

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 #32-0101-0901) (Fee Rule - New Chapter).

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
8-17-09. 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 9-16-09.

_____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: July 29, 2009

SUBJECT: Endowment Fund Investment Board
IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts – Docket No. 32-0101-0901 (Fee Rule – New Chapter)

The Endowment Fund Investment Board submits notice of temporary and proposed rulemaking at IDAPA 32.01.01 – Rules Governing the Credit Enhancement Program for School Districts. These rules constitute a new chapter implementing amendments to Section 57-728, Idaho Code, made by Senate Bill 1154, which was passed by the 2009 Legislature and became effective on April 17, 2009. Section 57-728, Idaho Code, as amended, requires the Board to promulgate rules implementing the Credit Enhancement Program for School District Bonds.

The Board states that the temporary adoption of the rule is appropriate and that negotiated rulemaking was not conducted because the rule is necessary to comply with a change to the governing law that took effect on April 17, 2009.

We note only the following suggestion and comment:

- In subparagraph 020.01.a., reference to “Section 3-57-728(8), Idaho Code,” should read “Section 57-728(8), Idaho Code.”
- Section 57-728(2)(b), Idaho Code, as amended, requires that the Board’s rules include application “submission deadlines.” The temporary and proposed rule does not include an application submission deadline. I contacted the Board’s attorney, Julie Weaver, and was informed that the proposed rule will be revised to include a subparagraph for submission deadlines. However, the temporary rule will not reflect this final revision.

Aside from these comments, the temporary and proposed rule is within the authority granted to the Board under 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 (FEE RULE - NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED 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.

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

THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 32-0101-0901

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.

(4-30-09)T

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."

(4-30-09)T

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

(4-30-09)T

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. (4-30-09)T

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. (4-30-09)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (4-30-09)T

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. (4-30-09)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code. (4-30-09)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Credit Enhancement Program. The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (4-30-09)T

02. EFIB. Endowment Fund Investment Board. (4-30-09)T

03. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. (4-30-09)T

04. School District. Shall have the meaning provided in Section 33-5302, Idaho Code. (4-30-09)T

05. Total Debt Service. The total amount to be repaid to purchasers over the stated maturity of the School District bond (principal plus interest). (4-30-09)T

06. Treasurer. The Idaho State Treasurer. (4-30-09)T

011. -- 019. (RESERVED).

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 one hundred dollars (\$100) 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

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

021. -- 029. (RESERVED).

030. GUARANTY FEE.

School Districts shall remit to the EFIB, within five (5) days of the sale of the bonds covered under the Credit Enhancement Program, a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. (4-30-09)T

031. -- 999. (RESERVED).