

Senator John L. Valentine proposes the following substitute bill:

JOINT RESOLUTION ON ETHICS

COMPLAINT PROCEDURES

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: David Litvack

7	Cosponsors:	David P. Hinkins	Ralph Okerlund
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LONG TITLE

General Description:

This bill modifies the joint legislative rules that govern the receipt and review of an ethics complaint against a legislator.

Highlighted Provisions:

This resolution:

- ▶ establishes an Independent Legislative Ethics Commission;
- ▶ establishes membership for the commission;
- ▶ provides qualifications for membership;
- ▶ provides term periods and replacement procedures for a member of the commission;
- ▶ provides for the resignation, removal, or recusal of a member of the commission;



- 29 ▶ provides per diem for commission members;
- 30 ▶ provides procedures for calling a meeting of the commission;
- 30a **§→** ▶ **requires the commission to prepare a public summary data report on an annual**
- 30b **basis and requires that the report be submitted** ~~to~~ **to a committee of the Legislature;** ~~←~~ **§**
- 31 ▶ provides for an independent staff to assist the commission;
- 32 ▶ specifies the grounds upon which an ethics complaint may be filed against a
- 33 legislator;
- 34 ▶ provides certain time and jurisdiction limitations on filing an ethics complaint;
- 35 ▶ establishes a general outline of hearing procedures for reviewing an ethics
- 36 complaint;
- 37 ▶ provides the chair of the commission or an ethics committee with the authority to
- 38 direct proceedings and make rulings;
- 39 ▶ permits a majority of the commission or committee to overrule certain decisions of
- 40 the chair;
- 41 ▶ provides subpoena powers to the commission and committees;
- 42 ▶ provides procedures for issuing a subpoena;
- 43 ▶ defines actions that constitute contempt of the Legislature in relation to procedures
- 44 established under these rules;
- 45 ▶ provides procedures for enforcing findings of contempt of the Legislature;
- 46 ▶ provides general procedures for the examination of a witness;
- 47 ▶ establishes permitted and restricted communications by commission and committee
- 48 members during the period that an ethics complaint is under review;
- 49 ▶ establishes rules that govern the payment of attorney fees and costs;
- 50 ▶ establishes conduct requirements for an attorney appearing before the commission
- 51 or a committee;
- 52 ▶ provides procedures for filing an ethics complaint, including:
- 53 • who may file a complaint;
- 54 • restrictions on dates for filing a complaint;
- 55 • the form of the complaint; and
- 56 • information required to be included in the complaint;
- 57 ▶ prohibits any person from disclosing the existence or contents of an ethics
- 58 complaint while the commission is reviewing the complaint with certain exceptions;
- 59 ▶ requires a complaint to be filed with the Senate or House Ethics Committee;

- 60 ▶ changes the title of an ethics committee cochair to vice chair;
- 61 ▶ modifies provisions for the recusal of an ethics committee member;
- 62 ▶ requires the chair and vice chair of the committee to review the complaint for
- 63 technical compliance with filing rules;
- 64 ▶ requires a new complaint to be filed if the original complaint fails to meet filing
- 65 requirements;
- 66 ▶ requires the chair and vice chair of an ethics committee to forward a complaint that
- 67 meets the filing requirements to the Independent Legislative Ethics Commission;
- 68 ▶ provides that the commission shall conduct the original review of each ethics
- 69 complaint;
- 70 ▶ provides that commission meetings and hearings shall be closed to the public;
- 71 ▶ permits the commission or an ethics committee to dismiss allegations that have
- 72 previously been heard by the commission or an ethics committee;
- 73 ▶ provides procedures for the commission to schedule a meeting to review an ethics
- 74 complaint;
- 75 ▶ permits the accused legislator, referred to as the respondent, to file a response to the
- 76 complaint;
- 77 ▶ establishes procedures and requirements for filing a response;
- 78 ▶ permits the commission to hold meetings on preliminary matters in relation to a
- 79 complaint before holding the formal review of the complaint;
- 80 ▶ provides that the scope of the committee's authority is limited to review of those
- 81 allegations contained in the complaint;
- 82 ▶ provides procedures for the commission's review of the complaint;
- 83 ▶ permits the commission to consult on certain issues with commission staff outside
- 84 of the presence of parties and their counsel;
- 85 ▶ prohibits third party recording of commission meetings, except under limited
- 86 circumstances;
- 87 ▶ requires that all portions of the commission's meetings be recorded;
- 88 ▶ provides procedures for storing a record of commission meetings;
- 89 ▶ provides that recordings and records of commission meetings are to be classified as
- 90 private records under the Government Records Access and Management Act;

- 91 ▶ provides procedures for the commission's deliberations when reviewing an ethics
- 92 complaint;
- 93 ▶ provides standards of evidence and voting procedures to be used by the commission
- 94 in determining whether each allegation in a complaint is proved or not proved;
- 95 ▶ requires the commission to dismiss allegations that are not found to be proved;
- 96 ▶ if one or more allegation is found to be proved, requires the commission to:
- 97 • refer the proved allegations to the Senate Ethics Committee or the House Ethics
- 98 Committee; and
- 99 • prepare a recommendation, a modified complaint, and a modified response for
- 100 public release and submission to the ethics committee for review;
- 101 ▶ provides procedures for the ethics committee's review of allegations submitted by
- 102 the commission;
- 103 ▶ provides that committee meetings for review of the allegations submitted by the
- 104 commission are subject to the Open and Public Meetings Act;
- 105 ▶ permits the committee to close the meeting for discussion of certain matters;
- 106 ▶ prohibits third party recording of committee meetings, except under limited
- 107 circumstances;
- 108 ▶ requires that all portions of the committee's meetings be recorded;
- 109 ▶ provides procedures for storing a record of committee meetings;
- 110 ▶ provides procedures for the committee's deliberations;
- 111 ▶ provides standards of evidence and voting procedures to be used by a committee in
- 112 determining whether each allegation referred to the committee by the commission is
- 113 proved or not proved;
- 114 ▶ requires a committee to dismiss allegations that are not found to be proved;
- 115 ▶ requires a committee to publicly issue a finding and order on the allegations;
- 116 ▶ if one or more allegation is found to be proved, requires the committee to:
- 117 • vote on a recommended consequence for the violation, including censure,
- 118 expulsion, or denial of any of the respondent's rights or privileges; and
- 119 • refer the finding and order to the membership of the House or Senate; and
- 120 ▶ makes technical changes.

121 **Special Clauses:**

122 This resolution provides an immediate effective date.

123 **Legislative Rules Affected:**

124 AMENDS:

125 **JR6-2-101**

126 **JR6-2-102**

127 **JR6-2-201**

128 **JR6-3-101**

129 **JR6-4-101**

130 **JR6-4-102**

131 **JR6-4-201**

132 ENACTS:

133 **JR6-2-103**

134 **JR6-2-104**

135 **JR6-2-301**

136 **JR6-2-302**

137 **JR6-2-303**

138 **JR6-2-304**

139 **JR6-2-305**

140 **JR6-2-306**

141 **JR6-2-307**

142 **JR6-3-102**

143 **JR6-4-103**

144 REPEALS AND REENACTS:

145 **JR6-2-202**

146 **JR6-4-202**

147 **JR6-4-203**

148 **JR6-4-204**

149 **JR6-4-301**

150 **JR6-4-302**

151 **JR6-4-303**

152 **JR6-4-304**

- 153 **JR6-4-305**
- 154 **JR6-4-306**
- 155 REPEALS:
- 156 **JR6-4-205**
- 157 **JR6-4-206**
- 158 **JR6-4-207**
- 159 **JR6-4-307**
- 160 **JR6-4-308**
- 161 **JR6-4-309**
- 162 **JR6-4-310**

164 *Be it resolved by the Legislature of the state of Utah:*

165 Section 1. **JR6-2-101** is amended to read:

166 **CHAPTER 2. HOUSE AND SENATE ETHICS COMMITTEES**
 167 **AND INDEPENDENT LEGISLATIVE ETHICS COMMISSION**

168 **Part 1. Membership, Meetings, and Staff**

169 **JR6-2-101. Ethics Committees -- Membership.**

170 (1) There is established a Senate Ethics Committee and a House Ethics Committee.

171 (2) The Senate Ethics Committee shall be composed of:

172 (a) the chair and three additional [~~members~~] Senators appointed by the President of the
173 Senate; and

174 (b) the [~~cochair~~] vice chair and three additional [~~members~~] Senators appointed by the
175 Senate minority leader.

176 (3) The House Ethics Committee shall be composed of:

177 (a) the chair and three additional [~~members~~] Representatives appointed by the Speaker
178 of the House of Representatives; and

179 (b) the [~~cochair~~] vice chair and three additional [~~members~~] Representatives appointed
180 by the House minority leader.

181 (4) [~~Members of the committees~~] A committee member shall serve a two-year [~~terms~~]
182 term.

183 (5) (a) If a [~~complaint is filed against any member of the respective ethics committees;~~

184 ~~the President of the Senate or the Speaker of the House shall appoint another]~~ member of an
 185 ethics committee is accused of wrongdoing in a complaint to be reviewed by the committee, or
 186 if a member of an ethics committee determines that he or she has a conflict of interest in
 187 relation to a complaint to be reviewed by the ethics committee, a member of the Senate or
 188 House [to] shall be appointed to temporarily serve in that member's place while the complaint
 189 is under review[;] as follows:

190 (i) except as provided in Subsection (5)(a)(ii), the member shall be appointed by the
 191 person who appointed the member who is being temporarily replaced, consistent with
 192 Subsection (2), for a member of the Senate Ethics Committee, or Subsection (3), for the House
 193 Ethics Committee; or

194 (ii) if the person designated to make the appointment under Subsection (5)(a)(i) is
 195 accused of wrongdoing in the complaint or determines that he or she has a conflict of interest in
 196 relation to the complaint, the appointment shall be made by:

197 (A) the Senate majority leader, if the person designated is the President of the Senate;

198 (B) the Senate minority whip, if the person designated is the Senate minority leader;

199 (C) the House majority leader, if the person designated is the Speaker of the House; or

200 (D) the House minority whip, if the person designated is the House minority leader.

201 (b) The temporary committee member's term ends when the committee has concluded
 202 its review of the complaint.

203 Section 2. **JR6-2-102** is amended to read:

204 **JR6-2-102. Ethics Committee -- Meetings and Staff.**

205 (1) The Senate and House Ethics Committees shall operate as both standing and
 206 interim committees.

207 (2) The committees shall meet as necessary, either as called at:

208 (a) the discretion of the chair; or

209 (b) by a majority vote of the committee.

210 (3) A majority of the committee is a quorum.

211 (4) The staff of ~~[the committees]~~ each committee consists of:

212 (a) the director of the Office of Legislative Research and General Counsel;

213 (b) the Legislative General Counsel; and

214 (c) any other ~~[members of the]~~ staff ~~[of that office]~~ designated by the director or the

215 Legislative General Counsel.

216 Section 3. **JR6-2-103** is enacted to read:

217 **JR6-2-103. Independent Legislative Ethics Commission -- Membership.**

218 (1) There is established an Independent Legislative Ethics Commission.

219 (2) The commission is composed of five persons, each of whom is registered to vote in
220 this state, appointed as follows:

221 (a) two members, who have served, but no longer serve, as judges of a court of record
222 in this state, each of whom shall be nominated by the mutual consent of the President of the
223 Senate and the Speaker of the House, and appointed by a majority vote of the President of the
224 Senate, Speaker of the House, Senate minority leader, and House minority leader;

225 (b) one member, who has served, but no longer serves, as a judge of a court of record
226 in this state, nominated by the mutual consent of the Senate minority leader and the House
227 minority leader, and appointed by a majority vote of the President of the Senate, Speaker of the
228 House, Senate minority leader, and House minority leader;

229 (c) one member, who has served as a member of the Legislature in this state no more
230 recently than four years before the date of appointment, appointed by the mutual consent of the
231 President of the Senate and the Speaker of the House of Representatives; and

232 (d) one member, who has served as a member of the Legislature in this state no more
233 recently than four years before the date of appointment, appointed by the mutual consent of the
234 Senate minority leader and House minority leader.

235 (3) A member of the commission may not, during the member's term of office on the
236 commission, act or serve as:

237 (a) an officeholder as defined in Section 20A-11-101;

238 (b) an agency head as defined in Section 67-16-3;

239 (c) a lobbyist as defined in Section 36-11-102; or

240 (d) a principal as defined in Section 36-11-102.

241 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each member of the commission
242 shall serve a four-year term.

243 (ii) When appointing the initial members upon formation of the commission, one
244 member nominated by the President of the Senate and the Speaker of the House of
245 Representatives and one member nominated by the Senate minority leader and House minority

246 leader shall be appointed to a two-year term so that approximately half of the commission is
247 appointed every two years.

248 (b) (i) When a vacancy occurs in the commission's membership for any reason, a
249 replacement member shall be appointed for the unexpired term of the vacating member using
250 the procedures and requirements of Subsection (2).

251 (ii) For the purposes of this rule, an appointment for an unexpired term of a vacating
252 member is not considered a full term.

253 (c) A member may not be appointed to serve for more than two full terms, whether
254 those terms are two or four years.

255 (d) A member of the commission may resign from the commission by giving one
256 month's written notice of the resignation to the President of the Senate, Speaker of the House,
257 Senate minority leader, and House minority leader.

258 (e) The chair of the Legislative Management Committee shall remove a member from
259 the commission if the member:

260 (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;

261 (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral
262 turpitude; or

263 (iii) fails to meet the qualifications of office as provided in this rule.

264 (f) If a commission member is accused of wrongdoing in a complaint, or if a
265 commission member determines that he or she has a conflict of interest in relation to a
266 complaint, a temporary commission member shall be appointed to serve in that member's place
267 for the purposes of reviewing that complaint using the procedures and requirements of
268 Subsection (2).

269 (5) (a) A member of the commission may not receive compensation or benefits for the
270 member's service, but may receive per diem and expenses incurred in the performance of the
271 member's official duties at the rates established by the Division of Finance under Sections
272 63A-3-106 and 63A-3-107.

273 (b) A member may decline to receive per diem and expenses for the member's service.

274 (6) (a) The commission members shall convene a meeting annually each January and
275 elect, by a majority vote, a commission chair from among the commission members.

276 (b) A person may not serve as chair for more than two consecutive years.

277 Section 4. **JR6-2-104** is enacted to read:

278 **JR6-2-104. Independent Legislative Ethics Commission -- Meetings -- Staff.**

279 (1) The Independent Legislative Ethics Commission shall meet for the purpose of
280 reviewing an ethics complaint when:

281 (a) except otherwise expressly provided in this title, called to meet at the discretion of
282 the chair; or

283 (b) called to meet by a majority vote of the commission.

284 (2) A majority of the commission is a quorum.

285 (3) (a) ~~§~~→ **The commission shall prepare, on an annual basis, a summary data report**
285a **that contains:**

285b **(i) a general description of the activities of the commission during the past year;**

285c **(ii) the number of ethics complaints filed with the commission;**

285d **(iii) the number of ethics complaints reviewed by the commission;**

285e **(iv) the number of complaints filed against a member of the House of Representatives;**

285f **(v) the number of complaints filed against a member of the Senate;**

285g **(vi) a summary description of any ethics complaints that were recommended by the**
285h **commission for review by a Legislative ethics committee; and**

285i **(vii) an accounting of the commission's budget and expenditures.**

285j **(b) The summary data report shall be submitted to an appropriate committee of the**
285k **Legislature on an annual basis.**

285l **(c) The summary data report shall be a public record.**

285m **(4)(a) ←§ The Senate and the House of Representatives shall employ staff for the**
286 **commission at a level that is reasonable to assist the commission in performing its duties as**
287 **established in this chapter.**

288 **(b) The Legislative Management Committee shall:**

289 **(i) authorize each staff position for the commission; and**

290 **(ii) approve the employment of each staff member for the commission.**

291 **(c) Staff for the commission shall work only for the commission and may not perform**
292 **services for the Senate, House of Representatives, or other legislative offices.**

293 Section 5. **JR6-2-201** is amended to read:

294 **Part 2. General Powers and Procedures**

295 **JR6-2-201. Authority to Review Complaints -- Grounds for Complaint --**
296 **Limitations on Filings.**

297 ~~[The]~~ (1) Subject to the requirements of this chapter, the Senate Ethics Committee

298 ~~[and], the House Ethics Committee [shall review and adjudicate any charges brought against a~~
299 ~~member of the Senate or House for acts that violate: (1) the Code of Official Conduct; or (2)~~
300 ~~any law, rule, regulation, or other standard of conduct applicable to the conduct of a member of~~
301 ~~the Senate or House in the performance of legislative responsibilities, if the conduct would~~
302 ~~reflect discredit upon the Senate or House as a whole.], and the Independent Legislative Ethics~~
303 Commission are authorized to review an ethics complaint against a legislator if the complaint
304 alleges:

- 305 (a) a violation of the Code of Official Conduct as provided in JR6-1-102;
- 306 (b) a conviction of, or a plea of guilty to, a crime involving moral turpitude; or
- 307 (c) a plea of no contest or a plea in abeyance to a crime involving moral turpitude.

308 (2) (a) For an alleged violation under Subsection (1)(a), the complaint must be filed
309 within two years of the date that the action or omission that forms the basis of the alleged
310 violation occurred or within two years of the date that the action or omission would have been
311 discovered by a reasonable person.

312 (b) For an alleged violation under Subsection (1)(b) or (1)(c), the complaint shall be
313 filed within two years of the date that the plea or conviction that forms the basis of the
314 allegation was entered.

315 (3) (a) A complaint may not contain an allegation if that allegation and the general
316 facts and circumstances supporting that allegation have been previously reviewed by the
317 commission or an ethics committee unless:

318 (i) the allegation was previously reviewed by the commission and dismissed without
319 being referred to an ethics committee for review;

320 (ii) the allegation is accompanied by material facts or circumstances supporting the
321 allegation that were not raised or pled to the commission when the allegation was previously
322 reviewed; and

323 (iii) the allegation and the general facts and circumstances supporting that allegation
324 have only been reviewed by the commission on one previous occasion.

325 (b) If an allegation in the complaint does not comply with the requirements of
326 Subsection (3)(a), the committee chairs, when reviewing the complaint under JR6-4-101, or the
327 commission, shall summarily dismiss that allegation with prejudice.

328 Section 6. **JR6-2-202** is repealed and reenacted to read:

329 **JR6-2-202. General Powers -- Jurisdiction.**

330 (1) The commission and the committees have jurisdiction only over an individual who
331 is currently serving in the Legislature.

332 (2) The commission and the committees shall dismiss an ethics complaint if the
333 respondent legislator resigns from the Legislature.

334 Section 7. **JR6-2-301** is enacted to read:

335 **Part 3. General Provisions Governing Hearings on Ethics Complaint**

336 **JR6-2-301. General Procedures for Conducting a Hearing on an Ethics**
337 **Complaint.**

338 (1) In conducting a hearing on a complaint, the Independent Legislative Ethics

339 Commission or the Senate or House Ethics Committee shall comply with the following process
340 in the order specified:

341 (a) introduction and instructions for procedure and process, at the discretion of the
342 chair;

343 (b) complainants' opening argument, to be presented by a complainant or complainants'
344 counsel;

345 (c) complainants' presentation of evidence and witnesses in support of allegations in
346 the complaint;

347 (d) consideration of motions to dismiss the complaint or motions for a directed verdict,
348 as applicable;

349 (e) respondent's opening argument, to be presented by the respondent or respondent's
350 counsel;

351 (f) respondent's presentation of evidence and witnesses refuting allegations in the
352 complaint;

353 (g) presentation of rebuttal evidence and witnesses by the complainants, at the
354 discretion of the chair;

355 (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion
356 of the chair;

357 (i) complainants' closing argument, to be presented by a complainant or complainants'
358 counsel;

359 (j) respondent's closing argument, to be presented by the respondent or respondent's
360 counsel;

361 (k) deliberations by the commission or committee; and

362 (l) adoption of the commission's or committee's findings.

363 (2) The commission or an ethics committee may, in extraordinary circumstances, vary
364 the order contained in Subsection (1) by majority vote and by providing notice to the parties.

365 (3) The chair may schedule the examination of a witness or evidence subpoenaed at the
366 request of the chair or the committee under JR6-2-303 at the chair's discretion.

367 Section 8. **JR6-2-302** is enacted to read:

368 **JR6-2-302. Chair as Presiding Judge.**

369 (1) Except as expressly provided otherwise in this title, the chair of the Independent

370 Legislative Ethics Commission and the chair of the Senate or House Ethics Committee is
371 vested with the power to direct the commission or committee during meetings authorized by
372 this title.

373 (2) Unless expressly prohibited from doing so under this title, the commission or
374 committee may overrule a decision of the chair by using the following procedure:

375 (a) If a member objects to a decision of the chair, that member may appeal the decision
376 by stating:

377 (i) "I appeal the decision of the chair."; and

378 (ii) the basis for the objection.

379 (b) This motion is nondebatable.

380 (c) The chair shall direct a roll call vote to determine if the commission or committee
381 supports the decision of the chair.

382 (d) A majority vote of the commission or committee is necessary to overrule the
383 decision of the chair.

384 (3) The chair may set time limitations on any part of a meeting or hearing authorized
385 by this title.

386 Section 9. **JR6-2-303** is enacted to read:

387 **JR6-2-303. Subpoena Powers.**

388 (1) For all proceedings authorized by this title, the Independent Legislative Ethics
389 Commission or the Senate or House Ethics Committee may issue a subpoena to:

390 (a) require the attendance of a witness;

391 (b) direct the production of evidence; or

392 (c) require both the attendance of a witness and the production of evidence.

393 (2) The commission shall issue a subpoena under this rule:

394 (a) as required under JR6-2-305;

395 (b) at the direction of the commission chair, if the chair determines that the testimony
396 or evidence is relevant to the review of a complaint under Chapter 4, Part 2, Review of Ethics
397 Complaint by the Independent Legislative Ethics Commission; or

398 (c) upon a vote of a majority of the commission members.

399 (3) An ethics committee shall issue a subpoena under this rule:

400 (a) as required under JR6-2-305;

401 (b) at the direction of the committee chair or vice chair, if the chair or vice chair
402 determines that the testimony or evidence is relevant to review of a complaint under Chapter 4,
403 Part 3, Review of Ethics Complaint by Ethics Committee; or

404 (c) upon a vote of a majority of the committee members.

405 (4) The Director of the Office of Legislative Research and General Counsel shall issue
406 a subpoena on behalf of an ethics committee when requested to do so by one of the persons or
407 entities authorized to do so under Subsection (3).

408 Section 10. **JR6-2-304** is enacted to read:

409 **JR6-2-304. Contempt of the Legislature.**

410 (1) (a) The following actions constitute contempt of the Legislature in relation to
411 actions and proceedings under this title:

412 (i) disobedience to a direction of the commission chair;

413 (ii) disobedience to a direction of an ethics committee chair;

414 (iii) failure to answer a question during a hearing when directed to do so by:

415 (A) the commission chair, unless the direction is overridden by the commission under
416 JR6-2-302;

417 (B) an ethics committee chair, unless the direction is overridden by the committee
418 under JR6-2-302; or

419 (C) a majority of the commission or committee; or

420 (iv) failure to comply with a subpoena or other order issued under authority of this
421 title;

422 (v) violation of privacy provisions established by JR6-3-102;

423 (vi) violation of the communication provisions established by JR6-2-306;

424 (vii) violation of a request to comply with a provision of this title by a chair or a
425 majority of the members of the commission or committee; or

426 (viii) any other ground that is specified in statute or recognized at common law.

427 (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is
428 to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth
429 Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's
430 testimony relates.

431 (2) (a) The following persons may authorize an enforcement action against a person in

432 contempt of the Legislature under the provisions of this title:

433 (i) the commission chair, subject to the provisions of JR6-2-302;

434 (ii) members of the commission, by means of a majority vote;

435 (iii) an ethics committee chair, subject to the provisions of JR6-2-302; or

436 (iv) members of an ethics committee, by means of a majority vote.

437 (b) In initiating and pursuing an action against an individual for contempt of the

438 Legislature, the plaintiff shall comply with the procedures and requirements of Section

439 36-14-5.

440 Section 11. **JR6-2-305** is enacted to read:

441 **JR6-2-305. Testimony and Examination of Witnesses -- Oath -- Procedure --**

442 **Contempt.**

443 (1) (a) The chair shall ensure that each witness listed in the complaint and response is

444 subpoenaed for appearance at the hearing unless:

445 (i) the witness is unable to be properly identified or located; or

446 (ii) service is otherwise determined to be impracticable.

447 (b) The chair shall determine the scheduling and order of witnesses and presentation of

448 evidence.

449 (c) The commission or committee may, by majority vote:

450 (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);

451 (ii) modify the chair's determination on the scheduling and order of witnesses under

452 Subsection (1)(b);

453 (iii) decline to hear or call a witness that has been requested by the complainant or

454 respondent;

455 (iv) decline to review or consider evidence submitted in relation to an ethics complaint;

456 or

457 (v) request and subpoena witnesses or evidence according to the procedures of

458 JR6-2-303.

459 (2) (a) Each witness shall testify under oath.

460 (b) The chair or the chair's designee shall administer the oath to each witness.

461 (3) After the oath has been administered to the witness, the chair shall direct testimony

462 as follows:

463 (a) allow the party that has called the witness, or that party's counsel, to question the
464 witness;

465 (b) allow the opposing party, or that party's counsel, to cross-examine the witness;

466 (c) allow additional questioning by a party or a party's counsel as appropriate;

467 (d) give commission or committee members the opportunity to question the witness;

468 and

469 (e) as appropriate, allow further examination of the witness by the commission or
470 committee, or the parties or their counsel.

471 (4) (a) If the witness, a party, or a party's counsel objects to a question, the chair shall:

472 (i) direct the witness to answer; or

473 (ii) rule that the witness is not required to answer the question.

474 (b) If the witness declines to answer a question after the chair or a majority of the
475 commission or committee determines that the witness is required to answer the question, the
476 witness may be held in contempt as provided in JR6-2-304.

477 (5) (a) The chair or a majority of the members of the commission or committee may
478 direct a witness to furnish any relevant evidence for consideration if the witness has brought
479 the material voluntarily or has been required to bring it by subpoena.

480 (b) If the witness declines to provide evidence in response to a subpoena, the witness
481 may be held in contempt as provided in JR6-2-304.

482 Section 12. **JR6-2-306** is enacted to read:

483 **JR6-2-306. Communications of Commission and Committee Members.**

484 (1) As used in this section, "third party" means:

485 (a) for a member of the Independent Legislative Ethics Commission, a person who is
486 not a member of the commission or staff to the commission; or

487 (b) for a member of an ethics committee, a person who is not a member of the
488 committee or staff to the committee.

489 (2) While a complaint is under review by the commission or an ethics committee, a
490 member of that commission or committee may not initiate or consider any communications
491 concerning the complaint with a third party unless:

492 (a) the communication is expressly permitted under the procedures established by this
493 title; or

494 (b) the communication is made by the third party, in writing, simultaneously to:

495 (i) all members of the commission or committee; and

496 (ii) a staff member of the commission or committee.

497 (3) (a) While the commission is reviewing a complaint under this title, a commission
498 member may communicate outside of the meetings, hearing, or deliberations with another
499 member of, or staff to, the commission, only if the member's communication does not
500 materially compromise the member's responsibility to independently review and make
501 decisions in relation to the complaint.

502 (b) While a committee is reviewing a complaint under this title, a committee member
503 may communicate outside of the meeting, hearing, or deliberations with another member of, or
504 staff to, the committee, only if the member's communication does not materially compromise
505 the member's responsibility to independently review and make decisions in relation to the
506 complaint.

507 (4) While a complaint is under review by an ethics committee, a member of the
508 commission may not comment publicly or privately about the commission's decision,
509 reasoning, or other matters relating to the ethics complaint, but may provide or refer a
510 questioner to the commission's written recommendation.

511 Section 13. **JR6-2-307** is enacted to read:

512 **JR6-2-307. Attorney Fees and Costs.**

513 (1) A person filing a complaint under this title:

514 (a) may, but is not required to, retain legal representation during the complaint review
515 process; and

516 (b) is responsible for payment of complainants' attorney fees and costs incurred.

517 (2) (a) A legislator against whom a complaint is filed under this title:

518 (i) may, but is not required to, retain legal representation during the complaint review
519 process; and

520 (ii) is responsible for that legislator's own attorney fees and costs involved, except as
521 provided in Subsection (2)(b).

522 (b) The Senate, for a Senator, or the House of Representatives, for a Representative,
523 shall pay the reasonable attorney fees and costs incurred by a legislator against whom a
524 complaint is filed under this title if:

525 (i) the commission declines to recommend that any allegation in the complaint be
526 reviewed by an ethics committee; or

527 (ii) an ethics committee determines that none of the allegations in the complaint that
528 were recommended for review by the commission have been proved.

529 (3) (a) An attorney participating in a hearing before the commission or an ethics
530 committee shall comply with:

531 (i) the Rules of Professional Conduct established by the Utah Supreme Court;

532 (ii) the procedures and requirements of this title; and

533 (iii) the directions of the chairs, commission, and ethics committees.

534 (b) Violations of Subsection (3)(a) may constitute:

535 (i) contempt of the Legislature under JR6-2-304; or

536 (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah
537 State Bar.

538 Section 14. **JR6-3-101** is amended to read:

539 **CHAPTER 3. FILING A COMPLAINT ALLEGING A**
540 **VIOLATION OF LEGISLATIVE ETHICS**

541 **JR6-3-101. Ethics Complaints -- Filing -- Form.**

542 ~~[(1) Any legislator who wishes to file an ethics complaint against another legislator~~
543 ~~shall file a written complaint:]~~

544 (1) (a) The following individuals, who shall be referred to as the complainants, may
545 file a complaint against an individual legislator if the complaint meets the requirements of
546 JR6-2-201 and Subsection (1)(b):

547 (i) two or more members of the House of Representatives, for a complaint against a
548 Representative, provided that the complaint contains evidence or sworn testimony that:

549 (A) sets forth facts and circumstances supporting the alleged violation; and

550 (B) is evidence or sworn testimony of the type that would generally be admissible
551 under the Utah Rules of Evidence;

552 (ii) two or more members of the Senate, for a complaint against a Senator, provided
553 that the complaint contains evidence or sworn testimony that:

554 (A) sets forth facts and circumstances supporting the alleged violation; and

555 (B) is evidence or sworn testimony of the type that would generally be admissible

556 under the Utah Rules of Evidence; or

557 (iii) two or more registered voters currently residing within Utah, if, for each alleged
558 violation pled in the complaint, at least one of those registered voters has actual knowledge of
559 the facts and circumstances supporting the alleged violation.

560 (b) A complainant may file a complaint only against an individual who is serving as a
561 member of the Legislature on the date that the complaint is filed.

562 (2) (a) Complainants shall file a complaint with:

563 [(a)] (i) [~~with the President of the Senate and~~] the chair and vice chair of the Senate
564 Ethics Committee, if the complaint is against a [Senator] member of the Senate; or

565 [(b)] (ii) [~~with the Speaker of the House and~~] the chair and vice chair of the House
566 Ethics Committee, if the complaint is against a [Representative] member of the House of
567 Representatives.

568 (b) An individual may not file a complaint during the 60 calendar days immediately
569 preceding:

570 (i) a regular primary election, if the accused legislator is a candidate in the primary
571 election; or

572 (ii) a regular general election in which the accused legislator is a candidate, unless the
573 accused legislator is unopposed in the election.

574 [(2)(a)] (3) [~~The legislator filing the complaint shall ensure that it contains] The~~
575 complainants shall ensure that each complaint filed under this rule is in writing and contains
576 the following information:

577 [(i)] (a) the name and position or title of the [person] legislator alleged to be in
578 violation, who [is] shall be referred to as the respondent;

579 [(ii)] (b) the name [and], address, and telephone number of [at least three Senators, if
580 the respondent is a Senate member, or at least three Representatives, if the respondent is a
581 House member, who are] each individual who is filing the complaint[, who are the complainant
582 or complainants];

583 [(iii)] (c) [~~the nature of the] a description of each alleged violation[;], including for~~
584 each alleged violation:

585 [(iv) subject to Subsection (1)(b), any facts alleged to support the complaint; and]

586 [(v) all documents that support the complaint as an attachment to it.]

587 (i) a reference to:
588 (A) the section of the code of conduct alleged to have been violated; or
589 (B) the criminal provision violated and the docket number of the case involving the
590 legislator;
591 (ii) the name of the complainant or complainants who have actual knowledge of the
592 facts and circumstances supporting each allegation;
593 (iii) the facts and circumstances supporting each allegation, which shall be provided
594 by:
595 (A) copies of official records or documentary evidence; or
596 (B) one or more affidavits, each of which shall comply with the following format:
597 (I) the name, address, and telephone number of the signer;
598 (II) a statement that the signer has actual knowledge of the facts and circumstances
599 alleged in the affidavit;
600 (III) the facts and circumstances testified to by the signer;
601 (IV) a statement that the affidavit is believed to be true and correct and that false
602 statements are subject to penalties of perjury; and
603 (V) the signature of the signer;
604 (d) a list of the witnesses that the complainants wish to have called, including for each
605 witness:
606 (i) the name, address, and, if available, one or more telephone numbers of the witness;
607 (ii) a brief summary of the testimony to be provided by the witness; and
608 (iii) a specific description of any documents or evidence complainants desire the
609 witness to produce;
610 (e) a statement that each complainant:
611 (i) has reviewed the allegations contained in the complaint and the sworn statements
612 and documents attached to the complaint;
613 (ii) believes that the complaint is submitted in good faith and not for any improper
614 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
615 respondent's reputation, or causing unnecessary expenditure of public funds; and
616 (iii) believes the allegations contained in the complaint to be true and accurate; and
617 (f) the signature of each complainant.

618 ~~[(b) If any of the facts supporting the complaint are based upon the information and~~
619 ~~belief of the complainants, the complaint shall state that the facts are presented "upon~~
620 ~~information and belief" and give the basis for that information and belief.]~~

621 Section 15. **JR6-3-102** is enacted to read:

622 **JR6-3-102. Privacy of Ethics Complaints -- Contempt -- Enforcement of Finding**
623 **of Contempt -- Dismissal.**

624 (1) (a) Except as provided in Subsection (1)(b) or (c), a person, including the
625 complainants, the respondent, commission members, a committee chair or vice chair, or staff to
626 the commission or a committee, may not disclose the existence of a complaint, a response, nor
627 any information concerning any alleged violation that is the subject of a complaint.

628 (b) The restrictions in Subsection (1)(a) do not apply to:

629 (i) a complaint or response that is publicly released by the commission and referred to
630 an ethics committee for review under the procedures and requirements of JR6-4-204, and the
631 allegations contained in the publicly released complaint or response; or

632 (ii) the respondent's voluntary disclosure of a finding by the commission that no
633 allegations in a complaint were proved, after that finding is issued by the commission under the
634 procedures and requirements of JR6-4-204.

635 (c) Nothing in this rule prevents a person from disclosing facts or allegations about
636 potential criminal violations to law enforcement authorities.

637 (2) A person who violates the provisions of Subsection (1)(a) is in contempt of the
638 Legislature and proceedings may be initiated to enforce the finding of contempt using the
639 procedures provided in JR6-2-304 and Section 36-14-5.

640 (3) If the existence of an ethics complaint is publicly disclosed during the period that
641 the Independent Legislative Ethics Commission is reviewing the complaint, the complaint shall
642 be summarily dismissed without prejudice.

643 Section 16. **JR6-4-101** is amended to read:

644 **CHAPTER 4. PROCEDURES FOR REVIEWING ETHICS COMPLAINTS**

645 **Part 1. Initial Review of Ethics Complaint and Response**

646 **JR6-4-101. Review of Ethics Complaint for Compliance with Form Requirements**
647 **-- Independent Requirements for Complaint -- Notice of Complaint to Commission**
648 **Members.**

649 (1) ~~(a)~~ Within five business days after receipt of ~~the~~ a complaint, the staff of the
 650 ~~committee~~ ethics committee receiving the complaint, in consultation with the committee
 651 chair and ~~cochair~~ vice chair, shall examine ~~each~~ the complaint to determine if it is in
 652 compliance with JR6-2-201 and JR6-3-101.

653 ~~(b)-(i)~~ (2) (a) If the chair and ~~cochair determine~~ vice chair determine that the
 654 complaint does not comply with JR6-2-201 or JR6-3-101, the chair shall return the complaint
 655 to the ~~complainants~~ first complainant named on the complaint with:

656 (i) a statement detailing the reason for the non-compliance; and

657 (ii) a copy of the applicable legislative rules ~~on ethics~~.

658 ~~(ii) The~~ (b) If a complaint is returned for non-compliance with the requirements of
 659 this title, the complainants may ~~resubmit the~~ file another complaint if the new complaint
 660 independently meets the requirements of JR6-3-101, including any requirements for timely
 661 filing.

662 ~~(c)~~ (3) If the chair and ~~cochair~~ vice chair determine that the complaint complies
 663 with ~~this title~~ the requirements of this rule, the chair shall:

664 ~~(i)~~ (a) accept the complaint;

665 ~~(ii)~~ (b) notify ~~each member~~ the chair and the staff of the ~~ethics committee~~
 666 Independent Legislative Ethics Commission that the complaint has been filed and accepted;
 667 and

668 ~~(iii)~~ (c) ~~provide each member of the ethics committee with a copy of~~ promptly
 669 forward the complaint~~[-]~~ to:

670 ~~(2) No committee member or staff may disclose publically any information received~~
 671 ~~by the committee concerning any alleged violation until the member of the Senate or House~~
 672 ~~charged in the violation has received the Summary of the Preliminary Inquiry required by~~
 673 ~~JR6-4-206.~~

674 (i) the commission; and

675 (ii) the legislator who is the subject of the ethics complaint via personal delivery or a
 676 delivery method that provides verification of receipt, together with a copy of the applicable
 677 legislative rules and notice of the legislator's deadline for filing a response to the complaint.

678 Section 17. **JR6-4-102** is amended to read:

679 **JR6-4-102. Meeting of the Independent Legislative Ethics Commission for**

680 **Review of Complaint -- Procedures.**

681 ~~[(1) Within 30 days after the complaint is accepted, the chair and cochair shall:]~~

682 By no later than 10 calendar days after the day on which the complaint is accepted
683 under JR6-4-101, the commission chair shall:

684 ~~[(a)]~~ (1) schedule [an ethics committee] a commission meeting[; and] on a date no later
685 than 60 calendar days after the date on which the committee chair and vice chair accept the
686 complaint;

687 ~~[(b)]~~ (2) place the [ethics] complaint on the agenda for consideration at that meeting
688 [with the recommendation that:]

689 ~~[(i) the complaint be considered; or]~~

690 ~~[(ii) the complaint be dismissed because it fails to allege facts that constitute a~~
691 violation.]

692 ~~[(2) (a) At the ethics committee meeting, the committee shall determine:]~~

693 ~~[(i) whether or not the alleged violation in the complaint is within the jurisdiction of~~
694 the committee; and]

695 ~~[(ii) whether or not the complaint merits further inquiry.]~~

696 ~~[(b) The chair shall notify the complainants and respondent, in writing, of the~~
697 determination made by the committee.]

698 ~~[(3) If the committee determines that the complaint merits further inquiry, the~~
699 committee meeting shall become a preliminary inquiry to determine whether the alleged
700 violation occurred.]

701 (3) provide notice of the date, time, and location of the meeting to:

702 (a) the members of the commission;

703 (b) the first complainant named in the complaint; and

704 (c) the respondent; and

705 (4) provide a copy of the complaint to each member of the commission.

706 Section 18. **JR6-4-103** is enacted to read:

707 **JR6-4-103. Response to Ethics Complaint -- Filing -- Form.**

708 (1) The legislator that is the subject of the complaint may file a response to the
709 complaint no later than 30 days after the day on which the legislator receives delivery of the
710 complaint.

711 (2) The respondent shall file the response with the commission and shall ensure that
712 the response is in writing and contains the following information:
713 (a) the name, address, and telephone number of the respondent;
714 (b) for each alleged violation in the complaint:
715 (i) each affirmative defense asserted in response to the allegation, including a general
716 description of each affirmative defense and the facts and circumstances supporting the defense
717 to be provided by one or more affidavits, each of which shall comply with the following
718 format:
719 (A) the name, address, and telephone number of the signer;
720 (B) a statement that the signer has actual knowledge of the facts and circumstances
721 alleged in the affidavit;
722 (C) the facts and circumstances testified to by the signer;
723 (D) a statement that the affidavit is believed to be true and correct and that false
724 statements are subject to penalties of perjury; and
725 (E) the signature of the signer;
726 (ii) the facts and circumstances refuting the allegation, which shall be provided by:
727 (A) copies of official records or documentary evidence; or
728 (B) one or more affidavits, each of which shall comply with the following format:
729 (I) the name, address, and telephone number of the signer;
730 (II) a statement that the signer has actual knowledge of the facts and circumstances
731 alleged in the affidavit;
732 (III) the facts and circumstances testified to by the signer;
733 (IV) a statement that the affidavit is believed to be true and correct and that false
734 statements are subject to penalties of perjury; and
735 (V) the signature of the signer;
736 (c) a list of the witnesses that the respondent wishes to have called, including for each
737 witness:
738 (i) the name, address, and, if available, telephone number of the witness;
739 (ii) a brief summary of the testimony to be provided by the witness; and
740 (iii) a specific description of any documents or evidence the respondent desires the
741 witness to produce;

- 742 (d) a statement that the respondent:
- 743 (i) has reviewed the allegations contained in the complaint and the sworn statements
- 744 and documents attached to the response; and
- 745 (ii) believes the contents of the response to be true and accurate; and
- 746 (e) the signature of the respondent.

747 (3) Promptly after receiving the response, the commission shall provide copies of the
748 response to:

- 749 (a) each member of the commission; and
- 750 (b) the first named complainant on the complaint.

751 Section 19. **JR6-4-201** is amended to read:

752 **Part 2. Review of Ethics Complaint by the Independent Legislative Ethics Commission**

753 **JR6-4-201. Review of Ethics Complaint by the Independent Legislative Ethics**

754 **Commission.**

755 (1) The scope of the [~~preliminary inquiry~~] Independent Legislative Ethics
756 Commission's review is limited to the alleged violations stated in the complaint.

757 [~~(2) (a) Only relevant or material evidence is admissible in the preliminary inquiry.]~~

758 (2) (a) Before holding the meeting for review of the complaint, the commission chair
759 may schedule a separate meeting of the commission for the purposes of:

760 (i) hearing motions or arguments from the parties, including hearing motions or
761 arguments relating to dismissal of a complaint, admission of evidence, or procedures;

762 (ii) holding a vote of the commission, with or without the attendance of the parties, on
763 procedural or commission business matters relating to a complaint; or

764 (iii) reviewing a complaint, with or without the attendance of the parties, to determine
765 if the complaint should be dismissed in whole or in part, by means of a majority vote of the
766 commission, because it pleads facts or circumstances against a legislator that have already been
767 reviewed by the commission or an ethics committee as provided in JR6-2-201.

768 (b) Notwithstanding JR6-4-102, the commission may, by a majority vote, change the
769 date of the meeting for review of the complaint in order to accommodate:

- 770 (i) a meeting authorized under Subsection (2)(a); or
- 771 (ii) necessary scheduling requirements.

772 (3) (a) The commission shall comply with the Utah Rules of Evidence except where

773 the commission determines, by majority vote, that a rule is not compatible with the
774 requirements of this title.

775 (b) The ~~[chair's determination of]~~ chair shall make rulings on admissibility ~~[is final and~~
776 ~~may only be overruled by a majority vote of the committee]~~ of evidence consistent with the
777 provisions of JR6-2-302.

778 ~~[(3) At the beginning of the preliminary inquiry, in order to expedite the committee's~~
779 ~~investigation and to facilitate a rapid resolution of the matter, the committee cochairs and the~~
780 ~~respondent may agree in writing that the procedural requirements of Part 3, Disciplinary~~
781 ~~Hearing, are waived.]~~

782 (4) (a) ~~[The preliminary inquiry is]~~ All meetings and hearings authorized in this part
783 are closed to the public.

784 (b) The ~~[respondent and the respondent's counsel]~~ following individuals may be
785 present during the presentation of testimony and evidence to the ~~[committee.]~~ commission:

786 ~~[(c) Only Ethics Committee members and staff may be present during other portions of~~
787 ~~the preliminary inquiry.]~~

788 ~~[(5) Except for the official record, no camera or recording device may be brought in or~~
789 ~~used in the preliminary inquiry.]~~

790 ~~[(6) Upon consent of a majority of its members, the committee may permit any person,~~
791 ~~not compelled or invited, to appear and testify at a hearing or submit a sworn written statement~~
792 ~~of facts or other documentary evidence for incorporation into the record.]~~

793 ~~[(7) (a) The release of any testimony or other evidence presented at a closed hearing~~
794 ~~and the form and manner of that release shall be by a majority vote of all members of the~~
795 ~~committee.]~~

796 ~~[(b) Committee members and committee staff may not publicly disclose any other part~~
797 ~~of the preliminary inquiry.]~~

798 (i) the complainants, except that no more than three complainants may be present at
799 one time;

800 (ii) complainants' counsel, if applicable;

801 (iii) the respondent;

802 (iv) the respondent's counsel, if applicable;

803 (v) members of the commission;

804 (vi) staff to the commission;

805 (vii) a witness, while testifying before the commission; and

806 (viii) necessary security personnel.

807 (c) The complainants, respondent, and their respective counsel may be excluded from a
808 portion of the meeting when the commission discusses administrative, procedural, legal, or
809 evidentiary issues by:

810 (i) the order of the chair, subject to override as provided in JR6-2-302; or

811 (ii) a majority vote of the commission.

812 (d) When the commission deliberates at the conclusion of presentation of testimony
813 and evidence, the commission shall ensure that those deliberations are closed to all persons
814 except for the members of the commission and commission staff.

815 ~~[(8)]~~ (5) If a majority of the [committee] commission determines that a continuance is
816 necessary to obtain further evidence and testimony [are necessary], to accommodate
817 administrative needs, or to accommodate the attendance of commission members, witnesses, or
818 a party, the [committee] commission shall:

819 (a) adjourn and continue the [preliminary inquiry hearing] meeting to a future date and
820 time after notice to the parties; and

821 (b) establish that future date and time by majority vote.

822 Section 20. **JR6-4-202** is repealed and reenacted to read:

823 **JR6-4-202. Record -- Recording of Meetings.**

824 (1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or
825 other recording device in any meeting authorized by this part.

826 (b) (i) The commission shall keep an audio or video recording of all portions of each
827 meeting authorized by this part.

828 (ii) If the commission elects, by a majority vote, to release the commission's
829 recommendation in a public meeting, the meeting may, upon a majority vote of the
830 commission, be opened to cameras or other recording devices.

831 (2) In addition to the recording required in Subsection (1), the chair shall ensure that a
832 record of the meeting or hearing is made, which shall include:

833 (a) official minutes taken during the meeting or hearing, if any;

834 (b) copies of all documents or other items admitted into evidence by the commission;

835 (c) copies of any documents or written orders or rulings issued by the chair or the
836 commission; and

837 (d) any other information that a majority of the commission or the chair directs.

838 (3) Except for the recommendation prepared by the commission, which shall be either
839 a private or public record as determined in JR6-4-204, any recording, testimony, evidence, or
840 other record of a meeting authorized by this part is a private record under Section 63G-2-302
841 and may not be disclosed.

842 Section 21. **JR6-4-203** is repealed and reenacted to read:

843 **JR6-4-203. Process for Making a Decision -- Deliberations.**

844 (1) After each party has presented a closing argument, the commission shall, at the
845 direction of the chair, begin its private deliberations:

846 (a) immediately after conclusion of the closing arguments; or

847 (b) at a future meeting of the commission, on a date and time determined by a majority
848 of the members of the commission.

849 (2) (a) The chair of the commission shall conduct the deliberations.

850 (b) Upon a motion made ~~by~~ by ~~a~~ a commission member, the commission may exclude
851 commission staff from all or a portion of the deliberations by a majority vote of the
852 commission.

853 (3) (a) During deliberations, for each allegation reviewed by the commission, each
854 member shall determine and cast a vote stating whether the allegation is:

855 (i) proven by a preponderance of the evidence; or

856 (ii) not proven.

857 (b) A verbal roll call vote shall be taken on each allegation and each member's vote
858 shall be recorded.

859 (4) (a) A count is not considered to be proven unless four of the five members of the
860 commission vote that the count is proven.

861 (b) A count that is not considered to be proven is dismissed.

862 (c) (i) Before the commission issues its recommendation under JR6-4-204, the
863 commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

864 (ii) A motion to reconsider a vote may only be made by a member of the commission
865 who voted that the allegation was not proved.

866 (5) At the conclusion of deliberations, the commission shall prepare its
 867 recommendations as provided in JR6-4-204.

868 Section 22. **JR6-4-204** is repealed and reenacted to read:

869 **JR6-4-204. Recommendations of Commission.**

870 (1) If the commission determines that no allegations in the complaint were proved, the
 871 commission shall:

872 (a) issue and enter into the record an order that the complaint is dismissed because no
 873 allegations in the complaint were found to have been proved;

874 (b) classify all recordings, testimony, evidence, orders, findings, and other records
 875 directly relating to the meetings authorized by this part as private records under Section
 876 63G-2-302;

877 (c) provide notice of the determination, in a manner determined by a majority vote of
 878 the commission, to:

879 (i) the respondent; ~~H→~~ [and] ~~←H~~

880 (ii) the first complainant named on the complaint; and

880a ~~H→~~ (iii) the chair and vice chair of the Senate Ethics Committee, if the respondent is a
 880b Senator, or the chair and vice chair of the House Ethics Committee, if the respondent is a
 880c Representative; and ~~←H~~

881 (d) provide notice to ~~H→~~ [a] each ~~←H~~ person named in Subsection (1)(c) that, under the
 881a provisions of
 882 JR6-3-102 and other provisions of this title, a person who discloses the findings of the
 883 commission ~~H→~~ in violation of any provision of this chapter ~~←H~~ is in contempt of the
 883a Legislature and is subject to penalties for contempt.

884 (2) If the commission determines that one or more of the allegations in the complaint
 885 were proved, the commission shall:

886 (a) if one or more allegations were not found to have been proven, enter into the record
 887 an order dismissing those unproven allegations;

888 (b) prepare a written recommendation to the Senate Ethics Committee, if the
 889 respondent is a Senator, or to the House Ethics Committee, if the respondent is a
 890 Representative, that:

891 (i) lists the name of each complainant;

892 (ii) lists the name of the respondent;

893 (iii) states the date of the recommendation;

894 (iv) for each allegation that was found to be proven:

895 (A) provides a reference to the code of conduct or criminal provision allegedly
896 violated;

897 (B) states the number and names of commission members voting that the allegation
 898 was proved and the number and names of commission members voting that the allegation was
 899 not proved;

900 (C) at the option of those members voting that the allegation was proved, includes a
 901 statement by one or all of those members stating the reasons for voting that the allegation was
 902 proved, provided that the statement does not cite specific evidence, specific testimony, or
 903 specific witnesses; and

904 (D) at the option of those members voting that the allegation was not proved, includes
 905 a statement by one or all of those members stating the reasons for voting that the allegation was
 906 not proved, provided that the statement does not cite specific evidence, specific testimony, or
 907 specific witnesses;

908 (v) contains any general statement that is adopted for inclusion in the recommendation
 909 by a majority of the members of the commission;

910 (vi) contains a statement referring the allegations found to have been proved to the
 911 appropriate ethics committee for review;

912 (vii) states the name of each member of the commission; and

913 (viii) is signed by each commission member;

914 (c) direct staff to publicly release the recommendation, the complaint, and the
 915 response, subject to the redaction of any allegations that were dismissed by the commission;
 916 and

917 (d) classify all other recordings, testimony, evidence, orders, findings, and other
 918 records directly relating to the meetings and hearings authorized by this part as private records
 919 under Section 63G-2-302.

920 **Š→ [(3) Notwithstanding any other provision of this title, the commission may not release a**
 921 **recommendation during the 60 calendar days immediately preceding:**

922 **—— (a) a regular primary election, if the accused legislator is a candidate in the primary**
 923 **election; or**

924 **—— (b) a regular general election in which the accused legislator is a candidate, unless the**
 925 **accused legislator is unopposed in the election.**

926 **—— (4) (3) ←Š The commission shall ensure that a copy of the recommendation is made**
 926a **publicly**
 927 **available and promptly provided to:**

928 (a) the respondent, together with notice that the respondent may amend respondent's
929 witness list as provided in JR6-4-301;

930 (b) the first complainant named on the complaint, together with notice that the
931 complainants may amend their witness list as provided in JR6-4-301; and

932 (c) the chair and vice chair of the Senate Ethics Committee, if the respondent is a
933 Senator, or the chair and vice chair of the House Ethics Committee, if the respondent is a
934 Representative.

935 (5) The commission shall ensure that, within five business days of the date of issuance
936 of the recommendation:

937 (a) the complaint and the response are redacted to remove references to those
938 allegations found not to have been proven by the commission, if one or more allegations were
939 found not to have been proven; and

940 (b) the following documents are made publicly available and are provided to the chair
941 and vice chair of the Senate Ethics Committee, if the respondent is a Senator, or the chair and
942 vice chair of the House Ethics Committee, if the respondent is a Representative:

943 (i) a cover letter referring the allegations contained in the edited complaint to the ethics
944 committee for the committee's review;

945 (ii) a copy of the edited complaint;

946 (iii) a copy of the edited response; and

947 (iv) a copy of the recommendation.

948 Section 23. **JR6-4-301** is repealed and reenacted to read:

949 **Part 3. Review of Ethics Complaint by Ethics Committee**

950 **JR6-4-301. Receipt of Recommendation from Independent Legislative Ethics**
951 **Commission -- Scheduling of Ethics Committee Hearing -- Amendments.**

952 (1) Within five calendar days of the date that the chair of the Senate Ethics or House
953 Ethics Committee receives the commission's recommendation as provided under JR6-4-204,
954 the chair and vice chair of the committee shall:

955 (a) schedule a committee hearing to review the complaint on a date no later than 30
956 days after of the day on which the committee receives the recommendation; and

957 (b) place the ethics complaint on the agenda for consideration at that hearing.

958 (2) (a) The complainants may not amend the complaint.

959 (b) The respondent may not amend the response.

960 (c) The complainant and respondent may file with the committee, within 10 days of the
961 date of issuance of the commission's recommendations, an amended list of witnesses and
962 evidence that they wish to have subpoenaed by the committee.

963 Section 24. **JR6-4-302** is repealed and reenacted to read:

964 **JR6-4-302. Review of Ethics Complaint by Ethics Committee.**

965 (1) The scope of the committee's review is limited to the alleged violations found to
966 have been proven by the commission, as pled in the edited complaint and the edited response
967 provided by the commission.

968 (2) (a) Before holding the hearing for review of the complaint as scheduled in
969 JR6-4-301, the chair may schedule a separate meeting of the committee to:

970 (i) hear motions or arguments from the parties, including hearing motions or arguments
971 relating to dismissal of a complaint, admission of evidence, or procedures; or

972 (ii) hold a vote of the committee, with or without the attendance of the parties, on
973 procedural or committee business matters relating to a complaint.

974 (b) Notwithstanding JR6-4-301, the committee may, by a majority vote, change the
975 date of the hearing scheduled in JR6-4-301 in order to accommodate:

976 (i) a meeting authorized under Subsection (2)(a); or

977 (ii) necessary scheduling requirements.

978 (3) (a) The committee shall comply with the Utah Rules of Evidence, except where the
979 committee determines, by majority vote, that a rule is not compatible with the requirements of
980 this title.

981 (b) The chair shall make rulings on admissibility of evidence consistent with the
982 provisions of JR6-4-202.

983 (4) (a) A meeting or hearing held under this Chapter 4, Part 3, Review of Ethics
984 Complaint by Ethics Committee:

985 (i) is subject to the requirements of Title 52, Chapter 4, Open and Public Meetings Act;
986 and

987 (ii) may be closed by a majority vote of the committee, held in the public portion of the
988 meeting, for:

989 (A) any purpose permitted under Section 52-4-205;

990 (B) the purpose of discussing legal, evidentiary, or procedural matters with the
991 committee or staff; or

992 (C) deliberations, as provided in JR6-4-304.

993 (b) Only committee members, committee staff, and necessary security personnel may
994 attend a closed meeting.

995 (5) If a majority of the committee determines that a continuance of a meeting or
996 hearing is necessary to obtain further evidence and testimony, to accommodate administrative
997 needs, or to accommodate the attendance of committee members, witnesses, or a party, the
998 chair or committee shall:

999 (a) adjourn and continue the hearing or meeting to a future date and time; and

1000 (b) establish that future date and time by majority vote.

1001 Section 25. **JR6-4-303** is repealed and reenacted to read:

1002 **JR6-4-303. Record -- Recording of Meetings.**

1003 (1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or
1004 other recording device in any meeting authorized by this part.

1005 (b) (i) The committee shall keep an audio or video recording of all portions of each
1006 meeting authorized by this part.

1007 (ii) If the committee elects, by a majority vote, to release the committee's finding and
1008 order in a public meeting, that meeting may, upon a majority vote of the committee, be opened
1009 to cameras or other recording devices.

1010 (2) In addition to the recording required in Subsection (1), the chair shall ensure that a
1011 record of each hearing or meeting is made, which shall include:

1012 (a) official minutes taken during the meeting or hearing, if any;

1013 (b) copies of all documents or other items admitted into evidence;

1014 (c) copies of any documents, written orders, or written rulings issued by the chair or the
1015 committee; and

1016 (d) any other information that a majority of the committee or the chair directs.

1017 (3) (a) Except as provided in Subsection (3)(b), all recordings, testimony, evidence,
1018 and other records of meetings and hearings authorized by this part are public records.

1019 (b) All recordings, minutes, and other records produced during a closed meeting
1020 authorized under this part are classified as private records under Section 63G-2-302.

1021 Section 26. **JR6-4-304** is repealed and reenacted to read:

1022 **JR6-4-304. Process for Making a Decision -- Deliberations -- Voting in Public**
1023 **Meeting.**

1024 (1) After each party has presented a closing argument, the committee shall deliberate in
1025 a closed meeting:

1026 (a) immediately after conclusion of the closing arguments; or

1027 (b) at a future meeting of the committee, on a date and time determined by a majority
1028 of the members of the committee.

1029 (2) The chair of the committee shall conduct the deliberations.

1030 (3) During the deliberations, committee members may:

1031 (a) discuss evidence and testimony;

1032 (b) discuss and debate whether an allegation was proven or not proven;

1033 (c) discuss and debate what actions should be taken or not taken against the respondent
1034 in relation to each allegation;

1035 (d) discuss and debate any other matter related to the allegations in the complaint that
1036 is before the committee; and

1037 (e) conduct, at the call of the chair or a majority of the members of the committee, a
1038 non-binding straw poll on any matter related to the complaint.

1039 (4) (a) Notwithstanding JR6-2-306, and except as provided in Subsection (4)(b), from
1040 the time of completion of closing arguments through the time that the written finding and order
1041 are publicly issued, a committee member may not discuss any of the following matters with any
1042 other person outside of official committee deliberations:

1043 (i) the substance or specifics of the allegations, testimony, or evidence of the complaint
1044 under review;

1045 (ii) a committee member's intended vote;

1046 (iii) a committee member's recommendation for actions to be taken or not taken against
1047 the respondent in relation to the complaint; or

1048 (iv) any other non-administrative matter related to the complaint.

1049 (b) During deliberations, committee members may privately consult with staff for the
1050 purpose of discussing legal, evidentiary, or procedural matters.

1051 (5) Deliberations shall continue until they are concluded or continued to another date

1052 and time:

1053 (a) at the direction of the chair, subject to JR6-2-302; or

1054 (b) upon a motion approved by a majority of the committee members.

1055 Section 27. **JR6-4-305** is repealed and reenacted to read:

1056 **JR6-4-305. Vote on Allegations and Recommendations -- Public Meeting --**
1057 **Standards -- Reconsideration.**

1058 (1) After conclusion of the deliberations, the committee shall meet in public and, for
1059 each allegation reviewed by the committee, vote on whether the allegation is:

1060 (a) proven by clear and convincing evidence; or

1061 (b) not proven.

1062 (2) For any count that has been voted as proven, the committee shall, by a motion
1063 approved by a majority of the members of the committee, recommend one or more of the
1064 following actions:

1065 (a) censure;

1066 (b) expulsion;

1067 (c) denial or limitation of any right, power, or privilege of the respondent, if, under the
1068 Utah Constitution, the Senate or House may impose that denial or limitation, and if the
1069 violation bears upon the exercise or holding of any right, power, or privilege; or

1070 (d) any other action that the committee determines is appropriate.

1071 (3) Votes shall be taken by verbal roll call and each member's vote shall be recorded.

1072 (4) A count is not considered to be proven unless a majority of the committee votes
1073 that the count is proven.

1074 (5) The committee, by a motion for reconsideration that is approved by a majority of
1075 the committee, may reconsider and hold a new vote provided that:

1076 (a) a motion to reconsider a vote on whether an allegation was proven or not proven
1077 may only be made by a member of the committee who voted that the allegation was not proven;
1078 and

1079 (b) a motion to reconsider a vote recommending an action against the respondent may
1080 only be made by a member of the committee who voted against the recommendation.

1081 (6) A count that is not voted as "proven" by a majority of the members of the
1082 committee is dismissed.

1083 (7) The committee may close the meeting for the purposes of further deliberations,
1084 subject to the requirements of JR6-4-304:

1085 (a) at the direction of the chair, subject to override by the committee as provided in
1086 JR6-2-302; or

1087 (b) upon a motion approved by a majority of the members of the committee.

1088 (8) After a final vote has been cast on each allegation and recommendation, the
1089 committee shall prepare the finding and order as provided in JR6-4-306.

1090 Section 28. **JR6-4-306** is repealed and reenacted to read:

1091 **JR6-4-306. Finding and Order.**

1092 (1) (a) If the committee determines that no allegations in the complaint were proved,
1093 the committee shall prepare a finding and order that:

1094 (i) lists the name of each complainant;

1095 (ii) lists the name of the respondent;

1096 (iii) states the date of the finding and order;

1097 (iv) for each allegation contained in the complaint:

1098 (A) provides a reference to the code of conduct or criminal provision alleged to have
1099 been violated; and

1100 (B) states the number and names of committee members voting that the allegation was
1101 proved and the number and names of committee members voting that the allegation was not
1102 proved;

1103 (v) order that the complaint is dismissed because no allegations in the complaint were
1104 found to have been proved;

1105 (vi) provide any general statement that is adopted for inclusion in the recommendation
1106 by a majority of the committee members; and

1107 (vii) states the name of each committee member.

1108 (b) Each committee member shall sign the finding and order.

1109 (2) (a) If the committee determines that one or more allegations in the complaint were
1110 proved, the committee shall issue a finding and order that:

1111 (i) lists the name of each complainant;

1112 (ii) lists the name of the respondent;

1113 (iii) states the date of the finding and order;

1114 (iv) for each allegation contained in the complaint:

1115 (A) provides a reference to the code of conduct or criminal provision alleged to have
1116 been violated;

1117 (B) states the number and names of committee members voting that the allegation was
1118 proved and the number and names of committee members voting that the allegation was not
1119 proved;

1120 (C) if the allegation was not ~~H~~→ [found not] found ←~~H~~ to have been proven, orders that
1120a the allegation

1121 be dismissed; and

1122 (D) if the allegation was found to have been proven, contains:

1123 (I) a description of any actions that the committee recommended be taken;

1124 (II) the number and names of committee members voting in favor of each
1125 recommendation and the number and names of committee members voting against each
1126 recommendation;

1127 (III) at the option of those members voting in favor of a recommendation, a statement
1128 by one or all of those members stating the reasons for making the recommendation; and

1129 (IV) at the option of those members against a recommendation, a statement by one or
1130 all of those members stating the reasons for opposing the recommendation;

1131 (v) contains any general statement that is adopted for inclusion in the finding and order
1132 by a majority of the committee members;

1133 (vi) contains a statement directing that the finding be delivered to:

1134 (A) for the Senate Ethics Committee, to the President of the Senate, the Senate
1135 majority leader, and the Senate minority leader; or

1136 (B) for the House Ethics Committee, to the Speaker of the House of Representatives,
1137 the House majority leader, and the House minority leader; and

1138 (vii) states the name of each committee member.

1139 (b) Each committee member shall sign the finding and order.

1140 (3) A copy of the finding and order shall be made publicly available.

1141 (4) A written copy of the finding and order shall be provided to:

1142 (a) the respondent;

1143 (b) the first complainant named on the complaint; and

1144 (c) any individuals required to receive a copy as stated in the finding and order.

1145 Section 29. **Repealer.**
1146 This resolution repeals:
1147 **JR6-4-205, Rights of the Respondent.**
1148 **JR6-4-206, Record.**
1149 **JR6-4-207, Process for Making a Decision -- Remedies -- Publication of Decision.**
1150 **JR6-4-307, Disciplinary Hearing Process -- Phase 1, Adjudication Phase.**
1151 **JR6-4-308, Disciplinary Hearing Process -- Phase II, Penalty Phase -- Remedies.**
1152 **JR6-4-309, Announcement of Decision.**
1153 **JR6-4-310, Records of Disciplinary Hearing.**
1154 Section 30. **Effective date.**
1155 This resolution takes effect upon approval by a constitutional majority vote of all
1156 members of the Senate and House of Representatives.

S.J.R. 3 2nd Sub. (Salmon) - Joint Resolution on Ethics Complaint Procedures

Fiscal Note

2010 General Session
State of Utah

State Impact

Costs associated with this bill depend upon a number of unpredictable factors including the number of complaints issued, the nature of complaints, the number of meetings required, and staff and attorney effort required. If no ethics complaints are filed in a year, the Independent Legislative Ethics Commission would meet once per year, at an annual cost of \$700 starting in FY 2011. If ethics complaints are filed, additional costs may include per diem, travel, legislative salaries, staff time, attorney fees, and ancillary meeting costs.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$700	\$700	\$0	\$0	\$0
Total	\$0	\$700	\$700	\$0	\$0	\$0

Individual, Business and/or Local Impact

Complainants would have the option, at their own expense, to hire attorneys. Individual legislators against whom a complaint is filed would have the option, at their own expense, to hire attorneys; however, if complaints are dropped by the ethics commission or committee, the legislator's reasonable attorney fees will be reimbursed by the state. Complainants and respondents may spend personal resources gathering and presenting evidence.