

# COMMISSIONER OF POLITICAL PRACTICES



## STATE OF MONTANA

JONATHAN R. MOTL  
COMMISSIONER  
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June 4, 2014

Senator Dee Brown  
Chairperson  
State Administration and Veterans' Affairs Interim Committee  
PO Box 201706  
Helena, MT 59620-1706

Dear Senator Brown and Committee Members:

Mary Baker and I will be present at 8:00 AM tomorrow (June 5) for the SAVA committee review of the COPP, including review of its most recent budget proposals. These proposals are described in the "agency request detail" document. We offer the following comments in regard to the budget proposals.

In way of background, we note the 2013 Montana legislature provided the COPP additional funding addressing two major areas of weakness within the office; legal services and information technology.

.A full time agency attorney (Jaime MacNaughton) was hired in September of 2013. Working as part of an agency team, Ms. MacNaughton was an integral part of a marked increase in the volume of campaign practice work product, including sufficiency Decisions, Advisory Opinions and advice letters. Further, Ms. MacNaughton is directly responsible for resolving sufficiency Decisions through settlement or litigation, and that prosecution work product has increased markedly. The success of in-house counsel is clear, as compared to the former practice of hiring outside counsel.

.In regard to information technology, the COPP launched its new on-line campaign reporting system on Friday, May 24<sup>th</sup>. The new service includes features such as the ability to file a C-7 Pre-Election notice and the information automatically is absorbed in to the subsequent report, the ability to search the entire COPP database for contributors

eliminating some key strokes, and a much more useful public search tool. The new system was funded out of HB 10, was launched on time and within the appropriation granted.

As you know, the COPP performs its functions with a very small staff and funding base. The Office appreciates the additional funding provided by the 2013 Legislature and believes that it has demonstrated responsibility in use of the technology and attorney funding provided.

The COPP now provides this Committee (and the Legislature) its assessment of the funding needed to allow the Office to fulfill its currently unmet responsibilities:

1. Senior Legal Counsel Position funded as a one-time only position. Request is to make this position a permanent full time position.
2. Lease increase to combine staff in one facility.
3. Program Assistant/Legal Assistant, new FTE.
4. Staff Attorney, new FTE.
5. Accountant, new FTE.
6. Litigation funding in the amount of \$50,000.

The "agency request detail" for requests 1 through 5 is attached. There is no detail for the litigation funding as we are informed this is a special type of funding that, if advance, will need to be through a separately sponsored bill. I note that the statute empowering COPP prosecution of campaign practice violations (§13-37-113 MCA) provides broad litigation authority. The above requests, numbered 3 through 6, constitutes the funding incident to that authority.

The past four election cycles have brought substantial change to Montana's campaign practices. The work of the COPP must assist Montana's political culture in absorbing these changes in a manner that is acceptable to Montana's people and candidates for public office. The above funding requests are those necessary to support this effort by the COPP.

Sincerely,



Jonathan Motl

Commissioner of Political Practices  
State of Montana

Summary of COPP Legislative Proposals  
*as of June 5, 2014*

Priority No.	Short Title
1	Mandatory electronic filing for state district candidates
2	Remove requirement for political committees to file locally
3	Define electioneering to include the 60 days before an election
4	Delete "other than a candidate or political committee" from definition of "Contribution" in 13-1-101(7)(a)(iii)
5	Include absentee voting period in the electioneering statute
6	Add ballot issue and incidental committees to the statute requiring notice of pre-election expenditures
7	Give COPP jurisdiction over robo call complaints
8	Allow COPP to deputize in-house counsel
9	Remove unconstitutional provisions: (1) Repeal 13-35-231, MCA, prohibiting political party endorsement of judicial candidates; (2) amend 13-37-131, MCA, concerning misrepresentation of voting records
10	Revoke charter of not for profit corporations that violate campaign practices act
11	Adjust pre-election reporting deadlines
12	Establish litigation fund - funded by fines that now go to general fund

**Complete Shaded Areas**

Form last update 1/21/2014

**Proposed 2015 Session Legislation**

<b>Agency Name &amp; No:</b>	Commissioner of Political Practices 32020		
<b>Priority Number:</b>	1	<b>Filename:</b>	Mandatory Filing
<b>Short Title:</b>	Mandatory Electronic Filing for State District Candidates		
<b>Agency Contact Person/Phone:</b>	Mary Baker, 444-7416		

**1. Purpose:**

The Montana Commissioner of Political Practices is in the process of developing a user friendly, publically accessible online filing service for candidates and committees. The eFiling services will be completed on May 24th, 2014. Once the candidates and committees submit their financial data through the online service, the data is available to the public. All campaigns that continue to file their financial reports via paper are scanned but aren't searchable. The intent of this bill is to mandate electronic filing for all state district candidates, which includes District Judge, Public Service Commissioner, and Legislative candidates.

**2. Background:**

Currently our office scans all campaign finance reports for public viewing. Scans are difficult to read and can take a long time to download if the report is of significant size. Statewide campaigns are already mandated to file their reports electronically. Generally the public as well as the other campaigns appreciate being able to read and search for specifics within the financial reports.

<b>3. Fiscal Impact by Fund Type:</b>	<i>This impact should be as specific as possible.</i>
No fiscal impact	

**4. Summary Checklist [Check & complete all that apply]--**

<input type="checkbox"/> Housekeeping Only	<input type="checkbox"/> Federal Requirement	<input type="checkbox"/> Audit Recommendation (Audit No.)	<input type="checkbox"/> Major Legislation
<input type="checkbox"/> Anticipated to be Controversial Legislation	<input type="checkbox"/> Bill Draft has been included in Legislation Submittal (if available)		
<input type="checkbox"/> Supports Submitted EPP Item Number:	<input type="checkbox"/> Local Government Fiscal Impact		
<input type="checkbox"/> Increases FTE, or <input type="checkbox"/> Decreases FTE by	List FTE amount and program		
<input type="checkbox"/> Increases Existing Revenue	<input type="radio"/> Tax <input type="radio"/> Fee <input type="radio"/> Penalty [amount in #3]		
<input type="checkbox"/> Decreases Existing Revenue	<input type="radio"/> Tax <input type="radio"/> Fee <input type="radio"/> Penalty [amount in #3]		
<input type="checkbox"/> Establishes New Revenue	<input type="radio"/> Tax <input type="radio"/> Fee <input type="radio"/> Penalty [amount in #3]		
<input type="checkbox"/> Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):			
<input type="checkbox"/> Legislation would affect other state agencies (list):			
<input checked="" type="checkbox"/> Special Interest Groups Affected (list):	National Institute in Money in State Politics		
<input type="checkbox"/> Other:			

**Proposed 2015 Session Legislation**

**Agency Name & No:** Commissioner of Political Practices 32020

**Priority Number:** 2 **Filename:** Local Level Reporting

**Short Title:** Remove the requirement for Political Committees to file locally

**Agency Contact Person/Phone:** Mary Baker, 444-7416

**1. Purpose:**

Montana Code Ann. 13-37-225, requires that all financial reports submitted by political committees, also be filed with the election administrator where the committee is headquartered. All of the campaign finance disclosure reports are scanned and are available on the Political Practices website for download. If an election administrator receives a request for a report, they often refer to the website for the form.

**2. Background:**

The 2011 Legislature removed the requirement for statewide and state district candidates from filing copies of their financial disclosure reports with their resident county election administrator. The political committees requested to be included in the bill but it was at the end of the Legislature and they didn't make it in the bill.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

No fiscal impact

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

**Complete Shaded Areas**

Form last update 1/21/2014

**Proposed 2015 Session Legislation**

**Agency Name & No:** Political Practices 32020

**Priority Number:** 3 **Filename:** Define Electioneering

**Short Title:** Define Electioneering to include the 60 days before an election

**Agency Contact Person/Phone:**

**1. Purpose:**

Define electioneering to include 60 day pre-election issue advocacy (the so called dark money) for reporting and disclosure purposes.

**2. Background:**

Title 13 requires attribution, disclosure and reporting for campaign expenditures, campaign contributions and independent expenditures. An expenditure, however, that is still centered on an election and does not involve a campaign and does not identify as an independent expenditure can be made anonymously. This would require attribution, disclosure and reporting for this so-called "issue" advocacy if made in the last 60 days prior to an election.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

Requires .1 FTE for additional report handling and examination as well as to deal with complaints filed based on requirement.

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2015 Session Legislation

Agency Name & No: Political Practices

Priority Number: 4 Filename: Amend 13-1-101(7)(a)(iii)

Short Title: Delete "other than a candidate or political committee" from the statute

Agency Contact Person/Phone: Jon Motl 444-4622

1. Purpose:

Amend 13-1-101(7)(a)(iii) to delete "other than a candidate or political committee."

2. Background:

The language has been subject to conflicting interpretations by successive Commissioners, including one interpretation [Deschamps v. Bullock, May 15, 2012, Deputy Commissioner Dufrechou] that interpreted the language such that is created a huge "paid services" loophole in the definition of contribution. While the current Commissioner is attempting to reconcile the conflicting interpretations with an advisory opinion it would be best to solve the issue by removing the language. This was the approach taken in federal election

3. Fiscal Impact by Fund Type: This impact should be as specific as possible.

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only, Federal Requirement, Audit Recommendation, Major Legislation, Anticipated to be Controversial Legislation, Bill Draft has been included in Legislation Submittal, Supports Submitted EPP Item Number, Local Government Fiscal Impact, Increases FTE, Decreases FTE, List FTE amount and program, Increases Existing Revenue, Decreases Existing Revenue, Establishes New Revenue, Leg. has been Submitted in Previous Legislative Sessions, Legislation would affect other state agencies, Special Interest Groups Affected, Other

**Complete Shaded Areas**

Form last update 1/21/2014

**Proposed 2015 Session Legislation**

**Agency Name & No:** Commissioner of Political Practices 32020

**Priority Number:** 5 **Filename:** Electioneering

**Short Title:** Include Absentee Period in to the Electioneering Statute

**Agency Contact Person/Phone:** Mary Baker, 444-7416

**1. Purpose:**

Montana Code Ann. 13-35-211 prohibits electioneering on "election day." The intent of this change is to include the period of time that the absentee ballots are being returned to their drop off locations. In other words prohibit, electioneering while voters are dropping their ballots off at the polls.

**2. Background:**

Our office has received a number of complaints alleging that campaigns or committees are electioneering because the candidates or committees are advocating success or defeat within 100 feet of an entrance of the polling places.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

There could be some potential fiscal impact. Our office received four complaints of this nature in 2012, if the law would have included the absentee period a violation would likely have been found and a penalty assessed.

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:



**Proposed 2015 Session Legislation**

**Agency Name & No:** Commissioner of Political Practices 32020

**Priority Number:** 6 **Filename:** Notice of Pre-Election Expenditures

**Short Title:** Notice of pre-election expenditures, add ballot issue and incidental committees

**Agency Contact Person/Phone:** Mary Baker, 444-7416

**1. Purpose:**

Montana Code Ann. 13-37-226(5)(b) requires that independent committees file a notice of an expenditure report within 24 hours when the value is \$500 or more. The intent of this amendment is to include ballot issue committees and incidental committees in this requirement.

**2. Background:**

The 24 hour notice of an expenditure is a valuable resource for both the campaigns and the committees plus enhances public disclosure. This amendment will bring consistency to the requirement and tighten up the disclosure.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

General fund impact. Some minor changes will be needed to the online service to accommodate the new filing requirement.

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

**Proposed 2015 Session Legislation**

**Agency Name & No:** Political Practices 32020

**Priority Number:** 7 **Filename:** Robo Calls

**Short Title:** Give COPP jurisdiction over robo call complaints

**Agency Contact Person/Phone:** Jon Motl 444-4622

**1. Purpose:**

7. Place campaign practice acts occurring under 45-8-216 (robo calls) under the jurisdiction of the COPP.

**2. Background:**

Robo calls are illegal in mt but there is no real enforcement. This allows enforcement of robo calls made for campaign purpose.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

.10 attorney time to respond and enforce.

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2015 Session Legislation

Agency Name & No: Political Practices 32020

Priority Number: 8 Filename: Deputize COPP Staff

Short Title: Deputize in-house counsel

Agency Contact Person/Phone: Jon Motl 444-4622

1. Purpose:

Provide authority to deputize in-house COPP counsel as deputy commissioner, except in instances where the Commissioner is recused because of conflict of interest. In conflict of interest situations outside counsel will still need to be retained.

2. Background:

The Commissioner's office has an in-house counsel. Current no staff in the Commissioner's office can be appointed deputy commissioner. In instances where the Commissioner is ill or on vacation it is expedient and less costly to appoint the in-house counsel as deputy.

3. Fiscal Impact by Fund Type: This impact should be as specific as possible.

[Empty shaded area for fiscal impact details]

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.) [ ]     Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number: [ ]     Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program [ ]
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no): [ ]
- Legislation would affect other state agencies (list): [ ]
- Special Interest Groups Affected (list): [ ]
- Other: [ ]

Proposed 2015 Session Legislation

Agency Name & No: Political Practices 32020

Priority Number: 9 Filename: Amend/delete unconstiutional language

Short Title: Amend 13-35-231 and 13-37-131, courts declare unconstitutional

Agency Contact Person/Phone: Jon Motl 444-4622

1. Purpose:

. Amend 13-35-231 MCA to take out language removed by Court Decisions.
Amend 13-37-131 MCA to delete language removed by Court Decisions.

2. Background:

Housekeeping, remove language stricken by the courts.

3. Fiscal Inact by Fund Type: This impact should be as specific as possible.

[Empty shaded area for fiscal impact details]

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only [checked]
Federal Requirement [ ]
Audit Recommendation (Audit No.) [ ]
Major Legislation [ ]
Anticipated to be Controversial Legislation [ ]
Bill Draft has been included in Legislation Submittal (if available) [ ]
Supports Submitted EPP Item Number: [ ]
Local Government Fiscal Impact [ ]
Increases FTE, or Decreases FTE by [ ]
List FTE amount and program [ ]
Increases Existing Revenue [ ]
Decreases Existing Revenue [ ]
Establishes New Revenue [ ]
Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no): HB 120 [checked]
Legislation would affect other state agencies (list): [ ]
Special Interest Groups Affected (list): [ ]
Other: [ ]

**Proposed 2015 Session Legislation**

**Agency Name & No:** Political Practices 32020

**Priority Number:** 10 **Filename:** Amend Not For Profit Act

**Short Title:** Penalty for corporations that violate the Montana campaign practices act

**Agency Contact Person/Phone:** Jon Motl 444-4622

**1. Purpose:**

Amend Montana not for profit corporation act to provide for automatic revocation of the corporate charter or authorization to do business in Montana of any corporation determined by a court to have violated Montana's campaign practice act.  
. Amend Montana's not for profit and for profit statutes to provide for personal liability of any corporate director for the acts of any corporation determined by a court to have violated Montana's campaign practice act.

**2. Background:**

Montana's campaign practice act provides for more severe consequences for candidates who violate the law than it does for the third party corporations, like Western Tradition Partnership, who also violate the law. This change removes some of the benefits of citizenship for such corporate entities who engage in illegal campaign practices.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by \_\_\_\_\_ List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

**Proposed 2015 Session Legislation**

**Agency Name & No:** Political Practices 32020

**Priority Number:** 11 **Filename:** Amend 13-37-226 Reporting Deadlines

**Short Title:** Adjust pre-election reporting deadlines

**Agency Contact Person/Phone:** Jon Motl 444-4622

**1. Purpose:**

Amend 13-37-226, add a May 1st and October 1st reporting deadline for all statewide, state district, and county elections. Remove the filing requirement for the 15th day reporting deadline for statewide campaigns. This amendment is based on complaints that concern dark money expenditures that occur just before the election.

**2. Background:**

Since 2008 the number of complaints has increased significantly. Many of the complaints derive from dark money activity that occurs right before an election. This amendment will also capture most of the activity that is occurring during the absentee ballot period.

**3. Fiscal Impact by Fund Type:** *This impact should be as specific as possible.*

There will be some fiscal impact, COPP is requesting an additional FTE to assist with report inspections, scanning, and paralegal type of activities. The estimated cost for the FTE is \$45,000.

**4. Summary Checklist [Check & complete all that apply]--**

- Housekeeping Only     Federal Requirement     Audit Recommendation (Audit No.)      Major Legislation
- Anticipated to be Controversial Legislation     Bill Draft has been included in Legislation Submittal (if available)
- Supports Submitted EPP Item Number:      Local Government Fiscal Impact
- Increases FTE, or  Decreases FTE by    List FTE amount and program
- Increases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Decreases Existing Revenue     Tax  Fee  Penalty [amount in #3]
- Establishes New Revenue     Tax  Fee  Penalty [amount in #3]
- Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):
- Legislation would affect other state agencies (list):
- Special Interest Groups Affected (list):
- Other:

Proposed 2015 Session Legislation

Agency Name & No: Political Practices 32020

Priority Number: 12 Filename: Amend 13-37-129

Short Title: Disposition of Fines Collected - Litigation Fund

Agency Contact Person/Phone: Jon Motl 444-4622

1. Purpose:

All penalties and costs collected through settlement or litigation of a matter adjudicated by the Commissioner or County Attorney would be deposited into the litigation fund for the office. Currently the office returns all penalties and costs collected to the general fund, and must request supplemental funding from the legislature in order to actively litigate ongoing enforcement actions. All court costs associated with a prosecution of a violation of CFP laws "must be paid by the state of Montana", Mont. Code Ann. 13-37-124(4). The idea is to self fund a litigation account through the collection of penalties and costs, without having to seek additional

2. Background:

The office has found it necessary to take judicial action to enforce its campaign practice decisions. There are currently 12 pending enforcement actions: (COPP v. Miller, Lewis & Clark Co., Cause CDV-2014-62; COPP v. Murray, Lewis & Clark Co., Cause BDV-2014-170; COPP v. Bannan, Lewis & Clark Co., Cause CDV 2014-178; COPP v. Boniek, Lewis and Clark Co., Cause ADV-2014-202; COPP v. Kennedy, Lewis & Clark Co., Cause BDV-2014-204;

3. Fiscal Impact by Fund Type: This impact should be as specific as possible.

[Empty shaded area for fiscal impact details]

4. Summary Checklist [Check & complete all that apply]--

- Housekeeping Only, Federal Requirement, Audit Recommendation (Audit No.), Major Legislation, Anticipated to be Controversial Legislation, Bill Draft has been included in Legislation Submittal (if available), Supports Submitted EPP Item Number, Local Government Fiscal Impact, Increases FTE, or Decreases FTE by, List FTE amount and program, Increases Existing Revenue, Decreases Existing Revenue, Establishes New Revenue, Leg. has been Submitted in Previous Legislative Sessions (list priority no, LC no, or bill no):, Legislation would affect other state agencies (list):, Special Interest Groups Affected (list):, Other:

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 1	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 1		Contact: Mary Baker 444-7416
Request Name: Senior Legal Counsel - FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

		2016	2017	Biennium Total
<b>Expenditure Request</b>				
61099	PERSONAL SERVICES	\$86,032	\$86,039	\$172,071
<b>Total Request Expenditures</b>		<b>\$86,032</b>	<b>\$86,039</b>	<b>\$172,071</b>
<b>Position Details</b>				
Title	Lawyer	FTE	1.00	1.00
Pos #	32200010	Position Cost	\$86,032	\$86,039
<b>Total FTE</b>		<b>1.00</b>	<b>1.00</b>	
<b>Total FTE Cost</b>		<b>\$86,032</b>	<b>\$86,039</b>	<b>\$172,071</b>
<b>Funding Request</b>				
		Funding Restrictions None		
01100	General Fund	\$86,032	100.00%	\$86,039 100.00%
<b>Total Funding</b>		<b>\$86,032</b>	<b>100.00%</b>	<b>\$86,039 100.00%</b>
<b>Federal Funding</b>				
Match Requirements		Not Required		
Maintenance of Effort Requirements		Not Required		



## AGENCY REQUEST DETAIL

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 1	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 1		Contact: Mary Baker 444-7416
Request Name: Senior Legal Counsel - FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

## EPP Request Description and Justification

The 2013 Legislature granted one-time only funding for an agency in-house legal counsel. The position was filled in September 2013. This position is critical in order for the office to maintain the current enforcement docket of litigation and settlements, the high number of complaint driven decisions, and advisory opinions.

The COPP receives complaints, and investigates allegations of campaign finance and practice, ethics and lobbying violations. The COPP investigates and issues decisions in these matters. When the COPP finds sufficient evidence of a violation, the matter then moves to in-house counsel for enforcement of the sufficiency findings either through settlement or litigation of the matter. To date, Commissioner Motl has issued 65 decisions, 21 of which were dismissed, and 44 of which have led to enforcement actions involving in-house legal counsel.

In-house legal counsel has brought settlements in matters dating back to 2009 to current. Settling 2 sufficiency findings issued prior to Commissioner Motl's term, 18 from Commissioner Motl's term, with a total of 20 completed settlements. Currently there are three matters in the process of settlement, with negotiation offers pending, and one sufficiency finding out for consideration to a County Attorney.

There are presently 26 sufficiency finding enforcement actions with the Commissioner which have led to litigation in a district court. The COPP has initiated enforcement litigation against nine candidates, and three third party cases in district court. Many of the complaints in district court for enforcement against the candidates have filed counterclaims against the COPP, which include Montana Constitutional and statutory challenges. Additionally, four parties have initiated litigation against the COPP, in Actions for Declaratory Judgment. The COPP also has a current case pending in the 9th Cir. Court of Appeals. The first enforcement action brought by the COPP has been scheduled for trial in May of 2015 (COPP v. Miller). Given the District Court's current docket, it is expected that the trials on the other enforcement actions will be scheduled after May of 2015.

Prior to the funding of the in-house counsel, COPP on average spent more than \$120,000 in contracted legal services. The costs are somewhat less than prior years, with more work being completed in a timely manner. One of the biggest complaints the COPP has faced over the years is the extensive delays in resolution to complaints. This position has aided in the expediency of the complaint resolution and the public has responded favorably. Without this position it would be impossible to maintain the current rate of issuing advisory opinions, completing sufficiency findings, and following through with enforcement through settlement and litigation the sufficiency findings in district court.

## Legislative Information

Is there related legislation for this EPP item?	No
Will the agency prepare this legislation?	No
Is this EPP item contingent upon proposed legislation?	No
Does this EPP item impact counties or other local entities?	No

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 1	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 1		Contact: Mary Baker 444-7416
Request Name: Senior Legal Counsel - FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

**Legislative Information**

If yes, is local funding provided by this EPP item? No

Agency Legislation Number

Leg. Services LC Number

Short Title

Bill Number

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 2	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 2		Contact: Mary Baker 444-7416
Request Name: Lease Increase - EPP Request		
DP Category: None		
Budget Level: Present Law	Bill No:Regular HB 0002	Special Consideration: None

	2016	2017	Biennium Total
<b>Expenditure Request</b>			
62098 UNALLOCATED OPERATING EXPENSES	\$12,000	\$12,000	\$24,000
<b>Total Request Expenditures</b>	<b>\$12,000</b>	<b>\$12,000</b>	<b>\$24,000</b>
<b>Funding Request Funding Restrictions None</b>			
01100 General Fund	\$12,000 100.00%	\$12,000 100.00%	\$24,000
<b>Total Funding</b>	<b>\$12,000 100.00%</b>	<b>\$12,000 100.00%</b>	<b>\$24,000</b>

**Federal Funding**  
 Match Requirements Not Required  
 Maintenance of Effort Requirements Not Required

**EPP Request Description and Justification**  
 The 2013 Legislature granted funding for an agency move. COPP was unable to locate a site that was small enough or big enough on the Capital campus. Instead, the office split in to two small offices, one for compliance and once for enforcement. The cost for the increased rent has been partially paid with agency move funds. The agency move funds is one-time only. COPP is still searching for a building big enough/small enough to house all staff in one place. We would like to request \$12,000 in funding to cover the additional lease for the second building.

**Legislative Information**

Is there related legislation for this EPP item?	No
Will the agency prepare this legislation?	No
Is this EPP item contingent upon proposed legislation?	No
Does this EPP item impact counties or other local entities?	No

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 2	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 2		Contact: Mary Baker 444-7416
Request Name: Lease Increase - EPP Request		
DP Category: None		
Budget Level: Present Law	Bill No:Regular HB 0002	Special Consideration: None

**Legislative Information**

If yes, is local funding provided by this EPP item? No

Agency Legislation Number

Leg. Services LC Number

Short Title

Bill Number

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 3	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION	
EPP Req #: 3		Contact: Mary Baker	444-7416
Request Name: Prgm Asst/Legal Assistant			
DP Category: None			
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None	

		2016	2017	Biennium Total
<b>Expenditure Request</b>				
61098	UNALLOCATED PERSONAL SERVICES	\$2,900	\$0	\$2,900
61099	PERSONAL SERVICES	\$47,487	\$47,491	\$94,978
<b>Total Request Expenditures</b>		<b>\$50,387</b>	<b>\$47,491</b>	<b>\$97,878</b>
<b>Position Details</b>				
Title	Legal Secretary	FTE	1.00	1.00
Pos #	32200012	Position Cost	\$47,487	\$47,491
<b>Total FTE</b>		<b>1.00</b>	<b>1.00</b>	
<b>Total FTE Cost</b>		<b>\$47,487</b>	<b>\$47,491</b>	<b>\$94,978</b>
<b>Funding Request</b>				
		Funding Restrictions None		
01100	General Fund	\$50,387	100.00%	\$47,491 100.00%
<b>Total Funding</b>		<b>\$50,387</b>	<b>100.00%</b>	<b>\$47,491 100.00%</b>
<b>Federal Funding</b>				
Match Requirements		Not Required		
Maintenance of Effort Requirements		Not Required		

**AGENCY REQUEST DETAIL**

**Department:** 3202 COMMISSIONER OF POLITICAL PRAC

**Version:** 2017-3202-E02

<b>Priority:</b> 3	<b>Status:</b> Pending	<b>Reporting Level:</b> 3202-01-00-00-00-00-00 ADMINISTRATION
<b>EPP Req #:</b> 3		<b>Contact:</b> Mary Baker 444-7416
<b>Request Name:</b> Prgm Asst/Legal Assistant		
<b>DP Category:</b> None		
<b>Budget Level:</b> New Proposal	<b>Bill No:</b> Regular HB 0002	<b>Special Consideration:</b> None

**EPP Request Description and Justification**

This is a request for a new FTE. This position is primarily a legal assistant. In the past the COPP used contracted services for most legal/enforcement tasks. This position would be responsible for a myriad of tasks including but not limited to; scanning all incoming and outgoing legal documentation including large volumes of discovery documents for electronic files, scanning legal documents to PDF form to be bates stamped using bates software, calendaring court deadlines, continually updating the pleading and discovery case dockets, both hardcopy and electronically, set up pleadings, type in discovery text from opposing counsel into word documents for the COPP to answer, set up and maintaining legal files both hardcopy and electronic, frequent trips to the court to file documents, pick up and/or drop off discovery documentation with opposing counsel, prepare all correspondence and information for process server to serve defendants. Work with process server until all defendants are served. Act as assistant to the Commissioner to prepare both hardcopy and electronic files for complaints, advisory opinions, general letters, SAVA and Legislative files, including scanning of all of the above. Maintain both hardcopy and electronic filing system for complaints and all of the above. Prepare complainant and respondent letters for the Commissioner to sign, prepare certified mail for complainant and respondent and advise respondent of complaint via email. Notify the media via email of any public letters and Decisions as decided by the Commissioner, work with staff to ensure accepted complaints, Decisions and Advisory Opinions are made available on the website. Email all parties a courtesy copy of all decisions on the day they are signed by the Commissioner. Proof read and format all final Decisions for the Commissioner. In addition this FTE would also assist during the busy election season in scanning campaign finance reports, report inspections, fielding phone calls, etc.

Now that COPP has its own legal/enforcement division within the office, the investigator handles many of these tasks. The number of complaints, requests for information, and litigation has increased by 400% in the last decade. It is impossible for the investigator to keep up with the workload for investigations and the legal assistant requirements. Adding this position would increase efficiency, and would allow for quicker public access to the information that the COPP collects.

**Legislative Information**

- Is there related legislation for this EPP item? No
- Will the agency prepare this legislation? No
- Is this EPP item contingent upon proposed legislation? No
- Does this EPP item impact counties or other local entities? No
- If yes, is local funding provided by this EPP item? No

**Agency Legislation Number**

**Leg. Services LC Number**

**Bill Number**

**Short Title**

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 4	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 4		Contact: Mary Baker 444-7416
Request Name: Staff Attorney New FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

		2016	2017	Biennium Total
<b>Expenditure Request</b>				
61098	UNALLOCATED PERSONAL SERVICES	\$2,900	\$0	\$2,900
61099	PERSONAL SERVICES	\$69,098	\$69,104	\$138,202
<b>Total Request Expenditures</b>		<b>\$71,998</b>	<b>\$69,104</b>	<b>\$141,102</b>
<b>Position Details</b>				
Title	Lawyer	FTE	1.00	1.00
Pos #	32200013	Position Cost	\$69,098	\$69,104
<b>Total FTE</b>		<b>1.00</b>	<b>1.00</b>	
<b>Total FTE Cost</b>		<b>\$69,098</b>	<b>\$69,104</b>	<b>\$138,202</b>
<b>Funding Request</b>				
Funding Restrictions: None				
01100	General Fund	\$71,998	100.00%	\$69,104 100.00%
<b>Total Funding</b>		<b>\$71,998</b>	<b>100.00%</b>	<b>\$69,104 100.00%</b>
<b>Federal Funding</b>				
Match Requirements		Not Required		
Maintenance of Effort Requirements		Not Required		

## AGENCY REQUEST DETAIL

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 4	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 4		Contact: Mary Baker 444-7416
Request Name: Staff Attorney New FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

## EPP Request Description and Justification

The COPP has an existing attorney position and is requesting a second position. The functions and need for this additional position is set out below.

## Attorney Position Two (New Position)

This position would draft formal sufficiency Decisions for review and final preparation and signature by the Commissioner. The sufficiency Decisions are currently being drafted by the Commissioner (who is also a licensed attorney). The current Commissioner, Jonathan Motl, began work on June 10, 2013. During his year of service Commissioner Motl, in the role of a staff attorney, has drafted 65 Decisions responding to 85 complaints of illegal campaign practices. Twenty-one of these Decisions dismissed complaints with the remaining 44 Decisions finding sufficient facts to justify prosecution of a campaign practice violation. A sufficiency Decision runs from 7 to 45 pages in length. A Decision reviews and analyzes known facts, reaching a sufficiency of facts Decision in a manner that cites legal and administrative precedent. All 65 sufficiency Decisions can be accessed on the COPP homepage.

This position would also draft advisory opinions on campaign practice and other issues. The COPP began numbering these opinions in 2014. There have been 11 advisory opinions issued to date in 2014. Advisory opinions run from 3 to 12 pages in length. An advisory opinion is based on a given set of facts from which an analysis of law and precedent is made, leading to an advisory opinion. The Commissioner, in the role of staff attorney currently drafts these advisory opinions. All 2014 advisory opinions can be accessed on the COPP homepage. This position would also draft informal letters responding to requests for information and advice. These requests come from the public, press and public officials. This task is currently performed by the Commissioner, legal counsel and the program supervisor.

## Relationship of Attorney Position Two to Current Legal Counsel and Commissioner.

The COPP's current legal counsel position is filled by Jaime MacNaughton. MacNaughton enforces those Decisions finding sufficient facts showing a campaign practice violation and also handles litigation brought against the COPP. MacNaughton began work in September of 2013 and has since settled 20 sufficiency Decisions (2 of these were based on Decisions of Commissioners who held office prior to Motl) for civil fines. All settlement documents can be accessed on the COPP homepage. MacNaughton has also initiated enforcement litigation against nine candidates and three third party cases in district court. MacNaughton is also defending on another 5 cases brought against the COPP in district courts. All litigation matters are listed on the COPP homepage according to the Decision being enforced. Finally, MacNaughton reviews and comments on all Decisions and Advisory Opinions.

The Commissioner would work directly with the Attorney two person. The Commissioner would continue to accept and initiate work on all campaign practice complaints. The Commissioner would then review the draft Decision prepared by the Attorney two, as well as comments on the Decision, and prepare the final Decision. This same process would apply to Advisory Opinions and advisory letters. Because the Attorney Two would be drafting these documents, significant Commissioner's time would be saved and the Commissioner would have time to act as Commissioner. The Commissioner's time would be used to engage in further public speaking, initiate work on updating the COPP administrative rules and address lobbying reporting and rulemaking. These are all tasks the COPP is mandated to perform but currently does not have staff to perform.



**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 4	Status: Pending	Reporting Level: 3202-01-00-00-00-00 ADMINISTRATION
EPP Req #: 4		Contact: Mary Baker 444-7416
Request Name: Staff Attorney New FTE - EPP Request		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

**Legislative Information**

- Is there related legislation for this EPP item? No
- Will the agency prepare this legislation? No
- Is this EPP item contingent upon proposed legislation? No
- Does this EPP item impact counties or other local entities? No
- If yes, is local funding provided by this EPP item? No

**Agency Legislation Number**

**Leg. Services LC Number**

**Short Title**

**Bill Number**

**AGENCY REQUEST DETAIL**

Department: 3202 COMMISSIONER OF POLITICAL PRAC

Version: 2017-3202-E02

Priority: 5	Status: Pending	Reporting Level: 3202-01-00-00-00-00-00 ADMINISTRATION
EPP Req #: 5		Contact: Mary Baker 444-7416
Request Name: Accountant: New FTE		
DP Category: None		
Budget Level: New Proposal	Bill No: Regular HB 0002	Special Consideration: None

2016	2017	Biennium Total
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**Expenditure Request**

61098	UNALLOCATED PERSONAL SERVICES	\$2,900	\$0	\$2,900
61099	PERSONAL SERVICES	\$77,706	\$77,713	\$155,419
<b>Total Request Expenditures</b>		<b>\$80,606</b>	<b>\$77,713</b>	<b>\$158,319</b>

**Position Details**

Title	Accountant	FTE	1.00	1.00	
Pos #	32200014	Position Cost	\$77,706	\$77,713	\$155,419
<b>Total FTE</b>		<b>1.00</b>	<b>1.00</b>		
<b>Total FTE Cost</b>		<b>\$77,706</b>	<b>\$77,713</b>	<b>\$155,419</b>	

**Funding Request**

Funding Restrictions None

01100	General Fund	\$80,606	100.00%	\$77,713	100.00%	\$158,319
<b>Total Funding</b>		<b>\$80,606</b>	<b>100.00%</b>	<b>\$77,713</b>	<b>100.00%</b>	<b>\$158,319</b>

**Federal Funding**

Match Requirements Not Required

Maintenance of Effort Requirements Not Required

**AGENCY REQUEST DETAIL**

**Department:** 3202 COMMISSIONER OF POLITICAL PRAC

**Version:** 2017-3202-E02

<b>Priority:</b> 5	<b>Status:</b> Pending	<b>Reporting Level:</b> 3202-01-00-00-00-00-00 ADMINISTRATION	
<b>EPP Req #:</b> 5		<b>Contact:</b> Mary Baker	444-7416
<b>Request Name:</b> Accountant: New FTE			
<b>DP Category:</b> None			
<b>Budget Level:</b> New Proposal	<b>Bill No:</b> Regular HB 0002	<b>Special Consideration:</b> None	

**EPP Request Description and Justification**

The COPP currently conducts a surface-only inspection of campaign finance reports under 13-37-121 MCA. The COPP has audit powers it has not used and is not using. These include post-election examination (13-37-123 MCA), general investigative powers under 13-37-111 MCA and lobbying report audit powers under 5-7-212 MCA.

The 2008, 2010 and 2012 election cycles showed that Western Tradition Partnership, along with allied entities, was willing to engage in unreported and undisclosed campaign practices. While the most obvious of these practices have now been identified and challenged by the COPP there remains major issues of nondisclosure and nonreporting that have not yet been addressed. Addressing those issues will require engagement or use of an accountant for the purposes of examination of the books and records of political committees and other entities. The COPP currently has no such accounting expertise. It will be much more cost effective to engage such expertise in-house rather than contract for it.

**Legislative Information**

- Is there related legislation for this EPP item? No
- Will the agency prepare this legislation? No
- Is this EPP item contingent upon proposed legislation? No
- Does this EPP item impact counties or other local entities? No
- If yes, is local funding provided by this EPP item? No

**Agency Legislation Number**

**Leg. Services LC Number**

**Short Title**

**Bill Number**