

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1255  
By: Shapiro  
Education  
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Committee Report (Substituted)

### **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.

C.S.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 credit enhancement of 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. C.S.S.B. 1255 requires the commissioner of education (commissioner), following receipt of an application for the credit enhancement 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 4 (Section 45.0531, Education Code) of this bill.

Rulemaking authority previously granted to SBOE is modified in 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. INTERCEPT PROGRAM TO PROVIDE CREDIT ENHANCEMENT FOR BONDS**

Sec. 45.251. DEFINITIONS. Defines "board," "Foundation School Program," and "paying agent."

Sec. 45.252. INTERCEPT CREDIT ENHANCEMENT PROGRAM. (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 credit enhancement of bonds described by

Section 45.054 (Eligibility), by money appropriated for the Foundation School Program (program), other than money that is appropriated to school districts specifically as required under the Texas Constitution or for assistance in paying debt service.

(b) Prohibits the same school district bonds from benefitting under both Subchapter C and this subchapter.

(c) Provides that notwithstanding any amendment of this subchapter or other law, the credit enhancement provided under this subchapter for school district bonds remains in effect until the date those bonds mature.

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.

Sec. 45.254. INTERCEPT OF FOUNDATION SCHOOL PROGRAM APPROPRIATIONS AS CREDIT ENHANCEMENT. (a) 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 provide credit enhancement for 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.

(b) Requires that the payment, if the program appropriations are not sufficient in any year to pay principal or interest that becomes due on bonds for which credit enhancement is provided under this subchapter, be made from the following year's program appropriations that are authorized to be used for the purpose under this subchapter before those appropriations are used for any other program purpose.

Sec. 45.255. APPLICATION FOR CREDIT ENHANCEMENT. (a) Requires a school district seeking credit enhancement of eligible bonds under this subchapter 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 or credit enhancement of eligible bonds may apply simultaneously first for a guarantee under Subchapter C, and then, if that guarantee is rejected, for a credit enhancement 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 programs to provide the guarantee or credit enhancement of eligible bonds.

Sec. 45.256. INVESTIGATION. (a) Requires the commissioner, following receipt of an application under Section 45.255, 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 provided credit enhancement under this subchapter, as applicable, to endorse the bonds.

Sec. 45.257. CREDIT ENHANCEMENT ENDORSEMENT. (a) Requires the commissioner to endorse bonds approved for credit enhancement under this subchapter in

the manner provided under Section 45.057 (Guarantee Endorsement) for endorsing bonds approved under Subchapter C.

(b) Provides that the credit enhancement 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 FAILURE OR INABILITY TO PAY. 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 bond for which credit enhancement is provided under this subchapter, but not later than the fifth day before maturity date, to notify the commissioner.

Sec. 45.259. PAYMENT FROM INTERCEPTED 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.

(c) 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, other than any portion appropriated from the available school fund, in the same manner provided by Section 42.253(h) (relating to the amount appropriated for the program for the second year of a state fiscal biennium) for a case in which school district entitlements exceed the amount appropriated. Provides that the following fiscal year, a district's entitlement under Section 42.253 (Distribution of Foundation School Fund) is increased by an amount equal to the reduction under this subsection.

(d) Provides that a payment made under this section by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this subchapter creates a repayment obligation of the district to the state regardless of the maturity date of or any payment of interest on the bonds.

(e) Provides that this section does not create a debt of the state under the Texas Constitution or, except to the extent provided by this subchapter, create a payment obligation.

Sec. 45.260. BONDS NOT ACCELERATED ON FAILURE TO PAY. Provides that if a school district fails to pay principal or interest on a bond for which credit enhancement is provided under this subchapter when the amount matures, other amounts not yet mature are not accelerated and do not become due by virtue of the district's failure to pay amounts matured.

Sec. 45.261. REIMBURSEMENT OF FOUNDATION SCHOOL PROGRAM. (a) Requires the commissioner, if the commissioner orders payment from the money appropriated to the program on behalf of a school district that is not required to reduce its wealth per student under Chapter 41 (Equalized Wealth Level), to direct the comptroller to withhold the amount paid from the first state money payable to the district. Requires the commissioner, if the commissioner orders payment from the money appropriated to the program on behalf of a school district that is required to reduce its wealth per student under Chapter 41, to increase amounts due from the district under that chapter in a total amount equal to the amount of payments made on behalf of the district under this subchapter. Requires that amounts withheld or received under this subsection be used for the program.

(b) Authorizes the commissioner, in accordance with commissioner rules, to authorize reimbursement of the program 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)(1) is considered part of the district's current debt rate for purposes of computing a rollback tax rate under Section 26.08 (Election to Ratify School Taxes), Tax Code; and is not considered part of the district's interest and sinking fund tax rate.

(f) Requires the commissioner, on reimbursement by a school district as required by this section, to pay the district any amount withheld under this section.

Sec. 45.262. REPEATED FAILURE TO PAY. (a) Authorizes the commissioner, if a total of two or more payments are made under Subchapter C or this subchapter on the bonds of a school district and the commissioner determines that the district is acting in bad faith under the guarantee program under Subchapter C or the credit enhancement program under this subchapter, 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. (a) Authorizes the commissioner to adopt rules necessary for the administration of the bond credit enhancement program under this subchapter.

(b) Requires the commissioner, in adopting rules under Subsection (a), to establish an annual deadline by which a school district is required to pay the debt service on bonds for which credit enhancement is provided under this subchapter. Prohibits the deadline established from being later than the 10th day before the date specified under Section 42.259 for payment to school districts of the final program installment for a school year.

SECTION 2. Amends Section 45.052, Education Code, as follows:

Sec. 45.052. GUARANTEE. (a) Creates Subsection (a) from existing text.

(b) Provides that notwithstanding any amendment of this subchapter or other law, the guarantee under this subchapter of school district bonds remains in effect until the date those bonds mature.

SECTION 3. 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 4. 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 5. Amends Section 45.055, Education Code, as follows:

Sec. 45.055. APPLICATION FOR GUARANTEE. (a) Requires a school district seeking guarantee, rather than the guarantee, of eligible bonds under this subchapter 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 guarantee or credit enhancement of eligible bonds is authorized to apply simultaneously first for guarantee under this subchapter and then, if that guarantee is rejected, for credit enhancement 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 SBOE in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible 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 provided credit enhancement under 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 on the bonds, 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 program under this subchapter or the credit enhancement program under Subchapter I, 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 42.259, Education Code, by adding Subsection (g), as follows:

(g) Requires the commissioner to make all annual program payments under this section for purposes described by Sections 45.252(a)(1) (relating to money appropriated for the program other than money that is appropriated to school districts as required under the Texas Constitution) and (2) (relating to money appropriated for the program other than money that is appropriated to school districts for assistance in paying debt service) before the deadline established under Section 45.263(b) for payment of debt service on bonds. Authorizes the commissioner, notwithstanding any other provision of this section, to make program payments under this section after the deadline established under Section 45.263(b) only if the commissioner has not received notice under Section 45.258 concerning a district's failure or inability to pay matured principal or interest on bonds.

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