

Dear Senators McKENZIE, Pearce & Stennett, and
Representatives LOERTSCHER, Anderson & Mary Lou Shepherd:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Endowment Fund Investment Board:

IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts

(Docket No. 32-0101-1001 – Fee Rule – New Chapter).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the co-chairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10/25/10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/23/10.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee

FROM: Brooke Murdoch, Legislative Research Analyst *stom*

DATE: October 5, 2010

SUBJECT: Endowment Fund Investment Board

**IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts
(Docket No. 32-0101-1001 – Fee Rule – New Chapter)**

The Endowment Fund Investment Board submits notice of proposed rulemaking at IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts. According to the Board, this docket was published as a temporary rule in the May 5, 2010 Idaho Administrative Bulletin, Vol. 10-5, pages 54 through 58, with a temporary effective date of March 30, 2010.

The Board's proposed rulemaking constitutes a new chapter that is consistent with amendments made to Section 57-728, Idaho Code, which became effective on April 17, 2009. Section 57-728, Idaho Code, requires the Board to promulgate rules implementing the School District Bond Credit Enhancement Program. The proposed rule specifies the application procedures for school districts that seek to participate in the Program and imposes guaranty and administrative fees.

The Board states that negotiated rulemaking was not conducted because the rule is necessary to confer a benefit by allowing the Program to provide guarantees to school districts. There is no negative fiscal impact on the state general fund resulting from this rulemaking.

The proposed rule is within the authority granted to the Board in Section 57-728, Idaho Code.

cc: Endowment Fund Investment Board
Larry Johnson, Manager of Investments

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-1001 (FEE RULE - NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 57-728(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amendments to Section 57-728, Idaho Code, became effective April 17, 2009. The amendments require the Endowment Fund Investment Board (EFIB) to promulgate rules furthering the Credit Enhancement Program for School Districts (Program). The new chapter of rules specifies the application procedure for school districts seeking to participate in the Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Program to the Endowments. The rules specify the fees for the Program and allow the EFIB to continue offering guarantees to school districts.

This docket was published as a temporary rule in the [May 5, 2010 Idaho Administrative Bulletin, Vol. 10-5, pages 54 through 58](#), with a temporary effective date of March 30, 2010.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 57-728, Idaho Code, and 2010 Attorney General Opinion 01, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of Program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009 and discussed in 2010 Idaho Attorney General Opinion 01. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in *Endowment Fund Investment Board v. Crane* that the Program is a permissible investment for the Fund.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will experience lower interest rates on school bonds through participation in the Program. The Public School Endowment will recover its costs for providing the benefit to school districts.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this new chapter of rules was necessary to confer a benefit by allowing the Program to provide guarantees to school districts.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 12th day of August, 2010.

Larry Johnson
Manager of Investments
Endowment Fund Investment Board
816 W. Bannock St., Ste. 301
P. O. Box 83720
Boise, ID 83720-0046
Phone: (208) 334-3312
Fax: (208) 334-3786

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

**This docket has been previously published as a Temporary Rule.
The temporary effective date is March 30, 2010.**

**The original text of the Temporary Rule was published in the Idaho
Administrative Bulletin, [Volume 10-5, May 5, 2010](#),
pages 54 through 58.**

THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 32-001-1001

**IDAPA 32
TITLE 01
CHAPTER 01**

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

000. LEGAL AUTHORITY.

Section 57-728(2), Idaho Code, gives the Endowment Fund Investment Board authority to promulgate rules necessary to the discharge of the EFIB's duties for the administration of the Credit Enhancement Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Credit Enhancement Program to the Endowments. ()

001. TITLE AND SCOPE

01. Title. These rules shall be cited as IDAPA 32, Title 01, Chapter 01, “Rules Governing the Credit Enhancement Program for School Districts.” ()

02. Scope. These rules contain the provisions for implementation of the Credit Enhancement Program. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the EFIB’s office. ()

003. ADMINISTRATIVE APPEALS.

The EFIB’s determination to invest through the Credit Enhancement Program is a discretionary exercise of its fiduciary duties to the Endowments. This chapter does not provide for appeal of the requirements under the Credit Enhancement Program as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The location and mailing address of the EFIB is 816 West Bannock Street, Suite 301, Boise, Idaho 83702. The offices are open daily from 8 a.m. to noon, and 1 p.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed for mandatory leave without pay. The EFIB’s telephone number is (208) 334-3311 and the facsimile number is (208) 334-3786. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS AND REFERENCES.

01. Administrative Fees. Application Fees and Pass-through Fees charged to School Districts applying for and receiving guarantees under the Credit Enhancement Program. ()

02. Application Fee. The amount determined by the EFIB and set forth in this chapter as the cost of reviewing applications to the Credit Enhancement Program and administering the Credit Enhancement Program. ()

03. Credit Enhancement Program. The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. ()

04. EFIB. Endowment Fund Investment Board. ()

05. Endowments. The trusts granted to the state of Idaho by the Idaho Admission Bill, 26 Statutory Laws 215, chapter 656 as amended. The Endowments include the Public School Endowment established by Idaho Admission Bill sections 4 and 13. ()

06. Guarantee Fee. The amount determined by the EFIB and set forth in this chapter as the cost of guaranteeing a school bond under the Credit Enhancement Program. The cost of guaranteeing a school bond includes the difference in the investment return to the Public School Endowment projected by the EFIB to arise from the guarantee and additional costs to the Endowments arising from investment of the Public School Endowment in the Credit Enhancement Program. ()

07. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter

53, Idaho Code. ()

08. Pass-Through Fee. A direct cost to the EFIB for reviewing an application to the Credit Enhancement Program or for issuing a note to pay a debt service payment under the Credit Enhancement Program. Direct costs include the costs billed to the EFIB by legal, accounting, and financial professionals. ()

09. School District. Shall have the meaning provided in Section 33-5302, Idaho Code. ()

10. Total Debt Service. The total amount to be repaid to bond purchasers over the stated maturity of the School District bond (principal plus interest). ()

011. -- 019. (RESERVED).

020. APPLICATION.

01. Required Materials. School Districts shall submit the following application materials to the EFIB: ()

a. Correspondence from the Idaho State Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 57-728(8), Idaho Code. ()

b. A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. ()

c. Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years and the adopted budget for the current fiscal year. ()

d. Upon request of the EFIB, documentation substantiating the information set forth in materials submitted pursuant to Subsection 020.01 of these rules. ()

02. Submission Deadlines. School Districts may submit an application at any time. ()

021. -- 029. (RESERVED).

030. FEES.

01. Guarantee Fee. ()

a. Amount. School Districts shall remit to the EFIB a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. ()

b. When Paid. School Districts shall remit the Guarantee Fee to the EFIB within five (5) days of the sale of bonds guaranteed by the Credit Enhancement Program. ()

c. Use of Fee. The EFIB will deposit the Guarantee Fee in the Public School Endowment. ()

02. Administrative Fees. ()

a. Application Fee. ()

i. Amount. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). ()

ii. When Paid. School Districts shall submit the Application Fee to the EFIB with the application materials. ()

iii. Use of Fee. The EFIB will use Application Fees to pay costs of reviewing applications and administering the Credit Enhancement Program. At the conclusion of each fiscal year, the EFIB will deposit unexpended Application Fees in the Public School Endowment. ()

b. Pass-through Fee. ()

i. Amount. The EFIB may incur a Pass-through Fee related to the review of an application in its discretion. The EFIB will not invoice a School District for Pass-through Fees related to the review of an application without the prior written approval of the School District. The EFIB may incur a Pass-through Fee related to the issuance of a note without prior approval of the School District. The EFIB will invoice School Districts for the full amount of any Pass-through Fees related to the issuance of a note. ()

ii. When Paid. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. ()

iii. Use of Fee. The EFIB will use a Pass-through Fee to pay the direct costs to the EFIB under the Credit Enhancement Program giving rise to the fee. ()

031. -- 039. (RESERVED).

040. APPROVAL AND DENIAL OF APPLICATIONS.

01. Review Periods. The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests substantiating documentation, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating documentation. ()

02. Delegation of Review and Approval. ()

a. Staff Review. The EFIB may delegate review of applications to EFIB staff. ()

b. Experts. The EFIB may engage experts to review an application. Experts include legal, accounting, and financial professionals. ()

c. Staff Approval. The EFIB may delegate approval of applications to the EFIB's manager of investments. ()

03. Discretionary Investment. The EFIB will invest in a School District bond issuance under the Credit Enhancement Program in its sole discretion and within its fiduciary responsibilities as trustees of the financial assets of the Endowments. The EFIB may deny an application for participation in the Credit Enhancement Program if the EFIB determines the investment is not in the best interests of one (1) or more of the Endowments. ()

04. Denial of Application for Unpaid Fees. The EFIB may deny an application for participation in the Credit Enhancement Program if a School District has not paid a fee under a pending application or a prior guarantee issued by the Credit Enhancement Program. ()

041. -- 999. (RESERVED).