ATTACHMENT II
Text of Adopted New 19 TAC

Chapter 61. School Districts

Subchapter CC. Commissioner's Rules Concerning School Facilities

§61.1039. Open-Enrollment Charter School Bond Enhancement Program.

(a) Statutory provision. The commissioner of education must administer the open-enrollment charter school facilities credit enhancement program according to the provisions of the Texas Education Code (TEC), Chapter 45, Subchapter J.

(b) Definitions. The following definitions apply to the open-enrollment charter school facilities credit enhancement program.

(1) Amortization expense--The annual expense of any debt and/or loan obligations.

(2) Annual debt service--Payments of principal and interest on outstanding bonded debt scheduled to occur between September 1 and August 31 during a fiscal year as reported by the Municipal Advisory Council (MAC) of Texas or its successor, if the open-enrollment charter holder is responsible for [~~has~~] outstanding bonded indebtedness.

(A) The [~~existing~~] annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder as reported by the MAC of Texas or its successor as of the date of the application deadline.

(B) 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) Annual debt service includes required payments into a sinking fund as authorized under 26 United States Code (USC) §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(3) 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.

(4) Average daily attendance (ADA)--Total refined average daily attendance as defined by the TEC, §42.005.

(5) Board resolution--The resolution adopted by the governing body of an open-enrollment charter holder that:

(A) requests credit enhancement of bonds through the Open-Enrollment Charter School Bond Enhancement Program; and

(B) authorizes the charter holder's administration to pursue bond financing.

(6) Bond resolution--The resolution authorizing the issuance of bonds adopted by the governing body of an issuer of bonds for the benefit of an open-enrollment charter holder [~~that authorizes the issuance of bonds~~] .

(7) 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 TEC, Chapter 53, or 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.

(8) Debt service coverage ratio--A measure of an open-enrollment charter holder's ability to pay interest and principal with cash generated from current operations. The debt service coverage ratio (total debt service coverage on all long-term capital debt) equals the excess of revenues over expenses plus interest expense plus depreciation expense plus amortization expense, all divided by maximum annual debt service. The calculation can be expressed as: (Excess of revenues over expenses + interest expense + depreciation expense + amortization expense) / Maximum annual debt service.

(9) Depreciation expense--The audited amount of depreciation that was expensed during the fiscal period.

[~~(10) 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 MAC of Texas or its successor, if the open-enrollment charter holder has outstanding bonded indebtedness.~~]

[~~(A) The existing annual debt service will be determined by the current report of the bonded indebtedness of the open-enrollment charter holder 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 reservation 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.~~]

[~~(D) Annual debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.~~]

(10) [~~(11)~~] 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 the state of Texas.

(11) [~~(12)~~] Maximum annual debt service--As of any date of calculation, the highest annual debt service requirements with respect to all outstanding debt for any succeeding fiscal year.

(12) [~~(13)~~] New money issue--An issuance of revenue bonds for the purposes of the purchase, repair, or renovation of real property, including improvements to real property, for an educational [~~instructional~~] facility, as that term is defined in the TEC, §53.02 [~~§46.001~~] , of an open-enrollment charter school and for purposes of equipping real property of an open-enrollment charter school. Eligibility for the credit enhancement for new money issues is limited to the issuance of bonds authorized under the TEC, Chapter 53. A new money issue does not include the issuance of bonds to purchase a facility from a public facility corporation created by the open-enrollment charter holder or to purchase any property that is currently under a lease-purchase contract under the Local Government Code, Chapter 271, Subchapter A.

(13) [~~(14)~~] Open-enrollment charter--This term has the meaning assigned in §100.1011 of this title (relating to Definitions).

(14) [~~(15)~~] Open-enrollment charter holder--This term has the meaning assigned to the term "charter holder" in the TEC, §12.1012.

(15) [~~(16)~~] Open-enrollment charter school--This term has the meaning assigned to the term "charter school" in §100.1011 of this title.

(16) [~~(17)~~] Open-Enrollment Charter School Bond Enhancement Program (CSBEP)--The program to provide credit enhancement for open-enrollment charter school bonds that is described by this section and established under the TEC, Chapter 45, Subchapter J.

(17) [~~(18)~~] Open-enrollment charter school campus--This term has the meaning assigned to the term "charter school campus" in §100.1011 of this title.

(18) [~~(19)~~] 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. Proposed annual [~~Annual~~] debt service includes required payments into a sinking fund as authorized under 26 USC §54A(d)(4)(C), provided that the sinking fund is maintained by a trustee or other entity approved by the commissioner that is not under the control or common control of the charter holder.

(19) [~~(20)~~] Refunding issue--An issuance of bonds for the purpose of refunding bonds that have previously been issued under the TEC, Chapter 53, or the Texas Government Code, Chapter 1207, and have previously been approved by the Office of the Attorney General.

(20) [(21)] School year--The period beginning the fourth Monday of August of the current calendar year and ending the Sunday before the fourth Monday of August of the following calendar year.

(c) Eligibility to apply for the credit enhancement.

(1) To have its application for the credit enhancement considered, an open-enrollment charter holder must:

(A) have operated at least one open-enrollment charter school in the state of Texas for at least three years;

(B) identify in its application for which open-enrollment charter school and, if applicable, for which open-enrollment charter school campus the bond funds will be used;

(C) in its application, agree that the bonded indebtedness for which the credit enhancement is sought will be undertaken as an obligation of all tax-exempt entities under common control of the open-enrollment charter holder and agree that all such entities will be liable for the obligation if the open-enrollment charter holder defaults on the bonded indebtedness;

(D) not be considered a high-risk grantee by the TEA office responsible for planning, grants, and evaluation; and

(E) not have an unresolved corrective action that is more than one year old, unless the open-enrollment charter holder has taken appropriate steps to begin resolving the action.

(2) For an open-enrollment charter holder to have its application for the credit enhancement considered, each [~~all~~] open-enrollment charter school [~~schools~~] operated under the charter must not have an accreditation rating of Not Accredited-Revoked and must have a rating [~~ratings~~] of acceptable or higher as its [~~their~~] most recent state academic accountability rating [~~ratings~~] . However, if an open-enrollment charter school operated under the charter is not yet rated because the school is in its first year of operation, that fact will not impact the charter holder's eligibility to apply for the credit enhancement.

(d) Criteria to be met for open-enrollment charter holder to receive initial approval.

(1) In determining whether an open-enrollment charter holder applicant is eligible to receive initial approval for the credit enhancement, the commissioner will investigate the financial status of the applicant open-enrollment charter holder and the accreditation status of all open-enrollment charter schools operated under the charter. For the open-enrollment charter holder's application to be eligible for initial approval by the commissioner, each [~~All the~~] open-enrollment charter school [~~schools~~] operated under the charter must be accredited and the open-enrollment charter holder must be financially sound [~~for the open-enrollment charter holder's application to be eligible for initial approval by the commissioner~~] . The commissioner's review will include review of the following:

(A) the purpose of the bond issue;

(B) the accreditation status, as defined by §97.1055 of this title (relating to Accreditation Status), of all open-enrollment charter schools operated under the charter in accordance with the following , except that, if an open-enrollment charter school operated under the charter has not yet received an accreditation rating because it is in its first year of operation, that fact will not impact the charter holder's eligibility for consideration for the credit enhancement :

(i) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the open-enrollment charter holder will be eligible for consideration for the credit enhancement;

(ii) if the accreditation status of any open-enrollment charter school operated under the charter 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 open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement; or

(iii) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited-Revoked, the open-enrollment charter holder will not be eligible for consideration for the credit enhancement;

(C) the open-enrollment charter holder's financial status and stability, regardless of each open-enrollment charter school's accreditation rating, including approval of the bonds by the Office of the Attorney General under the provisions of the TEC, §53.40;

(D) the audit history of the open-enrollment charter holder and of all open-enrollment charter schools operated under the charter;

(E) the open-enrollment charter holder's compliance with statutes and rules of the TEA and with applicable state and federal program requirements and the compliance of all open-enrollment charter schools operated under the charter with these statutes, rules, and requirements;

(F) any interventions and sanctions to which the open-enrollment charter holder has been subject; to which any of the open-enrollment charter schools operated under the charter has been subject; and, if applicable, to which any of the open-enrollment charter school campuses operated under the charter has been subject;

(G) formal complaints made against the open-enrollment charter holder, against any of the open-enrollment charter schools operated under the charter, or against any of the open-enrollment charter school campuses operated under the charter;

(H) the state academic accountability rating of all open-enrollment charter schools operated under the charter and the campus ratings of all open-enrollment charter school campuses operated under the charter; and

(I) any unresolved corrective actions that are less than one year old.

(2) For an open-enrollment charter holder to receive initial approval for credit enhancement:

(A) the applicant open-enrollment charter holder's lowest credit rating from any credit rating agency may not be the same as or higher than that of the CSBEP;

(B) 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)(18) [~~(b)(19)~~] of this section, for the term of the bonds by the number of years in the amortization schedule; and

(C) the open-enrollment charter holder must agree, in its application, that payments of all of the principal of the bonds will be scheduled during the first six months of the state fiscal year.

(3) To receive initial approval for credit enhancement of bonds to be issued for the purchase, repair, or renovation of real property, the open-enrollment charter holder must agree, in its application, to execute a lien or require the owner of the property, if different, to execute a lien on that real property in a form prescribed by the commissioner and approved by the Office of the Attorney General to secure repayment of all amounts due to the state from the open-enrollment charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this section. The lien must be filed in the real property records of each county in which the real property is located. In accordance with the TEC, §45.306, the lien has priority over any other claim against the real property except a lien granted to the holders of obligations issued to finance the acquisition of the real property and any security interest or lien existing before credit enhancement is provided under this section. The open-enrollment charter holder must disclose all existing liens, security interests, or other encumbrances on the real property to be purchased, renovated, or improved and on any improvements proposed for the real property in the application and confirm that no additional liens or encumbrances have been placed on the property before the signing and filing of the lien under this subsection. On the payment or defeasance of the enhanced bonds, the lien will terminate and be released insofar as the paid or defeased bonds are concerned. Property purchased with the bond proceeds is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.

(e) Limitations on access to the credit enhancement.

(1) The commissioner will limit approval of the credit enhancement to an open-enrollment charter holder with a historical debt service coverage ratio of at least 1.1 and a projected debt service coverage ratio of at least 1.20 [~~1.25~~] .

(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)(12), (19), [~~(b)(13), (20),~~] and (7), respectively, of this section.

(3) To be eligible to receive the credit enhancement, bonds may not provide for acceleration of amounts of principal or interest not yet matured by virtue of a charter holder's failure to make payments or for any other reason.

(f) Application processing. To facilitate prioritization of applications for the credit enhancement, all applications received during a calendar month will be held until the twentieth business day of the subsequent month. On the twentieth business day of each month, the commissioner will announce the results of the prioritization described in paragraph (6) of this subsection, if prioritization was

necessary, and process applications for initial approval of the credit enhancement up to the available capacity as of the application deadline, subject to the requirements of this subsection.

(1) The open-enrollment charter holder may not submit an application for a credit enhancement before the governing body of the open-enrollment charter holder adopts a board resolution as defined in subsection (b)(5) of this section.

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

(3) Refunding issues must comply with the following requirements to retain eligibility for the credit enhancement for the refunding bonds.

[~~(A) The open-enrollment charter school must have an accreditation status of Accredited as defined by §97.1055 of this title. If the open-enrollment charter school 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 open-enrollment charter school's financial soundness. If the accreditation rating is related to the open-enrollment charter school's financial soundness, the refunding bonds will not be eligible to retain the credit enhancement. Open-enrollment charter schools with an accreditation status of Not Accredited-Revoked will not be eligible to retain the credit enhancement on the refunding bonds.~~]

(A) [~~(B)~~] The open-enrollment charter holder must demonstrate that issuing the refunding bond(s) will result in a net present value savings to the open-enrollment charter holder 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.

(B) [~~(C)~~] If an open-enrollment charter holder files an application for a combination issue, the application will be treated as a single issue for the purposes of eligibility for 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 eligibility requirements described in this subsection. The open-enrollment charter holder making the application must present data to the commissioner that demonstrate [~~demonstrates~~] compliance for both the new money portion of the issue and the refunding portion of the issue.

(C) [~~(D)~~] The refunding transaction must comply with the provisions of paragraphs (8) and (10) of this subsection.

(4) The commissioner in each month of each fiscal year will estimate the amount of funds available to make payments under the CSBEP from the FSP through the end of the fiscal year for purposes of providing initial approval to the credit enhancement of bonds issued for the benefit of [~~by~~] open-enrollment charter holders 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 final approval for the credit enhancement in accordance with subsection (g)(4) of this section.

(5) Before approving the credit enhancement of bonds issued by open-enrollment charter holders under the CSBEP, the commissioner must:

(A) allocate not more than 1.0% of the amount appropriated for the FSP for purposes of the CSBEP; and

(B) make the determination described in paragraph (4) of this subsection.

(6) If prioritization of applications is necessary because of limited program capacity, the commissioner will prioritize applications for the credit enhancement in the following way.

(A) Applications from open-enrollment charter holders that have not had bonds issued previously will be considered before applications from open-enrollment charter holders that have had bonds issued previously.

(B) The commissioner first will prioritize by lottery all applications received from open-enrollment charter holders that have not had bonds issued previously.

(C) The commissioner then will prioritize by lottery all applications received from open-enrollment charter holders that have had bonds issued previously.

(7) An application received after the application deadline will be considered a valid application for the subsequent month, unless withdrawn by the submitting open-enrollment charter holder before the end of the subsequent month.

(8) Each open-enrollment charter holder that submits a valid application will be notified of the application status within 20 business days of the end of the month following the application deadline. If an open-enrollment charter holder is awarded initial approval for the credit enhancement as described in subsection (g)(3) of this section, the following requirements must be met.

(A) The open-enrollment charter holder must comply with the provisions for final approval described in subsection (g)(4) of this section to maintain approval for the credit enhancement.

(B) The bonds must be approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement. The initial approval for the credit enhancement will expire at the end of the 270-day period. The commissioner may extend the 270-day period, based on extraordinary circumstances, on receiving a written request from the open-enrollment charter holder before the expiration of the 270-day period.

(9) If an open-enrollment charter holder 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 open-enrollment charter holder may reapply in a subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

(10) If the bonds are not approved by the Office of the Attorney General within 270 days of the date of the letter granting the approval of the credit enhancement, the commissioner will consider the application withdrawn, and the open-enrollment charter holder must reapply for a credit enhancement.

(11) An open-enrollment charter holder may not represent bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval of the credit enhancement.

(g) Application for the credit enhancement.

(1) Application process. Open-enrollment charter holders must apply to the commissioner for the credit enhancement of eligible bonds. The open-enrollment charter holder must submit, in a form specified by the commissioner, the information required under 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 must be accompanied by a fee to be set by the commissioner.

(A) The fee is due at the time the application for 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 an open-enrollment charter holder that:

(i) is not approved for the credit enhancement; or

(ii) does not sell its bonds before the expiration of its approval for the credit enhancement.

(C) The fee may be transferred to a subsequent application for the credit enhancement by the open-enrollment charter holder if the open-enrollment charter holder withdraws its application and submits the subsequent application for the same charter school before the expiration of its initial approval for the credit enhancement.

(2) Application for the credit enhancement and charter renewal or amendment.

(A) If an open-enrollment charter holder applies for the credit enhancement during the school year in which the open-enrollment charter holder's charter is due to expire, application approval will be contingent on successful renewal of the charter, and the bonds for which the open-enrollment charter holder is applying for the credit enhancement may not be issued before the successful renewal of the charter.

(B) If an open-enrollment charter holder proposes to use the proceeds of the bonds for which it is applying for the credit enhancement for an expansion that requires a charter amendment, application approval will be contingent on approval of the amendment, and the bonds may not be issued before approval of the amendment.

(3) Initial approval ; denial . The TEA will notify an applicant in writing of initial approval for or of denial for the credit enhancement on the TEA's determination of whether [~~that~~] the applicant has met all applicable requirements. Notification of denial will include the reasons for denial.

(4) Final approval. An open-enrollment charter holder must receive final approval before completing the sale of the bonds for which the open-enrollment charter holder has received notification of initial approval.

(A) An open-enrollment charter holder that has received initial approval must provide a written notice to the TEA two business days before issuing a preliminary official statement (POS) for the bonds that are eligible for the credit enhancement or two business days before soliciting investment offers, if the bonds will be privately placed without the use of a POS.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the available capacity of money allocated for the credit enhancement under this section continues to be available and must continue to meet the requirements of subsection (c) of this section before proceeding with the public or private offer to sell bonds.

(ii) The TEA will provide this notification within one business day of receiving the notice of the POS or notice of other solicitation offers to sell the bonds.

(B) An open-enrollment charter holder that received confirmation from the TEA in accordance with subparagraph (A) of this paragraph must provide written notice to the TEA of the placement of an agenda item on a meeting of the bond issuer's [~~open-enrollment charter holder's~~] board of directors to approve the bond sale no

later than two business days before the meeting. If the bond sale is completed pursuant to a delegation by the issuer [~~open-enrollment charter holder~~] to a pricing officer or committee, notice must be given to the TEA no later than two business days before the execution of a bond purchase agreement by such pricing officer or committee.

(i) The open-enrollment charter holder must receive written confirmation from the TEA that the capacity continues to be available for the bond sale before the approval of the sale by the bond issuer [~~open-enrollment charter holder~~] or by the pricing officer or committee.

(ii) The TEA will provide this notification within one business day before the date that the bond issuer [~~open-enrollment charter holder~~] expects to complete the sale by official action of the bond issuer [~~open-enrollment charter holder~~] or of a pricing officer or committee.

(C) The TEA will process requests for final approval from open-enrollment charter holders that have received initial approval on a first come, first served basis. Requests for final approval must be received before the expiration of the initial approval.

(D) An open-enrollment charter holder may provide written notification as required by this paragraph by facsimile transmission or by electronic mail in a manner prescribed by the commissioner.

(h) Defeasance. The credit enhancement will be completely removed when bonds approved for credit enhancement by this CSBEP are defeased, and such a provision must be specifically stated in the bond resolution. If bonds approved for credit enhancement by this CSBEP are defeased, the open-enrollment charter holder must notify the commissioner in writing within ten calendar days of the action.

(i) Payments. For purposes of the provisions of the TEC, Chapter 45, Subchapter J, matured principal and interest payments are limited to amounts due on bonds approved for credit enhancement 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 bond 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 on a tender of such bonds according to the terms of the bonds do not constitute matured principal and interest payments.

(j) Credit enhancement restrictions. The credit enhancement provided for eligible bonds under the provisions of the TEC, Chapter 45, Subchapter J, is restricted to matured bond principal and interest. The credit enhancement does not extend to any obligation of an open-enrollment charter holder 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.

(k) Report on the use of funds and confirmation of use of funds by independent auditor. An open-enrollment charter holder that issues bonds approved for credit enhancement by the CSBEP must report to the TEA annually in a form prescribed by the commissioner on the use of the bond funds until all bond proceeds have been spent. The open-enrollment charter holder's independent auditor must confirm in the open-enrollment charter holder's annual financial report that bond funds have been used in accordance with the purpose specified in the application for the credit enhancement.

(l) Failure to comply with statute or this section. An open-enrollment charter holder's failure to comply with the requirements of the TEC, Chapter 45, Subchapter J, or with the requirements of this section, including by making any misrepresentations in the open-enrollment charter holder's application for the credit enhancement, constitutes a material violation of the open-enrollment charter holder's charter.