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**** BILL NO. ****

MARCH 22ND DRAFT

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ELECTION SECURITY AND INTEGRITY COMPLAINT PROCESS IN THE SECRETARY OF STATE'S OFFICE AND THE DEPARTMENT OF JUSTICE; PROVIDING DUTIES; ESTABLISHING REPORT 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 Montana, within the department of justice.

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

(b) If the prosecutor has additional capacity, they may be assigned to other work within the department of justice with the understanding that they must return to their election-related work if a new election case or complaint is referred to them by the secretary of state's office.

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

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

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

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

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

14 (6) The secretary of state shall adopt rules implementing the provisions of subsections (1) to (4).
15

16 **NEW SECTION. Section 3. Referral process -- prosecutions.** (1) If the secretary of state's office
17 determines that there appears to be sufficient evidence to justify a civil or criminal prosecution, the secretary of
18 state's office shall notify the county attorney of the county in which the alleged violation occurred and transmit to
19 the county attorney all information relevant to the alleged violation.

20 (2) (a) The county attorney has 14 days after the notification to accept and review the case for the
21 appropriate civil or criminal action.

22 (b) If the county attorney declines to accept and review the case for the appropriate civil or criminal
23 action within 14 days, the matter must be referred to the department of justice.

24 (c) If the matter is referred to the department of justice, the prosecutor established in [section 1]
25 has 14 days to accept and review the case for the appropriate civil or criminal action.

26 (3) The secretary of state's office shall work with the assigned prosecutor for the duration of the
27 case.
28

1 **NEW SECTION. Section 4. Annual report to state administration and veterans' affairs interim**

2 **committee required.** (1) By September 1 of each year, the secretary of state's office and the department of
3 justice shall prepare and present a report to the state administration and veterans' affairs interim committee in
4 accordance with 5-11-210.

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

6 (a) the number of complaints received;

7 (b) the number of complaints investigated;

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

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

10 (e) the outcomes of the prosecutions.

11

12 **Section 5.** 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 6.** Section 13-37-124, MCA, is amended to read:

12 **"13-37-124. Consultation and cooperation with county attorney.** (1) ~~Whenever~~ Except as
13 provided in [sections 1-3], whenever the commissioner determines that there appears to be sufficient evidence
14 to justify a civil or criminal prosecution under chapter 35 of this title or this chapter, the commissioner shall
15 notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to
16 the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the
17 appropriate civil or criminal action within 30 days after receiving notification of the alleged violation, the
18 commissioner may then initiate the appropriate legal action.

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

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

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

