

1 State of Arkansas

As Engrossed: S3/2/11 S3/7/11

2 88th General Assembly

# A Bill

3 Regular Session, 2011

SENATE BILL 305

4  
5 By: Senator J. Hutchinson

## For An Act To Be Entitled

6  
7  
8 *AN ACT TO CREATE THE UNEMPLOYMENT TRUST FUND*  
9 *FINANCING ACT OF 2011; TO ENSURE THE ECONOMIC*  
10 *STABILITY OF THE STATE BY PROVIDING FOR BOND ISSUANCE*  
11 *FOR THE UNEMPLOYMENT TRUST FUND; TO DECLARE AN*  
12 *EMERGENCY AND FOR OTHER PURPOSES.*

## Subtitle

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15  
16 *TO CREATE THE UNEMPLOYMENT TRUST FUND*  
17 *FINANCING ACT OF 2011 AND TO DECLARE AN*  
18 *EMERGENCY.*

19  
20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22  
23 *SECTION 1. Arkansas Code Title 11, Chapter 10 is amended to add an*  
24 *additional subchapter to read as follows:*

25 *Subchapter 10 – Unemployment Trust Fund Financing Act of 2011.*

26  
27 *11-10-1001. Title.*

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

30  
31 *11-10-1002. Legislative findings and intent.*

32 *The General Assembly finds that:*

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

36 *(2) The Arkansas Unemployment Trust Fund:*



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

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

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

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

9 (4) The bonds should be payable from revenues raised by an  
10 unemployment obligation assessment.

11  
12 11-10-1003. Definitions.

13 As used in this subchapter:

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

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

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

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

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

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

31  
32 11-10-1004. Authorization – Purposes.

33 (a) The Arkansas Development Finance Authority is authorized, subject  
34 to the approval of the voters in a statewide election, to issue bonds to be  
35 known as Arkansas Unemployment Trust Fund Bonds in an aggregate principal  
36 amount necessary repay the principal of and interest on advances from the

1 federal trust fund under Title XII of the Social Security Act (42 U.S.C. §  
2 1321).

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

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

5 (2) Pay the costs of issuance of the bonds, including the costs  
6 of bond insurance or other credit enhancement; and

7 (3) Replenish the federal Unemployment Trust Fund."

8  
9 11-10-1005. Governor proclamation.

10 (a) The Arkansas Development Finance Authority shall prepare and  
11 distribute to the Governor a report that shall contain a plan for repaying  
12 the federal Unemployment Trust Fund debt and the estimated time and cost to  
13 repay the debt.

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

18  
19 11-10-1006. Election.

20 (a)(1) Arkansas Unemployment Trust Fund Bonds shall not be issued  
21 under this subchapter unless the issuance of bonds has been approved by a  
22 majority of the qualified electors of the state voting on the question at a  
23 statewide election called by proclamation of the Governor as provided under §  
24 11-10-1005.

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

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

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

35 (D)(i) If a special election is held on the date of the  
36 presidential preferential primary election, preferential primary election, or

1 general primary election, the issue or issues to be voted upon at the special  
2 election shall be included on the ballot of each political party.

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

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

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

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

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

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

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

23  
24 "Authorizing the Arkansas Development Finance Authority to issue Arkansas  
25 Unemployment Trust Fund Bonds (the "Bonds") in a total principal amount not  
26 to exceed five hundred million dollars (\$500,000,000). If approved, the  
27 bonds may be issued as more than one (1) series for the purpose of repaying  
28 the principal of and interest on advances from the federal trust fund under  
29 Title XII of the Social Security Act.

30  
31 "The bonds shall be general obligations of the State of Arkansas, payable  
32 from certain designated revenues. Under the Unemployment Trust Fund  
33 Financing Act of 2011, ("the Bond Act"), the bonds will be repaid from  
34 unemployment obligation assessment imposed on employers at a rate sufficient  
35 to pay debt service on the bonds and expenses related to the bonds. The  
36 bonds shall be issued under the authority of and the terms set forth in the

1 Bond Act.”

2  
3 (c) The ballot title shall be "Issuance of Arkansas Unemployment Trust  
4 Funds Bonds". On each ballot there shall be printed the title, the  
5 proposition set forth in subdivision (b)(2) of this section, and the  
6 following:

7  
8 “FOR issuance of Arkansas Unemployment Trust Fund Bonds in an amount not  
9 to exceed \$500,000,000 . . . . . [ ]”

10  
11 “AGAINST issuance of Arkansas Unemployment Trust Fund Bonds in an amount  
12 not to exceed \$500,000,000 . . . . . [ ]”

13  
14 (d)(1) Each county board of election commissioners shall hold and  
15 conduct the election and may take any action with respect to the appointment  
16 of election officials and other matters as required by the laws of the state.

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

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

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

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

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

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

36 (g) Subsequent elections may be called by the Governor if the

1 proposition fails, but each such subsequent election may be held no earlier  
2 than six (6) months after the date of the preceding election.

3  
4 11-10-1007. Procedure for issuing Arkansas Unemployment Trust Fund  
5 Bonds.

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

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

12 (1) The establishment and maintenance of funds and accounts;

13 (2) The deposit and investment of the bond proceeds; and

14 (3) The rights and obligations of the state, its officers and  
15 officials, the Arkansas Development Finance Authority, and the registered  
16 owners of the bonds.

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

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

27  
28 11-10-1008. Terms of bonds.

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

31 (1)(A) The bonds may be issued in more than one (1) series in an  
32 amount sufficient to finance all or part of the repayment of the federal  
33 Unemployment Trust Fund debt.

34 (B) The respective series of bonds shall be designated by  
35 the year in which the bonds are issued.

36 (C) If more than one (1) series of bonds is to be issued

1 in a particular year, the series shall be designated alphabetically;

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

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

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

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

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

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

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

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

22 (5) The Arkansas Development Finance Authority shall determine:

23 (A) The denominations of the bonds;

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

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

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

30 (E) Any other terms and conditions; and

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

34 (B) Delivery of the bonds executed shall be valid  
35 notwithstanding any change in the persons holding the offices occurring after  
36 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.

Under § 15-5-212, 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.

11-10-1011. Sources of repayment.

(a) The Arkansas Unemployment Trust Funds Bonds shall be payable from the designated revenues.

(b)(1) The Department of Workforce Services shall promulgate rules to



1 increase the rate of contribution under § 11-10-702.

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

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

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

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

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

18  
19 11-10-1012. Investment of proceeds.

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

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

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

32 (c) All procedures and methods for application of proceeds of the  
33 bonds shall be developed in consultation with the Arkansas Development  
34 Finance Authority, set forth in the resolution or trust indenture authorizing  
35 or securing the bonds, and maintained as part of the records of the Arkansas  
36 Development Finance Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (B) Repurchase agreements shall satisfy the following  
14 criteria:

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

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

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

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

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

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

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

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

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

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

6 (10) Any other investment authorized by law.

7  
8 11-10-1013. Refunding bonds.

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

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

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

24  
25 11-10-1014. Liability.

26 Officers, officials, employees, and members of the Board of Directors  
27 of the Arkansas Development Finance Authority are not liable personally for  
28 any reason arising from the issuance of bonds under this subchapter unless he  
29 or she acts with corrupt intent.

30  
31 11-10-1015. Tax exemption.

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

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

1 insurance company, and trust funds.

3 11-10-1016. Bonds – Rights and liabilities – Enforcement.

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

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

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

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

19  
20 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
21 General Assembly of the State of Arkansas that the state's unemployment trust  
22 fund faces higher claim levels and longer benefit durations; that the state  
23 is in debt to the federal government for unemployment funds paid to citizens  
24 of this state; and that this act is immediately necessary because the state  
25 needs to create a revenue stream to begin to pay off the debt to the federal  
26 government. Therefore, an emergency is declared to exist and this act being  
27 immediately necessary for the preservation of the public peace, health, and  
28 safety shall become effective on:

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

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

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

*/s/J. Hutchinson*

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