

## SENATE BILL NO. 202

INTRODUCED BY LASLOVICH, WILLIAMS, KAUFMANN, SANDS, JENT, SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING CANDIDATES FOR ELECTION TO THE SUPREME COURT WITH THE ALTERNATIVE OF A PUBLICLY FINANCED ELECTION CAMPAIGN AND PROVIDING FOR PUBLIC FUNDING THROUGH THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS FOR RECEIPT OF PUBLIC MONEY; REQUIRING CONTINUING COMPLIANCE BY CANDIDATES; SPECIFYING THE TIMING AND AMOUNT OF PAYMENTS TO CANDIDATES; SPECIFYING PURPOSES FOR WHICH PAYMENTS OF PUBLIC MONEY TO CANDIDATES MAY BE SPENT; REQUIRING DISCLOSURE OF CERTAIN ELECTION CAMPAIGN SPENDING; REQUIRING DISCLOSURE OF AMOUNTS SPENT FOR ISSUE ADVERTISING AND REQUIRING PAYMENTS TO CERTAIN CANDIDATES TO RESPOND TO THAT ADVERTISING; CREATING THE PUBLIC MONEY ELECTION CAMPAIGN FUND AND SPECIFYING THE CONTENT AND USE OF THE FUND; PROVIDING FOR ADMINISTRATION OF PAYMENTS FROM THE PUBLIC MONEY FUND TO CERTAIN CANDIDATES; CREATING A PRIVATE RIGHT OF ACTION; REQUIRING RULEMAKING; CREATING OFFENSES AND PROVIDING PENALTIES; AMENDING SECTION 13-1-101, MCA; AND PROVIDING EFFECTIVE DATES."

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

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

**NEW SECTION.** **Section 2. Purpose.** The purpose of [sections 1 through 24] is to ensure the fairness of democratic elections in Montana and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections. Those detrimental effects are especially problematic in elections of the judiciary because impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, [sections 1 through 24] establish an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fundraising and spending limits. Financing under [sections 1 through 24] is available to candidates for the offices of chief justice and associate justices of the supreme court in elections to be held in 2008 and afterward.

1

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

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

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

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

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

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

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

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

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

21           (c) releases to the communications media.

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

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

26           (9) "Primary election campaign period" means the period beginning 90 days before the primary election  
27 and ending on the day of the primary election.

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

30           (11) "Public money funding" means money paid or to be paid by the commissioner from the public money

1 fund to a participating candidate.

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

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

7  
8 **NEW SECTION. Section 4. Requirements for qualifying contributions.** (1) To be considered a  
9 qualifying contribution, a contribution:

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

11 (b) must be \$5;

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

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

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

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

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

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

27  
28 **NEW SECTION. Section 5. Eligibility of candidate for public money funding.** (1) A candidate  
29 qualifies as a participating candidate for the primary election campaign period if the candidate:

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

1 and

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

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

11 (a) meets all of the applicable requirements and files a declaration with the commissioner that the  
12 candidate has fulfilled and will fulfill all of the requirements of a participating candidate, as provided in [sections  
13 1 through 24], and the rules of the commissioner; and

14 (b) qualified for the general election as a participating candidate during the primary election campaign  
15 period.  
16

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

24 **NEW SECTION. Section 7. Continuing obligation to comply.** A participating candidate who accepts  
25 public money funding during the primary election campaign period shall comply with the requirements of [sections  
26 1 through 24] through the general election campaign period regardless of whether the participating candidate  
27 accepts public money funding during the general election campaign period.  
28

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

1 public money fund.

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

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

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

14  
15 **NEW SECTION. Section 9. Contribution and use of personal funds by candidate.** The personal  
16 funds of a candidate seeking certification as a participating candidate may not be used to meet the qualifying  
17 contribution requirements of [section 4] except for one \$5 contribution from the candidate and one \$5 contribution  
18 from the candidate's spouse if the candidate's spouse is a registered voter who resides in the state.

19  
20 **NEW SECTION. Section 10. Application for certification -- certification by commissioner -- judicial**  
21 **review.** (1) A candidate's application for certification as a participating candidate must be signed under oath by  
22 the candidate and the candidate's campaign treasurer.

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

25 (a) evidence of the number of qualifying contributions received by the candidate; and  
26 (b) a declaration that the candidate has complied and will comply with all the requirements for eligibility  
27 for certification as a participating candidate.

28 (3) No more than 5 working days after a candidate applies for public money funding, the commissioner  
29 shall determine whether the candidate is or is not eligible to receive public money funding. The commissioner's  
30 determination must be based on the documentation provided by the candidate applying for public money funding.

1 If the commissioner determines that the candidate is eligible, the commissioner shall certify the candidate as a  
2 participating candidate and make money from the public money fund available to the participating candidate in  
3 accordance with [section 11]. If the commissioner determines that the candidate is not eligible to receive public  
4 money funding, the commissioner shall inform the candidate in writing of that fact.

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

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

13  
14 **NEW SECTION. Section 11. Funding provided to participating candidates -- schedule of**  
15 **payments and amounts of public money funding.** (1) A candidate certified as a participating candidate must  
16 receive, at the times provided for in subsection (2), public money funding in the amounts provided for in  
17 subsection (3). Public money funding may be used by a participating candidate only in the manner and for the  
18 purposes provided for in [section 12].

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

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

26 (a) in a contested primary election, \$50,000 for candidates running for the office of associate justice and  
27 \$60,000 for candidates running for the office of chief justice;

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

30 (c) in a contested general election, \$125,000 for candidates running for the office of associate justice

1 and \$150,000 for candidates running for the office of chief justice; and

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

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

8  
9 **NEW SECTION. Section 12. Purpose for which public money funding may be used -- return of**  
10 **unspent funds.** (1) Public money funding may be used by a participating candidate only to pay for  
11 campaign-related expenses incurred in the course of a primary or general election campaign.

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

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

17  
18 **NEW SECTION. Section 13. Disclosure of excess campaign contributions by nonparticipating**  
19 **candidates.** (1) If a nonparticipating candidate's total campaign contributions received at any time exceed the  
20 amount of public money funding provided to the nonparticipating candidate's participating candidate opponent,  
21 the nonparticipating candidate shall declare to the commissioner within 48 hours of receipt every excess  
22 campaign contribution, once the total excess contributions exceed \$1,500.

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

26 (3) Upon receiving an excess campaign contribution declaration from a nonparticipating candidate or  
27 making a determination that a nonparticipating candidate has received more in campaign contributions than a  
28 participating candidate, the commissioner shall ~~immediately~~ WITHIN 24 HOURS provide additional public money  
29 funding to the opposing participating candidate equal to the excess campaign contributions received by the  
30 nonparticipating candidate, subject to the limitations provided in [section 15(5)].

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

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

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

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

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

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

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

21            (e) if the person making the payment has served in any formal policy or advisory position with the  
22 candidate's campaign or has participated in strategic or policymaking discussions with the candidate's campaign  
23 relating to the candidate's pursuit of election or nomination for election in the same election cycle as the election  
24 cycle in which the payment is made; or

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

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



1 advertising that:

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

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

7 (b) The term does not mean:

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

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

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

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

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

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

21  
22 **NEW SECTION. Section 15. Independent expenditures -- additional public money funding.** (1) A  
23 person who makes or obligates an independent expenditure during a primary or general election campaign period  
24 that, when considered with other independent expenditures made by that person not reported to the  
25 commissioner since a previous report, exceeds \$1,000 shall, within 48 hours of making the expenditure or  
26 obligation, report each of those independent expenditures to the commissioner.

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

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

(4) Upon receiving a report that an independent expenditure has been made or obligated, the commissioner shall ~~immediately~~ WITHIN 24 HOURS provide additional public money funding equal in amount to the amount of the independent expenditure to all participating candidates whom the independent expenditure is intended to oppose or defeat, as reported pursuant to subsections (2) and (3).

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

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

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

- (a) the amount of the expenditure;
- (b) the name and address of the person making the expenditure; and
- (c) the purpose of the issue advertisement.

(2) Upon receiving a report that an issue advertisement has been made or obligated and upon determination that the advertisement can reasonably be interpreted as having the effect of promoting the defeat of a participating candidate or the election of that participating candidate's opponent, the commissioner shall ~~immediately~~ WITHIN 24 HOURS provide to that participating candidate additional public money funding equal in amount to the cost of the issue advertisement. The commissioner shall develop appropriate rules for the implementation of this section.

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

1 advertising:

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

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

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

5 (d) that is communicated during a primary election campaign period or general election campaign period;

6 and

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

8

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

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

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

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

18

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

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

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

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

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

30 ~~(d) donations to the fund;~~

1           ~~(e)~~(D) interest or other income generated by money in the fund; and  
2           ~~(f)~~(E) other sources of revenue determined necessary by the legislature.

3  
4           NEW SECTION. Section 19. Administration and payment of money from fund -- public money  
5 **debit card.** (1) Upon certification of a candidate as a participating candidate pursuant to [section 10], the  
6 commissioner shall issue to a participating candidate a line of credit evidenced by a public money debit card. The  
7 card must enable a participating candidate to draw upon a line of credit to be paid from the public money fund  
8 up to the maximum of the amount for which the card is issued.

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

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

18  
19           NEW SECTION. Section 20. General powers and duties of commissioner. (1) The powers provided  
20 in this section are powers that may be exercised by the commissioner in addition to powers granted by other laws.

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

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

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

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

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

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

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

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

**NEW SECTION. Section 21. Private right of action for others -- judicial review of commissioner's**

**action.** (1) A person other than the commissioner who believes that a candidate has violated a provision of [sections 1 through 24] has a right of action in the district court in the county in which the person bringing the action resides to enforce the provisions of [sections 1 through 24] or the rules of the commissioner if that person:

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

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

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

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

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

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

(2) The rules must include:

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

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

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

1        **NEW SECTION. Section 23. Repayment of amounts spent in excess of public money funding.** (1)

2        If a participating candidate spends or obligates more than the public money funding that the participating  
3        candidate is paid by the commissioner ~~and if the commissioner determines that the additional amount spent or~~  
4        ~~obligated is not an amount that had or could have reasonably been expected to have a significant impact on the~~  
5        ~~election of that participating candidate~~, whether or not the participating candidate was elected, then the  
6        participating candidate shall repay to the public money fund an amount equal to 10 TIMES THE VALUE OF the excess  
7        expenditure or obligation, ~~as follows:~~

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

9        ~~—— (b) for amounts between 105% and 115% of the permissible amount, twice the amount of the excess~~  
10       ~~expenditures; and~~

11       ~~—— (c) for amounts in excess of 115% of the permissible amount, five times the amount of the excess~~  
12       ~~expenditures.~~

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

18  
19        **NEW SECTION. Section 24. Offenses -- penalties.** (1) A participating candidate may not knowingly:

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Ballot" means:

(a) a paper ballot used with a paper-based system, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots; or

(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

1 (7) (a) "Contribution" means:

2 (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value  
3 to influence an election;

4 (ii) a transfer of funds between political committees;

5 (iii) the payment by a person other than a candidate or political committee of compensation for the  
6 personal services of another person that are rendered to a candidate or political committee.

7 (b) "Contribution" does not mean:

8 (i) services provided without compensation by individuals volunteering a portion or all of their time on  
9 behalf of a candidate or political committee or meals and lodging provided by individuals in their private  
10 residences for a candidate or other individual;

11 (ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any  
12 broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

13 (iii) the cost of any communication by any membership organization or corporation to its members or  
14 stockholders or employees; or

15 (iv) filing fees paid by the candidate.

16 (8) "Election" means a general, regular, special, or primary election held pursuant to the requirements  
17 of state law, regardless of the time or purpose.

18 (9) "Election administrator" means the county clerk and recorder or the individual designated by a county  
19 governing body to be responsible for all election administration duties, except that with regard to school elections,  
20 the term means the school district clerk.

21 (10) "Elector" means an individual qualified to vote under state law.

22 (11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift  
23 of money or anything of value made for the purpose of influencing the results of an election.

24 (b) "Expenditure" does not mean:

25 (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);

26 (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or  
27 personal necessities for the candidate and the candidate's family;

28 (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any  
29 broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

30 (iv) the cost of any communication by any membership organization or corporation to its members or



1 stockholders or employees.

2 (12) "Federal election" means a general or primary election in which an elector may vote for individuals  
3 for the office of president of the United States or for the United States congress.

4 (13) "General election" or "regular election" means an election held for the election of public officers  
5 throughout the state at times specified by law, including elections for officers of political subdivisions when the  
6 time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues  
7 required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the  
8 legislature to the electors at a general election, "general election" means an election held at the time provided  
9 in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted  
10 as a constitutional initiative at a regular election, regular election means an election held at the time provided in  
11 13-1-104(1).

12 (14) "Inactive elector" means an individual who failed to vote in the preceding federal general election  
13 and whose name was placed on an inactive list pursuant to 13-2-220.

14 (15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

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

16 (17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval  
17 or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall  
18 questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and  
19 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary  
20 for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes  
21 a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

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

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

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

28 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a  
29 petition for nomination; or

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

1 (c) as an earmarked contribution.

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

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

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

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

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

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

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

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

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

23 (30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in  
24 13-15-206.

25 (31) "Voting system" or "system" means any machine, device, technology, or equipment used to  
26 automatically record, tabulate, or process the vote of an elector cast on a paper or nonpaper ballot."  
27

28 **NEW SECTION. Section 26. Codification instruction.** [Sections 1 through 24] are intended to be  
29 codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [sections  
30 1 through 24].

1  
2           NEW SECTION. **Section 27. Contingent voidness.** If House Bill No. 2 is passed and approved and  
3 does not include an appropriation of at least ~~\$300,000~~ \$1 MILLION to implement the provisions of [this act], then  
4 [this act] is void.

6 NEW SECTION. **Section 28. Severability.** If a part of [this act] is invalid, all valid parts that are  
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
8 the part remains in effect in all valid applications that are severable from the invalid applications.

10        NEW SECTION. **Section 29. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
11        effective October 1, 2007.

12 (2) [Sections 22 and 26 through 28 and this section] are effective on passage and approval.

13 - END -