

BILL ANALYSIS

C.S.H.B. 467
By: Murphy
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interest parties contend that too few charter schools have access to the permanent school fund bond guarantee program, which the parties note can enhance a public school's credit rating and lower interest rates on bonds issued. C.S.H.B. 467 seeks to increase charter school access to the program.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 467 amends the Education Code to change the additional limitation on the guarantee of charter district bonds by the permanent school fund from a proportional amount of the guaranteed bond program's total available capacity, which is the program limit set by the State Board of Education (SBOE) minus the total amount of outstanding guaranteed bonds, to an amount based on the guaranteed bond program's charter capacity, which is the percentage of the program's total capacity established by the SBOE that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in Texas compared to the total number of students enrolled in all public schools in Texas, as determined by the commissioner of education.

C.S.H.B. 467 applies the charter capacity provided by the bill's provisions beginning with the state fiscal year that begins September 1, 2021. The bill requires the SBOE to establish a charter capacity for the preceding state fiscal years by increasing the total limitation on the amount of charter district bonds that could be guaranteed under the law in effect on January 1, 2017, by specified scheduled amounts based on a percentage difference between the charter capacity provided by the bill and the charter capacity in effect on that date. The bill authorizes the SBOE for any year to increase the charter capacity by less than the specified amount or decline to increase the charter capacity by any amount if the SBOE determines that increasing the charter capacity by the specified amount would likely result in a negative impact on the bond ratings provided by one or more nationally recognized investment rating firms for school district or charter district bonds for which a guarantee is requested or if one or more charter districts default on payment of maturing or matured principal or interest on a guaranteed bond, resulting in a negative impact on the bond ratings provided by one or more nationally recognized investment rating firms for school district or charter district bonds for which a guarantee is requested. The bill authorizes the SBOE, if the SBOE makes any such determination and modifies the schedule provided by the bill for that year, to also make appropriate adjustments to the schedule for

subsequent years to reflect the modification, provided that the charter capacity for any year may not exceed the limit provided for that year by the schedule. These provisions expire September 1, 2022.

C.S.H.B. 467 makes confidential and exempt from disclosure under state public information law information obtained from a nationally recognized investment rating firm relating to certain limitations on the guarantee of bonds by the permanent school fund that concerns a hypothetical or actual scenario relating to the credit rating of the permanent school fund or the bond guarantee program of the permanent school fund, and any communications from, or information generated by, the Texas Education Agency, the SBOE, the commissioner, or their employees relating to that information.

C.S.H.B. 467 authorizes the commissioner's investigation of an application for the guarantee of bonds submitted by a charter district to include evaluation of whether the charter district bond security documents provide a security interest in real property pledged as collateral for the bond and the repayment obligation under the proposed guarantee. The bill authorizes the commissioner to decline to approve the application if the commissioner determines that sufficient security is not provided. The bill adds a temporary provision set to expire September 1, 2019, authorizing the commissioner, in determining whether to approve charter district bonds for guarantee and in addition to considering all other applicable requirements, to consider any additional reasonable factor that the commissioner determines necessary to protect the guarantee program or minimize risk to the permanent school fund, including certain specified factors.

C.S.H.B. 467 establishes that the charter district bond guarantee reserve fund is managed by the SBOE in the same manner that the permanent school fund is managed by the SBOE. The bill authorizes the SBOE to invest money in the charter district bond guarantee reserve fund in accordance with a specified investment standard applicable to certain investments by the comptroller of public accounts and exempts the SBOE investment from any other limitation or requirement relating to authorized investments by the comptroller. The bill requires the SBOE to adjust the investment portfolio of fund money periodically to ensure that the balance of the fund is sufficient to meet the cash flow requirements of the fund.

C.S.H.B. 467 raises from 10 percent to 20 percent the percentage of the savings to a charter district as a result of the lower interest rate on a bond due to the guarantee by the permanent school fund that the charter district is required to remit to the commissioner for deposit in the charter district bond guarantee reserve fund. The bill removes the requirement that the amount due be amortized and paid over the duration of the bond, with each payment due on the anniversary of the date the bond was issued, and instead requires the amount due to be paid on receipt by the charter district of the bond proceeds. The bill exempts a charter district from the requirement to remit that amount if at the time the charter district receives the proceeds of the bond guaranteed by the permanent school fund the balance of the fund is at least equal to three percent of the total amount of outstanding guaranteed bonds issued by charter districts. The bill removes the authorization for the commissioner to direct the comptroller to annually withhold the amount due to the fund for that year on the basis of a charter school's remittances from the state funds otherwise payable to the charter district.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 467 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 45.0532(a), (a-1), and (b), Education Code, are amended to read as follows:

(a) In addition to the general limitation under Section 45.053, the commissioner may not approve charter district bonds for guarantee under this subchapter in a total amount that exceeds the charter capacity [~~percentage of the total available capacity~~] of the guaranteed bond program [~~that is equal to the percentage of the number of students enrolled in open enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner~~].

(a-1) The commissioner may not approve charter district refunding or refinanced bonds for guarantee under this subchapter in a total amount that exceeds one-half of the charter capacity [~~total amount available for the guarantee of charter district bonds under Subsection (a)~~].

(b) For purposes of this section [~~Subsection (a)~~], the charter [~~total available~~] capacity of the guaranteed bond program is the percentage of the total capacity of the guaranteed bond program [~~limit~~] established by the board under Sections 45.053(d) and 45.0531 that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner [~~minus the total amount of outstanding guaranteed bonds~~]. Each time the board increases the limit under Section 45.053(d), the total amount of charter district bonds that may be guaranteed increases accordingly under Subsection (a).

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 45.0532, Education Code, is amended by amending Subsections (a), (a-1), and (b) and adding Subsections (b-1), (b-2), (b-3), and (b-4) to read as follows:

(a) In addition to the general limitation under Section 45.053, the commissioner may not approve charter district bonds for guarantee under this subchapter in a total amount that exceeds the charter capacity [~~percentage of the total available capacity~~] of the guaranteed bond program [~~that is equal to the percentage of the number of students enrolled in open enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner~~].

(a-1) The commissioner may not approve charter district refunding or refinanced bonds for guarantee under this subchapter in a total amount that exceeds one-half of the charter capacity [~~total amount available for the guarantee of charter district bonds under Subsection (a)~~].

(b) For purposes of this section [~~Subsection (a)~~], the charter [~~total available~~] capacity of the guaranteed bond program is the percentage of the total capacity of the guaranteed bond program [~~limit~~] established by the board under Sections 45.053(d) and 45.0531 that is equal to the percentage of the number of students enrolled in open-enrollment charter schools in this state compared to the total number of students enrolled in all public schools in this state, as determined by the commissioner [~~minus the total amount of outstanding guaranteed bonds~~]. Each time the board increases the limit under Section 45.053(d), the total amount of charter district bonds that may be guaranteed increases accordingly under Subsection (a).

(b-1) The charter capacity provided by Subsection (b) applies beginning with the state fiscal year that begins September 1, 2021. Subject to Subsections (b-2) and (b-3), the board shall establish a charter capacity for the preceding state fiscal years by increasing the total limitation on the amount of charter district bonds that could

be guaranteed under the law in effect on January 1, 2017, by the following amount:
(1) for the state fiscal year that begins September 1, 2017, 20 percent of the difference between the charter capacity provided by Subsection (b) and the charter capacity in effect on January 1, 2017;
(2) for the state fiscal year that begins September 1, 2018, 40 percent of the difference between the charter capacity provided by Subsection (b) and the charter capacity in effect on January 1, 2017;
(3) for the state fiscal year that begins September 1, 2019, 60 percent of the difference between the charter capacity provided by Subsection (b) and the charter capacity in effect on January 1, 2017; and
(4) for the state fiscal year that begins September 1, 2020, 80 percent of the difference between the charter capacity provided by Subsection (b) and the charter capacity in effect on January 1, 2017.

No equivalent provision.

(b-2) For any year, the board may increase the charter capacity by less than the amount provided by Subsection (b-1) or may decline to increase the charter capacity by any amount if:

(1) the board determines that increasing the charter capacity by the amount provided by Subsection (b-1) would likely result in a negative impact on the bond ratings provided by one or more nationally recognized investment rating firms for school district or charter district bonds for which a guarantee is requested under this subchapter; or

(2) one or more charter districts default on payment of maturing or matured principal or interest on a guaranteed bond, resulting in a negative impact on the bond ratings provided by one or more nationally recognized investment rating firms for school district or charter district bonds for which a guarantee is requested under this subchapter.

No equivalent provision.

(b-3) If the board makes a determination described by Subsection (b-2) for any year and modifies the schedule provided by Subsection (b-1) for that year, the board may also make appropriate adjustments to the schedule for subsequent years to reflect the modification, provided that the charter capacity for any year may not exceed the

No equivalent provision.

limit provided for that year by the schedule.

(b-4) Subsections (b-1), (b-2), and (b-3) and this subsection expire September 1, 2022.

No equivalent provision.

SECTION 2. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0533 to read as follows:

Sec. 45.0533. COMMUNICATION WITH NATIONALLY RECOGNIZED INVESTMENT RATING FIRM. Information obtained from a nationally recognized investment rating firm relating to Section 45.053, 45.0531, or 45.0532 that concerns a hypothetical or actual scenario relating to the credit rating of the permanent school fund or the bond guarantee program of the permanent school fund, and any communications from, or information generated by, the agency, the board, the commissioner, or their employees relating to that information, is confidential and not subject to disclosure under Chapter 552, Government Code.

No equivalent provision.

SECTION 3. Section 45.056, Education Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) For purposes of this subsection, "bond security documents" include the resolution, trust agreement, indenture, ordinance, loan agreement, deed of trust, bond, note, and any additional document executed in connection with the issuance of a charter district bond for which a guarantee is requested under this subchapter. The commissioner's investigation of an application submitted by a charter district may include evaluation of whether the charter district bond security documents provide a security interest in real property pledged as collateral for the bond and the repayment obligation under the proposed guarantee. The commissioner may decline to approve the application if the commissioner determines that sufficient security is not provided.

No equivalent provision.

SECTION 4. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0561 to read as follows:

Sec. 45.0561. COMMISSIONER

CONSIDERATION OF ADDITIONAL FACTORS FOR CHARTER DISTRICT BONDS. (a) In addition to considering all other applicable requirements under this subchapter, in determining whether to approve charter district bonds for guarantee the commissioner may consider any additional reasonable factor that the commissioner determines necessary to protect the guarantee program or minimize risk to the permanent school fund, including:

(1) whether the charter district had an average daily attendance of more than 75 percent of its student capacity for each of the preceding three school years, or for each school year of operation if the charter district has not been in operation for the preceding three school years;

(2) the performance of the charter district under Sections 39.053 and 39.054; and

(3) any other indicator of performance that could affect the charter district's financial performance.

(b) This section expires September 1, 2019.

No equivalent provision.

SECTION 5. Section 45.0571, Education Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsections (b) and (c) to read as follows:

(a-1) Notwithstanding Chapter 404, Government Code, the charter district bond guarantee reserve fund is managed by the board in the same manner that the permanent school fund is managed by the board. The board may invest money in the charter district bond guarantee reserve fund in accordance with the investment standard described by Section 404.024(j), Government Code, and the board's investment is not subject to any other limitation or requirement provided by Section 404.024, Government Code.

(a-2) The board shall adjust the investment portfolio of charter district bond guarantee reserve fund money periodically to ensure that the balance of the fund is sufficient to meet the cash flow requirements of the fund.

(b) Subject to Subsection (c), a [A] charter district that has a bond guaranteed as provided by this subchapter must [annually] remit to the commissioner, for deposit in the charter district bond guarantee reserve fund, an amount equal to 20 [~~10~~] percent of the

savings to the charter district that is a result of the lower interest rate on the bond due to the guarantee by the permanent school fund. The amount due under this section shall be ~~[amortized and]~~ paid on receipt by the charter district of the bond proceeds ~~[over the duration of the bond. Each payment is due on the anniversary of the date the bond was issued]~~. The commissioner shall adopt rules to determine the amount ~~[total and annual amounts]~~ due under this section.

(c) Subsection (b) does not apply if, at the time the charter district receives the proceeds of the bond guaranteed as provided by this subchapter, the balance of the charter district bond guarantee reserve fund is at least equal to three percent of the total amount of outstanding guaranteed bonds issued by charter districts. ~~[The commissioner may direct the comptroller to annually withhold the amount due to the charter district bond guarantee reserve fund under Subsection (b) for that year from the state funds otherwise payable to the charter district.]~~

No equivalent provision.

SECTION 6. Section 45.0571, Education Code, as amended by this Act, applies only to a charter district bond that is approved by the commissioner of education for guarantee under Subchapter C, Chapter 45, Education Code, on or after the effective date of this Act. A charter district bond that is approved by the commissioner of education for guarantee under Subchapter C, Chapter 45, Education Code, before the effective date of this Act is governed by the law in effect on the date the bond is approved for guarantee, and the former law is continued in effect for that purpose.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 7. This Act takes effect September 1, 2017.