

BILL ANALYSIS

Senate Research Center
82S10044 GCB-D

S.B. 31
By: Shapiro
Education
6/3/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, public charter schools receive over \$2,000 less per child from the state than traditional public schools. This inequity consists of several drivers, one of which is facilities funding. Because charter schools cannot access facilities funding, they are forced to open in strip malls. Larger, more established charters can go out for bonds, but interest rates are excessive.

S.B. 31 would allow charter schools that qualify for investment grade rating to be backed by the Permanent School Fund (PSF). Charter schools would only have access to a percent of the available amount of the fund that is equal the amount of charter school students in Texas (currently two percent). Additionally, 10 percent of the savings that charter schools would earn because of the PSF backing on their bonds would be returned to the state as a savings fund in the event that a charter school defaulted.

As proposed, S.B. 31 amends current law relating to the guarantee of open-enrollment charter school bonds by the permanent school fund.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of education in SECTION 10 (Section 45.0571, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.135, as follows:

Sec. 12.135. DESIGNATION AS CHARTER DISTRICT FOR PURPOSES OF BOND GUARANTEE. (a) Authorizes the commissioner of education (commissioner), on the application of a charter holder, to grant designation as a charter district to an open-enrollment charter school that meets financial standards adopted by the commissioner. Requires that the financial standards require an open-enrollment charter school to have an investment grade credit rating as specified by Section 45.0541.

(b) Authorizes a charter district to apply for bonds issued under Chapter 53 (Higher Education Facility Authorities for Public Schools) for the open-enrollment charter school to be guaranteed by the permanent school fund as provided by Chapter 45 (School District Funds).

SECTION 2. Amends Section 45.051, Education Code, by adding Subdivision (1-a) and amending Subdivision (2), to define "charter district" and redefine "paying agent," respectively.

SECTION 3. Amends Section 45.052, Education Code, as follows:

Sec. 45.052. GUARANTEE. (a) Provides that on approval by the commissioner, bonds issued under Subchapter A (Tax Bonds and Maintenance Taxes) by a school district or Chapter 53 for a charter district, including refunding bonds, are guaranteed by the corpus and income of the permanent school fund.

(b) Provides that 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.

SECTION 4. Amends Subchapter C, Chapter 45, Education Code, by adding Section 45.0532, as follows:

Sec. 45.0532. **LIMITATION ON GUARANTEE OF CHARTER DISTRICT BONDS.**

(a) Prohibits the commissioner, in addition to the general limitation under Section 45.053, from approving 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.

(b) Provides that for purposes of Subsection (a), the total available capacity of the guaranteed bond program is the limit established by the governing body of an independent school district (board) under Section 45.053(d) (relating to the board being authorized by rule to increase the limit prescribed by Subsection (a)) and 45.0531 (Additional Limitation: Reservation of Percentage of Permanent School Fund Value) minus the total amount of outstanding guaranteed bonds. Provides that 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) Prohibits the commissioner, notwithstanding Subsections (a) and (b), from approving 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) Authorizes the commissioner to request that the comptroller of public accounts (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) Requires that a guarantee of charter district bonds be made in accordance with this chapter and any applicable federal law.

SECTION 5. Amends Section 45.054, Education Code, as follows:

Sec. 45.054. **ELIGIBILITY OF SCHOOL DISTRICT BONDS.** Requires that school district bonds, to be eligible for approval by the commissioner, be issued under Subchapter A of this chapter or under Subchapter A (General Provisions), Chapter 1207 (Refunding Bonds), Government Code, to make a deposit under Subchapter B (Advance Refunding Procedures) or C (Direct Deposit With Paying Agent) of that chapter, by an accredited school district.

SECTION 6. Amends Subchapter C, Chapter 45, Education Code, by adding Section 45.0541, as follows:

Sec. 45.0541. **ELIGIBILITY OF CHARTER DISTRICT BONDS.** Requires that charter district bonds, to be eligible for approval by the commissioner, without the guarantee, be rated as investment grade by a nationally recognized investment rating firm, and be issued under Chapter 53.

SECTION 7. Amends Sections 45.055(a) and (b), Education Code, as follows:

(a) Requires a school district or charter district seeking guarantee of eligible bonds under this subchapter to apply to the commissioner using a form adopted by the commissioner for the purpose. Makes a nonsubstantive change.

(b) Makes a conforming change.

SECTION 8. Amends Section 45.056, Education Code, as follows:

Sec. 45.056. INVESTIGATION. (a) Requires the commissioner, following receipt of an application for the guarantee of bonds, to conduct an investigation of the applicant school district or charter district in regard to the status of the district's accreditation, and the total amount of outstanding guaranteed bonds.

(b) Requires the commissioner to endorse the bonds 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 (Intercept Program to Provide Credit Enhancement for Bonds), as applicable, or the charter district's bonds should be guaranteed under this subchapter.

SECTION 9. Amends Section 45.057(b), Education Code, to provide that the guarantee is not effective unless the attorney general approves the bonds under Section 45.005 (Examination of Bonds by Attorney General) or 53.40 (Approval of Bonds; Registration; Negotiability), as applicable.

SECTION 10. Amends Subchapter C, Chapter 45, Education Code, by adding Section 45.0571, as follows:

Sec. 45.0571. CHARTER DISTRICT BOND GUARANTEE RESERVE FUND. (a) Provides that the charter district bond guarantee reserve fund is a special fund in the state treasury outside the general revenue fund. Requires that the following amounts 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) Requires a charter district that has a bond guaranteed as provided by this subchapter to 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. Requires that the amount due under this section be amortized and paid over the duration of the bond. Provides that each payment is due on the anniversary of the date the bond was issued. Requires the commissioner to adopt rules to determine the total and annual amounts due under this section.

(c) Authorizes the commissioner to 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) Requires the commissioner, each year, to 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 determine if charter districts should be required to submit a greater percentage of the savings resulting from the guarantee.

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

SECTION 11. Amends Section 45.058, Education Code, to require the school district or charter district to notify the commissioner 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, not later than the fifth day before maturity date.

SECTION 12. Amends the heading to Section 45.059, Education Code, to read as follows:

Sec. 45.059. PAYMENT OF SCHOOL DISTRICT BOND ON DEFAULT.

SECTION 13. Amends Section 45.059(a), Education Code, to require the commissioner, 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, to 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.

SECTION 14. Amends Subchapter C, Chapter 45, Education Code, by adding Section 45.0591, as follows:

Sec. 45.0591. PAYMENT OF CHARTER DISTRICT BOND ON DEFAULT. (a) Requires the commissioner, 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, to 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) Requires the commissioner, if money in the charter district bond guarantee reserve fund is insufficient to pay the amount due on a bond under Subsection (a), to 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) Requires the paying agent, immediately following receipt of the funds for the payment of the principal or interest, to pay the amount due and forward the canceled bond or coupon to the comptroller. Requires the comptroller to hold the canceled bond or coupon on behalf of the fund or funds from which payment was made.

(d) Requires the comptroller, following full reimbursement to the charter district bond guarantee reserve fund and the permanent school fund, if applicable, with interest, to further cancel the bond or coupon and forward it to the charter district for which payment was made.

SECTION 15. Amends Section 45.060, Education Code, to provide that 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.

SECTION 16. Amends the heading to Section 45.061, Education Code, to read as follows:

Sec. 45.061. REIMBURSEMENT OF FUNDS.

SECTION 17. Amends Section 45.061, Education Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Requires the commissioner, 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, to direct the comptroller to withhold the amount paid, plus interest, from the first state money payable to the school district or charter district.

Requires that the amount withheld, except as provided by Subsection (a-1), be deposited to the credit of the permanent school fund. Makes a nonsubstantive change.

(a-1) Requires that any remaining amounts withheld under Subsection (a) be deposited to the credit of the charter district bond guarantee reserve fund 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.

(b) Authorizes the commissioner, in accordance with the rules of the State Board of Education, to 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.

SECTION 18. Amends Section 45.062, Education Code, by adding Subsection (a-1), to authorize the commissioner, 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, to 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.

SECTION 19. Amends Section 53.02(10), Education Code, to redefine "authorized charter school."

SECTION 20. Amends Section 53.351, Education Code, by amending Subsection (f) and adding Subsection (f-1), as follows:

(f) Provides that, except as provided by Subsection (f-1), a revenue bond issued under this section is not a debt of the state or any state agency, political corporation, or political subdivision of the state and is not a pledge of the faith and credit of any of these entities.

(f-1) Provides that Subsection (f) does not apply to a revenue bond issued under this section for a charter district if the bond is approved for guarantee by the permanent school fund under Subchapter C, Chapter 45.

SECTION 21. Provides that this Act applies only to a bond issued or refunded on or after the effective date of this Act by an open-enrollment charter school designated as a charter district under Section 12.135, Education Code, as added by this Act.

SECTION 22. Effective date: the 91st day after the last day of the legislative session.