

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; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 13-37-111 AND 13-37-124, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Prosecutor -- duties. (1) There is a prosecutor licensed to practice law in the state within the department of justice.

(2) (a) The primary function of the prosecutor is to assist only with the investigations and prosecutions of alleged violations of election law received pursuant to [sections 2 and 3].

(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].

NEW SECTION. Section 2. Complaint and investigation process -- rulemaking. (1) An individual may report to the office of the secretary of state an alleged violation of election law under Title 13, chapter 35, part 2, or an alleged violation of Title 45, chapter 7, part 1, 2, or 4, by an election official in the course of administering an election. On receiving a complaint, the office of the secretary of state shall investigate the report and refer the case pursuant to the process in [section 3].

(2) An election official may report to the office of the secretary of state an alleged violation of election law under Title 13, chapter 35, part 2, or an alleged violation of Title 45, chapter 7, part 1, 2, or 4, by an individual during an election-related event or activity. On receiving a complaint, the office of the secretary of

1 state shall investigate the report and refer the case pursuant to the process in [section 3].

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

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

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

16 (6) The secretary of state shall adopt rules implementing the provisions of subsections (1) through  
17 (4).

18

19 **NEW SECTION. Section 3. Referral process -- prosecutions.** (1) If the office of the secretary of  
20 state determines pursuant to [section 2] that there appears to be sufficient evidence to justify a civil or criminal  
21 prosecution, the office of the secretary of state shall notify the county attorney of the county in which the alleged  
22 violation occurred and transmit to the county attorney all information relevant to the alleged violation.

23 (2) (a) The county attorney has 14 days after the notification to:

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

25 (ii) make a determination that no further action is appropriate and send notification to the office of  
26 the secretary of state and the complainant.

27 (b) The county attorney may refer the case to the department of justice if, after review, the county  
28 attorney determines that the case is too complicated or if the county attorney determines that there is a conflict

1 of interest. The county attorney shall transmit all information related to the case to the department of justice.

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

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

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

7 (4) The office of the secretary of state shall work with the assigned prosecutor for the duration of  
8 the case.

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10 **NEW SECTION. Section 4. Annual report to state administration and veterans' affairs interim**  
11 **committee required.** (1) By September 1 of each year, the office of the secretary of state and the department  
12 of justice shall prepare and present a report to the state administration and veterans' affairs interim committee  
13 in accordance with 5-11-210.

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

15 (a) the number of complaints received;

16 (b) the number of complaints investigated;

17 (c) the number of complaints not investigated and the reason why they were not investigated;

18 (d) the number of prosecutions resulting from complaints and investigations; and

19 (e) the outcomes of the prosecutions.

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

22 **"13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in [sections 1  
23 through 3] and this section, the commissioner is responsible for investigating all of the alleged violations of the  
24 election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is  
25 responsible for enforcing these election laws.

26 (2) The commissioner may:

27 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this  
28 chapter and shall investigate alleged failures to file any statement or the alleged falsification of any statement

1 filed pursuant to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written  
2 complaint by any individual, the commissioner shall investigate any other alleged violation of the provisions of  
3 chapter 35 of this title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

4 (b) inspect any records, accounts, or books that must be kept pursuant to the provisions of chapter  
5 35 of this title or this chapter that are held by any political committee or candidate, as long as the inspection is  
6 made during reasonable office hours; and

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

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

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

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

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

26 (c) If a complaint is filed against the commissioner, another employee in the office of the  
27 commissioner may not provide the commissioner with any information or documents concerning a complaint  
28 against the commissioner beyond that information or those documents normally provided to persons in matters

1 before the commissioner.

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

4 (b) The deputy:

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

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

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

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

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

16 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is  
17 effectuated by a contract between the supervisor who forwarded the complaint to the attorney general and the  
18 deputy or the deputy and the hearings officer, but the contract is construed to be with the office of the  
19 commissioner."  
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21 **Section 6.** Section 13-37-124, MCA, is amended to read:

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

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

4           (3)     The provisions of subsection (1) do not apply to a situation in which the alleged violation has  
 5 been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly  
 6 prosecute any alleged violation of chapter 35 of this title or this chapter.

7           (4)     If a prosecution is undertaken by the commissioner, all court costs associated with the  
 8 prosecution must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a  
 9 prosecution by the commissioner, except those paid to or imposed by a justice's court, must be deposited in the  
 10 state general fund."  
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12           NEW SECTION. **Section 7. Appropriation.** There is appropriated \$120,000 from the general fund to  
 13 the department of justice for each year of the biennium beginning July 1, 2023. The appropriation must be used  
 14 for the purposes of funding the prosecutor established in [section 1]. The legislature intends that the  
 15 appropriation in this section be considered part of the ongoing base for the next legislative session.  
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17           NEW SECTION. **Section 8. Codification instruction.** (1) [Section 1] is intended to be codified as an  
 18 integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

19           (2)     [Sections 2 through 4] are intended to be codified as an integral part of Title 13, chapter 35,  
 20 part 1, and the provisions of Title 13, chapter 35, part 1, apply to [sections 2 through 4].  
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22           NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2023.  
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