

1 State of Arkansas As Engrossed: S3/2/11 S3/7/11 S3/8/11 S3/16/11 H3/29/11

2 88th General Assembly

# A Bill

3 Regular Session, 2011

SENATE BILL 305

4

5 By: Senator J. Hutchinson

6

7

## For An Act To Be Entitled

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.*

13

14

15

## Subtitle

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 faces 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 under § 11-10-1017;

25 (5) "Employer" means the same as under § 11-10-209;

26 (6) "Federal interest rate" means at the time an issue of bonds  
27 is sold, the weighted average interest rate charged on advances from the  
28 federal trust fund under Title XII of the Social Security Act; and

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

32  
33 11-10-1004. Authorization – Purposes.

34 (a) The Arkansas Development Finance Authority is authorized, subject  
35 to the approval of the voters in a statewide election, to issue bonds to be  
36 known as the Arkansas Unemployment Trust Fund Bonds in an aggregate principal

1 amount not to exceed five hundred million dollars (\$500,000,000).

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

3 (1) Repay the principal of and interest on advances from the  
4 federal trust fund under Title XII of the Social Security Act, 42 U.S.C. §  
5 1321;

6 (2) Pay the costs of issuance of the bonds including without  
7 limitation the costs of bond insurance or other credit enhancement;

8 (3) Pay unemployment benefits by depositing bond proceeds into  
9 the Unemployment Compensation Fund;

10 (4) Provide a debt service reserve; and

11 (5) Pay capitalized interest on the bonds for a period not to  
12 exceed two (2) years.

13  
14 11-10-1005. Governor proclamation.

15 (a) The Arkansas Development Finance Authority shall prepare and  
16 distribute to the Governor a report that shall contain a plan for repaying  
17 the federal Unemployment Trust Fund debt and the estimated time and cost to  
18 repay the debt.

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

23  
24 11-10-1006. Election.

25 (a)(1) Arkansas Unemployment Trust Fund Bonds shall not be issued  
26 under this subchapter unless the issuance of bonds has been approved by a  
27 majority of the qualified electors of the state voting on the question at a  
28 statewide election called by proclamation of the Governor as provided under §  
29 11-10-1005.

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

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

35 (C) A special election that is held in months in which a  
36 presidential preferential primary election, preferential primary election,

1 general primary election, or general election is scheduled to occur shall be  
2 held on the date of the presidential preferential primary election,  
3 preferential primary election, general primary election, or general election.

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

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

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

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

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

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

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

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

28  
29 "Authorizing the Arkansas Development Finance Authority to issue Arkansas  
30 Unemployment Trust Fund Bonds (the "Bonds") in a total principal amount not  
31 to exceed five hundred million dollars (\$500,000,000). If approved, the  
32 bonds may be issued in one (1) or more series for the purpose of repaying the  
33 principal of and interest on advances from the federal trust fund under Title  
34 XII of the Social Security Act, 42 U.S.C. § 1321, paying the costs of  
35 issuance of the bonds including without limitation the costs of bond  
36 insurance or other credit enhancement, paying unemployment benefits by

1 depositing bond proceeds into the Unemployment Compensation Fund, providing a  
2 debt service reserve, and paying capitalized interest on the bonds for a  
3 period not to exceed two (2) years.

4  
5 The bonds shall be payable from certain designated revenues. Under the  
6 Unemployment Trust Fund Financing Act of 2011, ("the Bond Act"), the bonds  
7 will be repaid from an unemployment obligation assessment imposed on  
8 employers. The bonds shall be issued under the authority of and the terms  
9 set forth in the Bond Act.

10  
11 The unemployment obligation assessment shall be based on the aggregate  
12 principal amount of bonds issued for nonrefunding purposes and shall be  
13 determined by multiplying the employer's contribution rate in effect on the  
14 date that the Governor issues a proclamation calling an election on the  
15 issuance of the bonds for employers with accounts as of such date and the  
16 employer's contribution rate as of the employer's liability date for  
17 employers establishing accounts after the date of the proclamation by:

18 (a) 25% if the aggregate principal amount of bonds issued is  
19 \$350,000,000 or less;

20 (b) 30% if the aggregate principal amount of bonds issued is  
21 \$350,000,001 to \$400,000,000;

22 (c) 33.5% if the aggregate principal amount of bonds issued is  
23 \$400,000,001 to \$450,000,000; and

24 (d) 37.5% if the aggregate principal amount of bonds issued is  
25 \$450,000,001 to \$500,000,000."

26  
27 (c) The ballot title shall be "Issuance of Arkansas Unemployment Trust  
28 Fund Bonds, and levy and pledge of an unemployment obligation assessment".  
29 On each ballot there shall be printed the title, the proposition set forth in  
30 subdivision (b)(2) of this section, and the following:

31  
32 "FOR issuance of Arkansas Unemployment Trust Fund Bonds in an amount not  
33 to exceed \$500,000,000, and levy and pledge of an unemployment obligation  
34 assessment. . . . . [ ]"

35  
36 "AGAINST issuance of Arkansas Unemployment Trust Fund Bonds in an amount

1 not to exceed \$500,000,000, and levy and pledge of an unemployment obligation  
2 assessment. . . . . [ ]"

3  
4 (d) The notice and ballot shall contain a definition of "employer's  
5 contribution rate" as described in §§ 11-10-704 and 11-10-705.

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

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

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

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

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

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

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

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

31  
32 11-10-1007. Procedure for issuing Arkansas Unemployment Trust Fund  
33 Bonds.

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

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

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

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

6 (3) The rights and obligations of the state, its officers and  
7 officials, the Arkansas Development Finance Authority, and the registered  
8 owners of the bonds.

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

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

19  
20 11-10-1008. Terms of bonds.

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

23 (1)(A) The bonds may be issued in more than one (1) series in an  
24 amount sufficient to accomplish the purposes of this subchapter.

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

27 (C) If one (1) or more series of bonds is to be issued in  
28 a particular year, the series shall be designated alphabetically;

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

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

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

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

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

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

9 (D) The true interest cost of an issue of bonds after  
10 taking into account original issue discount and premium and underwriter's  
11 discount shall not exceed the federal interest rate;

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

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

15 (A) The denominations of the bonds;

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

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

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

22 (E) Any other terms and conditions; and

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

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

29  
30 11-10-1009. Sale of bonds.

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

35 (b)(1) If the bonds are to be sold at public sale, the Arkansas  
36 Development Finance Authority shall give notice of the offering of the bonds

1 in a manner reasonably designed to notify participants in the public finance  
2 industry that such offering is being made.

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

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

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

16  
17 11-10-1010. Employment of professionals.

18 Under § 15-5-212, the Arkansas Development Finance Authority may employ  
19 and retain any professionals that the Arkansas Development Finance Authority  
20 deems necessary to accomplish the issuance and sale of the Arkansas  
21 Unemployment Trust Fund Bonds, including without limitation legal counsel,  
22 financial advisors, underwriters, trustees, paying agents, and remarketing  
23 agents.

24  
25 11-10-1011. Sources of repayment.

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

28 (b)(1) The unemployment obligation assessment shall be collected until  
29 the end of the quarter immediately following the repayment of all bonds  
30 authorized under this subchapter.

31 (2) The unemployment obligation assessment shall not be  
32 collected until the qualified voters of the state approve the issuance of  
33 bonds under this subchapter.

34 (c)(1) In order to secure the payment of debt service, any trust  
35 instrument, resolution, or other document for the security for the  
36 bondholders may provide for the payment of the designated revenues directly

1 into a trust fund or to a paying agent for the payment of debt service on the  
2 bonds.

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

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

8  
9 11-10-1012. Investment of proceeds.

10 (a) Proceeds from the sale of the bonds shall be deposited into trust  
11 funds or accounts established under the resolution or trust indenture  
12 authorizing or securing the bonds to accomplish the purposes of this  
13 subchapter in amounts or portions as set forth in the resolution or trust  
14 indenture securing the bonds.

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

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

22 (c) All procedures and methods for application of proceeds of the  
23 bonds shall be developed in consultation with the Arkansas Development  
24 Finance Authority, set forth in the resolution or trust indenture authorizing  
25 or securing the bonds, and maintained as part of the records of the Arkansas  
26 Development Finance Authority.

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

34 (e) Proceeds from the sale of the bonds and any money held in any  
35 funds created under or authorized by this subchapter may be invested and  
36 reinvested in accordance with the resolution or trust indenture authorizing

1 or securing the bonds issued and shall be invested by or at the direction of  
2 the Arkansas Development Finance Authority to the fullest extent practicable  
3 pending disbursement for the purposes intended in any of the following:

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

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

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

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

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

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

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

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

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

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

32 (9)(A) Repurchase agreements providing for the transfer of  
33 securities from a dealer bank or securities firm to the holder of the trust  
34 funds and the transfer of cash from the holder of the trust funds to the  
35 dealer bank or securities firm with an agreement that the dealer bank or  
36 securities firm will repay the cash plus a yield to the holder of the trust

1 funds in exchange for the securities at a specified date.

2 (B) Repurchase agreements shall satisfy the following  
3 criteria:

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

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

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

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

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

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

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

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

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

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

31 (10) Any other investment authorized by law.

32  
33 11-10-1013. Refunding bonds.

34 (a) The Arkansas Development Finance Authority may issue the Arkansas  
35 Unemployment Trust Fund Bonds for the purpose of refunding bonds previously  
36 issued under this subchapter if the total amount of bonds outstanding after

1 the refunding is completed does not exceed the total amount authorized by  
2 this subchapter.

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

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

13  
14 11-10-1014. Liability.

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

19  
20 11-10-1015. Tax exemption.

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

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

27  
28 11-10-1016. Bonds – Rights and liabilities – Enforcement.

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

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

35 (b) The courts in a suit against the Arkansas Development Finance  
36 Authority, or other appropriate officer or official of this state shall

1 prevent a diversion of any revenues pledged under this subchapter and shall  
2 compel the restoration of diverted revenues by injunction or mandamus.

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

8  
9 11-10-1017. Unemployment obligation assessment.

10 (a)(1)(A) Except employers that have made an election to reimburse the  
11 Unemployment Compensation Fund under § 11-10-713(c), each employer shall pay  
12 a separate and additional assessment, to be known as the unemployment  
13 obligation assessment, on wages paid by that employer with respect to  
14 employment in addition to the contributions, stabilization and extended  
15 benefits taxes, and advance interest taxes levied under §§ 11-10-703 – 11-10-  
16 708.

17 (B) The unemployment obligation assessment shall be based  
18 on the aggregate principal amount of bonds issued for nonrefunding purposes  
19 and shall be determined by multiplying the employer's contribution rate as  
20 described in §§ 11-10-704 and 11-10-705 and in effect on the date that the  
21 Governor issues a proclamation calling an election on the issuance of the  
22 bonds for employers with accounts as of such date and in effect as of the  
23 employer's liability date for employers establishing accounts after the date  
24 of the proclamation, by:

25 (i) Twenty-five percent (25%) if the aggregate  
26 principal amount of bonds issued is three hundred fifty million dollars  
27 (\$350,000,000) or less;

28 (ii) Thirty percent (30%) if the aggregate principal  
29 amount of bonds issued is three hundred fifty million and one dollars  
30 (\$350,000,001) to four hundred million dollars (\$400,000,000);

31 (iii) Thirty-three and five tenths percent (33.5%)  
32 if the aggregate principal amount of bonds issued is four hundred million and  
33 one dollars (\$400,000,001) to four hundred fifty million dollars  
34 (\$450,000,000); and

35 (iv) Thirty-seven and five tenths percent (37.5%) if  
36 the aggregate principal amount of bonds issued is four hundred fifty million

1 and one dollars (\$450,000,001) to five hundred million dollars  
2 (\$500,000,000).

3 (C)(i) The effective date of the unemployment obligation  
4 assessment shall be the first day of the calendar quarter immediately  
5 following the month in which the Secretary of State certifies the vote of the  
6 voters approving the unemployment obligation assessment and the issuance of  
7 the bonds under this subchapter.

8 (ii) The unemployment obligation assessment is  
9 effective until the end of the quarter immediately following the repayment of  
10 all bonds authorized under this subchapter.

11 (2)(A) This unemployment obligation assessment shall not be  
12 credited to the separate account of any employer.

13 (B) The unemployment obligation assessment shall be levied  
14 and collected in the same manner as contributions and shall be subject to the  
15 same penalty and interest, collection, impoundment, priority, lien,  
16 certificate of assessment, and assessment provisions and procedures under §§  
17 11-10-716 – 11-10-722.

18 (b)(1) Receipts from the unemployment obligation assessment and any  
19 penalty and interest on the unemployment obligation assessment shall be  
20 deposited into the Unemployment Compensation Fund Clearing Account.

21 (2) At least once each month, deposits of the unemployment  
22 obligation assessment payment and any interest and penalty payments  
23 applicable to the unemployment obligation assessment shall be deposited into  
24 the Department of Workforce Services Bond Financing Trust Fund.

25 (c) Debt service on the bonds shall be paid in a timely manner and  
26 shall not be paid directly or indirectly by an equivalent reduction in  
27 unemployment contributions or taxes imposed under:

28 (1) Sections 11-10-701 – 11-10-715; or

29 (2) Section 11-10-801 et seq.

30 (d) The unemployment obligation assessment may be used to:

31 (1) Repay the principal of and interest on advances from the  
32 federal trust fund under Title XII of the Social Security Act, 42 U.S.C. §  
33 1321;

34 (2) Pay the costs of issuance of the bonds, including without  
35 limitation the costs of bond insurance or other credit enhancement;

36 (3) Pay unemployment benefits by depositing bond proceeds into

1 the Unemployment Compensation Fund;

2 (4) Provide a debt service reserve; and

3 (5) Pay capitalized interest on the bonds for a period not to  
4 exceed two (2) years.

5 (e) The director of the Department of Workforce Services shall  
6 promulgate rules to carry out the provisions of this section.

7 (f) Upon retirement of all bonds, the following shall be transferred  
8 to the Unemployment Compensation Fund:

9 (1) Surplus unemployment obligation assessment collections; and

10 (2) Delinquent taxes, penalties, or interest due under the  
11 unemployment obligation assessment.

12  
13 11-10-1018. Department of Workforce Services Bond Financing Trust  
14 Fund.

15 (a)(1) There is established on the books of the Department of  
16 Workforce Services a special restricted fund to be known as the "Bond  
17 Financing Trust Fund", to be maintained and administered by the Department of  
18 Workforce Services under this subchapter for the purposes stated in this  
19 subchapter.

20 (2) The following shall be deposited into the Bond Financing  
21 Trust Fund:

22 (A) Collections of the unemployment obligation assessment;

23 and

24 (B) Any penalties and interest with respect to the  
25 unemployment obligation assessment.

26 (b) Moneys in the Bond Financing Trust Fund may be used to:

27 (1) Pay debt service on the bonds;

28 (2) Make refunds of the unemployment obligation assessment and  
29 interest and penalty payments that were erroneously paid;

30 (3) Return moneys to the Unemployment Compensation Fund Clearing  
31 Account which may have been incorrectly identified and erroneously  
32 transferred to the Bond Financing Trust Fund; and

33 (4) Purchase or redeem outstanding bonds.

34 (c) The Department of Workforce Services shall maintain the Bond  
35 Financing Trust Fund at the Arkansas Development Finance Authority or at one  
36 (1) or more financial institutions within or outside the state.

1 (d) Income from investment of moneys in the Bond Financing Trust Fund  
2 shall be deposited into and credited to the Bond Financing Trust Fund.

3 (e)(1) All moneys received for, deposited into, or paid to the  
4 Department of Workforce Services for deposit into the Bond Financing Trust  
5 Fund:

6 (A) Are specifically declared to be cash funds restricted  
7 in their use;

8 (B) Shall not be deposited into the State Treasury for the  
9 purposes of:

10 (i) Arkansas Constitution, Article 5, § 29;

11 (ii) Arkansas Constitution, Article 16, § 12;

12 (iii) Arkansas Constitution, Amendment 20; or

13 (iv) Any other constitutional provision or statutory  
14 law; and

15 (C) Shall be held and applied by the Department of  
16 Workforce Services and the Arkansas Development Finance Authority as agent  
17 for the Department of Workforce Services solely for the uses set forth in  
18 this subchapter.

19 (2) Interest and other moneys received from the investment of  
20 moneys in the Bond Financing Trust Fund are cash funds restricted in their  
21 use and shall not be deposited into the State Treasury but shall be held and  
22 applied by the Department of Workforce Services and the Arkansas Development  
23 Finance Authority as agent for the Department of Workforce Services solely  
24 for the uses set forth in this subchapter.

25 (f) Upon retirement of all bonds, the following shall be transferred  
26 to the Unemployment Compensation Fund:

27 (1) Surplus unemployment obligation assessment collections; and

28 (2) Delinquent taxes, penalties, or interest due under the  
29 unemployment obligation assessment.

30  
31 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
32 General Assembly of the State of Arkansas that the state's unemployment trust  
33 fund faces higher claim levels and longer benefit durations; that the state  
34 is in debt to the federal government for unemployment funds paid to citizens  
35 of this state; and that this act is immediately necessary because the state  
36 needs to create a revenue stream to begin to pay off the debt to the federal

1 government. Therefore, an emergency is declared to exist and this act being  
2 immediately necessary for the preservation of the public peace, health, and  
3 safety shall become effective on:

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

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

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

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11 /s/J. Hutchinson  
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