APPLICATION TO CIRCULATE STATEWIDE INITIATIVE PETITION

Pursuant to Utah Code, Section 20A-7-202, we, the undersigned citizens of the state of Utah, respectfully request that a proposed bill, entitled **"GOVERNMENT ETHICS REFORM,"** be submitted to the legal voters of Utah for their approval or rejection at the regular election to be held on November 2, 2010. Accordingly, the undersigned hereby submit this application to the Honorable Lieutenant Governor, Gary R. Herbert, seeking to circulate a statewide initiative petition, and, in that regard, show the Honorable Lieutenant Governor, Gary R. Herbert, as follows:

1. The undersigned desire to have a bill entitled "Government Ethics Reform" enacted into law, using the initiative process. As required by Utah Code, Section 20A-7-202(2)(d), a true and correct copy of this bill is appended to this application.

2. The undersigned, as required by Utah Code, Section 20A-7-202(2)(b)(i), are all residents of the state of Utah. We have listed our residential addresses and attested to the truth of the same below, all as required by Utah Code, Sections 20A-7-202(2)(a) and (b)(i) and (c).

3. All of the undersigned have voted in a regular general election in Utah within the last three years and this fact also is attested below as required by Utah Code, Sections 20A-7-202(2)(b)(ii) and (c).

4. Pursuant to Utah Code, Section 20A-7-202(2)(e), the undersigned affirm that, absent exigent circumstances which are not presently foreseeable, they do not intend to use paid personnel to gather signatures in connection with this initiative petition.

In separate, numbered sheets, we, the undersigned, have attested to the truth of the matters stated in this application and our signatures in this regard, as required by Utah Code, Section 20A-7-202(2)(c), are confirmed by a notary public.

Received

AUG 12 2009

Gary R. Herbert
Lieutenant Governor

GOVERNMENT ETHICS REFORM

LONG TITLE

General Description:

This bill enacts provisions in the Legislative Code to establish an independent ethics commission to administer a legislative ethics code.

Highlighted Provisions:

This bill:

-- provides definitions and rules of construction;

-- establishes an independent ethics commission, setting forth the criteria for eligibility for members of the commission, the manner of selecting those members, and the powers, duties, and functions of the commission;

-- enacts a code of ethical conduct for legislators;

-- sets forth procedures which will govern the work of the commission and its staff, including procedures for handling complaints against legislators who are accused of misconduct;

-- enacts miscellaneous provisions which regulate the application of open meetings laws, judicial review, administrative procedures, government records access and management, the role of the Office of the Attorney General, the role of the Office of Legislative Research and General Counsel, intervention rights in litigation challenging this bill, funding, and severability.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

36-27-101, Utah Code Annotated 1953

36-27-102, Utah Code Annotated 1953

36-27-201, Utah Code Annotated 1953

36-27-301, Utah Code Annotated 1953

36-27-401, Utah Code Annotated 1953

36-27-402, Utah Code Annotated 1953

36-27-403, Utah Code Annotated 1953

36-27-404, Utah Code Annotated 1953

36-27-501, Utah Code Annotated 1953

REPEALS:

63G-2-703(1)-(4), Utah Code Annotated 1953

MODIFIES:

63G-2-103(11)(a)(ii), Utah Code Annotated 1953

63G-2-302(1)(d), Utah Code Annotated 1953

Be it enacted by the people of the state of Utah:

Intent Statement. We the people of Utah, exercising our legislative power under the Utah Constitution to the fullest extent possible, insist that the people's business in the legislative branch be conducted upon principles of ethical governance, and that legislators, as trustees of our collective legislative power, serve us – the beneficiaries of that trust – with fidelity, integrity, and selfless judgment.

It has become evident over the years that the legislature has been unwilling to enact enforceable ethical standards of conduct or a workable process for enforcing its own rules. Forty states have some form of an independent ethics commission; Utah does not.

A troubling, parallel development is that lobbyists and special interests are free to inject unlimited amounts of corporate money into Utah's political system, often by invitation from legislators who, again and again, go back to the same contributors for more and more donations to personal projects, committees, caucuses, and leadership campaigns. These donors are often the very people and companies who regularly have matters of significant private profit requiring legislative action, and it is contrary to human nature to expect that such transactions are nothing more than friends helping friends in the grand cause of better government. Indeed, lobbyists have every reason to agree to every legislator's request for money, no matter how dubious.

Utah's financial disclosure laws have been ranked 47th worst in the nation. Forty-four states limit financial contributions to legislators; Utah does not. Eighty-one percent of all money funding legislative campaigns in Utah comes from special interests; $2.45 million in 2008 came from corporations, which cannot by law contribute to federal election campaigns. It is axiomatic that, "He who pays the piper calls the tune."

Over the years, concerned legislators have sponsored bill after bill to strengthen Utah's laws on legislative ethics. All but cosmetic gestures towards reform have withered and died. Scandals are forgotten until next time, and then forgotten again. A citizens' commission formed by the governor to study and make recommendations for ethics reforms had the subject stricken from its agenda as a result of pressure from legislative leaders. If we, the people, are ever to get comprehensive and meaningful ethics reform, we will have to write and pass the law ourselves.

Good government requires that ethical and wise citizens stand for election as legislators, and such citizens have done so frequently, to our collective benefit. It is the nature of power to corrupt, and common experience and *The Federalist Papers* teach us that unchecked power and unlimited money create circumstances where a clear vision of the public interest becomes blurred by self-interest, favoritism, and a sense of entitlement. The purpose of this law, therefore, is threefold: (1) To establish clear standards of ethical and fiduciary conduct; (2) To keep honest people honest; and (3) To provide a fair, nonpartisan, and transparent process for reviewing complaints of ethical violations by legislators.

Section 1. Section **36-27-101** is enacted to read:

CHAPTER 27. UTAH INDEPENDENT ETHICS COMMISSION

36-27-101. Title.

This chapter is known as the "Utah Independent Ethics Commission Act."

Section 2. Section **36-27-102** is enacted to read:

36-27-102. Definitions and Rules of Construction.

(1) As used in this chapter 27 of title 36:

(a) "Act" means this Utah Independent Ethics Commission Act.

(b) "Client" includes any person in an agency or independent contractor relationship with another person, and client of a legislator includes any client of a corporation of which the legislator is a control person.

(c) "Code of conduct" includes the matters addressed in section 36-27-301 of this Act, as well as any opinions or rules and regulations promulgated by the commission pursuant to sections 36-27-201(7)(f), 36-27-201(7)(j), and 36-27-301(1) of this Act.

(d) "Commission" means the Utah Independent Ethics Commission created by this Act.

(e) "Confidential information" includes information classified as controlled, private, or protected in the Utah Government Records Access and Management Act or any other applicable law.

(f) "Control person" or "controlling person" includes (i) any person with a control status or actual control within a corporation, including any member of a board of directors, any officer, any managing member, any general partner, any equity holder having more than 10 percent ownership in such corporation, or (ii) any person who, under any set of circumstances, has power to direct or materially influence the affairs of another person.

(g) "Corporation" includes any private business or form of private business organization, whether for profit or non-profit, including corporations, limited liability companies, partnerships, business trusts, joint stock companies, unincorporated associations, and labor unions.

(h) "Executive director" means the executive director appointed by the commission pursuant to section 36-27-201(7)(a) of this Act.

(i) "Gift" includes anything of value, including money, services, goods, financial accommodations, contributions, loans, property (whether tangible or intangible), meals, entertainment, or rewards, or any promise thereof, that is given to a person, whether for that person's own use or for the use or benefit of any other person, for less than a reasonably equivalent consideration, provided, however, that a gift shall not include (i) lawful contributions made to a legislator's personal campaign committee by individuals or political action committees, (ii) awards of recognition having nominal or no monetary value, such as a token, plaque, or certificate, on ceremonial occasions, and (iii) light refreshments of negligible value.

(j) "House" means the Utah House of Representatives.

(k) "Includes" or "including" means non-limiting or without limitation.

(l) "Individual" means any human being.

(m) "Insider" of a legislator includes (i) any relative of the legislator, (ii) any person in relation to whom the legislator is a control person, (iii) any person who is a controlling person in relation to a legislator, and (iv) any client of a legislator.

(n) "Leadership" means the Speaker of the House, the President of the Senate, the Minority Leader of the House, and the Minority Leader of the Senate when acting collectively pursuant to sections 36-27-201(4) and 36-27-201(5) of this Act.

(o) "Legislator" includes an individual who has been elected or appointed to serve as a representative in the House or as a senator in the Senate. The term, "legislator" (unless the context otherwise requires), includes individuals presently serving, as well as those who have served at any time in the past. The term, "legislator," also includes legislative candidates who violate section 36-27-301(2)(d) of this Act and, at any time subsequent to that violation, are elected to the legislature.

(p) "Legislative candidate" includes any individual who is soliciting funds for the purpose of running for election to the legislature, including any individual who may have filed a declaration of candidacy pursuant to section 20A-9-202(1)(b) of the Utah Code.

(q) "Legislature" means the Utah State Legislature.

(r) "Lobbyist" (except where the context otherwise may require) includes (i) any person who is retained and paid by another person, whether as an employee, agent, independent contractor, or otherwise, for the purpose of communicating with a legislator, legislators, or the legislature for the purpose of influencing the passage, defeat, amendment, postponement, or other action respecting passage of a bill or for the purpose of influencing action respecting any other legislative matter, or for the purpose of communicating with any other public official or public

body for the purpose of influencing action by such public official or public body, (ii) any person who retains and pays a lobbyist, and, (iii) where the person retaining and paying a lobbyist is a corporation, any control person of that corporation, (iv) provided, however, that, where the communication is solely to a public official or a public body, lobbyist shall not include a licensed attorney or a licensed accountant during the ordinary course of representing a client or any expert witness during the ordinary course of giving testimony.

(s) "Person" means any individual or corporation.

(t) "Personal campaign committee" means a personal campaign committee as defined in section 20A-11-101(25) of the Utah Code.

(u) "Personal interest" includes an interest resulting in (i) potential or actual profit or benefit to a person or an insider of such person, and (ii) potential or actual partisan political benefit to a person or an insider of such person, but does not include any interest resulting in profit or benefit derived from a state contract or the use of state monies solely on account of regular employment by a public body in the ordinary course of business of that public body, and does not include any profit or benefit which is available to the public at large on the same terms and conditions.

(v) "Political action committee" means a political action committee as defined in section 20A-11-101(2) of the Utah Code.

(w) "Political issues committee" means a political issues committee as defined in section 20A-11-101(28) of the Utah Code.

(x) "Political party" means a registered political party as defined in section 20A-11-101(40) of the Utah Code.

(y) "Public body" includes any branch, system, department, institution, agency, commission, board, bureau, division, tribunal, entity, or other unit of government in the state of Utah or any political subdivision of the state of Utah, including any entity which is quasi-governmental in nature or by law.

(z) "Public official" includes (i) any individual who is elected to any office in a public body and (ii) any person who is appointed to any office in a public body which office requires policymaking, the exercise of discretion, the adjudication of disputes, or decision-making respecting purchasing, contracting, or the disbursement of funds.

(aa) "Relative" includes a spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin of an individual or of the spouse of such individual.

(bb) "School fund" means the fund established in Utah Code, section 53A-16-101.

(cc) "Senate" means the Utah State Senate.

(dd) "Sponsors" means the first 5 signatories of this initiative petition pursuant to section 20A-7-202(2) of the Utah Code who still reside within the state of Utah and are competent, at the applicable time, to perform the duties specified in sections 36-27-201(4)(a), 36-27-201(4)(c), and 36-27-201(5) of this Act.

(ee) "Utah Administrative Procedures Act" means the Administrative Procedures Act, as enacted in title 63G, chapter 4, of the Utah Code.

(ff) "Utah Administrative Rulemaking Act" means the Utah Administrative Rulemaking Act, as enacted in title 63G, chapter 3, of the Utah Code.

(gg) "Utah Government Records Access and Management Act" means the Government Records Access and Management Act, as enacted in title 63G, chapter 2, of the Utah Code.

(hh) "Utah Open Meetings Act" means the Open and Public Meetings Act as enacted in title 52, chapter 4, of the Utah Code.

(2) This Act shall be construed so that the people of the state of Utah shall be deemed to be exercising their legislative power to the fullest extent possible under article 6, sections 1(1)(b), 1(2)(a)(i)(A), 8, 10, and 12, of the Utah Constitution.

(3) This Act shall be construed to implement the provisions of article 22, section 5, and article 4, section 6, of the Utah Constitution to the fullest extent possible.

(4) This Act shall be construed liberally in furtherance of its remedial goals.

(5) Wherever this Act proscribes any act, such proscription includes any conduct, instrumentality, and means which may be used, either directly or indirectly, to accomplish such act.

Section 3. Section **36-27-201** is enacted to read:

36-27-201. Utah Independent Ethics Commission – Requirements for Membership – Manner of Appointment -- Vacancies – Voting and Chair -- Powers and Duties.

(1) There is created the Utah Independent Ethics Commission to administer, implement, and apply the code of conduct provided for in this Act, and to exercise all other powers and perform all other duties specified in this Act.

(2) The commission shall consist of 5 individuals, each of whom shall meet the eligibility requirements of section 36-27-201(3) of this Act, and all of whom shall be appointed as provided in sections 36-27-201(4) or 36-27-201(5) of this Act.

(3) No individual may be appointed a member of the commission unless such individual, as of the date such individual shall become a member, satisfies each of the following conditions:

(a) Each member shall be a citizen and, throughout the duration of service, shall reside and be domiciled in the state of Utah;

(b) Each member shall be 25 years of age or older;

(c) Each member shall have demonstrated integrity through leadership and service;

(d) Each member shall be educated and experienced broadly in ethical matters;

(e) Each member, even where formally affiliated with a particular party, shall be ready, willing, and able impartially to require ethical conduct from all legislators of whatever political persuasion;

(f) No member may have been a lobbyist for a period of 5 years preceding appointment to the commission;

(g) No member may have been a legislator or the holder of any other elected public office or a candidate for election to the legislature or any other public office for a period of 5 years preceding appointment to the commission;

(h) No member may have held an office of any kind (other than the office of voting district officer or delegate to a county or state convention) in a political party for a period of 5 years preceding appointment to the commission;

(i) No member may become a lobbyist, legislator, holder of any other elected public office, or holder of an office of any kind in a political party while serving as a member of the commission.

(4) All of the members of the commission shall be selected by using the procedures set forth below.

(a) No later than June 1, 2011, the leadership unanimously shall agree upon 20 individuals who would qualify under section 36-27-201(3) of this Act as members of the commission, and shall insure, by the same deadline, that each of these candidates shall be willing, if chosen, to serve as a member of the commission. If any are unwilling, then, as to the number of unwilling candidates, the process, dictated above, shall be repeated until 20 willing candidates have been selected, provided, however, that the selection process, in all events, shall be concluded no later than June 1, 2011. If the leadership fails unanimously to select all 20 candidates and to insure the willingness of each of these candidates to serve, if chosen, by this deadline, the sponsors, by no later than August 1, 2011, unanimously shall select the 20 candidates, insuring, by the same deadline, the willingness of each candidate, if chosen, to serve as a member of the commission.

(b) No later than 10 days from the date the 20 candidates are selected and qualified pursuant to section 36-27-201(4)(a) of this Act, the name of each candidate shall be written on a separate paper of equal size, and these papers shall be folded in half and placed in a hat. A member of the House and a member of the Senate, each selected by any mathematically random means, alternately shall draw names blindly from the hat with the House member drawing first. The first 5 names so drawn from the hat shall serve as members of the commission. In order to achieve

staggered ending dates, the first 2 names drawn from the hat shall serve for terms of 3 years from the date of appointment, and the last 3 names drawn from the hat shall serve for terms of 5 years from the date of appointment, provided, however, that any appointee's term may be extended pursuant to section 36-27-201(4)(c) of this Act. Each member of the commission appointed thereafter shall serve for a term of 5 years from the date of appointment and as that term may be extended pursuant to section 36-27-201(4)(c) of this Act. No member of the commission may be removed from office by the legislature.

(c) As each member's term of office, as specified in section 36-27-201(4)(b) of this Act, shall expire, a new member shall be appointed, using the same method prescribed above in sections 36-27-201(4)(a) and 36-27-201(4)(b) of this Act. In that event, the deadlines for selection, as dictated in section 36-27-201(4)(a) of this Act, shall be June 1st and August 1st respectively of the relevant year. The members of the commission shall hold over and continue to serve until their successors shall be appointed.

(5) If a vacancy occurs by reason of death, disability, resignation, or disqualification of any member of the commission prior to the expiration of the term of office specified in either section 36-27-201(4)(b) or section 36-27-201(4)(c) of this Act, a new member shall be appointed, using the same method prescribed above in sections 36-27-201(4)(a) and 36-27-201(4)(b) of this Act, provided, however, that such selection shall be made as soon as practicable, but in no event later than June 1st and August 1st respectively of the relevant year. The replacement shall serve for the balance of the term of the member being replaced.

(6) Except where otherwise provided in this Act, the commission may act only by a majority vote of all members of the commission. The commission shall elect a chair from among its members.

(7) The commission is vested with power and jurisdiction (i) to investigate and review the conduct of legislators in relation to the code of conduct, (ii) to perform all of the duties and functions specified in this Act, and (iii) to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in order to accomplish (i) or (ii) above, including the following.

(a) The commission shall employ an executive director upon such terms and conditions as the commission shall deem appropriate, provided, however, that the executive director must be an attorney licensed to practice law in the state of Utah.

(b) The commission may employ such additional staff (upon such terms and conditions as the commission deems appropriate) in order to exercise the commission's powers and fulfill its duties under this Act.

(c) The commission (especially where funding may be limited or inadequate) may employ volunteers, including a volunteer executive director, upon such terms and conditions as the commission deems appropriate in order to exercise its powers and fulfill its duties under this Act.

(d) The commission may request assistance from the Office of Legislative Research and General Counsel, the Office of Legislative Fiscal Analyst, or the Office of Legislative Auditor, and those departments shall give such assistance promptly, completely, and on a confidential basis to the commission.

(e) The commission shall receive, investigate, and process complaints against legislators pursuant to the terms and conditions set forth in this Act.

(f) Upon request by a legislator or a committee of the legislature, the commission shall issue advisory opinions concerning the code of conduct.

(g) The commission shall create and administer a training program for ethical responsibility for all legislators and for all departments and staff of the legislature.

(h) The commission shall insure that disclosure statements from each legislator are filed and supplemented as required under section 36-27-301(2)(c) of this Act.

(i) The commission shall study, investigate, and make recommendations to the legislature for the improvement of ethics in connection with the conduct of legislative business. In addition to the foregoing, and within 2 years of its establishment, the commission shall report to the legislature upon the relationship of money, gifts, contributions, lobbying, and campaign finance to the integrity and effectiveness of the lawmaking process, and upon the advisability of pay enhancements for legislative service as a possible antidote for the corrupting influence of money interests in this regard, making specific recommendations for reform in these areas. A copy of this report with recommendations also shall be forwarded to the citizens' salary commission which has been established pursuant to article 6, section 9, of the Utah Constitution.

(j) Although the commission serves the legislature and is not an agency within the executive branch of state government, the commission nevertheless shall have the powers and shall adopt the procedures of the Utah Administrative Rulemaking Act. This rulemaking power shall include the power to make rules governing the internal processes of the commission, interpreting the code of conduct, and implementing and furthering the purposes and policies of this Act, including rules which add to or otherwise modify the ethical proscriptions in the code of conduct, provided, however, that the commission, by rule, may not reduce or weaken any standard of conduct in the code of conduct, and provided further that, except as allowed above in this section 36-27-201(7)(j) of this Act, no rule promulgated by the commission shall be valid, effective, or enforceable to the extent that it may be inconsistent with any express provision of this Act.

(k) The commission may gather information by any appropriate means, including the issuance of subpoenas in order to compel the production of documents and the attendance and testimony of witnesses, and for any purpose under this Act. Subpoenas shall be issued in the manner provided under Rule 45 of the Utah Rules of Civil Procedure. Subpoenas shall be enforced in the manner provided under title 36, chapter 14, of the Utah Code, provided, however, that the commission shall be the party in interest which is authorized and empowered to seek such enforcement of any such subpoena. Testimony may be taken at public hearings or closed depositions as required or allowed under section 36-27-501(1) of this Act.

(l) The commission shall meet, allocate its budget, marshall its resources, prioritize its work, and conduct its business as it deems appropriate, and its independence in this regard shall not be abridged, impaired, or threatened by the legislature, any committee of the legislature, or any legislator.

Section 4. Section **36-27-301** is enacted to read:

36-27-301. Code of Conduct.

(1) In addition to those advisory opinions which the commission is required to give pursuant to section 36-27-201(7)(f) of this Act, a legislator who desires a "safe harbor" or "no-action" opinion from the commission respecting the ethical propriety or impropriety of a relationship or transaction contemplated by the legislator may file a request for such an opinion on a form and in a manner prescribed by the commission, and the commission, in its discretion, may issue such an opinion to the legislator. An opinion by the commission which determines that the relationship or transaction under review does not violate the code of conduct shall give the legislator absolute immunity from any complaint under sections 36-27-401 and 36-27-402 of this Act. Such an opinion, however, shall not immunize a legislator from a complaint under sections 36-27-401 and 36-27-402 of this Act unless (i) such opinion is sought and obtained prior to entering the relationship or doing the transaction which is the subject of review by the commission, (ii) the opinion has been rendered on no less than 30 days' notice from the legislator so that the opinion might be a well-prepared and wisely-considered ruling, (iii) the opinion is issued in writing and sets forth, in reasonable detail, the application of the code of conduct to the statement of facts which has been supplied by the legislator, and (iv) the complaint asserts claims which involve the identical circumstances covered by the commission's opinion. The issuance of any opinion by the commission, whether issued under section 36-27-201(7)(f) or this section 36-27-301(1) of this Ac,t shall not give rise to any confidential relationship between the commission and any legislator and, likewise, shall not prevent or be deemed to impair the commission's impartiality in ruling upon any subsequent issues which may be brought to its attention respecting such legislator.

(2) A legislator who violates the code of conduct shall be guilty of an ethical violation and subject to the procedures and remedies provided for in this Act. Violations of the code of conduct include the following.

(a) Legislators, while serving in office, are fiduciaries in relation to their constituents and the state of Utah and shall conduct themselves accordingly. This conduct shall include the following.

(i) Beginning January 1, 2013, no legislator, while serving in office, may be a control person of any corporation where (A) status as a legislator was a contributing factor in such selection as a control person and (B) being a control person in such corporation furthers any personal interest of the legislator. In determining whether the status of a legislator was a contributing factor in such selection as a control person, the commission shall consider all relevant facts and circumstances including (A) the timing of the selection, and (B) the qualifications of the legislator, independent of his status as legislator, to be selected.

(ii) No legislator, while serving in office, may act as a lobbyist.

(iii) No legislator may act as a lobbyist for two years from and after the date of such legislator's resignation, removal, or expiration of term of office. No legislator, while serving in office, may communicate respecting legislative matters with any legislator who is acting in violation of the first sentence of this section 36-27-301(2)(a)(iii) of this Act.

(iv) A legislator, while serving in office, shall not accept new employment or engagement, whether as a consultant, advisor, attorney, or employee, with a lobbyist.

(v) A legislator shall not use any confidential information acquired as the result of service in the legislature in furtherance of a personal interest.

(vi) A legislator, while serving in office, shall not accept a gift from a lobbyist.

(vii) A legislator, while serving in office, may not accept a campaign contribution where such contribution has been promised or was intended as a quid pro quo, explicitly or implicitly, to induce specific action by a legislator which is favorable to the person making the contribution.

(viii) A legislator, while serving in office, and in exchange for money or money's worth, shall neither offer to give nor give consultations respecting the passage of legislation or any legislative action.

(ix) A legislator, while serving in office, shall demonstrate exemplary obedience to law and shall not engage in any conduct violative of any civil or criminal statute relating to or having a bearing upon legislative service or a legislator's fitness to serve.

(b) Legislative office is a public trust, and legislators shall not use or abuse their offices of trust for personal interest. This proscription includes the following.

(i) A legislator, while serving in office, shall not use or threaten to use the legislator's office, including the legislator's power to sponsor legislation, control or influence outcomes in committees, or vote on bills, in furtherance of any personal interest.

(ii) A legislator, while serving in office, shall not threaten retribution against any person, public official, or public body for failure to comply with a request by the legislator.

(iii) A legislator, while serving in office, shall not communicate with any public official or public body in order to discourage the investigation or prosecution of any matter, civil or criminal. Nothing herein shall preclude a legislator from pleading a personal defense in any action.

(iv) A legislator, while serving in office, shall not use government facilities or employees in furtherance of a personal interest.

(v) A legislator, while serving in office, shall not interfere with or attempt to influence the preparation of any document, analysis, opinion, or audit to be prepared by the Office of Legislative Research and General Counsel, the Office of the Legislative Fiscal Analyst, the Office of the Legislative Auditor, the Governor's Office of Planning and Budget, or any other public body or public official in conjunction with any issue which is or is proposed to be the subject of a statewide initiative or referendum.

(vi) No legislator, while serving in office, shall attempt unduly or unconstitutionally to influence the outcome of any matter to be decided by a public body or public official. In determining whether a legislator has exercised any improper influence in this regard, the commission shall consider all the facts and circumstances of the case, including (A) whether the legislator has any personal interest in the matter; (B) whether the legislator acted officiously; (C) whether the legislator acted ultra vires; (D) whether the legislator communicated on an ex parte basis; and (E) whether the legislator employed inappropriate means, including the use of foul language, the making of threats of reprisal, or the creating of an impression that the legislator is acting for the legislature or other legislators when, in fact, the legislator is not authorized formally to do so.

(vii) A legislator, while serving in office, shall not attempt to influence the contractual relationship between a lobbyist and the principal of such lobbyist in furtherance of a personal interest.

(viii) A legislator, while serving in office, shall not suggest to any lobbyist that such lobbyist make any arrangement which might further the personal interest of such legislator including a suggestion that the lobbyist hire the legislator or an insider of the legislator, and no legislator, while serving in office, shall arrange for or accept any employment from or through a lobbyist, whether for the legislator or an insider of the legislator.

(ix) As with judges, a legislator, in discharging the duties of legislative office, shall avoid the appearance of impropriety.

(c) Not later than January 15 of each year, each legislator shall file a conflict of interest disclosure statement with the commission. The disclosure statement shall be in a form prepared by the commission, and shall include, at a minimum, the following information: (i) the full names of the legislator and the legislator's spouse; (ii) the name, headquarters address, and telephone number of every person (excluding clients) from which the legislator or spouse received compensation or benefits of any kind of a value in excess of $3,000 during the previous year and a description of such compensation and benefits; (iii) any trusteeships, directorships, offices, or positions of any nature, whether compensated or uncompensated, held by the legislator or spouse with any person; (iv) the names, addresses, and telephone numbers of any person with which the legislator has an agency relationship, including any client of a legislator, and from which, in the year previous, the legislator has received amounts in excess of $10,000; (v) the location, nature of, and fair market value of any property, real or personal, tangible or intangible (other than a primary personal residence), in which the legislator or spouse, directly or indirectly, holds an interest which is or is proposed or likely to be the subject of acquisition, trade, or regulation by any public body; (vi) the names, addresses, and telephone numbers of any insider of the legislator where such insider holds or seeks contracts for services with any public body; (vii) the amount and nature of any loans to the legislator or spouse which, within the previous 12 months, have been forgiven or compromised by or through any insider of the legislator or spouse or by or through any lobbyist, giving the name, address, and telephone number of the lender; (viii) the names, addresses, and telephone numbers of all insiders of the legislator which are lobbyists; and (ix) an itemization of all transfers received from lobbyists and to the legislator or and any insider of the legislator within the preceding year. Each legislator shall file an amended disclosure statement with the commission no later than 10 days after any change shall occur in connection with the information requirements noted above in this section of this Act. If the commission, in its discretion, desires supplemental or explanatory disclosures from any legislator, that legislator shall file such information within 14 days following receipt of a written request from the commission. The disclosure statements, amended disclosure statements, and supplemental disclosures contemplated in this section of this Act shall be accurate and complete; they shall be signed by legislators under penalty of perjury; and they shall be available for inspection and copying by any member of the public. A legislator's failure to file, amend, or supplement a disclosure statement as required under this section of this Act shall constitute a violation of the code of conduct.

(d) The following requirements apply to legislators and legislative candidates.

(i) Legislators and legislative candidates shall not:

(A) Solicit or accept contributions from a lobbyist for any political action committee, political issues committee, political party, political caucus, or any personal campaign committee other than the legislator's or legislative candidate's own personal campaign committee;

(B) Give monies taken from the legislator's or legislative candidate's personal campaign committee to another legislator or legislative candidate, a political action committee, political issues committee, political party, or political caucus;

(C) Accept contributions from the personal campaign committee of another legislator or legislative candidate;

(D) Accept campaign contributions from corporations, except that nothing herein shall prohibit the acceptance of contributions from a political action committee the monies of which are obtained from contributions by a corporation's employees, equity holders, or members;

(E) Solicit or accept campaign contributions which exceed $2500 per individual or $5000 per political action committee during each two-year period preceding a general election.

(F) Use any funds from their personal campaign committee for non-campaign personal expenditures, including household living expenses, loans or gifts, clothing and grooming expenses, vacation and leisure travel, or entertainment, whether these expenditures are made to or for the benefit of the legislator, legislative candidate, or any third party.

(ii) In addition to the provisions and restrictions of sections 20A-11-301 and 20A-11-402 of the Utah Code, funds remaining in the campaign account of a legislator or legislative candidate 5 years from the date of such individual's defeat, resignation, or expiration of term of office shall be deemed transferred to the school fund, unless, within 30 days after the expiration of this 5 year period, the legislator earmarks such funds for transfer to one or more charitable organizations which the commission, by rule, shall select and approve as donees for this purpose, in which event the funds shall be transferred to such organization or organizations.

(iii) Notwithstanding any other provision of law, any legislator or legislative candidate who amends a financial disclosure report filed with the lieutenant governor shall certify in writing under penalty of perjury that the amendment was necessary because the information in the amendment either (1) was not known to him at the time the original report was filed, or (2) could not have been discovered with reasonable diligence on or before the date the original report was filed, and shall explain in reasonable detail the factual basis for either statement.

(3) Any conduct which violates the code of conduct shall be deemed in every instance to be one or more of the following: (i) a felony; (ii) a breach of the peace; (iii) an action outside the

ordinary course of legislative business; (iv) an action beyond the scope of a legislator's official duties.

(4) Each year, commencing February 1, 2012, every legislator (as well as every employee of the Office of Legislative Research and General Counsel, the Office of Legislative Fiscal Analyst, and the Office of Legislative Auditor, and every other employee or intern at the legislature) shall complete the ethics training program created and administered by the commission pursuant to section 36-27-201(7)((g) of this Act.

Section 5. Section **36-27-401** is enacted to read:

36-27-401 – Initial Complaints Against Legislators – Procedures for Handling and Resolving Initial Complaints.

Complaints alleging misconduct by any legislator initially shall be processed as provided in section 36-27-401 of this Act.

(1) With the exceptions of commission members, the executive director, and staff of the commission, any 3 persons may file a complaint against a legislator, alleging a violation of the code of conduct or any statute, federal or state, which defines and proscribes any civil or criminal conduct relating to or having a bearing upon legislative service or a legislator's fitness to serve. Complaints shall be in writing and filed with the executive director. A legislator may not be charged with misconduct which occurred more than 6 years prior to the date upon which the complaint is filed, provided, however, that this 6 year limitations period shall not begin to run until the misconduct in question could have been discovered by a reasonable person through publicly available information.

(2) Except as provided elsewhere in this Act, all complaints that are filed with the executive director shall be kept confidential.

(3) Within 3 days after the filing of a complaint, the executive director shall deliver a copy of the complaint to all members of the commission and to the legislator against whom it was filed, and shall begin to investigate the averments in the complaint with a view to determining whether plenary review by the entire commission shall be necessary. In furtherance of the investigation contemplated under this section 36-27-401(3) of this Act, the executive director may issue subpoenas for the production of documents and to compel the attendance and testimony of witnesses by deposition or otherwise. The persons who filed the complaint may participate fully in the development of evidence during this investigative phase of the proceeding, and the executive director, upon request of the complainants, shall issue such subpoenas as may be necessary to facilitate that participation. All costs in this regard, including those incurred for subpoenas and

depositions, shall be borne by the commission. The accused legislator may participate informally, but shall have no formal rights of participation, during this stage of the proceeding.

(4) Within 60 days after receiving any complaint, the executive director shall recommend to the commission either that the complaint be dismissed or that plenary review by the entire commission is appropriate. The commission, for good cause, may enlarge this 60 day deadline.

(5) After hearing the recommendation from the executive director under section 36-27-401(4) of this Act, the commission shall determine whether to dismiss or give plenary review to a complaint. If the commission determines that there is no foundation in fact or law for a complaint, or that the complaint otherwise is frivolous, then the commission shall dismiss the complaint. Orders of dismissal shall be in writing, setting forth in adequate detail the basis for the ruling. Copies of these orders shall be delivered to the complainants and the legislator. If the commission does not dismiss the complaint, the commission shall order the complainants to prepare a formal complaint, pursuant to section 36-27-402 of this Act, against the legislator. After the commission orders the preparation of a formal complaint and throughout the remainder of the proceedings respecting that complaint, the complainants may continue to investigate the subject-matter of the complaint as provided in section 36-27-401(3) of this Act.

Section 6. Section **36-27-402** is enacted to read:

36-27-402. Formal Complaints Against Legislators – Procedures for Handling and Resolving Formal Complaints.

Formal complaints prepared by the complainants and alleging misconduct by an accused legislator shall be processed as provided in section 36-27-402 of this Act.

(1) Within 30 days after being ordered by the commission to prepare a formal complaint pursuant to section 36-27-401(5) of this Act, the complainants shall submit a formal complaint to the commission and deliver a copy of the same to the accused legislator. The formal complaint shall give the accused legislator fair notice of (i) the identity of the complainants, (ii) the conduct and circumstances which allegedly constitute a violation, and (iii) the provision of the code of conduct or civil or criminal statute allegedly violated. The 30 day deadline, referenced above, may be altered, if necessary, pursuant to the provisions of Section 36-27-402(2) of this Act, or for good cause by the commission.

(2) Notwithstanding the requirements of section 36-27-402(1) of this Act, and absent a contrary vote of at least 3 members of the commission, no formal complaint shall be submitted to the commission or delivered to an accused legislator within 30 days before a primary or general election in which the legislator is a candidate for any elective public office.

(3) The accused legislator may file a response to the formal complaint, including a motion to dismiss, within 20 days of the date on which the formal complaint is delivered to the accused legislator.

(4) The commission may, but need not, rule upon any motion to dismiss before adjudicating the merits of the formal complaint.

(5) The commission shall begin to hear the merits of the formal complaint within 60 days after the formal complaint first was submitted to the commission. The commission, for good cause, may enlarge or shorten this 60 day time-line.

(6) The commission, through pre-hearing conferences, may regulate the manner in which the hearings on formal complaints will be conducted, provided, however, that any such regulation shall not be inconsistent with any express provision of this Act.

Section 7. Section **36-27-403** is enacted to read:

36-27-403. Hearings on Formal Complaints.

Formal complaints shall be heard as provided in section 36-27-403 of this Act.

(1) The chair of the commission shall preside at hearings on formal complaints and shall make rulings respecting points of order and the admissibility of evidence, provided, however, that the chair's rulings may be overturned by a vote of 3 of the 5 members of the commission.

(2) The commission shall adopt uniform standards for the admissibility and admission of evidence at hearings on formal complaints. These standards shall be applied equitably and evenhandedly throughout the course of any given hearing. The commission is not required to but nevertheless may use, as standards, the Utah Rules of Evidence, provided, however, that the commission may not base any finding of fact solely upon evidence that would not be admissible under the Utah Rules of Evidence.

(3) The complainants, and the accused legislator shall be parties in interest, and these parties, together with their counsel, shall have full participatory rights in hearings on any formal complaint. All parties in interest shall have the right to be represented by counsel. The executive director and commission staff shall not be parties in interest in the case, but shall conduct research for and render advice to the commission during the course of the proceedings. The commission, for good cause, may allow other persons to intervene and become parties in interest, but intervention never shall be a matter of right and always shall be subject to the discretion of the commission. If any person is permitted to become a party in interest through intervention, the commission nevertheless may condition such intervention by limiting the participatory rights of such party at any hearing on a formal complaint.

(4) The commission may adjourn or continue any hearing from time to time, as circumstances warrant, and with a view to doing justice between and among all parties in interest, for any good cause, including a need to investigate further any fact that may be at issue in the case. In the event such further investigation is conducted, the procedures prescribed in section 36-27-401(3) of this Act shall apply during such investigation, provided, however, the legislator shall have participatory rights equal to the complainants, and intervening parties, subject to the discretion of the commission as provided above, also may have such rights

(5) The complainants shall have the burden of going forward and presenting the case against the accused legislator. Once a prima facie case has been established against an accused legislator, however, then as with fiduciary standards in the law of partnerships and corporations, the burden of proof and risk of non-persuasion in relation to such case shall shift to such legislator, and such legislator must show by a preponderance of evidence that the legislator did not commit the violation or violations charged in the formal complaint.

Section 8. Section **36-27-404** is enacted to read:

Section 36-27-404. Commission's Disposition of Formal Complaints After Hearing.

Formal complaints shall be resolved as provided in section 36-27-404 of this Act.

(1) At the conclusion of hearings on a formal complaint, including any argument, oral or written, that may be allowed or directed, the commission shall take the case under advisement for deliberation and decision, provided, however, that the commission shall render a decision no later than 60 days after the date on which final argument, oral or written, has been submitted by parties in interest to the commission. This 60 day deadline may be extended only for good cause and after consultation with all parties in interest.

(2) The commission's decision in every case shall be in writing, containing findings of fact, conclusions of law, and explaining in detail the application of those legal conclusions to those factual findings. If the commission determines that a legislator has violated any part of the code of conduct or applicable civil or criminal statute, the commission, as part of its written decision, shall recommend whether disciplinary action (including expulsion) should be taken, and, if so, on what basis, terms, and conditions, setting forth its reasoning in this regard. In that event, and within 10 days from the issuance of such a decision, the written findings, conclusions, and recommendations shall be delivered to the Speaker of the House or the President of the Senate as the case may be. The Speaker or the President, at the earliest possible occasion, but in no event later than the 30th day of the next general session of the legislature, shall insure that a vote of the House or the Senate, as the case may be, shall be taken, which vote shall be upon the question whether the decision of the commission shall be upheld or overruled. Any deliberation or debate prior to this vote shall be

in a proceeding which is open to the public, and, as the vote is taken, the yeas, nays, abstentions, and absences of each member shall be clear and conspicuous to those watching, and shall be recorded in the journal of the house or senate as the case may be.

(3) In every case where the commission's decision implicates misconduct which may offend any criminal statute, the commission promptly shall forward its decision to the applicable authorities, state and federal, with jurisdiction to investigate and prosecute any such crime. The commission shall cooperate with such prosecutorial authorities in providing files, documents, information, and the like which have been developed by the commission during the course of the case in question.

(4) In every case, the commission's decision shall be posted immediately and prominently on the legislature's website for a period of not less than 12 months.

Section 9. Section **36-27-501** is enacted to read.

Section 36-27-501. Miscellaneous Provisions – Application of Utah Open Meetings Act – Judicial Review of Commission Action – Application of Utah Administrative Procedure Act – Application of Utah Government Records Access and Management Act -- Role of the Attorney General – Role of Office of Legislative Research and General Counsel in Relation to the Commission and Provisions Respecting Attorneys' Fees for Accused Legislators – Intervention Rights -- Funding -- Severability.

(1) Every conference (whether in person or by other means, including telephones, e-mails, or text-messaging) between 2 or more of the leadership or sponsors, as the case may be, respecting the selection of members of the commission, as provided in sections 36-27-201(4) or 36-27-201(5) of this Act, and every hearing and the announcement of decisions involving 3 or more members of the commission pursuant to sections 36-27-402, 36-27-403, and 36-27-404 of this Act shall be treated as an open meeting under the Utah Open Meetings Act and may not be closed under any circumstance. Every conference involving members of the commission respecting proceedings under section 36-27-401 of this Act, every conference involving members of the commission respecting deliberations and decision-making under section 36-27-404(1) of this Act, and every investigative aspect of a case, whether conducted by commission staff or involving commission members, at any stage of proceedings, under sections 36-27-401, 36-27-402, and 36-27-403 of this Act shall be kept confidential and closed to the public, provided, however, that the commission, in its discretion, and for good cause, may release a copy of any order of dismissal pursuant to section 36-27-401(5) of this Act to the public. Except as expressly delineated otherwise in this section 36-27-501(1) of this Act, the commission shall be deemed a public body within the meaning of the

Utah Open Meetings Act and commission meetings shall be governed according to the requirements of that statute.

(2) Except as provided in the Utah Open Meetings Act and the Utah Government Records Access and Management Act, and notwithstanding any provisions to the contrary in the Utah Administrative Procedure Act and the Utah Administrative Rulemaking Act, there shall be no judicial review or agency review of any commission action

(3) The Utah Administrative Procedure Act shall not apply to the commission. Except as may be otherwise provided in this Act, the Utah Government Records Access and Management Act shall apply to the legislature to the same extent and in the same manner as other departments of government, and, to that end, subparts (1) through (4) of section 63G-2-703 of the Utah Code are repealed and the words "or rules or sifting committee" are stricken from section 63G-2-103(11)(a)(ii) of the Utah Code, and the words "Senate or House Ethics Committee" and "committee" are stricken from section 63G-2-302(1)(d) and the words "independent ethics commission" and "commission" are substituted in lieu thereof.

(4) The Attorney General for the state of Utah shall have no power or role as counsel for the commission.

(5) Notwithstanding the provisions of section 36-12-12 of the Utah Code, and in view of the provisions of section 36-27-201(7)(d) of this Act, the Office of Legislative Research and General Counsel shall not represent any legislator, any committee of the legislature, or the legislature in proceedings before the commission or in challenges to the constitutionality of this Act. In the event that a complaint under sections 36-27-401 or 36-27-402 of this Act is brought against a legislator, any such legislator desiring counsel must retain counsel other than through the Office of Legislative Research and General Counsel. Any such legislator who desires to retain counsel may select any attorney or law firm. The reasonable fees of any such attorney or law firm, including other costs of such representation, shall be paid out of funds allocated to the Office of Legislative Research and General Counsel, and this payment shall be made whether or not the legislator is acquitted of the charges of misconduct.

(6) In the event that this initiative becomes law and thereafter this initiative or any portion thereof, as law, is challenged on constitutional grounds, the sponsors or any of them shall have an absolute, unconditional right to intervene in any such litigation. Notice of any such litigation shall be given by the plaintiffs in such litigation immediately upon commencement of such litigation to the sponsors of this initiative.

(7) The legislature adequately shall fund the salary of the executive director, additional staff, and operations of the commission with an annual appropriation. In order to assure the

independence of the commission, this annual appropriation shall be no less than $472,000. Members of the commission shall receive a per diem and reimbursement for expenses incurred in the performance of official duties at rates established by the Utah Division of Finance under sections 67A-3-106 and 63A-3-107 of the Utah Code.

(8) If any portion of this Act shall be declared unconstitutional, the remaining sections shall be severed from the unconstitutional portion and, as such, shall remain valid, operative, and in full force and effect.