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## CHAPTER 203. FINANCING AND FUNDS

### Subchapter A. General Provisions

#### Sec. 203.001. Definitions

In this chapter:

- (1) **"Administration fund"** means the unemployment compensation administration fund created under Section 203.151.
- (2) **"Federal trust fund"** means the unemployment trust fund created under Section 904, Social Security Act (42 U.S.C. Section 1104).
- (3) **"Special administration fund"** means the unemployment compensation special administration fund created under Section 203.201.

#### Sec. 203.002. Duties of Comptroller

- (a) The comptroller is treasurer and custodian of the compensation fund and the special administration fund and shall administer the funds in accordance with the directions of the commission.
- (b) The comptroller shall issue warrants on the compensation fund in accordance with rules adopted by the commission.
- (c) The comptroller shall issue warrants on the special administration fund in accordance with the directions of the commission.

#### Sec. 203.003. Comptroller's Bond Liability

The comptroller is liable on the comptroller's official bond for the faithful performance of the comptroller's duties under this subtitle in connection with the compensation fund, the administration fund, and the special administration fund. This liability is in addition to liability on any separate bond that the comptroller may give.

#### Sec. 203.004. Deposit of Funds; Exception

All money paid to the commission under this subtitle:

- (1) shall be deposited in the treasury unless:
  - (A) a state or federal law prohibits deposit in the treasury; or
  - (B) the deposit would result in the loss of any federal funds; and

- (2) may be used only for the administration of this subtitle.

**Sec. 203.005. Application of Other Law**

Money in the compensation fund, the administration fund, and the special administration fund shall be deposited, administered, and disbursed in the same manner and under the same requirements as provided by law for other special funds in the state treasury.

**Subchapter B. Unemployment Compensation Fund**

**Sec. 203.021. Unemployment Compensation Fund; Separate Accounts**

- (a) The unemployment compensation fund is a special fund.
- (b) The compensation fund consists of:
  - (1) contributions collected under this subtitle;
  - (2) interest earned on money in the compensation fund;
  - (3) property or securities acquired through the use of money in the compensation fund;
  - (4) earnings of property or securities described by Subdivision (3);
  - (5) amounts recovered for losses sustained by the compensation fund; and
  - (6) other money received for the compensation fund from any other source.
- (c) Money in the compensation fund shall be mingled and undivided.
- (d) The comptroller shall maintain in the compensation fund:
  - (1) a clearing account;
  - (2) a federal trust fund account; and
  - (3) a benefit account.
- (e) Money in the compensation fund may not be transferred to the:
  - (1) Texas Enterprise Fund created under Section 481.078, Government Code; or
  - (2) Texas emerging technology fund established under Section 490.101, Government Code.

**Sec. 203.022. Composition and Use of Clearing Account**

- (a) On receipt of any money payable to the compensation fund, the commission shall forward the money to the comptroller, who shall immediately deposit it in the clearing account.
- (b) Except as provided by Section 203.026, money in the clearing account, after it has cleared, shall be immediately deposited with the United States secretary of the treasury to the credit of this state's account in the federal trust fund. This section prevails over any conflicting state statute relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state.

**Sec. 203.023. Requisitions from Federal Trust Fund; Benefit Account**

- (a) The commission periodically shall requisition from the federal trust fund amounts the commission considers necessary for the payment of benefits and refunds for a reasonable period. The commission may not requisition an amount exceeding the balance of this state's account in the federal trust fund.
- (b) The benefit account is composed of money requisitioned from this state's account in the federal trust fund.
- (c) On receipt of money requisitioned from the federal trust fund, the comptroller shall deposit it in the benefit account.

**Sec. 203.024. Deposits**

- (a) Except as otherwise provided by this subchapter, the comptroller, under the direction of the commission, may deposit money credited to the clearing and benefit accounts in a bank or public depository in which general funds of this state may be deposited.
- (b) A public deposit insurance charge or premium may not be paid out of the compensation fund.

**Sec. 203.025. Use of Requisitioned Money**

- (a) The commission shall direct the administration of the compensation fund exclusively for the purposes of this subtitle.
- (b) Money requisitioned from this state's account in the federal trust fund may be used only for the payment of benefits or for refunds as provided by Sections 203.023, 203.026, 203.027, and 203.203 and by Subchapter B, Chapter 210, and Subchapter E, Chapter 213, except that money credited to this state's account as provided by Section 903, Social Security Act (42 U.S.C. Section 1103), may be requisitioned and used by the commission only to the extent and under the conditions prescribed by that section.

- (c) Notwithstanding Subsections (a) and (b) or any other provision of this subtitle or other law, the commission, under an agreement with or waiver by the United States secretary of labor, may use money requisitioned from this state's account in the federal trust fund to conduct demonstration projects for the reemployment of unemployed individuals in the manner prescribed by that agreement or waiver and consistent with any applicable requirements under federal law. The commission shall provide to the legislative standing committees with primary jurisdiction over the commission any evaluation reports required by the United States Department of Labor for a reemployment demonstration project.

**Sec. 203.026. Accounts from which Benefits and Refunds Are Paid**

- (a) The comptroller may issue a warrant for a benefit only from the benefit account.
- (b) As directed by the commission, the comptroller may issue a warrant for a refund as provided by Subchapter E, Chapter 213, from the benefit account or the clearing account.
- (c) An expenditure from the benefit account or a refund from the clearing account is not subject to a law that requires itemization or other formal release by a state officer of money in the officer's custody.

**Sec. 203.027. Unexpended Balance of Benefit Account**

Money requisitioned from the federal trust fund that remains unclaimed or unpaid in the benefit account after the end of the period for which the money was requisitioned shall be, in the commission's discretion:

- (1) deducted from an estimate for the succeeding periods and used to pay benefits and refunds in those periods; or
- (2) redeposited in the federal trust fund as provided by Section 203.022.

**Sec. 203.028. Solvency of Compensation Fund; Reserve**

- (a) If the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the compensation fund, it shall inform the governor and legislature of its belief and when the change will become necessary and shall make recommendations for the necessary change.
- (b) The commission, if possible, shall maintain in the compensation fund a reserve against the liability to pay benefits in future years in excess of current contributions. The commission shall create the reserve according to accepted actuarial principles using statistics of employment, business activity, and other relevant factors for the longest possible period.

**Sec. 203.029. Refund of Contributions to Federal Instrumentality**

If this state is not certified for any year by the United States secretary of labor as required under Section 3304(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3304(c)), the commission shall refund from the compensation fund a payment required of an instrumentality of the federal government for that year in the same manner and within the same period as provided by Subchapter E, Chapter 213, for contributions erroneously collected.

**Sec. 203.030. Reimbursement from or to Compensation Fund under Reciprocal Arrangement**

- (a) The commission may reimburse a state or federal agency from the compensation fund or receive a reimbursement from a state or federal agency for the compensation fund under an arrangement under Section 211.003.
- (b) A reimbursement paid from the compensation fund under this section is a benefit for the purposes of this subtitle.

**Sec. 203.031. Nonliability of State**

Benefits are due and payable only to the extent money is available for that purpose in the compensation fund. Neither this state nor the commission is liable for any amount in excess of the amount in that fund.

**Sec. 203.032. Management of Compensation Fund on Discontinuance of Federal Trust Fund**

- (a) To the extent that a provision of this subchapter relates to the federal trust fund, the provision is operative only as long as:
  - (1) the federal trust fund exists; and
  - (2) the United States secretary of the treasury maintains for this state a separate book account of all funds deposited in the federal trust fund by this state for benefit purposes, with this state's proportionate share of the earnings of the federal trust fund, from which no other state is permitted to make withdrawals.
- (b) If the federal trust fund ceases to exist or the secretary of the treasury ceases to maintain a separate book account for this state in the federal trust fund, all money, property, or securities in the federal trust fund that belong to the compensation fund shall be transferred to the comptroller. The comptroller shall hold, invest, transfer, deposit, and release the money, property, or securities in a manner approved by the commission in accordance with this subtitle.
- (c) Money held by the comptroller under Subsection (b) shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America. The money shall

be invested in such a manner that the assets of the compensation fund are readily convertible at all times into cash as needed for the payment of benefits.

- (d) The comptroller may dispose of securities or other property belonging to the compensation fund only under the direction of the commission.

## **Subchapter C. Advances from Federal Trust Fund and Obligation Assessment**

### **Sec. 203.101. Limit on Application for Advance**

In any application for an advance from the federal trust fund (Section 1201, Social Security Act (42 U.S.C. Section 1321)), the governor shall limit the amount of the application to an amount that, when added to previous advances, does not exceed the amount for which principal and interest may be paid from taxes on employers.

### **Sec. 203.102. Obligation Trust Fund**

- (a) The obligation trust fund is a dedicated trust fund outside of the state treasury in the custody of the comptroller. The obligation trust fund is composed of:
  - (1) revenue received under Section 203.105; and
  - (2) any surplus revenue transferred from the compensation fund under Section 204.065.
- (b) The commission and governor may use money in the obligation trust fund without legislative appropriation to pay:
  - (1) bond obligations and bond administrative expenses; and
  - (2) principal and interest incurred on advances from the federal trust fund.

### **Sec. 203.104. Limitation on Transfer from Obligation Trust Fund to Compensation Fund**

An amount that is attributable to the portion of the unemployment obligation assessment authorized by Section 203.105(a)(2) may not be transferred to the compensation fund unless all bond obligations, including bond administrative expenses, have been fully paid and satisfied. After the obligations have been fully satisfied, the commission shall transfer the balance of the obligation trust fund to the compensation fund.

### **Sec. 203.105. Unemployment Obligation Assessment**

- (a) An unemployment obligation assessment shall be imposed as provided by this section if after January 1 of a year:

- (1) an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or
  - (2) bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.
- (b) The unemployment obligation assessment rate is the total of the amounts required to make the payments necessary under Subsections (a)(1) and (2). The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of interest under Subsection (a)(1), but not exceeding two-tenths of one percent. The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of the bond obligations, including administrative expenses, and to provide an amount necessary in the commission's judgment to enhance investor acceptance of the bonds. The rate shall be based on a formula prescribed by commission rule, using the employer's experience rating from the previous year. The unemployment obligation assessment rate applies to the same wage base to which the employer's unemployment tax applies for the year.
- (c) The unemployment obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.
- (d) Revenue from the unemployment obligation assessment under this section shall be deposited to the credit of the obligation trust fund under Section 203.102.

## **Subchapter D. Administration Fund**

### **Sec. 203.151. Administration Fund**

- (a) The unemployment compensation administration fund is a special fund in the state treasury.
- (b) The administration fund consists of money:
- (1) appropriated to the administration fund by this state;
  - (2) received from the United States or any federal agency for the administration of this subtitle;
  - (3) collected by the commission as fees for furnishing photostatic or certified copies of commission records;
  - (4) collected by the commission as fees for conducting audits under the authority granted by this subtitle;

- (5) received from any federal agency or any agency of another state as compensation for services or facilities supplied to the agency;
- (6) received under any surety bond or insurance policy or from other sources:
  - (A) for losses sustained by the administration fund; or
  - (B) by reason of damage to equipment or supplies purchased with money in the administration fund;
- (7) received as proceeds from the sale or disposition of equipment or supplies that are no longer necessary for the proper administration of this subtitle, if the equipment or supplies were purchased with money in the administration fund; and
- (8) received from any other source for the administration of this subtitle.

**Sec. 203.152. Use of Administration Fund**

- (a) Money credited to the administration fund may be used by the commission as provided by this subtitle and may not be transferred to any other fund.
- (b) Money in the administration fund received from the federal government or a federal agency may be spent only for the purposes and in the amounts found necessary by the United States secretary of labor or that secretary's successor for the proper and efficient administration of this subtitle.

**Sec. 203.154. Reimbursement of Administration Fund**

- (a) If the United States secretary of labor or that secretary's successor finds that money received from the secretary or the secretary's successor under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) or any other federal money granted to the commission for the administration of this subtitle has been lost or spent for a purpose other than, or in an amount in excess of, that found necessary for the proper administration of this subtitle by the secretary or the secretary's successor, the money shall be replaced by money appropriated for that purpose from the general funds of this state to the administration fund for expenditure as provided by Section 203.152.
- (b) On receipt of notice that the secretary or the secretary's successor has made a determination described in Subsection (a), the commission shall promptly report the amount needed for reimbursement to the governor. The governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of that amount.

## **Subchapter E. Special Administration Fund**

### **Sec. 203.201. Special Administration Fund**

- (a) The unemployment compensation special administration fund is a special fund.
- (b) The special administration fund consists of:
  - (1) all interest and penalties collected under this subtitle, other than a penalty assessed under Section 214.003(a)(2); and
  - (2) any amounts received under any surety bond for losses sustained by the special administration fund.

### **Sec. 203.202. Use of Special Administration Fund**

- (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:
  - (1) to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;
  - (2) in the administration of Chapters 51, 61, and 62;
  - (3) for payment of interest on advances from the federal trust fund;
  - (4) as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received;
  - (5) to refund a penalty as provided by Section 203.203; and
  - (6) subject to the provisions of Chapter 2107, Government Code, to pay persons who contract with the commission to collect delinquent unemployment taxes, penalties, and interest owed under this subtitle.
- (b) Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the absence of that money, be available to finance expenditures for the administration of this subtitle.
- (c) The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure.

### **Sec. 203.203. Refund of Penalties**

A refund under Subchapter E, Chapter 213, of a penalty that has been erroneously collected and deposited to the credit of the special administration fund shall be made, without interest, from the special administration fund.

## **Subchapter F. Issuance of Financial Obligations for Unemployment Compensation Fund**

### **Sec. 203.251. Findings and Purpose**

- (a) The legislature finds that:
- (1) it is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due;
  - (2) at the time of the enactment of this subchapter, borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the balance in the compensation fund is depleted;
  - (3) alternative methods of replenishing the unemployment compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and
  - (4) funds representing revenues received from the unemployment obligation assessment authorized under this subchapter and any income from the investment of those funds are not state property.
- (b) The purpose of this subchapter is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

### **Sec. 203.252. Definitions; General Provision**

- (a) In this subchapter:
- (1) **"Authority"** means the Texas Public Finance Authority.
  - (2) **"Bond"** means any type of revenue obligation, including a bond, note, certificate, or other instrument, payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the obligation.
  - (3) **"Bond administrative expenses"** means expenses incurred to administer bonds issued under this subchapter, including fees for paying agents, trustees, and

attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

- (4) **"Bond obligations"** means the principal of a bond and any premium and interest on a bond issued under this subchapter, together with any amount owed under a related credit agreement.
  - (5) **"Credit agreement"** means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, a forward payment conversion agreement, an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates, an agreement to exchange cash flows or a series of payments, an option, put, or call to hedge payment, currency, interest rate, or other exposure, or another agreement that enhances the marketability, security, or creditworthiness of a bond issued under this subchapter.
- (b) An amount owed by the authority under a credit agreement shall be payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the credit agreement.

#### **Sec. 203.253. Request for Bond Issuance**

- (a) If the commission determines that the issuance of bonds is necessary to reduce or avoid the need to borrow or obtain a federal advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law, or to refinance a previous loan or advance received by the commission and that bond financing is the most cost-effective method of funding the payment of benefits, the commission may request the authority to issue bonds on its behalf. Before making a request of the authority under this subsection, the commission must by resolution determine that the issuance of bonds for the purposes established by this section will result in a savings to the state and to employers in this state as compared to the cost of borrowing or obtaining an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law.
- (b) The commission shall specify in the commission's request to the authority the maximum principal amount of the bonds, not to exceed \$2 billion for any separate bond issue, and the maximum term of the bonds, not to exceed 10 years.
- (c) The principal amount determined by the commission under Subsection (b) may be increased to include an amount sufficient to:
  - (1) pay the costs of issuance of the authority;
  - (2) provide a bond reserve fund; and

- (3) capitalize interest for the period determined necessary by the commission, not to exceed two years.

**Sec. 203.254. Issuance of Bonds by Authority**

- (a) The authority shall issue bonds on request by the commission, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond issuance by a state agency.
- (b) The authority shall determine the method of sale, type of bond, bond form, maximum interest rates, and other terms of the bonds that, in the authority's judgment, best achieve the economic goals of the commission and effect the borrowing at the lowest practicable cost.
- (c) The authority may enter into a credit agreement in connection with the bonds.

**Sec. 203.255. Bond Proceeds**

- (a) The proceeds of bonds issued by the authority under this subchapter may be deposited with a trustee selected by the authority and the commission or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.
- (b) Bond proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the commission. The commission may use the proceeds to:
  - (1) repay the principal and interest of previous advances from the federal trust fund;
  - (2) pay unemployment benefits by depositing the proceeds in the unemployment compensation fund, as defined in Subchapter B;
  - (3) pay the costs of issuing the bonds;
  - (4) provide a bond reserve; and
  - (5) pay capitalized interest on the bonds for the period determined necessary by the commission, not to exceed two years.
- (c) Any excess money remaining after the purposes for which the bonds were issued is satisfied may be used to purchase or redeem outstanding bonds.
- (d) If there are no outstanding bonds or bond interest to be paid, the remaining proceeds shall be transferred to the unemployment compensation fund.

**Sec. 203.256. Repayment of Commission's Financial Obligations**

- (a) The commission shall assess an unemployment obligation assessment annually on each employer entitled to an experience rating under Chapter 204 if any bonds issued under this subchapter are outstanding.
- (b) With regard to outstanding bonds issued by the authority under this subchapter, the authority shall notify the commission of the amount of the bond obligations and the estimated amount of bond administrative expenses each year in sufficient time, as determined by the commission, to permit the commission to assess the annual rate of the unemployment obligation assessment, subject to verification by a financial advisor of the commission or as otherwise specified in the proceedings authorizing the bonds.
- (c) The commission shall deposit all revenue collected from the unemployment obligation assessment into the obligation trust fund. Money deposited in the fund may be invested as permitted by general law. Money in the obligation trust fund required to be used to pay bond obligations and bond administrative expenses shall be transferred to the authority or used by the commission in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents.
- (d) For bonds issued by the authority for the commission, the commission shall provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

**Sec. 203.257. Bond Payments**

- (a) Revenues received from the unemployment obligation assessment may be applied only as provided by this subchapter.
- (b) The commission may pay bond obligations with other legally available funds.
- (c) Bond obligations are payable only from sources provided for payment in this subchapter.

**Sec. 203.258. Excess Revenue Collections and Investment Earnings**

Revenue collected from the unemployment obligation assessment in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the obligation trust fund may, in the discretion of the commission, be:

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

- (2) used to redeem or purchase outstanding bonds;
- (3) deposited in the unemployment compensation fund; or
- (4) used to pay principal and interest on advances from the federal trust fund.

**Sec. 203.259. State Debt Not Created**

- (a) A bond issued under this subchapter, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and is not a pledge of the faith and credit of any of them. A bond or credit agreement is payable solely from revenue as provided by this subchapter.
- (b) A bond, and any related credit agreement, issued under this chapter must contain on its face a statement to the effect that:
  - (1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond except as provided by this subchapter; and
  - (2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

**Sec. 203.260. State Not to Impair Bond Obligations**

If bonds under this subchapter are outstanding, the state may not:

- (1) take action to limit or restrict the rights of the commission to fulfill its responsibility to pay bond obligations; or
- (2) in any way impair the rights and remedies of the bond owners until the bonds are fully discharged.

**Sec. 203.261. Exemption from Taxation**

A bond issued under this subchapter, any transaction relating to the bond, and profits made from the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of this state.

**Sec. 203.262. No Personal Liability**

The members of the commission, commission employees, the board of directors of the authority, and the employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.