CHAPTER 818

H.B. No. 2090

AN ACT

relating to payment of unemployment compensation benefits and the management of certain unemployment compensation funds; authorizing the issuance of bonds and the increase of certain unemployment taxes.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3, Texas Unemployment Compensation Act (Article 5221b–1, Vernon's Texas Civil Statutes), is amended by adding Subsection (b–1) to read as follows:

(b–1) Notwithstanding Subsection (b)(2) of this section, after any increase effective on October 1, 1986, the Commission may not implement an increase in the maximum

weekly benefit amount until October 1, 1989. The Commission shall calculate the maximum weekly benefit amounts for claims filed on or after October 1, 1989, without consideration of any increase in the annual average weekly wage for manufacturing production workers in this state for the years 1986 and 1987.

SECTION 2. Section 9c(a), Texas Unemployment Compensation Act (Article 5221b–7c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Advance Interest Trust Fund is established. The fund is a trust fund in the custody of the State Treasurer and may be used without appropriation by the Governor for the purpose of paying interest incurred on advances from the federal Unemployment Trust Fund, *incurred on any bonds issued to reduce or avoid federal advances to the unemployment compensation fund,* and to repay temporary transfers of surplus cash which may be made between this fund and other funds. Income from investment of the fund shall be deposited to the credit of the fund. If the amount of the fund exceeds the amount required to pay interest incurred on advances *and on any bonds issued to reduce or avoid federal advances to the unemployment compensation fund,* the Governor shall transfer all or part of the surplus to the unemployment compensation fund for the payment of benefits. If the Governor, upon the advice of the Commission, determines that funds in the unemployment compensation fund will be depleted at the time payment on an advance from the federal Unemployment Trust Fund is due, and that depletion of the funds will cause the loss of some portion of the credit received by employers against their federal unemployment tax rate, or if the Governor determines that payment of interest on a federal loan can be avoided by keeping the balance of the unemployment compensation fund positive, the Governor may authorize the Commission to transfer money from the Advance Interest Trust Fund to the unemployment compensation fund.

SECTION 3. Section 9c(d), Texas Unemployment Compensation Act (Article 5221b–7c, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) If the Commission finds after January 1 of a year that an interest payment on a federal advance, *or on any bonds issued to reduce or avoid federal advances to the unemployment compensation fund,* will be due [~~on September 30 of that year~~] and that the estimated amount necessary to make that payment will not otherwise be available, a separate and additional tax is levied, in addition to other taxes, on each employer eligible for an experience tax rate. The *Commission shall set the rate of the additional tax in an amount sufficient to ensure timely payment of interest, but not to exceed two-tenths of one percent. This rate applies* [~~rate of the additional tax is one-tenth of one percent, applied~~] to the same wage base to which the employer's unemployment tax applies for [~~the first two calendar quarters of~~] that year. The tax is due on a date set by the Commission, and revenue from the tax shall be deposited to the credit of the Advance Interest Trust Fund. The tax is subject to the same penalty for late payment as the unemployment tax.

SECTION 4. The Texas Unemployment Compensation Act (Article 5221b–1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 9d to read as follows:

Sec. 9d. REPLENISHMENT OF FUND THROUGH BONDS. (a) The purpose of this section is to provide a method of financing the replenishment of the state's unemployment compensation fund as an alternative to borrowing or obtaining advances from the federal unemployment trust fund or refinancing those loans or advances, and to provide a method through which the state may continue its unemployment compensation program at the least possible cost to the state and its employers.

(b) For the purposes of this section, "bond" means any type of obligation issued under this section, including any bond, note, warrant, revenue, or bond anticipation note or other evidence of indebtedness.

(c) The Commission is authorized to issue, sell, and deliver bonds in the name of the Commission before January 1, 1990, in an amount determined by the Commission that results in reducing or avoiding the need to borrow or obtain an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), or any similar federal legislation, or in an amount necessary to refinance any borrowing or advance previously made by the Commission. The Commission shall authorize the issuance, sale, and delivery of bonds by resolution. In such a resolution, the Commission must

make an affirmative finding that the issuance of bonds for the purposes established in this section results in a savings to the state and its employers. Bonds issued under this section must mature not later than five years from the date of issuance.

(d) The Commission shall provide for the payment of the principal of the bonds, any redemption premiums, the interest on the bonds, and the costs attributable to the bonds being issued or outstanding. As revenue, the Commission may irrevocably pledge money received from the levy of special unemployment taxes, in addition to and separate from taxes levied or imposed elsewhere under this Act, on each employer required to pay contributions under Section 7 of this Act, or any other money lawfully available to the Commission for that purpose. The rate of that tax or contribution shall be fixed and levied by the Commission from time to time, in addition to and separate from all other amounts fixed and levied under this Act, shall be applied uniformly to the same wage base to which the employer's general tax rate applies for that year, and shall at least be equal to the amount necessary to pay the annual debt service on any outstanding bonds, plus the administration costs associated with outstanding bonds, including trustee's and paying agent's fees and expenses, and any amounts necessary in the judgment of the Commission to enhance investor acceptance of the bonds. The Commission shall levy the tax as long as any bond or the interest on the bond is outstanding. At any time that no bond or bond interest remains outstanding, the Commission may transfer any remaining proceeds from this tax to the Advance Interest Trust Fund. All provisions of this Act concerning the levy and collection of contributions under this Act, including all penalties, are applicable to the levy and collection of the taxes and contributions authorized under this section.

(e) The legislature finds that the money representing proceeds of the tax or contribution authorized under this section, and any income from the investment of those funds, does not constitute state property. That money shall be deposited into a fund to be held in trust out of the state treasury but under the control of the state treasurer, as trustee, for the benefit of the owners of the bonds issued under this section and a class of employees whose employers pay in by virtue of a tax levied, the tax being in the nature of an excise tax. Proceeds of the tax and other money on deposit in this fund may only be applied under this section and the resolutions authorizing the bonds, and neither the state, any political subdivision of the state, nor the United States Treasury may have any prior or future claim on those proceeds. Pending use, the state treasurer may invest and reinvest the money in the fund in obligations of municipalities, counties, or other political subdivisions of any state in the United States or in investments authorized by law for state funds that the state treasurer, consistent with the resolutions authorizing the bonds, considers appropriate. Income from investment of the fund shall be credited to the fund.

(f) Bonds issued under this section do not constitute debts of this state or of any agency, political corporation, or political subdivision of this state, and are not a pledge of the faith and credit of this state or of any of those governmental entities. The bonds are payable only from revenue provided for the payment under this section. The bonds must contain a statement to the effect that:

(1) neither the state nor any agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bonds except as provided by this section; and

(2) neither the faith and credit nor the taxing power of the state nor any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of, premium, if any, or interest on the bonds except as provided by this section.

(g) The state pledges and agrees with the owners of any bonds issued under this section that the state will not limit or alter the rights vested in the Commission 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 bonds are fully discharged.

(h) In the resolutions authorizing the issuance of bonds, including refunding bonds, the Commission may provide for the flow of funds and the establishment and

maintenance of separate accounts within the fund, including the interest and sinking account, the reserve account, and other necessary accounts, and may make additional covenants with respect to the bonds and the pledged revenues. The resolutions authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued, and may contain other provisions and covenants as determined by the Commission.

(i) Bonds issued under this section are subject to review and approval by the attorney general in the same manner and with the same effect as provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(j) Bonds may not be issued under this section unless the issuance has been reviewed and approved by the bond review board created under this subsection. The bond review board is composed of the governor, the lieutenant governor, the speaker of the house of representatives, the state treasurer, and the comptroller of public accounts. If the speaker of the house of representatives is not permitted by the constitution of this state to serve as a voting member of the board, the speaker serves as a nonvoting member of the board. The governor serves as chairman. The bond review board may adopt rules governing application for review, the review process, and reporting requirements. A member of the bond review board may not be held liable for damages resulting from the performance of the members' functions under this section. This subsection does not affect the right of the Commission to select its own bond counsel, underwriter, financial advisor, or other provider of service in connection with the issuance of bonds under this section.

(k) The Commission may issue bonds to refund all or any part of the outstanding bonds issued under this section, including matured but unpaid interest. The Commission may refund the bonds as provided by the general laws of the state for the refunding of revenue bonds.

(l) The bonds issued by the Commission, any transaction relating to the bonds, and profits made from the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

(m) As determined necessary by the Commission, the proceeds of the bonds, less the costs 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 fund created under Subsection (e) of this section until they are transferred to the unemployment compensation fund.

(n) This section is cumulative of all laws affecting the issuance of bonds by state agencies, including Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), and the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), but to the extent of any conflict between this section and other laws, the provisions of this section prevail. In connection with the issuance of the bonds, the Commission may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes), to the extent consistent with this section.

(o) Payment of the bonds and the performance of official duties prescribed by this section may be enforced in the state supreme court by mandamus or other appropriate proceeding.

SECTION 5. Section 19(n), Texas Unemployment Compensation Act (Article 5221b–17, Vernon's Texas Civil Statutes), is amended to read as follows:

(n) "Wages" means all remuneration paid for personal services, including the cash value of all remuneration paid in any medium other than cash and gratuities received by any employee in the course of employment to the extent that the gratuities are considered as wages in the computation of taxes under the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3301 et seq., except that such term shall not include:

(1) That part of the remuneration *paid to an individual by an employer with respect to employment during a calendar year* [~~which,~~] after remuneration (other than remuneration referred to in the succeeding *subdivisions* [~~paragraphs~~] of this subsection) [~~equal to Seven Thousand Dollars ($7,000)~~] with respect to employment has been paid to *the* [~~an~~] individual by *the* [~~an~~] employer during *that* [~~any~~] calendar year *in an amount equal to:*

(A) Seven Thousand Dollars ($7,000) for calendar years before calendar year 1988;

(B) Eight Thousand Dollars ($8,000) for calendar year 1988; and

(C) Nine Thousand Dollars ($9,000) for calendar year 1989 and each succeeding calendar year [~~, is paid to such individual by such employer during any such calendar year~~];

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents), or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six (6) calendar months following the last calendar month in which the employee worked for such employer;

(5) Any payment made to, or on behalf of, an employee or his beneficiary:

(A) From or to a trust described in Section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under Section 501(a) of said Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the Internal Revenue Code of 1954, or

(C) Under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in Section 405(a) of the Internal Revenue Code of 1954;

(6) The payment by an employer (without deduction from the remuneration of the employee):

(A) Of the tax imposed upon an employee under Section 3101 of the Internal Revenue Code of 1954 (or the corresponding section of prior law);

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of sixty-five (65), if he did not work for the employer in the period for which such payment is made;

(9) Within any calendar year that part of an individual's remuneration from a single employer which, after *the amount applicable to that calendar year under Subdivision (1) of this subsection* [~~Seven Thousand Dollars ($7,000)~~] has been paid him upon which

contributions have been paid under the unemployment law of any state, is paid with respect to employment.

SECTION 6. This Act takes effect September 1, 1987.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 28, 1987, by the following vote: Yeas 135, Nays 2, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2090 on May 29, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 27, 1987, by a viva-voce vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.