

State of California
Business, Transportation & Housing Agency
Department of transportation

POLICY MATTERS
Draft GARVEE Program Guidelines
Information Item

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Finance
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DRAFT GUIDELINES
SENATE BILL (SB) 928 GARVEE BOND PROGRAM

BACKGROUND

Government Code sections 14550, and 14552-14555 added by Chapter 783 of the Statutes of 1999 (SB 928) authorize the State to issue Grant Anticipation Revenue Vehicles (GARVEE bonds) to accelerate funding of transportation projects.

Only “eligible projects” that are currently programmed in the STIP, have environmental clearance, and have completed project design qualify for GARVEE funding. “Eligible Projects” are defined in SB 928 as any highway or other transportation project that has been designated for accelerated construction by the California Transportation Commission (Commission).

Applicants must agree to pledge future receipts of federal transportation funds to bond payments for as long as the bond notes remain outstanding. All funds allocated are counted against the STIP county share for the county in which the project is located.

DISCUSSION

The attached Draft Guidelines for the SB 928 GARVEE bond program are being presented for discussion by the Commission.

The Department anticipates the Guidelines will be on the August agenda for notice and on the September agenda for adoption.

DRAFT GUIDELINES

**GRANT ANTICIPATION REVENUE VEHICLES
(GARVEE BONDS)**

AUTHORITY AND PURPOSE

Government Code Sections 14550 and 14552-14555, added by Chapter 862 of the Statutes of 1999 (SB 928), authorize the State to issue Grant Anticipation Revenue Vehicles (GARVEE bonds) to accelerate funding of transportation projects. To the extent that this financing allows a project to be constructed sooner, it could be more cost effective by avoiding cost increases resulting from inflation. SB 928 specifies that these bonds shall not constitute a debt or liability of the state and bond repayments are to be made only from federal transportation funds.

GARVEE bonds were authorized at the federal level by Section 311 of the National Highway System Act of 1995, which significantly expanded the eligibility of bond and other debt instrument financing costs for Federal aid reimbursement. This change to the Federal aid program was codified into permanent highway law as an amendment to Section 122 of Title 23 of the United States Code.

Section 122 of Title 23 of the United States Code now makes bond-related costs eligible for Federal reimbursement on any Title 23 eligible Federal aid project. The definition of construction is revised in Title 23, Section 101, to include a reference to bond related costs eligible for reimbursement, including principal and interest payments, issuance costs, insurance, and other costs incidental to financing.

SCOPE OF GARVEE BOND PROGRAM GUIDELINES AND PROCEDURES

These guidelines apply to all projects eligible under Title 23 USC when approved by the California Transportation Commission (Commission), the Federal Highway Administration (FHWA) and the regional transportation planning agency pursuant to Government Code sections 14550 and 14552-14555. For purposes of these Guidelines, the term "eligible project" means any highway or other transportation project that has been designated for accelerated construction by the Commission. These Guidelines are nondiscriminatory and are designed to allow as many counties as possible to establish eligibility for funding allocations regardless of the population or geographic location of the county. These Guidelines are intended to provide policy guidance and direction for actions as well as activity processes and procedures related to GARVEE bonds for the advancement of eligible projects.

Specific activities governed by these Guidelines include, project eligibility, GARVEE bond application review and approval, economic justification and fund availability and distribution.

The procedures are intended to detail responsibilities and requirements, and provide guidance on making an application. The Department may develop and maintain additional internal administrative procedures necessary to carry out the legislative intent of this GARVEE bond program.

GUIDELINES

3.1 Funding Availability

As authorized by Government Code sections 14553 – 14555, the Commission may designate projects to be funded from the proceeds of notes and the Treasurer may issue tax-exempt or taxable notes which shall be deposited in a newly created Transportation Financing Subaccount.

On or before April 1 of each year, the Commission, in conjunction with the Treasurer's office, shall prepare an annual analysis of the bonding capacity of federal transportation funds deposited in the State Highway Account (SHA) in the State Transportation Fund (STF). The capacity shall be limited so that the annual repayment obligations of all outstanding notes in any fiscal year will not exceed 30 percent of the total amount of federal transportation funds deposited in the SHA in the STF for any consecutive 12-month period within the preceding 24 months. The Treasurer has established a minimum single or pooled bond issue size of _____.

GARVEE bonds will be approved on a first-come, first served basis, except that an out-of-order application may be approved when program capacity would be exceeded if a preceding application were approved. The Commission intends that the Department use the following criteria to determine an application's "status" in determining its call on available funds.

- the date and order in which it is received.
- whether the cumulative total of funds available for GARVEE bonds is greater than the amount requested.

The Department may, however, negotiate with an applicant for a reduced GARVEE bond amount when an application exceeds available funds.

3.2 Project Eligibility

Only projects that are currently programmed in the STIP in accordance with Streets & Highways Code section 164 (e) and have completed project design are eligible for funding under this program. The Department may also consider applications for projects that are STIP eligible. STIP eligible projects will be placed on a waiting list with funding approval contingent on the project's incorporation into the STIP and completion of project design. Projects, including preliminary engineering, right of way and construction activities, must meet all federal requirements, including compliance with the National Environmental Protection Act (NEPA).

"STIP eligible" means those types of projects defined in Streets and Highways Code section 164 (e) and as further clarified in the Commission's STIP guidelines, Section 25, and which are also included in the adopted RTP.

GARVEE funds may be used for capital and support costs for right of way and construction activities on highway or other transportation projects that have been designated for accelerated construction by the Commission. Transit projects are not eligible for funding under the GARVEE program.

Funds that are subject to the constraints of Section 1 or 2 of Article XIX of the California Constitution may be used as the state or local principal matching share for any project that is eligible for federal matching funds and which is funded pursuant to this program.

3.3 GARVEE Application, Approval and Disbursement of Funds

Applications will be submitted to the Department in the form of the “_____” adopted by the Commission. A Resolution approved by the applicant’s governing body authorizing the GARVEE application for the stated purpose and proposed terms must be attached to the application. Upon receipt, the application will be posted on the Commission’s web site for review by interested parties. Interested parties may submit comments concerning an application to the Department. Comments shall be in writing or electronic mail.

The Department will review each application in the order received, and will submit the GARVEE request, its recommendation and any comments from interested parties to the Commission at its next regularly scheduled meeting when time permits.

The GARVEE funding proposed must be more appropriate, as determined by the Commission, than other funding options, including, but not limited to, pay-as-you-go, federal advance construction, federal incremental advance construction, or other funding methods authorized under federal law to achieve maximum efficiency from the state’s federal allocation of transportation funds.

Projects must begin construction within six months (timely use of funds) of approval by the Commission for GARVEE bond funds or the funds will be subject to being redirected to another project. For purposes of these Guidelines, “construction” is defined as the “award of construction” date.

The applicant must agree to pledge any future receipts of federal transportation funds received by the applicant to the payment of principal, interest and premium on the notes, including costs involved in the bond sale process, for as long as the notes remain outstanding. All funds allocated, including cost overruns and financing costs, are counted against the STIP county share for the county in which the project is located.

The GARVEE request and recommendation to be presented to the Commission shall include all of the following information:

- identity of the applicant

- the date and time the application was received by the Department.
- the amount of the GARVEE note requested to the nearest \$1,000
- the terms of the note
- the project(s) description
- evidence that the project is in the STIP and has completed project design (or the dates that the project is expected to be included in the STIP and have a completed project design). If the project is not in the STIP, the Commission can only agree to fund if funds are available when project is included into the STIP. GARVEE funds will not be approved unless the project is in the STIP with a completed design.
- the estimated date the project is scheduled for construction advertisement and award.
- discussion of financial enhancements, if any, including but not limited to:
 - letters of credit, bond insurance, and surety bonds provided by private sector financial institutions.
 - insurance or guarantees provided by any other agency of the state.
- the Department recommendation (approve/disapprove)
- copy of comments from interested parties.
- schedule for bond retirement

3.4 Issuance of Notes

The Treasurer will issue notes pursuant to a resolution of the Commission. The Commission resolution may contain any of the following, which will become a part of the contract with the noteholders:

- provisions pledging receipt of future federal transportation funds to secure the payment of the notes or of any particular issue of notes, and pledging moneys held in funds and accounts pursuant to the note issue, or the earnings thereon.
- provisions for the investment of proceeds of the notes or of moneys received by the Treasurer for repayment of the notes.
- provisions setting aside reserves or sinking funds, including their regulation and disposition.
- limitations on the issuance of additional notes, the terms upon which additional notes may be issued and secured, and the refunding of outstanding notes.
- the procedure, if any, to amend the terms of the contract with noteholders.
- definitions of acts or omissions to act that constitute a default by one of the parties.

Funds are to be continuously appropriated without regard to fiscal year to the Treasurer.

Notes issued may be secured by a trust agreement, indenture, or resolution between the Commission and a trustee. The trustee may be the Treasurer or a bank or trust company chartered under the laws of California or the United States and designated by the Treasurer.

The notes will be authorized by the Treasurer. No note may mature more than 30 years from the date of issue. The interest rate(s), denomination and other terms and conditions of the note will be contained in the note.

The Treasurer determines the terms and conditions of the sale of the notes which can be sold at public or private sale, above or below par value.

Whenever the Treasurer deems that it will increase the salability or the price of the notes to obtain a legal opinion, other than that of the Attorney General, as to the validity or tax-exempt nature of the notes, the Treasurer may obtain that legal opinion. Payment for those legal services shall be made from the proceeds of the sale of the notes.

The Treasurer may employ financial, engineering, or transportation consultants or advisers, underwriters and accountants as may be necessary in his or her judgment in connection with the issuance and sale of any notes by the Treasurer. Payment for these services may be made out of the proceeds from the sale of the notes.

3.5 Project Overruns

Applicants are responsible to make accurate estimates of project costs. All GARVEE funds allocated to a project, including any allocation for cost overruns and financing costs, will be against the STIP county share for the county in which the project is located.

3.6 Delay of Construction and Notification Rescinding GARVEE Funds

Projects funded under this program will be required to be under construction not later than 6 months after approval of GARVEE funds. If construction does not begin before the date set by the Department under this provision, the Department will notify the applicant that GARVEE funds will not be released to the project. The Department will set the final date that construction may begin at the time it sets the date that the funds are available for distribution to the applicant. The Department will require applicants to agree in writing that construction of the project will begin no later than the date set by the Department. GARVEE funds will be disbursed on a reimbursement basis as work is completed on the project

Recipients of GARVEE funds under this program shall provide the Department with a copy of the executed construction contract on, or before, the date set by the Department for construction to begin, as evidence that "construction" has begun. If, for any reason, the project must be readvertised for

contract award after the date set by the Department, the Department will reassess the delay in construction and provide a recommendation to the Commission and the Treasurer whether to delay sale of the bonds.

3.7 Monitoring and Reporting

The Department shall be responsible to monitor GARVEE funds and repayment schedules and to provide an annual "status of GARVEE funds report" for the preceding calendar year to the Commission. The report shall be submitted by February 1 of each year and shall include the total amount of outstanding GARVEE debt issued and the projects funded. This information is required for the Commission's annual report to the Governor and Legislature which is due by April 1 of each year.

PROCEDURES

4.1 Department of Transportation Responsibilities

The Department is responsible for reviewing and analyzing applications in a timely manner. The Department will review and analyze each application and make a determination whether all Government Code section 14533 conditions required for the approval of GARVEE funds are met. The Department will submit a GARVEE fund request and/or a recommendation to approve or disapprove to the Commission for each application it receives.

The Department will review and analyze each application in the order it is received. There is, however, no guarantee an application received first will be approved first or at all when all other factors have been weighed. The Department will use criteria as stated in Section 3.1 of the guidelines to determine the application's "status" or placement in line for funds.

The process conducted by the Department during the 30-day period following Commission approval of GARVEE funds will include the following:

- the reconciliation of discrepancies between the approved amount and terms of repayment if different from those requested in the application.
- setting the final date for construction to begin
- execution of the GARVEE agreement.
- accounting activities necessary to transmit GARVEE funds.

The Department will transmit funds on a reimbursable basis directly to the applicant after the notes issued by the Treasurer are deposited in the Transportation Financing Subaccount and the applicant submits an invoice that demonstrates payment has been made to the contractor.

4.2 Eligible Applicants

Any local entity that is a transportation planning agency or county transportation commission that is also the approving authority for the county's submission of projects to the STIP, may apply for GARVEE funds. Other local entities such as city or county governments or local transportation authorities applying for GARVEE funds must apply jointly with the regional transportation planning agency or county transportation commission that is the approving authority for the county's submission to the STIP.

4.3 Approval Subject to Availability of Funds

While approval of any individual GARVEE application is subject to a maximum sum as is stated in Section 3.1, the State Treasurer's Office has established _____ as the minimum size for issuing federal highway grant anticipation notes. Several projects may have to be combined to reach the minimum size required.

The criteria established in Guidelines Section 3.1 will be used when GARVEE fund approval would result in minimum limitations not being met or maximum limitations being exceeded. When recommendations are being made for two or more applications at the same Commission meeting, and all other factors are equal, the Department will base its recommendation for approval or disapproval of an application on its "status".

The Department will not hold applications over for later processing whenever funding capacity has been reached and the Commission will suspend the GARVEE Program at that point. The Commission will also suspend or terminate the program whenever termination is deemed to be the most prudent action. Applications will not be processed during any suspension period. Applicants are encouraged to contact the Department' Innovative Finance Program in Sacramento to determine program status before submitting an application.

4.4 Project and Applicant Requirements

4.4.1 Ineligible Projects

Highway and other transportation projects that are not designated for accelerated construction by the Commission are ineligible for the GARVEE program. Transit projects are also ineligible. The Department will automatically reject an application that includes funding for any project that would be prohibited under Article XIX of the California Constitution (i.e., rolling stock, freight carrier, non-transportation related, etc.).

4.4.2 Minimum Project Requirements

GARVEE applications for projects that do not meet the following minimum requirements will not be considered further:

- the project is in the STIP and has completed project design (or is STIP eligible and will be incorporated in the STIP and have completed design within ___ months).
- the project complies with NEPA certification requirements or the final NEPA certification has been submitted to FHWA for final approval.
- for each project, proposed GARVEE costs are greater than \$10 million and, unless waived by the Commission for a county with less than 500,000 population the project costs for GARVEE funds are equal to or less than 50% of the county's share as shown in the most recent STIP Fund Estimate.

When an application includes more than one project, each project must meet the minimum project requirements set by these Guidelines.

4.4.3 Project Readiness

GARVEE funds are available for the right of way and construction phases of transportation projects. It is the applicant's responsibility to evaluate whether the project is at the stage of development in which project activities for which GARVEE funds are requested can reasonably be expected to begin within 6 months from the date any GARVEE funds are approved by the Commission.

4.4.4 Applicant Requirements and Responsibilities

Applicants must have reviewed existing resources to identify other possible funding that may be available for the project as an applicant for GARVEE funds must certify that other funding sources are insufficient to complete the construction of the project.

Applicants must limit a GARVEE request for any single county for one or more projects to an amount not greater than \$100 million but not more than 50 percent of the regional share funding allocation (county share) as published in the most recent STIP Fund Estimate for that county. If a GARVEE is paid off, additional GARVEE funds could then be requested as long as the project fund allocation remains within these financial limits.

When the application is for multiple projects, applicants must prioritize the projects. Following negotiations authorized by Section 3.1 of the Guidelines, the Department may recommend the

Commission approve a reduced GARVEE amount dependent on deletion of one or more projects from the application. Applicants electing to delete one or more lower priority projects from the application must submit a revised application at least two (2) working days prior to the Commission meeting at which the Department' recommendation will be heard.

4.5 Uniform GARVEE Application and Agreement Package

Applications must be completed using the "Uniform GARVEE Application and Agreement" package adopted by the Commission. The GARVEE package can be requested from:

GARVEE Program
California Department of Transportation
1120 N Street, MS 6
Sacramento, CA 95814

Attention:
Innovative Finance, GARVEE
Program
Phone: (916) 324-7624
FAX: (916) 324-7708

or obtained from the Commission's web page: <http://www.dot.ca.gov/CTC/>.

Applicants must submit an original and three copies of all mandated GARVEE materials to the Department.