

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

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

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

B. Legislative findings and determinations. The Legislature of Louisiana hereby finds and determines that the rapid growth of the economy of this state has prompted new and ever-increasing uses of public highways, roads, and other transportation infrastructure, and it is critical to the well-being and quality of life of the citizens of this state that the state address, on an accelerated basis, the long-term transportation needs of this state. The Legislature of Louisiana further determines that current transportation funding mechanisms do not provide adequate revenues to keep pace with the increasing demands of the state's transportation system. By utilizing revenue anticipation bonds for the financing of transportation projects that may be financed, in whole or in part, with federal transportation funds, a significant amount of up-front revenues can be generated for such transportation projects. This will enable the design and construction of transportation projects on an accelerated basis. Utilizing revenue anticipation bonds to finance federal-aid transportation projects and state transportation projects will result in significant cost savings to the state, since such transportation projects can be completed at present-day costs and at an accelerated pace. The Legislature of Louisiana further finds and declares that the bonds authorized herein constitute revenue bonds as provided in Article VII, Section 6 of the Constitution of Louisiana and the payment of the bonds with the amounts authorized herein is permitted under Article VII, Section 27 of the Constitution of Louisiana 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, revenue anticipation bonds shall not be issued or projects
9 funded without the prior approval of the Joint Legislative Committee
10 on the Budget.

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

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

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

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

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

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

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

27 (c) Notwithstanding the foregoing provisions, any state

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

7 E. Resolutions; trust agreement, publication; peremption. The
8 State Bond Commission shall authorize the bonds by a resolution or
9 resolutions adopted by the State Bond Commission. The bonds issued
10 pursuant to this Section may also be secured by a trust agreement by
11 and between the State Bond Commission and one or more corporate
12 trustees or fiscal agents which may be any trust company or bank
13 having the powers of a trust company within or outside the state. Such
14 resolution or trust agreement may provide that the trustee bank shall
15 hold the proceeds of the bond pending expenditure for projects as
16 approved by the Joint Legislative Committee on the Budget. The State
17 Bond Commission after authorizing the issuance of bonds by resolution
18 shall publish once in the official journal of the state, as provided by
19 law, a notice of intention to issue the bonds, which notice shall include
20 a description of the bonds and the security therefor. Within thirty days
21 after the publication, any person in interest may contest the legality of
22 the resolution, any provision of the bonds to be issued pursuant to it,
23 the provision securing the bonds, and the validity of all other provisions
24 and proceedings relating to the authorization and issuance of the bonds.
25 If no action or proceeding is instituted within the thirty days, no person
26 may contest the validity of the bonds, the provisions of the resolution
27 pursuant to which the bonds were issued, the security of the bonds, or

1 the validity of any other provisions or proceedings relating to their
2 authorization and issuance, and the bonds shall be presumed
3 conclusively to be legal. Thereafter no court shall have authority to
4 inquire into such matters.

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

1 with the issuance and administration of such bonds that may be paid
2 from federal transportation funds pursuant to federal law and any
3 agreement between the United States Department of Transportation and
4 the department or the political subdivision that is or is to be the initial
5 recipient of such federal transportation funds are subject to continuing
6 federal appropriations of federal transportation funds at a level equal
7 to or greater than the amount needed to pay the federal share of
8 principal, interest, and costs on the bonds.

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

21 H. Certain details of the bonds. Notwithstanding any provision
22 of law to the contrary, the bonds shall be of such series, bear such date
23 or dates, be serial or term bonds, mature at such time or times no later
24 than thirty years from their date, bear interest at such fixed, variable,
25 or adjustable rate or rates payable on such date or dates, be in such
26 denomination, be in such form, carry such registration and
27 exchangeability provisions, be payable in such medium of payment and

1 at such place or places, be subject to such terms of redemption, and be
2 entitled to such priorities on the amounts pledged to secure the bonds
3 as the resolution or trust agreement authorizing or security such bonds
4 may provide. The bonds may be additionally secured by municipal
5 bond insurance, bank guarantees, surety bonds, letters of credit, lines
6 of credit, or other devices to enhance the credit quality of the bonds, or
7 any combination thereof, as the State Bond Commission determines.
8 In addition, derivative products, including interest rate exchange
9 agreements and other interest rate hedge agreements, may be used to
10 either enhance the marketability of the bonds or to minimize interest
11 rate risks, or both.

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

24 (2) Execution of bonds. The bonds shall be executed in the
25 name of the State Bond Commission by the manual or facsimile
26 signatures of the official or officials authorized by the State Bond
27 Commission. If any officer whose manual or facsimile signature

1 appears on any bond ceases to be such officer before the delivery of
2 such bonds, such signature nevertheless shall be valid and sufficient for
3 all purposes as if he had remained in office until such delivery. The
4 resolution or trust agreement may provide for authentication of the
5 bonds by the trustee or fiscal agent thereunder.

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

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

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

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

1 (7) Remedies of bondholders. The holders of any bonds issued
2 hereunder shall have such rights and remedies as may be provided in
3 the resolution or trust agreement authorizing the issuance of the bonds,
4 including but not by way of limitation appointment of a trustee for
5 bondholders, and any other available civil action to compel compliance
6 with the terms and provisions of the bonds and the resolution or trust
7 agreement.

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

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

25 (10) Proceeds and revenues to be deposited in separate funds.
26 Subject to agreements with the holders of bonds, all proceeds of bonds
27 and all revenues pledged under a resolution or trust agreement

1 authorizing or securing such bonds shall be deposited and held in trust
2 in a fund or funds separate and apart from all other funds of the state.
3 Subject to the resolution or trust agreement, the trustee shall hold the
4 same for the benefit of the holders of the bonds for the application and
5 disposition thereof solely to the respective uses and purposes provided
6 in such resolution or trust agreement.

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

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

19 J. Powers of political subdivisions.

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

23 (a) To sell, lease, loan, donate, grant, convey, assign, or
24 otherwise transfer to the department any real or personal property or
25 interests therein in accordance with law.

26 (b) To enter into agreements with any person for the joint
27 financing, construction, operation, or maintenance of any qualified

1 federal-aid transportation project. Upon compliance with applicable
2 constitutional, statutory, or charter limitations, the political subdivision
3 may agree to make payments, without limitation as to amount except
4 as set forth in the agreement, from revenues received in one or more
5 fiscal years to the department or any person to defray the costs of the
6 financing, construction, operation, or maintenance of any qualified
7 federal-aid transportation project.

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

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

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

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

1 the day following such approval.

The original instrument was prepared by Tom Wade. The following digest, which does not constitute a part of the legislative instrument, was prepared by Riley Boudreaux.

Holden (SB 80)

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. The JLCB also approves expenditures of the proceeds held by trustee banks. 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill.

1. Requires JLCB approval of expenditures of the proceeds of bonds held by trustee banks.
2. Removes the requirement that the proceeds of the bonds be appropriated to DOTD.
3. Clarifies that the pledge of federal transportation funds by a political subdivision is limited by the terms of such federal aid.