

ATTACHMENT I

Statutory Citations Relating to Proposed New 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, §33.67, Bond Guarantee Program for Charter Schools

Texas Education Code, Chapter 7, State Organization, Subchapter D, State Board of Education, §7.102, State Board of Education Powers and Duties (excerpt):

- (c)(33) The board shall adopt an annual report on the status of the guaranteed bond program and may adopt rules as necessary for the administration of the program as provided under Subchapter C, Chapter 45.

Texas Education Code, Chapter 12, Charters, Subchapter D, Open-Enrollment Charter School, §12.135, Designation as Charter District for Purposes of Bond Guarantee, as amended by House Bill 885, 83rd Texas Legislature, Regular Session, 2013:

- (a) On the application of the charter holder, the commissioner may grant designation as a charter district to an open-enrollment charter school that meets financial standards adopted by the commissioner. The financial standards must require an open-enrollment charter school to have an investment grade credit rating as specified by Section 45.0541.
- (b) A charter district may apply for bonds issued under Chapter 53 for the open-enrollment charter school, including refunding and refinanced bonds, to be guaranteed by the permanent school fund as provided by Chapter 45.

Texas Education Code, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds:

§45.051, Definitions.

In this subchapter:

- (1) "Board" means the State Board of Education.
- (1-a) "Charter district" means an open-enrollment charter school designated as a charter district under Section 12.135.
- (2) "Paying agent" means the financial institution that is designated by a school district or charter district as its agent for the payment of the principal of and interest on guaranteed bonds.

§45.052, Guarantee, as amended by House Bill 885, 83rd Texas Legislature, Regular Session, 2013.

- (a) On approval by the commissioner, bonds issued under Subchapter A by a school district or Chapter 53 for a charter district, including refunding and refinanced bonds, are guaranteed by the corpus and income of the permanent school fund.
- (b) Notwithstanding any amendment of this subchapter or other law, the guarantee under this subchapter of school district or charter district bonds remains in effect until the date those bonds mature or are defeased in accordance with state law.

§45.053, Limitation; Value Estimates.

- (a) Except as provided by Subsection (d), the commissioner may not approve bonds for guarantee under this subchapter if the approval would result in the total amount of outstanding guaranteed bonds under this subchapter exceeding an amount equal to 2-1/2 times the cost value of the permanent school fund, as estimated by the board and certified by the state auditor.
- (b) Each year, the state auditor shall analyze the status of guaranteed bonds under this subchapter as compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the amount of bonds guaranteed under this subchapter is within the limit prescribed by this section.
- (c) The commissioner shall prepare and the board shall adopt an annual report on the status of the guaranteed bond program under this subchapter.
- (d) The board by rule may increase the limit prescribed by Subsection (a) to an amount not to exceed five times the cost value of the permanent school fund, provided that the increased limit is consistent with federal law and regulations and does not prevent the bonds to be guaranteed from receiving the highest available credit rating, as determined by the board. The board shall at least annually consider whether to change any limit in accordance with this subsection. This subsection may not be construed in a manner that impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

§45.0531, Additional Limitation: Reservation of Percentage of Permanent School Fund Value.

- (a) In addition to the limitation on the approval of bonds for guarantee under Section 45.053, the board by rule may establish a percentage of the cost value of the permanent school fund to be reserved from use in guaranteeing bonds under this subchapter.
- (b) If the board has reserved a portion of the permanent school fund under Subsection (a), each year, the state auditor shall analyze the status of the reserved portion compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the portion of the permanent school fund reserved from use in guaranteeing bonds under this subchapter satisfies the reserve percentage established.
- (c) If the board has reserved a portion of the permanent school fund under Subsection (a), the board shall at least annually consider whether to change the reserve percentage established to ensure that the reserve percentage allows compliance with federal law and regulations and serves to enable bonds guaranteed under this subchapter to receive the highest available credit rating, as determined by the board.
- (d) This section may not be construed in a manner that impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

§45.0532, Limitation on Guarantee of Charter District Bonds, as amended by House Bill 885, 83rd Texas Legislature, Regular Session, 2013.

- (a) In addition to the general limitation under Section 45.053, the commissioner may not approve charter district bonds for guarantee under this subchapter in a total amount that exceeds the percentage of the total available capacity of the guaranteed bond program that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner.

- (a-1) The commissioner may not approve charter district refunding or refinanced bonds for guarantee under this subchapter in a total amount that exceeds one-half of the total amount available for the guarantee of charter district bonds under Subsection (a).
- (b) For purposes of Subsection (a), the total available capacity of the guaranteed bond program is the limit established by the board under Sections 45.053(d) and 45.0531 minus the total amount of outstanding guaranteed bonds. Each time the board increases the limit under Section 45.053(d), the total amount of charter district bonds that may be guaranteed increases accordingly under Subsection (a).
- (c) Notwithstanding Subsections (a) and (b), the commissioner may not approve charter district bonds for guarantee under this subchapter if the guarantee will result in lower bond ratings for school district bonds for which a guarantee is requested under this subchapter.
- (d) The commissioner may request that the comptroller place the portion of the permanent school fund committed to the guarantee of charter district bonds in a segregated account if the commissioner determines that a separate account is needed to avoid any negative impact on the bond ratings of school district bonds for which a guarantee is requested under this subchapter.
- (e) A guarantee of charter district bonds must be made in accordance with this chapter and any applicable federal law.

§45.054, Eligibility of School District Bonds.

To be eligible for approval by the commissioner, school district bonds must be issued under Subchapter A of this chapter or under Subchapter A, Chapter 1207, Government Code, to make a deposit under Subchapter B or C of that chapter, by an accredited school district.

§45.0541, Eligibility of Charter District Bonds.

To be eligible for approval by the commissioner, charter district bonds must:

- (1) without the guarantee, be rated as investment grade by a nationally recognized investment rating firm; and
- (2) be issued under Chapter 53.

§45.055, Application for Guarantee.

- (a) A school district or charter district seeking guarantee of eligible bonds under this subchapter shall apply to the commissioner using a form adopted by the commissioner for the purpose. The commissioner may adopt a single form on which a school district seeking guarantee or credit enhancement of eligible bonds may apply simultaneously first for guarantee under this subchapter and then, if that guarantee is rejected, for credit enhancement under Subchapter I.
- (b) An application under Subsection (a) must include:
- (1) the name of the school district or charter district and the principal amount of the bonds to be issued;
 - (2) the name and address of the district's paying agent for those bonds; and
 - (3) the maturity schedule, estimated interest rate, and date of the bonds.

- (c) An application under Subsection (a) must be accompanied by a fee set by rule of the board in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds.

§45.056, Investigation.

- (a) Following receipt of an application for the guarantee of bonds, the commissioner shall conduct an investigation of the applicant school district or charter district in regard to:
 - (1) the status of the district's accreditation; and
 - (2) the total amount of outstanding guaranteed bonds.
- (b) If following the investigation the commissioner is satisfied that the school district's bonds should be guaranteed under this subchapter or provided credit enhancement under Subchapter I, as applicable, or the charter district's bonds should be guaranteed under this subchapter, the commissioner shall endorse the bonds.

§45.057, Guarantee Endorsement.

- (a) The commissioner shall endorse bonds approved for guarantee with:
 - (1) the commissioner's signature or a facsimile of the commissioner's signature; and
 - (2) a statement relating the constitutional and statutory authority for the guarantee.
- (b) The guarantee is not effective unless the attorney general approves the bonds under Section 45.005 or 53.40, as applicable.

§45.0571, Charter District Bond Guarantee Reserve Fund.

- (a) The charter district bond guarantee reserve fund is a special fund in the state treasury outside the general revenue fund. The following amounts shall be deposited in the fund:
 - (1) money due from a charter district as provided by Subsection (b); and
 - (2) interest earned on balances in the fund.
- (b) A charter district that has a bond guaranteed as provided by this subchapter must annually remit to the commissioner, for deposit in the charter district bond guarantee reserve fund, an amount equal to 10 percent of the savings to the charter district that is a result of the lower interest rate on the bond due to the guarantee by the permanent school fund. The amount due under this section shall be amortized and paid over the duration of the bond. Each payment is due on the anniversary of the date the bond was issued. The commissioner shall adopt rules to determine the total and annual amounts due under this section.
- (c) The commissioner may direct the comptroller to annually withhold the amount due to the charter district bond guarantee reserve fund under Subsection (b) for that year from the state funds otherwise payable to the charter district.
- (d) Each year, the commissioner shall:
 - (1) review the condition of the bond guarantee program and the amount that must be deposited in the charter district bond guarantee reserve fund from charter districts; and
 - (2) determine if charter districts should be required to submit a greater percentage of the savings resulting from the guarantee.

- (e) The commissioner shall make recommendations to the legislature based on the review under Subsection (d).

§45.058, Notice of Default.

Immediately following a determination that a school district or charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, but not later than the fifth day before maturity date, the school district or charter district shall notify the commissioner.

§45.059, Payment of School District Bond on Default.

- (a) Immediately following receipt of notice under Section 45.058 that a school district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.
- (b) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller shall hold the canceled bond or coupon on behalf of the permanent school fund.
- (c) Following full reimbursement to the permanent school fund with interest, the comptroller shall further cancel the bond or coupon and forward it to the school district for which payment was made.

§45.0591, Payment of Charter District Bond on Default.

- (a) Immediately following receipt of notice under Section 45.058 that a charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the charter district bond guarantee reserve fund created under Section 45.0571 to the district's paying agent the amount necessary to pay the maturing or matured principal or interest.
- (b) If money in the charter district bond guarantee reserve fund is insufficient to pay the amount due on a bond under Subsection (a), the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district's paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.
- (c) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller shall hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.
- (d) Following full reimbursement to the charter district bond guarantee reserve fund and the permanent school fund, if applicable, with interest, the comptroller shall further cancel the bond or coupon and forward it to the charter district for which payment was made.

§45.060, Bonds Not Accelerated on Default.

If a school district or charter district fails to pay principal or interest on a guaranteed bond when it matures, other amounts not yet mature are not accelerated and do not become due by virtue of the school district's or charter district's default.

§45.061, Reimbursement of Funds.

- (a) If the commissioner orders payment from the permanent school fund or the charter district bond guarantee reserve fund on behalf of a school district or charter district, the commissioner shall direct the comptroller to withhold the amount paid, plus interest, from the first state money payable to the school district or charter district. Except as provided by Subsection (a-1), the amount withheld shall be deposited to the credit of the permanent school fund.
- (a-1) After the permanent school fund has been reimbursed for all money paid from the fund as the result of a default of a charter district bond guaranteed under this subchapter, any remaining amounts withheld under Subsection (a) shall be deposited to the credit of the charter district bond guarantee reserve fund.
- (b) In accordance with the rules of the board, the commissioner may authorize reimbursement to the permanent school fund or charter district bond guarantee reserve fund with interest in a manner other than that provided by this section.
- (c) The commissioner may order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to:
 - (1) provide reimbursement under this section; and
 - (2) pay the principal of and interest on district bonds as the principal and interest become due.
- (d) If a school district fails to comply with the commissioner's order under Subsection (c), the commissioner may impose any sanction on the district authorized to be imposed on a district under Subchapter G, Chapter 39, including appointment of a board of managers or annexation to another district, regardless of the district's accreditation status or the duration of a particular accreditation status.

§45.062, Repeated Defaults.

- (a) If a total of two or more payments are made under this subchapter or Subchapter I on the bonds of a school district and the commissioner determines that the school district is acting in bad faith under the guarantee program under this subchapter or the credit enhancement program under Subchapter I, the commissioner may request the attorney general to institute appropriate legal action to compel the school district and its officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.
- (a-1) If a total of two or more payments are made under this subchapter on charter district bonds and the commissioner determines that the charter district is acting in bad faith under the guarantee program under this subchapter, the commissioner may request the attorney general to institute appropriate legal action to compel the charter district and its officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.
- (b) Jurisdiction of proceedings under this section is in district court in Travis County.

§45.063, Rules.

The board may adopt rules necessary for the administration of the bond guarantee program.

Texas Constitution, Article VII, Education, §5, Permanent School Fund; Available School Fund; Use of Funds; Distribution of Available School Fund (excerpt):

- (d) The legislature by law may provide for using the permanent school fund to guarantee bonds issued by school districts or by the state for the purpose of making loans to or purchasing the bonds of school districts for the purpose of acquisition, construction, or improvement of instructional facilities including all furnishings thereto. If any payment is required to be made by the permanent school fund as a result of its guarantee of bonds issued by the state, an amount equal to this payment shall be immediately paid by the state from the treasury to the permanent school fund. An amount owed by the state to the permanent school fund under this section shall be a general obligation of the state until paid. The amount of bonds authorized hereunder shall not exceed \$750 million or a higher amount authorized by a two-thirds record vote of both houses of the legislature. If the proceeds of bonds issued by the state are used to provide a loan to a school district and the district becomes delinquent on the loan payments, the amount of the delinquent payments shall be offset against state aid to which the district is otherwise entitled.