

FIRST REGULAR SESSION

# HOUSE BILL NO. 135

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE NOLTE.

0785L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 288.330, RSMo, and to enact in lieu thereof one new section relating to the board of unemployment fund financing.

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Section A. Section 288.330, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.330, to read as follows: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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **industrial relations**, and the commissioner of administration. The board shall have all powers  
19 necessary to effectuate its purposes including, without limitation, the power to provide a seal,  
20 keep records of its proceedings, and provide for professional services. The governor shall serve  
21 as chair, the lieutenant governor shall serve as vice chair, and the commissioner of administration  
22 shall serve as secretary. Staff support for the board shall be provided by the commissioner of  
23 administration.

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

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

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

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

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

40 (4) The board is authorized, by offering for public negotiated sale, to issue, sell, and  
41 deliver credit instruments, bearing interest at a fixed or variable rate as shall be determined by  
42 the board, which shall mature no later than [ten] **twenty** years after issuance, in the name of the  
43 board in an amount determined by the board. Such credit instruments may be issued, sold, and  
44 delivered for the purposes set forth in subdivision (1) of this subsection. Such credit instrument  
45 may only be issued upon the approval of a resolution authorizing such issuance by a simple  
46 majority of the members of the board, with no other proceedings required.

47 (5) The board shall provide for the payment of the principal of the credit instruments,  
48 any redemption premiums, the interest on the credit instruments, and the costs attributable to the  
49 credit instruments being issued or outstanding as provided in this chapter. Unless the board  
50 directs otherwise, the credit instrument shall be repaid in the same time frame and in the same  
51 amounts as would be required for loans issued pursuant to 42 U.S.C. Section 1321; however, in  
52 no case shall credit instruments be outstanding for more than [ten] **twenty** years.

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

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

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

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

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

76 (9) The board may prescribe the form, details, and incidents of the credit instruments and  
77 make such covenants that in its judgment are advisable or necessary to properly secure the  
78 payment thereof. If such credit instruments shall be authenticated by the bank or trust company  
79 acting as registrar for such by the manual signature of a duly authorized officer or employee  
80 thereof, the duly authorized officers of the board executing and attesting such credit instruments  
81 may all do so by facsimile signature provided such signatures have been duly filed as provided  
82 in the uniform facsimile signature of public officials law, sections 105.273 to 105.278, when  
83 duly authorized by resolution of the board, and the provisions of section 108.175 shall not apply  
84 to such credit instruments. The board may provide for the flow of funds and the establishment  
85 and maintenance of separate accounts within the special employment security fund, including  
86 the interest and sinking account, the reserve account, and other necessary accounts, and may  
87 make additional covenants with respect to the credit instruments in the documents authorizing  
88 the issuance of credit instruments including refunding credit instruments. The resolutions

89 authorizing the issuance of credit instruments may also prohibit the further issuance of credit  
90 instruments or other obligations payable from appropriated moneys or may reserve the right to  
91 issue additional credit instruments to be payable from appropriated moneys on a parity with or  
92 subordinate to the lien and pledge in support of the credit instruments being issued and may  
93 contain other provisions and covenants as determined by the board, provided that any terms,  
94 provisions or covenants provided in any resolution of the board shall not be inconsistent with the  
95 provisions of this section.

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

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

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

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

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

125 (15) If the United States Secretary of Labor holds that a provision of this subsection or  
126 of any provision related to the levy or use of the credit instrument and financial agreement  
127 repayment surcharge does not conform with a federal statute or would result in the loss to the  
128 state of any federal funds otherwise available to it the board, in cooperation with the department  
129 of labor and industrial relations, may administer this subsection, and other provisions related to  
130 the credit instrument and financial agreement repayment surcharge, to conform with the federal  
131 statute until the general assembly meets in its next regular session and has an opportunity to  
132 amend this subsection or other sections, as applicable.

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

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

137 (b) The board is authorized to enter financial agreements with any lender for the  
138 purposes set forth in subdivision (1) of this subsection, or to refinance other financial agreements  
139 in whole or in part, upon the approval of the simple majority of the members of the board of a  
140 resolution authorizing such financial agreements, with no other proceedings required. In no  
141 instance shall the outstanding obligation under any financial agreement continue for more than  
142 [ten] **twenty** years. Repayment of obligations to lenders shall be made from the special  
143 employment security fund, section 288.310, subject to appropriation by the general assembly.

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

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

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

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

160 (e) The board may prescribe the form, details and incidents of the financing agreements  
161 and make such covenants that in its judgment are advisable or necessary to properly secure the  
162 payment thereof provided that any terms, provisions or covenants provided in any such financing  
163 agreement shall not be inconsistent with the provisions of this section. If such financing  
164 agreements shall be authenticated by the bank or trust company acting as registrar for such by  
165 the manual signature of a duly authorized officer or employee thereof, the duly authorized  
166 officers of the board executing and attesting such financing agreements may all do so by  
167 facsimile signature provided such signatures have been duly filed as provided in the uniform  
168 facsimile signature of public officials law, sections 105.273 to 105.278, when duly authorized  
169 by resolution of the board and the provisions of section 108.175 shall not apply to such financing  
170 agreements.

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

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

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

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