

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

Page 1 of 1

ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§6.1 – 6.3 and new §6.5 concerning general provisions, amendments to §6.12, concerning eligible projects, and §6.42, concerning performance of work, to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments and new section, attached to this minute order as Exhibits A - D, are incorporated by reference as though set forth at length verbatim in this minute order.

IT IS THEREFORE ORDERED by the commission that the amendments to §§6.1 – 6.3, §6.12, and §6.42 and new §6.5, are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:


Chief Financial Officer

Recommended by:


Executive Director

110220 SEP 29 05

Minute Number Date Passed

1 Proposed Preamble

2 The Texas Department of Transportation (department) proposes
3 amendments to §§6.1 - 6.3, and new §6.5, concerning general
4 provisions, amendments to §6.12, concerning eligible projects,
5 and §6.42, concerning performance of work.

6

7 EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

8 House Bill 2134, 79th Texas Legislature, Regular Session, 2005,
9 amended Transportation Code, Chapter 222, Subchapter D, relating
10 to the State Infrastructure Bank (SIB). Those amendments
11 clarify in state law that SIB accounts and loans may be funded
12 with state dollars as well as federal dollars, as allowed under
13 federal law. Those amendments further clarify that the Texas
14 Transportation Commission (commission) will administer the SIB
15 program in accordance with applicable state and federal law.
16 The proposed revisions to Chapter 6, implement the statutory
17 amendments.

18

19 Section 6.1, Purpose, is amended to clarify that SIB loans may
20 be used for eligible transportation facilities on or off the
21 state highway system.

22

23 Section 6.2, Definitions, is amended to add new 6.2(14) to
24 define Transportation Code, Chapter 222, Subchapter D, Section
25 222.071 et.seq., relating to a State Infrastructure Bank, as the

1 State Act; to renumber §§6.2(14) and 6.2(15) as 6.2(15) and
2 6.2(16), respectively; to clarify that new §6.2(15) includes
3 capital expenditures for commuter rail; and to update new
4 §6.2(16) to current terminology.

5
6 Section 6.3, General Policies, is amended to clarify that state
7 funds may be deposited into the SIB by order of the commission.

8
9 New §6.5, Separate Subaccounts, is added to Subchapter A to
10 clarify that the commission may create subaccounts in the SIB
11 that are capitalized solely with state funds, and that such
12 subaccounts by their nature are not subject to the federal law
13 relating to state infrastructure banks.

14
15 Section 6.12, Eligible Projects, is amended to add the statutory
16 requirement that financial assistance from the SIB is limited to
17 eligible projects that are consistent with the transportation
18 plan developed by the metropolitan planning organization.

19
20 Section 6.42, Performance of Work, is amended to clarify that
21 the commission will administer the SIB program in accordance
22 with applicable state and federal law.

23
24 FISCAL NOTE

25 James Bass, Chief Financial Officer, has determined that for

1 each of the first five years the amendments and new section as
2 proposed are in effect, there will be no fiscal implications for
3 state or local governments as a result of enforcing or
4 administering the amendments and new section. There are no
5 anticipated economic costs for persons required to comply with
6 the sections as proposed.

7

8 Mr. Bass, has certified that there will be no significant impact
9 on local economies or overall employment as a result of
10 enforcing or administering the amendments or new section.

11

12 PUBLIC BENEFIT

13 Mr. Bass has also determined that for each year of the first
14 five years the sections are in effect, the public benefit
15 anticipated as a result of enforcing or administering the
16 amendments and new section will be the creation of a state
17 funded SIB program for eligible transportation projects that can
18 be applied to on-system and off-system highway projects and
19 transit projects. There will be no adverse economic effect on
20 small businesses.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed amendments and new section may
24 be submitted to James Bass, Chief Financial Officer, Finance
25 Division, 125 East 11th Street, Austin, Texas 78701-2483. The

1 deadline for receipt of comments is 5:00 p.m. on November 14,
2 2005.

3

4 STATUTORY AUTHORITY:

5 The amendments and new section are proposed under Transportation
6 Code, §201.101, which provides the commission with the authority
7 to establish rules for the conduct of the work of the
8 department, and more specifically, Transportation Code,
9 §222.077, which requires the commission to adopt rules governing
10 the SIB.

11

12 CROSS REFERENCE TO STATUTE: Transportation Code, §§222.072,
13 222.073, 222.074, 222.076, and 222.077.

SUBCHAPTER A. GENERAL PROVISIONS

§6.1. Purpose.

(a) Transportation Code, Chapter 222, Subchapter D, establishes a state infrastructure bank as an account within the state highway fund, to be administered by the Texas Transportation Commission. The commission shall use money deposited in the bank to:

(1) encourage public and private investment in transportation facilities both within and outside of the state highway system, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state; and

(2) develop financing techniques designed to:

(A) expand the availability of funding for transportation projects and to reduce direct state costs;

(B) maximize private and local participation in financing projects; and

(C) improve the efficiency of the state transportation system.

(b) This chapter specifies the procedures and conditions by which an eligible entity may apply for and obtain financial assistance from the bank.

1 §6.2. Definitions. The following words and terms, when used in
2 this chapter, shall have the following meanings, unless the
3 context clearly indicates otherwise.

4 (1) Bank--The state infrastructure bank account in the
5 state highway fund.

6 (2) Commission--The Texas Transportation Commission.

7 (3) Construction--A term as defined by Title 23, United
8 States Code, §101, and which includes preliminary studies
9 required to determine the feasibility of an eligible project.

10 (4) Department--The Texas Department of Transportation.

11 (5) Design manual--The latest editions of and successors
12 to the:

13 (A) operations and procedures manual of the design
14 division;

15 (B) bridge operational planning manual of the design
16 division;

17 (C) hydraulic manual of the design division;

18 (D) Texas Manual on Uniform Traffic Control Devices;

19 (E) standard highway sign designs for Texas; and

20 (F) traffic control standard sheets booklet of the
21 traffic operations division.

22 (6) Executive director--The executive director of the
23 Texas Department of Transportation, or his or her designee.

1 (7) Expected financing period--The time taken to fully
2 pay any and all liabilities incurred to finance an eligible
3 project, including all extensions of time through refunding or
4 restructuring.

5 (8) Federal Act--Section 350 of the National Highway
6 System Designation Act of 1995 (Pub. L. No. 104-59) and all
7 rules and regulations adopted under the Act.

8 (9) Federal-aid highway--A term as defined in Title 23,
9 United States Code, §101.

10 (10) Financial assistance--A term which includes:

11 (A) extending credit by direct loan;

12 (B) providing credit enhancements;

13 (C) serving as a capital reserve for bond or debt
14 instrument funding;

15 (D) subsidizing interest rates;

16 (E) insuring the issuance of a letter of credit or
17 credit instrument;

18 (F) financing a purchase or lease agreement in
19 connection with a transit project;

20 (G) providing security for bonds and other debt
21 instruments; or

22 (H) providing methods of leveraging money that have
23 been approved by the United States Secretary of Transportation

1 and which relate to the project for which the assistance is
2 provided.

3 (11) Investment grade rating--Creditworthiness sufficient
4 to qualify a debt as eligible for commercial bank investment
5 under regulations issued by the Comptroller of the Currency.
6 For bonds, these debts are limited to ratings of "AAA," "AA,"
7 "A," and "BBB" by Standard and Poor's Rating Services or
8 corresponding ratings used by other rating services.

9 (12) Metropolitan planning organization (MPO)--An
10 organization designated in certain urbanized areas to carry out
11 the transportation planning process as required by Title 23,
12 United States Code, §134.

13 (13) Secondary Funds--A term which includes:

14 (A) the repayment of a loan, including interest,
15 principal, fees, charges, or other assistance that is provided
16 with money deposited to the credit of the bank; and

17 (B) the investment income generated by secondary funds
18 deposited to the credit of the bank.

19 (14) State Act--Transportation Code, Chapter 222,
20 Subchapter D, Section 222.071 et.seq., relating to a State
21 Infrastructure Bank.

22 (15) [+14] Transit project--Capital expenditures [7
23 ~~excluding expenditures for commuter rail,~~] eligible for funding

1 under Title 49, United States Code, §5307, §5309, and §5311.

2 (16) [~~15~~] Unified Transportation Program, Construct
3 [~~Priority 1~~] and Develop [~~Priority 2~~] designations--That group
4 of transportation programs for which the commission has
5 authorized the department to prepare or complete plans,
6 specifications, and estimates, or acquire right-of-way, or
7 adjust utilities, or be let to contract.

8

9 §6.3. General Policies.

10 (a) All actions of the bank will be in accordance with
11 applicable federal and state law, and applicable rules and
12 regulations.

13 (b) Grant financing will not be considered.

14 (c) No actions will be knowingly taken which would result
15 in the bank's credit rating falling below investment grade.

16 (d) If the bank's credit rating falls below investment
17 grade, the commission will take actions necessary or appropriate
18 to return the bank's credit rating as promptly as practicable to
19 investment grade.

20 (e) The federal government shall not be obligated by any
21 act of the commission or department under this chapter.

22 (f) Repayment of any financial assistance from the bank
23 will commence at the earliest reasonable date consistent with

1 applicable federal and state law, rules, and regulations. The
2 term for repaying any financial assistance will not exceed 30
3 years after the date of the first payment.

4 (g) The Federal Highway Administration, the Federal Transit
5 Administration, and the Comptroller General of the United
6 States, each if applicable, and the Texas State Auditor's
7 Office, and the department, or any of their authorized
8 representatives, shall have the right of access to any books,
9 documents, papers, or other records of the applicant which are
10 pertinent to any agreement, in order to make audits,
11 examinations, excerpts, and transcripts.

12 (h) Federal funds received by the state under the federal
13 act, matching state funds in an amount required by that act,
14 proceeds from bonds issued under the state act, secondary funds,
15 other state funds deposited into the bank by order of the
16 commission, and other money received by the state that is
17 eligible for deposit in the bank, may be deposited into the
18 bank.

19
20 §6.5. Separate Subaccounts

21 (a) The bank shall consist of at least two separate
22 subaccounts, a highway subaccount and a transit subaccount.

23 (b) In addition to the subaccounts under subsection (a) of

1 this section, the commission may create one or more subaccounts
2 that are capitalized with state funds only. Subaccounts
3 capitalized with state funds only are not subject to the federal
4 act.

SUBCHAPTER B. ELIGIBILITY

§6.12. Eligible Projects.

(a) The following public or private projects are eligible for financial assistance:

(1) construction of a federal-aid highway, including required preliminary studies;

(2) a transit project; or

(3) for the expenditure of secondary funds, a transit project including a project eligible for assistance under Title 49, United States Code, §5310, or the planning, development, construction, maintenance, or operation of a public road, provided that:

(A) the project is eligible for assistance under Title 23 or Title 49, United States Code; and

(B) the department is authorized by state law to provide assistance for the project.

(b) Financial assistance to a private entity shall be limited to an eligible project that:

(1) provides transportation services or facilities that provide a demonstrated public benefit; or

(2) is constructed or operated in cooperation with a state agency or political subdivision in accordance with an agreement between that state agency or political subdivision and

1 a private entity.

2 (c) Financial assistance to a public or private entity
3 shall be limited, as applicable, to an eligible project that is
4 consistent with the transportation plan developed by the
5 metropolitan planning organization.

1 SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS

2 §6.42. Performance of Work.

3 (a) Work performed by the department. The department may,
4 in its discretion and consistent with state law, provide all or
5 part of the work connected with the project in the department's
6 normal course of business. For work performed by the
7 department, the following provisions will apply.

8 (1) The department will account for all costs of the
9 project in the normal course of business in accordance with
10 applicable law [~~as it does for all federal aid eligible~~
11 ~~projects~~].

12 (2) The department will make progress payments or set
13 aside funds from the bank on behalf of the applicant as the
14 department deems necessary. Such actions shall bind the
15 applicant to repayment according to the terms of the
16 agreement(s). Interest shall accrue from the date of the
17 payment or setting aside of funds.

18 (3) The department's actions and decisions regarding the
19 project shall not be contestable by the applicant.

20 (4) The applicant shall provide the department, and if
21 applicable, the Federal Highway Administration, and the Federal
22 Transit Administration, or their authorized representatives as
23 applicable, with right of entry or access to all properties or

1 locations necessary to perform activities required to execute
2 the work, inspect the work or aid otherwise in the prompt
3 pursuit of the work.

4 (b) Work performed by applicant. The department may, in
5 its discretion and consistent with state law, provide that the
6 applicant conduct all or part of the work connected with the
7 project. For work performed by the applicant, the following
8 provisions apply.

9 (1) The applicant shall comply with applicable
10 requirements of the federal act, Title 23, United States Code,
11 Title 49, United States Code, other applicable state and federal
12 law, and all terms and conditions of any agreements. Where
13 approval or concurrence of the Federal Highway Administration,
14 the Federal Transit Administration, or other federal agency is
15 required, the applicant shall seek such action through the
16 department. The applicant shall reimburse the department for
17 any loss of federal funds to the department resulting from the
18 applicant's failure to comply.

19 (2) The applicant shall maintain project records and
20 accounts in accordance with generally accepted accounting
21 principles, and all applicable federal and state requirements.

22 (3) The applicant shall, at the applicant's cost, have a
23 full audit performed annually of the project records and

1 accounts by an independent certified public accountant. The
2 applicant shall cause the auditor to provide a full copy of the
3 audit report and any other management letters or auditor's
4 comments directly to the department.

5 (4) The applicant shall hold all project records,
6 accounts, and supporting documents open for state or federal
7 audits until project completion.

8 (5) Upon completion of the project, the applicant shall
9 forward to the department all project files as prescribed by the
10 department. The department shall retain these files until all
11 financial assistance has been repaid and necessary audits have
12 been performed.