

BILL ANALYSIS

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S.B. 1255
By: Shapiro
Education
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has a premier bond backing guarantees for school facilities through the Permanent School Fund (PSF) to guarantee district bond issuances, covering up to two and a half times the PSF. The 80th Legislature increased this amount to five times the PSF, but a change in federal tax rules is required before this can take effect.

Further, the decline in stock market value reduced the bond backing capacity and all districts in Texas face increased costs in the construction of facilities. This bill would create a bond backing guarantee using the Foundation School Program (FSP) as the guarantor of bond issuances, in lieu of the PSF, and in case of default, the state would intercept the normal FSP payment and pay the bondholders.

As proposed, S.B. 1255 authorizes a school district, if a district's application for guarantee of district bonds by the corpus and income of the permanent school fund is rejected, to apply for guarantee of bonds, including refunding bonds, by money appropriated for the Foundation School Program that is authorized to be used for the purpose, other than money that is appropriated for the school facilities assistance program, is necessary for certain purposes, or is appropriated from the available school fund. S.B. 1255 requires the commissioner of education (commissioner), following receipt of an application for the guarantee of bonds, to conduct an investigation of the applicant school district and as applicable, to endorse the bonds. This bill also authorizes the commissioner, if the commissioner determines that the school district is acting in bad faith under the guarantee, to 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.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 1 (Section 45.263, Education Code) of this bill.

Rulemaking authority is expressly granted to the State Board of Education (SBOE) in SECTION 3 (Section 45.0531, Education Code) of this bill.

Rulemaking authority previously granted to SBOE is modified in SECTION 1 (Section 45.255, Education Code) and SECTION 5 (Section 45.055, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 45, Education Code, by adding Subchapter I, as follows:

SUBCHAPTER I. ADDITIONAL GUARANTEE FOR BONDS

Sec. 45.251. DEFINITIONS. Defines "board" and "paying agent."

Sec. 45.252. GUARANTEE. (a) Authorizes a school district, if a district's application for guarantee of district bonds by the corpus and income of the permanent school fund as provided by Subchapter C (Guaranteed Bonds) is rejected, to apply under this subchapter for guarantee of bonds issued under Subchapter A (Tax Bonds and Maintenance Taxes), including refunding bonds, by money appropriated for the Foundation School Program (program) that is authorized to be used for the purpose, other than money that is

appropriated for the school facilities assistance program under Chapter 46 (Assistance with Instructional Facilities and Payment of Existing Debt), is necessary for purposes of Section 46.009(b)(1) (relating to excess funds being transferred from the Foundation School Program to the instructional facilities program) or 46.035 (Payment of Assistance), or is appropriated from the available school fund.

(b) Prohibits school district bonds from being guaranteed under both Subchapter C and this subchapter.

Sec. 45.253. ELIGIBILITY. Requires that bonds, to be eligible for approval by the commissioner of education (commissioner) under this subchapter, be issued in the manner provided by Section 45.054 (Eligibility) and payable from an ad valorem tax under Section 45.003 (Bond and Tax Elections).

Sec. 45.254. USE OF FOUNDATION SCHOOL PROGRAM APPROPRIATIONS AS GUARANTEE. Requires that money appropriated for the program that is authorized to be used for the purpose under this subchapter and any other law, rule, or regulation be used to guarantee eligible bonds as provided by this subchapter, the General Appropriations Act, and State Board of Education (SBOE) rule if using the permanent school fund to guarantee particular bonds would result in a total amount of outstanding bonds guaranteed by the permanent school fund exceeding the amount authorized under Section 45.053 (Limitation; Value Estimates), or federal law or regulations; or would result in the use of a portion of the cost value of the permanent school fund reserved under Section 45.0531, as determined by SBOE and certified by the state auditor.

Sec. 45.255. APPLICATION FOR GUARANTEE. (a) Requires a school district seeking the guarantee of eligible bonds to apply to the commissioner using a form adopted by the commissioner for the purpose. Authorizes the commissioner to adopt a single form on which a district seeking the guarantee of eligible bonds is authorized to apply simultaneously for a guarantee first under Subchapter C, and then, if that guarantee is rejected, for a guarantee under this subchapter.

(b) Requires that an application under Subsection (a) include the information required by Section 45.055(b) (relating to information required on the application for guarantee) and be accompanied by a fee set by SBOE rule in an amount designed to cover the costs of administering the guarantee of the bonds.

Sec. 45.256. INVESTIGATION. (a) Requires the commissioner, following receipt of an application for the guarantee of bonds, to conduct an investigation of the applicant school district as provided for an investigation under Section 45.056(a) (relating to an investigation of the applicant school district).

(b) Requires the commissioner, if following the investigation under Subsection (a) the commissioner is satisfied that the school district's bonds should be guaranteed under Subchapter C or this subchapter, as applicable, to endorse the bonds.

Sec. 45.257. GUARANTEE ENDORSEMENT. (a) Requires the commissioner to endorse bonds approved for guarantee under this subchapter in the manner provided under Section 45.057 (Guarantee Endorsement) for endorsing bonds approved under Subchapter C.

(b) Provides that the guarantee is not effective unless the attorney general approves the bonds under Section 45.005 (Examination of Bonds by Attorney General).

Sec. 45.258. NOTICE OF DEFAULT. Requires the school district, immediately following a determination that a school 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, to notify the commissioner.

Sec. 45.259. PAYMENT FROM GUARANTEE FUNDS. (a) Requires the commissioner, immediately following receipt of notice under Section 45.258, to instruct the comptroller of public accounts (comptroller) to transfer to the district's paying agent from appropriations to the program that is authorized to be used for the purpose under Section 45.252 and other law the amount necessary to pay the maturing or matured principal or interest.

(b) Requires the paying agent, immediately following receipt of the funds for payment of the principal or interest, to pay the amount due and to forward the canceled bond or coupon to the comptroller. Requires the comptroller to hold the canceled bond or coupon on behalf of the program.

(c) Requires the comptroller, following full reimbursement to the program, with interest, to further cancel the bond or coupon and forward it to the school district for which payment was made.

(d) Requires the commissioner, if money appropriated for the program is used for purposes of this subchapter and, as a result there is insufficient money to fully fund the program, to the extent necessary, to reduce each school district's foundation school fund allocations in the same manner provided by Section 42.253(h) (relating to distribution of foundation school fund) for a case in which the school district entitlements exceed the amount appropriated.

Sec. 45.260. BONDS NOT ACCELERATED ON DEFAULT. Provides that if a school district fails to pay principal or interest on a guaranteed bond when the bond matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's default.

Sec. 45.261. REIMBURSEMENT OF FOUNDATION SCHOOL FUND. (a) Requires the commissioner, if the commissioner orders payment from the money appropriated to the program on behalf of a school district, to direct the comptroller to withhold the amount paid, plus interest, from the first state money payable to the district. Requires that the amount withheld be deposited to the credit of the foundation school fund.

(b) Authorizes the commissioner, in accordance with commissioner rules, to authorize reimbursement to the foundation school fund with interest in a manner other than that provided by this section.

(c) Authorizes the commissioner to order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to provide reimbursement under this section and pay the remaining principal of and interest on the bonds as the principal and interest become due.

(d) Authorizes the commissioner, if a school district fails to comply with the commissioner's order under Subsection (c), to impose any sanction on the district authorized to be imposed on a district under Subchapter G (Accreditation Sanctions), Chapter 39 (Public School System Accountability), 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.

(e) Provides that any part of a school district's tax rate attributable to producing revenue for purposes of Subsection (c) is not considered part of the district's tax rate for purposes of the tax rate limit under Section 45.0031 (Limitation on Issuance of Tax-Supported Bonds) and is considered part of the district's current debt rate for the purposes of computing a rollback tax rate under Section 26.08 (Election to Ratify School Taxes), Tax Code, and interest and sinking fund rate.

Sec. 45.262. REPEATED DEFAULTS. (a) Authorizes the commissioner, if a total of two or more payments are made under Subchapter C or this subchapter on the guaranteed bonds of a school district and the commissioner determines that the district is acting in

bad faith under the guarantee, to request the attorney general to institute appropriate legal action to compel the district and the district's officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.

(b) Provides that jurisdiction of proceedings under this section is in district court in Travis County.

Sec. 45.263. RULES. Authorizes the commissioner to adopt rules necessary for the administration of the bond guarantee program under this subchapter.

SECTION 2. Amends Sections 45.053(a)-(c), Education Code, as follows:

(a) Prohibits the commissioner, except as provided by Subsection (d) (relating to increasing the limit 5 times the cost value of the permanent fund if consistent with federal law), from approving 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 SBOE and certified by the state auditor.

(b)-(c) Makes conforming changes.

SECTION 3. Amends Subchapter C, Chapter 45, Education Code, by adding Section 45.0531, as follows:

Sec. 45.0531. ADDITIONAL LIMITATION: RESERVATION OF PERCENTAGE OF PERMANENT SCHOOL FUND VALUE. (a) Authorizes SBOE, in addition to the limitation on the approval of bonds for guarantee under Section 45.053, by rule to establish a percentage of the cost value of the permanent school fund to be reserved from use in guaranteeing bonds under this subchapter.

(b) Requires the state auditor, if SBOE has reserved a portion of the permanent school fund under Subsection (a), each year, to analyze the status of the reserved portion compared to the cost value of the permanent school fund and based on that analysis, to certify whether the portion of the permanent school fund reserved from use in guaranteeing bonds under this subchapter satisfies the reserve percentage established.

(c) Requires SBOE, if SBOE has reserved a portion of the permanent school fund under Subsection (a), to 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 SBOE.

(d) Prohibits this section from being construed in a manner that impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

SECTION 4. Amends Section 45.054, Education Code, to require that bonds, to be eligible for approval by the commissioner, be payable from an ad valorem tax under Section 45.003. Makes nonsubstantive changes.

SECTION 5. Amends Section 45.055, Education Code, as follows:

Sec. 45.055. APPLICATION FOR GUARANTEE. (a) Requires a school district seeking the guarantee of eligible bonds to apply to the commissioner using a form adopted by the commissioner for the purpose. Authorizes the commissioner to adopt a single form on which a district seeking the guarantee of eligible bonds is authorized to apply simultaneously first for a guarantee under this subchapter and then, if that guarantee is rejected, for a guarantee under Subchapter I.

(b) Requires that an application under Subsection (a) include certain information. Makes a nonsubstantive change.

(c) Requires that an application under Subsection (a) be accompanied by a fee set by rule of the board in an amount designed to cover the costs of administering the guarantee of the bonds, rather than the guarantee program. Makes a nonsubstantive change.

SECTION 6. Amends Section 45.056(b), Education Code, to require the commissioner, if following the investigation the commissioner is satisfied that the school district's bonds should be guaranteed under this subchapter or Subchapter I, as applicable, to endorse the bonds.

SECTION 7. Amends Section 45.061, Education Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes the commissioner to order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to provide reimbursement under this section and pay the principal of and interest on district bonds as the principal and interest become due.

(d) Authorizes the commissioner, if a school district fails to comply with the commissioner's order under Subsection (c), to 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.

SECTION 8. Amends Section 45.062(a), Education Code, to authorize the commissioner, if a total of two or more payments are made under this subchapter or Subchapter I, rather than from the permanent school fund, on the guaranteed bonds of a school district and the commissioner determines that the school district is acting in bad faith under the guarantee, to 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.

SECTION 9. Amends Section 45.001(a), Education Code, to authorize the governing board of an independent school district, including the city council or commission that has jurisdiction over a municipally controlled independent school district, the governing board of a rural high school district, and the commissioners court of a county, on behalf of each common school district under its jurisdiction, to levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay any reimbursement under Section 45.061 or 45.261. Makes nonsubstantive changes.

SECTION 10. Effective date: upon passage or September 1, 2009.