

SENATE BILL NO. 271

INTRODUCED BY STAPLETON

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING THAT~~ AUTHORIZING REQUIRING THAT THE
5 PROCESS ORIENTED INTEGRATED SYSTEM (POINTS) COMPUTER SYSTEM OF THE DEPARTMENT OF
6 REVENUE TO BE REPLACED WITH A DIFFERENT COMPUTER SYSTEM; LIMITING THE COST OF THE
7 REPLACEMENT SYSTEM; REQUIRING THAT CURRENT DATA NEEDED FOR THE REPLACEMENT
8 SYSTEM BE CORRECTED; PROVIDING THAT UNEMPLOYMENT INSURANCE TAX COLLECTIONS WILL
9 NOT BE PROCESSED UNDER THE REPLACEMENT SYSTEM BY TERMINATING THE DELEGATION TO
10 THE DEPARTMENT OF REVENUE OF RESPONSIBILITY FOR COLLECTING UNEMPLOYMENT INSURANCE
11 TAXES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; INCREASING THE DEBT LIMIT UNDER THE
12 MUNICIPAL FINANCE CONSOLIDATION ACT; AUTHORIZING A LOAN TO THE DEPARTMENT OF REVENUE
13 FOR THE REPLACEMENT SYSTEM; REQUIRING THE DEPARTMENT OF REVENUE TO IMPOSE AN
14 ADMINISTRATIVE CHARGE FOR TAX COLLECTION SERVICES; REQUIRING THE ADMINISTRATIVE
15 CHARGE TO BE DEPOSITED IN AN ACCOUNT TO BE USED TO PAY THE DEBT SERVICE ON LOANS
16 ISSUED FOR THE REPLACEMENT SYSTEM; APPROPRIATING MONEY FOR DEPARTMENT OF REVENUE'S
17 TRANSITION COSTS AND FOR LOAN REPAYMENT; AMENDING SECTIONS 15-2-302, 15-30-204, 15-30-249,
18 15-1-501, 17-5-1608, 17-5-2001, 39-51-301, 39-51-302, AND 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303,
19 AND 39-51-2402, MCA; REPEALING SECTIONS 15-30-250, 15-30-251, AND 15-30-255, 39-51-1301, AND
20 39-51-2402, MCA; AND PROVIDING A DELAYED AN IMMEDIATE EFFECTIVE DATES AND A CONTINGENT
21 TERMINATION DATE DATES."

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24
25 NEW SECTION. Section 1. Department of revenue POINTS computer system replacement. (1)
26 The department of revenue, in conjunction with the chief information officer and the department of
27 administration, ~~shall~~ MAY SHALL replace the process oriented integrated system (POINTS) computer system.
28 Unemployment insurance collections must be transferred to the department of labor and industry, ~~so that the~~
29 ~~replacement software is not required to process those collections~~ BY FEBRUARY 1, 2005. Subject to department
30 of revenue requirements, the replacement system ~~must~~ MAY MUST be phased in to process all other department

1 tax and debt collection functions. Functioning portions of POINTS may continue to be used for departmental
2 processing requirements until the replacement system becomes operational for those processes.

3 (2) The department of revenue, in conjunction with the chief information officer and the department of
4 ~~administration~~ LABOR AND INDUSTRY, shall ~~MAY SHALL~~ plan replacement system requirements and, prior to the
5 ~~beginning of the 2005 legislative session~~ FEBRUARY 1, 2005, have in operation a base component and at least
6 one tax processing component of the replacement system. ~~The department may not expend funds in excess~~
7 ~~of \$11 million, from all sources, during the biennium ending June 30, 2005, on the replacement system, which~~
8 ~~includes the planning process and data auditing and repair as provided in subsection (3).~~

9 (3) NONE OF THE DEPARTMENTS OR AGENCIES INVOLVED IN THE POINTS COMPUTER SYSTEM REPLACEMENT
10 MAY EXPEND ANY FUNDS AUTHORIZED FOR THE REPLACEMENT SYSTEM BY THE 58TH LEGISLATURE AFTER JUNE 30, 2005,
11 WITHOUT OBTAINING SPENDING AUTHORITY FROM THE 59TH LEGISLATURE.

12 ~~———— (3)(4) In addition to the replacement of POINTS, the department of revenue shall, based upon an~~
13 ~~independent audit conducted either directly or under contract by the legislative auditor, correct and realign tax~~
14 ~~and collection data used by the department to ensure the integrity of data used by the replacement system.~~

15 (4) THE CHIEF INFORMATION OFFICER, IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF REVENUE
16 AND THE COMMISSIONER OF LABOR AND INDUSTRY, SHALL REQUIRE THAT CURRENT WITHHOLDING, COMBINED OIL AND
17 GAS, AND UNEMPLOYMENT INSURANCE DATA DETERMINED NECESSARY FOR THE REPLACEMENT SYSTEM BE CORRECTED.
18 THE CORRECTION MUST BE VERIFIED THROUGH AN INDEPENDENT AUDIT CONDUCTED EITHER DIRECTLY OR UNDER
19 CONTRACT BY THE LEGISLATIVE AUDITOR.

20
21 ~~———— **Section 2.** Section 15-2-302, MCA, is amended to read:~~
22 ~~———— **"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing.** (1) A~~
23 ~~person may appeal to the state tax appeal board a final decision of the department of revenue involving:~~

24 ~~———— (a) property centrally assessed under chapter 23;~~

25 ~~———— (b) classification of property as new industrial property;~~

26 ~~———— (c) any other tax, other than the property tax, imposed under this title; or~~

27 ~~———— (d) any other matter in which the appeal is provided by law.~~

28 ~~———— (2) (a) Except as provided in subsection (2)(b), the The appeal is made by filing a complaint with the~~
29 ~~board within 30 days following receipt of notice of the department's final decision. The complaint must set forth~~
30 ~~the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the~~

1 complaint to the department.

2 ~~———(b) An appeal from the department's determination of whether wages earned by an unemployment~~
 3 ~~insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the~~
 4 ~~board within 10 days following receipt of notice of the department's final determination. The board shall promptly~~
 5 ~~mail a copy of the complaint to each interested party at the last-known address of each party.~~

6 ~~———(3) The department shall file with the board an answer within 30 days following filing of a complaint, or~~
 7 ~~in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant~~
 8 ~~were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the~~
 9 ~~department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with~~
 10 ~~the board, and at that time mail a copy to the complainant. The answer must set forth the department's response~~
 11 ~~to each ground for and type of relief demanded in the complaint.~~

12 ~~———(4) (a) Except as provided in subsection (4)(b), the The board shall conduct the appeal in accordance~~
 13 ~~with the contested case provisions of the Montana Administrative Procedure Act.~~

14 ~~———(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment~~
 15 ~~insurance claimant were properly reported to the department, the appeal must be conducted informally and may,~~
 16 ~~in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a~~
 17 ~~contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the~~
 18 ~~hearing or making its decision, is not bound by the Montana Rules of Evidence.~~

19 ~~———(ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.~~

20 ~~———(5) The decision of the state tax appeal board is final and binding upon all interested parties unless~~
 21 ~~reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board~~
 22 ~~under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to~~
 23 ~~the extent that it does not conflict with 15-2-303."~~

24

25 ~~———**Section 3.** Section 15-30-204, MCA, is amended to read:~~

26 ~~———"**15-30-204. Reporting and remittance requirements.** (1) For the purposes of this section, employers~~
 27 ~~shall remit their taxes in accordance with the appropriate remittance schedule as follows:~~

28 ~~———(a) Employers whose total liability for state income tax withholding during the preceding lookback period~~
 29 ~~was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due~~
 30 ~~dates for federal tax deposits.~~

1 ~~————(b) Employers whose total liability for state income tax withholding during the preceding lookback period~~
2 ~~was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the remittance due~~
3 ~~date is on or before the 15th day of the month following the payment of wages.~~

4 ~~————(c) Employers whose total liability for state income tax withholding during the preceding lookback period~~
5 ~~was less than \$1,200 shall remit on a "quarterly schedule" for which the remittance due date is on or before the~~
6 ~~last day of the month following the close of each calendar quarter.~~

7 ~~————(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose~~
8 ~~total liability for state income tax withholding during the preceding lookback period was less than \$1,200 may~~
9 ~~remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following~~
10 ~~payment of wages.~~

11 ~~————(2) (a) Every employer is required to file a report quarterly in the form required by the department.~~
12 ~~————(b) The report is due on or before the last day of the month following the close of the calendar quarter.~~
13 ~~————(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect~~
14 ~~to file an annual report on or before February 28 for the preceding calendar year.~~

15 ~~————(d)(c) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter"~~
16 ~~using alternative reporting methods provided in department rules.~~

17 ~~————(e)(d) An employer, in addition to the scheduled reports and remittances, must shall file the annual~~
18 ~~report and wage statements as required by 15-30-207.~~

19 ~~————(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the~~
20 ~~remittance schedule for each employer.~~

21 ~~————(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements~~
22 ~~of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a)~~
23 ~~and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the~~
24 ~~employer's subsequent filing and payment history that the employer will file and remit in a timely fashion.~~

25 ~~————(c) On or before November 1 of each year, the department shall notify the employers subject to the~~
26 ~~provisions of this section of the employers' remittance schedules for the following calendar year based upon the~~
27 ~~department's review of the preceding lookback period.~~

28 ~~————(d) Except as provided in subsection (3)(g), a new employer or an employer with no filing history is~~
29 ~~subject to the quarterly remittance schedule in subsection (1)(c) until the department is able to determine the~~
30 ~~employer's proper remittance schedule by a review of the employer's first complete lookback period.~~

1 ~~———(e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit~~
 2 ~~payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly or~~
 3 ~~quarterly payments.~~

4 ~~———(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must shall begin~~
 5 ~~withholding state income tax on or before the last day of the month following the quarter in which the wages paid~~
 6 ~~exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the~~
 7 ~~department is able to determine the employer's proper remittance schedule by a review of the employer's first~~
 8 ~~complete lookback period.~~

9 ~~———(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose~~
 10 ~~estimated annual state income tax withholding is not expected to exceed \$1,199 for the calendar year may remit~~
 11 ~~according to the annual schedule and report annually on or before February 28.~~

12 ~~———(h) An employer may use alternative remittance methods in conjunction with the department's electronic~~
 13 ~~remittance program in accordance with department rules.~~

14 ~~———(4) If the department has reason to believe that collection of the amount of any tax withheld is in~~
 15 ~~jeopardy, it may proceed as provided for under 15-1-703.~~

16 ~~———(5) Each employer shall keep true and accurate payroll records containing the information that the~~
 17 ~~department may prescribe by rule. Those records must be open to inspection and audit and may be copied by~~
 18 ~~the department or its authorized representative at any reasonable time and as often as may be necessary. An~~
 19 ~~employer who maintains its records outside Montana shall furnish copies of those records to the department at~~
 20 ~~the employer's expense."~~

21
 22 ~~——— **Section 4.** Section 15-30-249, MCA, is amended to read:~~

23 ~~——— "**15-30-249. Confidentiality.** Reports and returns required to be filed under this part are confidential,~~
 24 ~~subject to the limitations contained in 39-51-603(3) and (4)."~~

25
 26 **SECTION 2. SECTION 15-1-501, MCA, IS AMENDED TO READ:**

27 **"15-1-501. Disposition of money from certain designated license and other taxes. (1) The Except**
 28 **as provided in subsection (5), the state treasurer shall deposit to the credit of the state general fund in**
 29 **accordance with the provisions of subsection (3) all money received from the collection of:**

30 (a) income taxes, interest, and penalties collected under chapter 30;

- 1 (b) all taxes, interest, and penalties collected under chapter 31;
2 (c) oil and natural gas production taxes distributed to the general fund under 15-36-324;
3 (d) electrical energy producer's license taxes under chapter 51;
4 (e) the retail telecommunications excise tax collected under Title 15, chapter 53, part 1;
5 (f) liquor license taxes under Title 16;
6 (g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided
7 in 61-5-121;
8 (h) estate taxes under Title 72, chapter 16; and
9 (i) fees based on the value of currency on deposit and tangible personal property held for safekeeping
10 by a foreign capital depository as provided in 15-31-803.
- 11 (2) The department shall also deposit to the credit of the state general fund all money received from
12 the collection of license taxes and all net revenue and receipts from all sources, other than certain fees, under
13 the operation of the Montana Alcoholic Beverage Code.
- 14 (3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according
15 to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax
16 revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department
17 of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.
- 18 (4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded.
19 All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are
20 currently being recorded.
- 21 (5) The administrative assessment provided for in [section 5] must be deposited in an account in the
22 state special revenue fund to the credit of the department."

23
24 **SECTION 3. SECTION 17-5-1608, MCA, IS AMENDED TO READ:**
25 **"17-5-1608. (Temporary) Limitations on amounts.** The board may not issue any bonds or notes that
26 cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund
27 or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation
28 notes of a local government as defined in 7-6-1101, to exceed ~~\$80~~ \$120 million. (Terminates June 30,
29 2011--sec. 9, Ch. 394, L. 2001.)

30 **17-5-1608. (Effective July 1, 2011) Limitations on amounts.** The board may not issue any bonds or

1 notes that cause the total outstanding indebtedness of the board under this part, (except for bonds or notes
2 issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue
3 anticipation notes of a local government as defined in 7-6-1101), to exceed ~~\$75~~ \$120 million."

4

5 **SECTION 4. SECTION 17-5-2001, MCA, IS AMENDED TO READ:**

6 **"17-5-2001. (Temporary) Loans to state agencies.** (1) An agency responsible for the procurement
7 and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service
8 fund, as described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of
9 indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and
10 equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal
11 service fund if:

12 (a) the term of the indebtedness does not exceed the useful life of the items being financed; and

13 (b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees
14 and charges approved by the legislature and other available fund revenue, will be sufficient to repay the
15 indebtedness over the proposed term and to maintain the operation of the enterprise.

16 (2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms
17 of indebtedness with the board of investments for an amount not to exceed \$4.5 million, payable over a term
18 not to exceed 10 years, for financing the cost of an information technology system for the production and
19 maintenance of motor vehicle title and registration records and driver's license records.

20 (b) For purposes of the financing of the motor vehicle information technology system, loans are payable
21 from the money in the motor vehicle information technology system account as provided in 61-3-550. The term
22 of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made,
23 the projected revenue of the motor vehicle information technology system account, based upon the fees
24 approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

25 (3) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms
26 of indebtedness with the board of investments for an amount not to exceed \$1,120,000, payable over a term not
27 to exceed 7 years, for the acquisition of video gambling automated accounting and reporting system data
28 collection units.

29 (b) The loan is payable from the department of justice's annual appropriation from the general fund.

30 (c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time

1 that the loan is made, the department of justice's base budget appropriation from the general fund must be
 2 sufficient to repay the indebtedness with respect to the video gambling data collection units over the proposed
 3 term of the loan.

4 (d) The loan is subject to the risk of nonappropriation.

5 (4) (a) If bonds are not issued for the project authorized in [section 1], the department of revenue is
 6 authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of
 7 investments for an amount not to exceed \$17 million, payable over a term not to exceed 7 years, for the
 8 acquisition of a replacement system for the process oriented integrated system (POINTS) computer system.

9 (b) The loan is payable from the department of revenue's appropriation from the administrative
 10 assessment provided for in [section 5].

11 (c) The term of the indebtedness may not exceed the useful life of the items being financed. At the time
 12 that the loan is made, the projected revenue from the administrative assessment provided for in [section 5] must
 13 be sufficient to repay the indebtedness with respect to the replacement system over the proposed term of the
 14 loan.

15 (d) The loan is subject to the risk of nonappropriation. (Terminates June 30, 2011--sec. 9, Ch. 394, L.
 16 2001.)

17 **17-5-2001. (Effective July 1, 2011) Loans to state agencies.** An agency responsible for the
 18 procurement and provision of vehicles and equipment using an enterprise fund or an internal service fund, as
 19 described in 17-2-102, is authorized to enter into contracts, loan agreements, or other forms of indebtedness
 20 payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment
 21 and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund
 22 if:

23 (1) the term of the indebtedness does not exceed the useful life of the items being financed; and

24 (2) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees
 25 and charges approved by the legislature and other available fund revenue, will be sufficient to repay the
 26 indebtedness over the proposed term and to maintain the operation of the enterprise."
 27

28 NEW SECTION. SECTION 5. ADMINISTRATIVE ASSESSMENT. (1) THE DEPARTMENT SHALL ESTABLISH A FEE
 29 OF UP TO 0.45% OF SELECTED TAXES COLLECTED BY THE DEPARTMENT IN ORDER TO RECOVER COSTS AND EXPENSES
 30 ASSOCIATED WITH THE POINTS REPLACEMENT SYSTEM DESCRIBED IN [SECTION 1]. THE FEE MUST BE SET ANNUALLY

1 TO PROVIDE REVENUE EQUAL TO THE DEBT SERVICE ON THE BONDS AUTHORIZED IN 17-5-1608 OR THE PROJECTED
 2 PRINCIPAL AND INTEREST PAYMENTS ON THE LOAN PROVIDED FOR IN 17-5-2001.

3 (2) THE DEPARTMENT SHALL DEPOSIT THE FEE IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND TO THE
 4 CREDIT OF THE DEPARTMENT.

5 (3) THE DEPARTMENT MAY ADOPT RULES FOR IDENTIFYING WHICH TAXES THE ADMINISTRATIVE FEE APPLIES TO
 6 AND ESTABLISHING THE RATE OF THE FEE.

7

8 **Section 6.** Section 39-51-301, MCA, is amended to read:

9 **"39-51-301. Administration -- duties and powers of department.** (1) It is the duty of the department
 10 to administer this chapter and it may adopt, amend, or rescind rules; to employ persons, make expenditures,
 11 require reports, make investigations, and take action as it considers necessary or suitable in administering this
 12 chapter.

13 (2) The department shall determine its own organization and methods of procedure in accordance with
 14 the provisions of this chapter and shall must have an official seal, which is judicially noticed.

15 (3) Whenever the department believes that a change in contribution or benefit rates will become
 16 necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make
 17 recommendations with respect to the change.

18 (4) The department and the board may issue subpoenas and compel testimony and the production of
 19 evidence, including books and records, in regard to any investigation or proceeding under this chapter.

20 (5) ~~The department shall delegate to the department of revenue is responsible for~~ MAY DELEGATE TO THE
 21 DEPARTMENT OF REVENUE all duties associated with the administration of unemployment insurance contributions
 22 and the employment security account, ~~so long as the~~ The duties are must be carried out in conformity with the
 23 requirements of the program budget plan with the United States department of labor. THE DEPARTMENT OF
 24 REVENUE MUST RECEIVE FUNDS FROM THE DEPARTMENT FOR THE PERFORMANCE OF THE DELEGATED DUTIES. THE
 25 DEPARTMENT OF REVENUE HAS RULEMAKING AUTHORITY WITH RESPECT TO ANY FUNCTION OR DUTY DELEGATED TO THE
 26 DEPARTMENT OF REVENUE PURSUANT TO THIS SECTION. ~~The delegated duties do not include oversight duties such~~
 27 ~~as revenue quality control, risk management, and trust fund management. The department of revenue must~~
 28 ~~receive funds from the department for the performance of the delegated duties. The department of revenue has~~
 29 ~~rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this~~
 30 ~~section. The delegation of duties to the department of revenue under Chapter 491, Laws of 1997, is terminated.~~

1 ~~The provisions of this section, as it was amended by Chapter 491, Laws of 1997, governed the transfer of duties~~
 2 ~~from the department to the department of revenue.~~

3 (6) THE DEPARTMENT MAY REVOKE ITS DELEGATION TO THE DEPARTMENT OF REVENUE AT ANY TIME.

4 ~~(6)(7)~~ Employees transferring from the department of revenue to the department of revenue as a result
 5 of a ~~the termination of the~~ delegation of duties in subsection (5) are entitled to all rights, including those under
 6 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and
 7 of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor
 8 union contract, rights to compensatory time earned, and any other rights under any law or administrative policy
 9 including the State Employee Protection Act. Employees transferring must be considered internal applicants by
 10 the department for recruitment purposes for ~~the period from July January 1, 1997 2004, through June 30, 1998~~
 11 December 31, 2004 1 YEAR FROM THE DATE OF THE TERMINATION OF THE DELEGATION OF DUTIES IN SUBSECTION (5).

12 ~~(7)(8)~~ The department of revenue shall succeed the department of revenue in its rights to property
 13 relating to the ~~termination of the~~ delegation of duties in subsection (5) to the extent that is consistent with federal
 14 property transfer policy. The property includes real property, records, office equipment, forms, supplies, and
 15 contracts other than the program budget plan with the United States department of labor.

16 ~~(8)(9)~~ (a) The ~~termination of the~~ delegation of duties in subsection (5) does not affect the validity of any
 17 pending judicial or administrative proceeding.

18 ~~(b) Appeals that were filed with the board of labor appeals or the department's hearings bureau before~~
 19 ~~July January 1, 1997 2004, THE DATE OF THE TERMINATION OF THE DELEGATION OF DUTIES IN SUBSECTION (5) must~~
 20 ~~follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after~~
 21 ~~July January 1, 1997 2004, THE DATE OF THE TERMINATION OF THE DELEGATION OF DUTIES IN SUBSECTION (5) must~~
 22 ~~be taken in accordance with the procedures and processes in effect on the date the appeal is filed.~~

23 (B) ALL APPEALS THAT HAVE NOT BEEN HEARD PRIOR TO THE TERMINATION OF THE DELEGATION OF DUTIES IN
 24 SUBSECTION (5) MUST BE MADE IN ACCORDANCE WITH THE PROCEDURES IDENTIFIED IN 39-51-1109.

25 (c) The department of revenue must be substituted for the department of revenue and succeed to all
 26 audits, determinations, and other actions ~~that have not been appealed to the board of labor appeals or the~~
 27 ~~department's hearings bureau prior to~~ FOLLOWING July January 1, 1997 2004 THE DATE OF THE TERMINATION OF
 28 THE DELEGATION OF DUTIES IN SUBSECTION (5).

29 ~~(9)(10)~~ The rights, privileges, and duties of the holders of bonds and other obligations issued and of the
 30 parties to contracts, leases, indentures, and other transactions entered into before the ~~termination of the~~

1 delegation of duties in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants,
 2 or agreements are impaired or diminished by reason of the delegation of duties. The department of revenue is
 3 substituted for the department of revenue and, subject to the provisions of subsection (5), succeeds to the rights
 4 and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The
 5 provisions of this subsection ~~(9)~~ (10) do not apply to the program budget plan agreement between the
 6 department and the United States department of labor."

7

8 ~~Section 6.~~ Section 39-51-302, MCA, is amended to read:

9 ~~"39-51-302. Administrative rules. (1) The department may adopt procedural and substantive rules~~
 10 ~~necessary to implement this chapter.~~

11 ~~(2) The department shall delegate rulemaking authority to the department of revenue with respect to~~
 12 ~~any function or duty delegated to the department of revenue pursuant to 39-51-301(5)."~~

13

14 **Section 7.** Section 39-51-1109, MCA, is amended to read:

15 **"39-51-1109. Tax appeals -- procedure.** ~~(1)~~(1) A decision, determination, or redetermination of the
 16 department involving contribution liability, contribution rate, application for a refund, an employer-employee
 17 relationship, or the charging of benefit payments to employers is final unless an interested party entitled to
 18 notification submits a written appeal of the decision, determination, or redetermination. The appeal must be
 19 made in the same manner as provided in 39-71-415.

20 ~~(2) A decision, determination, or redetermination involving contribution liability, contribution rate,~~
 21 ~~application for refund, subject wages, or other tax-related issues must be issued by the department of revenue~~
 22 ~~as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested~~
 23 ~~party entitled to notification follows the uniform dispute review procedures as prescribed in 15-1-211 and~~
 24 ~~15-30-257, if applicable.~~

25 (2) A DECISION, DETERMINATION, OR REDETERMINATION INVOLVING CONTRIBUTION LIABILITY, CONTRIBUTION
 26 RATE, APPLICATION FOR REFUND, SUBJECT WAGES, OR OTHER TAX-RELATED ISSUES MUST BE ISSUED BY THE
 27 DEPARTMENT OF REVENUE AS PROVIDED IN TITLE 15, CHAPTER 1, PART 2, AND 15-30-257, IF APPLICABLE. THE DECISION
 28 IS FINAL UNLESS AN INTERESTED PARTY ENTITLED TO NOTIFICATION FOLLOWS THE UNIFORM DISPUTE REVIEW
 29 PROCEDURES AS PRESCRIBED IN 15-1-211 AND 15-30-257, IF APPLICABLE."

30

1 **SECTION 8.** SECTION 39-51-1109, MCA, IS AMENDED TO READ:

2 **"39-51-1109. Tax appeals -- procedure.** (1) A decision, determination, or redetermination of the
3 department involving an employer-employee relationship or the charging of benefit payments to employers is
4 final unless an interested party entitled to notification submits a written appeal of the decision, determination,
5 or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

6 (2) A decision, determination, or redetermination involving contribution liability, contribution rate,
7 application for refund, subject wages, or other ~~tax-related~~ contribution-related issues must be issued by the
8 department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. ~~The decision and~~
9 ~~is final unless an interested party entitled to notification follows the uniform dispute review procedures as~~
10 ~~prescribed in 15-1-211 and 15-30-257, if applicable~~ submits a written appeal of the decision, determination, or
11 redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a
12 decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure
13 do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by video conference.
14 The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided
15 in 39-51-2403 through 39-51-2410."

16
17 ~~Section 8.~~ ~~Section 39-51-1110, MCA, is amended to read:~~

18 ~~"39-51-1110. Refunds to employers.~~ (1) ~~If an employer claims an adjustment or the department or~~
19 ~~its delegate, as provided in 39-51-301, determines through an examination of the employer's account that the~~
20 ~~employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment~~
21 ~~insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim~~
22 ~~is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest~~
23 ~~became due or within one 1 year from the date the payment is made, whichever is later. The department or its~~
24 ~~delegate pursuant to 39-51-301(5), shall credit or refund the amount to the employer, without interest.~~

25 ~~(2) If the department or its delegate pursuant to 39-51-301(5), determines that an employer has paid~~
26 ~~taxes to this state under this chapter but the taxes should have been paid to another state under a similar act~~
27 ~~of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of~~
28 ~~payment that the other state has been fully paid, then a refund to the employer must be made upon application~~
29 ~~without limitation of time.~~

30 ~~(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then~~

1 refunds must be made of all taxes required under this chapter from employers for that year."

2

3 ~~Section 9. Section 39-51-1301, MCA, is amended to read:~~

4 ~~"39-51-1301. Penalty and interest on past due reports and taxes. (1) (a) Failure to file reports and~~
 5 ~~payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an~~
 6 ~~employer to penalty and interest, as provided by 15-1-216.~~

7 ~~(b) (i) A person who fails to file a required report with the department or make a payment by the due~~
 8 ~~date, including any extension of time, must be assessed a late filing penalty of \$50 or the amount of the payment~~
 9 ~~due, whichever is less.~~

10 ~~(ii) A person who purposely fails to file a required report must be assessed an additional late filing~~
 11 ~~penalty of \$200 or the amount of the payment due, whichever is less.~~

12 ~~(iii) A person who fails to make a payment when due must be assessed a late payment penalty of 1.5%~~
 13 ~~a month or fraction of a month on the unpaid tax. The penalty may not exceed 18% of the tax due.~~

14 ~~(iv) A person who purposely fails to make a payment when due must be assessed an additional penalty~~
 15 ~~equal to 25% of the payment due or \$200, whichever is less, plus interest as provided in subsection (1)(c).~~

16 ~~(c) Interest on payments not paid when due must be assessed at the rate of 12% a year, accrued at 1%~~
 17 ~~a month or fraction of a month, on the unpaid amount. Interest on delinquent payments is computed from the~~
 18 ~~original due date of the report until the amount is paid.~~

19 ~~(2) Except as provided by rule, payments, including delinquent payments, penalty, and interest, must~~
 20 ~~be applied to the employer's account, prorated on the basis of the amount of each account due to the amount~~
 21 ~~of the total due, and distributed to the appropriate fund accounts as required by law.~~

22 ~~(3) Payment of a penalty assessed for late filing of a report for which there is no amount due for the~~
 23 ~~period must be applied to the employer's liability for the penalties and equally distributed to the fund accounts~~
 24 ~~specified by law among the payment types the report covers.~~

25 ~~(2)(4) There is an account in the federal special revenue fund. Penalties and interest collected for~~
 26 ~~unemployment insurance obligations are distributed as provided in 15-30-250 subsections (2) and (3) and must~~
 27 ~~be deposited in that account. Money deposited in that account and appropriated to the department or transferred~~
 28 ~~by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate~~
 29 ~~only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of~~
 30 ~~benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in~~

1 the account not appropriated for these purposes must be transferred by the department to the unemployment
2 insurance trust fund at the end of each fiscal year.

3 ~~———— (3)(5) All money accruing to the unemployment insurance trust fund from interest and penalties~~
4 ~~collected on past due unemployment insurance taxes must be used solely for the payment of unemployment~~
5 ~~insurance benefits and may not be used for any other purpose."~~

6
7 ~~———— **Section 10.** Section 39-51-1303, MCA, is amended to read:~~

8 ~~———— "**39-51-1303. Collection of unpaid taxes.** (1) The department, or its delegate pursuant to 39-51-301(5),~~
9 ~~has authority to enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest.~~
10 ~~Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered~~
11 ~~into and adhered to. Failure to meet the terms of the payment agreement voids the penalty and interest~~
12 ~~abatement and penalty, and interest must be recomputed from the due date of the unpaid tax.~~

13 ~~———— (2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited~~
14 ~~liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment~~
15 ~~of taxes, penalties, or interest on the taxes and penalties, the department, or its delegate pursuant to~~
16 ~~39-51-301(5), may initiate a civil action in the name of the state to collect the amount due, and the employer,~~
17 ~~liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or~~
18 ~~partner in a limited liability partnership adjudged in default shall pay the costs of the action.~~

19 ~~———— (3) An action for the collection of taxes due must be brought within 5 years from the date the original~~
20 ~~or amended report was filed or assessment became due, whichever is later, or it is barred.~~

21 ~~———— (4) The department, or its delegate pursuant to 39-51-301(5), may pursue its remedy under 39-51-1304,~~
22 ~~or this section, or both."~~

23
24 ~~———— **Section 11.** Section 39-51-2402, MCA, is amended to read:~~

25 ~~———— "**39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the~~
26 ~~department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the~~
27 ~~deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy~~
28 ~~will shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum~~
29 ~~benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who~~
30 ~~shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect~~

1 ~~to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in~~
 2 ~~accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in 15-2-302~~
 3 ~~and 15-30-257. The deputy shall promptly notify the claimant and any other interested party of the decision and~~
 4 ~~the reasons for reaching the decision.~~

5 ~~———(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and~~
 6 ~~other interested parties of the amended decision and the reasons for the decision.~~

7 ~~———(3) A determination or redetermination of an initial or additional claim may not be made under this~~
 8 ~~section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is~~
 9 ~~mailed to each interested party.~~

10 ~~———(4) A determination or redetermination is final unless an interested party entitled to notice of the decision~~
 11 ~~applies for reconsideration of the determination or appeals the decision within 10 days after the notification was~~
 12 ~~mailed to the interested party's last-known address. The 10-day period may be extended for good cause.~~

13 ~~———(5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after~~
 14 ~~2 years from the date of the initial determination.~~

15 ~~———(6) A redetermination may be made within 3 years from the date of the initial determination of a claim~~
 16 ~~if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact~~
 17 ~~by the claimant or the employer."~~

18
 19 ~~———**NEW SECTION. Section 12. Repealer.** Sections 15-30-250, 15-30-251, and 15-30-255, MCA, are~~
 20 ~~repealed.~~

21
 22 **SECTION 9. SECTION 39-51-1301, MCA, IS AMENDED TO READ:**

23 **"39-51-1301. Penalty and interest on past-due reports and taxes.** (1) Failure to file reports and
 24 payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an
 25 employer to penalty and interest, as provided by 15-1-216.

26 (2) There is an account in the federal special revenue fund. Penalties and interest collected for
 27 unemployment insurance obligations ~~are distributed as provided in 15-30-250 and~~ must be deposited in that
 28 account. Money deposited in that account and appropriated to the department or transferred by the department
 29 to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this
 30 chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that

1 federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated
2 for these purposes must be transferred by the department to the unemployment insurance trust fund at the end
3 of each fiscal year.

4 (3) All money accruing to the unemployment insurance trust fund from interest and penalties collected
5 on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance
6 benefits and may not be used for any other purpose."

7

8 **SECTION 10. SECTION 39-51-2402, MCA, IS AMENDED TO READ:**

9 **"39-51-2402. Initial determination -- redetermination.** (1) A representative designated by the
10 department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the
11 deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy
12 will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit
13 amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall
14 make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. With respect to a
15 determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in
16 accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302
17 and 15-30-257 during the time that the department delegated the duties associated with the administration of
18 unemployment insurance contributions to the department of revenue pursuant to 39-51-301. The deputy shall
19 promptly notify the claimant and any other interested party of the decision and the reasons for reaching the
20 decision.

21 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and
22 other interested parties of the amended decision and the reasons for the decision.

23 (3) A determination or redetermination of an initial or additional claim may not be made under this
24 section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is
25 mailed to each interested party.

26 (4) A determination or redetermination is final unless an interested party entitled to notice of the decision
27 applies for reconsideration of the determination or appeals the decision within 10 days after the notification was
28 mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

29 (5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after
30 2 years from the date of the initial determination.

1 (6) A redetermination may be made within 3 years from the date of the initial determination of a claim
 2 if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact
 3 by the claimant or the employer."
 4

5 **NEW SECTION. SECTION 11. DEPOSIT OF LOAN PROCEEDS -- CAPITAL PROJECTS APPROPRIATION.** (1) THE
 6 PROCEEDS OF ANY LOAN FROM THE BOARD OF INVESTMENTS TO THE DEPARTMENT OF REVENUE FOR REPLACEMENT OF
 7 THE POINTS COMPUTER SYSTEM MUST BE DEPOSITED IN THE CAPITAL PROJECTS FUND.

8 (2) THERE IS APPROPRIATED FROM THE CAPITAL PROJECTS FUND TO THE DEPARTMENT OF ADMINISTRATION UP
 9 TO \$17 MILLION FOR THE REPLACEMENT SYSTEM DESCRIBED IN [SECTION 1].

10 (3) THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF ADMINISTRATION ARE PROHIBITED FROM USING
 11 ANY OF THE PROCEEDS FROM THE LOAN FOR THE REPLACEMENT SYSTEM AUTHORIZED BY [SECTION 1] FOR AGENCY
 12 CURRENT LEVEL OPERATING EXPENSES. LOAN PROCEEDS APPROPRIATED UNDER THIS SECTION MAY BE EXPENDED FOR
 13 PROJECT ADMINISTRATION AND IMPLEMENTATION, INCLUDING SOFTWARE AND REQUIRED HARDWARE, SOFTWARE
 14 LICENSING, AND EXTRAORDINARY PERSONAL AND CONTRACTED SERVICES.

15 (4) THE APPROPRIATION CONTINUES UNTIL JUNE 30, 2005.
 16

17 **NEW SECTION. SECTION 12. APPROPRIATION.** (1) THERE IS APPROPRIATED FROM THE GENERAL FUND TO
 18 THE DEPARTMENT OF REVENUE \$2,391,385 FOR THE BIENNIUM ENDING JUNE 30, 2005. THIS APPROPRIATION IS TO
 19 PROVIDE FOR THE REPLACEMENT OF POINTS AND THE TRANSFER OF RESPONSIBILITY FOR UNEMPLOYMENT INSURANCE
 20 COLLECTIONS TO THE DEPARTMENT OF LABOR AND INDUSTRY. THE DEPARTMENT OF REVENUE MAY USE THE
 21 APPROPRIATED FUNDS FOR EXPENSES NECESSARY TO ENSURE THE SMOOTH TRANSITION OF EXISTING POINTS DATA AND
 22 SYSTEMS TO THE REPLACEMENT SYSTEMS, INCLUDING EXPENSES FOR TRAINING, PERSONAL AND CONTRACTED SERVICES,
 23 DATA AND SOFTWARE CLEANUP, CLEARING BACKLOG, CORRECTING AND REALIGNING TAX AND COLLECTION DATA,
 24 PREPARING AND EXECUTING CONVERSION STRATEGIES, MAINTAINING CURRENCY, AND CONVERTING HISTORIC DATA.

25 (2) THERE IS APPROPRIATED \$1.9 MILLION FROM THE STATE SPECIAL REVENUE ACCOUNT FOR ADMINISTRATIVE
 26 ASSESSMENTS PROVIDED FOR IN [SECTION 5] TO THE DEPARTMENT OF REVENUE FOR THE BIENNIUM ENDING JUNE 30,
 27 2005, FOR THE PAYMENT OF DEBT SERVICE ON THE BONDS AUTHORIZED IN 17-5-1608 OR THE PROJECTED PRINCIPAL
 28 AND INTEREST PAYMENTS ON THE LOAN PROVIDED FOR IN 17-5-2001.
 29

30 **NEW SECTION. SECTION 13. CODIFICATION INSTRUCTION.** [SECTIONS 1 AND 5] ARE INTENDED TO BE

1 CODIFIED AS AN INTEGRAL PART OF TITLE 15, CHAPTER 1, PART 1, AND THE PROVISIONS OF TITLE 15, CHAPTER 1, PART
 2 1, APPLY TO [SECTIONS 1 AND 5].

3
 4 NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are
 5 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 6 the part remains in effect in all valid applications that are severable from the invalid applications.

7
 8 NEW SECTION. Section 15. Saving clause. [This act] does not affect rights and duties that matured,
 9 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

10
 11 NEW SECTION. Section 16. Effective date DATES -- CONTINGENCY. (1) ~~[This act]~~ EXCEPT AS PROVIDED
 12 IN SUBSECTION (2) SUBSECTIONS (2) AND (3), [THIS ACT] is effective January 1, 2004 ON PASSAGE AND APPROVAL.

13 (2) [SECTIONS 4 THROUGH 6 8 THROUGH 10] ARE EFFECTIVE ON THE DATE THAT THE COMMISSIONER OF LABOR
 14 AND INDUSTRY CERTIFIES TO THE GOVERNOR THAT THE DELEGATION OF DUTIES IN 39-51-301 IS TERMINATED.

15 (3) [SECTIONS 2, 5, AND 12] ARE EFFECTIVE JULY 1, 2003.

16
 17 NEW SECTION. SECTION 17. CONTINGENT TERMINATION. (1) ~~[SECTION 3 7]~~ TERMINATES ON THE DATE THAT
 18 THE COMMISSIONER OF LABOR AND INDUSTRY CERTIFIES TO THE GOVERNOR THAT THE DELEGATION OF DUTIES IN
 19 39-51-301 IS TERMINATED.

20 (2) THE COMMISSIONER OF LABOR AND INDUSTRY SHALL TRANSMIT A COPY OF THE CERTIFICATION OF THE
 21 TERMINATION OF DUTIES TO THE CODE COMMISSIONER.

22
 23 NEW SECTION. SECTION 18. TERMINATION. [SECTIONS 1, 4, AND 5] TERMINATE JUNE 30, 2011.

24 - END -