

Senator Wayne A. Harper proposes the following substitute bill:

ADMINISTRATIVE LAW JUDGE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill provides for complaints, performance standards, and recommendations regarding administrative law judges.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Department of Human Resource Management to create a code of conduct for administrative law judges;
- ▶ imposes a penalty for destruction of evidence by an administrative law judge;
- ▶ provides for evaluation of administrative law judges by the Department of Human Resource Management on a four-year cycle, including:
 - conducting a performance survey; and
 - establishing minimum performance standards;
- ▶ addresses protected records related to performance evaluations and complaints regarding administrative law judges;
- ▶ provides a method for complaints against administrative law judges;
- ▶ creates an administrative law judge conduct committee within the Department of Human Resource Management;



26 ▶ requires the department to investigate complaints against administrative law judges;

27 and

28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **67-19e-101**, Utah Code Annotated 1953

36 **67-19e-102**, Utah Code Annotated 1953

37 **67-19e-103**, Utah Code Annotated 1953

38 **67-19e-104**, Utah Code Annotated 1953

39 **67-19e-105**, Utah Code Annotated 1953

40 **67-19e-106**, Utah Code Annotated 1953

41 **67-19e-107**, Utah Code Annotated 1953

42 **67-19e-108**, Utah Code Annotated 1953

43 **67-19e-109**, Utah Code Annotated 1953



44
45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **67-19e-101** is enacted to read:

47 **CHAPTER 19e. ADMINISTRATIVE LAW JUDGES**

48 **67-19e-101. Title.**

49 This chapter is known as "Administrative Law Judges."

50 Section 2. Section **67-19e-102** is enacted to read:

51 **67-19e-102. Definitions -- Application of chapter -- Exceptions.**

52 (1) In addition to the definitions found in Section 67-19-3, the following definitions

53 apply to this chapter.

54 (a) "Administrative law judge" means an individual who is employed or contracted by

55 a state agency that:

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

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

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

60 (b) "Administrative law judge" does not mean

60a §→ (i) ←§ an individual who reviews an order or
 61 ruling of an administrative law judge §→ ; ←§ or

61a §→ (ii) ←§ the executive director of a state agency.

62 (c) "Committee" means the Administrative Law Judge Conduct Committee created in
 63 Section 67-19e-108.

64 (2) This chapter applies to all agencies of the state except the:

65 (a) Board of Pardons and Parole;

66 (b) Department of Corrections; and

67 (c) State Tax Commission.

68 Section 3. Section **67-19e-103** is enacted to read:

69 **67-19e-103. Administrative law judges -- Standard of conduct.**

70 (1) All agency administrative law judges who conduct formal administrative hearings
 71 are subject to this chapter.

72 (2) All administrative law judges are subject to the code of conduct promulgated by the
 73 department in accordance with Section 67-19e-104.

74 (3) §→ §→ [f] **An administrative law judge who tampers with or destroys** [f]

74a1 ~~[Tampering with or destroying]~~ ←§ ←§

74a evidence submitted to §→ §→ [f] **the** [f] ~~[an]~~ ←§ ←§ administrative

75 law judge is §→ ~~[guilty of a class B misdemeanor]~~ §→ ~~[a violation of]~~ **subject to the**

75a1 **provisions of** ←§ **Section 76-8-510.5** ←§ . This

75a section does not apply to documents

76 destroyed in accordance with Title 63G, Chapter 2, Government Records Access and

77 Management Act.

78 Section 4. Section **67-19e-104** is enacted to read:

79 **67-19e-104. Rulemaking authority.**

80 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah

81 Administrative Rulemaking Act:

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

83 (2) providing procedures for filing, addressing, and reviewing complaints against

84 administrative law judges;

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

86 (4) promulgating a code of conduct for all administrative law judges in all state

87 agencies.

88 Section 5. Section **67-19e-105** is enacted to read:

89 **67-19e-105. Performance evaluation of administrative law judges.**

90 (1) Beginning January 1, 2014, the department shall prepare a performance evaluation
91 for each administrative law judge contracted or employed by a state agency.

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

93 (a) the results of the administrative law judge's performance evaluations conducted by
94 the employing agency since the administrative law judge's last performance evaluation
95 conducted by the department in accordance with the performance evaluation procedure for the
96 agency;

97 (b) information from the employing agency concerning the administrative law judge's
98 compliance with minimum performance standards;

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

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

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

104 (3) If an administrative law judge fails to meet the minimum performance standards the
105 department shall provide a copy of the performance evaluation and survey to the employing
106 agency.

107 (4) The department shall conduct performance reviews every four years for
108 administrative law judges contracted or employed by an agency.

109 Section 6. Section **67-19e-106** is enacted to read:

110 **67-19e-106. Performance surveys.**

111 (1) For administrative law judges contracted or employed before July 1, 2013,
112 performance surveys shall be conducted initially at either the two-, three-, or four-year mark
113 beginning January 1, 2014. By July 1, 2018, all administrative law judges shall be on a
114 four-year staggered cycle for performance evaluations.

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

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

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

119 (3) The department may include an additional classification of respondents if the
120 department:

121 (a) considers a survey of that classification of respondents helpful to the department;
122 and

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

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

127 (5) If the department provides any information to an administrative law judge or the
128 §→ [commission] committee ←§ , the information shall be provided in such a way as to protect the
128a confidentiality of
129 a survey respondent.

130 (6) If the department establishes an additional classification, in accordance with
131 Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of
132 the day on which the case in which the person appeared before the administrative law judge is
133 closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the
134 survey period.

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

136 (a) legal ability, including the following:

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

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

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

141 (iv) grasp of the practical impact on the parties of the administrative law judge's
142 rulings, including the effect of delay and increased litigation expense;

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

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

145 (b) temperament and integrity, including the following:

146 (i) demonstration of courtesy toward attorneys, staff, and others in the administrative
147 law judge's department;

148 (ii) maintenance of decorum in the courtroom;

149 (iii) demonstration of judicial demeanor and personal attributes that promote public

150 trust and confidence in the administrative law judge system;
151 (iv) preparedness for oral argument;
152 (v) avoidance of impropriety or the appearance of impropriety;
153 (vi) display of fairness and impartiality toward all parties; and
154 (vii) ability to clearly communicate, including the ability to explain the basis for
155 written rulings, court procedures, and decisions; and
156 (c) administrative performance, including the following:
157 (i) management of workload;
158 (ii) sharing proportionally the workload within the department; and
159 (iii) issuance of opinions and orders without unnecessary delay.
160 (8) If the department determines that a certain survey question or category of questions
161 is not appropriate for a respondent group, the department may omit that question or category of
162 questions from the survey provided to that respondent group.
163 (9) (a) The survey shall allow respondents to indicate responses in a manner
164 determined by the department, which shall be:
165 (i) on a numerical scale from one to five; or
166 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
167 to respond in the affirmative or negative.
168 (b) To supplement the responses to questions on either a numerical scale or in the
169 affirmative or negative, the department may allow respondents to provide written comments.
170 (10) The department shall compile and make available to each administrative law
171 judge that administrative law judge's survey results with each of the administrative law judge's
172 performance evaluations.

173 Section 7. Section **67-19e-107** is enacted to read:
174 **67-19e-107. Complaints.**
175 (1) A complaint against an administrative law judge shall be filed with the department.
176 (2) Upon receipt of a complaint, the department shall conduct an investigation.
177 (3) If the department's investigation determines that the complaint is frivolous or
178 without merit, it may dismiss it without further action. A complaint that merely indicates
179 disagreement, without further misconduct, with the administrative law judge's decision shall be
180 treated as without merit.

181 (4) The contents of all complaints and subsequent investigations are classified as
182 protected under Title 63G, Chapter 2, Government Records Access and Management Act.

183 Section 8. Section **67-19e-108** is enacted to read:

184 **67-19e-108. Administrative Law Judge Conduct Committee.**

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

187 (2) The committee shall be composed of:

188 (a) the executive director of the department, or the executive director's designee, as
189 chair; and

190 (b) four executive directors, or their designees, of agencies that employ or contract with
191 administrative law judges, to be selected by the executive director as needed.

192 (3) The department shall provide staff for the committee as needed.

193 Section 9. Section **67-19e-109** is enacted to read:

194 **67-19e-109. Procedure for review of complaint by conduct committee.**

195 (1) Upon a determination that a complaint requires further action, the executive
196 director shall select four executive directors ~~§~~ or their designees ~~←§~~ and convene the
196a committee. The executive

197 director of the agency that employs or contracts with the administrative law judge who is the
198 subject of the complaint may not be a member of the committee.

199 (2) The department shall provide a copy of the complaint, along with the results of the
200 department's investigation, to the committee and the administrative law judge who is the
201 subject of the complaint. If the committee directs, a copy of the complaint and investigation
202 may also be provided to the attorney general.

203 (3) The committee shall allow an administrative law judge who is the subject of a
204 complaint to appear and speak at any committee meeting, except a closed meeting, during
205 which the committee is deliberating the complaint.

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

209 (5) After deliberation and discussion of the complaint and all information provided, the
210 committee shall provide a report, with a recommendation, to the agency. The recommendation
211 shall include:

212 (a) a brief description of the complaint and results of the department's investigation;

213 (b) the committee's findings; and

214 (c) a recommendation from the committee whether action should be taken against the

215 administrative law judge.

216 (6) Actions recommended by the committee may include no action, disciplinary action,

217 termination, or any other action an employer may take against an employee.

218 (7) The record of an individual committee member's vote on recommended actions

219 against an administrative law judge is a protected record under Title 63G, Chapter 2,

220 Government Records Access and Management Act.