

SENATE BILL NO. 322
INTRODUCED BY ELLINGSON, FACEY

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 LEGISLATIVE FINDINGS; 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; CREATING INDIVIDUAL AND CORPORATE TAX CHECKOFFS AND CREDITS AND AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO PROVIDE MONEY FOR THE PUBLIC MONEY FUND; ~~PROVIDING A FUND TRANSFER~~; AMENDING SECTION 13-1-101, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE."

WHEREAS, the increasingly large amounts of money being raised and spent to influence the outcome of elections may have a detrimental effect on the constitutional rights of voters and candidates; and

WHEREAS, those detrimental effects are especially problematic in elections of the judiciary because impartiality is uniquely important to the integrity and credibility of the courts; and

WHEREAS, the Legislature wishes to ensure the fairness of democratic judicial elections in Montana to protect the impartiality in appearance and in fact of the Montana Supreme Court; and

WHEREAS, the Legislature wishes to provide a voluntary public finance system for Supreme Court elections as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fundraising and spending limits.

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

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

NEW SECTION. **Section 2. Findings and declaration.** (1) The legislature finds that the current system of privately financed campaigns for election to the supreme court undermines democracy in the state, in that the system:

~~(a) diminishes the meaning of the right to vote by allowing large contributions to have a deleterious influence on the political process;~~

~~———(b) violates the rights of all citizens to equal and meaningful participation in the democratic process;~~

~~———(c) diminishes the free speech rights of nonwealthy voters and candidates whose voices are drowned out by those who can afford to monopolize the arena of paid political communications;~~

~~———(d) undermines the first amendment right of voters and candidates to be heard in the political process, undermines the first amendment right of voters to hear all candidates' speech, and undermines the core first amendment value of open and robust debate in the political process;~~

~~(e)(A)~~ fuels the public perception of corruption and undermines public confidence in the democratic process and in judicial institutions;

~~(f)(B)~~ creates the appearance and the inference that supreme court justices are accountable to major contributors or the groups of contributors who finance their election campaigns;

~~(g)(C)~~ creates a danger of actual corruption by encouraging supreme court candidates to take money from private interests that may be directly affected by their actions;

~~(h)(D)~~ drives up the cost of election campaigns, making it difficult for qualified candidates without access to large contributors or personal fortunes to mount competitive campaigns;

~~(i)(E)~~ disadvantages challengers, because large campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;

~~(j)(F)~~ inhibits communication with the electorate by candidates without access to large sums of campaign money; and

~~(k)(G)~~ burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities.

(2) The legislature finds that providing a voluntary public finance system for all primary and general

supreme court justice elections would enhance democracy in Montana in that it would:

- (a) eliminate the deleterious influence of large contributions on supreme court races and remove access to wealth as a major determinant of a citizen's influence within these races;
- (b) restore the rights of all citizens to equal and meaningful participation in these races;
- (c) restore the free speech rights of nonwealthy candidates and voters by providing candidates with equal resources with which to communicate with the voters;
- (d) help restore the first amendment right of voters and candidates to be heard in the political process, help restore the first amendment right of voters to hear all candidates' speech, and help restore the core first amendment value of open and robust debate in the political process;
- (e) diminish the public perception of corruption and strengthen public confidence in the democratic process and democratic institutions;
- (f) maintain the integrity and impartiality of the Montana supreme court;
- (g) eliminate the danger of actual corruption caused by the private financing of the supreme court election campaigns, thus restoring public confidence in the fairness of the electoral and judicial processes;
- (h) slow or reverse the escalating cost of elections;
- (i) create a more level playing field for incumbents and challengers, create genuine opportunities for qualified residents of Montana to run for the supreme court, and encourage more competitive elections;
- (j) facilitate communication with the electorate by candidates, regardless of their access to large sums of campaign money; and
- (k) free candidates from the incessant rigors of raising money and allow them more time to carry out their official duties.

(3) The legislature further finds that the unique factual circumstances in Montana require that the provisions of [sections 1 through 25] be enacted to promote the compelling state interests listed in subsections (1) and (2). The provisions of [sections 1 through 25] are designed to create a rough proportionality between the benefits and restrictions that apply to participating candidates. However, it should be clear that [sections 1 through 25] are not entirely neutral. Participating candidates are deliberately favored to further the compelling state interest of encouraging participation in the public financing scheme.

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

- (1) "Candidate" means an individual who has filed a declaration for nomination, acceptance of

nomination, or appointment as a candidate for the office of chief justice or associate justice of the supreme court.

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

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

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

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

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

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

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

(c) releases to the communications media.

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

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

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

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

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

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

(13) "Qualifying contribution" means a contribution meeting the requirements of [section 4(1)] given to

a candidate for election.

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

- (a) may be made only by a registered voter who resides within the state;
- (b) must be \$5;
- (c) must be received during the public money qualifying period by a candidate seeking to become a participating candidate;
- (d) may be made only by cash, check, or money order;
- (e) must be acknowledged by a receipt given to the contributor, with a copy of the receipt kept by the candidate and a copy sent to the commissioner. The receipt must include the contributor's signature, printed name, home address, and telephone number and the name of the candidate on whose behalf the contribution is made. The receipt must indicate, by the contributor's signature, that:

- (i) the contributor fully understands that the purpose of the contribution is to help the candidate qualify for public money funding; and
- (ii) the contribution is made without coercion or reimbursement by volunteers who do not receive reimbursement.

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

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

- (a) receives at least 1,000 qualifying contributions before the close of the public money qualifying period;
- and

(b) files a declaration with the commissioner that the candidate has complied and will comply with all of the requirements of [sections 1 through 25], including the requirement that during the public money qualifying period, the candidate has not and will not accept or spend private contributions from any source other than public money qualifying contributions. However, during the qualifying period a candidate may lend up to \$2,500 to the candidate's campaign to defray the expenses of collecting qualifying contributions. Loans must be repaid from

any qualifying contributions before the balance is deposited in the fund established in [section 17], unless [section 6] applies.

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

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

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

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

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

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

(2) A participating candidate who receives a qualifying contribution that is not from the person listed on the receipt required by [section 4] shall pay the qualifying contribution to the commissioner and is liable for other penalties provided by [sections 1 through 25]. THE COMMISSIONER SHALL DEPOSIT THE QUALIFYING CONTRIBUTION IN THE PUBLIC MONEY ELECTION CAMPAIGN FUND.

(3) During the primary and general election campaign periods, a participating candidate may pay the participating candidate's campaign expenditures, except petty cash expenditures paid from a fund created in

accordance with 13-37-215, by means of the public money debit card issued pursuant to [section 19].

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

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

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

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

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

(b) a declaration that the candidate has complied and will comply with all the requirements for eligibility for certification as a participating candidate.

(3) No more than 5 working days after a candidate applies for public money funding, the commissioner shall determine whether the candidate is or is not eligible to receive public money funding. THE COMMISSIONER'S DETERMINATION MUST BE BASED ON THE DOCUMENTATION PROVIDED BY THE CANDIDATE APPLYING FOR PUBLIC MONEY FUNDING. If the commissioner determines that the candidate is eligible, the commissioner shall certify the candidate as a participating candidate and make money from the public money fund available to the participating candidate in accordance with [section 11]. If the commissioner determines that the candidate is not eligible to receive public money funding, the commissioner shall inform the candidate in writing of that fact.

(4) The commissioner shall revoke the certification of a participating candidate who the commissioner later determines was not eligible for certification because of a violation of [sections 1 through 25] or the rules of the commissioner. THE COMMISSIONER'S DETERMINATION MUST BE BASED UPON A FINDING MADE IN A CONTESTED CASE PROCEEDING HELD PURSUANT TO TITLE 2, CHAPTER 4, PART 6. If a participating candidate's certification of eligibility

is revoked, the candidate shall repay to the commissioner all public money funding received by the candidate. Money repaid to the commissioner must be deposited in the public money fund.

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

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

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

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

(a) in a contested primary election, \$50,000 for candidates running for the office of associate justice and \$75,000 for candidates running for the office of chief justice;

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

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

(d) in an uncontested general election, \$5,000 for candidates running for the office of associate justice and \$7,500 for candidates running for the office of chief justice.

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

NEW SECTION. Section 12. Purpose for which public money funding may be used -- return of

unspent funds. (1) Public money funding may be used by a participating candidate only to pay for campaign-related expenses incurred in the course of a primary or general election campaign.

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

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

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

(2) During the last 20 days before the end of the relevant campaign period, a nonparticipating candidate shall declare to the commissioner each excess campaign contribution within 24 hours of receipt, if the total excess contributions exceed \$1,500.

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

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

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

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

(2) "Coordination" means a payment made for a communication or anything of value that is given for the

purpose of influencing the outcome of an election and that is made by a person:

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

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

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

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

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

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

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

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

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

(b) The term does not mean:

(i) a news story, commentary, or editorial by a broadcasting station, newspaper, magazine, or other

publication, but only if that entity is not owned by or affiliated with any candidate or candidate's authorized committee; or

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

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

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

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

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

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

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

(3) A person who makes or obligates to make 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 to be made, the commissioner shall immediately 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 prompt 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 to make an expenditure to purchase an issue advertisement, the person who makes or obligates to make 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 to be made 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 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 advertising:

- (a) the purchase of which is not an independent expenditure or a contribution;
- (b) that costs, in the aggregate, \$1,000 or more;
- (c) that contains the name or likeness of one or more candidates;
- (d) that is communicated during a primary election campaign period or general election campaign period;

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(4) The commissioner may investigate anonymous complaints. Complainants may receive whistleblower protection pursuant to rules adopted by the commissioner.~~

~~(5)~~(4) The commissioner may seek an injunction under Title 27, chapter 19, if:

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

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

(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.

~~(6) The commissioner may levy fines for violations of [sections 1 through 25] or the rules of the commissioner pursuant to a schedule of fines and the procedure provided for contested cases in the Montana Administrative Procedure Act and the rules of the commissioner. Fines paid must be deposited in the public money election campaign fund.~~

~~(7)~~(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 25] 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 25] 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 ~~30~~ 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 25] 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 25] 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 25] 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 25].

(2) The rules must include:

- (a) the use of the public money debit card;
~~(b) whistleblower protection for persons making complaints to the commissioner;~~
~~(c)~~(B) a schedule of fines and a procedure for levying fines against persons who violate [sections 1 through 25] or the rules of the commissioner; and
~~(d)~~(C) any other matters the commissioner considers necessary to implement [sections 1 through 25].

NEW SECTION. Section 23. Repayment of amounts spent in excess of public money funding. (1) If a participating candidate spends or obligates to spend more than the public money funding that the participating candidate is paid by the commissioner and if the commissioner determines that the additional amount spent or

obligated is not an amount that had or could have reasonably been expected to have a significant impact on the election of that participating candidate, whether or not the participating candidate was elected, then the participating candidate shall repay to the public money fund an amount equal to the excess expenditure or obligation, AS FOLLOWS:

(A) FOR AMOUNTS UP TO 105% OF THE PERMISSIBLE AMOUNT, THE EXCESS EXPENDITURES;

(B) FOR AMOUNTS BETWEEN 105% AND 115% OF THE PERMISSIBLE AMOUNT, TWICE THE AMOUNT OF THE EXCESS EXPENDITURES; AND

(C) FOR AMOUNTS IN EXCESS OF 115% OF THE PERMISSIBLE AMOUNT, FIVE TIMES THE AMOUNT OF THE EXCESS EXPENDITURES.

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

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

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

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

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

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

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

(4) FINES PAID MUST BE DEPOSITED IN THE PUBLIC MONEY ELECTION CAMPAIGN FUND.

NEW SECTION. Section 25. Loan from board of investments -- repayment. ~~The~~ IF THE MONEY IN THE

PUBLIC MONEY ELECTION CAMPAIGN FUND IS INADEQUATE TO FUND ALL REQUESTS FOR PUBLIC FUNDING, THE commissioner may borrow money from the board of investments, and the board is authorized to make loans for the purposes of [sections 1 through 25], including payments made by the commissioner to candidates for public office as provided in [section 11]. Loans made by the board of investments must be repaid at a rate of interest and on a schedule determined by the board from money in the public money election campaign fund. If the money in the fund is insufficient to repay the loans within the period of time determined by the board of investments, the loans must be repaid from the general fund.

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

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

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

(3) (A) ~~Money~~ EXCEPT AS PROVIDED IN SUBSECTION (3)(B), MONEY received under this section must be deposited in the public money election campaign fund created by [section 17], after the department has deducted the amount necessary for the department to administer this section as provided in 15-30-153.

(B) IF THE BALANCE IN THE PUBLIC MONEY ELECTION CAMPAIGN FUND, EXCEPT AMOUNTS BORROWED UNDER [SECTION 25], IS \$200,000 OR MORE, THEN THE MONEY RECEIVED UNDER THIS SECTION MUST BE DEPOSITED IN THE STATE GENERAL FUND.

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

(2) The contribution for which the credit is allowed may be made by the voluntary checkoff provided for

in [section 26] or by another method of donation.

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

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

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

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

(3) (A) Money EXCEPT AS PROVIDED IN SUBSECTION (3)(B), MONEY received under this section must be deposited in the public money election campaign fund created by [section 17], after the department has deducted any amount necessary for the department to administer this section.

(B) IF THE BALANCE IN THE PUBLIC MONEY ELECTION CAMPAIGN FUND, EXCEPT AMOUNTS BORROWED UNDER [SECTION 25], IS \$200,000 OR MORE, THEN THE MONEY RECEIVED UNDER THIS SECTION MUST BE DEPOSITED IN THE STATE GENERAL FUND.

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

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

(3) There is no carryback or carryforward of the credit permitted by this section. A contribution made by the voluntary checkoff provided for in [section 28] or by another method of contribution for which a tax credit is claimed must be made in the same tax year for which a return is filed.

Section 30. 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 25] and unless the context clearly indicates otherwise, the following definitions apply:

- (1) "Active elector" means a qualified elector whose name is on the active list.
- (2) "Active list" means a list of active electors maintained by an election administrator pursuant to 13-2-219.
- (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 completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.
- (5) "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.
- (6) (a) "Contribution" means:
 - (i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;
 - (ii) a transfer of funds between political committees;
 - (iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.
- (b) "Contribution" does not mean:
 - (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence

for a candidate or other individual;

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

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

(iv) filing fees paid by the candidate.

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

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

(9) "Elector" means an individual qualified and registered to vote under state law.

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

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (6);

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

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

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

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

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

13-1-104(1).

(13) "Inactive elector" means an individual whose name is placed on an inactive list.

(14) "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to 13-2-219.

(15) "Individual" means a human being.

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

(17) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (5).

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

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

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

(c) as an earmarked contribution.

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

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

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

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

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

election.

(24) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

NEW SECTION. Section 31. Codification instruction. (1) [Sections 1 through 25] are intended to be codified as an integral part of Title 13, chapter 37, and the provisions of Title 13, chapter 37, apply to [sections 1 through 25].

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

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

~~NEW SECTION. Section 32. Fund transfer.~~ There is transferred to the public money election campaign fund \$150,000 from the general fund for the purposes of [sections 1 through 25] for each of the fiscal years 2004 and 2005. The money must be deposited in the public money election campaign fund created by [section 17].

NEW SECTION. Section 32. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 33. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Sections 22, 31 through 33, 35, and 36, 32, 34, AND 35 and this section] are effective on passage and approval.

NEW SECTION. Section 34. Retroactive applicability -- APPLICABILITY. (1) [Sections 26 through 29] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.

(2) [SECTIONS 1 THROUGH 25] APPLY TO JUDICIAL ELECTIONS AFTER THE BALANCE IN THE PUBLIC MONEY ELECTION CAMPAIGN FUND REACHES \$200,000. THE STATE TREASURER SHALL NOTIFY THE SECRETARY OF STATE, THE COMMISSIONER OF POLITICAL PRACTICES, AND THE CODE COMMISSIONER OF THE DATE THAT THE PUBLIC MONEY ELECTION CAMPAIGN FUND REACHES \$200,000.

NEW SECTION. **Section 35. Contingent termination.** The voluntary income tax checkoffs created in [sections 26 and 28] terminate January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoffs raise less than \$20,000 in each of those 2 tax years.

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