is made and ending the
- 132 day on which the commissioner determines it will take no further action with regard to the
- 133 complaint.
- 134 (6) The commission may not impose a penalty in a manner inconsistent with
- 135 Subsection (2)(g) or make a rule that conflicts with Subsection (2)(g).
- 136 Section 2. Section **35A-3-302** is amended to read:
- 137 **35A-3-302. Eligibility requirements.**
- 138 (1) The program of cash assistance provided under this part is known as the Family
- 139 Employment Program.
- 140 (2) (a) The division shall submit a state plan to the secretary of the United States
- 141 Department of Health and Human Services to obtain federal funding under the Temporary
- 142 Assistance for Needy Families Block Grant.
- 143 (b) The division shall make the plan consistent with this part and federal law.
- 144 (c) If a discrepancy arises between a provision of the state plan and this part, this part
- 145 supersedes the provision in the state plan.
- 146 (3) The services and supports under this part are for both one-parent and two-parent
- 147 families.
- 148 (4) To be eligible for cash assistance under this part, a family shall:
- 149 (a) have at least one minor dependent child; or
- 150 (b) have a parent who is in the third trimester of a pregnancy.
- 151 (5) The department shall make rules for eligibility and the amount of cash assistance a

152 family is eligible to receive under this part based on:

- 153 (a) family size;
- 154 (b) family income;
- 155 (c) income disregards;
- 156 (d) other relevant factors; and
- 157 (e) if the applicant has met the eligibility requirements under Subsections (5)(a)
- 158 through (d), the assessment and other requirements described in Sections 35A-3-304 and
- 159 35A-3-304.5.

160 (6) The division shall disregard money on deposit in an individual development

161 account established under Section 35A-3-312 in determining eligibility.

162 (7) The department shall provide for an appeal of a determination of eligibility in

163 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

164 (8) (a) The department shall make a report to either the Legislature's Executive

165 Appropriations Committee or the Social Services Appropriations Subcommittee on any

166 proposed rule change made under Subsection (5) that would modify the eligibility requirements

167 or the amount of cash assistance a family would be eligible to receive.

168 (b) The department shall submit the report prior to implementing the proposed rule

169 change and the report shall include:

- 170 (i) a description of the department's current practice or policy that it is proposing to
- 171 change;
- 172 (ii) an explanation of why the department is proposing the change;
- 173 (iii) the effect of an increase or decrease in cash benefits on families; and
- 174 (iv) the fiscal impact of the proposed change.

175 (c) The department may use the Notice of Proposed Rule Amendment form filed with

176 the Division of Administrative Rules and Administrative Law Judges as its report if the notice

177 contains the information required under Subsection (8)(b).

178 (9) The department shall make rules to ensure that:

179 (a) a recipient of assistance from the Family Employment Program:

- 180 (i) has adequate access to the assistance;
- 181 (ii) has the ability to use and withdraw assistance with minimal fees or surcharges,
- 182 including the opportunity to obtain assistance with no fees or surcharges;

183 (iii) is provided information regarding fees and surcharges that may apply to assistance
184 accessed through an electronic fund transaction; and

185 (iv) is provided information explaining the restrictions on accessing assistance
186 described in Subsection (10); and

187 (b) information regarding fees and surcharges that may apply when accessing
188 assistance from the Family Employment Program through an electronic fund transaction is
189 available to the public.

190 (10) An individual receiving assistance under this section may not access the assistance
191 through an electronic benefit transfer, including through an automated teller machine or
192 point-of-sale device, in an establishment in the state that:

193 (a) exclusively or primarily sells intoxicating liquor;

194 (b) allows gambling or gaming; or

195 (c) provides adult-oriented entertainment where performers disrobe or perform
196 unclothed.

197 (11) An establishment in the state may not allow an individual to access the assistance
198 described in this section on the establishment's premises through an electronic benefit transfer,
199 including through an automated teller machine or point-of-sale device, if the establishment:

200 (a) exclusively or primarily sells intoxicating liquor;

201 (b) allows gambling or gaming; or

202 (c) provides adult-oriented entertainment where performers disrobe or perform
203 unclothed.

204 (12) In accordance with federal requirements, the department shall make rules to
205 prevent individuals from accessing assistance in a manner prohibited by Subsections (10) and
206 (11), which rules may include enforcement provisions that impose sanctions that temporarily or
207 permanently disqualify an individual from receiving assistance.

208 (13) When exercising rulemaking authority under this part, the department shall
209 comply with the requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

210 Section 3. Section **53-2a-209** is amended to read:

211 **53-2a-209. Orders, rules, and regulations having force of law -- Filing**
212 **requirements -- Suspension of state agency rules -- Suspension of enforcement of certain**
213 **statutes during a state of emergency.**

214 (1) All orders, rules, and regulations promulgated by the governor, a municipality, a
215 county, or other agency authorized by this part to make orders, rules, and regulations, not in
216 conflict with existing laws except as specifically provided herein, shall have the full force and
217 effect of law during the state of emergency, when a copy of the order, rule, or regulation is filed
218 with:

219 (a) the Division of Administrative Rules and Administrative Law Judges, if issued by
220 the governor or a state agency; or

221 (b) the office of the clerk of the municipality or county, if issued by the chief executive
222 officer of a municipality or county.

223 (2) The governor may suspend the provisions of any order, rule, or regulation of any
224 state agency, if the strict compliance with the provisions of the order, rule, or regulation would
225 substantially prevent, hinder, or delay necessary action in coping with the emergency or
226 disaster.

227 (3) (a) Except as provided in Subsection (3)(b) and subject to Subsections (3)(c) and
228 (d), the governor may by executive order suspend the enforcement of a statute if:

229 (i) the governor declares a state of emergency in accordance with Section 53-2a-206;

230 (ii) the governor determines that suspending the enforcement of the statute is:

231 (A) directly related to the state of emergency described in Subsection (3)(a)(i); and

232 (B) necessary to address the state of emergency described in Subsection (3)(a)(i);

233 (iii) the executive order:

234 (A) describes how the suspension of the enforcement of the statute is:

235 (I) directly related to the state of emergency described in Subsection (3)(a)(i); and

236 (II) necessary to address the state of emergency described in Subsection (3)(a)(i); and

237 (B) provides the citation of the statute that is the subject of suspended enforcement;

238 (iv) the governor acts in good faith;

239 (v) the governor provides written notice of the suspension of the enforcement of the
240 statute to the speaker of the House of Representatives and the president of the Senate no later
241 than 24 hours after suspending the enforcement of the statute; and

242 (vi) the governor makes the report required by Section 53-2a-214.

243 (b) (i) Except as provided in Subsection (3)(b)(ii), the governor may not suspend the
244 enforcement of a criminal penalty created in statute.

245 (ii) The governor may suspend the enforcement of a misdemeanor or infraction if:
246 (A) the misdemeanor or infraction relates to food, health, or transportation; and
247 (B) the requirements of Subsection (3)(a) are met.
248 (c) A suspension described in this Subsection (3) terminates no later than the date the
249 governor terminates the state of emergency in accordance with Section 53-2a-206 to which the
250 suspension relates.

251 (d) The governor:
252 (i) shall provide the notice required by Subsection (3)(a)(v) using the best available
253 method under the circumstances as determined by the governor; and
254 (ii) may provide the notice required by Subsection (3)(a)(v) in electronic format.

255 Section 4. Section 53C-1-201 is amended to read:

256 **53C-1-201. Creation of administration -- Purpose -- Director -- Participation in**
257 **Risk Management Fund.**

258 (1) (a) There is established within state government the School and Institutional Trust
259 Lands Administration.

260 (b) The administration shall manage all school and institutional trust lands and assets
261 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
262 of Revenue from Trust Lands, and Title 53D, Chapter 1, School and Institutional Trust Fund
263 Management Act.

264 (2) The administration is an independent state agency and not a division of any other
265 department.

266 (3) (a) It is subject to the usual legislative and executive department controls except as
267 provided in this Subsection (3).

268 (b) (i) The director may make rules as approved by the board that allow the
269 administration to classify a business proposal submitted to the administration as protected
270 under Section 63G-2-305, for as long as is necessary to evaluate the proposal.

271 (ii) The administration shall return the proposal to the party who submitted the
272 proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access
273 and Management Act, if the administration determines not to proceed with the proposal.

274 (iii) The administration shall classify the proposal pursuant to law if it decides to
275 proceed with the proposal.

276 (iv) Section 63G-2-403 does not apply during the review period.

277 (c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah
278 Administrative Rulemaking Act, except that the administration is not subject to Subsections
279 63G-3-301(6) and (7) and Section 63G-3-601, and the director, with the board's approval, may
280 establish a procedure for the expedited approval of rules, based on written findings by the
281 director showing:

282 (i) the changes in business opportunities affecting the assets of the trust;

283 (ii) the specific business opportunity arising out of those changes which may be lost
284 without the rule or changes to the rule;

285 (iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without
286 causing the loss of the specific opportunity;

287 (iv) approval by at least five board members; and

288 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
289 reasons and justifications for its findings, with the Division of Administrative Rules and
290 Administrative Law Judges and notified interested parties as provided in Subsection
291 63G-3-301(10).

292 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
293 Management Act, except as provided in this Subsection (3)(d).

294 (ii) The board may approve, upon recommendation of the director, that exemption for
295 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
296 the administration to efficiently fulfill its responsibilities under the law. The director shall
297 consult with the executive director of the Department of Human Resource Management prior
298 to making such a recommendation.

299 (iii) The positions of director, deputy director, associate director, assistant director,
300 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
301 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

302 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
303 after consultation with the executive director of the Department of Human Resource
304 Management, within ranges approved by the board. The board and director shall consider
305 salaries for similar positions in private enterprise and other public employment when setting
306 salary ranges.

307 (v) The board may create an annual incentive and bonus plan for the director and other
308 administration employees designated by the board, based upon the attainment of financial
309 performance goals and other measurable criteria defined and budgeted in advance by the board.

310 (e) The administration shall comply with Title 63G, Chapter 6a, Utah Procurement
311 Code, except where the board approves, upon recommendation of the director, exemption from
312 the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3,
313 Utah Administrative Rulemaking Act, for procurement, which enable the administration to
314 efficiently fulfill its responsibilities under the law.

315 (f) (i) Except as provided in Subsection (3)(f)(ii), the administration is not subject to
316 the fee agency requirements of Section 63J-1-504.

317 (ii) The following fees of the administration are subject to the requirements of Section
318 63J-1-504: application, assignment, amendment, affidavit for lost documents, name change,
319 reinstatement, grazing nonuse, extension of time, partial conveyance, patent reissue, collateral
320 assignment, electronic payment, and processing.

321 (4) The administration is managed by a director of school and institutional trust lands
322 appointed by a majority vote of the board of trustees with the consent of the governor.

323 (5) (a) The board of trustees shall provide policies for the management of the
324 administration and for the management of trust lands and assets.

325 (b) The board shall provide policies for the ownership and control of Native American
326 remains that are discovered or excavated on school and institutional trust lands in consultation
327 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
328 Native American Grave Protection and Repatriation Act. The director may make rules in
329 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement
330 policies provided by the board regarding Native American remains.

331 (6) In connection with joint ventures and other transactions involving trust lands and
332 minerals approved under Sections 53C-1-303 and 53C-2-401, the administration, with board
333 approval, may become a member of a limited liability company under Title 48, Chapter 2c,
334 Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform
335 Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405 and is
336 considered a person under Section 48-2c-102 or Section 48-3a-102.

337 (7) Subject to the requirements of Subsection 63E-1-304(2), the administration may

338 participate in coverage under the Risk Management Fund created by Section [63A-4-201](#).

339 Section 5. Section **63A-15-101** is enacted to read:

340 **CHAPTER 15. ADMINISTRATIVE LAW JUDGES**

341 **Part 1. General Provisions**

342 **63A-15-101. Title.**

343 (1) This chapter is known as "Administrative Law Judges."

344 (2) This part is known as "General Provisions."

345 Section 6. Section **63A-15-102** is enacted to read:

346 **63A-15-102. Definitions.**

347 As used in this chapter:

348 (1) (a) "Administrative law judge" means an individual who is employed or contracted
349 by a state agency that:

350 (i) presides over or conducts formal administrative hearings on behalf of an agency;

351 (ii) has the power to administer oaths, rule on the admissibility of evidence, take
352 testimony, evaluate evidence, and make determinations of fact; and

353 (iii) issues written orders, rulings, or final decisions on behalf of an agency.

354 (b) "Administrative law judge" does not include:

355 (i) an individual who reviews an order or ruling of an administrative law judge;

356 (ii) the executive director of a state agency; or

357 (iii) a person employed by or who contracts with:

358 (A) the Board of Pardons and Parole;

359 (B) the Department of Corrections; or

360 (C) the State Tax Commission.

361 (c) "Administrative law judge" includes an employee administrative law judge.

362 (2) "Agency" means the same as that term is defined in Section [63G-4-103](#).

363 (3) "Committee" means the Administrative Law Judge Conduct Committee created in
364 Section [63A-15-306](#).

365 (4) "Department" means the Department of Administrative Services.

366 (5) "Designated agency" means:

367 (a) for an employee administrative law judge, the state agency for which the employee
368 administrative law judge performs services as an administrative law judge; or

369 (b) for an administrative law judge who is not an employee administrative law judge,
370 the state agency that contracts with the administrative law judge.

371 (6) "Director" means the director of the Division of Administrative Rules and
372 Administrative Law Judges.

373 (7) "Division" means the Division of Administrative Rules and Administrative Law
374 Judges.

375 (8) (a) "Employee administrative law judge" means an administrative law judge who is
376 employed by a state agency.

377 (b) "Employee administrative law judge" does not include an administrative law judge
378 employed by the Department of Health.

379 (9) "Executive director" means the executive director of the Department of
380 Administrative Services.

381 (10) "Minimum performance standards" means the performance standards for an
382 administrative law judge established by the department under Section [63A-15-103](#).

383 Section 7. Section **63A-15-103**, which is renumbered from Section 67-19e-104 is
384 renumbered and amended to read:

385 ~~[67-19e-104]~~. **63A-15-103. Rulemaking authority.**

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

388 (1) establishing minimum performance standards for all administrative law judges;

389 (2) providing procedures for filing, addressing, and reviewing complaints against
390 administrative law judges;

391 (3) providing standards for complaints against administrative law judges; and

392 (4) promulgating a code of conduct for all administrative law judges in all state
393 agencies.

394 Section 8. Section **63A-15-201** is enacted to read:

395 **Part 2. Employment and Oversight of Administrative Law Judges**

396 **63A-15-201. Title.**

397 This part is known as "Employment and Oversight of Administrative Law Judges."

398 Section 9. Section **63A-15-202** is enacted to read:

399 **63A-15-202. Employment of administrative law judges -- Hiring procedure.**

400 (1) Beginning January 1, 2016:

401 (a) each employee administrative law judge is an employee of the division; and

402 (b) the director shall supervise each employee administrative law judge.

403 (2) (a) An employee administrative law judge shall perform administrative law judge

404 services for a single designated agency.

405 (b) An employee administrative law judge's designated agency shall provide a

406 workspace and all necessary equipment and support staff to the employee administrative law

407 judge.

408 (3) (a) An employee administrative law judge who is hired on or after January 1, 2016

409 shall be hired in accordance with this Subsection (3).

410 (b) If the division decides to interview an applicant for an employee administrative law

411 judge position, the division shall interview the applicant by means of a hiring panel.

412 (c) The hiring panel described in Subsection (3)(b) shall consist of:

413 (i) the director, or the director's designee;

414 (ii) the director of the position's designated agency, or the director's designee; and

415 (iii) the executive director of the Department of Human Resource Management, or the

416 executive director's designee.

417 (d) (i) After the hiring panel completes the interviews for an employee administrative

418 law judge position, the hiring panel shall recommend an applicant for the position.

419 (ii) The director shall consider the hiring panel's recommendation and decide which

420 applicant to hire for the employee administrative law judge position.

421 Section 10. Section **63A-15-203** is enacted to read:

422 **63A-15-203. Peer review and evaluation.**

423 (1) For each year in which the department conducts a performance survey for an

424 employee administrative law judge, the employee administrative law judge shall meet with a

425 peer review and evaluation panel described in Subsection (2) to review and discuss:

426 (a) the results of that year's performance evaluation;

427 (b) the results of the performance survey; and

428 (c) any other information that the department considers relevant to the employee

429 administrative law judge's performance.

430 (2) A peer review and evaluation panel shall include:

- 431 (a) the executive director, or the executive director's designee;
 432 (b) the executive director of the Department of Human Resource Management, or the
 433 executive director's designee;
 434 (c) the director of the employee administrative law judge's designated agency, or the
 435 director's designee; and
 436 (d) an employee administrative law judge from a different designated agency, selected
 437 by the executive director.

438 Section 11. Section **63A-15-301** is enacted to read:

439 **Part 3. Administrative Law Judge Standards of Conduct and Evaluation**

440 **63A-15-301. Title.**

441 This part is known as "Administrative Law Judge Standards of Conduct and
 442 Evaluation."

443 Section 12. Section **63A-15-302**, which is renumbered from Section 67-19e-103 is
 444 renumbered and amended to read:

445 ~~[67-19e-103].~~ **63A-15-302. Administrative law judges -- Standard of**
 446 **conduct.**

447 (1) ~~[All agency]~~ Each administrative law ~~[judges who conduct formal administrative~~
 448 ~~hearings are]~~ judge is subject to ~~[this chapter:]~~:

449 (a) the provisions of this part; and

450 ~~[(2) All administrative law judges are subject to]~~

451 (b) the code of conduct promulgated by the department in accordance with Section
 452 ~~[67-19e-104]~~ 63A-15-103.

453 ~~[(3)]~~ (2) (a) An administrative law judge who tampers with or destroys evidence
 454 submitted to the administrative law judge is subject to the provisions of Section 76-8-510.5.

455 ~~[This section]~~ (b) Subsection (2)(a) does not apply to documents destroyed in
 456 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

457 Section 13. Section **63A-15-303**, which is renumbered from Section 67-19e-105 is
 458 renumbered and amended to read:

459 ~~[67-19e-105].~~ **63A-15-303. Performance evaluation of administrative law**
 460 **judges.**

461 (1) Beginning January 1, ~~[2014]~~ 2016, the department shall prepare a performance

462 evaluation for each administrative law judge [~~contracted or employed by a state agency~~].

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

464 (a) the results of the administrative law judge's performance evaluations conducted by
465 the [~~employing~~] administrative law judge's designated agency since the administrative law
466 judge's last performance evaluation conducted by the department in accordance with the
467 performance evaluation procedure [~~for the agency~~];

468 (b) information from the [~~employing~~] designated agency concerning the administrative
469 law judge's compliance with the minimum performance standards;

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

471 (d) the results of any performance surveys conducted since the administrative law
472 judge's last performance review conducted by the department; and

473 (e) any other factor that the department considers relevant to evaluating the
474 administrative law judge's performance.

475 (3) If an administrative law judge fails to meet the minimum performance standards the
476 department shall provide a copy of the performance evaluation and survey to:

477 (a) the [~~employing~~] designated agency[~~;~~]; and

478 (b) if the administrative law judge is an employee administrative law judge, the
479 director.

480 (4) The department shall conduct a performance [~~reviews~~] review for each
481 administrative law judge every four years [~~for administrative law judges contracted or~~
482 ~~employed by an agency~~].

483 Section 14. Section **63A-15-304**, which is renumbered from Section 67-19e-106 is
484 renumbered and amended to read:

485 [~~67-19e-106~~]. **63A-15-304. Performance surveys.**

486 [(1) ~~For administrative law judges contracted or employed before July 1, 2013,~~
487 ~~performance surveys shall be conducted initially at either the two-, three-, or four-year mark~~
488 ~~beginning January 1, 2014.~~]

489 (1) (a) The department shall continue the four-year performance survey schedule for
490 each administrative law judge the Department of Human Resource Management started on
491 January 1, 2014.

492 (b) By July 1, 2018, all administrative law judges shall be on a four-year staggered

493 cycle for performance evaluations.

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

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

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

498 (3) The department may include an additional classification of respondents if the
499 department:

500 (a) considers a survey of that classification of respondents helpful to the department;

501 and

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

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

506 (5) If the department provides any information to an administrative law judge or the
507 committee, the information shall be provided in such a way as to protect the confidentiality of a
508 survey respondent.

509 (6) (a) If the department establishes an additional classification, in accordance with
510 Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of
511 the day on which the case in which the person appeared before the administrative law judge is
512 closed, exclusive of any appeal.

513 (b) Staff and attorneys may be surveyed at any time during the survey period.

514 (7) Survey categories may include questions concerning an administrative law judge's:

515 (a) legal ability, including the following:

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

518 (ii) attentiveness to factual and legal issues before the administrative law judge;

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

520 (iv) grasp of the practical impact on the parties of the administrative law judge's

521 rulings, including the effect of delay and increased litigation expense;

522 (v) ability to write clear opinions and decisions; and

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

524 (b) temperament and integrity, including the following:
525 (i) demonstration of courtesy toward attorneys, staff, and others in the administrative
526 law judge's [~~department~~] designated agency;
527 (ii) maintenance of decorum in the courtroom;
528 (iii) demonstration of judicial demeanor and personal attributes that promote public
529 trust and confidence in the administrative law judge system;
530 (iv) preparedness for oral argument;
531 (v) avoidance of impropriety or the appearance of impropriety;
532 (vi) display of fairness and impartiality toward all parties; and
533 (vii) ability to clearly communicate, including the ability to explain the basis for
534 written rulings, court procedures, and decisions; and
535 (c) administrative performance, including the following:
536 (i) management of workload;
537 (ii) sharing proportionally the workload within the department; and
538 (iii) issuance of opinions and orders without unnecessary delay.
539 (8) If the department determines that a certain survey question or category of questions
540 is not appropriate for a respondent group, the department may omit that question or category of
541 questions from the survey provided to that respondent group.
542 (9) (a) The survey shall allow respondents to indicate responses in a manner
543 determined by the department, which shall be:
544 (i) on a numerical scale from one to five; or
545 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
546 to respond in the affirmative or negative.
547 (b) To supplement the responses to questions on either a numerical scale or in the
548 affirmative or negative, the department may allow respondents to provide written comments.
549 (10) The department shall compile and make available to each administrative law
550 judge that administrative law judge's survey results with each of the administrative law judge's
551 performance evaluations.
552 (11) A survey and an administrative law judge's survey results are classified as
553 protected under Title 63G, Chapter 2, Government Records Access and Management Act.
554 Section 15. Section **63A-15-305**, which is renumbered from Section 67-19e-107 is

555 renumbered and amended to read:

556 ~~[67-19e-107].~~ **63A-15-305. Complaints.**

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

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

559 (3) (a) If the department's investigation determines that the complaint is frivolous or
560 without merit, it may dismiss it without further action.

561 (b) A complaint that merely indicates disagreement, without further misconduct, with
562 the administrative law judge's decision shall be treated as without merit.

563 (4) The contents of ~~[all complaints]~~ a complaint and any documents relating to a
564 subsequent [investigations] investigation are classified as protected under Title 63G, Chapter 2,
565 Government Records Access and Management Act.

566 Section 16. Section **63A-15-306**, which is renumbered from Section 67-19e-108 is
567 renumbered and amended to read:

568 ~~[67-19e-108].~~ **63A-15-306. Administrative Law Judge Conduct Committee.**

569 (1) There is created the Administrative Law Judge Conduct Committee to investigate,
570 review, and hear complaints filed against administrative law judges.

571 (2) (a) The committee shall be composed of:

572 ~~[(a)]~~ (i) the executive director ~~[of the department]~~, or the executive director's designee,
573 as chair; and

574 ~~[(b)]~~ (ii) four executive directors, or their designees, of agencies;

575 (A) that employ or contract with administrative law judges~~[-, to be selected by the~~
576 ~~executive director as needed.];~~ or

577 (B) for which one or more employee administrative law judges are designated.

578 (b) The executive director shall select the members described in Subsection (2)(a)(ii)
579 as needed.

580 (3) The ~~[department]~~ division shall provide staff for the committee as needed.

581 Section 17. Section **63A-15-307**, which is renumbered from Section 67-19e-109 is
582 renumbered and amended to read:

583 ~~[67-19e-109].~~ **63A-15-307. Procedure for review of complaint by conduct**
584 **committee.**

585 (1) (a) Upon a determination that a complaint requires further action, the executive

586 director shall select four executive directors or their designees and convene the committee.

587 (b) The executive director of the designated agency [~~that employs or contracts with~~] of
588 the administrative law judge who is the subject of the complaint may not be a member of the
589 committee.

590 (2) (a) The department shall provide a copy of the complaint, along with the results of
591 the department's investigation, to the committee and the administrative law judge who is the
592 subject of the complaint. [~~If the committee directs,~~]

593 (b) Upon direction from the committee, the department shall also send a copy of the
594 complaint and investigation [~~may also be provided~~] to the attorney general.

595 (3) The committee shall allow an administrative law judge who is the subject of a
596 complaint to appear and speak at any committee meeting, except a closed meeting conducted in
597 accordance with Subsection (4), during which the committee is deliberating the complaint.

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

601 (5) (a) After deliberation and discussion of the complaint and all information provided,
602 the committee shall provide a report, with a recommendation, to the [~~agency~~] director.

603 (b) The recommendation described in Subsection (5)(a) shall include:

604 [~~(a)~~] (i) a brief description of the complaint and results of the department's
605 investigation;

606 [~~(b)~~] (ii) the committee's findings; and

607 [~~(c)~~] (iii) a recommendation from the committee whether action should be taken
608 against the administrative law judge.

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

611 (7) The record of an individual committee member's vote on a recommended [~~actions~~]
612 action against an administrative law judge is a protected record under Title 63G, Chapter 2,
613 Government Records Access and Management Act.

614 Section 18. Section **63G-3-102** is amended to read:

615 **63G-3-102. Definitions.**

616 As used in this chapter:

617 (1) "Administrative record" means information an agency relies upon when making a
618 rule under this chapter including:

619 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

620 (b) the public comment received and recorded by the agency during the public
621 comment period;

622 (c) the agency's response to the public comment;

623 (d) the agency's analysis of the public comment; and

624 (e) the agency's report of its decision-making process.

625 (2) "Agency" means each state board, authority, commission, institution, department,
626 division, officer, or other state government entity other than the Legislature, its committees, the
627 political subdivisions of the state, or the courts, which is authorized or required by law to make
628 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
629 perform other similar actions or duties delegated by law.

630 (3) "Bulletin" means the Utah State Bulletin.

631 (4) "Catchline" means a short summary of each section, part, rule, or title of the code
632 that follows the section, part, rule, or title reference placed before the text of the rule and serves
633 the same function as boldface in legislation as described in Section [68-3-13](#).

634 (5) "Code" means the body of all effective rules as compiled and organized by the
635 division and entitled "Utah Administrative Code."

636 (6) "Department" means the Department of Administrative Services.

637 [~~(6)~~] (7) "Director" means the director of the Division of Administrative Rules and
638 Administrative Law Judges.

639 [~~(7)~~] (8) "Division" means the Division of Administrative Rules and Administrative
640 Law Judges.

641 [~~(8)~~] (9) "Effective" means operative and enforceable.

642 [~~(9)~~] (10) (a) "File" means to submit a document to the division as prescribed by the
643 division.

644 (b) "Filing date" means the day and time the document is recorded as received by the
645 division.

646 [~~(10)~~] (11) "Interested person" means any person affected by or interested in a
647 proposed rule, amendment to an existing rule, or a nonsubstantive change made under Section

648 [63G-3-402](#).

649 ~~[(11)]~~ (12) "Order" means an agency action that determines the legal rights, duties,
650 privileges, immunities, or other interests of one or more specific persons, but not a class of
651 persons.

652 ~~[(12)]~~ (13) "Person" means any individual, partnership, corporation, association,
653 governmental entity, or public or private organization of any character other than an agency.

654 ~~[(13)]~~ (14) "Publication" or "publish" means making a rule available to the public by
655 including the rule or a summary of the rule in the bulletin.

656 ~~[(14)]~~ (15) "Publication date" means the inscribed date of the bulletin.

657 ~~[(15)]~~ (16) "Register" may include an electronic database.

658 ~~[(16)]~~ (17) (a) "Rule" means an agency's written statement that:

659 (i) is explicitly or implicitly required by state or federal statute or other applicable law;

660 (ii) implements or interprets a state or federal legal mandate; and

661 (iii) applies to a class of persons or another agency.

662 (b) "Rule" includes the amendment or repeal of an existing rule.

663 (c) "Rule" does not mean:

664 (i) orders;

665 (ii) an agency's written statement that applies only to internal management and that
666 does not restrict the legal rights of a public class of persons or another agency;

667 (iii) the governor's executive orders or proclamations;

668 (iv) opinions issued by the attorney general's office;

669 (v) declaratory rulings issued by the agency according to Section [63G-4-503](#) except as
670 required by Section [63G-3-201](#);

671 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection
672 [63G-3-201](#)(6); or

673 (vii) an agency written statement that is in violation of any state or federal law.

674 ~~[(17)]~~ (18) "Rule analysis" means the format prescribed by the division to summarize
675 and analyze rules.

676 ~~[(18)]~~ (19) "Small business" means a business employing fewer than 50 persons.

677 ~~[(19)]~~ (20) "Substantive change" means a change in a rule that affects the application
678 or results of agency actions.

679 Section 19. Section **63G-3-401** is amended to read:

680 **Part 4. Division of Administrative Rules and Administrative Law Judges**

681 **63G-3-401. Division of Administrative Rules and Administrative Law Judges**

682 **created -- Appointment of director.**

683 (1) There is created within the Department of Administrative Services the Division of
684 Administrative Rules and Administrative Law Judges, to be administered by a director.

685 (2) The director of [~~administrative rules~~] the division shall be appointed by the
686 executive director with the approval of the governor.

687 (3) (a) For purposes of the division's duties under Title 63A, Chapter 15, Part 2,
688 Employment and Oversight of Administrative Law Judges, the department shall operate the
689 division as an internal service fund agency in accordance with Section [63A-1-109.5](#).

690 (b) The division shall submit to the Rate Committee established in Section [63A-1-114](#):

691 (i) the proposed rate and fee schedule as required by Section [63A-1-114](#); and

692 (ii) other information or analysis that the Rate Committee requests.

693 Section 20. Section **63G-3-402** is amended to read:

694 **63G-3-402. Division of Administrative Rules and Administrative Law Judges --**

695 **Duties generally.**

696 (1) The Division of Administrative Rules and Administrative Law Judges shall:

697 (a) establish all filing, publication, and hearing procedures necessary to make rules
698 under this chapter;

699 (b) record in a register the receipt of all agency rules, rule analysis forms, and notices
700 of effective dates;

701 (c) make the register, copies of all proposed rules, and rulemaking documents available
702 for public inspection;

703 (d) publish all proposed rules, rule analyses, notices of effective dates, and review
704 notices in the bulletin at least monthly, except that the division may publish the complete text
705 of any proposed rule that the director determines is too long to print or too expensive to publish
706 by reference to the text maintained by the division;

707 (e) compile, format, number, and index all effective rules in an administrative code,
708 and periodically publish that code and supplements or revisions to it;

709 (f) publish a digest of all rules and notices contained in the most recent bulletin;

- 710 (g) publish at least annually an index of all changes to the administrative code and the
711 effective date of each change;
- 712 (h) print, or contract to print, all rulemaking publications the division determines
713 necessary to implement this chapter;
- 714 (i) distribute without charge the bulletin and administrative code to state-designated
715 repositories, the Administrative Rules Review Committee, the Office of Legislative Research
716 and General Counsel, and the two houses of the Legislature;
- 717 (j) distribute without charge the digest and index to state legislators, agencies, political
718 subdivisions on request, and the Office of Legislative Research and General Counsel;
- 719 (k) distribute, at prices covering publication costs, all paper rulemaking publications to
720 all other requesting persons and agencies;
- 721 (l) provide agencies assistance in rulemaking;
- 722 ~~[(m) if the Department of Administrative Services operates the division as an internal
723 service fund agency in accordance with Section 63A-1-109.5, submit to the Rate Committee
724 established in Section 63A-1-114:]~~
- 725 ~~[(i) the proposed rate and fee schedule as required by Section 63A-1-114; and]
726 [(ii) other information or analysis requested by the Rate Committee; and]~~
- 727 ~~[(n)]~~ (m) administer this chapter and require state agencies to comply with filing,
728 publication, and hearing procedures[-];
- 729 (n) employ designated administrative law judges in accordance with the provisions of
730 Title 63A, Chapter 15, Part 2, Employment and Oversight of Administrative Law Judges; and
- 731 (o) administer the provisions of Title 63A, Chapter 15, Part 3, Administrative Law
732 Judge Standards of Conduct and Evaluation.
- 733 (2) The division may after notifying the agency make nonsubstantive changes to rules
734 filed with the division or published in the bulletin or code by:
- 735 (a) implementing a uniform system of formatting, punctuation, capitalization,
736 organization, numbering, and wording;
- 737 (b) correcting obvious errors and inconsistencies in punctuation, capitalization,
738 numbering, referencing, and wording;
- 739 (c) changing a catchline to more accurately reflect the substance of each section, part,
740 rule, or title;

741 (d) updating or correcting annotations associated with a section, part, rule, or title; and
742 (e) merging or determining priority of any amendment, enactment, or repeal to the
743 same rule or section made effective by an agency.

744 (3) In addition, the division may make the following nonsubstantive changes with the
745 concurrence of the agency:

746 (a) eliminate duplication within rules;
747 (b) eliminate obsolete and redundant words; and
748 (c) correcting defective or inconsistent section and paragraph structure in arrangement
749 of the subject matter of rules.

750 (4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after
751 publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes
752 in the bulletin. For each nonsubstantive change, the list shall include:

753 (a) the affected code citation;
754 (b) a brief description of the change; and
755 (c) the date the change was made.

756 (5) All funds appropriated or collected for publishing the division's publications shall
757 be nonlapsing.

758 Section 21. Section **63J-1-602.4** is amended to read:

759 **63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.**

760 (1) Funds paid to the Division of Real Estate for the cost of a criminal background
761 check for a mortgage loan license, as provided in Section [61-2c-202](#).

762 (2) Funds paid to the Division of Real Estate for the cost of a criminal background
763 check for principal broker, associate broker, and sales agent licenses, as provided in Section
764 [61-2f-204](#).

765 (3) Certain funds donated to the Department of Human Services, as provided in
766 Section [62A-1-111](#).

767 (4) Appropriations from the National Professional Men's Basketball Team Support of
768 Women and Children Issues Restricted Account created in Section [62A-1-202](#).

769 (5) Certain funds donated to the Division of Child and Family Services, as provided in
770 Section [62A-4a-110](#).

771 (6) Appropriations from the Choose Life Adoption Support Restricted Account created

772 in Section 62A-4a-608.

773 (7) Appropriations to the Division of Services for People with Disabilities, as provided
774 in Section 62A-5-102.

775 (8) A portion of the funds appropriated to the Utah Seismic Safety Commission, as
776 provided in Section 63C-6-104.

777 (9) Certain money payable for commission expenses of the Pete Suazo Utah Athletic
778 Commission, as provided under Section 63C-11-301.

779 (10) Funds appropriated or collected for publishing the Division of Administrative
780 [Rules] Rules and Administrative Law Judges' publications, as provided in Section 63G-3-402.

781 (11) The Immigration Act Restricted Account created in Section 63G-12-103.

782 (12) Money received by the military installation development authority, as provided in
783 Section 63H-1-504.

784 (13) Appropriations to fund the Governor's Office of Economic Development's
785 Enterprise Zone Act, as provided in Title 63M, Chapter 1, Part 4, Enterprise Zone Act.

786 (14) The Motion Picture Incentive Account created in Section 63M-1-1803.

787 Section 22. **Repealer.**

788 This bill repeals:

789 Section 67-19e-101, Title.

790 Section 67-19e-102, Definitions -- Application of chapter -- Exceptions.

791 Section 23. **Appropriation.**

792 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
793 the fiscal year beginning July 1, 2015, and ending June 30, 2016, the following sums of money
794 are appropriated from resources not otherwise appropriated, or reduced from amounts
795 previously appropriated, out of the funds or accounts indicated. These sums of money are in
796 addition to any amounts previously appropriated for fiscal year 2016.

797 To Department of Human Resource Management

798 From General Fund (\$75,200)

799 From General Fund, One-time \$37,600

800 Schedule of Programs:

801 ALJ Compliance (\$37,600)

802 To Department of Administrative Services – Administrative Rules

803	<u>From General Fund</u>	<u>\$75,200</u>
804	<u>From General Fund, One-time</u>	<u>(\$37,600)</u>
805	<u>Schedule of Programs:</u>	
806	<u>DAR Administration</u>	<u>\$37,600</u>
807	<u>The Legislature intends that the Department of Administrative Services use the</u>	
808	<u>appropriation under this section to implement and administer the provisions of Title 63A,</u>	
809	<u>Chapter 15, Part 3, Administrative Law Judge Standards of Conduct and Evaluation.</u>	
810	Section 24. Effective date.	
811	<u>(1) Except as provided in Subsection (2), this bill takes effect on January 1, 2016.</u>	
812	<u>(2) Uncodified Section 23, Appropriation, takes effect on July 1, 2015.</u>	

Legislative Review Note
as of 2-26-15 4:22 PM

Office of Legislative Research and General Counsel