

SENATE BILL NO. 319

INTRODUCED BY ELLINGSON

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CANDIDATES FOR ELECTION TO THE SUPREME
5 COURT WITH THE ALTERNATIVE OF A PUBLICLY FINANCED ELECTION CAMPAIGN AND PROVIDING
6 FOR PUBLIC FUNDING THROUGH THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES;
7 PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR RECEIPT OF PUBLIC MONEY; REQUIRING
8 CONTINUING COMPLIANCE BY CANDIDATES; SPECIFYING THE TIMING AND AMOUNT OF PAYMENTS
9 TO CANDIDATES; SPECIFYING PURPOSES FOR WHICH PAYMENTS OF PUBLIC MONEY TO
10 CANDIDATES MAY BE SPENT; REQUIRING DISCLOSURE OF CERTAIN ELECTION CAMPAIGN SPENDING;
11 REQUIRING DISCLOSURE OF AMOUNTS SPENT FOR ISSUE ADVERTISING AND REQUIRING PAYMENTS
12 TO CERTAIN CANDIDATES TO RESPOND TO THAT ADVERTISING; CREATING THE PUBLIC MONEY
13 ELECTION CAMPAIGN FUND AND SPECIFYING THE CONTENT AND USE OF THE FUND; PROVIDING FOR
14 ADMINISTRATION OF PAYMENTS FROM THE PUBLIC MONEY FUND TO CERTAIN CANDIDATES;
15 CREATING A PRIVATE RIGHT OF ACTION; REQUIRING RULEMAKING; CREATING OFFENSES AND
16 PROVIDING PENALTIES; ~~CREATING INDIVIDUAL AND CORPORATE TAX CHECKOFFS AND CREDITS
17 AND AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO PROVIDE MONEY FOR THE PUBLIC
18 MONEY FUND;~~ AMENDING SECTION 13-1-101, MCA; AND PROVIDING EFFECTIVE DATES, ~~A
19 RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.~~"

20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22

23 NEW SECTION. **Section 1. Short title.** [Sections 1 through ~~25~~ 24] may be cited as the "Public
24 Financing of Supreme Court Election Campaigns Act".

25

26 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through ~~25~~ 24] is to ensure the
27 fairness of democratic elections in Montana and to protect the constitutional rights of voters and candidates from
28 the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome
29 of elections. Those detrimental effects are especially problematic in elections of the judiciary because impartiality
30 is uniquely important to the integrity and credibility of the courts. Accordingly, [sections 1 through ~~25~~ 24] establish

1 an alternative source of campaign financing for candidates who demonstrate public support and voluntarily
2 accept strict fundraising and spending limits. Financing under [sections 1 through ~~25~~ 24] is available to
3 candidates for the offices of chief justice and associate justices of the supreme court in elections to be held in
4 and after 2006.

5
6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through ~~25~~ 24], unless the context
7 indicates otherwise, the following definitions apply:

8 (1) "Candidate" means an individual who has filed a declaration for nomination, acceptance of
9 nomination, or appointment as a candidate for the office of chief justice or associate justice of the supreme court.

10 (2) "Election" means an election, as defined in 13-1-101, of an individual to the office of chief justice
11 or associate justice of the supreme court.

12 (3) "Election cycle" means the period of time beginning the day after the general election until the day
13 of the next general election.

14 (4) "Excess campaign contribution" means the amount of money received by a nonparticipating
15 candidate as a campaign contribution in excess of the public money funding available to a participating
16 candidate running for the same office.

17 (5) "General election campaign period" means the period of time beginning the day after the primary
18 election and ending on the day of the general election.

19 (6) "Mass mailing" means a mailing of 200 or more identical or nearly identical pieces of mail sent by
20 a candidate or an elected official to the voters, residents, or post-office boxholders within the jurisdiction that a
21 candidate seeks to represent. A mass mailing does not include:

22 (a) a mailing made in direct response to communications from individuals or groups to whom the matter
23 is mailed;

24 (b) a mailing to federal, state, or local government officials; or

25 (c) releases to the communications media.

26 (7) "Nonparticipating candidate" means a candidate who is on the ballot but has not been certified by
27 the commissioner pursuant to [section 10] as a participating candidate.

28 (8) "Participating candidate" means a candidate who has been certified as a participating candidate by
29 the commissioner pursuant to [section 10] and who is eligible to receive public money funding.

30 (9) "Primary election campaign period" means the period beginning 90 days before the primary election

1 and ending on the day of the primary election.

2 (10) "Public money election campaign fund", "public money fund", or "fund" means the fund created in
3 [section 17].

4 (11) "Public money funding" means money paid or to be paid by the commissioner from the public
5 money fund to a participating candidate.

6 (12) "Public money qualifying period" means the period during which candidates are permitted to collect
7 qualifying contributions in order to qualify for public money funding. The period begins 120 days before the
8 beginning of the primary election campaign period and ends 30 days before the primary election.

9 (13) "Qualifying contribution" means a contribution meeting the requirements of [section 4(1)] given to
10 a candidate for election.

11
12 **NEW SECTION. Section 4. Requirements for qualifying contributions.** (1) To be considered a
13 qualifying contribution, a contribution:

14 (a) may be made only by a registered voter who resides within the state;

15 (b) must be \$5;

16 (c) must be received during the public money qualifying period by a candidate seeking to become a
17 participating candidate;

18 (d) may be made only by cash, check, or money order;

19 (e) must be acknowledged by a receipt given to the contributor, with a copy of the receipt kept by the
20 candidate and a copy sent to the commissioner. The receipt must include the contributor's signature, printed
21 name, home address, and telephone number and the name of the candidate on whose behalf the contribution
22 is made. The receipt must indicate, by the contributor's signature, that:

23 (i) the contributor fully understands that the purpose of the contribution is to help the candidate qualify
24 for public money funding; and

25 (ii) the contribution is made without coercion or reimbursement by volunteers who do not receive
26 reimbursement.

27 (2) The receipt required by subsection (1)(e) and the contribution must be submitted to the
28 commissioner according to a schedule and procedure to be determined by the commissioner. A contribution
29 submitted as a qualifying contribution that does not include a signed and completed receipt may not be counted
30 as a qualifying contribution.

1
2 **NEW SECTION. Section 5. Eligibility of candidate for public money funding.** (1) A candidate
3 qualifies as a participating candidate for the primary election campaign period if the candidate:

4 (a) receives at least 500 qualifying contributions before the close of the public money qualifying period;
5 and

6 (b) files a declaration with the commissioner that the candidate has complied and will comply with all
7 of the requirements of [sections 1 through ~~25~~ 24], including the requirement that during the public money
8 qualifying period, the candidate has not and will not accept or spend private contributions from any source other
9 than public money qualifying contributions. However, during the qualifying period a candidate may lend up to
10 \$2,500 to the candidate's campaign to defray the expenses of collecting qualifying contributions. Loans must
11 be repaid from any qualifying contributions before the balance is deposited in the fund established in [section
12 17], unless [section 6] applies.

13 (2) A candidate qualifies as a participating candidate for the general election campaign period if the
14 candidate:

15 (a) meets all of the applicable requirements and files a declaration with the commissioner that the
16 candidate has fulfilled and will fulfill all of the requirements of a participating candidate, as provided in [sections
17 1 through ~~25~~ 24], and the rules of the commissioner; and

18 (b) qualified for the general election as a participating candidate during the primary election campaign
19 period.

20
21 **NEW SECTION. Section 6. Eligibility rule for transition from current election cycle.** During the
22 election cycle in effect on [the effective date of this section], a candidate may be certified as a participating
23 candidate notwithstanding the acceptance of contributions or making of expenditures from private funds before
24 that date that would, except for this section, disqualify the candidate as a participating candidate if any private
25 funds accepted but not expended before [the effective date of this section] are returned to the contributor or are
26 submitted to the commissioner for deposit in the public money fund.

27
28 **NEW SECTION. Section 7. Continuing obligation to comply.** A participating candidate who accepts
29 public money funding during the primary election campaign period shall comply with the requirements of
30 [sections 1 through ~~25~~ 24] through the general election campaign period regardless of whether the participating

1 candidate accepts public money funding during the general election campaign period.

2

3 **NEW SECTION. Section 8. Contributions and expenditures.** (1) A participating candidate may not,
4 during the primary and general election campaign periods, accept a contribution from a source other than the
5 public money fund.

6 (2) A participating candidate who receives a qualifying contribution that is not from the person listed on
7 the receipt required by [section 4] shall pay the qualifying contribution to the commissioner and is liable for other
8 penalties provided by [sections 1 through 25 24]. The commissioner shall deposit the qualifying contribution in
9 the public money election campaign fund.

10 (3) During the primary and general election campaign periods, a participating candidate may pay the
11 participating candidate's campaign expenditures, except petty cash expenditures paid from a fund created in
12 accordance with 13-37-215, by means of the public money debit card issued pursuant to [section 19].

13 (4) An individual applying for certification as a participating candidate shall furnish complete campaign
14 records, including all records of qualifying contributions, to the commissioner at the time of application.
15 Participating candidates shall furnish any of those records to the commissioner upon the request of the
16 commissioner. Individuals applying for certification and participating candidates shall cooperate with the
17 commissioner in the commissioner's performance of an audit or other investigation.

18

19 **NEW SECTION. Section 9. Contribution and use of personal funds by candidate.** The personal
20 funds of a candidate seeking certification as a participating candidate may not be used to meet the qualifying
21 contribution requirements of [section 4] except for one \$5 contribution from the candidate and one \$5
22 contribution from the candidate's spouse if the candidate's spouse is a registered voter who resides in the state.

23

24 **NEW SECTION. Section 10. Application for certification -- certification by commissioner --**
25 **judicial review.** (1) A candidate's application for certification as a participating candidate must be signed under
26 oath by the candidate and the candidate's campaign treasurer.

27 (2) An application for certification as a participating candidate must be submitted to the commissioner
28 and must include:

29 (a) evidence of the number of qualifying contributions received by the candidate; and

30 (b) a declaration that the candidate has complied and will comply with all the requirements for eligibility

1 for certification as a participating candidate.

2 (3) No more than 5 working days after a candidate applies for public money funding, the commissioner
3 shall determine whether the candidate is or is not eligible to receive public money funding. The commissioner's
4 determination must be based on the documentation provided by the candidate applying for public money
5 funding. If the commissioner determines that the candidate is eligible, the commissioner shall certify the
6 candidate as a participating candidate and make money from the public money fund available to the participating
7 candidate in accordance with [section 11]. If the commissioner determines that the candidate is not eligible to
8 receive public money funding, the commissioner shall inform the candidate in writing of that fact.

9 (4) The commissioner shall revoke the certification of a participating candidate who the commissioner
10 later determines was not eligible for certification because of a violation of [sections 1 through ~~25~~ 24] or the rules
11 of the commissioner. The commissioner's determination must be based upon a finding made in a contested case
12 proceeding held pursuant to Title 2, chapter 4, part 6. If a participating candidate's certification of eligibility is
13 revoked, the candidate shall repay to the commissioner all public money funding received by the candidate.
14 Money repaid to the commissioner must be deposited in the public money fund.

15 (5) A decision by the commissioner whether to certify a candidate as a participating candidate is subject
16 to judicial review in the manner provided by Title 2, chapter 4, part 7.

17
18 **NEW SECTION. Section 11. Funding provided to participating candidates -- schedule of**
19 **payments and amounts of public money funding.** (1) A candidate certified as a participating candidate must
20 receive, at the times provided for in subsection (2), public money funding in the amounts provided for in
21 subsection (3). Public money funding may be used by a participating candidate only in the manner and for the
22 purposes provided for in [section 12].

23 (2) The commissioner shall provide public money funding to a participating candidate for a primary
24 election campaign period, in the amount provided in subsection (3), on the day that the commissioner certifies
25 the candidate as a participating candidate. The commissioner shall provide public funding money to a
26 participating candidate for a general election campaign period, in the amount provided in subsection (3), within
27 48 hours after certification of the primary election results.

28 (3) The commissioner shall pay the following amounts from the public money fund to participating
29 candidates:

30 (a) in a contested primary election, \$50,000 for candidates running for the office of associate justice and

1 \$60,000 for candidates running for the office of chief justice;

2 (b) in an uncontested primary election, \$5,000 for candidates running for the office of associate justice
3 and \$5,000 for candidates running for the office of chief justice;

4 (c) in a contested general election, \$125,000 for candidates running for the office of associate justice
5 and \$150,000 for candidates running for the office of chief justice; and

6 (d) in an uncontested general election, \$5,000 for candidates running for the office of associate justice
7 and \$6,000 for candidates running for the office of chief justice.

8 (4) After the first election cycle in which the commissioner provides public money funding to participating
9 candidates, the commissioner shall increase all public money funding to be paid in the following election cycle
10 by an amount equal to the rate of inflation or the cost-of-living increase, whichever is more, between the previous
11 general election and the next general election, as determined by the rules of the commissioner.

12

13 **NEW SECTION. Section 12. Purpose for which public money funding may be used -- return of**
14 **unspent funds.** (1) Public money funding may be used by a participating candidate only to pay for
15 campaign-related expenses incurred in the course of a primary or general election campaign.

16 (2) Public money funding may not be expended in violation of law or for personal, family, or business
17 loans, expenditures, or debts.

18 (3) A participating candidate who does not expend all public money funding received by the participating
19 candidate shall return the unspent portion to the commissioner, who shall deposit the money into the public
20 money election campaign fund.

21

22 **NEW SECTION. Section 13. Disclosure of excess campaign contributions by nonparticipating**
23 **candidates.** (1) If a nonparticipating candidate's total campaign contributions received at any time exceed the
24 amount of public money funding provided to the nonparticipating candidate's participating candidate opponent,
25 the nonparticipating candidate shall declare to the commissioner within 48 hours of receipt every excess
26 campaign contribution, once the total excess contributions exceed \$1,500.

27 ~~————(2) During the last 20 days before the end of the relevant campaign period, a nonparticipating candidate~~
28 ~~may not receive any additional campaign contributions. The nonparticipating candidate may continue to~~
29 ~~contribute the candidate's personal funds to the campaign and shall declare to the commissioner each excess~~
30 ~~campaign contribution within 24 hours of receipt once the total excess contributions exceed \$1,500.~~

1 ~~(3)~~(2) The commissioner may make a determination as to whether an excess campaign contribution
2 has been made to a nonparticipating candidate based upon documentation provided by the nonparticipating
3 candidate.

4 ~~(4)~~(3) Upon receiving an excess campaign contribution declaration from a nonparticipating candidate
5 or making a determination that a nonparticipating candidate has received more in campaign contributions than
6 a participating candidate, the commissioner shall immediately provide additional public money funding to the
7 opposing participating candidate equal to the excess campaign contributions received by the nonparticipating
8 candidate, subject to the limitations provided in [section 15(5)].

9
10 NEW SECTION. **Section 14. Definition of independent expenditure.** As used in [section 15] and this
11 section, unless the context indicates otherwise, the following definitions apply:

12 (1) "Candidate's authorized committee" means a combination of two or more persons that, with the
13 candidate's full knowledge and approval and on behalf of a candidate, organizes to support that candidate or
14 to oppose a different candidate.

15 (2) "Coordination" means a payment made for a communication or anything of value that is given for
16 the purpose of influencing the outcome of an election and that is made by a person:

17 (a) in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a
18 particular understanding with a candidate, a candidate's authorized committee, or an agent acting on behalf of
19 a candidate or a candidate's authorized committee;

20 (b) for the dissemination, distribution, or republication, in whole or in part, of a broadcast or a written,
21 graphic, or other form of campaign material prepared by a candidate, a candidate's authorized committee, or
22 an agent of a candidate or a candidate's authorized committee;

23 (c) based on specific information about the candidate's plans, projects, or needs provided to the person
24 making the payment by the candidate or the candidate's agent who provides the information with a view toward
25 having the payment made;

26 (d) if, in the same election cycle in which the payment is made, the person making the payment is
27 serving or has served as a member, employee, fundraiser, or agent of the candidate's authorized committee in
28 an executive or policymaking position;

29 (e) if the person making the payment has served in any formal policy or advisory position with the
30 candidate's campaign or has participated in strategic or policymaking discussions with the candidate's campaign

1 relating to the candidate's pursuit of election or nomination for election in the same election cycle as the election
2 cycle in which the payment is made; or

3 (f) if the person making the payment retains the professional services of an individual or person who,
4 in a nonministerial capacity, has provided or is providing campaign-related services in the same election cycle
5 to a candidate who is pursuing the same nomination or election as any of the candidates to whom the
6 communication refers.

7 (3) (a) "Express advocacy" means a communication that is made through a broadcast medium,
8 newspaper, magazine, billboard, direct mail, or similar type of general public communication or political
9 advertising that:

10 (i) advocates the election or defeat of a clearly identified candidate, including any communication that
11 contains a phrase such as "vote for", "reelect", "support", "cast your ballot for", "(name of candidate) for (name
12 of office)", "(name of candidate) in (year)", "vote against", "defeat", "reject", or similar phrases; or

13 (ii) contains campaign slogans or individual words that in context can have no reasonable meaning other
14 than to recommend the election or defeat of one or more clearly identified candidates.

15 (b) The term does not mean:

16 (i) a news story, commentary, or editorial by a broadcasting station, newspaper, magazine, or other
17 publication, but only if that entity is not owned by or affiliated with any candidate or candidate's authorized
18 committee; or

19 (ii) a regularly published newsletter or other communication for which circulation is limited to an
20 organization's members, employees, shareholders, and other affiliated individuals and those who request or
21 purchase the communication.

22 (4) "Independent expenditure" means an expenditure made by a person other than a candidate or a
23 candidate's authorized committee that:

24 (a) is made for a communication that contains express advocacy; and

25 (b) is made without the participation or cooperation of and without coordination with a candidate or
26 candidate's authorized committee.

27 (5) "Professional services" includes services in support of a candidate's pursuit of election or nomination
28 for election, such as polling, media advice, mass mailing, fundraising, or campaign research.

29

30 **NEW SECTION. Section 15. Independent expenditures -- additional public money funding. (1)**

1 A person who makes or obligates an independent expenditure during a primary or general election campaign
2 period that, when considered with other independent expenditures made by that person not reported to the
3 commissioner since a previous report, exceeds \$1,000 shall, within 48 hours of making the expenditure or
4 obligation, report each of those independent expenditures to the commissioner.

5 (2) The report to the commissioner required by subsection (1) must include a sworn statement by the
6 person making or obligating the independent expenditure identifying the candidate whom the independent
7 expenditure is intended to help elect or defeat and affirming that the expenditure is totally independent and
8 involves no cooperation or coordination with a candidate, a candidate's authorized committee, or a political party.

9 (3) A person who makes or obligates an independent expenditure during the last 20 days before the
10 end of the relevant campaign period that, when considered with other independent expenditures made by that
11 person during the same period since the previous report to the commissioner, exceeds \$500 shall, within 24
12 hours of making the expenditure, report each expenditure to the commissioner.

13 (4) Upon receiving a report that an independent expenditure has been made or obligated, the
14 commissioner shall immediately provide additional public money funding, equal in amount to the amount of the
15 independent expenditure, to all participating candidates whom the independent expenditure is intended to
16 oppose or defeat, as reported pursuant to subsections (2) and (3).

17 (5) The maximum aggregate amount of additional funding that a participating candidate may receive
18 to match independent expenditures or excess campaign contributions of nonparticipating candidates, or both,
19 in an election is 200% of the total amount of public money funding received by a participating candidate in that
20 election.

21 (6) An individual or organization may file a complaint with the commissioner if the individual or
22 organization believes that a statement made for the purposes of satisfying subsection (2) is false. The
23 commissioner shall make a determination of a complaint and dispose of the matter as provided in [section 20].
24

25 **NEW SECTION. Section 16. Issue advertisements -- payment of additional public money.** (1) Not
26 later than 48 hours after making or obligating an expenditure to purchase an issue advertisement, the person
27 who makes or obligates the expenditure shall file a report with the commissioner that contains the following
28 information:

- 29 (a) the amount of the expenditure;
30 (b) the name and address of the person making the expenditure; and

1 (c) the purpose of the issue advertisement.

2 (2) Upon receiving a report that an issue advertisement has been made or obligated and upon
3 determination that the advertisement can reasonably be interpreted as having the effect of promoting the defeat
4 of a participating candidate or the election of that participating candidate's opponent, the commissioner shall
5 immediately provide to that participating candidate additional public money funding, equal in amount to the cost
6 of the issue advertisement. The commissioner shall develop appropriate rules for the implementation of this
7 section.

8 (3) As used in this section, "issue advertisement" means a communication through a broadcasting
9 station, newspaper, magazine, outdoor advertising facility, mass mailing, or other type of general public political
10 advertising:

11 (a) the purchase of which is not an independent expenditure or a contribution;

12 (b) that costs, in the aggregate, \$1,000 or more;

13 (c) that contains the name or likeness of one or more candidates;

14 (d) that is communicated during a primary election campaign period or general election campaign
15 period; and

16 (e) that recommends a position on a political issue.

17
18 **NEW SECTION. Section 17. Public money election campaign fund created -- nature and purpose**

19 **of fund.** (1) There is an account in the state special revenue fund, established in 17-2-102, to be known as the
20 public money election campaign fund.

21 (2) Revenue derived from the sources specified in [section 18] must be deposited in the account as
22 provided in that section. Interest or other income earned on the money in the account accrues to the account.

23 (3) Money in the account may be used by the commissioner only for the administration of [sections 1
24 through ~~25~~ 24], including public money funding payments to participating candidates as provided for in [sections
25 1 through ~~25~~ 24] and payment for any additional administrative costs incurred by the commissioner's office in
26 implementing [sections 1 through ~~25~~ 24].

27
28 **NEW SECTION. Section 18. Sources of revenue.** (1) Money appropriated by the legislature for the
29 purposes of [sections 1 through ~~25~~ 24] must be deposited in the public money election campaign fund.

30 (2) Other sources of revenue that must be deposited in the fund include:

1 (a) qualifying contributions paid by candidates seeking certification as participating candidates pursuant
 2 to [section 10] and any qualifying contributions collected by a candidate in excess of the number necessary for
 3 certification as a participating candidate;

4 (b) money distributed to a participating candidate who does not remain a candidate until the primary
 5 or general election for which the money was paid by the commissioner and the money from the fund that
 6 remains unused by a participating candidate following the date of the primary or general election for which that
 7 money was paid;

8 (c) fines levied by the commissioner against candidates for violation of [sections 1 through 25 24];

9 ~~(d) money resulting from the voluntary tax checkoffs provided for in [sections 26 and 28] and other~~
 10 donations to the fund;

11 (e) interest or other income generated by money in the fund; AND

12 ~~—— (f) loans received from the board of investments pursuant to [section 25]; and~~

13 ~~(g)~~(F) other sources of revenue determined necessary by the legislature.

14

15 **NEW SECTION. Section 19. Administration and payment of money from fund -- public money**
 16 **debit card.** (1) Upon certification of a candidate as a participating candidate pursuant to [section 10], the
 17 commissioner shall issue to a participating candidate a line of credit evidenced by a public money debit card.
 18 The card must enable a participating candidate to draw upon a line of credit to be paid from the public money
 19 fund up to the maximum of the amount for which the card is issued.

20 (2) A participating candidate or other individual authorized by the participating candidate or the
 21 participating candidate's campaign treasurer to make or obligate expenditures on behalf of the participating
 22 candidate or the participating candidate's campaign may not, except as provided in this section, use any form
 23 of payment, including cash, check, or money order, other than the public money debit card to pay for those
 24 expenditures or incur obligations for expenditures.

25 (3) Cash amounts of \$100 or less a day may be drawn on the public money debit card and used to pay
 26 expenses of no more than \$25 each. Records of all expenditures for which the debit card is used must be
 27 maintained and reported to the commissioner at the time and in the manner provided by the rules of the
 28 commissioner.

29

30 **NEW SECTION. Section 20. General powers and duties of commissioner.** (1) The powers provided

1 in this section are powers that may be exercised by the commissioner in addition to powers granted by other
2 laws.

3 (2) After every primary or general election, the commissioner may conduct random audits and
4 investigations to ensure compliance with [sections 1 through ~~25~~ 24].

5 (3) The subjects of audits and investigations must be selected by the commissioner on the basis of
6 impartial criteria established by the commissioner.

7 (4) The commissioner may seek an injunction under Title 27, chapter 19, if:

8 (a) there is a substantial likelihood that a violation of [sections 1 through ~~25~~ 24] or the rules of the
9 commissioner is occurring or is about to occur;

10 (b) the commissioner's failure to act expeditiously will result in irreparable harm to a candidate affected
11 by the violation or potential violation;

12 (c) expeditious action will not cause undue harm or prejudice to the interests of others; and

13 (d) the public interest would be best served by the issuance of an injunction.

14 (5) The commissioner shall refer criminal violations to the attorney general for prosecution.

15

16 **NEW SECTION. Section 21. Private right of action for others -- judicial review of commissioner's**
17 **action.** (1) A person other than the commissioner who believes that a candidate has violated a provision of
18 [sections 1 through ~~25~~ 24] has a right of action in the district court in the county in which the person bringing the
19 action resides to enforce the provisions of [sections 1 through ~~25~~ 24] or the rules of the commissioner if that
20 person:

21 (a) has previously filed a complaint with the commissioner regarding the same alleged violation; and

22 (b) has not been informed by the commissioner in writing within 45 days of the date of filing the
23 complaint that the commissioner intends to bring a civil action or an administrative action or to refer the matter
24 to the attorney general to resolve the same alleged violation.

25 (2) Except as otherwise provided in this section, a person other than the commissioner who brings an
26 action pursuant to subsection (1) may be awarded only the civil relief awardable to the commissioner if the
27 commissioner had brought the action.

28 (3) A litigant that substantially prevails in a civil action brought pursuant to subsection (1) charging a
29 violation of [sections 1 through ~~25~~ 24] or the rules of the commissioner may receive costs as provided by law
30 and reasonable attorney fees from the other party.

1 (4) A person who is aggrieved by the violation of [sections 1 through ~~25 24~~] or the rules of the
2 commissioner may bring an action in the district court for Lewis and Clark County to enforce the provisions of
3 [sections 1 through ~~25 24~~] and the rules of the commissioner. The litigant that substantially prevails in the action
4 is entitled to costs as provided by law and to reasonable attorney fees from the other party.

5
6 **NEW SECTION. Section 22. Rulemaking.** (1) The commissioner shall adopt rules implementing
7 [sections 1 through ~~25 24~~].

8 (2) The rules must include:

9 (a) the use of the public money debit card;

10 (b) a schedule of fines and a procedure for levying fines against persons who violate [sections 1 through
11 ~~25 24~~] or the rules of the commissioner; and

12 (c) any other matters the commissioner considers necessary to implement [sections 1 through ~~25 24~~].

13
14 **NEW SECTION. Section 23. Repayment of amounts spent in excess of public money funding.**

15 (1) If a participating candidate spends or obligates more than the public money funding that the participating
16 candidate is paid by the commissioner and if the commissioner determines that the additional amount spent or
17 obligated is not an amount that had or could have reasonably been expected to have a significant impact on the
18 election of that participating candidate, whether or not the participating candidate was elected, then the
19 participating candidate shall repay to the public money fund an amount equal to the excess expenditure or
20 obligation, as follows:

21 (a) for amounts up to 105% of the permissible amount, the excess expenditures;

22 (b) for amounts between 105% and 115% of the permissible amount, twice the amount of the excess
23 expenditures; and

24 (c) for amounts in excess of 115% of the permissible amount, five times the amount of the excess
25 expenditures.

26 (2) If a participating candidate spends or obligates more than the public money funding that the
27 candidate is given and if the additional amount spent or obligated is determined by the commissioner to be an
28 amount that had or could reasonably have been expected to have a significant impact on the election of that
29 participating candidate, whether or not that participating candidate was elected, then the participating candidate
30 shall repay to the public money fund an amount equal to 10 times the value of the excess expenditure or

1 obligation.

2

3 **NEW SECTION. Section 24. Offenses -- penalties.** (1) A participating candidate may not knowingly:

4 (a) accept more public money funding than that amount to which the participating candidate is entitled;

5 (b) spend more public money funding than the participating candidate has received from the
6 commissioner; or

7 (c) spend public money funding for a purpose other than those purposes allowed by [section 12].

8 (2) If a violation of subsection (1) involves an amount of public money funding that had or could
9 reasonably have been expected to have a significant impact on the election of that participating candidate,
10 whether or not that participating candidate was elected, the participating candidate may be fined an amount up
11 to \$25,000 or be imprisoned for a term up to 5 years, or both.

12 (3) A person who provides false information to the commissioner or conceals or withholds information
13 from the commissioner is guilty of an offense and may be fined an amount up to \$5,000 for each violation or be
14 imprisoned for a term up to 5 years, or both.

15 (4) Fines paid must be deposited in the public money election campaign fund.

16

17 ~~NEW SECTION. Section 25. Loan from board of investments -- repayment.~~ If the money in the
18 public money election campaign fund is inadequate to fund all requests for public funding, the commissioner may
19 borrow money from the board of investments, and the board is authorized to make loans for the purposes of
20 [sections 1 through 25], including payments made by the commissioner to candidates for public office as
21 provided in [section 11]. Loans made by the board of investments must be repaid at a rate of interest and on a
22 schedule determined by the board from money in the public money election campaign fund. If the money in the
23 fund is insufficient to repay the loans within the period of time determined by the board of investments, the loans
24 must be repaid from the general fund.

25

26 ~~NEW SECTION. Section 26. Voluntary checkoff for public money election campaign fund.~~ (1)
27 Each individual taxpayer who is required to file an income tax return under this chapter may contribute part of
28 any tax payment due to the public money election campaign fund, provided for in [section 17], by marking the
29 appropriate box on the state income tax return.

30 ~~(2) Each state individual income tax return must contain a provision for indicating a contribution to the~~

1 public money election campaign fund in substantially the following form:

2 _____ "Supreme court public money election campaign fund. Check this box if you wish to designate \$5 _____,
3 \$10 _____, or more _____ (indicate amount up to a maximum of \$50) of your tax payment due to help fund the public
4 money election campaign fund. On a joint return, check the corresponding box for your spouse if your spouse
5 wishes to contribute \$5 _____, \$10 _____, or more _____ (indicate amount up to a maximum of \$50) of the tax payment
6 due for the same purpose."

7 _____ (3) Money received under this section must be deposited in the public money election campaign fund
8 created by [section 17] after the department has deducted the amount necessary for the department to
9 administer this section as provided in 15-30-153.

10

11 _____ NEW SECTION. Section 27. Tax credit for money contributed to public money election campaign
12 fund. (1) A tax credit is allowed against the taxes imposed by this chapter in an amount up to \$50 for an amount
13 contributed A DIRECT CONTRIBUTION to the public money election campaign fund provided for in [section 17]. The
14 credit allowed by this section may not exceed the taxpayer's income tax liability.

15 _____ (2) The contribution for which the credit is allowed may be made by the voluntary checkoff provided for
16 in [section 26] or by another method of donation.

17 _____ (3)(2) There is no carryback or carryforward of the credit permitted by this section. A contribution made
18 by the voluntary checkoff provided for in [section 26] or by another method of contribution DIRECT CONTRIBUTION
19 TO THIS FUND for which a tax credit is claimed must be made in the same tax year for which a return is filed.

20 _____ (3) IF THE ELECTION IS MADE TO CLAIM THIS CREDIT, THE CONTRIBUTION MAY NOT BE CLAIMED AS A DEDUCTION
21 UNDER 15-30-121.

22

23 _____ NEW SECTION. Section 28. Voluntary checkoff for public money election campaign fund. (1)
24 Each taxpayer that is required to file an income tax return under this chapter may contribute part of any tax
25 payment due to the public money election campaign fund, provided for in [section 17], by marking the
26 appropriate box on the state income tax return.

27 _____ (2) Each state corporate income tax return must contain a provision for indicating a contribution to the
28 public money election campaign fund in substantially the following form:

29 _____ "Supreme court public money election campaign fund. Check this box if you wish to designate \$5 _____,
30 \$10 _____, or more _____ (indicate amount up to a maximum of \$50) of your tax payment due to help fund the public

1 money election campaign fund."

2 ~~———— (3) (a) Except as provided in subsection (3)(b), money MONEY received under this section must be~~
3 ~~deposited in the public money election campaign fund created by [section 17] after the department has deducted~~
4 ~~any amount necessary for the department to administer this section.~~

5 ~~———— (b) If the balance in the public money election campaign fund, except amounts borrowed under [section~~
6 ~~25], is \$200,000 or more, then the money received under this section must be deposited in the state general~~
7 ~~fund.~~

8
9 ~~———— **NEW SECTION. Section 29. Tax credit for money contributed to public money election campaign**~~
10 ~~**fund.** (1) A tax credit is allowed against the taxes imposed by this chapter in an amount up to \$50 for an amount~~
11 ~~contributed A DIRECT CONTRIBUTION to the public money election campaign fund provided for in [section 17]. The~~
12 ~~credit allowed by this section may not exceed the taxpayer's income tax liability.~~

13 ~~———— (2) The contribution for which the credit is allowed may be made by the voluntary checkoff provided for~~
14 ~~in [section 28] or by another method of donation.~~

15 ~~———— (3)(2) There is no carryback or carryforward of the credit permitted by this section. A contribution made~~
16 ~~by the voluntary checkoff provided for in [section 28] or by another method of contribution DIRECT CONTRIBUTION~~
17 ~~TO THIS FUND for which a tax credit is claimed must be made in the same tax year for which a return is filed.~~

18
19 **Section 25.** Section 13-1-101, MCA, is amended to read:

20 **"13-1-101. Definitions.** As used in this title, except as provided in [sections 1 through 25 24], and
21 unless the context clearly indicates otherwise, the following definitions apply:

22 (1) "Active elector" means an elector who voted in the previous federal general election and whose
23 name is on the active list.

24 (2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

25 (3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that
26 is ordinarily not given away free but is purchased.

27 (4) "Application for voter registration" means a voter registration form prescribed by the secretary of
28 state that is completed and signed by an elector, submitted to the election administrator, and contains voter
29 registration information subject to verification as provided by law.

30 (5) "Ballot" means:

- 1 (a) a paper ballot used with a paper-based system, such as an optical scan system or other technology
2 that automatically tabulates votes cast by processing the paper ballots; or
- 3 (b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine,
4 a direct recording electronic machine, or other technology.
- 5 (6) "Candidate" means:
- 6 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or
7 appointment as a candidate for public office as required by law;
- 8 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained
9 contributions, made expenditures, or given consent to an individual, organization, political party, or committee
10 to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination
11 or election to any office at any time, whether or not the office for which the individual will seek nomination or
12 election is known when the:
- 13 (i) solicitation is made;
- 14 (ii) contribution is received and retained; or
- 15 (iii) expenditure is made; and
- 16 (c) an officeholder who is the subject of a recall election.
- 17 (7) (a) "Contribution" means:
- 18 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value
19 to influence an election;
- 20 (ii) a transfer of funds between political committees;
- 21 (iii) the payment by a person other than a candidate or political committee of compensation for the
22 personal services of another person that are rendered to a candidate or political committee.
- 23 (b) "Contribution" does not mean:
- 24 (i) services provided without compensation by individuals volunteering a portion or all of their time on
25 behalf of a candidate or political committee or meals and lodging provided by individuals in their private
26 residences for a candidate or other individual;
- 27 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
28 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;
- 29 (iii) the cost of any communication by any membership organization or corporation to its members or
30 stockholders or employees; or

- 1 (iv) filing fees paid by the candidate.
- 2 (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements
3 of state law, regardless of the time or purpose.
- 4 (9) "Election administrator" means the county clerk and recorder or the individual designated by a
5 county governing body to be responsible for all election administration duties, except that with regard to school
6 elections, the term means the school district clerk.
- 7 (10) "Elector" means an individual qualified to vote under state law.
- 8 (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift
9 of money or anything of value made for the purpose of influencing the results of an election.
- 10 (b) "Expenditure" does not mean:
- 11 (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- 12 (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or
13 personal necessities for the candidate and the candidate's family;
- 14 (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any
15 broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- 16 (iv) the cost of any communication by any membership organization or corporation to its members or
17 stockholders or employees.
- 18 (12) "Federal election" means a general or primary election in which an elector may vote for individuals
19 for the office of president of the United States or for the United States congress.
- 20 (13) "General election" or "regular election" means an election held for the election of public officers
21 throughout the state at times specified by law, including elections for officers of political subdivisions when the
22 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues
23 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the
24 legislature to the electors at a general election, "general election" means an election held at the time provided
25 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted
26 as a constitutional initiative at a regular election, regular election means an election held at the time provided
27 in 13-1-104(1).
- 28 (14) "Inactive elector" means an individual who failed to vote in the preceding federal general election
29 and whose name was placed on an inactive list pursuant to 13-2-220.
- 30 (15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

1 (16) "Individual" means a human being.

2 (17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval
3 or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall
4 questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35
5 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure
6 necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue
7 becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

8 (18) "Legally registered elector" means an individual whose application for voter registration was
9 accepted, processed, and verified as provided by law.

10 (19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,
11 club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

12 (20) "Political committee" means a combination of two or more individuals or a person other than an
13 individual who makes a contribution or expenditure:

14 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
15 petition for nomination; or

16 (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue;
17 or

18 (c) as an earmarked contribution.

19 (21) "Political subdivision" means a county, consolidated municipal-county government, municipality,
20 special district, or any other unit of government, except school districts, having authority to hold an election for
21 officers or on a ballot issue.

22 (22) "Primary" or "primary election" means an election held throughout the state to nominate candidates
23 for public office at times specified by law, including nominations of candidates for offices of political subdivisions
24 when the time for nominations is set on the same date for all similar subdivisions in the state.

25 (23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not
26 been verified as provided by law.

27 (24) "Provisionally registered elector" means an individual whose application for voter registration was
28 accepted but whose eligibility has not yet been verified as provided by law.

29 (25) "Public office" means a state, county, municipal, school, or other district office that is filled by the
30 people at an election.

1 (26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant
2 election administrator.

3 (27) "Special election" means an election other than a statutorily scheduled primary or general election
4 held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled
5 election.

6 (28) "Statewide voter registration list" means the voter registration list established and maintained
7 pursuant to 13-2-107 and 13-2-108.

8 (29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an
9 elector to transfer the elector's registration when the elector's residence address has changed within the county.

10 (30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in
11 13-15-206.

12 (31) "Voting system" or "system" means any machine, device, technology, or equipment used to
13 automatically record, tabulate, or process the vote of an elector cast on a paper or nonpaper ballot."
14

15 **NEW SECTION. Section 26. Codification instruction.** (†) [Sections 1 through ~~25~~ 24] are intended
16 to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to
17 [sections 1 through ~~25~~ 24].

18 ~~———— (2) [Sections 26 and 27] are intended to be codified as an integral part of Title 15, chapter 30, part 1,~~
19 ~~and the provisions of Title 15, chapter 30, part 1, apply to [sections 26 and 27].~~

20 ~~———— (3) [Sections 28 and 29] are intended to be codified as an integral part of Title 15, chapter 31, part 4,~~
21 ~~and the provisions of Title 15, chapter 31, part 4, apply to [sections 28 and 29].~~

22

23 ~~———— **COORDINATION SECTION. SECTION 27. COORDINATION INSTRUCTION.** IF THE GENERAL APPROPRIATIONS~~
24 ~~ACT APPROVED BY THE 59TH LEGISLATURE DOES NOT INCLUDE AN APPROPRIATION OF AT LEAST \$300,000 TO IMPLEMENT~~
25 ~~THE PROVISIONS OF [THIS ACT], THEN SECTION 34 [SECTION 29] OF [THIS ACT] MUST BE AMENDED TO READ AS FOLLOWS:~~

26 ~~———— **NEW SECTION. Section 34 29. Effective dates.** (1) Except as provided in subsection (2), [this act]~~
27 ~~is effective October 1, 2005 July 1, 2007.~~

28 ~~———— (2) [Sections 22, 31, 33, 35, and 36 and this section] [SECTIONS 22 AND 26 THROUGH 28 AND THIS SECTION]~~
29 ~~are effective on passage and approval.~~

30

