

CHAPTER.....

AN ACT relating to unemployment compensation; authorizing the issuance of revenue bonds and other securities to repay loans from the Federal Government to this State for the payment of unemployment compensation and to establish adequate balances in the Unemployment Trust Fund; providing for special bond contributions to pay such bonds and related costs; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the system of unemployment compensation is funded by employer contributions in the form of state and federal taxes. If the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation determines that the amount of such contributions will be inadequate to enable the Administrator to pay all compensation, existing law authorizes the Administrator to request that the United States Secretary of Labor advance the amount of money required to pay such compensation. The loan must be repaid out of future employer contributions. (NRS 612.290; 42 U.S.C. §§ 1321 et seq.) As of March 2012, the unemployment compensation system of this State was indebted to the Federal Government for over \$800 million due to such advances.

Section 12 of this bill authorizes the State Board of Finance, if requested by the Administrator, to issue bonds to: (1) raise money to repay such federal advances; (2) create adequate balances in this State’s account in the Unemployment Trust Fund of the United States Treasury for the payment of compensation in the future; and (3) to defray various expenses connected with the issuance and administration of the bonds. The bonds are special obligation bonds payable primarily out of the special bond contributions that employers are required to pay pursuant to **section 16** of this bill. The bonds do not pledge the full faith and credit of the State. **Section 13** of this bill establishes various provisions concerning the security that purchasers of bonds may rely on to ensure their repayment. **Section 14** of this bill establishes the procedures to govern the State Treasurer and the Administrator to meet the payment of bond-related obligations. **Section 15** of this bill requires the creation of a trust fund in the State Treasury under the control and direction of the State Treasurer to receive the money from the special bond contributions. **Section 15** also establishes the purposes for which money in the fund may be used. **Section 16** requires all employers who are required to make contributions under existing law to also pay the special bond contributions until all bonds that were issued to retire the State’s indebtedness to the Federal Government and to establish adequate balances in this State’s account in the Unemployment Trust Fund have been retired. **Section 17** of this bill pledges the faith of the State to maintain all laws in such a manner that will not impair the rights of holders of the bonds.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 612 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Benefits” has the meaning ascribed to it in NRS 612.035 and also includes the principal due on a bond which is attributable to the payment of benefits under Title XII of the Social Security Act, 42 U.S.C. §§ 1321 et seq., as amended, or which is attributable to the repayment of the principal of a federal advance, in each case, exclusive of interest on the bond or bond administrative expenses.*

Sec. 4. *“Bond” means any type of special revenue obligation, including, without limitation, a bond, note, interim obligation, certificate or other instrument issued by the State Board of Finance in accordance with sections 2 to 17, inclusive, of this act, including refunding bonds.*

Sec. 5. *“Bond administrative expense” means any expense incurred by the Division, the State Treasurer, the State Board of Finance, bond trustees, paying agents, arbitrage compliance agents or any other person or entity to administer bonds or as otherwise necessary to ensure compliance with federal or Nevada law.*

Sec. 6. *“Bond obligation” means the principal of a bond and any premium and interest payable on a bond, together with any amount owed under a related credit agreement or under any instrument or agreement related to the bond.*

Sec. 7. *“Credit agreement” means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, a standby bond purchase agreement, municipal bond insurance or any other agreement that enhances the marketability, security or creditworthiness of a bond.*

Sec. 8. *“Federal advance” means a loan by the Federal Government to this State for the payment of compensation under Title XII of the Social Security Act, 42 U.S.C. §§ 1321 et seq., as amended.*



Sec. 9. *“Special bond contributions” means the contributions required to be assessed, imposed and collected pursuant to section 16 of this act.*

Sec. 10. *“Unemployment Compensation Bond Fund” means the fund established pursuant to section 15 of this act.*

Sec. 11. *The Legislature hereby finds and declares that:*

1. It is an important public policy of this State to maintain funds in an amount sufficient to pay unemployment benefits when due;

2. Unemployment benefits payments are made from Nevada’s account in the Unemployment Trust Fund of the United States Treasury and are funded by employer contributions;

3. Borrowing from the Federal Government is the only option available to obtain sufficient funds to pay benefits when the balance in Nevada’s account in the Unemployment Trust Fund of the United States Treasury is insufficient to make necessary payments;

4. Alternative methods of replenishing Nevada’s account in the Unemployment Trust Fund of the United States Treasury and establishing adequate balances therein may reduce the costs of providing unemployment benefits and employers’ costs of doing business in this State; and

5. It is in the best interest of this State to authorize the issuance of bonds, when appropriate, for the purpose of continuing the unemployment insurance program at the lowest possible cost to this State and to employers in this State and to avoid reductions in the federal unemployment tax credit.

Sec. 12. *1. At the request of the Administrator, the State Board of Finance may issue bonds under the authority of this section and NRS 349.071, in the manner provided in the State Securities Law, to fund the repayment of federal advances and interest thereon, to make deposits to or to establish adequate balances in this State’s account in the Unemployment Trust Fund of the United States Treasury, to pay the costs of issuing bonds, to pay bond administrative expenses, to fund capitalized interest, to fund bond reserves, to refund or redeem prior bonds, or otherwise to further the purposes of sections 2 to 17, inclusive, of this act.*

2. Bonds issued pursuant to sections 2 to 17, inclusive, of this act are special obligations and are not a public debt of this State within the meaning of Section 3 of Article 9 of the Nevada Constitution and do not exhaust its debt-incurring power under any such debt limitation, and must not create or constitute any



indebtedness, liability or obligation of this State, except from the special funds pledged thereto.

3. Bond obligations and bond administrative expenses are payable solely from revenues or funds pledged or available for their repayment as authorized in sections 2 to 17, inclusive, of this act, including the proceeds of the issuance of bonds.

4. Each bond must contain on its face a statement that:

(a) The bond, and the interest and any premium on the bond, are payable solely from the money, funds and assets pledged to or available for the payment thereof under sections 2 to 17, inclusive, of this act;

(b) Neither this State nor any political subdivision thereof is obligated to pay the principal of the bond, and the interest and any premium on the bond, except from special funds made available under sections 2 to 17, inclusive, of this act; and

(c) The full faith and credit or moral obligation of this State is not pledged to the payment of the principal of the bond, or the interest and any premium on the bond.

5. The provisions of the State Securities Law, set forth in NRS 349.150 to 349.364, inclusive, apply to bonds issued pursuant to the provisions of this section.

6. Subject to the provisions of NRS 349.303, bonds are payable upon the terms and conditions specified by the State Board of Finance in the resolution under which the State Board of Finance issues the bonds or in a related trust indenture.

Sec. 13. 1. *The bond obligations and bond administrative expenses are secured, for the benefit of the owners of the bonds and the obligees under any agreement described in subsection 5, by pledge of, security interest in and first lien on all the following:*

(a) Special bond contributions;

(b) Money on deposit in the Unemployment Compensation Bond Fund, including all investment income thereon;

(c) Proceeds of the bonds and receipts from related credit agreements; and

(d) Money relating to the bonds held on deposit in any other fund or account under any instrument or agreement pertaining to the bonds, including, without limitation, bond reserves and income on such money.

2. To the extent legally available therefor under federal law, that part of the principal due on bonds which is attributable to payment of benefits or the repayment of the principal of federal advances under Title XII of the Social Security Act, 42 U.S.C. §§ 1321 et seq., as amended, exclusive of any interest or bond



administrative expenses associated with the bonds, is also payable from money in the Unemployment Compensation Fund, including the Benefit Account, and money credited to the account of this State in the Unemployment Trust Fund pursuant to section 903 of the Social Security Act, 42 U.S.C. § 1103, as amended.

3. The security provided in subsections 1 and 2 does not apply to money in any fund or account related to arbitrage rebate obligations.

4. The special bond contributions and other money, funds and assets pledged to the payment of bond obligations and bond administrative expenses by subsection 1 constitute pledged revenues, as defined in NRS 349.192, with respect to the bonds.

5. The Department of Employment, Training and Rehabilitation, the Division, the Administrator, the State Treasurer, the State Board of Finance and any other division or department of this State may enter into loan agreements, credit agreements, bond purchase agreements, trust indentures, trust agreements, financing agreements, intergovernmental agreements and other contracts, instruments and agreements in connection with the bonds in order to effectuate the purposes of sections 2 to 17, inclusive, of this act. Such documents may contain such covenants, representations, warranties, terms, conditions and other provisions as the officers entering into such documents deem appropriate, including provisions relating to the transfer to the bond trustee, or other depository agent, for the bonds of funds pledged or otherwise authorized to be used to pay the bonds, the security for and payment of the bonds and, if applicable, tax exemption of interest on the bonds.

6. Special bond contributions and other money, funds and assets pledged to the payment of bond obligations and bond administrative expenses by subsection 1, as received by or otherwise credited to this State, are immediately subject to the lien of such pledge without any physical delivery thereof, any filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made in the authorizing resolution or other instrument appertaining thereto has priority over any or all other obligations and liabilities of this State, except as may be otherwise provided in chapter 349 of NRS or in such resolution or other instrument, and subject to any prior pledges and liens theretofore created. The lien of such pledge is valid and binding as against all persons having claims of any kind in tort, contract or otherwise against this State, irrespective of whether such persons have notice thereof.



Sec. 14. 1. *For each calendar year in which bond obligations and bond administrative expenses will be due, the State Treasurer shall notify the Administrator of the amount of bond obligations, the estimated amount of bond administrative expenses and the other amounts described in subsection 3 of section 15 of this act in sufficient time, as determined by the Administrator, to permit the Administrator to determine the amount of special bond contributions required for that year, for deposit into the Unemployment Compensation Bond Fund. The State Treasurer's calculation of the amount of bond obligations and bond administrative expenses that will be due is subject to verification by the Administrator.*

2. Money in the Unemployment Compensation Bond Fund that is needed to pay bond obligations and bond administrative expenses or to replenish bond reserves must be transferred as directed by the Administrator to ensure the timely payment of bond obligations and bond administrative expenses and timely replenishment of bond reserves under any instrument or agreement related to the bonds.

3. If there is a deficiency in the Unemployment Compensation Bond Fund and to the extent permitted by law, that part of the principal due on bonds which is attributable to payment of benefits or the repayment of the principal of federal advances under Title XII of the Social Security Act, 42 U.S.C. §§ 1321 et seq., as amended, exclusive of any interest or bond administrative expenses associated with the bonds, may be paid from this State's account in the Unemployment Trust Fund of the United States Treasury.

Sec. 15. 1. *There is hereby established as a special dedicated trust fund, separate and apart from all other public money or funds of this State, a fund in the State Treasury to be known as the Unemployment Compensation Bond Fund. The State Treasurer shall be the treasurer and custodian of the Unemployment Compensation Bond Fund. All special bond contributions and any other amounts provided for in any contract, instrument or other agreement entered into pursuant to subsection 5 of section 13 of this act must be paid into the Unemployment Compensation Bond Fund, provided that all or a portion of the special bond contributions may be paid into this State's account in the Unemployment Trust Fund of the United States Treasury as may be provided in any contract, instrument or other agreement entered into pursuant to subsection 5 of section 13 of this act. Expenditures of money in the Unemployment Compensation Bond*



Fund are not subject to any provision of law requiring specific appropriations or other formal release by state officers of money in their custody.

2. The money in the Unemployment Compensation Bond Fund must be used for any or all of the following purposes:

(a) Payment of bond obligations and bond administrative expenses;

(b) Replenishment of bond reserves;

(c) Funding or replenishment of additional reserves in an amount required under any instrument or agreement related to the bonds to maintain a debt service coverage ratio at least at the level required by the trust indenture and instruments in connection with the bonds or in an amount that may be necessary to maintain any ratings on the bonds at a level determined by the State Treasurer, in his or her sole discretion; and

(d) Optional redemption, mandatory redemption, purchase, refunding or defeasance of outstanding bonds.

↳ Subject to the provisions of the trust indenture and instruments in connection with the bonds, money in the Unemployment Compensation Bond Fund may also be used for transfer to the Benefit Account for payment of benefits under this chapter.

3. Pending application for the purposes authorized, money held or deposited by the State Treasurer in the Unemployment Compensation Bond Fund may be invested or reinvested as are other funds in the custody of the State Treasurer in the manner provided by law. All earnings received from the investment or deposit of money in the Unemployment Compensation Bond Fund must be retained therein.

Sec. 16. *1. Notwithstanding any other provision of this chapter, all employers required to pay contributions under NRS 612.535 are required to pay the special bond contributions provided in this section. The provisions of this section do not apply to any nonprofit organization, political subdivision or Indian tribe which makes reimbursements in lieu of contributions pursuant to NRS 612.553. The Administrator shall establish an assessment payable by each employer to the Administrator for the special bond contributions at such rate or rates as the Administrator may prescribe.*

2. All special bond contributions collected under this section must remain separate from any other contributions paid pursuant to this chapter.

3. The amount of the special bond contributions must be calculated and assessed annually, or more frequently as provided



in subsection 4, by the Administrator as the amount necessary for the following purposes:

(a) To pay the bond obligations and bond administrative expenses that are due in that year or any other year;

(b) To replenish amounts that have been drawn from bond reserves under any instrument or agreement related to the bonds;

(c) To fund or replenish additional reserves in an amount required under any instrument or agreement related to the bonds to maintain a debt service coverage ratio at least at the level required by the trust indenture and instruments in connection with the bonds, or in an amount that may be necessary to maintain any ratings on the bonds at a level determined by the State Treasurer, in his or her sole discretion; and

(d) To fund optional redemption, mandatory redemption, purchase, refunding or defeasance of outstanding bonds that will occur in that year.

4. Whenever the Administrator determines that the cash balance and current estimated receipts of the Unemployment Compensation Bond Fund will be insufficient at any time to meet the covenants and conditions of the trust indenture and other instruments in connection with the bonds, the Administrator shall assess supplemental special bond contributions in an amount sufficient to increase the balance of the Unemployment Compensation Bond Fund to the amount required to meet such covenants and conditions.

5. Special bond contributions are due and payable by each employer in accordance with such regulations as the Administrator may prescribe.

6. Except as otherwise provided in sections 2 to 17, inclusive, of this act, all provisions of this chapter applicable to the collection or refund of any contributions due under this chapter, including, without limitation, the enforcement and remedial provisions of NRS 612.625, 612.630, 612.635 and 612.660 to 612.695, inclusive, are applicable to the collection or refund of amounts due pursuant to this section and amounts directed pursuant to this section for deposit into the Unemployment Compensation Bond Fund. In accordance with NRS 612.680, special bond contributions, including penalties and interest thereon, due and unpaid from any employer constitute a lien upon all of the assets of the employer. The lien is to be prior to and paid in preference to all other liens or claims except prior recorded liens and prior taxes.



7. The provisions of this section are operative only when any bonds remain outstanding. During any period that no bonds are outstanding, the Administrator shall cease charging additional special bond contributions and shall notify all employers paying special bond contributions that contributions are no longer being assessed. The Administrator may continue to collect any special bond contributions previously assessed and not paid. Any money remaining in the Unemployment Compensation Bond Fund when no bonds remain outstanding must be deposited into this State's account in the Unemployment Trust Fund of the United States Treasury.

Sec. 17. Notwithstanding the provisions of NRS 612.755, the faith of the State is hereby pledged that NRS 612.595, 612.600 and 612.617 and sections 2 to 17, inclusive, of this act, any law supplemental or otherwise appertaining thereto, and any other act concerning the bonds, the Unemployment Compensation Bond Fund, the special bond contributions or other pledged money, funds or assets, must not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding bonds until all such bonds have been discharged in full or provision for their payment and redemption has been fully made.

Sec. 18. As used in this section and NRS 612.585 to 612.600, inclusive, "benefits" has the meaning ascribed to it in section 3 of this act.

Sec. 19. NRS 612.165 is hereby amended to read as follows:

612.165 "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions, *other than special bond contributions, as defined in section 9 of this act*, or payments in lieu of contributions, are required to be deposited and from which all benefits provided under this chapter shall be paid **†** *and from which the principal due on a bond which is attributable to the payment of benefits under Title XII of the Social Security Act, 42 U.S.C. §§ 1321 et seq., as amended, or which is attributable to the repayment of the principal of a federal advance, in each case, exclusive of interest on the bond or bond administrative expenses, as defined in section 5 of this act, may be paid.*

Sec. 20. NRS 612.585 is hereby amended to read as follows:

612.585 1. There is hereby established as a special fund, separate and apart from all public money or funds of this State, an Unemployment Compensation Fund, which must be administered by the Administrator exclusively for the purposes of this chapter.



2. The Fund consists of:
 - (a) All contributions, *other than special bond contributions as defined in section 9 of this act*, or reimbursements in lieu of contributions collected under this chapter.
 - (b) Interest earned upon the money in the Fund.
 - (c) Any property or securities acquired through the use of money belonging to the Fund.
 - (d) All earnings of such property or securities.
 - (e) All money credited to the account of the State of Nevada in the Unemployment Trust Fund pursuant to section 903 of the Social Security Act, as amended (42 U.S.C. § 1103).
 - (f) All other money received for the Fund from any other source.
3. All money in the Fund must be mingled and undivided.
4. All fines and penalties collected pursuant to the criminal provisions of this chapter must be paid to the State Permanent School Fund.

Sec. 21. NRS 612.590 is hereby amended to read as follows:

612.590 1. The State Treasurer shall:

- (a) Be the treasurer and custodian of the Fund.
- (b) Administer the Fund in accordance with the directions of the Administrator.
- (c) Issue warrants upon it in accordance with such regulations as the Administrator prescribes.

2. The State Treasurer shall maintain within the Fund three separate accounts:

- (a) A Clearing Account.
- (b) An Unemployment Trust Fund Account.
- (c) A Benefit Account.

3. All money payable to the Fund, upon receipt thereof by the Administrator, must be forwarded to the State Treasurer, who shall immediately deposit it in the Clearing Account.

4. Refunds payable pursuant to NRS 612.655 may be paid from the Clearing Account or from the Benefit Account upon warrants issued by the State Treasurer under the direction of the Administrator.

5. After clearance thereof, all other money in the Clearing Account must be immediately deposited with the Secretary of the Treasury to the credit of the account of this State in the Unemployment Trust Fund established and maintained pursuant to Section 904 of the Social Security Act, as amended, 42 U.S.C. § 1104, any provisions of law in this State relating to the deposit, administration, release or disbursement of money in the possession or custody of this State to the contrary notwithstanding.



6. The Benefit Account consists of all money requisitioned from this State's account in the Unemployment Trust Fund **H** *and any money transferred to the Benefit Account pursuant to section 14 of this act.*

7. Except as herein otherwise provided, money in the Clearing and Benefit Accounts may be deposited by the State Treasurer, under the direction of the Administrator, in any bank, credit union or public depository in which general money of the State may be deposited, but no public deposit insurance charge or premium may be paid out of the Fund.

8. Money in the Clearing and Benefit Accounts must not be commingled with other state money, but must be maintained in a separate account on the books of the depository. Money in the Clearing and Benefit Accounts must be secured by the bank, credit union or public depository to the same extent and in the same manner as required by the general depository laws of the State of Nevada, and collateral pledged must be maintained in a separate custody account.

Sec. 22. NRS 612.617 is hereby amended to read as follows:

612.617 1. Money credited to the account of this State in the Unemployment Trust Fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended (42 U.S.C. § 1103), may be requisitioned and used for the payment of expenses incurred for the administration of this chapter, pursuant to a specific appropriation by the Legislature, if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which the money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be used during a 12-month period beginning on July 1 and ending on June 30 of the following year to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended (42 U.S.C. § 1103), during the same 12-month period and the 24 preceding 12-month periods, exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this State during any of such 25 12-month periods.



2. For the purposes of subsection 1, amounts used during any such 12-month period must be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used during any such 12-month period for the administration of this chapter may be charged against any amount credited during such a 12-month period earlier than the 24th preceding period.

3. Money credited to the account of this State pursuant to section 903 of the Social Security Act, as amended (42 U.S.C. § 1103), may not be withdrawn or used except for:

(a) The payment of benefits ~~††~~, *as defined in section 3 of this act*; and

(b) The payment of expenses for the administration of this chapter pursuant to this section.

4. Money appropriated for the payment of expenses of administration pursuant to this section may be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, must be deposited in the Unemployment Compensation Administration Fund from which such payments must be made. The Administrator shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Money so deposited must, until expended, remain a part of the Unemployment Compensation Fund and, if it will not be expended, must be returned promptly to the account of this State in the Unemployment Trust Fund.

Sec. 23. This act becomes effective upon passage and approval.

