

ETHICS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions relating to ethics committees and commissions.

Highlighted Provisions:

This bill:

- ▶ defines "malfeasance";
- ▶ clarifies that the Independent Executive Branch Ethics Commission and the Political Subdivisions Ethics Review Commission (the commissions) are independent entities;
- ▶ permits the commissions to retain private counsel and provides for additional staff;
- ▶ addresses a request for supplemental appropriations by the commissions;
- ▶ requires submission of an annual summary report to the governor;
- ▶ addresses conflicts of interest for commission members;
- ▶ places restrictions on the contents of a complaint;
- ▶ describes the circumstances under which an official, officer, or employee may be held responsible, under the provisions of this bill, for a violation based on the act or failure to act of an individual under the authority of the official, officer, or employee;
- ▶ addresses complaints filed in more than one forum;
- ▶ requires a complainant to have personal knowledge of matters alleged in a complaint;



- 28 ▶ addresses confidentiality requirements in relation to the commissions;
- 29 ▶ requires the state or a political subdivision to pay costs and attorney fees if none of
- 30 the allegations in a complaint before the commissions are proven;
- 31 ▶ for budget purposes only, moves the Political Subdivisions Ethics Review
- 32 Commission to the Department of Administrative Services, and recodifies
- 33 provisions accordingly;
- 34 ▶ provides for the appointment of an alternate or temporary replacement member for
- 35 the Political Subdivisions Ethics Review Commission;
- 36 ▶ modifies provisions relating to selection of the chair of the Political Subdivisions
- 37 Ethics Review Commission;
- 38 ▶ modifies deadlines relating to proceedings of the Political Subdivisions Ethics
- 39 Review Commission;
- 40 ▶ addresses the confidentiality of recordings of the commissions and legislative ethics
- 41 committees and commissions; and
- 42 ▶ makes technical and conforming changes.

43 **Money Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 None

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49 10-3-1311, as last amended by Laws of Utah 2012, Chapter 202
- 50 17-16a-11, as last amended by Laws of Utah 2012, Chapter 202
- 51 52-4-204, as last amended by Laws of Utah 2013, Chapter 426
- 52 63A-14-102, as enacted by Laws of Utah 2013, Chapter 426
- 53 63A-14-202, as enacted by Laws of Utah 2013, Chapter 426
- 54 63A-14-203, as enacted by Laws of Utah 2013, Chapter 426
- 55 63A-14-302, as enacted by Laws of Utah 2013, Chapter 426
- 56 63A-14-402, as enacted by Laws of Utah 2013, Chapter 426
- 57 63A-14-403, as enacted by Laws of Utah 2013, Chapter 426
- 58 63A-14-502, as enacted by Laws of Utah 2013, Chapter 426

- 59 **63A-14-504**, as enacted by Laws of Utah 2013, Chapter 426
- 60 **63A-14-604**, as enacted by Laws of Utah 2013, Chapter 426
- 61 **63G-2-103**, as last amended by Laws of Utah 2017, Chapters 196 and 441
- 62 **63G-2-302**, as last amended by Laws of Utah 2017, Chapters 168 and 282
- 63 **67-16-15**, as enacted by Laws of Utah 2012, Chapter 202
- 64 RENUMBERS AND AMENDS:
- 65 **63A-15-101**, (Renumbered from 11-49-101, as enacted by Laws of Utah 2012, Chapter
- 66 202)
- 67 **63A-15-102**, (Renumbered from 11-49-102, as last amended by Laws of Utah 2016,
- 68 Chapter 350)
- 69 **63A-15-103**, (Renumbered from 11-49-103, as enacted by Laws of Utah 2012, Chapter
- 70 202)
- 71 **63A-15-201**, (Renumbered from 11-49-201, as enacted by Laws of Utah 2012, Chapter
- 72 202)
- 73 **63A-15-202**, (Renumbered from 11-49-202, as last amended by Laws of Utah 2013,
- 74 Chapter 278)
- 75 **63A-15-301**, (Renumbered from 11-49-301, as enacted by Laws of Utah 2012, Chapter
- 76 202)
- 77 **63A-15-302**, (Renumbered from 11-49-302, as enacted by Laws of Utah 2012, Chapter
- 78 202)
- 79 **63A-15-401**, (Renumbered from 11-49-401, as enacted by Laws of Utah 2012, Chapter
- 80 202)
- 81 **63A-15-402**, (Renumbered from 11-49-402, as enacted by Laws of Utah 2012, Chapter
- 82 202)
- 83 **63A-15-403**, (Renumbered from 11-49-403, as enacted by Laws of Utah 2012, Chapter
- 84 202)
- 85 **63A-15-404**, (Renumbered from 11-49-404, as enacted by Laws of Utah 2012, Chapter
- 86 202)
- 87 **63A-15-405**, (Renumbered from 11-49-405, as enacted by Laws of Utah 2012, Chapter
- 88 202)
- 89 **63A-15-406**, (Renumbered from 11-49-406, as enacted by Laws of Utah 2012, Chapter

90 202)
91 **63A-15-407**, (Renumbered from 11-49-407, as last amended by Laws of Utah 2013,
92 Chapter 278)
93 **63A-15-408**, (Renumbered from 11-49-408, as enacted by Laws of Utah 2012, Chapter
94 202)
95 **63A-15-501**, (Renumbered from 11-49-501, as last amended by Laws of Utah 2016,
96 Chapter 160)
97 **63A-15-502**, (Renumbered from 11-49-502, as enacted by Laws of Utah 2012, Chapter
98 202)
99 **63A-15-601**, (Renumbered from 11-49-601, as enacted by Laws of Utah 2012, Chapter
100 202)
101 **63A-15-602**, (Renumbered from 11-49-602, as enacted by Laws of Utah 2012, Chapter
102 202)
103 **63A-15-603**, (Renumbered from 11-49-603, as enacted by Laws of Utah 2012, Chapter
104 202)
105 **63A-15-604**, (Renumbered from 11-49-604, as enacted by Laws of Utah 2012, Chapter
106 202)
107 **63A-15-701**, (Renumbered from 11-49-701, as enacted by Laws of Utah 2012, Chapter
108 202)
109 **63A-15-702**, (Renumbered from 11-49-702, as enacted by Laws of Utah 2012, Chapter
110 202)
111 **63A-15-703**, (Renumbered from 11-49-703, as enacted by Laws of Utah 2012, Chapter
112 202)
113 **63A-15-704**, (Renumbered from 11-49-704, as enacted by Laws of Utah 2012, Chapter
114 202)
115 **63A-15-705**, (Renumbered from 11-49-705, as enacted by Laws of Utah 2012, Chapter
116 202)
117 **63A-15-706**, (Renumbered from 11-49-706, as enacted by Laws of Utah 2012, Chapter
118 202)
119 ENACTS:
120 **63A-14-405**, Utah Code Annotated 1953

121 [63A-15-303](#), Utah Code Annotated 1953



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

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

125 **10-3-1311. Municipal ethics commission -- Complaints charging violations.**

126 (1) A municipality may establish by ordinance an ethics commission to review a
127 complaint against an officer or employee subject to this part for a violation of a provision of
128 this part.

129 (2) (a) A person filing a complaint for a violation of this part shall file the complaint:

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

132 (ii) with the Political Subdivisions Ethics Review Commission in accordance with
133 [~~Title 11, Chapter 49~~] Title 63A, Chapter 15, Political Subdivisions Ethics Review
134 Commission, if the municipality has not established a municipal ethics commission.

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

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

138 (ii) forward the complaint to the Political Subdivisions Ethics Review Commission
139 established in Section [~~11-49-201~~] 63A-15-201:

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

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

143 (3) If the alleged ethics complaint is against a person who is a member of the municipal
144 ethics commission, the complaint shall be filed with or forwarded to the Political Subdivisions
145 Ethics Review Commission.

146 Section 2. Section **17-16a-11** is amended to read:

147 **17-16a-11. County ethics commission -- Complaints charging violations --**
148 **Procedure.**

149 (1) A county may establish by ordinance an ethics commission to review a complaint,
150 except as provided in Subsection (3), against an officer or employee subject to this part for a
151 violation of a provision of this part.

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

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

156 (ii) with the Political Subdivisions Ethics Review Commission established in
157 accordance with [~~Title 11, Chapter 49~~] Title 63A, Chapter 15, Political Subdivisions Ethics
158 Review Commission if the county has not established a county ethics commission.

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

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

162 (ii) forward the complaint to the Political Subdivisions Ethics Review Commission
163 established in Section [~~11-49-201~~] 63A-15-201:

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

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

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

169 Section 3. Section **52-4-204** is amended to read:

170 **52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for**
171 **meeting recorded.**

172 (1) A closed meeting may be held if:

173 (a) (i) a quorum is present;

174 (ii) the meeting is an open meeting for which notice has been given under Section
175 52-4-202; and

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

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

181 (C) for an ethics committee of the Legislature that is conducting an open meeting for
182 the purpose of reviewing an ethics complaint, a majority of the members present vote to

183 approve closing the meeting for the purpose of seeking or obtaining legal advice on legal,
184 evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the
185 complaint; or

186 (D) for the Political Subdivisions Ethics Review Commission established in Section
187 ~~[11-49-201]~~ [63A-15-201](#) that is conducting an open meeting for the purpose of reviewing an
188 ethics complaint in accordance with Section ~~[11-49-701]~~ [63A-15-701](#), a majority of the
189 members present vote to approve closing the meeting for the purpose of seeking or obtaining
190 legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to
191 reach a decision on the complaint; or

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

197 (ii) for the Political Subdivisions Ethics Review Commission established in Section
198 ~~[11-49-201]~~ [63A-15-201](#), the closed meeting is convened for the purpose of conducting
199 business relating to the preliminary review of an ethics complaint in accordance with Section
200 ~~[11-49-602]~~ [63A-15-602](#), provided that public notice of the closed meeting is given under
201 Section [52-4-202](#), with the agenda for the meeting stating that the meeting will be closed for
202 the purpose of "conducting business relating to the review of ethics complaints"; or

203 (iii) for the Independent Executive Branch Ethics Commission created in Section
204 [63A-14-202](#), the closed meeting is convened for the purpose of conducting business relating to
205 an ethics complaint, provided that public notice of the closed meeting is given under Section
206 [52-4-202](#), with the agenda for the meeting stating that the meeting will be closed for the
207 purpose of "conducting business relating to an ethics complaint."

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

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

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

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

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

220 Section 4. Section 63A-14-102 is amended to read:

221 **63A-14-102. Definitions.**

222 As used in this chapter:

223 (1) "Commission" means the Independent Executive Branch Ethics Commission,
 224 created in Section 63A-14-202.

225 (2) "Complainant" means an individual who files a complaint under Subsection
 226 63A-14-402(1)(a).

227 (3) "Executive branch elected official" means:

- 228 (a) the governor;
- 229 (b) the lieutenant governor;
- 230 (c) the state auditor;
- 231 (d) the state treasurer; or
- 232 (e) the attorney general.

233 (4) "Improper purpose" includes harassing a respondent, causing unwarranted harm to
 234 a respondent's reputation, or causing unnecessary expenditure of public funds.

235 (5) "Malfeasance in office" means an intentional act or omission relating to the duties
 236 of an executive branch elected official that:

- 237 (a) constitutes a crime; or
- 238 (b) (i) constitutes a substantial breach of the trust imposed upon the executive branch
 239 elected official by the nature of the official's office; and
- 240 (ii) is against commonly accepted standards of honesty and morality.

241 [~~5~~] (6) "Respondent" means the executive branch elected official against whom an
 242 ethics complaint described in Section 63A-14-402 is filed.

243 [~~6~~] (7) "Violation" means a high crime, a misdemeanor, or malfeasance in office.

244 Section 5. Section 63A-14-202 is amended to read:

245 **63A-14-202. Independent Executive Branch Ethics Commission -- Membership.**

246 (1) (a) There is created the Independent Executive Branch Ethics Commission,
247 consisting of the following five members appointed by the governor, each of whom shall be
248 registered to vote in the state at the time of appointment:

249 (i) two members who served:

250 (A) as elected officials in state government no more recently than four years before the
251 day on which the member is appointed; or

252 (B) in a management position in the state executive branch no more recently than four
253 years before the day on which the member is appointed;

254 (ii) one member who:

255 (A) has served, but no longer actively serves, as a judge of a court in the state; or

256 (B) is a licensed attorney in the state and is not, and has not been, a judge; and

257 (iii) two citizen members.

258 (b) The governor shall make appointments to the commission as follows:

259 (i) each executive branch elected official, other than the governor, shall select, and
260 provide to the governor, at least two names for potential appointment to one of the membership
261 positions described in Subsection (1)(a);

262 (ii) the governor shall determine which of the executive branch elected officials
263 described in Subsection (1)(b)(i) shall select names for which membership position;

264 (iii) the governor shall appoint to the commission one of the names provided by each
265 executive branch elected official described in Subsection (1)(b)(i);

266 (iv) the governor shall directly appoint the remaining member of the commission; and

267 (v) if an executive branch elected official fails to submit names to the governor within
268 15 days after the day on which the governor makes the determination described in Subsection
269 (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership
270 position.

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

273 (a) an officeholder as defined in Section [20A-11-101](#);

274 (b) an agency head as defined in Section [67-16-3](#);

275 (c) a lobbyist as defined in Section [36-11-102](#);

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

277 (e) an employee of the state.

278 (3) (a) Except as provided in Subsection (3)(b), each member of the commission shall
279 serve a four-year term.

280 (b) The governor shall set the first term of two of the members of the commission at
281 two years, so that approximately half of the commission is appointed, or reappointed, every
282 two years.

283 (c) When a vacancy occurs in the commission's membership for any reason, the
284 governor shall appoint a replacement member for the unexpired term of the vacating member,
285 in accordance with Subsection (1).

286 (d) The governor may not appoint a member to serve more than two full terms, whether
287 those terms are two or four years.

288 (e) (i) The governor, or a majority of the commission, may remove a member from the
289 commission only for cause.

290 (ii) The governor may not remove a member from the commission during any period of
291 time when the commission is investigating or considering a complaint alleging an ethics
292 violation against the governor or lieutenant governor.

293 (f) If a commission member determines that the commission member has a conflict of
294 interest in relation to a complaint, the remaining members of the commission shall appoint an
295 individual to serve in that member's place for the purpose of reviewing that complaint.

296 (4) (a) A member of the commission may not receive compensation or benefits for the
297 member's service, but may receive per diem and expenses incurred in the performance of the
298 member's official duties at the rates established by the Division of Finance under Sections
299 63A-3-106 and 63A-3-107.

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

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

303 (b) An individual may not serve as chair for more than two consecutive years.

304 (6) The commission:

305 (a) is an independent entity established within the department for budgetary and
306 general administrative purposes only; and

307 (b) is not under the direction or control of the department, the executive director, or
 308 any other officer or employee of the department.

309 Section 6. Section **63A-14-203** is amended to read:

310 **63A-14-203. Independent Executive Branch Ethics Commission -- Meetings --**
 311 **Annual summary report -- Staff -- Legal counsel -- Supplemental appropriations.**

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

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

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

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

317 (b) A majority vote of a quorum present constitutes the action of the commission.

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

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

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

321 (iii) the number of ethics complaints reviewed by the commission;

322 (iv) a summary description of ethics complaints that formed the basis for a commission
 323 finding that an allegation in a complaint has merit; and

324 (v) an accounting of the commission's budget and expenditures.

325 (b) The commission shall submit the summary data report to the [~~Legislative~~
 326 ~~Management Committee~~] governor before December 1 each year.

327 (c) The summary data report is a public record.

328 [~~(4) (a) The commission may employ staff at a level that is reasonable to assist the~~
 329 ~~commission in performing the commission's duties as established in this chapter.~~]

330 (4) The commission:

331 (a) shall employ a director to provide administrative support to the commission and to
 332 assist the commission in fulfilling the commission's duties;

333 (b) may employ additional staff, to work under the direction of the director;

334 (c) shall contract with private legal counsel to provide legal services to the
 335 commission, as needed; and

336 (d) may, in consultation with the Office of the Legislative Fiscal Analyst, request
 337 supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed

338 the commission's budget due to the number or complexity of the ethics complaints filed with or
339 considered by the commission in a fiscal year.

340 ~~[(b)]~~ (5) (a) Except as provided in Subsection ~~[(4)(c)]~~ (5)(b), staff for the commission
341 may not perform services for any other person in state government.

342 ~~[(c)]~~ (b) A person employed as staff for the commission may be the same person
343 employed as staff for the Independent Legislative Ethics Commission, if the staff ensures that
344 proper protections are in place to preserve the confidentiality to both bodies and to avoid a
345 conflict of interest.

346 ~~[(5)]~~ (6) Except as expressly otherwise provided in this chapter, all meetings held
347 under this chapter are closed to the public.

348 Section 7. Section **63A-14-302** is amended to read:

349 **63A-14-302. Authority to review complaint -- Grounds for complaint --**

350 **Limitations on filings.**

351 (1) Subject to the requirements of this chapter, the commission may review an ethics
352 complaint against an executive branch elected official if the complaint alleges that the
353 executive branch elected official has committed a violation.

354 (2) The commission may not review an ethics complaint filed against an executive
355 branch elected official unless the complaint alleges conduct that, if true, would constitute
356 grounds for impeachment under the Utah Constitution.

357 (3) A complaint against an executive branch elected official may not allege a violation
358 by the executive branch elected official for an act by an individual under the authority of the
359 executive branch elected official, unless the complaint evidences that the executive branch
360 elected official:

361 (a) encouraged, condoned, or ordered the act;

362 (b) (i) before the individual engaged in the act, knew or should have known that the
363 individual was likely to engage in the act; and

364 (ii) failed to take appropriate action to prevent the act;

365 (c) (i) while the individual engaged in the act, knew or should have known that the
366 individual was engaging in the act; and

367 (ii) failed to take appropriate action to stop the act; or

368 (d) (i) after the individual engaged in the act, knew or should have known that the

369 individual engaged in the act; and

370 (ii) failed to take appropriate action in response to the act.

371 (4) A complaint against an executive branch elected official may not allege a violation
372 by the executive branch elected official for an individual under the authority of the executive
373 branch elected official failing to act, unless the complaint evidences that the executive branch
374 elected official:

375 (a) encouraged, condoned, or ordered the failure to act;

376 (b) (i) before the individual failed to act, knew or should have known that the
377 individual was likely to fail to act; and

378 (ii) failed to take appropriate action to prevent the failure to act;

379 (c) (i) while the individual was failing to act, knew or should have known that the
380 individual was failing to act; and

381 (ii) failed to take appropriate action to prevent the failure to act; or

382 (d) (i) after the individual failed to act, knew or should have known that the individual
383 failed to act; and

384 (ii) failed to take appropriate action in response to the failure to act.

385 ~~[(2)]~~ (5) Individuals who file a complaint for an alleged violation shall file the
386 complaint within two years after the later of:

387 (a) the day on which the action or omission that forms the basis for the alleged
388 violation occurs or would have been discovered by a reasonable person; or

389 (b) the day on which a plea or conviction that forms the basis for the allegation is
390 entered.

391 ~~[(3)]~~ (6) (a) A complaint may not contain an allegation that was previously reviewed by
392 the commission, unless:

393 (i) the allegation is accompanied by material facts or circumstances supporting the
394 allegation that were not raised or pled to the commission when the allegation was previously
395 reviewed; and

396 (ii) the allegation and the general facts and circumstances supporting the allegation
397 were only reviewed by the commission on one previous occasion.

398 (b) If an allegation in a complaint does not comply with the requirements of Subsection
399 ~~[(3)]~~ (6)(a), the commission or the chair shall dismiss the allegation with prejudice.

400 (7) (a) An individual may not file a complaint under this chapter that alleges the same
401 conduct alleged in a grievance filed under Title 67, Chapter 19a, Grievance Procedures, unless
402 the individual files the complaint within seven days before or after the day on which the
403 individual files the grievance under Title 67, Chapter 19a, Grievance Procedures.

404 (b) If an allegation in a complaint does not comply with the requirements of Subsection
405 (7)(a), the commission or the chair shall dismiss the allegation with prejudice.

406 (c) If an individual files a complaint under this chapter, in accordance with the time
407 requirement described in Subsection (7)(a), that alleges the same conduct alleged in a grievance
408 filed under Title 67, Chapter 19a, Grievance Procedures:

409 (i) the commission may stay proceedings before the commission in relation to the
410 allegation, pending resolution of the grievance filed under Title 67, Chapter 19a, Grievance
411 Procedures; and

412 (ii) the Career Service Review Office, created in Section [67-19a-201](#), shall, upon
413 request of the commission, inform the commission of the progress and final disposition of the
414 grievance proceeding.

415 (8) If the commission stays proceedings under Subsection (7)(c), the matter shall
416 proceed as follows after the grievance under Title 67, Chapter 19a, Grievance Procedures, is
417 resolved:

418 (a) if the individual who filed the complaint under this chapter desires to proceed with
419 the complaint:

420 (i) the individual shall, within 15 days after the day on which a final decision is
421 rendered under Title 67, Chapter 19a, Grievance Procedures, file a written document with the
422 commission:

423 (A) describing the final decision; and

424 (B) stating that the individual desires to proceed with the complaint;

425 (ii) the Career Service Review Office, created in Section [67-19a-201](#), shall, upon
426 request of the commission, provide copies of all records relating to the grievance described in
427 Subsection (7)(c)(i), in accordance with Section [63G-2-206](#); and

428 (iii) the commission shall:

429 (A) review the records described in Subsection (8)(a)(ii);

430 (B) consider any additional evidence that the commission determines necessary;

431 (C) in the discretion of the commission, hear closing arguments from the parties; and

432 (D) comply with Section 63A-14-604; or

433 (b) if the individual who filed the complaint under this chapter does not desire to
434 proceed with the complaint, the individual shall, within 15 days after the day on which a final
435 decision is rendered under Title 67, Chapter 19a, Grievance Procedures, file a written
436 document with the commission stating that the individual does not desire to proceed with the
437 complaint.

438 (9) The commission shall dismiss a complaint for which the commission stayed
439 proceedings under Subsection (7)(c) if the individual who filed the complaint:

440 (a) fails to timely comply with Subsection (8)(a)(i); or

441 (b) files the document described in Subsection (8)(b).

442 Section 8. Section **63A-14-402** is amended to read:

443 **63A-14-402. Ethics complaints -- Filing -- Form.**

444 (1) (a) The following individuals may file an ethics complaint against an executive
445 branch elected official if the complaint meets the requirements of Section 63A-14-302 and
446 Subsection (1)(b):

447 (i) two or more executive branch elected officials, deputies of elected officials,
448 executive directors of departments in the executive branch, or directors of divisions in the
449 executive branch, if the complaint contains evidence or sworn testimony that:

450 (A) describes the facts and circumstances supporting the alleged violation; and

451 (B) is generally admissible under the Utah Rules of Evidence; or

452 (ii) two or more registered voters who currently reside in Utah and are not individuals
453 described in Subsection (1)(a)(i), if, for each alleged violation pled in the complaint, at least
454 one of those registered voters has ~~[actual]~~ personal knowledge of the facts and circumstances
455 supporting the alleged violation.

456 (b) Complainants may file a complaint only against an individual who is serving as an
457 executive branch elected official on the date that the complaint is filed.

458 (2) (a) The ~~[lieutenant governor]~~ commission shall post, on the ~~[home page of the~~
459 ~~lieutenant governor's]~~ state's website, a conspicuous and clearly identified link to the name and
460 address of a person authorized to accept a complaint on behalf of the commission.

461 (b) Complainants shall file a complaint with the person described in Subsection (2)(a).

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

464 (i) a regular primary election in which the accused executive branch elected official is a
465 candidate; or

466 (ii) a regular general election in which the accused executive branch elected official is
467 a candidate, unless the accused executive branch elected official is unopposed in the election.

468 (3) The complainants shall ensure that each complaint filed under this rule is in writing
469 and contains the following information:

470 (a) the name and position or title of the respondent;

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

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

474 (i) a reference to any criminal provision that the respondent is alleged to have violated;

475 (ii) a reference to any other provision of law that the respondent is alleged to have
476 violated or failed to comply with;

477 (iii) the name of the complainant or complainants who have [~~actual~~] personal
478 knowledge of the supporting facts and circumstances; and

479 (iv) the facts and circumstances supporting the allegation, which shall be provided by:

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

481 (B) one or more affidavits, each of which shall comply with the format described in
482 Subsection (4);

483 (d) a list of the witnesses that the complainants desire to call, including for each
484 witness:

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

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

487 (iii) a specific description of any documents or evidence the complainants desire the
488 witness to produce;

489 (e) a statement that each complainant:

490 (i) has reviewed the allegations contained in the complaint and the affidavits and
491 documents attached to the complaint;

492 (ii) believes that the complaint is submitted in good faith and not for any improper

493 purpose; and

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

495 (f) the signature of each complainant.

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

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

498 (b) a statement that the affiant has [~~actual~~] personal knowledge of the facts and
499 circumstances described in the affidavit;

500 (c) the facts and circumstances testified to by the affiant;

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

503 (e) the signature of the affiant.

504 Section 9. Section **63A-14-403** is amended to read:

505 **63A-14-403. Privacy of ethics complaint -- Dismissal -- Contempt.**

506 (1) (a) Except as provided in Subsection (2) or [~~(3)~~] (4), a person, including the
507 complainant, the respondent, a commission member, or staff to the commission may not
508 disclose the existence of a complaint, a response, or any information concerning an alleged
509 violation that is the subject of a complaint.

510 (b) A person that violates this Subsection (1) may be held in contempt of the
511 commission in accordance with Section [63A-14-705](#).

512 (2) The restrictions described in Subsection (1) do not apply to:

513 (a) a complaint or response that is publicly released by the commission and referred to
514 the Legislature; [~~or~~]

515 (b) the respondent's voluntary disclosure that the commission determined that all
516 allegations in a complaint are without merit, after the commission issues an order dismissing
517 the complaint under Section [63A-14-605](#)[-];

518 (c) a disclosure by a respondent that is made solely for the purpose of, and only to the
519 extent necessary for, retaining counsel or conducting an interview, seeking evidence, or taking
520 other action to prepare to defend against a complaint;

521 (d) a communication between a commission member and the commission's attorney or
522 a member of the commission's staff; or

523 (e) a disclosure to a person that is determined necessary, by a majority vote of the

524 commission, to conduct the duties of the commission.

525 (3) When a person makes a disclosure under Subsection (2)(c) or (e), the person
526 making the disclosure shall inform the person to whom the disclosure is made of the
527 nondisclosure requirements described in this section.

528 ~~[(3)]~~ (4) Nothing in this section prevents a person from disclosing facts or allegations
529 regarding potential criminal violations to law enforcement authorities.

530 ~~[(4)]~~ (5) If the existence of an ethics complaint is publicly disclosed by a person, other
531 than the respondent [or], an agent of the respondent, or a person who learns of the complaint
532 under Subsection (2)(c) or (e), during the period that the commission is reviewing the
533 complaint, the commission shall summarily dismiss the complaint without prejudice.

534 Section 10. Section **63A-14-405** is enacted to read:

535 **63A-14-405. Motion to disqualify commission member for conflict of interest.**

536 (1) A complainant may file a motion to disqualify one or more members of the
537 commission from participating in proceedings relating to the complaint if the individual files
538 the motion within 20 days after the later of:

539 (a) the day on which the individual files the ethics complaint; or

540 (b) the day on which the individual knew or should have known of the grounds upon
541 which the motion is based.

542 (2) A respondent may file a motion to disqualify one or more members of the
543 commission from participating in proceedings relating to the complaint if the respondent files
544 the motion within 20 days after the later of:

545 (a) the day on which the respondent receives delivery of the complaint; or

546 (b) the day on which the respondent knew or should have known of the grounds upon
547 which the motion is based.

548 (3) A motion filed under this section shall include:

549 (a) a statement that the members to whom the motion relates have a conflict of interest
550 that, under the circumstances, would lead a reasonable person to question the impartiality of
551 the members;

552 (b) a detailed description of the grounds supporting the statement described in
553 Subsection (3)(a); and

554 (c) a statement that the motion is filed in good faith, supported by an affidavit or

555 declaration under penalty of Section 78B-5-705 stating that the motion and all accompanying
556 statements and documents are true and correct to the best of the complainant's or respondent's
557 knowledge.

558 (4) A party may not file more than one motion to disqualify, unless the second or
559 subsequent motion:

560 (a) is based on grounds of which the party was not aware, and could not have been
561 aware, at the time of the earlier motion; and

562 (b) is accompanied by a statement, included in the affidavit or declaration described in
563 Subsection (3)(c), explaining how and when the party first became aware of the grounds
564 described in Subsection (4)(a).

565 (5) The commission shall dismiss a motion filed under this section, with prejudice, if
566 the motion:

567 (a) is not timely filed; or

568 (b) does not comply with the requirements of this section.

569 (6) A member of the commission may:

570 (a) on the member's own motion, disqualify the member from participating in
571 proceedings relating to a complaint if the member believes that the member has a conflict of
572 interest that, under the circumstances, would lead a reasonable person to question the
573 impartiality of the member; or

574 (b) ask the commission to disqualify another member of the commission if the member
575 believes that the member has a conflict of interest that, under the circumstances, would lead a
576 reasonable person to question the impartiality of the member.

577 (7) (a) When a party files a motion under this section, or when a commission member
578 makes a request under Subsection (6)(b), the commission member for whom disqualification is
579 sought may make the initial determination regarding whether the commission member has a
580 conflict of interest.

581 (b) If a commission member described in Subsection (7)(a) determines that the
582 commission member has a conflict of interest, the commission member shall disqualify the
583 commission member from participating in the matter.

584 (c) If a commission member described in Subsection (7)(a) determines that the
585 commission member does not have a conflict of interest, or declines to make the determination,

586 the remainder of the commission shall, by majority vote, determine whether the commission
587 member has a conflict of interest.

588 (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on
589 the issue of a conflict of interest.

590 (8) In making a determination under Subsection (7)(c), the commission may:

591 (a) gather additional evidence;

592 (b) hear testimony; or

593 (c) request that the commission member who is the subject of the motion or request file
594 an affidavit or declaration responding to questions posed by the commission.

595 Section 11. Section **63A-14-502** is amended to read:

596 **63A-14-502. Initial review of ethics complaint -- Notice.**

597 (1) [~~Within~~] (a) Except as provided in Subsection (1)(b), within five business days
598 after the day on which the commission receives a complaint, the [~~staff of~~] director of the
599 commission, in consultation with the chair, shall examine the complaint to determine if [it] the
600 complaint is in compliance with Sections [63A-14-302](#) and [63A-14-402](#).

601 (b) The chair shall appoint another staff member or member of the commission to
602 fulfill a duty described in Subsection (1)(a) if an individual described in Subsection (1)(a) has a
603 conflict of interest in relation to the complaint.

604 (2) If the chair determines that the complaint does not comply with Sections
605 [63A-14-302](#) and [63A-14-402](#), the chair shall:

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

607 (i) a description of the reason for the noncompliance; and

608 (ii) a copy of the applicable provisions of law; and

609 (b) without disclosing the identity of the respondent, notify the other members of the
610 commission that a complaint was filed against an executive branch elected official, but that the
611 complaint was returned for noncompliance with the requirements of this chapter.

612 (3) Each member of the commission and the commission's staff shall keep confidential
613 the fact that a complaint was filed and returned until the commission submits the annual
614 summary data report described in Section [63A-14-203](#).

615 (4) If a complaint is returned for noncompliance with the requirements of this chapter,
616 the complainants may file another complaint if the new complaint independently meets the

617 requirements of Sections [63A-14-302](#) and [63A-14-402](#), including any requirements for timely
618 filing.

619 (5) If the chair determines that a complaint complies with the requirements of this
620 chapter, the chair shall:

621 (a) accept the complaint;

622 (b) notify the members of the commission that:

623 (i) a complaint has been filed against an executive branch elected official; and

624 (ii) the chair has accepted the complaint; and

625 (c) within five business days after the day on which the commission receives the
626 complaint, forward the complaint to the respondent via personal delivery or a delivery method
627 that provides verification of receipt, and include with the complaint notice of the respondent's
628 deadline for filing a response to the complaint.

629 (6) (a) The identity of the respondent and the allegations raised in a complaint are
630 confidential pending the commission's review of the complaint.

631 (b) The fact that a complaint was filed is confidential until the commission publicly
632 discloses the existence of the complaint by:

633 (i) issuing a finding that an allegation in the complaint has merit; or

634 (ii) submitting the annual summary data report described in Section [63A-14-203](#).

635 Section 12. Section **63A-14-504** is amended to read:

636 **63A-14-504. Response to ethics complaint -- Filing -- Form.**

637 (1) A respondent shall file a response to a complaint with the commission no later than
638 20 days after the day on which the respondent receives delivery of the complaint.

639 (2) A respondent shall ensure that the response is in writing and contains the following
640 information:

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

642 (b) for each alleged violation in the complaint:

643 (i) each affirmative defense asserted in response to the allegation, including a general
644 description of each affirmative defense and the facts and circumstances supporting the defense,
645 supported by one or more affidavits, each of which shall comply with the format described in
646 Subsection (3); and

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

- 648 (A) copies of official records or documentary evidence; or
- 649 (B) one or more affidavits, each of which shall comply with the format described in
- 650 Subsection (3);
- 651 (c) a list of the witnesses that the respondent desires to call, including for each witness:
- 652 (i) the name, address, and, if available, telephone number of the witness;
- 653 (ii) a brief summary of the testimony to be provided by the witness; and
- 654 (iii) a specific description of any documents or evidence that the respondent desires the
- 655 witness to produce;
- 656 (d) a statement that the respondent:
- 657 (i) has reviewed the allegations contained in the complaint and the sworn statements
- 658 and documents attached to the response; and
- 659 (ii) believes the contents of the response to be true and accurate; and
- 660 (e) the signature of the respondent.
- 661 (3) An affidavit described in Subsection (2)(b) shall include:
- 662 (a) the name, address, and telephone number of the affiant;
- 663 (b) a statement that the affiant has [~~actual~~] personal knowledge of the facts and
- 664 circumstances alleged in the affidavit;
- 665 (c) the facts and circumstances testified to by the affiant;
- 666 (d) a statement that the affidavit is believed to be true and correct and that false
- 667 statements are subject to penalties for perjury; and
- 668 (e) the signature of the affiant.
- 669 (4) Within five business days after the day on which the commission receives the
- 670 response, the commission shall provide copies of the response to:
- 671 (a) each member of the commission; and
- 672 (b) the first named complainant on the complaint.
- 673 Section 13. Section ~~63A-14-604~~ is amended to read:
- 674 **63A-14-604. Process for making a decision -- Deliberations.**
- 675 (1) (a) After each party presents a closing argument, the commission shall, at the
- 676 direction of the chair, begin private deliberations.
- 677 (b) The deliberations described in Subsection (1)(a) may be held:
- 678 (i) immediately after conclusion of the closing arguments; or

679 (ii) at a future meeting of the commission, on a date and time determined by a majority
680 of the members of the commission.

681 (2) (a) The chair shall conduct the deliberations.

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

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

687 (i) proved, by clear and convincing evidence, to have merit; or

688 (ii) not proved to have merit.

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

691 (4) (a) An allegation is determined to not have merit unless four of the five members of
692 the commission vote that the allegation has merit.

693 (b) An allegation that is not determined to have merit is dismissed.

694 (5) (a) Before issuing an order or a finding under Section 63A-14-605, the commission
695 may, upon a majority vote, reconsider and hold a new vote on an allegation.

696 (b) A motion to reconsider a vote may only be made by a member of the commission
697 who voted in favor of the vote to be reconsidered.

698 (6) At the conclusion of deliberations, the commission shall prepare an order or a
699 finding in accordance with Section 63A-14-605.

700 (7) The commission may not find that an allegation has merit if the allegation is based
701 on an act by an individual under the authority of the executive branch elected official, unless
702 the commission finds, by clear and convincing evidence, that the executive branch elected
703 official:

704 (a) encouraged, condoned, or ordered the act;

705 (b) (i) before the individual engaged in the act, knew or should have known that the
706 individual was likely to engage in the act; and

707 (ii) failed to take appropriate action to prevent the act;

708 (c) (i) while the individual engaged in the act, knew or should have known that the
709 individual was engaging in the act; and

- 710 (ii) failed to take appropriate action to stop the act; or
- 711 (d) (i) after the individual engaged in the act, knew or should have known that the
- 712 individual engaged in the act; and
- 713 (ii) failed to take appropriate action in response to the act.
- 714 (8) The commission may not find that an allegation has merit if the allegation is based
- 715 on the failure of an individual under the authority of the executive branch elected official to act,
- 716 unless the commission finds, by clear and convincing evidence, that the executive branch
- 717 elected official:
- 718 (a) encouraged, condoned, or ordered the failure to act;
- 719 (b) (i) before the individual failed to act, knew or should have known that the
- 720 individual was likely to fail to act; and
- 721 (ii) failed to take appropriate action to prevent the failure to act;
- 722 (c) (i) while the individual was failing to act, knew or should have known that the
- 723 individual was failing to act; and
- 724 (ii) failed to take appropriate action to prevent the failure to act; or
- 725 (d) (i) after the individual failed to act, knew or should have known that the individual
- 726 failed to act; and
- 727 (ii) failed to take appropriate action in response to the failure to act.

728 Section 14. Section **63A-15-101**, which is renumbered from Section 11-49-101 is
 729 renumbered and amended to read:

730 **CHAPTER 15. POLITICAL SUBDIVISIONS ETHICS REVIEW COMMISSION**
 731 **Part 1. General Provisions**

732 ~~[11-49-101]~~. **63A-15-101. Title.**

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

734 Section 15. Section **63A-15-102**, which is renumbered from Section 11-49-102 is
 735 renumbered and amended to read:

736 ~~[11-49-102]~~. **63A-15-102. Definitions.**

737 (1) "Commission" means the Political Subdivisions Ethics Review Commission
 738 established in Section ~~[11-49-201]~~ [63A-15-201](#).

739 (2) "Complainant" means a person who files a complaint in accordance with Section
 740 ~~[11-49-501]~~ [63A-15-501](#).

- 741 (3) "Ethics violation" means a violation of:
- 742 (a) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
- 743 (b) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
- 744 (c) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- 745 (4) "Local political subdivision ethics commission" means an ethics commission
- 746 established by a political subdivision within the political subdivision or with another political
- 747 subdivision by interlocal agreement in accordance with Section [~~11-49-103~~] [63A-15-103](#).
- 748 (5) "Political subdivision" means a county, municipality, school district, community
- 749 reinvestment agency, local district, special service district, an entity created by an interlocal
- 750 agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, a local building
- 751 authority, or any other governmental subdivision or public corporation.
- 752 (6) (a) "Political subdivision employee" means a person who is:
- 753 (i) (A) in a municipality, employed as a city manager or non-elected chief executive on
- 754 a full or part-time basis; or
- 755 (B) employed as the non-elected chief executive by a political subdivision other than a
- 756 municipality on a full or part-time basis; and
- 757 (ii) subject to:
- 758 (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
- 759 (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
- 760 (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- 761 (b) "Political subdivision employee" does not include:
- 762 (i) a person who is a political subdivision officer;
- 763 (ii) an employee of a state entity; or
- 764 (iii) a legislative employee as defined in Section [67-16-3](#).
- 765 (7) "Political subdivision governing body" means:
- 766 (a) for a county, the county legislative body as defined in Section [68-3-12.5](#);
- 767 (b) for a municipality, the council of the city or town;
- 768 (c) for a school district, the local board of education described in Section [53A-3-101](#);
- 769 (d) for a community reinvestment agency, the agency board described in Section
- 770 [17C-1-203](#);
- 771 (e) for a local district, the board of trustees described in Section [17B-1-301](#);

- 772 (f) for a special service district:
- 773 (i) the legislative body of the county, city, or town that established the special service
- 774 district, if no administrative control board has been appointed under Section 17D-1-301; or
- 775 (ii) the administrative control board of the special service district, if an administrative
- 776 control board has been appointed under Section 17D-1-301;
- 777 (g) for an entity created by an interlocal agreement, the governing body of an interlocal
- 778 entity, as defined in Section 11-13-103;
- 779 (h) for a local building authority, the governing body, as defined in Section 17D-2-102,
- 780 that creates the local building authority; or
- 781 (i) for any other governmental subdivision or public corporation, the board or other
- 782 body authorized to make executive and management decisions for the subdivision or public
- 783 corporation.

784 (8) (a) "Political subdivision officer" means a person elected in a political subdivision
 785 who is subject to:

- 786 (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
- 787 (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
- 788 (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act.
- 789 (b) "Political subdivision officer" does not include:
- 790 (i) a person elected or appointed to a state entity;
- 791 (ii) the governor;
- 792 (iii) the lieutenant governor;
- 793 (iv) a member or member-elect of either house of the Legislature; or
- 794 (v) a member of Utah's congressional delegation.

795 (9) "Respondent" means a person who files a response in accordance with Section
 796 ~~[11-49-604]~~ [63A-15-604](#).

797 Section 16. Section **63A-15-103**, which is renumbered from Section 11-49-103 is
 798 renumbered and amended to read:

799 ~~[11-49-103]~~. **63A-15-103. Local ethics commission permitted -- Filing**
 800 **requirements.**

801 (1) A political subdivision, other than a municipality described in Section [10-3-1311](#) or
 802 a county described in Section [17-16a-11](#), may establish a local political subdivision ethics

803 commission within the political subdivision to review a complaint against a political
 804 subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and
 805 Employees' Ethics Act.

806 (2) A political subdivision may enter into an interlocal agreement with another political
 807 subdivision, in accordance with Title 11, Chapter 13, Interlocal Cooperation Act, to establish a
 808 local political subdivision ethics commission to review a complaint against a political
 809 subdivision officer or employee subject to Title 67, Chapter 16, Utah Public Officers' and
 810 Employees' Ethics Act.

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

813 (i) a local political subdivision ethics commission, if the political subdivision has
 814 established a local political subdivision ethics commission under Subsection (1) or (2); or

815 (ii) the commission if the political subdivision has not established a local political
 816 subdivision ethics commission.

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

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

821 (ii) forward the complaint to the commission:

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

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

826 Section 17. Section **63A-15-201**, which is renumbered from Section 11-49-201 is
 827 renumbered and amended to read:

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

829 ~~[11-49-201]~~. **63A-15-201. Commission established -- Membership.**

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

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

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

836 (b) one member who has served as a mayor or municipal council member no more
837 recently than four years before the date of appointment;

838 (c) one member who has served as a member of a local board of education no more
839 recently than four years before the date of appointment;

840 (d) two members who are lay persons; and

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

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

843 (ii) a municipal council member no more recently than four years before the date of
844 appointment;

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

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

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

850 (vi) a local district board of trustees member no more recently than four years before
851 the date of appointment; or

852 (vii) a judge who has served, but no longer serves, as a judge of a court of record in
853 this state.

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

856 [~~(a)~~] (i) a political subdivision officer;

857 [~~(b)~~] (ii) a political subdivision employee;

858 [~~(c)~~] (iii) an agency head as defined in Section 67-16-3;

859 [~~(d)~~] (iv) a lobbyist as defined in Section 36-11-102; or

860 [~~(e)~~] (v) a principal as defined in Section 36-11-102.

861 (b) In addition to the seven members described in Subsection (2), the governor shall,
862 with the advice and consent of the Senate, appoint one individual as an alternate member of the
863 commission who:

864 (i) may be a lay person;

865 (ii) shall be registered to vote in the state; and
866 (iii) complies with the requirements described in Subsection (3)(a).
867 (c) The alternate member described in Subsection (3)(b):
868 (i) shall serve as a member of the commission in the place of one of the seven members
869 described in Subsection (2) if that member is temporarily unable or unavailable to participate in
870 a commission function or is disqualified under Section 63A-15-303; and
871 (ii) may not cast a vote on the commission unless the alternate member is serving in
872 the capacity described in Subsection (3)(c)(i).

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

875 (ii) When appointing the initial members upon formation of the commission, a member
876 described in Subsections (2)(b) through (d) shall be appointed to a two-year term so that
877 approximately half of the commission is appointed every two years.

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

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

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

885 (d) A member of the commission may resign from the commission by giving one
886 month's written notice of the resignation to the governor.

887 (e) The governor shall remove a member from the commission if the member:
888 (i) is convicted of, or enters a plea of guilty to, a crime involving moral turpitude;
889 (ii) enters a plea of no contest or a plea in abeyance to a crime involving moral
890 turpitude; or

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

892 (f) (i) If a commission member is accused of wrongdoing in a complaint, or if a
893 commission member [~~determines that the commission member~~] has a conflict of interest in
894 relation to a [~~complaint, a temporary commission member shall be appointed to serve in that~~
895 ~~member's place for the purposes of reviewing that complaint using the procedures and~~

896 requirements of Subsection (2).] matter before the commission:

897 (A) the alternate member described in Subsection (3)(b) shall serve in the member's
898 place for the purposes of reviewing the complaint; or

899 (B) if the alternate member has already taken the place of another commission member
900 or is otherwise not available, the commission shall appoint another individual to temporarily
901 serve in the member's place for the purposes of reviewing the complaint.

902 (ii) An individual appointed by the commission under Subsection (4)(f)(i)(B):

903 (A) is not required to be confirmed by the Senate;

904 (B) may be a lay person;

905 (C) shall be registered to vote in the state; and

906 (D) shall comply with Subsection (3)(a).

907 (5) (a) Except as provided in Subsection (5)(b)(i), a member of the commission may
908 not receive compensation or benefits for the member's service.

909 (b) (i) A member may receive per diem and expenses incurred in the performance of
910 the member's official duties at the rates established by the Division of Finance under Sections
911 [63A-3-106](#) and [63A-3-107](#).

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

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

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

916 Section 18. Section ~~63A-15-202~~, which is renumbered from Section 11-49-202 is
917 renumbered and amended to read:

918 ~~[11-49-202].~~ 63A-15-202. Meetings -- Staff -- Legal counsel -- Additional
919 appropriations.

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

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

923 (b) a majority of members agree to meet.

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

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

- 927 (i) a general description of the activities of the commission during the past year;
- 928 (ii) the number of ethics complaints filed with the commission;
- 929 (iii) the number of ethics complaints dismissed in accordance with Section [~~11-49-602~~]
- 930 63A-15-602;
- 931 (iv) the number of ethics complaints reviewed by the commission in accordance with
- 932 Section [~~11-49-701~~] 63A-15-701;
- 933 (v) an executive summary of each complaint review in accordance with Section
- 934 [~~11-49-701~~] 63A-15-701; and
- 935 (vi) an accounting of the commission's budget and expenditures.
- 936 (b) The commission shall submit the summary data report [~~shall be submitted to the~~
- 937 ~~Political Subdivisions Interim Committee~~] to the governor on an annual basis.
- 938 (c) The summary data report shall be a public record.
- 939 (4) (a) The [~~Senate and the House of Representatives~~] commission shall employ staff
- 940 [~~for the commission~~] at a level that is reasonable to assist the commission in performing its
- 941 duties as established in this chapter.
- 942 [~~(b) The Legislative Management Committee shall:~~]
- 943 [~~(i) authorize each staff position for the commission; and~~]
- 944 [~~(ii) approve the employment of each staff member for the commission.~~]
- 945 [~~(c)~~] (b) Staff for the commission [~~shall work only for the commission and~~] may not
- 946 perform services for [~~the Senate, House of Representatives, other legislative offices, or~~] a
- 947 political subdivision.
- 948 (c) A person employed as staff for the commission may be the same person employed
- 949 as staff for the Independent Legislative Ethics Commission, if the staff ensures that proper
- 950 protections are in place to preserve the confidentiality to both bodies and to avoid a conflict of
- 951 interest.
- 952 (5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and
- 953 Public Meetings Act, unless otherwise provided.
- 954 (6) The commission:
- 955 (a) is an independent entity established within the department for budgetary and
- 956 general administrative purposes only;
- 957 (b) is not under the direction or control of the department, the executive director, or

958 any other officer or employee of the department;

959 (c) shall employ a director to provide administrative support to the commission and to
960 assist the commission in fulfilling the commission's duties;

961 (d) may employ additional staff, to work under the direction of the director;

962 (e) shall contract with private legal counsel to provide legal services to the
963 commission, as needed; and

964 (f) may, in consultation with the Office of the Legislative Fiscal Analyst, request
965 supplemental appropriations to pay the costs of legal fees and other staffing needs that exceed
966 the commission's budget due to the number or complexity of the ethics complaints filed with or
967 considered by the commission in a fiscal year.

968 Section 19. Section **63A-15-301**, which is renumbered from Section 11-49-301 is
969 renumbered and amended to read:

970 **Part 3. General Powers and Procedures**

971 ~~[11-49-301].~~ **63A-15-301. Authority to review complaint -- Grounds for**
972 **complaint -- Limitations on filings.**

973 (1) Subject to the requirements of this chapter and Section 10-3-1311 or 17-16a-11, the
974 commission is authorized to review an ethics complaint against a political subdivision officer
975 or employee if the complaint alleges:

976 (a) if the applicable political subdivision is a municipality, an ethics violation of Title
977 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act by:

- 978 (i) a city manager or non-elected chief executive; or
- 979 (ii) an elected officer, as defined in Section 10-3-1303;

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

- 982 (i) an appointed officer, as defined in Section 17-16a-3;
- 983 (ii) an elected officer, as defined in Section 17-16a-3; or
- 984 (iii) an employee subject to Title 17, Chapter 16a, County Officers and Employees
985 Disclosure Act; or

986 (c) for a political subdivision officer or employee other than a municipal officer or
987 employee described in Subsection (1)(a) or a county officer or employee described in
988 Subsection (1)(b), an ethics violation of Title 67, Chapter 16, Utah Public Officers' and

989 Employees' Ethics Act.

990 (2) A complaint described in Subsection (1) shall be filed in accordance with the time
991 limit provisions, if any, of the applicable part or chapter.

992 (3) (a) A complaint may not contain an allegation if that allegation and the general
993 facts and circumstances supporting that allegation have been previously reviewed by a
994 municipal ethics commission established under Section 10-3-1311, a county ethics commission
995 established under Section 17-16a-11, or a local political subdivision ethics commission
996 established under Section ~~[11-49-103]~~ 63A-15-103, as applicable, or the commission unless:

997 (i) the allegation was previously reviewed and dismissed by the commission under
998 Section ~~[11-49-602 or 11-49-701]~~ 63A-15-602 or 63A-15-701;

999 (ii) the allegation is accompanied by material facts or circumstances supporting the
1000 allegation that were not raised or pled to the commission; and

1001 (iii) the allegation and the general facts and circumstances supporting that allegation
1002 have only been reviewed by the commission in accordance with Section ~~[11-49-701]~~
1003 63A-15-701 on one previous occasion.

1004 (b) The commission may not review a complaint that is currently before:

1005 (i) a municipal ethics commission established under Section 10-3-1311;

1006 (ii) a county ethics commission established under Section 17-16a-11; or

1007 (iii) a local political subdivision ethics commission established under Section
1008 ~~[11-49-103]~~ 63A-15-103.

1009 (c) If an allegation in the complaint does not comply with the requirements of
1010 Subsection (3)(a) or (b), the allegation shall be summarily dismissed with prejudice by:

1011 (i) the chair when reviewing the complaint under Section ~~[11-49-601]~~ 63A-15-601; or

1012 (ii) the commission, when reviewing the complaint under Section ~~[11-49-602 or~~
1013 ~~11-49-701]~~ 63A-15-602 or 63A-15-701.

1014 (4) A complaint against a political subdivision officer or employee may not allege a
1015 violation by the political subdivision officer or employee for an act by an individual under the
1016 authority of the political subdivision officer or employee, unless the complaint evidences that
1017 the political subdivision officer or employee:

1018 (a) encouraged, condoned, or ordered the act;

1019 (b) (i) before the individual engaged in the act, knew or should have known that the

1020 individual was likely to engage in the act; and
1021 (ii) failed to take appropriate action to prevent the act;
1022 (c) (i) while the individual engaged in the act, knew or should have known that the
1023 individual was engaging in the act; and
1024 (ii) failed to take appropriate action to stop the act; or
1025 (d) (i) after the individual engaged in the act, knew or should have known that the
1026 individual engaged in the act; and
1027 (ii) failed to take appropriate action in response to the act.
1028 (5) A complaint against a political subdivision officer or employee may not allege a
1029 violation by the political subdivision officer or employee for an individual under the authority
1030 of the political subdivision officer or employee failing to act, unless the complaint evidences
1031 that the political subdivision officer or employee:
1032 (a) encouraged, condoned, or ordered the failure to act;
1033 (b) (i) before the individual failed to act, knew or should have known that the
1034 individual was likely to fail to act; and
1035 (ii) failed to take appropriate action to prevent the failure to act;
1036 (c) (i) while the individual was failing to act, knew or should have known that the
1037 individual was failing to act; and
1038 (ii) failed to take appropriate action to prevent the failure to act; or
1039 (d) (i) after the individual failed to act, knew or should have known that the individual
1040 failed to act; and
1041 (ii) failed to take appropriate action in response to the failure to act.
1042 Section 20. Section **63A-15-302**, which is renumbered from Section 11-49-302 is
1043 renumbered and amended to read:
1044 ~~[11-49-302]~~. **63A-15-302. General powers -- Jurisdiction.**
1045 (1) The commission has jurisdiction only over an individual who is a political
1046 subdivision officer or employee.
1047 (2) The commission shall dismiss an ethics complaint if:
1048 (a) the respondent resigns or is terminated from the political subdivision; or
1049 (b) except as provided in Subsection (3):
1050 (i) the respondent is charged with a criminal violation of:

1051 (A) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;
1052 (B) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or
1053 (C) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act; and
1054 (ii) the facts and allegations presented in the ethics complaint assert the same or similar
1055 facts and allegations as those asserted in the criminal charges.

1056 (3) If an ethics complaint asserts an ethics violation in addition to a criminal violation
1057 described in Subsection (2)(b), the commission shall:

1058 (a) dismiss an allegation described in Subsection (2)(b)(ii); and

1059 (b) proceed with any remaining allegation in the complaint.

1060 Section 21. Section **63A-15-303** is enacted to read:

1061 **63A-15-303. Motion to disqualify commission member for conflict of interest.**

1062 (1) A complainant may file a motion to disqualify one or more members of the
1063 commission from participating in proceedings relating to the complaint if the individual files
1064 the motion within 20 days after the later of:

1065 (a) the day on which the individual files the ethics complaint; or

1066 (b) the day on which the individual knew or should have known of the grounds upon
1067 which the motion is based.

1068 (2) A respondent may file a motion to disqualify one or more members of the
1069 commission from participating in proceedings relating to the complaint if the respondent files
1070 the motion within 20 days after the later of:

1071 (a) the day on which the respondent receives delivery of the complaint; or

1072 (b) the day on which the respondent knew or should have known of the grounds upon
1073 which the motion is based.

1074 (3) A motion filed under this section shall include:

1075 (a) a statement that the members to whom the motion relates have a conflict of interest
1076 that, under the circumstances, would lead a reasonable person to question the impartiality of
1077 the members;

1078 (b) a detailed description of the grounds supporting the statement described in
1079 Subsection (3)(a); and

1080 (c) a statement that the motion is filed in good faith, supported by an affidavit or
1081 declaration under penalty of Section [78B-5-705](#) stating that the motion and all accompanying

1082 statements and documents are true and correct to the best of the complainant's or respondent's
1083 knowledge.

1084 (4) A party may not file more than one motion to disqualify, unless the second or
1085 subsequent motion:

1086 (a) is based on grounds of which the party was not aware, and could not have been
1087 aware, at the time of the earlier motion; and

1088 (b) is accompanied by a statement, included in the affidavit or declaration described in
1089 Subsection (3)(c), explaining how and when the party first became aware of the grounds
1090 described in Subsection (4)(a).

1091 (5) The commission shall dismiss a motion filed under this section, with prejudice, if
1092 the motion:

1093 (a) is not timely filed; or

1094 (b) does not comply with the requirements of this section.

1095 (6) A member of the commission may:

1096 (a) on the member's own motion, disqualify the member from participating in
1097 proceedings relating to a complaint if the member believes that the member has a conflict of
1098 interest that, under the circumstances, would lead a reasonable person to question the
1099 impartiality of the member; or

1100 (b) ask the commission to disqualify another member of the commission if the member
1101 believes that the member has a conflict of interest that, under the circumstances, would lead a
1102 reasonable person to question the impartiality of the member.

1103 (7) (a) When a party files a motion under this section, or a when commission member
1104 makes a request under Subsection (6)(b), the commission member for whom disqualification is
1105 sought may make the initial determination regarding whether the commission member has a
1106 conflict of interest.

1107 (b) If a commission member described in Subsection (7)(a) determines that the
1108 commission member has a conflict of interest, the commission member shall disqualify the
1109 commission member from participating in the matter.

1110 (c) If a commission member described in Subsection (7)(a) determines that the
1111 commission member does not have a conflict of interest, or declines to make the determination,
1112 the remainder of the commission shall, by majority vote, determine whether the commission

1113 member has a conflict of interest.

1114 (d) A vote of the commission, under Subsection (7)(c), constitutes a final decision on
1115 the issue of a conflict of interest.

1116 (8) In making a determination under Subsection (7)(c), the commission may:

1117 (a) gather additional evidence;

1118 (b) hear testimony; or

1119 (c) request that the commission member who is the subject of the motion or request file
1120 an affidavit or declaration responding to questions posed by the commission.

1121 Section 22. Section **63A-15-401**, which is renumbered from Section 11-49-401 is
1122 renumbered and amended to read:

Part 4. Hearing on Ethics Complaint

1123 **[~~11-49-401~~]. 63A-15-401. Hearing on ethics complaint -- General**
1124 **procedures.**

1126 (1) In conducting a hearing on a complaint in accordance with Part 7, Commission
1127 Review of Ethics Violation, the commission shall comply with the following process in the
1128 order specified:

1129 (a) introduction and instructions for procedure and process, at the discretion of the
1130 chair;

1131 (b) complainant's opening argument, to be presented by a complainant or complainant's
1132 counsel;

1133 (c) complainant's presentation of evidence and witnesses in support of allegations in
1134 the complaint;

1135 (d) consideration of motions to dismiss the complaint or motions for a finding of no
1136 cause, as applicable;

1137 (e) respondent's opening argument, to be presented by the respondent or respondent's
1138 counsel;

1139 (f) respondent's presentation of evidence and witnesses refuting allegations in the
1140 complaint;

1141 (g) presentation of rebuttal evidence and witnesses by the complainant, at the
1142 discretion of the chair;

1143 (h) presentation of rebuttal evidence and witnesses by the respondent, at the discretion

1144 of the chair;

1145 (i) complainant's closing argument, to be presented by a complainant or complainant's
1146 counsel;

1147 (j) respondent's closing argument, to be presented by the respondent or respondent's
1148 counsel;

1149 (k) deliberations by the commission; and

1150 (l) adoption of the commission's findings.

1151 (2) The commission may, in extraordinary circumstances, vary the order contained in
1152 Subsection (1) by majority vote and by providing notice to the parties.

1153 (3) The chair may schedule the examination of a witness or evidence subpoenaed at the
1154 request of the chair or the commission under Section [~~11-49-403~~] [63A-15-403](#) at the chair's
1155 discretion.

1156 Section 23. Section ~~63A-15-402~~, which is renumbered from Section 11-49-402 is
1157 renumbered and amended to read:

1158 [~~11-49-402~~]. **63A-15-402. Chair as presiding officer.**

1159 (1) Except as expressly provided otherwise in this chapter, the chair of the commission
1160 is vested with the power to direct the commission during meetings authorized by this chapter.

1161 (2) Unless expressly prohibited from doing so under this chapter, the commission may
1162 overrule a decision of the chair by using the following procedure:

1163 (a) If a member objects to a decision of the chair, that member may appeal the decision
1164 by stating:

1165 (i) "I appeal the decision of the chair."; and

1166 (ii) the basis for the objection.

1167 (b) A motion described in Subsection (2)(a) is nondebatable.

1168 (c) The chair shall direct a roll call vote to determine if the commission supports the
1169 decision of the chair.

1170 (d) A majority vote of the commission is necessary to overrule the decision of the
1171 chair.

1172 (3) The chair may set time limitations on any part of a meeting or hearing authorized
1173 by this chapter.

1174 Section 24. Section ~~63A-15-403~~, which is renumbered from Section 11-49-403 is

1175 renumbered and amended to read:

1176 ~~[11-49-403].~~ **63A-15-403. Subpoena powers.**

1177 (1) Except for a preliminary review described in Section ~~[11-49-602]~~ [63A-15-602](#), for
1178 a proceeding authorized by this chapter, the commission may issue a subpoena to:

1179 (a) require the attendance of a witness;

1180 (b) direct the production of evidence; or

1181 (c) require both the attendance of a witness and the production of evidence.

1182 (2) The commission shall issue a subpoena:

1183 (a) in accordance with Section ~~[11-49-405]~~ [63A-15-405](#);

1184 (b) at the direction of the commission chair, if the chair determines that the testimony
1185 or evidence is relevant to the review of a complaint under Part 7, Commission Review of
1186 Ethics ~~[Violations]~~ Violation; or

1187 (c) upon a vote of a majority of the commission members.

1188 (3) If the commission issues a subpoena authorized under this section, the commission
1189 shall give a reasonable period of time for the person or entity to whom the subpoena is directed
1190 to petition a district court to quash or modify the subpoena before the time specified in the
1191 subpoena for compliance.

1192 Section 25. Section **63A-15-404**, which is renumbered from Section 11-49-404 is
1193 renumbered and amended to read:

1194 ~~[11-49-404].~~ **63A-15-404. Contempt of the commission.**

1195 (1) (a) The following actions constitute contempt of the commission in relation to
1196 actions and proceedings under this chapter:

1197 (i) disobedience to a direction of the commission chair;

1198 (ii) failure, without legal justification, to answer a question during a hearing when
1199 directed to do so by:

1200 (A) the commission chair, unless the direction is overridden by the commission in
1201 accordance with Section ~~[11-49-402]~~ [63A-15-402](#); or

1202 (B) a majority of the commission;

1203 (iii) failure to comply with a subpoena or other order issued under authority of this
1204 chapter;

1205 (iv) violation of privacy provisions established by Section ~~[11-49-502]~~ [63A-15-502](#);

1206 (v) violation of the communication provisions established by Section [~~11-49-407~~]
1207 [63A-15-407](#);

1208 (vi) violation of a request to comply with a provision of this chapter by a chair or a
1209 majority of the members of the commission; or

1210 (vii) any other ground that is specified in statute or recognized by common law.

1211 (b) Because the purpose of the Fifth Amendment privilege not to incriminate oneself is
1212 to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth
1213 Amendment privilege if the witness cannot be prosecuted for the crime to which the witness's
1214 testimony relates.

1215 (2) (a) The following persons may authorize an enforcement action against a person in
1216 contempt of the commission under the provisions of this chapter:

1217 (i) the commission chair, subject to the provisions of Section [~~11-49-402~~] [63A-15-402](#);
1218 or

1219 (ii) members of the commission, by means of a majority vote.

1220 (b) In initiating and pursuing an action against an individual for contempt of the
1221 commission, the plaintiff shall comply with the procedures and requirements of Section
1222 [~~11-49-405~~] [63A-15-405](#).

1223 Section 26. Section **63A-15-405**, which is renumbered from Section 11-49-405 is
1224 renumbered and amended to read:

1225 [~~11-49-405~~]. **63A-15-405. Order to compel -- Enforcement.**

1226 (1) (a) When the subject of a subpoena issued in accordance with Section [~~11-49-403~~]
1227 [63A-15-403](#) disobeys or fails to comply with the subpoena, or if a person appears before the
1228 commission pursuant to a subpoena and refuses to testify to a matter upon which the person
1229 may be lawfully interrogated, the commission may:

1230 (i) file a motion for an order to compel obedience to the subpoena with the district
1231 court within the jurisdiction of the applicable political subdivision;

1232 (ii) file, with the district court, a motion for an order to show cause why the penalties
1233 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
1234 named in the subpoena for contempt of the commission; or

1235 (iii) pursue other remedies against persons in contempt of the commission.

1236 (b) (i) Upon receipt of a motion under this section, the court shall expedite the hearing

1237 and decision on the motion.

1238 (ii) A court may:

1239 (A) order the person named in the subpoena to comply with the subpoena; and

1240 (B) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
1241 the person named in the subpoena for contempt of the commission.

1242 (2) (a) If a commission subpoena requires the production of accounts, books, papers,
1243 documents, or other tangible things, the person or entity to whom the subpoena is directed may
1244 petition a district court to quash or modify the subpoena at or before the time specified in the
1245 subpoena for compliance.

1246 (b) The commission may respond to a motion to quash or modify the subpoena by
1247 pursuing any remedy authorized by Subsection (1).

1248 (c) If the court finds that a commission subpoena requiring the production of accounts,
1249 books, papers, documents, or other tangible things is unreasonable or oppressive, the court may
1250 quash or modify the subpoena.

1251 (3) Nothing in this section prevents the commission from seeking an extraordinary writ
1252 to remedy contempt of the commission.

1253 (4) Any party aggrieved by a decision of a court under this section may appeal that
1254 action directly to the Utah Supreme Court.

1255 Section 27. Section **63A-15-406**, which is renumbered from Section 11-49-406 is
1256 renumbered and amended to read:

1257 ~~[11-49-406]~~. **63A-15-406. Testimony and examination of witnesses -- Oath**
1258 **-- Procedure -- Contempt.**

1259 (1) (a) The chair shall ensure that each witness listed in the complaint and response is
1260 subpoenaed for appearance at the hearing unless:

1261 (i) the witness is unable to be properly identified or located; or

1262 (ii) service is otherwise determined to be impracticable.

1263 (b) The chair shall determine the scheduling and order of witnesses and presentation of
1264 evidence.

1265 (c) The commission may, by majority vote:

1266 (i) overrule the chair's decision not to subpoena a witness under Subsection (1)(a);

1267 (ii) modify the chair's determination on the scheduling and order of witnesses under

1268 Subsection (1)(b);

1269 (iii) decline to hear or call a witness that has been requested by the complainant or
1270 respondent;

1271 (iv) decline to review or consider evidence submitted in relation to an ethics complaint;
1272 or

1273 (v) request and subpoena witnesses or evidence according to the procedures of Section
1274 [~~11-49-403~~] [63A-15-403](#).

1275 (2) (a) Each witness shall testify under oath.

1276 (b) The chair or the chair's designee shall administer the oath to each witness.

1277 (3) After the oath has been administered to the witness, the chair shall direct testimony
1278 as follows:

1279 (a) allow the party that has called the witness, or that party's counsel, to question the
1280 witness;

1281 (b) allow the opposing party, or that party's counsel, to cross-examine the witness;

1282 (c) allow additional questioning by a party or a party's counsel as appropriate;

1283 (d) give commission members the opportunity to question the witness; and

1284 (e) as appropriate, allow further examination of the witness by the commission, or the
1285 parties or their counsel.

1286 (4) (a) If the witness, a party, or a party's counsel objects to a question, the chair shall:

1287 (i) direct the witness to answer; or

1288 (ii) rule that the witness is not required to answer the question.

1289 (b) If the witness declines to answer a question after the chair or a majority of the
1290 commission determines that the witness is required to answer the question, the witness may be
1291 held in contempt as provided in Section [~~11-49-404~~] [63A-15-404](#).

1292 (5) (a) The chair or a majority of the members of the commission may direct a witness
1293 to furnish any relevant evidence for consideration if the witness has brought the material
1294 voluntarily or has been required to bring it by subpoena.

1295 (b) If the witness declines to provide evidence in response to a subpoena, the witness
1296 may be held in contempt as provided in Section [~~11-49-404~~] [63A-15-404](#).

1297 Section 28. Section **63A-15-407**, which is renumbered from Section 11-49-407 is
1298 renumbered and amended to read:

1299 ~~[11-49-407]~~. 63A-15-407. Communications of commission members.

1300 (1) As used in this section, "third party" means a person who is not a member of the
1301 commission or staff to the commission.

1302 (2) While a complaint is under review by the commission, a member of the
1303 commission may not initiate or consider any communications concerning the complaint with a
1304 third party unless:

1305 (a) the communication is expressly permitted under the procedures established by this
1306 chapter; or

1307 (b) the communication is made by the third party, in writing, simultaneously to:

1308 (i) all members of the commission; and

1309 (ii) a staff member of the commission.

1310 (3) While the commission is reviewing a complaint under this chapter, a commission
1311 member may communicate outside of a meeting, hearing, or deliberation with another member
1312 of, or staff to, the commission, only if the member's communication does not materially
1313 compromise the member's responsibility to independently review and make decisions in
1314 relation to the complaint.

1315 Section 29. Section ~~63A-15-408~~, which is renumbered from Section 11-49-408 is
1316 renumbered and amended to read:

1317 ~~[11-49-408]~~. 63A-15-408. Attorney fees and costs.

1318 (1) A person filing a complaint under this chapter:

1319 (a) may, but is not required to, retain legal representation during the complaint review
1320 process; and

1321 (b) is responsible for payment of complainant's attorney fees and costs incurred.

1322 (2) (a) A respondent against whom a complaint is filed under this chapter ~~[may]~~:

1323 (i) ~~may~~, but is not required to, retain legal representation during the complaint review
1324 process; ~~[and]~~

1325 (ii) except as provided in Subsection (2)(a)(iii), is responsible for payment of the
1326 respondent's attorney fees and costs incurred; and

1327 (iii) may be entitled to the provision of legal defense by the political subdivision in
1328 accordance with Section ~~63G-7-902~~.

1329 (b) For purposes of Subsection (2)(a)~~[(ii)]~~(iii), a complaint filed against a respondent in

1330 accordance with this chapter shall constitute an action against a governmental employee in
1331 accordance with Section [63G-7-902](#).

1332 (3) (a) An attorney participating in a hearing before the commission shall comply with:

1333 (i) the Rules of Professional Conduct established by the Utah Supreme Court;

1334 (ii) the procedures and requirements of this chapter; and

1335 (iii) the directions of the chair and commission.

1336 (b) A violation of Subsection (3)(a) may constitute:

1337 (i) contempt of the commission under Section [~~11-49-404~~] [63A-15-404](#); or

1338 (ii) a violation of the Rules of Professional Conduct subject to enforcement by the Utah
1339 State Bar.

1340 Section 30. Section **63A-15-501**, which is renumbered from Section 11-49-501 is
1341 renumbered and amended to read:

1342 **Part 5. Complaint of Ethics Violation**

1343 [~~11-49-501~~]. **63A-15-501. Ethics complaints -- Who may file -- Form.**

1344 (1) (a) Notwithstanding any other provision, the following may file a complaint,
1345 subject to the requirements of Subsections (1)(b) and (c) and Section [~~11-49-301~~] [63A-15-301](#),
1346 against a political subdivision officer or employee:

1347 (i) two or more registered voters who reside within the boundaries of a political
1348 subdivision;

1349 (ii) two or more registered voters who pay a fee or tax to a political subdivision; or

1350 (iii) one or more registered voters who reside within the boundaries of a political
1351 subdivision and one or more registered voters who pay a fee or tax to the political subdivision.

1352 (b) A person described in Subsection (1)(a) may not file a complaint unless at least one
1353 person described in Subsection (1)(a)(i), (ii), or (iii) has actual knowledge of the facts and
1354 circumstances supporting the alleged ethics violation.

1355 (c) A complainant may file a complaint only against an individual who, on the date that
1356 the complaint is filed, is serving as a political subdivision officer or is a political subdivision
1357 employee.

1358 (2) (a) The [~~lieutenant governor~~] commission shall post, on the [~~homepage of the~~
1359 ~~lieutenant governor's~~] state's website, a conspicuous and clearly identified link to the name and
1360 address of an individual authorized to accept a complaint on behalf of the commission.

1361 (b) A complainant shall file a complaint with the individual described in Subsection
1362 (2)(a).

1363 (c) An individual may not file a complaint during the 60 calendar days immediately
1364 preceding:

1365 (i) a regular primary election, if the accused political subdivision officer is a candidate
1366 in the primary election; or

1367 (ii) a regular general election in which an accused political subdivision officer is a
1368 candidate, unless the accused political subdivision officer is unopposed in the election.

1369 (3) A complainant shall ensure that each complaint filed under this section is in writing
1370 and contains the following information:

1371 (a) the name and position of the political subdivision officer or employee alleged to be
1372 in violation;

1373 (b) the name, address, and telephone number of each individual who is filing the
1374 complaint;

1375 (c) a description of each alleged ethics violation, as applicable of:

1376 (i) Title 10, Chapter 3, Part 13, Municipal Officers' and Employees' Ethics Act;

1377 (ii) Title 17, Chapter 16a, County Officers and Employees Disclosure Act; or

1378 (iii) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

1379 (d) include for each alleged ethics violation:

1380 (i) a reference to the section of the code alleged to have been violated;

1381 (ii) the name of the complainant who has actual knowledge of the facts and
1382 circumstances supporting each allegation; and

1383 (iii) with reasonable specificity, the facts and circumstances supporting each allegation,
1384 which shall be provided by:

1385 (A) copies of official records or documentary evidence; or

1386 (B) one or more affidavits that include the information required in Subsection (4);

1387 (e) a list of the witnesses that a complainant wishes to have called, including for each
1388 witness:

1389 (i) the name, address, and, if available, one or more telephone numbers of the witness;

1390 (ii) a brief summary of the testimony to be provided by the witness; and

1391 (iii) a specific description of any documents or evidence a complainant desires the

1392 witness to produce;

1393 (f) a statement that each complainant:

1394 (i) has reviewed the allegations contained in the complaint and the sworn statements
1395 and documents attached to the complaint;

1396 (ii) believes that the complaint is submitted in good faith and not for any improper
1397 purpose such as for the purpose of harassing the respondent, causing unwarranted harm to the
1398 respondent's reputation, or causing unnecessary expenditure of public funds; and

1399 (iii) believes the allegations contained in the complaint to be true and accurate; and

1400 (g) the signature of each complainant.

1401 (4) An affidavit described in Subsection (3)(d)(iii)(B) shall include:

1402 (a) the name, address, and telephone number of the signer;

1403 (b) a statement that the signer has actual knowledge of the facts and circumstances
1404 alleged in the affidavit;

1405 (c) the facts and circumstances testified by the signer;

1406 (d) a statement that the affidavit is believed to be true and correct and that false
1407 statements are subject to penalties of perjury; and

1408 (e) the signature of the signer.

1409 Section 31. Section **63A-15-502**, which is renumbered from Section 11-49-502 is
1410 renumbered and amended to read:

1411 ~~[11-49-502].~~ **63A-15-502. Privacy of ethics complaint -- Contempt --**
1412 **Enforcement of finding of contempt -- Dismissal.**

1413 (1) (a) Except as otherwise provided in [~~Subsection (1)(b) or (c)~~] this chapter, a person,
1414 including a complainant, the respondent, a commission member, or staff to the commission,
1415 may not disclose the existence of a complaint, a response, nor any information concerning any
1416 alleged ethics violation that is the subject of a complaint[-].

1417 [~~(i) unless otherwise provided in this chapter; or~~]

1418 [~~(ii) after a complaint is presented at the meeting described in Section 11-49-701;~~]

1419 (b) The restrictions in Subsection (1)(a) do not apply to:

1420 (i) the respondent's voluntary disclosure of a finding by the commission that no

1421 allegations in a complaint were proved after that finding is issued by the commission under the

1422 procedures and requirements of Section [~~11-49-602~~;] 63A-15-602;

1423 ~~[(c) Nothing in this section shall prevent a person from disclosing]~~
1424 (ii) this disclosure of facts or allegations about potential criminal violations to a law
1425 enforcement authority[-];
1426 ~~[(d) Nothing in this section may be construed to hinder or prevent a respondent from~~
1427 ~~preparing a defense to a complaint, including contacting a witness or other actions in~~
1428 ~~preparation for review by the commission.]~~
1429 (iii) a disclosure by a respondent that is made solely for the purpose of, and only to the
1430 extent necessary for, retaining counsel, conducting an interview, seeking evidence, or taking
1431 other action to prepare to defend against a complaint;
1432 (iv) a communication between a commission member and the commission's attorney or
1433 a member of the commission's staff; or
1434 (v) a disclosure to a person that is determined necessary, by a majority vote of the
1435 commission, to conduct the duties of the commission.
1436 (2) When a person makes a disclosure under Subsection (1)(b)(iii) or (v), the person
1437 making the disclosure shall inform the person to whom the disclosure is made of the
1438 nondisclosure requirements described in this section.
1439 (3) After the commission issues an order under Subsection [63A-15-704](#)(2), the
1440 commission may disclose the portion of the complaint, a response, and other information
1441 relating to an alleged ethics violation that the commission determines is proved.
1442 ~~[(2)]~~ (4) A person who violates the provisions of Subsection (1)(a) is in contempt of
1443 the commission and proceedings may be initiated to enforce the finding of contempt using the
1444 procedures provided in Sections [~~11-49-404 and 11-49-405~~] [63A-15-404](#) and [63A-15-405](#).
1445 ~~[(3) If the existence of an ethics complaint is publicly disclosed before or during the~~
1446 ~~preliminary review period described in Section [11-49-602](#), the complaint shall be summarily~~
1447 ~~dismissed without prejudice.]~~
1448 (5) If, before the commission issues an order in relation to an ethics complaint under
1449 Section [63A-15-704](#), the existence of the ethics complaint is publicly disclosed by a person
1450 other than the respondent, an agent of the respondent, or a person who learns of the complaint
1451 under Subsection (1)(b)(iii) or (v), the commission shall summarily dismiss the complaint
1452 without prejudice.
1453 Section 32. Section **63A-15-601**, which is renumbered from Section 11-49-601 is

1454 renumbered and amended to read:

1455 ~~[11-49-601]~~. 63A-15-601. Review of ethics complaint for compliance with
1456 **form requirements -- Independent requirements for complaint -- Notice.**

1457 (1) Within ~~[five]~~ 10 business days after receipt of a complaint, the staff of the
1458 commission, in consultation with the chair of the commission, shall examine the complaint to
1459 determine if it is in compliance with Sections ~~[11-49-301 and 11-49-501]~~ 63A-15-301 and
1460 63A-15-501.

1461 (2) (a) If the chair determines that the complaint does not comply with Sections
1462 ~~[11-49-301 and 11-49-501]~~ 63A-15-301 and 63A-15-501, the chair shall:

1463 (i) return the complaint to the first complainant named on the complaint with:

1464 (A) a statement detailing the reason for the non-compliance; and

1465 (B) a copy of the applicable provisions in this chapter; and

1466 (ii) notify the applicable political subdivision governing body that:

1467 (A) a complaint was filed against an unidentified political subdivision officer or
1468 employee but was returned for non-compliance with this chapter; and

1469 (B) the fact that a complaint was filed and returned shall be kept confidential until the
1470 commission submits its annual summary data report as required by Section ~~[11-49-202]~~
1471 63A-15-202.

1472 (b) If a complaint is returned for non-compliance with the requirements of this chapter,
1473 a complainant may file another complaint if the new complaint independently meets the
1474 requirements of Sections ~~[11-49-301 and 11-49-501]~~ 63A-15-301 and 63A-15-501, including
1475 any requirements for timely filing.

1476 (3) If the chair determines that the complaint complies with the requirements of this
1477 section, the chair shall:

1478 (a) accept the complaint;

1479 (b) notify each member of the commission that the complaint has been filed and
1480 accepted;

1481 (c) notify the applicable political subdivision that:

1482 (i) a complaint has been filed against an unidentified political subdivision officer or
1483 employee;

1484 (ii) the identity of the political subdivision officer or employee and the allegations

1485 raised in the complaint are confidential pending the commission's preliminary review of the
 1486 complaint; and

1487 (iii) the fact that a complaint was filed shall be kept confidential until the commission
 1488 publicly discloses the existence of the complaint via:

1489 (A) notice of the commission's review of a complaint in accordance with Section
 1490 [~~11-49-701~~] [63A-15-701](#); or

1491 (B) submission of the commission's annual summary data report as required in Section
 1492 [~~11-49-202~~] [63A-15-202](#); and

1493 (d) promptly forward the complaint to the political subdivision officer or employee
 1494 who is the subject of the ethics complaint via personal delivery or a delivery method that
 1495 provides verification of receipt, together with a copy of this chapter and notice of the officer's
 1496 or employee's deadline for filing a response to the complaint if the complaint is not dismissed
 1497 under Section [~~11-49-602~~] [63A-15-602](#).

1498 Section 33. Section **63A-15-602**, which is renumbered from Section 11-49-602 is
 1499 renumbered and amended to read:

1500 [~~11-49-602~~]. **63A-15-602. Preliminary review of complaint -- Standard of**
 1501 **proof -- Notice.**

1502 (1) (a) By no later than 10 calendar days after the day on which a complaint is accepted
 1503 under Section [~~11-49-601~~] [63A-15-601](#), the commission chair shall:

1504 (i) schedule a commission meeting on a date no later than 60 calendar days after the
 1505 date on which the commission accepts the complaint;

1506 (ii) place the complaint on the agenda for consideration at the meeting;

1507 (iii) provide a copy of the complaint to the members; and

1508 (iv) provide notice of the date, time, and location of the meeting:

1509 (A) to the respondent;

1510 (B) the first complainant named in the complaint;

1511 (C) each commission member; and

1512 (D) in accordance with Section [52-4-202](#).

1513 (b) The meeting described in Subsection (1)(a)(ii) is closed to the public in accordance
 1514 with Section [52-4-204](#).

1515 (2) (a) At the meeting described in Subsection (1)(a)(i):

- 1516 (i) the commission members shall review each allegation in the complaint;
- 1517 (ii) the commission may not receive testimony, hear a motion from a party, or admit
1518 evidence; and
- 1519 (iii) the chair shall conduct deliberations.
- 1520 (b) The commission may, if necessary:
- 1521 (i) request a formal response or affidavit from a respondent; and
- 1522 (ii) review the response or affidavit at the meeting.
- 1523 (c) Upon a motion made by a commission member, the commission may exclude
1524 commission staff from all or a portion of the deliberations by a majority vote.
- 1525 (3) (a) During deliberations, each commission member shall, for each allegation,
1526 determine:
- 1527 (i) whether the facts alleged, if true, would be an ethics violation;
- 1528 (ii) whether the complaint includes an affidavit from a person with firsthand
1529 knowledge of alleged facts described in Subsection (3)(a)(i); and
- 1530 (iii) whether the complaint is frivolous or solely for a political purpose.
- 1531 (b) A commission member shall vote to forward an allegation in a complaint for a final
1532 commission review in accordance with Part 7, Commission Review of Ethics Violation, if the
1533 commission member determines:
- 1534 (i) an allegation, if true, would be an ethics violation;
- 1535 (ii) the complaint contains an affidavit with firsthand knowledge of the allegation
1536 under Subsection (3)(a)(ii); and
- 1537 (iii) the allegation is not frivolous or solely for a political purpose.
- 1538 (4) (a) A verbal roll call vote shall be taken on each allegation and each member's vote
1539 shall be recorded.
- 1540 (b) The commission may not review an allegation for a final determination under Part
1541 7, Commission Review of Ethics Violation, unless six of the seven members of the
1542 commission vote to review the allegation.
- 1543 (5) (a) An allegation that is not forwarded for a final determination is dismissed.
- 1544 (b) Before the commission issues an order in accordance with this section, the
1545 commission may, upon a majority vote, reconsider and hold a new vote on an allegation.
- 1546 (c) A motion to reconsider a vote may only be made by a member of the commission

1547 who voted that the allegation should not be forwarded for a final determination.

1548 (6) (a) If each allegation stated in a complaint is dismissed in accordance with this
1549 section, the commission shall:

1550 (i) issue and enter into the record an order that the complaint is dismissed because no
1551 allegations, in accordance with this section, were forwarded for a final determination;

1552 (ii) classify all recordings, testimony, evidence, orders, findings, and other records
1553 directly relating to the meetings authorized by this part as private records under Section
1554 [63G-2-302](#);

1555 (iii) provide notice of the determination, in a manner determined by the chair, to:

1556 (A) the respondent;

1557 (B) the first complainant named on the complaint; and

1558 (C) subject to Subsection (6)(b), the appropriate political subdivision; and

1559 (iv) provide notice to each person or entity named in Subsections (6)(a)(iii)(A) through
1560 (C) that, under provisions of Section [~~11-49-502~~] [63A-15-502](#) and other provisions of this
1561 chapter, a person who discloses the findings of the commission in violation of any provision of
1562 this chapter is in contempt of the commission and is subject to penalties for contempt.

1563 (b) The notification to the appropriate political subdivision shall notify the political
1564 subdivision that:

1565 (i) a complaint against an unidentified political subdivision officer or employee has
1566 been dismissed; and

1567 (ii) the fact that a complaint was filed shall be kept confidential until the commission
1568 publicly discloses the existence of the complaint via submission of the commission's annual
1569 summary data report as required in Section [~~11-49-202~~] [63A-15-202](#).

1570 (7) If one or more of the allegations stated in a complaint are not dismissed in
1571 accordance with this section, the commission shall:

1572 (a) issue and enter into the record:

1573 (i) an order for each allegation that is dismissed, if any, because the allegation was not
1574 forwarded for a final determination; and

1575 (ii) an order for further review under Part 7, Commission Review of Ethics Violation,
1576 of each allegation that is not dismissed;

1577 (b) classify all recordings, orders, findings, and other records or documents directly

1578 relating to a meeting authorized by this section as private records under Section [63G-2-302](#);

1579 (c) if an allegation was dismissed, provide notice of the determination for each

1580 allegation dismissed in a manner determined by the chair, to:

1581 (i) the respondent;

1582 (ii) the first complainant named on the complaint; and

1583 (iii) subject to Subsection (8), the appropriate political subdivision; and

1584 (d) provide notice to each person or entity named in Subsections (7)(c)(i) through (iii)

1585 that:

1586 (i) under provisions of Section [~~11-49-502~~] [63A-15-502](#) and other provisions of this
1587 chapter, a person who discloses the findings of the commission under this section in violation
1588 of any provision of this chapter is in contempt of the commission and is subject to penalties for
1589 contempt; and

1590 (ii) the commission shall review the remaining allegations in the complaint at a
1591 meeting described in Section [~~11-49-603~~] [63A-15-603](#) and in accordance with Part 7,
1592 Commission Review of Ethics Violation.

1593 (8) The notification to the appropriate political subdivision shall notify the political
1594 subdivision that:

1595 (a) an unspecified allegation in a complaint against an unidentified political
1596 subdivision officer or employee has been dismissed; and

1597 (b) the fact that a complaint was filed shall be kept confidential until the commission
1598 publicly discloses the existence of the complaint in accordance with the provisions of this
1599 chapter.

1600 (9) For a complaint described in Subsection (7), the commission members shall ensure
1601 that, within five business days after the day of the meeting described in Subsection (1)(a)(ii),
1602 the complaint is redacted to remove references to an allegation that is dismissed under this
1603 section.

1604 (10) The chair shall ensure that a record of the meeting held under this section is kept
1605 in accordance with Section [~~11-49-702~~] [63A-15-702](#).

1606 Section 34. Section **63A-15-603**, which is renumbered from Section 11-49-603 is
1607 renumbered and amended to read:

1608 [~~11-49-603~~]. **63A-15-603. Meeting of the commission to review a**

1609 **complaint -- Procedures.**

1610 By no later than 10 calendar days after the day on which a complaint is accepted under
 1611 Section [~~11-49-602~~] [63A-15-602](#) for further review, the commission chair shall:

1612 (1) schedule a commission meeting on a date no later than [~~45~~] 60 calendar days after
 1613 the date on which the commission votes to forward a complaint for final determination in
 1614 accordance with Section [~~11-49-602~~] [63A-15-602](#);

1615 (2) place the complaint on the agenda for consideration at the meeting described in
 1616 Subsection (1);

1617 (3) provide notice of the date, time, and location of the meeting:

1618 (a) to:

1619 (i) the members of the commission;

1620 (ii) the first complainant named in the complaint; and

1621 (iii) the respondent; and

1622 (b) in accordance with Section [52-4-202](#); and

1623 (4) provide a copy of the complaint or redacted complaint, as required in Section
 1624 [~~11-49-602~~] [63A-15-602](#), to each member of the commission.

1625 Section 35. Section **63A-15-604**, which is renumbered from Section 11-49-604 is
 1626 renumbered and amended to read:

1627 [~~11-49-604~~]. **63A-15-604. Response to ethics complaint -- Filing -- Form.**

1628 (1) The political subdivision officer or employee who is the subject of the complaint
 1629 may file a response to the complaint no later than 30 days after the day on which the officer or
 1630 employee receives delivery of an order issued by the commission under Subsection
 1631 [~~11-49-602~~] [63A-15-602](#)(7).

1632 (2) The respondent shall file the response with the commission and ensure that the
 1633 response is in writing and contains the following information:

1634 (a) the name, address, and telephone number of the respondent;

1635 (b) for each alleged ethics violation in the complaint:

1636 (i) each affirmative defense asserted in response to the allegation, including a general
 1637 description of each affirmative defense and the facts and circumstances supporting the defense
 1638 to be provided by one or more affidavits, each of which shall comply with Subsection (4);

1639 (ii) the facts and circumstances refuting the allegation, which shall be provided by:

- 1640 (A) copies of official records or documentary evidence; or
- 1641 (B) one or more affidavits, each of which shall comply with Subsection (4);
- 1642 (c) a list of the witnesses that the respondent wishes to have called, including for each
- 1643 witness:
 - 1644 (i) the name, address, and, if available, telephone number of the witness;
 - 1645 (ii) a brief summary of the testimony to be provided by the witness; and
 - 1646 (iii) a specific description of any documents or evidence the respondent desires the
 - 1647 witness to produce;
- 1648 (d) a statement that the respondent:
 - 1649 (i) has reviewed the allegations contained in the complaint and the sworn statements
 - 1650 and documents attached to the response; and
 - 1651 (ii) believes the contents of the response to be true and accurate; and
- 1652 (e) the signature of the respondent.
- 1653 (3) Promptly after receiving the response, the commission shall provide copies of the
- 1654 response to:
 - 1655 (a) each member of the commission; and
 - 1656 (b) the first named complainant on the complaint.
- 1657 (4) An affidavit described in Subsection (2)(b)(i) or (2)(b)(ii)(B) shall include the
- 1658 following information:
 - 1659 (a) the name, address, and telephone number of the signer;
 - 1660 (b) a statement that the signer has actual knowledge of the facts and circumstances
 - 1661 alleged in the affidavit;
 - 1662 (c) the facts and circumstances testified to by the signer;
 - 1663 (d) a statement that the affidavit is believed to be true and correct and that false
 - 1664 statements are subject to penalties of perjury; and
 - 1665 (e) the signature of the signer.

1666 Section 36. Section **63A-15-701**, which is renumbered from Section 11-49-701 is
1667 renumbered and amended to read:

Part 7. Commission Review of Ethics Violation

1668 ~~[11-49-701]~~. **63A-15-701. Commission review of ethics violation.**

- 1670 (1) The scope of a review by the commission is limited to an alleged ethics violation

1671 stated in a complaint that has not been previously dismissed under Section [~~11-49-602~~]
1672 [63A-15-602](#).

1673 (2) (a) Before holding the meeting for review of the complaint, the commission chair
1674 may schedule a separate meeting of the commission for the purposes of:

1675 (i) hearing motions or arguments from the parties, including hearing motions or
1676 arguments relating to dismissal of a complaint, admission of evidence, or procedures;

1677 (ii) holding a vote of the commission, with or without the attendance of the parties, on
1678 procedural or commission business matters relating to a complaint; or

1679 (iii) reviewing a complaint, with or without the attendance of the parties, to determine
1680 if the complaint should be dismissed in whole or in part, by means of a majority vote of the
1681 commission, because the complaint pleads facts or circumstances against a political
1682 subdivision officer or employee that have already been reviewed by, as provided in Section
1683 [~~11-49-301~~] [63A-15-301](#), the commission, a municipal ethics commission established in
1684 accordance with Section [10-3-1311](#), a county ethics commission established in accordance with
1685 Section [17-16a-11](#), or a local political subdivision ethics commission established in accordance
1686 with Section [~~11-49-103~~] [63A-15-103](#).

1687 (b) Notwithstanding Section [~~11-49-603~~] [63A-15-603](#), the commission may, by a
1688 majority vote, change the date of the meeting for review of the complaint in order to
1689 accommodate:

1690 (i) a meeting authorized under Subsection (2)(a); or

1691 (ii) necessary scheduling requirements.

1692 (3) (a) The commission shall comply with the Utah Rules of Evidence except where
1693 the commission determines, by majority vote, that a rule is not compatible with the
1694 requirements of this chapter.

1695 (b) The chair shall make rulings on admissibility of evidence consistent with the
1696 provisions of Section [~~11-49-402~~] [63A-15-402](#).

1697 (4) (a) A meeting or hearing authorized in this part is open to the public except as
1698 provided in Section [52-4-204](#).

1699 (b) The following individuals may be present during the presentation of testimony and
1700 evidence to the commission:

1701 (i) the complainant;

- 1702 (ii) the complainant's counsel, if applicable;
- 1703 (iii) the respondent;
- 1704 (iv) the respondent's counsel, if applicable;
- 1705 (v) members of the commission;
- 1706 (vi) staff to the commission;
- 1707 (vii) a witness, while testifying before the commission; and
- 1708 (viii) necessary security personnel.
- 1709 (c) The commission may, in accordance with Section 52-4-204, close a meeting to:
 - 1710 (i) seek or obtain legal advice on legal, evidentiary, or procedural matters; or
 - 1711 (ii) conduct deliberations to reach a decision on the complaint.
- 1712 (5) If a majority of the commission determines that a continuance is necessary to obtain
- 1713 further evidence and testimony, to accommodate administrative needs, or to accommodate the
- 1714 attendance of commission members, witnesses, or a party, the commission shall:
 - 1715 (a) adjourn and continue the meeting to a future date and time after notice to the
 - 1716 parties; and
 - 1717 (b) establish that future date and time by majority vote.
- 1718 (6) A record, as defined in Section 63G-2-103, created by the commission under this
- 1719 part, reviewed by the commission under this part, or received by the commission under this
- 1720 part, is a public record, as defined in Section 63G-2-103.
- 1721 Section 37. Section 63A-15-702, which is renumbered from Section 11-49-702 is
- 1722 renumbered and amended to read:
 - 1723 ~~[11-49-702]~~. **63A-15-702. Record -- Recording of meetings.**
 - 1724 (1) (a) Except as provided in Subsection (1)(b), an individual may not use a camera or
 - 1725 other recording device in a meeting authorized by this part.
 - 1726 (b) (i) The commission shall keep an audio or video recording of all portions of each
 - 1727 meeting authorized by this part.
 - 1728 (ii) The commission may, by a majority vote of the commission, permit a camera or
 - 1729 other recording device in the meeting in which the commission releases the commission's
 - 1730 recommendation under this part.
 - 1731 (2) In addition to the recording required in Subsection (1), the chair shall ensure that a
 - 1732 record of the meeting or hearing is made, which shall include:

- 1733 (a) official minutes taken during the meeting or hearing, if any;
- 1734 (b) copies of all documents or other items admitted into evidence by the commission;
- 1735 (c) copies of a document or written order or ruling issued by the chair or the
- 1736 commission; and

1737 (d) any other information that a majority of the commission or the chair directs.

1738 Section 38. Section **63A-15-703**, which is renumbered from Section 11-49-703 is
1739 renumbered and amended to read:

1740 ~~[11-49-703]~~. **63A-15-703. Commission deliberations -- Standard of proof.**

1741 (1) After each party has presented a closing argument, the commission shall, at the
1742 direction of the chair, begin its deliberations:

- 1743 (a) immediately after conclusion of the closing arguments; or
- 1744 (b) at a future meeting of the commission, on a date and time determined by a majority
1745 of the members of the commission.

1746 (2) (a) The chair of the commission shall conduct the deliberations.

1747 (b) Upon a motion made by a commission member, the commission may:

- 1748 (i) exclude commission staff from all or a portion of the deliberations by a majority
1749 vote of the commission; or
- 1750 (ii) close the meeting in accordance with Section [52-4-204](#).

1751 (3) (a) During deliberations, for each allegation reviewed by the commission, each
1752 member shall determine and cast a vote stating:

1753 (i) whether the allegation is:

- 1754 (A) proven by clear and convincing evidence; or
- 1755 (B) not proven; and

1756 (ii) for each allegation proven, whether the commission would recommend to the
1757 appropriate political subdivision governing body to take one or more of the following actions:

- 1758 (A) censure;
 - 1759 (B) in the case of a political subdivision employee, termination;
 - 1760 (C) in the case of a political subdivision officer, removal from office; or
 - 1761 (D) any other action or reprimand that the commission determines is appropriate.
- 1762 (b) (i) A verbal roll call vote shall be taken on each allegation, and each recommended

1763 action described in Subsection (3)(a)(ii) on each allegation.

1764 (ii) Each member's vote shall be recorded.

1765 (4) (a) An allegation is not considered to be proven unless six of the seven members of
1766 the commission vote that the allegation is proven.

1767 (b) The seven members of the commission described in Subsection (4)(a) refers to the
1768 members that actually participate in deciding whether an allegation is proven, including an
1769 alternate member described in Subsection 63A-15-201(4)(f)(i)(A) or a temporary member
1770 described in Subsection 63A-15-201(4)(f)(i)(B).

1771 ~~[(b)]~~ (c) An allegation that is not considered to be proven is dismissed.

1772 ~~[(c)]~~ (d) (i) Before the commission issues its recommendation in accordance with
1773 Section ~~[11-49-704]~~ 63A-15-704, the commission may, upon a majority vote, reconsider and
1774 hold a new vote on an allegation.

1775 (ii) A motion to reconsider a vote may only be made by a member of the commission
1776 who voted that the allegation was not proved.

1777 (5) The commission may not find that an allegation is proven if the allegation is based
1778 on an act by an individual under the authority of the political subdivision officer or employee,
1779 unless the commission finds, by clear and convincing evidence, that the political subdivision
1780 officer or employee:

1781 (a) encouraged, condoned, or ordered the act;

1782 (b) (i) before the individual engaged in the act, knew or should have known that the
1783 individual was likely to engage in the act; and

1784 (ii) failed to take appropriate action to prevent the act;

1785 (c) (i) while the individual engaged in the act, knew or should have known that the
1786 individual was engaging in the act; and

1787 (ii) failed to take appropriate action to stop the act; or

1788 (d) (i) after the individual engaged in the act, knew or should have known that the
1789 individual engaged in the act; and

1790 (ii) failed to take appropriate action in response to the act.

1791 (6) The commission may not find that an allegation is proven if the allegation is based
1792 on the failure of an individual under the authority of the political subdivision officer or
1793 employee to act, unless the commission finds, by clear and convincing evidence, that the
1794 political subdivision officer or employee:

1795 (a) encouraged, condoned, or ordered the failure to act;
 1796 (b) (i) before the individual failed to act, knew or should have known that the
 1797 individual was likely to fail to act; and
 1798 (ii) failed to take appropriate action to prevent the failure to act;
 1799 (c) (i) while the individual was failing to act, knew or should have known that the
 1800 individual was failing to act; and
 1801 (ii) failed to take appropriate action to prevent the failure to act; or
 1802 (d) (i) after the individual failed to act, knew or should have known that the individual
 1803 failed to act; and
 1804 (ii) failed to take appropriate action in response to the failure to act.
 1805 ~~[(5)]~~ (7) At the conclusion of deliberations, the commission shall prepare ~~[its]~~ the
 1806 commission's recommendations as provided in Sections ~~[11-49-704 and 11-49-705]~~
 1807 63A-15-704 and 63A-15-705.
 1808 Section 39. Section **63A-15-704**, which is renumbered from Section 11-49-704 is
 1809 renumbered and amended to read:
 1810 ~~[11-49-704].~~ **63A-15-704. Recommendations of commission.**
 1811 (1) (a) If the commission determines that no allegations in the complaint were proved,
 1812 the commission shall:
 1813 (i) issue and enter into the record an order that the complaint is dismissed because no
 1814 allegations in the complaint were found to have been proved;
 1815 (ii) provide notice of the determination at a public meeting; and
 1816 (iii) provide written notice of the determination to:
 1817 (A) the respondent;
 1818 (B) the first complainant named on the complaint; and
 1819 (C) the appropriate political subdivision.
 1820 (2) If the commission determines that one or more of the allegations in the complaint
 1821 were proved, the commission shall:
 1822 (a) if one or more allegations were not found to have been proven, enter into the record
 1823 an order dismissing those unproven allegations; and
 1824 (b) prepare a written recommendation to the applicable political subdivision governing
 1825 body that:

- 1826 (i) lists the name of each complainant;
- 1827 (ii) lists the name of the respondent;
- 1828 (iii) states the date of the recommendation;
- 1829 (iv) for each allegation that was found to be proven:
 - 1830 (A) provides a reference to the statute or criminal provision allegedly violated;
 - 1831 (B) states the number and names of commission members voting that the allegation
 - 1832 was proved and the number and names of commission members voting that the allegation was
 - 1833 not proved;
 - 1834 (C) at the option of those members voting that the allegation was proved, includes a
 - 1835 statement by one or all of those members stating the reasons for voting that the allegation was
 - 1836 proved; and
 - 1837 (D) at the option of those members voting that the allegation was not proved, includes
 - 1838 a statement by one or all of those members stating the reasons for voting that the allegation was
 - 1839 not proved;
 - 1840 (v) contains any general statement that is adopted for inclusion in the recommendation
 - 1841 by a majority of the members of the commission;
 - 1842 (vi) contains a statement referring the allegations found to have been proved to the
 - 1843 appropriate political subdivision governing body for review and, if necessary, further action;
 - 1844 (vii) contains a statement referring to each allegation proven the commission's
 - 1845 recommendation under Subsection [~~11-49-703~~] [63A-15-703\(3\)\(a\)\(ii\)](#);
 - 1846 (viii) states the name of each member of the commission; and
 - 1847 (ix) is signed by each commission member.
- 1848 (3) The commission shall provide notice of the determination:
 - 1849 (a) at a public meeting; and
 - 1850 (b) in writing to:
 - 1851 (i) the respondent;
 - 1852 (ii) the first complainant named on the complaint; and
 - 1853 (iii) in accordance with Subsection (4), the appropriate political subdivision.
- 1854 (4) The commission shall ensure that, within [~~five~~] 10 business days of the date of
- 1855 public issuance of the determination in accordance with Subsection (3), the following
- 1856 documents are provided to the political subdivision governing body:

1857 (a) a cover letter referring the proven allegations contained in the complaint to the
1858 political subdivision governing body for review;

1859 (b) a copy of the complaint;

1860 (c) a copy of the response; and

1861 (d) a copy of the commission's recommendation.

1862 Section 40. Section **63A-15-705**, which is renumbered from Section 11-49-705 is
1863 renumbered and amended to read:

1864 ~~[11-49-705]~~. **63A-15-705. Criminal allegation -- Recommendation to**
1865 **county or district attorney or attorney general.**

1866 (1) If the commission finds that a political subdivision officer or employee allegedly
1867 violated a criminal provision, the commission shall, in addition to sending a recommendation
1868 to a political subdivision governing body in accordance with Section ~~[11-49-704]~~ 63A-15-704,
1869 send a written recommendation for further investigation to one or more of the following:

1870 (a) the county or district attorney of the applicable jurisdiction ~~[by delivering to the~~
1871 ~~county or district attorney a written recommendation that:]; or~~

1872 (b) the attorney general.

1873 (2) The written recommendation described in Subsection (1) shall:

1874 (a) ~~[lists]~~ list the name of each complainant;

1875 (b) ~~[lists]~~ list the name of the respondent;

1876 (c) ~~[states]~~ state the date of the recommendation;

1877 (d) for each allegation of a criminal violation, provide a reference to the criminal
1878 provision allegedly violated;

1879 (e) ~~[includes]~~ include a general statement that is adopted by a majority of the members
1880 of the commission; and

1881 (f) ~~[gives]~~ state the name of the political subdivision governing body that the
1882 commission sent a recommendation to in accordance with Section ~~[11-49-704]~~ 63A-15-704.

1883 ~~[(2)]~~ (3) If the commission sends a recommendation in accordance with ~~[Subsection~~
1884 ~~(1)(a);]~~ this section, the commission shall enter into the record:

1885 (a) a copy of the recommendation; and

1886 (b) the name of ~~[the county or district attorney of jurisdiction to whom it was sent]~~
1887 each person described in Subsection (1) to whom the commission sent the recommendation.

1888 [(3)] (4) A recommendation prepared and delivered in accordance with this section is a
1889 public record.

1890 Section 41. Section **63A-15-706**, which is renumbered from Section 11-49-706 is
1891 renumbered and amended to read:

1892 ~~[11-49-706]~~. **63A-15-706. Action by political subdivision governing body.**

1893 A political subdivision governing body that receives a recommendation in accordance
1894 with Section [~~11-49-704~~] 63A-15-704 shall:

- 1895 (1) review the recommendation; and
- 1896 (2) take further action in accordance with a political subdivision's governing ordinance,
1897 bylaws, or other applicable governing rule.

1898 Section 42. Section **63G-2-103** is amended to read:

1899 **63G-2-103. Definitions.**

1900 As used in this chapter:

- 1901 (1) "Audit" means:
 - 1902 (a) a systematic examination of financial, management, program, and related records
1903 for the purpose of determining the fair presentation of financial statements, adequacy of
1904 internal controls, or compliance with laws and regulations; or
 - 1905 (b) a systematic examination of program procedures and operations for the purpose of
1906 determining their effectiveness, economy, efficiency, and compliance with statutes and
1907 regulations.
- 1908 (2) "Chronological logs" mean the regular and customary summary records of law
1909 enforcement agencies and other public safety agencies that show:
 - 1910 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
1911 and
 - 1912 (b) any arrests or jail bookings made by the agency.
- 1913 (3) "Classification," "classify," and their derivative forms mean determining whether a
1914 record series, record, or information within a record is public, private, controlled, protected, or
1915 exempt from disclosure under Subsection 63G-2-201(3)(b).
- 1916 (4) (a) "Computer program" means:
 - 1917 (i) a series of instructions or statements that permit the functioning of a computer
1918 system in a manner designed to provide storage, retrieval, and manipulation of data from the

- 1919 computer system; and
- 1920 (ii) any associated documentation and source material that explain how to operate the
- 1921 computer program.
- 1922 (b) "Computer program" does not mean:
- 1923 (i) the original data, including numbers, text, voice, graphics, and images;
- 1924 (ii) analysis, compilation, and other manipulated forms of the original data produced by
- 1925 use of the program; or
- 1926 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
- 1927 algorithms contained in the program, that would be used if the manipulated forms of the
- 1928 original data were to be produced manually.
- 1929 (5) (a) "Contractor" means:
- 1930 (i) any person who contracts with a governmental entity to provide goods or services
- 1931 directly to a governmental entity; or
- 1932 (ii) any private, nonprofit organization that receives funds from a governmental entity.
- 1933 (b) "Contractor" does not mean a private provider.
- 1934 (6) "Controlled record" means a record containing data on individuals that is controlled
- 1935 as provided by Section [63G-2-304](#).
- 1936 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
- 1937 governmental entity's familiarity with a record series or based on a governmental entity's
- 1938 review of a reasonable sample of a record series, the primary classification that a majority of
- 1939 records in a record series would be given if classified and the classification that other records
- 1940 typically present in the record series would be given if classified.
- 1941 (8) "Elected official" means each person elected to a state office, county office,
- 1942 municipal office, school board or school district office, local district office, or special service
- 1943 district office, but does not include judges.
- 1944 (9) "Explosive" means a chemical compound, device, or mixture:
- 1945 (a) commonly used or intended for the purpose of producing an explosion; and
- 1946 (b) that contains oxidizing or combustive units or other ingredients in proportions,
- 1947 quantities, or packing so that:
- 1948 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
- 1949 compound or mixture may cause a sudden generation of highly heated gases; and

- 1950 (ii) the resultant gaseous pressures are capable of:
1951 (A) producing destructive effects on contiguous objects; or
1952 (B) causing death or serious bodily injury.
- 1953 (10) "Government audit agency" means any governmental entity that conducts an audit.
1954 (11) (a) "Governmental entity" means:
1955 (i) executive department agencies of the state, the offices of the governor, lieutenant
1956 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
1957 the Board of Examiners, the National Guard, the Career Service Review Office, the State
1958 Board of Education, the State Board of Regents, and the State Archives;
1959 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
1960 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
1961 committees, except any political party, group, caucus, or rules or sifting committee of the
1962 Legislature;
1963 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
1964 administrative units in the judicial branch;
1965 (iv) any state-funded institution of higher education or public education; or
1966 (v) any political subdivision of the state, but, if a political subdivision has adopted an
1967 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
1968 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
1969 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 1970 (b) "Governmental entity" also means:
1971 (i) every office, agency, board, bureau, committee, department, advisory board, or
1972 commission of an entity listed in Subsection (11)(a) that is funded or established by the
1973 government to carry out the public's business;
1974 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
1975 undertaking;
1976 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation; and
1977 (iv) an association as defined in Section 53A-1-1601.
1978 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
1979 in Section 53B-8a-103.
- 1980 (12) "Gross compensation" means every form of remuneration payable for a given

1981 period to an individual for services provided including salaries, commissions, vacation pay,
1982 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
1983 similar benefit received from the individual's employer.

1984 (13) "Individual" means a human being.

1985 (14) (a) "Initial contact report" means an initial written or recorded report, however
1986 titled, prepared by peace officers engaged in public patrol or response duties describing official
1987 actions initially taken in response to either a public complaint about or the discovery of an
1988 apparent violation of law, which report may describe:

1989 (i) the date, time, location, and nature of the complaint, the incident, or offense;

1990 (ii) names of victims;

1991 (iii) the nature or general scope of the agency's initial actions taken in response to the
1992 incident;

1993 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

1994 (v) the name, address, and other identifying information about any person arrested or
1995 charged in connection with the incident; or

1996 (vi) the identity of the public safety personnel, except undercover personnel, or
1997 prosecuting attorney involved in responding to the initial incident.

1998 (b) Initial contact reports do not include follow-up or investigative reports prepared
1999 after the initial contact report. However, if the information specified in Subsection (14)(a)
2000 appears in follow-up or investigative reports, it may only be treated confidentially if it is
2001 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

2002 (15) "Legislative body" means the Legislature.

2003 (16) "Notice of compliance" means a statement confirming that a governmental entity
2004 has complied with a records committee order.

2005 (17) "Person" means:

2006 (a) an individual;

2007 (b) a nonprofit or profit corporation;

2008 (c) a partnership;

2009 (d) a sole proprietorship;

2010 (e) other type of business organization; or

2011 (f) any combination acting in concert with one another.

2012 (18) "Private provider" means any person who contracts with a governmental entity to
2013 provide services directly to the public.

2014 (19) "Private record" means a record containing data on individuals that is private as
2015 provided by Section 63G-2-302.

2016 (20) "Protected record" means a record that is classified protected as provided by
2017 Section 63G-2-305.

2018 (21) "Public record" means a record that is not private, controlled, or protected and that
2019 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

2020 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
2021 card, tape, recording, electronic data, or other documentary material regardless of physical form
2022 or characteristics:

2023 (i) that is prepared, owned, received, or retained by a governmental entity or political
2024 subdivision; and

2025 (ii) where all of the information in the original is reproducible by photocopy or other
2026 mechanical or electronic means.

2027 (b) "Record" does not mean:

2028 (i) a personal note or personal communication prepared or received by an employee or
2029 officer of a governmental entity:

2030 (A) in a capacity other than the employee's or officer's governmental capacity; or

2031 (B) that is unrelated to the conduct of the public's business;

2032 (ii) a temporary draft or similar material prepared for the originator's personal use or
2033 prepared by the originator for the personal use of an individual for whom the originator is
2034 working;

2035 (iii) material that is legally owned by an individual in the individual's private capacity;

2036 (iv) material to which access is limited by the laws of copyright or patent unless the
2037 copyright or patent is owned by a governmental entity or political subdivision;

2038 (v) proprietary software;

2039 (vi) junk mail or a commercial publication received by a governmental entity or an
2040 official or employee of a governmental entity;

2041 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
2042 of a library open to the public;

- 2043 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
2044 of a library open to the public, regardless of physical form or characteristics of the material;
- 2045 (ix) a daily calendar or other personal note prepared by the originator for the
2046 originator's personal use or for the personal use of an individual for whom the originator is
2047 working;
- 2048 (x) a computer program that is developed or purchased by or for any governmental
2049 entity for its own use;
- 2050 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 2051 (A) a member of the judiciary;
- 2052 (B) an administrative law judge;
- 2053 (C) a member of the Board of Pardons and Parole; or
- 2054 (D) a member of any other body, other than an association or appeals panel as defined
2055 in Section [53A-1-1601](#), charged by law with performing a quasi-judicial function;
- 2056 (xii) a telephone number or similar code used to access a mobile communication
2057 device that is used by an employee or officer of a governmental entity, provided that the
2058 employee or officer of the governmental entity has designated at least one business telephone
2059 number that is a public record as provided in Section [63G-2-301](#);
- 2060 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
2061 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be
2062 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);
- 2063 (xiv) information that an owner of unimproved property provides to a local entity as
2064 provided in Section [11-42-205](#); ~~or~~
- 2065 (xv) a video or audio recording of an interview, or a transcript of the video or audio
2066 recording, that is conducted at a Children's Justice Center established under Section
2067 [67-5b-102](#)~~[-];~~ or
- 2068 (xvi) before final disposition of an ethics complaint occurs, a video or audio recording
2069 of the closed portion of a meeting or hearing of:
- 2070 (A) a Senate or House Ethics Committee;
- 2071 (B) the Independent Legislative Ethics Commission;
- 2072 (C) the Independent Executive Branch Ethics Commission, created in Section
2073 [63A-14-202](#); or

2074 (D) the Political Subdivisions Ethics Review Commission established in Section
2075 63A-15-201.

2076 (23) "Record series" means a group of records that may be treated as a unit for
2077 purposes of designation, description, management, or disposition.

2078 (24) "Records committee" means the State Records Committee created in Section
2079 63G-2-501.

2080 (25) "Records officer" means the individual appointed by the chief administrative
2081 officer of each governmental entity, or the political subdivision to work with state archives in
2082 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
2083 records.

2084 (26) "Schedule," "scheduling," and their derivative forms mean the process of
2085 specifying the length of time each record series should be retained by a governmental entity for
2086 administrative, legal, fiscal, or historical purposes and when each record series should be
2087 transferred to the state archives or destroyed.

2088 (27) "Sponsored research" means research, training, and other sponsored activities as
2089 defined by the federal Executive Office of the President, Office of Management and Budget:

2090 (a) conducted:

2091 (i) by an institution within the state system of higher education defined in Section
2092 53B-1-102; and

2093 (ii) through an office responsible for sponsored projects or programs; and

2094 (b) funded or otherwise supported by an external:

2095 (i) person that is not created or controlled by the institution within the state system of
2096 higher education; or

2097 (ii) federal, state, or local governmental entity.

2098 (28) "State archives" means the Division of Archives and Records Service created in
2099 Section 63A-12-101.

2100 (29) "State archivist" means the director of the state archives.

2101 (30) "Summary data" means statistical records and compilations that contain data
2102 derived from private, controlled, or protected information but that do not disclose private,
2103 controlled, or protected information.

2104 Section 43. Section **63G-2-302** is amended to read:

- 2105 **63G-2-302. Private records.**
- 2106 (1) The following records are private:
- 2107 (a) records concerning an individual's eligibility for unemployment insurance benefits,
- 2108 social services, welfare benefits, or the determination of benefit levels;
- 2109 (b) records containing data on individuals describing medical history, diagnosis,
- 2110 condition, treatment, evaluation, or similar medical data;
- 2111 (c) records of publicly funded libraries that when examined alone or with other records
- 2112 identify a patron;
- 2113 (d) records received by or generated by or for:
- 2114 (i) the Independent Legislative Ethics Commission, except for:
- 2115 (A) the commission's summary data report that is required under legislative rule; and
- 2116 (B) any other document that is classified as public under legislative rule; or
- 2117 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
- 2118 unless the record is classified as public under legislative rule;
- 2119 (e) records received by, or generated by or for, the Independent Executive Branch
- 2120 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
- 2121 of Executive Branch Ethics Complaints;
- 2122 (f) records received or generated for a Senate confirmation committee concerning
- 2123 character, professional competence, or physical or mental health of an individual:
- 2124 (i) if, prior to the meeting, the chair of the committee determines release of the records:
- 2125 (A) reasonably could be expected to interfere with the investigation undertaken by the
- 2126 committee; or
- 2127 (B) would create a danger of depriving a person of a right to a fair proceeding or
- 2128 impartial hearing; and
- 2129 (ii) after the meeting, if the meeting was closed to the public;
- 2130 (g) employment records concerning a current or former employee of, or applicant for
- 2131 employment with, a governmental entity that would disclose that individual's home address,
- 2132 home telephone number, social security number, insurance coverage, marital status, or payroll
- 2133 deductions;
- 2134 (h) records or parts of records under Section [63G-2-303](#) that a current or former
- 2135 employee identifies as private according to the requirements of that section;

- 2136 (i) that part of a record indicating a person's social security number or federal employer
2137 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,
2138 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 2139 (j) that part of a voter registration record identifying a voter's:
- 2140 (i) driver license or identification card number;
- 2141 (ii) Social Security number, or last four digits of the Social Security number;
- 2142 (iii) email address; or
- 2143 (iv) date of birth;
- 2144 (k) a voter registration record that is classified as a private record by the lieutenant
2145 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 2146 (l) a record that:
- 2147 (i) contains information about an individual;
- 2148 (ii) is voluntarily provided by the individual; and
- 2149 (iii) goes into an electronic database that:
- 2150 (A) is designated by and administered under the authority of the Chief Information
2151 Officer; and
- 2152 (B) acts as a repository of information about the individual that can be electronically
2153 retrieved and used to facilitate the individual's online interaction with a state agency;
- 2154 (m) information provided to the Commissioner of Insurance under:
- 2155 (i) Subsection 31A-23a-115(3)(a);
- 2156 (ii) Subsection 31A-23a-302(4); or
- 2157 (iii) Subsection 31A-26-210(4);
- 2158 (n) information obtained through a criminal background check under Title 11, Chapter
2159 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 2160 (o) information provided by an offender that is:
- 2161 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
2162 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and
- 2163 (ii) not required to be made available to the public under Subsection 77-41-110(4) or
2164 77-43-108(4);
- 2165 (p) a statement and any supporting documentation filed with the attorney general in
2166 accordance with Section 34-45-107, if the federal law or action supporting the filing involves

2167 homeland security;

2168 (q) electronic toll collection customer account information received or collected under
2169 Section [72-6-118](#) and customer information described in Section [17B-2a-815](#) received or
2170 collected by a public transit district, including contact and payment information and customer
2171 travel data;

2172 (r) an email address provided by a military or overseas voter under Section
2173 [20A-16-501](#);

2174 (s) a completed military-overseas ballot that is electronically transmitted under Title
2175 20A, Chapter 16, Uniform Military and Overseas Voters Act;

2176 (t) records received by or generated by or for the Political Subdivisions Ethics Review
2177 Commission established in Section [~~11-49-201~~] [63A-15-201](#), except for:

2178 (i) the commission's summary data report that is required in Section [~~11-49-202~~]
2179 [63A-15-202](#); and

2180 (ii) any other document that is classified as public in accordance with [~~Title 11,~~
2181 ~~Chapter 49~~] Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;

2182 (u) a record described in Subsection [53A-11a-203](#)(3) that verifies that a parent was
2183 notified of an incident or threat; and

2184 (v) a criminal background check or credit history report conducted in accordance with
2185 Section [63A-3-201](#).

2186 (2) The following records are private if properly classified by a governmental entity:

2187 (a) records concerning a current or former employee of, or applicant for employment
2188 with a governmental entity, including performance evaluations and personal status information
2189 such as race, religion, or disabilities, but not including records that are public under Subsection
2190 [63G-2-301](#)(2)(b) or [63G-2-301](#)(3)(o) or private under Subsection (1)(b);

2191 (b) records describing an individual's finances, except that the following are public:

2192 (i) records described in Subsection [63G-2-301](#)(2);

2193 (ii) information provided to the governmental entity for the purpose of complying with
2194 a financial assurance requirement; or

2195 (iii) records that must be disclosed in accordance with another statute;

2196 (c) records of independent state agencies if the disclosure of those records would
2197 conflict with the fiduciary obligations of the agency;

2198 (d) other records containing data on individuals the disclosure of which constitutes a
2199 clearly unwarranted invasion of personal privacy;

2200 (e) records provided by the United States or by a government entity outside the state
2201 that are given with the requirement that the records be managed as private records, if the
2202 providing entity states in writing that the record would not be subject to public disclosure if
2203 retained by it;

2204 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
2205 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
2206 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

2207 (g) audio and video recordings created by a body-worn camera, as defined in Section
2208 77-7a-103, that record sound or images inside a home or residence except for recordings that:

2209 (i) depict the commission of an alleged crime;

2210 (ii) record any encounter between a law enforcement officer and a person that results in
2211 death or bodily injury, or includes an instance when an officer fires a weapon;

2212 (iii) record any encounter that is the subject of a complaint or a legal proceeding
2213 against a law enforcement officer or law enforcement agency;

2214 (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);

2215 or

2216 (v) have been requested for reclassification as a public record by a subject or
2217 authorized agent of a subject featured in the recording.

2218 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
2219 records, statements, history, diagnosis, condition, treatment, and evaluation.

2220 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
2221 doctors, or affiliated entities are not private records or controlled records under Section
2222 63G-2-304 when the records are sought:

2223 (i) in connection with any legal or administrative proceeding in which the patient's
2224 physical, mental, or emotional condition is an element of any claim or defense; or

2225 (ii) after a patient's death, in any legal or administrative proceeding in which any party
2226 relies upon the condition as an element of the claim or defense.

2227 (c) Medical records are subject to production in a legal or administrative proceeding
2228 according to state or federal statutes or rules of procedure and evidence as if the medical

2229 records were in the possession of a nongovernmental medical care provider.

2230 Section 44. Section **67-16-15** is amended to read:

2231 **67-16-15. Complaint -- Political Subdivisions Ethics Review Commission.**

2232 A person may file a complaint for an alleged violation of this chapter by a political
2233 subdivision officer or employee in accordance with Title [~~11, Chapter 49~~] 63A, Chapter 15,
2234 Political Subdivisions Ethics Review Commission.

Legislative Review Note
Office of Legislative Research and General Counsel