



Legislative Research Brief

for the
State Administrative and Veteran's Affairs Interim Committee

October 21, 2013

HJR 1 Study - Commissioner of Political Practices' Office Previous 50-State Surveys & Draft of SAVA's Survey

Prepared by Sheri Scurr, Legislative Research Analyst

Scope of study

The study plan adopted by the State Administration and Veterans' Affairs Interim Committee (SAVA) on August 20, 2013, calls for staff to research other states with respect to oversight and enforcement of laws regulating (1) campaigns, (2) ethics, and (3) lobbying. This research is to encompass:

- (a) with respect to persons empowered to administratively enforce these laws;
 - (i) how these persons are selected or appointed;
 - (ii) what qualifications these persons must have; and
 - (iii) who sets the salaries for these persons; and

- (b) with respect to how these respective offices and officials handle violations;
 - (i) how complaints are filed;
 - (ii) what criteria is used to determine whether to dismiss or investigate;
 - (ii) how investigations are conducted;
 - (iii) who makes the final ruling and whether it is subject to judicial review; and
 - (iv) how administrative penalties are set.

Information available from other sources

Staff researched whether previously conducted 50-state surveys could provide SAVA with the requested information. The following 50-state information was available from other sources:

- a National Conference for State Legislatures (NCSL) survey conducted from November 2011 through January 2012 (*see Attachment A*);
- a 50-state directory of lead agencies to contact concerning state campaign reporting, ethics laws, and lobbying regulation, current as of 2013 (*see Attachment B*); and
- a 2003 summary table from the Book of States about ethics agencies and whether they issue advisory opinions, conduct investigations, or require public officials to receive ethics training (*see Attachment C*).

Summary of information from other sources

According to the information gathered from these other sources, with certain disclaimers about the information provided:*

- Montana is the only state that vests one appointed officer with administrative authority over campaign, ethics, and lobbying laws;
- in 35 states, a commission or board oversees campaign, lobbying, and/or ethics laws, and in 12 of these states, these powers are vested in more than one commission;
- in 13 states, an elected state official oversees campaign, lobbying and/or ethics laws;
- the state legislature alone oversees lobbying in two states;
- nearly all state ethics agencies issue advisory opinions, however, these advisory opinions are binding in only a handful of states; and
- ethics training is required in only seven states.

What questions should SAVA ask?

Attached is a draft survey based on SAVA's adopted study plan. (*See Attachment D.*)

Committee members should carefully review this survey and be prepared to discuss any changes with the full committee at the October 21, 2013, meeting. Also, because not all states may respond to the survey and information from some states may be more or less relevant to committee member interests, members may wish to consider limiting the survey to certain states. In any case, the objective is for SAVA to revise and/or adopt a survey or provide instructions to staff so that the research gathered will fulfill the study objective of examining information from other states.

* Only 27 states responded to the NCSL survey. The NCSL survey question was ambiguous. The directory information was not collected with specific powers and duties in mind. The Book of States information is limited to ethics agencies, is 10 years old, and not all states or agencies responded to all the information requested.

ATTACHMENT A

Summarized Results of an NCSL Survey - Nov. 16, 2011, and Jan. 31, 2012

QUESTION: In your state, what entity enforces (not administers) election laws? I'm looking for the agency (or agencies) that would receive, investigate, and prosecute election law violations?

State	Board or Commission	Commissioner or similar officer	State's Chief Election Officer	The election administrator for the election	Other
Alabama					
Alaska	X				
Arizona				X	
Arkansas					
California	X				
Colorado			?		
Connecticut	X				
Delaware		X			
Florida	X				
Georgia					
Hawaii					
Idaho					?
Illinois					
Indiana					X
Iowa					
Kansas					
Kentucky					?
Louisiana					
Maine					
Maryland	?				
Massachusetts					
Michigan			X		
Minnesota					X
Mississippi					
Missouri					
Montana		X			
Nebraska					
Nevada			?		
New Hampshire					X
New Jersey					
New Mexico					
New York					
North Carolina	X				
North Dakota					?
Ohio					
Oklahoma	X				
Oregon			X		
Pennsylvania					?
Rhode Island					
South Carolina					
South Dakota					
Tennessee					
Texas	X				
Utah			X		
Vermont			X		
Virginia				X	
Washington					
West Virginia	X				
Wisconsin	X				
Wyoming					
TOTALS	9 plus 1?	2	4 plus 2?	2	3 plus 4?

NOTES:

The survey question was ambiguous and did not distinguish between election processes or campaign practices, nor did the question distinguish between administrative penalties or criminal prosecution

Only 27 of 50 states responded

Of those who responded, at least 7 of the responses need further clarification

Of those who responded, at least 3 states (but potentially 7) have a process for handling election law violations that does not seem to fit within one of the categories specified above

ATTACHMENT B
Combined Federal/State Disclosure Directory - 2013

Source: Federal Election Commission				
C = State campaign reports E = Ethics Regulation L = Lobbying Regulation				
State	Board or Commission	Commissioner or similar officer	Secretary of State	Comments
Alabama	E, L		C	
Alaska	C, E, L			
Arizona			C, E, L	
Arkansas			C, E, L	Separate commission for campaigns and ethics
California			C, E, L	
Colorado			C, E, L	
Connecticut	E		C, L	Separate commission for campaigns and ethics
Delaware	E, L	C		
Florida	E, L		C	Separate commission for campaigns and ethics
Georgia	C, E, L			
Hawaii	C, E, L			Separate commission for campaigns and ethics
Idaho			C, E, L	
Illinois	C		E, L	
Indiana	L		C, E	
Iowa	C, E, L			
Kansas			C, E, L	
Kentucky	C, E, L			Separate commission for campaigns and ethics
Louisiana	C, E, L			
Maine	C, E, L			
Maryland	C, E, L			Separate commission for campaigns and ethics
Massachusetts	C, E		L	Separate commission for campaigns and ethics
Michigan			C, E, L	
Minnesota	C, E, L			
Mississippi	E		C, L	
Missouri	C, E, L			
Montana		C, E, L, P		
Nebraska	C, E, L			
Nevada	E for appointed officials		C, E for elected officials	L - Legislative Branch
Hampshire			C, E, L	
New Jersey	C, E, L			
New Mexico			C, E, L	
New York	C, E, L			Separate commissions for state, city, and legislative ethics
North Carolina	C, E		L	Separate commission for campaigns and ethics
North Dakota			C, E, L	
Ohio	C, E for enforcement		C, E for reports	Separate commission for campaigns and ethics L - Legislative Branch
Oklahoma	C, E, L			
Oregon	E, L		C	
Pennsylvania	E		C, L	Separate commission for campaigns and ethics
Rhode Island	C, E		L	
South Carolina	C, E, L			
South Dakota			C, E, L	
Tennessee	C, E, L			
Texas	C, E, L			
Utah				C, E, L - Lt. Gov
Vermont			C, E, L	
Virginia	C		E, L	
Washington	C, E, L			Separate commission for campaigns and ethics
West Virginia	E, L		C	
Wisconsin	C, E, L			
Wyoming			C, E, L	

Summary:

- (1) The source of this information is a federal/state directory. This chart identifies only lead contact agencies for election and disclosure matters and does not necessarily provide information on who investigates complaints, determines violations, imposes administrative penalties, or prosecutes civil or criminal cases.
- (2) Montana is the only state with a state officer (e.g., the CPP) whose duties encompass all three aspects of elections and disclosure: campaign finance, lobbying, and ethics.
- (3) In 35 states, a commission or board oversees the agency handling campaign, lobbying, and/or ethics matters. In 12 of these 35 states, there is a commission overseeing campaign regulation and a separate commission overseeing ethics matters.
- (4) In 13 states, the Secretary of State's Office (or the Lt. Governor in the case of Utah) oversees regulation of campaigns, lobbying, and ethics.
- (5) In 2 states, the Legislature handles lobbyist disclosure.

ATTACHMENT C

ETHICS

Table 6.13

ETHICS AGENCIES: ADVISORY OPINIONS, INVESTIGATIONS & TRAINING

State	Agency	Investigations						
		Advisory opinions		Authority to investigate		Estimated number per year	Training	
		Authority to issue	Binding on inquirer	On own initiative	Respond to complaint		Agency trains	Optional or required
Alabama	State Ethics Comm.	Y	(N)	N	Y	329	Y	O
Alaska	Public Ofcs. Comm.	Y	Y	Y	Y	5-10	Y	O
Arizona	Citizens Clean Elections Comm.	N	N	Y	Y	20	Y	O
Arkansas	Ethics Comm.	Y	N	Y	Y	112	Y	O
California	Fair Political Practices Comm.;	Y	Y	Y	Y	N.A.	Y	B
	L.A. City Ethics Comm.;	Y	N	Y	Y	35	Y	B
	Oakland Public Ethics Comm.;	Y	N	Y	Y	30-40	N	B
	San Diego Ethics Comm.;	Y	N	N	Y	38	Y	R
San Francisco Ethics Comm.	Y	N	Y	Y	38	Y	O	
Colorado	Denver Bd. of Ethics	Y	N	N	Y	9	Y	R
Connecticut	Freedom of Info. Comm.;	Y	Y	Y	Y	N.A.	Y	O
	State Ethics Comm.	Y	Y	Y	Y	75	Y	B
Delaware	Public Integrity Comm.	Y	N	Y	Y	3-7	Y	O
Florida	City of Jacksonville;	Y	N	N	N	N.A.	Y	R
	Comm. on Ethics;	Y	Y	N	Y	117 (a)	Y	O
	Elections Comm.	N	N	N	Y	200	N	N.A.
Georgia	State Ethics Comm.	Y	N	Y	Y	20	Y	O
Hawaii	Camp. Spending Comm.;	Y	Y	Y	Y	20	Y	N.A.
	State Ethics Comm.;	Y	Y	Y	Y	10-20	Y	O
	Honolulu Ethics Comm.	Y	Y	Y	Y	20-30	Y	B
Idaho	Secretary of State		(c)	Y	Y	5 (b)	N	N.A.
Illinois	Chicago Bd. of Ethics;	Y	N	Y	Y	25	Y	B
	City of Champaign	Y	N	N	N	N.A.	N	O
Indiana	Public Access Counselor's Ofc.;	Y	N	N	Y	N.A.	Y	O
	State Ethics Comm.	Y	N	Y	Y	50	Y	O
Iowa	Ethics & Camp. Discl. Bd.	Y	N	Y	N	5	N	N.A.
Kansas	Govtl. Ethics Comm.	Y	Y	Y	Y	3-5	Y	O
Kentucky	Exec. Branch Ethics Comm.;	Y	Y	Y	Y	20	Y	O
	Legislvt. Ethics Comm.	Y	Y	(f)	Y	4	Y	R
Louisiana	Ethics Admn.	Y	N	Y	Y	113	Y	N.A.
Maine	Comm. on Govtl. Ethics &	Y	Y	Y	Y	<10	Y	R
	Election Practices;							
Maryland	House of Rep.	Y	Y	Y	Y	<10	N	R
	Anne Arundel Co. Ethics Comm.;	Y	N	Y	Y	5-10	Y	O
	Montgomery Co. Ethics Comm.	Y	Y	Y	Y	2	N	O
Massachusetts	State Ethics Comm.	Y	Y	Y	Y	114 (d)	Y	
Michigan	Dept. of State	N	N	N	N	N.A.	Y	O
Minnesota	Camp. Finance & Public Discl. Bd.;	N	Y	Y	Y	2	N	N.A.
	Dept. of Employees	Y	Y	N	N	N.A.	Y	N.A.
Mississippi				N.A.				
Missouri	Ethics Comm.	Y	N	Y	Y	180	Y	N.A.
Montana	Commr. of Political Practices	Y	N	N	Y	15-20	N	O
Nebraska	Accountability & Discl. Comm.	Y	N	Y	Y	40	Y	O
Nevada				N.A.				
New Hampshire				N.A.				
New Jersey	Exec. Comm. on Ethical Stds.	Y	N	Y	Y	35	Y	O
New Mexico				N.A.				
New York	Buffalo Bd. of Ethics;	Y	N	Y	Y	1-2	N	N.A.
	NYC Conflicts of Interest Bd.;	Y	Y	Y	Y	44 (e)	Y	O
	Dept. of State Cmte. on Open Govt.;	Y	N	N	Y	N.A.	Y	N.A.
	State Ethics Comm.;	Y	Y	Y	Y	40	N	O
	Temp. State Comm. on Lobbying;	Y	Y	Y	Y	10	Y	N.A.
Suffolk Co. Camp. Finance Bd.	Y	N	Y	Y	0	N	N.A.	
North Carolina	Bd. of Ethics	Y	N	Y	Y	5-10	Y	O
North Dakota				N.A.				
Ohio	Ethics Comm.;	Y	N	Y	Y	56	Y	O
	Legislvt. Insp. Gen. Ofc.	Y	N	Y	Y	3	Y	N.A.
Oklahoma	Ethics Comm.	Y	N	Y	N	over 10	Y	O
Oregon	Govt. Standards & Practices Comm.	Y	Y	Y	Y	100-150	Y	O
Pennsylvania	Ethics Comm.	Y	N	Y	Y	100	Y	O
Rhode Island				N.A.				
South Carolina	House Legislvt. Ethics Cmte.	Y	Y	N	Y	3	Y	N.A.

See footnotes at end of table.

ETHICS AGENCIES: ADVISORY OPINIONS, INVESTIGATIONS & TRAINING — Continued

State	Agency	Investigations							Training	
		Advisory opinions		Authority to investigate		Estimated number per year	Agency trains	Optional or required		
		Authority to issue	Binding on inquirer	On own initiative	Respond to complaint					
South Dakota		N.A.								
Tennessee		N.A.								
Texas	Ethics Comm.	Y	Y	Y	Y	76	Y	B		
Utah	State Elections Ofc.	Y	N	Y	N	3	N	N.A.		
Vermont		N.A.								
Virginia	State Bd. of Elections	N	N	N	N	N.A.	Y	O		
Washington	Seattle Ethics & Elections Comm.;	Y	Y	Y	Y	75	Y	O		
	King Co. Bd. of Ethics;	Y	N	Y	Y	various	Y	B		
	King Co. Ofc. Of Citizen Complaints;	N	N	Y	Y	10-20	Y	N.A.		
	State Comm. on Judicial Conduct;	N	N	Y	Y	360	N	O		
	State Exe. Ethics Bd.;	Y	N	Y	Y	100	Y	O		
	State Legislatv. Ethics Bd.;	Y	N	Y	Y	5	Y	B		
West Virginia	State Public Discl. Comm.	Y	Y	Y	Y	75-90	Y	O		
	Ethics Comm.	Y	N	N	Y	12-15	Y	O		
Wisconsin	State Ethics Bd.	Y	N	Y	Y	N.A.	Y	R		
Wyoming		N.A.								

Source: The Council on Governmental Ethics Laws, *Ethics Update 2002*.

Key:

Y — Yes

N — No

B — Both

O — Optional

R — Required

N.A. — Not available

(a) Three year average.

(b) In elections years.

(c) Informal written guidance only.

(d) In Fiscal Year 2002.

(e) In 2001.

(f) The Commission may file its own complaint if the facts in a matter warrant it.

ATTACHMENT D



State Administration and Veterans' Affairs Interim Committee
63rd Montana Legislature

Study of Montana's Office of Commissioner of Political Practices

Introduction

This 50-state survey is being conducted for the Montana Legislature's interim committee on State Administration and Veterans' Affairs (SAVA). The survey is divided into three parts:

Part 1 – Campaign Practices

Part 2 – Lobbying

Part 3 – Ethics

You may forward the email and link for this survey to multiple people to assist in filling it out. When the survey is complete, please click the "Final Submission" button at the bottom of this page to let us know all sections are done.

Please complete this survey by **October 1, 2013**. If you would like access to the survey results, they will be available by October 21 on SAVA's website at www.leg.mt.gov/sava.

If you have any questions, please contact Sheri Scurr at the Montana Legislative Services Division, (406) 444-3596 or sscurr@mt.gov.

Thank you for your participation.

*** 1. STATE INFORMATION:**

(Please provide this information so we may contact you if we have questions.)

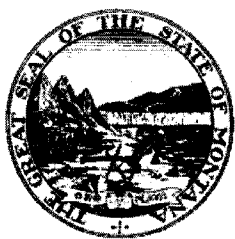
Name:

Agency:

State:

Email Address:

Phone Number:



State Administration and Veterans' Affairs Interim Committee
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Study of Montana's Office of Commissioner of Political Practices

PART 1 - CAMPAIGN PRACTICES

1. Do you have a state agency in charge of receiving campaign finance reports and that monitors and/or enforces compliance with state campaign laws?

- Yes
 No

If yes, please provide the state statutory citation establishing the agency.

2. How is the state agency directed?

- By a single person (commissioner or director, etc.)
 By a board or commission

3. Is the director, board, or commission appointed?

- Yes
 No (If "No" do not proceed with this page.)

4. If the director, board, or commission is appointed, who makes the appointment?

- The governor
 The head of another state agency
 A court
 A selection committee
 Other (please specify)

5. Is the appointment subject to confirmation by the State Senate?

- Yes
 No

6. If the appointment is made by a selection committee, please list the selection committee's membership.

7. Is there a nomination process prior to the appointment?

Yes

No

8. If there is a nomination process prior to the appointment, is the appointing authority required to make an appointment from the list of nominees?

Yes

No

9. How is the salary for the state agency director or the board or commission members set?

By the appointing authority

By statute

It is a classified position under the state's pay plan

Other (please specify)

10. What is the annual salary for the agency head or executive director of the board or commission?

11. What is the scope of the office's enforcement powers? Select all that apply.

May determine whether a complaint is valid or substantial

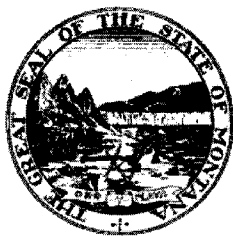
May issue orders or notices of noncompliance

May conduct administrative hearings and impose administrative penalties

May hire or retain attorneys to act as special prosecutors if the county or district attorney declines to prosecute a violation

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Study of Montana's Office of Commissioner of Political Practices

PART 2 - LOBBYIST ACTIVITIES

1. Do you have a state agency in charge of monitoring/and or enforcing laws concerning lobbyist activities that is separate from the agency in charge of monitoring compliance with campaign laws?

- Yes
- No (If "No" do not proceed with this page.)

(if yes, please provide the state statutory citation establishing the agency)

2. How is the state agency directed?

- By a single person (commissioner or director, etc.)
- By a board or commission

3. Is the director, board, or commission appointed?

- Yes
- No (If "No" do not proceed with this page.)

4. If the director, board, or commission is appointed, who makes the appointment?

- The governor
- The head of another state agency
- A court
- A selection committee
- Other (please specify)

5. Is the appointment subject to confirmation by the State Senate?

- Yes
- No

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9. How is the salary for the state agency director or the board or commission members set?

By the appointing authority

By statute

It is a classified position under the state's pay plan

Other (please specify)

10. What is the annual salary for the agency head or executive director of the board or commission?

11. What is the scope of the office's enforcement powers? Select all that apply.

May determine whether a complaint is valid or substantial

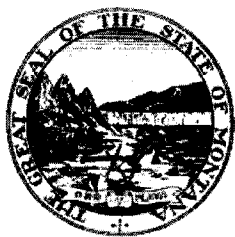
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PART 3 - ETHICS

1. Do you have a state agency in charge of monitoring and/or enforcing laws concerning ethical conduct of public officials or employees that is separate from the agency in charge of monitoring compliance with campaign laws?

- Yes
 No (if "No" do not proceed)

If yes, please provide the state statutory citation establishing the agency.

2. How is the state agency directed?

- By a single person (commissioner or director, etc.)
 By a board or commission

3. Is the director, board, or commission appointed?

- Yes
 No (if "No" do not proceed with this page.)

4. If the director, board, or commission is appointed, who makes the appointment?

- The governor
 The head of another state agency
 A court
 A selection committee
 Other (please specify)

5. Is the appointment subject to confirmation by the State Senate?

- Yes
 No

6. If the appointment is made by a selection committee, please list the selection committee's membership.

7. Is there a nomination process prior to the appointment?

Yes

No

8. If there is a nomination process prior to the appointment, is the appointing authority required to make an appointment from the list of nominees?

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9. How is the salary for the state agency director or the board or commission members set?

By the appointing authority

By statute

It is a classified position under the state's pay plan

Other (please specify)

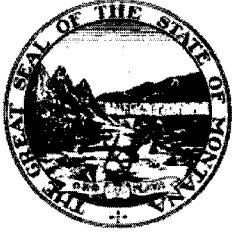
10. What is the scope of the office's enforcement powers? Select all that apply.

May determine whether a complaint is valid or substantial

May issue orders or notices of noncompliance

May conduct administrative hearings and impose administrative penalties

May hire or retain attorneys to act as special prosecutors if the county or district attorney declines to prosecute a violation



State Administration and Veterans' Affairs Interim Committee
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Study of Montana's Office of Commissioner of Political Practices

PART 3 - ETHICS

1. Do you have a state agency in charge of monitoring and/or enforcing laws concerning ethical conduct of public officials or employees that is separate from the agency in charge of monitoring compliance with campaign laws?

- Yes
 No (if "No" do not proceed)

If yes, please provide the state statutory citation establishing the agency.

2. How is the state agency directed?

- By a single person (commissioner or director, etc.)
 By a board or commission

3. Is the director, board, or commission appointed?

- Yes
 No (if "No" do not proceed with this page.)

4. If the director, board, or commission is appointed, who makes the appointment?

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 The head of another state agency
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By statute

It is a classified position under the state's pay plan

Other (please specify)

10. What is the scope of the office's enforcement powers? Select all that apply.

May determine whether a complaint is valid or substantial

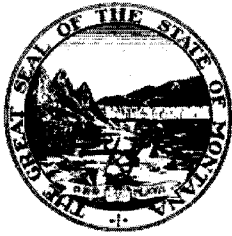
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FINAL SUBMISSION

*** 1. FINAL SUBMISSION:**

All pages are complete and this survey is ready for submission (select no if you wish to return and complete this survey later).

- No
- Yes

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Done