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*Senate* BILL NO. 403  
INTRODUCED BY Edw. Cetrone Romney

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR PUBLIC FINANCING OF CAMPAIGNS FOR ELECTION TO CERTAIN PUBLIC OFFICES; TO ESTABLISH AN ELECTION FINANCE BOARD; TO LIMIT CERTAIN CAMPAIGN EXPENDITURES AND CONTRIBUTIONS, TO PROVIDE PENALTIES, AND TO REPEAL SECTIONS 23-4901 THROUGH 23-4906, R.C.M. 1947."

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

Section 1. Short title. This act may be cited as "The Statewide Election Finance Act".

Section 2. Declaration of purpose. It is the purpose of this act:

(1) to provide public financing of costs incurred by a candidate campaigning for election as a state official thereby increasing the opportunities for meaningful participation in such electoral contests without regard to the financial resources available to an individual candidate;

(2) to prevent the relatively few individuals who have access to great wealth from having an excessive influence upon the presentation of competing viewpoints within the political process and from pre-empting the channels of mass

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communication as candidates or as contributors; and  
(3) to reduce the pressure on candidates to depend upon large campaign contributions from private sources due to unacceptably high campaign expenditure levels and the absence of public financial assistance.

Section 3. Definitions. As used in this act:

(1) "Board" means election finance board established under [section 5].

(2) "Campaign expenditure" means any expenditure incurred by a candidate, or any person acting on his behalf in connection with his campaign, for election to office during the campaign expenditure period and any such expense incurred prior to the campaign expenditure period for goods or services to be used or rendered during such period.

(3) "Campaign expenditure period" means the eighteen (18) month period preceding the date of the general election for the office which the candidate seeks.

(4) "Candidate" means an individual who has taken the steps necessary under applicable law to qualify to have his name appear on a ballot for election to a specified state office.

(5) "Contribution" means any:

(a) payment, distribution, loan guaranty, deposit, or gift of money or anything else of value, to a candidate, his agent, or political committee;

1 (b) payment by any person other than the candidate,  
2 his agents or authorized agents of political committees, of  
3 compensation for the personal services of another person  
4 rendered to a candidate's campaign;

5 (c) goods, advertising, or services furnished to a  
6 candidate's campaign without charge, or at a rate that is  
7 less than the rate normally charged for those goods or  
8 services;

9 (d) payment by any person other than the candidate,  
10 his authorized agents, or political committees for any  
11 goods, or services used by a candidate's campaign; or

12 (e) expenditure in connection with any other activity  
13 undertaken independently of the candidate's campaign, made  
14 or furnished for the purpose of influencing the results of  
15 an election to office or for the purpose of paying  
16 obligations incurred in connection with such election.

17 (6) The term "contribution" does not include:

18 (a) personal services provided without compensation by  
19 individuals volunteering a portion or all of their time on  
20 behalf of a candidate or political committee;

21 (b) communications by any organization, excluding a  
22 political party, solely to its members and their families on  
23 any subject;

24 (c) communications (including advertisements) to any  
25 person on any subject by any organization that is organized

1 solely as an issue-oriented organization, which  
2 communications neither endorse nor oppose any candidate for  
3 office; and

4 (d) normal billing credit for a period not exceeding  
5 thirty (30) days.

6 (7) "Fund" means the campaign assistance trust account  
7 established under [section 4].

8 (8) "Major party candidate" means a candidate of a  
9 political party that received fifteen percent (15%) or more  
10 of the total vote cast for governor at the next preceding  
11 general election in the state.

12 (9) "Minor party candidate" means a candidate of a  
13 political party that received at least three percent (3%)  
14 but less than fifteen percent (15%) of the total vote cast  
15 for governor at the next preceding general election in the  
16 state, or the candidate of a political party that obtains  
17 the signatures of registered voters equal to three percent  
18 (3%) of the total vote cast for governor in the next  
19 preceding general election in the state.

20 (10) "Independent candidate" means a candidate who has  
21 filed a certificate of nomination as provided in section  
22 23-3318.

23 (11) "Person" means individual, partnership, company,  
24 association, firm, society, or other organization or group  
25 of persons which may lawfully make a political contribution

1 under the laws of the United States and under applicable  
 2 Montana state law. An organization, and any parent,  
 3 subsidiary, affiliate, or regional branch of such  
 4 organization shall consist of one "person" for purposes of  
 5 this act.

6 (12) "Personal resources of the candidate" means  
 7 personal funds or property of the candidate and the personal  
 8 funds or property of his immediate family.

9 (a) "Immediate family" includes any child, parent,  
 10 grandparent, brother, sister, or spouse of the candidate;  
 11 and any child, parent, grandparent, brother, or sister of  
 12 the candidate's spouse; and any dependent of the candidate  
 13 or of his spouse as defined in the Internal Revenue Code of  
 14 1954, and the spouse of those dependents.

15 (13) "Election" means general election.

16 (14) "State office and state official" include the  
 17 offices of governor, lieutenant-governor, secretary of  
 18 state, auditor, attorney general, justice and chief justice  
 19 of the supreme court, superintendent of public instruction,  
 20 and public service commissioner.

21 Section 4. Establishment of fund. There is established  
 22 in the earmarked revenue fund an account to be known as the  
 23 "campaign assistance trust account". There is appropriated  
 24 to the account revenues collected from a tax levied on all  
 25 personal income tax returns filed with the state of Montana.

1 A one dollar (\$1) tax is to be levied on all individual  
 2 returns filed and a two dollar (\$2) tax is to be levied on  
 3 all joint returns filed. Any money in the account not  
 4 needed for current operations shall be invested in bonds or  
 5 other investments in accordance with Article 8, section 13  
 6 of the Montana constitution. The fund shall remain  
 7 available without fiscal year limitation and shall consist  
 8 of such amounts as may be collected for and appropriated to  
 9 it, any interest or other receipts on investments, and  
 10 amounts otherwise deposited into the fund by the board under  
 11 this act.

12 Section 5. Establishment of board. (1) There is  
 13 established an election finance board composed of five (5)  
 14 members, none of whom may hold any position in a political  
 15 party. Members of the board shall be appointed by the  
 16 governor from a list of names submitted by the supreme  
 17 court. The supreme court shall submit at least twice as  
 18 many names as there are positions to be filled. The  
 19 governor shall make the appointments to the board within  
 20 three (3) months of the effective date of this act. The  
 21 governor shall designate two (2) members to serve four (4)  
 22 year terms and three (3) members to serve two (2) year  
 23 terms. Upon completion of the original terms, all terms are  
 24 four (4) years and until a successor is appointed and  
 25 qualified.

1 (2) Any individual appointed to fill a vacancy  
 2 occurring for reasons other than expiration of a term shall  
 3 be appointed only for the unexpired term of the member whom  
 4 he succeeds. A member whose term expires shall continue to  
 5 serve until his successor qualifies.

6 (3) The members of the board shall elect a chairman  
 7 and vice-chairman from among their members to serve for  
 8 terms of two (2) years each. No member elected to be  
 9 chairman or vice-chairman may succeed himself as chairman.  
 10 The chairman is responsible on behalf of the board for  
 11 administrative operations of the board and shall appoint and  
 12 fix the compensation of those officers and employees as he  
 13 considers necessary to assist the board in the performance  
 14 of its functions.

15 (4) A vacancy in the board does not impair the right  
 16 of the remaining members to exercise the power of the board.  
 17 Three (3) members of the board constitute a quorum.

18 (5) The principal office of the board is in Helena,  
 19 but it may meet or exercise any of its powers at any other  
 20 place and, during election campaigns, establish field  
 21 operations in appropriate locations. The department of  
 22 administration shall provide office space for the board.

23 (6) The board is attached to the office of the  
 24 secretary of state for administrative purposes only.

25 (a) The board shall exercise the functions assigned to

1 it by this act independently of the secretary of state.

2 (b) The office of the secretary of state shall:  
 3 include the board's budget request in its total budget  
 4 request; collect revenues for the board and deposit them in  
 5 the appropriate account; and print and disseminate required  
 6 notices, rules, or orders adopted, amended, or repealed by  
 7 the board.

8 Section 6. Duties and powers. (1) It is the duty of  
 9 the board:

10 (a) to make proposals for expanding the jurisdiction  
 11 of this act to include primary elections and to submit those  
 12 proposals to the legislature by January 2, 1977;

13 (b) to develop forms for the making of such reports  
 14 and statements as it may require;

15 (c) to prepare and publish a manual setting forth  
 16 recommended uniform methods of bookkeeping and reporting for  
 17 use by persons required to make reports and statements under  
 18 this act;

19 (d) to make reports and statements filed with it  
 20 available for public inspection and copying during regular  
 21 office hours, and to permit copying by hand, or by copying  
 22 machine at the expense of the individual requesting the  
 23 copies;

24 (e) to preserve such reports and statements for a  
 25 period of ten (10) years from the date of receipt and

1 (f) to do such other things as may be necessary to  
2 carry out the provisions of this act.

3 (2) At the close of each fiscal year the board shall  
4 report to the legislature concerning its activities and  
5 operations during that fiscal year, including the names,  
6 salaries, and duties of all individuals employed by it and  
7 the moneys it has disbursed. The board may make such  
8 additional reports to the legislature on the matters within  
9 its jurisdiction, including recommendations for additional  
10 legislation, as it considers desirable.

11 (3) In carrying out its duties under subsection (1) of  
12 this section, the board shall consult with the secretary of  
13 state and utilize the reporting, filing, and accounting  
14 procedures and forms developed by him to the greatest extent  
15 possible. To the extent the board determines that its  
16 duties under this act can be satisfactorily performed by  
17 using the data available to the secretary of state, it shall  
18 not require additional or separate reports to be made to it  
19 by any candidate who is complying with the provisions of  
20 existing state election laws.

21 (4) The board may prescribe such rules, conduct such  
22 examinations and investigations, and require the keeping of  
23 such books, records, and information, as it considers  
24 necessary to carry out the functions and duties imposed on  
25 it by this act. Within one hundred and eighty (180) days

1 after an election, the board shall conduct a complete  
2 examination and audit of the expenditures made, expenses  
3 incurred, and financial assistance received by or on behalf  
4 of any candidate who has received assistance under this act  
5 in connection with his election campaign, and shall furnish  
6 to the legislature a report of the results of each such  
7 examination and audit.

8 (5) If the board determines on the record after an  
9 opportunity for a hearing that any portion of the amount  
10 transferred out of the fund to the candidate was in excess  
11 of the aggregate amount to which that candidate was entitled  
12 under this act, it shall require the candidate to pay to the  
13 board for deposit in the fund an amount equal to such excess  
14 less any amounts returned to the board by the candidate. No  
15 determination of an overpayment may be made initially more  
16 than one (1) year after the date of the overpayment.

17 (6) The board is authorized to investigate violations  
18 of this act either prior to or after an election and in the  
19 course of such investigation:

20 (a) to compel the attendance of any person to answer  
21 questions under oath relating to the financial matters of  
22 any campaign for which transfers have been received from the  
23 fund; and

24 (b) to compel under oath the production for inspection  
25 or copying of documents, papers, books, records, or other

1 writings relating to the financial matters of any campaign  
2 for which transfers have been received from the fund.

3 Upon petition by the board any district court of the  
4 state of Montana, within the jurisdiction of which the  
5 person is found, or is doing business, shall issue an order,  
6 on conditions it considers just, requiring compliance with a  
7 valid order of the board issued under this subsection.

8 (7) For any violation of this act or criminal  
9 violation related to a campaign under its jurisdiction, the  
10 board, by an attorney of its own selection, may prosecute  
11 such violation in the name of the state of Montana and with  
12 the same authority as a county attorney.

13 Section 7. Eligibility for assistance. (1) In order  
14 to be eligible to receive amounts from the fund, a candidate  
15 shall:

16 (a) file with the board, at such time and in such  
17 manner as it shall require, a sworn statement in which he  
18 agrees:

19 (i) to maintain and make available to the board such  
20 records, books, and other information as the board may  
21 require;

22 (ii) to repay into the fund the aggregate amount of  
23 transfers made to this account from the fund if he fails to  
24 receive at least five percent (5%) of the votes cast for all  
25 candidates for the same office in the general election.

1 (b) furnish the board with evidence satisfactory to  
2 the board that he has qualified under applicable laws for  
3 nomination and election to the office he seeks;

4 (c) furnish the board, in a form prescribed by the  
5 board, a sworn statement of all campaign expenditures made  
6 prior to the date of such statement and all contributions  
7 received that have been used for campaign expenditures or  
8 that remain available for campaign expenditures. The  
9 statement shall include the date, amount, and nature of each  
10 expenditure, the date and amount of each contribution, and  
11 the name, address and, in the case of individuals, the  
12 occupation of each contributor. The statement shall also  
13 list each amount of the personal resources of the candidate  
14 that have been used for campaign expenditures or that remain  
15 available for campaign expenditures, the date such amount  
16 was made available and its source.

17 (2) No candidate is eligible to receive transfers to  
18 his campaign account or creditors thereof from the fund if  
19 he has been convicted of violating any provision of this act  
20 or of any Montana election laws.

21 (3) The board shall promptly notify any candidate who  
22 applies for assistance from the fund if he is eligible to  
23 receive transfers from the fund, together with a  
24 verification of the total amount to which he is entitled in  
25 connection with his general election campaign.

1 Section 8. Payments from the fund. (1) Transfers  
 2 from the fund shall be made directly to the qualified  
 3 creditors of an eligible candidate upon receipt of a voucher  
 4 from that creditor in the amount owed him by the candidate,  
 5 together with a sworn statement from the eligible candidate  
 6 that the voucher presented to the board qualifies for  
 7 payment from the account.

8 (2) No transfers may be made from the fund to a  
 9 candidate who has no qualified opposition for the office he  
 10 seeks. Candidates for justice of the supreme court or chief  
 11 justice of the supreme court shall receive one-half (1/2) of  
 12 the subsidy otherwise provided when the question on the  
 13 ballot is whether or not the justice should be retained.

14 (3) Whenever the board determines that amounts  
 15 remaining in or available to the fund will be, or may be  
 16 expected to be inadequate to meet obligations arising under  
 17 this section, it shall:

18 (a) notify by certified mail each candidate currently  
 19 entitled to receive transfers from the fund that the amount  
 20 which is available to him under the provisions of this act  
 21 may be reduced.

22 (4) Whenever the board makes a determination under  
 23 subsection (3), it shall reduce the amount available for  
 24 transfer to the eligible candidates by a percentage equal to  
 25 the percentage obtained by dividing (1) the total amount to

1 which all qualified candidates who have made application at  
 2 the time of such determination to receive amounts from the  
 3 fund are entitled (less any amounts already transferred at  
 4 such time to such candidates) into (2) the amount remaining  
 5 in the fund at the time of that determination. If  
 6 additional qualified candidates made application thereafter,  
 7 the board shall make those further reductions in amounts  
 8 transferable it considers necessary to carry out the  
 9 purposes of this act. If, as a result of a reduction under  
 10 this subsection in the amount available to a candidate,  
 11 transfers have been made from the fund to the candidate's  
 12 account in excess of the amount to which he is entitled,  
 13 that candidate is liable for repayment to the fund of the  
 14 excess under procedures the board may prescribe by  
 15 regulation.

16 Section 9. Limitations on non-account financing. A  
 17 candidate who does not receive transfers out of the account  
 18 is entitled to receive contributions and utilize personal  
 19 resources for his campaign, but shall be ineligible for  
 20 public financing as provided in this act and in no event  
 21 shall incur campaign expenditures in an amount greater than  
 22 the amount he could have received from the campaign  
 23 assistance account for the particular office in accordance  
 24 with the succeeding section.

25 Section 10. Determination of amounts transferable.

1 (1) Major party candidates for election to the office of  
2 governor, or lieutenant governor who qualify to receive  
3 public financing as herein provided shall receive one  
4 hundred thousand dollars (\$100,000).

5 (2) A major party candidate for election to the office  
6 of secretary of state, who qualifies to receive public  
7 financing as herein provided shall receive seven thousand  
8 dollars (\$7,000).

9 (3) A major party candidate for election to the office  
10 of auditor, who qualifies to receive public financing as  
11 herein provided shall receive seven thousand dollars  
12 (\$7,000).

13 (4) A major party candidate for election to the office  
14 of attorney general, who qualifies to receive public  
15 financing as herein provided shall receive thirty thousand  
16 dollars (\$30,000).

17 (5) A candidate for election to the office of justice  
18 or chief justice of the supreme court, who qualifies to  
19 receive public financing as herein provided shall receive  
20 ten thousand dollars (\$10,000).

21 (6) A major party candidate for election to the office  
22 of public service commissioner, who qualifies to receive  
23 public financing as herein provided shall receive ten  
24 thousand dollars (\$10,000).

25 (7) A major party candidate for election to the office

1 of superintendent of public instruction, who qualifies to  
2 receive public financing as herein provided shall receive  
3 twelve thousand dollars (\$12,000).

4 (8) "Minor party" and "independent" candidates shall  
5 receive the same amounts as major party candidates if they  
6 present a petition bearing signatures of registered voters  
7 equal to fifteen percent (15%) of the total vote cast for  
8 the office in the next preceding general election.

9 Section 11. Limitations on individual contributions.

10 (1) No candidate who receives campaign financing as  
11 provided in section 9 may:

12 (a) receive contributions from any person in  
13 connection with his general election campaign that, in the  
14 aggregate, exceed one hundred dollars (\$100).

15 (b) raise additional private funds from his personal  
16 resources or those of his immediate family for use in  
17 connection with his general election campaign that, in the  
18 aggregate, exceed one hundred dollars (\$100).

19 (2) No person may make contributions to any candidate  
20 receiving assistance under this act. No person may make a  
21 contribution to a person not receiving assistance under this  
22 act that exceeds the limitation imposed by this section.

23 (3) No person may make a contribution to a candidate  
24 for election to office in the name of another person, and no  
25 person may solicit or accept such a contribution.



1 (4) The limitations of this section shall apply to any  
2 contribution within the campaign expenditure period and any  
3 contribution made prior to such period which is used for  
4 campaign expenditures.

5 (5) Contributions permitted each person under this  
6 section may not be made under any pooling arrangement or any  
7 formal or informal arrangement for combining such  
8 contributions.

9 Section 12. Limitations on campaign expenditures. (1)  
10 No candidate who receives transfers from the fund in  
11 connection with any general election campaign may make  
12 campaign expenditures in connection with that campaign in  
13 excess of the sum of the amount transferable to his campaign  
14 under section 8.

15 (2) For purposes of this section and section 10,  
16 contributions and expenditures shall not be included in  
17 determining compliance with the limitations imposed if such  
18 amounts are expended as contributions within the meaning of  
19 section 3 (5) (e) and the independent activity is undertaken  
20 unilaterally by the contributor and not at the request or  
21 suggestion of the candidate, his agents or political  
22 committees nor in cooperation with them.

23 Section 13. Enforcement against violations. (1) The  
24 board may enjoin any person from engaging in any acts or  
25 practices which constitute or will constitute a violation of

1 any provisions of this act or any regulation or order issued  
2 under it.

3 (2) Any person who believes a violation of this act  
4 has occurred may file a complaint with the board. If the  
5 board determines there is reason to believe such a violation  
6 has occurred, it shall expeditiously make an investigation.

7 (3) Whenever a complaint is filed by the board, or by  
8 or on behalf of a person claiming to be aggrieved, the board  
9 shall serve notice of the charge (including the specific  
10 nature of the alleged violation) on such person and shall  
11 make a prompt investigation. Complaints shall be in writing  
12 under oath or affirmation and shall contain such information  
13 and be in such form as the board requires. The board shall  
14 make a determination on reasonable cause and, so far as  
15 practicable, not later than ten (10) days from the filing of  
16 the charge.

17 (4) Whenever in the judgment of the board there is  
18 reasonable cause to believe any person has engaged in or is  
19 about to engage in any acts or practices which constitute or  
20 will constitute a violation of any provision of this act or  
21 any regulation or order issued thereunder, the board shall  
22 hold a public hearing after giving due notice and an  
23 opportunity for a hearing by all parties, including the  
24 complainant and promptly issue its findings and an  
25 appropriate order.

1 (5) If the respondent named in the charge fails to  
 2 comply with the findings and order of the board, the board  
 3 shall bring a mandamus action against him. The person or  
 4 persons aggrieved by the violation may intervene in a civil  
 5 action brought by the board. If a complaint filed with the  
 6 board pursuant to subsection (2) of this section is  
 7 dismissed by the board, or if within ten (10) days from the  
 8 filing of such charge, the board has not held a public  
 9 hearing on such charge, or if, within five (5) days from the  
 10 date of issuance of an order pursuant to subsection (4) of  
 11 this section the board has not filed an action under this  
 12 section and the violation has not been corrected, the person  
 13 aggrieved may bring a mandamus action against the respondent  
 14 named in the complaint or against the board.

15 Section 14. Review of board determinations. (1) A  
 16 candidate for election to a statewide office who is  
 17 aggrieved by:

18 (a) a determination of ineligibility under section 7  
 19 to receive transfers from the fund;

20 (b) the determination by the board of the amount of  
 21 transfers to which he is eligible to receive; or

22 (c) any other determination, action, or failure to act  
 23 by the board with respect to the candidate's participation  
 24 in the operation of this act, may petition the board for a  
 25 prompt hearing on its determination, action, or failure to

1 act.

2 (2) The board shall order a hearing held on the  
 3 record, with the opportunity to be heard and present  
 4 evidence, expeditiously and at a location reasonably  
 5 convenient to the candidate.

6 (3) If, after the hearing on the petition, the board  
 7 does not reverse or revise its determination, action or  
 8 failure to act, and the petitioner remains aggrieved, he may  
 9 appeal to the district court.

10 Section 15. Jurisdiction of the district courts. (1)  
 11 Each state district court has jurisdiction of actions  
 12 brought under this act. Such action may be brought in the  
 13 district court for the judicial district in which the  
 14 unlawful action or practice is alleged to have been  
 15 committed, or in the district court for the judicial  
 16 district in which the candidate resides.

17 (2) Any action (or appeal therefrom) brought under  
 18 this act shall be advanced on the docket of the court in  
 19 which filed, and put ahead of all other actions (other than  
 20 other actions brought under this act), whenever extent  
 21 possible.

22 Section 16. Penalties. A violation of this act is  
 23 punishable by a fine not to exceed one thousand dollars  
 24 (\$1,000) or imprisonment not to exceed six (6) months or by  
 25 both such fine and imprisonment.

1       Section 17. Severability. If a part of this act is  
2       invalid, all valid parts that are severable from the invalid  
3       part remain in effect. If a part of this act is invalid in  
4       one or more of its applications, the part remains in effect  
5       in all valid applications that are severable from the  
6       invalid applications.

7       Section 18. Supersession of other acts. The  
8       limitations on contributions and expenditures contained in  
9       this act supercede the limitations imposed by any other  
10      statute with regard to candidates for state office covered  
11      by this act. With regard to any conflict between this act  
12      and any other act as regards a campaign for state office  
13      governed by this act, this act prevails.

14      Section 19. Sections 23-4901 through 23-4906, R.C.M.  
15      1947, are repealed.

-End-