

LOBBYIST EXPENDITURES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill restricts a lobbyist's expenditures on certain local and education officials.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a lobbyist to file certain reports related to the lobbyist's expenditure on a local official or education official;
- ▶ establishes limits for a lobbyist's expenditures on a local official or education official;
- ▶ establishes provisions for the disposal of a publication that qualifies as an expenditure;
- ▶ establishes criminal and civil penalties;
- ▶ grants rulemaking authority to the director of elections within the Office of the Lieutenant Governor; and
- ▶ makes most of the provisions of the Lobbyist Disclosure and Regulation Act applicable to expenditures for a local official or an education official by incorporating those provisions into a Local Government and Board of Education Lobbyist Disclosure and Regulation Act.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63A-14-202**, as last amended by Laws of Utah 2018, Chapter 461

33 **63A-15-201**, as renumbered and amended by Laws of Utah 2018, Chapter 461

34 **63E-1-401**, as enacted by Laws of Utah 2001, Chapter 201

35 **63E-1-404**, as enacted by Laws of Utah 2001, Chapter 201

36 **76-10-1602**, as last amended by Laws of Utah 2014, Chapter 167

37 ENACTS:

38 **36-11a-101**, Utah Code Annotated 1953

39 **36-11a-102**, Utah Code Annotated 1953

40 **36-11a-201**, Utah Code Annotated 1953

41 **36-11a-202**, Utah Code Annotated 1953

42 **36-11a-203**, Utah Code Annotated 1953

43 **36-11a-301**, Utah Code Annotated 1953

44 **36-11a-302**, Utah Code Annotated 1953

45 **36-11a-303**, Utah Code Annotated 1953



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

48 Section 1. Section **36-11a-101** is enacted to read:

49 **CHAPTER 11a. LOCAL GOVERNMENT AND BOARD OF EDUCATION LOBBYIST**
50 **DISCLOSURE AND REGULATION ACT**

51 **Part 1. General Provisions**

52 **36-11a-101. Title.**

53 This chapter is known as the "Local Government and Board of Education Lobbyist
54 Disclosure and Regulation Act."

55 Section 2. Section **36-11a-102** is enacted to read:

56 **36-11a-102. Definitions.**

57 As used in this chapter:

58 (1) "Aggregate daily expenditures" means:

59 (a) for a single lobbyist, principal, or government officer, the total of all expenditures
60 made within a calendar day by the lobbyist, principal, or government officer for the benefit of
61 an individual local official or education official;

62 (b) for an expenditure made by a member of a lobbyist group, the total of all
63 expenditures made within a calendar day by every member of the lobbyist group for the benefit
64 of an individual local official or education official; or

65 (c) for a multiclient lobbyist, the total of all expenditures made by the multiclient
66 lobbyist within a calendar day for the benefit of an individual local official or education
67 official, regardless of whether the expenditures were attributed to different clients.

68 (2) "Board of education" means:

69 (a) a local school board described in Title 53G, Chapter 4, School Districts;

70 (b) the State Board of Education;

71 (c) the State Charter School Board created under Section 53G-5-201; or

72 (d) a charter school governing board described in Title 53G, Chapter 5, Charter
73 Schools.

74 (3) (a) "Compensation" means anything of economic value, however designated, that is
75 paid, loaned, granted, given, donated, or transferred to an individual for the provision of
76 services or ownership before any withholding required by federal or state law.

77 (b) "Compensation" includes:

78 (i) a salary or commission;

79 (ii) a bonus;

80 (iii) a benefit;

81 (iv) a contribution to a retirement program or account;

82 (v) a payment includable in gross income, as defined in Section 62, Internal Revenue
83 Code, and subject to social security deductions, including a payment in excess of the maximum
84 amount subject to deduction under social security law;

85 (vi) an amount that the individual authorizes to be deducted or reduced for salary
86 deferral or other benefits authorized by federal law; or

87 (vii) income based on an individual's ownership interest.

88 (4) "Compensation payor" means a person who pays compensation to a local official or
89 education official in the ordinary course of business:

90 (a) because of the local official's or education official's ownership interest in the
91 compensation payor; or

92 (b) for services rendered by the local official or education official on behalf of the
93 compensation payor.

94 (5) "Education action" means:

95 (a) a resolution, policy, or other official action for consideration by a board of
96 education;

97 (b) a nomination or appointment by an education official or a board of education;

98 (c) an administrative action taken by a vote of a board of education;

99 (d) an adjudicative proceeding over which an education official has direct or indirect
100 control;

101 (e) a purchasing or contracting decision;

102 (f) drafting or making a policy, resolution, or rule;

103 (g) determining a rate or fee; or

104 (h) making an adjudicative decision.

105 (6) "Education official" means:

106 (a) a member of a board of education;

107 (b) an individual appointed to or employed in a position under a board of education if
108 that individual:

109 (i) occupies a policymaking position or makes purchasing or contracting decisions;

110 (ii) drafts resolutions or policies or drafts or makes rules;

111 (iii) determines rates or fees; or

112 (iv) makes adjudicative decisions; or

113 (c) an immediate family member of an individual described in Subsection (6)(a) or (b).

114 (7) "Event" means entertainment, a performance, a contest, or a recreational activity
115 that an individual participates in or is a spectator at, including a sporting event, an artistic
116 event, a play, a movie, dancing, or singing.

117 (8) (a) "Expenditure" means any of the items listed in this Subsection (8)(a) when
118 given to or for the benefit of a local official or education official unless consideration of equal
119 or greater value is received:

120 (i) a purchase, payment, or distribution;

- 121 (ii) a loan, gift, or advance;
122 (iii) a deposit, subscription, or forbearance;
123 (iv) services or goods;
124 (v) money;
125 (vi) real property;
126 (vii) a ticket or admission to an event; or
127 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide
128 any item listed in Subsections (8)(a)(i) through (vii).
- 129 (b) "Expenditure" does not mean:
130 (i) a commercially reasonable loan made in the ordinary course of business;
131 (ii) a campaign contribution:
132 (A) reported in accordance with Title 20A, Chapter 11, Campaign and Finance
133 Reporting Requirements, Section 10-3-208 or Section 17-16-6.5, or an applicable ordinance
134 described in Subsection 10-3-208(5) or Subsection 17-16-6.5(1); or
135 (B) lawfully given to a person that is not required to report the contribution under a law
136 or ordinance described in Subsection (8)(b)(ii)(A);
137 (iii) printed informational material that is related to the performance of the recipient's
138 official duties;
139 (iv) a devise or inheritance;
140 (v) any item listed in Subsection (8)(a) if:
141 (A) given by a relative;
142 (B) given by a compensation payor for a purpose solely unrelated to the local official's
143 or education official's position as a local official or education official;
144 (C) the item is food or beverage with a value that does not exceed the food
145 reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed
146 the food reimbursement rate; or
147 (D) the item is not food or beverage, has a value of less than \$10, and the aggregate
148 daily expenditures do not exceed \$10;
149 (vi) food or beverage that is provided at an event, a tour, or a meeting to a local official
150 or education official who is:
151 (A) giving a speech at the event, tour, or meeting;

152 (B) participating in a panel discussion at the event, tour, or meeting; or

153 (C) presenting or receiving an award at the event, tour, or meeting;

154 (vii) a plaque, commendation, or award that:

155 (A) is presented in public; and

156 (B) has the name of the individual receiving the plaque, commendation, or award
 157 inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or
 158 award;

159 (viii) a publication having a cash value not exceeding \$30;

160 (ix) admission to or attendance at an event, a tour, or a meeting, the primary purpose of
 161 which is:

162 (A) to solicit a contribution that is reportable under 2 U.S.C. Sec. 434, Title 20A,
 163 Chapter 11, Campaign and Financial Reporting Requirements, Section [10-3-208](#) or Section
 164 [17-16-6.5](#), or an applicable ordinance described in Subsection [10-3-208\(5\)](#) or Subsection
 165 [17-16-6.5\(1\)](#);

166 (B) to solicit a campaign contribution that a person is not required to report under a law
 167 or ordinance described in Subsection (8)(b)(ix)(A); or

168 (C) charitable solicitation, as defined in Section [13-22-2](#);

169 (x) notwithstanding Subsection (8)(a)(vii), admission to, attendance at, or travel to or
 170 from an event, a tour, or a meeting for a local official or education official:

171 (A) that is sponsored by a governmental entity, a public school, a charter school, or an
 172 organization that represents only local governmental entities, public schools, or charter schools,
 173 including the Utah Association of Counties, the Utah League of Cities and Towns, the Utah
 174 Association of Special Districts, ~~H→ [or] ←H~~ the Utah Association of Public Charter Schools
 174a ~~H→~~ , the Utah School Boards Association, or the Utah School Superintendents Association ←H
 174b ; or

175 (B) that is widely attended and related to a governmental duty of the local official or
 176 education official; or

177 (xi) travel to a widely attended tour or meeting related to a governmental duty of a
 178 local official or education official if that travel results in a financial savings to the local
 179 government or board of education to which the local official or education official belongs.

180 (9) "Food reimbursement rate" means the total amount set by the director of the
 181 Division of Finance, by rule, under Section [63A-3-107](#), for in-state meal reimbursement, for an
 182 employee of the executive branch, for an entire day.

183 (10) (a) "Government officer" means:

184 (i) an individual elected to a position in state or local government, when acting in the
185 capacity of the state or local government position;

186 (ii) an individual elected to a board of education, when acting in the capacity of a
187 member of a board of education;

188 (iii) an individual appointed to fill a vacancy in a position described in Subsection
189 (10)(a)(i) or (ii), when acting in the capacity of the position; or

190 (iv) an individual appointed to or employed in a full-time position by state government,
191 local government, or board of education, when acting in the capacity of the individual's
192 appointment or employment.

193 (b) "Government officer" does not mean a member of the legislative branch of state
194 government.

195 (11) "Immediate family" means:

196 (a) a spouse;

197 (b) a child residing in the household; or

198 (c) an individual claimed as a dependent for tax purposes.

199 (12) "Lobbying" means communicating with a local official or education official for
200 the purpose of influencing a local action or education action.

201 (13) (a) "Lobbyist" means:

202 (i) an individual who is employed by a principal; or

203 (ii) an individual who contracts for economic consideration, other than reimbursement
204 for reasonable travel expenses, with a principal to lobby a local official or education official.

205 (b) "Lobbyist" does not include:

206 (i) a government officer;

207 (ii) a member or employee of the legislative branch of state government;

208 (iii) a person participating on or appearing before an advisory or study task force,
209 commission, board, or committee, constituted by a local government or board of education;

210 (iv) a representative of a political party;

211 (v) an individual representing a bona fide church solely for the purpose of protecting
212 the right to practice the religious doctrines of the church, unless the individual or church makes
213 an expenditure that confers a benefit on a local official or education official;

214 (vi) a newspaper, television station or network, radio station or network, periodical of
215 general circulation, or book publisher for the purpose of publishing news items, editorials,
216 other comments, or paid advertisements that directly or indirectly urge local action or education
217 action;

218 (vii) an individual who appears on the individual's own behalf before a board of
219 education, the governing body of a local government, or a committee of a local government or
220 board of education, solely for the purpose of testifying in support of or in opposition to local
221 action or education action; or

222 (viii) an individual representing a business, entity, or industry, who:

223 (A) interacts with a local official or education official, in the local official's or
224 education official's capacity as a local official or education official, while accompanied by a
225 lobbyist who is lobbying in relation to the subject of the interaction; and

226 (B) does not make an expenditure for, or on behalf of, a local official or education
227 official in relation to the interaction or during the period of interaction.

228 (14) "Lobbyist group" means two or more lobbyists, principals, government officers, or
229 any combination of lobbyists, principals, and government officers, who each contribute a
230 portion of an expenditure made to benefit a local official or education official or member of the
231 local official's or education official's immediate family.

232 (15) "Local action" means:

233 (a) an ordinance or resolution for consideration by a local government;

234 (b) a nomination or appointment by a local official or a local government;

235 (c) an administrative action taken by a vote of a local government's legislative body;

236 (d) an adjudicative proceeding over which a local official has direct or indirect control;

237 (e) a purchasing or contracting decision;

238 (f) drafting or making a policy, resolution, or rule;

239 (g) determining a rate or fee; or

240 (h) making an adjudicative decision.

241 (16) "Local government" means:

242 (a) a county, city, town, or metro township;

243 (b) a local district governed by Title 17B, Limited Purpose Local Government Entities

244 - Local Districts;

245 (c) a special service district governed by Title 17D, Chapter 1, Special Service District
246 Act;

247 (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local
248 Government Entities - Community Reinvestment Agency Act;

249 (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;

250 (f) a redevelopment agency; or

251 (g) an interlocal entity or a joint or cooperative undertaking governed by Title 11,
252 Chapter 13, Interlocal Cooperation Act.

253 (17) "Local official" means:

254 (a) an elected member of a local government;

255 (b) an individual appointed to or employed in a position in a local government if that
256 individual:

257 (i) occupies a policymaking position or makes purchasing or contracting decisions;

258 (ii) drafts ordinances or resolutions or drafts or makes rules;

259 (iii) determines rates or fees; or

260 (iv) makes adjudicative decisions; or

261 (c) an immediate family member of an individual described in Subsection (17)(a) or

262 (b).

263 (18) "Meeting" means a gathering of people to discuss an issue, receive instruction, or
264 make a decision, including a conference, seminar, or summit.

265 (19) "Multiclient lobbyist" means a single lobbyist, principal, or government officer
266 who represents two or more clients and divides the aggregate daily expenditure made to benefit
267 a local official or education official or member of the local official's or education official's
268 immediate family between two or more of those clients.

269 (20) "Principal" means a person that employs an individual to perform lobbying, either
270 as an employee or as an independent contractor.

271 (21) "Quarterly reporting period" means the three-month period covered by each
272 financial report required under Section [36-11a-201](#).

273 (22) "Related person" means a person, agent, or employee who knowingly and
274 intentionally assists a lobbyist, principal, or government officer in lobbying.

275 (23) "Relative" means:

- 276 (a) a spouse;
277 (b) a child, parent, grandparent, grandchild, brother, sister, parent-in-law,
278 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin; or
279 (c) a spouse of an individual described in Subsection (23)(b).
280 (24) "Tour" means the visit of a location by a local official or education official, for a
281 purpose relating to the duties of the local official or education official, and not primarily for
282 entertainment, including:
283 (a) viewing a facility;
284 (b) viewing the sight of a natural disaster; or
285 (c) assessing a circumstance in relation to which a local official or education official
286 may need to take action within the scope of the local official's or education official's duties.
287 (25) "Type of public official" means a notation to identify whether an individual is:
288 (a) a local official, including a notation of the type of local government for which the
289 individual is a local official;
290 (b) an education official, including a notation of the type of board of education for
291 which the individual is an education official; or
292 (c) an immediate family member of an individual described in Subsection (6)(a),
293 (6)(b), (17)(a), or (17)(b).

294 Section 3. Section **36-11a-201** is enacted to read:

295 **Part 2. Disclosure of Expenditures**

296 **36-11a-201. Lobbyist, principal, and government officer financial reporting**
297 **requirements -- Prohibition for related person to make expenditures.**

- 298 (1) (a) (i) Except as provided in Subsection (1)(a)(ii), a lobbyist shall file financial
299 reports with the lieutenant governor on or before the due dates specified in Subsection (2).
300 (ii) A lobbyist who has not made an expenditure during a quarterly reporting period is
301 not required to file a quarterly financial report for that quarterly reporting period.
302 (iii) A lobbyist who is not required to file any quarterly reports under this section for a
303 calendar year shall, on or before January 10 of the following year, file a financial report listing
304 the amount of the expenditures for the entire preceding year as "none."
305 (b) A government officer or principal that makes an expenditure during any of the
306 quarterly reporting periods under Subsection (2)(a) shall file a financial report with the

307 lieutenant governor on or before the date that a report for that quarter is due.

308 (2) (a) A financial report is due quarterly on the following dates:

309 (i) April 10, for the period of January 1 through March 31;

310 (ii) July 10, for the period of April 1 through June 30;

311 (iii) October 10, for the period of July 1 through September 30; and

312 (iv) January 10, for the period of October 1 through December 31 of the previous year.

313 (b) If the due date for a financial report falls on a Saturday, Sunday, or legal holiday,

314 the report is due on the next succeeding business day.

315 (c) A financial report is timely filed if it is filed electronically before the close of

316 regular office hours on or before the due date.

317 (3) A financial report shall contain:

318 (a) the total amount of expenditures made to benefit any local official or education

319 official during the quarterly reporting period;

320 (b) the total amount of expenditures made, by the type of official, during the quarterly

321 reporting period;

322 (c) for the financial report due on January 10:

323 (i) the total amount of expenditures made to benefit any local official or education

324 official during the last calendar year; and

325 (ii) the total amount of expenditures made, by the type of official, during the last

326 calendar year;

327 (d) a disclosure of each expenditure made during the quarterly reporting period to

328 reimburse or pay for travel or lodging for a local official or education official, including:

329 (i) each travel destination and each lodging location;

330 (ii) the name of each local official or education official who benefitted from the

331 expenditure on travel or lodging;

332 (iii) the type of official of each local official or education official named;

333 (iv) for each local official or education official named, a listing of the amount and

334 purpose of each expenditure made for travel or lodging; and

335 (v) the total amount of expenditures listed under Subsection (3)(d)(iv);

336 (e) a disclosure of aggregate daily expenditures greater than \$10 made during the

337 quarterly reporting period including:

- 338 (i) the date and purpose of the expenditure;
339 (ii) the location of the expenditure;
340 (iii) the name of any local official or education official benefitted by the expenditure;
341 (iv) the type of official benefitted by the expenditure; and
342 (v) the total monetary worth of the benefit that the expenditure conferred on any local
343 official or education official;
344 (f) for each local official or education official who was employed by the lobbyist,
345 principal, or government officer, a list that provides:
346 (i) the name of the local official or education official; and
347 (ii) the nature of the employment with the local official or education official;
348 (g) a description of each local action or education action regarding which the lobbyist,
349 principal, or government officer made an expenditure to a local official or education official;
350 (h) the general purposes, interests, and nature of the entities that the lobbyist, principal,
351 or government officer filing the report represents; and
352 (i) for a lobbyist, a certification that the information provided in the report is true,
353 accurate, and complete to the lobbyist's best knowledge and belief.
354 (4) A related person may not, while assisting a lobbyist, principal, or government
355 officer in lobbying, make an expenditure that benefits a local official or education official
356 under circumstances that would otherwise fall within the disclosure requirements of this
357 chapter if the expenditure was made by the lobbyist, principal, or government officer.
358 (5) The lieutenant governor:
359 (a) shall provide a reporting system that allows a lobbyist, principal, or government
360 officer to submit a financial report required by this chapter via the Internet; and
361 (b) may integrate the reporting system described in Subsection (5)(a) with the reporting
362 system described in Subsection [36-11-201\(5\)\(b\)](#).
363 (6) (a) A lobbyist and a principal shall continue to file a financial report required by
364 this section until the lobbyist or principal files a statement with the lieutenant governor that:
365 (i) (A) for a lobbyist, states that the lobbyist has ceased lobbying activities; or
366 (B) for a principal, states that the principal no longer employs an individual as a
367 lobbyist;
368 (ii) contains a listing, as required by this section, of all previously unreported

369 expenditures that have been made through the date of the statement; and

370 (iii) states that the lobbyist or principal will not make any additional expenditure that is
 371 not disclosed on the statement unless the lobbyist or principal complies with the disclosure
 372 requirements of this chapter.

373 (b) Except as provided in Subsection (1)(a)(ii), a lobbyist or principal that is required
 374 to file a financial report under this section is required to file the report quarterly until the
 375 lobbyist or principal files the statement required by Subsection (6)(a).

376 Section 4. Section **36-11a-202** is enacted to read:

377 **36-11a-202. Expenditures over certain amounts prohibited -- Exceptions.**

378 (1) Except as provided in Subsection (2), a lobbyist, principal, or government officer
 379 may not make or offer to make aggregate daily expenditures that exceed:

380 (a) for food or beverage, the food reimbursement rate; or

381 (b) \$10 for expenditures other than food or beverage.

382 (2) A lobbyist, principal, or government officer may make aggregate daily expenditures
 383 that exceed the limits described in Subsection (1):

384 (a) for the following items, if the expenditure is reported in accordance with Section
 385 [36-11a-201](#):

386 (i) food;

387 (ii) beverage;

388 (iii) travel;

389 (iv) lodging; or

390 (v) admission to or attendance at a tour or meeting; or

391 (b) if the expenditure is made for a purpose solely unrelated to the local official's or
 392 education official's position as a local official or education official.

393 Section 5. Section **36-11a-203** is enacted to read:

394 **36-11a-203. Disposal of publications.**

395 If a lobbyist, principal, or government officer makes an expenditure, in the form of a
 396 publication, to a local official or education official, the local official or education official may
 397 return the publication to the lobbyist, principal, or government officer, donate the publication
 398 to a charity or a government entity, or destroy the publication.

399 Section 6. Section **36-11a-301** is enacted to read:

400 **Part 3. Penalties and Statutory Construction**401 **36-11a-301. Penalties.**

402 (1) A person who intentionally violates Section 36-11a-201 or 36-11a-202 is subject to
403 the following penalties:

404 (a) an administrative penalty of up to \$1,000 for each violation; and

405 (b) for each subsequent violation of that same section within 24 months, either:

406 (i) an administrative penalty of up to \$5,000; or

407 (ii) suspension of the violator's lobbying license for up to one year, if the person is a
408 registered lobbyist under Section 36-11-103.

409 (2) Any person who intentionally fails to file a financial report required by this chapter,
410 omits material information from a financial report, or files false information on a financial
411 report, is subject to the following penalties:

412 (a) an administrative penalty of up to \$1,000 for each violation; or

413 (b) suspension of the violator's lobbying license for up to one year, if the person is a
414 registered lobbyist under Section 36-11-103.

415 (3) In addition to any penalty imposed under Subsection (1) or (2), a person who
416 intentionally fails to file a financial report required by this chapter on the date the report is due
417 is subject to a penalty of up to \$50 per day for each day that the report is late.

418 (4) A person with evidence of a possible violation of this chapter may submit the
419 evidence to the lieutenant governor for investigation.

420 (5) Nothing in this chapter creates a third-party cause of action or appeal rights.

421 Section 7. Section **36-11a-302** is enacted to read:

422 **36-11a-302. Lieutenant governor's procedures.**

423 The director of elections within the Office of the Lieutenant Governor shall make rules
424 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that provide
425 for the appointment of an administrative law judge to adjudicate alleged violations of this
426 chapter and to impose penalties under this chapter.

427 Section 8. Section **36-11a-303** is enacted to read:

428 **36-11a-303. Construction and interpretation -- Freedom of expression,**
429 **participation, and press -- Non-preemption.**

430 (1) No provision of this chapter may be construed in a manner that limits:

431 (a) a person's right of freedom of expression and participation in government; or

432 (b) freedom of the press.

433 (2) This chapter does not prevent a local government or public education entity from
434 enacting an ordinance or adopting a policy, that the local government or public education entity
435 otherwise has the lawful authority to enact or adopt, that is stricter than the requirements of this
436 chapter.

437 Section 9. Section **63A-14-202** is amended to read:

438 **63A-14-202. Independent Executive Branch Ethics Commission -- Membership.**

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

442 (i) two members who served:

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

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

447 (ii) one member who:

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

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

450 (iii) two citizen members.

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

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

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

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

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

460 (v) if an executive branch elected official fails to submit names to the governor within
461 15 days after the day on which the governor makes the determination described in Subsection

462 (1)(b)(ii), the governor shall directly appoint a person to fill the applicable membership
463 position.

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

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

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

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

469 (d) a principal as defined in Section [36-11-102](#) or [36-11a-102](#); or

470 (e) an employee of the state.

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

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

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

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

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

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

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

489 (4) (a) A member of the commission may not receive compensation or benefits for the
490 member's service, but may receive per diem and expenses incurred in the performance of the
491 member's official duties at the rates established by the Division of Finance under Sections
492 [63A-3-106](#) and [63A-3-107](#).

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

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

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

497 (6) The commission:

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

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

502 Section 10. Section **63A-15-201** is amended to read:

503 **63A-15-201. Commission established -- Membership.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

530 (i) a political subdivision officer;

531 (ii) a political subdivision employee;

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

533 (iv) a lobbyist as defined in Section [36-11-102](#) or [36-11a-102](#); or

534 (v) a principal as defined in Section [36-11-102](#) or [36-11a-102](#).

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

538 (i) may be a lay person;

539 (ii) shall be registered to vote in the state; and

540 (iii) complies with the requirements described in Subsection (3)(a).

541 (c) The alternate member described in Subsection (3)(b):

542 (i) shall serve as a member of the commission in the place of one of the seven members
543 described in Subsection (2) if that member is temporarily unable or unavailable to participate in
544 a commission function or is disqualified under Section [63A-15-303](#); and

545 (ii) may not cast a vote on the commission unless the alternate member is serving in
546 the capacity described in Subsection (3)(c)(i).

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

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

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

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

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

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

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

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

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

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

566 (f) (i) If a commission member is accused of wrongdoing in a complaint, or if a
567 commission member has a conflict of interest in relation to a matter before the commission:

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

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

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

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

575 (B) may be a lay person;

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

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

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

580 (b) (i) A member may receive per diem and expenses incurred in the performance of
581 the member's official duties at the rates established by the Division of Finance under Sections
582 [63A-3-106](#) and [63A-3-107](#).

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

584 (6) The commission members shall, by a majority vote, elect a commission chair from
585 among the commission members.

586 Section 11. Section **63E-1-401** is amended to read:

587 **63E-1-401. Definitions.**

588 As used in this part:

589 (1) "Asset" means property of all kinds, real and personal, tangible and intangible, and

590 includes:

591 (a) cash, except reasonable compensation or salary for services rendered;

592 (b) stock or other investments;

593 (c) goodwill;

594 (d) real property;

595 (e) an ownership interest;

596 (f) a license;

597 (g) a cause of action; and

598 (h) any similar property.

599 (2) "Business interest" means:

600 (a) holding the position of trustee, director, officer, or other similar position with a

601 business entity; or

602 (b) the ownership, either legally or equitably, of at least 10% of the outstanding shares

603 of a corporation or 10% interest in any other business entity, being held by:

604 (i) an individual;

605 (ii) the individual's spouse;

606 (iii) a minor child of the individual; or

607 (iv) any combination of Subsections (2)(b)(i) through (iii).

608 (3) "Interested party" means a person that held or holds the position of trustee, director,

609 officer, or other similar position with an independent entity within:

610 (a) five years prior to the date of an action described in Subsection (5); or

611 (b) during the privatization of an independent entity.

612 (4) "Lobbyist" is a person that provided or provides services as a lobbyist, as defined in

613 Section [36-11-102](#) or [36-11a-102](#), within:

614 (a) five years prior to the date of an action described in Subsection (5); or

615 (b) during the privatization of an independent entity.

616 (5) (a) "Privatized" means an action described in Subsection (5)(b) taken under

617 circumstances in which the operations of the independent entity are continued by a successor
618 entity that:

619 (i) is privately owned;

620 (ii) is unaffiliated to the state; and

621 (iii) receives any asset of the independent entity.

622 (b) An action referred to in Subsection (5)(a) includes:

623 (i) the repeal of the authorizing statute of an independent entity and the revision to state
624 laws to terminate the relationship between the state and the independent entity;

625 (ii) the dissolution of the independent entity;

626 (iii) the merger or consolidation of the independent entity with another entity; or

627 (iv) the sale of all or substantially all of the assets of the independent entity.

628 Section 12. Section **63E-1-404** is amended to read:

629 **63E-1-404. Penalties for violation.**

630 (1) A person who knowingly violates this part:

631 (a) is guilty of a third degree felony if the combined value of any compensation or
632 assets received by the person as a result of the violation is equal to or greater than \$10,000; or

633 (b) is guilty of a class A misdemeanor if the combined value of any compensation or
634 assets received by the person as a result of the violation is less than \$10,000.

635 (2) (a) In addition to any penalty imposed under Subsection (1), a person that violates
636 this part shall return to the successor of the independent entity any compensation or assets
637 received in violation of this part.

638 (b) If the assets received by the person in violation of this part are no longer in the
639 possession of the person, the person shall pay the successor of the independent entity an
640 amount equal to the fair market value of the asset at the time the person received the asset.

641 (3) Notwithstanding [~~Subsection~~] Subsections [36-11-401\(3\)](#) and [36-11a-304\(3\)](#), if a
642 lobbyist violates Subsection [63E-1-402\(2\)\(b\)\(i\)](#), the lobbyist is guilty of the crime outlined in
643 Subsection (1), which crime shall be determined by the value of compensation or assets
644 received by the lobbyist.

645 Section 13. Section **76-10-1602** is amended to read:

646 **76-10-1602. Definitions.**

647 As used in this part:

648 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
649 business trust, association, or other legal entity, and any union or group of individuals
650 associated in fact although not a legal entity, and includes illicit as well as licit entities.

651 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
652 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
653 have the same or similar purposes, results, participants, victims, or methods of commission, or
654 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
655 demonstrate continuing unlawful conduct and be related either to each other or to the
656 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
657 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
658 activity as defined by this part shall have occurred within five years of the commission of the
659 next preceding act alleged as part of the pattern.

660 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
661 interest in property, including state, county, and local governmental entities.

662 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
663 command, encourage, or intentionally aid another person to engage in conduct which would
664 constitute any offense described by the following crimes or categories of crimes, or to attempt
665 or conspire to engage in an act which would constitute any of those offenses, regardless of
666 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
667 or a felony:

668 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
669 Recording Practices Act;

670 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
671 Code, Sections [19-1-101](#) through [19-7-109](#);

672 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
673 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
674 Code of Utah, or Section [23-20-4](#);

675 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
676 26, Chapter 20, Utah False Claims Act, Sections [26-20-1](#) through [26-20-12](#);

677 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
678 Offenses and Procedure Act;

- 679 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
680 Land Sales Practices Act;
- 681 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
682 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
683 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
684 Clandestine Drug Lab Act;
- 685 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
686 Securities Act;
- 687 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
688 Procurement Code;
- 689 (j) assault or aggravated assault, Sections [76-5-102](#) and [76-5-103](#);
- 690 (k) a threat of terrorism, Section [76-5-107.3](#);
- 691 (l) criminal homicide, Sections [76-5-201](#), [76-5-202](#), and [76-5-203](#);
- 692 (m) kidnapping or aggravated kidnapping, Sections [76-5-301](#) and [76-5-302](#);
- 693 (n) human trafficking, human smuggling, or aggravated human trafficking, Sections
694 [76-5-308](#), [76-5-309](#), and [76-5-310](#);
- 695 (o) sexual exploitation of a minor, Section [76-5b-201](#);
- 696 (p) arson or aggravated arson, Sections [76-6-102](#) and [76-6-103](#);
- 697 (q) causing a catastrophe, Section [76-6-105](#);
- 698 (r) burglary or aggravated burglary, Sections [76-6-202](#) and [76-6-203](#);
- 699 (s) burglary of a vehicle, Section [76-6-204](#);
- 700 (t) manufacture or possession of an instrument for burglary or theft, Section [76-6-205](#);
- 701 (u) robbery or aggravated robbery, Sections [76-6-301](#) and [76-6-302](#);
- 702 (v) theft, Section [76-6-404](#);
- 703 (w) theft by deception, Section [76-6-405](#);
- 704 (x) theft by extortion, Section [76-6-406](#);
- 705 (y) receiving stolen property, Section [76-6-408](#);
- 706 (z) theft of services, Section [76-6-409](#);
- 707 (aa) forgery, Section [76-6-501](#);
- 708 (bb) fraudulent use of a credit card, Sections [76-6-506.2](#), [76-6-506.3](#), [76-6-506.5](#), and
709 [76-6-506.6](#);

- 710 (cc) deceptive business practices, Section 76-6-507;
- 711 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
712 criticism of goods, Section 76-6-508;
- 713 (ee) bribery of a labor official, Section 76-6-509;
- 714 (ff) defrauding creditors, Section 76-6-511;
- 715 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 716 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 717 (ii) bribery or threat to influence contest, Section 76-6-514;
- 718 (jj) making a false credit report, Section 76-6-517;
- 719 (kk) criminal simulation, Section 76-6-518;
- 720 (ll) criminal usury, Section 76-6-520;
- 721 (mm) fraudulent insurance act, Section 76-6-521;
- 722 (nn) retail theft, Section 76-6-602;
- 723 (oo) computer crimes, Section 76-6-703;
- 724 (pp) identity fraud, Section 76-6-1102;
- 725 (qq) mortgage fraud, Section 76-6-1203;
- 726 (rr) sale of a child, Section 76-7-203;
- 727 (ss) bribery to influence official or political actions, Section 76-8-103;
- 728 (tt) threats to influence official or political action, Section 76-8-104;
- 729 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 730 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
731 76-8-106;
- 732 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 733 (xx) obstruction of justice, Section 76-8-306;
- 734 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 735 (zz) false or inconsistent material statements, Section 76-8-502;
- 736 (aaa) false or inconsistent statements, Section 76-8-503;
- 737 (bbb) written false statements, Section 76-8-504;
- 738 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 739 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 740 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

741 (fff) tampering with evidence, Section [76-8-510.5](#);

742 (ggg) falsification or alteration of government record, Section [76-8-511](#), if the record is
743 a record described in Title 20A, Election Code, [or] Title 36, Chapter 11, Lobbyist Disclosure
744 and Regulation Act, or Title 36, Chapter 11a, Local Government and Board of Education
745 Lobbyist Disclosure and Regulation Act;

746 (hhh) public assistance fraud in violation of Section [76-8-1203](#), [76-8-1204](#), or
747 [76-8-1205](#);

748 (iii) unemployment insurance fraud, Section [76-8-1301](#);

749 (jjj) intentionally or knowingly causing one animal to fight with another, Subsection
750 [76-9-301\(2\)\(d\)](#) or (e), or Section [76-9-301.1](#);

751 (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or
752 parts, Section [76-10-306](#);

753 (lll) delivery to common carrier, mailing, or placement on premises of an incendiary
754 device, Section [76-10-307](#);

755 (mmm) possession of a deadly weapon with intent to assault, Section [76-10-507](#);

756 (nnn) unlawful marking of pistol or revolver, Section [76-10-521](#);

757 (ooo) alteration of number or mark on pistol or revolver, Section [76-10-522](#);

758 (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
759 [76-10-1002](#);

760 (qqq) selling goods under counterfeited trademark, trade name, or trade devices,
761 Section [76-10-1003](#);

762 (rrr) sales in containers bearing registered trademark of substituted articles, Section
763 [76-10-1004](#);

764 (sss) selling or dealing with article bearing registered trademark or service mark with
765 intent to defraud, Section [76-10-1006](#);

766 (ttt) gambling, Section [76-10-1102](#);

767 (uuu) gambling fraud, Section [76-10-1103](#);

768 (vvv) gambling promotion, Section [76-10-1104](#);

769 (www) possessing a gambling device or record, Section [76-10-1105](#);

770 (xxx) confidence game, Section [76-10-1109](#);

771 (yyy) distributing pornographic material, Section [76-10-1204](#);

772 (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
773 (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
774 (bbbb) distribution of pornographic films, Section 76-10-1222;
775 (cccc) indecent public displays, Section 76-10-1228;
776 (dddd) prostitution, Section 76-10-1302;
777 (eeee) aiding prostitution, Section 76-10-1304;
778 (ffff) exploiting prostitution, Section 76-10-1305;
779 (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
780 (hhhh) communications fraud, Section 76-10-1801;
781 (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and
782 Currency Transaction Reporting Act;
783 (jjjj) vehicle compartment for contraband, Section 76-10-2801;
784 (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in
785 this state; and
786 (llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.
787 Sec. 1961(1)(B), (C), and (D).