

### Part 3 Guaranty Operation

#### **53A-28-301 Business administrator duties -- Paying agent to provide notice -- State treasurer to execute transfer to paying agents -- Effect of transfer.**

- (1)
  - (a) The business administrator of each board with outstanding, unpaid bonds shall transfer money sufficient for the scheduled debt service payment to its paying agent at least 15 days before any principal or interest payment date for the bonds.
  - (b) The paying agent may, if instructed to do so by the business administrator, invest the money at the risk and for the benefit of the board until the payment date.
  - (c) A business administrator who is unable to transfer the scheduled debt service payment to the paying agent 15 days before the payment date shall immediately notify the paying agent and the state treasurer by:
    - (i) telephone;
    - (ii) a writing sent by facsimile transmission; and
    - (iii) a writing sent by first-class United States mail.
- (2) If sufficient funds are not transferred to the paying agent as required by Subsection (1), the paying agent shall notify the state treasurer of that failure in writing at least 10 days before the scheduled debt service payment date by:
  - (a) telephone;
  - (b) a writing sent by facsimile transmission; and
  - (c) a writing sent by first-class United States mail.
- (3)
  - (a) If sufficient money to pay the scheduled debt service payment has not been transferred to the paying agent, the state treasurer shall, on or before the scheduled payment date, transfer sufficient money to the paying agent to make the scheduled debt service payment.
  - (b) The payment by the treasurer:
    - (i) discharges the obligation of the issuing board to its bondholders for the payment; and
    - (ii) transfers the rights represented by the general obligation of the board from the bondholders to the state.
  - (c) The board shall pay the transferred obligation to the state as provided in this chapter.

Amended by Chapter 342, 2011 General Session

#### **53A-28-302 State financial assistance intercept mechanism -- State treasurer duties -- Interest and penalty provisions.**

- (1)
  - (a) If one or more payments on bonds are made by the state treasurer as provided in Section 53A-28-301, the state treasurer shall:
    - (i) immediately intercept any payments from the Uniform School Fund or from any other source of operating money provided by the state to the board that issued the bonds that would otherwise be paid to the board by the state; and
    - (ii) apply the intercepted payments to reimburse the state for payments made pursuant to the state's guaranty until all obligations of the board to the state arising from those payments, including interest and penalties, are paid in full.

- (b) The state has no obligation to the board or to any person or entity to replace any money intercepted under authority of Subsection (1)(a).
- (2) The board that issued bonds for which the state has made all or part of a debt service payment shall:
  - (a) reimburse all money drawn by the state treasurer on its behalf;
  - (b) pay interest to the state on all money paid by the state from the date the money was drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus 1%; and
  - (c) pay all penalties required by this chapter.
- (3)
  - (a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the board on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payment on the bonds.
  - (b) The state treasurer may, after considering the circumstances giving rise to the failure of the board to make payment on its bonds in a timely manner, impose on the board a penalty of not more than 5% of the amount paid by the state pursuant to its guaranty for each instance in which a payment by the state is made.
- (4)
  - (a)
    - (i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one year from the state's payment of a board's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the board to compel it to:
      - (A) levy and provide property tax revenues to pay debt service on its bonds when due as required by Title 11, Chapter 14, Local Government Bonding Act; and
      - (B) meet its repayment obligations to the state.
    - (ii) In pursuing its rights under this Subsection (4)(a), the state shall have the same substantive and procedural rights under Title 11, Chapter 14, Local Government Bonding Act, as would a holder of the bonds of a board.
  - (b) The attorney general shall assist the state treasurer in these duties.
  - (c) The board shall pay the attorney's fees, expenses, and costs of the state treasurer and the attorney general.
- (5)
  - (a) Except as provided in Subsection (5)(c), any board whose operating funds were intercepted under this section may replace those funds from other board money or from ad valorem property taxes, subject to the limitations provided in this Subsection (5).
  - (b) A board may use ad valorem property taxes or other money to replace intercepted funds only if the ad valorem property taxes or other money was derived from:
    - (i) taxes originally levied to make the payment but which were not timely received by the board;
    - (ii) taxes from a special levy made to make the missed payment or to replace the intercepted money;
    - (iii) money transferred from the capital outlay fund of the board or the undistributed reserve, if any, of the board; or
    - (iv) any other source of money on hand and legally available.
  - (c) Notwithstanding the provisions of Subsections (5)(a) and (b), a board may not replace operating funds intercepted by the state with money collected and held to make payments on

bonds if that replacement would divert money from the payment of future debt service on the bonds and increase the risk that the state's guaranty would be called upon a second time.

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