



**State Administration and Veterans' Affairs Interim Committee**  
**64th Montana Legislature**

**SENATE MEMBERS**

DEE BROWN--Chair  
DOUG KARY  
CLIFF LARSEN  
JONATHAN WINDY BOY

**HOUSE MEMBERS**

BRYCE BENNETT--Vice Chair  
FORREST MANDEVILLE  
WENDY MCKAMEY  
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**COMMITTEE STAFF**

SHERI SCURR, **Lead** Staff  
GINGER ALDRICH, Staff Attorney  
KATYA GROVER, Secretary

November 24, 2015

RE: Poll of the Legislature pursuant to section 2-4-403, MCA

Dear Member of the Montana Legislature:

I am writing to you as chairman of the State Administration and Veterans' Affairs Interim Committee (SAVA). Because of the circumstances explained below, SAVA is required by statute to poll all the members of the Legislature for the purpose of determining whether 16 of the Commissioner of Political Practices' proposed new rules and proposed amended rules in [Montana Administrative Register \(MAR\) Notice No. 44-2-207](#) are consistent with the intent of the Legislature.

**THE BALLOT THAT IS ATTACHED TO THESE MATERIALS AS A SEPARATE DOCUMENT MUST BE RECEIVED BY THE LEGISLATIVE SERVICES DIVISION BY NO LATER THAN : P.M. ON \_\_\_\_\_, 2015. PLEASE ALSO NOTE THAT ONCE YOUR BALLOT IS RECEIVED YOU MAY NOT CHANGE THE WAY YOU VOTED.**

**Poll Request Statute, Legislator Objections,  
and Commissioner of Political Practices' Response**

Section [2-4-403](#), MCA, requires the committee that has subject matter jurisdiction over an agency to conduct a poll of the members of the Legislature when 20 or more legislators object to a proposed rule. As of November 13, 2015, the Legislative Services Division had received 23 written objections to 16 of the Commissioner of Political Practices' proposed new and amended rules in [MAR Notice No. 44-2-207](#) that fall under the jurisdiction of SAVA. The written objections that were received as of the date of this mailing are located online on SAVA's website.

Twenty-two of the twenty-three objection letters<sup>1</sup> appear to be identical, and they state the following:

"This letter is to register my objection to certain administrative rules proposed by the Commissioner of Political Practices, on August 13, 2015.

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<sup>1</sup>Representative Monforton's letter text differs from the other letters, but the rules that he objects to are the same as objected to in the other letters.

It is my intent that this objection be considered submitted in order to fulfill the requirements of 2-4-403, MCA, that states:

"2-4-403(2) If 20 or more legislators object to a proposed rule, the committee shall poll the members of the legislature."

I specifically object to the following MAR 44-2-207 rules:

New Rule I	New Rule VIII	Proposed Rule 44.10.307
New Rule IV	New Rule X	Proposed Rule 44.10.321
New Rule V	New Rule XI	Proposed Rule 44.10.323
New Rule VI	New Rule XII	Proposed Rule 44.10.327
New Rule VII	Proposed Rule 44.10.201	Proposed Rule 44.10.329
	Proposed Rule 44.10.301	

I request that the State Administration and Veterans Affairs committee formally poll the entire legislature as to the intent of the listed rules upon receipt of twenty objections."

Additionally, pursuant to section [2-4-403\(3\)](#), MCA, the Commissioner's written justifications for the proposed new and amended rules are attached to this mailing. The full text of section [2-4-403](#), MCA, provides as follows:

**2-4-403. Legislative intent -- poll.** (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) If 20 or more legislators object to a proposed rule, the committee shall poll the members of the legislature.

(3) The poll must include an opportunity for the agency to present a written justification for the proposed rule to the members of the legislature.

### **Potential Impact of Poll**

If a majority of the members of both houses vote that a proposed rule is contrary to the intent of the Legislature under section [2-4-404](#), MCA, then that rule is conclusively presumed, in any litigation involving the rule, to be contrary to the intent of the Legislature. The full text of section [2-4-404](#), MCA, provides as follows:

**2-4-404. Evidentiary value of legislative poll.** If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with [2-4-403](#), the results of the poll must be admissible in any court proceeding involving the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency. If the poll determines that a majority of the members of both houses find that the proposed rule or adopted

rule is contrary to the intent of the legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

### **Publication of the Vote Results by the Secretary of State**

This poll and the poll results are a public record. Additionally, pursuant to [section 2-4-306\(3\)](#), MCA, the results of the poll must be published with a rule if the rule is adopted.

### **History of the Proposed Rules**

In the 2015 legislative session, the Legislature enacted SB 151, sponsored by Senator Doug Kary, which struck the statutory requirement for candidates and political committees to file certain certifications and contribution and expenditure reports with election administrators. In addition, the Legislature enacted SB 89, sponsored by Senator John Brenden, which requires Supreme Court Justices and District Court Judges to file business disclosure statements with the Commissioner of Political Practices. Lastly, the Legislature enacted SB 289, sponsored by Senator Duane Ankney, which generally revised campaign finance laws. The full title of SB 289 is as follows:

AN ACT GENERALLY REVISING CAMPAIGN FINANCE LAWS; REVISING DEFINITIONS OF "CONTRIBUTION", "EXPENDITURE", AND "POLITICAL COMMITTEE"; CLARIFYING TYPES OF POLITICAL COMMITTEES; DEFINING CAMPAIGN-RELATED TERMS; REVISING ATTRIBUTION REQUIREMENTS; PROHIBITING A UNION FROM CONTRIBUTING TO CANDIDATES; REQUIRING THE COMMISSIONER OF POLITICAL PRACTICES TO ADOPT RULES TO DETERMINE THE PRIMARY PURPOSE OF AN INCIDENTAL COMMITTEE AND TO DEFINE WHAT CONSTITUTES A DE MINIMIS ACT, CONTRIBUTION, OR EXPENDITURE; REVISING WHEN A POLITICAL COMMITTEE FILES CERTIFICATION WITH THE COMMISSIONER; CLARIFYING DISCLOSURE REQUIREMENTS FOR CERTAIN ELECTION MATERIALS; REVISING THE TIMES FOR FILING CERTAIN REPORTS; CLARIFYING DISCLOSURE REQUIREMENTS FOR CONTRIBUTIONS AND EXPENDITURES; ALLOWING THE COMMISSIONER OF POLITICAL PRACTICES TO REQUIRE CERTAIN REPORTS TO BE FILED ELECTRONICALLY; REQUIRING THE COMMISSIONER TO POST CERTAIN REPORT INFORMATION ON A WEBSITE; PROVIDING DISCLOSURE REQUIREMENTS FOR INCIDENTAL COMMITTEES; CLARIFYING THAT CERTAIN DISCLOSURE REPORTS ARE TO BE FILED REGARDLESS OF AN ENTITY'S TAX STATUS; REVISING AND EXPANDING THE COMMISSIONER'S RULEMAKING AUTHORITY; AMENDING SECTIONS 2-2-121, 13-1-101, 13-35-225, 13-35-227, 13-35-402, 13-37-114, 13-37-201, 13-37-216, 13-37-219, 13-37-225, 13-37-226, 13-37-228,

13-37-229, 13-37-231, AND 13-37-402, MCA; AND REPEALING SECTION 13-37-230, MCA.

In order to implement SB 89, SB 151, and SB 289, to "conform to current law, including *Citizens United*, and to clarify application of the Montana Campaign Practices and Finance Act to candidates and political committees"<sup>2</sup>, the Commissioner of Political Practices proposed a major revision of that agency's rules pursuant to the Montana Administrative Procedure Act (MAPA). The update included the adoption of 12 new rules, the transfer of 5 rules, the transfer and amendment of 43 rules, and the repeal of 5 rules. See [MAR Notice No. 44-2-207](#). Thus, [MAR Notice No. 44-2-207](#) is a result of a major overhaul of rules relating to existing statute, the implementation of a large legislative revision during the session, and two smaller bills. The objections at issue in this poll pertain only to nine new rules and seven amended rules; objections were not raised regarding the other proposed new rules, amended rules, transfer of rules, and repeal of rules. Because of this, the text of *only* the rules that have been objected to by more than 20 legislators as they were originally proposed in August is provided in Attachment A, and the statutes these rules cite are provided in Attachment B. The electronic version of this letter includes Internet links to the most current version of the statutes that each rule implements and the statute(s) that authorize each rule. In addition, the full notice as published in the Montana Administrative Register is also available via the Committee's poll website or the Secretary of State's website.

Please note, however, that since August, the Commissioner has provided SAVA with a number of changes following public comment to the proposed rules as originally published in the Montana Administrative Register in August. The most recent version of the rules, incorporating the changes provided by the Commissioner, may be found on the SAVA poll website. However, this poll concerns the rules as originally proposed in MAR 44-2-207 and as provided to you in Attachment A.

### **Ballot Explanation**

There is no provision in the state statutes governing the poll of the Legislature for members casting their ballots to object to anything but a "rule". Thus, if you object to any part of a proposed or amended rule, the objection must be made to the entire rule or all of the amendments to the rule.

### **Poll Materials Enclosed**

The following materials are enclosed in this mailing to assist you in making your determination whether the proposed new and amended rules are consistent or inconsistent with the intent of the Legislature and to cast your ballot:

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<sup>2</sup>[MAR Notice No. 44-2-207, p. 1139.](#)

ATTACHMENT A:	The text of the 16 rules as published in <a href="#">MAR Notice No. 44-2-207</a>
ATTACHMENT B:	The statutes implemented by the 16 rules and the statutes cited as rulemaking authority for the 16 rules
COMMISSIONER'S RESPONSE:	The Commissioner of Political Practices' written justifications for the proposed and amended rules; and
BALLOT:	The ballot where you indicate whether you believe a proposed new rule is or is not consistent with the intent of the Legislature.

### **Additional Poll Materials Available by Request or Online**

Additional poll materials are available in hard copy format by contacting the Legislative Services Division and are posted in the "Committee Topics" section of the State Administration and Veterans' Affairs Interim Committee website, under the hyperlink "Poll Documents", available at:

<http://leg.mt.gov/css/Committees/interim/2015-2016/State-Administration-and-Veterans-Affairs/Committee-Topics/Poll/poll.asp>

The additional materials are as follows:

- The full text of [MAR Notice No. 44-2-207](#)
- CoPP: Updated changes to MAR Notice No. 44-2-207 as of 11/23/2015 (relating to all proposed rules under [MAR Notice No. 44-2-207](#))
- Updated changes to [MAR Notice No. 44-2-207](#) as of 11/23/2015 (relating to 16 rules at issue under the objections, only) and related public comment (collated by Legislative Services Division)
- The 4 documents provided by the CoPP to SAVA after public comment relating to *all* rules from [MAR Notice No. 44-2-207](#) including:
  - Public comments and CoPP Responses
  - Text of all rules as proposed after comments and changes with strikes and inserts
  - Text of all rules after comments and changes - clean version
  - Rule numbers grouped by comments and changes
- Twenty-three legislator objections to MAR Notice No. 44-2-207
- SAVA Committee Meeting Materials including written and video meeting minutes, CoPP materials provided to SAVA concerning rule updates, and 8/18/2015 Rule Review Memo concerning MAR Notice No. 44-2-207
- Senate Bill 289, including written\* and video minutes relating to hearings, executive action, and floor debates, the text of the bill, LAWS Bill Report, and

- Committee of the Whole votes
- Senate Bill 151, including written\* and video minutes relating to hearings, executive action, and floor debates, the text of the bill, LAWS Bill Report, and Committee of the Whole votes
  - Note: SB 151 amended section 13-37-225, MCA, (Reports of contributions and expenditures required) to require candidates and political committees to file contribution and expenditure reports with the Commissioner of Political Practices rather than with the Commissioner and election administrators. This statutory amendment appears unrelated to the rules at issue in the poll; however, because SB 151 amended section 13-37-225, MCA, which is implemented by some of the rules at issue, the history of SB 151 is provided below for members.

\* NOTE: Committee minutes are in outline form. Consequently, hyperlinks to the audio/video of the committee hearings for SB 289 and SB 151 are posted in the poll section of the SAVA website in the event you desire to listen to any of the hearings.

Please read the enclosed material, mark your ballot to show whether you believe the 16 proposed new and amended rules cited above from MAR 44-2-207 are consistent with or contrary to the intent of the Legislature, sign your ballot, and mail the ballot as soon as possible to the Legislative Services Division in the envelope provided. Alternatively, you may submit your ballot in person, via facsimile, or via e-mail by following the instructions on the attached ballot.

Written notice on the results of the poll will be communicated to all members through the Legislative Services Division web page and newsletter [The Interim](#).

Sincerely,

Senator Dee Brown  
Chairman of the State Administration and Veterans' Affairs Interim Committee