

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,  
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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 state  
8 transportation projects; to authorize the State Bond Commission to fix  
9 the details of such obligations and to provide for the sale of such  
10 obligations from time to time at public or private sales; to provide for  
11 the pledge of federal highway funds received by the state of Louisiana;  
12 to provide that the interest income from such obligations shall be  
13 exempt from all taxation within the state; and to provide for related  
14 matters.

15 Be it enacted by the Legislature of Louisiana:

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

1           §27. Grant Anticipation Revenue Vehicles

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

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

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

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

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

13 (1) "Act" means this Act.

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

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

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

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

27 (6) "Qualified federal-aid transportation project" means any

1 state project that may be financed, pursuant to Article VII, Section  
2 27(B) of the Constitution of Louisiana, in whole or in part, with federal  
3 transportation funds.

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

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

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

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

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

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

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

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

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

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

5 (c) The bonds authorized herein are hereby declared to  
6 constitute revenue bonds as provided in Article VII, Section 6 of the  
7 Constitution of Louisiana unless the full faith and credit of the state is  
8 pledged to the payment of such bonds.

9 (d) The bonds may also be secured by a pledge of the full faith  
10 and credit of the state provided such pledge of the state's full faith and  
11 credit to the payment of the bonds is made in accordance with the  
12 provisions of Article VII, Section 6 of the Constitution of Louisiana.

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

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

26 (2)(a) The portion of the principal of and interest on the bonds  
27 and the costs associated with the issuance and administration of such

1 bonds that may be paid from federal transportation funds pursuant to  
2 federal law and any agreement between the United States Department  
3 of Transportation and the department hereinafter referred to in this  
4 Paragraph as "the federal share of principal, interest, and costs", shall  
5 be paid from federal transportation funds that the legislature, in its sole  
6 discretion, has appropriated on an annual basis for this purpose in  
7 accordance with state law.

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

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

20 E. Resolutions; trust agreement, publication; peremption. The  
21 State Bond Commission shall authorize the bonds by a resolution or  
22 resolutions adopted by the State Bond Commission. The bonds issued  
23 pursuant to this Section may also be secured by a trust agreement by  
24 and between the State Bond Commission and one or more corporate  
25 trustees or fiscal agents which may be any trust company or bank  
26 having the powers of a trust company within or outside the state. Such  
27 resolution or trust agreement may provide that the trustee bank shall

1 hold the proceeds of the bond pending expenditure for projects as  
2 approved by the Joint Legislative Committee on the Budget. The State  
3 Bond Commission after authorizing the issuance of bonds by resolution  
4 shall publish once in the official journal of the state, as provided by  
5 law, a notice of intention to issue the bonds, which notice shall include  
6 a description of the bonds and the security therefor. Within thirty days  
7 after the publication, any person in interest may contest the legality of  
8 the resolution, any provision of the bonds to be issued pursuant to it,  
9 the provision securing the bonds, and the validity of all other provisions  
10 and proceedings relating to the authorization and issuance of the bonds.  
11 If no action or proceeding is instituted within the thirty days, no person  
12 may contest the validity of the bonds, the provisions of the resolution  
13 pursuant to which the bonds were issued, the security of the bonds, or  
14 the validity of any other provisions or proceedings relating to their  
15 authorization and issuance, and the bonds shall be presumed  
16 conclusively to be legal. Thereafter no court shall have authority to  
17 inquire into such matters.

18 F. Financial obligations subject to appropriation. Any bond  
19 issued in accordance with this Section shall constitute a contract  
20 between the state of Louisiana and the owner or holder thereof. In no  
21 event shall any decision by the state not to appropriate, state matching  
22 funds, or federal transportation funds in any given fiscal year for the  
23 payment of such bonds or any costs associated with the issuance and  
24 administration for such bonds be construed to constitute an action  
25 impairing such contract. Every contract entered into by the State Bond  
26 Commission pursuant to the provisions of this Section shall provide  
27 that all financial obligations of the state under such contracts are

1 subject to appropriation on an annual basis by the state and that such  
2 contracts do not constitute or create debt of the state, within the  
3 meaning of any constitutional or statutory provisions whatsoever, and  
4 neither the full faith or credit nor the taxing power of the state is  
5 pledged to the payment of the principal of, premium, if any, or the  
6 interest on the bonds, unless the full faith and credit of the state has  
7 been pledged in accordance with the constitution and state law. In  
8 addition, bonds issued by the State Bond Commission on behalf of the  
9 state pursuant to the provisions of this Section and every contract  
10 relating to the issuance of such bonds shall provide that all financial  
11 obligations of the state in regard to the portion of the principal of and  
12 interest on such bonds and the costs associated with the issuance and  
13 administration of such bonds that may be paid from federal  
14 transportation funds pursuant to federal law and any agreement  
15 between the United States Department of Transportation and the  
16 department are subject to continuing federal appropriations of federal  
17 transportation funds at a level equal to or greater than the amount  
18 needed to pay the federal share of principal, interest, and costs on the  
19 bonds.

20 G. Pledges. Any pledge made by the State Bond Commission  
21 pursuant to this Section shall be valid and binding from the time the  
22 pledge is made. The revenues, securities, and other monies so pledged  
23 and then held or thereafter received by the State Bond Commission or  
24 any fiduciary shall immediately be subject to the lien of such pledge  
25 without any physical delivery thereof or further act, and the lien of any  
26 such pledge shall be valid and binding as against all parties having  
27 claims of any kind in tort, contract, or otherwise against the State Bond

1 Commission whether or not such parties have notice thereof. Neither  
2 the resolution nor any trust agreement by which a pledge is created  
3 need be filed or recorded except in the official minutes of the State  
4 Bond Commission.

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

23 (1) Sale of bonds. Notwithstanding any provision of law to the  
24 contrary, the bonds shall be sold by the State Bond Commission in such  
25 manner, upon such terms and at such prices, at public or negotiated  
26 sale, as is determined by the State Bond Commission to be in the best  
27 interest of the state. If the State Bond Commission determines to sell

1 the bonds at public sale, notice of such sale upon sealed proposals shall  
2 be published at least once not less than seven days prior to the date of  
3 such sale in a publication carrying municipal bond notices and devoted  
4 primarily to financial news or to the subject of state and municipal  
5 bonds, of general circulation in the city of New York, New York, and  
6 in a newspaper of general circulation published in either the city of  
7 New Orleans or the city of Baton Rouge, Louisiana.

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

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

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

26 (5) Negotiability of bonds. All bonds issued pursuant to this  
27 Section shall be and are hereby made negotiable instruments within the

1 meaning of and for all the purposes of the negotiable instrument laws  
2 of the state, subject only to the provisions of the bonds for registration.

3 (6) Tax exemption and eligibility for investment. All bonds and  
4 the income therefrom shall be exempt from taxation by the state and by  
5 parishes, municipalities, or any political subdivision thereof. The  
6 bonds shall be legal and authorized investments for banks, savings  
7 banks, insurance companies, homestead and building and loan  
8 associations, trustees, and other fiduciaries and may be used for deposit  
9 with any officer, board, municipality, or other political subdivision of  
10 the state, in any case where, by present or future law, deposit of  
11 security is required.

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

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

27 (9) Approval of fees. All fees, expenses, and costs, including

1 sales commission, underwriting liability fees, management fees,  
2 attorney fees, and all other general and legal costs of issuance and  
3 credit support costs associated with the issuance of said bonds shall be  
4 subject to prior review and written approval by the attorney general and  
5 the State Bond Commission before the issuance of the bonds. The  
6 State Bond Commission may pay all fees, expenses, and commissions  
7 that the State Bond Commission deems necessary or advantageous in  
8 connection with the sale of bonds from the proceeds of any bonds.

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

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

25 I. Additional authority. Notwithstanding any other provision of  
26 law to the contrary, the lien of the pledge and security interest on any  
27 bond proceeds shall not affect the authority of the department to enter

1 into contracts for the design and construction of any qualified federal-  
2 aid transportation project.

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

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

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

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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 state 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 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 SenateCommittee 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.

Senate Floor Amendments to engrossed bill.

1. Limits applicability to state transportation projects.
2. Removes from definition of federal transportation funds those funds paid to any political subdivision of the state by the U.S. Dept. of Transportation.
3. Clarifies that the aggregate amount of principal and interest on all bonds issued not exceed 10% of the annual obligatory authority to the Department of Transportation and Development of federal transportation funds.