COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 5

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

June 24, 2025

MOTION

Made By: Ms. Sellers, **Seconded By:** Dr. Smoot
Action: Motion Carried, Unanimously

Title: Approval of Federal Transportation Grant Anticipation Revenue Notes (GARVEE) Memorandum of Understanding (MOU)

WHEREAS, by resolution dated October 19, 2011, the Commonwealth Transportation Board ("Board") approved and authorized issuance and sale of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series 2011 ("2011 GARVEES"); and

WHEREAS, the Board, in its resolution authorizing issuance and sale of the 2011 GARVEES, among other things, approved and authorized execution of certain "Basic Documents", one of which included a memorandum of agreement among the Virginia Division of the Federal Highway Administration ("FHWA"), the Virginia Department of Transportation ("Department"), and the Board, required by the FHWA and related to the processes to execute and manage the Commonwealth of Virginia's GARVEE program; and

WHEREAS, on December 28, 2011, FHWA, the Department, and the Board executed the memorandum of agreement, which included a provision requiring review of the document every five years to determine needed changes or updates; and

WHEREAS, on July 19, 2017, the Board approved and authorized execution of, and on August 21, 2017, FHWA, the Department, and the Board executed a revised memorandum of agreement, which was determined to be necessary after the initial five-year review period; and

WHEREAS, subsequent to execution of the revised memorandum of agreement in 2017, the document has been reviewed periodically and following the most recent review, it has been determined that an update to the memorandum is needed to more clearly define the parties' roles and responsibilities, processes, and timeframes for updates and revisions, based on knowledge and experience gained since implementation of the GARVEE program; and

WHEREAS, FHWA and the Department have prepared a revised memorandum in the form of a memorandum of understanding addressing execution and management of the Commonwealth of Virginia's GARVEE program, which incorporates the needed updates and is attached hereto as Attachment A ("GARVEE MOU"); and

WHEREAS, the Board is authorized under Virginia Code §33.2-221(A) to enter into contracts or agreements with the United States government.

NOW, THEREFORE, BE IT RESOLVED, that the Board approves the GARVEE MOU, in substantially the form as set forth in Attachment A, with such changes and additions as the Commissioner of Highways and Chairman deem necessary. The Board authorizes and directs the Commissioner of Highways to execute the GARVEE MOU on behalf of the Department, and the Chairman to prepare, execute, and deliver the final form of the GARVEE MOU on behalf of the Board.

BE IT FURTHER RESOLVED, that the Chairman's execution and delivery of the GARVEE MOU shall constitute conclusive evidence of the approval of the final form of the GARVEE MOU by the Chairman on behalf of the Board.

BE IT FURTHER RESOLVED, that the Board authorizes the Commissioner of Highways and Chairman to execute future revisions to the GARVEE MOU deemed necessary by the Chairman, the Department and FHWA to administer the GARVEE program, and to deliver the final form of any revised GARVEE MOU on behalf of the Board.

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Commonwealth Transportation Board (CTB) Decision Brief

Approval of Federal Transportation Grant Anticipation Revenue Notes (GARVEE) Memorandum of Understanding (MOU)

Issue: The Federal Highway Administration (FHWA) requires a memorandum of agreement be entered into among the Virginia Division FHWA, the Virginia Department of Transportation (VDOT), and the Commonwealth Transportation Board (CTB) regarding the processes to execute and manage the Commonwealth of Virginia's Grant Anticipation Revenue Vehicle (GARVEE) program. Pursuant to Va. Code § 33.2-221(A), the CTB has the power and duty to comply fully with the provisions of the present or future federal aid acts and the authority to enter into contracts or agreements with the U.S. government.

Facts: FHWA requires a memorandum of agreement regarding the processes to execute and manage the GARVEE program. GARVEE bond and debt service allocations are included in the Six-Year Improvement Program.

By resolution dated October 19, 2011, the CTB approved and authorized issuance and sale of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series 2011 ("2011 GARVEES").

The CTB, in its resolution authorizing issuance and sale of the 2011 GARVEES, among other things, approved and authorized execution of certain "Basic Documents", one of which was a memorandum of agreement (MOA) between the Virginia Division FHWA, VDOT, and the CTB.

The Virginia Division FHWA, VDOT, and the CTB executed the MOA on December 28, 2011, that included a provision to review the MOA every five years to determine needed changes or updates.

On August 21, 2017, after the initial five-year review period, the Virginia Division FHWA, VDOT, and the CTB executed a revised MOA following CTB authorization on July 19, 2017. The parties have been working in collaboration under the revised MOA since that time.

Following the most recent review, it was determined that further update to the MOA is needed to more clearly define the parties' roles and responsibilities, processes, and timeframes for updates and revisions, based on knowledge and experience gained since implementation of the GARVEE program.

FHWA and VDOT have prepared a revised memorandum in the form of a memorandum of understanding addressing execution and management of the Commonwealth of Virginia's GARVEE program, which incorporates the needed updates and is attached hereto as Attachment A ("GARVEE MOU").

The CTB is authorized under Virginia Code §33.2-221(A) to enter into contracts or agreements with the United States government.

Recommendations: VDOT recommends that the CTB approve and authorize the Chairman, on behalf of the CTB, and the Commissioner of Highways, on behalf of VDOT, to execute the GARVEE MOU, as set out in Attachment A. It is further recommended that the CTB authorize the Chairman and the Commissioner to execute any future revisions to the GARVEE MOU regarding the processes to execute and manage the Commonwealth of Virginia's GARVEE program, deemed necessary by the Chairman, VDOT and FHWA.

Action Required by CTB: Section 33.2-221(A) of the *Code of Virginia* requires the majority vote of the CTB to approve and authorize execution of the GARVEE MOU. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: The Chairman, on behalf of the CTB, and the Commissioner of Highways, on behalf of VDOT, will execute the GARVEE MOU with the Virginia Division FHWA. The Chairman and Commissioner of Highways will be authorized to execute future revisions to the GARVEE MOU as needed to manage the Commonwealth of Virginia's GARVEE program.

Options: Approve, Deny, or Defer

Public Comments/ Reaction:

ATTACHMENT A

GARVEE BOND PROGRAM
(GRANT ANTICIPATION REVENUE VEHICLE)

Memorandum of Understanding

PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) is entered into among the Federal Highway Administration Virginia Division (FHWA), the Virginia Department of Transportation (VDOT), and the Commonwealth Transportation Board (CTB). VDOT and the CTB may collectively be referred to as the State. This MOU supersedes the MOU executed on 8/21/2017.

The State intends to finance the construction of certain Federal-aid projects or a single Federal-aid project (the Projects or Project) through the sale of one or more series of Grant Anticipation Revenue Vehicle (GARVEE) Bonds (the Bonds). The purpose of this MOU is to document the procedures for managing the Bonds and their proceeds to be used for the purpose of financing all or a portion of the costs of transportation projects eligible for Federal-aid assistance under title 23 of the United States Code (23 U.S.C.).

The Bonds will be issued by the CTB. VDOT will have primary responsibility for ensuring compliance with this MOU.

The Federal legal authority enabling reimbursement of eligible debt service, issuance, and certain other bond-related costs is set forth in 23 U.S.C. 122. The State legal authority supporting the issuance of the Bonds is provided in Va. Code §§ 33.2-1708 and 33.2-1709(F).

THE BONDS

General Provisions

The Projects to be financed from the Bond proceeds are identified in **Attachment A**. The State may revise the Projects by submitting a revised **Attachment A** to FHWA.

Subject to available funding and obligation authority, FHWA will participate in the payment of debt-related costs associated with the Projects under the following conditions:

The State will provide a final Debt Service Schedule at the close of any new Bond series. The schedule must fully allocate the debt obligations (principal, interest, cost of issuance, and other eligible costs) by project (Project Allocations) and show the final maturity date for the respective series of bonds. FHWA will withhold approval and payment of debt service until the final debt service schedule is submitted and accepted. **Attachment B** provides the Debt Service Schedules and Project Allocations for all of the State's GARVEE bonds.

The Project Allocations, as may be amended from time to time, will serve as the ceilings on the amounts that may be billed against the Projects for payment of debt obligations.

The final maturity dates on the project allocation schedules will be the final dates by which any debt obligations may be reimbursed by FHWA for a project and may not be extended unless the

CTB issues additional bonds with a new final maturity date to finance additional eligible project costs that have not been previously funded.

The Project Allocations may be amended by VDOT to adjust for overruns or shortages in projects based on actual expenditures as well as for the purpose of substituting or adding Federally-eligible projects. VDOT will submit any Project Allocation amendment to FHWA for approval.

VDOT acknowledges that the eligibility of a GARVEE Bond issuance for Federal-aid reimbursement shall not constitute a commitment, guarantee, or obligation on the part of the United States to provide for payment of principal or interest on the Bonds, nor create a right of a third party against the United States for payment of the Bonds. This statement will be included in any Bond official offering document relating to GARVEE Bond issuance.

Additional Bonds / Refunding Bonds

Prior to the issuance of additional Bonds, including Bonds used to refund outstanding Bonds, VDOT and FHWA will amend all necessary attachments to this MOU with Debt Service Schedules and Project Allocations (**Attachment B**) as may be needed to reflect any such additional Bonds.

Prior to the sale of refunding Bonds, VDOT will certify and demonstrate to FHWA that (i) there are debt service cost savings on a net present value basis or (ii) the aggregate nominal debt service costs scheduled to be reimbursed with Federal funds are reduced.

If the CTB seeks to refund GARVEE Bonds to restructure debt service or change bond covenants, or for another purpose, and the refunding will not generate positive net present value savings, the FHWA Division Office will consult with the Office of Innovative Finance to ensure that the CTB and VDOT have sufficiently demonstrated and properly documented its need to increase the amount of Federal funding in the GARVEE project(s) prior to issuance of the refunding bonds. The MOU will be modified as needed to address this situation.

The CTB and VDOT will obtain FHWA approval prior to issuing any GARVEE refunding Bond and will modify the relevant project agreement(s) to reflect the revised project cost and Federal share based on the revised debt service payment schedule. Following the issuance of a GARVEE refunding Bond for any purpose, VDOT will promptly submit to FHWA a Federal-aid project agreement modification for each project along with a new debt service payment schedule and updated project allocation, as an amended **Attachment B** to this MOU, to ensure the continued eligibility of Federal reimbursements of bond costs.

THE PROJECTS

General Provisions

The Projects will be administered in accordance with the laws, regulations, and procedures applying to Federally-assisted projects.

The Federal-aid project agreement(s) will include a statement that the Project authorization is requested under the provisions of 23 U.S.C 115 and 122.

VDOT will enter the Projects in the Fiscal Management Information System (FMIS) in accordance with normal FMIS procedures provided that the additional costs associated with the Bonds (interest, issuance, and other bond related costs) will be entered as Improvement Type 45, "Debt Service." The Projects entered in FMIS should reconcile with the Projects listed in **Attachment A**.

The Projects will be authorized using Federal advance construction (AC) procedures and VDOT's current Federal-aid authorization process. The use of AC procedures as permitted by 23 U.S.C. 115 will preserve eligibility for the Projects without providing a commitment, guarantee, or obligation on the part of the United States, acting by and through the FHWA to provide for payment of project costs. The AC amount for each project will reflect the unobligated Federal share of the project including the project's estimated share of additional costs associated with the Bonds that have been issued.

Project Accounting

VDOT will maintain a system that accurately allocates eligible debt service payments, issuance costs, and other bond-related costs back to the Projects. This process is described in **Attachment B.**

The State affirms that procedures and expenditure controls are in place to ensure that all construction and Bond-related costs are eligible for Federal-aid funding.

Any interest earned from deposited bond proceeds will be used on projects eligible under title 23.

Billing and Reimbursement

In lieu of seeking Federal reimbursement for project costs funded from bond proceeds, VDOT will submit requests for Federal reimbursement of debt service payments and other eligible costs for Bonds issued under the provisions of 23 U.S.C. 122. These costs will be considered costs incurred at the time the State is required to make payment. Costs not included in the debt service payment are reimbursable at the time the State pays the costs. VDOT may request Federal reimbursement in sufficient time to make debt service payments in accordance with the provisions of the Cash Management Improvement Act.

Issuance and other bond-related costs are Federal-aid eligible to the extent they are reasonable, necessary, customary, and allocable to the Federal project. In any case, costs are subject to FHWA approval.

Subject to Federal-aid funds and obligation authority availability, VDOT will obligate and convert the amount of AC necessary to pay the Federal share of debt service (principal and interest), issuance costs, and other bond-related costs scheduled for that fiscal year. The conversion of AC for debt service on the Bonds will be obligated as the first obligation of each fiscal year to cover the payments due that year, based on the debt service schedule. The type of funds used to convert AC will directly relate to the eligibility of the projects paid for by the Bond Proceeds.

Reimbursement of Debt Service Advances by the State

In the event that anticipated Federal payments from FHWA are insufficient or late, the State may use other State resources or draw upon Project reserves, including the debt service reserve fund should one exist, to make debt service payments on the Bonds. In such a case, subsequent Federal payments may be used to reimburse the State or replenish the reserve for those draws.

It should be noted that under the Treasury Offset Program (31 CFR 285.5), the U.S. Treasury may withhold part or all of a debtor's Federal payment to satisfy the debtor's delinquent debt owed to the U.S. Government. While transportation funds are rarely affected by offsets, it is possible for an FHWA payment to be intercepted by the U.S. Treasury to satisfy a delinquent debt incurred on another Federal program. This could be problematic for the State if a payment for GARVEE debt

service were intercepted. Such a situation would have to be resolved by the State working with the creditor agency and Treasury.

The debt service reserve fund, including any interest earnings on fund balances, will be used in accordance with the financing agreement (bond resolution or trust indenture) provisions that typically govern the use of such funds associated with bond issuances.

Project Close-Out

The Projects will remain open until all underlying contracts have been closed and all payments for debt service, issuance costs, and other bond-related costs have been made and audited in accordance with the State's audit requirements. Conventional project closeout documentation will be submitted to FHWA for each project. VDOT will maintain documentation of individual project costs for not less than three (3) years after closeout of the Project and final payment in accordance with 2 CFR 200.333.

STEWARDSHIP AND OVERSIGHT

The State acknowledges i) FHWA's authority under 23 U.S.C. 106(g)(2) to perform an annual assessment of the adequacy of the State's accounting procedures and processes in order to ensure that the State's financial management system properly supports the allocation of eligible debt service (principal and interest), issuance costs, and other bond-related costs back to the Projects; and ii) FHWA may authorize an audit of the Federal-aid projects being financed under 23 U.S.C. 122, the State's allocation of debt service expense, and bond-related costs thereto, by an independent auditor at the expense of the State apportionments.

From issuance to maturity of the bond, VDOT and the Division will provide updated information into the FHWA Office of Innovative Finance’s GARVEE database annually, or at any change in the terms of the bond agreement.

In accordance with the Division Office Stewardship and Oversight Plan, FHWA will perform reviews and assessments of the GARVEE program as needed to ensure compliance with Federal requirements. If the Division Office Stewardship and Oversight plan does not include such provisions, VDOT and Division will amend the Plan to include review and assessment roles for both the Division and VDOT.

VDOT will include programming of debt service and related costs in the Statewide Transportation Improvement Program (STIP) submitted to FHWA for review and approval.

The State will provide FHWA with an electronic copy of the Official Statement or other offering document for each GARVEE Bond issuance.

AMENDMENTS TO THE MOU

This MOU shall not be altered, modified, or amended except by an instrument in writing and executed by the Parties below. The Parties will amend this MOU as needed to reflect material changes and will review it at least every five years to determine if changes are needed. This MOU shall not terminate except upon ninety (90) days prior written notice from either Party.

Execution of Agreement

This MOU is effective as of the date of final signature below.

SIGNATURES

_____	_____
Stephen C. Brich, P.E. **Commissioner of Highways** **Virginia Department of Transportation**	**Date**
_____	_____
W. Sheppard Miller III **Chairman** **Commonwealth Transportation Board**	**Date**
_____	_____
Edward Ofori, P.E. **Virginia Division Administrator** **Federal Highway Administration**	**Date**

Attachment A - GARVEE Project Summary

Attachment B - Debt Service Schedule