

ATTACHMENT I

Statutory Citations Relating to New 19 TAC Chapter 61, School Districts, Subchapter CC, Commissioner's Rules Concerning School Facilities, §61.1038, School District Bond Enhancement Program

Texas Education Code (TEC), Chapter 45, School District Funds, Subchapter I, Intercept Program to Provide Credit Enhancement for Bonds.

§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.

§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 specifically:
 - (1) as required under the Texas Constitution; or
 - (2) for assistance in paying debt service.
- (b) The same school district bonds may not benefit under both Subchapter C and this subchapter.
- (c) 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 or are defeased in accordance with state law.

§45.253. Limitation on Intercept Credit Enhancement.

- (a) In each month of each fiscal year, the commissioner shall determine the amount of funds available to make payments under this subchapter from the Foundation School Program through the end of the fiscal year and the amounts due under this code to public schools from the Foundation School Program through the end of the fiscal year. The commissioner may revise a determination under this subsection during the fiscal year as appropriate.
- (b) The commissioner may not endorse particular bonds for credit enhancement under this subchapter until the commissioner has:
 - (1) made the determinations required under Subsection (a); and

- (2) 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 under this subchapter to exceed the lesser of:
 - (A) one-half of the amount of funds due to public schools from the Foundation School Program for the remainder of the fiscal year; or
 - (B) 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.
- (c) The commissioner may not endorse particular bonds for credit enhancement under this subchapter 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:
 - (1) one-half of the amount of funds due to public schools from the Foundation School Program for the current fiscal year; or
 - (2) 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.

§45.254. Eligibility.

To be eligible for approval by the commissioner for credit enhancement under this subchapter:

- (1) bonds must be issued in the manner provided by Section 45.054; and
- (2) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year.

§45.2541. Intercept of Foundation School Program Appropriations as Credit Enhancement.

- (a) Money appropriated for the Foundation School Program that may be used for the purpose under this subchapter and under any other law, rule, or regulation shall be used to provide credit enhancement for eligible bonds as provided by this subchapter, the General Appropriations Act, and board rule if using the permanent school fund to guarantee particular bonds would result in:
 - (1) a total amount of outstanding bonds guaranteed by the permanent school fund exceeding the amount authorized under:
 - (A) Section 45.053; or
 - (B) federal law or regulations; or
 - (2) the use of a portion of the cost value of the permanent school fund reserved under Section 45.0531, as determined by the board.
- (b) 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 under this subchapter, the payment shall be made from the following year's Foundation School Program appropriations that may be used for the purpose under this subchapter before those appropriations are used for any other Foundation School Program purpose.

§45.255. Application for Credit Enhancement.

- (a) A school district seeking credit enhancement of eligible bonds under this subchapter shall apply to the commissioner using a form adopted by the commissioner for the purpose.

The commissioner may adopt a single form on which a district seeking 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 credit enhancement under this subchapter.

- (b) An application under Subsection (a) must:
 - (1) include the information required by Section 45.055(b); and
 - (2) 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.

§45.256. Investigation.

- (a) Following receipt of an application under Section 45.255, the commissioner shall conduct an investigation of the applicant school district as provided for an investigation under Section 45.056(a).
- (b) 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, the commissioner shall endorse the bonds.

§45.257. Credit Enhancement Endorsement.

- (a) The commissioner shall endorse bonds approved for credit enhancement under this subchapter in substantially the same manner provided under Section 45.057 for endorsing bonds approved under Subchapter C.
- (b) The credit enhancement is not effective unless the attorney general approves the bonds under Section 45.005.

§45.258. Notice of Failure or Inability to Pay.

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 10th day before maturity date, the school district shall notify the commissioner.

§45.259. Payment from Intercepted Funds.

- (a) Immediately following receipt of notice under Section 45.258, the commissioner shall instruct the comptroller to transfer to the district's paying agent from appropriations to the Foundation School Program that may 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) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due.
- (c) The procedures prescribed by Subsections (a) and (b) 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.
- (d) If money appropriated for the Foundation School Program is used for purposes of this subchapter and as a result there is insufficient money to fully fund the Foundation School Program, the commissioner shall, to the extent necessary, 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) for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, a district's entitlement under Section 42.253 is increased by an amount equal to the reduction under this subsection.

- (e) 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.
- (f) 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.

§45.260. Bonds Not Accelerated on Failure to Pay.

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.

§45.261. Reimbursement of Foundation School Program.

- (a) 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 Chapter 41, the commissioner shall direct the comptroller to withhold the amount paid from the first state money payable to the district. 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 Chapter 41, the commissioner shall 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. Amounts withheld or received under this subsection shall be used for the Foundation School Program.
- (b) In accordance with commissioner rules, the commissioner may authorize reimbursement of the Foundation School Program in a manner other than that provided by this section.
- (c) The commissioner may order a school district to set an ad valorem tax rate capable of producing an amount of revenue sufficient to enable the district to:
 - (1) provide reimbursement under this section; and
 - (2) pay the remaining principal of and interest on the bonds as the principal and interest become due.
- (d) If a school district fails to comply with the commissioner's order under Subsection (c), the commissioner may 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.
- (e) 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:
 - (1) current debt rate for purposes of computing a rollback tax rate under Section 26.08, Tax Code; and

- (2) interest and sinking fund tax rate.
- (f) On reimbursement by a school district as required by this section, the commissioner shall pay to the district any amount withheld under this section.

§45.262. Repeated Failure to Pay.

- (a) 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, the commissioner may 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) Jurisdiction of proceedings under this section is in district court in Travis County.

§45.263. Rules.

- (a) The commissioner shall adopt rules necessary for the administration of the bond credit enhancement program under this subchapter.
- (b) In adopting rules under Subsection (a), the commissioner shall establish an annual deadline by which a school district must pay the debt service on bonds for which credit enhancement is provided under this subchapter. The deadline established may not be later than the 10th day before the date specified under Section 42.259 for payment to school districts of the final Foundation School Program installment for a state fiscal year.