

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: 32.01.01 - Rules Governing the Credit Enhancement Program for School Districts (Docket #32-0101-0901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen 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 10-26-09. 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 11-24-09.

\_\_\_\_\_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 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## **MEMORANDUM**

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

**FROM:** Brooke Murdoch, Research Analyst

**DATE:** October 6, 2009

**SUBJECT:** Endowment Fund Investment Board  
IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts – Docket No. 32-0101-0901 (Adoption of Pending Fee Rule and Amendment to Temporary Rule)

The Endowment Fund Investment Board submits notice of adoption of a pending fee rule and amendment to temporary rulemaking at IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts. According to the Board, additional public comment regarding its temporary and proposed rulemaking at IDAPA 32.01.01, was received at public meetings held on August 12 and 27, 2009. Following discussions, the Board determined that its fiduciary responsibilities to the Public School Endowment Fund require that the Board provide a range of fees in rule so that it may rapidly adjust fees to address investment market conditions and to allow for changes in actual administrative costs. The Board states that Subsection 020.02 and Section 030. of the rules have been revised to establish a range of fees and provide that the Board will set the applicable fee, within the range, in Board policy. In addition, the Board states that an Idaho Code citation referenced in Subsection 020.01.a. of the rules has been corrected, a new subsection has been added to provide application submission deadlines and Section 030. has been modified to specify that guaranty fees must be deposited in the Public School Endowment Fund.

We have one minor comment. The Idaho Code citation referenced in Subsection 020.01.a. of the rules has not been corrected.

Aside from the above comment, the pending fee rule and amendment to the temporary rule appear to be in compliance with Sections 67-5224 and 67-5227, Idaho Code, and within the authority granted to the Board in Section 57-728, Idaho Code.

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

## IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

### 32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

DOCKET NO. 32-0101-0901

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE AND AMENDMENT TO TEMPORARY 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  
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

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**DOCKET NO. 32-0101-0901 - ADOPTION OF PENDING RULE  
AND AMENDMENT TO TEMPORARY RULE**

**Substantive changes have been made to the pending rule.**  
*Italicized text that is underscored is new text that is being added.*  
*Italicized text that is ~~underscored and struck through~~ is codified temporary text that is being removed from the temporary rule. This is also an amendment to the pending rule text.*

**Only those sections or subsections that have changed from the original temporary/proposed text are printed in this Bulletin following this notice.**

**The text of the temporary/proposed rule was published in the Idaho Administrative Bulletin, [Volume 08-8, August 5, 2009, pages 125 through 128.](#)**

**This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2010 Idaho State Legislature for final adoption.**

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**THE FOLLOWING IS THE AMENDED TEMPORARY RULE AND THE  
AMENDED PENDING RULE TEXT FOR DOCKET 32-0101-0901**

**020. APPLICATION.**

**01. Required Materials.** School Districts shall submit the following application materials to the EFIB: (4-30-09)T

**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 3-57-728(8), Idaho Code. (4-30-09)T

**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. (4-30-09)T

**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. (4-30-09)T

**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. (4-30-09)T

**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)T~~(4-30-09)T

**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. (4-30-09)T

**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. (4-30-09)T

**05. Submission Deadlines.** School Districts may submit an application at any time. (4-30-09)T

**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)T~~(4-30-09)T