

FIRST REGULAR SESSION

SENATE BILL NO. 510

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time March 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1933S.011

AN ACT

To repeal sections 288.121, 288.128, 288.310, and 288.330, RSMo, and to enact in lieu thereof four new sections relating to alternative refinancing to state unemployment debt.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 288.121, 288.128, 288.310, and 288.330, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 288.121, 288.128, 288.310, and 288.330, to read as follows:

288.121. 1. On October first of each calendar year, if the average balance, less any federal advances, of the unemployment compensation trust fund of the four preceding quarters (September thirtieth, June thirtieth, March thirty-first and December thirty-first of the preceding calendar year) is less than four hundred fifty million dollars, then each employer's contribution rate calculated for the four calendar quarters of the succeeding calendar year shall be increased by the percentage determined from the following table:

Balance in Trust Fund		Percentage
Less Than	Equals or Exceeds	of Increase
\$450,000,000	\$400,000,000	10%
\$400,000,000	\$350,000,000	20%
\$350,000,000		30%

For calendar years 2005, 2006, and 2007, the contribution rate of any employer who is paying the maximum contribution rate shall be increased by forty percent, instead of thirty percent as previously indicated in the table in this section.

2. [For calendar years 2005, 2006, and 2007,] **Effective January 1, 2006 and until such time as the Title XII loans incurred during the period of 2003 through 2005 are retired in full**, an employer's total contribution rate shall equal the employer's

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

contribution rate plus a temporary debt indebtedness [assessment] **surcharge** equal to the amount to be determined in subdivision (6) of subsection 2 of section 288.330 added to the contribution rate plus the increase authorized under subsection 1 of this section. Any moneys overcollected beyond the actual administrative, interest and principal repayment costs for the credit instruments used shall be deposited into the state unemployment insurance trust fund and credited to the employer's experience account. The temporary debt indebtedness assessment shall expire upon the last day of the fourth calendar quarter of 2007.

288.128. 1. In addition to all other contributions due under this chapter, if the fund is utilizing moneys advanced by the federal government under the provisions of 42 U.S.C.A., Section 1321 pursuant to section 288.330, [or if the fund is not utilizing moneys advanced by the federal government, then from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instruments proceeds and moneys advanced under financial agreements,] each employer shall be assessed an amount solely for the payment of interest due on such federal advancements[, or if the fund is not utilizing moneys advanced by the federal government, or in the case of issuance of credit instruments for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both]. The rate shall be determined by dividing the interest due [on federal advancements or if the fund is not utilizing moneys advanced by the federal government, then the principal, interest, and administrative expenses related to credit instruments, or the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements] by ninety-five percent of the total taxable wages paid by all Missouri employers in the preceding calendar year. Each employer's proportionate share shall be the product obtained by multiplying such employer's total taxable wages for the preceding calendar year by the rate specified in this section. Each employer shall be notified of the amount due under this section by June thirtieth of each year and such amount shall be considered delinquent thirty days thereafter. The moneys collected from each employer for the payment of interest due on federal advances[, or if the fund is not utilizing moneys advanced by the federal government, then the payment of principal, interest, and administrative expenses related to credit instruments, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial

agreements,] shall be deposited in the special employment security fund.

2. If on December thirty-first of any year the money collected under this section exceeds the amount of interest due on federal advancements by one hundred thousand dollars or more, then each employer's experience rating account shall be credited with an amount which bears the same ratio to the excess moneys collected under this section as that employer's payment collected under this section bears to the total amount collected under this section. Further, if on December thirty-first of any year the moneys collected under this section exceed the amount of interest due on the federal advancements by less than one hundred thousand dollars, the balance shall be transferred from the special employment security fund to the Secretary of the Treasury of the United States to be credited to the account of this state in the unemployment trust fund.

3. In addition to all other contributions due under this chapter, if the fund is utilizing moneys from the proceeds of credit instruments issued under section 288.330, or from the moneys advanced under financial agreements under subdivision (17) of subsection 2 of section 288.330, or a combination of credit instrument proceeds and moneys advanced under financial agreements each employer shall be assessed a [credit instrument and financing agreement repayment] **temporary debt indebtedness** surcharge. The total of such surcharge shall be calculated as an amount up to one hundred fifty percent of the amount required in the twelve-month period following the due date for the payment of such surcharge for the payment of the principal, interest, and administrative expenses related to such credit instruments, or in the case of financial agreements for the payment of principal, interest, and administrative expenses related to such financial agreements, or in the case of a combination of credit instruments and financial agreements for the payment of principal, interest, and administrative expenses for both. Each employer's proportionate share shall be the product obtained by multiplying the total statewide [credit instrument and financing agreement repayment] **temporary debt indebtedness** surcharge by a number obtained by dividing the employer's total taxable wages for the prior year by the total taxable wages in the state for the prior year. **The director of the division of employment security, may if directed to do so by the board of unemployment fund financing, grant up to a ten percent reduction for those employers with a positive experience calculated rate equal to or less than one percent if, and only if, a similar total sum may be generated by levying up to a ten percent increase on those employers with a negative experience calculated rates prior to the application of any contribution rate adjustment.** Each employer shall be notified of the amount due under this section by [(January)] **November** thirtieth of each year and such amount shall be considered delinquent thirty days thereafter.

288.310. 1. There is hereby reated in the state treasury a special fund to be known as the "Special Employment Security Fund". All interest and penalties collected under the provisions of this law, including moneys collected pursuant to section 288.128 for the

payment of interest due on federal advances received pursuant to section 288.330, or subject to appropriation, or supplemental appropriation, by the general assembly, amounts received pursuant to the [credit instrument and financing agreement repayment] **temporary debt indebtedness** surcharge pursuant to section 288.128 related to the payment of principal, interest, and administrative expenses related to credit instruments issued under section 288.330, or the payment of the principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements shall be paid into this fund. The moneys collected pursuant to section 288.128 shall be used for the payment of interest due on federal advances received pursuant to section 288.330. Amounts received pursuant to the credit instrument and financing agreement repayment surcharge pursuant to subsection 3 of section 288.128 shall be used, following appropriation by the general assembly and exclusively for payment of principal, interest, and administrative expenses related to credit instruments issued under that section, or the payment of principal, interest, and administrative expenses related to financial agreements under subdivision (17) of subsection 2 of section 288.330, or the payment of the principal, interest, and administrative expenses related to a combination of credit instruments and financial agreements. Such moneys, except for moneys collected pursuant to section 288.128, shall not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of such money be available to finance expenditures for the administration of the employment security law, but nothing in this section shall prevent such moneys, except for moneys collected pursuant to section 288.128, from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Subject to the approval of the director of the department of labor and industrial relations, the moneys in this fund, except for moneys collected pursuant to section 288.128, shall be used by the department of labor and industrial relations for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the unemployment compensation administration fund. Such moneys, except for moneys collected pursuant to section 288.128, shall be available either to satisfy the obligations incurred by the department of labor and industrial relations for the division directly or by requesting the board of fund commissioners to transfer the required amount from the special employment security fund to the unemployment compensation administration fund. The board of fund commissioners shall upon receipt of a written request of the department of labor and industrial relations make any such transfer. No expenditures of this fund or transfer herein provided, except for moneys collected pursuant to section 288.128, shall be made unless and

until the director of the department of labor and industrial relations finds that no other funds are available or can properly be used to finance such expenditures, except that as hereinafter authorized expenditures from such fund may be made for the purpose of acquiring lands and buildings, or for the erection of buildings on lands so acquired, which are deemed necessary by the director of the department of labor and industrial relations for the proper administration of this law. The director of the department of labor and industrial relations shall order the transfer of such funds or the payment of any such obligation and such funds shall be paid by the state treasurer on requisitions drawn by the director of the department of labor and industrial relations directing the state auditor to issue his or her warrant therefor. Any such warrant shall be drawn by the state auditor based upon bills of particulars and vouchers certified by an officer or employee designated by the director of the department of labor and industrial relations. Such certification shall among other things include a duly certified copy of the director of the department of labor and industrial relations' findings hereinbefore referred to. The moneys in this fund, except for moneys collected pursuant to section 288.128, are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the Federal Social Security Act (42 U.S.C.A. Sec. 502), as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the director of the department of labor and industrial relations for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided.

2. The director of the department of labor and industrial relations, subject to the approval of the board of public buildings, is authorized and empowered to use all or any part of the funds in the special employment security fund, except for moneys collected pursuant to section 288.128, for the purpose of acquiring suitable office space for the division by way of purchase, lease, contract or in any other manner, including the right to use such funds or any part thereof to purchase land and erect thereon such buildings as he or she shall deem necessary or to assist in financing the construction of any building erected by the state of Missouri or any of its agencies wherein available space will be provided for the division under lease or contract between the department of labor and industrial relations and the state of Missouri or such other agency. The director of the department of labor and industrial relations may transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and

maintenance thereof as was expended from the special employment security fund has been returned to such fund.

3. The director of the department of labor and industrial relations may also transfer from the unemployment compensation administration fund to the special employment security fund amounts not exceeding funds specifically available to the department of labor and industrial relations for that purpose, equivalent to the fair reasonable rental value of space used by the department of labor and industrial relations in any building erected by the state of Missouri or any of its agencies until such time as the department of labor and industrial relations' proportionate amount of the purchase price of such building and the department of labor and industrial relations' proportionate amount of such costs of repair and maintenance thereof as was expended from the special employment security fund has been returned to such fund.

288.330. 1. Benefits shall be deemed to be due and payable only to the extent that moneys are available to the credit of the unemployment compensation fund and neither the state nor the division shall be liable for any amount in excess of such sums. The governor is authorized to apply for an advance to the state unemployment fund and to accept the responsibility for the repayment of such advance in order to secure to this state and its citizens the advantages available under the provisions of federal law.

2. (1) The purpose of this subsection is to provide a method of providing funds for the payment of unemployment benefits or maintaining an adequate fund balance in the unemployment compensation fund, and as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or for refinancing those loans or advances.

(2) For the purposes of this subsection, "credit instrument" means any type of borrowing obligation issued under this section, including any bonds, commercial line of credit note, tax anticipation note or similar instrument.

(3) (a) There is hereby created for the purposes of implementing the provisions of this subsection a body corporate and politic to be known as the "Board of Unemployment Fund Financing". The powers of the board shall be vested in five board members who shall be the governor, lieutenant governor, attorney general, director of the department of labor, and the commissioner of administration. The board shall have all powers necessary to effectuate its purposes including, without limitation, the power to provide a seal, keep records of its proceedings, and provide for professional services. The governor shall serve as chair, the lieutenant governor shall serve as vice chair, and the commissioner of administration shall serve as secretary. Staff support for the board shall be provided by the commissioner of administration;

(b) Notwithstanding the provisions of any other law to the contrary:

a. No officer or employee of this state shall be deemed to have forfeited or shall forfeit his or her office or employment by reason of his or her acceptance of an appointment as a

board member or for his or her service to the board;

b. Board members shall receive no compensation for the performance of their duties under this subsection, but each commissioner shall be reimbursed from the funds of the commission for his or her actual and necessary expenses incurred in carrying out his or her official duties under this subsection.

(c) In the event that any of the board members or officers of the board whose signatures or facsimile signatures appear on any credit instrument shall cease to be board members or officers before the delivery of such credit instrument, their signatures or facsimile signatures shall be valid and sufficient for all purposes as if such board members or officers had remained in office until delivery of such credit instrument.

(d) Neither the board members executing the credit instruments of the board nor any other board members shall be subject to any personal liability or accountability by reason of the issuance of the credit instruments.

(4) The board is authorized, by offering for public negotiated sale, to issue, sell, and deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by the board, which shall mature no later than ~~[three]~~ **fifteen** years after issuance, in the name of the board in an amount determined by the board not to exceed a total of four hundred fifty million dollars, less the principal amount of any financing agreement entered into under subdivision (17) of this subsection, for the purposes set forth in subdivision (1) of this subsection. Such credit instrument may only be issued upon the approval of a resolution authorizing such issuance by a simple majority of the members of the board, with no other proceedings required. No credit instrument may be outstanding hereunder after January 15, ~~[2008]~~ **2020**.

(5) The board shall provide for the payment of the principal of the credit instruments, any redemption premiums, the interest on the credit instruments, and the costs attributable to the credit instruments being issued or outstanding as provided in this subsection and in section 288.310. Unless the board directs otherwise, the credit instrument shall be repaid ~~[in the same time frame and in the same amounts as would be required for loans issued pursuant to 42 U.S.C. Section 1321; however, in no case shall credit instruments be outstanding for more than three years]~~ and further provided that no credit instruments shall be outstanding hereunder after January 15, ~~[2008]~~ **2020**.

(6) The board may irrevocably pledge money received from the ~~[credit instrument and financing agreement repayment]~~ **temporary debt indebtedness** surcharge under **subsection 2 of section 288.121 and** subsection 3 of section 288.128, and other money legally available to it, which is deposited in an account created for credit instrument repayment in the special employment security fund, provided that the general assembly has first appropriated moneys received from such surcharge and other moneys deposited in such account for the payment of credit instruments.

(7) Credit instruments issued under this section shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The credit instruments are payable only from revenue provided for under this chapter. The credit instruments shall contain a statement to the effect that:

(a) Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the credit instruments except as provided by this section; and

(b) Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the credit instruments.

(8) The board pledges and agrees with the owners of any credit instruments issued under this section that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements made with the owners or in any way impair the rights and remedies of the owners until the credit instruments are fully discharged.

(9) The board may prescribe the form, details, and incidents of the credit instruments and make such covenants that in its judgment are advisable or necessary to properly secure the payment thereof. If such credit instruments shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such credit instruments may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board, and the provisions of section 108.175, RSMo, shall not apply to such credit instruments. The board may provide for the flow of funds and the establishment and maintenance of separate accounts within the special employment security fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the credit instruments in the documents authorizing the issuance of credit instruments including refunding credit instruments. The resolutions authorizing the issuance of credit instruments may also prohibit the further issuance of credit instruments or other obligations payable from appropriated moneys or may reserve the right to issue additional credit instruments to be payable from appropriated moneys on a parity with or subordinate to the lien and pledge in support of the credit instruments being issued and may contain other provisions and covenants as determined by the board, provided that any terms, provisions or covenants provided in any resolution of the board shall not be inconsistent with the provisions of this section.

(10) The board may issue credit instruments to refund all or any part of the outstanding credit instruments issued under this section including matured but unpaid interest. As with other credit instruments issued under this section, such refunding credit instruments may bear interest at a fixed or variable rate as determined by the board. No such refunding credit instruments may be outstanding for more than three years or after January 15, [2008] **2020**.

(11) The credit instruments issued by the board, any transaction relating to the credit instruments, and profits made from the sale of the credit instruments are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

(12) As determined necessary by the board the proceeds of the credit instruments less the cost of issuance shall be placed in the state's unemployment compensation fund and may be used for the purposes for which that fund may otherwise be used. If those net proceeds are not placed immediately in the unemployment compensation fund they shall be held in the special employment security fund in an account designated for that purpose until they are transferred to the unemployment compensation fund provided that the proceeds of refunding credit instruments may be placed in an escrow account or such other account or instrument as determined necessary by the board.

(13) The board may enter into any contract or agreement deemed necessary or desirable to effectuate cost-effective financing hereunder. Such agreements may include credit enhancement, credit support, or interest rate agreements including, but not limited to, arrangements such as municipal bond insurance; surety bonds; tax anticipation notes; liquidity facilities; forward agreements; tender agreements; remarketing agreements; option agreements; interest rate swap, exchange, cap, lock or floor agreements; letters of credit; and purchase agreements. Any fees or costs associated with such agreements shall be deemed administrative expenses for the purposes of calculating the [credit instrument and financing agreement repayment] **temporary debt indebtedness** surcharge under subsection 3 of section 288.128. The board, with consideration of all other costs being equal, shall give preference to Missouri-headquartered financial institutions, or those out-of-state-based financial institutions with at least one hundred Missouri employees.

(14) To the extent this section conflicts with other laws the provisions of this section prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298, RSMo.

(15) If the United States Secretary of Labor holds that a provision of this subsection or of any provision related to the levy or use of the credit instrument and financial agreement repayment surcharge does not conform with a federal statute or would result in the loss to the state of any federal funds otherwise available to it the board, in cooperation with the department of labor and industrial relations, may administer this subsection, and other

provisions related to the credit instrument and financial agreement repayment surcharge, to conform with the federal statute until the general assembly meets in its next regular session and has an opportunity to amend this subsection or other sections, as applicable.

(16) Nothing in this chapter shall be construed to prohibit the officials of the state from borrowing from the government of the United States in order to pay unemployment benefits under subsection 1 of this section or otherwise.

(17) (a) As used in this subdivision the term "lender" means any state or national bank.

(b) The board is authorized to enter financial agreements with any lender for the purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements in whole or in part, upon the approval of the simple majority of the members of the board of a resolution authorizing such financial agreements, with no other proceedings required. The total amount of the outstanding obligation under all such agreements shall not exceed the difference of four hundred fifty million dollars and the principal amount of credit instruments issued under this subsection. In no instance shall the outstanding obligation under any financial agreement continue for more than three years, and no such financial agreement, whether entered into for refinancing purposes or otherwise, shall be outstanding after January 15, [2008] 2020. Repayment of obligations to lenders shall be made from the special employment security fund, section 288.310, subject to appropriation by the general assembly.

(c) Financial agreements entered into under this subdivision shall not constitute debts of this state or of the board or any agency, political corporation, or political subdivision of this state and are not a pledge of the faith and credit of this state, the board or of any of those governmental entities and shall not constitute an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. The financial agreements are payable only from revenue provided for under this chapter. The financial agreements shall contain a statement to the effect that:

a. Neither the state nor the board nor any agency, political corporation, or political subdivision of the state shall be obligated to pay the principal or interest on the financial agreements except as provided by this section; and

b. Neither the full faith and credit nor the taxing power of the state nor the board nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal, premium, if any, or interest on the financial agreements.

(d) Neither the board members executing the financial agreements nor any other board members shall be subject to any personal liability or accountability by reason of the execution of such financial agreements.

(e) The board may prescribe the form, details and incidents of the financing agreements and make such covenants that in its judgment are advisable or necessary to

properly secure the payment thereof provided that any terms, provisions or covenants provided in any such financing agreement shall not be inconsistent with the provisions of this section. If such financing agreements shall be authenticated by the bank or trust company acting as registrar for such by the manual signature of a duly authorized officer or employee thereof, the duly authorized officers of the board executing and attesting such financing agreements may all do so by facsimile signature provided such signatures have been duly filed as provided in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, RSMo, when duly authorized by resolution of the board and the provisions of section 108.175, RSMo, shall not apply to such financing agreements.

(18) The commission may issue credit instruments to refund all or any part of the outstanding borrowing issued under this section including matured but unpaid interest.

(19) The credit instruments issued by the commission, any transaction relating to the credit instruments, and profits made from the issuance of credit are free from taxation by the state or by any municipality, court, special district, or other political subdivision of the state.

3. In event of the suspension of this law, any unobligated funds in the unemployment compensation fund, and returned by the United States Treasurer because such Federal Social Security Act is inoperative, shall be held in custody by the treasurer and under supervision of the division until the legislature shall provide for the disposition thereof. In event no disposition is made by the legislature at the next regular meeting subsequent to suspension of said law, then all unobligated funds shall be returned ratably to those who contributed thereto.

4. For purposes of this section, as contained in senate substitute no. 2 for senate committee substitute for house substitute for house committee substitute for house bill nos. 1268 and 1211, ninety-second general assembly, second regular session, the revisor of statutes shall renumber subdivision (16) of subsection 2 of such section as subdivision (17) of such subsection and renumber subdivision (17) of subsection 2 of such section as subdivision (16) of such subsection.