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HOUSE BILL NO. 953

INTRODUCED BY S. GALLOWAY

BY REQUEST OF THE (S) JOINT SELECT COMMITTEE ON ELECTION SECURITY

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ELECTION SECURITY AND INTEGRITY COMPLAINT AND ENFORCEMENT PROCESS; PROVIDING DUTIES; CREATING A CASE MANAGEMENT SYSTEM; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS ~~13-37-111 AND 13-37-124~~ 13-35-203, 13-35-218, AND 13-35-221, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. ProsecutorContracted legal services -- duties. (1) ~~There is a prosecutor licensed to practice law in the state within the department of justice~~ The department of justice shall designate a prosecutor from the agency to contract with the commissioner of political practices only to assist with prosecutions of alleged violations of election law received pursuant to [sections 3 and 4]. The prosecutor must be specifically available to the commissioner of political practices for complaints related to alleged violations of election law involving county attorneys, other county officials, or employees, or if the county attorney is unavailable when the complaint is received or transmitted.

(2) (a) The primary function of the prosecutor is to assist ~~only with the investigations and the commissioner of political practices or a county attorney with~~ prosecutions of alleged violations of election law received pursuant to ~~[sections 2 and 3]~~ [sections 3 and 4].

(b) ~~If the prosecutor has additional capacity, the prosecutor may be assigned to other work unrelated to election law within the department of justice with the understanding that the prosecutor shall return to the prosecutor's election-related work if a new election case or complaint is referred to the prosecutor pursuant to [sections 2 and 3].~~ Prosecuting cases received pursuant to [sections 3 and 4] and referred by the commissioner of political practices or a county attorney must take priority over the prosecutor's other duties.

(c) The prosecutor must be available to the commissioner of political practices or a county attorney

1 the week prior to the election, on election day, and after the election as required to review and process alleged
2 violations referred pursuant to [section 4].

3

4 **NEW SECTION. Section 2. Investigator -- duties.** (1) There is an investigator, qualified by
5 education, training, experience, and high professional competence in criminal investigative procedures, within
6 the office of the commissioner of political practices.

7 (2) The investigator shall process and investigate complaints received through the process
8 provided for in [section 3] as directed by the commissioner of political practices and shall work with the
9 department of justice prosecutor established in [section 1], county attorney, or commissioner of political
10 practices for the duration of all cases.

11

12 **NEW SECTION. Section 3. Complaint and investigation process -- rulemaking.** (1) An individual
13 may report to the ~~office of the secretary of state~~ office of the commissioner of political practices or the case
14 management system established in [section 5] an alleged violation of election law under Title 13, chapter 35,
15 part 2, ~~or an alleged violation of Title 45, chapter 7, part 1, 2, or 4,~~ by an election official in the course of
16 administering an election. On receiving a complaint, the ~~office of the secretary of state~~ office of the
17 commissioner of political practices shall investigate the ~~report~~ complaint if the complaint contains alleged
18 violations under the authority of the commissioner of political practices pursuant to Title 13, chapter 35, part 2,
19 and refer the case pursuant to the process in ~~[section 3]~~ [section 4].

20 (2) An election official may report to the ~~office of the secretary of state~~ office of the commissioner
21 of political practices or the case management system established in [section 5] an alleged violation of election
22 law under Title 13, chapter 35, part 2, ~~or an alleged violation of Title 45, chapter 7, part 1, 2, or 4,~~ by an
23 individual during an election-related event or activity. On receiving a complaint, the ~~office of the secretary of~~
24 ~~state~~ office of the commissioner of political practices shall investigate the ~~report~~ complaint if the complaint
25 contains alleged violations under the authority of the commissioner of political practices pursuant to Title 13,
26 chapter 35, part 2, and refer the case pursuant to the process in ~~[section 3]~~ [section 4].

27 (3) An individual may report to the ~~office of the secretary of state~~ office of the commissioner of
28 political practices or the case management system established in [section 5] an alleged violation of election law

1 under Title 13, chapter 35, part 2, ~~or an alleged violation of Title 45, chapter 7, part 1, 2, or 4,~~ by an individual
 2 during an election-related event or activity. On receiving a complaint, the ~~office of the secretary of state~~ office of
 3 the commissioner of political practices shall investigate the ~~report~~ complaint if the complaint contains alleged
 4 violation under the authority of the commissioner of political practices pursuant to Title 13, chapter 35, part 2,
 5 and refer the case pursuant to the process in ~~[section 3]~~ [section 4].

6 (4) The ~~office of the secretary of state~~ office of the commissioner of political practices shall process
 7 and investigate complaints received ~~through the process~~ as provided in subsections (1) through (3). If the ~~office~~
 8 ~~of the secretary of state~~ office of the commissioner of political practices determines that there appears to be
 9 sufficient evidence to justify a civil or criminal prosecution, the ~~office of the secretary of state~~ office of the
 10 commissioner of political practices shall refer the case pursuant to the process in ~~[section 3]~~ [section 4] and
 11 work with the ~~assigned~~ department of justice prosecutor established in [section 1] or county attorney for the
 12 duration of the case.

13 (5) ~~— If the complaint filed under subsections (1) through (3) directly involves the secretary of state or~~
 14 ~~a member of the secretary of state's staff, the complaint must be sent to the prosecutor within the department of~~
 15 ~~justice established in [section 1]. The prosecutor shall process and investigate the complaint and then proceed~~
 16 ~~pursuant to [section 3] if the prosecutor determines that there appears to be sufficient evidence to justify a civil~~
 17 ~~or criminal prosecution.~~

18 (5) If, in the course of an investigation, the office of the commissioner of political practices believes
 19 that a violation of Title 45, chapter 7, parts 1 through 4, may have also occurred, the office of the commissioner
 20 of political practices shall notify the department of justice prosecutor established in [section 1] or the appropriate
 21 county attorney in accordance with the referral process in [section 4].

22 (6) The ~~secretary of state~~ commissioner of political practices shall adopt rules implementing the
 23 provisions of subsections (1) through ~~(4)~~ (5).

24
 25 **NEW SECTION. Section 4. Referral process -- prosecutions.** (1) If the ~~office of the secretary of~~
 26 ~~state~~ office of the commissioner of political practices determines pursuant to ~~[section 2]~~ [section 3] that there
 27 appears to be sufficient evidence to justify a civil or criminal prosecution, the ~~office of the secretary of state shall~~
 28 ~~notify the county attorney of the county in which the alleged violation occurred and transmit to the county~~

1 attorney office of the commissioner of political practices shall notify and consult with the county attorney in the
2 jurisdiction where the alleged violation occurred and transmit the matter to the county attorney or the
3 department of justice prosecutor established in [section 1] all information relevant to the alleged violation.

4 (2) (a) The county attorney ~~has 14 days~~ or the department of justice prosecutor shall immediately
5 review the notification and information provided from the office of the commissioner of political practices after
6 the notification to:

7 (i) review the case for the appropriate civil or criminal action; or

8 (ii) make a determination that no further action is appropriate and send notification to the ~~office of~~
9 ~~the secretary of state~~ office of the commissioner of political practices and the complainant and enter the
10 determination into the case management system established in [section 5].

11 (b) The county attorney may refer the case to the department of justice if, after review, the county
12 attorney determines that the case is too complicated or if the county attorney determines that there is a conflict
13 of interest. The county attorney shall transmit all information related to the case to the department of justice.

14 ~~(3) If the matter is referred to the department of justice, the prosecutor established in [section 1]~~
15 ~~has 14 days to:~~

16 ~~(a) review the case for the appropriate civil or criminal action; or~~

17 ~~(b) make a determination that no further action is appropriate and send notification to the office of~~
18 ~~the secretary of state and the complainant.~~

19 ~~(4)(3)~~ The office of the secretary of state office of the commissioner of political practices shall work
20 with the ~~assigned~~ department of justice prosecutor or county attorney for the duration of the case.

21 (4) If a prosecution is undertaken by the department of justice prosecutor or the commissioner of
22 political practices, all costs associated with the prosecution must be paid by the state, and all fines and
23 forfeitures imposed pursuant to a prosecution by the department of justice prosecutor or the commissioner of
24 political practices must be deposited in the state general fund.

25 (5) The department of justice prosecutor, county attorney, or commissioner of political practices
26 must have all powers consistent with the provisions of 13-37-125.

27 (6) The commissioner of political practices must have all authority and investigative powers
28 consistent with 13-37-111 through 13-37-116.

1 (7) Unless otherwise provided by law, an action may not be brought under this chapter more than
2 1 year after the occurrence of the facts that give rise to the action.

3
4 **NEW SECTION. Section 5. Case management system -- rulemaking.** (1) The commissioner of
5 political practices, in consultation with the secretary of state and the department of justice, shall establish a
6 case management system that allows for the filing and processing of complaints pursuant to [sections 3 and 4].

7 (2) The commissioner of political practices shall adopt rules to implement subsection (1).
8

9 **NEW SECTION. Section 6. Annual report to state administration and veterans' affairs interim**
10 **committee required.** (1) By September 1 of each year, the ~~office of the secretary of state~~ office of the
11 commissioner of political practices and the department of justice shall prepare and present a report to the state
12 administration and veterans' affairs interim committee in accordance with 5-11-210.

13 (2) The report must be presented to the committee, be submitted in writing, and must include:

- 14 (a) the number of complaints received;
 - 15 (b) the number of complaints investigated;
 - 16 (c) the number of complaints not investigated and the reason why they were not investigated;
 - 17 (d) the number of prosecutions resulting from complaints and investigations; and
 - 18 (e) the outcomes of the prosecutions.
- 19

20 **NEW SECTION. Section 7. Judicial and local officials.** (1) (a) At least one district court of the state
21 shall remain open on election day to receive and review emergency petitions brought by the department of
22 justice prosecutor established in [section 1], a county attorney, or the commissioner of political practices.

23 (b) The district court must have at least one judge with the appropriate level of staff to receive and
24 review petitions, hear arguments, and issue orders as appropriate.

25 (c) The district court must have both subject matter and personal jurisdiction on election day.

26 (2) (a) Local government officials and employees with duties or information pertaining to their
27 duties or the election must be available to the commissioner and the department of justice prosecutor or county
28 attorney and shall assist with investigations and prosecutions as requested.

1 (b) A refusal to assist with investigations or prosecutions is a violation of 13-35-204.

2

3 **Section 8.** Section 13-35-203, MCA, is amended to read:

4 **"13-35-203. Interference with officials.** A person who, ~~in any manner,~~ interferes with the officers
5 holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and
6 lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 45-7-302."

7

8 **Section 9.** Section 13-35-218, MCA, is amended to read:

9 **"13-35-218. Coercion or undue influence of voters.** (1) A person, directly or indirectly, individually
10 or through any other person, in order to induce or compel a person to vote or refrain from voting for any
11 candidate, the ticket of any political party, or any ballot issue before the people, may not:

12 (a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any
13 person; or

14 (b) inflict or threaten to inflict, individually or with any other person, any temporal or spiritual injury,
15 damage, harm, or loss upon or against any person.

16 (2) A person may not, by abduction, duress, or any fraudulent contrivance, impede or prevent the
17 free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give
18 or to refrain from giving the elector's vote at any election.

19 (3) A person may not, ~~in any manner,~~ interfere with a voter lawfully exercising the right to vote at
20 an election in order to prevent the election from being fairly held and lawfully conducted.

21 (4) A person on election day may not obstruct the doors or entries of any polling place or engage
22 in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner that in any
23 way interferes with the election process or obstructs the access of voters to or from the polling place."

24

25 **Section 10.** Section 13-35-221, MCA, is amended to read:

26 **"13-35-221. Improper nominations.** (1) A person may not pay or promise valuable consideration to
27 another, ~~in any manner or form,~~ for the purpose of inducing the other person to be or to refrain from or to cease
28 being a candidate, and a person may not solicit or receive any payment or promise from another for that

1 purpose.

2 (2) A person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in
3 subsection (1), may not:

4 (a) be nominated or refuse to be nominated as a candidate at an election;

5 (b) become, individually or in combination with any other person or persons, a candidate for the
6 purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the
7 office; or

8 (c) withdraw if the person has been nominated.

9 (3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining
10 the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person
11 on the ballot as a candidate for nomination to any office if the judge is convinced that:

12 (a) the person has sought the nomination or seeks to have the person's name presented to the
13 voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive;
14 and

15 (b) the person's candidacy for the nomination is not in good faith."
16

17 **Section 5. Section 13-37-111, MCA, is amended to read:**

18 ~~"13-37-111. Investigative powers and duties -- recusal. (1) Except as provided in [sections 1~~
19 ~~through 3] and this section, the commissioner is responsible for investigating all of the alleged violations of the~~
20 ~~election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is~~
21 ~~responsible for enforcing these election laws.~~

22 (2) ~~The commissioner may:~~

23 (a) ~~investigate all statements filed pursuant to the provisions of chapter 35 of this title or this~~
24 ~~chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement~~
25 ~~filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written~~
26 ~~complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of~~
27 ~~chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.~~

28 (b) ~~inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter~~

1 ~~35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is~~
2 ~~made during reasonable office hours; and~~

3 ~~(c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take~~
4 ~~evidence, and require the production of any books, papers, correspondence, memoranda, bank account~~
5 ~~statements of a political committee or candidate, or other records that are relevant or material for the purpose of~~
6 ~~conducting any investigation pursuant to the provisions of chapter 35 of this title or this chapter.~~

7 ~~(3) If the commissioner determines that considering a matter would give rise to the appearance of~~
8 ~~impropriety or a conflict of interest, the commissioner is recused from participating in the matter.~~

9 ~~(4) The commissioner is recused from participating in any decision in which the commissioner is~~
10 ~~accused of violating 13-37-108 or any other ethical standard.~~

11 ~~(5) (a) If a campaign finance or ethics complaint is filed in the office of the commissioner against~~
12 ~~the commissioner, a supervisor within the commissioner's office shall within 10 business days forward the~~
13 ~~complaint to the attorney general, who shall within 45 days appoint a deputy in the case of a finance complaint~~
14 ~~or a deputy and a hearings officer in the case of an ethics complaint to make a determination in the matter of~~
15 ~~the complaint. The attorney general shall, to the extent practicable, ensure that there is no conflict of interest in~~
16 ~~the appointment of the deputy or hearings officer or in the provision of any legal advice to the office of the~~
17 ~~commissioner.~~

18 ~~(b) A deputy appointed pursuant to this subsection must, in addition to complying with the~~
19 ~~requirements of subsection (6)(b), be an attorney licensed to practice law in Montana who is engaged in the~~
20 ~~private practice of law and who has liability insurance applicable to the purposes for which the deputy is~~
21 ~~appointed.~~

22 ~~(c) If a complaint is filed against the commissioner, another employee in the office of the~~
23 ~~commissioner may not provide the commissioner with any information or documents concerning a complaint~~
24 ~~against the commissioner beyond that information or those documents normally provided to persons in matters~~
25 ~~before the commissioner.~~

26 ~~(6) (a) If the commissioner is recused pursuant to this section, the commissioner shall, except as~~
27 ~~provided in subsection (5), appoint a deputy, subject to subsection (6)(b).~~

28 ~~(b) The deputy:~~

1 (i) ~~may not be an employee of the office of the commissioner;~~

2 (ii) ~~must have the same qualifications as specified for the commissioner in 13-37-107;~~

3 (iii) ~~with respect to only the specific matter from which the commissioner is recused, has the same~~
4 ~~authority, duties, and responsibilities as the commissioner would have absent the recusal; and~~

5 (iv) ~~may not exercise any powers of the office that are not specifically related to the matter for~~
6 ~~which the deputy is appointed.~~

7 (7) ~~(a) Except as provided in subsection (7)(b), the appointment of the deputy is effectuated by a~~
8 ~~contract between the commissioner and the deputy. A contract executed pursuant to this subsection (7) must~~
9 ~~specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date~~
10 ~~on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's~~
11 ~~appointment, powers, or duties.~~

12 (b) ~~If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is~~
13 ~~effectuated by a contract between the supervisor who forwarded the complaint to the attorney general and the~~
14 ~~deputy or the deputy and the hearings officer, but the contract is construed to be with the office of the~~
15 ~~commissioner."~~

16
17 **Section 6.** Section 13-37-124, MCA, is amended to read:

18 **"13-37-124. Consultation and cooperation with county attorney.** (1) ~~Whenever Except as~~
19 ~~provided in [sections 1 through 3], whenever the commissioner determines that there appears to be sufficient~~
20 ~~evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner~~
21 ~~shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to~~
22 ~~transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to~~
23 ~~initiate the appropriate civil or criminal action within 30 days after receiving notification of the alleged violation,~~
24 ~~the commissioner may then initiate the appropriate legal action.~~

25 (2) ~~A county attorney may, at any time prior to the expiration of the 30-day time period specified in~~
26 ~~subsection (1), waive the right to prosecute, and the waiver authorizes the commissioner to initiate the~~
27 ~~appropriate civil or criminal action.~~

28 (3) ~~The provisions of subsection (1) do not apply to a situation in which the alleged violation has~~

1 ~~been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly~~
2 ~~prosecute any alleged violation of chapter 35 of this title or this chapter.~~

3 ~~(4) If a prosecution is undertaken by the commissioner, all court costs associated with the~~
4 ~~prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a~~
5 ~~prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the~~
6 ~~state general fund."~~

7
8 NEW SECTION. Section 11. Appropriation. (1) There is appropriated \$120,000 from the general
9 fund to the ~~department of justice~~ office of the commissioner of political practices for each year of the biennium
10 beginning July 1, 2023. The appropriation must be used for the purposes of funding ~~the prosecutor established~~
11 ~~in [section 1] the contracted legal services established in [section 1] and the investigator established in [section~~
12 ~~2].~~

13 (2) There is appropriated \$50,000 from the general fund to the office of the commissioner of
14 political practices for the biennium beginning July 1, 2023, to develop and implement the case management
15 system required in [section 5].

16 (3) The legislature intends that the ~~appropriation in this section~~ appropriation in subsection (1) be
17 considered part of the ongoing base for the next legislative session.

18
19 NEW SECTION. Section 12. Codification instruction. (1) ~~[Section 1] is intended to be codified as~~
20 ~~an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section~~
21 ~~4].~~

22 (2) [Sections 2 through 4] [Sections 1 through 7] are intended to be codified as an integral part of
23 Title 13, chapter 35, part 1, and the provisions of Title 13, chapter 35, part 1, apply to ~~[sections 2 through 4]~~
24 [sections 1 through 7].

25
26 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2023.

27 - END -