SUBJECT: Establishing credit enhancement program for school district bonds

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Eissler, Hochberg, Aycock, Farias, Jackson, Olivo, Weber

0 nays

4 absent — Allen, Dutton, Patrick, Shelton

SENATE VOTE: On final passage, April 17 — 28-0

WITNESSES: For — (*Registered, but did not testify*: Amy Beneski, Texas Association of School Administrators; Daniel Casey, Fast Growth School Coalition; Julie Shields, Texas Association of School Boards)

Against — None

On — David Anderson, Texas Education Agency

DIGEST: CSSB 1255 would amend ch. 45 of the Education Code by adding a subchapter to establish an intercept credit enhancement program that would back bonds issued by school districts using the Foundation School Program (FSP) as the guarantee of bond issuances.

Intercept credit enhancement program. If a school district's application for the Permanent School Fund bond guarantee program were rejected, the district could apply for credit enhancement of bonds by money appropriated for the FSP, other than money appropriated to school districts as required by the Texas Constitution or for assistance in paying debt service. The same school district bonds could not be eligible for both the Permanent School Fund bond guarantee program and for FSP backing. The credit enhancement provided for bonds would remain in effect until the bonds matured or were defeased in accordance with state law.

Money appropriated for the FSP would be used to provide credit enhancement for eligible bonds as provided by this subchapter, the general appropriations act, and by State Board of Education (SBOE) rule if using the Permanent School Fund to guarantee particular bonds would result in:

- the total amount of outstanding bonds guaranteed by the Permanent School Fund exceeding the authorized amount; or
- the use of a portion of the cost value of the Permanent School Fund reserved in accordance with the bill, as determined by the SBOE.

If FSP appropriations were not sufficient in any year to pay the principal or interest that becomes due on bonds for which credit enhancement was provided, the payment would be made from the following year's FSP appropriations that could be used for the intercept credit enhancement program before any other FSP purpose**.**

Eligibility. To be eligible for approval by the commissioner for credit enhancement, the bonds would be issued in the manner provided by the bond guarantee program, and payments of all of the principal of the bonds would be scheduled during the first six months of the state fiscal year.

Restrictions on credit enhancement. In each month of each fiscal year, TEA would determine the amount available for the intercept credit enhancement program from the FSP through the end of the fiscal year and the amounts due to public schools from the FSP through the end of the fiscal year. TEA could revise a determination under this subsection during the fiscal year as appropriate.

The commissioner of education could not endorse particular bonds for credit enhancement until the commissioner had determined that there were funds available for this purpose and determined that the endorsement would not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement to exceed the lesser of:

- one-half of the amount of funds due to public schools from the FSP for the remainder of the fiscal year; or
- one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the remainder of the fiscal year.

Also, the commissioner could not endorse particular bonds for credit enhancement unless the commissioner determined that the maximum annual debt service on the bonds during any state fiscal year would not exceed these thresholds. The SBOE, by rule, could establish a percentage of the cost value of the Permanent School Fund to be reserved from use in guaranteeing bonds for the intercept credit enhancement program. If this occurred, the state auditor would each year analyze the status of the reserved portion compared to the cost value of the Permanent School Fund. Based on that analysis, the state auditor would certify whether the portion of the Permanent School Fund reserved from use in guaranteeing bonds for credit enhancement satisfied the reserve percentage established.

Application and investigation for credit enhancement. The commissioner could adopt a single form on which a district seeking guarantee or credit enhancement of eligible bonds could apply simultaneously first for the Permanent School Fund bond guarantee program and then, if that guarantee were rejected, for credit enhancement from the FSP. An application would require certain information and be accompanied by a fee to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds.

After receiving an application for credit enhancement, the commissioner would conduct an investigation of the applicant school district. Upon a satisfactory result of the investigation, the commissioner would endorse the bonds.

Payment from intercepted funds. If a school district determined that it would be unable to pay maturing or matured principal or interest on a bond for which credit enhancement was provided, it would notify the commissioner immediately, but no later than 10 days before the maturity date. After receiving the notification, the commissioner would instruct the comptroller to transfer to the district’s paying agent, from FSP appropriations that could be used for the intercept credit enhancement program, the amount necessary to pay the maturing or matured principal or interest. Immediately after receiving the funds, the paying agent would pay the amount due.

If FSP appropriations were used for the intercept credit enhancement program and, as a result FSP could not be fully funded, the commissioner would, as necessary, reduce each school district’s Foundation School Fund allocations, other than any portion appropriated from the Available School Fund, in the manner established by the FSP for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, a district's entitlement of FSP funding would be increased by an amount equal to the reduction under this subsection.

Intercepted fund payments would not create a debt of the state under the Texas Constitution or, except as provided above, create a payment obligation.

Reimbursement to the FSP. Payment from intercepted funds by the state on behalf of a school district on bonds for which credit enhancement was provided would create a repayment obligation of the district to the state, regardless of the maturity date of, or any payment of interest on, the bonds.

If the commissioner ordered payment from the money appropriated to the FSP on behalf of a school district that was not required to reduce its wealth per student under ch. 41, the commissioner would direct the comptroller to withhold the amount paid from the first state money payable to the district. If the commissioner ordered payment from the money appropriated to the FSP on behalf of a school district that was required to reduce its wealth per student under ch. 41, the commissioner would increase amounts due from the district in a total amount equal to the amount of payments made on behalf of the district for the intercept credit enhancement program. Amounts withheld or received would be used for the FSP.

The commissioner could order a school district to set an ad valorem tax rate to produce sufficient revenue for the district to:

- provide reimbursement under this section; and
- pay the remaining principal of and interest on the bonds as the principal and interest became due.

If a school district failed to comply with the commissioner's order for reimbursement, the commissioner could impose any sanction on the district authorized to be imposed on a district under current accreditation sanctions, 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.

If two or more payments were made from intercepted funds or the bond guarantee program on the bonds of a school district and TEA determined that the district was acting in bad faith under the guarantee program or the credit enhancement program, the commissioner could request the attorney general to institute appropriate legal action to compel the district to comply with the duties required of them by law in regard to the bonds. Jurisdiction of these proceedings would be in district court in Travis County.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

CSSB 1255 would create a bond backing guarantee using the Foundation School Program (FSP) to guarantee bond issuances of school districts as a backstop to the Permanent School Fund (PSF) bond guarantee program. The program established by the bill would be known as a "state intercept" because, in the case of a default, the state would intercept the normal FSP payment and pay the bondholders. Thirteen other states already have established similar intercept programs. While this would be a separate guarantee program, it would be used while the PSF guarantee was unavailable. Due to market conditions, funds have not been sufficient in the PSF to guarantee local school district bonds since November of last year. This has forced school districts to turn to an increasingly small private bond insurance market to issue bonds at significantly higher costs.

Texas has one of the premier bond backing guarantees for school facilities by using the PSF to guarantee up to two-and-a-half times the PSF district bond issuances. While the 80th Legislature enacted legislation to increase this multiplier from 2.5 to 5 times, federal tax rules must be changed before this can take effect. Given the current situation, the state needs the alternative bond backing program that CSSB 1255 would provide.

The intercept credit enhancement program would allow school districts to build additional facilities at a time when market rates, using the state's backing, are at unusually favorable terms. School districts are faced with the need for additional and renovated instructional facilities because of rapid population growth and the increased need for specialty classrooms, such as science laboratories. The bill would assist, in a cost-effective, low-risk manner, school districts that would otherwise be priced out of building new classrooms.

It is important to note that school district bonds are backed by the taxing capacity of districts and that no defaults on PSF-guaranteed bonds have ever occurred. Also, there is ample reserve in the FSP. For the last 10 years, it has run a surplus of between $400 million and $800 million. The bill also would provide important safeguards to ensure that FSP appropriations were not used unless strict conditions were met. This is ample evidence that CSSB 1255 would represent a safe and prudent measure to address a very real need for school districts across the state.

OPPONENTS SAY:

CSSB 1255 would offer a low-risk solution for school districts to issue bonds at lower rates using the state's Foundation School Program (FSP). Because it provides most of the state's funding for school districts, any risk to the FSP would be too much.