

## SB0180S02 compared with SB0180S01

~~{deleted text}~~ shows text that was in SB0180S01 but was deleted in SB0180S02.

inserted text shows text that was not in SB0180S01 but was inserted into SB0180S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

### POLITICAL SUBDIVISION ETHICS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

Cosponsor:

John L. Valentine

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#### LONG TITLE

##### General Description:

This bill enacts language related to a political subdivision officer or employee ethics violation.

##### Highlighted Provisions:

This bill:

- ▶ authorizes a municipality to establish a municipal ethics commission;
- ▶ enacts general provisions;
- ▶ defines terms;
- ▶ authorizes a political subdivision to establish an ethics commission within the political subdivision or by interlocal agreement;

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- ▶ enacts provisions related to the Political Subdivisions Ethics Review Commission (Commission);
- ▶ enacts provisions related to general powers and procedures;
- ▶ enacts provisions related to a hearing on an ethics complaint;
- ▶ enacts provisions related to an ethics complaint;
- ▶ enacts provisions related to a review of an ethics complaint for compliance;
- ▶ enacts provisions related to the ~~{Commission's}~~ commission's preliminary review and review of an ethics violation;
- ▶ authorizes a county to establish a county ethics commission;
- ▶ amends provisions related to a closed public meeting;
- ▶ amends provisions related to a private record;
- ▶ removes a county from the authority of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
- ▶ enacts language related to filing a complaint for a violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
- ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**10-3-1311**, as enacted by Laws of Utah 1981, Chapter 57

**17-16a-11**, as enacted by Laws of Utah 1983, Chapter 46

**52-4-204**, as last amended by Laws of Utah 2010, Chapters 35 and 239

**63G-2-302**, as last amended by Laws of Utah 2011, Chapters 85, 327, and 413

**67-16-3**, as last amended by Laws of Utah 2008, Chapter 382

**67-16-4**, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

**11-49-101**, Utah Code Annotated 1953

**11-49-102**, Utah Code Annotated 1953

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**11-49-103**, Utah Code Annotated 1953  
**11-49-201**, Utah Code Annotated 1953  
**11-49-202**, Utah Code Annotated 1953  
**11-49-301**, Utah Code Annotated 1953  
**11-49-302**, Utah Code Annotated 1953  
**11-49-401**, Utah Code Annotated 1953  
**11-49-402**, Utah Code Annotated 1953  
**11-49-403**, Utah Code Annotated 1953  
**11-49-404**, Utah Code Annotated 1953  
**11-49-405**, Utah Code Annotated 1953  
**11-49-406**, Utah Code Annotated 1953  
**11-49-407**, Utah Code Annotated 1953  
**11-49-408**, Utah Code Annotated 1953  
**11-49-501**, Utah Code Annotated 1953  
**11-49-502**, Utah Code Annotated 1953  
**11-49-601**, Utah Code Annotated 1953  
**11-49-602**, Utah Code Annotated 1953  
**11-49-603**, Utah Code Annotated 1953  
**11-49-604**, **Utah Code Annotated 1953**  
**11-49-701**, Utah Code Annotated 1953  
**11-49-702**, Utah Code Annotated 1953  
**11-49-703**, Utah Code Annotated 1953  
**11-49-704**, Utah Code Annotated 1953  
**11-49-705**, Utah Code Annotated 1953  
**11-49-706**, Utah Code Annotated 1953  
**67-16-15**, Utah Code Annotated 1953

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

Section 1. Section **10-3-1311** is amended to read:

**10-3-1311. Municipal ethics commission -- Complaints charging violations.**

**(1) A municipality may establish by ordinance an ethics commission to review a**

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complaint, except as provided in Subsection (3), against an officer or employee subject to this part for a violation of a provision of this part.

(2) (a) Except as provided in Subsection (3), a person filing a complaint for a violation of this part may file the complaint:

(~~f~~a)i) with the municipal ethics commission, if a municipality has established a municipal ethics commission in accordance with Subsection (1); or

(~~f~~b)ii) with the Political Subdivisions Ethics Review Commission in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission.

(b) A municipality that receives a complaint described in Subsection (2)(a) may:

(i) accept the complaint if the municipality has established a municipal ethics commission in accordance with Subsection (1); or

(ii) forward the complaint to the Political Subdivisions Ethics Review Commission established in Section 11-49-201:

(A) regardless of whether the municipality has established a municipal ethics commission; or

(B) if the municipality has not established a municipal ethics commission.

~~[(+)] (3) Any complaint against a person who is under the merit system, charging that person with a violation of this part, shall be filed and processed in accordance with the provisions of the merit system.~~

~~[(2) If the person charged with the violation is not under any merit system, then the complaint shall be filed with the mayor or city manager. The mayor or city manager shall investigate the complaint and shall give the person an opportunity to be heard. A written report of the findings and the recommendation of the mayor or city manager shall be filed with the governing body. If the governing body finds that the person has violated this part, it may dismiss, suspend, or take such other appropriate action with respect to the person.]~~

Section 2. Section 11-49-101 is enacted to read:

### CHAPTER 49. POLITICAL SUBDIVISIONS ETHICS REVIEW COMMISSION

#### Part 1. General Provisions

##### 11-49-101. Title.

This chapter is known as "Political Subdivisions Ethics Review Commission."

Section 3. Section 11-49-102 is enacted to read:

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### **11-49-102. Definitions.**

(1) "Commission" means the Political Subdivisions Ethics Review Commission established in Section 11-49-201.

(2) "Complainant" means a person who files a complaint in accordance with Section 11-49-501.

(3) "Local political subdivision ethics commission" means an ethics commission established by a political subdivision within the political subdivision or with another political subdivision by interlocal agreement in accordance with Section 11-49-103.

(~~3~~4) "Political subdivision" means a county, municipality, school district, community development and renewal agency, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local building authority, or any other governmental subdivision or public corporation.

(~~4~~5) (a) "Political subdivision employee" means a person who is:

(i) employed on a full or part-time basis by a political subdivision; and

(ii) subject to:

(A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

(B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

(C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(b) "Political subdivision employee" does not include:

(i) a person who is a political subdivision officer;

(ii) an employee of a state entity; or

(iii) a legislative employee as defined in Section 67-16-3.

(~~5~~6) "Political subdivision governing body" means:

(a) for a county, the county legislative body as defined in Section 68-3-12.5;

(b) for a municipality, the council of the city or town;

(c) for a school district, the local board of education described in Section 53A-3-101;

(d) for a community development and renewal agency, the agency board described in Section 17C-1-203;

(e) for a local district, the board of trustees described in Section 17B-1-301;

(f) for a special service district:

(i) the legislative body of the county, city, or town that established the special service

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district, if no administrative control board has been appointed under Section 17D-1-301; or

(ii) the administrative control board of the special service district, if an administrative control board has been appointed under Section 17D-1-301;

(g) for an entity created by an interlocal agreement, the governing body of an interlocal entity, as defined in Section 11-13-103;

(h) for a local building authority, the governing body, as defined in Section 17D-2-102, that creates the local building authority; or

(i) for any other governmental subdivision or public corporation, the board or other body authorized to make executive and management decisions for the subdivision or public corporation.

~~(6)7~~ (a) "Political subdivision officer" means a person elected or appointed in a political subdivision who is subject to:

(i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

(ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

(iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(b) "Political subdivision officer" does not include:

(i) a person elected or appointed to a state entity;

(ii) the governor;

(iii) the lieutenant governor;

(iv) a member or member-elect of either house of the Legislature ~~of Utah~~; or

(v) a member of Utah's congressional delegation.

~~(7)8~~ "Respondent" means a person who files a response in accordance with Section ~~11-49-603~~ 11-49-604.

Section 4. Section **11-49-103** is enacted to read:

### **11-49-103. Local ethics commission permitted -- Filing requirements.**

(1) A political subdivision, other than a municipality described in Section 10-3-1311 or a county described in Section 17-16a-11, may establish a local **political subdivision** ethics commission within the political subdivision to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(2) A political subdivision may enter into an interlocal agreement with another political

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subdivision, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to establish a local political subdivision ethics commission to review a complaint against a political subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.

(3) (a) A person filing a complaint for a violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, may file the complaint with:

(~~f~~a) ~~i~~) ~~an ethics commission created within the appropriate~~ a local political subdivision ethics commission, if the political subdivision has established ~~an~~ a local political subdivision ethics commission under Subsection (1) or (2); or

(~~f~~b) ~~ii~~) the ~~Political Subdivisions Ethics Commission established in this chapter~~ commission.

(b) A political subdivision that receives a complaint described in Subsection (3)(a) may:

(i) accept the complaint if the political subdivision has established a local political subdivision ethics commission in accordance with Subsection (1) or (2); or

(ii) forward the complaint to the commission;

(A) regardless of whether the political subdivision has established a local political subdivision ethics commission; or

(B) if the political subdivision has not established a local political subdivision ethics commission.

Section 5. Section 11-49-201 is enacted to read:

### **Part 2. Political Subdivisions Ethics Review Commission**

#### **11-49-201. Commission established -- Membership.**

(1) There is established a Political Subdivisions Ethics Review Commission.

(2) The commission is composed of ~~five~~ seven persons, each of whom is registered to vote in this state and appointed by the governor with the advice and consent of the Senate, as follows:

(a) one member ~~f~~ who has served, but no longer serves, as a judge of a court of record in this state;

(b) one member ~~f~~ who has served as a mayor or ~~county commissioner~~ municipal

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council member no more recently than four years before the date of appointment:

(c) one member ~~{,}~~ who has served as a ~~{municipal council}~~ member of a local board of education no more recently than four years before the date of appointment:

(d) ~~{one member, who has served as a mayor, county commissioner,}~~ two members who are lay persons; and

(e) two members, each of whom is one of the following:

(i) a municipal mayor no more recently than four years before the date of appointment;

(ii) a municipal council member ~~{, or}~~ no more recently than four years before the date of appointment;

(iii) a county mayor no more recently than four years before the date of appointment;

(iv) a county commissioner no more recently than four years before the date of appointment;

(v) a special service district administrative control board member no more recently than four years before the date of appointment;

(vi) a local district board of trustees member no more recently than four years before the date of appointment; ~~{and}~~ or

~~{(c) one member, who is a lay person}~~ (vii) a judge who has served, but no longer serves, as a judge of a court of record in this state.

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

(a) a political subdivision officer;

(b) a political subdivision employee;

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

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

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

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

(ii) When appointing the initial members upon formation of the commission, ~~{one}~~ a member ~~{nominated by the president of the Senate and the speaker of the House and one member nominated by the Senate minority leader and House minority leader}~~ described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that approximately half

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of the commission is appointed every two years.

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

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

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

(d) A member of the commission may resign from the commission by giving one month's written notice of the resignation to the ~~{president of the Senate, speaker of the House, Senate minority leader, and House minority leader}~~

~~\_\_\_\_\_~~ ~~{e} The chair of the Legislative Management Committee}~~ ~~governor.~~

~~(e) The governor~~ shall remove a member from the commission if the member:

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

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

~~(iii) fails to meet the qualifications of office as provided in this section.~~

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

(5) (a) ~~{A}~~ ~~Except as provided in Subsection (5)(b)(i),~~ a member of the commission may not receive compensation or benefits for the member's service ~~{, but}~~.

~~(b) (i) A member~~ may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~{b}~~ ~~ii~~ A member may decline to receive per diem and expenses for the member's service.

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

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

Section 6. Section 11-49-202 is enacted to read:

### 11-49-202. Meetings -- Staff.

(1) The commission shall meet for the purpose of reviewing an ethics complaint when:

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

(b) ~~the~~ a majority of members agree to meet.

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

(3) (a) The commission shall prepare, on an annual basis, a summary data report that contains:

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

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

~~(iii)~~ (iii) the number of ethics complaints dismissed in accordance with Section 11-49-602;

(iv) the number of ethics complaints reviewed by the commission in accordance with Section 11-49-701;

(v) an executive summary of each complaint review in accordance with Section 11-49-701; and

~~(fiv)~~ (vi) an accounting of the commission's budget and expenditures.

(b) The summary data report shall be submitted to the Government Operations and Political Subdivisions Interim Committee on an annual basis.

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

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

(b) The Legislative Management Committee shall:

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

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

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

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(5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and Public Meetings Act, unless otherwise provided.

Section 7. Section 11-49-301 is enacted to read:

### Part 3. General Powers and Procedures

**11-49-301. Authority to review complaint -- Grounds for complaint -- Limitations on filings.**

(1) Subject to the requirements of this chapter, the commission is authorized to review an ethics complaint against a political subdivision officer or employee if the complaint alleges:

(a) if the applicable political subdivision is a municipality, a violation of Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:

(i) an appointed officer, as defined in Section 10-3-1303;

(ii) an elected officer, as defined in Section 10-3-1303; or

(iii) a municipal employee, as defined in Section 10-3-1303;

(b) if the applicable political subdivision is a county, a violation of Title 17, Chapter 16a, County Officers and Employees Disclosure Act by:

(i) an appointed officer, as defined in Section 17-16a-3;

(ii) an elected officer, as defined in Section 17-16a-3; or

(iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

(c) for a political subdivision officer or employee other than a municipal officer or employee described in Subsection (1)(a) ~~};~~ or ~~a violation by~~ a county officer or employee described in Subsection (1)(b), a violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act ~~};~~.

~~(d) a conviction of, or a plea of guilty to, a crime involving moral turpitude; or~~

~~(e) a plea of no contest or a plea in abeyance to a crime involving moral turpitude.~~

~~(2) (a) For an alleged violation under Subsection (1)(a), (b), or (c), the complaint;~~ 2) A complaint described in Subsection (1) shall be filed in accordance with the time limit provisions, if any, of the applicable part or chapter. ~~f~~

~~(b) For an alleged violation under Subsection (1)(d) or (e), the complaint shall be filed within two years of the date that the plea or conviction that forms the basis of the allegation was entered. ~~f~~~~

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(3) (a) A complaint may not contain an allegation if that allegation and the general facts and circumstances supporting that allegation have been previously reviewed by a municipal ethics commission established under Section 10-3-1311, a county ethics commission established under Section 17-16a-11, or a local political subdivision ethics commission established under Section 11-49-103, as applicable, or the commission unless:

(i) the allegation was previously reviewed and dismissed by either the commission under [Section 11-49-602](#) or [11-49-701](#) or, as applicable, a municipal, county, or local political subdivision ethics commission;

(ii) the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the commission or, as applicable, a municipal, county, or local political subdivision ethics commission when the allegation was previously reviewed; and

(iii) in the case of an allegation previously reviewed by the commission, the allegation and the general facts and circumstances supporting that allegation have only been reviewed by the commission [in accordance with Section 11-49-701](#) on one previous occasion.

(b) The commission may not review a complaint that is currently before:

(i) a municipal ethics commission established under Section 10-3-1311~~(f)~~;

(ii) a county ethics commission established under Section 17-16a-11~~(f)~~; or

(iii) a local political subdivision ethics commission established under Section 11-49-103.

(c) If an allegation in the complaint does not comply with the requirements of Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:

(i) the chair when reviewing the complaint under Section 11-49-601; or

(ii) the commission, when reviewing the complaint under Section [11-49-602](#) or [11-49-701](#).

Section 8. Section **11-49-302** is enacted to read:

### **11-49-302. General powers -- Jurisdiction.**

(1) The commission has jurisdiction only over an individual who is a political subdivision officer or employee.

(2) The commission shall dismiss an ethics complaint if:

(a) the respondent resigns or is terminated from the political subdivision; [or](#)

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(b) except as provided in Subsection (3):

(i) the respondent is charged with a criminal violation of:

(A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

(B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

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

(ii) the facts and allegations presented in the ethics complaint assert the same or similar facts and allegations as those asserted in the criminal charges.

(3) If an ethics complaint asserts an ethics violation in addition to a criminal violation described in Subsection (2)(b), the commission shall:

(a) dismiss an allegation described in Subsection (2)(b)(ii); and

(b) proceed with any remaining allegation in the complaint.

Section 9. Section **11-49-401** is enacted to read:

### **Part 4. Hearing on Ethics Complaint**

#### **11-49-401. Hearing on ethics complaint -- General procedures.**

(1) In conducting a hearing on a complaint **in accordance with Part 7, Commission Review of Ethics Violation**, the commission shall comply with the following process in the order specified:

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

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

(c) complainant's presentation of evidence and witnesses in support of allegations in the complaint;

(d) consideration of motions to dismiss the complaint or motions for a finding of no cause, as applicable;

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

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

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

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

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

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

(k) deliberations by the commission; and

(l) adoption of the commission's findings.

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

(3) The chair may schedule the examination of a witness or evidence subpoenaed at the request of the chair or the commission under Section 11-49-403 at the chair's discretion.

Section 10. Section **11-49-402** is enacted to read:

### **11-49-402. Chair as presiding officer.**

(1) Except as expressly provided otherwise in this chapter, the chair of the commission is vested with the power to direct the commission during meetings authorized by this chapter.

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

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

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

(ii) the basis for the objection.

(b) A motion described in Subsection (2)(a) is nondebatable.

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

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

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

Section 11. Section **11-49-403** is enacted to read:

### **11-49-403. Subpoena powers.**

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(1) ~~{For all proceedings}~~ Except for a preliminary review described in Section 11-49-602, for a proceeding authorized by this chapter, the commission may issue a subpoena to:

- (a) require the attendance of a witness;
- (b) direct the production of evidence; or
- (c) require both the attendance of a witness and the production of evidence.

(2) The commission shall issue a subpoena:

- (a) in accordance with Section 11-49-405;
- (b) at the direction of the commission chair, if the chair determines that the testimony

or evidence is relevant to the review of a complaint under Part 7, Commission Review of Ethics Violations; or

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

(3) If the commission issues a subpoena authorized under this section, the commission shall give a reasonable period of time for the person or entity to whom the subpoena is directed to petition a district court to quash or modify the subpoena before the time specified in the subpoena for compliance.

Section 12. Section **11-49-404** is enacted to read:

### **11-49-404. Contempt of the commission.**

(1) (a) The following actions constitute contempt of the commission in relation to actions and proceedings under this chapter:

- (i) disobedience to a direction of the commission chair;
- (ii) failure, without legal justification, to answer a question during a hearing when

directed to do so by:

(A) the commission chair, unless the direction is overridden by the commission in accordance with Section 11-49-402; or

- (B) a majority of the commission;

(iii) failure to comply with a subpoena or other order issued under authority of this chapter;

(iv) violation of privacy provisions established by Section 11-49-502;

(v) violation of the communication provisions established by Section 11-49-407;

(vi) violation of a request to comply with a provision of this chapter by a chair or a

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majority of the members of the commission; or

(vii) any other ground that is specified in statute or recognized by common law.

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

(2) (a) The following persons may authorize an enforcement action against a person in contempt of the commission under the provisions of this chapter:

(i) the commission chair, subject to the provisions of Section 11-49-402; or

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

(b) In initiating and pursuing an action against an individual for contempt of the commission, the plaintiff shall comply with the procedures and requirements of Section 11-49-405.

Section 13. Section **11-49-405** is enacted to read:

### **11-49-405. Order to compel -- Enforcement.**

(1) (a) When the subject of a subpoena issued in accordance with Section 11-49-403 disobeys or fails to comply with the subpoena, or if a person appears before the commission pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the commission may:

(i) file a motion for an order to compel obedience to the subpoena with the district court within the jurisdiction of the applicable political subdivision;

(ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the commission; or

(iii) pursue other remedies against persons in contempt of the commission.

(b) (i) Upon receipt of a motion under this section, the court shall expedite the hearing and decision on the motion.

(ii) A court may:

(A) order the person named in the subpoena to comply with the subpoena; and

(B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the commission.

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(2) (a) If a commission subpoena requires the production of accounts, books, papers, documents, or other tangible things, the person or entity to whom the subpoena is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

(b) The commission may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (1).

(c) If the court finds that a commission subpoena requiring the production of accounts, books, papers, documents, or other tangible things is unreasonable or oppressive, the court may quash or modify the subpoena.

(3) Nothing in this section prevents the commission from seeking an extraordinary writ to remedy contempt of the commission.

(4) Any party aggrieved by a decision of a court under this section may appeal that action directly to the Utah Supreme Court.

Section 14. Section **11-49-406** is enacted to read:

### **11-49-406. Testimony and examination of witnesses -- Oath -- Procedure --**

#### **Contempt.**

(1) (a) The chair shall ensure that each witness listed in the complaint and response is subpoenaed for appearance at the hearing unless:

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

(ii) service is otherwise determined to be impracticable.

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

(c) The commission may, by majority vote:

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

(ii) modify the chair's determination on the scheduling and order of witnesses under Subsection (1)(b);

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

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

or

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

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11-49-403.

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

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

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

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

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

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

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

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

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

(i) direct the witness to answer; or

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

(b) If the witness declines to answer a question after the chair or a majority of the commission determines that the witness is required to answer the question, the witness may be held in contempt as provided in Section 11-49-404.

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

(b) If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in Section 11-49-404.

Section 15. Section **11-49-407** is enacted to read:

**11-49-407. Communications of commission members.**

(1) As used in this section, "third party" means a person who is not a member of the commission or staff to the commission.

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

(a) the communication is expressly permitted under the procedures established by this

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chapter; or

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

(i) all members of the commission; and

(ii) a staff member of the commission.

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

Section 16. Section **11-49-408** is enacted to read:

### **11-49-408. Attorney fees and costs.**

(1) A person filing a complaint under this chapter:

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

(b) is responsible for payment of complainant's attorney fees and costs incurred.

(2) (a) A respondent against whom a complaint is filed under this chapter:

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

(ii) is responsible for the respondent's own attorney fees and costs involved, except as provided in Subsection (2)(b).

(b) A political subdivision for which the respondent is a political subdivision officer or employee shall pay the reasonable attorney fees and costs incurred by the respondent against whom a complaint is filed under this chapter if the commission determines that none of the allegations in the complaint have been proved.

(3) (a) An attorney participating in a hearing before the commission shall comply with:

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

(ii) the procedures and requirements of this chapter; and

(iii) the directions of the chair and commission.

(b) A violation of Subsection (3)(a) may constitute:

(i) contempt of the commission under Section 11-49-404; or

(ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah

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### State Bar.

Section 17. Section 11-49-501 is enacted to read:

#### **Part 5. Complaint of Ethics Violation**

##### **11-49-501. Ethics complaints -- Who may file -- Form.**

(1) (a) Notwithstanding any other provision, the following may file a complaint, subject to the requirements of Subsections (1)(b) and (c) and Section 11-49-301, against a political subdivision officer or employee:

(i) two or more registered voters who reside within the boundaries of a political subdivision;

(ii) two or more registered voters who pay a fee or tax to a political subdivision; or

(iii) one or more registered voters who reside within the boundaries of a political subdivision and one or more registered voters who pay a fee or tax to the political subdivision.

(b) A person described in Subsection (1)(a) may not file a complaint unless at least one person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and circumstances supporting the alleged violation.

(c) A complainant may file a complaint only against an individual who, on the date that the complaint is filed, is serving as a political subdivision officer or is a political subdivision employee.

(2) (a) (i) A complainant shall file a complaint with the Office of the Lieutenant Governor.

(ii) The lieutenant governor shall forward the complaint to the chair of the commission no later than five days after the day on which the complaint is filed.

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

(i) a regular primary election, if the accused political subdivision officer is a candidate in the primary election; or

(ii) a regular general election in which an accused political subdivision officer is a candidate, unless the accused political subdivision officer is unopposed in the election.

(3) A complainant shall ensure that each complaint filed under this section is in writing and contains the following information:

(a) the name and position of the political subdivision officer or employee alleged to be

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in violation:

(b) the name, address, and telephone number of each individual who is filing the complaint;

(c) a description of each alleged violation, including for each alleged violation:

(i) a reference to ~~+~~

~~— (A) +~~ the section of the code alleged to have been violated; ~~+~~ or ~~+~~

~~{ — (B) if the political subdivision officer or employee has been charged with a criminal violation, the criminal provision violated and the docket number of the case;~~

~~+~~ (ii) the name of the complainant who has actual knowledge of the facts and circumstances supporting each allegation; and

(iii) ~~with reasonable specificity,~~ the facts and circumstances supporting each allegation, which shall be provided by:

(A) copies of official records or documentary evidence; or

(B) one or more affidavits that include the information required in Subsection (4);

(d) a list of the witnesses that a complainant wishes to have called, including for each witness:

(i) the name, address, and, if available, one or more telephone numbers of the witness;

(ii) a brief summary of the testimony to be provided by the witness; and

(iii) a specific description of any documents or evidence a complainant desires the witness to produce;

(e) a statement that each complainant:

(i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;

(ii) believes that the complaint is submitted in good faith and not for any improper purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the respondent's reputation, or causing unnecessary expenditure of public funds; and

(iii) believes the allegations contained in the complaint to be true and accurate; and

(f) the signature of each complainant.

(4) An affidavit described in Subsection (3)(c)(iii)(B) shall include:

(a) the name, address, and telephone number of the signer;

(b) a statement that the signer has actual knowledge of the facts and circumstances

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alleged in the affidavit:

(c) the facts and circumstances testified by the signer;

(d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and

(e) the signature of the signer.

Section 18. Section **11-49-502** is enacted to read:

**11-49-502. Privacy of ethics complaint -- Contempt -- Enforcement of finding of contempt -- Dismissal.**

(1) (a) Except as provided in Subsection (1)(b) or (c), a person, including a complainant, the respondent, a commission member, or staff to the commission, may not disclose the existence of a complaint, a response, nor any information concerning any alleged violation that is the subject of a complaint~~;~~:

(i) unless otherwise provided in this chapter; or

(ii) after a complaint is presented at the meeting described in Section 11-49-701.

(b) The restrictions in Subsection (1)(a) do not apply to the respondent's voluntary disclosure of a finding by the commission that no allegations in a complaint were proved, after that finding is issued by the commission under the procedures and requirements of Section~~11-49-704~~11-49-602.

(c) Nothing in this section shall prevent a person from disclosing facts or allegations about potential criminal violations to a law enforcement authority.

(d) Nothing in this section may be construed to hinder or prevent a respondent from preparing a defense to a complaint, including contacting a witness or other actions in preparation for review by the commission.

(2) A person who violates the provisions of Subsection (1)(a) is in contempt of the commission and proceedings may be initiated to enforce the finding of contempt using the procedures provided in Sections 11-49-404 and 11-49-405.

(3) If the existence of an ethics complaint is publicly disclosed~~before or during the period that the commission is reviewing the complaint~~preliminary review period described in Section 11-49-602, the complaint shall be summarily dismissed without prejudice.

Section 19. Section **11-49-601** is enacted to read:

### **Part 6. Review of Complaint for Compliance**

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### 11-49-601. Review of ethics complaint for compliance with form requirements -- Independent requirements for complaint-- Notice.

(1) Within five business days after receipt of a complaint, the staff of the commission, in consultation with the chair of the commission, shall examine the complaint to determine if it is in compliance with ~~{Section}~~Sections 11-49-301 and 11-49-501.

(2) (a) If the chair determines that the complaint does not comply with ~~{Section}~~Sections 11-49-301 ~~{or}~~and 11-49-501, the chair shall:

(i) return the complaint to the first complainant named on the complaint with:

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

(B) a copy of the applicable provisions in this chapter; and

(ii) notify the applicable political subdivision governing body that:

(A) a complaint was filed against an unidentified political subdivision officer or employee but was returned for non-compliance with this chapter; and

(B) the fact that a complaint was filed and returned shall be kept confidential until the commission submits its annual summary data report as required by Section 11-49-202.

(b) If a complaint is returned for non-compliance with the requirements of this chapter, a complainant may file another complaint if the new complaint independently meets the requirements of Sections 11-49-301 and 11-49-501, including any requirements for timely filing.

(3) If the chair determines that the complaint complies with the requirements of this section, the chair shall:

(a) accept the complaint;

(b) notify each member of the commission that the complaint has been filed and accepted;

(c) notify the applicable political subdivision that:

(i) a complaint has been filed against an unidentified political subdivision officer or employee;

(ii) the identity of the political subdivision officer or employee and the allegations raised in the complaint are confidential pending the commission's preliminary review of the complaint; and

(iii) the fact that a complaint was filed shall be kept confidential until the commission

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publicly discloses the existence of the complaint via:

(A) ~~fa recommendation that an allegation in the complaint be considered by the political subdivision governing body~~ notice of the commission's review of a complaint in accordance with Section ~~{11-49-704}~~ 11-49-701; or

(B) submission of the commission's annual summary data report as required in Section 11-49-202; and

(d) promptly forward the complaint to the political subdivision officer or employee who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with a copy of this chapter and notice of the officer's or employee's deadline for filing a response to the complaint if the complaint is not dismissed under Section 11-49-602.

Section 20. Section 11-49-602 is enacted to read:

**11-49-602. Preliminary review of complaint -- Standard of proof -- Notice.**

(1) (a) By no later than 10 calendar days after the day on which a complaint is accepted under Section 11-49-601, the commission chair shall:

(i) schedule a commission meeting on a date no later than 60 calendar days after the date on which the commission accepts the complaint;

(ii) place the complaint on the agenda for consideration at the meeting;

(iii) provide a copy of the complaint to the members; and

(iv) provide notice of the date, time, and location of the meeting:

(A) to the respondent;

(B) the first complainant named in the complaint;

(C) each commission member; and

(D) in accordance with Section 52-4-202.

(b) The meeting described in Subsection (1)(a)(ii) is closed to the public in accordance with Section 52-4-204.

(2) (a) At the meeting described in Subsection (1)(a)(i):

(i) the commission members shall review each allegation in the complaint;

(ii) the commission may not receive testimony, hear a motion from a party, or admit evidence; and

(iii) the chair shall conduct deliberations.

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(b) The commission may, if necessary:

(i) request a formal response or affidavit from a respondent; and

(ii) review the response or affidavit at the meeting.

(c) Upon a motion made by a commission member, the commission may exclude commission staff from all or a portion of the deliberations by a majority vote.

(3) (a) During deliberations, each commission member shall, for each allegation, determine:

(i) whether the facts alleged, if true, would be an ethics violation;

(ii) whether the complaint includes an affidavit from a person with firsthand knowledge of alleged facts described in Subsection (3)(a)(i); and

(iii) whether the complaint is frivolous or solely for a political purpose.

(b) A commission member shall vote to forward an allegation in a complaint for a final commission review in accordance with Part 7, Commission Review of Ethics Violation, if the commission member determines:

(i) an allegation, if true, would be an ethics violation;

(ii) the complaint contains an affidavit with firsthand knowledge of the allegation under Subsection (3)(a)(ii); and

(iii) the allegation is not frivolous or solely for a political purpose.

(4) (a) A verbal roll call vote shall be taken on each allegation and each member's vote shall be recorded.

(b) The commission may not review an allegation for a final determination under Part 7, Commission Review of Ethics Violation, unless six of the seven members of the commission vote to review the allegation.

(5) (a) An allegation that is not forwarded for a final determination is dismissed.

(b) Before the commission issues an order in accordance with this section, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

(c) A motion to reconsider a vote may only be made by a member of the commission who voted that the allegation should not be forwarded for a final determination.

(6) (a) If each allegation stated in a complaint is dismissed in accordance with this section, the commission shall:

(i) issue and enter into the record an order that the complaint is dismissed because no

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allegations, in accordance with this section, were forwarded for a final determination:

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

(iii) provide notice of the determination, in a manner determined by the chair, to:

(A) the respondent;

(B) the first complainant named on the complaint; and

(C) subject to Subsection (6)(b), the appropriate political subdivision; and

(iv) provide notice to each person or entity named in Subsections (6)(a)(iii)(A) through (C) that, under provisions of Section 11-49-502 and other provisions of this chapter, a person who discloses the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt.

(b) The notification to the appropriate political subdivision shall notify the political subdivision that:

(i) a complaint against an unidentified political subdivision officer or employee has been dismissed; and

(ii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint via submission of the commission's annual summary data report as required in Section 11-49-202.

(7) If one or more of the allegations stated in a complaint are not dismissed in accordance with this section, the commission shall:

(a) issue and enter into the record:

(i) an order for each allegation that is dismissed, if any, because the allegation was not forwarded for a final determination; and

(ii) an order for further review under Part 7, Commission Review of Ethics Violation, of each allegation that is not dismissed;

(b) classify all recordings, orders, findings, and other records or documents directly relating to a meeting authorized by this section as private records under Section 63G-2-302;

(c) if an allegation was dismissed, provide notice of the determination for each allegation dismissed in a manner determined by the chair, to:

(i) the respondent;

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

(iii) subject to Subsection (8), the appropriate political subdivision; and

(d) provide notice to each person or entity named in Subsections (7)(c)(i) through (iii)

that:

(i) under provisions of Section 11-49-502 and other provisions of this chapter, a person who discloses the findings of the commission under this section in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt; and

(ii) the commission shall review the remaining allegations in the complaint at a meeting described in Section 11-49-603 and in accordance with Part 7, Commission Review of Ethics Violation.

(8) The notification to the appropriate political subdivision shall notify the political subdivision that:

(a) an unspecified allegation in a complaint against an unidentified political subdivision officer or employee has been dismissed; and

(b) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint in accordance with the provisions of this chapter.

(9) For a complaint described in Subsection (7), the commission members shall ensure that, within five business days after the day of the meeting described in Subsection (1)(a)(ii), the complaint is redacted to remove references to an allegation that is dismissed under this section.

(10) The chair shall ensure that a record of the meeting held under this section is kept in accordance with Section 11-49-702.

Section 21. Section 11-49-603 is enacted to read:

**11-49-603. Meeting of the Commission to review a complaint -- Procedures.**

By no later than 10 calendar days after the day on which a complaint is accepted under Section ~~11-49-601~~ 11-49-602 for further review, the commission chair shall:

(1) schedule a commission meeting on a date no later than ~~60~~45 calendar days after the date on which the commission accepts the complaint;

(2) place the complaint on the agenda for consideration at the meeting described in Subsection (1);

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(3) provide notice of the date, time, and location of the meeting~~{to}~~:

(a) to:

~~{a}~~i the members of the commission;

~~{b}~~ii the first complainant named in the complaint; and

~~{c}~~iii the respondent; and

(b) in accordance with Section 52-4-202; and

(4) provide a copy of the complaint or redacted complaint, as required in Section 11-49-602, to each member of the commission.

Section ~~{21}~~22. Section ~~{11-49-603}~~11-49-604 is enacted to read:

~~{11-49-603}~~11-49-604. **Response to ethics complaint -- Filing -- Form.**

(1) The political subdivision officer or employee who is the subject of the complaint may file a response to the complaint no later than 30 days after the day on which the officer or employee receives delivery of an order issued by the ~~{complaint}~~commission under Subsection 11-49-602(7).

(2) The respondent shall file the response with the commission and ensure that the response is in writing and contains the following information:

(a) the name, address, and telephone number of the respondent;

(b) for each alleged violation in the complaint:

(i) each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense to be provided by one or more affidavits, each of which shall comply with Subsection (4);

(ii) the facts and circumstances refuting the allegation, which shall be provided by:

(A) copies of official records or documentary evidence; or

(B) one or more affidavits, each of which shall comply with Subsection (4);

(c) a list of the witnesses that the respondent wishes to have called, including for each witness:

(i) the name, address, and, if available, telephone number of the witness;

(ii) a brief summary of the testimony to be provided by the witness; and

(iii) a specific description of any documents or evidence the respondent desires the witness to produce;

(d) a statement that the respondent:

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(i) has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and

(ii) believes the contents of the response to be true and accurate; and

(e) the signature of the respondent.

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

(a) each member of the commission; and

(b) the first named complainant on the complaint.

(4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the following information:

(a) the name, address, and telephone number of the signer;

(b) a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;

(c) the facts and circumstances testified to by the signer;

(d) a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and

(e) the signature of the signer.

Section ~~{22}~~23. Section 11-49-701 is enacted to read:

### **Part 7. Commission Review of Ethics Violation**

#### **11-49-701. Commission review of ethics violation.**

(1) The scope of a review by the commission is limited to ~~the~~an alleged ~~violations~~violation stated in a complaint that has not been previously dismissed under Section 11-49-602.

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

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

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

(iii) reviewing a complaint, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the

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commission, because the complaint pleads facts or circumstances against a political subdivision officer or employee that have already been reviewed by, as provided in Section 11-49-301, the commission, a municipal ethics commission established in accordance with Section 10-3-1311, a county ethics commission established in accordance with Section 17-16a-11, or a local political subdivision ethics commission established in accordance with Section 11-49-103.

(b) Notwithstanding Section ~~11-49-602~~ 11-49-603, the commission may, by a majority vote, change the date of the meeting for review of the complaint in order to accommodate:

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

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

(b) The chair shall make rulings on admissibility of evidence consistent with the provisions of Section 11-49-402.

(4) (a) A meeting or hearing authorized in this part is ~~closed~~ open to the public except as provided in Section 52-4-204.

(b) The following individuals may be present during the presentation of testimony and evidence to the commission:

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

(ii) the complainant's counsel, if applicable;

(iii) the respondent;

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

(v) members of the commission;

(vi) staff to the commission;

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

(viii) necessary security personnel.

(c) ~~The complainant, respondent, and their respective counsel may be excluded from a portion of the meeting when the commission discusses administrative, procedural, legal, or~~

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evidentiary issues by:

~~— (i) the order of the chair, subject to override as provided in Section 11-49-402; or~~  
~~— (ii) a majority vote of the commission.~~  
~~— (d) When the commission deliberates at the conclusion of presentation of testimony and evidence, the commission shall ensure that those deliberations are closed to all persons except for the members of the commission and commission staff;~~commission may, in accordance with Section 52-4-204, close a meeting to:

- (i) seek or obtain legal advice on legal, evidentiary, or procedural matters; or
- (ii) conduct deliberations to reach a decision on the complaint.

(5) If a majority of the commission determines that a continuance is necessary to obtain further evidence and testimony, to accommodate administrative needs, or to accommodate the attendance of commission members, witnesses, or a party, the commission shall:

(a) adjourn and continue the meeting to a future date and time after notice to the parties; and

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

(6) A document created by the commission under this part, reviewed by the commission under this part, or received by the commission under this part is a public document.

Section ~~{23}~~24. Section **11-49-702** is enacted to read:

### **11-49-702. Record -- Recording of meetings.**

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

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

(ii) ~~{If the commission elects, by a majority vote, to release the commission's recommendation in a public meeting, the meeting may, upon}~~The commission may, by a majority vote of the commission, ~~{be opened to cameras}~~ permit a camera or other recording ~~{devices}~~ device in the meeting in which the commission releases the commission's recommendation under this part.

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

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- (a) official minutes taken during the meeting or hearing, if any;
- (b) copies of all documents or other items admitted into evidence by the commission;
- (c) copies of a document or written order or ruling issued by the chair or the

commission; and

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

~~{ (3) Except for the recommendation prepared by the commission, which shall be either a private or public record as determined in Section 11-49-704, any recording, testimony, evidence, or other record of a meeting authorized by this part is a private record under Section 63G-2-302 and may not be disclosed.~~

‡ Section ~~{24}~~25. Section **11-49-703** is enacted to read:

### **11-49-703. Commission deliberations -- Standard of proof.**

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

- (a) immediately after conclusion of the closing arguments; or
- (b) at a future meeting of the commission, on a date and time determined by a majority of the members of the commission.

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

(b) Upon a motion made by a commission member, the commission may:

(i) exclude commission staff from all or a portion of the deliberations by a majority vote of the commission; or

(ii) close the meeting in accordance with Section 52-4-204.

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

(i) whether the allegation is:

(A) proven by clear and convincing evidence; or

(B) not proven; and

(ii) for each allegation proven, whether the commission would recommend to the appropriate political subdivision governing body to take one or more of the following actions:

(A) censure;

(B) in the case of a political subdivision employee, termination;

(C) in the case of a political subdivision officer, removal from office; or

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(D) any other action or reprimand that the commission determines is appropriate.

(b) (i) A verbal roll call vote shall be taken on each allegation, ~~and~~ each recommended action described in Subsection (3)(a)(ii) on each allegation ~~{, and each}.~~

(ii) Each member's vote shall be recorded.

(4) (a) An allegation is not considered to be proven unless ~~{four}~~six of the ~~{five}~~seven members of the commission vote that the allegation is proven.

(b) An allegation that is not considered to be proven is dismissed.

(c) (i) Before the commission issues its recommendation in accordance with Section 11-49-704, the commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

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

(5) At the conclusion of deliberations, the commission shall prepare its recommendations as provided in Sections 11-49-704 and 11-49-705.

Section ~~{25}~~26. Section 11-49-704 is enacted to read:

### **11-49-704. Recommendations of commission.**

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

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

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

~~{provide notice of the determination {, in a manner determined by a majority vote of the commission,} at a public meeting; and~~

(iii) ~~provide written notice of the determination~~ to:

(A) the respondent;

(B) the first complainant named on the complaint; and

(C) ~~{subject to Subsection (1)(b),}~~ the appropriate political subdivision ~~{, and~~

~~{provide notice to each person named in Subsection (1)(a)(iii) that, under the provisions of Section 11-49-502 and other provisions of this chapter, a person who discloses~~

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~~the findings of the commission in violation of any provision of this chapter is in contempt of the commission and is subject to penalties for contempt:~~

~~—— (b) The notification to the appropriate political subdivision shall notify the political subdivision that:~~

~~—— (i) a complaint against an unidentified political subdivision officer or employee has been dismissed; and~~

~~—— (ii) the fact that a complaint was filed shall be kept confidential until the commission publicly discloses the existence of the complaint, if at all, via submission of the commission's annual summary data report as required in Section 11-49-202}.~~

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

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

(b) prepare a written recommendation to the applicable political subdivision governing body that:

(i) lists the name of each complainant;

(ii) lists the name of the respondent;

(iii) states the date of the recommendation;

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

(A) provides a reference to the statute or criminal provision allegedly violated;

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

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

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

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

(vi) contains a statement referring the allegations found to have been proved to the appropriate political subdivision governing body for review and, if necessary, further action;

(vii) contains a statement referring to each allegation the commission's recommendation under Subsection 11-49-703 (3)(a)(ii);

(viii) states the name of each member of the commission; and

(ix) is signed by each commission member;

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

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

~~\_\_\_\_\_ (f);~~

(3) The commission shall ensure that a copy of the recommendation is made publicly available and promptly provided to the respondent and; **provide notice of the determination:**

(a) at a public meeting; and

(b) in writing to:

(i) the respondent;

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

(iii) in accordance with Subsection (4), the appropriate political subdivision.

(4) The commission shall ensure that, within five business days of the date of **public** issuance of the ~~recommendation~~:

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

~~\_\_\_\_\_ (b) **determination in accordance with Subsection (3)**, the following documents ~~are made publicly available and~~ are provided to the political subdivision governing body:~~

(~~fi~~)**a**) a cover letter referring the **proven** allegations contained in the ~~edited~~ complaint to the political subdivision governing body for review;

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~~(iii)~~b) a copy of the ~~edited~~ complaint;

~~(iii)~~c) a copy of the ~~edited~~ response; and

~~(iv)~~d) a copy of the commission's recommendation.

Section ~~26~~27. Section 11-49-705 is enacted to read:

### **11-49-705. Criminal allegation -- Recommendation to county or district attorney.**

(1) If the commission finds that a political subdivision officer or employee allegedly violated a criminal provision, ~~and the officer or employee has not already been charged with the criminal violation,~~ the commission shall, in addition to sending a recommendation to a political subdivision governing body in accordance with Section 11-49-704, send a recommendation for further investigation to the county or district attorney of jurisdiction by delivering to the county or district attorney a written recommendation that:

(a) lists the name of each complainant;

(b) lists the name of the respondent;

(c) states the date of the recommendation;

(d) for each allegation of a criminal violation, provide a reference to the criminal provision allegedly violated;

(e) includes a general statement that is adopted by a majority of the members of the commission; and

(f) gives the name of the political subdivision governing body that the commission sent a recommendation to in accordance with Section 11-49-704.

(2) If the commission sends a recommendation in accordance with Subsection (1)(a), the commission shall enter into the record:

(a) a copy of the recommendation; and

(b) the name of the county or district attorney of jurisdiction to whom it was sent.

(3) A recommendation prepared and delivered in accordance with this section is a public record.

Section ~~27~~28. Section 11-49-706 is enacted to read:

### **11-49-706. Action by political subdivision governing body.**

A political subdivision governing body that receives a recommendation in accordance with Section 11-49-704 shall:

(1) review the recommendation; and

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(2) take further action in accordance with a political subdivision's governing ordinance, bylaws, or other applicable governing rule.

Section ~~{28}~~29. Section 17-16a-11 is amended to read:

### **17-16a-11. County ethics commission -- Complaints charging violations --**

#### **Procedure.**

(1) A county may establish by ordinance an ethics commission to review a complaint, except as provided in Subsection (3), against an officer or employee subject to:

~~— (a) this part for a violation of a provision of this part; or~~

~~— (b) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.~~

(2) (a) Except as provided in Subsection (3), a person filing a complaint for a violation of this part ~~{or Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act}~~ may file the complaint:

~~(a) i~~ with the county ethics commission, if the county has established a county ethics commission in accordance with Subsection (1); or

~~(b) ii~~ with the Political Subdivisions Ethics Review Commission established in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission.

(b) A county that receives a complaint described in Subsection (2)(a) may:

(i) accept the complaint if the county has established a county ethics commission in accordance with Subsection (1); or

(ii) forward the complaint to the Political Subdivisions Ethics Review Commission established in Section 11-49-201:

(A) regardless of whether the county has established a county ethics commission; or

(B) if the county has not established a county ethics commission.

~~[(+)] (3) Any complaint against a person who is under the merit system, charging that person with a violation of this part, shall be filed and processed in accordance with the provisions of the merit system.~~

~~[(2) If the person charged with the violation is not under any merit system, then the complaint shall be filed with the commission which shall investigate the complaint and shall give the person an opportunity to be heard. A written report of the findings and the recommendation of the commission shall be filed with the governing body. If the governing body finds that the person has violated this part, it may dismiss, suspend, or take such other~~

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~~appropriate action with respect to the person.]~~

Section 30. Section 52-4-204 is amended to read:

**52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.**

(1) A closed meeting may be held if:

(a) (i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii) (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting; ~~[or]~~

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(D) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201 that is conducting an open meeting for the purpose of reviewing an ethics complaint in accordance with Section 11-49-701, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(b) (i) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202 with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints"[-]; or

~~(b) for the Independent Legislative Ethics Commission~~ ii) for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, the closed meeting is convened for the purpose of conducting business relating to the ~~receipt or~~ preliminary

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review of an ethics complaint [in accordance with Section 11-49-602](#), provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the ~~receipt or~~ review of ethics complaints".

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

- (a) the reason or reasons for holding the closed meeting;
- (b) the location where the closed meeting will be held; and
- (c) the vote by name, of each member of the public body, either for or against the motion to hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

Section ~~29~~[31](#). Section **63G-2-302** is amended to read:

### **63G-2-302. Private records.**

- (1) The following records are private:
  - (a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;
  - (b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;
  - (c) records of publicly funded libraries that when examined alone or with other records identify a patron;
  - (d) records received by or generated by or for:
    - (i) the Independent Legislative Ethics Commission, except for:
      - (A) the commission's summary data report that is required under legislative rule; and
      - (B) any other document that is classified as public under legislative rule; or
    - (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

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(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

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(iii) Subsection 31A-26-210(3);

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(m) information provided by an offender that is:

(i) required by the registration requirements of Section 77-27-21.5; and

(ii) not required to be made available to the public under Subsection 77-27-21.5(27);

(n) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(o) electronic toll collection customer account information received or collected under Section 72-6-118, including contact and payment information and customer travel data[-];

(p) an email address provided by a military or overseas voter under Section 20A-16-501; [~~and~~]

(q) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act[-]; and

(r) records received by or generated by or for the Political Subdivision Ethics [Review Commission](#) established in Section 11-49-201, except for:

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified [as public](#) in accordance with Title 11, Chapter 49, Political Subdivisions Ethics [Review Commission](#).

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would

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conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

[Section 32. Section 67-16-3 is amended to read:](#)

### **67-16-3. Definitions.**

As used in this chapter:

(1) "Agency" means any department, division, agency, commission, board, council, committee, authority, or any other institution of the state or any of its political subdivisions.

(2) "Agency head" means the chief executive or administrative officer of any agency.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent, aid, advise, furnish information to, or otherwise provide assistance to a person or business entity, believing that such action is of help, aid, advice, or assistance to such person or business

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entity and with the intent to assist such person or business entity.

(4) "Business entity" means a sole proprietorship, partnership, association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.

(5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

(6) "Controlled, private, or protected information" means information classified as controlled, private, or protected in Title 63G, Chapter 2, Government Records Access and Management Act, or other applicable provision of law.

(7) "Governmental action" means any action on the part of the state, a political subdivision, or an agency, including:

(a) any decision, determination, finding, ruling, or order; and

(b) any grant, payment, award, license, contract, subcontract, transaction, decision, sanction, or approval, or the denial thereof, or the failure to act in respect to.

(8) "Improper disclosure" means disclosure of controlled, private, or protected information to any person who does not have the right to receive the information.

(9) "Legislative employee" means any officer or employee of the Legislature, or any committee of the Legislature, who is appointed or employed to serve, either with or without compensation, for an aggregate of less than 800 hours during any period of 365 days.

"Legislative employee" does not include legislators.

(10) "Legislator" means a member or member-elect of either house of the Legislature of the state of Utah.

(11) "Political subdivision" means a district, county, school district, or any other political subdivision of the state that is not an agency, but does not include municipalities a municipality or a county.

(12) "Public employee" means a person who is not a public officer who is employed on a full-time, part-time, or contract basis by the state or any of its political subdivisions. "Public employee" does not include legislators or legislative employees.

(13) "Public officer" means all elected or appointed officers of the state or any of its

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political subdivisions who occupy policymaking posts. "Public officer" does not include legislators or legislative employees.

(14) "State" means the state of Utah.

(15) "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, or the individual's minor children, of at least 10% of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

Section 33. Section 67-16-4 is amended to read:

**67-16-4. Improperly disclosing or using private, controlled, or protected information -- Using position to secure privileges or exemptions -- Accepting employment which would impair independence of judgment or ethical performance -- Exceptions.**

(1) ~~Except as provided in Subsection (3), it~~ It is an offense for a public officer, public employee, or legislator, under circumstances not amounting to a violation of Section 63G-6-1001 or 76-8-105, to:

(a) accept employment or engage in any business or professional activity that he might reasonably expect would require or induce him to improperly disclose controlled information that he has gained by reason of his official position;

(b) disclose or improperly use controlled, private, or protected information acquired by reason of his official position or in the course of official duties in order to further substantially the officer's or employee's personal economic interest or to secure special privileges or exemptions for himself or others;

(c) use or attempt to use his official position to:

(i) further substantially the officer's or employee's personal economic interest; or

(ii) secure special privileges or exemptions for himself or others;

(d) accept other employment that he might expect would impair his independence of judgment in the performance of his public duties; or

(e) accept other employment that he might expect would interfere with the ethical performance of his public duties.

(2) (a) Subsection (1) does not apply to the provision of education-related services to public school students by public education employees acting outside their regular employment.

(b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

~~(3) A county legislative body member who does not participate in the process of~~

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selecting a mental health or substance abuse service provider does not commit an offense under Subsection (1)(a) or (b) by:

~~[(a) serving also as a member of the governing board of the provider of mental health or substance abuse services under contract with the county; or]~~

~~[(b) discharging, in good faith, the duties and responsibilities of each position.]~~

Section ~~{30}~~34. Section **67-16-15** is enacted to read:

### **67-16-15. Complaint -- Political Subdivisions Ethics Review Commission.**

A person may file a complaint for an alleged violation of this chapter by a political subdivision officer or employee in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission.