§ 168.00 Agreements for credit enhancement. a. The finance board of any municipality, school district or district corporation (herein a "public body") is hereby authorized and empowered to enter into such agreements as it deems reasonable and appropriate, with any department or agency of the United States of America, the state, or any other financially responsible party, to facilitate the issuance, sale, resale and payment of bonds, notes, or other evidences of indebtedness of such public body, including, but not limited to letters of credit, lines of credit, revolving credit, bond insurance or other credit enhancements. Such agreements may provide for (i) the advance or advances of funds on behalf of such public body to pay the interest on and principal and premium of bonds, notes or other evidences of indebtedness of such public body on their date or dates of maturity or redemption or when interest is otherwise due, and (ii) the reimbursement of such advance or advances by such public body.

b. Such agreements may be executed on or before the date of issuance of the obligations to be paid pursuant thereto, provided, however, that any reimbursement obligation of such public body arising from such agreements shall be deemed indebtedness of such public body (i) only as of the date that the corresponding advance is made pursuant to paragraph a of this section, and (ii) only in the amount of the advance made pursuant to such paragraph. Such agreements may include a pledge by such public body of its faith and credit for the payment of principal of and interest on any indebtedness deemed to be contracted as set forth in this paragraph, and may provide that any such indebtedness arising from a reimbursement obligation contracted pursuant to this section shall be paid in accordance with the terms of such agreement. Such indebtedness shall be excluded in ascertaining the power of such public body to contract indebtedness pursuant to title eight and title nine of this article. Such agreements shall also include such terms and conditions as the finance board shall deem appropriate, including provisions for the payment of reasonable fees and expenses by such public body in return for a commitment to advance funds pursuant to such agreement. Such fees and expenses shall be deemed part of the cost of the object or purpose in connection with which they are incurred.

c. Prior to procurement of any credit or liquidity enhancements, such public body shall, to the extent practicable:

(1) consider the ability of the credit or liquidity enhancement provider to make required payments as and when due under the terms of the appropriate governing instruments;

(2) consider the business reputation of the credit or liquidity enhancement provider;

(3) consider the maximum term of the credit or liquidity enhancement relative to the maturity of the bonds, notes or other obligations being credit or liquidity enhanced;

(4) provide for the right of substitution for the credit or liquidity enhancement provider in all agreements, including a provision permitting such substitution when the rating of the credit or liquidity enhancement provider falls below the probable credit rating of the issue without considering the credit or liquidity enhancer; and

(5) consider the cost of the credit or liquidity enhancement relative to the savings or other benefit likely to be achieved through the utilization of the credit or liquidity enhancement.

d. Where the credit or liquidity enhancement procured is an irrevocable letter of credit or an acquisition arrangement with a banking organization, such instrument shall be:

(1) issued or confirmed by a bank holding company or its direct subsidiaries, a federally chartered bank or its subsidiaries, or a state chartered bank or its subsidiaries, licensed or authorized to do business in this state or

(2) issued or confirmed by an agency or branch of a foreign banking institution licensed to do business in this state with total worldwide assets in excess of five billion dollars.

e. Any such issuing banking organization referred to in paragraph d of this section shall meet the regulatory guidelines for capital adequacy as promulgated by the appropriate federal banking agency as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

f. (1) Where the credit or liquidity enhancement procured is provided by an insurance company, such insurer shall be licensed to write

financial guarantee insurance in this state.

(2) Where the credit or liquidity enhancement procured is from other than an entity described in paragraph d of this section or subdivision one of this paragraph, the provider shall be a financially responsible party, incorporated or authorized to do business in this state and having total assets in excess of ten billion dollars.

g. The failure of a public body to comply with paragraphs c through f of this section shall not invalidate or impair any credit or liquidity enhancement contract or instrument.

h. The finance board may, by resolution, delegate its authority under this section to the chief fiscal officer of such public body in which event the chief fiscal officer shall exercise such power until the finance board, by resolution, shall elect to reassume the same.