

## Chapter 33. Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund

### Subchapter A. State Board of Education Rules

#### §33.2. Distributions to the Available School Fund.

Each year, the State Board of Education (SBOE) shall determine whether a distribution to the Available School Fund (ASF) shall be made for the current state fiscal year. The SBOE shall determine whether such distribution is permitted under the Texas Constitution, Article VII, §(2). The annual determination for the current fiscal year shall include a projection of the expected total return of the Permanent School Fund (PSF) at the end of the current fiscal year and the realized returns during the nine preceding state fiscal years. Any one-year distribution to the ASF shall not exceed 6.0% of the average market value of the PSF excluding real property managed, sold, or acquired under the Texas Constitution, Article VII, § determined under the Texas Constitution, Article VII(a)(1). When adopting the rate of distribution, the SBOE shall strive to balance the needs of current and future generations of Texas school children by attempting to maintain consistent levels of distributions per student and assets per student, after adjusting for inflation.

**Statutory Authority:** The provisions of this §33.2 are based under the Texas Constitution, Article VII, §5(a)(2) and (f).

**Source:** The provisions of this §33.2 adopted to be effective April 21, 2010, 35 TexReg 3027, amended to be effective March 31, 2024, 49 TexReg 1917.

#### §33.3. Duties and Responsibilities of the State Board of Education Related to the Texas Permanent School Fund Corporation.

- (a) The Texas Constitution, Article VII, §58, establish the Available School Fund, the Texas Permanent School Fund (PSF), and the State Board of Education (SBOE) and specify the standards SBOE members must exercise in managing PSF assets. In addition, the constitution directs the legislature to

- (2) Official act or official action--a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.
- (3) Permanent School Fund (PSF) service provider--a person who provides services to the PSF or relating to the management or investment of PSF, including, but not limited to, external investment managers, consultants, banks, custodians, and professional services (attorneys, accountants, etc.). Notwithstanding the foregoing, for all purposes under this section, the term PSF service provider excludes State Board of Education (SBOE) members, TEA employees, and private fund managers. PSF service providers who provide services to the Texas PSF Corporation are covered by the Texas PSF Corporation's ethics policy.
- (4) Personal securities transactions--
  - (A) transactions for a member or employee's own account, including an individual retirement account; or
  - (B) transactions for an account, other than an account over which the member or employee has no

Constitution, Texas statutes, and all other applicable provisions governing the responsibilities of a fiduciary.

(c) General ethical standards.

- (1) SBOE members must comply with all laws applicable to them, which may include one or more of the following statutes: Texas Government Code, §57.051 (Standards of Conduct; State Agency Ethics Policy), §552.352 (Distribution or Misuse of Confidential Information), §572.002 (General Definitions), §572.004 (Definition: Regulation), §572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Official Offense), §72.058 (Private Interest in Measure or Decision; Disclosure; Removal from Office; Violation), §572.021 (Financial Statement Required), §52.908 (Disclosure of Interested Parties), Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), and Chapter 305 (Registration of Lobbyists); Texas Penal Code, Chapter 36 (Bribery and Corrupt Influence) and Chapter 39 (Abuse of Office). And §43.0032 (Conflicts of Interest) and §3.0033 (Reports of Expenditures). The omission of any applicable statute listed in this paragraph does not excuse violation of its provisions.
- (2) SBOE members must be honest in the exercise of their duties and must not take actions that will discredit the PSF.
- (3) SBOE members shall be loyal to the interests of PSF to the extent that such loyalty is not in conflict with other duties that legally have priority.
- (4) SBOE members shall not use nonpublic information gained through their relationship with the PSF to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of PSF as a reference or the commercial use of the PSF for the purpose of a relationship (more than 4.127(a)(9), 4.117(c), 9.06, 9.08, 9.09, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15, 9.16, 9.17, 9.18, 9.19, 9.20, 9.21, 9.22, 9.23, 9.24, 9.25, 9.26, 9.27, 9.28, 9.29, 9.30, 9.31, 9.32, 9.33, 9.34, 9.35, 9.36, 9.37, 9.38, 9.39, 9.40, 9.41, 9.42, 9.43, 9.44, 9.45, 9.46, 9.47, 9.48, 9.49, 9.50, 9.51, 9.52, 9.53, 9.54, 9.55, 9.56, 9.57, 9.58, 9.59, 9.60, 9.61, 9.62, 9.63, 9.64, 9.65, 9.66, 9.67, 9.68, 9.69, 9.70, 9.71, 9.72, 9.73, 9.74, 9.75, 9.76, 9.77, 9.78, 9.79, 9.80, 9.81, 9.82, 9.83, 9.84, 9.85, 9.86, 9.87, 9.88, 9.89, 9.90, 9.91, 9.92, 9.93, 9.94, 9.95, 9.96, 9.97, 9.98, 9.99, 10.00).

(2) acce



- (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 Texas Education Agency (TEA) has sufficient evidence of the discharge or defeasance of such debt.
- (C) Solely for the purpose of this calculation, the debt service amounts for variable rate bonds will be those that are published in the financial statement, or if there is no official statement, debt service amounts based on the maximum rate.













- (i) The district must receive written confirmation from ~~EA~~ that the capacity

- substitute allocation sufficient to meet the purposes of the initial allocation. This allocation will not affect any rights of the bond holders under law.
- (j) Defeasance. The guarantee will be completely removed when bonds guaranteed by the BGP are defeased, and such a provision must be specifically stated in the bond order. If bonds guaranteed by the BGP are defeased, the district must notify the commissioner in writing within calendar days of the action.
  - (k) Bonds issued before August 15, 1993. For bonds issued before August 15, 1993, a school district seeking the guarantee of eligible bonds must certify, to the date of issuance of any bond, no funds received by the district from the Available School Fund (ASF) are reasonably expected to be used directly or indirectly to pay the principal or interest on, or the tender or retirement price of, any bond of the political subdivision or to fund a reserve or placement fund for any such bond.
  - (l) Bonds guaranteed before December 1, 1993. For bonds guaranteed before December 1, 1993, if a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause the amount needed to pay the principal or interest to be transferred to the district agent solely from the PSF and not from the ASF. The commissioner also will direct the comptroller of public accounts to withhold the amount paid, plus interest, from the state money payable to the district, excluding payments from the ASF.
  - (m) Bonds issued after August 15, 1993, and guaranteed on or after December 1, 1993. If a school district cannot pay the maturing or matured principal or interest on a guaranteed bond, the commissioner will cause

charged at the rate determined under the Texas Government Code §2251.025(b). Interest will accrue as specified in the Texas Government Code §2251.025(a) and (c).

- (r) Bonds not accelerated on default. If a school 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 default.
- (s) Reimbursement of PSF. If payment from the PSF is made on behalf of a school district, the district must reimburse the amount of the payment plus interest, in accordance with the requirements of TEC, §45.061.
- (t) Repeated failure to pay. If a total of two or more payments are made under the BGP or the credit enhancement program authorized under §61.1038 of this title on the bonds of a school district, the commissioner will take action in accordance with the provisions of TEC, §5.052.

Statutory Authority: The provisions of this §33A issued under the Texas Constitution, Article VII, §5(a) and (f); Texas Education Code, §43.001; and Senate Bill 1232, 87th Legislature, Regular Session, 2021.

Source: The provisions of this §33A adopted to be effective March 1, 2023, 48 TexReg 1043.

§33.7. Bond Guarantee Program for Charter Schools.

- (a) Statutory provision. The commissioner of education must administer a guarantee program for open enrollment charter schools.







- (3) If an open enrollment charter holder files an application for a combination issue, the application will be treated as an application for a single issue for the purposes of eligibility for the guarantee. A guarantee 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 rule. As part of its application, the charter holder making the application must present data that demonstrate compliance for both the new money portion of the issue and the refunding portion of the issue.
  - (4) If the commissioner determines that an applicant has deliberately misrepresented information related to a bond issue to secure a guarantee, the commissioner must revoke the approval of the bonds for the guarantee.
- (d) Determination of Permanent School Fund (PSF) capacity to guarantee bonds for charter districts.
- (1) Each month the commissioner will estimate the available capacity of the PSF to guarantee bonds for charter districts. This capacity is determined by multiplying the net capacity determined under §33.6 of this title (relating to Bond Guarantee Program for School Districts) by 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. The commissioner's determination of the number of students enrolled in open enrollment charter schools in this state and the number of students enrolled in all public schools in this state is based on the enrollment data submitted by school districts and charter schools to the Public Education Information Management System (PEIMS) during the most recent fall PEIMS submission. Annually, the commissioner will post the applicable student enrollment numbers and the percentage of students enrolled in open enrollment charter schools on the Texas Education Agency (TEA) web page related to the BGP. The commissioner shall hold the percentage established by the State Board of Education (SBOE) under §33.6(2) of this title (relating to the BGP).

- (D) The fee may be transferred to a subsequent application for the guarantee by a charter district that has been approved for the guarantee if the charter district with its application and submits the subsequent application before the expiration of the guarantee for the guarantee.
- (2) Eligibility to be designated a charter district.
- (A) To be designated a charter district and have its application for the guarantee considered by the commissioner, an open enrollment charter holder must:
- (i) have operated at least one open enrollment charter school in the state of Texas for at least three years and have had students enrolled in the school for those three years;
  - (ii) 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;
  - (iii) in its application, agree that the bonded indebtedness for which the guarantee is sought will be undertaken as an obligation of all 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, provided that an entity that does not operate a charter school in Texas is subject to this subparagraph only to the extent that it has received state funds from the open enrollment charter holder;
  - (iv) not have an unresolved corrective action that is more than one year old, unless the open enrollment charter holder has taken appropriate steps, as determined by the commissioner, to begin resolving the action;
  - (v) have had, for the past three years, an audit as required by 1047 of this title (relating to Accounting for State and Federal Funds) that was completed with unqualified independent audit.

applicant's proposed bonds represent. The commissioner will allocate to that applicant the same percentage of the available capacity, but in no event will an allocation be equal to an amount less than \$500,000.

- (B) The actual guarantee of the bonds subject to the approval process prescribed in subsection (f) of this section.
- (C) An applicant charter district is ineligible for consideration for the guarantee if its lowest credit rating from any nationally recognized investment rating firm as defined in subsection (b)(16) of this section is the same as or higher than that of the PSF.
- (4) Late application. 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.
- (5) Notice of application status. Each open enrollment charter holder that submits a valid application will be notified of the application status within 15 business days of the application deadline.
- (6) Reapplication. If an open enrollment charter holder does not receive designation as a charter district, does not receive approval for the guarantee, or for any reason does not receive approval of the bonds from the attorney general within the time period specified in subsection (f)(5) of this section, the charter holder may reapply in a subsequent month. An application that was denied approval for the guarantee or that was submitted by a charter holder that the commissioner determined did not meet the criteria for charter district designation will not be retained for consideration in subsequent months. A reapplication fee will be required unless the conditions described in subsection (e)(1)(D) of this section apply to the charter holder.
- (f) Approval

notification as notification of initial and final approval for the guarantee and may complete the sale of the applicable bonds.

(3) Initial approval.

(A) The following provisions apply to all applications for the guarantee, regardless of whether an application is for a new money, refunding, or combination issue. Under TEC, §45.056, the commissioner will investigate the financial status of the applicant charter district and the accreditation status of open-enrollment charter schools operated under the charter. For the charter district's application to be eligible for initial approval by the commissioner, each open-enrollment charter school operated under the charter must be accredited, and the charter district must be financially sound. The commissioner will include review of the following:

- (i) the purpose of the bond issue;
- (ii) the accreditation status, as defined by §5055 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 will not impact the charter district's eligibility for consideration for the guarantee:
  - (I) if the accreditation status of all open-enrollment charter schools operated under the charter is Accredited, the charter district will be eligible for consideration for the guarantee;
  - (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 charter district will not be eligible for consideration for the guarantee; or
  - (III) if the accreditation status of any open-enrollment charter school operated under the charter is Not Accredited or Revoked, the charter district will not be eligible for consideration for the guarantee;
- (iii) the charter district's financial status and stability, regardless of each open-enrollment charter school's accreditation rating.

- (viii) formal complaints received by TEA that have been made against the charter district, 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;
  - (ix) 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;
  - (x) any unresolved corrective actions that are less than one year old; and
  - (xi) whether the charter district is considered a high-grantee by the TEA office responsible for planning, grants, and evaluation.
- (B) The commissioner will limit approval for the guarantee to a charter district with a historical debt service coverage ratio, based on annual debt service, of at least 1.1 for the most recently completed fiscal year and a projected debt service coverage ratio, based on projected revenues and expenses and maximum annual debt service, of at least 1.2. If the bond issuance for which an application has been submitted by a charter district is its first bond issuance, the commissioner will evaluate only projected debt service coverage. Projections of revenues and expenses are subject to approval by the commissioner.
- (C) The commissioner will grant or deny initial approval for the guarantee based on the review described in subparagraph (A) of this paragraph and the limitation described in subparagraph (B) of this paragraph and will provide an applicant charter district whose application has received initial approval for the guarantee.



any agreement with a third party relating to bonds that is defined or described in state law as a "bond" or "credit agreement" unless the right to payment of such third party is directly enhanced or improved as a result of such third party being a bondholder.

- (k) Notice of default. A charter district that has determined that it is or will be unable to pay maturing or matured principal or interest on a guaranteed bond must immediately, but not later than the fifth business day before the maturing or maturing principal or interest becomes due, notify the commissioner.
- (l) Charter District Bond Guarantee Reserve Fund. The Charter District Bond Guarantee Reserve Fund is a special fund in the state treasury outside the general revenue fund and is managed by the SBOE in the same manner that the PSF is managed by the SBOE.
- (m) Payment from Charter District Bond Guarantee Reserve Fund and PSF.
  - (1) Immediately after the commissioner receives the notice described in subsection (k) of this section, the commissioner will notify the Texas PSF Corporation of the notice of default and instruct the comptroller to transfer from the Charter District Bond Guarantee Reserve Fund established under TEC § 115.009 (t) to the Bath and Wellness Center Fund established under TEC § 14.25 (e)-D-1.9.

commissioner on the use of the bond funds until all bond proceeds have been spent. The charter district independent auditor must confirm in the charter district's annual financial report that bond funds have been used in accordance with the purpose specified in the application guarantee.

- (r) Failure to comply with statute or this section. An open enrollment charter holder's failure to (d f)13.7 (unds)9.5 ( ha3u[(s)2





business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if such event is material within the meaning of the federal securities laws;

- (N) Appointment of a successor or additional trustee with respect to the Program or the change of name of a trustee, if such event is material within the meaning of the federal securities laws;
  - (O) The incurrence of a financial obligation of the Program, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Program, any of which affect security holders, if material; and
  - (P) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Program, any of which affect financial difficulties.
- (2) For these purposes, any event described in the immediately preceding paragraph (L) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the Program in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Program, or if such authority has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision of a court or governmental authority.

- (4) No default by the Agency in observing or performing its obligations ~~until~~ the Program Regulation shall comprise a breach of or default under the Order for purposes of any other provision of the Order. Nothing in this Program Regulation is intended or shall ~~act to~~ ~~waive~~, or otherwise limit the duties of the Agency under federal and state securities laws.
- (5) The provisions of this Program Regulation may be amended by the Agency from time to time to adapt to changed circumstances that arise from a change in le