

## 1 HOUSE BILL NO. 34

2 INTRODUCED BY COBB

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA JUDICIAL ELECTION CAMPAIGN  
5 FINANCING ACT; PROVIDING FOR PUBLIC FINANCING OF JUDICIAL ELECTION CAMPAIGNS; PROVIDING  
6 FOR ADMINISTRATION BY THE SECRETARY OF STATE; PROVIDING A STATUTORY APPROPRIATION  
7 AND AN APPROPRIATION; AMENDING SECTIONS 13-37-240 AND 17-7-502, MCA; AND PROVIDING  
8 EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **NEW SECTION. Section 1. Designation of general fund money for public financing of judicial**  
13 **election campaigns.** (1) Each individual taxpayer who is required to file an income tax return under this  
14 chapter may designate money to be paid from the state general fund to the Montana judicial election  
15 campaign financing program account provided for in [section 4] by marking the appropriate box on the state  
16 income tax return.

17 (2) Each state individual income tax return must contain a conspicuous provision for indicating  
18 whether the taxpayer and the taxpayer's spouse want \$5 to be paid from the state general fund to the  
19 judicial election campaign financing program.

20 (3) An individual may not designate more than \$5 in a year to be deposited in the account created  
21 by [section 4]. Money designated by a taxpayer pursuant to this section must be deposited in the account  
22 after the department has deducted the amount necessary for the department to administer this section as  
23 provided in 15-30-153.

24 (4) Money must be deposited in the account by June 30 of each year of a general election. The  
25 department shall assist the secretary of state in determining the amount of money deposited in the account  
26 pursuant to this section.

27  
28 **NEW SECTION. Section 2. Short title.** [Sections 2 through 5] may be cited as the "Montana  
29 Judicial Election Campaign Financing Act".

1           **NEW SECTION. Section 3. Definitions.** Unless the context requires otherwise, the following  
2 definitions apply to [sections 2 through 5]:

3           (1) "Candidate" means a candidate in a general election for election to the Montana supreme court  
4 or to a state district court, as appropriate.

5           (2) "Montana judicial election campaign financing program account" or "account" means the  
6 account created by [section 4].  
7

8           **NEW SECTION. Section 4. Montana judicial election campaign financing program account --**  
9 **administration by secretary of state.** (1) There is a Montana judicial election campaign financing program  
10 account in the state special revenue fund in the state treasury. The account consists of all money  
11 deposited in the account.

12           (2) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, to the  
13 secretary of state, and may be used by the secretary of state only for judicial election campaign financing  
14 program payments and administration of the Montana judicial election campaign financing program provided  
15 for in [sections 2 through 5]. Money in the account approved for payment by the secretary of state must  
16 be paid by the state treasurer in the same manner as payment of claims by a state agency.

17           (3) Money within the account not approved for payment by the secretary of state pursuant to  
18 [section 5] must remain in the account. Upon termination of [sections 2 through 5], money in the account  
19 must be deposited in the state general fund.  
20

21           **NEW SECTION. Section 5. Secretary of state to administer judicial election campaign financing**  
22 **program -- timing and conditions of payment -- penalty.** (1) The secretary of state shall administer a  
23 judicial election campaign financing program in accordance with [sections 2 through 5].

24           (2) Except as provided in this section, the secretary of state shall on August 1 in the year of a  
25 primary election approve the following amounts for payment from the account:

26           (a) to each candidate for election to the Montana supreme court:

27           (i) \$75,000, if two or more candidates have filed for one seat; or

28           (ii) \$8,000, if only one candidate has filed for one seat; and

29           (b) to each candidate for election to a district court:

30           (i) \$25,000, if two or more candidates have filed for a seat on the same court; or

1 (ii) \$3,000, if only one candidate has filed for a seat on the court.

2 (3) If there is sufficient money in the account, the secretary of state shall not later than October  
3 1 in the year of a primary election, approve the payment of one-half of the amount provided in subsection  
4 (2) to be made to a candidate who replaces a candidate who died or withdrew from a race prior to the  
5 general election.

6 (4) If there is insufficient money in the account for the payment of the amounts required by  
7 subsection (2) to candidates for both the supreme court and district courts, the secretary of state shall  
8 approve for payment an equal amount to candidates for the supreme court. Remaining amounts must be  
9 divided equally by the secretary of state among district court candidates. However, if there is insufficient  
10 money in the account to pay each district court candidate at least \$300, the secretary of state may not  
11 approve a payment to any district court candidate and the money that otherwise would have been paid to  
12 district court candidates must remain in the account.

13 (5) A payment from the account may not be approved by the secretary of state if the candidate  
14 has informed the secretary of state that the payment will not be accepted by the candidate.

15 (6) Acceptance by a candidate of a payment made pursuant to this section does not prohibit the  
16 candidate from accepting a campaign contribution in money or in kind from another source.

17 (7) A candidate who accepts a payment from the account shall within 120 days after the time for  
18 filing the closing campaign report pursuant to 13-37-228 return to the secretary of state surplus funds from  
19 the candidate's campaign received from any source. The secretary of state shall provide a form to  
20 accompany a payment made pursuant to this section informing the candidate of the candidate's  
21 responsibility to return surplus campaign funds from any source to the secretary of state once a payment  
22 from the account is accepted by the candidate. For the purposes of this section, a payment from the  
23 account is accepted by a candidate by the cashing of the state warrant drawn upon the account.

24 (8) A candidate who accepts a payment from the account but withdraws from the race before the  
25 election shall return surplus campaign funds received from any source to the secretary of state within 120  
26 days of withdrawal from the race. The campaign treasurer for a candidate who accepted a payment from  
27 the account but died before the election shall return surplus campaign funds received from any source to  
28 the secretary of state within 120 days of the candidate's death.

29 (9) The secretary of state shall deposit in the account money returned to the secretary of state  
30 pursuant to subsections (7) and (8).

1 (10) A candidate or campaign treasurer failing to comply with the requirements of subsections (7)  
2 and (8) is guilty of a misdemeanor.

3  
4 **Section 6.** Section 13-37-240, MCA, is amended to read:

5 "13-37-240. **Surplus campaign funds.** (1) A candidate shall dispose of any surplus funds from the  
6 candidate's campaign within 120 days after the time of filing the closing campaign report pursuant to  
7 13-37-228. In disposing of the surplus funds, a candidate may not contribute the funds to another  
8 campaign, including the candidate's own future campaign, or use the funds for personal benefit. The  
9 candidate shall provide a supplement to the closing campaign report to the commissioner showing the  
10 disposition of any surplus campaign funds.

11 (2) A candidate for election to the supreme court or a district court who has accepted a payment  
12 from the judicial election campaign financing program provided for in [sections 2 through 5] shall comply  
13 with [section 5(7)]. A candidate who accepts a payment from the judicial election financing program but  
14 withdraws from the race before the election shall comply with [section 5(8)]. The campaign treasurer of  
15 a candidate for election to the supreme court or a district court who accepted a payment from the judicial  
16 election campaign financing program but died before the general election shall comply with [section 5(8)].

17 ~~(2)(3)~~ For purposes of this section, "personal benefit" means a use that will provide a direct or  
18 indirect benefit of any kind to the candidate or any member of the candidate's immediate family."  
19

20 **Section 7.** Section 17-7-502, MCA, is amended to read:

21 "17-7-502. **Statutory appropriations -- definition -- requisites for validity.** (1) A statutory  
22 appropriation is an appropriation made by permanent law that authorizes spending by a state agency  
23 without the need for a biennial legislative appropriation or budget amendment.

24 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply  
25 with both of the following provisions:

26 (a) The law containing the statutory authority must be listed in subsection (3).

27 (b) The law or portion of the law making a statutory appropriation must specifically state that a  
28 statutory appropriation is made as provided in this section.

29 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;  
30 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; [section 4]; 15-1-111;

1 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;  
 2 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201;  
 3 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606;  
 4 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306;  
 5 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501;  
 6 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232;  
 7 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214;  
 8 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220;  
 9 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

10 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,  
 11 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued  
 12 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of  
 13 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as  
 14 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the  
 15 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.  
 16 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for  
 17 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates  
 18 July 1, 2001.)"

19  
 20 **NEW SECTION. Section 8. Appropriation.** (1) On July 1, 1998, there is appropriated from the  
 21 general fund \$450,000 to the secretary of state to be deposited in the Montana judicial election campaign  
 22 financing account created in [section 4], to be used for the purposes of that account.

23 (2) On July 1, 2000, there is appropriated from the general fund \$1,250,000 to the secretary of  
 24 state to be deposited in the Montana judicial election campaign financing account created in [section 4],  
 25 to be used for the purposes of that account.

26  
 27 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as  
 28 an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to  
 29 [section 1].

30 (2) [Sections 2 through 5] are intended to be codified as an integral part of Title 13, and the

1 provisions of Title 13 apply to [sections 2 through 5].

2

3 **NEW SECTION. Section 10. Applicability.** [This act] applies to tax years beginning after December  
4 31, 1996.

5

6 **NEW SECTION. Section 11. Contingent effective date -- contingent voidness -- effective dates.**

7 (1) [Section 1] is effective January 1, 1998, if [this act] is passed and approved without an appropriation  
8 to the secretary of state in the amounts of \$450,000 on July 1, 1998, and \$1,250,000 on July 1, 2000,  
9 to be deposited in the Montana judicial election campaign financing account created in [section 4].

10 (2) If [this act] is passed and approved with the appropriation referred to in subsection (1), then  
11 [section 1] is void.

12 (3) [Sections 2 through 10 and 12 and this section] are effective October 1, 1997.

13

14 **NEW SECTION. Section 12. Termination.** [This act] terminates January 1, 2001.

15

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0034, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill creating the Montana Judicial Election Campaign Financing Act, and providing for public financing of judicial election campaigns.

ASSUMPTIONS:

1. In FY99, there will be \$267,000 distributed to judicial candidates for campaign purposes. This assumes 2 supreme court seats open with 1 seat contested, and 5 district court seats open with 2 contested.
2. This bill provides two revenue sources: direct general fund appropriation and an income tax checkoff. If one passes the other is eliminated, and vice versa. The following assumptions are for the income tax checkoff.
3. The checkoff provided for in Section 1 is not of the current type on Montana individual income tax returns in that it will not increase or decrease liability of the taxpayer. The checkoff is of the same type utilized on federal income tax returns for the \$3 presidential campaign fund checkoff. At the federal level, 33 million taxpayers utilize the presidential campaign checkoff, representing approximately 28% of all returns filed.
4. For tax year 1995, a total of 384,088 forms were filed for Montana individual income taxes. Approximately, 25% (96,000) of these forms will utilize the checkoff for judicial campaign financing, if Montanans follow federal utilization patterns. (Note that the highest utilization of any previous checkoff that increased liability was 6,630 forms in 1983 for non-game wildlife.) At \$5 per checkoff, this will result in \$480,000 in annualized general fund transfers to the judicial campaign financing account. (In fiscal year 1998 the impact will be half this amount as only about half the returns will be processed as of June 30, the date at which funds are to be transferred to the campaign financing account.)
5. The Department of Revenue will incur additional administrative expense in the amount of \$14,672 first year costs for form design and changes, and \$2,850 maintenance costs in subsequent years.

FISCAL IMPACT:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
<u>If income tax checkoff (sec. 1):</u>		
<u>Expenditures:</u>		
Operating expenses	14,672	2,850
Distribution to judges	<u>0</u>	<u>267,000</u>
Total	14,672	269,850
<u>Funding:</u>		
State Special Campaign Finance(02)	14,672	269,850
<u>Revenues:</u>		
Income Tax (General Fund)	(240,000)	(480,000)
State Special Campaign Finance(02)	<u>240,000</u>	<u>480,000</u>
Total	0	0
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
General Fund (01)	(240,000)	(480,000)
State Special Campaign Finance(02)	225,328	210,150

(continued)

Dave Lewis 1-16-97  
 DAVE LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

1-16-97  
 JOHN COBB, PRIMARY SPONSOR      DATE

Fiscal Note for HB0034, as introduced

**HB 34**

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
<u>If direct appropriation (Sec. 8):</u>		
<u>Expenditures:</u>		
Transfer to Election Fund (Appropriation)	0	450,000
Distribution to judges	0	\$267,000
<u>Funding:</u>		
General Fund	0	450,000
State Special Campaign Finance(02)	0	267,000
<u>Revenues:</u>		
General Fund	0	0
State Special Campaign Finance(02)	0	450,000
<u>Net Impact on Fund Balance: (Revenue minus expense)</u>		
General Fund (01)	0	(\$450,000)
State Special (02)	0	183,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

It appears that some funds would revert to the general fund when the act terminates January 1, 2001. The amount would be difficult to calculate since it is dependent on the number of judge candidates, and especially those that are contested. This information is not known, and cannot be estimated with accuracy.

Can this legislature make a \$1,250,000 general fund appropriation for July 1, 2000?  
(Section 8[2])