

**Bonds and Bond
Taxes**

The board may issue bonds for:

1. The construction, acquisition, and equipment of school buildings in the district;
2. The acquisition of property or the refinancing of property under a contract entered under the Public Property Finance Act (Local Government Code, Chapter 271, Subchapter A), regardless of whether payment obligations under the contract are due in the current year or a future year;
3. The purchase of the necessary sites for school buildings;
4. The purchase of new school buses;
5. The retrofitting of school buses with emergency, safety, or security equipment; and
6. The purchase or retrofitting of vehicles to be used for emergency, safety, or security purposes.

The board may levy, pledge, assess, and collect annual ad valorem taxes sufficient to pay the principal of and interest on the bonds as or before the principal and interest become due, subject to the provisions at Bond Elections, below.

Education Code 45.001(a)

All bonds shall be issued in accordance with the Public Security Procedures Act. *Gov't Code, Ch. 1201*

Limitation

A district may not issue general obligation bonds to purchase, improve, or construct one or more improvements to real property, to purchase one or more items of personal property, or to do both, if the weighted average maturity of the issue of bonds exceeds 120 percent of the reasonably expected weighted average economic life of the improvements and personal property financed with the issue of bonds. *Gov't Code 1253.002*

Use of Proceeds for
Utilities

The proceeds of bonds issued by school districts for the construction and equipment of school buildings in the district and the purchase of the necessary sites for school buildings may be used, among other things, to pay the cost of acquiring, laying, and installing pipes or lines to connect with the water, sewer, or gas lines of a municipality or private utility company, whether or not the water, sewer, or gas lines adjoin the school, so that the school district may provide its public school buildings the water, sewer, or gas services. *Education Code 45.101*

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BOND ISSUES

CCA
(LEGAL)

State Facilities
Funding

*Instructional
Facilities
Allotment*

“Instructional facility” means real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the required curriculum.

Education Code 46.001

Under the Instructional Facilities Allotment, Education Code Chapter 46, Subchapter A, for each year, except as provided by Education Code 46.005 (limitation on the guaranteed amount) and 46.006 (shortage or excess of appropriated funds), a district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the statutory maximum in Education Code 46.003(b), to pay the principal of and interest on eligible bonds issued to construct, acquire, renovate or improve an instructional facility. *Education Code 46.003(a); 19 TAC 61.1032*

*Existing Debt
Allotment*

A district is guaranteed a specified amount per student in state and local funds for each cent of tax effort to pay the principal and interest on eligible bonds under Education Code Chapter 46, Subchapter B. Bonds are eligible to be paid with state and local funds under Subchapter B if the district made payments on the bonds during the final school year of the preceding state fiscal biennium or taxes levied to pay the principal and interest on the bonds were included in a district’s audited debt service collections for that school year, and the district does not receive state assistance under the Instructional Facilities Allotment for payment of the principal and interest on the bonds. *Education Code 46.032(a), .033; 19 TAC 61.1035*

Note: For information on the new instructional facility allotment, see CBA.

Investment of Bond
Proceeds

For legal requirements regarding investment of bond proceeds, see CDA(LEGAL).

Unspent Bond
Proceeds

A district may use unspent proceeds of issued general obligation bonds only:

1. For the specific purposes for which the bonds were authorized;
2. To retire the bonds; or
3. For a purpose other than the specific purposes for which the bonds were authorized if:
 - a. The specific purposes are accomplished or abandoned; and

- b. The board at a public meeting held only for the purpose of considering the use of the unspent bond proceeds approves in separate votes the use of the proceeds for:
 - (1) A purpose other than to retire the bonds; and
 - (2) The purpose specified at the time the vote is taken.

In addition to other requirements, notice of a public meeting held under this provision must include a statement that the board will consider the use of unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized. A public meeting held under this provision must provide the public an opportunity to address the board on the question of using the unspent bond proceeds for a purpose other than the specific purposes for which the bonds were authorized.

Education Code 45.1105

Capital Appreciation Bonds

For purposes of the following policy provisions, a “capital appreciation bond” is a bond that accrues and compounds interest from its date of delivery, the interest on which by its terms is payable only upon maturity or prior redemption.

Limitation on Issuance

A school district may not issue capital appreciation bonds that are secured by ad valorem taxes unless:

- 1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance;
- 2. The board has received a written estimate of the cost of the issuance, including:
 - a. The amount of principal and interest to be paid until maturity;
 - b. The amount of fees to be paid to outside vendors, including vendors who sell products to be financed by the bond issuance;
 - c. The amount of fees to be paid to each financing team member; and
 - d. The projected tax impact of the bonds and the assumptions on which the calculation of the projected tax impact is based;
- 3. The board has determined in writing whether any personal or financial relationship exists between the members of the board and any financial advisor, bond counsel, bond under-

writer, or other professional associated with the bond issuance and submitted the determination to the Ethics Commission; and

4. The board posts prominently on the district's internet website and enters in the minutes of the board:
 - a. The total amount of the proposed bonds;
 - b. The length of maturity of the proposed bonds;
 - c. The projects to be financed with bond proceeds;
 - d. The intended use of bond proceeds not spent after completion of the projects identified;
 - e. The total amount of the district's outstanding bonded indebtedness at the time of the election on the bonds, including the amount of principal and interest to be paid on existing bond indebtedness until maturity;
 - f. The total amount of the district's outstanding bonded indebtedness, including the amount of principal and interest to be paid until maturity; and
 - g. The information received at item 2 above and determined under item 3 above.

The board shall regularly update the debt information posted on the district's internet website under item 4.f above to ensure that the information is current and accurate.

Limitation on Use of Proceeds

Capital appreciation bond proceeds may not be used to purchase the following items, unless an item has an expected useful life that exceeds the bond's maturity date:

1. Items more regularly considered maintenance items, including replacement HVAC units, upgraded plumbing, or similar items; or
2. Transportation-related items, including buses.

Unspent Proceeds

Capital appreciation bond proceeds unspent after completion of the project identified as the proceeds' intended use may be used only for a use identified on the district's website as required above, unless another use is approved by the voters of the district at an election held for that purpose.

Total Amount of Capital Appreciation Bonds

The total amount of capital appreciation bonds may not exceed 25 percent of the district's total outstanding bonded indebtedness at the time of the issuance, including the amount of principal and interest to be paid on the outstanding bonds until maturity.

- Extension
- A district may not extend the maturity date of an issued capital appreciation bond, including through the issuance of refunding bonds that extend the maturity date, unless:
1. The extension of the maturity date will decrease the total amount of projected principal and interest to maturity; or
 2. The maximum legally allowable tax rate for indebtedness has been adopted and TEA certifies in writing that the solvency of the permanent school fund's bond guarantee program would be threatened without the extension.

Gov't Code 1201.0245

The foregoing provisions of Government Code 1201.0245 do not apply to the issuance of refunding bonds under Government Code Chapter 1207 or capital appreciation bonds for the purpose of financing transportation projects. *Gov't Code 1201.0245(j)*

Bond Elections

Bonds may not be issued and taxes may not be levied unless authorized by a majority of the qualified voters of the district, voting at an election held for such purpose, at the expense of the district, in accordance with the Election Code, except as provided by Education Code 45.003. The election shall be called by resolution or order of the board. The resolution or order must state the date of the election, the proposition or propositions to be submitted and voted on, the polling place or places, and any other matters considered necessary or advisable by the board. *Education Code 45.003(a)*

Each special election in this state shall be held on one of the following dates:

1. The first Saturday in May; or
2. The first Tuesday after the first Monday in November.

Election Code 41.001(a) [See BBB]

- Call for Election
- For an election to be held on a uniform election date, the election shall be ordered not later than the 78th day before election day. *Election Code 3.005* [See BBBA]

- Election Order
- In addition to other legal requirements regarding the election order [see BBBA(LEGAL)], the document ordering an election to authorize a district to issue debt obligations must distinctly state:
1. The proposition language that will appear on the ballot;
 2. The purpose for which the bonds are to be authorized;
 3. The principal amount of the bonds to be authorized;

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CCA
(LEGAL)

4. That taxes sufficient to pay the principal of and interest on the bonds may be imposed;
5. The estimated tax rate if the bonds are authorized or the maximum interest rate of the bonds or any series of the bonds, based on the market conditions at the time of the election order;
6. The maximum maturity date of the bonds to be authorized or that the bonds may be issued to mature over a specified number of years not to exceed the maximum number of years authorized by law;
7. The aggregate amount of the outstanding principal of the district's debt obligations as of the date the election is ordered;
8. The aggregate amount of the outstanding interest on the district's debt obligations as of the date the election is ordered, which may be based on the district's expectations relative to variable rate debt obligations; and
9. The district's ad valorem debt service tax rate at the time the election is ordered, expressed as an amount per \$100 valuation of taxable property.

Election Code 3.009(b)

Posting

The election order must be posted:

1. On election day and during early voting by personal appearance, in a prominent location at each polling place;
2. Not later than the 21st day before the election in three public places in the boundaries of the district; and
3. During the 21 days before the election, on the district's internet website, prominently and together with the notice of the election, the contents of the proposition, and any sample ballot prepared for the election, if the district maintains an internet website.

Election Code 4.003(f) [See Voter Information, below]

Election Notice

The notice of election must comply with Election Code Chapter 4. [For specific requirements regarding contents of the election notice, see BBBA(LEGAL).]

Publication and Posting

The notice of election must be published and posted in accordance with Election Code requirements. [For specific requirements regarding publication and posting, see BBBA(LEGAL).]

*Notice to Election
Officials*

Notice must be given to the county clerk, voter registrar, and election judge in accordance with Election Code Chapter 4. [For specific requirements, see BBBA(LEGAL).]

Propositions

A proposition submitted to authorize the issuance of bonds must include the question of whether the board may levy, pledge, assess, and collect annual ad valorem taxes, on all taxable property in the district, either:

1. Sufficient, without limits as to rate or amount, to pay the principal of and interest on said bonds; or
2. Sufficient to pay the principal of and interest on the bonds, provided that the annual aggregate bond taxes in the district may never be more than the rate stated in the proposition.

The ballot proposition must include the following statement: "THIS IS A PROPERTY TAX INCREASE."

Education Code 45.003(b), (b-1)

A district that submits to the voters a proposition for the approval of the issuance of debt obligations shall prescribe the wording of the proposition that is to appear on the ballot in accordance with the requirements of Government Code Chapter 1251, Subchapter B. *Election Code 52.072(f)*

The district shall assign a letter to each measure on the ballot that corresponds to its order on the ballot. Each proposition on the ballot must identify the name of the authority ordering the election on the measure. *Election Code 52.095*

Ballot Contents

The ballot for a measure seeking voter approval of the issuance of debt obligations by a district shall specifically state:

1. A plain language description of the single specific purposes for which the debt obligations are to be authorized;
2. The total principal amount of the debt obligations to be authorized; and
3. That taxes sufficient to pay the principal of and interest on the debt obligations will be imposed.

Each single specific purpose for which debt obligations requiring voter approval are to be issued must be printed on the ballot as a separate proposition. A proposition may include as a specific purpose one or more structures or improvements serving the substantially same purpose and may include related improvements and equipment necessary to accomplish the specific purpose.

Gov't Code 1251.052(a)-(a-1)

- Exception
- Notwithstanding the requirements at Ballot Contents, above, the question of whether to approve the issuance of bonds for the construction, acquisition, and equipment of school buildings in the district, the purchase of new school buses, and the purchase of necessary sites for school buildings may be submitted to the voters in a single ballot proposition, except that bonds for each of the following purposes must be stated in a separate proposition:
1. The construction, acquisition, or equipment of:
 - a. A stadium with seating capacity for more than 1,000 spectators;
 - b. A natatorium;
 - c. Another recreational facility other than a gymnasium, playground, or play area;
 - d. A performing arts facility;
 - e. Housing for teachers as determined by the district to be necessary to have a sufficient number of teachers for the district; and
 2. An acquisition or update of technology equipment, other than equipment used for school security purposes or technology infrastructure integral to the construction of a facility.

The question of whether to approve the issuance of bonds for a building described by items 1a–e above must be printed on the ballot as a separate ballot proposition regardless of whether that building is proposed as part of the same complex or building that contains traditional classroom facilities. Each separate ballot proposition must state the principal amount of the bonds to be issued that constitutes the cost for construction of that portion of the building or complex attributable to the building described by items 1a–e above or to the traditional classroom facilities, as applicable.

Education Code 45.003(g)–(h)

Definition

"Debt obligation" means a public security, as defined by Government Code 1201.002, secured by and payable from ad valorem taxes. The term does not include public securities that are designated as self-supporting by the political subdivision issuing the securities. *Gov't Code 1251.051(1)*

Voter Information

A district with at least 250 registered voters on the date the board adopts the debt obligation election order must prepare a voter information document for each proposition to be voted on at the election.

*Posting
Requirements*

The district shall post the voter information document in the same manner as a debt obligation election order is required to be posted under Election Code 4.003(f) [see Posting, above] and may include the voter information document in the debt obligation election order.

A district that maintains an internet website shall provide the information described at Contents, below, on its website in an easily accessible manner beginning not later than the 21st day before election day and ending on the day after the date of the debt obligation election.

Contents

The voter information document must distinctly state:

1. The language that will appear on the ballot;
2. The following information formatted as a table:
 - a. The principal of the debt obligations to be authorized;
 - b. The estimated interest for the debt obligations to be authorized;
 - c. The estimated combined principal and interest required to pay on time and in full the debt obligations to be authorized; and
 - d. As of the date the district adopts the debt obligation election order:
 - (1) The principal of all outstanding debt obligations of the district;
 - (2) The estimated remaining interest on all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations; and
 - (3) The estimated combined principal and interest required to pay on time and in full all outstanding debt obligations of the district, which may be based on the district's expectations relative to the interest due on any variable rate debt obligations;
3. The estimated maximum annual increase in the amount of taxes that would be imposed on a residence homestead in the district with an appraised value of \$100,000 to repay the debt obligations to be authorized, if approved, based upon assumptions made by the board; and

4. Any other information that the board considers relevant or necessary to explain the information required by these provisions.

Assumptions

The board shall identify in the voter information document the major assumptions made in connection with the statement required by item 3 above, including:

1. The amortization of the district's debt obligations, including outstanding debt obligations and the proposed debt obligations;
2. Changes in estimated future appraised values within the district; and
3. The assumed interest rate on the proposed debt obligations.

Gov't Code 1251.052(b)-(d)

Electioneering and
Political Advertising

For additional information and prohibitions related to electioneering and political advertising, see BBBD(LEGAL).

**50 Cent Test for New
Debt**

Before issuing bonds, a district must demonstrate to the attorney general that, with respect to the proposed issuance, the district has a projected ability to pay the principal of and interest on the proposed bonds and all previously issued bonds, other than bonds authorized to be issued at an election held on or before April 1, 1991, and issued before September 1, 1992, from a tax at a rate not to exceed \$0.50 per \$100 of valuation (the "50 Cent Test").

A district may demonstrate the ability to comply with the 50 Cent Test by using the most recent taxable value of property in the district, combined with state assistance to which the district is entitled under Education Code Chapter 46 or 48 that may be lawfully used for the payment of bonds.

Future Taxable
Value

A district may demonstrate the ability to comply with the 50 Cent Test by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due for the bonds submitted to the attorney general, combined with state assistance to which the district is entitled under Education Code Chapter 46 or 48 that may be lawfully used for the payment of bonds.

The district must submit to the attorney general a certification of the district's projected taxable value prepared by a registered, certified professional appraiser who has demonstrated professional experience in projecting taxable values or who can obtain any necessary assistance from an experienced person.

The certification of a district's projected taxable value must be signed by the superintendent. The attorney general must base a determination of whether a district has complied with the 50 Cent Test on a taxable value that is equal to 90 percent of the value certified.

Education Code 45.0031

Refunding Bonds

A board may refund or refinance all or any part of any of the district's outstanding bonds and matured or unmatured but unpaid interest on those bonds payable from ad valorem taxes by issuing refunding bonds payable from ad valorem taxes. *Education Code 45.004; Gov't Code Ch. 1207*

Instructional
Facilities Allotment
for Refunding
Bonds

A district may use state funds received under Education Code Chapter 46 to pay principal of and interest on refunding bonds that:

1. Are issued to refund bonds eligible under Education Code 46.003;
2. Do not have a final maturity date later than the final maturity date of the bonds being refunded;
3. May not be called for redemption earlier than the earliest call date of all bonds being refunded; and
4. Result in a present value savings as defined in Education Code 46.007(4).

Education Code 46.007

Authorized Unissued Bonds

If a district has authorized school bonds for a specific purpose and that purpose has been accomplished by other means or has been abandoned and all or a portion of the authorized bonds remains unissued, a board may order an election [see BBBA] to submit to the qualified voters of the district the proposition of whether or not the authorized but unissued bonds may be issued, sold, and delivered for other and different purposes specified in the election order and notice. The election shall be ordered, held, and conducted in the same form and manner as that at which the bonds were originally authorized. If a majority of those voting at the election vote in favor of the sale and delivery of the unissued bonds for the purposes specified in the election order and notice, the board may issue, sell, and deliver the bonds and use the proceeds for the purposes authorized at the election. *Education Code 45.110*

Bond Guarantee Program

Eligibility

A district seeking guarantee of eligible bonds under the Bond Guarantee Program shall apply to the commissioner of education using a form adopted by the commissioner. To be eligible for approval, district bonds must be issued under Education Code Chapter 45,

Subchapter A, or under Government Code Chapter 1207. *Education Code 45.054, .055(a); 19 TAC 33.65(b)(5)*

Application

An application must include:

1. The name of the district and the principal amount of the bonds to be issued;
2. The name and address of the district's paying agent, which means the financial institution designated by a district as its agent for payment of principal and interest on guaranteed bonds; and
3. The maturity schedule, estimated interest rate, and date of the bonds.

Education Code 45.051(2), .055

An application must be accompanied by a fee set by rule of the State Board of Education. *Education Code 45.055(c); 19 TAC 33.65(f)(1)*

On approval by the commissioner, bonds issued by a district are guaranteed by the corpus and income of the permanent school fund. The guarantee remains in effect until the date those bonds mature or are defeased in accordance with state law. *Education Code 45.052*

If a 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 specified time period, the district may reapply in a subsequent month. Applications that were denied approval for the guarantee will not be retained for consideration in subsequent months. *19 TAC 33.65(f)(5)*

A district may not represent bonds as guaranteed for the purpose of pricing or marketing the bonds before the date of the letter granting approval for the guarantee. *19 TAC 33.65(g)(4)(D)*

Credit Enhancement Program

If a district's application for guarantee of district bonds by the permanent school fund is rejected, the district may apply under Education Code Chapter 45, Subchapter I for credit enhancement of bonds described by Education Code 45.054 (eligibility for the Bond Guarantee Program) by money appropriated for the Foundation School Program, other than money that is appropriated to districts specifically:

1. As required under the Texas Constitution; or
2. For assistance in paying debt service.

The credit enhancement remains in effect until the date the bonds mature or are defeased in accordance with state law.

Education Code 45.252

Eligibility

To be eligible for approval by the commissioner for credit enhancement:

1. Bonds must be issued in the manner provided by Education Code 45.054;
2. Payments of all of the principal of the bonds must be scheduled during the first six months of the state fiscal year;
3. The district's lowest credit rating from any credit rating agency may not be the same as or higher than that of the School District Bond Enhancement Program;
4. 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 19 Administrative Code 61.1038(b)(10), for the term of the bonds by the number of years in the amortization schedule; and
5. The district must agree in its application that the total annual debt service on bonds approved for the credit enhancement will be paid on or before August 15 of each state fiscal year.

Education Code 45.254; 19 TAC 61.1038(f)

Application

A district seeking credit enhancement of eligible bonds shall apply to the commissioner using a form adopted by the commissioner for the purpose. The application must:

1. Include the information required by Education Code 45.055(b), at Bond Guarantee Program—Application, above; and
2. Be accompanied by a fee set by the State Board of Education. *19 TAC 61.1038(d)(1)*

Education Code 45.255

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

If a district does not receive a credit enhancement or for any reason does not receive approval of the bonds from the attorney general within the specified time period, the district may reapply in a

subsequent month. Applications that were denied a credit enhancement will not be retained for consideration in subsequent months.

A district may not represent the bonds as approved for credit enhancement for the purposes of pricing or marketing the bonds before the date of the letter granting approval for the credit enhancement.

19 TAC 61.1038(e)(1), (8), (10)

Federal Securities Law

Disclosure
Obligations for
Bond and Other
Debt Offerings

Prior to publicly offering bonds, a school district must prepare and deliver to an underwriter an official statement containing the terms of the bond offering, a description of the district itself, financial and operating data of the district, and any other information that may be material to an investor interested in purchasing the district's bonds or otherwise required by Rule 15c2-12 (the "Rule") of the Securities Exchange Commission (SEC). *SEC Rule 15c2-12(b)* [See Note, below]

Liability under
Federal Securities
Law

School districts, board members, and employees of the district are subject to liability under the "antifraud provisions" of the federal securities laws contained in Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 of the SEC. The antifraud provisions generally prohibit false or misleading statements made in connection with the offer or sale of a district's bonds (or the omission of material facts from such statements), including the official statement itself and any other statement reasonably expected to reach bond investors ("disclosures"). *SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

The antifraud provisions also apply to a district's continuing disclosure obligations under the Rule after a district's bonds are issued. [See Continuing Disclosure after Issuing Bonds, below] *SEC Report on the Municipal Securities Market (July 31, 2012) (the "SEC 2012 Report") at pg. 29 and SEC Exchange Act Release No. 33741 (Mar. 9, 1994)*

Continuing
Disclosure after
Issuing Bonds

Except for exempt offerings, the Rule requires underwriters to obtain a continuing disclosure agreement (CDA) from the district when the district issues bonds. The CDA obligates the district to prepare and file "continuing disclosures" of financial information and operating data after the bonds are issued. *SEC Rule 15c2-12(b)(5)* [See Note, below]

Note: In preparing an official statement, a district may reasonably rely on the advice of outside professionals who are also subject to the antifraud provisions, but a district is primarily liable for the content of its official statement and other disclosures. *SEC Exchange Act Release No. 36761 (Jan. 24, 1996)*

A district may engage qualified consultants, including qualified disclosure or securities counsel and a financial adviser, to assist with preparing an official statement and other disclosures relating to a bond offering. Creation of internal procedures may help to insulate a district against criticism or liability under federal securities laws.

Internal procedures may provide for (1) appointment of, and disclosure training for, district officials and employees who will be part of the financing team, (2) a procedure of accountability for review of the disclosures, and (3) ensuring that any procedures established are in fact followed.

[See SEC Report on the Municipal Securities Market (July 31, 2012) at pg. 109]
