

1 HOUSE BILL NO. 539

2 INTRODUCED BY C. EDMUNDS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WHEN A PERSON MAY FILE CERTAIN ELECTIONS
5 OR ETHICS COMPLAINTS WITH THE COMMISSIONER OF POLITICAL PRACTICES; AMENDING SECTIONS
6 2-2-136 AND 13-37-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
7 DATE."

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

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11 **Section 1.** Section 2-2-136, MCA, is amended to read:
12 **"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint**
13 **involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state
14 employee may file a complaint with the commissioner of political practices if the person has standing as provided
15 in 13-37-111(6). The commissioner does not have jurisdiction for a complaint concerning a legislator if a
16 legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a
17 county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person
18 directly with the commissioner pursuant to 2-2-144(6). The commissioner may request additional information from
19 the complainant or the person who is the subject of the complaint to make an initial determination of whether the
20 complaint states a potential violation of this part.

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

27 (c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a
28 potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint
29 as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record
30 established before the commissioner.

1 (2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this
2 part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than
3 \$1,000.

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

6 (c) If the violation was committed by a state employee, the commissioner may also recommend that the
7 employing state agency discipline the employee. The employing entity of a state employee may take disciplinary
8 action against an employee for a violation of this part, regardless of whether the commissioner makes a
9 recommendation for discipline. The commissioner may assess the costs of the proceeding against the person
10 bringing the charges if the commissioner determines that a violation did not occur or against the officer or
11 employee if the commissioner 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 2.** Section 13-37-111, MCA, is amended to read:

29 **"13-37-111. Investigative powers and duties -- recusal -- standing of person alleging violations.**

30 (1) Except as provided in 13-35-240, the commissioner is responsible for investigating all of the alleged violations

1 of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys
2 is responsible for enforcing these election laws.

3 (2) The commissioner may:

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

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

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

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

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

20 (b) The deputy:

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

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

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

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

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

