

Briefing on Ethics Offices  
for the State Administration and Veterans' Affairs Interim Committee

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Following the resignation of the Commissioner of Political Practices in January 2012, the State Administration and Veterans' Affairs Interim Committee requested a study of the Office of the Commissioner of Political Practices, including a comparison with other states' ethics offices. There was also a request to consider inclusion of the Commissioner's duties in the Office of the Secretary of State.

This briefing is divided into three main parts. The first summarizes statutes related to the Montana Office of the Commissioner of Political Practices, such as the appointment process, qualifications, and duties and responsibilities. The second section is a table of ethics offices in other states that perform functions similar to those performed by the Commissioner's office. The third section discusses the states that use the Secretary of State's or Attorney General's office for some or all of the functions performed by the Montana Commissioner.

### **Montana Commissioner of Political Practices**

The office now known as the Commissioner of Political Practices was created in 1975 and originally named the Commissioner of Campaign Finances and Practices. The statement of purpose for the bill creating the office cited the need to "consolidate and clarify the authority to enforce the election and campaign finance laws."<sup>1</sup> The name of the office changed in 1980 as a result of Initiative 85, which also changed requirements related to lobbyists.

#### **Appointment**

When first created, the Speaker of the House, the President of the Senate, and the minority leaders of both houses appointed the Commissioner. If they could not agree, the Supreme Court appointed a fifth member to the selection committee.<sup>2</sup> The 1979 Legislature changed the appointment of the Commissioner by giving that power to the Governor, with confirmation by the Senate. The role of the selection committee of the Speaker of the House, the President of the Senate, and the minority leaders of both houses changed to one of recommending names to the Governor.<sup>3</sup> However, the Governor is not required to choose a nominee from the list provided by the selection committee.

#### **Term of Office**

Sections 13-37-103 and 13-37-104, MCA, outline the term of the Commissioner and vacancies in the office, respectively. The Commissioner is appointed for a 6-year term and is not eligible for reappointment unless appointed to serve fewer than 3 years of an unexpired term resulting from a vacancy. When first created, the Commissioner's term was not specified. The 1977 Legislature amended section 13-37-103 to specify a 5-year term<sup>4</sup> and the 1979 Legislature changed the term to 6 years.<sup>5</sup>

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<sup>1</sup> Ch. 480, L. 1975.

<sup>2</sup> Ch. 480, L. 1975.

<sup>3</sup> Ch. 483, L. 1979.

<sup>4</sup> Ch. 365, L. 1977.

<sup>5</sup> Ch. 483, L. 1979.

### Salary

Section 13-37-106 addresses the compensation of the Commissioner of Political Practices. When first enacted in 1979, the section identified a specific salary for the Commissioner, in this case, \$22,000 annually.<sup>6</sup> For a number of years, the Legislature amended the section each session to update and specify the salary for the next two fiscal years.

In the 1997 session, the language was changed to assign a grade to the Commissioner's position (grade 18) and require the salary fall within that grade. The 1997 change also made clear that the Commissioner is eligible for the benefits received by other state employees including health insurance, leave, longevity pay, and expense reimbursement. The Legislature also added language prohibiting a decrease in the Commissioner's salary during the term of office.<sup>7</sup>

Changes to this section of law in 2007 reflect the move to a different pay plan. The new language allowed the Governor to set the Commissioner's salary within the "occupational pay range." The range is set by the Department of Administration in the same manner as for other state employees. Another new subsection required the Commissioner to receive pay adjustments consistent with other state employees.<sup>8</sup> The 2009 Legislature changed the "occupational pay range" language to "pay band."<sup>9</sup>

### Qualifications

Section 13-37-107 sets forth qualifications for the Commissioner. The Commissioner must be a citizen of the United States and a resident of Montana and must be registered to vote in Montana on the date of appointment. The 2005 Legislature enacted this section of law and it has not been amended.

### Restrictions

The same bill that added qualifications for the Commissioner of Political Practices also included restrictions. Section 13-37-108 outlines those restrictions, which prohibit the commissioner from knowingly:

- holding another position of public trust or engaging in an occupation or business that interferes or is inconsistent with executing the duties of the commissioner's office;
- participating in any political activity or in a political campaign;
- making contributions to a candidate, political committee, or for or against a ballot issue or engaging in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;
- attending an event held for the purpose of raising funds for or against a candidate, political committee, or ballot issue; or
- participating in a matter pertaining to the commissioner's office that involves a relative or is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest.

The section has not been amended since its enactment in 2005.

### Removal From Office

The statutes that address removing the Commissioner of Political Practices from office are contained in sections 13-37-102(2) and 13-37-105. Section 13-37-102 creates the office and, as discussed above, was amended in 1979 to give the Governor the power to appoint the Commissioner. At the same time that

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<sup>6</sup> Ch. 483, L. 1979.

<sup>7</sup> Ch. 417, L. 1997.

<sup>8</sup> Ch. 81, L. 2007.

<sup>9</sup> Ch. 7, L. 2009.

change was made, the Legislature also added subsection (2), allowing the Governor to remove the Commissioner prior to expiration of the term only for "incompetence, malfeasance, or neglect of duty."<sup>10</sup> The decision to remove the Commissioner is subject to judicial review. A 2005 amendment to this section added a requirement that the Governor submit the decision to remove the Commissioner in writing.<sup>11</sup>

Section 13-37-105 allows for impeachment of the Commissioner of Political Practices and prosecution by the county attorney for official misconduct. The section was enacted as part of the same bill that created the office in 1975. The language on impeachment refers to Title 5, chapter 5, part 4, which allows for impeachment for "felonies and misdemeanors or malfeasance in office" in section 5-5-401.

### Duties and Responsibilities

The duties and responsibilities assigned to the Office of the Commissioner of Political Practices can be grouped into three general categories: ethics, lobbyists, and campaign finance and elections. A list of specific tasks within each category follows, with citations to statute.

#### *Ethics*

The Commissioner of Political Practices' role related to ethics includes receiving disclosures from public employees, state officers, and candidates and receiving ethics complaints. Specific tasks include:

- Receiving disclosures from those with salaries from two separate public employment positions, 2-2-104;
- Receiving business disclosure statements for state officers and candidates, 2-2-106;
- Receiving disclosure of private interests related to public duty, 2-2-131;
- Receiving code of ethics complaints for state officers, legislators, state employees, and county attorneys, 2-2-136; and
- Receiving legislative auditor reports on apparent violations of the state code of ethics, 5-13-304.

#### *Lobbyists*

The Commissioner is responsible for licensing lobbyists, collecting reports on lobbying payments, conducting investigations related to lobbyist disclosure, and holding hearings for levying penalties. These responsibilities are listed below along with the statutory citations:

- Licensing lobbyists and inspecting applications and reports from lobbyists, 5-7-103;
- Making lobbyist information publicly available, 5-7-201;
- Receiving reports from principals on payments to lobbyists, 5-7-208;
- Investigating irregularities in lobbyist reports, 5-7-212; and
- Holding informal contested case hearings for penalties levied against lobbyists who fail to file reports in the time frame required by law, 5-7-306.

#### *Campaign Finance and Elections*

The Commissioner's duties related to campaign finances and elections can be generally summarized as receiving candidate and political committee campaign finance filings and investigating complaints related to campaign finances and election practices. The Commissioner's campaign finance and election responsibilities are as follows:

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<sup>10</sup> Ch. 483, L. 1979.

<sup>11</sup> Ch. 479, L. 2005.

- Receiving reports from political committees that employ paid signature gatherers, investigating alleged violations, issuing orders of noncompliance, and prosecuting violations, 13-37-112 and 13-37-113;
- Receiving documentation about anonymous election material when the advertising is too small to meet the requirements of 13-35-225(1) through (3) or if the "paid for" information is discovered to be missing, 13-35-225(5)(a);
- Receiving voluntary filings of campaign scripts intended for broadcast advertising by a political committee not organized on behalf of a candidate and making the filings available for public inspection, 13-35-240;
- Preparation of a form for the Code of Fair Campaign Practices set forth in 13-35-301, sending the form to each candidate required to file reports with the commissioner, and receiving signed copies of the form (signing is voluntary), 13-35-302;
- Investigating all alleged violations of election and campaign practices laws contained in Title 13, chapters 35 and 37, and enforcing these laws in conjunction with county attorneys, 13-37-111;
- Hiring or retaining attorneys to prosecute violations of Title 13, chapters 35 and 37, 13-37-113;
- Prescribing forms for reports and other information required to be filed; preparing and publishing a manual prescribing a uniform system for accounts; providing copies of election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and others required to file reports or information; providing forms, manuals, and laws electronically and providing paper copies upon request, 13-37-117;
- Accepting and filing information voluntarily supplied that exceeds the requirements of Title 13, chapters 35 and 37, 13-37-118;
- Making statements and information filed available for public inspection; preserving filings for 10 years; preparing summaries of statements received; providing for wide dissemination of summaries and reports, 13-37-119;
- Inspecting statements and reports filed within the time prescribed by law; notifying those who have not satisfied the filing requirements; issuing orders of noncompliance if a person does not comply after notification; deciding whether to initiate civil or criminal action upon failure to submit required information, 13-37-121;
- Examining each statement or report filed to determine whether it conforms with law (within 120 days of election) and opting to investigate the source and authenticity of any contribution or expenditure or alleged failure to report any contribution or expenditure, 13-37-123;
- Notifying the appropriate county attorney when there seems to be enough evidence to justify civil or criminal procedures and arranging to transmit information relevant to the alleged violation; initiating legal action within 30 days if county attorney fails to initiate the appropriate action, 13-37-124;
- Notifying the Secretary of State that a candidate has not complied with a requirement to file a report or statement and is ineligible to appear on the ballot, 13-37-126;
- Notifying the official responsible for issuing certificates of election that a candidate has complied with report and statement requirements and the certificate of election may be issued, 13-37-127;
- Receiving candidate and political committee filings certifying the campaign treasurer and campaign depository, 13-37-201 and 13-37-205;
- Publishing revised contribution limits as an administrative rule (these are adjusted based on the Consumer Price Index for the June prior to the general election), 13-37-216;
- Receiving campaign finance reports required by Title 13, chapter 37, and receiving campaign reports for congressional and presidential candidates pursuant to federal law requirements, 13-37-225;

- Promulgating rules regarding the extent to which incidental political committees<sup>12</sup> report their politically related activities, 13-37-226;
- Adopting rules to allow political committees to file a single comprehensive report when they support or oppose more than one candidate or issue; adopting rules for committees that file reports with the Federal Election Commission and committees headquartered outside of Montana, 13-37-227;
- Receiving sworn statements from political committees that choose to voluntarily limit spending, 13-37-250;
- Receiving filings for constituent services accounts, 13-37-402;
- Adopting rules to carry out Title 13, chapters 35 and 37, 13-37-114; and
- Having authority to bring suit in a case involving a violation of 13-35-226 (unlawful acts of employers and employees related to elections and candidates), 13-37-128.

### Ethics Commission

From 1995 to 2001, Montana law allowed for an Ethics Commission but the Legislature never appointed one. The Ethics Commission was attached to the Office of the Commissioner of Political Practices for administrative purposes and its role was to hear appeals of the Commissioner's decisions.<sup>13</sup> Section 2-2-138 provided for appointment of the Commission, which referred to the appointment process for the Districting and Apportionment Commission contained in section 5-1-102. In that process, the majority and minority leaders of each house each select one commissioner. The four commissioners then select a fifth member within 20 days and, if they cannot agree, a majority of the Supreme Court selects the fifth member.

Section 2-2-138 also contained qualifications and restrictions. A member of the Ethics Commission had to be a citizen of the United States and a resident of Montana. A commissioner could not be a public official, a public employee (except the fifth member could be a public employee), a candidate, a lobbyist or lobbyist's principal, or a member of the immediate family of any of these. This section also specified a 4-year term with a prohibition against serving more than two consecutive terms. The commissioners could receive reimbursement for expenses but were not entitled to a salary.

Additional restrictions on political activity by members of the Ethics Commission were in section 2-2-142. Commission members were not allowed to make financial contributions to a candidate or political committee or knowingly attend a fundraiser held for the benefit of a candidate or political committee.

The designated role of the Ethics Commission was one of administrative appeal. Section 2-2-137 provided for the appeal process, which was permitted in section 2-2-136. An appeal had to be requested in writing within 60 days of a decision by the Commissioner of Political Practices. The Ethics Commission was then to hold a hearing on matters in the established record and the Commission could affirm, modify, or reverse the decision. A decision required an affirmative vote of three or more commissioners.

The statutes providing for the Ethics Commission were repealed in 2001.<sup>14</sup> Then-Commissioner of Political Practices Linda Vaughey testified at the Senate hearing that "her office was seeking to eliminate the Ethics Commission because the Ethics Commission had never existed."<sup>15</sup>

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<sup>12</sup> An incidental committee is a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue. ARM 44.10.327

<sup>13</sup> Ch. 562, L. 1995.

<sup>14</sup> Ch. 122, L. 2001.

<sup>15</sup> Senate Committee on State Administration, [Minutes of Meeting](#), Jan. 17, 2001, p. 5.

When the Legislature repealed the Ethics Commission in 2001, the language in subsection (3) of 2-2-136 that allowed for appeal of the Commissioner’s decision to the Ethics Commission was replaced with a provision allowing for judicial review of the Commissioner’s decision.

### **Comparison with Other States**

Forty-one states have independent ethics commissions<sup>16</sup> but their structure and authority vary considerably from state to state. The main ways these commissions differ are how they define “ethics,” which officials and employees they have jurisdiction over, the extent of their authority, and the composition of the commission.<sup>17</sup>

Most of the ethics boards and commissions are independent but have jurisdiction over the appointing entity or entities. This may lead to questions about the real or perceived independence of the body. States are split as to whether the governor should appoint the members or other executive, legislative, or judicial officers should share appointment power. Generally, there are attempts to balance the composition by spreading the appointment authority among different entities or requiring legislative confirmation. States also often attempt to create an impartial commission by limiting members of a political party to less than a majority, by establishing an odd number of commissioners, or by using term limits.<sup>18</sup>

State ethics commissions often have control over their budgets and staff, which contributes to their autonomy. However, a concern for many ethics commissions is receiving adequate funding, especially when facing across-the-board budget cuts.<sup>19</sup>

The following table summarizes basic information about the Office of the Commissioner of Political Practices and ethics offices in other states that perform functions similar to those of Montana’s Commissioner of Political Practices. The subject areas for which these states have responsibility are campaign finance, ethics, financial disclosure, gift restriction, and lobbying.<sup>20</sup> Although the subject areas for the states identified are similar, the jurisdiction and duties related to investigation, advisory opinions, and training often differ.

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<sup>16</sup> Betsy Z. Russell, “Idaho Lawmakers Drop Ethics Commission Idea,” *The Spokesman-Review*, March 6, 2012.

<sup>17</sup> David E. Freel, “Trends and Issues in State Ethics Agencies,” *The Book of the States 2005*, p. 366.

<sup>18</sup> David E. Freel, “Trends and Issues in State Ethics Agencies,” *The Book of the States 2005*, p. 367.

<sup>19</sup> David E. Freel, “Trends and Issues in State Ethics Agencies,” *The Book of the States 2005*, p. 367.

<sup>20</sup> Staff identified the states that have responsibility for the same subject areas as Montana from, “[Table 6.9 Ethics Agencies: Jurisdiction Subject Areas](#),” *The Book of the States 2005*.

**Comparison of State Ethics Commissions that Perform Similar Functions to Montana Commissioner of Political Practices**

Office Name	Selection of Commissioners	Term	Compensation	Staff	Jurisdiction	Authority	Est. Office Budget
<a href="#">Arkansas Ethics Commission</a>  Created 1990  5 commissioners	Appointed by G, LG, AG, SP, and HS	5 years, single term only	\$50 per diem and reimbursed for expenses	9 staff: executive director, 2 staff attorneys, 2 directors of compliance, systems administrator, fiscal officer, 2 administrative assistants	Executive branch employees, judges and judicial employees, legislative employees and legislators, lobbyists, local appointed and elected officials, local employees, state appointed and elected officials, state employees, state colleges and universities	Issue advisory opinions, investigate on own initiative and in response to complaints, issue disciplinary action for violations or refer to prosecuting attorney, prepare educational materials	\$680,000
<a href="#">California Fair Political Practices Commission</a>  Created 1974  5 commissioners	G appoints the chair and 1 commissioner (of different party than G); SOS, AG, and State Controller each appoint 1 commissioner (if all officers of same party, state controller selects member from a list provided by another party)	4 years, single term only	Chair is salaried and serves full-time; other commissioners are part-time and paid \$100 per diem for each meeting and reimbursed for expenses	80 staff organized into four divisions: legal, technical assistance, enforcement, and administration	Executive branch employees, judges and judicial employees, legislative employees and legislators, lobbyists, local appointed and elected officials, local employees, state appointed and elected officials, state employees, state colleges and universities	Issue binding advisory opinions, investigate on own initiative and in response to complaints, assist state and local agencies with development and enforcement of conflict of interest codes, educate about Political Reform Act, conduct trainings	\$8.298 million

AG=Attorney General  
SOS=Secretary of State

G=Governor  
SP=Senate President

HS=Speaker of the House  
SML=Senate Minority Leader

HML=House Minority Leader  
SC=Chief Justice of the Supreme Court

LG=Lieutenant Governor

Office Name	Selection of Commissioners	Term	Compensation	Staff	Jurisdiction	Authority	Est. Office Budget
<a href="#">Iowa Ethics and Campaign Disclosure Board</a>  Created 1973  6 commissioners	G appointed, balanced as to political party affiliation and gender	6 years, no term limit	Compensation on per diem basis at same rate as members of interim committees, expenses reimbursed	5 staff: executive director/legal counsel, administrative assistant, legislative and statewide audit and compliance, statewide PAC/county central committee audit and compliance, county local audit and compliance	Executive branch employees, lobbyists, private sector/vendors, state elected officials, state employees, state colleges and universities	Issue advisory opinions, investigate on own initiative, advise local government about application of ethics laws, contract with political subdivisions to enforce ethics codes, conduct trainings	\$537,000
<a href="#">Kansas Governmental Ethics Commission</a>  Created 1974  9 commissioners	Chair appointed by G; G, AG, SOS, SC, SP, SML, HS, HML each appoint 1 commissioner; not more than 5 commissioners of same party, the 2 appointed by G must be of different political parties	2 years, no term limit	\$35 per meeting and reimbursed for expenses	9 staff: executive director, investigator, 2 auditors, attorney, lobbying coordinator, state level campaign finance, local level campaign finance, and office manager	Executive branch employees, judges and judicial employees, legislative employees and legislators, lobbyists, local elected officials, private sector/vendors, state appointed and elected officials, state employees, state colleges and universities	Issue binding advisory opinions, investigate on own initiative and in response to complaints	\$684,000

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SC=Chief Justice of the Supreme Court

LG=Lieutenant Governor

Office Name	Selection of Commissioners	Term	Compensation	Staff	Jurisdiction	Authority	Est. Office Budget
<a href="#">Louisiana Board of Ethics</a> Created 1996 11 commissioners	7 appointed by G (1 from each congressional district), 2 appointed by Senate, 2 appointed by House; all subject to senate confirmation; all selected from list submitted by state's 8 private universities	5 years, 2-term limit	\$50 per diem and reimbursed for expenses	41 staff in 2 divisions: office of the ethics administrator and office of the secretary	Executive branch employees, judicial employees, legislative employees and legislators, lobbyists, local appointed and elected officials, local employees, private sector/vendors, state appointed officials, state employees, state colleges and universities	Issue advisory opinions, investigate on own initiative and in response to complaints, conduct trainings	\$3,840,517
<a href="#">Montana Commissioner of Political Practices</a> Created 1975 1 commissioner	Selected by G. List of names submitted by panel of SP, SML, HS, and HML but G not required to choose from list; confirmed by senate	6 years, single term only	Full-time salaried position that pays \$57,689 annually	4 staff: program supervisor, investigator, data and program technician, and program assistant	Executive branch employees, judges and judicial employees, legislative employees and legislators, lobbyists, local elected officials, state appointed and elected officials, state employees	Issue advisory opinions, investigate on own initiative and in response to complaints, coordinate with county attorney for court proceedings, conduct trainings	\$564,214

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Office Name	Selection of Commissioners	Term	Compensation	Staff	Jurisdiction	Authority	Est. Office Budget
<a href="#">Nebraska Accountability and Disclosure Commission</a> Created 1976 9 commissioners	SOS serves as one commissioner; 4 appointed by SOS – one each from lists submitted by Democratic and Republican state chairs and 2 from citizenry at large; 4 appointed by G – one each from 2 lists submitted by Legislature and 2 from citizenry at large; no more than 4 of 8 commissioners from same party and at least 1 registered independent	6 years, single term only	On a per diem basis not to exceed \$3,125 annually, reimbursed for expenses	7 staff: executive director, deputy director, general counsel, administrative assistant, 2 auditors, staff assistant	Executive branch employees, legislative employees and legislators, lobbyists, local appointed and elected officials, local employees, private sector/vendors, state appointed and elected officials, state employees, state colleges and universities	Issue advisory opinions, investigate on own initiative and in response to complaints	\$650,000
<a href="#">Oklahoma Ethics Commission</a> Created 1990 5 commissioners	Appointed by G, SP, HS, SC, and AG; no more than 3 commissioners of same political party	5 years, 2-term limit	Reimbursed for expenses	6 staff: executive director, general counsel, principal assistant, business manager, investigator/auditor, information systems applications specialist	Executive branch employees, judges and judicial employees, legislators, lobbyists, local employees, private sector/vendors, state appointed officials, state employees, state colleges and universities	Issue advisory opinions, investigate on own initiative and in response to complaints	\$647,354

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## Other Models<sup>21</sup>

Twelve states place at least some of the duties performed by the Montana Commissioner of Political Practices with a single officeholder rather than a commission.<sup>22</sup> Ten states task the Secretary of State's office with some of these duties: Arizona, Colorado, Idaho, Michigan, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont and Wyoming.<sup>23</sup> Two other states, Utah and Virginia, have the Attorney General regulate ethics laws. There does not appear to be any state, however, that houses all the duties currently performed by the Montana Commissioner of Political Practices with a Secretary of State's Office or Attorney General's Office. Some states split the campaign finance, lobbyist registration, and ethics duties among two or more offices. These states are categorized below into states that separate ethics, campaign finance, and lobbyist registration into different offices and those that do not have a designated ethics commission or board.

### States that Split Ethics and Campaign Finance/Lobbying

The states discussed below use more than one state office or commission to carry out campaign finance, lobbyist, and ethics tasks.

#### *Colorado*

The Colorado Secretary of State has responsibility for campaign finance and lobbyist reporting, personal finance disclosure, and gift reporting.

The Independent Ethics Commission, created by the 2006 passage of a voter-initiated constitutional amendment, performs ethics-related duties. The Commission gives advice and guidance on ethics issues, standards of conduct, and reporting requirements and hears complaints, issues findings, and assesses penalties. The Governor, the Chief Justice of the Colorado Supreme Court, the Senate President, and the Speaker of the House of Representatives each appoint one commissioner. The Commission itself selects a fifth member, who must be a local government official or employee. There may not be more than two commission members from the same political party. The Commission has jurisdiction over state executive and legislative branch elected officials and employees and local officials and employees (unless the county or municipality is a home-rule entity with an ethics code). Commission members serve without a salary but are reimbursed for expenses.

#### *Michigan*

Michigan has a State Board of Ethics that together with the Michigan Department of State performs functions similar to those provided by the Montana Commissioner of Political Practices. The Department of State is responsible for campaign finance and lobbyist disclosure as required by the Campaign Finance Act of 1976 and Lobby Registration Act of 1978, respectively.

The State Board of Ethics, originally created by a 1973 Executive Order, handles ethics complaints. Legislation enacted in 1974 put the Board of Ethics into law. The Board of Ethics is made up of 7 members who are appointed by the Governor with the advice and consent of the Senate. No more than 4 members may be of the same political party and no member may be associated with public employment. The members serve without compensation but are reimbursed for expenses. The Attorney General and State Personnel Director are also ex officio members without the right to vote.

The Michigan State Board of Ethics serves an advisory and investigatory role for complaints and investigations initiated by the Board. The Board discovers facts and makes recommendations to the entity

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<sup>21</sup> All information in this section is from the respective state agency unless otherwise cited.

<sup>22</sup> David E. Freel, "Trends and Issues in State Ethics Agencies," *The Book of the States 2005*, p. 366.

<sup>23</sup> David E. Freel, "Trends and Issues in State Ethics Agencies," *The Book of the States 2005*, p. 371-372, endnote 4.

with supervisory power over the subject of the investigation. The Board has jurisdiction to determine ethical conduct for state employees and public officers of the executive branch only. Legislative branch employees, judicial branch employees, judges, local government employees, and elected officials do not fall under the jurisdiction of the Board.

### *Utah*

Utah does not have a Secretary of State. The responsibilities performed by Montana's Commissioner of Political Practices are spread among a few different entities. The Lieutenant Governor's Office handles campaign finance and lobbyist registration duties. The Attorney General receives financial disclosure statements from public officers and public employees.<sup>24</sup>

The 2010 Legislature created the Independent Legislative Ethics Commission, but the Commission does not appear to have a staff, website, phone number, or e-mail address.<sup>25</sup> The Commission first convened in July 2010 but did not hear any complaints at that time.<sup>26</sup> The membership consists of two retired judges and one former legislator mutually appointed by the Speaker of the House and President of the Senate and one retired judge and one former legislator mutually nominated by the minority leaders of both houses.<sup>27</sup> The Commission only has jurisdiction over legislators and does not disclose complaints unless it decides to forward the complaint to the House or Senate ethics committee after a "closed-door mini-trial."<sup>28</sup>

### States without an Ethics Commission

The following states do not have a statewide ethics commission.

#### *Arizona*

The Arizona Secretary of State, as the Chief Election Officer, is responsible for accepting and filing campaign finance reports and lobbyist registrations and expenditure reports.

#### *Idaho*

The Idaho Secretary of State performs campaign finance, elections administration, and lobbying functions. There is no state ethics commission. A 2012 working group could not reach consensus regarding creation of an ethics commission. Ethics complaints against legislators go before committees of legislators.<sup>29</sup>

#### *New Hampshire*

The New Hampshire Secretary of State has responsibility for campaign finance, lobbyist filing, and financial and gift disclosures. Lobbyists register with the Secretary of State and file statements outlining fees received from clients and expenditures made from those fees. Candidates and appointed and elected public officials also file gift and financial disclosures with the Secretary of State's office.

#### *New Mexico*

The 1993 Governmental Conduct Act assigns the New Mexico Secretary of State duties related to government that include: regulating lobbyist activity and campaign finance reporting by candidates and political action committees, receiving financial disclosure filings by candidates and state officials, enforcing the gift restriction, and receiving complaints related to voting. There is no independent state

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<sup>24</sup> Utah Code, Title 67, Chapter 16, Section 7.

<sup>25</sup> "Ethics: State Ethics Commissions," National Conference of State Legislatures, updated October 2011.

<sup>26</sup> Joseph M. Dougherty, "Utah Ethics Commission Convenes for First Time," *Deseret News*, July 19, 2010.

<sup>27</sup> "Ethics: State Ethics Commissions," National Conference of State Legislatures, updated October 2011.

<sup>28</sup> Joseph M. Dougherty, "Utah Ethics Commission Convenes for First Time," *Deseret News*, July 19, 2010.

<sup>29</sup> Betsy Z. Russell, "Idaho Lawmakers Drop Ethics Commission Idea," *The Spokesman-Review*, March 6, 2012.

ethics commission that responds to the types of complaints to which the Montana Commissioner of Political Practices responds.<sup>30</sup>

#### *North Dakota*

The North Dakota Secretary of State handles campaign finance disclosure and lobbyist registration but does not have duties related to ethics.

#### *South Dakota*

The South Dakota Secretary of State is responsible for campaign finance filings, lobbyist registration, and lobbyist employer registration and expense reporting.

#### *Vermont*

Vermont's Secretary of State has campaign finance duties and receives lobbyist registration, gift, and expenditure reports.

#### *Virginia*

Virginia splits campaign finance, lobbyist, and ethics responsibilities among a few different state agencies. The Secretary of the Commonwealth handles lobbyist registration and disclosure and receives financial disclosure filings from government officers and employees. The State Board of Elections handles campaign finance filings. The Attorney General has duties related to the conflict of interest law including providing advisory opinions, advising state agencies on procedures for complying with the law, and investigating potential violations.<sup>31</sup>

#### *Wyoming*

The Wyoming Secretary of State's duties include maintaining the campaign finance reporting system, administering the lobbyist registration and disclosure program, and receiving elected officials' personal financial disclosure reports.

### **Conclusion**

Montana is the only state with a single commissioner responsible for campaign finance, lobbyist disclosure, and ethics oversight. Many states give responsibility for these duties to an ethics commission and the states with ethics commissions that perform the same functions as the Montana Commissioner range in size from 5 to 11 members and vary in their authority and jurisdiction. No state houses all duties performed by the Montana Commissioner in an elected officer, such as the Secretary of State or Attorney General. The states that use the Secretary of State or Attorney General to perform some of these duties either do not have an ethics commission or split campaign finance, lobbyist, and ethics responsibilities among two or more entities.

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<sup>30</sup> Trip Jennings, "Governor Candidates Disagree on State Ethics Commission," *New Mexico Independent*, Sept. 28, 2010.

<sup>31</sup> Virginia Code, Title 2, chapter 2, section 3126.