

SENATE BILL NO. 271
INTRODUCED BY C. STAPLETON

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT THE PROCESS ORIENTED INTEGRATED SYSTEM (POINTS) COMPUTER SYSTEM OF THE DEPARTMENT OF REVENUE BE REPLACED WITH A DIFFERENT COMPUTER SYSTEM; LIMITING THE COST OF THE REPLACEMENT SYSTEM; REQUIRING THAT CURRENT DATA NEEDED FOR THE REPLACEMENT SYSTEM BE CORRECTED; PROVIDING THAT UNEMPLOYMENT INSURANCE TAX COLLECTIONS WILL NOT BE PROCESSED UNDER THE REPLACEMENT SYSTEM BY TERMINATING THE DELEGATION TO THE DEPARTMENT OF REVENUE OF RESPONSIBILITY FOR COLLECTING UNEMPLOYMENT INSURANCE TAXES FOR THE DEPARTMENT OF LABOR AND INDUSTRY; AMENDING SECTIONS 15-2-302, 15-30-204, 15-30-249, 39-51-301, 39-51-302, 39-51-1109, 39-51-1110, 39-51-1301, 39-51-1303, AND 39-51-2402, MCA; REPEALING SECTIONS 15-30-250, 15-30-251, AND 15-30-255, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Department of revenue POINTS computer system replacement.** (1) The department of revenue, in conjunction with the chief information officer and the department of administration, shall replace the process oriented integrated system (POINTS) computer system. Unemployment insurance collections must be transferred to the department of labor and industry, so that the replacement software is not required to process those collections. Subject to department of revenue requirements, the replacement system must be phased in to process all other department tax and debt collection functions. Functioning portions of POINTS may continue to be used for departmental processing requirements until the replacement system becomes operational for those processes.

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

(3) In addition to the replacement of POINTS, the department of revenue shall, based upon an

independent audit conducted either directly or under contract by the legislative auditor, correct and realign tax and collection data used by the department to ensure the integrity of data used by the replacement system.

Section 2. Section 15-2-302, MCA, is amended to read:

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or
- (d) any other matter in which the appeal is provided by law.

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

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

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

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

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

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

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

Section 3. Section 15-30-204, MCA, is amended to read:

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

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

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

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

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

(2) (a) Every employer is required to file a report quarterly in the form required by the department.

(b) The report is due on or before the last day of the month following the close of the calendar quarter.

~~(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.~~

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

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

(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the

remittance schedule for each employer.

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

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

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

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

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

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

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

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

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

Section 4. Section 15-30-249, MCA, is amended to read:

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

Section 5. Section 39-51-301, MCA, is amended to read:

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

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

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

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

(5) The department ~~shall delegate to the department of revenue~~ is responsible for all duties associated with the administration of unemployment insurance contributions and the employment security account, so long as the ~~The duties are~~ must be carried out in conformity with the requirements of the program budget plan with the United States department of labor. ~~The delegated duties do not include oversight duties such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties. The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section. The delegation of duties to the department of revenue under Chapter 491, Laws of 1997, is terminated. The provisions of this section, as it was amended by Chapter 491, Laws of 1997, governed the transfer of duties from the department to the department of revenue.~~

(6) Employees transferring from the department of revenue to the department ~~of revenue~~ as a result of ~~a~~ the termination of the delegation of duties in subsection (5) are entitled to all rights, including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy

including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for the period from ~~July~~ January 1, 1997 2004, through ~~June 30, 1998~~ December 31, 2004.

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

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

(b) Appeals that were filed ~~with the board of labor appeals or the department's hearings bureau~~ before ~~July~~ January 1, 1997 2004, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after ~~July~~ January 1, 1997 2004, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.

(c) The department of ~~revenue~~ must be substituted for the department of revenue and succeed to all audits, determinations, and other actions that have not been appealed ~~to the board of labor appeals or the department's hearings bureau~~ prior to ~~July~~ January 1, 1997 2004.

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

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

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

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

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

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

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

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

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

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

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year."

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

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) (a) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may subject an

employer to penalty and interest, ~~as provided by 15-1-216.~~

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

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

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

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

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

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

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

~~(2)(4)~~ There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in ~~15-30-250~~ subsections (2) and (3) and must be deposited in that account. Money deposited in that account and appropriated to the department ~~or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate~~ only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

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

Section 10. Section 39-51-1303, MCA, is amended to read:

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

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

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

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

Section 11. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim and, on the basis of the facts the deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy ~~will~~ shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in accordance with procedures for unemployment insurance benefit claimant appeals as prescribed in 15-2-302 and 15-30-257.~~ The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons for reaching the decision.

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

(3) A determination or redetermination of an initial or additional claim may not be made under this section

unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

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

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

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

NEW SECTION. **Section 12. Repealer.** Sections 15-30-250, 15-30-251, and 15-30-255, MCA, are repealed.

NEW SECTION. **Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 14. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 15. Effective date.** [This act] is effective January 1, 2004.

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