

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the issuance of revenue GARVEE Bonds supported by grants to be received from the Federal Highway Administration to finance transportation-related improvements in the District and to require an annual report by the Chief Financial Officer on how the bonds are structured, the amount of obligation, and a statement of whether the bonds are structured in such a way as to count toward the District's 12% debt cap.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Infrastructure Improvements GARVEE Bond Financing Act of 2009".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Authorized Signatory" means the Chief Financial Officer, the District of Columbia Treasurer, or any deputy mayor of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Chief Financial Officer.

(3) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this act and section 490 of the Home Rule Act.

(4) "Chairman" means the Chairman of the Council of the District of Columbia.

(5) "Chief Financial Officer" means the Chief Financial Officer established pursuant to section 424(a)(1) of the Home Rule Act.

(6) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the GARVEE Bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(7) "Council" means the Council of the District of Columbia.

(8) "Debt Service" means payment of principal, premium, if any, and interest on

the GARVEE Bonds.

(9) "District" means the District of Columbia.

(10) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the GARVEE Bonds, including any offering document, and any required supplements to any such documents.

(11) "GARVEE" means grant anticipation revenue vehicle debt financing.

(12) "GARVEE Bonds" means bonds secured by GARVEE Revenues and issued to finance the Qualified Transportation Project.

(13) "GARVEE Revenues" means:

(A) Funds derived from the Federal Highway Administration and interest earnings derived from such funds; and

(B) Other investments, gifts, grants, contributions, appropriations, income, and any other amounts approved by Council resolution to be pledged to secure payment of GARVEE Bonds.

(14) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(15) "Mayor" means the Mayor of the District of Columbia.

(16) "Qualified Transportation Project" means the project to replace the twin 11th Street Bridges over the Anacostia River and to improve the interchanges at either end, including adding missing movements to and from the north onto the Anacostia Freeway. This project meets the eligibility requirements of the Federal Highway Administration as a permissible transportation expenditure under Title 23 of the Code of Federal Regulations.

(17) "Qualified Transportation Project Costs" means all costs incurred in the construction of the Qualified Transportation Project, including, without limitation:

(A) The purchase price or acquisition of any property or interest in those properties or other rights necessary or convenient for the project;

(B) Costs of the study, permitting, and engineering on the project, including the preparation of plans and specifications, surveys, and estimates of cost;

(C) Costs of construction, reconstruction, paving, repaving, building, alteration, repair, restoration, environmental review or remediation, enlargement, or other improvement, including all labor, materials, machinery, fixtures, and equipment, including rolling stock or vehicles;

(D) Costs of engineering, architectural, legal, and other professional services;

(E) Costs of reserves, insurance, letters of credit, or other financial guarantees for payment of future Debt Service on the GARVEE Bonds; and

(F) All other costs or expenses necessary or convenient to the project, including the financing or refinancing of the project.

Sec. 3. Bond authorization.

(a) Pursuant to section 490 of the Home Rule Act, the Council approves and authorizes the issuance of one or more series of GARVEE Bonds to fund the Qualified Transportation Project Costs of the Qualified Transportation Project; provided that:

(1) The aggregate principal amount of GARVEE Bonds that may be issued is the amount that can be supported by Debt Service equal to the annual GARVEE Revenues received by the District, but shall not exceed \$200 million;

(2) The GARVEE Bonds may be issued from time to time in one or more series;

(3) The GARVEE Bonds shall be tax-exempt or taxable as the Chief Financial Officer shall determine and shall be payable and secured as provided in section 5.

(b) The Mayor is authorized to pay from the proceeds of the GARVEE Bonds the costs and expenses of issuing and delivering the GARVEE Bonds, including, but not limited to, underwriting discount or fees, rating agency fees, legal fees, accounting fees, financial advisory fees, trustee and paying agent fees, collection agent fees, bond insurance, letters of credit and other credit enhancements, liquidity enhancements, and printing costs and expenses.

Sec. 4. Creation of the Transportation Infrastructure Improvement Fund.

(a) There is established as a nonlapsing fund, separate and apart from the General Fund of the District of Columbia, the Transportation Infrastructure Improvement Fund. The Chief Financial Officer shall deposit into the Transportation Infrastructure Improvement Fund the GARVEE Revenues and any other funds specifically designated by statute for deposit in the Transportation Infrastructure Improvement Fund. All funds deposited into the Transportation Infrastructure Improvement Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Mayor may pledge and create a security interest in the funds in the Transportation Infrastructure Improvement Fund, or any sub-account or sub-accounts within the Transportation Infrastructure Improvement Fund, for the payment of the Debt Service on the GARVEE Bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act, such payment to be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the GARVEE Bonds.

Sec. 5. Payment and security.

(a) Except as may be otherwise provided in this act, the Debt Service on the GARVEE Bonds, and the payment of ongoing administrative expenses related to the GARVEE Bond financing, shall be payable solely from proceeds received from the sale of the GARVEE Bonds, income realized from the temporary investment of those proceeds, the GARVEE Revenues and any other receipts and revenues realized by the District and deposited into the Transportation Infrastructure Improvement Fund, and income realized from the temporary investment of the

GARVEE Revenues and those other receipts and revenues prior to payment to the GARVEE Bond owners.

(b) Payment of the GARVEE Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the GARVEE Bond owners of certain of its rights under the Financing Documents and Closing Documents to the trustee for the GARVEE Bonds pursuant to the Financing Documents.

(c) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the GARVEE Bonds pursuant to the Financing Documents.

Sec. 6. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the GARVEE Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the GARVEE Bonds, including a determination that the GARVEE Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the GARVEE Bonds to be issued and denominations of the GARVEE Bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the GARVEE Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the GARVEE Bonds, and the maturity date or dates of the GARVEE Bonds;

(5) The terms under which the GARVEE Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the GARVEE Bonds and the replacement of mutilated, lost, stolen, or destroyed GARVEE Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the GARVEE Bonds;

(8) The time and place of payment of the GARVEE Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the GARVEE Bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the GARVEE Bonds under blue sky laws of any jurisdiction where the GARVEE Bonds are marketed; and

(11) The terms and types of credit enhancement under which the GARVEE Bonds may be secured.

(b) The GARVEE Bonds shall contain a legend which shall provide that the GARVEE Bonds are special obligations of the District, are without recourse to the District, are not a pledge

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of, and do not involve, the faith and credit or the taxing power of the District, do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The GARVEE Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the GARVEE Bonds.

(e) The GARVEE Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee or paying agent to be selected by the Chief Financial Officer, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The GARVEE Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The GARVEE Bonds are declared to be issued for essential public and governmental purposes. The GARVEE Bonds, the interest thereon, the income therefrom, and all funds pledged or available to pay or secure the payment of the GARVEE Bonds shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the GARVEE Bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the GARVEE Revenues pledged to secure the GARVEE Bonds or the basis on which the GARVEE Revenues are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the GARVEE Bonds, will not in any way impair the rights or remedies of the holders of the GARVEE Bonds, and will not modify in any way the exemptions from taxation provided for in this act, until the GARVEE Bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the GARVEE Bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the GARVEE Bonds. This subsection constitutes a contract between the District and the holders of the GARVEE Bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Chapter 9 of Title 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the GARVEE Bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 7. Issuance of the GARVEE Bonds.

(a) The GARVEE Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon such terms that the Mayor or an Authorized Signatory considers to be in the best interests of the District.

(b) The Mayor or an Authorized Signatory may execute, in connection with each sale of the GARVEE Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the GARVEE Bonds being sold.

(c) The Mayor or an Authorized Signatory is authorized to deliver executed and sealed GARVEE Bonds, on behalf of the District, for authentication, and, after the GARVEE Bonds have been authenticated, to deliver the GARVEE Bonds to the original purchasers of the GARVEE Bonds upon payment of the purchase price.

(d) The GARVEE Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the GARVEE Bonds of such series and, if the interest on the GARVEE Bonds is expected to be exempt from federal income taxation, the treatment of the interest on the GARVEE Bonds for purposes of federal income taxation.

(e) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and subchapter III of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor or the Chief Financial Officer may from time to time enter into, or the Mayor or the Chief Financial Officer may determine to be necessary or appropriate, for purposes of this act.

Sec. 8. Financing and Closing Documents.

(a) The Mayor or the Chief Financial Officer is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the GARVEE Bonds.

(b) The Mayor or an Authorized Signatory is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the GARVEE Bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's or the Authorized Signatory's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's or the Authorized Signatory's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed

Closing Documents.

(e) The Mayor or an Authorized Signatory is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the GARVEE Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 9. Limited liability.

(a) The GARVEE Bonds shall be special obligations of the District. The GARVEE Bonds shall be without recourse to the District. The GARVEE Bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The GARVEE Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the GARVEE Bonds.

(c) No person, including, but not limited to any GARVEE Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the GARVEE Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 10. District officials.

(a) Except as otherwise provided in section 9(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the GARVEE Bonds or be subject to any personal liability by reason of the issuance of the GARVEE Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the GARVEE Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the GARVEE Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the GARVEE Bonds, the Financing Documents, or the Closing Documents.

Sec. 11. Maintenance of documents.

Copies of the specimen GARVEE Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 12. Information reporting.

(a) Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the GARVEE Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

(b) Within 12 months after the effective date of this act, and every 12 months thereafter, the Chief Financial Officer shall report to the Council on the amount of obligation per GARVEE Bond issued under this act, how the funds are committed within the 11th Street Bridge project, how each GARVEE bond is structured, and a statement of whether each GARVEE Bonds is structured in such a way as to count toward the District's 12% debt service cap.

Sec. 13. Authority of the Chief Financial Officer.

Notwithstanding any other provision of this act, the Mayor shall implement the provisions of this act in a manner consistent with the authority of the Chief Financial Officer under section 424d of the Home Rule Act.

Sec. 14. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer, dated January 7, 2009, with addendum dated February 13, 2009, as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

Sec. 15. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia