

1 AN ACT

2 relating to the issuance of certain obligations and the imposition
3 of assessments for the unemployment compensation system.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Subchapter C, Chapter 203, Labor
6 Code, is amended to read as follows:

7 SUBCHAPTER C. ADVANCES FROM FEDERAL TRUST FUND AND
8 OBLIGATION ASSESSMENT

9 SECTION 2. Section 203.102, Labor Code, is amended to read
10 as follows:

11 Sec. 203.102. OBLIGATION [~~ADVANCE INTEREST~~] TRUST FUND.

12 (a) The obligation [~~advance interest~~] trust fund is a dedicated
13 trust fund outside of the state treasury in the custody of the
14 comptroller.

15 (b) The commission and governor may use money in the
16 obligation [~~advance interest~~] trust fund without legislative
17 appropriation to pay:

18 (1) bond obligations and bond administrative
19 expenses; and

20 (2) principal and [~~pay~~] interest incurred on advances
21 from the federal trust fund[~~, and~~

22 [~~(2) repay temporary transfers of surplus cash that~~
23 ~~may be made between the advance interest trust fund and other~~
24 ~~funds].~~

1 ~~[(c) Subject to legislative appropriation, the commission~~
 2 ~~may use money in the advance interest trust fund, including any~~
 3 ~~interest earnings scheduled to be transferred under Section~~
 4 ~~203.103, for the administration of Chapters 51, 61, and 62.]~~

5 SECTION 3. Section 203.104, Labor Code, is amended to read
 6 as follows:

7 Sec. 203.104. LIMITATION ON TRANSFER FROM OBLIGATION
 8 [ADVANCE INTEREST] TRUST FUND TO COMPENSATION FUND. An amount that
 9 is attributable to the portion of the unemployment obligation
 10 assessment authorized by Section 203.105(a)(2) may not be
 11 transferred [The governor may authorize the commission to transfer
 12 money from the advance interest trust fund] to the compensation
 13 fund unless all bond obligations, including bond administrative
 14 expenses, have been fully paid and satisfied. After the
 15 obligations have been fully satisfied, the commission shall
 16 transfer the balance of the obligation trust fund to the
 17 compensation fund [if the governor

18 ~~[(1) on the advice of the commission, determines that~~
 19 ~~funds in the compensation fund will be depleted at the time payment~~
 20 ~~on an advance from the federal trust fund is due and that depletion~~
 21 ~~of the funds will cause the loss of some portion of the credit~~
 22 ~~received by employers against their federal unemployment tax rate,~~
 23 ~~or~~

24 ~~[(2) determines that payment of interest on a federal~~
 25 ~~loan may be avoided by keeping the balance of the compensation fund~~
 26 ~~positive].~~

27 SECTION 4. Section 203.105, Labor Code, is amended to read

1 as follows:

2 Sec. 203.105. UNEMPLOYMENT OBLIGATION ASSESSMENT

3 ~~[ADDITIONAL TAX]~~. (a) An unemployment obligation assessment shall
4 be imposed as provided by this section ~~[In addition to other taxes,~~
5 ~~a separate tax is imposed on each employer eligible for an~~
6 ~~experience tax rate]~~ if after January 1 of a year:

7 (1) an interest payment on an advance from the federal
8 trust fund will be due~~(+)~~ and

9 ~~[(2)]~~ the estimated amount necessary to make the
10 interest payment is not available in the obligation trust fund or
11 ~~[will not be]~~ available otherwise; or

12 (2) bond obligations are due and the amount necessary
13 to pay in full those obligations, including bond administrative
14 expenses, is not available in the obligation trust fund or
15 available otherwise.

16 (b) The unemployment obligation assessment rate is the
17 total of the amounts required to make the payments necessary under
18 Subsections (a)(1) and (2). The commission shall set the
19 unemployment obligation assessment rate ~~[of an additional tax under~~
20 ~~this section]~~ in an amount sufficient to ensure timely payment of
21 interest under Subsection (a)(1), but not exceeding two-tenths of
22 one percent. The commission shall set the unemployment obligation
23 assessment rate in an amount sufficient to ensure timely payment of
24 the bond obligations, including administrative expenses, and to
25 provide an amount necessary in the commission's judgment to enhance
26 investor acceptance of the bonds. The rate shall be based on a
27 formula prescribed by commission rule, using the employer's

1 experience rating from the previous year. The unemployment
 2 obligation assessment rate applies to the same wage base to which
 3 the employer's unemployment tax applies for the [~~that~~] year.

4 (c) The unemployment obligation assessment [~~An additional~~
 5 ~~tax under this section~~] is due at the same time, collected in the
 6 same manner, and [~~on the date set by the commission and is~~] subject
 7 to the same penalties and interest as other contributions assessed
 8 under this subtitle [~~penalty for late payment as the unemployment~~
 9 ~~tax~~].

10 (d) Revenue from the unemployment obligation assessment [~~an~~
 11 ~~additional tax~~] under this section shall be deposited to the credit
 12 of the obligation [~~advance interest~~] trust fund under Section
 13 203.102.

14 SECTION 5. Chapter 203, Labor Code, is amended by adding
 15 Subchapter F to read as follows:

16 SUBCHAPTER F. ISSUANCE OF FINANCIAL OBLIGATIONS

17 FOR UNEMPLOYMENT COMPENSATION FUND

18 Sec. 203.251. FINDINGS AND PURPOSE. (a) The legislature
 19 finds that:

20 (1) it is an essential governmental function to
 21 maintain funds in an amount sufficient to pay unemployment benefits
 22 when due;

23 (2) at the time of the enactment of this subchapter,
 24 borrowing from the federal government was the only option available
 25 to obtain sufficient funds to pay benefits when the balance in the
 26 compensation fund is depleted;

27 (3) alternative methods of replenishing the

1 unemployment compensation fund may reduce the costs of providing
2 unemployment benefits and employers' cost of doing business in the
3 state; and

4 (4) funds representing revenues received from the
5 unemployment obligation assessment authorized under this
6 subchapter and any income from the investment of those funds are not
7 state property.

8 (b) The purpose of this subchapter is to provide appropriate
9 methods through which the state may continue the unemployment
10 compensation program at the lowest possible cost to the state and
11 employers in the state.

12 Sec. 203.252. DEFINITIONS; GENERAL PROVISION. (a) In this
13 subchapter:

14 (1) "Authority" means the Texas Public Finance
15 Authority.

16 (2) "Bond" means any type of revenue obligation,
17 including a bond, note, certificate, or other instrument, payable
18 from and secured by a pledge of revenues received from the
19 unemployment obligation assessment and amounts on deposit in the
20 obligation trust fund to the extent provided in the proceedings
21 authorizing the obligation.

22 (3) "Bond administrative expenses" means expenses
23 incurred to administer bonds issued under this subchapter,
24 including fees for paying agents, trustees, and attorneys, and for
25 other professional services necessary to ensure compliance with
26 applicable state or federal law.

27 (4) "Bond obligations" means the principal of a bond

1 and any premium and interest on a bond issued under this subchapter,
2 together with any amount owed under a related credit agreement.

3 (5) "Credit agreement" means a loan agreement, a
4 revolving credit agreement, an agreement establishing a line of
5 credit, a letter of credit, an interest rate swap agreement, an
6 interest rate lock agreement, a currency swap agreement, a forward
7 payment conversion agreement, an agreement to provide payments
8 based on levels of or changes in interest rates or currency exchange
9 rates, an agreement to exchange cash flows or a series of payments,
10 an option, put, or call to hedge payment, currency, interest rate,
11 or other exposure, or another agreement that enhances the
12 marketability, security, or creditworthiness of a bond issued under
13 this subchapter.

14 (b) An amount owed by the authority under a credit agreement
15 shall be payable from and secured by a pledge of revenues received
16 from the unemployment obligation assessment and amounts on deposit
17 in the obligation trust fund to the extent provided in the
18 proceedings authorizing the credit agreement.

19 Sec. 203.253. REQUEST FOR BOND ISSUANCE. (a) If the
20 commission determines that the issuance of bonds is necessary to
21 reduce or avoid the need to borrow or obtain a federal advance under
22 Section 1201, Social Security Act (42 U.S.C. Section 1321), as
23 amended, or any similar federal law, or to refinance a previous loan
24 or advance received by the commission and that bond financing is the
25 most cost-effective method of funding the payment of benefits, the
26 commission may request the authority to issue bonds on its behalf.
27 Before making a request of the authority under this subsection, the

1 commission must by resolution determine that the issuance of bonds
2 for the purposes established by this section will result in a
3 savings to the state and to employers in this state as compared to
4 the cost of borrowing or obtaining an advance under Section 1201,
5 Social Security Act (42 U.S.C. Section 1321), as amended, or any
6 similar federal law.

7 (b) The commission shall specify in the commission's
8 request to the authority the maximum principal amount of the bonds,
9 not to exceed \$2 billion for any separate bond issue, and the
10 maximum term of the bonds, not to exceed 10 years.

11 (c) The principal amount determined by the commission under
12 Subsection (b) may be increased to include an amount sufficient to:

13 (1) pay the costs of issuance of the authority;
14 (2) provide a bond reserve fund; and
15 (3) capitalize interest for the period determined
16 necessary by the commission, not to exceed two years.

17 Sec. 203.254. ISSUANCE OF BONDS BY AUTHORITY. (a) The
18 authority shall issue bonds on request by the commission, in
19 accordance with the requirements of Chapter 1232, Government Code,
20 and other provisions of Title 9, Government Code, that apply to bond
21 issuance by a state agency.

22 (b) The authority shall determine the method of sale, type
23 of bond, bond form, maximum interest rates, and other terms of the
24 bonds that, in the authority's judgment, best achieve the economic
25 goals of the commission and effect the borrowing at the lowest
26 practicable cost.

27 (c) The authority may enter into a credit agreement in

1 connection with the bonds.

2 Sec. 203.255. BOND PROCEEDS. (a) The proceeds of bonds
3 issued by the authority under this subchapter may be deposited with
4 a trustee selected by the authority and the commission or held by
5 the comptroller in a dedicated trust fund outside the state
6 treasury in the custody of the comptroller.

7 (b) Bond proceeds, including investment income, shall be
8 held in trust for the exclusive use and benefit of the commission.
9 The commission may use the proceeds to:

10 (1) repay the principal and interest of previous
11 advances from the federal trust fund;

12 (2) pay unemployment benefits by depositing the
13 proceeds in the unemployment compensation fund, as defined in
14 Subchapter B;

15 (3) pay the costs of issuing the bonds;

16 (4) provide a bond reserve; and

17 (5) pay capitalized interest on the bonds for the
18 period determined necessary by the commission, not to exceed two
19 years.

20 (c) Any excess money remaining after the purposes for which
21 the bonds were issued is satisfied may be used to purchase or redeem
22 outstanding bonds.

23 (d) If there are no outstanding bonds or bond interest to be
24 paid, the remaining proceeds shall be transferred to the
25 unemployment compensation fund.

26 Sec. 203.256. REPAYMENT OF COMMISSION'S FINANCIAL
27 OBLIGATIONS. (a) The commission shall assess an unemployment

1 obligation assessment annually on each employer entitled to an
2 experience rating under Chapter 204 if any bonds issued under this
3 subchapter are outstanding.

4 (b) With regard to outstanding bonds issued by the authority
5 under this subchapter, the authority shall notify the commission of
6 the amount of the bond obligations and the estimated amount of bond
7 administrative expenses each year in sufficient time, as determined
8 by the commission, to permit the commission to assess the annual
9 rate of the unemployment obligation assessment, subject to
10 verification by a financial advisor of the commission or as
11 otherwise specified in the proceedings authorizing the bonds.

12 (c) The commission shall deposit all revenue collected from
13 the unemployment obligation assessment into the obligation trust
14 fund. Money deposited in the fund may be invested as permitted by
15 general law. Money in the obligation trust fund required to be used
16 to pay bond obligations and bond administrative expenses shall be
17 transferred to the authority or used by the commission in the manner
18 and at the time specified in the resolution adopted in connection
19 with the bond issue to ensure timely payment of obligations and
20 expenses, or as otherwise provided by the bond documents.

21 (d) For bonds issued by the authority for the commission,
22 the commission shall provide for the payment of the bond
23 obligations and the bond administrative expenses by irrevocably
24 pledging revenues received from the unemployment obligation
25 assessment and amounts on deposit in the obligation trust fund,
26 together with any bond reserve fund, as provided in the proceedings
27 authorizing the bonds and related credit agreements.

1 Sec. 203.257. BOND PAYMENTS. (a) Revenues received from
2 the unemployment obligation assessment may be applied only as
3 provided by this subchapter.

4 (b) The commission may pay bond obligations with other
5 legally available funds.

6 (c) Bond obligations are payable only from sources provided
7 for payment in this subchapter.

8 Sec. 203.258. EXCESS REVENUE COLLECTIONS AND INVESTMENT
9 EARNINGS. Revenue collected from the unemployment obligation
10 assessment in any year that exceeds the amount of the bond
11 obligations and bond administrative expenses payable in that year
12 and interest earned on the obligation trust fund may, in the
13 discretion of the commission, be:

14 (1) used to pay bond obligations payable in the
15 subsequent year, offsetting the amount of the assessment that would
16 otherwise have to be levied for the year under this subchapter;

17 (2) used to redeem or purchase outstanding bonds;

18 (3) deposited in the unemployment compensation fund;

19 or

20 (4) used to pay principal and interest on advances
21 from the federal trust fund.

22 Sec. 203.259. STATE DEBT NOT CREATED. (a) A bond issued
23 under this subchapter, and any related credit agreement, is not a
24 debt of the state or any state agency or political subdivision of
25 the state and is not a pledge of the faith and credit of any of them.
26 A bond or credit agreement is payable solely from revenue as
27 provided by this subchapter.

1 (b) A bond, and any related credit agreement, issued under
2 this chapter must contain on its face a statement to the effect
3 that:

4 (1) neither the state nor a state agency, political
5 corporation, or political subdivision of the state is obligated to
6 pay the principal of or interest on the bond except as provided by
7 this subchapter; and

8 (2) neither the faith and credit nor the taxing power
9 of the state or any state agency, political corporation, or
10 political subdivision of the state is pledged to the payment of the
11 principal of or interest on the bond.

12 Sec. 203.260. STATE NOT TO IMPAIR BOND OBLIGATIONS. IF
13 bonds under this subchapter are outstanding, the state may not:

14 (1) take action to limit or restrict the rights of the
15 commission to fulfill its responsibility to pay bond obligations;
16 or

17 (2) in any way impair the rights and remedies of the
18 bond owners until the bonds are fully discharged.

19 Sec. 203.261. EXEMPTION FROM TAXATION. A bond issued under
20 this subchapter, any transaction relating to the bond, and profits
21 made from the sale of the bond are exempt from taxation by this
22 state or by a municipality or other political subdivision of this
23 state.

24 Sec. 203.262. NO PERSONAL LIABILITY. The members of the
25 commission, commission employees, the board of directors of the
26 authority, and the employees of the authority are not personally
27 liable as a result of exercising the rights and responsibilities

1 granted under this subchapter.

2 SECTION 6. The heading to Section 204.063, Labor Code, is
3 amended to read as follows:

4 Sec. 204.063. DEFICIT ASSESSMENT [TAX].

5 SECTION 7. Section 204.064(b), Labor Code, is amended to
6 read as follows:

7 (b) The numerator is computed by subtracting the balance of
8 the compensation fund, considering any federal advance [~~or other~~
9 ~~liability of the fund~~], from the floor of the compensation fund.

10 SECTION 8. Section 203.103, Labor Code, is repealed.

11 SECTION 9. The advance interest trust fund established
12 under Section 203.102, Labor Code, as that section existed before
13 the effective date of this Act, is abolished on the effective date
14 of this Act. All money in that fund on that date is transferred to
15 the obligation trust fund established by Section 203.102, Labor
16 Code, as amended by this Act.

17 SECTION 10. This Act takes effect immediately if it
18 receives a vote of two-thirds of all the members elected to each
19 house, as provided by Section 39, Article III, Texas Constitution.
20 If this Act does not receive the vote necessary for immediate
21 effect, this Act takes effect September 1, 2003.

David Newkum

President of the Senate

Jim Cusick

Speaker of the House

I certify that H.B. No. 3324 was passed by the House on May 2, 2003, by the following vote: Yeas 126, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3324 on May 30, 2003, by the following vote: Yeas 143, Nays 0, 1 present, not voting.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 3324 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

Daisy Spaw
Secretary of the Senate

APPROVED: 18 June '03

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:30 pm O'CLOCK

JUN 18 2003
Ann Shea
Secretary of State