COMMITTEE SUBSTITUTE FOR S.B. No. 597

A BILL TO BE ENTITLED
AN ACT

relating to the guarantee of open-enrollment charter school bonds
by the permanent school fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 12, Education Code, is
amended by adding Section 12.135 to read as follows:

Sec. 12.135. DESIGNATION AS CHARTER DISTRICT FOR PURPOSES
OF BOND GUARANTEE. (a) On the application of the charter holder,
the commissioner may grant designation as a charter district to an
open-enrollment charter school that meets financial standards
adopted by the commissioner. The financial standards must require
an open-enrollment charter school to have an investment grade
credit rating as specified by Section 45.0541.

(b) A charter district may apply for bonds issued under
Chapter 53 for the open-enrollment charter school to be guaranteed
by the permanent school fund as provided by Chapter 45.

SECTION 2. Section 45.051, Education Code, is amended by
adding Subdivision (1-a) and amending Subdivision (2) to read as
follows:

(1-a) "Charter district" means an open-enrollment
charter school designated as a charter district under Section
12.135.

(2) "Paying agent" means the financial institution
that is designated by a school district or charter district as its
agent for the payment of the principal of and interest on guaranteed
bonds.

SECTION 3. 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 by a school district
or Chapter 53 for a charter district, 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
or charter district bonds remains in effect until the date those
bonds mature or are defeased in accordance with state law.

SECTION 4. Subchapter C, Chapter 45, Education Code, is
amended by adding Section 45.0532 to read as follows:

Sec. 45.0532. LIMITATION ON GUARANTEE OF CHARTER DISTRICT
BONDS. (a) In addition to the general limitation under Section
45.053, the commissioner may not approve charter district bonds for
guarantee under this subchapter in a total amount that exceeds the
percentage of the total available capacity of the guaranteed bond
program that is equal to the percentage of the number of students
enrolled in open-enrollment charter schools in this state compared
to the total number of students enrolled in all public schools in
this state, as determined by the commissioner.

(b) For purposes of Subsection (a), the total available
capacity of the guaranteed bond program is the limit established by
the board under Sections 45.053(d) and 45.0531 minus the total
amount of outstanding guaranteed bonds. Each time the board
increases the limit under Section 45.053(d), the total amount of
charter district bonds that may be guaranteed increases accordingly
under Subsection (a).
(c) Notwithstanding Subsections (a) and (b), the commissioner may not approve charter district bonds for guarantee under this subchapter if the guarantee will result in lower bond ratings for school district bonds for which a guarantee is requested under this subchapter.

(d) The commissioner may request that the comptroller place the portion of the permanent school fund committed to the guarantee of charter district bonds in a segregated account if the commissioner determines that a separate account is needed to avoid any negative impact on the bond ratings of school district bonds for which a guarantee is requested under this subchapter.

(e) A guarantee of charter district bonds must be made in accordance with this chapter and any applicable federal law.

SECTION 5. Section 45.054, Education Code, is amended to read as follows:

Sec. 45.054. ELIGIBILITY OF SCHOOL DISTRICT BONDS. To be eligible for approval by the commissioner, school district bonds must be issued under Subchapter A of this chapter or under Subchapter A, Chapter 1207, Government Code, to make a deposit under Subchapter B or C of that chapter, by an accredited school district.

SECTION 6. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0541 to read as follows:

Sec. 45.0541. ELIGIBILITY OF CHARTER DISTRICT BONDS. To be eligible for approval by the commissioner, charter district bonds must:

(1) without the guarantee, be rated as investment grade by a nationally recognized investment rating firm; and

(2) be issued under Chapter 53.

SECTION 7. Subsections (a) and (b), Section 45.055, Education Code, are amended to read as follows:

(a) A school district or charter district seeking 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 school 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 application under Subsection (a) must include:

(1) the name of the school district or charter 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.

SECTION 8. Section 45.056, Education Code, is amended to read as follows:

Sec. 45.056. INVESTIGATION. (a) Following receipt of an application for the guarantee of bonds, the commissioner shall conduct an investigation of the applicant school district or charter district in regard to:

(1) the status of the district's accreditation; and

(2) the total amount of outstanding guaranteed bonds.

(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, or the charter district's bonds should be guaranteed under this subchapter, the commissioner shall endorse the bonds.

SECTION 9. Subsection (b), Section 45.057, Education Code, is amended to read as follows:

(b) The guarantee is not effective unless the attorney general approves the bonds under Section 45.005 or 53.40, as applicable.

SECTION 10. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0571 to read as follows:

Sec. 45.0571. CHARTER DISTRICT BOND GUARANTEE RESERVE FUND.

(a) The charter district bond guarantee reserve fund is a special
fund in the state treasury outside the general revenue fund. The following amounts shall be deposited in the fund:

(1) Money due from a charter district as provided by Subsection (b); and
(2) Interest earned on balances in the fund.

(b) A charter district that has a bond guaranteed as provided by this subchapter must annually remit to the commissioner, for deposit in the charter district bond guarantee reserve fund, an amount equal to 10 percent of the savings to the charter district that is a result of the lower interest rate on the bond due to the guarantee by the permanent school fund. The amount due under this section shall be amortized and paid over the duration of the bond. Each payment is due on the anniversary of the date the bond was issued. The commissioner shall adopt rules to determine the total and annual amounts due under this section.

(c) The commissioner may direct the comptroller to annually withhold the amount due to the charter district bond guarantee reserve fund under Subsection (b) for that year from the state funds otherwise payable to the charter district.

(d) Each year, the commissioner shall:

(1) Review the condition of the bond guarantee program and the amount that must be deposited in the charter district bond guarantee reserve fund from charter districts; and
(2) Determine if charter districts should be required to submit a greater percentage of the savings resulting from the guarantee.

(e) The commissioner shall make recommendations to the legislature based on the review under Subsection (d).

SECTION 11. Section 45.058, Education Code, is amended to read as follows:

Sec. 45.058. NOTICE OF DEFAULT. Immediately following a determination that a school district or charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, but not later than the fifth day before maturity date, the school district or charter district shall notify the commissioner.

SECTION 12. The heading to Section 45.059, Education Code, is amended to read as follows:

Sec. 45.059. PAYMENT OF SCHOOL DISTRICT BOND ON DEFAULT FROM PERMANENT SCHOOL FUND.

SECTION 13. Subsection (a), Section 45.059, Education Code, is amended to read as follows:

(a) Immediately following receipt of notice under Section 45.058 that a school district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district’s paying agent the amount necessary to pay the maturing or matured principal or interest.

SECTION 14. Subchapter C, Chapter 45, Education Code, is amended by adding Section 45.0591 to read as follows:

Sec. 45.0591. PAYMENT OF CHARTER DISTRICT BOND ON DEFAULT. Immediately following receipt of notice under Section 45.058 that a charter district will be or is unable to pay maturing or matured principal or interest on a guaranteed bond, the commissioner shall instruct the comptroller to transfer from the charter district bond guarantee reserve fund created under Section 45.0571 to the district’s paying agent the amount necessary to pay the maturing or matured principal or interest.

(b) If money in the charter district bond guarantee reserve fund is insufficient to pay the amount due on a bond under Subsection (a), the commissioner shall instruct the comptroller to transfer from the appropriate account in the permanent school fund to the district’s paying agent the amount necessary to pay the balance of the unpaid maturing or matured principal or interest.

(c) Immediately following receipt of the funds for payment of the principal or interest, the paying agent shall pay the amount due and forward the canceled bond or coupon to the comptroller. The comptroller shall hold the canceled bond or coupon on behalf of the
fund or funds from which payment was made.

(d) Following full reimbursement to the charter district
bond guarantee reserve fund and the permanent school fund, if
applicable, with interest, the comptroller shall further cancel the
bond or coupon and forward it to the charter district for which
payment was made.

SECTION 15. Section 45.060, Education Code, is amended to
read as follows:

Sec. 45.060. BONDS NOT ACCELERATED ON DEFAULT. If a school
district or charter district fails to pay principal or interest on a
guaranteed bond when it matures, other amounts not yet mature are
not accelerated and do not become due by virtue of the school
district's or charter district's default.

SECTION 16. The heading to Section 45.061, Education Code,
is amended to read as follows:

Sec. 45.061. REIMBURSEMENT OF FUNDS [PERMANENT SCHOOL
FUND].

SECTION 17. Section 45.061, Education Code, is amended by
amending Subsections (a) and (b) and adding Subsection (a-1) to
read as follows:

(a) If the commissioner orders payment from the permanent
school fund or the charter district bond guarantee reserve fund on
behalf of a school district or charter district, the commissioner
shall direct the comptroller to withhold the amount paid, plus
interest, from the first state money payable to the school district
or charter district. Except as provided by Subsection (a-1), the
amount withheld shall be deposited to the credit of the
permanent school fund.

(a-1) After the permanent school fund has been reimbursed
for all money paid from the fund as the result of a default of a
charter district bond guaranteed under this subchapter, any
remaining amounts withheld under Subsection (a) shall be deposited
to the credit of the charter district bond guarantee reserve fund.

(b) In accordance with the rules of the board, the
commissioner may authorize reimbursement to the permanent school
fund or charter district bond guarantee reserve fund with interest
in a manner other than that provided by this section.

SECTION 18. Section 45.062, Education Code, is amended by
adding Subsection (a-1) to read as follows:

(a-1) If a total of two or more payments are made under this
subchapter on charter district bonds and the commissioner
determines that the charter district is acting in bad faith under
the guarantee program under this subchapter, the commissioner may
request the attorney general to institute appropriate legal action
to compel the charter district and its officers, agents, and
employees to comply with the duties required of them by law in
regard to the bonds.

SECTION 19. Subdivision (10), Section 53.02, Education
Code, is amended to read as follows:

(10) "Authorized charter school" means an
open-enrollment charter school that holds a charter granted under
Subchapter D, Chapter 12, and includes an open-enrollment charter
school designated as a charter district as provided by Section
12.135.

SECTION 20. Section 53.351, Education Code, is amended by
amending Subsection (f) and adding Subsection (f-1) to read as
follows:

(f) Except as provided by Subsection (f-1), a [A] revenue
bond issued under this section is not a debt of the state or any
state agency, political corporation, or political subdivision of
the state and is not a pledge of the faith and credit of any of these
entities. A revenue bond is payable solely from the revenue of the
authorized open-enrollment charter school on whose behalf the bond
is issued. A revenue bond issued under this section must contain on
its face a statement to the effect that:

(1) neither the state nor a state agency, political
corporation, or political subdivision of the state is obligated to
pay the principal of or interest on the bond; and

(2) neither the faith and credit nor the taxing power
of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

(f-1) Subsection (f) does not apply to a revenue bond issued under this section for a charter district if the bond is approved for guarantee by the permanent school fund under Subchapter C, Chapter 45.

SECTION 21. This Act applies only to a bond issued or refunded on or after the effective date of this Act by an open-enrollment charter school designated as a charter district under Section 12.135, Education Code, as added by this Act. A bond issued or refunded by an open-enrollment charter school before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 22. This Act takes effect September 1, 2011.

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