

STATE ETHICS COMMISSION

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: _____

LONG TITLE

General Description:

This bill establishes a State Ethics Commission.

Highlighted Provisions:

This bill:

- ▶ establishes a state ethics commission;
- ▶ provides that the commission is not subject to the Open and Public Meetings Act;
- ▶ requires that records provided to the commission be classified as protected records under the Government Records Access and Management Act unless all or part of the record is publicly released by the commission;
- ▶ provides that the commission shall hear certain ethics complaints filed against the governor, lieutenant governor, state attorney general, state treasurer, state auditor, and members of the Legislature;
- ▶ provides for membership of the commission;
- ▶ permits the commission to hire staff;
- ▶ provides for the commission to issue advisory opinions;
- ▶ requires the Department of Administrative Services to provide physical facilities and equipment for the commission and commission staff;
- ▶ provides for procedures for filing ethics complaints, responding to ethics complaints, and holding hearings in response to ethics complaints;
- ▶ provides for the consolidation of multiple complaints;



28 ▶ provides that the commission may not schedule hearings or meetings in relation to
29 an ethics complaint filed immediately preceding an election under certain
30 circumstances;

31 ▶ permits the commission to issue private or public reprimands if it determines that an
32 ethics complaint is substantiated;

33 ▶ permits the commission to publicly release ethics complaints, responses to ethics
34 complaints, and records and documents related to ethics hearings in some
35 circumstances;

36 ▶ requires the commission to issue an annual report of its activities;

37 ▶ provides that a frivolous complaint is a third degree felony; and

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

45 **52-4-103**, as last amended by Laws of Utah 2007, Chapters 35 and 45

46 **63G-2-305**, as last amended by Laws of Utah 2008, Chapters 3, 87, 95, 101, 111, 161,
47 196, 248, 352 and renumbered and amended by Laws of Utah 2008, Chapter 382

48 **ENACTS:**

49 **63G-12-101**, Utah Code Annotated 1953

50 **63G-12-102**, Utah Code Annotated 1953

51 **63G-12-201**, Utah Code Annotated 1953

52 **63G-12-202**, Utah Code Annotated 1953

53 **63G-12-301**, Utah Code Annotated 1953

54 **63G-12-302**, Utah Code Annotated 1953

55 **63G-12-303**, Utah Code Annotated 1953

56 **63G-12-304**, Utah Code Annotated 1953

57 **63G-12-305**, Utah Code Annotated 1953

58 **63G-12-306**, Utah Code Annotated 1953

- 59 **63G-12-307**, Utah Code Annotated 1953
- 60 **63G-12-308**, Utah Code Annotated 1953
- 61 **63G-12-309**, Utah Code Annotated 1953



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

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

65 **52-4-103. Definitions.**

66 As used in this chapter:

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

- 68 (a) an electronic meeting originates; or
- 69 (b) the participants are connected.

70 (2) "Convening" means the calling of a meeting of a public body by a person
71 authorized to do so for the express purpose of discussing or acting upon a subject over which
72 that public body has jurisdiction or advisory power.

73 (3) "Electronic meeting" means a public meeting convened or conducted by means of a
74 conference using electronic communications.

75 (4) (a) "Meeting" means the convening of a public body, with a quorum present,
76 including a workshop or an executive session whether the meeting is held in person or by
77 means of electronic communications, for the purpose of discussing, receiving comments from
78 the public about, or acting upon a matter over which the public body has jurisdiction or
79 advisory power.

80 (b) "Meeting" does not mean:

- 81 (i) a chance meeting;
- 82 (ii) a social meeting; or
- 83 (iii) the convening of a public body that has both legislative and executive
84 responsibilities where no public funds are appropriated for expenditure during the time the
85 public body is convened and:

86 (A) the public body is convened solely for the discussion or implementation of
87 administrative or operational matters for which no formal action by the public body is required;

88 or

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

90 administrative or operational matters that would not come before the public body for
91 discussion or action.

92 (5) "Monitor" means to hear or observe, live, by audio or video equipment, all of the
93 public statements of each member of the public body who is participating in a meeting.

94 (6) "Participate" means the ability to communicate with all of the members of a public
95 body, either verbally or electronically, so that each member of the public body can hear or
96 observe the communication.

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

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

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

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

106 or

107 (iii) the State Ethics Commission established under Section 63G-12-201.

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

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

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

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

117 Section 2. Section **63G-2-305** is amended to read:

118 **63G-2-305. Protected records.**

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

- 120 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret

121 has provided the governmental entity with the information specified in Section 63G-2-309;

122 (2) commercial information or nonindividual financial information obtained from a
123 person if:

124 (a) disclosure of the information could reasonably be expected to result in unfair
125 competitive injury to the person submitting the information or would impair the ability of the
126 governmental entity to obtain necessary information in the future;

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

129 (c) the person submitting the information has provided the governmental entity with
130 the information specified in Section 63G-2-309;

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

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

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

140 (6) records the disclosure of which would impair governmental procurement
141 proceedings or give an unfair advantage to any person proposing to enter into a contract or
142 agreement with a governmental entity, except, subject to Subsection (1) and (2), that this
143 Subsection (6) does not restrict the right of a person to have access to, once the contract or
144 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
145 entity in response to:

146 (a) a request for bids;

147 (b) a request for proposals;

148 (c) a grant; or

149 (d) other similar document;

150 (7) records that would identify real property or the appraisal or estimated value of real
151 or personal property, including intellectual property, under consideration for public acquisition

152 before any rights to the property are acquired unless:

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

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

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

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

162 (e) the property under consideration for public acquisition is a single family residence
163 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
164 the property as required under Section 78B-6-505;

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

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

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

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

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

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

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

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

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

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

192 (11) records the disclosure of which would jeopardize the security of governmental
193 property, governmental programs, or governmental recordkeeping systems from damage, theft,
194 or other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

213 (18) records of communications between a governmental entity and an attorney

214 representing, retained, or employed by the governmental entity if the communications would be
215 privileged as provided in Section 78B-1-137;

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

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

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

222 (A) members of a legislative body;

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

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

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

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

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

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

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

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

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

244 (25) records, other than personnel evaluations, that contain a personal recommendation

245 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
246 personal privacy, or disclosure is not in the public interest;

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

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

252 (28) records of an institution within the state system of higher education defined in
253 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
254 retention decisions, and promotions, which could be properly discussed in a meeting closed in
255 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
256 the final decisions about tenure, appointments, retention, promotions, or those students
257 admitted, may not be classified as protected under this section;

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

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

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

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

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

274 (34) memoranda prepared by staff and used in the decision-making process by an
275 administrative law judge, a member of the Board of Pardons and Parole, or a member of any

276 other body charged by law with performing a quasi-judicial function;

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

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

285 (37) the name of a donor or a prospective donor to a governmental entity, including an
286 institution within the state system of higher education defined in Section 53B-1-102, and other
287 information concerning the donation that could reasonably be expected to reveal the identity of
288 the donor, provided that:

289 (a) the donor requests anonymity in writing;

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

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

297 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
298 73-18-13;

299 (39) a notification of workers' compensation insurance coverage described in Section
300 34A-2-205;

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

304 (i) unpublished lecture notes;

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

306 (A) relating to research; and

- 307 (B) of:
- 308 (I) the institution within the state system of higher education defined in Section
- 309 53B-1-102; or
- 310 (II) a sponsor of sponsored research;
- 311 (iii) unpublished manuscripts;
- 312 (iv) creative works in process;
- 313 (v) scholarly correspondence; and
- 314 (vi) confidential information contained in research proposals;
- 315 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 316 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 317 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 318 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 319 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 320 date that audit is completed and made public; and
- 321 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 322 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 323 the records in the custody or control of the Office of Legislative Auditor General that would
- 324 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 325 protected records until the audit is completed and made public;
- 326 (42) records that provide detail as to the location of an explosive, including a map or
- 327 other document that indicates the location of:
- 328 (a) a production facility; or
- 329 (b) a magazine;
- 330 (43) information:
- 331 (a) contained in the statewide database of the Division of Aging and Adult Services
- 332 created by Section 62A-3-311.1; or
- 333 (b) received or maintained in relation to the Identity Theft Reporting Information
- 334 System (IRIS) established under Section 67-5-22;
- 335 (44) information contained in the Management Information System and Licensing
- 336 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 337 (45) information regarding National Guard operations or activities in support of the

338 National Guard's federal mission;

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

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

344 (48) except to the extent that the record is exempt from this chapter pursuant to Section
345 63G-2-106, records related to an emergency plan or program prepared or maintained by the
346 Division of Homeland Security the disclosure of which would jeopardize:

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

348 (b) the security of:

349 (i) governmental property;

350 (ii) governmental programs; or

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

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

358 (50) as provided in Section 26-39-501:

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

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

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

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

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

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

372 (ii) the individual complying with the law, ordinance, rule, or order;

373 (52) records filed with or in the custody or control of the State Ethics Commission in
374 relation to an ethics complaint or hearing, unless the record has been declared a public record
375 under Section 63G-12-308;

376 [~~(52)~~] (53) the name, home address, work addresses, and telephone numbers of an
377 individual that is engaged in, or that provides goods or services for, medical or scientific
378 research that is:

379 (a) conducted within the state system of higher education, as defined in Section
380 53B-1-102; and

381 (b) conducted using animals;

382 [~~(53)~~] (54) an initial proposal under Title 63M, Chapter 1, Part 26, Government
383 Procurement Private Proposal Program, to the extent not made public by rules made under that
384 chapter;

385 [~~(54)~~] (55) information collected and a report prepared by the Judicial Performance
386 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
387 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
388 the information or report;

389 [~~(55)~~] (56) (a) records of the Utah Educational Savings Plan Trust created under
390 Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary
391 obligations;

392 (b) proposals submitted to the Utah Educational Savings Plan Trust; and

393 (c) contracts entered into by the Utah Educational Savings Plan Trust and the related
394 payments; and

395 [~~(56)~~] (57) records contained in the Management Information System created in
396 Section 62A-4a-1003.

397 Section 3. Section **63G-12-101** is enacted to read:

398 **CHAPTER 12. STATE ETHICS COMMISSION ACT**

399 **Part 1. General Provisions**

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

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

434 (ii) At the time the commission is created the governor shall adjust the terms of two
435 members so that approximately half of the commission is appointed every two years:

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

438 (c) A member may not be appointed for more than two full terms.

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

441 (5) The commission shall meet:

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

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

444 (c) in response to an ethics complaint filed and accepted under Section 63G-12-301.

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

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

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

454 Section 6. Section **63G-12-202** is enacted to read:

455 **63G-12-202. State Ethics Commission -- Duties.**

456 (1) The State Ethics Commission shall:

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

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

461 (c) annually prepare and make available for public inspection, a report describing, for

462 the previous year:

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

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

465 (iii) the number of hearings that resulted in a finding that the ethics complaint that was

466 the subject of the hearing was substantiated or partially substantiated;

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

468 commission, provided that the summary does not contain any information that might identify a

469 participant in a hearing, unless the information has been publicly released under Subsection

470 63G-12-308(5);

471 (v) a copy of all hearing decisions that were issued and publicly released by the

472 commission under Section 63G-12-308; and

473 (vi) any other documents or information that a majority of the members of the

474 commission elect to include in the report;

475 (d) make forms to facilitate the filing and processing of ethics complaints and

476 responses to ethics complaints in accordance with the requirements of this chapter; and

477 (e) issue advisory opinions upon request by:

478 (i) the governor;

479 (ii) the lieutenant governor;

480 (iii) the attorney general;

481 (iv) the state auditor;

482 (v) the state treasurer;

483 (vi) the president of the Senate;

484 (vii) the minority leader of the Senate;

485 (viii) the speaker of the House of Representatives; or

486 (ix) the minority leader of the House of Representatives.

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

488 (3) The Department of Administrative Services shall provide the commission and

489 commission staff with the physical facilities and equipment necessary for the commission to

490 carry out its responsibilities as provided in this chapter.

491 Section 7. Section **63G-12-301** is enacted to read:

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

493 **63G-12-301. Ethics complaints -- Requirements -- Filing -- Confidentiality --**
494 **Notice of filing.**

495 (1) A person may file a written ethics complaint against a member of the Legislature,
496 the governor, the lieutenant governor, the attorney general, the state auditor, or the state
497 treasurer, alleging a violation of:

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

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

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

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

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

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

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

506 (iii) for each violation alleged:

507 (A) a reference to the statute alleged to have been violated; and

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

509 (iv) all documents supporting the complaint as an attachment.

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

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

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

517 (i) name;

518 (ii) address; and

519 (iii) signature.

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

522 (4) In accordance with Section 63G-2-305, all records related to an ethics complaint
523 are classified as a protected record, and no commission member or staff may publicly disclose

524 any information received by the commission concerning any complaint or alleged violation
525 unless the commission elects to publicly disclose the information as provided under Subsection
526 63G-12-308(5).

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

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

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

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

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

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

539 (ii) if an ethics complaint is filed within the 60 days immediately preceding the date of
540 an election and the complaint makes allegations against an individual who is a candidate in the
541 election, schedule a preliminary review meeting after the date of the election, but no later than
542 25 days after the date of the election, unless the respondent consents, in writing, to scheduling a
543 preliminary review meeting in accordance with the requirements of Subsection (6)(a)(i);

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

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

547 (d) provide the respondent with:

548 (i) a copy of the complaint; and

549 (ii) written notice that the individual may file a written response to the complaint with
550 the commission within 20 days of the date of the notice, as provided in Section 63G-12-302.

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

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

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

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

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

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

561 (A) the respondent; and

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

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

566 Section 8. Section **63G-12-302** is enacted to read:

567 **63G-12-302. Response to ethics complaint.**

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

571 (2) The respondent shall limit the response to the following:

572 (a) an admission or denial of each count, under oath, with any supporting evidence or
573 relevant information;

574 (b) an objection to any or all counts on the grounds that the count fails to state facts
575 that constitute a violation of any law; and

576 (c) an objection to the jurisdiction of the commission in considering the allegations
577 contained in the complaint.

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

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

583 (a) each commission member; and

584 (b) the person who filed the ethics complaint.

585 Section 9. Section **63G-12-303** is enacted to read:

586 **63G-12-303. Preliminary review meeting.**

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

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

591 (a) the commission has jurisdiction over the matters contained in the ethics complaint;

592 (b) a hearing should be held to address the allegations in the ethics complaint; or

593 (c) no action shall be taken on the complaint.

594 (3) (a) If the commission determines that a hearing shall be held to address the
595 complaint, the commission shall schedule an ethics hearing according to the procedures of
596 Section 63G-12-304.

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

599 (i) provide written notice that the commission has chosen not to take action on the
600 complaint to:

601 (A) the person who filed the complaint; and

602 (B) the respondent; and

603 (ii) classify the complaint and information related to the complaint as a protected
604 record as provided under Section 63G-2-305.

605 Section 10. Section **63G-12-304** is enacted to read:

606 **63G-12-304. Ethics hearing -- Notice -- Response -- Procedures -- Subpoena**
607 **powers.**

608 (1) (a) If an ethics hearing is authorized under Section 63G-12-303, the chair shall,
609 within three business days of the date of the preliminary review meeting:

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

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

614 (A) the person who filed the complaint; and

615 (B) the respondent; and

616 (iii) provide notice of the date, time, and location of the hearing to each commission

617 member.

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

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

623 (b) In accordance with Section 63G-2-305, and unless specifically made public under
624 Subsection 63G-12-308(5), no commission member, member of commission staff, or any other
625 person present at any portion of the ethics hearing may publicly disclose any part of the
626 hearing.

627 (c) Except as may be required to create the record required under Section 63G-12-307,
628 no camera or recording device may be brought in or used in the hearing.

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

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

633 (i) to require the attendance of witnesses;

634 (ii) to direct the production of evidence; or

635 (iii) that require both attendance and production of evidence.

636 Section 11. Section **63G-12-305** is enacted to read:

637 **63G-12-305. Ethics hearing -- Discretion of chair -- Right to counsel -- Standards**
638 **-- Subpoenas -- Contempt -- Scope of hearing.**

639 (1) (a) The person who filed the ethics complaint, the respondent, and all other persons
640 testifying before the commission have the right to counsel during all stages of the ethics
641 hearing.

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

645 (ii) Counsel for a person may not:

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

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

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

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

652 (c) The witness's counsel may not suggest testimony and answers to the witness during
653 the inquiry, but must allow the witness to present testimony and answer questions without
654 prompting or suggestions.

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

657 (2) (a) (i) The chair of the commission shall direct the commission on procedural
658 matters during the ethics hearing.

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

661 (iii) The motion to appeal the decision of the chair is nondebatable.

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

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

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

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

668 (ii) compel any person to produce for examination any book, paper, or other
669 information relating to the matters raised by the ethics complaint.

670 (3) A witness may not invoke the privilege against self-incrimination unless the
671 witness reasonably could be prosecuted for the crime to which the witness's testimony relates.

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

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

678 (b) The commission may compel obedience to the requirements of the commission by

679 directing staff to file a contempt proceeding in the district court for Salt Lake County against a
680 person who:

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

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

684 (iii) is guilty of contempt on any other grounds specified in statute or recognized by
685 common law.

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

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

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

691 Section 12. Section **63G-12-306** is enacted to read:

692 **63G-12-306. Ethics hearing -- Procedures for argument and testimony.**

693 (1) The commission shall permit opening statements to be provided by:

694 (a) the person who filed the ethics complaint or that person's counsel; and

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

696 (2) (a) After hearing opening statements, at the direction of the chair, the commission
697 may hear the testimony of:

698 (i) the person who filed the ethics complaint;

699 (ii) any witness called by the person who filed the ethics complaint;

700 (iii) the respondent;

701 (iv) any witness called by the respondent; and

702 (v) any witness called by the commission.

703 (b) Each witness shall testify under oath.

704 (c) The chair shall permit each witness to make a brief opening statement if the witness
705 desires.

706 (d) The chair shall direct the examination of the witness as follows:

707 (i) After the witness's presentation, the chair shall:

708 (A) give commission members the opportunity to question the witness; and

709 (B) give the respondent the opportunity to question the witness.

710 (ii) The chair may allow further examination of the witness by the commission, the
711 person filing the complaint, or the respondent.

712 (e) (i) If a witness objects to a question, the chair may direct the witness to answer.

713 (ii) If the witness declines to answer a question after being directed to answer by the
714 chair, the witness may be held in contempt as provided in Subsection 63G-12-305(4).

715 (f) The chair shall direct each witness to furnish any relevant evidence for the
716 commission's consideration if the witness has brought the material voluntarily or has been
717 required to bring it by subpoena.

718 (g) If the witness declines to provide evidence in response to a subpoena, the witness
719 may be held in contempt as provided in Subsection 63G-12-305(4).

720 (h) The chair may allow a witness to insert into the record a sworn written statement of
721 reasonable length that is relevant to the purpose, subject matter, and scope of the hearing.

722 (3) The commission shall permit closing statements to be provided by:

723 (a) the person who filed the ethics complaint or that person's counsel; and

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

725 Section 13. Section **63G-12-307** is enacted to read:

726 **63G-12-307. Ethics hearing -- Record.**

727 (1) The chair shall ensure that:

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

729 (b) the record includes:

730 (i) rulings of the chair;

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

732 (iii) the testimony and responses of witnesses;

733 (iv) sworn statements submitted to the commission;

734 (v) any relevant document; and

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

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

738 Section 14. Section **63G-12-308** is enacted to read:

739 **63G-12-308. Ethics hearing -- Decision by commission -- Recommendations --**

740 **Public release of certain records.**

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

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

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

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

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

752 (3) (a) If the commission determines that the ethics complaint is unsubstantiated, the
753 commission shall provide notice of that decision to the person who filed the ethics complaint
754 and the respondent within ten business days after the conclusion of the ethics hearing.

755 (b) If the commission determines that the ethics complaint is substantiated in whole or
756 in part, the commission shall provide the person who filed the ethics complaint and the
757 respondent with, within ten business days after the conclusion of the ethics hearing, a decision
758 containing the following:

759 (i) the name of the respondent;

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

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

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

763 (A) a statement of the alleged violation;

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

765 (I) unsubstantiated;

766 (II) substantiated in part;

767 (III) substantiated; or

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

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

771 (v) if the respondent is not a member of the Legislature, a statement of the

772 commission's recommendations in relation to each violation that is substantiated or
773 substantiated in part, which may be:

774 (A) a private reprimand of the respondent;

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

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

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

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

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

781 (4) If the complaint is substantiated or partially substantiated and the respondent is a
782 member of the Legislature, the commission shall promptly provide a copy of the decision to:

783 (a) (i) the president of the Senate; and

784 (ii) the minority leader of the Senate; or

785 (b) (i) the speaker of the House of Representatives; and

786 (ii) the minority leader of the House of Representatives.

787 (5) If the commission determines that the ethics complaint is substantiated or partially
788 substantiated:

789 (a) the commission's decision shall be made publicly available; and

790 (b) the commission may elect, by a majority vote, to classify all or part of the following
791 records as a public document:

792 (i) the ethics complaint filed in relation to the hearing;

793 (ii) the respondent's response to the ethics complaint;

794 (iii) the record of the ethics hearing; and

795 (iv) any other document or evidence received by the commission in relation to the
796 ethics complaint filed in relation to the hearing.

797 Section 15. Section **63G-12-309** is enacted to read:

798 **63G-12-309. Frivolous complaints -- Penalty.**

799 (1) A complaint filed under this chapter is frivolous if:

800 (a) the complaint is filed with the commission;

801 (b) (i) the complaint is returned by the commission under Section 63G-12-301 because
802 it does not meet the requirements of that section;

803 (ii) the commission votes to take no action on the complaint at the preliminary review
804 meeting; or
805 (iii) the commission determines that the complaint is unsubstantiated; and
806 (c) the complaint is determined by a two-thirds vote of the commission to be filed
807 primarily for the purpose of harassing the respondent.
808 (2) Filing a frivolous complaint is a third degree felony.

Legislative Review Note
as of 1-9-09 9:01 AM

Office of Legislative Research and General Counsel

S.B. 101 - State Ethics Commission

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will require \$159,100 ongoing to fund 1.5 FTE to staff the commission with associated salary, benefits, and related expenses and \$5,000 one-time in FY 2009 to acquire furnishings and equipment for the staff.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$159,100	\$159,100	\$0	\$0	\$0
General Fund, One-Time	\$0	\$5,000	\$0	\$0	\$0	\$0
Total	\$0	\$164,100	\$159,100	\$0	\$0	\$0

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.