

# ARKANSAS SENATE

88th General Assembly - Regular Session, 2011

## Amendment Form

\*\*\*\*\*

### Subtitle of Senate Bill No. 305

TO CREATE THE UNEMPLOYMENT TRUST FUND FINANCING ACT OF 2011.

\*\*\*\*\*

### Amendment No. 1 to Senate Bill No. 305

Amend Senate Bill No. 305 as originally introduced:

Page 1, delete lines 8 - 14 and substitute the following:

"AN ACT TO CREATE THE UNEMPLOYMENT TRUST FUND FINANCING ACT OF 2011; TO ENSURE THE ECONOMIC STABILITY OF THE STATE BY PROVIDING FOR BOND ISSUANCE FOR THE UNEMPLOYMENT TRUST FUND; TO AUTHORIZE THAT THE REPAYMENT OF THE BONDS BE GUARANTEED BY THE FULL FAITH AND CREDIT OF THE STATE; TO DECLARE AN EMERGENCY AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:

"TO CREATE THE UNEMPLOYMENT TRUST FUND FINANCING ACT OF 2011 AND TO DECLARE AN EMERGENCY."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 11, Chapter 10 is amended to add an additional subchapter to read as follows:

Subchapter 10 – Unemployment Trust Fund Financing Act of 2011.

11-10-1001. Title.

This subchapter shall be known and cited as the "Unemployment Trust Fund Financing Act of 2011".

11-10-1002. Legislative findings and intent.

The General Assembly finds that:

(1) With a recession or economic slowdown now underway, the state's unemployment trust fund face higher claims levels and longer benefit durations that accompany any economic downturn;

(2) The Arkansas Unemployment Trust Fund:



(A) Provides partial wage replacement to workers who find themselves out of work;

(B) Provides economic stability for a community when major unemployment occurs; and

(C) Encourages workers to remain in the community and to be available for work recalls by employers;

(3) The state is in debt to the federal government for unemployment funds paid to citizens of the State of Arkansas;

(4) The bonds should be payable from revenues raised by an unemployment obligation assessment; and

(5) The repayment of the bonds shall also be guaranteed by the full faith and credit of the state.

11-10-1003. Definitions.

As used in this subchapter:

(1) "Authority" means the Arkansas Development Finance Authority;

(2) "Bonds" means the "Arkansas Unemployment Trust Fund Bonds", as authorized in this subchapter;

(3) "Debt service" means all amounts required for the payment of principal, interest, and premium, if any, due with respect to the bonds in any fiscal year along with all associated costs, including the fees and costs of paying agents and trustees, remarketing agent fees, credit enhancement costs, and other amounts necessary in connection with the bonds;

(4) "Designated revenues" means revenues derived from the unemployment obligation assessment described in § 11-10-1011;

(5) "Federal interest rate" means the federal interest rate at the time the bonds are sold, the rate of interest charged on advances from the federal trust fund under Title XII of the Social Security Act; and

(6) "Federal Unemployment Trust Fund debt" means the principal and interest on advances from the federal trust fund under Title XII of the Social Security Act (42 U.S.C. § 1321) as it existed on January 1, 2011.

11-10-1004. Authorization – Purposes.

(a) The Arkansas Development Finance Authority is authorized, subject to the approval of the voters in a statewide election, to issue bonds to be known as Arkansas Unemployment Trust Fund Bonds in an aggregate principal amount necessary repay the principal of and interest on advances from the federal trust fund under Title XII of the Social Security Act (42 U.S.C. § 1321).

(b) The purpose of the bond issuance shall be to:

(1) Repay the federal Unemployment Trust Fund debt; and

(2) Pay the costs of issuance of the bonds, including the costs of bond insurance or other credit enhancement.

(c) The authorization to issue bonds shall not be ongoing, but shall be a one-time issuance of bonds in an amount not to exceed five hundred million dollars (\$500,000,000).

11-10-1005. Governor proclamation.

(a) The Arkansas Development Finance Authority shall prepare and distribute to the Governor a report that shall contain a plan for repaying

the federal Unemployment Trust Fund debt and the estimated time and cost to repay the debt.

(b) Upon receipt of the report described in subsection (a) of this section, the Governor shall, if the Governor deems it to be in the public interest, by proclamation call an election on the question of issuing the bonds.

11-10-1006. Election.

(a)(1) Arkansas Unemployment Trust Fund Bonds shall not be issued under this subchapter unless the issuance of bonds has been approved by a majority of the qualified electors of the state voting on the question at a statewide election called by proclamation of the Governor as provided under § 11-10-1005.

(2)(A) An election under this section may be in conjunction with a general election, or it may be a special election.

(B) A special election held under this section shall occur on the second Tuesday of any month, except as otherwise provided for in this subsection (a).

(C) A special election that is held in months in which a presidential preferential primary election, preferential primary election, general primary election, or general election is scheduled to occur shall be held on the date of the presidential preferential primary election, preferential primary election, general primary election, or general election.

(D)(i) If a special election is held on the date of the presidential preferential primary election, preferential primary election, or general primary election, the issue or issues to be voted upon at the special election shall be included on the ballot of each political party.

(ii) However, separate ballots containing only the issue or issues to be voted upon at the special election shall be prepared and made available to voters requesting a separate ballot.

(iii) A voter shall not be required to vote in a political party's presidential preferential primary election, preferential primary election, or general primary election in order to be able to vote in the special election.

(E) Special elections scheduled to occur in a month in which the second Tuesday is a legal holiday shall be held on the third Tuesday of the month.

(b)(1) Notice of the election shall be:

(A) Published by the Secretary of State in a newspaper of general circulation in the state at least thirty (30) days prior to the election; and

(B) Mailed to each county board of election commissioners and the sheriff of each county at least sixty (60) days prior to the election.

(2) The notice of election shall state that the election is to be held for the purpose of submitting to the people the following proposition in substantially the following form:

"Authorizing the Arkansas Development Finance Authority to issue Arkansas Unemployment Trust Fund Bonds (the "Bonds") in a total principal amount not to exceed five hundred million dollars (\$500,000,000). If approved, the bonds may be issued as one series for the purpose of repaying the principal

of and interest on advances from the federal trust fund under Title XII of the Social Security Act.

“The bonds shall be general obligations of the State of Arkansas, payable from certain designated revenues and also secured by the full faith and credit of the State of Arkansas, including its general revenues. Pursuant to the Unemployment Trust Fund Financing Act of 2011, ("the Bond Act"), the bonds will be repaid from unemployment obligation assessment imposed on employers at a rate sufficient to pay debt service on the bonds and expenses related to the bonds. To the extent that designated revenues are insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas. The bonds shall be issued under the authority of and the terms set forth in the Bond Act.”

(c) The ballot title shall be "Issuance of Arkansas Unemployment Trust Fund Bonds and pledge of full faith and credit of the State of Arkansas". On each ballot there shall be printed the title, the proposition set forth in subdivision (b)(2) of this section, and the following:

“FOR issuance of Arkansas Unemployment Trust Fund Bonds in an amount not to exceed \$500,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds.....[ ]

“AGAINST issuance of Arkansas Unemployment Trust Fund Bonds in an amount not to exceed \$500,000,000 and the pledge of the full faith and credit of the State of Arkansas to further secure the bonds .....[ ]”

(d)(1) Each county board of election commissioners shall hold and conduct the election and may take any action with respect to the appointment of election officials and other matters as required by the laws of the state.

(2)(A) The vote shall be canvassed and the result of the vote declared in each county by the board.

(B) Within ten (10) days after the date of the election, the results shall be certified by the boards to the Secretary of State, who shall tabulate all returns received and certify to the Governor the total vote for and against the proposition submitted pursuant to this subchapter.

(e)(1) The result of the election shall be proclaimed by the Governor by the publication of a proclamation one (1) time in a newspaper of general circulation in the State of Arkansas.

(2) The results as proclaimed shall be conclusive unless a complaint challenging the proclaimed results is filed in Pulaski County Circuit Court within thirty (30) days after the date of the publication.

(f)(1) If a majority of the qualified electors voting on the proposition vote in favor of the proposition, the Arkansas Development Finance Authority shall proceed with the issuance of the bonds in the manner and on the terms set forth in this subchapter.

(2) If a majority of the qualified electors voting on the proposition vote against the issuance of the bonds, the Arkansas Development Finance Authority shall have no authority to issue bonds.

(g) Subsequent elections may be called by the Governor if the proposition fails, but each such subsequent election may be held no earlier than six (6) months after the date of the preceding election.

11-10-1007. Procedure for issuing Arkansas Unemployment Trust Fund Bonds.

(a) Prior to the issuance of Arkansas Unemployment Trust Fund Bonds, the Arkansas Development Finance Authority shall adopt a resolution authorizing the issuance of the bonds.

(b) Each resolution adopted under this section shall contain the terms, covenants, and conditions as are deemed desirable and consistent with this subchapter, including without limitation those pertaining to:

- (1) The establishment and maintenance of funds and accounts;
- (2) The deposit and investment of the bond proceeds; and
- (3) The rights and obligations of the state, its officers and officials, the Arkansas Development Finance Authority, and the registered owners of the bonds.

(c)(1) The resolutions of the Arkansas Development Finance Authority may provide for the execution and delivery by the Arkansas Development Finance Authority of a trust indenture or trust indentures, with one (1) or more banks or trust companies located within or without the state, containing any of the terms, covenants, and conditions required under subsection (b) of this section and any other terms and conditions deemed necessary by the Arkansas Development Finance Authority.

(2) The trust indenture or trust indentures shall be binding upon the Arkansas Development Finance Authority and the state, and their respective officers and officials.

(d)(1) The Arkansas Development Finance Authority shall submit to the Legislative Council the selection of legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

(2) The review shall occur prior to entering into a contract with the legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

11-10-1008. Terms of bonds.

The Arkansas Unemployment Trust Fund Bonds are subject to the following terms and conditions:

(1) The bonds shall be in one (1) series in an amount sufficient to finance all or part of the repayment of the federal Unemployment Trust Fund debt;

(2)(A) The bonds shall have the date or dates as the Arkansas Development Finance Authority determines.

(B) The bonds shall mature or be subject to mandatory sinking fund redemption over a period ending not later than twelve (12) years after the date of issue of the bonds.

(C) Refunding bonds issued under § 11-10-1013 shall mature or be subject to mandatory sinking fund redemption over a period not ending later than twelve (12) years after the date of issue of the original bonds;

(3)(A) The bonds shall bear interest at the rate or rates determined by the Arkansas Development Finance Authority at the sale of the bonds.

(B) The bonds may bear interest at either a fixed or a variable rate or may be convertible from one (1) interest rate mode to another.

(C) The interest shall be payable at the times as the Arkansas Development Finance Authority shall determine.

(D) The interest rate on the bonds shall not exceed the federal interest rate;

(4) The bonds shall be issued in the form of bonds registered as to both principal and interest without coupons;

(5) The Arkansas Development Finance Authority shall determine:

(A) The denominations of the bonds;

(B) Whether the bonds may be made exchangeable for bonds of another form or denomination bearing the same rate of interest;

(C) When the bonds may be made payable and the places within or without the state where the bonds may be payable;

(D) Whether the bonds may be made subject to redemption prior to maturity and the manner of and prices for redemption; and

(E) Any other terms and conditions; and

(6)(A) Each bond shall be executed with the facsimile or manual signatures of the Chair and Secretary of the Arkansas Development Finance Authority and shall have affixed or imprinted thereon the seal of the state.

(B) Delivery of the bonds executed shall be valid notwithstanding any change in the persons holding the offices occurring after the bonds have been executed.

#### 11-10-1009. Sale of bonds.

(a) The Arkansas Unemployment Trust Fund Bonds may be sold in any manner, either at private or public sale, and upon terms as the Arkansas Development Finance Authority shall determine to be reasonable and expedient for effecting the purposes of this subchapter.

(b)(1) If the bonds are to be sold at public sale, the Arkansas Development Finance Authority shall give notice of the offering of the bonds in a manner reasonably designed to notify participants in the public finance industry that such offering is being made.

(2) The Arkansas Development Finance Authority shall set the terms and conditions of bidding, including the basis on which the winning bid will be selected.

(c) The Arkansas Development Finance Authority may structure the sale of bonds utilizing financing techniques that are recommended by the Arkansas Development Finance Authority's professional advisors in order to take advantage of market conditions and obtain the most favorable interest rates consistent with the purposes of this subchapter.

(d) The Arkansas Development Finance Authority may enter into any ancillary agreements in connection with the sale of the bonds as the Arkansas Development Finance Authority deems necessary and advisable, including without limitation bond purchase agreements, remarketing agreements, and letter of credit and reimbursement agreements.

#### 11-10-1010. Employment of professionals.

(a) Subject to review by the Legislative Council, the Arkansas Development Finance Authority may employ and retain any professionals that the Arkansas Development Finance Authority deems necessary to accomplish the

issuance and sale of the Arkansas Unemployment Trust Fund Bonds, including without limitation legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

(b) The review shall occur prior to entering into a contract with the legal counsel, financial advisors, underwriters, trustees, paying agents, and remarketing agents.

11-10-1011. Sources of repayment.

(a) The Arkansas Unemployment Trust Fund Bonds shall be general obligations of the State of Arkansas, secured and payable from the designated revenues and the general revenues of the state.

(b)(1) The bonds shall be payable first from revenues derived from the designated revenues.

(2)(A) The Department of Workforce Services shall promulgate rules to increase the rate of contribution under § 11-10-702.

(B) The increase in the rate of contribution under subdivision (b)(2)(A) of this section shall not exceed one and one-quarter percent (1.25%) of the annual debt service.

(C) The unemployment obligation assessment shall be collected as long as any bonds are outstanding and shall not be collected after the repayment of all bonds authorized under this subchapter.

(c) If the amount of designated revenues is insufficient to make timely payment of debt service on the bonds, the payment shall be made from the general revenues of the State of Arkansas.

(d)(1) In order to secure the payment of debt service, any trust instrument, resolution, or other document for the security for the bondholders may provide for the payment of the designated revenues directly into a trust fund or to a paying agent for the payment of debt service on the bonds.

(2) It is not necessary for the funds to be deposited into the State Treasury.

(e) Designated revenues remaining after the payment of scheduled debt service on the bonds in any year shall be used to redeem or purchase outstanding bonds.

11-10-1012. Investment of proceeds.

(a) Designated revenues and proceeds from the sale of the bonds shall be deposited into trust funds or accounts established under the resolution or trust indenture authorizing or securing the bonds to accomplish the purposes of this subchapter in amounts or portions as set forth in the resolution or trust indenture securing the bonds.

(b)(1) The holder of the trust funds shall establish separate accounts for the bonds.

(2) In addition and under the resolution or trust indenture authorizing or securing the bonds, there may be created other funds, accounts, or subaccounts as the Arkansas Development Finance Authority may determine to be necessary or desirable to accomplish the purposes of this subchapter.

(c) All procedures and methods for application of proceeds of the bonds shall be developed in consultation with the Arkansas Development Finance Authority, set forth in the resolution or trust indenture authorizing

or securing the bonds, and maintained as part of the records of the Arkansas Development Finance Authority.

(d) The holder and administrator of funds, comprised in whole or in part of proceeds of bonds or disbursement from funds established under this subchapter, shall be required by appropriate provision of the resolution or trust indenture authorizing or securing the bonds issued to assist the Arkansas Development Finance Authority in preparing any report related to the bonds that may be required by this subchapter or other applicable federal or state law.

(e) Designated revenues and proceeds from the sale of the bonds and any money held in any funds created under or authorized by this subchapter may be invested and reinvested in accordance with the resolution or trust indenture authorizing or securing the bonds issued and shall be invested by or at the direction of the Arkansas Development Finance Authority to the fullest extent practicable pending disbursement for the purposes intended in any of the following:

(1) Direct obligations of the United States, including obligations issued or held in book entry form on the books of the United States Department of the Treasury, or obligations the principal of and interest on which are unconditionally guaranteed by the United States;

(2) Bonds, debentures, notes, or other evidences of indebtedness issued or guaranteed by any United States government agency if the obligations are backed by the full faith and credit of the United States;

(3) Non full faith and credit senior debt obligations issued or guaranteed by United States government agencies;

(4) Money market funds investing exclusively in the investments described in subdivisions (e)(1) – (3) of this section;

(5)(A) Certificates of deposit providing for deposits secured at all times by collateral described in subdivisions (e)(1) – (3) of this section.

(B) The certificates must be issued by commercial bank deposits which are insured by the Federal Deposit Insurance Corporation and collateral of which must be held by a third party.

(C) The holder of the trust funds must have a perfected first security interest in the collateral;

(6) Certificates of deposit, savings accounts, deposit accounts, or money market deposits, all of which are fully insured by the Federal Deposit Insurance Corporation;

(7) Bonds or notes issued by the State of Arkansas, any municipality, county, or school district in the state or by any agency or instrumentality of the state;

(8) Investment agreements with financial institutions or insurance companies that are rated in one (1) of the two (2) highest rating categories of a nationally recognized rating agency;

(9)(A) Repurchase agreements providing for the transfer of securities from a dealer bank or securities firm to the holder of the trust funds and the transfer of cash from the holder of the trust funds to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the holder of the trust funds in exchange for the securities at a specified date.

(B) Repurchase agreements shall satisfy the following criteria:



(i) Repurchase agreements must be between the holder of the trust funds and a dealer bank or securities firm described as follows:

(a) Dealers with at least one hundred million dollars (\$100,000,000) in capital; or

(b) Banks whose deposits are insured by the Federal Deposit Insurance Corporation; and

(ii) The written repurchase agreement contract must include the following:

(a) Securities that are acceptable for transfer are those listed in subdivisions (e)(1) – (3) of this section;

(b) The term of the repurchase agreement may not exceed thirty (30) calendar days;

(c) The collateral must be delivered to the holder of the trust funds, a trustee if a trustee is not supplying the collateral, or a third party acting as agent for the trustee if the trustee is supplying the collateral before or simultaneously with payment; and

(d)(1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(2)(A) The value of collateral must be equal to one hundred three percent (103%) of the amount of cash transferred by the holder of the trust funds to the dealer bank or security firm under the repurchase agreement plus accrued interest.

(B) If the value of securities held as collateral declines below one hundred three percent (103%) of the value of the cash transferred by the holder of the trust funds, then additional cash or acceptable securities, or both, must be transferred and held by the holder of the trust funds; and

(10) Any other investment authorized by law.

#### 11-10-1013. Refunding bonds.

(a) The Arkansas Development Finance Authority may issue the Arkansas Unemployment Trust Fund Bonds for the purpose of refunding bonds previously issued under this subchapter if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized by this subchapter.

(b) The refunding bonds shall be general obligations of the State of Arkansas, secured as set forth in this subchapter, and shall be secured and sold in accordance with the provisions of this subchapter.

(c)(1) To the extent that refunding bonds are issued and the principal amount of the refunding bonds is not in a greater principal amount than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not be subject to the five hundred million dollar limit.

(2) If the refunding bonds are issued in a greater principal amount than the bonds being refunded, the principal amount of the refunding bonds shall not count against the five hundred million dollar limit so long as the aggregate debt service on the refunding bonds is less than the aggregate debt service on the bonds being refunded.

#### 11-10-1014. Liability.

Officers, officials, employees, and members of the Board of Directors of the Arkansas Development Finance Authority are not liable personally for

any reason arising from the issuance of bonds under this subchapter unless he or she acts with corrupt intent.

11-10-1015. Tax exemption.

(a) All Arkansas Unemployment Trust Fund Bonds issued under this subchapter and interest on the bonds shall be exempt from all taxes of the State of Arkansas, including income, inheritance, and property taxes.

(b) The bonds shall be eligible to secure deposits of all public funds and shall be legal for investment of municipal, county, bank, fiduciary, insurance company, and trust funds.

11-10-1016. Bonds – Rights and liabilities – Enforcement.

(a)(1) This subchapter shall constitute a contract between the State of Arkansas and the registered owners of all State of Arkansas Unemployment Trust Fund Bonds issued under this subchapter that shall never be impaired.

(2) A violation of terms of this subchapter, whether under purported legislative authority or otherwise, shall be enjoined by the courts at the suit of any bondholder or of any taxpayer.

(b) The courts in a suit against the Arkansas Development Finance Authority, or other appropriate officer or official of this state shall prevent a diversion of any revenues pledged under this subchapter and shall compel the restoration of diverted revenues by injunction or mandamus.

(c) Without limitation as to any other appropriate remedy at law or in equity, any bondholder by an appropriate action, including without limitation, injunction or mandamus, may compel the performance of all covenants and obligations of the State of Arkansas and its officers and officials under this subchapter.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the state's unemployment trust fund faces higher claim levels and longer benefit durations; that the state is in debt to the federal government for unemployment funds paid to citizens of this state; and that this act is immediately necessary because the state needs to create a revenue stream to begin to pay off the debt to the federal government. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator J. Hutchinson  
MAG/JPS - 03/01/11 08:26  
MAG207

\_\_\_\_\_  
Secretary