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Texas Bill Could Eliminate PSF Guaranty on School Bonds

Pursuant to Section 45.052 of the Texas Education Code, school district and charter school bonds (including refunding bonds) are eligible to be guaranteed by the corpus and income of the Permanent School Fund (PSF). If obtained, such guaranty remains in effect until the date such bonds mature or are defeased. House Bill 5035 (HB 5035), currently pending in the Texas Legislature, would amend Section 45.052 to prohibit the use of the PSF to guarantee school district bonds and charter school bonds after September 1, 2025. The bill would not affect the PSF guaranty of outstanding bonds.

Background

The PSF was created in 1845 expressly for the benefit of the public schools of Texas with the sole purpose of assisting in the funding of public education. Article 7, Section 5(a) of the Texas Constitution provides that the PSF consists of all land appropriated for public schools by the Texas Constitution or other laws of Texas, other properties belonging to the PSF, and all revenue derived from the land or other properties. It received its first significant funding with a \$2,000,000 appropriation by the Texas Legislature in 1854. Article 7, Section 5(d) of the Texas Constitution was amended in 1983 to authorize the Legislature to use the PSF to guarantee bonds issued by school districts (including charter schools) or by the State in order to make loans to, or purchase the bonds of, school districts for the purposes of acquisition, construction, or improvement of instructional facilities, including furnishings (Bond Guarantee Program).

Bond Guarantee Program

The Bond Guarantee Program requires an application by a school district or a nonprofit corporation acting on behalf of a charter school to the Texas Education Agency for a guaranty of its bonds. If the conditions for the program are satisfied, the guaranty becomes

effective upon approval of the bonds by the Texas Attorney General and remains in effect until the guaranteed bonds are paid or defeased. In the event of default, holders of guaranteed bonds receive all payments as and when they become due from the corpus (including income) of the PSF. The Bond Guarantee Program has not had a district default on its bond payments in the history of the program.

The only cost of the PSF guaranty is an application processing fee of \$1,500 due at the time of the application. Such cost pales in comparison to the cost of a commercial bond insurance policy that would achieve the same rating for school district or charter school bonds as a PSF-guaranteed bond. Moody's Investors Service, Inc., S&P Global Ratings, and Fitch Ratings, Inc. rate PSF-guaranteed bonds "Aaa," "AAA" and "AAA," respectively. The Bond Guarantee Program is the largest triple-A bond guarantor in the country.

As of August 31, 2024, the PSF's mineral assets, sovereign lands, other lands, and discretionary internal investments had book values of approximately \$13.4 million, \$0.8 million, \$37.2 million, and \$318.9 million, respectively; their market values were approximately \$4,540.6 million, \$277.4 million, \$153.1 million, and \$457.0 million, respectively. The annual payout from the PSF is limited to both (1) 6% of the average of its market value, excluding real property, on the last day of each of the 16 State fiscal quarters preceding the Regular Session of the Legislature that begins before that State fiscal biennium, and (2) the total return on all of its investment assets over a rolling 10-year period.^[1]

On January 31, 2025 (based on unaudited data, which is subject to adjustment), there were \$129,723,799,121 in the principal amount of bonds guaranteed under the Bond Guarantee Program, comprised of 3,437 school district issuances, aggregating \$124,794,149,121 in principal amount, and 109 charter school issuances, aggregating \$4,929,650,000 in principal amount.

Impact of HB 5035

The PSF guaranty is highly valued by investors and, as noted above, available to school districts and charter schools at minimal cost. If

HB 5035 is enacted, the impact upon Texas public schools and upon the bond market from discontinuing the PSF guaranty for future bonds—both on outstanding bonds with the PSF guaranty and on future bonds without the PSF guaranty—is unknown and hard to predict.

For more information, please contact the authors or any attorney with Frost Brown Todd's [Public Finance Practice Group](#).

[\[1\]](#) Texas Education Agency.

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