

Senator Todd Weiler proposes the following substitute bill:

JUDICIARY RELATED AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions related to the judiciary.

Highlighted Provisions:

This bill:

- ▶ addresses judicial candidacy;
 - ▶ modifies provisions related to when the commission shall allow a judge to appear before the commission;
 - ▶ provides for reconsideration if the Utah Supreme Court issues a public sanction of a judge before the voter information pamphlet is published;
 - ▶ modifies survey requirements;
 - ▶ addresses confidentiality and anonymity of survey responses;
 - ▶ modifies minimum performance standards;
 - ▶ addresses intercept surveys for justice court judges administered by the commission;
- and
- ▶ makes technical amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:



None

Utah Code Sections Affected:

AMENDS:

20A-12-201, as last amended by Laws of Utah 2014, Chapter 207

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

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

78A-12-205, as last amended by Laws of Utah 2011, Chapter 80

78A-12-207, as enacted by Laws of Utah 2014, Chapter 152

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

Section 1. Section **20A-12-201** is amended to read:

20A-12-201. Judicial appointees -- Retention elections.

(1) (a) Each judicial appointee to a court is subject to an unopposed retention election at the first general election held more than three years after the judge or justice was appointed.

(b) After the first retention election:

(i) each Supreme Court justice shall be on the regular general election ballot for an unopposed retention election every tenth year; and

(ii) each judge of other courts shall be on the regular general election ballot for an unopposed retention election every sixth year.

(2) (a) Each justice or judge of a court of record who wishes to retain office shall, in the year the justice or judge is subject to a retention election:

(i) file a declaration of candidacy with the lieutenant governor, or with the county clerk in the candidate's county of residence, within the period beginning on ~~April~~ July 1 and ending at 5 p.m. on ~~April~~ July 15 in the year of a regular general election; and

(ii) pay a filing fee of \$50.

(b) (i) Each justice court judge who wishes to retain office shall, in the year the justice court judge is subject to a retention election:

(A) file a declaration of candidacy with the lieutenant governor, or with the county clerk in the candidate's county of residence, within the period beginning on ~~April~~ July 1 and ending at 5 p.m. on ~~April~~ July 15 in the year of a regular general election; and

(B) pay a filing fee of \$25 for each judicial office.

(ii) If a justice court judge is appointed or elected to more than one judicial office, the declaration of candidacy shall identify all of the courts included in the same general election.

(iii) If a justice court judge is appointed or elected to more than one judicial office, filing a declaration of candidacy in one county in which one of those courts is located is valid for the courts in any other county.

(3) (a) The lieutenant governor shall, no later than August 31 of each regular general election year:

(i) transmit a certified list containing the names of the justices of the Supreme Court and judges of the Court of Appeals declaring their candidacy to the county clerk of each county; and

(ii) transmit a certified list containing the names of judges of other courts declaring their candidacy to the county clerk of each county in the geographic division in which the judge filing the declaration holds office.

(b) Each county clerk shall place the names of justices and judges standing for retention election in the nonpartisan section of the ballot.

(4) (a) At the general election, the ballots shall contain, as to each justice or judge of any court to be voted on in the county, the following question:

"Shall _____ (name of justice or judge) be retained in the office of _____? (name of office, such as "Justice of the Supreme Court of Utah"; "Judge of the Court of Appeals of Utah"; "Judge of the District Court of the Third Judicial District"; "Judge of the Juvenile Court of the Fourth Juvenile Court District"; "Justice Court Judge of (name of county) County or (name of municipality)")

Yes ()

No ()."

(b) If a justice court exists by means of an interlocal agreement under Section 78A-7-102, the ballot question for the judge shall include the name of that court.

(5) (a) If the justice or judge receives more yes votes than no votes, the justice or judge is retained for the term of office provided by law.

(b) If the justice or judge does not receive more yes votes than no votes, the justice or judge is not retained, and a vacancy exists in the office on the first Monday in January after the regular general election.

(6) A justice or judge not retained is ineligible for appointment to the office for which the justice or judge was defeated until after the expiration of that term of office.

(7) If a justice court judge is standing for retention for more than one office, the county clerk shall place the judge's name on the ballot separately for each office. If the justice court judge receives more no votes than yes votes in one office, but more yes votes than no votes in the other, the justice court judge shall be retained only in the office for which the judge received more yes votes than no votes.

Section 2. Section **78A-12-203** is amended to read:

78A-12-203. Judicial performance evaluations.

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

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

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

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

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

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

(c) courtroom observation;

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

(e) public comment solicited by the commission;

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

(g) any other factor that the commission:

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

(ii) establishes by rule.

(3) The commission shall make rules concerning the conduct of courtroom observation

under Subsection (2), which shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The commission may only disclose the final commission vote on whether or not to recommend that the voters retain a judge.

(6) (a) If the Utah Supreme Court issues a public sanction of a judge after the commission makes a decision on whether to recommend the judge for retention, but before the publication of the voter information pamphlet in accordance with Section [20A-7-702](#), the commission may elect to reconsider the commission's recommendation.

(b) The commission shall invite the judge described in Subsection (6)(a) to appear before the commission during a closed meeting for the purpose of reconsidering the commission's recommendation.

(c) The judge described in Subsection (6)(a) may provide a written statement, not to exceed 100 words, that shall be included in the judge's evaluation report.

(d) The commission shall include in the judge's evaluation report:

(i) the date of the reconsideration;

(ii) any change in the decision of whether to recommend that the voters retain the judge; and

(iii) a brief statement explaining the reconsideration.

(e) The commission shall submit revisions to the judge's evaluation report to the lieutenant governor by no later than August 31 of a regular general election year for publication in the voter information pamphlet, and publish the revisions on the commission's website, and through any other means the commission considers appropriate and within budgetary constraints.

~~[(6)]~~ (7) (a) The commission shall compile a midterm report of [its] the commission's judicial performance evaluation of a judge.

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

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

the evaluated judge serves.

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

Section 3. Section **78A-12-204** is amended to read:

78A-12-204. Judicial performance survey.

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

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

- (a) attorneys who have appeared before the judge as counsel;
- (b) jurors who have served in a case before the judge; and
- (c) court staff who have worked with the judge.

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

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

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

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

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

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

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

- 212 (a) legal ability, including the following:
- 213 (i) demonstration of understanding of the substantive law and any relevant rules of
- 214 procedure and evidence;
- 215 (ii) attentiveness to factual and legal issues before the court;
- 216 (iii) adherence to precedent and ability to clearly explain departures from precedent;
- 217 (iv) grasp of the practical impact on the parties of the judge's rulings, including the
- 218 effect of delay and increased litigation expense;
- 219 (v) ability to write clear judicial opinions; and
- 220 (vi) ability to clearly explain the legal basis for judicial opinions;
- 221 (b) judicial temperament and integrity, including the following:
- 222 (i) demonstration of courtesy toward attorneys, court staff, and others in the judge's
- 223 court;
- 224 (ii) maintenance of decorum in the courtroom;
- 225 (iii) demonstration of judicial demeanor and personal attributes that promote public
- 226 trust and confidence in the judicial system;
- 227 (iv) preparedness for oral argument;
- 228 (v) avoidance of impropriety or the appearance of impropriety;
- 229 (vi) display of fairness and impartiality toward all parties; and
- 230 (vii) ability to clearly communicate, including the ability to explain the basis for
- 231 written rulings, court procedures, and decisions; and
- 232 (c) administrative performance, including the following:
- 233 (i) management of workload;
- 234 (ii) sharing proportionally the workload within the court or district; and
- 235 (iii) issuance of opinions and orders without unnecessary delay.
- 236 (8) If the commission determines that a certain survey question or category of
- 237 questions is not appropriate for a respondent group, the commission may omit that question or
- 238 category of questions from the survey provided to that respondent group.
- 239 (9) (a) The survey shall allow respondents to indicate responses in a manner
- 240 determined by the commission, which shall be:
- 241 (i) on a numerical scale from one to five~~[- with one representing inadequate~~
- 242 ~~performance and five representing outstanding performance]~~; or

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

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

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

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

Section 4. Section **78A-12-205** is amended to read:

78A-12-205. Minimum performance standards.

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

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

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

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

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

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

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

(b) adopts the standard.

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

Section 5. Section **78A-12-207** is amended to read:

78A-12-207. Evaluation of justice court judges.

(1) The Judicial Performance Evaluation Commission shall:

(a) conduct a performance evaluation for each justice court judge in the third and fifth

274 year of the justice court judge's term;

275 (b) classify each justice court judge into one of the following three categories:

276 (i) full evaluation;

277 (ii) midlevel evaluation; or

278 (iii) basic evaluation; and

279 (c) establish evaluation criteria for each of the three categories.

280 (2) A full evaluation justice court judge shall be subject to the requirements of [~~the~~
281 ~~Judicial Performance Evaluation Commission Act~~] this chapter.

282 (3) A midlevel evaluation justice court judge shall be governed by [~~the Judicial~~
283 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:

284 (a) the commission shall administer an [~~electronic~~] intercept survey [~~shall be~~
285 ~~administered by the commission~~] periodically outside the courtroom of the evaluated justice
286 court judge in lieu of the survey specified in Section 78A-12-204; and

287 (b) courtroom observation may not be conducted for midlevel evaluation justice court
288 judges.

289 (4) A basic evaluation justice court judge shall be governed by [~~the Judicial~~
290 ~~Performance Evaluation Commission Act~~] this chapter, except as provided below:

291 (a) basic evaluation justice court judges shall comply with minimum performance
292 standards for judicial education, judicial conduct, cases under advisement, and any other
293 standards the commission may promulgate by administrative rule; and

294 (b) courtroom observation and surveys may not be conducted for basic evaluation
295 justice court judges.