

HOUSE BILL NO. 183

INTRODUCED BY K. DUDIK

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A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE COMMISSIONER OF POLITICAL PRACTICES TO DEPUTIZE EMPLOYEES OF THE OFFICE OF THE COMMISSIONER FOR MATTERS UNDER THE JURISDICTION OF THE COMMISSIONER INCLUDING CERTAIN MATTERS IN WHICH THE COMMISSIONER IS RECUSED; PROVIDING QUALIFICATIONS FOR DEPUTIZED EMPLOYEES; AND AMENDING SECTION 13-37-111, MCA."

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

**Section 1.** Section 13-37-111, MCA, is amended to read:

**"13-37-111. Investigative powers and duties -- recusal -- deputies.** (1) Except as provided in 13-35-240 and this section, the commissioner is responsible for investigating all of the alleged violations of the election laws contained in chapter 35 of this title or this chapter and in conjunction with the county attorneys is responsible for enforcing these election laws.

(2) The commissioner may:

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

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

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

(3) If the commissioner determines that considering a matter would give rise to the appearance of



1 impropriety or a conflict of interest, the commissioner is recused from participating in the matter.

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

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

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

13 ~~(c)(b)~~ If a complaint is filed against the commissioner, another employee in the office of the commissioner  
14 may not provide the commissioner with any information or documents concerning a complaint against the  
15 commissioner beyond that information or those documents normally provided to persons in matters before the  
16 commissioner.

17 (6) ~~(a)~~ If the commissioner is recused pursuant to ~~this section~~ subsection (3) or (4), the commissioner  
18 shall, ~~except as provided in subsection (5),~~ appoint a deputy, ~~subject to subsection (6)(b).~~

19 (7) Except as provided in subsection (5), the commissioner may appoint an employee from the office of  
20 the commissioner as a deputy for any matter under the jurisdiction of the commissioner. The commissioner may  
21 appoint an employee pursuant to this subsection for an appointment required under subsection (6).

22 ~~(b)(8)~~ The A deputy commissioner:

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

24 ~~(ii)(a)~~ must have the same qualifications as specified for the commissioner in 13-37-107 and, if applicable:

25 (i) if appointed pursuant to subsection (5), must be an attorney licensed to practice law in Montana  
26 engaged in the private practice of law. The attorney must have liability insurance applicable to the purposes for  
27 which the deputy is appointed.

28 (ii) if appointed pursuant to subsection (7), must be an attorney licensed to practice law in Montana;

29 ~~(iii)(b)~~ with respect to only the specific matter from which the for which the deputy commissioner is  
30 ~~recused~~ appointed, has the same authority, duties, and responsibilities as the commissioner had or would have

1 ~~had~~ absent the commissioner's recusal; and

2 ~~(iv)(c)~~ may not exercise any powers of the office that are not specifically related to the matter for which  
3 the deputy is appointed.

4 ~~(7)(9)~~ (a) Except as provided in subsection ~~(7)(b)~~ (9)(b), the appointment of ~~the~~ a deputy is effectuated  
5 by a contract between the commissioner and the deputy. ~~A contract executed pursuant to this subsection (7) must~~  
6 ~~specify the deputy's term of appointment, which must be temporary, the matter assigned to the deputy, the date~~  
7 ~~on which the matter assigned must be concluded by the deputy, and any other items relevant to the deputy's~~  
8 ~~appointment, powers, or duties.~~

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

12 (c) A contract executed pursuant to this subsection (9) must specify the deputy's term of appointment,  
13 which must be temporary, the matter assigned to the deputy, the date on which the matter assigned must be  
14 concluded by the deputy, and any other items relevant to the deputy's appointment, powers, or duties."

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