

# House Bill 95

An Act relating to elections and election investigations.

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HOUSE STATE AFFAIRS COMMITTEE, MAY 18, 2021

DEPARTMENT OF LAW



# HB 95's Purpose

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To authorize the Attorney General to conduct civil investigations into election law violations and to bring civil enforcement actions if a violation is found.



# Current Statutory Scheme

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Division of Elections  
identifies suspicious  
behavior



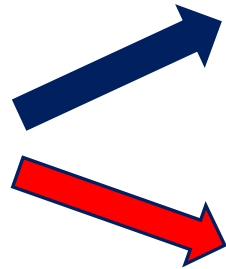
Only option: Criminal referral

# HB 95 Adds Tools

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Division of Elections  
identifies suspicious  
behavior



Criminal Investigation Referral

Civil Investigation Referral



# Advantages to Civil Investigation

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- Can react more quickly than criminal process allows
- Evidentiary standard is not as high
- Can get information to the Division that may help the Division in making determinations

# Examples

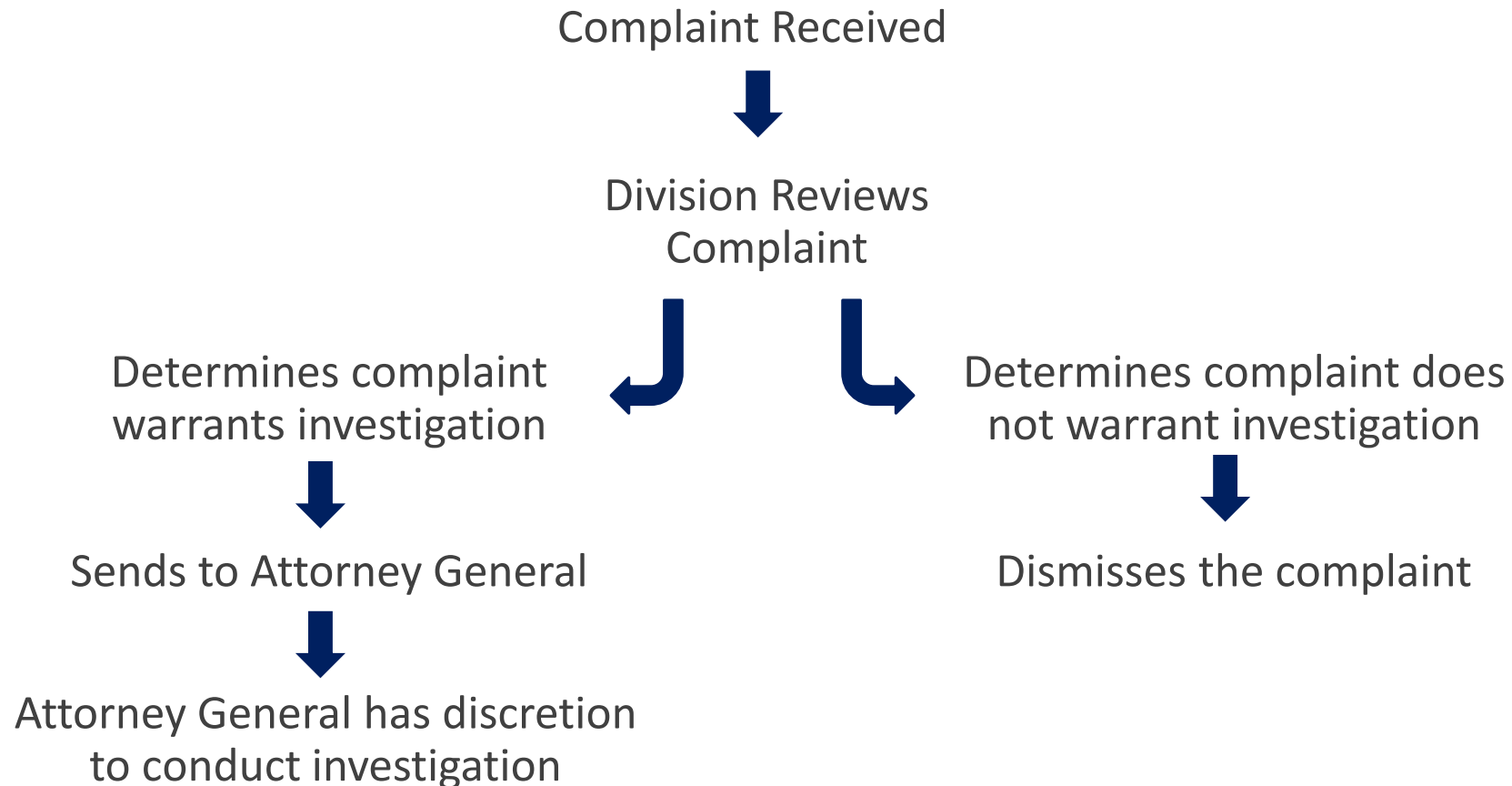
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- House District 15 in 2018 – suspicious absentee ballot applications
- Signature-gathering for 19OGTX - \$1 per signature prohibition



# Complaint Referral Process





# Investigative Steps

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- Preliminary Investigative Steps:
  - Monitor websites, social media, print advertising
  - Site visits or physical monitoring
  - Interview complainants
- Informal Discovery:
  - Voluntary interviews of victims or witnesses
  - Voluntary interviews of the target(s) of the investigation
  - Obtain documents from those who will provide them voluntarily
  - Continue monitoring the internet, media, and physical spaces
- An Investigator's Role:
  - Attorney cannot become a witness in their own case
  - Need an investigator to testify about things they heard or saw, to take screenshots, to authenticate a recorded conversation with the target, etc.





# Investigative Steps

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- Subpoenas
  - Slower process than voluntary interviews or voluntary document requests
  - Requires service by a process server or by certified mail, restricted delivery
  - Objections, delays, assertions of privilege, or non-compliance will require negotiation or litigation
- Subpoenas to Non-Targets
  - Often used to obtain records from businesses that work with the target (e.g., bank statements)
  - Sometimes used to interview witnesses who will not talk voluntarily, e.g., friends or employees of the target
- Subpoenas to Targets
  - Interview the target(s) under oath, obtain documents, and/or answers to interrogatories
  - Information obtained from targets sometimes leads the AG to serve additional subpoenas or to engage in additional informal discovery



# Sectional Analysis

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HB 95, “An Act relating to elections and election investigations,” adds one new section to AS 15.56:

- Subsection (a) allows anyone to file a written complaint alleging a violation of election laws or regulations. The complaint would be due to the Division of Elections 30 days after the election, or 30 days after the alleged violation, whichever is later.



# Sectional Analysis

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- Subsection (b) directs the Division to refer alleged violations of campaign finance laws or regulations to the Alaska Public Offices Commission. The Division has the discretion to refer all other complaints to the Attorney General. If the complaint is incomplete, frivolous, or does not allege a violation, the Division could ask for more information or dismiss the complaint.
- Subsection (c) allows the Attorney General to investigate an alleged violation identified by a complaint, by the Division, or by the Attorney General.



# Sectional Analysis

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- Subsection (d) authorizes the Attorney General to conduct the investigation by subpoenaing witnesses or documents, holding hearings under oath, sending interrogatories, and examining records.
- Section (e) provides that the records and intelligence resulting from the investigation are not public records, except the Attorney General may issue public statements that describe activities that violate elections laws.



# Sectional Analysis

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- Section (f) directs the Attorney General to inform the Division of the results of the investigation, with the option to submit a report. If a complaint against a state agency or state employee has merit, the Division will make reasonable efforts to take corrective action. The records and intelligence resulting from the investigation remain confidential unless they are submitted to a court or used by the Division.



# Sectional Analysis

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- Subsection (g) allows the Attorney General to sue for injunctive relief after the investigation, provided the alleged violation is not a violation of campaign finance laws.
- Subsection (h) allows the Attorney General to seek a civil penalty of no more than \$25,000 per violation, along with reasonable fees and costs, including the costs of the investigation.



# Sectional Analysis

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- Subsections (i) and (j) allow the Division and the Attorney General to adopt regulations to implement this section.
- Subsection (k) clarifies that the person filing the complaint may also file a civil action in superior court.
- Subsection (l) defines frivolous, state agency, and state employee.

# Questions?

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