

ALASKA LEGISLATURE

2245

HOUSE and SENATE FINANCE COMMITTEE FILES,

2001 - 2002

Nationwide Programs Leveraging Federal Funds

State	Nature of Project	Direct/Indirect	Coverage From TEA-21 Federal Receipts Only	Additional Debt Limitation	State Backup Pledge	State G.O. Rating M/SP/F (1)	Transaction Rating M/SP/F (1)
Arizona	Highways	Direct	8.0x Max. Annual Debt Service	3.0x ABT	None	NR/NR/NR	Aa3/AA-/AA
Arkansas	Interstate	N/A	1.0x (GO Backup)	N/A	General Obligation	Aa2/AA/AA	Aa2/AA/NR
Colorado	Highways	Direct	1.8x Max. Annual Debt Service (5.8x with all avail revs)	See (2) Below	State Taxes and DOT Funds	NR/NR/NR	AA3/AA/AA
Georgia	Highways	Indirect	N/A	N/A	None	Aaa/AAA/AAA	MIG1/F1+
Massachusetts	Interstate	Direct/Indirect	2.4x Max. Annual Debt Service	\$216 Million Max P&I	State Gas Tax	Aa2/AA-/AA-	Aa3/NR/AA
Michigan (3)	Highways	Indirect	4.0x Max. Annual Debt Service	\$600 Million Par; 1.5x ABT	None	Aa-/AAA/AAA	A1, VMIG-1/A+, A-1+/AA-, F1+
Mississippi	Interstate	N/A	9.8x Max. Annual Debt Service	No Additional Debt	Motor Fuel Taxes; State Approp	Aa-/A/AAA	Aa1/AAA/AAA
New Jersey	Transit	Direct	1.35x Max. Annual Debt Service	1.35x ABT (fwd)	None	Aa1/A+/AA+	A1/A/A
New Mexico	NHS	Direct	13.0x Max. Annual Debt Service	2.5x ABT	None	Aa1/A+/NR	A2/A/A
Ohio	Interstate	Direct	11.5x Max. Annual Debt Service (4)	\$100 Million Max P&I	Moral Obligation	Aa1/AA+/AA+	Aa3/AA-/AA-
Virginia	Highways	Indirect	3.5x Projected Max. Annual Debt Service	\$800 Million Par; 3.0x ABT	None	Aaa/AAA/AAA	Aa2/AA/AA

Footnotes:

(1) M/SP/F are Moody's/Standard & Poors/Fitch. NR is Not Rated.

(2) For Colorado, total debt service can not exceed 50% of the prior year FHWA reimbursement.

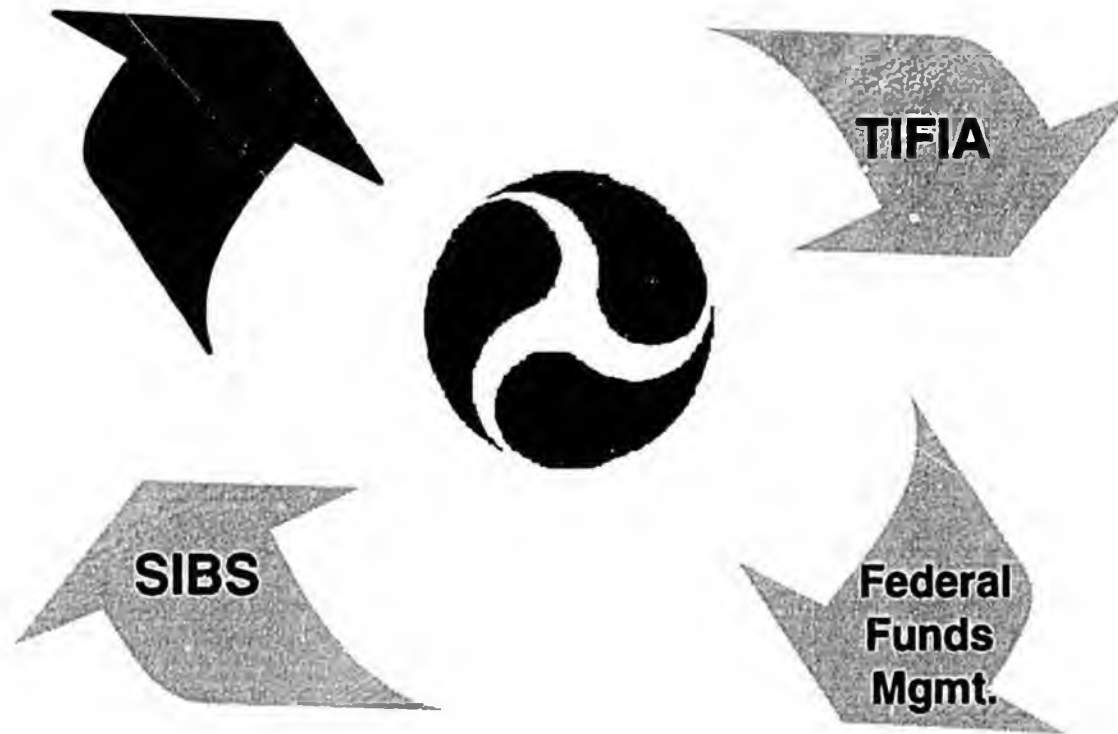
Also, total principal amount and total debt service are capped at \$1.7 billion and \$2.3 billion, respectively.

(3) Michigan is a variable rate issuance that is insured by FSA with a credit facility provided by Dexia.

(4) Ohio's coverage includes debt service on parity issues of the Butler County, Ohio Transportation Improvement District



GARVEEs and Other Grant Anticipation Debt: New State Options for Transportation Finance



***Informational Briefing, Alaska State Legislature
April 11th, 2002
Jennifer Mayer
Federal Highway Administration
Western Resource Center, San Francisco, California***



Presentation Objectives

Define GARVEEs

Review History and Current Trends

Describe Typical Transaction and Federal Role

Review Experience in Other States



What is a GARVEE?

- A GARVEE (Grant Anticipation Revenue Vehicle) is a specific subtype of grant anticipation debt, enabled under Section 122 of Title 23, under which a share of debt service can be directly repaid by Federal-aid funds
- An “eligible debt financing instrument” can be any “bond, note, certificate, mortgage, lease or other debt financing instrument issued by a state or political subdivision or a public authority,” the proceeds of which are used for an eligible project under Section 122 of Title 23, U.S. Code
- FHWA GARVEE guidance issued in August 2000



History: Federal Transportation Grant Anticipation

- Original Federal-aid program was designed for pay-as-you go; could not begin Federal projects without full funding at outset
- Past program included no provision for reimbursing interest or issuance costs
- Recent federal administrative & legal changes and funding increases have facilitated debt issuance as an option for states



Why Have GARVEEs and Other Types of Grant Anticipation Debt Recently Increased?

- **Partial Conversion of Advance Construction:**

Administrative procedure allows states to claim partial reimbursement for construction of eligible projects

- **TEA-21:** Increased amount and predictability of funding

- **Low Interest Rate Environment:** Led to more issues, especially in states with high construction inflation rates



Issues to Consider: Grant Anticipation Debt

(I)

Can GARVEEs help match payment for asset to useful life of asset (same as borrowing for any capital asset, with other revenue streams), enable large projects without damaging rest of program?

Can borrowing avoid construction inflation (possibly achieving cost savings)?

Can borrowing bring economic, safety, environmental and other project benefits sooner?

Can borrowing achieve economies of scale (and possibly cost savings?)



Issues to Consider: Grant Anticipation Debt *(II)*

Will interest and issuance costs outweigh anticipated cost savings and benefits?

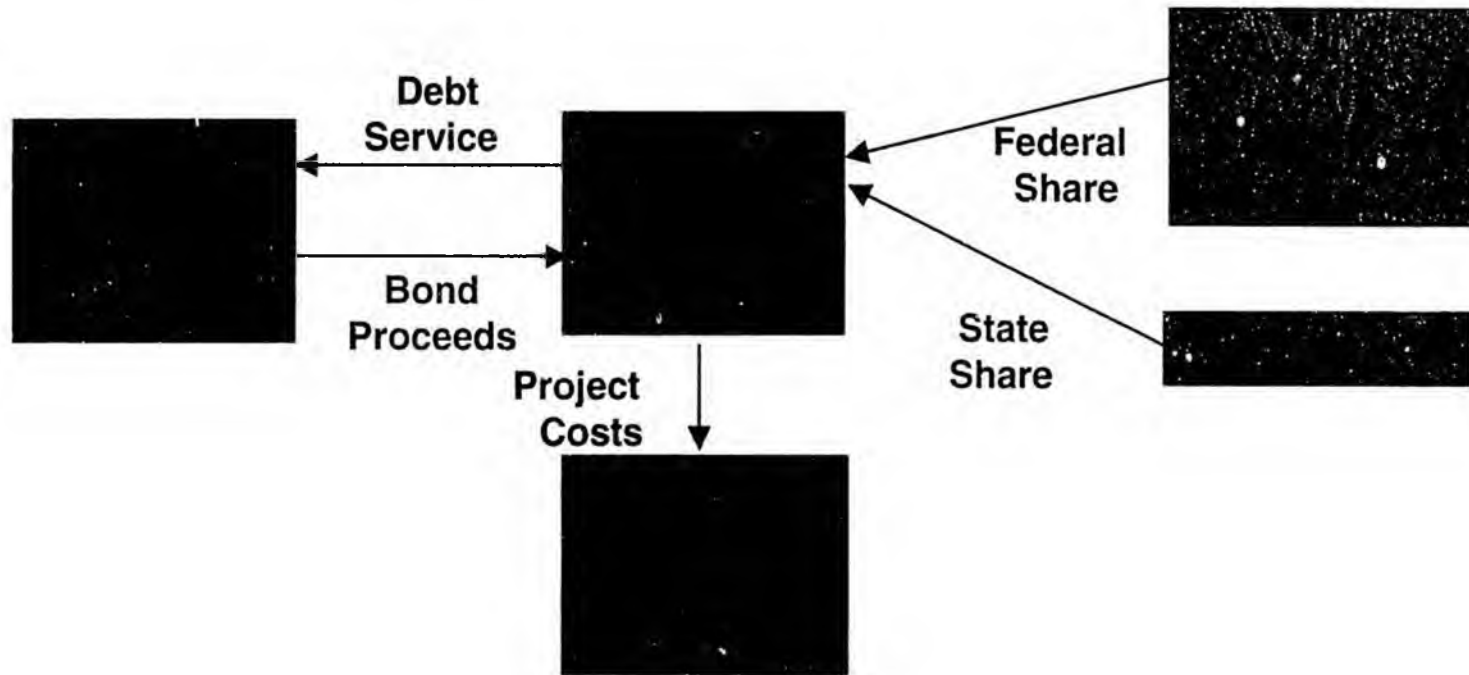
Will more money actually deliver projects sooner? Can state oversee more projects, or are there administrative issues?

Can state provide matching funds for expanded/accelerated program?

Will accelerated program cause construction inflation of its own? Can it be integrated with state's planning process? How will this affect future program plans?



GARVEEs: Flow of Funds

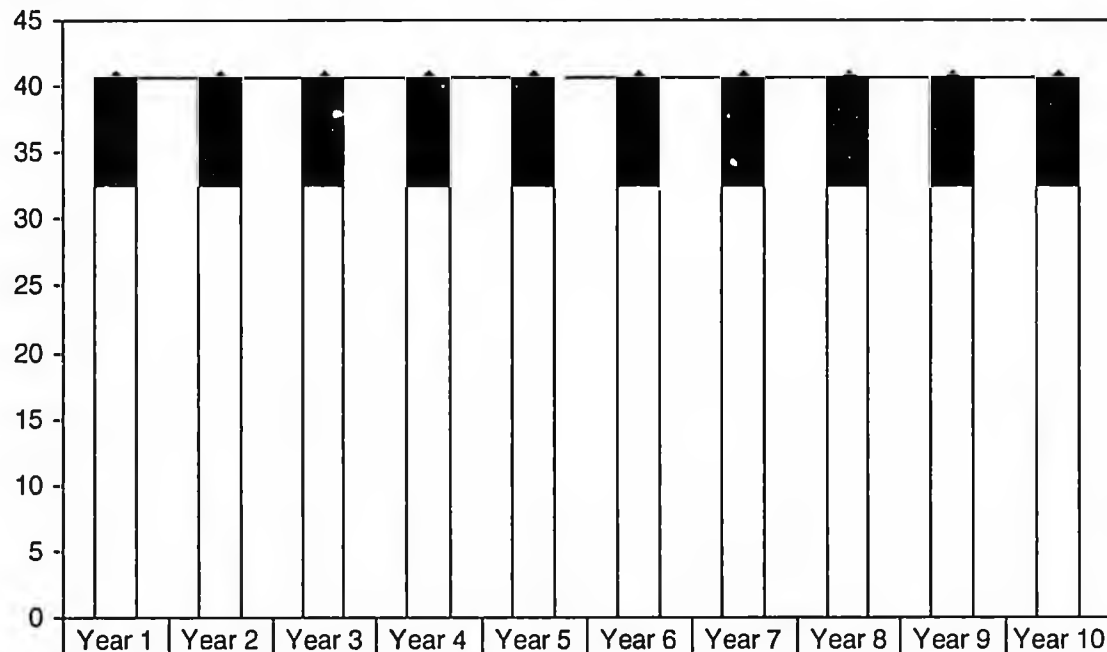




Comparison: Regular Federal-Aid Project vs. GARVEE Debt-Financed Project

	Standard Federal Aid Project	Debt-Financed Project under Section 122 (GARVEE)
Total Project Cost Eligible for Federal Reimbursement	Federal share of total eligible construction costs	Total debt service (including principal, interest, and issuance) for bond issue to finance eligible Federal-aid project
Basis for Reimbursement	Construction expenditures	Debt service payments
Timing of Reimbursement	Period of construction (3-5 years, typically)	Term of debt (5, 10, 15 or even 20 years)
Federal Requirements	All applicable	All applicable
What Shows on STIP?	Total funds needed to reimburse construction expenditures during fiscally-constrained years of STIP	Total funds needed for debt service during fiscally-constrained years of STIP

Simplified Example: GARVEE for 3 \$100 million projects over 10 years



■ State Funds Used for Debt Service	8.14	8.14	8.14	8.14	8.14	8.14	8.14	8.14	8.14	8.14
□ Federal Share of Debt Service	32.56	32.56	32.56	32.56	32.56	32.56	32.56	32.56	32.56	32.56
◆ Total Debt Service Owed	40.7	40.7	40.7	40.7	40.7	40.7	40.7	40.7	40.7	40.7

□ Federal Share of Debt Service

■ State Funds Used for Debt Service

◆ Total Debt Service Owed



Federal Role in GARVEEs

- **Project Approval:** FHWA approves the projects financed by the GARVEE
 - **Federal Requirements:** FHWA ensures that applicable federal requirements (NEPA, Davis-Bacon) are followed
 - **Non-Federal Match:** FHWA ensures that matching requirements are met for debt service payments
 - FHWA is notified that project reimbursements will be based on debt service costs; other administrative requirements found in guidance
-



What the Federal Role ISN'T

FHWA does NOT:

Review or approve interest rates, backstops, terms, or anything else regarding the debt instruments themselves

Guarantee payment of bonds. There is no Federal guarantee of payment, and any pledges or obligations must come from state legislation and/or executive authority

Promote or discourage bond issuance: it is the State's decision.



GARVEE Transactions to Date ***(April 2002)***

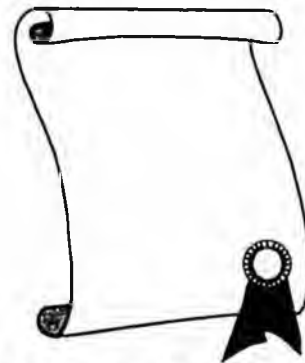
New Mexico	Sep-98 Feb-01	\$100.2 Million 18.5 Million	A3/A/na A2/A/na	New Mexico State Route 44	No backstop; Bond Insurance Obtained
Ohio	May-98 Aug-99	\$70 Million \$20 Million	Aa3/AA-/AA-	Spring-Sandusky Project	Moral Obligation pledge to use state gas tax funds and seek general fund appropriations in the event of Federal shortfall
Arkansas	Mar-00 Jul-01	\$175 Million \$185 Million	Aa2/AA/na Aa2/AA/na	Interstate Highways	Full faith and credit of state, plus state motor fuel taxes
Colorado	May-00 Apr-01	\$537 Million \$506.4 Million	Aa3/AA/AA	Any Project Financed Whole or in Part by Federal Funds	Federal highway funds as allocated annually by COT; Other state funds
Arizona	Jun-00 May-01	\$39.4 Million \$142.9 Million	Aa3/AA-/AA- Aa3/AA-/AA-	Acceleration of Freeway Projects/Federally Eligible Projects	Certain sub-account transfers
Alabama	Mar-02	\$200 Million		County bridge program	All Federal construction reimbursements
Total		\$1,994.4 Million			

GARVEE SCORECARD



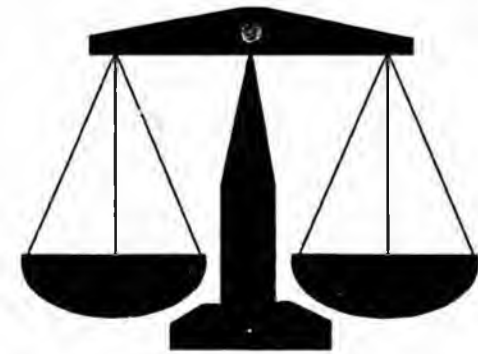
Have Issued GARVEEs

Arkansas
Alabama
Arizona
Colorado
New Jersey (transit)
New Mexico
Ohio



Have Authority to Issue**

California
Florida
Montana
Nevada



Considering or Seeking Authority

Alaska
Texas

**Note: This list may not be comprehensive. Some states do not need enabling legislation.*



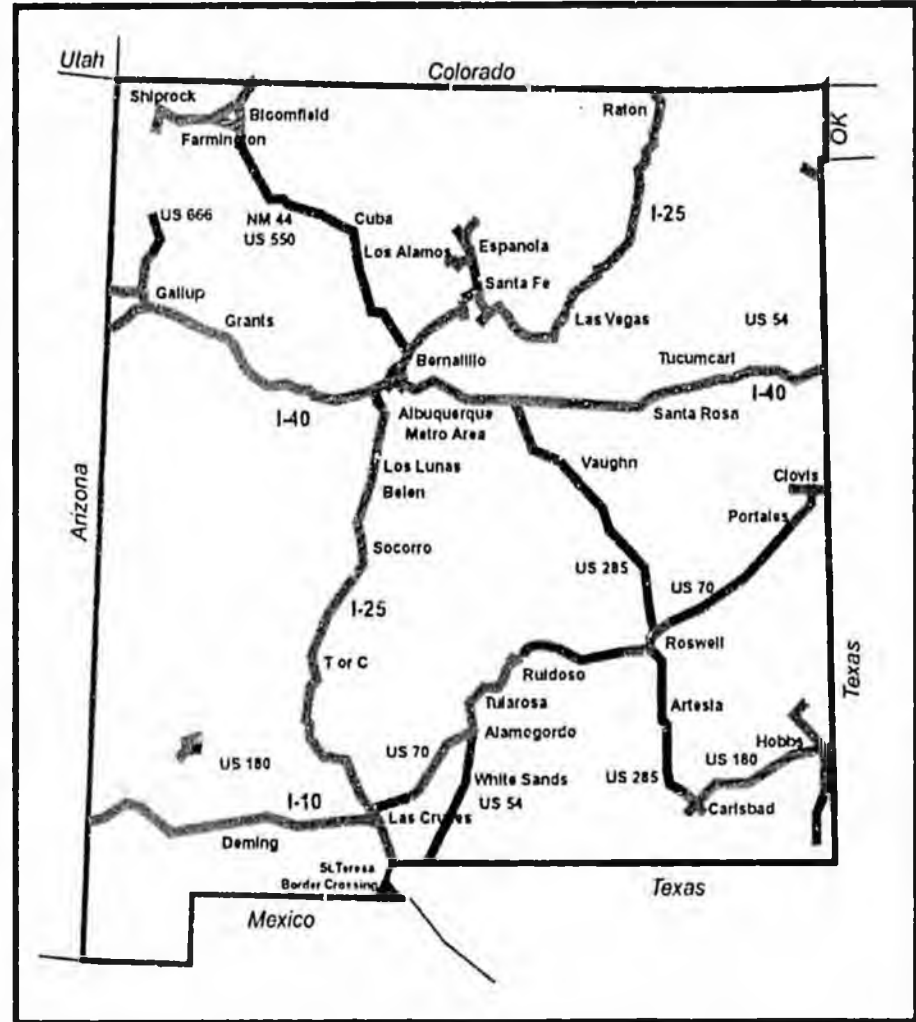
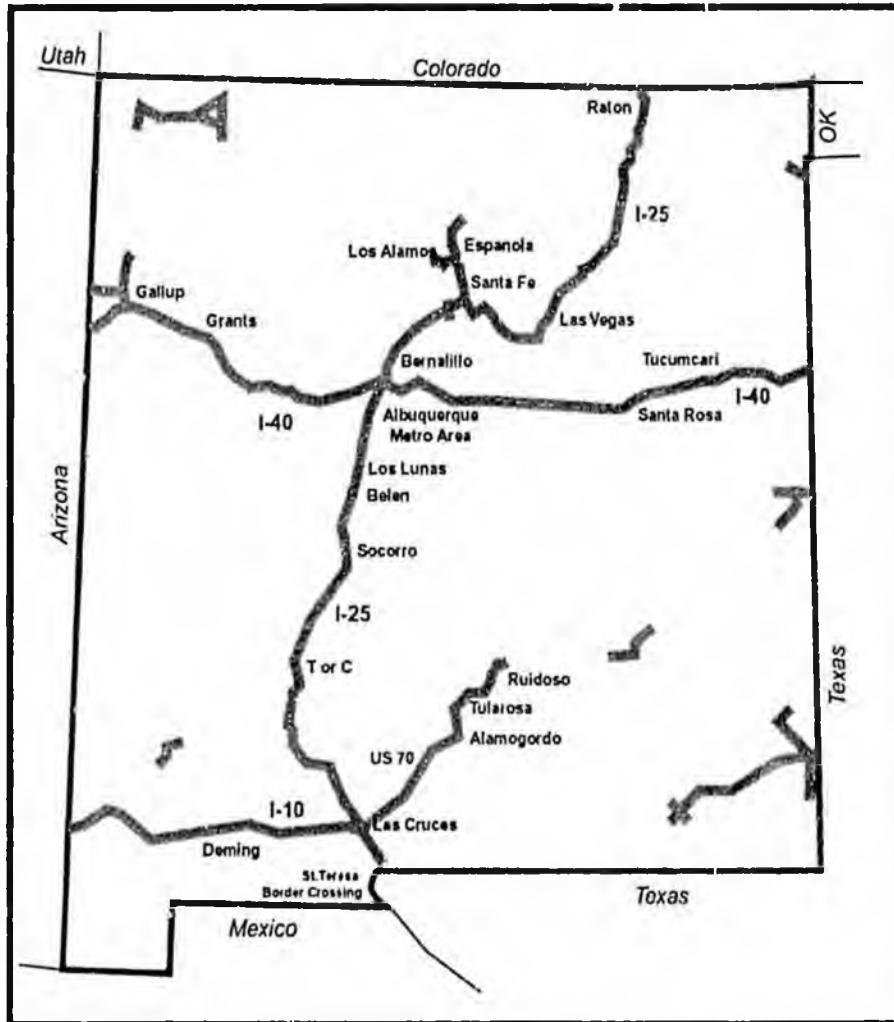
Resources for More Information

- **FHWA Western Resource Center: Jennifer Mayer, (415)744-2634, jennifer.mayer@fhwa.dot.gov**
- **Webpage: www.fhwa.dot.gov/innovativefinance,**
- **www.innovativefinance.org**



**Innovative Financing and the
Major Investment Program in New Mexico**
Charlie Trujillo, Deputy Secretary

Presentation to the Alaska State Legislature



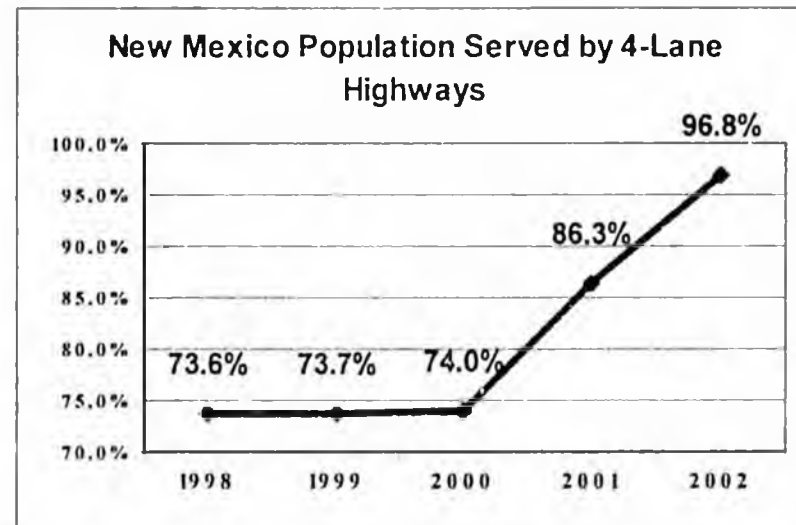
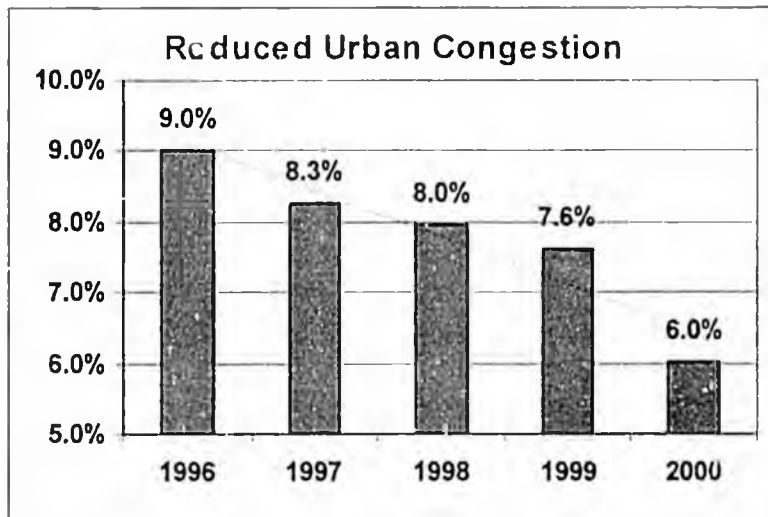
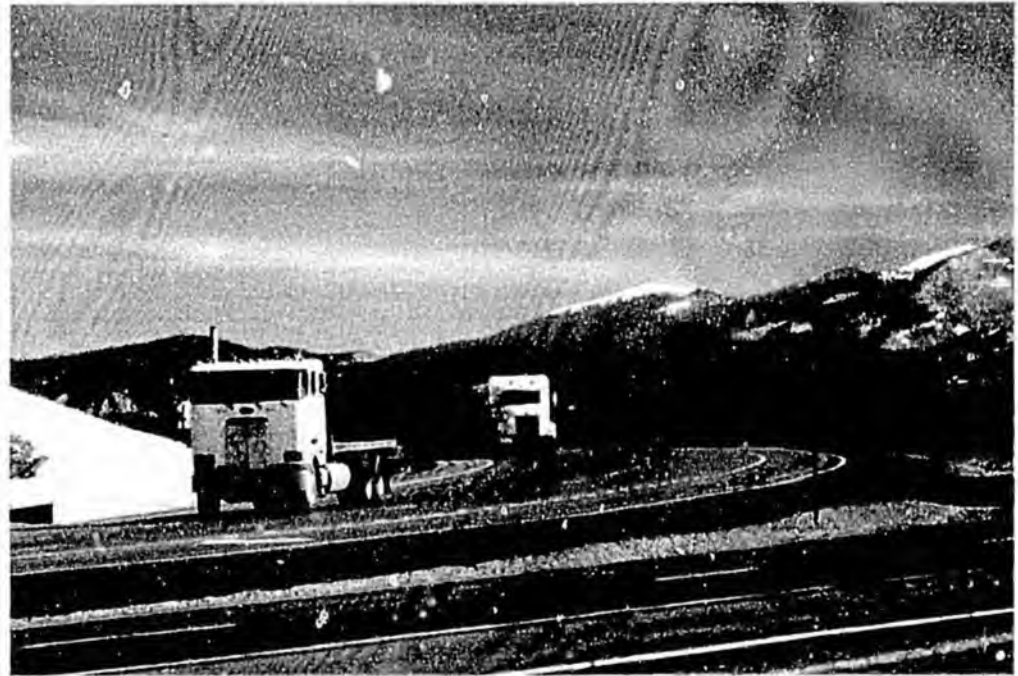
New Mexico's Strategy

- Connect communities to economic opportunities

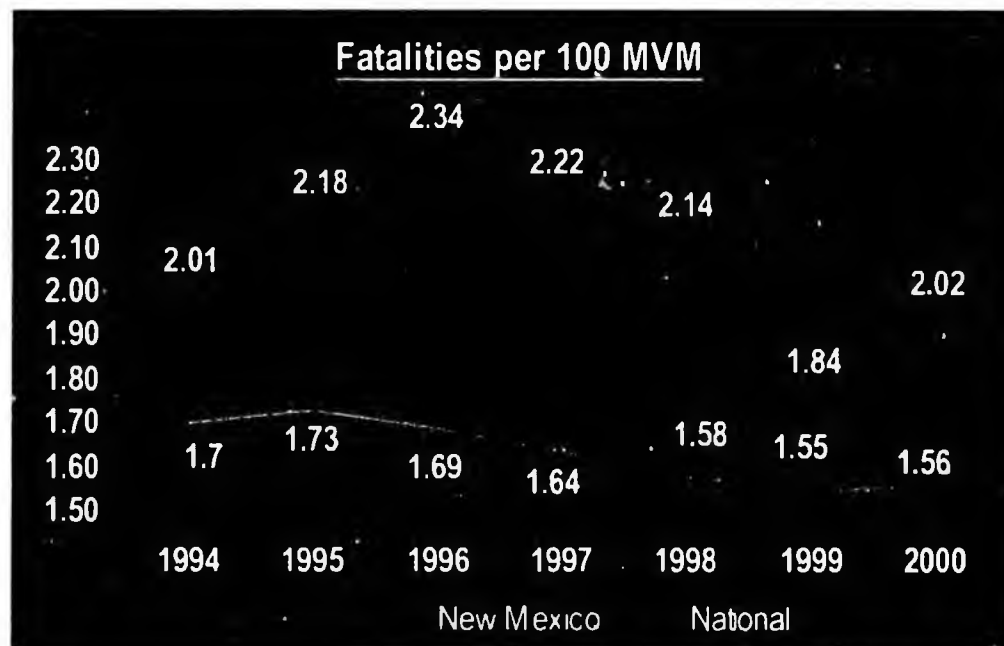
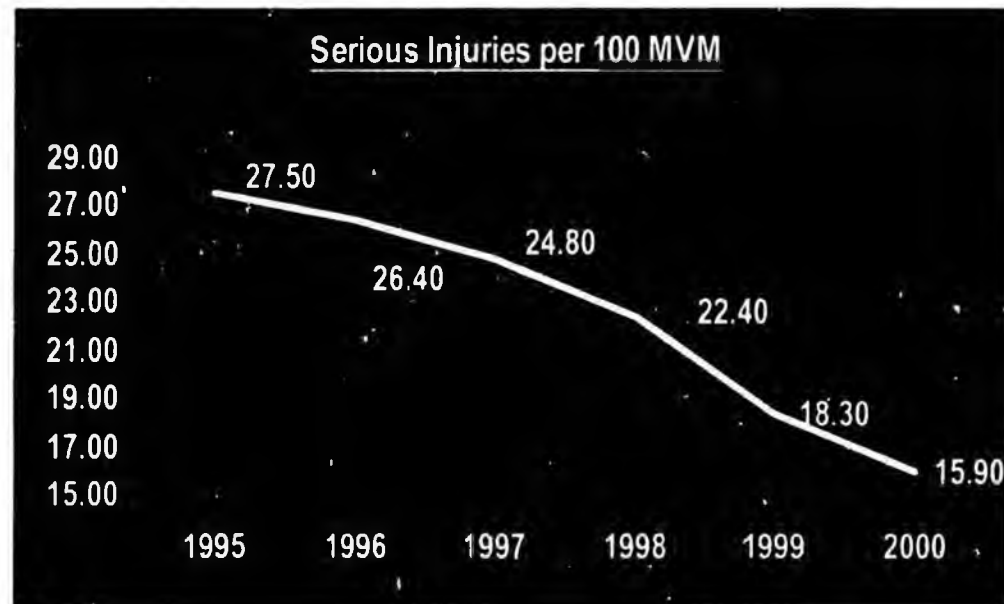
- Connect to Regional and National Transportation Systems
- Build Four-lane corridors

With Bonding

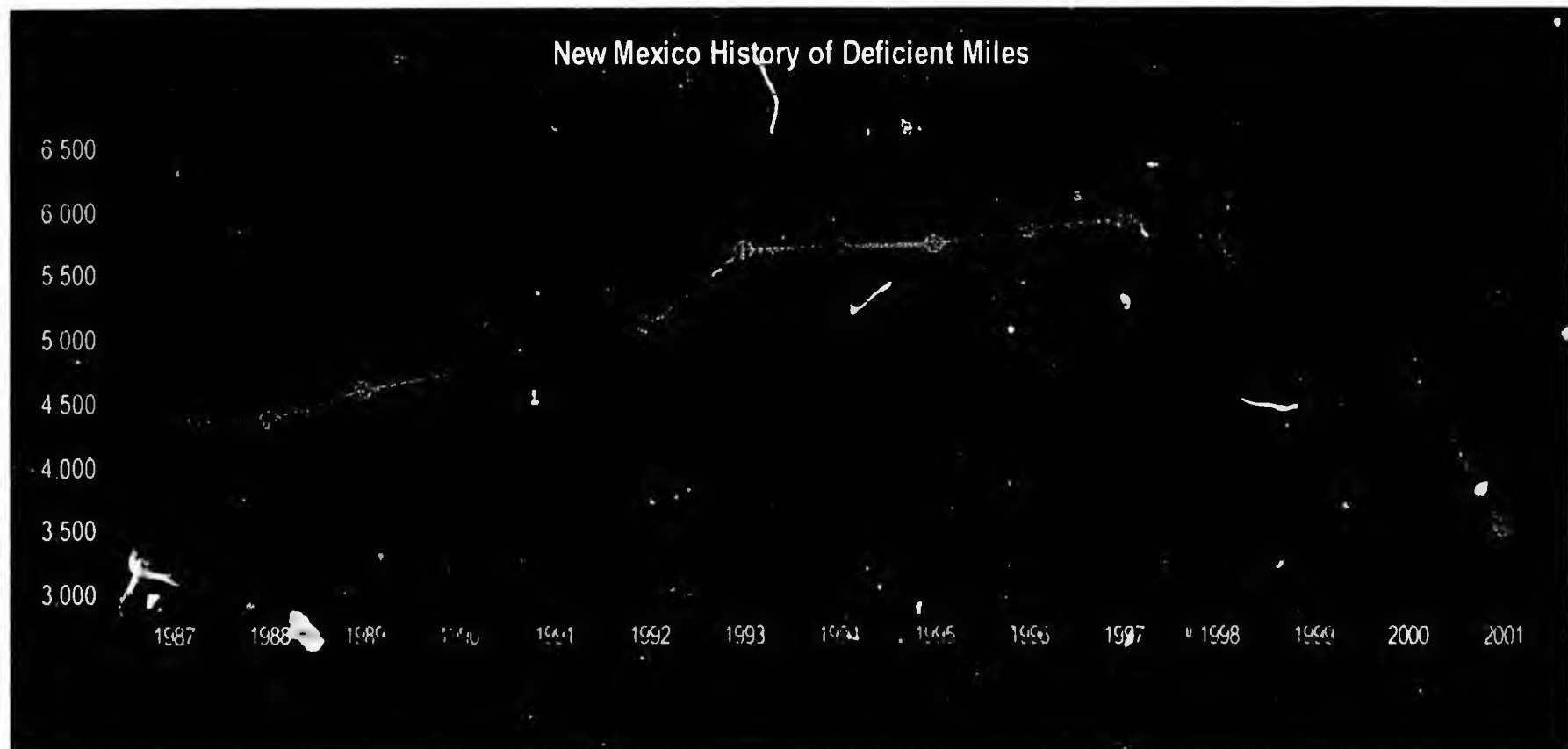
- 500 new four-lane highways
- Improved road conditions
- Relieved urban congestion
- 96% of NM citizens connected to transportation corridors



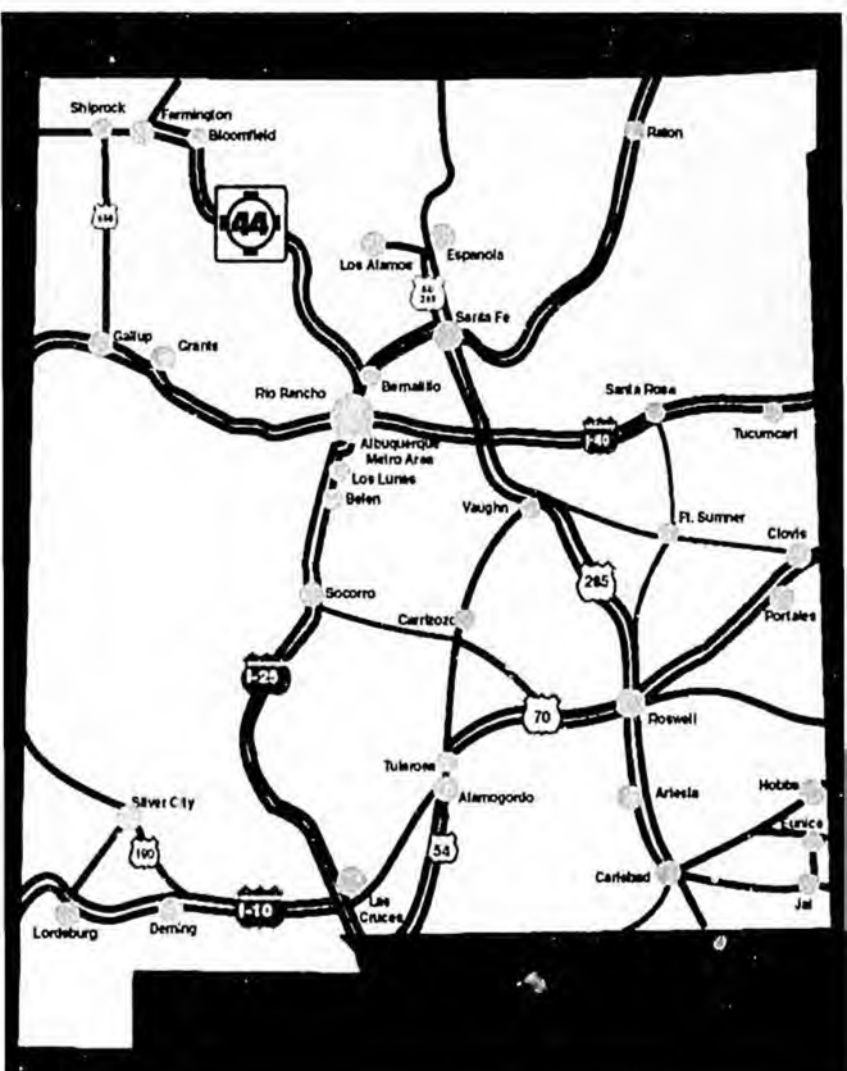
- Reduced highway deaths
- Reduced serious injuries
- Reduced deaths caused by drunk drivers



- Reversed 23 year trend in deteriorating highways
- Improved over 2,000 system miles from a deficient status



INNOVATIVE FINANCIN

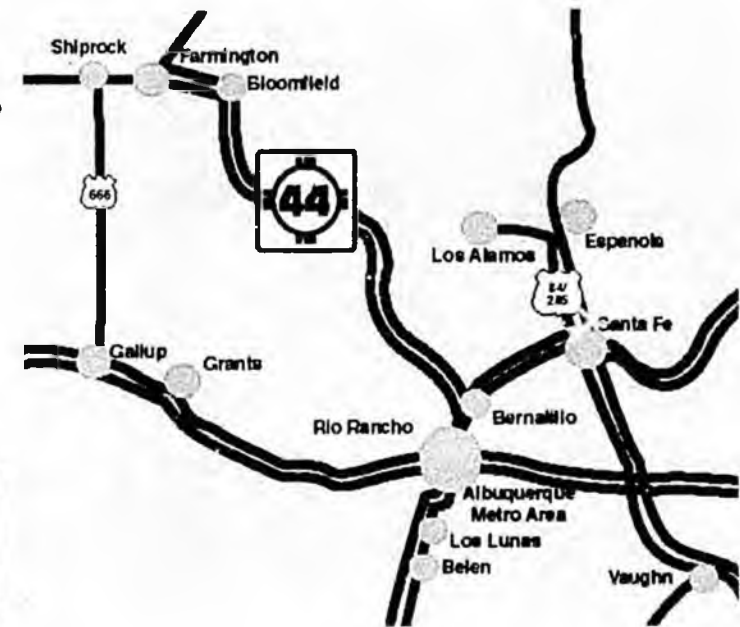


G on NM44

- Grant Anticipation Revenue Vehicle Bonds (GARVEE)
- Standard and Poor's rated at Aaa/AAA and A2/A
- Texas, California, Oklahoma, North Carolina using NM model

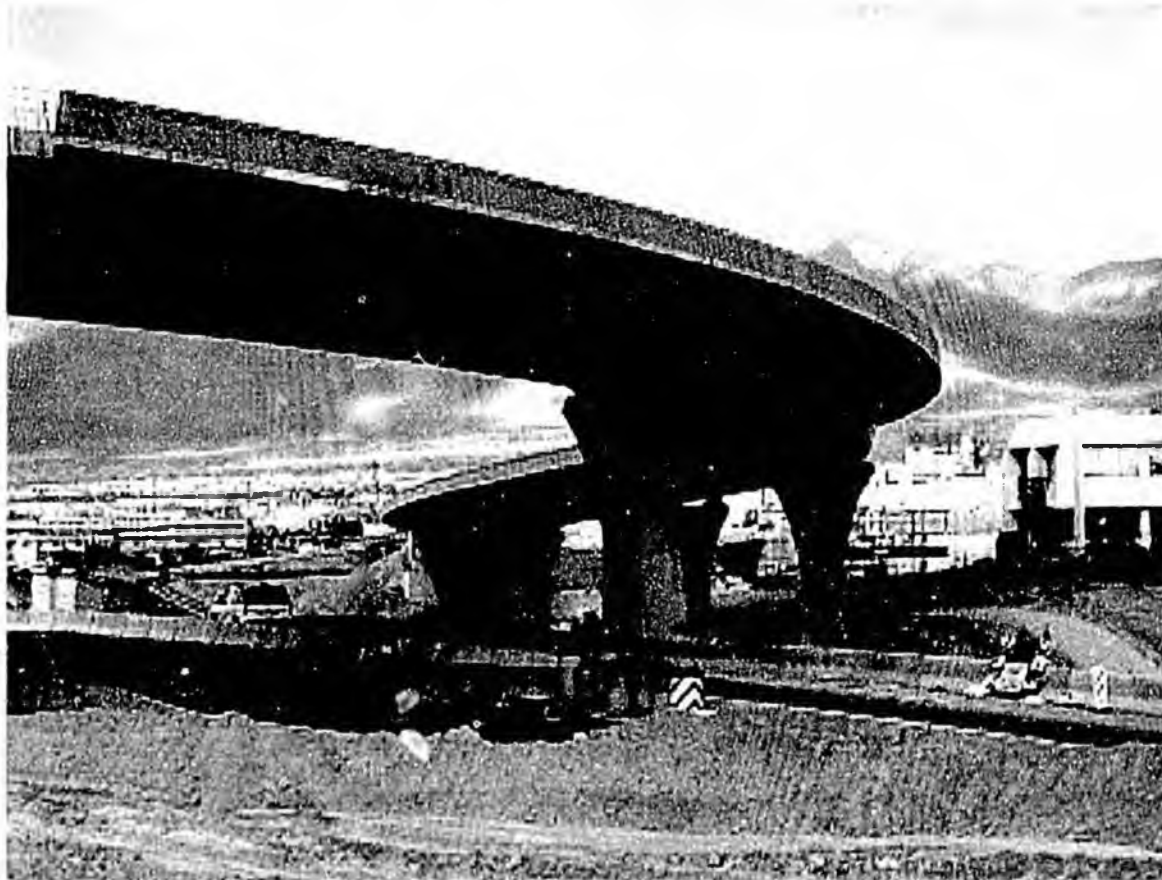
NM 44 UNIQUE

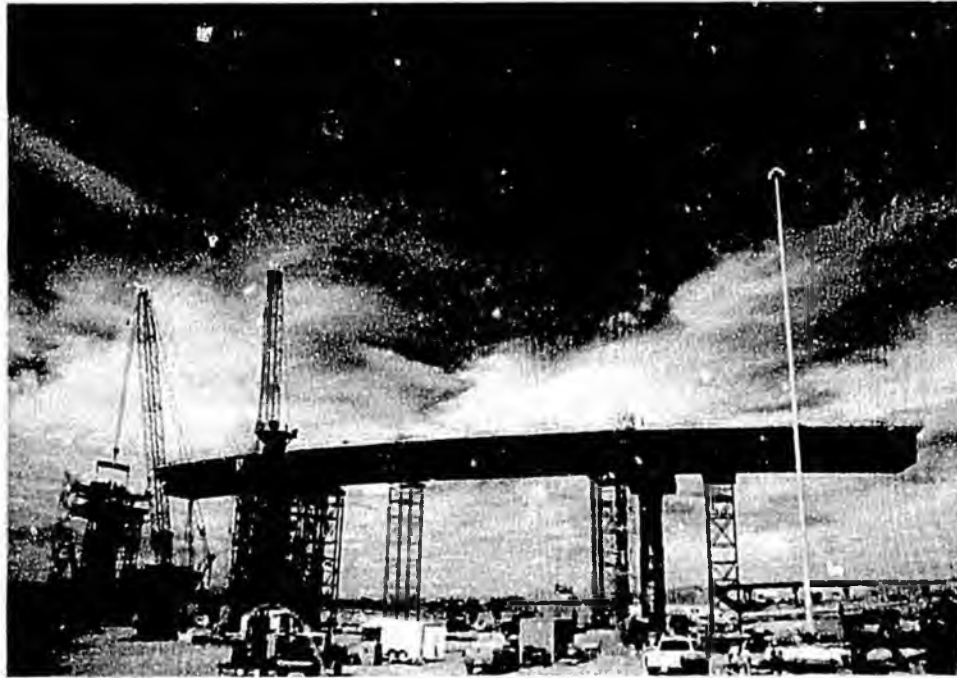
- 118 mile corridor completed in four years
- 27 years to construct under traditional methods
- First 20-year warranty in nation
- \$89 million savings in maintenance costs
- Packaging of contracts
- Innovative materials
- Time constraints
- Project expectations
- Design Standards



THE NEED TO REBUILD THE BIG I

- Intersection of I-25 and I-40 in the heart of Albuquerque
- Ranked #10 in congested interstates in the US
- 300,000 vehicles per day travel through the intersection
- 50% of traffic volume is trucks
- 40 years ago it was designed for 40 thousand vehicles per day



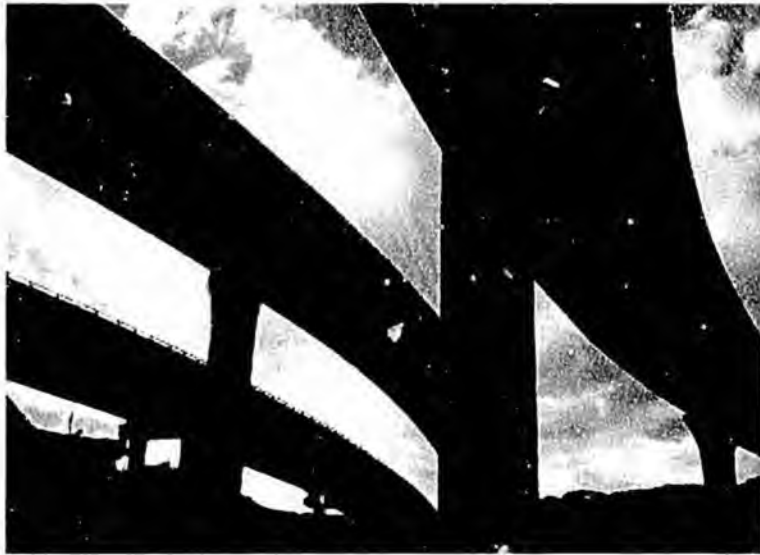


INVESTING IN THE BIG I

According to National Highway Users Alliance, investment in Big I will save motorists and commercial users

- \$8.1 billion in time
- \$870 million in fuel
- \$460 million in safety
- \$670 million in environmental impacts

This \$286 million investment will realize a \$10 billion return on investment!



BIG I CONSTRUCTION

- 24 month construction schedule
- 111 new lane miles
- 55 new bridges
- 45 bridges from scratch
- Maintain two lanes of traffic

Recognized by AASHTO as the most cost effective and innovative Value Engineering project in the country

Summary of NMSHTD Bonding Program

Project	Lien Level	Ratings	Amount of Legislative Authorization	Original Amount Issued	Outstanding Bonds	Source of Pledged Revenues	Payment Revenues	Anticipated Future Issues
1993 Projects	Senior	Aaa/AAA	\$50 million	\$50,000,000	\$11,605,000	Gas Tax / Motor Vehicle Registration	Approx. \$6.2 million (\$0.01 gas tax which provides \$8.2 million)	None
HIF	Senior HIF ⁽¹⁾ / Senior Subordinate SRF	Aa2/AA+ ⁽²⁾	CHAT Authorized (not including Big I & Corr 44)	\$69,320,000	\$69,320,000	Highway Infrastructure Fund and State Road Fund	Approx. \$6.58 million (Highway Infrastructure Fund Revenues)	None
CHAT	Senior Subordinate	Aa2/AA+	\$1.124 billion (including Corr. 44)	\$700,000,000	\$665,075,000	State Road Fund	Approx. \$80 million (Federal reimbursement)	None
WIPP (US 285)	Subordinate	A1/AA-	\$200 million (\$100 million authorized under 1999 CHAT legislation)	\$200,000,000	\$166,715,000	State Road Fund and/or Federal Revenues	Approx. \$20 million (Dept. of Energy Grant) (+1.7% inflation adjustor)	None
Corridor 44 (US 550)	"Garvee" Bonds	Aaa/AAA A2/A	None required for federal grant anticipation bonds	\$100,230,000	\$95,385,000	Federal Only	Approx. \$10 million (Federal Revenues)	None
US70 Forest Highway	"Garvee" Bonds	Aaa/AAA A2/A	None required for federal grant anticipation bonds	\$18,535,000	\$18,535,000	Federal Only	\$2.5 million (PL1-FH Federal Revenues)	None
TOTAL				\$1,119,550,000	\$1,008,100,000			

(1) Proposed Senior pledge on HIF revenues, parity pledge at Senior Subordinate lien level

(2) Rating objective

Summary of Outstanding and Proposed Debt

FY	SENIOR		SENIOR-SUBORDINATE CHAT PROJECT BONDS					TOTAL SR/SUB	SUBORDINATE	Federal	Grand Total	Pledged Revenue ^A	Coverage ³
	Series 1993	Series 1998A	Series 1999	Series 2000A	Series 2001A	Series 2002A	Series 2002C ¹		WPP 1998B / 2002B	Grant Anticip. 1998 / 2001			
2002	6,190,620	11,829,808	12,367,631	20,666,288	13,357,063	2,258,303		60,479,092	20,048,690	10,059,996	96,778,398	292,582,000	3.02
2003	6,185,700	11,832,008	12,369,131	20,668,188	24,057,798	6,957,250	6,496,570	82,380,943	20,332,583	11,127,476	120,026,702	292,582,000	2.44
2004		11,828,233	12,371,481	20,666,488	24,061,035	11,382,250	6,499,674	86,809,160	20,601,358	12,040,940	119,541,457	292,582,000	2.45
2005		11,828,033	12,371,256	20,668,600	24,057,435	11,381,500	6,496,988	86,803,811	21,060,238	12,040,179	119,904,228	292,582,000	2.44
2006		11,828,650	12,371,506	20,668,650	24,057,585	11,379,500	6,496,934	86,802,825	21,489,913	12,039,150	120,331,887	292,582,000	2.43
2007		11,827,375	12,368,206	20,665,150	24,061,235	11,380,500	6,496,448	86,798,914	21,878,663	12,039,753	120,717,330	292,582,000	2.42
2008		11,830,200	12,372,225	20,667,425	24,059,335	11,379,650	6,498,839	86,799,674	22,267,863	12,036,791	121,112,327	292,582,000	2.42
2009		11,830,450	12,369,375	20,667,375	24,058,710	11,377,900	6,496,179	86,799,969	22,667,863	12,032,044	121,499,895	292,582,000	2.41
2010		11,831,819	12,370,800	20,668,075	24,062,460	11,381,400	6,498,654	86,813,208	23,087,363	12,035,964	121,936,534	292,582,000	2.40
2011			12,370,200	20,666,775	24,060,148	11,382,025	6,498,364	74,977,502	23,517,788	12,031,864	110,527,153	292,582,000	2.65
2012				20,667,975	24,058,838	11,378,500	6,494,866	62,600,209	-	12,029,594	74,629,802	292,582,000	3.92
2013				20,664,400	24,058,538	11,380,550	6,497,436	62,600,924	-	9,532,747	72,133,671	292,582,000	4.06
2014				20,668,400		11,378,175	6,498,611	38,545,186	-	9,533,789	48,078,975	292,582,000	6.09
2015				20,664,700			6,498,237	27,162,937	-	9,533,445	36,696,382	292,582,000	7.97
2016							6,496,106	6,496,106	-	9,527,063	16,022,168	292,582,000	18.26
2017							6,497,961	6,497,961	-	-	6,497,961	292,582,000	45.03
2018													
TOTAL	\$ 12,376,320	\$ 106,466,574	\$ 123,701,813	\$ 289,338,488	\$ 278,010,178	\$ 134,397,503	\$ 97,460,883	\$ 1,029,375,438	\$ 217,042,318	\$ 158,113,732	\$ 1,426,434,870		
Original	\$ 50,000,000	\$ 105,000,000	\$ 100,000,000	\$ 201,200,000	\$ 198,800,000	\$ 95,000,000	\$ 69,320,000	\$ 769,320,000	\$ 200,000,000	\$ 118,765,000	\$ 1,138,085,000		
Outstanding	\$ 11,605,000	\$ 84,715,000	\$ 92,980,000	\$ 193,580,000	\$ 198,800,000	\$ 95,000,000	\$ 69,320,000	\$ 734,395,000	\$ 166,715,000	\$ 113,920,000	\$ 1,026,635,000		

(1) Paid from HF revenues. Estimated TIC 4.63% as of March 15, 2002

(2) Estimated FY12 pledged revenues as of January 2002.

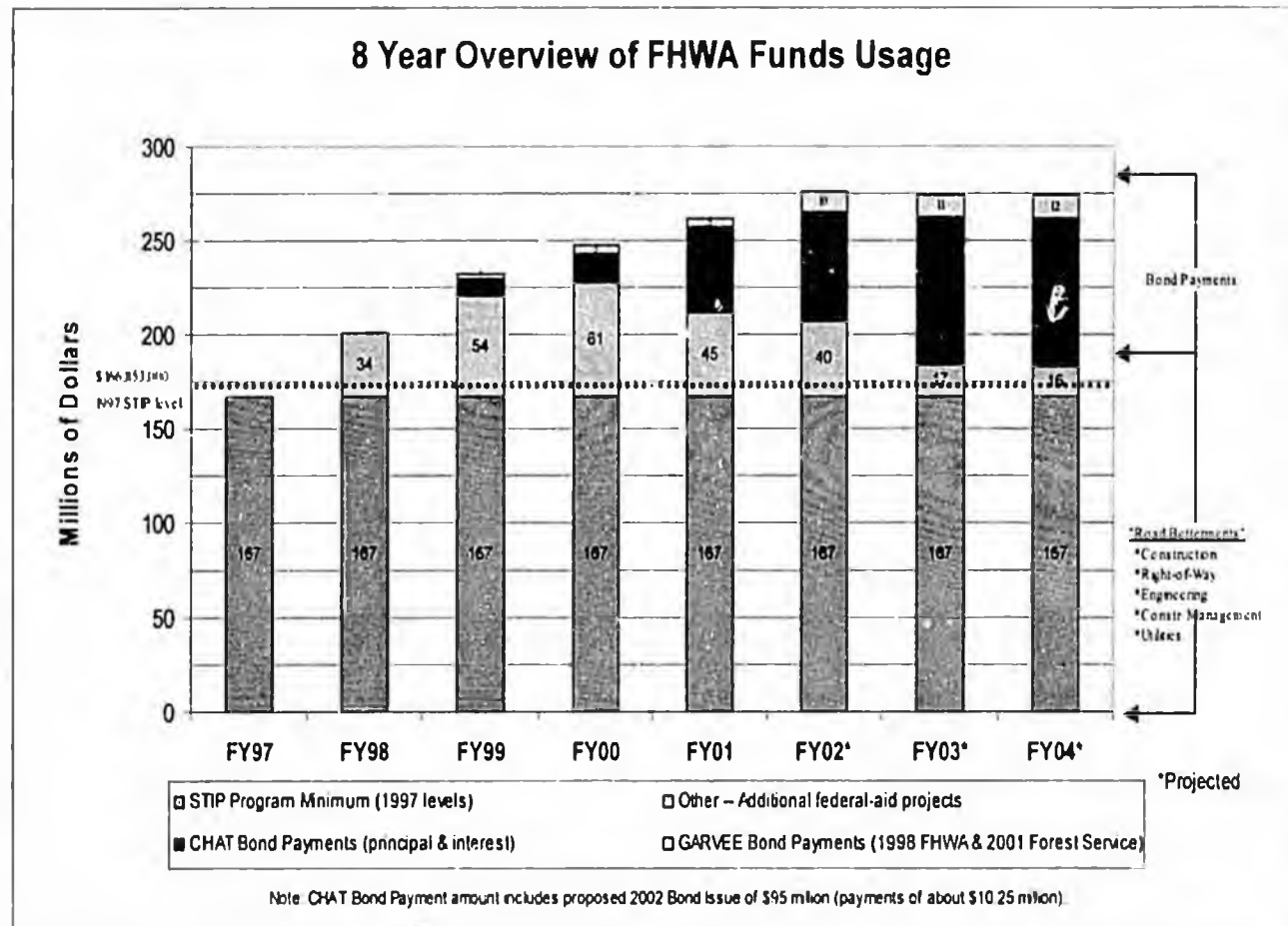
(3) Coverage on all debt based on State Road Fund Revenues only.

- Our key strategic challenge is the lack of needed funds for highway construction and maintenance.

- Leverage future federal revenue by selling bonds

- Support of the Governor and State Legislature.

- The State Highway Commission policy that restricts the Department from incurring debt above the baseline program.



4/11/02

Resolutions in support of GARVEE Bonds received to date:

Alaska Municipal League

Alaska Trucking Association

Anchorage Chamber of Commerce

Anchorage Municipality

Consulting Engineers Council

Fairbanks North Star Borough

Juneau City and Borough

Kenai Peninsula Borough

Ketchikan

Kotzebue

Mat-Su Borough

Nome

North Pole

Palmer

Southeast Conference

Haines City

AK Professional Design Council

Bristol Bay Borough

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 22, 2001

TONY KNOWLES, GOVERNOR

GOVERNMENTAL AFFAIRS SECTION
P.O. BOX 110300
DIAMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-2520

The Honorable Bill Williams
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801

Re: House Bill 168 authorizing the financing of certain
transportation projects; financing method comparison

Dear Representative Williams:

You requested an explanation for the administration's determination to propose House Bill 168 which would authorize lease purchase financing of transportation projects eligible for federal highway grant money. This proposal contrasts with HB 319 and SB 223 introduced during the second session of the Twenty-First Alaska State Legislature authorizing the issuance of general obligation bonds to finance similar projects. The specific type of financing instrument involved in HB 168 has been referred to as a "GARVEE bond." In fact, the method proposed in HB 168 involves a lease financing agreement which authorizes the issuance of revenue obligations in the form of certificates of participation (COPs) in the annual lease payments made by the state.

We previously advised that federal grant funds could not be anticipated beyond two years by pledging them to retire indebtedness. To overcome this potential legal problem, we recommended that bonds intended to be repaid out of federal grants be issued as a general obligation of the state. Authorization of general obligation bonds requires authorization by the legislature and a ratification vote by the electorate. Alaska Const. art. IX, sec.8. Bills to authorize general obligation bonds were introduced by the governor during the last legislative session.

The general obligation approach is not the sole means of financing federal highway eligible projects. This conservative method would negate any question about the power of the legislature to anticipate federal grant money. This is known as "double barreled" financing where federal funds are represented as sufficient and available for the purpose, and an overlapping pledge of the full faith and credit of the state is also made to provide complete security for the financing.

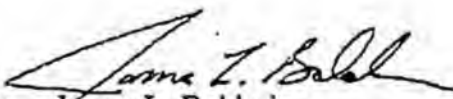
The issuance of certificates of participation (COPs) was an option considered at the same time that the governor proposed issuing general obligation bonds. We were reluctant to recommend this method at that time because of concern that highway projects would be an unconventional form of collateral for such a financing transaction. However, the market is becoming more familiar with lease purchase financing for transportation projects. It is now believed by the state's financial advisors and bond counsel that COPs secured by transportation projects are marketable. In light of these changing conditions and attitudes, we advised the governor that the state may validly issue revenue obligations to finance transportation projects. These revenue obligations are in fact certificates of participation in a lease financing agreement. This is a familiar form of financing that has been used to procure anything from computer equipment to public court facilities.

The COPs would be subject to the appropriation power of the legislature in that each year the debt service would be paid from appropriations made from federal sources. There would be no anticipation of future federal grants, nor would there be an enforceable pledge of this revenue source. Holders of the COPs would assume the relatively low risk that the legislature may not annually appropriate sufficient amounts to cover debt service. Structured in this manner, the holders of the revenue obligations (COPs) authorized in HB 168 would not be holding debt instruments in the constitutional sense. See *Carr-Gottstein Properties v. State*, 899 P.2d 136 (Alaska 1995). Since the lease financing authorized in HB 168 would not result in constitutional debt, it would not be necessary to follow the process for authorizing general obligation debt set out in article IX, section 8 of the Alaska Constitution. Based on the foregoing legal reasoning, the administration changed its proposal for financing transportation projects eligible for federal highway grant money.

If you have any questions about this matter do not hesitate to call.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL


By: James L. Baldwin
Assistant Attorney General

JLB:jn

cc: Kurt Parkan, Deputy Commissioner
Department of Transportation & Public Facilities
Chrystal Smith, Legislative Liaison
Deborah Behr, Legislation Attorney
Department of Law

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

Statement Of Support For GARVEE Bond Concept

February 23, 2001

My name is Frank Dillon. I am employed as executive vice president of Alaska Trucking Association. Alaska Trucking Association is a 42-year-old trade association comprised of transportation companies throughout the state of Alaska.

Alaska Trucking Association strongly supports the GARVEE Bond Financing concept. GARVEE Bonds are a mechanism allowed by the federal government and currently being used in other states, in which federal highway funds are essentially advanced to the state that would normally come in outlying years.

The use of GARVEE Bonds will allow for expedited construction of much needed transportation infrastructure projects. Many of these projects will enhance the safety, efficiency, and productivity of the trucking industry.

Alaskans depend on trucks for food, construction materials, and virtually all consumer items. Prudhoe Bay and the oil and gas industry throughout Alaska depend on trucks for supplies to continue their production. GARVEE Bonds will allow for the completion of much needed transportation infrastructure sooner than the normal process. Therefore, affording Alaskans the benefits of these projects in a timelier manner.





The Premier
Construction
Group

An Award-Winning
Chapter of
The
Associated
General
Contractors
of America

1998
Chapter of
the Year

COLORADO CONTRACTORS ASSOCIATION, INC.

CONSTRUCTING THE NECESSITIES OF LIFE

March 4, 2002

Mr. Richard Cittanach
Executive Director
AGC of Alaska
8005 Schoon Street
Anchorage, AK 99518-3045

Dear Dick:

I enjoyed visiting with you and your members at the Western AGC Chapters Conference last month. Much of the discussion centered on the GARVEE bonds and whether or not they are a good deal for the state and its contractors.

There is no question that being able to advance projects is good, both for the state and the construction industry. They allow earlier completion and use by the citizens, and there is some savings on future construction costs-dependent on inflation that is experienced in the future.

When Colorado joined the numerous other states in issuing the anticipation bonds-to be re-paid by future Federal highway revenue, no one imagined that the Federal-aid program would be reduced in the future. President Bush, in presenting his budget for FY 2003, reduced the appropriations for highways 27%. For those states now facing a repayment schedule, this reduction has the potential of really cutting the program in the state next year. This is the reason our friends in Kansas recommended bonding for transportation carry with it a new source of funds for repayment, to avoid such a situation-but this defeats the GARVEE concept.

When we endorsed the GARVEE bond program, some directors commented that once we begin borrowing it will have to be maintained in the future to continue a program of any size and consequence. Although we anticipate a reduction in our Fiscal Year 2003 program, I am not sure a price can be placed on not having the benefits provided by the early completion of projects. The projects Colorado has contracted under the program will undoubtedly save lives and travel time in the corridors being improved, and that is a big benefit to the state and those particular areas.

Sincerely,

Jay R. Lower
President/CEO



Monty Montgomery

From: Robert Hileman [rhileman@agcar.net]
Sent: Monday, February 25, 2002 7:26 AM
To: Monty Montgomery
Subject: GARVEE Bonds

Arkansas is currently using GARVEE Bonds to rehab 60 percent of its entire interstate system over a 5 year period. We are starting the 3rd year of the program and everything is going great.

Rob Hileman for Tommy Fish
Arkansas AGC

ACCELERATED TRANSPORTATION PLAN GARVEE BONDS

Position Paper of
The Associated General Contractors of Alaska

EXECUTIVE SUMMARY

ISSUE: On January 24, 2000, Governor Knowles announced a plan to utilize state bonding to accelerate the construction of transportation projects. The proposed \$350 million package contained projects from all over the State and included many high priority items. The purpose of this approach is to acquire additional funding to permit the undertaking of these projects years in advance of the current plan.

As proposed, the concept must first be approved by the legislature and then by voters in a statewide election. The source of repayment for the bonds will be future federal highway revenue sharing funds. If approved by both the legislator and the voters, the initial bonds are anticipated to mature in 15 years.

ADVANTAGES: The primary benefit is that the plan will allow the state to accelerate major projects thereby relieving stresses on the highway systems years in advance of the current program. Under the concept envisioned by the state, the timing of project advertising and construction could be planned to coincide with the Alaska construction climate rather than the inflow of federal monies. The State contemplates phasing the projects over a four to five year period so that construction activity would be increased by approximately \$75 - \$125 million per year. In summary the plan would increase construction activity, permit earlier and better project scheduling, and result in lower costs by avoiding future inflation. It has also been suggested that the State would benefit from arbitrage during the early years of the program.

DISADVANTAGES: The proposed plan was obviously crafted with a view toward statewide public acceptance. Most likely if you support one project, you are forced to support the package. Some AGC members are offended by the inclusion of high-speed ferries, but must support their inclusion to benefit from the projects they support in their areas. Some other problems identified include: the possibility of over-heating the construction market; the additional maintenance funds that will be needed for these projects; the selection process for new projects to replace those completed; the impact on the general fund of any difference between bond cost and arbitrage earnings; potential reduction in Alaska's share of the federal highway fund allocation, and, the ultimate bond payoff and the impact on future highway construction.

AGC POSITION

Given the proposed format, AGC does not believe that the advantages listed above from the sale of Garvee bonds outweigh the potential disadvantages. Therefore we cannot support the concept of Garvee bonds as currently proposed. However, it might be

possible to develop a plan that minimized the impact of the disadvantages. The concept of Garvee bonds has merit, but any plan should consider the problems identified above before implementation.

Benefits from Garvee Bonds

Acceleration of Projects:

The ability to accelerate major projects to deal with significant infrastructure problems is very compelling to the Department of Transportation, Municipalities, and contractors. By the nature of our current funding, large, high cost projects are phased over a period of time to minimize their impact on the overall highway program. Unless phased, one large project, such as the Glenn Highway expansion in Anchorage could well dominate the highway program in a given year. That means that funds would not be available to deal with projects in other parts of the State. Phasing also has the disadvantage of prolonging the period of construction trauma inflicted on the public from issues that are associated with highway construction.

The use of Garvee Bonds allows the State to deal with major projects in a manner that will not significantly impact the overall statewide highway program. An additional benefit is that by dealing with an entire project rather than phasing the project the construction disruptions to the public can be minimized.

Timing of projects:

In a perfect world, government programs would never overheat or cool the economy. If all the projects contemplated under the current proposal were to be issued in a single year, the construction market would be unable to deal with the work. In essence we would in be trying to complete two seasons of work in one year. The design community does not have the manpower to double their efforts, the State does not have project engineers to manage the work, and the contractors do not have the labor force to prosecute and supervise the work.

There is no reason however that the projects proposed under the Garvee bonds could not be phased in under increments of \$75 to \$125 million for a three or four year period. By releasing the projects in this manner, the State can minimize the impact the program will have on the construction economy. The State could also consider the impact potential "mega-projects" such as a gas pipeline, ANWR, or the missile defense system will have on the economy and program the release of the bonds to minimize the consequences of the inevitable contraction in the economy that traditionally follows the completion of a major project.

Construction Cost Savings:

By building sooner, rather than later, the impact of inflation can be reduced and projects can be delivered at a lower overall cost. Consequently Alaska could get more projects completed with the projected funding from the federal highway fund. This benefit is mitigated somewhat by the fact that the bonds require an interest payment that will increase the cost to the program. So long as the interest costs of the bond issue are less than the rate of inflation, the program benefits from the issuance of bonds.

Benefits from Interest Earnings:

In the most basic sense, bonds require an interest premium for the privilege of borrowing money under the terms and conditions outlined in the bond indenture agreement. During the early years of the program it is expected that the State will invest the unused portion of the bonds and earn interest at a rate in excess of that required on the bonds. That difference represents a savings that can be used for various purposes such as payments required on the bonds themselves or State match for the federal highway appropriation. At some point, all the bonds will be issued and the State will incur a higher cost due to the interest portion of the bonds. Any benefit from this interest arbitrage will be received shortly after the bonds are issued. Once the bond funds are invested in projects rather than financial assets, the benefit disappears.

Potential Problems with Garvee Bonds

Selection of Projects:

The theoretical benefits of Garvee Bonds are undermined when the program becomes just another means of funding desired projects. A \$420,000 project in Anchorage hardly seems to demand a creative means of project acceleration. The State should establish a process that meets strict criteria for selection rather than one that seems to curry favor from local residents.

Also absent from the discussion is how projects are to advance in the STIP to replace the projects funded by the bond proposal. The STIP process was developed to minimize the political influence that can occur in project selection. That same process does not seem to have been applied to the selection of projects for inclusion on the Garvee Bond list. Until the selection process is better explained and understood the end result must be questioned.

Over-heating the economy:

Can the construction community handle an additional \$75 to \$125 million in work annually for three to four years? Yes. Can the State and the design community design this additional work in that time frame? The answer to this is less clear. The State presently has a problem in getting the work to bid to comply with the current construction season. A job bidding in August and September is less valuable to the industry than one that bids in March or April. From the construction industry this bidding history impacts two construction seasons. For the State, the work is released in one fiscal year. Over time however this problem corrects itself as the fall release of jobs becomes the base from which the future years work is programmed. But delays in projects being released is symptomatic of a problem that will only be exacerbated by a significant increase in the project load.

Impact on future construction volume:

Under the current scenario described by the State, Alaska would see construction volume increase significantly during the first four years following the bond issue and then lag the "non-Garvee" trend for the next fourteen years. Perhaps the appropriate question is not "Will the Garvee bonds overheat the economy?" but "What will happen to the industry after the projects funded by the bond issue are completed?"

The assumption underlying the State's analysis is that construction volume will fall from a peak of \$600 million in 2004 to approximately \$450 million in 2006. This twenty five percent reduction in volume is permanent and only increases due to projected increases in inflation. The analysis assumes that the State of Alaska will continue to be a net benefactor from the allocation formula at the same level as currently experienced through all future federal highway reauthorizations. This assumption may well be true, but reason suggests that as Alaska's senior leadership retires, Alaska's share of the highway funds will be reduced. Should that happen, the highway construction industry in Alaska would be severely impacted.

One of the arguments for the bonds is that future inflation can be avoided by early construction. If however the construction industry must purchase new equipment to meet the peaks imposed by the increased volume accompanying Garvee bonds, it seems reasonable to expect that they will attempt to amortize the cost of the increased equipment over the expected life of the increased volume. The cost of the Garvee projects under such a scenario may actually be higher than expected and the proposed inflation savings non-existent.

Highway construction is a capital-intensive business. Self-inflicted modifications to construction volume can seriously impact the economic viability of the construction industry. A planned reduction of 25% to the industry means that some firms will have difficulty making equipment payments. Bidding then becomes defensive as the firms attempt to generate cash flow and the entire industry suffers until the excess capacity can be relieved. In the end some firms may well go out of business, not because of economic decisions they make, but because of economic distortions to the economy by those that did not consider the ramifications of their decisions.

A Proposed Approach to GARVEE Bonds

Bond payments limited to 10% of federal highway program:

More is frequently not better. New Mexico issued approximately \$1 billion in Garvee bonds to do a number of major projects. The bonds supposedly are being paid back over a number of years at a rate of almost \$100 million per year. New Mexico's highway program is approximately \$242 million dollars before the reduction for the Garvee bonds and other senior sub-ordinate lien bonds. After the reduction, the program is reduced to approximately \$164 million. More than one third of their highway program funds are being used to payback the bonds. This reduction has seriously impacted the economic viability of their highway construction industry. (See attached letters documenting New Mexico's problems)

The problem is further magnified when the proposed level of highway funding for 2003 is considered. In President Bush's 2003 budget proposal, New Mexico's estimated highway appropriation will be \$199 million. After the reduction for the bond payments, they will have less than \$125 million for their highway program. This reduction in the highway allocation is unique, but can easily occur again. It is expected that some, but not all, of the budget reduction will be restored, but the impact when combined with the bond payments will be devastating to their construction industry.

It can be argued that the problems in New Mexico are unique, and perhaps they are. Other states are also gaining valuable experience in this area. Colorado, Kansas, West Virginia, and others have experiences that should be analyzed and understood. Where appropriate, these experiences should be avoided or replicated. More importantly, they should be understood.

Given the problems experienced in some states, AGC would propose that any allocation of the federal highway funds for repayment of bonds should not exceed ten percent of the projected highway funds. General obligation bonds should fund major projects that will require a higher repayment level.

Project Selection:

Projects selected for funding under a Garvee Bond approach should be determined by the application of a rigorous set of criteria. No project should be selected that has not successfully undergone the process imposed in the STIP. But inclusion on the STIP should not be sufficient in and of itself. The project should be of sufficient size that the State would normally phase the construction to minimize the impact on any one years project list. The rationale for inclusion on the list should be compelling. Removals of significant safety hazards, environmental issues, or economic benefits from project acceleration are all reasons that a project might be included on a Garvee Bond list. This approach could potentially be a valuable tool for the State, but the goals should be clearly defined and the problems carefully evaluated.

Summary

It is extremely difficult for a trade organization representing contractors to argue against additional work for their industry. But when that work comes at the expense of future work and when future-funding levels might decline due to factors beyond our control, then it becomes an issue of finding the best means of stabilizing the industry. The problems experienced in other states suggest that the use of Garvee bonds should be approached cautiously. Wild swings in construction volume will permanently damage the highway industry in Alaska. The Associated General Contractors of Alaska cannot support any method or alternative that will cause long-term harm to the industry. As currently proposed the issue is not good for the industry, and most likely not good for the State.

AGC is not ready however to totally discard the concept. The association is willing to work with the State, Legislators, and other interested parties to develop a program that will not impose all the inherent risks that exist in the current proposal.

907-745-3845 Phone
907-745-7548 FAX

Karl and Melanie Kopperud
P.O. Box 1822
Palmer, AK 99645

Fax

To: Senate Finance Committee	From: Karl and Melanie Kopperud
Fax: 907-745-7548	Pages: 1
Phone: 907-745-3845	Date: 4/11/2002
Re: GARVEE Bond	CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments: Please support Senate Bill 191 on the GARVEE bond. It is very important that we get some help in financing the rebuilding of the OLD GLENN HIGHWAY near Palmer. It is in a dangerous condition! My understanding is that the GARVEE bond will allow the State to do major road improvements now and that the federal government will repay 91% of the costs.

When I wrote to Governor Knowles about the problems with the highway, he said the only way to get the money for the upgrade work was through this bond. All they are doing now is throwing away on trying to patch the road. The patches don't hold at all and the materials just comes apart and lays on the road. We need more! Please support Bill 191!

Thank you.

ALASKA TRUCKING ASSOCIATION, INC.

3443 Minnesota Drive • Anchorage, Alaska 99503 • PHONE (907) 276-1149 • FAX (907) 274-1946

Statement Of Support For GARVEE Bond Concept

February 23, 2001

My name is Frank Dillon. I am employed as executive vice president of Alaska Trucking Association. Alaska Trucking Association is a 42-year-old trade association comprised of transportation companies throughout the state of Alaska.

Alaska Trucking Association strongly supports the GARVEE Bond Financing concept. GARVEE Bonds are a mechanism allowed by the federal government and currently being used in other states, in which federal highway funds are essentially advanced to the state that would normally come in outlying years.

The use of GARVEE Bonds will allow for expedited construction of much needed transportation infrastructure projects. Many of these projects will enhance the safety, efficiency, and productivity of the trucking industry.

Alaskans depend on trucks for food, construction materials, and virtually all consumer items. Prudhoe Bay and the oil and gas industry throughout Alaska depend on trucks for supplies to continue their production. GARVEE Bonds will allow for the completion of much needed transportation infrastructure sooner than the normal process. Therefore, affording Alaskans the benefits of these projects in a timelier manner.





U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
ALASKA DIVISION
709 West Ninth Street, Room 851
P.O. Box 21648
Juneau, Alaska 99802
907-586-7413 | 907-586-7420 FAX

April 2, 2001

REFER TO
HDA-AK
File #: Adm-F&A 1

Ms. Nancy Slagle
Director, Administrative Services Division
Alaska Department of Transportation
and Public Facilities
3132 Channel Drive
Juneau, Alaska 99801-7898

SUBJECT: Excess investment earnings from GARVEE bond issuance

Dear Ms. Slagle:

In response to a recent question by your office, concerning the proposed GARVEE bond issuance, I offer the following comments:

As mentioned in a February 8, 2001 letter to your office, we established that investment earnings from bond sale proceeds could be used as non-Federal matching funds for the GARVEE funded projects. We also pointed out that, pending approval of a TE-045 Innovative Finance application, such funds could be applied to the non-Federal match on debt service payments using a lump sum, present value computation. The question you posed related to whether excess investment earnings not needed to meet this present value calculation could be used as non-Federal match for "regular", non-GARVEE funded Federal-aid highway projects.

In discussions with our Headquarters financial management and legal staff on this issue, FHWA has determined that investment earnings are considered as State funds. As such, their use to meet non-Federal match requirements is permissible.

If you have any additional questions on this matter, please feel free to contact our office at (907) 586-7413.

Sincerely,

For
David C. Miller
Division Administrator

HB 191-FINANCING FOR TRANSPORTATION PROJECTS
SENATE FINANCE COMMITTEE

SIGN-IN

NAME: Carla Perez Subject/Bill No: HB191
Co./Dept./Title: J.P. Morgan Phone: 303-607-7724
Address: 370 17th Street, Suite 3200, CO Zip: 80202
Do you wish to testify? Yes No Respond To Questions

~~NAME: Jennifer Mayer Subject/Bill No: HB191
Co./Dept./Title: FHWA Phone: (415) 744-2634
Address: 201 MISSION STR #2100 Zip: 94105
Do you wish to testify? Yes No Respond To Questions will testify on request~~

~~NAME: Rosemary Hegevig Subject/Bill No: HB191
Co./Dept./Title: Past. President Southeast Conference Phone: 364-2154 h
Address: Box 240 403 Douglas AK Zip: 99824
Do you wish to testify? Yes No Respond To Questions~~

NAME: LOREN GERHARD Subject/Bill No: HB191
Co./Dept./Title: EXEC. DIR. SOUTHWEST CONFERENCE Phone: 463 3448
Address: 612 W WILLOUSBY Zip: 99801
Do you wish to testify? Yes No Respond To Questions

SITE: ANCHORAGE LIO

COMMITTEE: SFIN

DATE: 4-11-02

SUBJECT OF MEETING:

HB 191

UPDATE #:



P R I N T YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

**DO YOU WANT
TO TESTIFY?
Y or N**

<input checked="" type="checkbox"/> Frank Dillon		AK Trucking Assoc	Y-HB 191
Email address:			
<input checked="" type="checkbox"/> Dick Cattanagh		AGC	Y-HB 191
Email address:			
Tim Rogers		MOA	Y-HB 191
Email address:			
James Armstrong		MOA	Ans ?s
Email address:			HB 191
Email address:			
Email address:			
Email address:			

SITE: **OFFNETS**

SUBJECT OF MEETING:

COMMITTEE:

DATE:

UPDATE #:



PLEASE SIGN IN

PLEASE PRINT:

NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

DO YOU WANT
TO TESTIFY?
Y or N

NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	DO YOU WANT TO TESTIFY? Y or N
✓ Tom Norton	303-757-9201	SolSmBarn	y
Carla Perez	303-607-7724	JP Morgan	y
✓ Tim Rattigan	206-628-4955	SolSmBarn	y
✓ E. Wolforth		Law firm of Wolforth,	y
M. White			y
✓ Ron Morino			y
John Urbina	206-682-8393	George Baum & Co.	y
Kim Swain Pierce			y
J.P. Morgan		JP Morgan / not test.	y
✓ Pete Rahn		SectyNewMex DOT	y



SITE: MAT-LIO

SUBJECT OF MEETING:

HB 191 Financing for
Transportation projects

COMMITTEE: SFIN

DATE: 04-11-02

UPDATE#: 1

PLEASE SIGN IN

PRINT YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING

DO YOU WANT
TO TESTIFY?
Y or N

✓ **Robert Hakenson**

Email address:

Y

✓ **George Strother**

Email address:

Matsu Boro

Y

Email address:

Email address:

Email address:

Email address:

SITE: PETERSBURG LIO

COMMITTEE: SFIN

DATE: 4/11/2002

SUBJECT OF MEETING:

HB191-Financing
for Transportation Projects

UPDATE #:



PLEASE SIGN IN

DO YOU WANT

PRINT YOUR NAME

ADDRESS (MAILING & ZIP)

REPRESENTING TO TESTIFY?

Y or N

PRINT YOUR NAME	ADDRESS (MAILING & ZIP)	REPRESENTING	TO TESTIFY? Y or N
✓ Dave Kensinger	PO Box 1289, Petersburg, AK 99833	Self	Yes
Email address:			
✓ Leo Luczak	PO Box 329 Petersburg, AK 99833	City of	Yes
Email address:		Psg	
Email address:			
Email address:			
Email address:			
Email address:			

HB

193

HFIN

FILE

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: CSHB 193(FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): 04/10/2001 Dept. Affect: OOG
 Title: An Act relating to the primary election BRU: Elective Operations
 Component: Elections
 Sponsor: Rules Committee
 Requester: Governor Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	5.2	269.5	5.2	269.5	5.2	269.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.2	269.5	5.2	269.5	5.2	269.5

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.2	269.5	5.2	269.5	5.2	269.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.2	269.5	5.2	269.5	5.2	269.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill will require the division to print six ballots, one for each recognized political party. The cost above is what would be required in addition to the division's annual budgets. These include: additional ballot printing costs (\$90.0); revision and printing of forms (\$5.2); voter education (\$150.0); additional election workers (\$29.5).

Prepared by: Gail Fenumalai Phone 465-3935
 Division: Division of Election Date/Time 04/10/2001 4:10PM
 Approved by: Sally Rue Date 04/10/2001
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: CSHB 193(FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): 04/10/2001 Dept. Affect: OOG
 Title: An Act relating to the primary election BRU: Elective Operations
 Component: Elections
 Sponsor: Rules Committee
 Requester: Governor Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual	5.2	269.5	5.2	269.5	5.2	269.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.2	269.5	5.2	269.5	5.2	269.5

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	5.2	269.5	5.2	269.5	5.2	269.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.2	269.5	5.2	269.5	5.2	269.5

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill will require the division to print six ballots, one for each recognized political party. The cost above is what would be required in addition to the division's annual budgets. These include: additional ballot printing costs (\$90.0); revision and printing of forms (\$5.2); voter education (\$150.0); additional election workers (\$29.5).

Prepared by: Gail Fenuniai Phone 465-3935
 Division: Division of Election Date/Time 04/10/2001 4:10PM
 Approved by: Sally Rue Date 04/10/2001
 Agency: Office of the Lieutenant Governor

For distribution information, call the Governor's Legislative Office

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, AK 99701
(907)-456-5081
Fax# (907)-456-8245



Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 416

REPRESENTATIVE JOHN COGHILL

CSHB 193 SECTIONAL

Section 1. Intent language to comply with Democratic Party v. Jones, 530 U.S. 567(2000) and have a system in place in time for the 2002 Primary Election.

Section 2. Provides that the director shall prepare a primary ballot for each political party. It also provides that a person not registered with a political party may not vote that party's ballot unless that political party has precleared by-laws and given written notice to the Division of Elections that allows persons other than persons registered with the party to vote the ballot.

Section 3. Provides that a party must submit written notice to the director of elections by 5:00 p.m., Alaska Time on November 1 of the calendar year prior to the primary election that the party by-laws provide for provisions to vote in the primary different than those reflected on the primary ballot. The party's by-laws must accompany the application. It provides that once this process is used, all subsequent primaries will use the expanded ballot until such time the party submits written notice of a new process. The U.S. Department of Justice must preclear the by-laws of the party before submission.

Section 5. The language all primary ballots will be printed on white paper and that each voter may vote only one primary ballot. The order of names on the ballot will be the same as the order would be in the general election and there will be no spaces for write-in candidates. It also provides that the voter's party eligibility will be based on the voter's registered party 30 days prior to the primary.

Section 6. Effective date is immediate.


ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
119 N. Cushman, Suite 211
Fairbanks, Alaska 99701
(907)-456-5081
Fax# (907)-456-8245



Session Contact:
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 416

REPRESENTATIVE JOHN COGHILL

Date: March 30, 2001
To: Members of the House State Affairs Committee
From: Representative John Coghill 
Re: Committee Substitute for HB 193

The United States Supreme Court ruled in California Democratic Party et al. v. Jones, Secretary of State, et al. (530 U.S. 567, 2000) that the petitioners of California Proposition 198 which implemented California's blanket primary violated a political party's right to association. Governor Knowles has completely disregarded this decision by introducing HB 193 and SB 146. His approach is to enact the blanket primary and leave it up to the party to exclude voters from participation. The proper process is to make provisions for a Party inclusion.

The intent of *California Democratic Party v. Jones* was to implement a primary system that allows a party to nominate its candidates for the general election and provide a mechanism by which they could include voters other than registered party members. In the Courts decision was very explicit in this regard by citing Eu v. San Francisco County Democratic Central Committee, (489 U.S. 214):

"In no area is the political association's right to exclude more important than in its candidate-selection process. That process often determines the party's positions on significant public policy issues, and it is the nominee who is the party's ambassador charged with winning the general electorate over to its views. The First Amendment reserves a special place, and accords a special protection, for that process."

California goes even further in protecting the right of inclusion:

"California blanket primary violates these principles [right to association]. Proposition 198 forces petitioners to adulterate their candidate-selection process—a political party's basic function—by opening it up to person wholly unaffiliated with the party, who may have different views from the party. "

It is noteworthy to cite Justice Rabinowitz in his April, 1996 dissent of O'Callaghan v. Alaska which ended the open primary in Alaska. He stated:

In my view, Alaska's blanket primary statute impermissibly burdens the Republican Party of Alaska's political rights of association in violation of the First and Fourteenth Amendments to the United State Constitution."

Rabinowitz argued that while the blanket primary did not specifically interfere with the Republican Party of Alaska's right to have candidates on the primary ballot, the state prohibited the RPA from selecting candidates according to its chosen method.

It is not the power of the State to include: it is the Party's right to exclude. The legislation implementing a primary election should start at that point. My suggestion is that the director of elections prepares a primary election ballot for each political party. Any political party wanting to include participation of voters other than registered party members may provide written notice to the director of elections by 5:00 p.m. November 1st of the calendar year prior to the primary election requesting that members of other parties or unaffiliated member be permitted access to the party's ballot.

March 14, 2001

The Honorable Fran Ulmer
Lieutenant Governor
PO Box 110015
Juneau AK 99811-0015

Dear Lieutenant Governor Ulmer:

On January 25, 2001, the Primary Election Task Force was created in which you invited members to discuss and recommend how Alaska should run its primary election. Last June, in California Democratic Party v. Jones, the U.S. Supreme Court ruled that California's blanket primary was unconstitutional. The ruling affected other state's blanket primary election system, including Alaska.

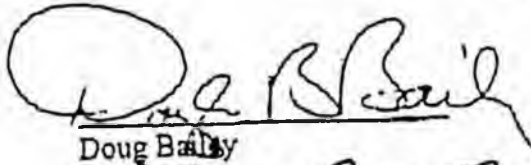
The task force held three meetings. The first was an organizational meeting held on February 9 at which time the purpose of the task force was discussed. Presentations were made by the Division of Elections and the Department of Law which included information concerning the Jones decision, Alaska's primary election and those of other states. On February 27, a hearing to receive statewide public comment was held. Public comments were received from members of both the major and minor political parties, the public, and the League of Women Voters. On March 9, the task force met to formulate a recommendation concerning the conduct of Alaska's primary election system.

We, the members of the Primary Election Task Force, do hereby approve the attached recommendation.

Sincerely,



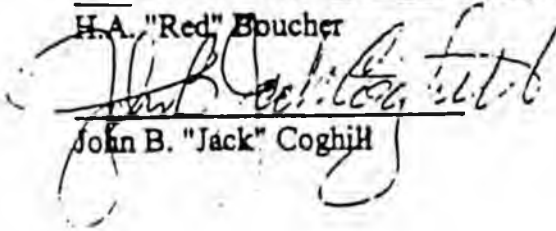
Av Gross, Chairman



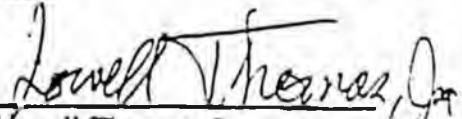
Doug Bailey



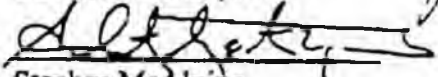
H.A. "Red" Boucher



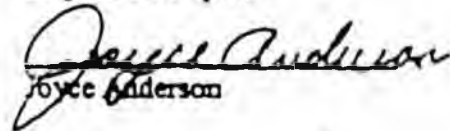
John B. "Jack" Coghill



Lowell Thomas, Jr.



Stephen McAlpine



Joyce Anderson

**PRIMARY ELECTION TASK FORCE
RECOMMENDATION TO
LIEUTENANT GOVERNOR FRAN ULMER**

The Primary Election Task Force has reviewed the U.S. Supreme Court decision in California Democratic Party v. Jones and the state's primary election procedures. We believe it is in the best interests of the voters of Alaska to have legislation introduced and adopted this legislative session to resolve the conflict between Alaska's primary election system and the Jones decision. We recommend that the legislation be formulated around these four points.

1. If a political party chooses not to participate in a blanket primary, the party must submit its party rules governing primary elections to the lieutenant governor not later than September 1 in the year prior to a primary election. These party rules must have received preclearance by the U.S. Department of Justice by this date. If a party fails to submit their party primary preference to the lieutenant governor by this date, the party's candidates will appear on the blanket primary.

For the first election following enactment of this legislation, the parties must notify the Lieutenant Governor of their party primary plans by September 1. In subsequent years, if the party rules governing primary elections have not changed, there is no need to notify the Lieutenant Governor. The party's primary will be conducted in the manner which the Lieutenant Governor was last notified.

2. Voters cannot change their party registration within 30 days of a primary election. Voters should not be allowed to change their political party affiliation at the polling place on election day.
3. The design of the ballot should be centered around a blanket primary ballot. The blanket primary ballot will list all candidates regardless of party affiliation. If a political party chooses to exclude voters not registered with their parties from participating in their primary election, then a ballot listing appropriate candidates shall be prepared for members of that party.
4. The lieutenant governor or director of elections shall have the authority to adopt regulations necessary to implement this legislation.

Note: While this is not a recommendation of the task force, it is noted for the record that there was discussion by members whether political parties should or should not be able to opt out of the primary system and nominate candidates by convention. The task force determined this was beyond the scope of the task force's purpose. It is suggested that the legislature discuss this issue.

PROPOSED PRIMARY ELECTION LEGISLATION BULLET SHEET

- The decision of the United States Supreme Court in California Democratic Party v. Jones requires state law to recognize a political party's right to determine who may associate with the party under the First Amendment to the Constitution of the United States to nominate candidates of the party to be placed on the general election ballot.
- As a result of this decision, the Lieutenant Governor appointed the Primary Election Task Force to review the court's decision and the state's primary election law. This legislation implements the findings of the task force.
- It is critical to have a new primary election system in place in time to conduct the next primary election in an orderly and efficient manner consistent with the court decision.
- If a political party chooses not to participate in a blanket primary, the party must submit its party rules governing primary elections to the director of elections by September 1 in the year prior to the year in which a primary election is held. These party rules must have been precleared by the United States Department of Justice by this date.
- If a political party fails to submit their party primary preference to the director of elections by September 1, the parties candidates will appear on the blanket primary ballot.
- If a voter desires to be registered as a member of a political party, that registration must be done by the 30th day prior to the primary election.
- The design of the primary election ballot will be centered around a blanket primary. The blanket primary ballot will list all candidates regardless of party affiliation. If a political party chooses to exclude voters not registered with that party from participating in its primary, then a ballot listing appropriate candidates shall be prepared for that party.

For each of these scenarios, it is important to keep in mind the following rule: *the political parties have a right to choose who has access to their ballot, but cannot prohibit their party members from voting for candidates of another political party, as long as that party allows for this to happen.*

Scenario One

All recognized political parties allow only voters registered with their party to vote for their candidates. All parties would allow Undeclared/Nonpartisan voters to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates D candidates AIP candidates G candidates RM candidates L candidates

Scenario Two

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The AIP, Green, Republican Moderate and Libertarian political parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
AIP candidates	AIP candidates	G candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
G candidates	G candidates	RM candidates	RM candidates	G candidates	G candidates	AIP candidates
RM candidates	RM candidates	L candidates	L candidates	L candidates	RM candidates	G candidates
L candidates	L candidates	D candidates	D candidates	D candidates	D candidates	RM candidates
						L candidates

Scenario Three

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP, Republican Moderate and Libertarian political parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
AIP candidates	AIP candidates	RM candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
RM candidates	RM candidates	L candidates	RM candidates	L candidates	RM candidates	AIP candidates
L candidates	L candidates	D candidates	L candidates	D candidates	D candidates	G candidates
						RM candidates
						L candidates

Scenario Four

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP allows only voters registered with their party to vote for AIP candidates. Undeclared/Nonpartisan voters may vote for AIP candidates.

The Republican Moderate and Libertarian parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	RM candidates	RM candidates	RM candidates	L candidates	RM candidates	D candidates
L candidates	L candidates	L candidates	L candidates	D candidates	D candidates	AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Five

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows only voters registered with their party to vote for Green candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The AIP allows only voters registered with their party to vote for AIP candidates. Undeclared/Nonpartisan voters may vote for AIP candidates.

The Libertarian party allows only voters registered with their party to vote for Libertarian candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	RM candidates	RM candidates	RM candidates	D candidates	RM candidates	D candidates
						AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Six

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows only registered voters from parties that do not restrict Democrats from voting for their candidates to vote for Democratic candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Republican Moderate party allows only voters registered with their party to vote for Republican Moderate candidates.

The AIP, Green and Libertarian parties allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
G candidates	G candidates	G candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
AIP candidates	AIP candidates	L candidates	L candidates	G candidates	G candidates	AIP candidates
L candidates	L candidates	D candidates	D candidates	L candidates	D candidates	G candidates
						L candidates

Scenario Seven

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows any registered voter to vote for their candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The Libertarian party allows only their party members to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows only voters registered with the Republican party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The AIP allow any registered voter to vote for their candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rcp. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
D candidates	G candidates	D candidates	AIP candidates	AIP candidates	AIP candidates	D candidates
AIP candidates	AIP candidates		D candidates	D candidates	D candidates	AIP candidates
RM candidates						G candidates
						L candidates

Scenario Eight

The Republican party allows only voters registered with their party to vote for Republican candidates. Undeclared/Nonpartisan voters may vote for Republican candidates.

The Democratic party allows voters registered with the Republican Moderate and Libertarian parties to vote for their candidates. Undeclared/Nonpartisan voters may vote for Democratic candidates.

The Green party allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Green candidates.

The Libertarian party allows only their party members to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The Republican Moderate party allows only voters registered with the Republican party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The AIP allows voters registered with the Democratic party to vote for their candidates. Undeclared/Nonpartisan voters may vote for Libertarian candidates.

The ballots for each party would appear as follows:

<u>Republican</u>	<u>Democratic</u>	<u>AIP</u>	<u>Green</u>	<u>Rep. Moderate</u>	<u>Libertarian</u>	<u>Undeclared/Nonpartisan</u>
R candidates	D candidates	AIP candidates	G candidates	RM candidates	L candidates	R candidates
RM candidates	G candidates			D candidates	D candidates	D candidates
	AIP candidates					AIP candidates
						G candidates
						RM candidates
						L candidates

Scenario Nine

All parties allow all persons to vote on their candidates.

Blanket Primary Ballot

R candidates

D candidates

AIP candidates

G candidates

RM candidates

L candidates