

Amend CSHB 3646 (Senate committee printing) by inserting into the bill the following new ARTICLE, appropriately numbered, and renumbering subsequent ARTICLES of the bill to read as follows:

ARTICLE ____ . CREDIT ENHANCEMENT

SECTION ____ .01. Chapter 45, Education Code, is amended by adding Subchapters I and J to read as follows:

SUBCHAPTER I. INTERCEPT PROGRAM TO PROVIDE CREDIT ENHANCEMENT FOR BONDS

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

Sec. 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.

SUBCHAPTER J. OPEN-ENROLLMENT CHARTER SCHOOL FACILITIES CREDIT
ENHANCEMENT PROGRAM

Sec. 45.301. DEFINITIONS. In this subchapter:

(1) "Charter holder" has the meaning assigned by Section 12.1012.

(2) "Program" means the open-enrollment charter school facilities credit enhancement program established under this subchapter.

Sec. 45.302. ESTABLISHMENT OF PROGRAM. (a) The commissioner by rule may establish an open-enrollment charter school facilities credit enhancement program to assist charter holders in obtaining financing for the purchase, repair, or renovation of real property, including improvements to real property, for facilities of open-enrollment charter schools.

(b) The commissioner may adopt a structure and procedures for the program that are substantially similar to the structure and procedures for the credit enhancement program for school district bonds under Subchapter I.

Sec. 45.303. LIMITATION ON PARTICIPATION; MINIMUM REQUIREMENTS FOR DEBT SERVICE RESERVE. In adopting rules under Section 45.302, the commissioner may:

(1) limit participation in the program to charter holders who hold charters for open-enrollment charter schools that meet standards established by the commissioner, including standards for financial stability, compliance with applicable state and federal program requirements, and student academic performance; and

(2) impose minimum requirements for a debt service reserve to secure repayment of obligations for which credit enhancement is provided under this subchapter.

Sec. 45.304. ALLOCATION OF PORTION OF FOUNDATION SCHOOL PROGRAM FUNDS FOR CREDIT ENHANCEMENT. (a) The commissioner may allocate not more than one percent of the amount appropriated for the Foundation School Program for purposes of the program under this subchapter.

(b) The funds allocated under this section may not be considered available for purposes of any other credit enhancement program.

(c) Only those Foundation School Program funds allocated under this section may be committed to the program under this subchapter.

Sec. 45.305. PRIVATE MATCHING FUNDS REQUIRED; USE OF OTHER STATE FUNDS. (a) The commissioner may not implement the program unless private funds in an amount at least equal to the amount of state funds allocated under Section 45.304 are obligated to the

program for at least the first 10 years of the term of obligations for which credit enhancement is provided under the program.

(b) The commissioner may use state funds allocated under Section 45.304 to pay any amount due for credit enhancement under the program and, subject to the terms of the applicable private credit obligation agreement, provide for payment of private funds to the Foundation School Program in an amount equal to at least one-half of the amount of the state funds paid. The commissioner may also use any other state funds available for the purpose to make payments under this subchapter or to reimburse the Foundation School Program for payments made under this subchapter from Foundation School Program funds.

Sec. 45.306. REPAYMENT; LIEN. (a) If a charter holder on behalf of which the state makes a payment under the program does not immediately repay the Foundation School Program the amount of the payment, the commissioner shall withhold any funds due from the state to the charter holder as necessary to recover the total amount of state and private funds paid on behalf of the charter holder under the program.

(b) If a charter holder is for any reason, including revocation or surrender of a charter or bankruptcy, unable to repay any amount due under this subchapter, any loss of funds shall be shared equally between the Foundation School Program and the person providing the private funds obligated for credit enhancement under this subchapter.

(c) A charter holder for which credit enhancement is provided under this subchapter to purchase, repair, or renovate real property for open-enrollment charter school facilities must agree to execute a lien on that real property in a form prescribed by the commissioner and approved by the attorney general to secure repayment of all amounts due to the state from the charter holder, including reimbursement of any private funds paid on behalf of an open-enrollment charter school under this subchapter.

(d) A lien under this section must be filed in the real property records of each county in which the real property is located. A lien under this section 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 subchapter.

(e) The commissioner shall notify a charter holder of any amount determined to be due to the state, including federal funds. If the full amount due to the state has not been repaid or recovered by the commissioner from other funds due to the charter holder within the current and subsequent school year, the commissioner may request the attorney general to file an action to foreclose on a lien under this section. Funds recovered from foreclosure of a lien under this section shall be credited first to any security interest or lien with priority over the lien under this section, then to the charter holder's obligation under this section, and then to any other program to which the funds are due.

(f) Venue for a suit under this section is in Travis County.

Sec. 45.307. STATUS OF PROGRAM. (a) The program is separate from and does not create any claim to the credit enhancement program for school district bonds under Subchapter I.

(b) This subchapter 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.

Sec. 45.308. RULES. If the commissioner establishes a program under this subchapter, the commissioner shall adopt rules to administer the program.

SECTION _____.02. Section 45.052, Education Code, is amended to read as follows:

Sec. 45.052. GUARANTEE. (a) On approval by the commissioner, bonds issued under Subchapter A, including refunding bonds, are guaranteed by the corpus and income of the permanent school fund.

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

SECTION _____.03. Subsections (a), (b), and (c), Section 45.053, Education Code, are amended to read as follows:

(a) Except as provided by Subsection (d), the commissioner

may not approve bonds for guarantee under this subchapter if the approval would result in the total amount of outstanding guaranteed bonds under this subchapter exceeding an amount equal to 2-1/2 times the cost value of the permanent school fund, as estimated by the board and certified by the state auditor.

(b) Each year, the state auditor shall analyze the status of guaranteed bonds under this subchapter as compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the amount of bonds guaranteed under this subchapter is within the limit prescribed by this section.

(c) The commissioner shall prepare and the board shall adopt an annual report on the status of the guaranteed bond program under this subchapter.

SECTION _____.04. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0531 to read as follows:

Sec. 45.0531. ADDITIONAL LIMITATION: RESERVATION OF PERCENTAGE OF PERMANENT SCHOOL FUND VALUE. (a) In addition to the limitation on the approval of bonds for guarantee under Section 45.053, the board by rule may establish a percentage of the cost value of the permanent school fund to be reserved from use in guaranteeing bonds under this subchapter.

(b) If the board has reserved a portion of the permanent school fund under Subsection (a), each year, the state auditor shall analyze the status of the reserved portion compared to the cost value of the permanent school fund. Based on that analysis, the state auditor shall certify whether the portion of the permanent school fund reserved from use in guaranteeing bonds under this subchapter satisfies the reserve percentage established.

(c) If the board has reserved a portion of the permanent school fund under Subsection (a), the board shall at least annually consider whether to change the reserve percentage established to ensure that the reserve percentage allows compliance with federal law and regulations and serves to enable bonds guaranteed under this subchapter to receive the highest available credit rating, as determined by the board.

(d) This section may not be construed in a manner that

impairs, limits, or removes the guarantee of bonds that have been approved by the commissioner.

SECTION _____.05. Section 45.055, Education Code, is amended to read as follows:

Sec. 45.055. APPLICATION FOR GUARANTEE. (a) A school district seeking ~~[the]~~ guarantee 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 guarantee under this subchapter and then, if that guarantee is rejected, for credit enhancement under Subchapter I.

(b) An ~~[The]~~ application under Subsection (a) must include:

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

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

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

(c) An ~~[The]~~ application under Subsection (a) must be accompanied by a fee set by rule of the board in an amount designed to cover the costs of administering the programs to provide the guarantee or credit enhancement of eligible bonds ~~[program]~~.

SECTION _____.06. Subsection (b), Section 45.056, Education Code, is amended to read as follows:

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

SECTION _____.07. Section 45.061, Education Code, is amended by adding Subsections (c) and (d) to read as follows:

(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 principal of and interest on district

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.

SECTION _____.08. Subsection (a), Section 45.062, Education Code, is amended to read as follows:

(a) If a total of two or more payments [~~from the permanent school fund~~] are made under this subchapter or Subchapter I on the [~~guaranteed~~] bonds of a school district and the commissioner determines that the school district is acting in bad faith under the guarantee program under this subchapter or the credit enhancement program under Subchapter I, the commissioner may request the attorney general to institute appropriate legal action to compel the school district and its officers, agents, and employees to comply with the duties required of them by law in regard to the bonds.

SECTION _____.09. Section 42.259, Education Code, is amended by adding Subsection (g) to read as follows:

(g) The commissioner shall make all annual Foundation School Program payments under this section for purposes described by Sections 45.252(a)(1) and (2) before the deadline established under Section 45.263(b) for payment of debt service on bonds. Notwithstanding any other provision of this section, the commissioner may make Foundation School Program payments under this section after the deadline established under Section 45.263(b) only if the commissioner has not received notice under Section 45.258 concerning a district's failure or inability to pay matured principal or interest on bonds.