

Regular Session, 2002

SENATE BILL NO. 80

BY SENATOR HOLDEN

BONDS. Authorizes the issuance of debt financing instruments known as Grant Anticipation Revenue Vehicles (GARVEE) by the State Bond Commission. (gov sig)

1 AN ACT

2 To enact R.S. 48:27, relative to the issuance of revenue anticipation bonds for  
3 the purpose of financing transportation projects; to authorize the State  
4 Bond Commission, acting on behalf of the state of Louisiana and the  
5 Department of Transportation and Development, to issue revenue  
6 anticipation bonds in order to finance all or a portion of the costs  
7 incurred or to be incurred for accelerated construction of transportation  
8 projects; to authorize the State Bond Commission to fix the details of  
9 such obligations and to provide for the sale of such obligations from  
10 time to time at public or private sales; to provide for the pledge of  
11 federal highway funds received by the state of Louisiana; to provide  
12 that the interest income from such obligations shall be exempt from all  
13 taxation within the state; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. R.S. 48:27 is hereby enacted to read as follows:

16 §27. Grant Anticipation Revenue Vehicles

1 **R.S. 48:27 is all proposed new law.**

2 A. Short title. This Act shall be known and cited as the "Grant  
3 Anticipation Revenue Vehicle Act of 2002".

4 B. Legislative findings and determinations. The Legislature of  
5 Louisiana hereby finds and determines that the rapid growth of the  
6 economy of this state has prompted new and ever-increasing uses of  
7 public highways, roads, and other transportation infrastructure, and it  
8 is critical to the well being and quality of life of the citizens of this  
9 state that the state address, on an accelerated basis, the long-term  
10 transportation needs of this state. The Legislature of Louisiana further  
11 determines that current transportation funding mechanisms do not  
12 provide adequate revenues to keep pace with the increasing demands  
13 of the state's transportation system. By utilizing revenue anticipation  
14 bonds for the financing of transportation projects that may be financed,  
15 in whole or in part, with federal transportation funds, a significant  
16 amount of up-front revenues can be generated for such transportation  
17 projects. This will enable the design and construction of transportation  
18 projects on an accelerated basis. Utilizing revenue anticipation bonds  
19 to finance federal-aid transportation projects and state transportation  
20 projects will result in significant cost savings to the state, since such  
21 transportation projects can be completed at present-day costs and at an  
22 accelerated pace. The Legislature of Louisiana further finds and  
23 declares that the bonds authorized herein constitute revenue bonds as  
24 provided in Article VII, Section 6 of the Constitution of Louisiana and  
25 the payment of the bonds with the amounts authorized herein is  
26 permitted under Article VII, Section 27 of the Constitution of Louisiana  
27 as part of the department's program for state highway construction. It

1 is hereby determined that the issuance of the bonds and the program as  
2 herein authorized are in all respects public and governmental purposes  
3 for the improvement of the health, safety, welfare, comfort, and  
4 security of the people of the state, and that said purposes are public  
5 purposes and that the State Bond Commission on behalf of the state of  
6 Louisiana will be performing an essential governmental function and  
7 meeting a public obligation in the exercise of the powers conferred  
8 upon it by this Act.

9 C. Definitions. Whenever used in this Act, unless a different  
10 meaning clearly appears in the context, the following terms shall mean  
11 the following:

12 (1) "Act" means this Act.

13 (2) "Bonds" means bonds, notes, or other evidences of  
14 indebtedness.

15 (3) "Constitution" means the constitution of the state, as  
16 amended.

17 (4) "Department" means the Department of Transportation and  
18 Development of the state of Louisiana.

19 (5) "Federal transportation funds" means:

20 (a) Funds paid or reimbursed to the department by the United  
21 States Department of Transportation including, without limitation,  
22 future Federal Highway Administration obligational authority or  
23 Federal Highway Administration reimbursement funds and any other  
24 monies payable under Title 23 of the United States Code, as amended  
25 from time to time.

26 (b) Funds paid to any political subdivision of the state by the  
27 United States Department of Transportation that are subsequently paid

1 to the department by such political subdivision.

2 (6) "Political subdivision" means any parish, municipality, and  
3 any other unit of local government, including a school board, and a  
4 special district, authorized by law to perform governmental functions.

5 (7) "Qualified federal-aid transportation project" means any  
6 project that may be financed, pursuant to Article VII, Section 27(B) of  
7 the Constitution of Louisiana, in whole or in part, with federal  
8 transportation funds.

9 (8) "State" means the state of Louisiana.

10 (9) "State Bond Commission" means the State Bond  
11 Commission of the state, acting on behalf of the state.

12 (10) "State matching funds" means fees, rates, rentals, taxes,  
13 tolls, charges, grants, or other receipts or income derived by or in  
14 connection with a transportation project or undertaking, other than  
15 federal transportation funds, that may be used by the department to pay  
16 the costs of any qualified federal-aid transportation projects or state  
17 transportation projects.

18 (11) "State transportation project" means any state  
19 transportation project other than the projects enumerated in Act No. 16  
20 of the 1989 First Extraordinary Session of the Louisiana Legislature.

21 D. Power to issue bonds; repayment; principal amount of bonds.

22 (1)(a) The State Bond Commission, or its successor, on behalf  
23 of the state, is hereby authorized to issue bonds for the purpose of  
24 financing any qualified federal-aid transportation project or state  
25 transportation project secured by a pledge of and payable from any of  
26 the following:

27 (i) Federal transportation funds and state matching funds, if any,

1           that are appropriated on an annual basis for such purpose by the state.

2                   (ii) Any proceeds of such bonds and any earnings from the  
3           investment of such bond proceeds pledged for such purpose.

4                   (iii) Other revenues, funds, or other security, if any, pledged or  
5           appropriated for such purpose under state law, including without  
6           limitation, any monies payable from a political subdivision.

7                   (b) Notwithstanding any provision of this Section to the  
8           contrary, bonds shall not be issued without the prior approval of the  
9           Joint Legislative Committee on the Budget.

10                  (c) The bonds authorized herein are hereby declared to  
11           constitute revenue bonds as provided in Article VII, Section 6 of the  
12           Constitution of Louisiana unless the full faith and credit of the state or  
13           a political subdivision is pledged to the payment of such bonds.

14                  (d) The bonds may also be secured by a pledge of the full faith  
15           and credit of the state or, if applicable, a political subdivision, provided  
16           such pledge of the state's full faith and credit to the payment of the  
17           bonds is made in accordance with the provisions of Article VII, Section  
18           6 of the Constitution of Louisiana and the pledge of a political  
19           subdivision's full faith and credit shall be made in accordance with  
20           Article VI, Section 33 of the Constitution of Louisiana.

21                  (e) The proceeds of bonds, including any premium received on  
22           the sale thereof, shall be appropriated to the department to pay costs of  
23           any qualified federal-aid transportation project or state transportation  
24           project plus an amount for issuance costs, capitalized interest, reserve  
25           funds, and other financing expenses, including, without limitation, any  
26           original issue discount and where appropriate, may be paid to any  
27           political subdivision for the purposes of paying costs of any qualified

1 federal-aid transportation project or state transportation project, and the  
2 proceeds of bonds may be used together with any federal, local, or  
3 private funds which may be made available for such purpose.

4 (f) The aggregate amount of annual installments of principal  
5 and interest on all bonds issued pursuant to Subsection D of this  
6 Section that are scheduled to be paid during any given fiscal year,  
7 determined as of the date of issuance of each series of bonds, shall not  
8 exceed ten percent of annual obligational authority to the department  
9 of federal transportation funds in accordance with the provisions of  
10 Title 23 of the United States Code.

11 (2)(a) The portion of the principal of and interest on the bonds  
12 and the costs associated with the issuance and administration of such  
13 bonds that may be paid from federal transportation funds pursuant to  
14 federal law and any agreement between the United States Department  
15 of Transportation and the department or the political subdivision that  
16 is or is to be the initial recipient of such federal transportation funds,  
17 hereinafter referred to in this Paragraph as "the federal share of  
18 principal, interest, and costs", shall be paid from federal transportation  
19 funds that the legislature, in its sole discretion, has appropriated on an  
20 annual basis for this purpose in accordance with state law.

21 (b) If federal transportation funds are not sufficient to pay the  
22 federal share of principal, interest, and costs when due, the state may  
23 temporarily pay the federal share of principal, interest, and costs with  
24 state matching funds that the state has appropriated for this purpose in  
25 accordance herewith.

26 (c) Notwithstanding the foregoing provisions, any state  
27 matching funds paid under Subparagraph (b) of this Paragraph may, if

1 required by the original state appropriation, be reimbursed for the  
2 amount of monies in the fund used in accordance with Subparagraph  
3 (a) of this Paragraph from federal transportation funds that the state  
4 determines are not needed in the future to pay the federal share of  
5 principal, interest, and costs.

6 E. Resolutions; trust agreement, publication; peremption. The  
7 State Bond Commission shall authorize the bonds by a resolution or  
8 resolutions adopted by the State Bond Commission. The bonds issued  
9 pursuant to this Section may also be secured by a trust agreement by  
10 and between the State Bond Commission and one or more corporate  
11 trustees or fiscal agents which may be any trust company or bank  
12 having the powers of a trust company within or outside the state. The  
13 State Bond Commission after authorizing the issuance of bonds by  
14 resolution shall publish once in the official journal of the state, as  
15 provided by law, a notice of intention to issue the bonds, which notice  
16 shall include a description of the bonds and the security therefor.  
17 Within thirty days after the publication, any person in interest may  
18 contest the legality of the resolution, any provision of the bonds to be  
19 issued pursuant to it, the provision securing the bonds, and the validity  
20 of all other provisions and proceedings relating to the authorization and  
21 issuance of the bonds. If no action or proceeding is instituted within  
22 the thirty days, no person may contest the validity of the bonds, the  
23 provisions of the resolution pursuant to which the bonds were issued,  
24 the security of the bonds, or the validity of any other provisions or  
25 proceedings relating to their authorization and issuance, and the bonds  
26 shall be presumed conclusively to be legal. Thereafter no court shall  
27 have authority to inquire into such matters.

1 F. Financial obligations subject to appropriation. Any bond  
2 issued in accordance with this Section shall constitute a contract  
3 between the state of Louisiana and the owner or holder thereof. In no  
4 event shall any decision by the state not to appropriate bond proceeds  
5 not otherwise pledged, state matching funds, or federal transportation  
6 funds in any given fiscal year for the payment of such bonds or any  
7 costs associated with the issuance and administration for such bonds be  
8 construed to constitute an action impairing such contract. Every  
9 contract entered into by the State Bond Commission pursuant to the  
10 provisions of this Section shall provide that all financial obligations of  
11 the state under such contracts are subject to appropriation on an annual  
12 basis by the state and that such contracts do not constitute or create  
13 debt of the state or of any political subdivision thereof, within the  
14 meaning of any constitutional or statutory provisions whatsoever, and  
15 neither the full faith or credit nor the taxing power of the state or of any  
16 political subdivision thereof is pledged to the payment of the principal  
17 of, premium, if any, or the interest on the bonds, unless the full faith  
18 and credit of the state or a political subdivision has been pledged in  
19 accordance with the constitution and state law. In addition, bonds  
20 issued by the State Bond Commission on behalf of the state pursuant  
21 to the provisions of this Section and every contract relating to the  
22 issuance of such bonds shall provide that all financial obligations of the  
23 state in regard to the portion of the principal of and interest on such  
24 bonds and the costs associated with the issuance and administration of  
25 such bonds that may be paid from federal transportation funds pursuant  
26 to federal law and any agreement between the United States  
27 Department of Transportation and the department or the political



1 subdivision that is or is to be the initial recipient of such federal  
2 transportation funds are subject to continuing federal appropriations of  
3 federal transportation funds at a level equal to or greater than the  
4 amount needed to pay the federal share of principal, interest, and costs  
5 on the bonds.

6 G. Pledges. Any pledge made by the State Bond Commission  
7 pursuant to this Section shall be valid and binding from the time the  
8 pledge is made. The revenues, securities, and other monies so pledged  
9 and then held or thereafter received by the State Bond Commission or  
10 any fiduciary shall immediately be subject to the lien of such pledge  
11 without any physical delivery thereof or further act, and the lien of any  
12 such pledge shall be valid and binding as against all parties having  
13 claims of any kind in tort, contract, or otherwise against the State Bond  
14 Commission whether or not such parties have notice thereof. Neither  
15 the resolution nor any trust agreement by which a pledge is created  
16 need be filed or recorded except in the official minutes of the State  
17 Bond Commission.

18 H. Certain details of the bonds. Notwithstanding any provision  
19 of law to the contrary, the bonds shall be of such series, bear such date  
20 or dates, be serial or term bonds, mature at such time or times no later  
21 than thirty years from their date, bear interest at such fixed, variable,  
22 or adjustable rate or rates payable on such date or dates, be in such  
23 denomination, be in such form, carry such registration and  
24 exchangeability provisions, be payable in such medium of payment and  
25 at such place or places, be subject to such terms of redemption, and be  
26 entitled to such priorities on the amounts pledged to secure the bonds  
27 as the resolution or trust agreement authorizing or security such bonds

1           may provide. The bonds may be additionally secured by municipal  
2           bond insurance, bank guarantees, surety bonds, letters of credit, lines  
3           of credit, or other devices to enhance the credit quality of the bonds, or  
4           any combination thereof, as the State Bond Commission determines.  
5           In addition, derivative products, including interest rate exchange  
6           agreements and other interest rate hedge agreements, may be used to  
7           either enhance the marketability of the bonds or to minimize interest  
8           rate risks, or both.

9                   (1) Sale of bonds. Notwithstanding any provision of law to the  
10           contrary, the bonds shall be sold by the State Bond Commission in such  
11           manner, upon such terms and at such prices, at public or negotiated  
12           sale, as is determined by the State Bond Commission to be in the best  
13           interest of the state. If the State Bond Commission determines to sell  
14           the bonds at public sale, notice of such sale upon sealed proposals shall  
15           be published at least once not less than seven days prior to the date of  
16           such sale in a publication carrying municipal bond notices and devoted  
17           primarily to financial news or to the subject of state and municipal  
18           bonds, of general circulation in the city of New York, New York, and  
19           in a newspaper of general circulation published in either the city of  
20           New Orleans or the city of Baton Rouge, Louisiana.

21                   (2) Execution of bonds. The bonds shall be executed in the  
22           name of the State Bond Commission by the manual or facsimile  
23           signatures of the official or officials authorized by the State Bond  
24           Commission. If any officer whose manual or facsimile signature  
25           appears on any bond ceases to be such officer before the delivery of  
26           such bonds, such signature nevertheless shall be valid and sufficient for  
27           all purposes as if he had remained in office until such delivery. The

1 resolution or trust agreement may provide for authentication of the  
2 bonds by the trustee or fiscal agent thereunder.

3 (3) Nonliability of officers. The members of the board, the  
4 officers, or employees of the State Bond Commission, or any other  
5 person executing the bonds of the State Bond Commission shall not be  
6 personally liable for the bonds or be subject to any personal liability or  
7 accountability by reason of the issuance, sale, and delivery thereof  
8 while acting within the scope of their authority.

9 (4) Purchase of bonds. The State Bond Commission shall have  
10 power to purchase its bonds out of any funds available therefor under  
11 the resolution or trust agreement authorizing or securing such bonds.

12 (5) Negotiability of bonds. All bonds issued pursuant to this  
13 Section shall be and are hereby made negotiable instruments within the  
14 meaning of and for all the purposes of the negotiable instrument laws  
15 of the state, subject only to the provisions of the bonds for registration.

16 (6) Tax exemption and eligibility for investment. All bonds and  
17 the income therefrom shall be exempt from taxation by the state and by  
18 parishes, municipalities, or any political subdivision thereof. The  
19 bonds shall be legal and authorized investments for banks, savings  
20 banks, insurance companies, homestead and building and loan  
21 associations, trustees, and other fiduciaries and may be used for deposit  
22 with any officer, board, municipality, or other political subdivision of  
23 the state, in any case where, by present or future law, deposit of  
24 security is required.

25 (7) Remedies of bondholders. The holders of any bonds issued  
26 hereunder shall have such rights and remedies as may be provided in  
27 the resolution or trust agreement authorizing the issuance of the bonds,

1 including but not by way of limitation appointment of a trustee for  
2 bondholders, and any other available civil action to compel compliance  
3 with the terms and provisions of the bonds and the resolution or trust  
4 agreement.

5 (8) Covenants with bondholders. The State Bond Commission  
6 is further authorized to enter into such covenants and agreements with  
7 the owners of the bonds or the providers of any credit enhancement  
8 devices or derivative products as may be deemed necessary or desirable  
9 to ensure the marketability of the bonds upon a finding by the State  
10 Bond Commission that such covenants and agreements are necessary  
11 or desirable and such finding shall constitute conclusive authority to  
12 enter into such covenants and agreements.

13 (9) Approval of fees. All fees, expenses, and costs, including  
14 sales commission, underwriting liability fees, management fees,  
15 attorney fees, and all other general and legal costs of issuance and  
16 credit support costs associated with the issuance of said bonds shall be  
17 subject to prior review and written approval by the attorney general and  
18 the State Bond Commission before the issuance of the bonds. The  
19 State Bond Commission may pay all fees, expenses, and commissions  
20 that the State Bond Commission deems necessary or advantageous in  
21 connection with the sale of bond from the proceeds of any bonds.

22 (10) Proceeds and revenues to be deposited in separate funds.  
23 Subject to agreements with the holders of bonds, all proceeds of bonds  
24 and all revenues pledged under a resolution or trust agreement  
25 authorizing or securing such bonds shall be deposited and held in trust  
26 in a fund or funds separate and apart from all other funds of the state.  
27 Subject to the resolution or trust agreement, the trustee shall hold the

1 same for the benefit of the holders of the bonds for the application and  
2 disposition thereof solely to the respective uses and purposes provided  
3 in such resolution or trust agreement.

4 (11) Complete authority. This Section does and shall be  
5 construed to provide a complete method for the doing of the things  
6 authorized hereby. No proceedings, notice, or approval shall be  
7 required for the issuance of any bonds or of any instruments or security  
8 therefor or any credit enhancement except as provided herein. The  
9 provisions of this Act shall be liberally construed for the  
10 accomplishment of its purposes.

11 I. Additional authority. Notwithstanding any other provision of  
12 law to the contrary, the lien of the pledge and security interest on any  
13 bond proceeds shall not affect the authority of the department to enter  
14 into contracts for the design and construction of any qualified federal-  
15 aid transportation project.

16 J. Powers of political subdivisions.

17 (1) A political subdivision, for the purpose of aiding and  
18 cooperating in the financing, construction, operation, or maintenance  
19 of any qualified federal-aid transportation project, has the power:

20 (a) To sell, lease, loan, donate, grant, convey, assign, or  
21 otherwise transfer to the department any real or personal property or  
22 interests therein.

23 (b) To enter into agreements with any person for the joint  
24 financing, construction, operation, or maintenance of any qualified  
25 federal-aid transportation project. Upon compliance with applicable  
26 constitutional, statutory, or charter limitations, the political subdivision  
27 may agree to make payments, without limitation as to amount except

1 as set forth in the agreement, from revenues received in one or more  
2 fiscal years to the department or any person to defray the costs of the  
3 financing, construction, operation, or maintenance of any qualified  
4 federal-aid transportation project.

5 (c) To transfer or assign to the department any contracts that  
6 may have been awarded by the political subdivision for construction,  
7 operation, or maintenance of any qualified federal-aid transportation  
8 project.

9 (2) To assist in the financing, construction, operation, or  
10 maintenance of a qualified federal-aid transportation project, any  
11 political subdivision may, by contract, pledge to the department all or  
12 a portion of federal transportation funds paid to the political  
13 subdivision or revenues from any other legally available source.

14 K. Powers. The powers conferred by this Act shall be in  
15 addition and supplemental to, and not in substitution for, and the  
16 limitations imposed by this Act shall not directly or indirectly modify,  
17 limit, or affect, the powers conferred to the department or the State  
18 Bond Commission by any other law.

19 Section 2. This Act shall become effective upon signature by the  
20 governor or, if not signed by the governor, upon expiration of the time for bills  
21 to become law without signature by the governor, as provided in Article III,  
22 Section 18 of the Constitution of Louisiana. If vetoed by the governor and  
23 subsequently approved by the legislature, this Act shall become effective on  
24 the day following such approval.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Tom Wade.

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#### DIGEST

Proposed law authorizes the State Bond Commission to issue Grant Anticipation Revenue Vehicles (GARVEE) to finance the accelerated construction of certain transportation projects.

Proposed law provides for the pledge of certain federal highway funds received by the state as security for the bonds.

Proposed law provides that such bonds shall be issued by the State Bond Commission but only after the issuance has been approved by the Joint Legislative Committee on the Budget. Further provides that the aggregate amount of annual installment of principal and interest on all bonds issued under this authority shall not exceed 10% of annual federal highway funds.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 48:27)