

BILL ANALYSIS

C.S.S.B. 1255
By: Shapiro
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas has a premier bond backing guarantee for school facilities through the permanent school fund to guarantee district bond issuances, covering up to two and a half times the fund. The 80th Legislature increased this amount to five times the fund, but a change in federal tax rules is required before this can take effect. Furthermore, the decline in stock market value reduced the bond backing capacity, and all districts in Texas face increased costs in the construction of facilities.

C.S.S.B. 1255 creates a bond backing guarantee using the Foundation School Program as the guarantor of bond issuances, in lieu of the permanent school fund, and in case of default, provides for the state to intercept the normal Foundation School Program 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 appropriated for the school facilities assistance program, necessary for certain purposes, or appropriated from the available school fund. The bill requires the commissioner of education, 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

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 1 of this bill, and to the State Board of Education in SECTIONS 1 and 4 of this bill.

ANALYSIS

C.S.S.B. 1255 amends the Education Code to authorize a school district, if the 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 bonds, including refunding bonds, by money appropriated for the Foundation School Program, other than money that is appropriated to school districts specifically as required by the Texas Constitution or for assistance in paying debt service. The bill prohibits the same school district bonds from benefiting under both provisions relating to guaranteed bonds and provisions added by the bill. The bill establishes that the credit enhancement for school district bonds remains in effect until the date those bonds mature or are defeased in accordance with state law.

C.S.S.B. 1255 requires the commissioner of education, in each month of each fiscal year, to

determine the amount of funds available to make payments for credit enhancement from the Foundation School Program through the end of the fiscal year and the amounts due under the Education Code to public schools from the Foundation School Program through the end of the fiscal year. The bill authorizes the commissioner to revise such a determination during the fiscal year as appropriate and prohibits the commissioner from endorsing particular bonds for credit enhancement until the commissioner has made the required determinations and determined that the endorsement will 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 Foundation School Program for the remainder of the fiscal year or one-half of the amount of funds anticipated to be on hand in the Foundation School Program to make payments for the remainder of the fiscal year. The bill prohibits the commissioner from endorsing particular bonds for credit enhancement unless the commissioner has determined that the maximum annual debt service on the bonds during any state fiscal year will not exceed the lesser of one-half of the amount of funds due to public schools from the Foundation School Program for the current fiscal year or one-half of the amount of funds anticipated to be on hand in the Foundation School Program to make payments for the current fiscal year.

C.S.S.B. 1255 requires the bonds, to be eligible for approval by the commissioner for credit enhancement, to be issued in the manner prescribed by provisions for bond eligibility generally and requires, as a further condition of eligibility for approval, that payments of all of the principal of the bonds be scheduled during the first six months of the state fiscal year.

C.S.S.B. 1255 requires the money appropriated for the Foundation School Program that may be used for the purpose set forth in these provisions and any other law, rule, or regulation to be used to provide credit enhancement for eligible bonds as provided by these provisions, 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 specified relative to the cost value of the permanent school fund or the amount authorized under federal law or regulations or would result in the use of a portion of the cost value of the reserved permanent school fund, as determined by the board. The bill requires a payment, if Foundation School Program appropriations are not sufficient in any year to pay principal or interest that becomes due on bonds for which credit enhancement is provided, to be made from the following year's Foundation School Program appropriations that may be used for credit enhancement before those appropriations are used for another program purpose.

C.S.S.B. 1255 requires a school district seeking credit enhancement of eligible bonds to apply to the commissioner using a form adopted by the commissioner for that purpose. The bill authorizes the commissioner to adopt a single form on which a district seeking either guarantee or credit enhancement may apply simultaneously first for a guarantee of eligible bonds, and then, if that guarantee is rejected, for a credit enhancement of eligible bonds. The bill requires such an application to include the information required for an application for guaranteed bonds and be accompanied by a fee set by board rule in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds. The bill requires the commissioner, following receipt of the application, to conduct an investigation of the applicant school district and, if following the investigation the commissioner is satisfied that the school district's bonds should be guaranteed or provided credit enhancement, to endorse the bonds. The bill requires the commissioner to endorse bonds approved for credit enhancement in substantially the same manner provided by state law for endorsing guaranteed bonds. The bill provides that the credit enhancement is not effective unless the attorney general approves the bonds as provided by state law.

C.S.S.B. 1255 requires the school district, immediately following a determination that the school district will be or is unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided, but not later than the 10th day before maturity date, to notify the

commissioner. The bill requires the commissioner, immediately following receipt of the notice, to instruct the comptroller of public accounts to transfer to the district's paying agent from appropriations to the Foundation School Program the amount necessary to pay the maturing or matured principal or interest. The bill requires the paying agent, immediately following receipt of the funds for payment of the principal or interest, to pay the amount due and establishes that these prescribed procedures apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased in accordance with state law. The bill requires the commissioner, if money appropriated for the Foundation School Program is used for purposes of these provisions and as a result there is insufficient money to fully fund the program, to reduce to the extent necessary each school district's foundation school fund allocations, other than any portion appropriated from the available school fund, in the same manner as provided for a case in which school district entitlements exceed the amount appropriated. The bill provides for an increase in a district's entitlement from the foundation school fund for the following fiscal year by an amount equal to the reduction determined by the commissioner. The bill establishes that a payment by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds. The bill provides that these provisions do not create a debt of the state under the Texas Constitution or, except to the extent provided by the bill's provisions, create a payment obligation.

C.S.S.B. 1255 establishes that, if a school district fails to pay principal or interest on a bond for which credit enhancement is provided 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. The bill requires the commissioner, if the commissioner orders payment from the money appropriated to the Foundation School Program on behalf of a school district that is not required to reduce its wealth per student under state law, to direct the comptroller to withhold the amount paid from the first state money payable to the district. The bill requires the commissioner, if the commissioner orders payment from the money appropriated to the Foundation School Program on behalf of a school district that is required to reduce its wealth per student under state law, to increase amounts due from the district in a total amount equal to the amount of payments made on behalf of the district under the bill's provisions. The bill requires amounts received under these provisions to be used for the Foundation School Program.

C.S.S.B. 1255 authorizes the commissioner, in accordance with commissioner rules, to authorize reimbursement of the Foundation School Program in a manner other than that provided for by this provision. The bill authorizes the commissioner to order a school district to set a property tax rate capable of producing an amount of revenue sufficient to enable the district to provide reimbursement and pay the remaining principal of and interest on the bonds that have been credit enhanced as the principal and interest become due. The bill authorizes the commissioner, if a school district fails to comply with the commissioner's order, to impose any authorized sanction on the district, 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. The bill sets forth that any part of a school district's tax rate attributable to producing revenue for purposes of providing reimbursement is considered part of the district's current debt rate for purposes of computing a rollback tax rate and the district's interest and sinking fund tax rate. The bill requires the commission, on reimbursement by a school district, to pay to the district any amount withheld under these provisions.

C.S.S.B. 1255 authorizes the commissioner, if a total of two or more payments are made on a school district's guaranteed bonds or bonds for which credit enhancement is provided and the commissioner determines that the district is acting in bad faith under the guarantee program or the credit enhancement program, 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. The bill provides that jurisdiction of these proceedings is in district court in Travis County. The bill requires the commissioner to adopt

rules necessary for the administration of the bond credit enhancement program and, in adopting such rules, to establish an annual deadline by which a school district must pay the debt service on bonds for which credit enhancement is provided. The bill prohibits such deadline from being later than the 10th day before the date specified for payment to school districts of the final Foundation School Program installment for a state fiscal year.

C.S.S.B. 1255 establishes that the guarantee of school district bonds currently provided for in state law remains in effect until the date those bonds mature or are defeased in accordance with state law.

C.S.S.B. 1255 authorizes the SBOE by rule, in addition to the limitation on the approval of bonds for guarantee, to establish a percentage of the cost value of the permanent school fund to be reserved from use in guaranteeing bonds. The bill requires the state auditor, if the SBOE has reserved a portion of the permanent school fund, to analyze the status of the reserved portion compared to the cost value of the permanent school fund each year, and, based on that analysis, to certify whether the portion of the permanent school fund reserved from use in guaranteeing bonds satisfies the reserve percentage established. The bill requires, if the SBOE has reserved a portion of the permanent school fund, to consider at least annually whether to change the reserve percentage established to ensure that the reserve percentage allows compliance with federal law and regulations and serves to enable guaranteed bonds to receive the highest available credit rating, as determined by the SBOE. The bill prohibits this provision relating to the reservation of percentage of permanent school fund value from being construed in a manner that impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

C.S.S.B. 1255 authorizes the commissioner to order a school district to set a property tax rate capable of producing an amount of revenue sufficient to enable the district to provide reimbursement of the permanent school fund and pay the principal of and interest on district bonds that have been guaranteed as the principal and interest become due. The bill authorizes the commissioner, if a school district fails to comply with the commissioner's order, to impose any authorized sanction on the district, 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.

C.S.S.B. 1255 requires the commissioner to make all annual Foundation School Program transfer payments for purposes specifically required by the Texas Constitution or for assistance with debt service before the established deadline for a school district's payment of debt service on bonds for which credit enhancement has been provided. The bill authorizes the commissioner to make the payments after that deadline only if the commissioner has not received notice concerning a district's failure or inability to pay matured principal or interest on bonds.

C.S.S.B. 1255 defines "paying agent" as the financial institution that is designed by a school district as the district's agent for the payment of the principal of and interest on bonds for which credit enhancement is provided. The bill defines "board" and "Foundation School Program."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1255 adds provisions not in the original requiring the commissioner of education, in each month of each fiscal year, to determine the amount of funds available to make payments for credit enhancement from the Foundation School Program through the end of the fiscal year and the amounts due to public schools from the Foundation School Program through the end of the fiscal year; authorizing the commissioner to revise such a determination during the fiscal year as

appropriate; prohibiting the commissioner from endorsing particular bonds for credit enhancement until the commissioner has determined that the endorsement will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement to exceed the limitations established by the bill's provisions.

C.S.S.B. 1255 adds provisions not in the original prohibiting the commissioner from endorsing particular bonds for credit enhancement unless the commissioner has determined that the maximum annual debt service on the bonds during any state fiscal year will not exceed the limitations established by the bill's provisions and requiring payments of all of the principal of the bonds, for the bonds to be eligible for commissioner approval for credit enhancement, to be scheduled during the first six months of the state fiscal year.

C.S.S.B. 1255 requires a school district to notify the commissioner immediately following a determination that the district will be or is unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided, but not later than the 10th day before maturity date, whereas the original sets that deadline for notification at not later than the fifth day before maturity date.

C.S.S.B. 1255 adds a provision not in the original specifying that the procedures prescribed for the comptroller's transfer to the district's paying agent from appropriations to the Foundation School Program of the amount necessary to pay the maturing or matured principal or interest and the paying agent's payment of the principal or interest amount due immediately following receipt of the funds apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased in accordance with state law.

C.S.S.B. 1255 differs from the original by specifying that the annual deadline for a school district to pay the debt service on bonds for which credit enhancement is provided may not be later than the 10th day before the date of the district's final installment payment from the Foundation School Program for a state fiscal year, rather than not later than the 10th day before the date of the district's final installment payment from the Foundation School Program for a school year as in the original.