

By: Eissler

H.B. No. 1437

A BILL TO BE ENTITLED

AN ACT

relating to the guarantee of open-enrollment charter school bonds by the permanent school fund.

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

SECTION 1. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.135 to read as follows:

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

(b) A charter district may apply for bonds issued under Chapter 53 for the open-enrollment charter school to be guaranteed by the permanent school fund as provided by Chapter 45.

SECTION 2. Section 45.051, Education Code, is amended by adding Subdivision (1-a) and amending Subdivision (2) to read as follows:

(1-a) "Charter district" means an open-enrollment charter school designated as a charter district under Section 12.135.

(2) "Paying agent" means the financial institution that is designated by a school district or charter district as its

1 agent for the payment of the principal of and interest on guaranteed
2 bonds.

3 SECTION 3. Section 45.052, Education Code, is amended to
4 read as follows:

5 Sec. 45.052. GUARANTEE. (a) On approval by the
6 commissioner, bonds issued under Subchapter A by a school district
7 or Chapter 53 for a charter district, including refunding bonds,
8 are guaranteed by the corpus and income of the permanent school
9 fund.

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

14 SECTION 4. Subchapter C, Chapter 45, Education Code, is
15 amended by adding Section 45.0532 to read as follows:

16 Sec. 45.0532. LIMITATION ON GUARANTEE OF CHARTER DISTRICT
17 BONDS. (a) In addition to the general limitation under Section
18 45.053, the commissioner may not approve charter district bonds for
19 guarantee under this subchapter in a total amount that exceeds the
20 percentage of the total available capacity of the guaranteed bond
21 program that is equal to the percentage of the number of students
22 enrolled in open-enrollment charter schools in this state compared
23 to the total number of students enrolled in all public schools in
24 this state, as determined by the commissioner.

25 (b) For purposes of Subsection (a), the total available
26 capacity of the guaranteed bond program is the limit established by
27 the board under Section 45.053(d) minus the total amount of

1 outstanding guaranteed bonds. Each time the board increases the
2 limit under Section 45.053(d), the total amount of charter district
3 bonds that may be guaranteed increases accordingly under Subsection
4 (a).

5 (c) Notwithstanding Subsections (a) and (b), the
6 commissioner may not approve charter district bonds for guarantee
7 under this subchapter if the guarantee will result in lower bond
8 ratings for school district bonds for which a guarantee is
9 requested under this subchapter.

10 (d) The commissioner may request that the comptroller place
11 the portion of the permanent school fund committed to the guarantee
12 of charter district bonds in a segregated account if the
13 commissioner determines that a separate account is needed to avoid
14 any negative impact on the bond ratings of school district bonds for
15 which a guarantee is requested under this subchapter.

16 (e) A guarantee of charter district bonds must be made in
17 accordance with this chapter and any applicable federal law.

18 SECTION 5. Section 45.054, Education Code, is amended to
19 read as follows:

20 Sec. 45.054. ELIGIBILITY OF SCHOOL DISTRICT BONDS. To be
21 eligible for approval by the commissioner, school district bonds
22 must be issued under Subchapter A of this chapter or under
23 Subchapter A, Chapter 1207, Government Code, to make a deposit
24 under Subchapter B or C of that chapter, by an accredited school
25 district.

26 SECTION 6. Subchapter C, Chapter 45, Education Code, is
27 amended by adding Section 45.0541 to read as follows:

1 Sec. 45.0541. ELIGIBILITY OF CHARTER DISTRICT BONDS. To be
2 eligible for approval by the commissioner, charter district bonds
3 must:

4 (1) without the guarantee, be rated as investment
5 grade by a nationally recognized investment rating firm; and

6 (2) be issued under Chapter 53.

7 SECTION 7. Sections 45.055(a) and (b), Education Code, are
8 amended to read as follows:

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

17 (b) An application under Subsection (a) must include:

18 (1) the name of the school district or charter
19 district and the principal amount of the bonds to be issued;

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

22 (3) the maturity schedule, estimated interest rate,
23 and date of the bonds.

24 SECTION 8. Section 45.056, Education Code, is amended to
25 read as follows:

26 Sec. 45.056. INVESTIGATION. (a) Following receipt of an
27 application for the guarantee of bonds, the commissioner shall

1 conduct an investigation of the applicant school district or
2 charter district in regard to:

3 (1) the status of the district's accreditation; and

4 (2) the total amount of outstanding guaranteed bonds.

5 (b) If following the investigation the commissioner is
6 satisfied that the school district's bonds should be guaranteed
7 under this subchapter or provided credit enhancement under
8 Subchapter I, as applicable, or the charter district's bonds should
9 be guaranteed under this subchapter, the commissioner shall endorse
10 the bonds.

11 SECTION 9. Section 45.057(b), Education Code, is amended to
12 read as follows:

13 (b) The guarantee is not effective unless the attorney
14 general approves the bonds under Section 45.005 or 53.40, as
15 applicable.

16 SECTION 10. Subchapter C, Chapter 45, Education Code, is
17 amended by adding Section 45.0571 to read as follows:

18 Sec. 45.0571. CHARTER DISTRICT BOND GUARANTEE RESERVE FUND.

19 (a) The charter district bond guarantee reserve fund is a special
20 fund in the state treasury outside the general revenue fund. The
21 following amounts shall be deposited in the fund:

22 (1) money due from a charter district as provided by
23 Subsection (b); and

24 (2) interest earned on balances in the fund.

25 (b) A charter district that has a bond guaranteed as
26 provided by this subchapter must annually remit to the
27 commissioner, for deposit in the charter district bond guarantee

1 reserve fund, an amount equal to 10 percent of the savings to the
2 charter district that is a result of the lower interest rate on the
3 bond due to the guarantee by the permanent school fund. The amount
4 due under this section shall be amortized and paid over the duration
5 of the bond. Each payment is due on the anniversary of the date the
6 bond was issued. The commissioner shall adopt rules to determine
7 the total and annual amounts due under this section.

8 (c) The commissioner may direct the comptroller to annually
9 withhold the amount due to the charter district bond guarantee
10 reserve fund under Subsection (b) for that year from the state funds
11 otherwise payable to the charter district.

12 (d) Each year, the commissioner shall:

13 (1) review the condition of the bond guarantee program
14 and the amount that must be deposited in the charter district bond
15 guarantee reserve fund from charter districts; and

16 (2) determine if charter districts should be required
17 to submit a greater percentage of the savings resulting from the
18 guarantee.

19 (e) The commissioner shall make recommendations to the
20 legislature based on the review under Subsection (d).

21 SECTION 11. Section 45.058, Education Code, is amended to
22 read as follows:

23 Sec. 45.058. NOTICE OF DEFAULT. Immediately following a
24 determination that a school district or charter district will be or
25 is unable to pay maturing or matured principal or interest on a
26 guaranteed bond, but not later than the fifth day before maturity
27 date, the school district or charter district shall notify the

1 commissioner.

2 SECTION 12. The heading to Section 45.059, Education Code,
3 is amended to read as follows:

4 Sec. 45.059. PAYMENT OF SCHOOL DISTRICT BOND ON DEFAULT
5 [~~FROM PERMANENT SCHOOL FUND~~].

6 SECTION 13. Section 45.059(a), Education Code, is amended
7 to read as follows:

8 (a) Immediately following receipt of notice under Section
9 45.058 that a school district will be or is unable to pay maturing
10 or matured principal or interest on a guaranteed bond, the
11 commissioner shall instruct the comptroller to transfer from the
12 appropriate account in the permanent school fund to the district's
13 paying agent the amount necessary to pay the maturing or matured
14 principal or interest.

15 SECTION 14. Subchapter C, Chapter 45, Education Code, is
16 amended by adding Section 45.0591 to read as follows:

17 Sec. 45.0591. PAYMENT OF CHARTER DISTRICT BOND ON DEFAULT.

18 (a) Immediately following receipt of notice under Section 45.058
19 that a charter district will be or is unable to pay maturing or
20 matured principal or interest on a guaranteed bond, the
21 commissioner shall instruct the comptroller to transfer from the
22 charter district bond guarantee reserve fund created under Section
23 45.0571 to the district's paying agent the amount necessary to pay
24 the maturing or matured principal or interest.

25 (b) If money in the charter district bond guarantee reserve
26 fund is insufficient to pay the amount due on a bond under
27 Subsection (a), the commissioner shall instruct the comptroller to

1 transfer from the appropriate account in the permanent school fund
2 to the district's paying agent the amount necessary to pay the
3 balance of the unpaid maturing or matured principal or interest.

4 (c) Immediately following receipt of the funds for payment
5 of the principal or interest, the paying agent shall pay the amount
6 due and forward the canceled bond or coupon to the comptroller. The
7 comptroller shall hold the canceled bond or coupon on behalf of the
8 fund or funds from which payment was made.

9 (d) Following full reimbursement to the charter district
10 bond guarantee reserve fund and the permanent school fund, if
11 applicable, with interest, the comptroller shall further cancel the
12 bond or coupon and forward it to the charter district for which
13 payment was made.

14 SECTION 15. Section 45.060, Education Code, is amended to
15 read as follows:

16 Sec. 45.060. BONDS NOT ACCELERATED ON DEFAULT. If a school
17 district or charter district fails to pay principal or interest on a
18 guaranteed bond when it matures, other amounts not yet mature are
19 not accelerated and do not become due by virtue of the school
20 district's or charter district's default.

21 SECTION 16. The heading to Section 45.061, Education Code,
22 is amended to read as follows:

23 Sec. 45.061. REIMBURSEMENT OF FUNDS [~~PERMANENT SCHOOL~~
24 ~~FUND~~].

25 SECTION 17. Section 45.061, Education Code, is amended by
26 amending Subsections (a) and (b) and adding Subsection (a-1) to
27 read as follows:

1 (a) If the commissioner orders payment from the permanent
2 school fund or the charter district bond guarantee reserve fund on
3 behalf of a school district or charter district, the commissioner
4 shall direct the comptroller to withhold the amount paid, plus
5 interest, from the first state money payable to the school district
6 or charter district. Except as provided by Subsection (a-1), the
7 ~~[The]~~ amount withheld shall be deposited to the credit of the
8 permanent school fund.

9 (a-1) After the permanent school fund has been reimbursed
10 for all money paid from the fund as the result of a default of a
11 charter district bond guaranteed under this subchapter, any
12 remaining amounts withheld under Subsection (a) shall be deposited
13 to the credit of the charter district bond guarantee reserve fund.

14 (b) In accordance with the rules of the board, the
15 commissioner may authorize reimbursement to the permanent school
16 fund or charter district bond guarantee reserve fund with interest
17 in a manner other than that provided by this section.

18 SECTION 18. Section 45.062, Education Code, is amended by
19 adding Subsection (a-1) to read as follows:

20 (a-1) If a total of two or more payments are made under this
21 subchapter on charter district bonds and the commissioner
22 determines that the charter district is acting in bad faith under
23 the guarantee program under this subchapter, the commissioner may
24 request the attorney general to institute appropriate legal action
25 to compel the charter district and its officers, agents, and
26 employees to comply with the duties required of them by law in
27 regard to the bonds.

1 SECTION 19. Section 53.02(10), Education Code, is amended
2 to read as follows:

3 (10) "Authorized charter school" means an
4 open-enrollment charter school that holds a charter granted under
5 Subchapter D, Chapter 12, and includes an open-enrollment charter
6 school designated as a charter district as provided by Section
7 12.135.

8 SECTION 20. Section 53.351, Education Code, is amended by
9 amending Subsection (f) and adding Subsection (f-1) to read as
10 follows:

11 (f) Except as provided by Subsection (f-1), a [A] revenue
12 bond issued under this section is not a debt of the state or any
13 state agency, political corporation, or political subdivision of
14 the state and is not a pledge of the faith and credit of any of these
15 entities. A revenue bond is payable solely from the revenue of the
16 authorized open-enrollment charter school on whose behalf the bond
17 is issued. A revenue bond issued under this section must contain on
18 its face a statement to the effect that:

19 (1) neither the state nor a state agency, political
20 corporation, or political subdivision of the state is obligated to
21 pay the principal of or interest on the bond; and

22 (2) neither the faith and credit nor the taxing power
23 of the state or any state agency, political corporation, or
24 political subdivision of the state is pledged to the payment of the
25 principal of or interest on the bond.

26 (f-1) Subsection (f) does not apply to a revenue bond issued
27 under this section for a charter district if the bond is approved

1 for guarantee by the permanent school fund under Subchapter C,
2 Chapter 45.

3 SECTION 21. This Act applies only to a bond issued or
4 refunded on or after the effective date of this Act by an
5 open-enrollment charter school designated as a charter district
6 under Section 12.135, Education Code, as added by this Act. A bond
7 issued or refunded by an open-enrollment charter school before the
8 effective date of this Act is governed by the law in effect
9 immediately before that date, and that law is continued in effect
10 for that purpose.

11 SECTION 22. This Act takes effect September 1, 2011.