



Guidance

FAQ – State Infrastructure Bank and Environmental Review

Introduction

This is an Environmental Affairs Division (ENV) guidance document that provides answers to a number of frequently asked questions regarding the environmental review requirements for a public or private entity project that have applied for state infrastructure bank (SIB) financing.

1. Q: What is the state infrastructure bank?

A: The state infrastructure bank, or SIB, is a financial assistance program administered by TxDOT to provide innovative financing methods to communities to assist them in meeting their infrastructure needs. The bank is an account within the state highway fund, established by state law under Transportation code, Chapter 222, Subchapter D. Eligible public or private entities may submit applications for a loan from the SIB to build eligible projects. For more information about the SIB program, see TxDOT's Project Finance, Debt and Strategic Contracts Division's web page.

2. Q: When a public or private entity applies to TxDOT for a SIB loan, are there any environmental review requirements that apply?

A: Yes, if the project is an FHWA project or will take place on the state highway system or other real property owned by TxDOT, then it requires a review and clearance under our environmental review program, just like any other project.

The applicable TxDOT SIB rules state: "Before final approval is granted under subsection (e) of this section, the department or the applicant must complete a study of the social, economic, and environmental impact of the project. The study must meet all requirements for a federal or state project as if the project had been undertaken directly by the department." 43 TAC 6.32(d)(1).

ENV interprets that underlined phrase as meaning we apply the same applicability threshold for doing an environmental review and clearance that we would for any project that TxDOT undertakes. In early 2020, TxDOT completed a rulemaking to limit the overall applicability of our environmental review rules to (1) an FHWA transportation project, or (2) any portion of a state transportation project that will take place on the state highway system or other real property owned by TxDOT. 43 TAC 2.3(a)(1). (The previous version of the rules also applied to projects receiving state funding from TxDOT even if not on the state highway system or other real property owned by TxDOT).

Therefore, if the project will receive no FHWA funding, and will not take place on the state highway system or other real property owned by the department, then it does not require an environmental review and clearance under our Chapter 2 review rules, even if it will receive funding provided by TxDOT under the SIB program. Of course, in this instance, the entity building the project still has to comply with all applicable environmental laws (Endangered Species Act, Clean Water Act, etc.).

3. Q: Do utility relocations outside the ROW funded with a SIB loan need to be reviewed under Chapter 2?

A: No, utility re-locations outside the ROW, even if funded through a SIB loan, would not require review under Chapter 2 because, if it were a TxDOT project, that activity would not be included as part of the "transportation project" pursuant to 43 T.A.C. §2.3(e)(2).

4. Q: Who does the environmental review, if one is required?

A: For a project on the state highway system, TxDOT’s SIB rules state that TxDOT is responsible for performing the environmental studies, with any costs to be charged to the project. 43 T.A.C. §6.32(d)(3). Therefore, the TxDOT district will be the project sponsor, and either the district or ENV will be the department delegate, depending on the classification of the project (i.e., CE vs. EA or EIS).

For a project not on the state highway system, the applicant is responsible for performing the environmental studies (unless TxDOT and the applicant agree that TxDOT shall do it, in which case any costs shall be charged according to TxDOT’s local participation agreement). 43 T.A.C. §6.32(d)(2). In this situation, the applicant shall, at its discretion, either request to be the project sponsor under Chapter 2 (if it is eligible under 43 T.A.C. §2.7(c), or prepare the environmental review document, technical reports, etc. for the local TxDOT district’s use, as provided at 43 T.A.C. §2.7(b), in which case the local TxDOT district would serve as the project sponsor.

5. Q: When must the Chapter 2 review be complete in relation to the SIB loan application process?

A: The Texas Transportation Commission cannot approve the SIB loan application until TxDOT has issued a CE determination, FONSI, or ROD, depending on the project application. See 43 T.A.C. §6.32(d)(1).

6. Q: How will TxDOT’s Project Finance, Debt and Strategic Contracts Division confirm the environmental clearance as it processes the SIB loan application?

A: TxDOT’s Project Finance, Debt and Strategic Contracts Division (PFD) will email an “ENV Division SIB Application Review Form” to the ENV Project Delivery Section Director.

If the project does not require an environmental review and clearance (e.g., because it has no FHWA funding and will not take place on the state highway system or other real property owned by TxDOT, or consists of an off-ROW utility relocation), the ENV Project Delivery Section Director will enter an explanation in the “Comments” box, check “Approval,” and forward the form to the ENV Division Director for signature. After the ENV Division Director signs, the ENV Project Delivery Section Director will forward the signed form to PFD, and store both the Word version of the form and the pdf of the version signed by the ENV Division Director in this folder: Groups (T:) → PD → SIB Application Review.

If the project does require an environmental review and clearance, then the ENV Project Delivery Section Director will confirm the clearance in ECOS, check “Approval” on the form, and insert a customized statement in the “Comments” box of the form as indicated below.

“This project has been environmentally cleared. A **<category exclusion determination, FONSI, or ROD>** was issued on **<insert date>**. No other environmental considerations are necessary.

<if the project is in a non-attainment area, and requires a conformity determination, include the following statement> The project is in a Clean Air Act non-attainment area and is consistent with the Statewide Transportation Improvement Program, with the conforming plan and Transportation Improvement Program for the MPO in which the project is located, and with the State Implementation Plan. A conformity determination was approved by FHWA on **<insert date>**.



<if the project is in a non-attainment area, but does not require a conformity determination, include the following statement> The project is in a Clean Air Act non-attainment area but no project-level conformity determination was required.

<if the project is not in a non-attainment area, include the following statement> The project is not in a Clean Air Act non-attainment area.

ENV recommends approval of the SIB loan application.”

After inserting the customized statement in the “Comments” box, the ENV Project Delivery Section Director will forward to the ENV Division Director for signature. After the ENV Division Director signs, the ENV Project Delivery Section Director will forward the signed form to PFD, and store both the Word version of the form and the pdf of the version signed by the ENV Division Director in this folder: Groups (T:) → PD → SIB Application Review.

If the project does require an environmental review and clearance, but it has not been cleared yet in ECOS, then the ENV Project Delivery Section Director will notify both PDF and the appropriate district environmental staff that ENV cannot recommend approval of the SIB loan until the project is cleared in ECOS.



Appendix A: Revision History

The following table shows the revision history for this interim guidance document.

Revision History	
Effective Date Month, Year	Reason for and Description of Change
May 2021	<p>Version 2 was released.</p> <ul style="list-style-type: none">• Updated to reflect 2020 rulemaking limiting applicability of environmental review process to FHWA projects and projects on the state highway system or other real property owned by TxDOT.• Added instructions for ENV Project Delivery Section Director regarding handling of “ENV Division SIB Application Review Form” forwarded by TxDOT’s Project Finance, Debt and Strategic Contracts Division.
March 2017	<p>Version 1 was released. Document number was changed from 100.03.FAQ to 020.04.GUI</p>