

ATTACHMENT II
Text of Adopted New 19 TAC

Chapter 61. School Districts

Subchapter CC. Commissioner's Rules Concerning School Facilities

§61.1038. School District Bond Enhancement Program.

- (a) Statutory provision. The commissioner of education must administer the intercept credit enhancement program for school district bonds according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter I.
- (b) Definitions. The following definitions apply to the intercept credit enhancement program for school district bonds.
 - (1) Application deadline--The last business day of the month in which an application for a credit enhancement is filed. Applications must be received by the Texas Education Agency (TEA) division responsible for state funding by 5:00 p.m. on the last business day of the month to be considered in that month's application processing.
 - (2) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.
 - (3) Bond order--The order adopted by the governing body of a school district that authorizes the issuance of bonds.
 - (4) Combination issue--An issuance of bonds for which an application is filed for a credit enhancement that includes both a new money portion and a refunding portion, as permitted by the Texas Government Code, Chapter 1207. The eligibility of combination issues for the credit enhancement is limited by the eligibility of the new money and refunding portions as defined in this subsection.
 - (5) Enrollment growth--Growth in student enrollment, as defined by §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook), that has occurred over the previous five school years.
 - ~~[(6) Existing annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the district has outstanding bonded indebtedness.]~~
 - ~~[(A) The existing annual debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline.]~~
 - ~~[(B) The existing annual debt service does not include:]~~
 - ~~[(i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or]~~
 - ~~[(ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.]~~
 - ~~[(C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement.]~~
 - (6) ~~[(7)]~~ Financial exigency--A determination by a school district board of trustees that the financial condition of the district requires a reduction in personnel, as authorized by the TEC, §21.211.

- ~~(7)~~ ~~(8)~~ Foundation School Program (FSP)--The program established under the TEC, Chapters 41, 42, and 46, or any successor program of state-appropriated funding for school districts in this state.
- ~~(8)~~ ~~(9)~~ New money issue--An issuance of bonds for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, §45.003. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the school district or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A. A new money issue does not include an issuance of bonds to refinance any type of maintenance tax-supported debt. Maintenance tax-supported debt includes, but is not limited to:
- (A) time warrants or loans entered under the TEC, Chapter 45, Subchapter E; or
 - (B) any other type of loan or warrant that is not supported by bond taxes as defined by the TEC, §45.003.
- ~~(9)~~ ~~(10)~~ Notes issued to provide interim financing--An issuance of notes, including commercial paper notes, designed to provide short-term financing for the purposes of constructing, renovating, acquiring, and equipping school buildings; the purchase of property; or the purchase of school buses. For notes to be eligible for the credit enhancement under this section, the notes must be:
- (A) issued to pay costs for which bonds have been authorized at an election occurring before the issuance of the notes;
 - (B) approved by the Office of the Attorney General or issued in accordance with proceedings that have been approved the Office of the Attorney General; and
 - (C) refunded by bonds issued to provide long-term financing no more than three years from the date of issuance of such notes, provided that the date of issuance of notes will be determined by reference to the date on which the notes were issued for capital expenditures and the intervening date or dates of issuance of any notes issued to refinance outstanding notes will be disregarded.
- ~~(10)~~ ~~(11)~~ Proposed annual debt service--Payments of principal and interest on the outstanding bonded debt for which the enhancement is sought scheduled to occur between September 1 and August 31 during the fiscal year in which the credit enhancement is sought and each fiscal year for which the credit enhancement is or would be in effect as described in the amortization schedule for the bonded debt for which the enhancement is sought.
- ~~(11)~~ ~~(12)~~ Refunding issue--An issuance of bonds for the purpose of refunding bonds, including notes issued to provide interim financing, that are supported by bond taxes as defined by the TEC, §45.003. Eligibility for the credit enhancement for refunding issues is limited to refunding issues that refund bonds, including notes issued to provide interim financing, that were authorized by a bond election under the TEC, §45.003.
- ~~(12)~~ ~~(13)~~ School District Bond Enhancement Program (SDBEP)--The intercept program to provide credit enhancement for school district bonds that is described by this section and established under the TEC, Chapter 45, Subchapter I.
- ~~(13)~~ ~~(14)~~ Total debt service--Total outstanding principal and interest on bonded debt.
- (A) The total debt service will be determined by the current report of the bonded indebtedness of the district as reported by the MAC of Texas or its successor as of the date of the application deadline, if the district has outstanding bonded indebtedness.
 - (B) The total debt service does not include:

- (i) the amount of debt service to be paid on the bonds for which the credit enhancement is sought; or
 - (ii) the amount of debt service attributable to any debt that is no longer outstanding at the application deadline, provided that the TEA has sufficient evidence of the discharge or defeasance of such debt.
 - (C) The debt service amounts used in this calculation for variable rate bonds will be those that are published in the final official statement or final maturity schedule .
- (c) Data sources.
 - (1) The following data sources will be used for purposes of prioritization:
 - (A) projected ADA for the current school year as adopted by the legislature for appropriations purposes;
 - (B) final property values certified by the comptroller of public accounts, as described in the Texas Government Code, Chapter 403, Subchapter M, for the tax year preceding the year in which the bonds will be issued. If final property values are unavailable, the most recent projection of property values by the comptroller, as described in the Texas Government Code, Chapter 403, Subchapter M, will be used;
 - (C) debt service information reported by the MAC of Texas or its successor as of the date of the application deadline; and
 - (D) enrollment information reported to the Public Education Information Management System (PEIMS) for the five-year time period ending in the year before the application date.
 - (2) The commissioner may consider adjustments to data values determined to be erroneous or not reflective of current conditions before the deadline for receipt of applications for that application cycle.
- (d) Application for the credit enhancement.
 - (1) Application process. Districts must apply to the commissioner of education for the guarantee or the credit enhancement of eligible bonds. The district must submit, in a form specified by the commissioner, the information required under the TEC, §45.055(b), and this section and any additional information the commissioner may require. The application and all additional information required by the commissioner must be received before the application will be processed. The application will first be considered for guarantee of eligible bonds under §33.65 of this title (relating to Bond Guarantee Program). If Permanent School Fund (PSF) capacity has been exhausted, the application will then be considered for credit enhancement of eligible bonds. The application must be accompanied by a fee in the amount specified as the application fee amount in §33.65 of this title.
 - (A) The fee is due at the time the application for the guarantee or the credit enhancement is submitted. An application will not be processed until the fee has been received in accordance with the process prescribed by the commissioner for remitting the fee on the application form.
 - (B) The fee will not be refunded to a district that:
 - (i) is not approved for the guarantee or the credit enhancement; or
 - (ii) does not sell its bonds before the expiration of its approval for the guarantee or the credit enhancement.
 - (C) The fee may be transferred to a subsequent application for the guarantee or the credit enhancement by the district if the district withdraws its application and

submits the subsequent application before the expiration of its approval for the guarantee or the credit enhancement.

(2) Approval.

(A) Under the TEC, §45.056, the commissioner will investigate the applicant school district's accreditation status and financial status. A district must be accredited and financially sound to be eligible for approval by the commissioner. The commissioner's review will include the following:

(i) the purpose of the bond issue;

(ii) the district's accreditation status as defined by §97.1055 of this title (relating to Accreditation Status) in accordance with the following:

(I) if the district's accreditation status is Accredited, the district will be eligible for consideration for the credit enhancement;

(II) if the district's accreditation status is Accredited-Warned or Accredited-Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the district will not be eligible for consideration for the credit enhancement; or

(III) if the district's accreditation status is Not Accredited-Revoked, the district will not be eligible for consideration for the credit enhancement;

(iii) the district's compliance with statutes and rules of the TEA; and

(iv) the district's financial status and stability, regardless of the district's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §45.0031 and §45.005.

(B) The commissioner will grant or deny approval for the credit enhancement based on the review described in subparagraph (A) of this paragraph and will provide an applicant district whose application has received or been denied approval for the credit enhancement written notice of approval or denial. Notice of denial will include the reasons for denial .

(e) Application processing. To facilitate prioritization of applications for the guarantee authorized under §33.65 of this title, or for the credit enhancement authorized under this section, if the PSF capacity has been exhausted, all applications received during a calendar month will be held until the fifteenth business day of the subsequent month. On the fifteenth business day of each month, the commissioner of education will announce the results of the prioritization described in paragraph (5) of this subsection. If the PSF capacity has been exhausted, the commissioner will process the application for approval for the credit enhancement up to the available capacity of money appropriated for the FSP for credit enhancement under this section as of the application deadline, subject to the requirements of this subsection.

(1) The school district may not submit an application for a guarantee or credit enhancement before the successful passage of an authorizing proposition.

(2) The actual credit enhancement of the bonds is subject to the approval process prescribed in subsection (d) of this section.

(3) During those periods in which the PSF capacity has been exhausted, the commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the SDBEP from the FSP through the end of the fiscal year for purposes of providing approval for the credit enhancement of school district bonds under this

section. The commissioner will confirm that a sufficient amount of these funds exists to enhance the credit of the bonds before the issuance of the approval for the credit enhancement in accordance with subsection (d)(2) of this section. The amount of funds available to make payments under the SDBEP from the FSP is limited as described in paragraph (4) of this subsection and does not include:

- (A) Available School Fund (ASF) funds;
- (B) any FSP funds designated for the facilities programs provided for under the TEC, Chapter 46;
- (C) any funds designated for the charter school credit enhancement program provided for under the TEC, Chapter 45, Subchapter J; or
- (D) any federal funds, including federal funds provided by the American Recovery and Reinvestment Act of 2009.

(4) Before approving school district bonds for credit enhancement under the SDBEP, the commissioner must:

- (A) make the determination described in paragraph (3) of this subsection;
- (B) determine that credit enhancement of the bonds will not cause the projected debt service coming due during the remainder of the fiscal year for bonds provided credit enhancement under this section to exceed the lesser of:
 - (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
 - (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year; and
- (C) determine that the maximum annual debt service on the bonds provided credit enhancement under this section, during any state fiscal year, will not exceed the lesser of:
 - (i) one-half of the amount of funds due to public schools from the FSP for the final month of the current fiscal year; or
 - (ii) one-half of the amount of funds anticipated to be on hand in the FSP to make payments for the final month of the current fiscal year.

(5) Credit enhancements will be awarded each month beginning with the districts with the lowest property wealth per ADA until the amount of funds available to make payments under the SDBEP from the FSP reaches its net capacity to enhance bonds, as described in paragraph (4) of this subsection. Credit enhancements will be awarded to applicants based on the amount available to fully enhance the bond issue for which the credit enhancement is sought. Applications for bond issues that cannot be fully enhanced will not receive an award. The amount of bond issue for which the guarantee or credit enhancement was requested may not be modified after the monthly application deadline for the purposes of securing the guarantee or credit enhancement during the award process.

(6) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting district before the end of the subsequent month.

(7) Each district that submits a valid application will be notified of the application status within 15 business days of the application deadline. If a district is awarded approval for the credit enhancement as described in subsection (d)(2) of this section, the bonds must be approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement. The approval for the credit enhancement will expire at the end of the 180-day period. The commissioner may extend

the 180-day period, based on extraordinary circumstances, on receiving a written request from the district before the expiration of the 180-day period.

- (8) If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the Office of the Attorney General within the specified time period, the district may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.
- (9) If the bonds are not approved by the Office of the Attorney General within 180 days of the date of the letter granting the approval for the credit enhancement, the commissioner will consider the application withdrawn, and the district must reapply for a credit enhancement.
- (10) Districts may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

(f) Eligibility.

- (1) For bonds to be eligible for the credit enhancement under the SDBEP:
 - (A) bonds must be issued in the manner provided by the TEC, §45.054;
 - (B) payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;
 - (C) the applicant ~~school district's lowest credit rating from any credit rating agency may not be the same as or higher than [school district must have, from any credit rating agency, a credit rating that is lower than]~~ that of the SDBEP;
 - (D) the bonded debt for which the credit enhancement is sought must be structured so that no single annual debt service payment exceeds two times the quotient produced by dividing the total proposed annual debt service, as defined in subsection ~~(b)(10) [(b)(11)]~~ of this section, for the term of the bonds by the number of years in the amortization schedule; and
 - (E) the applicant school district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.
- (2) Refunding issues must comply with the following requirements to be eligible for the credit enhancement for the refunding bonds, except that subparagraph ~~(C) [(D)]~~ of this paragraph does not apply to a refunding issue that provides long-term financing for notes issued to provide interim financing.
 - ~~[(A) — The district must have an accreditation status of Accredited as defined by §97.1055 of this title. If the district has an accreditation status of Accredited- Warned or Accredited- Probation, the commissioner will investigate the underlying reason for the accreditation rating to determine whether the accreditation rating is related to the district's financial soundness. If the accreditation rating is related to the district's financial soundness, the refunding bonds will not be eligible for the credit enhancement. Districts with an accreditation status of Not Accredited- Revoked will not be eligible for the credit enhancement for the refunding bonds.]~~
 - (A) ~~[(B)]~~ Only refunding issues as defined in subsection ~~(b)(11) [(b)(12)]~~ of this section are eligible for the credit enhancement.
 - (B) ~~[(C)]~~ The bonds to be refunded must have been:
 - (i) previously guaranteed by the PSF under the guarantee program authorized under §33.65 of this title or provided credit enhancement under this section;

- (ii) issued on or after November 1, 2008, and before December 16, 2009;
or
- (iii) issued as notes to provide interim financing as defined in subsection (b)(9) ~~(b)(10)~~ of this section.

(C) ~~(D)~~ The district must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the district and that the refunding bond or bonds will not have a maturity date later than the final maturity date of the bonds being refunded. Net present ~~Present~~ value savings is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Net present ~~Present~~ value savings must be computed at the true interest cost of the refunding bonds.

(D) ~~(E)~~ If a district files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for the guarantee or the credit enhancement. A credit enhancement for the combination issue will be awarded only if both the new money portion and the refunding portion meet all of the applicable eligibility requirements described in this subsection. The district making the application must present data to the commissioner that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.

(E) ~~(F)~~ The refunding transaction must comply with the provisions of subsection (e)(7) and (9) of this section.

(g) Limitations on access to the credit enhancement.

- (1) The commissioner will limit approval for the credit enhancement to a district with less than the amount of annual debt service per student in ADA or less than the amount of total debt service per student in ADA that is specified as the limitation in §33.65 of this title at the time of the application for a guarantee or a credit enhancement. The limitation will not apply to school districts that have enrollment growth, as defined in subsection (b)(5) of this section, of at least 25%, based on PEIMS data on enrollment available at the time of application. The annual debt service amount is the amount defined by §33.65(b)(1) of this title. The total debt service amount is the amount defined by subsection (b)(13) ~~(b)(14)~~ of this section.
- (2) The eligibility of bonds to receive the credit enhancement is limited to those new money, refunding, and combination issues as defined in subsection (b)(8), (11), ~~(b)(9), (12),~~ and (4), respectively, of this section.

(h) Financial exigency. A school district that declares a financial exigency must designate the fiscal year to which the exigency applies. A state of financial exigency expires at the end of that fiscal year unless renewed or may be terminated by action of the board of trustees at any time before the end of the fiscal year.

- (1) Declaration for current fiscal year.
 - (A) Application for credit enhancement of new money issue. The commissioner will deny approval of an application for the credit enhancement of a new money issue if the applicant school district has declared a state of financial exigency for the district's current fiscal year. The denial of approval will be in effect for the duration of the applicable fiscal year unless the district can demonstrate financial stability.
 - (B) Approval granted before declaration. If in a given district's fiscal year the commissioner grants approval for the credit enhancement of a new money issue and the school district subsequently declares a state of financial exigency for that same fiscal year, the district must immediately notify the commissioner and

may not offer the bonds for sale unless the commissioner determines that the district may proceed.

- (C) Application for credit enhancement of refunding issue. The commissioner will consider an application for the credit enhancement of a refunding issue that meets all applicable requirements specified in this section even if the applicant school district has declared a state of financial exigency for the district's current fiscal year. In addition to fulfilling all applicable requirements specified in this section, the applicant school district must also describe, in its application, the reason financial exigency was declared and how the refunding issue will support the district's financial recovery plan.
- (2) Declaration in a previous fiscal year. An applicant school district that declared a state of financial exigency in a previous district fiscal year but that has not declared such a state for the district's current fiscal year will not be considered to be in a state of financial exigency for the purposes of this section.
- (i) Defeasance. The credit enhancement will be completely removed when bonds provided credit enhancement under this section are defeased, and such a provision must be specifically stated in the bond resolution. If bonds provided credit enhancement under this section are defeased, the district must notify the commissioner in writing within ten calendar days of the action.
- (j) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter I, matured principal and interest payments are limited to amounts due on bonds provided credit enhancement under this section at scheduled maturity, at scheduled interest payment dates, and at dates when bonds are subject to mandatory redemption, including extraordinary mandatory redemption, in accordance with their terms. All such payment dates, including mandatory redemption dates, must be specified in the order or other document pursuant to which the bonds initially are issued. Without limiting the provisions of this subsection, payments attributable to an optional redemption or a right granted to a bondholder to demand payment upon a tender of such bonds in accordance with the terms of the bonds do not constitute matured principal and interest payments.
- (k) Credit enhancement restrictions. The credit enhancement provided for eligible bonds in accordance with the provisions of the TEC, Chapter 45, Subchapter I, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of a district under any agreement with a third party relating to bonds that is defined or described in state law as a "bond enhancement agreement" or a "credit agreement," unless the right to payment of such third party is directly as a result of such third party being a bondholder.
- (l) Notice of failure or inability to pay. A school district that has determined that it is or will be unable to pay maturing or matured principal or interest on a bond for which credit enhancement is provided under this section must immediately, but not later than the tenth business day before maturity date, notify the commissioner.
- (m) Payment from intercepted funds.
- (1) Immediately after the commissioner receives the notice described in subsection (l) of this section, the commissioner will instruct the comptroller to transfer to the district's paying agent from the amount of funds available to make payments under the SDBEP from the FSP, as identified by the commissioner, the amount necessary to pay the maturing or matured principal or interest.
- (2) Immediately after receipt of the funds for payment of the principal or interest, the paying agent must pay the amount due.
- (3) The procedures described in paragraphs (1) and (2) of this subsection apply to each payment of principal or interest on bonds as the payment becomes due until the bonds mature or are defeased according to state law.
- (4) If, as a result of payments made under this subsection, there is insufficient money to fully fund the FSP, the commissioner will, to the extent necessary, reduce each school district's

foundation school fund allocations, other than any portion appropriated from the ASF, in the same manner provided by the TEC, §42.253(h), for a case in which school district entitlements exceed the amount appropriated. The following fiscal year, the commissioner will increase each school district's entitlement under the TEC, §42.253, by an amount equal to the reduction under this paragraph.

- (5) A payment made under this subsection by the state on behalf of a school district of funds the district owes on bonds for which credit enhancement is provided under this section creates a repayment obligation of the district to the state regardless of the maturity date of, or any payment of interest on, the bonds.
- (6) This subsection does not create a debt of the state under the Texas Constitution or, except to the extent provided by this section, create a payment obligation.
- (n) 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 section 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.
- (o) Reimbursement of FSP. If payment from the money appropriated to the FSP is made on behalf of a school district, the school district must reimburse the amount of the payment in accordance with the requirements of the TEC, §45.261.
- (p) Repeated failure to pay. If a total of two or more payments are made under the guarantee program authorized under §33.65 of this title or the SDBEP on the bonds of a school district, the commissioner will take action in accordance with the provisions of the TEC, §45.262.