

HOUSE BILL NO. 623

INTRODUCED BY R. OSMUNDSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE OFFICE OF POLITICAL PRACTICES;
5 CREATING A CAMPAIGN PRACTICES AND ETHICS REVIEW BOARD; PRESCRIBING THE DUTIES OF THE
6 BOARD; ESTABLISHING A PRIVATE RIGHT OF ACTION AGAINST A PERSON ALLEGED TO HAVE
7 VIOLATED ETHICS OR CAMPAIGN PRACTICES LAWS; AMENDING SECTIONS 2-2-136, 13-37-101,
8 13-37-111, 13-37-121, 13-37-124, AND 13-37-128, MCA; PROVIDING AN APPROPRIATION; AND PROVIDING
9 AN EFFECTIVE DATE AND 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. Campaign practices and ethics review board -- duties.** (1) There is a
14 campaign practices and ethics review board.

15 (2) The board consists of four members appointed by the governor as provided in subsection (3). An
16 individual appointed by the governor may be removed by the governor only for those reasons provided in
17 13-37-102(2). If an individual is removed, the governor shall appoint a replacement as provided in subsection
18 (3)(b). Members of the board serve terms of 2 years.

19 (3) (a) By June 1 of every odd-numbered year, the majority and minority leaders of the house of
20 representatives and the senate shall each nominate three individuals for appointment to the board. Within 30 days
21 of receiving the nominations, the governor shall select one individual from each list of nominations.

22 (b) A vacancy on the board must be filled in the same manner as the original appointment. The board
23 may not take action on matters referred to the board while there is a vacancy on the board.

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

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

30 (6) (a) Members of the board serve without compensation but must be paid expenses as provided in

1 2-18-501 through 2-18-503.

2 (b) The board may provide compensation to a mediator appointed under subsection (12). The
3 compensation must be set by the board in its rules of operation.

4 (7) The board is attached to the office of the secretary of state for administrative purposes only as
5 provided in 2-15-121.

6 (8) If an alleged violation of an ethics law within the jurisdiction of the commissioner, as provided in
7 2-2-136, is not resolved by the issuance of a single administrative notice of violation or a single order that is not
8 contested or appealed, the commissioner shall refer the matter to the board.

9 (9) After the commissioner completes an investigation and recommends that an alleged election or
10 campaign practices violation of chapter 35 of this title or this chapter occurred and before the commissioner
11 notifies a county attorney pursuant to 13-37-124, the commissioner shall present the findings of the investigation
12 to the board.

13 (10) Within 15 business days of receiving a case from the commissioner, the board shall determine
14 pursuant to criteria adopted by the board in rule:

15 (a) whether it appears that resolution of an ethics case under the Montana Administrative Procedure Act
16 is appropriate; or

17 (b) whether there appears to be sufficient evidence to justify a civil or criminal prosecution of an election
18 or campaign practices violation under chapter 35 of this title or this chapter.

19 (11) If the board determines by majority vote that a case may proceed, the commissioner shall:

20 (a) pursue resolution of an ethics case under the Montana Administrative Procedure Act; or

21 (b) for an election or campaign practices case, notify the proper county attorney and follow the process
22 established in 13-37-124.

23 (12) If the board cannot reach a decision by majority vote or if the commissioner does not pursue action,
24 the board shall appoint a mediator from a list maintained by the board according to its rules of operation. If the
25 board still cannot reach a decision by majority vote within 15 business days after appointing a mediator, the
26 commissioner may not take further action on a case.

27 (13) If the board determines by a majority vote that the commissioner may not pursue a final resolution
28 in an ethics, election, or campaign practices case or if the board is unable to reach a decision on the case, the
29 person bringing the complaint may bring a civil action as provided in 13-37-128(3).

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

2 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
3 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
4 employee may file a complaint with the commissioner of political practices. The commissioner does not have
5 jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The
6 commissioner also has jurisdiction over complaints against a county attorney that are referred by a local
7 government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to
8 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the
9 commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5). The commissioner
10 may request additional information from the complainant or the person who is the subject of the complaint to
11 make an initial determination of whether the complaint states a potential violation of this part.

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

18 (c) Except as provided in [section 1] and subsection (1)(b) of this section, if the commissioner determines
19 that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case
20 hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based
21 upon the record established before the commissioner.

22 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
23 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
24 \$1,000.

25 (b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may
26 impose an administrative penalty of not less than \$500 or more than \$10,000.

27 (c) If the violation was committed by a state employee, the commissioner may also recommend that the
28 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
29 action against an employee for a violation of this part, regardless of whether the commissioner makes a
30 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person

1 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
 2 employee if the commissioner determines that a violation did occur.

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

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

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

17 (6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part."
 18

19 **Section 3.** Section 13-37-101, MCA, is amended to read:

20 "**13-37-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the
 21 following definitions apply:

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

23 ~~(1)~~(2) "Commissioner" means the commissioner of political practices created by 13-37-102.

24 ~~(2)~~(3) "Public office" has the meaning provided in 13-1-101.

25 ~~(3)~~(4) "Recusal" means disqualification from a matter by reason of prejudice or conflict of interest.

26 ~~(4)~~(5) "Relative" means a family member who is within the second degree of consanguinity or affinity to
 27 the commissioner."
 28

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

30 "**13-37-111. Investigative powers and duties -- recusal.** (1) Except as provided in 13-35-240, [section

1 1, and this section, the commissioner is responsible for investigating all of the alleged violations of the election
2 laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible
3 for enforcing these election laws.

4 (2) The commissioner may:

5 (a) investigate all statements filed pursuant to the provisions of chapter 35 of this title or this chapter and
6 shall investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant
7 to the provisions of chapter 35 of this title or this chapter. Upon the submission of a written complaint by any
8 individual, the commissioner shall investigate any other alleged violation of the provisions of chapter 35 of this
9 title, this chapter, or any rule adopted pursuant to chapter 35 of this title or this chapter.

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

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

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

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

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

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

30 (c) If a complaint is filed against the commissioner, another employee in the office of the commissioner

1 may not provide the commissioner with any information or documents concerning a complaint against the
2 commissioner beyond that information or those documents normally provided to persons in matters before the
3 commissioner.

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

6 (b) The deputy:

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

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

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

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

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

18 (b) If a deputy is appointed pursuant to subsection (5), the appointment of the deputy is effectuated by
19 a contract between the supervisor who forwarded the complaint to the attorney general and the deputy or the
20 deputy and the hearings officer, but the contract is construed to be with the office of the commissioner."
21

22 **Section 5.** Section 13-37-121, MCA, is amended to read:

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

1 (2) An order of noncompliance may be issued when:

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

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

6 (3) If an order of noncompliance is issued during a campaign period or within 60 days after an election,
7 a candidate or political committee shall submit the necessary information within 5 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 may initiate a civil or criminal action pursuant to the procedures outlined in~~
10 ~~13-37-124 and 13-37-125~~ the commissioner shall refer the matter to the board as provided in [section 1].

11 (4) If an order of noncompliance is issued during any period other than that described in subsection (3),
12 a candidate or political committee shall submit the necessary information within 10 days after receiving the order
13 of noncompliance. Upon a failure to submit the required information within the time specified, ~~the appropriate~~
14 ~~county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined~~
15 ~~in 13-37-124 and 13-37-125~~ the commissioner shall refer the matter to the board as provided in [section 1].

16 (5) After a complaint is filed with the commissioner pursuant to 13-37-111, the procedure described in
17 this section regarding the provision of notice and issuance of orders of noncompliance is not a prerequisite to
18 initiation of any other administrative or judicial action authorized under chapter 35 of this title or this chapter."
19

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

21 **"13-37-124. Consultation and cooperation with county attorney.** (1) Except as provided in 13-35-240
22 ~~and if authorized by the board, whenever the commissioner determines that there appears to be sufficient~~
23 ~~evidence to justify a civil or criminal prosecution under chapter 35 of this title or this chapter,~~ the commissioner
24 shall notify the county attorney of the county in which ~~the~~ an alleged violation of chapter 35 of this title or this
25 chapter occurred and shall arrange to transmit to the county attorney all information relevant to the alleged
26 violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after receiving
27 notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

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

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

4 (4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution
 5 must be paid by the state of Montana, and all fines and forfeitures imposed pursuant to a prosecution by the
 6 commissioner, except those paid to or imposed by a justice's court, must be deposited in the state general fund."
 7

8 **Section 7.** Section 13-37-128, MCA, is amended to read:

9 **"13-37-128. Cause of action created.** (1) A person who intentionally or negligently violates any of the
 10 reporting provisions of this chapter, a provision of 13-35-225, or a provision of Title 13, chapter 35, part 4, is liable
 11 in a civil action brought by the commissioner or a county attorney pursuant to the provisions outlined in 13-37-124
 12 and 13-37-125 for an amount up to \$500 or three times the amount of the unlawful contributions or expenditures,
 13 whichever is greater.

14 (2) A person who makes or receives a contribution or expenditure in violation of 13-35-227, 13-35-228,
 15 or this chapter or who violates 13-35-226 is liable in a civil action brought by the commissioner or a county
 16 attorney pursuant to the provisions outlined in 13-37-124 and 13-37-125 for an amount up to \$500 or three times
 17 the amount of the unlawful contribution or expenditure, whichever is greater.

18 (3) If the board determines that the commissioner may not pursue a final resolution of an election or
 19 campaign practice case or if the board is unable to reach a decision on the case, the person who filed the
 20 complaint may bring a civil action in the district court of the county in which the plaintiff resides for the collection
 21 of those civil penalties as could be sought by the county attorney or the commissioner."
 22

23 NEW SECTION. Section 8. Appropriation. There is appropriated \$9,000 from the general fund to the
 24 commissioner of political practices for the biennium beginning July 1, 2015. The appropriation must be used for
 25 the operation and expenses of the campaign practices and ethics review board. Unspent funds must revert to
 26 the general fund.
 27

28 NEW SECTION. Section 9. Transition. (1) Within 15 days of [the effective date of this act], the majority
 29 and minority leaders of each house of the legislature shall each submit lists of nominees to the governor as
 30 required in [section 1]. The governor shall appoint the board members within 15 days of receiving the lists.

