

HOUSE BILL NO. 556

INTRODUCED BY R. OSMUNDSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE ENFORCEMENT OF ETHICS
5 AND CAMPAIGN PRACTICES LAWS BY THE COMMISSIONER OF POLITICAL PRACTICES; CREATING THE
6 ETHICS AND ELECTION CAMPAIGN PRACTICES VIOLATIONS REVIEW BOARD AND PRESCRIBING THE
7 DUTIES OF THE BOARD; ESTABLISHING A PRIVATE RIGHT OF ACTION AGAINST A PERSON ALLEGED
8 TO HAVE VIOLATED ETHICS OR CAMPAIGN PRACTICES LAWS; AMENDING SECTIONS 2-2-136,
9 13-37-101, 13-37-111, 13-37-115, AND 13-37-121, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

12
13 NEW SECTION. **Section 1. Ethics and election campaign practices violations review board --**

14 **duties.** (1) There is an ethics and election campaign practices violations review board.

15 (2) The board consists of four members appointed by the governor from one individual recommended
16 to the governor by each of the majority and minority leaders of the house of representatives and the senate. An
17 individual appointed by the governor may be removed by the governor only for those reasons provided in
18 13-37-102(2). If an individual is removed, the governor shall appoint a replacement from the same political party
19 as the individual removed. Members of the board serve the same term as the commissioner of political practices
20 pursuant to 13-37-103, except that the governor shall, by lot, stagger the terms of those members first appointed
21 to terms of 2 to 4 years. A vacancy is subject to the provisions of 13-37-104 except that an individual appointed
22 to the board need not be confirmed by the senate.

23 (3) A person who is currently serving in or running for election for a public office may not be appointed
24 to the board.

25 (4) The board shall elect a presiding officer and vice presiding officer and by vote determine its rules of
26 operation. The commission shall meet at the call of the presiding officer, who shall determine meeting times in
27 consultation with the commissioner and the secretary of state.

28 (5) Members of the board serve without compensation but must be paid expenses as provided in
29 2-18-501 through 2-18-503.

30 (6) The board is attached to the office of the secretary of state for administrative purposes only as

1 provided in 2-15-121.

2 (7) If it appears to the commissioner that an apparent violation of law within the jurisdiction of the
3 commissioner may not be resolved by the issuance of a single notice of violation or a single order and may
4 require resolution by the use of more than one administrative order or pursuant to the contested case procedure
5 under the Montana Administrative Procedure Act, the commissioner shall refer the matter to the board. The board
6 shall review the matter referred by the commissioner and determine pursuant to criteria adopted by the board by
7 rule which of the matters may proceed to a determination by the commissioner and which may not.

8 (8) If the board determines that a matter referred to the board by the commissioner may not be resolved
9 by administrative action by the commissioner, the person bringing the complaint may bring a civil action in the
10 district court of the county in which the plaintiff resides for the collection of those civil penalties as could be sought
11 by the commissioner. Any monetary penalties collected pursuant to this subsection must be treated as if the
12 penalty was collected by the commissioner.

13

14 **Section 2.** Section 2-2-136, MCA, is amended to read:

15 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
16 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
17 employee may file a complaint with the commissioner of political practices. The commissioner does not have
18 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The
19 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local
20 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to
21 2-2-144(6). The commissioner may request additional information from the complainant or the person who is the
22 subject of the complaint to make an initial determination of whether the complaint states a potential violation of
23 this part.

24 (b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of
25 this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint
26 states a potential violation of this part. If the issues presented in a complaint have been addressed and decided
27 in a prior decision and the commissioner determines that no additional factual development is necessary, the
28 commissioner may issue a summary decision without holding an informal contested case hearing on the
29 complaint.

30 (c) Except as provided in [section 1] and subsection (1)(b) of this section, if the commissioner determines

1 that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case
2 hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based
3 upon the record established before the commissioner.

4 (2) If the commissioner determines that a violation of this part has occurred, the commissioner may
5 impose an administrative penalty of not less than \$50 or more than \$1,000, and if the violation was committed
6 by a state employee, the commissioner may also recommend that the employing state agency discipline the
7 employee. The employing entity of a state employee may take disciplinary action against an employee for a
8 violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The
9 commissioner may assess the costs of the proceeding against the person bringing the charges if the
10 commissioner determines that a violation did not occur or against the officer or employee if the commissioner
11 determines that a violation did occur.

12 (3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of
13 this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

14 (4) Except for records made public in the course of a hearing held under subsection (1) and records that
15 are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the
16 commissioner in connection with an investigation or complaint are confidential documents and are not open for
17 public inspection. The complainant and the person who is the subject of the complaint shall maintain the
18 confidentiality of the complaint and any related documents released to the parties by the commissioner until the
19 commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing,
20 the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and
21 any related documents must be open for public inspection. The commissioner's decision issued after a hearing
22 is a public record open to inspection.

23 (5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm
24 that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects
25 and status of the case.

26 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
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28 **Section 3.** Section 13-37-101, MCA, is amended to read:

29 **"13-37-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
30 following definitions apply:

1 (1) "Board" means the ethics and election campaign practices violations review board established in
2 [section 1].

3 ~~(1)~~(2) "Commissioner" means the commissioner of political practices created by 13-37-102.

4 ~~(2)~~(3) "Public office" has the meaning provided in 13-1-101.

5 ~~(3)~~(4) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

6 ~~(4)~~(5) "Relative" means a family member who is within the second degree of consanguinity or affinity to
7 the commissioner."

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9 **Section 4.** Section 13-37-111, MCA, is amended to read:

10 **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240 and
11 [section 1], the commissioner is responsible for investigating all of the alleged violations of the election laws
12 contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for
13 enforcing these election laws.

14 (2) ~~The~~ Except as provided in [section 1], the commissioner may:

15 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and
16 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant
17 to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any
18 individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this
19 title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

20 (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter 35
21 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is made
22 during reasonable office hours; and

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

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

29 (4) (a) If the commissioner is recused pursuant to this section, the commissioner shall appoint a deputy,
30 subject to subsection (4)(b).

- 1 (b) The deputy:
2 (i) may not be an employee of the office of the commissioner;
3 (ii) must have the same qualifications as specified for the commissioner in 13-37-107;
4 (iii) with respect to only the specific matter from which the commissioner is recused, has the same
5 authority, duties, and responsibilities as the commissioner would have absent the recusal; and
6 (iv) may not exercise any powers of the office that are not specifically related to the matter for which the
7 deputy is appointed.

8 (5) The appointment of the deputy is effectuated by a contract between the commissioner and the
9 deputy. The contract must specify the deputy's term of appointment, which must be temporary, the matter
10 assigned to the deputy, the date on which the matter assigned must be concluded by the deputy, and any other
11 items relevant to the deputy's appointment, powers, or duties."

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13 **Section 5.** Section 13-37-115, MCA, is amended to read:

14 "**13-37-115. Orders of noncompliance.** ~~The~~ Except as provided in [section 1], the commissioner may
15 issue orders of noncompliance as prescribed by 13-37-121."

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17 **Section 6.** Section 13-37-121, MCA, is amended to read:

18 "**13-37-121. Inspection of statements and reports -- issuance of orders of noncompliance.** (1) Each
19 statement and report filed with the commissioner during an election or within 60 days after the election must be
20 inspected within 20 days after the statement or report is filed. Intermediate Saturdays, Sundays, and holidays
21 must be excluded in the computation of time under this section. If a person has not satisfied the provisions of this
22 chapter, the commissioner shall immediately notify the person of the noncompliance. Notification by the
23 commissioner may be accomplished by written or electronic communication or by telephone. If the person fails
24 to comply after the notification, the commissioner shall issue an order of noncompliance as provided in this
25 section.

26 (2) ~~An~~ Except as provided in [section 1], an order of noncompliance may be issued when:

27 (a) upon examination of the official ballot, it appears that the person has failed to file a statement or
28 report as required by this chapter or that a statement or report filed by a person does not conform to law; or

29 (b) it is determined that a statement or report filed with the commissioner does not conform to the
30 requirements of this chapter or that a person has failed to file a statement or report required by law.

1 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,
2 a candidate or political committee shall submit the necessary information within 5 days after receiving the order
3 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate
4 county attorney or the commissioner may initiate a civil or criminal action pursuant to the procedures outlined in
5 13-37-124 and 13-37-125.

6 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),
7 a candidate or political committee shall submit the necessary information within 10 days after receiving the order
8 of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate
9 county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined
10 in 13-37-124 and 13-37-125.

11 (5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in
12 this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to
13 initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."
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15 NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an
16 integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [section 1].
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18 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured,
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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21 NEW SECTION. Section 9. Applicability. [This act] applies to complaints of violations of law brought
22 to the commissioner of political practices for the first time on or after October 1, 2011.
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