

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 495
95TH GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industry, April 2, 2009, with recommendation that the Senate Committee Substitute do pass.

2121S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 288.330, RSMo, and to enact in lieu thereof one new section relating to employment security.

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

Section A. Section 288.330, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 288.330, to read as follows:

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

8 2. (1) The purpose of this subsection is to provide a method of providing
9 funds for the payment of unemployment benefits or maintaining an adequate fund
10 balance in the unemployment compensation fund, and as an alternative to
11 borrowing or obtaining advances from the federal unemployment trust fund or for
12 refinancing those loans or advances.

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

16 (3) (a) There is hereby created for the purposes of implementing the
17 provisions of this subsection a body corporate and politic to be known as the
18 "Board of Unemployment Fund Financing". The powers of the board shall be

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

19 vested in five board members who shall be the governor, lieutenant governor,
20 attorney general, director of the department of labor, and the commissioner of
21 administration. The board shall have all powers necessary to effectuate its
22 purposes including, without limitation, the power to provide a seal, keep records
23 of its proceedings, and provide for professional services. The governor shall serve
24 as chair, the lieutenant governor shall serve as vice chair, and the commissioner
25 of administration shall serve as secretary. Staff support for the board shall be
26 provided by the commissioner of administration;

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

28 a. No officer or employee of this state shall be deemed to have forfeited
29 or shall forfeit his or her office or employment by reason of his or her acceptance
30 of an appointment as a board member or for his or her service to the board;

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

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

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

44 (4) The board is authorized, by offering for public negotiated sale, to issue,
45 sell, and deliver credit instruments, bearing interest at a fixed or variable rate
46 as shall be determined by the board, which shall mature no later than ten years
47 after issuance, in the name of the board in an amount determined by the board[,
48 provided that the unpaid principal amount of any outstanding credit instruments,
49 combined with the unpaid principal amount of any financing agreement entered
50 into under subdivision (17) of this subsection, shall not exceed four hundred fifty
51 million dollars at any one time]. Such credit instruments may be issued, sold,
52 and delivered for the purposes set forth in subdivision (1) of this
53 subsection. Such credit instrument may only be issued upon the approval of a
54 resolution authorizing such issuance by a simple majority of the members of the

55 board, with no other proceedings required.

56 (5) The board shall provide for the payment of the principal of the credit
57 instruments, any redemption premiums, the interest on the credit instruments,
58 and the costs attributable to the credit instruments being issued or outstanding
59 as provided in this chapter. Unless the board directs otherwise, the credit
60 instrument shall be repaid in the same time frame and in the same amounts as
61 would be required for loans issued pursuant to 42 U.S.C. Section 1321; however,
62 in no case shall credit instruments be outstanding for more than ten years.

63 (6) The board may irrevocably pledge money received from the credit
64 instrument and financing agreement repayment surcharge under subsection 3 of
65 section 288.128, and other money legally available to it, which is deposited in an
66 account authorized for credit instrument repayment in the special employment
67 security fund, provided that the general assembly has first appropriated moneys
68 received from such surcharge and other moneys deposited in such account for the
69 payment of credit instruments.

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

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

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

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

90 (9) The board may prescribe the form, details, and incidents of the credit

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

114 (10) The board may issue credit instruments to refund all or any part of
115 the outstanding credit instruments issued under this section including matured
116 but unpaid interest. As with other credit instruments issued under this section,
117 such refunding credit instruments may bear interest at a fixed or variable rate
118 as determined by the board.

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

123 (12) As determined necessary by the board the proceeds of the credit
124 instruments less the cost of issuance shall be placed in the state's unemployment
125 compensation fund and may be used for the purposes for which that fund may
126 otherwise be used. If those net proceeds are not placed immediately in the

127 unemployment compensation fund they shall be held in the special employment
128 security fund in an account designated for that purpose until they are transferred
129 to the unemployment compensation fund provided that the proceeds of refunding
130 credit instruments may be placed in an escrow account or such other account or
131 instrument as determined necessary by the board.

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

146 (14) To the extent this section conflicts with other laws the provisions of
147 this section prevail. This section shall not be subject to the provisions of sections
148 23.250 to 23.298, RSMo.

149 (15) If the United States Secretary of Labor holds that a provision of this
150 subsection or of any provision related to the levy or use of the credit instrument
151 and financial agreement repayment surcharge does not conform with a federal
152 statute or would result in the loss to the state of any federal funds otherwise
153 available to it the board, in cooperation with the department of labor and
154 industrial relations, may administer this subsection, and other provisions related
155 to the credit instrument and financial agreement repayment surcharge, to
156 conform with the federal statute until the general assembly meets in its next
157 regular session and has an opportunity to amend this subsection or other
158 sections, as applicable.

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

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

163 national bank.

164 (b) The board is authorized to enter financial agreements with any lender
165 for the purposes set forth in subdivision (1) of this subsection, or to refinance
166 other financial agreements in whole or in part, upon the approval of the simple
167 majority of the members of the board of a resolution authorizing such financial
168 agreements, with no other proceedings required. [The total amount of the
169 outstanding obligation under all such agreements at any one time shall not
170 exceed the difference of four hundred fifty million dollars and the principal
171 amount of credit instruments outstanding under this subsection.] In no instance
172 shall the outstanding obligation under any financial agreement continue for more
173 than ten years. Repayment of obligations to lenders shall be made from the
174 special employment security fund, section 288.310, subject to appropriation by the
175 general assembly.

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

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

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

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

194 (e) The board may prescribe the form, details and incidents of the
195 financing agreements and make such covenants that in its judgment are
196 advisable or necessary to properly secure the payment thereof provided that any
197 terms, provisions or covenants provided in any such financing agreement shall
198 not be inconsistent with the provisions of this section. If such financing

199 agreements shall be authenticated by the bank or trust company acting as
200 registrar for such by the manual signature of a duly authorized officer or
201 employee thereof, the duly authorized officers of the board executing and
202 attesting such financing agreements may all do so by facsimile signature provided
203 such signatures have been duly filed as provided in the uniform facsimile
204 signature of public officials law, sections 105.273 to 105.278, RSMo, when duly
205 authorized by resolution of the board and the provisions of section 108.175,
206 RSMo, shall not apply to such financing agreements.

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

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

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

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

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