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As of: September 5, 2012 (2:18pm)

LCsa01

**** Bill No. ****

Introduced By *****

By Request of the State Administration and Veterans' Affairs

Interim Committee

A Bill for an Act entitled: "An Act regarding ethics violations in the office of the commissioner of political practices; prohibiting the commissioner from engaging in private business during the office hours of the commissioner; providing for the resolution of charges of ethics violations by the commissioner of political practices; amending sections 2-2-136, 13-37-108, and 13-37-111, MCA."

Be it enacted by the Legislature of the State of Montana:

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

"2-2-136. Enforcement for state officers, legislators, and state employees -- referral of complaint involving county attorney. (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed

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against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

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

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

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

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

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

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

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the

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commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

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

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

{*Internal References to 2-2-136:*
2-2-103x 2-2-103x 2-2-144x 2-2-144x }

Section 2. Section 13-37-108, MCA, is amended to read:

"13-37-108. Commissioner of political practices -- restrictions. During the commissioner's term of office, the commissioner may not knowingly, as defined in 45-2-101:

(1) hold another position of public trust or engage in any other occupation or business if the position of public trust or the other occupation or business interferes with or is inconsistent with the commissioner executing the duties of the commissioner's office;

(2) engage in any other occupation or business during the business hours of the commissioner's office unless the commissioner is in a leave status from the office;

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~~(2)~~(3) participate in any political activity or in a political campaign;

~~(3)~~(4) make a contribution to a candidate or political committee or for or against a ballot issue or engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;

~~(4)~~(5) attend an event that is held for the purpose of raising funds for or against a candidate, political committee, or ballot issue;

~~(5)~~(6) participate in a matter pertaining to the commissioner's office that:

(a) is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest pursuant to Title 2, chapter 2; or

(b) involves a relative of the commissioner."

{*Internal References to 13-37-108: None.*}

Section 3. Section 13-37-111, MCA, is amended to read:

"13-37-111. Investigative powers and duties -- recusal. (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

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

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

(5)(a) If a campaign finance or ethics complaint is filed

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in the office of the commissioner against the commissioner, a supervisor within the commissioner's office shall within 10 business days forward the complaint to the attorney general who shall within 45 days appoint a deputy in the case of a finance complaint or a deputy and a hearing officer in the case of an ethics complaint to make a determination in the matter of the complaint. The attorney general shall take care that there is no conflict of interests in the appointment of the deputy or hearing officer and the provision of any legal advice to the office of the commissioner

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

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

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

(b) The deputy:

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

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

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

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

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

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

{*Internal References to 13-37-111:*
13-37-121x }

- END -

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