

STATE AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

***32.01.01 - Rules Governing the Credit Enhancement Program
for School Districts***

Docket No. 32-0101-0901 (New Chapter)2

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD
32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM
FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is April 30, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending fee rule and amended a temporary rule. The action is authorized pursuant to Section 57-728(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The Endowment Fund Investment Board received additional public comment and discussed the pending and temporary rule at public meetings on August 12, 2009 and August 27, 2009. After a thorough discussion, the Board determined that its fiduciary responsibilities to the Public School Endowment Fund require the Board provide a range of fees in rule so that it may rapidly adjust the fees to address investment market conditions and to allow for changes in actual administrative costs. Subsection 020.02 and Section 030 of these rules are thus revised to establish a range of fees and provide that the Board will set the applicable fee within the range in Board policy. Board policy is set at public Board meetings. EFIB staff plans to recommend the Board adopt an initial policy of a one hundred dollar (\$100) application fee and a 2 basis point guaranty fee, consistent with the original temporary rule and comments by the Board in the two recent meetings.

In addition to the above, a citation to Idaho Code is being corrected in Paragraph 020.01.a., a new Subsection 020.05 is being added to provide for submission deadlines, and Section 030 is modified to specify that guaranty fees must be deposited in the Public School Endowment Fund.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Endowment Fund Investment Board amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 125 through 128.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger. This fee or charge is being imposed pursuant to Section 57-728, Idaho Code. The following is a specific description of the fee or charge imposed or increased:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, 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. 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.

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

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:

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

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

DATED this 28th day of August, 2009.

Larry Johnson
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***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED FEE RULE***

EFFECTIVE DATE: The effective date of the temporary rule is April 30, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. 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 August 19, 2009.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and 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. The rules will allow the reopening of the Program, which was closed to new applications in 2008. The new chapter of rules specifies the application procedure for school districts seeking to participate in the Credit Enhancement Program.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rulemaking is necessary to comply with deadlines in amendments to governing law. In addition, the temporary rules confer a benefit by allowing the Program to re-open.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Pursuant to Section 57-728, Idaho Code, as revised effective April 17, 2009, 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. 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:

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will be charged a small application fee reflecting the overhead costs of the EFIB's administration of the Program and the EFIB's other clients will see a corresponding reduction in their expenses. The Public School Endowment will receive a guarantee fee that will be reflected in the Endowment's investment returns.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

**IDAPA 32
TITLE 01
CHAPTER 01**

**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. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 32, Title 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 endowment funds. 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, and legal holidays. 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.

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

02. EFIB. Endowment Fund Investment Board. ()

03. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. ()

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

05. Total Debt Service. The total amount to be repaid to purchasers over the stated

maturity of the School District bond (principal plus interest). ()

06. Treasurer. The Idaho State Treasurer. ()

011. -- 019. (RESERVED).

020. APPLICATION.

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

a. Correspondence from the 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. If the audit of the last fiscal year has not been completed, an unaudited, draft financial statement or financial summary for that year will be accepted up to six (6) months after the end of the last fiscal year. ()

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

02. Application and Administrative Fees. School Districts shall submit an application fee ~~of with the application materials in an amount established by EFIB policy. The application fee shall not exceed one hundred thousand dollars (\$1000) with the application materials.~~ The EFIB may charge the applicant an administrative fee equal to the actual charges to the EFIB for the review of application materials by outside experts, including certified public accountants. ~~(4-30-09)F()~~

03. Staff Review. The EFIB may delegate review of applications to EFIB staff. The EFIB may delegate approval of applications to the EFIB's manager of investments. ()

04. 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 information substantiating audit materials, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating information. ()

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

021. -- 029. (RESERVED).

030. GUARANTY FEE.

School Districts shall remit to the EFIB, *for deposit in the Public School Endowment Fund* within five (5) days of the sale of the bonds covered under the Credit Enhancement Program, a one-time fee ~~equal to as set forth in EFIB policy.~~ *Such fee shall not exceed ~~two~~ five one-hundredths of one percent (0.025% or ~~two~~ five basis points) of the Total Debt Service.* ~~(4-30-09)F()~~

031. -- 999. (RESERVED).