

SENATE FILE NO. SF0096

Special investigator.

Sponsored by: Senator(s) Rothfuss, Coe, Emerich and Landen
and Representative(s) Berger, Connolly, Gay,
Krone, Madden, Miller, Petroff, Throne,
Zwonitzer, Dn. and Zwonitzer, Dv.

A BILL

for

1 AN ACT relating to the administration of government;
2 creating the office of special investigator; providing for
3 appointment of the special investigator by the Wyoming
4 supreme court; providing duties; providing for assistance
5 by other state agencies as specified; providing for the
6 hiring of deputy special investigators and other
7 assistants; providing for the appointment of an alternative
8 special investigator; providing for removal from office as
9 specified; creating an account; providing for a
10 distribution from severance taxes to the account as
11 specified; providing rulemaking authority; and providing
12 for an effective date.

13

14 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2 **Section 1.** W.S. 9-20-101 through 9-20-107 are created
3 to read:

4

5

ARTICLE 20

6

OFFICE OF SPECIAL INVESTIGATOR

7

8

9-20-101. Definitions.

9

10 (a) As used in this act:

11

12 (i) "Member of the judiciary" means a justice of
13 the Wyoming supreme court, a judge of a state district
14 court or a judge of a state circuit court;

15

16 (ii) "Member of the legislature" means a member
17 of the Wyoming senate or house of representatives;

18

19 (iii) "Official" means individuals holding the
20 offices specified in W.S. 9-20-103(a);

21

22 (iv) "Official legislative capacity" or
23 "official legislative function" means an act or duty that

1 is immune from civil or criminal prosecution or an act or
2 duty for which a legislator shall not be questioned in any
3 place outside of the house in which the legislator serves
4 as provided in article I, section 6, clause 1 of the United
5 States constitution or article 3, section 16 of the
6 constitution of the state of Wyoming when performed by a
7 legislator, legislative staff or other qualified person;

8

9 (v) "Official misconduct" means a crime against
10 public administration as defined in W.S. 6-5-101 through
11 6-5-118, a criminal violation of the Ethics and Disclosure
12 Act as provided in W.S. 9-13-109(a) and other acts which
13 demean or lessen the office to which an official is elected
14 or appointed;

15

16 (vi) "Statewide elected official" means the
17 governor, secretary of state, state treasurer, state
18 auditor and superintendent of public instruction;

19

20 (vii) "This act" means W.S. 9-20-101 through
21 9-20-107.

22

1 **9-20-102. Creation of office of special investigator;**
2 **appointment; qualifications; rules and regulations.**

3

4 (a) There is created the office of special
5 investigator. The office shall be housed within, but
6 independent of, the office of the attorney general.

7

8 (b) The special investigator shall be appointed by
9 the Wyoming supreme court from a list of three (3) nominees
10 submitted by the judicial nominating commission.

11

12 (c) A person appointed special investigator shall:

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14 (i) Have been a practicing attorney for not less
15 than four (4) years;

16

17 (ii) Not currently serve in federal, state or
18 local government as an elected or appointed official or as
19 a full or part-time federal, state or local government
20 employee;

21

22 (iii) Be admitted to practice before the state
23 and federal courts in Wyoming;

1

2 (iv) Be a member in good standing of the Wyoming
3 state bar association; and

4

5 (v) Be a resident and elector of the state.

6

7 (d) A special investigator shall serve for a term of
8 four (4) years. A special investigator shall not serve for
9 more than two (2) consecutive terms.

10

11 (e) The special investigator, through the attorney
12 general's office, shall adopt rules and regulations as
13 necessary to effectuate the purposes of this act.

14

15 **9-20-103. Duties; action upon a complaint;**
16 **investigation of state official; confidentiality;**
17 **prosecution of state official.**

18

19 (a) Pursuant to the provisions of this article, the
20 special investigator is empowered to investigate credible
21 allegations of official misconduct against:

22

23 (i) The governor;

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(ii) The secretary of state;

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(iii) The state treasurer;

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(iv) The state auditor;

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(v) The superintendent of public instruction;

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(vi) The attorney general;

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(vii) A member of the judiciary; and

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(viii) A member of the legislature.

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(b) Upon receipt of a written complaint alleging official misconduct by an official subject to investigation and prosecution under this act, the special investigator shall determine whether the allegations in the complaint constitute a credible, prima facie showing of official misconduct by the named official. If the special investigator determines that the complaint does not constitute a credible, prima facie showing of official

1 misconduct, the special investigator shall summarily
2 dismiss the complaint. If the special investigator
3 summarily dismisses the complaint, the complainant and the
4 official who was the subject of the complaint shall be
5 notified of the special investigator's determination in
6 writing. Except as further provided herein, the complaint
7 and the written determination of the special investigator
8 under this subsection shall be considered confidential
9 documents which are not subject to disclosure under the
10 Wyoming Public Records Act. If, through no affirmative act
11 of the office of the special investigator, a complaint
12 lodged under this section becomes public, the special
13 investigator or the official against whom the complaint was
14 lodged, may release the special investigator's written
15 determination.

16

17 (c) If the special investigator determines that the
18 allegations in the complaint constitute a credible, prima
19 facie showing of official misconduct, the special
20 investigator shall:

21

1 (i) Provide the named official not less than
2 fifteen (15) calendar days to respond to the allegations in
3 the complaint in writing;

4

5 (ii) Provide the complainant with ten (10)
6 business days to reply to the official's response to the
7 allegations;

8

9 (iii) Review the response and reply, and any
10 other available evidence, and determine whether there is
11 probable cause to believe the official conducted official
12 misconduct. The special investigator shall provide notice
13 in writing to the official and complainant of his
14 determination under this section. A determination under
15 this section is not appealable by any person.

16

17 (d) If the special investigator finds probable cause
18 to believe that the official committed official misconduct
19 under subsection (c) of this section, the special
20 investigator shall initiate an investigation into the
21 complaint against the official. When conducting an
22 investigation under this subsection, neither the
23 complainant, the elected official against whom the

1 complaint is made or any other person shall have the right
2 to testify, present evidence or call or examine witnesses
3 unless specifically requested by the special investigator.
4

5 (e) At the conclusion of an investigation initiated
6 under this section, the special investigator shall release
7 a report of the investigation, which shall include findings
8 and conclusions. A report under this section shall be a
9 public document, but shall redact information protected
10 under the Wyoming Public Records Act. If the special
11 investigator determines that an official committed official
12 misconduct which constitutes a criminal act, the special
13 investigator may initiate criminal proceedings in a court
14 of competent jurisdiction in this state and prosecute the
15 case in the name of the state.

16
17 (f) A complaint, response or reply filed with the
18 special investigator may be supported with such documents,
19 affidavits and other material in a form and as allowed by
20 the Wyoming Rules of Civil Procedure.

21
22 (g) In conducting an investigation under this
23 section, the special investigator may subpoena witnesses,

1 compel their attendance, require the production of records
2 and other evidence, administer oaths or affirmations and
3 receive relevant evidence. A person who fails to respond
4 to a subpoena issued under this section is guilty of
5 contempt as provided in W.S. 6-5-306.

6

7 **9-20-104. Hiring of deputy special investigators;**
8 **retaining assistants; requesting assistance from state**
9 **agencies.**

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11 (a) In conducting an investigation under W.S.
12 9-20-103, the special investigator may appoint deputy
13 special investigators and employ and retain such legal,
14 investigative or technical assistance as the special
15 investigator deems appropriate.

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17 (b) The special investigator may request assistance
18 from the office of the attorney general, the division of
19 criminal investigation or any other state agency when
20 undertaking duties imposed under this act. A state agency
21 shall provide assistance requested under this section
22 unless such assistance constitutes a violation of
23 constitutional or statutory duties of the agency. If the

1 special investigator's request for assistance is denied
2 under this section, the special investigator may invoke any
3 authority granted under this act to obtain the assistance,
4 support or material necessary to conduct the investigation.

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6 (c) All expenditures of the special investigator,
7 including payment of additional employees or contractors
8 under this section, shall be issued by the state auditor
9 upon receipt of a voucher signed and attested by the
10 special investigator.

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12 **9-20-105. Retainer of special investigator; fees**
13 **during investigation and prosecution.**

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15 (a) A special investigator appointed under W.S.
16 9-20-102 shall receive payments in the form of a retainer
17 fee as determined by the attorney general to act as a
18 special investigator.

19

20 (b) While conducting an investigation or prosecution,
21 or determining whether a complaint contains prima facie
22 evidence that an official conducted official misconduct,

1 the special investigator shall be paid a fee as determined
2 by the attorney general.

3

4 (c) Retainers under subsection (a) of this section
5 and fees under subsection (b) shall be set at an amount to
6 ensure that competent, qualified individuals who will
7 further public trust in that office will serve as the
8 special investigator.

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10 **9-20-106. Conflict of interest; determination;**
11 **appointment of alternative special investigator; removal of**
12 **special investigator.**

13

14 (a) If the special investigator determines that he
15 has a conflict of interest involving any complaint filed
16 with his office, the special investigator shall notify the
17 Wyoming supreme court of the conflict of interest. The
18 court shall then appoint an alternative special
19 investigator from a group of three (3) nominees submitted
20 by the judicial nominating commission. The alternative
21 special investigator shall serve through the conclusion of
22 all proceedings initiated as a result of the complaint.

23

1 (b) An alternative special investigator appointed
2 under this section shall possess all of the qualifications
3 and authority of a regularly appointed special
4 investigator.

5
6 (c) A special investigator appointed under this act
7 may be removed from office by an affirmative vote of four
8 (4) of the statewide elected officials that the special
9 investigator committed official misconduct or that removal
10 of the special investigator is necessary to restore public
11 trust in the office. Any determination under this section
12 is a final agency action appealable to the first judicial
13 district court pursuant to W.S. 16-3-114(a).

14

15 **9-20-107. Office of special investigator account.**

16

17 (a) There is created the office of special
18 investigator account. All funds in the account shall be
19 continuously appropriated for the purposes of this section.
20 Payments from the account shall be issued by the state
21 auditor upon submittal of a voucher signed and attested by
22 the special investigator.

23

1 (b) If at any time, the account has a balance of less
2 than twenty-five thousand dollars (\$25,000.00), the
3 governor, or if the governor refuses to act, a majority of
4 the remaining statewide elected officials, shall authorize
5 the transfer of a sufficient amount of funds from the
6 budget reserve account to the office of special
7 investigator account to allow the special investigator to
8 continue the duties of his office until funds are deposited
9 in the account pursuant to W.S. 39-14-801(e) (i).

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11 **Section 2.** W.S. 39-14-801(e) (i) is amended to read:

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13 **39-14-801. Severance tax distributions; distribution**
14 **account created; formula.**

15

16 (e) Deposits into the account created by subsection
17 (a) of this section shall be distributed as follows,
18 subject to subsections (b) through (d) of this section:

19

20 (i) To the general fund, sixty-two and twenty-six
21 hundredths percent (62.26%), except that up to one-half of
22 one percent (0.5%) of this amount shall first be directed
23 to the office of the special investigator account created

1 by W.S. 9-20-107 to provide for a balance of five hundred
2 thousand dollars (\$500,000.00) in that account;

3

4 **Section 3.** The office of attorney general shall begin
5 to develop and promulgate rules to effect this act upon the
6 effective date of this act. The Wyoming supreme court
7 shall not appoint a special investigator prior to October
8 15, 2015.

9

10 **Section 4.** This act is effective July 1, 2015.

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12

(END)