

For what costs may a borrower use Texas State Infrastructure Bank (SIB) loan proceeds?

The Texas SIB was capitalized with federal funds and state money from the State Highway Fund.

Therefore, law governing the use of the federal funds and the State Highway Fund limits the use of the loan proceeds. Section 350 of the National Highway System Designation Act of 1995 (NHS Act - PL 104-59, Sec. 350) requires all projects receiving assistance from an NHS Act SIB pilot program to comply with the Federal requirements that apply to projects under title 23 or title 49 (as appropriate) when the assistance is derived from: (1) the Federal funds deposited into the SIB; (2) the non-Federal matching funds; (3) all repayment amounts from Federal sources; and (4) any investment income generated from these funds.

Language used to create original “NHS Act” pilot program, under which the Texas SIB was created: Pursuant to federal law, “[a]n infrastructure bank ... may make loans or provide other assistance to a public or private entity in an amount equal to all or part of the cost of carrying out a project eligible for assistance under this section.” (NHS Act SIB pilot program language: PL 104-59, sec. 350(c) (Now 23 USC §610(e))

The use of State Highway Fund money is limited to “acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads....” Art. VIII, Sec. 7-a, Texas Constitution.

The SIB contains two subaccounts, the highway subaccount and the transit subaccount:

1. Highway Account

“Federal funds in the highway account of an infrastructure bank ... may be used only to provide assistance with respect to **construction of Federal-aid highways.**” (PL 104-59, Sec. 350 (d))

“**Construction**” is defined in 23 USC §101(a)(4) as: “...the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway or any project eligible for assistance under this title, including bond costs and other costs relating to the issuance in accordance with section 122 of bonds or other debt financing instruments and costs incurred by the State in performing Federal-aid project related audits that directly benefit the Federal-aid highway program. Such term includes –

(A) preliminary engineering, engineering, and design-related services directly relating to the construction of a highway project, including engineering, design, project development and management, construction project management and inspection, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance

with specifications of the National Oceanic and Atmospheric Administration), and architectural-related services;

(B) resurfacing, restoration, rehabilitation, and preservation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of hazards of railway-highway grade crossings;

(F) elimination of roadside hazards;

(G) improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.”

“**Federal-aid highway**” is defined in 23 USC §101(a)(6) as “a public highway eligible for assistance under this chapter other than a highway functionally classified as a local road or rural minor collector.

2. Transit Account

“Federal funds in the transit account of such bank may be used only to provide assistance with respect to capital projects” (as defined in 49 USC §5302). (PL 104-59, sec. 350 (d))

Costs of Issuance of Debt Instruments

Under 23 USC §122, assuming compliance with all applicable federal requirements, “...[t]he Secretary may reimburse a State for expenses and costs incurred by the State or a political subdivision of the State and reimburse a public authority for expenses and costs incurred by the public authority for –

(1) interest payments under an eligible debt financing instrument;

(2) the retirement of principal of an eligible debt financing instrument;

(3) the cost of the issuance of an eligible debt financing instrument;

(4) the cost of insurance for an eligible debt financing instrument; and

(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).”

Costs Already Incurred

SIB proceeds may not be used for costs already incurred before the execution of the financial assistance agreement evidencing the financial assistance. If permissible under state and federal law, financial assistance from the bank may be used to pay for consultant costs, if any, incurred by the applicant in the preparation of the application for the financial assistance or preparation of the financial assistance agreement. However, financial assistance from the bank may not be used to pay for costs incurred for an application that did not result in the disbursement of financial assistance to the applicant. (43 Texas Administrative Code §6.3(f))