



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1531

credit enhancement; budget reconciliation; 2016-2017

Purpose

Makes appropriations and session law changes related to public school credit enhancement necessary to implement the FY 2017 state budget.

Background

The Arizona Constitution prohibits substantive law from being included in the general appropriations, capital outlay appropriations and supplemental appropriations bills. However, it is often necessary to make statutory and session law changes to effectuate the budget. Thus, separate bills called budget reconciliation bills (BRBs) are introduced to enact these provisions. Because BRBs contain substantive law changes, the Arizona Constitution provides that they become effective on the general effective date, unless an emergency clause is enacted.

Provisions

Achievement District School

1. Directs the Credit Enhancement Eligibility Board to establish an application process, application forms and selection criteria for a public school or charter school to qualify as an Achievement District School.
2. States a public school or charter school is eligible to qualify as an Achievement District School if the public school or charter school meets all of the following criteria:
 - a) the assignment of a letter grade of A, or an equivalent successor classification;
 - b) proven instructional strategies and curricula that demonstrate high academic outcomes;
 - c) verifiable enrollment demand, including the placement of prospective pupils on a waiting list;
 - d) a sound financial plan that contemplates operational costs and future enrollment growth;
 - e) has shown a commitment to provide technical assistance, including business services, curriculum development and teacher training, to an underperforming school in the state; and
 - f) meets any other criteria established by the Credit Enhancement Eligibility Board.
3. Requires the Credit Enhancement Eligibility Board to:
 - a) meet regularly to evaluate applications and to either approve or deny each application submitted; and
 - b) report its decision on each application to the public school or charter school within 10 business days after the Board's decision.

4. Qualifies a school as an Achievement District School and states the school is eligible to apply for participation in the Arizona Public School Credit Enhancement Program if its application is approved.

Credit Enhancement Eligibility Board (Board)

5. Establishes the Board consisting of the following members:
 - a) the Governor or the Governor's designee;
 - b) the State Treasurer (Treasurer) or the Treasurer's designee; and
 - c) the Director of the Department of Administration or the Director's designee.
6. States Board members are:
 - a) not eligible to receive compensation; and
 - b) considered public officers with respect to their service on the Board and are subject to conflict of interest statutes.
7. Classifies the Board as a *public body* for the purposes of open meeting law.
8. Declares the Board a body corporate and politic and allows the Board to have an official seal that is judicially noticed.
9. Allows the Board to:
 - a) sue and be sued in its own name;
 - b) contract and enter into agreements as necessary to carry out its responsibilities;
 - c) contract with experts, advisers, consultants and agents, including financial experts, legal counsel and other advisers and consultants as may be necessary for services to assist the Board;
 - d) make and execute contracts and other instruments necessary or convenient for the performance of its duties and the exercise of its power and functions;
 - e) approve financing for an Achievement District School as guaranteed financing under the Arizona Public School Credit Enhancement Program;
 - f) do all acts, whether or not expressly authorized, that may be deemed necessary or proper for the protections of the monies in the Arizona Public School Credit Enhancement Fund, except that the Board may not take any action that would create a general or moral obligation of this state or any agency of the state;
 - g) contract with any entity relating to guaranteed financings;
 - h) issue Program Funding Obligations;
 - i) adopt rules governing the operation of the Arizona Public School Credit Enhancement Program; and
 - j) take any other action that is necessary or appropriate to carry out this act.
10. Directs the School Facilities Board (SFB) to provide staff as requested by the Board to support Board activities.
11. Exempts the Board from rulemaking requirements for two years.

Arizona Public School Credit Enhancement Fund (Fund)

12. Establishes the Fund consisting of the following:
 - a) payments of Arizona Public School Credit Enhancement Program participation fees paid by schools that have participated in guaranteed financing;
 - b) repayments of monies of the Fund that are used to make payments of principal and interest on guaranteed financings;
 - c) proceeds of Arizona Public School Credit Enhancement Program Funding Obligations issued by the Board;
 - d) gifts, grants and donations received from any public or private source to carry out the purposes of this article;
 - e) interest earnings and investment income earned on monies in the Fund; and
 - f) any other monies distributed, paid or deposited into the Fund by law or pursuant to contracts arising out of a guaranteed financing.
13. Holds and disburses monies and other assets from the Fund separate and apart from all other monies or assets of this state or political subdivisions of this state.
14. Requires the Treasurer to use monies in the Fund to make payments of principal or interest on guaranteed financings.
15. Requires the Board, at its direction, to use monies in the Fund to do the following:
 - a) pay for any operational or administrative expenses of the Board, including fees for advisers, rating agencies and professionals retained by the Board;
 - b) make payments to bond insurers to provide municipal bond insurance guaranteeing the timely payment of all or a portion of any guaranteed financing; and
 - c) make payments of principal and interest in connection with any Arizona Public School Credit Enhancement Program Funding Obligations.
16. Directs the Treasurer to:
 - a) administer the Fund;
 - b) disburse monies in the Fund as required;
 - c) separately account for monies received from each source; and
 - d) invest and divest monies in the Fund as provided by statute and credit monies earned from the investment to the Fund.
17. Allows the Treasurer to establish accounts and subaccounts as necessary to properly account for and use monies in the Fund.
18. Prohibits monies received for the Fund from being used for any purpose except:
 - a) guaranteeing or making payments of principal and interest on guaranteed financings of approved by the Board; and
 - b) any costs and expenses of the Arizona Public School Credit Enhancement Program or the Board as provided.
19. States monies in the Fund are non-lapsing.

Arizona Public School Credit Enhancement Program (Program)

20. Establishes the Program to assist Achievement District Schools in obtaining more favorable financing by guaranteeing the payment of principal and interest on guaranteed financings issued by or on behalf of Achievement District Schools.
21. Requires, in order to be considered for a guaranteed financing, an Achievement District School to submit an application to the Board, on a form and in the manner prescribed by the Board, that contains at least the following information:
 - a) proof of approval of the school's application as an Achievement District School at the time of applying to the Board;
 - b) exhibited sustainability in the financial operations of the school over at least two years based on financial metrics determined by the Board, including days cash on hand, the ratio of operating revenues to debt service or the ratio of the financed property value to any debt being secured by the property;
 - c) for charter schools, demonstrated experience in operating and managing charter schools with high academic outcomes for at least two consecutive years;
 - d) information regarding the proposed guaranteed financing by or on behalf of the schools, including the planned timing of the financing, sources and uses of monies, the expected principal and interest payment dates and amounts by payment date, plans for funding reserves expended ratings, if any, and any other information that would be useful to the Board's deliberations;
 - e) for charter schools, an acknowledgment that the guaranteed financing will include a fully funded debt service reserve equal to at least the maximum amount permitted by federal law in connection with the issuance of tax exempt obligations;
 - f) the identification of any property being pledged as collateral to the guaranteed financing and the value of the property; and
 - g) any additional information that the Board determines to be reasonable or necessary in order to fully evaluate the application.
22. States a school's failure to maintain ongoing Achievement District School eligibility does not impair or affect the validity or enforceability of the Program guarantee.
23. Requires the Board to meet regularly to evaluate applications and to either approve or deny each application submitted.
24. Requires the Board to ensure, if the application is approved, that:
 - a) the Program leverage ratio will not exceed a ratio of 3.5:1 as a result of the approval of the guarantee financing being considered; and
 - b) after 10 guaranteed financings have been approved by the Board, not more than 25 percent of the aggregate principal amount of guaranteed financings will be rated less than *BB-* or a comparable rating by a nationally recognized bond rating agency.
25. Directs the Board to report each application decision to the Achievement District School within 10 business days after the Board's decision.

26. Requires each charter school approved by the Board for guaranteed financing to pay an annual Program participation fee in the amount of at least 0.25 percent of the outstanding principal amount of the guaranteed financing in any year as determined by the Board for as long as the guaranteed financing is outstanding.
27. States Program participation fees for district public schools are determined by the Board.
28. Requires charter schools to pay Program participation fees:
 - a) in equal amounts on the date that interest is due and payable to investors under the guaranteed financing or at such other time as may be required by the Board; and
 - b) to the Treasurer on behalf of the Program for deposit in the Fund.
29. Allows the terms and conditions of the Board in approving a guaranteed financing to be set forth in a written agreement between the Board and the Achievement District School.

Payment of Program Guarantees

30. Requires the bank trustee, paying agent or other fiduciary for the guaranteed financing to deliver written notice to the Board and the Treasurer within 10 days after any draw from the debt service reserve fund to pay principal or interest on a guaranteed financing.
31. Requires the bank trustee, paying agent or other fiduciary to provide written notification of an expected deficiency to the Board and the Treasurer at least five business days before a debt service payment date if a school does not expect to make timely payment on its guaranteed financing and after any monies in the debt service reserve fund securing the guaranteed financing are fully expended.
32. Directs the Treasurer, within two business days after receipt of notice, to make payment from the Fund to the bank trustee, paying agent or other fiduciary to be used solely for making payment of principal or interest on the guaranteed financing.
33. Requires the school on whose behalf the payment was made to repay the amount of the payment plus interest at a rate that is 100 basis points higher than the true interest on the guaranteed financing as determined by the Board.
34. States repayments are made:
 - a) in equal monthly installments over a 12 month period or other period as determined by the Board; and
 - b) to the Treasurer for deposit in the Fund.
35. Deems any outstanding repayment balance after the stated repayment period immediately due and payable.
36. States any repayment amount owed to the Fund that is not otherwise paid remains a lawful obligation of the school and shall be paid from any other monies lawfully available to the school.

37. Entitles the Board and the Fund, in exchange for the guaranty of the payment of amounts due on guaranteed financing issued by or on behalf of an Achievement District School, to protections and remedies relating to the repayment of the amount, if any, paid from the Fund with respect to the guaranteed financing and the payment of Program participation fees.
38. States the protections and remedies may include one or more of the following:
 - a) the right to all or a portion of the proceeds from the sale or lease of any property serving as collateral for a guaranteed financing;
 - b) the right to intercept any payments or monies otherwise payable to the school; and
 - c) the right to any insurance proceeds otherwise payable to the school.
39. Directs the Attorney General to take any actions necessary, on request of the Board, to enforce repayment of Fund monies by a school.

Program Funding Obligations (Obligations)

40. Permits the Board to deliver nonnegotiable Obligations in one or more series in an aggregate principal amount of not more than \$80,000,000.
41. Directs the Board to sell Obligations to the Treasurer and directs the Treasurer to buy such Obligations as an allowable investment of the Fund.
42. Limits the maximum total principal amount of Obligations outstanding at any one time to \$80,000,000.
43. Allows the Board to reissue to the Treasurer any called Obligations on the same terms as the Obligations that were called and in a principal amount that does not exceed the principal amount called.
44. Requires the Board to authorize each Obligation by a resolution that sets forth the following:
 - a) the rate or rates of interest;
 - b) the date or dates of maturity;
 - c) the terms of redemption;
 - d) the form and manner of execution of the Obligation;
 - e) any terms necessary to secure credit enhancement or other sources of payment or security; and
 - f) any other term deemed necessary or advisable by the Board.
45. Computes the interest rate of Obligations as the sum of the following:
 - a) the actual rate of interest earned by the Treasurer on the investment of the proceeds from the sale of the Obligations; and
 - b) for any period during which guaranteed financings are outstanding, an additional interest rate of at least 100 basis points as determined by the Board.
46. Secures and pays for the principal and interest on the Obligations from monies deposited in the Fund on the terms set forth in the resolution and states payments of the principal and interest are subordinate to any payments necessary for guaranteed financings.

47. Pays principal payments on a basis proportional to the reduction in outstanding principal of guaranteed financings under the Program.
48. Pays interest on an annual or more frequent basis as set forth in the resolution of the Board.
49. Deems the monies pledged to the Obligations immediately subject to the lien of the pledge without any future physical delivery or further act.
50. States a lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Board irrespective of whether the parties have notice of the lien.
51. Stipulates the resolution by which the pledge is created is notice to all concerned of the creation of the pledge, when the resolution is placed in the Board's records.
52. Requires the Board to sell Obligations at private sale to the Treasurer at a price and on terms provided by the Board in its resolution.
53. Deposits the proceeds from the sale of Obligations into the Fund and allows the proceeds to be used for the purposes of the Fund.
54. Determines Obligations are:
 - a) special obligations of the Board;
 - b) not obligations that are general, special or otherwise of this state;
 - c) not a legal debt of this state; and
 - d) payable and enforceable only from the monies and fund pledged and assigned by the Board in its resolution.
55. Exempts any member of the Board or a person executing an Obligation from personal liability for the payment of the Obligation.

Quarterly Report

56. Directs SFB staff, in collaboration with the Board, to submit a quarterly report within 30 days after each calendar quarter on the implementation of the Program to the following individuals:
 - a) the Speaker of the House of Representatives;
 - b) the President of the Senate;
 - c) the Director of the Joint Legislative Budget Committee; and
 - d) the Director of the Governor's Office of Strategic Planning and Budgeting.
57. Requires the quarterly report to include at least the following information:
 - a) a listing of all guaranteed financings in the prior quarter, including the amounts disbursed for payment of principal and interest for the guaranteed financing and the terms and conditions the school is subject to;
 - b) the current balance of the Fund; and
 - c) the current Program leverage ratio.

58. Requires the quarterly report to include a listing of all outstanding guaranteed financings approved by the Board including the following information for each financing:
- a) the name of the public school or charter school by or on behalf of which the debt obligation was issued;
 - b) the date of the issuance;
 - c) the original amount of the issuance;
 - d) the interest rate of the issuance;
 - e) the term length of the issuance;
 - f) the credit rating of the issuance;
 - g) the amount of principal and interest due on the debt obligation in the current fiscal year;
 - h) the purpose for which the debt obligation was issued, separately delineated for obligations to construct new capital facilities, renovate existing capital facilities or refinance existing debt obligations; and
 - i) the current outstanding principal of the debt obligation.

Appropriation and Transfer

59. Appropriates \$500,000 from the state General Fund in FY 2017 to SFB for one-time funding for transaction costs associated with the establishment of the Program.
60. States the appropriation is non-lapsing except all monies remaining unexpended and unencumbered on June 30, 2018, revert to the state General Fund.
61. Transfers \$23,900,000 in FY 2017 from the Access our Best Public Schools Fund to the Fund.

Repeals

62. Repeals the Access Our Best Public Schools Fund on September 2, 2017.
63. Sunsets the Board on July 1, 2026.
64. Repeals the Program, Board and Fund if both of the following apply:
- a) on January 1, 2027, if the Board has no outstanding Obligations, schools have no outstanding guaranteed financings or the Legislature has otherwise provided for paying or retiring any Obligations; and
 - b) 30 days after the retirement of all Obligations and the retirement of all outstanding guaranteed financings if none of the specified conditions have occurred by January 1, 2027.

65. Contains a purpose statement.

Miscellaneous

66. States the Treasurer is not required to divest from Obligations before issuing warrant notes.
67. Allows the Treasurer to invest and reinvest trust and treasury monies in Obligations delivered by the Board.

68. Defines terms.

69. Makes technical and conforming changes.

70. Becomes effective on the general effective date.

Amendments Adopted by Committee of the Whole

1. Removes the 0.25 percent participation fee for school districts and instead allows the Board to determine the fee.

2. Modifies the requirements necessary for the termination of the Board.

Senate Action

APPROP 4/27/16 DP 5-3-0

Prepared by Senate Research

May 3, 2016

CB/lr