

**Bonds and Bond Taxes**

A board may obtain funds to construct, acquire, or equip school buildings, to purchase necessary sites for school buildings, to purchase new school buses, or to acquire or refinance property financed under a contract entered under the Public Property Finance Act by issuing bonds and assessing annual ad valorem taxes sufficient to pay the principal and interest on the bonds as or before they come due. Bonds may only be issued if approved in a bond election. [See 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*

Use of Bond Proceeds for Utilities

The proceeds of bonds issued by school districts for the construction and equipment of school buildings in a 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*

Instructional Facility Allotment

Except as provided by Education Code 46.005 and 46.006, a district that issues bonds to construct, acquire, renovate or improve an instructional facility may obtain state funding to pay principal and interest on eligible bonds under the Instructional Facilities Allotment program, Education Code Chapter 46, Subchapter A. *Education Code 46.003; 19 TAC 61.1032*

Existing Debt Allotment

A district may obtain state funding to pay the principal and interest on eligible bonds under Education Code Chapter 46, Subchapter B. Bonds are eligible if a 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-.033; 19 TAC 61.1035*

**Capital Appreciation Bonds**

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 unless:

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1. The bonds have a scheduled maturity date that is not later than 20 years after the date of issuance and extended only in accordance with law;
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 adviser, bond counsel, bond underwriter, or other professional associated with the bond issuance and reported any relationship to the Ethics Commission; and
4. The board posts prominently on the district's Internet website and enters in the minutes of a meeting information about the bonds required by law.

These restrictions do not apply to the issuance of refunding bonds under Chapter 1207 or capital appreciation bonds for the purpose of financing transportation projects.

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.

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.

*Govt Code 1201.0245*

**Bond Elections**

No bonds shall be issued or taxes levied unless approved by a majority of the qualified voters of a district who vote at an election held for such purpose. The election shall be called by board resolution or order, which shall set the date, polling places, and propositions to be voted on.

The election shall be held on a uniform election date.

*Education Code 45.003(a); 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 3.003, .005, 41.002* [See BBB]

Election Order

The election order 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;
4. That taxes sufficient to pay the annual 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 40;
7. The aggregate amount of the outstanding principal of the district's debt obligations as of the beginning of the fiscal year in which the election is ordered;
8. The aggregate amount of the outstanding interest on the district's debt obligations as of the beginning of the district's fiscal year in which the election is ordered; 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)*

*Propositions*

Each proposition submitted to authorize the issuance of bonds shall include the question of whether a board may levy ad valorem taxes 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 said bonds, provided that the annual aggregate bond taxes in a district shall never exceed the rate stated in the proposition.

*Education Code 45.003(b)*

In addition to any other requirement imposed by law for a proposition, including a provision prescribing the proposition language, a proposition submitted to the voters for approval of the issuance of bonds shall specifically state:

1. The total principal amount of the bonds to be authorized, if approved; and
2. A general description of the purposes for which the bonds are to be authorized, if approved.

*Election Code 52.072(e)*

*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 and the contents of the proposition, if the district maintains an Internet website.

*Election Code 4.003(f)*

Notice of Election

*Posting*

Notice of the election, which must include the location of each polling place, must be posted not later than the 21st day before election day on the bulletin board used for posting notices of board meetings (and must remain posted continuously through election day). The person posting the notice shall make a record at the time of posting stating the date and place of posting. The person shall sign the record and deliver it to the board after the last posting is made. *Election Code 4.003(b), .005(b)*

Notice of the election also must be posted during the 21 days before the election, on the district's Internet website, prominently and together with the election order and the contents of the proposition, if the district maintains an Internet website. *Election Code 4.003(f)*

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<i>Publication</i>	<p>Notice of each election shall be published not earlier than the 30th day or later than the tenth day before election day in a newspaper of general circulation in a district or a newspaper of general circulation in the territory if none is published in the district. Notice of election must state the nature and date of election and the location and hours of each polling place. The person responsible for giving the notice must retain a copy of the published notice that contains the name of the newspaper and the date of publication. <i>Election Code 4.003(a)(1), (c), .004, .005</i></p> <p>A board shall also deliver notice of the election to the county clerk of each county in which the district is located not later than the 60th day before election day. <i>Election Code 4.008</i> [See BBB]</p>
Electioneering	<p>A board may not use state or local funds or other resources of a district to electioneer for or against any candidate, measure (including a bond measure), or political party. <i>Education Code 11.169</i></p>
Political Advertising	<p>No officer or employee of a district shall knowingly expend or authorize the expenditure of district funds or resources for the purpose of political advertising (including advocacy for or against a bond measure). Funds and resources may be expended, however, to provide information that describes the factual reasons for a measure and does not advocate for the passage or defeat of such measure.</p> <p>In addition, no officer or employee of a district shall spend or authorize the expenditure of district funds or resources for a communication describing a measure if the communication contains information that:</p> <ol style="list-style-type: none"><li>1. The officer or employee knows is false; and</li><li>2. Is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.</li></ol> <p>It is an affirmative defense that the officer or employee reasonably relied on a court order, or an interpretation in a written opinion issued by a court of record, the attorney general, or the Ethics Commission.</p> <p>On written request of a district that has ordered an election on a measure, the Ethics Commission shall prepare an advance written advisory opinion as to whether a particular communication relating to a measure complies with Election Code 255.003.</p> <p><i>Election Code 255.003</i> [See CPAB]</p>
Newsletters	<p>A newsletter of a public officer of the district is not considered "political advertising" prohibited by Election Code Section 255.003 if</p>

such newsletter complies with the requirements of 1 Administrative Code 26.2. [See BBBB(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 42 or 46 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 42 or 46 that may be lawfully used for the payment of bonds.

A district must submit to the attorney general a certification of the 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 Authority**

A board is authorized to refund or refinance all or any part of any of its outstanding bonds and interest thereon, payable from ad valorem taxes, by issuing refunding bonds payable from ad valorem taxes in accordance with legal requirements for the issuance. *Education Code 45.004; Gov't Code Ch. 1207*

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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 Section 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.

*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 call an election [see BBB] to determine whether the authorized bonds may be issued or sold for a different purpose or purposes specified in the election order. If a majority of those voting at the election favor the sale of the unissued bonds, a board is authorized to issue the bonds and use the proceeds for the purpose or purposes stated in the election order. *Education Code 45.110*

**Guarantee of Bonds  
by the Permanent  
School Fund**

A district may apply to the Commissioner for approval to guarantee bonds issued in accordance with the provisions above (Subchapter A of Education Code Chapter 45) or bonds issued under Government Code Chapter 1207, by the corpus and income of the permanent school fund. The application shall include:

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

*Education Code 45.051–.052, .054–.055*

An application must be accompanied by a fee set by rule of the State Board of Education. *Education Code 45.055(c)*

If approved, the guarantee of the bonds 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, in accordance with Education Code Chapter 45, Subchapter I and 19 Administrative Code 61.1038, apply for credit enhancement of bonds described by Education Code 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.

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) and 19 Administrative Code 61.1038; and
2. Be accompanied by a fee set by the State Board of Education.

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.

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.

*Education Code 45.255; 19 TAC 61.1038(d), (e)(1), (8), (10)*

**Federal Securities Law**

Disclosure  
Obligations for  
Bond and Other  
Debt Offerings

Prior to publically 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]

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**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]

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