

SENATE BILL NO. 539
INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO PROPERTY TAX APPEALS; CREATING A PROPERTY TAX PROTEST RISK MANAGEMENT PROGRAM; ESTABLISHING A PROPERTY TAX PROTEST RISK MANAGEMENT ACCOUNT; REQUIRING THE DEPARTMENT OF REVENUE TO PROVIDE THE IDENTITY AND OWNERS OF CERTAIN INDUSTRIAL PROPERTY TO COUNTY TREASURERS; PROVIDING DEFINITIONS OF INDUSTRIAL PROPERTY; REQUIRING TAXPAYERS THAT PROTEST TAXES ASSESSED ON CERTAIN PROPERTY TO SUBMIT A QUALIFIED WRITTEN APPRAISAL IN SUPPORT OF THE PROPERTY TAX PROTEST; CLARIFYING THAT DECLARATORY JUDGMENTS MAY NOT BE BROUGHT IN PROPERTY TAX DISPUTES THAT INVOLVE FACTUAL OR CLASSIFICATION ISSUES UNTIL A TAXPAYER HAS EXHAUSTED ADMINISTRATIVE REMEDIES; TRANSFERRING JURISDICTION FOR PROPERTY TAX APPEALS OF CERTAIN INDUSTRIAL PROPERTY FROM COUNTY TAX APPEAL BOARDS TO THE DEPARTMENT OF REVENUE DISPUTE RESOLUTION OFFICE AND PROVIDING FOR APPEAL TO THE STATE TAX APPEAL BOARD; PROHIBITING THE USE OF CONTINGENCY FEE APPRAISALS AND TESTIMONY IN PROPERTY TAX APPEALS; ELIMINATING THE CENTRALLY ASSESSED PROPERTY TAX SPECIAL REVENUE FUND AT A SPECIFIED TIME; AMENDING SECTIONS 15-1-101, 15-1-211, 15-1-402, 15-1-406, 15-2-201, 15-8-404, 15-15-103, AND 15-15-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 6] may be cited as the "Property Tax Protest Risk Management Program Act".

NEW SECTION. Section 2. Purpose. The purpose of [sections 1 through 6] is to:

- (1) create a property tax protest risk management program that would allow the shifting of most of the risk of losing a property tax appeal related to centrally assessed property and certain industrial property from local taxing jurisdictions to the state;
- (2) allow counties to elect on behalf of local taxing jurisdictions within the county to use 90% of the revenue that they would have received had property taxes on centrally assessed property and certain industrial

property not been paid under protest;

(3) establish a property tax protest risk management account that is supported with specific funding methods;

(4) make payments from the property tax protest risk management account to taxpayers entitled to a refund of protested property taxes.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 6], the following definitions apply:

(1) "Account" means the property tax protest risk management account established in [section 5].

(2) "Electing county" means a county that has elected to participate in the property tax protest risk management program as provided in [section 4] with respect to protested taxes paid to the county on property that was centrally assessed by the department as provided in 15-23-101 or identified by the department as specially assessed industrial property as provided in 15-8-404(4).

(3) (a) "Local protested property taxes" means protested property taxes paid in an electing county related to locally imposed mill levies.

(b) The term does not include protested property taxes related to state mill levies imposed for purposes of 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439.

(4) "Program" means the property tax protest risk management program provided for in [section 4].

NEW SECTION. Section 4. County election to participate in property tax protest risk management program -- authority to expend locally protested taxes -- rules. (1) A county may elect on behalf of local taxing jurisdictions within the county to participate in the property tax protest risk management program as provided in this section.

(2) An election to participate in the program must be made on or before January 31 of the year following the year for which the taxes are protested. To make an election, the county shall notify the department, on a form prescribed by the department, of its election to participate in the program. The notification must include:

(a) the name of the taxpayer paying property taxes under protest;

(b) the total amount of taxes paid by the taxpayer; and

(c) the total amount of local protested property taxes.

(3) (a) At the time the county notifies the department of the election, the county shall remit to the department for deposit in the account:

- (i) 10% of the local protested property taxes;
- (ii) 100% of the protested taxes attributable to the university mill levy under 20-25-423; and
- (iii) 100% of the protested taxes attributable to state levies under 20-9-331, 20-9-333, 20-9-360, 20-25-439.

(b) If the protested taxes referred to in subsection (3)(a) are paid in two installments, the county shall remit the second installment within 30 days after receipt of the second installment according to the schedule provided in subsection (3)(a).

(4) The treasurer of a county that elects to participate in the program as provided in this section is not required to deposit the remaining 90% of the local protested property taxes in the protest fund as required by 15-1-402. The county treasurer shall distribute local protested property taxes in accordance with local mill levy distributions within the county.

(5) The department may adopt rules to administer the election by a county to participate in the program

NEW SECTION. Section 5. Property tax protest risk management account -- payments --refunds.

(1) There is a property tax protest risk management account in the state special revenue fund, as provided in 17-2-102, to the credit of the department. Interest earnings in the account must be retained in the account.

(2) There must be deposited in the account:

(a) the amount of local protested property taxes received from an electing county as provided in [section 4];

(b) the amount of protested taxes attributable to the levy imposed under 20-25-423 received from electing counties as provided in [section 4] and from nonelecting counties as provided in 15-1-402;

(c) the amount of protested taxes attributable to the state levies imposed under 20-9-331, 20-9-333, 20-9-360, and 20-25-439 received from electing counties as provided in [section 4] and from nonelecting counties as provided in 15-1-402;

(d) reimbursement from the state special revenue fund for amounts levied under 20-25-423 for any amount of protested taxes credited to the university system as provided in subsection (3)(a) that is required to be refunded; and

(e) reimbursement from the state general fund for any amount of protested taxes credited to the state general fund as provided in subsection (3)(b) that is required to be refunded.

(3) The department shall pay out of the account:

(a) to the credit of the university system, 50% of the protested taxes attributable to the levy imposed

under 20-25-423 received from electing and nonelecting counties;

(b) to the credit of the state general fund, 50% of the protested taxes attributable to state levies imposed under 20-9-331, 20-9-333, 20-9-360, and 20-25-439 received from electing counties and nonelecting counties.

(4) When an adverse action on protested taxes in an electing county has finally been determined, the department shall pay to:

(a) the person that paid the tax under protest in whose favor a judgment is rendered, the amount, if any, that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest until the date of refund at the rate of interest earned by the pooled investment fund provided for in 17-6-203;

(b) the electing county, 50% of the balance, if any, of the local protested property taxes paid into the account that is not required to be refunded under subsection (4)(a);

(c) the university system, the balance, if any, of the protested taxes attributable to the levy imposed under 20-25-423 paid into the account that is not required to be refunded under subsection (4)(a); and

(d) the general fund the balance, if any, of the taxes attributable to the state levies imposed under 20-9-331, 20-9-333, 20-9-360, and 20-25-439 paid into the fund that is not required to be refunded under subsection (4)(a).

(5) When an adverse action on protested taxes is finally determined in a county that has not elected to participate in the program, the department shall pay to:

(a) the person that paid the tax under protest in whose favor a judgment is rendered, the amount, if any, of taxes attributable to the university mill levy imposed under 20-25-423 and to state mill levies imposed under 20-9-331, 20-9-333, 20-9-360, and 20-25-439 that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest until the date of refund at the rate of interest earned by the pooled investment fund provided for in 17-6-203;

(b) the university system, the balance, if any, of the protested taxes attributable to the mill levy imposed under 20-25-423 that is not required to be refunded under subsection (5)(a); and

(c) the general fund the balance, if any, of the taxes attributable to state levies imposed under 20-9-331, 20-9-333, 20-9-360, and 20-25-439 that is not required to be refunded under subsection (5)(a).

NEW SECTION. Section 6. Management of property tax protest risk management account -- rules.

(1) The board of investments, as provided for in 2-15-1808, shall manage the account.

(2) The board of investments may adopt rules to manage the account.

(3) The department may adopt rules to administer the payment and refund of protested taxes from the account as provided in [sections 1 through 6].

Section 7. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, ~~when terms mentioned in this section are~~ the following definitions apply when used in connection with taxation, ~~they are defined in the following manner:~~

(a) ~~The term "agricultural" refers to~~ "Agriculture" means:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) ~~The term "assessed value"~~ "Assessed value" means the value of property as defined in 15-8-111.

(c) ~~The term "average wholesale value"~~ "Average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) ~~The term "commercial"~~ "Commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) ~~The term "comparable property"~~ "Comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) ~~The term "credit"~~ "Credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) ~~The terms "gas"~~ "Gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) ~~The term "improvements" includes~~ "Improvements" means all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) "Industrial improvements" means all improvements of a civil construction nature on the land used to house the industrial process. For purposes of this subsection, all storage facilities are treated as improvements to land.

(k) "Industrial plant" means a combination of land, land improvements, improvements, and manufacturing machinery and equipment that have been organized into a functioning unit.

(l) "Industrial property" means property used in the extraction, production, distribution, and changing the form of raw materials or assembling components and parts, packing and warehousing, and shipping of the finished products. The term includes industrial improvements, an industrial plant, and manufacturing machinery and equipment.

(~~j~~)(m) ~~The term "leasehold improvements"~~ "Leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(~~k~~)(n) ~~The term "livestock"~~ "Livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(~~h~~)(o) (i) ~~The term "manufactured home"~~ "Manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection ~~(1)(m)~~ (1)(q), or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(p) "Manufacturing machinery and equipment" means all property used in the manufacturing process, whether permanently or temporarily in place, used to transform raw or finished materials into something possessing a new nature or name and adapted to a new use.

~~(m)(q)~~ The term ~~"mobile home"~~ "Mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

~~(n)(r)~~ The term ~~"personal property" includes~~ "Personal property" means everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements" and "intangible personal property" as that term is defined in 15-6-218.

~~(o)(s)~~ The term ~~"poultry" includes~~ "Poultry" means all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(p)(t)~~ The term ~~"property" includes~~ "Property" money, credits, bonds, stocks, franchises, and means all other matters and things, real, personal, and mixed, capable of private ownership and includes money, credits, bonds, stocks, and franchises. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

~~(q)(u)~~ The term ~~"real estate" includes~~ "Real estate" means:

- (i) the possession of, claim to, ownership of, or right to the possession of land;
 - (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;
 - (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States;
- and
- (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

~~(r)(v)~~ "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

~~(s)(w)~~ "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical

analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(t)~~(x) The term "~~stock in trade~~" "Stock in trade" means any mobile home, manufactured home, or house trailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

~~(u)~~(y) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) ~~The phrase "municipal corporation"~~ "Municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) ~~The term "state board"~~ "State board" or "board" when used without other qualification means the state tax appeal board."

Section 8. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform dispute review procedure -- notice -- appeal -- contingent fee appraisal or testimony not considered. (1) The department shall provide a uniform review procedure for all persons or other entities, except as provided in subsection ~~(+)~~(a) (1)(b).

(a) The department's dispute review procedure must be adopted by administrative rule and, except as provided in subsection (1)(b), applies to all matters administered by the department and to all issues arising from the administration of the department, except including the assessment of centrally assessed property pursuant to Title 15, chapter 23, and to the assessment of specially assessment of industrial property pursuant to 15-8-404(4).

(b) The department's dispute review procedure does not apply to:

(i) estate taxes;

(ii) property taxes imposed on property that is not centrally assessed under Title 15, chapter 23, or identified as specially assessed industrial property under 15-8-404(4); and; or

(iii) the issue of whether an employer-employee relationship existed between the person or other entity and individuals subjecting the person or other entity to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. ~~The procedure applies to assessments of~~

~~centrally assessed property taxed pursuant to chapter 23.~~

~~(b) (i) The term "other entity", as used in this section, includes all businesses, corporations, and similar enterprises.~~

~~————(ii) The term "person" as used in this section includes all individuals.~~

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

(6) (a) (i) The director of revenue or the director's designee is authorized to enter into an agreement with a person or other entity relating to a matter administered by the department.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) Subject to subsection (6)(a)(ii), an agreement under the provisions of subsection (6)(a)(i) is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded.

(7) The department may not consider a contingent fee appraisal or any testimony by a witness who is compensated on a contingency fee basis in resolving disputes under the uniform dispute review procedure.

(8) As used in this section:

(a) "contingent fee appraisal" means any appraisal, opinion of value, or other assignment for which any part of the compensation for the appraisal is contingent on:

(i) the reporting of a predetermined result;

(ii) a direction in assignment results that favors the cause of the client;

(iii) the amount of a value opinion;

(iv) the attainment of a stipulated result; or

(v) the occurrence of a subsequent event directly related to an appraiser's opinions and specific to the assignment's purpose;

(b) "other entity" means a business, corporation, and similar enterprise; and

(c) "person" means an individual."

Section 9. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101 or that is subject to special assessment as industrial property pursuant to 15-8-404(4), the person shall:

(i) report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made; and

(ii) if the aggregate statewide protested amount exceeds \$100,000, attach a qualified appraisal supporting the protested amount.

(d) By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment ~~under~~ pursuant to 15-23-101(1) and (2) and to owners of specially assessed industrial property described in 15-8-404(4) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2) or that is industrial property subject to special assessment pursuant to 15-8-404(4), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in [section 4] and subsection (4)(b) of this section, all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 or specially assessed pursuant to 15-8-404(4) must be remitted by the county treasurer to the department.

(ii) ~~The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund~~ the taxes remitted by counties in the property tax protest risk management account established in [section 5] and immediately transfer-:

(iii) ~~Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund~~

(A) to the credit of the university system the amount required under [section 5(3)(a)]; and

(B) to the credit of the general fund the amount required under [section 5(3)(b)].

(5) (a) Except as provided in subsection (5)(b) and subject to [section 4], the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) ~~The~~ Subject to [section 4], the governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 or that is industrial property specially assessed pursuant to 15-8-404(4) in the first and subsequent years that a tax protest remains unresolved may

demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property or specially assessed industrial property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the ~~centrally assessed property tax state special revenue fund~~ property tax protest risk management account and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax in a county that has not made an election as provided in [section 4], then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) ~~¶~~ Except for protests in a county that has elected to participate in the property tax protest risk management program as provided in [section 4], if the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) ~~¶~~ Except for protests in a county that has elected to participate in the property tax protest risk management program as provided in [section 4], if the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property or specially assessed

industrial property, the department shall refund from the ~~centrally assessed property tax state special revenue fund~~ property tax protest risk management account the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). ~~The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-107.~~

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.

(9) As used in this section, "qualified appraisal" means a written appraisal that complies with the uniform standards of professional appraisal practice of the appraisal standards board of the appraisal foundation as defined in 37-54-102."

Section 10. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of property taxes or fees under protest. (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101 or is industrial property subject to special assessment pursuant to 15-8-404(4), the person shall:

(i) report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made; and

(ii) if the aggregate statewide protested amount exceeds \$100,000, attach a qualified appraisal supporting the protested amount.

(d) By November 1 of each year, the department shall mail a notice stating the requirements of this subsection (1)(c) to owners of property subject to central assessment ~~under~~ pursuant to 15-23-101(1) and (2) and to owners of specially assessed industrial property described in 15-8-404(4) who have filed a timely appeal under 15-1-211.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15, including a person appealing a property tax or fee on property that is subject to central assessment pursuant to 15-23-101(1) or (2) or that is industrial property subject to special assessment pursuant to 15-8-404(4), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county

or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 or that is industrial property subject to special assessment pursuant to 15-8-404(4) must be remitted by the county treasurer to the department.

(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-107 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-107 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(5) (a) Except as provided in subsection (5)(b), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 or that is industrial property specially assessed pursuant to 15-8-404(4) in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property or specially assessed industrial property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not

commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property or specially assessed industrial property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is

responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-107.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.

(9) As used in this section, "qualified appraisal" means a written appraisal that complies with the uniform standards of professional appraisal practice of the appraisal standards board of the appraisal foundation defined in 37-54-102.

Section 11. Section 15-1-406, MCA, is amended to read:

"15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may bring a declaratory judgment action in the district court seeking a declaration that:

- (a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department is illegal or improper; or
- (b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform dispute review procedure set forth in 15-1-211,

within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except estate taxes, are paid under protest by filing timely claims for refund and by following the uniform dispute review procedures of 15-1-211. Estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge:

(i) is to the legality of a particular methodology that is being applied to similarly situated taxpayers; and

(ii) does not require a determination of any material fact;

(b) classification of property; or

~~(b)~~(c) legality of a tax other than a property tax or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 12. Section 15-2-201, MCA, is amended to read:

"15-2-201. Powers and duties -- contingent fee appraisal and testimony not considered. (1) ~~It~~ Subject to subsection (3), it is the duty of the state tax appeal board to:

(a) prescribe rules for the tax appeal boards of the different counties in the performance of their duties and for this purpose may schedule meetings of county tax appeal boards, and it is the duty of all invited county tax appeal board members to attend if possible, and the cost of their attendance must be paid from the appropriation of the state tax appeal board;

(b) grant, at its discretion, whenever good cause is shown and the need for the hearing is not because of taxpayer negligence, permission to a county tax appeal board to meet beyond the normal time period provided for in 15-15-101(2) to hear an appeal.

(c) hear appeals from decisions of the county tax appeal boards;

(d) hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, except determinations that an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, and penalties.

(2) Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or the member's agent. If a witness does not obey a summons to appear before the board or refuses to testify or answer any material questions or to produce records, books, papers, or documents when required to do so, that failure or refusal must be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for the neglect or refusal. A person who testifies falsely in any material matter under consideration by the board is guilty of perjury and punished accordingly. Witnesses attending shall receive the same compensation as witnesses in the district court. The compensation must be charged to the proper appropriation for the board.

(3) (a) The board may not consider a contingent fee appraisal or any testimony by a witness who is compensated on a contingency fee basis.

(b) As used in this subsection (3), "contingent fee appraisal" has the meaning provided in 15-1-211.

~~(3)~~(4) The state tax appeal board also has the duties of an appeal board relating to other matters as may be provided by law."

NEW SECTION. Section 13. Specially assessed industrial property -- list of owners and property to county treasurer. The department shall furnish to the county treasurer the identity and owner of specially assessed industrial property that the department identifies pursuant to 15-8-404(4).

Section 14. Section 15-8-404, MCA, is amended to read:

"15-8-404. Property of particular types of firms. (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where the business is carried on.

(2) The personal property of express, transportation, and stage companies must be listed and assessed in the county, town, or district where the property is usually kept.

(3) The personal property of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

(4) The department shall identify industrial property, as defined in 15-1-101, under direct or indirect common control, that the department determines has a market value of \$10 million or more as specially assessed

industrial property. The department's identification of specially assessed industrial property does not affect where or to whom specially assessed industrial property is assessed."

Section 15. Section 15-15-103, MCA, is amended to read:

"15-15-103. Examination of applicant -- failure to hear application -- contingent fee appraisal and testimony not considered. (1) ~~Before~~ Subject to subsection (2), before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application with regard to the value of the property of the person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) (a) The county tax appeal board may not consider a contingent fee appraisal or any testimony by a witness who is compensated on a contingency fee basis.

(b) As used in this subsection (2), "contingent fee appraisal" has the meaning provided in 15-1-211.

~~(2)~~(3) (a) Except as provided in 15-15-201, if a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(i) those listed in 15-2-302; and

(ii) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant

to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current session.

(b) The county tax appeal board shall provide written notification of each application that was automatically granted pursuant to subsection ~~(2)(a)~~ (3)(a) to the department, the state tax appeal board, and any affected municipal corporation. The notice must include the name of the taxpayer and a description of the subject property."

Section 16. Section 15-15-104, MCA, is amended to read:

"15-15-104. Appeal to state tax appeal board. (1) If the appearance provisions of 15-15-103(1) have been complied with, a person or the department, on behalf of the state, or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.

(2) If an appeal has been automatically granted by a county tax appeal board pursuant to 15-15-103~~(2)~~(3), the department, on behalf of the state, or any municipal corporation aggrieved by the action may appeal to the state tax appeal board under 15-2-301. The time for filing an appeal commences on receipt by the department of the written notification required by 15-15-103~~(2)(b)~~(3)(b)."

NEW SECTION. Section 17. Transition -- disposition of centrally assessed property tax special revenue fund -- termination. (1) The special revenue fund established by section 1, Chapter 511, Laws of 2003, and further designated as the centrally assessed property tax special revenue fund in section 1, Chapter 536, Laws of 2005, must be maintained for the purposes for which it was established until the appeals related to the protested centrally assessed property taxes deposited in the fund are finally determined and the state's liability to refund or entitlement to retain the deposited protested taxes is fixed.

(2) Until the fund is terminated, when an action is finally determined as provided in 15-1-402(6), the department shall:

(a) refund from the centrally assessed property tax special revenue fund the amount of protested taxes required to be refunded, up to the amount of protested taxes deposited in or transferred to the fund for that action, and refund from the state general fund the amount of interest required to be refunded; and

(b) deposit any balance of the protested taxes deposited in or transferred to the fund for that action that the state is not required to refund to the credit of the fund or funds to which the property tax belongs.

(3) If the amount in the centrally assessed property tax special revenue fund is insufficient to refund the taxes to which a taxpayer is entitled and for which the state is responsible, the department shall pay the

remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund from taxes levied pursuant to 20-25-423.

(4) The fund terminates on the sooner of:

(a) the date on which the last appeal related to the protested centrally assessed property taxes that were deposited in the fund is finally determined and any protested tax and interest required to be refunded is paid as provided in subsection (2)(a) or credited as provided in subsection (2)(b); or

(b) the date on which all amounts in the centrally assessed property tax special revenue fund are expended.

(5) Any balance in the centrally assessed property tax special revenue fund at its termination must be credited to the state general fund.

NEW SECTION. Section 18. Codification instruction. (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 15, chapter 1, and the provisions of Title 15, chapter 1, apply to [sections 1 through 6].

(2) [Section 13] is intended to be codified as an integral part of Title 15, chapter 8, part 7, and the provisions of Title 15, chapter 8, part 7 applies to [section 13]

NEW SECTION. Section 19. 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 20. Effective date -- contingent voidness. (1) Except as provided in subsection (2), [sections 1 through 9, 11 through 19, and 21 and this section] are effective on passage and approval and [section 10] is void.

(2) If \$14.5 million is not transferred from the state general fund for deposit in the property tax protest risk management account established in [section 5] at the beginning of fiscal year 2008 or if the department of revenue is not provided a statutory appropriation to make payments from the property tax protest risk management account established in [section 5], then:

(a) [sections 1 through 6, 9, 17, and 18(1)] are void; and

(b) [sections 7, 8, 10 through 16, 19, and 21 and this section] are effective on passage and approval.

NEW SECTION. Section 21. Applicability. (1) Except as provided in subsection (2), [this act] applies retroactively, within the meaning of 1-2-109, to calendar years and tax years beginning after December 31, 2006.

(2) The provisions prohibiting the consideration of contingent fee appraisals as evidence under [sections 8, 12, and 15] apply to hearings held after [the effective date of this act].

- END -