

1 SENATE BILL NO. 266

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5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TAXATION TO PROMOTE NEW
 7 BUSINESS AND ECONOMIC ACTIVITY; PROVIDING FOR CREATION OF AN INCOME TAX CREDIT TO
 8 INCENTIVIZE MONTANA JOB GROWTH; PROVIDING FOR ADMINISTRATION BY THE DEPARTMENT OF
 9 LABOR AND INDUSTRY AND THE DEPARTMENT OF REVENUE; PROVIDING THAT THE CREDITS BE
 10 TAKEN AGAINST INDIVIDUAL INCOME TAX AND CORPORATE INCOME TAX LIABILITIES; PROVIDING
 11 DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-30-2618 AND 15-31-511,
 12 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND
 13 A TERMINATION DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 **NEW SECTION. Section 1. Employer job growth incentive tax credit -- administration.** (1) An
 18 employer that hires qualifying new employees is eligible for an annual job growth incentive tax credit against
 19 income taxes imposed pursuant to Title 15, chapter 30 or 31.

20 (2) The amount and duration of the credit is administered by the department of revenue as provided in
 21 [section 2] and [section 3].

22 (3) By February 1 of each calendar year, a qualifying employer seeking approval to claim a credit shall
 23 apply for a credit certificate with the department for the preceding calendar year. The application must be
 24 submitted on a form prescribed by the department on which the employer:

25 (a) identifies and describes the number of qualifying new employees hired ~~for the project~~;

26 (b) provides necessary details to calculate the net job growth and qualifying net job growth;

27 (c) provides documentation necessary to calculate the job growth incentive tax credit, including but not
 28 limited to the average yearly wage of each ~~project~~ qualifying new employee, ~~including benefits~~; AND

29 ~~(d) lists the county in which the project and qualifying new employee jobs are located; and~~

30 ~~(e)(D)~~ (D) submits any other information the department considers necessary to determine whether the an

1 employer qualifies for a credit certificate.

2 ~~(5)~~(4) After receiving an application, the department shall:

3 (a) provide the employer with a credit certificate, which must accompany the employer's tax return that
4 is filed with the department of revenue; or

5 (b) deny an application for a credit certificate and provide the employer with the reasoning for the denial.
6 Prior to issuing a denial, the department shall provide the employer with an opportunity to resolve deficiencies
7 in the application.

8 ~~(6)~~(5) The department shall provide to the department of revenue a list of the qualifying employers
9 approved for a credit certificate, the qualifying new employees employed by the qualifying employer, and the
10 aggregate total of net job growth and qualified net job growth for qualified employers claiming the credit. The list
11 must include the federal tax identification number of the qualifying employer and the name and social security
12 number or federal tax identification number of the qualifying new employees that were utilized during the issuance
13 of a credit certificate.

14 ~~(7)~~(6) The identity and social security number or federal tax identification number of individuals employed
15 by the employer are subject to the provisions of 15-30-2618 and 15-31-511.

16 ~~(8)~~(7) The department may audit ~~the accounts of~~ an employer up to 12 months following the issuance
17 of any credit certificate.

18 ~~(9)~~(8) The department may adopt rules necessary to administer this section.

19 ~~(10)~~(9) For the purposes of this section, the following definitions apply:

20 (a) "Business transfer" means any change in ownership or transfer of all or a material portion of the
21 business to another entity or individual by entity merger, combination, reorganization, asset acquisition, transfer,
22 or other similar business transaction in which an existing business is continued under new ownership or a
23 different entity.

24 (b) "Credit certificate" means a statement issued by the department to a qualifying employer that
25 provides the number of qualifying new employees hired or retained by the qualifying employer ~~during any~~
26 ~~calendar year of a credit period~~ STARTING WITH CALENDAR YEAR 2019 AND ENDING IN CALENDAR YEAR 2029.

27 ~~(c) "Credit period" means a period of time used to calculate net job growth starting January 1, 2019, and~~
28 ~~ending December 31, 2029.~~

29 ~~(d)~~(C) "Department" means the department of labor and industry provided for in 2-15-1701.

30 ~~(e)~~(D) "Employer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or

1 other obligation imposed by Title 15, chapters 30 and 31.

2 ~~(f)(E)~~ "Net job growth" means the difference between the total number of full-time equivalent employees
 3 employed by the employer in Montana during ~~the credit period~~ ANY CALENDAR YEAR STARTING WITH CALENDAR YEAR
 4 2019 AND ENDING IN CALENDAR YEAR 2029, and the total number of full-time equivalent employees employed by
 5 the employer or predecessor in Montana as of December 31, 2018.

6 ~~(g)(F)~~ "Predecessor" means any entity or individual that operated a business prior to a business transfer
 7 to the employer.

8 ~~(h)~~ "Project" means a project that encourages, promotes, and stimulates economic development in key
 9 economic sectors, including but not limited to agriculture, energy or natural resource development, tourism,
 10 construction, information technology, aerospace, health care, bioscience, and life science.

11 ~~(j)(G)~~ "Qualifying employer" means an employer with qualifying net job growth.

12 ~~(j)~~ "Qualifying net job growth" means a net job growth associated with a project that varies based on
 13 population according to the most recent census prescribed in ~~16-4-502~~. For a county with:

14 ~~—— (i) less than 20,000 in population, net job growth in the county must equal at least five jobs during the~~
 15 ~~first year the credit is claimed and at least 10 total jobs during any subsequent calendar year; and~~

16 ~~—— (ii) 20,000 or more in population, net job growth in the county must equal at least 10 jobs during the first~~
 17 ~~year the credit is claimed and at least 20 total jobs during any subsequent calendar year.~~

18 ~~(k) (i) "Qualifying new employee" means an employee of a qualifying employer that is initially hired during~~
 19 ~~the credit period:~~

20 ~~—— (A) who is employed at least 6 months during the year for which the credit is granted;~~

21 ~~—— (B) with an average yearly wage of at least \$50,000, including benefits, or if the project occurs in a~~
 22 ~~county with less than 20,000 in population according to the most recent census prescribed in 16-4-502, an~~
 23 ~~average yearly wage of at \$35,000, including benefits.~~

24 ~~—— (ii) The term does not include an employee previously employed by a predecessor or hired to replace~~
 25 ~~an employee of a predecessor.~~

26 (H) "QUALIFYING NET JOB GROWTH" MEANS NET JOB GROWTH EQUAL TO AT LEAST FIVE JOBS DURING THE FIRST
 27 YEAR THE CREDIT IS CLAIMED AND AT LEAST 10 TOTAL JOBS DURING ANY SUBSEQUENT CALENDAR YEAR. IN ORDER TO
 28 QUALIFY, THE NET JOB GROWTH MUST BE ASSOCIATED WITH A PROJECT IN MONTANA THAT ENCOURAGES, PROMOTES, AND
 29 STIMULATES ECONOMIC DEVELOPMENT IN KEY ECONOMIC SECTORS, INCLUDING BUT NOT LIMITED TO AGRICULTURE,
 30 ENERGY OR NATURAL RESOURCE DEVELOPMENT, TOURISM, CONSTRUCTION, INFORMATION TECHNOLOGY, AEROSPACE,

1 HEALTH CARE, BIOSCIENCE, AND LIFE SCIENCE.

2 (I) (I) "QUALIFYING NEW EMPLOYEE" MEANS AN EMPLOYEE OF A QUALIFYING EMPLOYER:

3 (A) WHO IS HIRED ANY CALENDAR YEAR STARTING WITH CALENDAR YEAR 2019 AND ENDING IN CALENDAR YEAR

4 2029;

5 (B) WHO IS EMPLOYED AT LEAST 6 MONTHS DURING THE YEAR FOR WHICH THE CREDIT IS GRANTED; AND

6 (C) WITH AN AVERAGE YEARLY WAGE OF AT LEAST \$45,000, PLUS BENEFITS.

7 (II) THE TERM DOES NOT INCLUDE AN EMPLOYEE:

8 (A) PREVIOUSLY EMPLOYED BY THE EMPLOYER OR A PREDECESSOR; OR

9 (B) HIRED TO REPLACE AN EMPLOYEE OF A PREDECESSOR.

10

11 NEW SECTION. Section 2. Grow Montana jobs -- annual job growth incentive tax credit. (1)

12 Subject to the provisions of [section 1], a taxpayer is allowed an annual job growth incentive tax credit against
13 the tax imposed by chapter 31 or this chapter for creating qualifying net job growth in Montana.

14 (2) The amount of the credit is equal to the number of qualifying new employees in the credit certificate
15 multiplied by 50% of the taxpayer's total estimated taxes imposed on the taxpayer each year for the qualifying
16 new employees under the Federal Insurance Contributions Act, 26 U.S.C. 3111(a) and (b).

17 (3) The credit allowed by this section may not be refunded if the taxpayer has a tax liability less than the
18 amount of the credit. If the sum of credit carryovers from the credit, if any, and the amount of credit allowed by
19 this section for the tax year ~~exceed~~ EXCEEDS the taxpayer's tax liability for the current tax year, the excess
20 attributable to the current tax year's credit is a credit carryover to succeeding tax years for a period not to exceed
21 10 years from the tax year the credit was claimed. The entire amount of unused credit must be carried forward
22 to the earliest of the succeeding years, and the oldest available unused credit must be used first. Any credit
23 remaining 10 years after the tax year for which the credit is based may not be refunded or credited to the
24 taxpayer.

25 (4) The credit may be claimed for up to 10 years, but only in a tax year in which the department of labor
26 and industry approved the credit by issuing the taxpayer with a credit certificate as provided in [section 1]. If a
27 taxpayer claims the credit but was not approved by the department of labor and industry, the taxpayer's return
28 will be processed without regard to the credit.

29 (5) For fiscal year filers, the credit available to claim in the current fiscal year is the credit allowed for the
30 calendar year that ends within the taxpayer's fiscal period.

1 (6) The department shall, after consultation with the department of labor and industry, prescribe a form
 2 for a taxpayer to claim the tax credit. The form must provide the department with sufficient information for the
 3 proper administration of the credit.

4 (7) The department shall provide the department of labor and industry an annual report detailing the tax
 5 credit provided to taxpayers for the previous year. The information provided to the department of labor and
 6 industry is subject to the provisions of 15-30-2618 and 15-31-511.

7 (8) The department shall encourage taxpayers utilizing this credit to also consider the apprenticeship
 8 tax credit pursuant to sections 15-30-2357, 15-31-173, and 39-6-109.

9 (9) Each biennium, the department shall provide to the revenue and transportation interim committee
 10 information regarding all approvals granted and credit certificates issued, including the credits claimed, the names
 11 of the qualifying employers of the credits, and the amount of tax credits claimed. THIS INFORMATION IS NOT SUBJECT
 12 TO THE CONFIDENTIALITY REQUIREMENTS OF 15-30-2618 OR 15-31-511.

13 (10) For the purposes of this section, the terms "credit certificate", "qualifying employer", "qualifying net
 14 job growth", and "qualifying new employee" have the same meaning as those terms are defined in [section 1].

15
 16 **NEW SECTION. Section 3. Grow Montana jobs -- annual job growth incentive tax credit.** (1) There
 17 is an annual job growth incentive tax credit against the taxes otherwise due under 15-31-121 or 15-31-122 that
 18 is allowable in the amount established pursuant to [section 2] when a taxpayer hires qualifying new employees
 19 in Montana. The credit is administered as provided in [section 1], [section 2], and this section.

20 (2) If the credit allowed under this section is claimed by a small business corporation as defined in
 21 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners, using the same proportion
 22 to report the corporation's or partnership's income or loss for Montana income tax purposes.

23
 24 **Section 4.** Section 15-30-2618, MCA, is amended to read:

25 **"15-30-2618. Confidentiality of tax records.** (1) Except as provided in 5-12-303, 15-1-106, 17-7-111,
 26 and subsections (8) and (9) of this section, in accordance with a proper judicial order, or as otherwise provided
 27 by law, it is unlawful to divulge or make known in any manner:

28 (a) the amount of income or any particulars set forth or disclosed in any individual report or individual
 29 return required under this chapter or any other information secured in the administration of this chapter; or

30 (b) any federal return or federal return information disclosed on any return or report required by rule of

1 the department or under this chapter.

2 (2) (a) The officers charged with the custody of the reports and returns may not be required to produce
3 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or
4 proceeding:

5 (i) to which the department is a party under the provisions of this chapter or any other taxing act; or

6 (ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes
7 when the reports or facts shown by the reports are directly involved in the action or proceedings.

8 (b) The court may require the production of and may admit in evidence only as much of the reports or
9 of the facts shown by the reports as are pertinent to the action or proceedings.

10 (3) This section does not prohibit:

11 (a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return
12 or report filed in connection with the taxpayer's tax;

13 (b) the publication of statistics classified to prevent the identification of particular reports or returns and
14 the items of particular reports or returns; ~~or~~

15 (c) the inspection by the attorney general or other legal representative of the state of the report or return
16 of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom
17 an action or proceeding has been instituted in accordance with the provisions of 15-30-2630; OR

18 (D) THE DELIVERY OF INFORMATION TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE RELATING TO
19 THE JOB GROWTH INCENTIVE TAX CREDIT AS PROVIDED IN [SECTION 2].

20 (4) The department may deliver to a taxpayer's spouse the taxpayer's return or information related to
21 the return for a tax year if the spouse and the taxpayer filed the return with the filing status of married filing
22 separately on the same return. The information being provided to the spouse or reported on the return, including
23 subsequent adjustments or amendments to the return, must be treated in the same manner as if the spouse and
24 the taxpayer filed the return using a joint filing status for that tax year.

25 (5) Reports and returns must be preserved for at least 3 years and may be preserved until the
26 department orders them to be destroyed.

27 (6) Any offense against subsections (1) through (5) is punishable by a fine not exceeding \$500. If the
28 offender is an officer or employee of the state, the offender must be dismissed from office or employment and
29 may not hold any public office or public employment in this state for a period of 1 year after dismissal or, in the
30 case of a former officer or employee, for 1 year after conviction.

1 (7) This section may not be construed to prohibit the department from providing taxpayer return
2 information and information from employers' payroll withholding reports to:

3 (a) the department of labor and industry to be used for the purpose of investigation and prevention of
4 noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

5 (b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud,
6 and abuse under the workers' compensation program.

7 (8) The department may permit the commissioner of internal revenue of the United States or the proper
8 officer of any state imposing a tax on the incomes of individuals or the authorized representative of either officer
9 to inspect the return of income of any individual or may furnish to the officer or an authorized representative an
10 abstract of the return of income of any individual or supply the officer with information concerning an item of
11 income contained in a return or disclosed by the report of an investigation of the income or return of income of
12 an individual, but the permission may be granted or information furnished only if the statutes of the United States
13 or of the other state grant substantially similar privileges to the proper officer of this state charged with the
14 administration of this chapter.

15 (9) On written request to the director or a designee of the director, the department shall furnish:

16 (a) to the department of justice all information necessary to identify those persons qualifying for the
17 additional exemption for blindness pursuant to 15-30-2114(4), for the purpose of enabling the department of
18 justice to administer the provisions of 61-5-105;

19 (b) to the department of public health and human services information acquired under 15-30-2616,
20 pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public
21 assistance fraud and abuse, provided notice to the applicant has been given;

22 (c) to the department of labor and industry for the purpose of:

23 (i) ~~for the purpose of~~ prevention and detection of fraud and abuse in and eligibility for benefits under the
24 unemployment compensation and workers' compensation programs, information on whether a taxpayer who is
25 the subject of an ongoing investigation by the department of labor and industry is an employee, an independent
26 contractor, or self-employed; ~~and~~

27 (ii) ~~for the purpose of~~ administering the apprenticeship tax credit provided for in 39-6-109, employer and
28 apprentice information necessary to implement 15-30-2357, 15-31-173, and 39-6-109; and

29 (iii) administering the annual job growth incentive tax credit provided for in [section 1], taxpayer and
30 employee information necessary to implement [section 2] and [section 3];

1 (d) to the department of fish, wildlife, and parks specific information that is available from income tax
 2 returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and
 3 fishing licenses;

4 (e) to the board of regents information required under 20-26-1111;

5 (f) to the legislative fiscal analyst and the office of budget and program planning individual income tax
 6 information as provided in 5-12-303, 15-1-106, and 17-7-111. The information provided to the office of budget
 7 and program planning must be the same as the information provided to the legislative fiscal analyst.

8 (g) to the department of transportation farm income information based on the most recent income tax
 9 return filed by an applicant applying for a refund under 15-70-430, provided that notice to the applicant has been
 10 given as provided in 15-70-430. The information obtained by the department of transportation is subject to the
 11 same restrictions on disclosure as are individual income tax returns.

12 (h) to the department of commerce tax information about a taxpayer whose debt is assigned to the
 13 department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information
 14 provided to the department of commerce must be used for the purposes of preventing and detecting fraud or
 15 abuse and determining eligibility for grants or loans.

16 (i) to the superintendent of public instruction information required under 20-9-905. (Subsection (9)(i)
 17 terminates December 31, 2023--sec. 33, Ch. 457, L. 2015.)"

18

19 **Section 5.** Section 15-31-511, MCA, is amended to read:

20 **"15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with
 21 a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

22 (a) the amount of income or any particulars set forth or disclosed in any return or report required under
 23 this chapter or any other information relating to taxation secured in the administration of this chapter; or

24 (b) any federal return or information in or disclosed on a federal return or report required by law or rule
 25 of the department under this chapter.

26 (2) (a) An officer or employee charged with custody of returns and reports required by this chapter may
 27 not be ordered to produce any of them or evidence of anything contained in them in any administrative
 28 proceeding or action or proceeding in any court, except:

29 (i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

30 (ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of

1 this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

2 (b) If the production of a return, report, or information contained in them is ordered, the court shall limit
3 production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the
4 action or proceeding.

5 (3) This section does not prohibit:

6 (a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer
7 who filed the return or report or to the taxpayer's authorized representative;

8 (b) the publication of statistics prepared in a manner that prevents the identification of particular returns,
9 reports, or items from returns or reports;

10 (c) the inspection of returns and reports by the attorney general or other legal representative of the state
11 in the course of an administrative proceeding or litigation under this chapter;

12 (d) access to information under subsection (4);

13 (E) THE DELIVERY OF INFORMATION TO THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE RELATING TO
14 THE JOB GROWTH INCENTIVE TAX CREDIT AS PROVIDED IN [SECTION 2];

15 ~~(e)~~(F) the director of revenue from permitting a representative of the commissioner of internal revenue
16 of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer
17 to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of
18 income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an
19 investigation of the income or return of a corporation. The director of revenue may not furnish that information
20 to a person representing the United States or another state unless the United States or the other state grants
21 substantially similar privileges to an officer of this state charged with the administration of this chapter.

22 (4) On written request to the director or a designee of the director, the department shall:

23 (a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to
24 the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection
25 (1);

26 (b) provide corporate income tax and alternative corporate income tax information, including any
27 information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided
28 in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111.
29 The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject
30 to the same restrictions on disclosure outside those offices as provided in subsection (1).

1 (c) provide to the department of commerce tax information about a taxpayer whose debt is assigned to
 2 the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The
 3 information provided to the department of commerce must be used for the purposes of preventing and detecting
 4 fraud or abuse and determining eligibility for grants or loans.

5 (d) furnish to the superintendent of public instruction information required under 20-9-905;

6 (e) exchange with the department of labor and industry:

7 (i) taxpayer and apprentice information necessary to implement 15-30-2357, 15-31-173, and 39-6-109;

8 and

9 (ii) taxpayer and employee information necessary to administer the annual job growth incentive tax credit
 10 provided for in [section 1], [section 2], and [section 3].

11 (5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or
 12 public employee is convicted of violating this section, the person is dismissed from office or employment and may
 13 not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case
 14 of a former officer or employee, for 1 year after conviction. (Subsection (4)(d) terminates December 31,
 15 2023--sec. 33, Ch. 457, L. 2015.)"

16
 17 **NEW SECTION. Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as an
 18 integral part of Title 39, and the provisions of Title 39 apply to [section 1].

19 (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions
 20 of Title 15, chapter 30, apply to [section 2].

21 (3) [Section 3] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions
 22 of Title 15, chapter 31, apply to [section 3].

23
 24 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

25
 26 **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the
 27 meaning of 1-2-109, to tax years beginning after December 31, 2018.

28
 29 **NEW SECTION. Section 9. Termination.** [This act] terminates December 31, 2029.

30 - END -