



- 28 an ethics complaint filed immediately preceding an election under certain circumstances;
- 29       ▶ permits the commission to issue private or public reprimands if it determines that an
- 30 ethics complaint is substantiated;
- 31       ▶ permits the commission to publicly release ethics complaints, responses to ethics
- 32 complaints, and records and documents related to ethics hearings in some
- 33 circumstances; and
- 34       ▶ requires the commission to issue an annual report of its activities.

**35 Monies Appropriated in this Bill:**

36       None

**37 Other Special Clauses:**

38       This bill coordinates with H.B. 63, Recodification of Title 63, State Affairs in General,  
39 by providing technical amendments.

**40 Utah Code Sections Affected:**

41 AMENDS:

- 42       **52-4-103**, as last amended by Laws of Utah 2007, Chapters 35 and 45
- 43       **63-2-304**, as last amended by Laws of Utah 2007, Chapters 66 and 352

44 ENACTS:

- 45       **63-96a-101**, Utah Code Annotated 1953
- 46       **63-96a-102**, Utah Code Annotated 1953
- 47       **63-96a-201**, Utah Code Annotated 1953
- 48       **63-96a-202**, Utah Code Annotated 1953
- 49       **63-96a-301**, Utah Code Annotated 1953
- 50       **63-96a-302**, Utah Code Annotated 1953
- 51       **63-96a-303**, Utah Code Annotated 1953
- 52       **63-96a-304**, Utah Code Annotated 1953
- 53       **63-96a-305**, Utah Code Annotated 1953
- 54       **63-96a-306**, Utah Code Annotated 1953
- 55       **63-96a-307**, Utah Code Annotated 1953
- 56       **63-96a-308**, Utah Code Annotated 1953



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

59 Section 1. Section **52-4-103** is amended to read:

60 **52-4-103. Definitions.**

61 As used in this chapter:

62 (1) "Anchor location" means the physical location from which:

63 (a) an electronic meeting originates; or

64 (b) the participants are connected.

65 (2) "Convening" means the calling of a meeting of a public body by a person

66 authorized to do so for the express purpose of discussing or acting upon a subject over which

67 that public body has jurisdiction or advisory power.

68 (3) "Electronic meeting" means a public meeting convened or conducted by means of a

69 conference using electronic communications.

70 (4) (a) "Meeting" means the convening of a public body, with a quorum present,

71 including a workshop or an executive session whether the meeting is held in person or by

72 means of electronic communications, for the purpose of discussing, receiving comments from

73 the public about, or acting upon a matter over which the public body has jurisdiction or

74 advisory power.

75 (b) "Meeting" does not mean:

76 (i) a chance meeting;

77 (ii) a social meeting; or

78 (iii) the convening of a public body that has both legislative and executive

79 responsibilities where no public funds are appropriated for expenditure during the time the

80 public body is convened and:

81 (A) the public body is convened solely for the discussion or implementation of

82 administrative or operational matters for which no formal action by the public body is required;

83 or

84 (B) the public body is convened solely for the discussion or implementation of

85 administrative or operational matters that would not come before the public body for

86 discussion or action.

87 (5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the

88 public statements of each member of the public body who is participating in a meeting.

89 (6) "Participate" means the ability to communicate with all of the members of a public

90 body, either verbally or electronically, so that each member of the public body can hear or  
91 observe the communication.

92 (7) (a) "Public body" means any administrative, advisory, executive, or legislative body  
93 of the state or its political subdivisions that:

- 94 (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- 95 (ii) consists of two or more persons;
- 96 (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
- 97 (iv) is vested with the authority to make decisions regarding the public's business.

98 (b) "Public body" does not include [a]:

- 99 (i) a political party, political group, or political caucus; [~~or~~]
- 100 (ii) a conference committee, rules committee, or sifting committee of the Legislature[~~;~~];

101 or

102 (iii) the State Ethics Commission established under Section 63-96a-201.

103 (8) "Public statement" means a statement made in the ordinary course of business of  
104 the public body with the intent that all other members of the public body receive it.

105 (9) (a) "Quorum" means a simple majority of the membership of a public body, unless  
106 otherwise defined by applicable law.

107 (b) "Quorum" does not include a meeting of two elected officials by themselves when  
108 no action, either formal or informal, is taken on a subject over which these elected officials  
109 have advisory power.

110 (10) "Recording" means an audio, or an audio and video, record of the proceedings of a  
111 meeting that can be used to review the proceedings of the meeting.

112 Section 2. Section **63-2-304** is amended to read:

113 **63-2-304. Protected records.**

114 The following records are protected if properly classified by a governmental entity:

115 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
116 has provided the governmental entity with the information specified in Section 63-2-308;

117 (2) commercial information or nonindividual financial information obtained from a  
118 person if:

119 (a) disclosure of the information could reasonably be expected to result in unfair  
120 competitive injury to the person submitting the information or would impair the ability of the

121 governmental entity to obtain necessary information in the future;

122 (b) the person submitting the information has a greater interest in prohibiting access  
123 than the public in obtaining access; and

124 (c) the person submitting the information has provided the governmental entity with  
125 the information specified in Section 63-2-308;

126 (3) commercial or financial information acquired or prepared by a governmental entity  
127 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
128 commodities that will interfere with a planned transaction by the governmental entity or cause  
129 substantial financial injury to the governmental entity or state economy;

130 (4) records the disclosure of which could cause commercial injury to, or confer a  
131 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
132 defined in Subsection 11-13-103(4);

133 (5) test questions and answers to be used in future license, certification, registration,  
134 employment, or academic examinations;

135 (6) records the disclosure of which would impair governmental procurement  
136 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
137 agreement with a governmental entity, except that this Subsection (6) does not restrict the right  
138 of a person to see bids submitted to or by a governmental entity after bidding has closed;

139 (7) records that would identify real property or the appraisal or estimated value of real  
140 or personal property, including intellectual property, under consideration for public acquisition  
141 before any rights to the property are acquired unless:

142 (a) public interest in obtaining access to the information outweighs the governmental  
143 entity's need to acquire the property on the best terms possible;

144 (b) the information has already been disclosed to persons not employed by or under a  
145 duty of confidentiality to the entity;

146 (c) in the case of records that would identify property, potential sellers of the described  
147 property have already learned of the governmental entity's plans to acquire the property;

148 (d) in the case of records that would identify the appraisal or estimated value of  
149 property, the potential sellers have already learned of the governmental entity's estimated value  
150 of the property; or

151 (e) the property under consideration for public acquisition is a single family residence

152 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
153 the property as required under Section 78-34-4.5;

154 (8) records prepared in contemplation of sale, exchange, lease, rental, or other  
155 compensated transaction of real or personal property including intellectual property, which, if  
156 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
157 of the subject property, unless:

158 (a) the public interest in access outweighs the interests in restricting access, including  
159 the governmental entity's interest in maximizing the financial benefit of the transaction; or

160 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
161 the value of the subject property have already been disclosed to persons not employed by or  
162 under a duty of confidentiality to the entity;

163 (9) records created or maintained for civil, criminal, or administrative enforcement  
164 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
165 release of the records:

166 (a) reasonably could be expected to interfere with investigations undertaken for  
167 enforcement, discipline, licensing, certification, or registration purposes;

168 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
169 proceedings;

170 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
171 hearing;

172 (d) reasonably could be expected to disclose the identity of a source who is not  
173 generally known outside of government and, in the case of a record compiled in the course of  
174 an investigation, disclose information furnished by a source not generally known outside of  
175 government if disclosure would compromise the source; or

176 (e) reasonably could be expected to disclose investigative or audit techniques,  
177 procedures, policies, or orders not generally known outside of government if disclosure would  
178 interfere with enforcement or audit efforts;

179 (10) records the disclosure of which would jeopardize the life or safety of an  
180 individual;

181 (11) records the disclosure of which would jeopardize the security of governmental  
182 property, governmental programs, or governmental recordkeeping systems from damage, theft,

183 or other appropriation or use contrary to law or public policy;

184 (12) records that, if disclosed, would jeopardize the security or safety of a correctional  
185 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
186 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

187 (13) records that, if disclosed, would reveal recommendations made to the Board of  
188 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
189 Board of Pardons and Parole, or the Department of Human Services that are based on the  
190 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
191 jurisdiction;

192 (14) records and audit workpapers that identify audit, collection, and operational  
193 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
194 audits or collections;

195 (15) records of a governmental audit agency relating to an ongoing or planned audit  
196 until the final audit is released;

197 (16) records prepared by or on behalf of a governmental entity solely in anticipation of  
198 litigation that are not available under the rules of discovery;

199 (17) records disclosing an attorney's work product, including the mental impressions or  
200 legal theories of an attorney or other representative of a governmental entity concerning  
201 litigation;

202 (18) records of communications between a governmental entity and an attorney  
203 representing, retained, or employed by the governmental entity if the communications would be  
204 privileged as provided in Section 78-24-8;

205 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
206 from a member of the Legislature; and

207 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
208 legislative action or policy may not be classified as protected under this section; and

209 (b) (i) an internal communication that is part of the deliberative process in connection  
210 with the preparation of legislation between:

211 (A) members of a legislative body;

212 (B) a member of a legislative body and a member of the legislative body's staff; or

213 (C) members of a legislative body's staff; and

214 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
215 legislative action or policy may not be classified as protected under this section;

216 (20) (a) records in the custody or control of the Office of Legislative Research and  
217 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
218 legislation or contemplated course of action before the legislator has elected to support the  
219 legislation or course of action, or made the legislation or course of action public; and

220 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
221 Office of Legislative Research and General Counsel is a public document unless a legislator  
222 asks that the records requesting the legislation be maintained as protected records until such  
223 time as the legislator elects to make the legislation or course of action public;

224 (21) research requests from legislators to the Office of Legislative Research and  
225 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
226 in response to these requests;

227 (22) drafts, unless otherwise classified as public;

228 (23) records concerning a governmental entity's strategy about collective bargaining or  
229 pending litigation;

230 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
231 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
232 Uninsured Employers' Fund, or similar divisions in other governmental entities;

233 (25) records, other than personnel evaluations, that contain a personal recommendation  
234 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
235 personal privacy, or disclosure is not in the public interest;

236 (26) records that reveal the location of historic, prehistoric, paleontological, or  
237 biological resources that if known would jeopardize the security of those resources or of  
238 valuable historic, scientific, educational, or cultural information;

239 (27) records of independent state agencies if the disclosure of the records would  
240 conflict with the fiduciary obligations of the agency;

241 (28) records of an institution within the state system of higher education defined in  
242 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
243 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
244 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of

245 the final decisions about tenure, appointments, retention, promotions, or those students  
246 admitted, may not be classified as protected under this section;

247 (29) records of the governor's office, including budget recommendations, legislative  
248 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
249 policies or contemplated courses of action before the governor has implemented or rejected  
250 those policies or courses of action or made them public;

251 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
252 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
253 recommendations in these areas;

254 (31) records provided by the United States or by a government entity outside the state  
255 that are given to the governmental entity with a requirement that they be managed as protected  
256 records if the providing entity certifies that the record would not be subject to public disclosure  
257 if retained by it;

258 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
259 except as provided in Section 52-4-206;

260 (33) records that would reveal the contents of settlement negotiations but not including  
261 final settlements or empirical data to the extent that they are not otherwise exempt from  
262 disclosure;

263 (34) memoranda prepared by staff and used in the decision-making process by an  
264 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
265 other body charged by law with performing a quasi-judicial function;

266 (35) records that would reveal negotiations regarding assistance or incentives offered  
267 by or requested from a governmental entity for the purpose of encouraging a person to expand  
268 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
269 person or place the governmental entity at a competitive disadvantage, but this section may not  
270 be used to restrict access to a record evidencing a final contract;

271 (36) materials to which access must be limited for purposes of securing or maintaining  
272 the governmental entity's proprietary protection of intellectual property rights including patents,  
273 copyrights, and trade secrets;

274 (37) the name of a donor or a prospective donor to a governmental entity, including an  
275 institution within the state system of higher education defined in Section 53B-1-102, and other

276 information concerning the donation that could reasonably be expected to reveal the identity of  
277 the donor, provided that:

278 (a) the donor requests anonymity in writing;

279 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
280 classified protected by the governmental entity under this Subsection (37); and

281 (c) except for an institution within the state system of higher education defined in  
282 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
283 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
284 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
285 by the donor or the donor's immediate family;

286 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
287 73-18-13;

288 (39) a notification of workers' compensation insurance coverage described in Section  
289 34A-2-205;

290 (40) (a) the following records of an institution within the state system of higher  
291 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
292 or received by or on behalf of faculty, staff, employees, or students of the institution:

293 (i) unpublished lecture notes;

294 (ii) unpublished notes, data, and information:

295 (A) relating to research; and

296 (B) of:

297 (I) the institution within the state system of higher education defined in Section  
298 53B-1-102; or

299 (II) a sponsor of sponsored research;

300 (iii) unpublished manuscripts;

301 (iv) creative works in process;

302 (v) scholarly correspondence; and

303 (vi) confidential information contained in research proposals;

304 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
305 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

306 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

307 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
308 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
309 date that audit is completed and made public; and

310 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
311 Office of the Legislative Auditor General is a public document unless the legislator asks that  
312 the records in the custody or control of the Office of Legislative Auditor General that would  
313 reveal the name of a particular legislator who requests a legislative audit be maintained as  
314 protected records until the audit is completed and made public;

315 (42) records that provide detail as to the location of an explosive, including a map or  
316 other document that indicates the location of:

317 (a) a production facility; or

318 (b) a magazine;

319 (43) information contained in the database described in Section 62A-3-311.1;

320 (44) information contained in the Management Information System and Licensing  
321 Information System described in Title 62A, Chapter 4a, Child and Family Services;

322 (45) information regarding National Guard operations or activities in support of the  
323 National Guard's federal mission;

324 (46) records provided by any pawn or secondhand business to a law enforcement  
325 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
326 Secondhand Merchandise Transaction Information Act;

327 (47) information regarding food security, risk, and vulnerability assessments performed  
328 by the Department of Agriculture and Food;

329 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
330 63-2-106, records related to an emergency plan or program prepared or maintained by the  
331 Division of Homeland Security the disclosure of which would jeopardize:

332 (a) the safety of the general public; or

333 (b) the security of:

334 (i) governmental property;

335 (ii) governmental programs; or

336 (iii) the property of a private person who provides the Division of Homeland Security  
337 information;

338 (49) records of the Department of Agriculture and Food relating to the National  
339 Animal Identification System or any other program that provides for the identification, tracing,  
340 or control of livestock diseases, including any program established under Title 4, Chapter 24,  
341 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and  
342 Quarantine;

343 (50) as provided in Section 26-39-109:

344 (a) information or records held by the Department of Health related to a complaint  
345 regarding a child care program or residential child care which the department is unable to  
346 substantiate; and

347 (b) information or records related to a complaint received by the Department of Health  
348 from an anonymous complainant regarding a child care program or residential child care; ~~and~~

349 (51) unless otherwise classified as public under Section 63-2-301 and except as  
350 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
351 personal mobile phone number, if:

352 (a) the individual is required to provide the information in order to comply with a law,  
353 ordinance, rule, or order of a government entity; and

354 (b) the subject of the record has a reasonable expectation that this information will be  
355 kept confidential due to:

356 (i) the nature of the law, ordinance, rule, or order; and

357 (ii) the individual complying with the law, ordinance, rule, or order~~[-]; and~~

358 (52) records filed with or in the custody or control of the State Ethics Commission in  
359 relation to an ethics complaint or hearing, unless the record has been declared a public record  
360 under Section 63-96a-308.

361 Section 3. Section **63-96a-101** is enacted to read:

**CHAPTER 96a. STATE ETHICS COMMISSION ACT**

**Part 1. General Provisions**

**63-96a-101. Title.**

365 This chapter is known as the "State Ethics Commission Act."

366 Section 4. Section **63-96a-102** is enacted to read:

**63-96a-102. Definitions.**

368 As used in this chapter:

369 (1) "Respondent" means the individual against whom an ethics complaint is filed.

370 (2) "Witness" means any of the following persons when offering testimony at an ethics

371 hearing held in response to an ethics complaint filed under this chapter:

372 (a) the person who filed the ethics complaint;

373 (b) the respondent; or

374 (c) any other person offering testimony during the ethics hearing.

375 Section 5. Section **63-96a-201** is enacted to read:

376 **Part 2. State Ethics Commission**

377 **63-96a-201. State Ethics Commission -- Creation -- Membership.**

378 (1) There is created a State Ethics Commission composed of five members as follows:

379 (a) a member designated by the governor;

380 (b) a member designated by the president of the Senate;

381 (c) a member designated by the minority leader of the Senate;

382 (d) a member designated by the speaker of the House of Representatives; and

383 (e) a member designated by the minority leader of the House of Representatives.

384 (2) (a) Each member of the commission shall be registered to vote in the state.

385 (b) A member of the commission may not, during the member's term of office on the  
386 commission, act or serve as:

387 (i) an officeholder as defined in Section 20a-11-101;

388 (ii) an agency head as defined in Section 67-16-3;

389 (iii) a lobbyist as defined in Section 36-11-102; or

390 (iv) a principal as defined in Section 36-11-102.

391 (3) (a) (i) Except as required by Subsection (3)(a)(ii), each member shall serve a  
392 four-year term.

393 (ii) At the time the commission is created:

394 (A) the members selected by the governor, the president of the Senate, and the minority  
395 leader of the Senate shall be appointed to four-year terms; and

396 (B) the members selected by the speaker of the House of Representatives and the  
397 minority leader of the House of Representatives shall be appointed to two-year terms.

398 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
399 appointed for the unexpired term.

400 (c) A member may not be appointed for more than two full terms or serve for more  
401 than eight years as a member of the commission, whichever period is shorter.

402 (4) The commission shall annually elect, by a majority vote, a commission chair from  
403 its membership.

404 (5) The commission shall meet:

405 (a) upon the request of the chair of the commission;

406 (b) upon the written request of a majority of the members of the commission; or

407 (c) in response to an ethics complaint filed and accepted under Section 63-96a-301.

408 (6) Except as specifically required elsewhere in this chapter, attendance of a majority  
409 of the members of the commission shall constitute a quorum for the conducting of business and  
410 the taking of official action.

411 (7) (a) Commission members who are not government employees may not receive  
412 compensation or benefits for their services, but may receive per diem and expenses incurred in  
413 the performance of the member's official duties at the rates established by the Division of  
414 Finance under Sections 63A-3-106 and 63A-3-107.

415 (b) A commission member may decline to receive per diem and expenses for service to  
416 the commission.

417 Section 6. Section **63-96a-202** is enacted to read:

418 **63-96a-202. State Ethics Commission -- Duties.**

419 (1) The State Ethics Commission shall:

420 (a) receive and review ethics complaints filed in accordance with the requirements of  
421 this chapter;

422 (b) conduct hearings and make recommendations in response to ethics complaints as  
423 provided for in this chapter;

424 (c) annually prepare and make available for public inspection, a report describing, for  
425 the previous year:

426 (i) the number of ethics complaints filed with the commission;

427 (ii) the number of ethics complaints that resulted in a hearing before the commission;

428 (iii) the number of hearings that resulted in a finding that the ethics complaint that was  
429 the subject of the hearing was substantiated or partially substantiated;

430 (iv) a brief summary of the decision issued in relation to each hearing conducted by the

431 commission, provided that the summary does not contain any information that might identify a  
432 participant in a hearing, unless the information has been publicly released under Subsection  
433 63-96a-308(3);

434 (v) a copy of all hearing decisions that were issued and publicly released by the  
435 commission under Section 63-96a-308; and

436 (vi) any other documents or information that a majority of the members of the  
437 commission elect to include in the report; and

438 (d) make forms to facilitate the filing and processing of ethics complaints and  
439 responses to ethics complaints in accordance with the requirements of this chapter.

440 (2) The commission may hire staff, including counsel, as necessary.

441 (3) The Department of Administrative Services shall provide the commission and  
442 commission staff with the physical facilities and equipment necessary for the commission to  
443 carry out its responsibilities as provided in this chapter.

444 Section 7. Section **63-96a-301** is enacted to read:

445 **Part 3. Ethics Complaints and Hearings**

446 **63-96a-301. Ethics complaints -- Requirements -- Filing -- Confidentiality --**

447 **Notice of filing.**

448 (1) A person may file a written ethics complaint against a member of the Utah State  
449 Legislature, the governor, the lieutenant governor, the attorney general, the state auditor, or the  
450 state treasurer, alleging a violation of:

451 (a) Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;

452 (b) Title 36, Chapter 19, Conflicts of Interest;

453 (c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; or

454 (d) Title 76, Chapter 8, Offenses Against the Administration of Government.

455 (2) (a) The ethics complaint shall be submitted to the State Ethics Commission, and  
456 shall contain:

457 (i) the name, address, and telephone number of the person filing the complaint;

458 (ii) the name of the individual against whom the complaint is filed;

459 (iii) for each violation alleged:

460 (A) a reference to the statute alleged to have be violated; and

461 (B) a statement of the facts and circumstances constituting the alleged violation; and

462 (iv) all documents that support the complaint as an attachment.

463 (b) If any of the facts or circumstances supporting the complaint are based upon the  
464 information and belief of the complainant, the complaint shall state that the facts are presented  
465 "upon information and belief" and give the basis for that information and belief.

466 (3) (a) Each ethics complaint filed under this section shall contain the signature of the  
467 person filing the complaint.

468 (b) An ethics complaint may list the names of additional persons supporting the filing  
469 of the complaint, provided that each such person provides the person's:

470 (i) name;

471 (ii) address; and

472 (iii) signature.

473 (c) Notices and documents required under this section shall be provided to the person  
474 filing the complaint.

475 (4) In accordance with Section 63-2-304, all records related to an ethics complaint are  
476 classified as a protected record, and no commission member or staff may publically disclose  
477 any information received by the commission concerning any complaint or alleged violation  
478 unless the commission elects to publicly disclose the information as provided under Subsection  
479 63-96a-308(3).

480 (5) Any ethics complaint that is filed with the commission that does not meet the  
481 requirements of this section shall be returned to the person who filed the ethics complaint with  
482 a statement that:

483 (a) declares that the ethics complaint is deficient and has not been accepted;

484 (b) lists each deficiency that must be corrected in order for the complaint to meet the  
485 requirements of this section; and

486 (c) as applicable, declares that the violation alleged or the individual identified in the  
487 complaint is not within the jurisdiction of the commission.

488 (6) Within three business days after receipt of the complaint, staff for the commission  
489 shall:

490 (a) (i) except as provided in Subsection (6)(a)(ii), schedule a preliminary review  
491 meeting no less than 25 and no more than 45 days after the date the complaint was filed; or

492 (ii) if an ethics complaint is filed within the 60 days immediately preceding the date of

493 an election and the complaint makes allegations against an individual who is a candidate in the  
494 election, schedule a preliminary review meeting after the date of the election, but no later than  
495 25 days after the date of the election, unless the respondent consents, in writing, to scheduling a  
496 preliminary review meeting in accordance with the requirements of Subsection (6)(a)(i):

497 (b) notify each commission member of the date, time, and place of the preliminary  
498 review meeting;

499 (c) provide each commission member with a copy of the complaint; and

500 (d) provide the respondent with:

501 (i) a copy of the complaint; and

502 (ii) written notice that the individual may file a written response to the complaint with  
503 the commission within 20 days of the date of the notice, as provided in Section 63-96a-302.

504 (7) (a) Upon a majority vote of the commission, multiple ethics complaints may be  
505 consolidated into one action provided that:

506 (i) the ethics complaints are filed against the same respondent; and

507 (ii) the alleged violations raised in the ethics complaints are substantially similar.

508 (b) If multiple ethics complaints are consolidated under this Subsection (7), the  
509 commission shall:

510 (i) designate, from among the persons who filed a complaint that was consolidated, up  
511 to three persons that will be designated as the filers of the consolidated complaint for the  
512 purposes of administering this chapter; and

513 (ii) provide notice of the consolidation and of the designation of complainants to:

514 (A) the respondent; and

515 (B) each person who filed a complaint that was consolidated.

516 (8) The procedures, actions, and recommendations of the State Ethics Commission  
517 shall be independent of and separate from any other investigations, penalties, or prosecutions  
518 associated with an ethics-related offense.

519 Section 8. Section **63-96a-302** is enacted to read:

520 **63-96a-302. Response to ethics complaint.**

521 (1) Within 20 calendar days after the date the commission sends notice of the filing of  
522 an ethics complaint, the respondent may file a written response to the complaint, which must  
523 be signed by the respondent or the respondent's counsel.

- 524 (2) The respondent shall limit the response to the following:  
525 (a) an admission or denial of each count, under oath, with any supportive evidence or  
526 relevant information;  
527 (b) an objection to any or all counts on the grounds that the count fails to state facts  
528 that constitute a violation of any law; and  
529 (c) an objection to the jurisdiction of the commission in considering the allegations  
530 contained in the complaint.

531 (3) If the respondent fails to submit a response to the ethics complaint or to any count  
532 contained in it, the commission may determine that the failure to respond constitutes an  
533 admission of the alleged violation.

534 (4) Within three business days after receipt of a response filed under this section, staff  
535 for the commission shall provide a copy of the response to:

- 536 (a) each commission member; and  
537 (b) the person who filed the ethics complaint.

538 Section 9. Section **63-96a-303** is enacted to read:

539 **63-96a-303. Preliminary review meeting.**

540 (1) A preliminary review meeting is closed to the public and is not subject to the  
541 requirements of Title 52, Chapter 4, Open and Public Meetings Act.

542 (2) At the preliminary review meeting, the commission shall determine, by a majority  
543 vote, whether:

- 544 (a) a hearing should be held to address the allegations in the ethics complaint; or  
545 (b) no action shall be taken on the complaint.

546 (3) (a) If the commission determines that a hearing shall be held to address the  
547 complaint, the commission shall schedule an ethics hearing according to the procedures of  
548 Section 63-96a-304.

549 (b) If a majority of the commission members elect not to take action on the complaint,  
550 the commission shall:

- 551 (i) provide written notice that the commission has chosen not to take action on the  
552 complaint to:  
553 (A) the person that filed the complaint; and  
554 (B) the respondent; and

555 (ii) classify the complaint and information related to the complaint as a protected  
556 record as provided under Section 63-2-304.

557 Section 10. Section **63-96a-304** is enacted to read:

558 **63-96a-304. Ethics hearing -- Notice -- Response -- Procedures -- Subpoena**  
559 **powers.**

560 (1) (a) If an ethics hearing is authorized under Section 63-96a-303, the chair shall,  
561 within three business days of the date of the preliminary review meeting:

562 (i) except as provided in Subsection (1)(b), schedule an ethics hearing for a date that is  
563 no less than 30 and no more than 75 days after the date of the preliminary review meeting;

564 (ii) provide a notice of the procedures that are to be used in relation to the hearing and  
565 notice of the date, time, and location of the hearing to:

566 (A) the person that filed the complaint; and

567 (B) the respondent; and

568 (iii) provide notice of the date, time, and location of the hearing to each commission  
569 member.

570 (b) An ethics hearing may not be scheduled during the ten-day period immediately  
571 following the date of an election if the respondent was a candidate in the election, unless the  
572 respondent consents, in writing, to schedule the hearing during this period.

573 (2) (a) An ethics hearing is closed to the public and is not subject to the requirements  
574 of Title 52, Chapter 4, Open and Public Meetings Act.

575 (b) In accordance with Section 63-2-304, and unless specifically made public under  
576 Subsection 63-96a-308(3), no commission member, member of commission staff, or any other  
577 person present at any portion of the ethics hearing may publicly disclose any part of the  
578 hearing.

579 (c) Except as may be required to create the record required under Section 63-96a-307,  
580 no camera or recording device may be brought in or used in the hearing.

581 (3) (a) In relation to any ethics hearing authorized by this chapter, the commission may  
582 require, by subpoena or otherwise, the attendance and testimony of witnesses and the  
583 production of any materials that the commission considers necessary.

584 (b) The chair of the commission may direct commission staff to issue subpoenas:

585 (i) to require the attendance of witnesses;

586 (ii) to direct the production of evidence; or  
587 (iii) that require both attendance and production of evidence.

588 Section 11. Section **63-96a-305** is enacted to read:

589 **63-96a-305. Ethics hearing -- Discretion of chair -- Right to counsel -- Standards**  
590 **-- Subpoenas -- Contempt -- Scope of hearing.**

591 (1) (a) The person that filed the ethics complaint, the respondent, and all other persons  
592 testifying before the commission have the right to counsel during all stages of the ethics  
593 hearing.

594 (b) (i) Except as otherwise specifically provided for in this chapter, during the ethics  
595 hearing, counsel for a person shall confine the counsel's activity exclusively to private advice to  
596 his client about the client's legal rights.

597 (ii) Counsel for a person may not:

598 (A) advise a witness during the witness's testimony, except when specifically requested  
599 by the person;

600 (B) address the commission, except as otherwise specifically provided in this chapter;

601 (C) ask questions of any witness, including the counsel's client; or

602 (D) engage in oral arguments with the commission, except as otherwise specifically  
603 provided in this chapter.

604 (c) Because the commission seeks factual testimony within the personal knowledge of  
605 each witness, the witness's counsel may not suggest testimony and answers to the witness  
606 during the inquiry, but must allow the witness to present testimony and answer questions  
607 without prompting or suggestions.

608 (d) If the witness's counsel fails to comply with any of the requirements of this section,  
609 the chair may exclude the counsel from the ethics hearing.

610 (2) (a) (i) The chair of the commission is vested with the power to direct the  
611 commission on procedural matters during the ethics hearing.

612 (ii) If a commission member objects to a decision of the chair, that member may appeal  
613 the decision to the commission by stating: "I appeal the decision of the chair."

614 (iii) This motion is nondebtable.

615 (iv) The chair shall direct a roll call vote to determine if the commission membership  
616 supports the decision of the chair.

617 (v) A majority vote of the commission is necessary to overrule the decision of the  
618 chair.

619 (b) At the direction of the commission chair, the commission may:

620 (i) administer oaths and take the testimony of any person under oath; and

621 (ii) compel any person to produce for examination any books, papers, or other  
622 information relating to the matters raised by the ethics complaint.

623 (3) Because the object of the Fifth Amendment privilege not to incriminate oneself is  
624 so that no criminal action will be prosecuted, it is improper for a witness to invoke the Fifth  
625 Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's  
626 testimony relates.

627 (4) (a) (i) A witness's disobedience to the direction of the chair or a direction of the  
628 majority of the members of the commission to answer a question, to appear in response to a  
629 subpoena, to produce evidence in response to a subpoena, or to otherwise comply with a  
630 subpoena or subpoena duces tecum, constitutes contempt.

631 (ii) The chair's direction to answer a question may only be overruled by a vote of the  
632 majority of the commission members present.

633 (b) A majority of the members of the commission may compel obedience to the  
634 requirements of the commission by directing staff to file a contempt proceeding in state district  
635 court against any person who:

636 (i) fails to comply with a subpoena or a subpoena duces tecum;

637 (ii) refuses to answer a question relevant to the investigation that does not infringe on  
638 the person's constitutional rights; or

639 (iii) is guilty of contempt on any other grounds specified in statute or recognized at  
640 common law.

641 (5) (a) The scope of the ethics hearing is limited to the alleged violations stated in the  
642 ethics complaint.

643 (b) Only relevant or material evidence is admissible in the hearing.

644 (c) The chair's determination of admissibility is final and may only be overruled by a  
645 majority vote of the commission.

646 Section 12. Section **63-96a-306** is enacted to read:

647 **63-96a-306. Ethics hearing -- Procedures for argument and testimony.**

- 648 (1) The commission shall permit opening statements to be provided by:  
649 (a) the person that filed the ethics complaint or that person's counsel; and  
650 (b) the respondent or the respondent's counsel.
- 651 (2) (a) After hearing opening statements, at the direction of the chair of the  
652 commission, the commission may hear the testimony of:  
653 (i) the person who filed the ethics complaint;  
654 (ii) witnesses called by the person who filed the ethics complaint;  
655 (iii) the respondent;  
656 (iv) witnesses called by the respondent; and  
657 (v) witnesses called by the commission.
- 658 (b) Each witness shall testify under oath.  
659 (c) The chair shall permit each witness to make a brief opening statement if the witness  
660 desires.
- 661 (d) The chair shall direct the examination of the witness as follows:  
662 (i) After the witness's presentation, the chair shall:  
663 (A) give commission members the opportunity to question the witness; and  
664 (B) give the respondent the opportunity to question the witness.  
665 (ii) The chair may allow further examination of the witness by the commission, the  
666 person filing the complaint, or the respondent.
- 667 (e) (i) If a witness objects to a question, the chair may direct the witness to answer.  
668 (ii) If the witness still declines to answer the question, the witness may be held in  
669 contempt as provided in Subsection 63-96a-305(4).
- 670 (f) The chair shall direct each witness to furnish any relevant evidence for the  
671 commission's consideration if the witness has brought the material voluntarily or has been  
672 required to bring it by subpoena.
- 673 (g) If the witness declines to provide evidence in response to a subpoena, the witness  
674 may be held in contempt as provided in Subsection 63-96a-305(4).
- 675 (h) The chair may allow a witness to insert into the record a sworn written statement of  
676 reasonable length that is relevant to the purpose, subject matter, and scope of the hearing.
- 677 (3) The commission shall permit closing statements to be provided by:  
678 (a) the person that filed the ethics complaint or that person's counsel; and

679 (b) the respondent or the respondent's counsel.

680 Section 13. Section **63-96a-307** is enacted to read:

681 **63-96a-307. Ethics hearing -- Record.**

682 (1) The chair shall ensure that:

683 (a) a record of the ethics hearing is made; and

684 (b) the record includes:

685 (i) rulings of the chair;

686 (ii) questions of the committee and its staff;

687 (iii) the testimony and responses of witnesses;

688 (iv) sworn statements submitted to the commission;

689 (v) relevant documents; and

690 (vi) any other matters that a commission member directs.

691 (2) After the ethics hearing is completed, the staff of the commission shall keep a file  
692 containing a comprehensive summary of the inquiry.

693 Section 14. Section **63-96a-308** is enacted to read:

694 **63-96a-308. Ethics hearing -- Decision by commission -- Recommendations --**

695 **Public release of certain records.**

696 (1) At the conclusion of the ethics hearing, or within five business days after the  
697 conclusion of the ethics hearing, the commission shall meet and determine, by a majority vote:

698 (a) whether or not each alleged violation in the complaint is within the jurisdiction of  
699 the commission;

700 (b) whether or not each alleged violation is substantiated by a preponderance of the  
701 evidence; and

702 (c) what recommendations should be made by the commission in accordance with the  
703 requirements of this section.

704 (2) A meeting conducted according to the requirements of this section is closed to the  
705 public and is not subject to the requirements of Title 52, Chapter 4, Open and Public Meetings  
706 Act.

707 (3) (a) If the commission determines that no issue raised by the ethics complaint is  
708 within the jurisdiction of the commission, the commission shall provide notice of that decision  
709 to the person who filed the ethics complaint and the respondent within ten business days after

710 the conclusion of the ethics hearing.

711 (b) If the commission determines that the ethics complaint is unsubstantiated, the  
712 commission shall provide notice of that decision to the person who filed the ethics complaint  
713 and the respondent within ten business days after the conclusion of the ethics hearing.

714 (c) If the commission determines that the ethics complaint is substantiated in whole or  
715 in part, the commission shall provide the person who filed the ethics complaint and the  
716 respondent with, within ten business days after the conclusion of the ethics hearing, a decision  
717 that contains the following:

718 (i) the name of the respondent;

719 (ii) the name of the person filing the ethics complaint;

720 (iii) the date, time, and location of the ethics hearing;

721 (iv) for each alleged violation that was raised in the ethics complaint:

722 (A) a statement of the alleged violation;

723 (B) the commission's determination that the alleged violation is:

724 (I) unsubstantiated;

725 (II) substantiated in part;

726 (III) substantiated; or

727 (IV) not within the jurisdiction of the commission; and

728 (C) a statement of the facts and legal conclusions that the commission relied upon to  
729 make its determination;

730 (v) a statement of the commission's recommendations in relation to each alleged  
731 violation, which may be:

732 (A) a private reprimand of the respondent;

733 (B) a public reprimand of the respondent; or

734 (C) a statement declining to issue a reprimand to the respondent;

735 (vi) any other matters that a majority of the commission elects to include in the  
736 statement;

737 (vii) the name of each member of the commission; and

738 (viii) the signature of the chair of the commission.

739 (4) If the commission determines that the ethics complaint is substantiated or partially  
740 substantiated, the commission may elect, by a majority vote, to classify all or part of the

741 following records as a public document:

742 (a) the decision issued under Subsection (3);

743 (b) the ethics complaint filed in relation to the hearing;

744 (c) the respondent's response to the ethics complaint;

745 (d) the record of the ethics hearing; and

746 (e) any other document or evidence received by the commission in relation to the ethics

747 complaint filed in relation to the hearing.

748 **Section 15. Coordinating H.B. 130 with H.B. 63 -- Merging technical amendments.**

749 If this H.B. 130 and H.B. 63, Recodification of Title 63 State Affairs in General, both

750 pass, it is the intent of the Legislature that the Office of Legislative Research and General

751 Counsel, in preparing the Utah Code database for publication:

752 (1) renumber Sections 63-96a-101 through 63-96a-308 to 63G-11-101 through

753 63G-11-308 and change all internal references;

754 (2) change the internal reference in Subsection 52-4-103(7)(b)(iii) from 63-96a-201 to

755 63G-11-201; and

756 (3) change the internal reference in Subsection 63-2-304(52) from 63-96a-308 to

757 63G-11-308.

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**Legislative Review Note**

**as of 1-16-08 6:53 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 130 - State Ethics Commission**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will require \$157,400 ongoing to fund 1.5 FTE to staff the commission with associated salary, benefits, and related expenses and \$11,000 one-time in FY 2008 to acquire furnishings and equipment for the staff.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$11,000	\$157,400	\$157,400	\$0	\$0	\$0
<b>Total</b>	<b>\$11,000</b>	<b>\$157,400</b>	<b>\$157,400</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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