Regular Session, 2002

SENATE BILL NO. 80

BY SENATORS HOLDEN, BAJOIE, BARHAM, BEAN, CHAISSON, CRAVINS, DEAN, DUPRE, ELLINGTON, FONTENOT, HINES, JOHNSON, B. JONES, LAMBERT, MALONE, MARIONNEAUX, MCPHERSON, SMITH AND THOMAS AND REPRESENTATIVES DANIEL, GLOVER, MONTGOMERY AND PIERRE

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§27. Grant Anticipation Revenue Vehicles

**R.S. 48:27 is all 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 state 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 is hereby determined that the issuance of the bonds and the program as herein authorized are in all respects public and governmental purposes for the improvement of the health, safety, welfare, comfort, and security of the people of the state, and that said purposes are public purposes and that the State Bond Commission on behalf of the state of Louisiana will be performing an essential governmental function and meeting a public obligation in the exercise of the powers conferred upon it by this Act.

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

(1) "Act" means this Act.

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

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

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

(5) "Federal transportation funds" means funds paid or reimbursed to the department by the United States Department of Transportation including, without limitation, future Federal Highway Administration obligational authority or Federal Highway Administration reimbursement funds and any other monies payable under Title 23 of the United States Code, as amended from time to time.

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

(7) "State" means the state of Louisiana.

(8) "State Bond Commission" means the State Bond Commission of the state, acting on behalf of the state.

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

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

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

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

(i) Federal transportation funds and state matching funds, if any, that are appropriated on an annual basis for such purpose by the state.

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

(iii) Other revenues, funds, or other security, if any, pledged or appropriated for such purpose under state law.

(b) Notwithstanding any provision of this Section to the contrary, revenue anticipation bonds shall not be issued or projects funded without the prior approval of the Joint Legislative Committee on the Budget.

(c) The bonds authorized herein are hereby declared to constitute revenue bonds as provided in Article VII, Section 6 of the Constitution of Louisiana.

(d) The proceeds of bonds, including any premium received on the sale thereof, shall be used to pay costs of any qualified federal-aid transportation project or state transportation project plus an amount for issuance costs, capitalized interest, reserve funds, and other financing expenses, including, without limitation, any original issue discount and the proceeds of bonds may be used together with any federal, local, or private funds which may be made available for such purpose.

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

(2)(a) The portion of the principal of and interest on the bonds and the costs associated with the issuance and administration of such bonds that may be paid from federal transportation funds pursuant to federal law and any agreement between the United States Department of Transportation and the department hereinafter referred to in this Paragraph as "the federal share of principal, interest, and costs", shall be paid from federal transportation funds that the legislature, in its sole discretion, has appropriated on an annual basis for this purpose in accordance with state law.

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

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

E. Resolutions; trust agreement, publication; peremption. The State Bond Commission shall authorize the bonds by a resolution or resolutions adopted by the State Bond Commission. However, the State Bond Commission shall not authorize the issuance of bonds pursuant to this Section unless such bonds and the projects to be funded by them have been previously approved by the Joint Committee on Transportation, Highways and Public Works. The bonds issued pursuant to this Section may also be secured by a trust agreement by and between the State Bond Commission and one or more corporate trustees or fiscal agents which may be any trust company or bank having the powers of a trust company within or outside the state. Such resolution or trust agreement may provide that the trustee bank shall hold the proceeds of the bond pending expenditure for projects as approved by the Joint Legislative Committee on the Budget. The State Bond Commission after authorizing the issuance of bonds by resolution shall publish once in the official journal of the state, as provided by law, a notice of intention to issue the bonds, which notice shall include a description of the bonds and the security therefor. Within thirty days after the publication, any person in interest may contest the legality of the resolution, any provision of the bonds to be issued pursuant to it, the provision securing the bonds, and the validity of all other provisions and proceedings relating to the authorization and issuance of the bonds. If no action or proceeding is instituted within the thirty days, no person may contest the validity of the bonds, the provisions of the resolution pursuant to which the bonds were issued, the security of the bonds, or the validity of any other provisions or proceedings relating to their authorization and issuance, and the bonds shall be presumed conclusively to be legal. Thereafter no court shall have authority to inquire into such matters.

F. Financial obligations subject to appropriation. Any bond issued in accordance with this Section shall constitute a contract between the state of Louisiana and the owner or holder thereof. In no event shall any decision by the state not to appropriate, state matching funds, or federal transportation funds in any given fiscal year for the payment of such bonds or any costs associated with the issuance and administration for such bonds be construed to constitute an action impairing such contract. Every contract entered into by the State Bond Commission pursuant to the provisions of this Section shall provide that all financial obligations of the state under such contracts are subject to appropriation on an annual basis by the state and that such contracts do not constitute or create debt of the state, within the meaning of any constitutional or statutory provisions whatsoever, and neither the full faith or credit nor the taxing power of the state is pledged to the payment of the principal of, premium, if any, or the interest on the bonds. In addition, bonds issued by the State Bond Commission on behalf of the state pursuant to the provisions of this Section and every contract relating to the issuance of such bonds shall provide that all financial obligations of the state in regard to the portion of the principal of and interest on such bonds and the costs associated with the issuance and administration of such bonds that may be paid from federal transportation funds pursuant to federal law and any agreement between the United States Department of Transportation and the department are subject to continuing federal appropriations of federal transportation funds at a level equal to or greater than the amount needed to pay the federal share of principal, interest, and costs on the bonds.

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

H. Certain details of the bonds. Notwithstanding any provision of law to the contrary, the bonds shall be of such series, bear such date or dates, be serial or term bonds, mature at such time or times no later than thirty years from their date, bear interest at such fixed, variable, or adjustable rate or rates payable on such date or dates, be in such denomination, be in such form, carry such registration and exchangeability provisions, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, and be entitled to such priorities on the amounts pledged to secure the bonds as the resolution or trust agreement authorizing or securing such bonds may provide. The bonds may be additionally secured by municipal bond insurance, bank guarantees, surety bonds, letters of credit, lines of credit, or other devices to enhance the credit quality of the bonds, or any combination thereof, as the State Bond Commission determines. In addition, derivative products, including interest rate exchange agreements and other interest rate hedge agreements, may be used to either enhance the marketability of the bonds or to minimize interest rate risks, or both.

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

(2) Execution of bonds. The bonds shall be executed in the name of the State Bond Commission by the manual or facsimile signatures of the official or officials authorized by the State Bond Commission. If any officer whose manual or facsimile signature appears on any bond ceases to be such officer before the delivery of such bonds, such signature nevertheless shall be valid and sufficient for all purposes as if he had remained in office until such delivery. The resolution or trust agreement may provide for authentication of the bonds by the trustee or fiscal agent thereunder.

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

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

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

(6) Tax exemption and eligibility for investment. All bonds and the income therefrom shall be exempt from taxation by the state and by parishes, municipalities, or any political subdivision thereof. The bonds shall be legal and authorized investments for banks, savings banks, insurance companies, homestead and building and loan

associations, trustees, and other fiduciaries and may be used for deposit with any officer, board, municipality, or other political subdivision of the state, in any case where, by present or future law, deposit of security is required.

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

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

(9) Approval of fees. All fees, expenses, and costs, including sales commission, underwriting liability fees, management fees, attorney fees, and all other general and legal costs of issuance and credit support costs associated with the issuance of said bonds shall be subject to prior review and written approval by the attorney general and the State Bond Commission before the issuance of the bonds. The State Bond Commission may pay all fees, expenses, and commissions that the State Bond Commission deems necessary or advantageous in

connection with the sale of bonds from the proceeds of any bonds.

(10) Proceeds and revenues to be deposited in separate funds. Subject to agreements with the holders of bonds, all proceeds of bonds and all revenues pledged under a resolution or trust agreement authorizing or securing such bonds shall be deposited and held in trust in a fund or funds separate and apart from all other funds of the state. Subject to the resolution or trust agreement, the trustee shall hold the same for the benefit of the holders of the bonds for the application and disposition thereof solely to the respective uses and purposes provided in such resolution or trust agreement.

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

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

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____________