

# **State Infrastructure Bank (SIB) Applicant Handbook**



**Texas Department of Transportation  
Finance Division  
July 2000**

Version 2.0

**State Infrastructure Bank**

Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684

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This handbook is designed to explain the State Infrastructure Bank program administered by the Texas Department of Transportation, and to assist eligible applicants in applying for financial assistance from the SIB. An application form is included in this handbook (see page 11) and may be submitted at any time to your local TxDOT district office or to the Budget and Finance Division of TxDOT. An electronic version of the application is available at <http://www.dot.state.tx.us>. Additional information may be obtained from the Budget and Finance Division.

The contact phone number for the local TxDOT district offices are:

Abilene (915) 676-6800	Amarillo (806) 356-3200	Atlanta (903) 796-2851
Austin (512) 832-7000	Beaumont (409) 892-7311	Brownwood (915) 646-2591
Bryan (409) 778-2165	Childress (817) 937-2571	Corpus Christi (361) 808-2300
Dallas (214) 320-6100	El Paso (915) 774-4200	Fort Worth (817) 370-6500
Houston (713) 802-5000	Laredo (956) 712-7400	Lubbock (806) 745-4411
Lufkin (409) 634-4433	Odessa (915) 332-0501	Paris (903) 737-9300
Pharr (210) 702-6100	San Angelo (915) 944-1501	San Antonio (210) 615-1110
Tyler (903) 510-9100	Waco (254) 867-2700	Wichita Falls (940) 720-7700
	Yoakum (361) 293-4300	

## Table of Contents

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<b>INTRODUCTION</b> .....	<b>1</b>
HOW DOES IT WORK? .....	1
ADVANTAGE TO LOCAL COMMUNITIES .....	1
<b>BACKGROUND</b> .....	<b>2</b>
<b>PURPOSE</b> .....	<b>3</b>
<b>ELIGIBILITY</b> .....	<b>4</b>
ELIGIBLE APPLICANTS .....	4
ELIGIBLE PROJECTS .....	4
<b>SIB ADMINISTRATION</b> .....	<b>5</b>
<b>FINANCIAL ASSISTANCE MANAGEMENT</b> .....	<b>6</b>
TYPES OF FINANCIAL ASSISTANCE AVAILABLE .....	6
PROJECT AGREEMENTS .....	6
TERMS .....	7
UNDERWRITING STANDARDS .....	7
PROJECT SPONSOR LOAN REQUIREMENTS .....	8
<b>APPLICATION PROCESS</b> .....	<b>9</b>
FINANCIAL AND CREDIT REQUIREMENTS OF APPLICANT .....	10
OTHER REQUIREMENTS .....	10
SUSPENSION OF APPLICATIONS .....	10
APPLICATION FOR FINANCIAL ASSISTANCE .....	11
<b>APPLICATION REVIEW PROCESS</b> .....	<b>13</b>
DEPARTMENT ACTION .....	13
COMMISSION ACTION .....	13
<i>Preliminary approval</i> .....	13
<i>Preliminary approval criteria</i> .....	13
<i>Final approval</i> .....	14
<b>PROJECT MANAGEMENT</b> .....	<b>16</b>
PERFORMANCE OF WORK .....	16
DESIGN, CONSTRUCTION AND PROCUREMENT STANDARDS .....	16
MAINTENANCE AND OPERATIONS .....	16
<b>GLOSSARY</b> .....	<b>17</b>
<b>APPENDIX A - RULES GOVERNING THE OPERATION OF THE TEXAS SIB</b> .....	<b>20</b>

## **Introduction**

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We are continually being asked to do more with less . . . in our jobs, our businesses and in state government. Local demands for transportation improvements greatly outnumber the funds available to meet them under traditional federal and state funding methods. This continuing problem can now be addressed with an innovation financing program, the Texas State Infrastructure Bank, or SIB.

### ***How Does It Work?***

Much like a private bank, the SIB uses federal and state capitalization funds to get started and offers eligible customers a range of loans and credit enhancement products. The SIB will offer its financial services to finance or financially enhance transportation projects which meet its selection criteria. As loans are repaid to the SIB, additional assistance will be granted for more transportation projects. The SIB, in effect, is a revolving loan fund.

### ***Advantage to Local Communities***

Why would a local entity want to borrow money from the SIB when historically they have not had to pay for local transportation projects? The answer is twofold: time and money.

Currently, TxDOT expects to be able to fund only about a third of the needed transportation projects in Texas. While TxDOT will continue to fund as many needed projects as possible, in many cases, a community's project may be priority ranked such that funding may not occur until year 10 under normal circumstances.

If the local community wants the project completed faster, it could borrow money from the SIB and advance the project by several years. Also, if the proposed transportation project would generate additional economic development, the local community may receive enough revenue from the increased tax base to easily repay the financial assistance from the SIB. Thus, the community could get its project completed much sooner and at little or no additional costs

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## **Background**

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In November of 1995, the President of the United States signed Public Law 104-59, known as the 1995 National Highway System Designation Act. Section 350 of that law allowed the United States Secretary of Transportation to designate a maximum of ten states as pilot projects for the State Infrastructure Bank program. Texas was selected as one of the initial pilot states.

A State Infrastructure Bank, or a SIB, operates chiefly as a revolving loan fund and may provide a wide range of financial assistance in addition to loans. The purpose of the pilot program is to attract new funding into transportation, to encourage innovative approaches to transportation problems, and to help build needed transportation infrastructure. The law provides that each designated state may transfer up to ten percent of certain of its federal dollars, match those funds with state funds, and deposit them into a State Infrastructure Bank. The greatest benefit of this program may well be the creation of a self-sustaining, growing, revolving loan fund.

In 1997, the 75<sup>th</sup> Texas Legislature passed State Bill 370 which created the Texas State Infrastructure Bank which is to be administered by the Texas Transportation Commission, the governing body of the Texas Department of Transportation. In September 1997, the Texas Transportation Commission approved the establishment of the State Infrastructure Bank and its operating rules.

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## Purpose

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The purpose of the Texas State Infrastructure Bank is to:

- Encourage public and private investment in transportation facilities, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state;
- Expand the availability of funding for transportation projects and to reduce direct state costs; and
- Improve the efficiency of the state transportation system.

The SIB program arose out of the need to improve, rehabilitate and renovate transportation facilities. Transportation needs are increasing while federal, state and local financial resources are constant or declining. The SIB program is one of the ways the federal government is applying innovative financial techniques to address growing transportation needs.

The mission of the SIB is to provide loans and other financial assistance to improve transportation infrastructure in the state of Texas. To accomplish this mission, the Texas Department of Transportation, TxDOT, will operate the SIB as a self-sustaining, growth-oriented fund. TxDOT will also ensure projects satisfy all appropriate federal, state and local planning and programming requirements.

TxDOT has designed the SIB to enhance the ability of borrowers to access capital funds at lower-than-market interest rates. The success of the SIB program will depend on maintaining strong credit standards and successfully leveraging funds to increase the program's activity through a revolving loan fund structure. The quality and diversification of SIB's financial assistance will have a direct impact on the interest rates paid by borrowers.

## **Eligibility**

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### ***Eligible Applicants***

Any public or private entity authorized by law to construct, maintain or finance a transportation project is eligible to apply for financial assistance from the SIB.

### ***Eligible Projects***

The following public or private projects are eligible for consideration for financial assistance from the SIB:

- 1) construction of a federal-aid highway, including required preliminary studies;
- 2) a transit project; or
- 3) for the expenditure of secondary funds from the SIB, 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.

Approval for financial assistance to a private entity shall be limited to an eligible project that:

- provides transportation services or facilities that demonstrate public benefit; or
- 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 a private entity.

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**SIB Administration**

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TxDOT, through its Budget and Finance Division, conducts the activities necessary to manage and administer the SIB. The Texas Transportation Commission capitalized the SIB with available federal and state money designated for this purpose. The SIB may issue bonds in the future to generate additional capital for transportation projects. Interest earnings on fund balances and loan repayments will also contribute to the available capital.

The Budget and Finance Division has been designated as the department contact for the purpose of providing information and assistance to potential applicants. Assistance may include non-binding advice, counsel, and consultation regarding all aspects of a potentially eligible project. If TxDOT determines that the project is otherwise eligible for assistance and that department resources are available, TxDOT may provide engineering and other technical assistance to aid potential applicants in developing their application. Any advice, assistance, or aid provided will not constitute a commitment or liability on the part of TxDOT or the Commission. Potential applicants are encouraged to communicate with the contact at the earliest possible date.

Texas Department of Transportation  
Budget and Finance Division  
Frank J. Smith, Director  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483  
(512) 463-8684  
(512) 463-6661 fax

## **Financial Assistance Management**

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### ***Types of Financial Assistance Available***

The SIB will structure a financial assistance package that may include loans as well as a variety of credit enhancements such as lines of credit, letters of credit, bond insurance, and capital reserves. Determination of the final amount of financing and the loan/bond mix will be based on:

- funds available to the bank,
- the financial feasibility of a project,
- a reasonable cost estimate of the project,
- the individual credit strength of an applicant,
- the ability of the applicant to repay the assistance;
- the public benefit of the project, and
- any other applicable issues.

Loans may be funded directly from available SIB resources or through the sale of revenue bonds. Revenue bond financing can offer applicants low interest rates and financing terms consistent with the nature of the project.

Grants are not an authorized form of assistance from the SIB. Projects that are not financially feasible will not be funded by the SIB.

### ***Project Agreements***

All financial assistance from the SIB will be defined by a project agreement entered into between TxDOT and the recipient, also referred to as the project sponsor.

The Executive Director of TxDOT will negotiate the terms of agreements deemed necessary to comply with any requirements of preliminary approval, to protect the public's safety, and to prudently provide for the protection of public funds while furthering the purposes of the SIB.

After a project receives preliminary approval, the Executive Director may negotiate:

- the project's limits, scope, definition, design, and any other factors which might impact the financing of the project;
- the amount, type and timing of disbursements of financial assistance;
- interest rates including subsidies;
- fees;
- bank charges;
- repayment schedules;

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- term to maturity of any financial assistance;
- dedicated security and collateral for the term for the financial assistance;
- covenants and pledges for the term of the financial assistance;
- default provisions; and
- all other provisions necessary to complete an agreement for financial assistance from the SIB.

**Terms**

Interest rates will be driven, to a significant degree, by:

- types of projects funded,
- the security pledged by borrowers,
- how effectively the project fulfills local and statewide transportation needs, and
- interest rates in both the taxable and the tax-exempt markets at the time the assistance is made.

The repayment of SIB assistance must commence no later than 5 years after the project has been completed, or in the case of a highway project, when the facility has opened to traffic (whichever is later). Repayments must be completed within 30 years after they commence. Projects which commence repayment sooner and those with shorter amortization periods will be more attractive to the department for SIB funding than longer term loans.

If the department determines that all the loaned funds are not needed to complete a transportation project, the department may accept early repayment from the recipient and discharge that part of the recipient's obligation.

**Underwriting Standards**

In order to be successful in developing a healthy revolving fund program, maintenance of SIB underwriting standards is crucial. The underwriting standards define the type of loans the SIB will make and under what conditions the loans are made. The SIB must maintain an investment grade rating. Depending on the security agreement, applicants may generally expect that revenues pledged to repay loans will exceed 1.2 times the anticipated loan repayment.

In general, the SIB underwriting standards will be developed to insure that, at a minimum, loans and other financial assistance made from the SIB will be repaid. In addition, standards will be established to insure that eligible, creditworthy projects receive funding from the SIB. This will enhance the credit quality of the

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program, and result in a higher capacity for leveraging. More leveraging will allow a greater number of transportation projects around the state to receive funding.

***Project Sponsor Loan Requirements***

TxDOT will assess the credit quality of the applicant and determine if there are sufficient resources to repay the loan. The applicant must also certify to this effect. For revenue-backed projects, project feasibility must include an evaluation of potential earnings or revenue to be generated by the project and debt service coverage. If a project involves the general obligation guarantee of an applicant, the analysis must include an evaluation of the taxing powers of the jurisdiction.

Approval of SIB assistance must maintain the credit standards of the program. In doing so, TxDOT shall use reasonable and prudent standards for evaluating applications that consider the use of bond financing when available as well as direct loan.

As part of their financial review of the applicant, TxDOT also must determine:

- 1) that sufficient moneys are or will be available in the SIB for the project, and
- 2) that the applicant is willing and able to enter into a project agreement with TxDOT for the repayment, and
- 3) the applicant has sufficient administrative ability to undertake and complete the project or can obtain these administrative services.

If a portion of the non-SIB funds needed to complete the project are not available at the time an application is reviewed, any SIB funding will be conditional on the securing of the other needed funds.

## Application Process

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The SIB application process is a collaborative effort between TxDOT headquarters, district staff, and the applicant. An eligible entity should submit an application (see the form on pages 11 and 12) to TxDOT containing the following information:

- 1) An overview and description of the project.
- 2) The estimated cost of the project.
- 3) The total amount and proposed use of requested financial assistance.
- 4) The proposed collateral or security.
- 5) The priority claim against the collateral or security.
- 6) A description of the need for the project and potential impact on traffic congestion and mobility.
- 7) The latest bond rating of the applicant or other evidence of creditworthiness similar to that required to obtain a bond rating.
- 8) For public roadway projects, the applicant shall conduct a preliminary design study which includes:
  - the initial route and potential alignments;
  - the project's logical termini and independent utility;
  - the location of all right-of-way, facilities and equipment required to make the project functional; and
  - any revisions or changes to state highway system facilities necessitated by the project.
- 9) For transit projects, the applicant shall conduct a preliminary scope study which includes:
  - preliminary layouts,
  - architectural drawings,
  - equipment specifications, and

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- any other information necessary to fully describe the project.

Other additional information may be requested depending on the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of financial assistance requested, the applicant's financial status, and how soon transportation benefits will begin.

***Financial and Credit Requirements of Applicant***

Upon final approval of the project, the applicant shall agree to the following:

- provide collateral and security for repayment, or other protections as the Executive Director may deem necessary;
- repay the financial assistance at specified interest rates over specified time periods according to repayment schedules and including agreed upon bank fees or compensation;
- abide by provisions governing default;
- have periodic audits in compliance with all applicable federal and state requirements; and
- reimburse TxDOT for all costs or losses of funds resulting from a failure to perform by the applicant.

***Other Requirements***

Depending on the facts and circumstances of each project, the applicant, and the type of financial assistance provided, the Executive Director may require additional terms and conditions necessary to protect the public safety, prudently provide for the protection of public funds, and further the purposes and requirements of the SIB.

***Suspension of Applications***

If the Commission determines that bank funding is fully committed or other uncertainties exist which warrant suspension of acceptance of applications, TxDOT may publish in the Texas Register a notice providing that applications will no longer be accepted. When conditions change, the Commission shall publish in the Texas Register a notice that applications are again being accepted.

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***Application for Financial Assistance***

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## **Application Review Process**

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### ***Department Action***

The Department will review the application and any required preliminary studies, and notify the applicant if the application is complete.

The Executive Director shall perform an analysis of the application (including the preliminary studies) to support a recommendation to the Commission. The Executive Director will submit the application together with findings and recommendations to the Commission.

### ***Commission Action***

The Commission may analyze the sufficiency of the information, the probable accuracy of the projections, the anticipated financial condition of the applicant and the project, the impact of the project on the economy of the region, and any other information the Commission determines appropriate.

### **Preliminary approval**

Prior to granting preliminary approval of an eligible project, the Commission will consider:

- whether the project is on the state highway system;
- the transportation need and public benefit of the project;
- the present and projected financial condition of the SIB;
- the potential social, economic and environmental impacts of the project;
- the project's conformity with purposes of the SIB; and
- the evidence of public support.

### **Preliminary approval criteria**

The Commission may grant preliminary approval to a project for SIB financial assistance if it finds that:

- the project is consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;

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- if the project is in a Clean Air Act non-attainment area, the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan;
- the project will improve the efficiency of the state's transportation systems;
- the project will expand the availability of funding for transportation projects or reduce direct state costs; and
- the preliminary studies show that the project and the applicant are likely to attain an investment grade credit rating acceptable for financial assistance from the SIB.

Additionally, the Commission, when granting a proposed project for preliminary approval, will also consider:

- the probable ability of any pledged revenues to meet all obligations of the project and to repay the financial assistance to the SIB;
- management of the project;
- adequacy of working capital and operating funds;
- collateral and other guarantees of repayment;
- how quickly the financial assistance will be repaid;
- the presence of the credit insurance or other guarantees; and
- how quickly the transportation benefits of the project can be achieved.

### Final approval

After preliminary approval is granted, negotiations are completed and the social, economic and environmental impact studies are accepted, the Commission may grant final approval if it determines that:

- providing financial assistance will protect the public safety and prudently provide for the protection of public funds while furthering the purposes of the SIB; and

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- the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

The Commission may postpone final approval if it finds the current or projected financial condition of the SIB warrants this action.

The Commission may make its preliminary or final approval contingent upon the applicant making changes, levying taxes, performing other acts, or maintaining certain conditions necessary to provide for adequacy of repayments.

Approval or disapproval of the project, whether preliminary or final, shall be by written order of the Commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

## **Project Management**

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### ***Performance of Work***

TxDOT may, in its discretion and consistent with state law, provide all or part of the work connected with the project in TxDOT's normal course of business. If TxDOT allows the project sponsor to conduct all or part of the work, the project sponsor shall comply with the federal act, Title 23, United States Code, Title 49, United States Code, other applicable state and federal law, and all terms and conditions of any agreements. The project sponsor shall reimburse TxDOT for any loss of federal funds resulting from the project sponsor's failure to comply.

### ***Design, Construction and Procurement Standards***

For federal-aid and state highway improvement projects, plans and specifications must be in compliance with the design manuals and the latest versions of the TxDOT's standard specifications for construction of highways, streets, and bridges. All construction plans shall be signed and dated by a professional engineer registered who is in Texas.

### ***Maintenance and Operations***

When funds for repayment are derived from fees or tolls on the project, or the project or asset is collateral for the financial assistance from the SIB, TxDOT may require standards and procedures to be used in maintenance of the project.

If applicable, speed limits shall be posted in accordance with procedures used by TxDOT for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by state law for a public road having the same characteristics.

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**Glossary**

Commission	The Texas Transportation Commission
Construction	A term as defined by Title 23, United States Code, §101, and which includes preliminary studies required to determine the feasibility of an eligible project.
Credit enhancement	Financing tools - such as letters of credit, lines of credit, bond insurance, debt service reserves, and debt service guarantees - that improve the credit quality of underlying financial commitments. Credit enhancements, which can be provided through a SIB, have the effect of lowering interest costs and improving the marketability or liquidity of bond issues.
Debt Service Reserve	Unobligated moneys set aside in the Texas State Infrastructure Bank to be used as debt service for bonds issued, in the event that debt service is not met by project sponsor.
Design manual	The latest editions of and successors to the following documents: a) operations and procedures manual of TxDOT's Design Division; b) b) bridge operational planning manual of TxDOT's Design Division; c) hydraulic manual of the TxDOT's Design Division; d) Texas Manual of Uniform Traffic Control Devices; e) standard highway sign designs for Texas; and f) traffic control standard sheets booklet of the TxDOT's Traffic Operations Division.
Executive Director	The executive director of the Texas Department of Transportation, or his or her designee.
Expected financing period	The time taken to fully pay any and all liabilities incurred to finance an eligible project, including all extensions of time through refunding or restructuring.
Federal Act	Section 350 of the National Highway System Designation Act of 1995 (Pub. L. No. 104-59) and all rules and regulations adopted under the Act.
Federal-aid Highway	A term as defined in Title 23, United States Code, §101.

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Financial assistance	A term for any type of assistance from the SIB such as direct loan or credit enhancement.
Grant anticipation notes (GANs)	Short-term debt that is secured by grant money expected to be received after debt is issued. The SIB may buy anticipation notes on behalf of project sponsors in advance of intergovernmental assistance, to enable a faster project start. Helps project sponsors advance projects, especially when unable to access capital markets.
Interest subsidy	The SIB may subsidize interest rates for project sponsors, lowering overall financing costs. With this tool, project sponsors repay loans at less than current market rates. Market rates may be determined by the cost of borrowing through conventional issues of comparable duration.
Investment grade rating	Creditworthiness sufficient to qualify a debt as eligible for commercial bank investment under regulations issued by the Comptroller of the Currency. For bonds, these debts are limited to ratings of "AAA," "AA," "A," and "BBB" by Standard and Poor's Rating Services or corresponding ratings used by other rating services.
Letter of credit	A form of loan from the SIB to be used only in the instance of a shortfall in net revenue for debt service (i.e., a contingent loan). A letter of credit is security provided directly to the lender/bondholders (via the trustee), rather than to the borrower/project sponsor.
Leveraging	A term used to describe the process where a certain sum of money is used to secure a larger sum of money.
Line of credit	A form of loan from the SIB to be used only in the instance of a shortfall in net revenue for debt service or other financial commitments (i.e., a contingent loan). A line of credit, which is similar to a letter of credit, is security available directly to the borrower/project sponsor with flexibility in use of the funds.
Loan	Any form of direct financial assistance from the SIB, subject to repayment, which is provided to a project sponsor.

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Metropolitan planning organization (MPO)	An organization designated in certain urbanized areas to carry out the transportation planning process as required by Title 23, United States Code, §134.
Project agreement	A legally binding contract between the Texas Department of Transportation and the Project Sponsor that sets out the terms and conditions for receipt of financial assistance from the Texas State Infrastructure Bank.
Project revenues	All rates, rents, fees, assessments, charges, and other receipts derived by a project sponsor from a project. Generally, the source of SIB assistance repayment.
Project sponsor	Entity responsible for the completion and payment of the project.
Secondary funds	A term which includes: the repayment of a loan, including interest, principal, fees, charges, or other assistance that is provided with money deposited to the credit of the bank; and the investment income generated by secondary funds deposited to the credit of the bank.
SIB	The Texas State Infrastructure Bank managed by the Texas Department of Transportation.
Soft loan	Loan provided to a project sponsor with flexible repayment terms. Soft loans, which can be provided through a SIB, are generally subordinate to other debt, can have variable repayment schedules and extended terms, and subsidized interest terms.
TxDOT	Texas Department of Transportation
Unified Transportation Program	That group of transportation programs for which the commission has authorized the department to prepare or complete plans, specifications, and estimates, acquire right-of-way, adjust utilities, or be let to contract.

## **Appendix A - Rules Governing the Operation of the Texas SIB**

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### 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, 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.

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

**Bank** — The state infrastructure bank account in the state highway fund.

**Commission** — The Texas Transportation Commission.

**Construction** — A term as defined by Title 23, United States Code, §101, and which includes preliminary studies required to determine the feasibility of an eligible project.

**Department** — The Texas Department of Transportation.

**Design manual** — The latest editions of and successors to the:

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

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

(C) hydraulic manual of the design division;

(D) Texas Manual on Uniform Traffic Control Devices;

(E) standard highway sign designs for Texas; and

(F) traffic control standard sheets booklet of the traffic operations

division.

**Executive director** — The executive director of the Texas Department of Transportation, or his or her designee.

**Expected financing period** — The time taken to fully pay any and all liabilities incurred to finance an eligible project, including all extensions of time through refunding or restructuring.

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

Federal-aid highway — A term as defined in Title 23, United States Code, §101.

Financial assistance — A term which includes:

- (A) extending credit by direct loan;
- (B) providing credit enhancements;
- (C) serving as a capital reserve for bond or debt instrument funding;
- (D) subsidizing interest rates;
- (E) insuring the issuance of a letter of credit or credit instrument;
- (F) financing a purchase or lease agreement in connection with a transit project;
- (G) providing security for bonds and other debt instruments; or
- (H) providing methods of leveraging money that have been approved by the United States Secretary of Transportation and which relate to the project for which the assistance is provided.

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

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

Secondary Funds — A term which includes:

- (A) the repayment of a loan, including interest, principal, fees, charges, or other assistance that is provided with money deposited to the credit of the bank; and
- (B) the investment income generated by secondary funds deposited to the credit of the bank.

Transit project - Capital expenditures, excluding expenditures for commuter rail, eligible for funding under Title 49, United States Code, §5307, §5309, and §5311.

Unified Transportation Program, Priority 1 and Priority 2 designations - That group of transportation programs for which the commission has authorized the department to prepare or complete plans, specifications, and estimates, or acquire right-of-way, or adjust utilities, or be let to contract.

### **§6.3. General Policies.**

- (a) All actions of the bank will be in accordance with applicable federal and state law, and applicable rules and regulations.
- (b) Grant financing will not be considered.
- (c) No actions will be knowingly taken which would result in the bank's credit rating falling below investment grade.

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684*

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

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

(f) Repayment of any financial assistance from the bank will commence at the earliest reasonable date consistent with applicable federal and state law, rules, and regulations. The term for repaying any financial assistance will not exceed 30 years after the date of the first payment.

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

§6.4. Applicability. The requirements of this chapter do not apply, and the commission may authorize the bank to provide financial assistance, to an eligible project for which an innovative financing proposal has been submitted by the department and approved by the Federal Highway Administration prior to September 1, 1997.

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684*

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**SUBCHAPTER B. ELIGIBILITY.**

§6.11. Eligible Entities. A public or private entity authorized by law to construct, maintain, or finance an eligible project is eligible to apply for financial assistance under Subchapter C of this chapter.

§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 a private entity.

**SUBCHAPTER C. PROCEDURES.**

§6.21. Department Contact. The executive director will designate a contact within the department for the purpose of providing information and assistance to potential applicants. Assistance may include non-binding advice, counsel, and consultation regarding all aspects of a possible eligible project. If the executive director determines that the project is otherwise eligible for assistance, that the department is authorized by state law to provide assistance, and that department resources are available, the department may provide engineering and other technical assistance to aid potential applicants in developing an application. Any advice, assistance, or aid provided will not constitute a commitment or liability on the part of the department or the commission. Potential applicants are encouraged to communicate with the contact at the earliest possible date.

§6.22. Requested Financial Assistance. An applicant may request any form of financial assistance authorized by this chapter. In general, all requests for financial assistance shall be treated as requests for the use of specific sums of money from the bank for certain periods of times at stated interest rates with scheduled repayments of principal, interest, and any appropriate charges or fees.

§6.23. Application Procedure.

(a) Basic application. An eligible entity shall submit an application to the executive director in a form prescribed by the department. The application must be accompanied by:

(1) an overview of the project, which shall include a description of the project, the total cost of the project and the proposed use of the requested financial assistance;

(2) the amounts of money required to supply the requested assistance (including the needs of any reserve funds which must be established and held by the bank for the applicant's benefit, but which may not be expended from the bank);

(3) any proposed pledge of collateral or security and priority of claim to those items;

(4) a description of the need for the project and potential impact on traffic congestion and mobility; and

(5) the latest bond rating obtained by the applicant when using the sources of revenue to be pledged, or if not applicable, other evidence of creditworthiness similar to that required to obtain a bond rating;

(6) for public roadway projects, a preliminary design study which includes:

(A) an initial route and potential alignments;

(B) the project's logical termini and independent utility;

(C) the location of all right-of-way, facilities and equipment required to make the project functional; and

(D) revisions or changes to state highway system facilities necessitated by the project; and

(7) for transit projects, a preliminary scope study which shall include preliminary layouts, architectural drawings, equipment specifications, and other

**State Infrastructure Bank**

Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684

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information necessary to fully describe the project and to comply with all requirements of the Federal Transit Administration.

(b) Supplemental information and data. The applicant shall submit the following supplemental information and data. If the project is in the Unified Transportation Program's Priority 1 or Priority 2 designations, the applicant must submit only that supplemental information and data which the executive director finds relevant to the project and the requested financing. In determining relevant supplemental information and data, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of financial assistance requested, the complexity of the project's and the applicant's financial status, and how soon transportation benefits will begin.

(1) Financial feasibility study. The applicant shall submit a financial feasibility study which must include:

(A) a project construction or asset acquisition schedule identifying the timing, amount, and source of all cash required;

(B) an analysis of the expected financing period of the project;

(C) a pro forma analysis based on cash basis accounting for the expected financing period of the project showing:

(i) anticipated cash revenues to be used in repayment by source;

(ii) anticipated cash disbursements by category including disbursements for operations, maintenance, renewal, and replacement;

(iii) anticipated cash balances at the close of each calendar or fiscal year; and

(iv) cash used to meet the requirements of any sinking funds, reserve funds, and loan amortization payments;

(D) a description of the methods used in preparing the financial feasibility study, the assumptions contained in the study, and persons and entities responsible for the preparation of the study;

(E) the length of time the amounts will be outstanding or obligated;

(F) the anticipated interest rates applicable during the term of the financial assistance;

(G) any interest rate subsidies requested;

(H) the expected savings to the applicant resulting from the assistance; and

(I) a description of how the requested assistance will:

(i) expand the availability of funding for transportation projects;

(ii) reduce direct state costs;

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

(iv) improve the efficiency of the state's transportation systems; and

(v) accelerate the project's transportation benefits over conventional financing methods.

**State Infrastructure Bank**

Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684

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(2) Project impacts. The applicant shall conduct studies analyzing the impact of the project. The studies must include:

(A) how the project will be consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;

(B) if the project is in a Clean Air Act non-attainment area, how the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan; and

(C) the economic impact based on a study assessing the potential impact of the project on the economy of the region in which the project is to be located, including the economies of each county in which the project is to be located and of the municipalities within those counties.

(3) Commitments and approvals. The applicant shall obtain commitments and approvals which must include:

(A) official written approval of the project by the governing body of each entity which may become liable for repayment of any financial assistance;

(B) a binding commitment that the environmental consequences of the proposed project will be fully considered, and that the proposed project will comply with all applicable local, state, and federal environmental laws, regulations, and requirements;

(C) a preliminary identification of potential social, economic, and environmental impacts; and

(D) appropriate documentary evidence of community involvement in development of the proposed project and public support for it.

(c) Waiver of required information or data. The executive director may waive submission of individual items of information or data required by this section if:

(1) the information or data required by this section is not relevant to the project, applicant, or the financial assistance requested (in determining relevant supplemental information and data, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of financial assistance requested, the complexity of the project's and the applicant's financial status, and how soon transportation benefits will begin); or

(2) the department already possesses information or data in a format which may be substituted for the required information or data.

(d) Requirement of additional information. The executive director may require the applicant to submit explanations and expansions of information or data required by this section which are relevant to the project, applicant, or financial assistance requested. In determining when additional relevant explanations and expansions of information or data are required, the executive director will consider the complexity and size of the project, the type of infrastructure or asset involved, the type, complexity, and amount of financial

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684*

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assistance requested, and the complexity of the project's and the applicant's financial status.

§6.24. Suspension of Applications. If the commission determines that bank funding is fully committed or other uncertainties exist which warrant suspension of acceptance of applications, the department may publish a notice in the Texas Register providing that applications will no longer be accepted. When conditions change, the commission shall publish a notice in the Texas Register that applications are again being accepted.

**SUBCHAPTER D. DEPARTMENT AND COMMISSION ACTION.**

**§6.31. Department Action.**

(a) Notification. The department will review the application submitted under Subchapter C. When the application is complete, the department will so notify the applicant.

(b) Analysis. The executive director will perform an analysis of the application to support findings and recommendations for the commission. The executive director will submit the application together with findings and recommendations to the commission.

**§6.32. Commission Action.**

(a) Commission analysis. The commission will determine the sufficiency of the information, the probable reliability of the projections, and the anticipated financial condition of the applicant and the project.

(b) Preliminary approval.

(1) Considerations. Prior to granting preliminary approval of an eligible project, the commission will consider:

(A) whether the project is on the state highway system;

(B) transportation need for and anticipated public benefit of the project;

(C) the present and projected financial condition of the bank;

(D) potential social, economical, and environmental impacts;

(E) conformity with the purposes of the bank; and

(F) evidence of local public support.

(2) Project requirements. The commission may grant preliminary approval to a project for bank financing if it finds that:

(A) the project is consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;

(B) if the project is in a Clean Air Act non-attainment area, the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan;

(C) the project will improve the efficiency of the state's transportation systems;

(D) the project will expand the availability of funding for transportation projects or reduce direct state costs; and

(E) the application shows that the project and the applicant are likely to have sufficient revenues to assure repayment of the financial assistance according to the terms of the agreement. In making this finding, the commission will consider:

(i) the probable ability of any pledged revenues to meet all obligations of the project and to repay the financial assistance to the bank;

(ii) management of the project;

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684*

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- (iii) adequacy of working capital and operating funds;
- (iv) collateral and other guarantees of repayment;
- (v) how quickly the financial assistance will be repaid; and
- (vi) the presence of credit insurance or other guarantees.

(3) Authorized actions. By granting preliminary approval, the commission authorizes the executive director to negotiate:

(A) the project's limits, scope, definition, design, and any other factors which might impact the financing of the project;

(B) the amount, type and timing of disbursements of financial assistance;

(C) interest rates including subsidies;

(D) fees;

(E) charges;

(F) repayment schedules;

(G) term to maturity of any financial assistance;

(H) collateral securing the financial assistance;

(I) appropriate covenants applicable to the financial assistance;

(J) default provisions; and

(K) all other provisions necessary to complete an agreement under Subchapter E of this Chapter.

(c) Social, economical, and environmental impact.

(1) Prior to receiving final approval under subsection (d) of this section, the department or the applicant shall complete a study of the social, economical, and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United States Code, §§4321 et seq., and Title 23, United States Code, §109(h), and shall provide for public involvement and meet all other requirements of Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement For Transportation Projects).

(2) For a project not on the state highway system, the applicant shall be responsible for completing required studies of social, economical, and environmental impacts unless the applicant and the department agree otherwise. If the department agrees to be responsible for these studies, then any costs will be charged according to the department's local participation agreement.

(3) For a project on the state highway system, the department shall be responsible for completing required studies of social, economical, and environmental impacts with any costs to be charged to the project.

(d) Final approval. Subsequent to preliminary approval under subsection (b) of this section, the completion of negotiations under subsection (b)(3) of this section, and the approval of the social, economical, and environmental impact required by subsection (c) of this section, the commission may grant final approval if it determines that:

(1) providing financial assistance will protect the public safety and prudently provide for the protection of public funds while furthering the purposes of this chapter; and

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684*

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(2) the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

(e) Postponement. The commission may postpone final approval if it finds that the current or projected financial condition of the bank warrants this action.

(f) Contingencies. The commission may make its preliminary or final approval contingent upon the applicant making changes, levying taxes, performing other acts, or maintaining certain conditions necessary to provide for adequacy of repayments.

(g) Order of approval or disapproval. Approval or disapproval of the project, whether preliminary or final, shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

**SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS.**

§6.41. Executive Director. The executive director will negotiate the terms of agreements deemed necessary to comply with any requirements of preliminary approval, to protect the public's safety, and to prudently provide for the protection of public funds while furthering the purposes of this chapter. These agreements shall include, but not be limited to, terms provided for in this subchapter, as applicable to the nature of the project.

§6.42. Performance of Work.

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

(1) The department will account for all costs of the project in the normal course of business as it does for all federal-aid eligible projects.

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

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

(4) The applicant shall provide the department, the Federal Highway Administration, and the Federal Transit Administration, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work or aid otherwise in the prompt pursuit of the work.

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

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

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

(3) The applicant shall, at the applicant's cost, have a full audit performed annually of the project records and accounts by an independent certified public accountant. The applicant shall cause the auditor to provide a full copy of the audit report and any other management letters or auditor's comments directly to the department.

**State Infrastructure Bank**

Texas Department of Transportation - Finance Division  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684

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

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

**§6.43. Design, Construction, and Procurement Standards.**

(a) Plans and specifications. For federal-aid and state highway improvement projects, plans and specifications must be in compliance with the design manuals and the latest version of the department's standard specifications for construction of highways, streets, and bridges. All construction plans shall be signed and dated by a professional engineer registered in Texas.

(b) Change orders. The department may require standards and procedures to be used in making any design change orders.

(c) Transit projects must comply with all requirements established under §§31.42-31.47 of this title (relating to Program Administration).

**§6.44. Maintenance and Operations.**

(a) Maintenance. When funds for repayment are derived from fees or tolls on the project, or the project or asset is collateral for the financial assistance, the department may require standards and procedures to be used in maintenance of the project.

(b) Speed limits. If applicable, speed limits shall be posted in accordance with procedures used by the department for the state highway system, but in no case shall such limits exceed the maximum prima facie speed limits prescribed by state law for a public road having the same characteristics.

**§6.45. Financial and Credit Requirements.** The applicant shall agree to:

(1) provide collateral and security for repayment, or other protections as the executive director may deem necessary;

(2) repay the financial assistance at specified interest rates over specified time periods according to repayment schedules and including agreed upon bank fees or compensation;

(3) abide by provisions governing default;

(4) have periodic audits in compliance with all applicable federal and state requirements; and

(5) reimburse the department for all costs or losses of funds resulting from a failure to perform by the applicant.

**§6.46. Other Requirements.** Depending on the facts and circumstances of each project, the applicant, and type of financial assistance provided, the executive director may require additional terms and conditions necessary to protect the public safety, prudently provide for the protection of public funds, and further the purposes and requirements of this chapter.

**State Infrastructure Bank**

*Texas Department of Transportation - Finance Division*  
125 E. 11<sup>th</sup> Street, Austin, TX 78701-2483 (512) 463-8684

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