

By: Shapiro

S.B. No. 1255

A BILL TO BE ENTITLED

AN ACT

relating to a state intercept credit enhancement program for certain bonds issued by school districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 45, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. INTERCEPT PROGRAM TO PROVIDE CREDIT ENHANCEMENT FOR BONDS

Sec. 45.251. DEFINITIONS. In this subchapter:

(1) "Board" means the State Board of Education.

(2) "Foundation School Program" means the program established under Chapters 41, 42, and 46, or any successor program of state appropriated funding for school districts in this state.

(3) "Paying agent" means the financial institution that is designated 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 under this subchapter.

Sec. 45.252. INTERCEPT CREDIT ENHANCEMENT PROGRAM. (a) If a school district's application for guarantee of district bonds by the corpus and income of the permanent school fund as provided by Subchapter C is rejected, the district may apply under this subchapter for credit enhancement of bonds described by Section 45.054 by money appropriated for the Foundation School Program, other than money that is appropriated to school districts

1 specifically:

2 (1) as required under the Texas Constitution; or

3 (2) for assistance in paying debt service.

4 (b) The same school district bonds may not benefit under
5 both Subchapter C and this subchapter.

6 (c) Notwithstanding any amendment of this subchapter or
7 other law, the credit enhancement provided under this subchapter
8 for school district bonds remains in effect until the date those
9 bonds mature or are defeased in accordance with state law.

10 Sec. 45.253. ELIGIBILITY. To be eligible for approval by
11 the commissioner under this subchapter, bonds must be issued in the
12 manner provided by Section 45.054.

13 Sec. 45.254. INTERCEPT OF FOUNDATION SCHOOL PROGRAM
14 APPROPRIATIONS AS CREDIT ENHANCEMENT. (a) Money appropriated for
15 the Foundation School Program that may be used for the purpose under
16 this subchapter and under any other law, rule, or regulation shall
17 be used to provide credit enhancement for eligible bonds as
18 provided by this subchapter, the General Appropriations Act, and
19 board rule if using the permanent school fund to guarantee
20 particular bonds would result in:

21 (1) a total amount of outstanding bonds guaranteed by
22 the permanent school fund exceeding the amount authorized under:

23 (A) Section 45.053; or

24 (B) federal law or regulations; or

25 (2) the use of a portion of the cost value of the
26 permanent school fund reserved under Section 45.0531, as determined
27 by the board.

1 (b) If Foundation School Program appropriations are not
2 sufficient in any year to pay principal or interest that becomes due
3 on bonds for which credit enhancement is provided under this
4 subchapter, the payment shall be made from the following year's
5 Foundation School Program appropriations that may be used for the
6 purpose under this subchapter before those appropriations are used
7 for any other Foundation School Program purpose.

8 Sec. 45.255. APPLICATION FOR CREDIT ENHANCEMENT. (a) A
9 school district seeking credit enhancement of eligible bonds under
10 this subchapter shall apply to the commissioner using a form
11 adopted by the commissioner for the purpose. The commissioner may
12 adopt a single form on which a district seeking guarantee or credit
13 enhancement of eligible bonds may apply simultaneously first for a
14 guarantee under Subchapter C and then, if that guarantee is
15 rejected, for credit enhancement under this subchapter.

16 (b) An application under Subsection (a) must:
17 (1) include the information required by Section
18 45.055(b); and
19 (2) be accompanied by a fee set by board rule in an
20 amount designed to cover the costs of administering the programs to
21 provide the guarantee or credit enhancement of eligible bonds.

22 Sec. 45.256. INVESTIGATION. (a) Following receipt of an
23 application under Section 45.255, the commissioner shall conduct an
24 investigation of the applicant school district as provided for an
25 investigation under Section 45.056(a).

26 (b) If following the investigation under Subsection (a) the
27 commissioner is satisfied that the school district's bonds should

1 be guaranteed under Subchapter C or provided credit enhancement
2 under this subchapter, as applicable, the commissioner shall
3 endorse the bonds.

4 Sec. 45.257. CREDIT ENHANCEMENT ENDORSEMENT. (a) The
5 commissioner shall endorse bonds approved for credit enhancement
6 under this subchapter in substantially the same manner provided
7 under Section 45.057 for endorsing bonds approved under Subchapter
8 C.

9 (b) The credit enhancement is not effective unless the
10 attorney general approves the bonds under Section 45.005.

11 Sec. 45.258. NOTICE OF FAILURE OR INABILITY TO PAY.
12 Immediately following a determination that a school district will
13 be or is unable to pay maturing or matured principal or interest on
14 a bond for which credit enhancement is provided under this
15 subchapter, but not later than the fifth day before maturity date,
16 the school district shall notify the commissioner.

17 Sec. 45.259. PAYMENT FROM INTERCEPTED FUNDS.

18 (a) Immediately following receipt of notice under Section 45.258,
19 the commissioner shall instruct the comptroller to transfer to the
20 district's paying agent from appropriations to the Foundation
21 School Program that may be used for the purpose under Section 45.252
22 and other law the amount necessary to pay the maturing or matured
23 principal or interest.

24 (b) Immediately following receipt of the funds for payment
25 of the principal or interest, the paying agent shall pay the amount
26 due.

27 (c) If money appropriated for the Foundation School Program

1 is used for purposes of this subchapter and as a result there is
2 insufficient money to fully fund the Foundation School Program, the
3 commissioner shall, to the extent necessary, reduce each school
4 district's foundation school fund allocations, other than any
5 portion appropriated from the available school fund, in the same
6 manner provided by Section 42.253(h) for a case in which school
7 district entitlements exceed the amount appropriated. The
8 following fiscal year, a district's entitlement under Section
9 42.253 is increased by an amount equal to the reduction under this
10 subsection.

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

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

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

25 Sec. 45.261. REIMBURSEMENT OF FOUNDATION SCHOOL PROGRAM.
26 (a) If the commissioner orders payment from the money appropriated
27 to the Foundation School Program on behalf of a school district that

1 is not required to reduce its wealth per student under Chapter 41,
2 the commissioner shall direct the comptroller to withhold the
3 amount paid from the first state money payable to the district. If
4 the commissioner orders payment from the money appropriated to the
5 Foundation School Program on behalf of a school district that is
6 required to reduce its wealth per student under Chapter 41, the
7 commissioner shall increase amounts due from the district under
8 that chapter in a total amount equal to the amount of payments made
9 on behalf of the district under this subchapter. Amounts withheld
10 or received under this subsection shall be used for the Foundation
11 School Program.

12 (b) In accordance with commissioner rules, the commissioner
13 may authorize reimbursement of the Foundation School Program in a
14 manner other than that provided by this section.

15 (c) The commissioner may order a school district to set an
16 ad valorem tax rate capable of producing an amount of revenue
17 sufficient to enable the district to:

- 18 (1) provide reimbursement under this section; and
19 (2) pay the remaining principal of and interest on the
20 bonds as the principal and interest become due.

21 (d) If a school district fails to comply with the
22 commissioner's order under Subsection (c), the commissioner may
23 impose any sanction on the district authorized to be imposed on a
24 district under Subchapter G, Chapter 39, including appointment of a
25 board of managers or annexation to another district, regardless of
26 the district's accreditation status or the duration of a particular
27 accreditation status.

1 (e) Any part of a school district's tax rate attributable to
2 producing revenue for purposes of Subsection (c)(1) is considered
3 part of the district's:

4 (1) current debt rate for purposes of computing a
5 rollback tax rate under Section 26.08, Tax Code; and

6 (2) interest and sinking fund tax rate.

7 (f) On reimbursement by a school district as required by
8 this section, the commissioner shall pay to the district any amount
9 withheld under this section.

10 Sec. 45.262. REPEATED FAILURE TO PAY. (a) If a total of
11 two or more payments are made under Subchapter C or this subchapter
12 on the bonds of a school district and the commissioner determines
13 that the district is acting in bad faith under the guarantee program
14 under Subchapter C or the credit enhancement program under this
15 subchapter, the commissioner may request the attorney general to
16 institute appropriate legal action to compel the district and the
17 district's officers, agents, and employees to comply with the
18 duties required of them by law in regard to the bonds.

19 (b) Jurisdiction of proceedings under this section is in
20 district court in Travis County.

21 Sec. 45.263. RULES. (a) The commissioner shall adopt
22 rules necessary for the administration of the bond credit
23 enhancement program under this subchapter.

24 (b) In adopting rules under Subsection (a), the
25 commissioner shall establish an annual deadline by which a school
26 district must pay the debt service on bonds for which credit
27 enhancement is provided under this subchapter. The deadline

1 established may not be later than the 10th day before the date
2 specified under Section 42.259 for payment to school districts of
3 the final Foundation School Program installment for a school year.

4 SECTION 2. Section 45.052, Education Code, is amended to
5 read as follows:

6 Sec. 45.052. GUARANTEE. (a) On approval by the
7 commissioner, bonds issued under Subchapter A, including refunding
8 bonds, are guaranteed by the corpus and income of the permanent
9 school fund.

10 (b) Notwithstanding any amendment of this subchapter or
11 other law, the guarantee under this subchapter of school district
12 bonds remains in effect until the date those bonds mature or are
13 defeased in accordance with state law.

14 SECTION 3. Subsections (a), (b), and (c), Section 45.053,
15 Education Code, are amended to read as follows:

16 (a) Except as provided by Subsection (d), the commissioner
17 may not approve bonds for guarantee under this subchapter if the
18 approval would result in the total amount of outstanding guaranteed
19 bonds under this subchapter exceeding an amount equal to 2-1/2
20 times the cost value of the permanent school fund, as estimated by
21 the board and certified by the state auditor.

22 (b) Each year, the state auditor shall analyze the status of
23 guaranteed bonds under this subchapter as compared to the cost
24 value of the permanent school fund. Based on that analysis, the
25 state auditor shall certify whether the amount of bonds guaranteed
26 under this subchapter is within the limit prescribed by this
27 section.

1 (c) The commissioner shall prepare and the board shall adopt
2 an annual report on the status of the guaranteed bond program under
3 this subchapter.

4 SECTION 4. Subchapter C, Chapter 45, Education Code, is
5 amended by adding Section 45.0531 to read as follows:

6 Sec. 45.0531. ADDITIONAL LIMITATION: RESERVATION OF
7 PERCENTAGE OF PERMANENT SCHOOL FUND VALUE. (a) In addition to the
8 limitation on the approval of bonds for guarantee under Section
9 45.053, the board by rule may establish a percentage of the cost
10 value of the permanent school fund to be reserved from use in
11 guaranteeing bonds under this subchapter.

12 (b) If the board has reserved a portion of the permanent
13 school fund under Subsection (a), each year, the state auditor
14 shall analyze the status of the reserved portion compared to the
15 cost value of the permanent school fund. Based on that analysis,
16 the state auditor shall certify whether the portion of the
17 permanent school fund reserved from use in guaranteeing bonds under
18 this subchapter satisfies the reserve percentage established.

19 (c) If the board has reserved a portion of the permanent
20 school fund under Subsection (a), the board shall at least annually
21 consider whether to change the reserve percentage established to
22 ensure that the reserve percentage allows compliance with federal
23 law and regulations and serves to enable bonds guaranteed under
24 this subchapter to receive the highest available credit rating, as
25 determined by the board.

26 (d) This section may not be construed in a manner that
27 impairs, limits, or removes the guarantee of bonds that have been

1 approved by the commissioner.

2 SECTION 5. Section 45.055, Education Code, is amended to
3 read as follows:

4 Sec. 45.055. APPLICATION FOR GUARANTEE. (a) A school
5 district seeking [~~the~~] guarantee of eligible bonds under this
6 subchapter shall apply to the commissioner using a form adopted by
7 the commissioner for the purpose. The commissioner may adopt a
8 single form on which a district seeking guarantee or credit
9 enhancement of eligible bonds may apply simultaneously first for
10 guarantee under this subchapter and then, if that guarantee is
11 rejected, for credit enhancement under Subchapter I.

12 (b) An [~~The~~] application under Subsection (a) must include:

13 (1) the name of the school district and the principal
14 amount of the bonds to be issued;

15 (2) the name and address of the district's paying agent
16 for those bonds; and

17 (3) the maturity schedule, estimated interest rate,
18 and date of the bonds.

19 (c) An [~~The~~] application under Subsection (a) must be
20 accompanied by a fee set by rule of the board in an amount designed
21 to cover the costs of administering the programs to provide the
22 guarantee or credit enhancement of eligible bonds [~~program~~].

23 SECTION 6. Subsection (b), Section 45.056, Education Code,
24 is amended to read as follows:

25 (b) If following the investigation the commissioner is
26 satisfied that the school district's bonds should be guaranteed
27 under this subchapter or provided credit enhancement under

1 Subchapter I, as applicable, the commissioner shall endorse the
2 bonds.

3 SECTION 7. Section 45.061, Education Code, is amended by
4 adding Subsections (c) and (d) to read as follows:

5 (c) The commissioner may order a school district to set an
6 ad valorem tax rate capable of producing an amount of revenue
7 sufficient to enable the district to:

8 (1) provide reimbursement under this section; and

9 (2) pay the principal of and interest on district
10 bonds as the principal and interest become due.

11 (d) If a school district fails to comply with the
12 commissioner's order under Subsection (c), the commissioner may
13 impose any sanction on the district authorized to be imposed on a
14 district under Subchapter G, Chapter 39, including appointment of a
15 board of managers or annexation to another district, regardless of
16 the district's accreditation status or the duration of a particular
17 accreditation status.

18 SECTION 8. Subsection (a), Section 45.062, Education Code,
19 is amended to read as follows:

20 (a) If a total of two or more payments [~~from the permanent~~
21 ~~school fund~~] are made under this subchapter or Subchapter I on the
22 [~~guaranteed~~] bonds of a school district and the commissioner
23 determines that the school district is acting in bad faith under the
24 guarantee program under this subchapter or the credit enhancement
25 program under Subchapter I, the commissioner may request the
26 attorney general to institute appropriate legal action to compel
27 the school district and its officers, agents, and employees to

1 comply with the duties required of them by law in regard to the
2 bonds.

3 SECTION 9. Section 42.259, Education Code, is amended by
4 adding Subsection (g) to read as follows:

5 (g) The commissioner shall make all annual Foundation
6 School Program payments under this section for purposes described
7 by Sections 45.252(a)(1) and (2) before the deadline established
8 under Section 45.263(b) for payment of debt service on bonds.
9 Notwithstanding any other provision of this section, the
10 commissioner may make Foundation School Program payments under this
11 section after the deadline established under Section 45.263(b) only
12 if the commissioner has not received notice under Section 45.258
13 concerning a district's failure or inability to pay matured
14 principal or interest on bonds.

15 SECTION 10. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2009.