

1 \*\*\*\* BILL NO. \*\*\*\*

2 INTRODUCED BY \*\*\*\*

3 BY REQUEST OF THE \*\*\*\*

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ELECTION SECURITY AND INTEGRITY STAFF  
6 AND COMPLAINT PROCESS IN THE DEPARTMENT OF JUSTICE; PROVIDING DUTIES; PROVIDING AN  
7 APPROPRIATION; AMENDING SECTIONS 13-37-111 AND 13-37-124, MCA; AND PROVIDING AN  
8 EFFECTIVE DATE."

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

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12 NEW SECTION. **Section 1. Election security and integrity staff -- duties.** (1) There are two  
13 election security and integrity staff positions within the department of justice. The staff positions shall  
14 investigate complaints as provided in [section 2] and prosecute cases as provided in [section 3]. The staff  
15 positions are under the supervision of the attorney general. The staff positions are:

16 (a) one investigator qualified by education, training, experience, and high professional competence  
17 in investigative procedures who shall investigate complaints as provided in [section 2]; and

18 (b) one attorney licensed to practice law in Montana who shall investigate complaints as provided  
19 in [section 2] and prosecute violations of election law as provided in [section 3].

20 (2) The primary focus of the investigator and attorney in subsection (1) must be the investigation  
21 and prosecution of cases concerning violations provided in [section 2]. If the investigator and attorney have  
22 additional capacity, they may be assigned to other work within the department of justice with the understanding  
23 that they must return to their election-related work if a new complaint is submitted.

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25 NEW SECTION. **Section 2. Complaint process.** (1) An individual may report to the staff established  
26 in [section 1] an alleged violation of election law under Title 13, chapter 35, part 2, or an alleged violation of  
27 Title 45, chapter 7, parts 1, 2, and 4, by an election official in the course of administering an election. Upon  
28 receiving a complaint, the staff shall investigate the report and proceed pursuant to [section 3] as applicable.

1 (2) An election official may report to the staff established in [section 1] an alleged violation of  
2 election law under Title 13, chapter 35, part 2, or an alleged violation of Title 45, chapter 7, parts 1, 2, and 4, by  
3 an individual during an election-related event or activity. Upon receiving a complaint, the staff shall investigate  
4 the report and proceed pursuant to [section 3] as applicable.

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6 **NEW SECTION. Section 3. Prosecutions.** In addition to the powers provided to the commissioner of  
7 political practices in Title 13, chapter 37, part 1, the department of justice's election security and integrity  
8 attorney established in [section 1] may also prosecute any criminal or civil action arising out of an alleged  
9 violation under [section 2] or pursuant to 13-37-128. All prosecutions must be brought in the state district court  
10 for the county in which a violation has occurred.

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

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

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

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

26 (c) administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence,  
27 and require the production of any books, papers, correspondence, memoranda, bank account statements of a  
28 political committee or candidate, or other records that are relevant or material for the purpose of conducting any

1 investigation pursuant to the provisions of chapter 35 of this title or this chapter.

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

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

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

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

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

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

23 (b) The deputy:

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

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

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

28 (iv) may not exercise any powers of the office that are not specifically related to the matter for which

1 the deputy is appointed.

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

7 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by  
8 a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the  
9 deputy and the hearings officer, but the contract is construed to be with the office of the commissioner."  
10

11 **Section 5.** Section 13-37-124, MCA, is amended to read:

12 **"13-37-124. Consultation and cooperation with county attorney and department of justice.** (1)  
13 Whenever the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal  
14 prosecution under chapter 35 of this title or this chapter, the commissioner shall notify the county attorney of the  
15 county in which the alleged violation occurred and the department of justice's election security and integrity staff  
16 and shall arrange to transmit to the county attorney or election security and integrity staff all information  
17 relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action  
18 within 30 days after receiving notification of the alleged violation, the commissioner or election security and  
19 integrity staff may then initiate the appropriate legal action.

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

23 (3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been  
24 committed by the county attorney of a county. In this instance, the commissioner is authorized to directly  
25 prosecute any alleged violation of chapter 35 of this title or this chapter, or request that the election security and  
26 integrity staff prosecute the case.

27 (4) If a prosecution is undertaken by the commissioner or election security and integrity staff, all court  
28 costs associated with the prosecution must be paid by the state of Montana, and all fines and forfeitures

1 imposed pursuant to a prosecution by the commissioner or department of justice, except those paid to or  
2 imposed by a justice's court, must be deposited in the state general fund."

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4 **NEW SECTION. Section 6. Appropriation.** There is appropriated \$175,000 from the general fund to  
5 the department of justice for each year of the biennium beginning July 1, 2023. The appropriation must be used  
6 for the purposes of funding the election security and integrity staff positions required under [section 1]. The  
7 legislature intends that the appropriation in this section be considered part of the ongoing base for the next  
8 legislative session.

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10 **NEW SECTION. Section 7. Codification instruction.** (1) [Section 1] is intended to be codified as  
11 an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section  
12 1].

13 (2) [Sections 2 through 3] are intended to be codified as an integral part of Title 44, chapter 4, and the  
14 provisions of Title 44, chapter 4, apply to [sections 2 through 3].

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16 **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2023.

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