

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to propose amendments to §§6.1 - 6.3, §6.11, §6.12, §§6.21 - 6.23, §6.31, §6.32, and §§6.41 - 6.43, the repeal of §6.4, §6.5, §6.24, and §§6.44 - 6.46, and new §6.4, §6.13, §6.24, §6.25, §6.33, and §§6.44 - 6.46 all relating to state infrastructure bank to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the proposed amendments, attached to this minute order as Exhibits A - F, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the General Counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that the amendments to §§6.1 - 6.3, §6.11, §6.12, §§6.21 - 6.23, §6.31, §6.32, and §§6.41 - 6.43, the repeal of §6.4, §6.5, §6.24, and §§6.44 - 6.46, and new §6.4, §6.13, §6.24, §6.25, §6.33, and §§6.44 - 6.46 are proposed for adoption and are authorized for publication in the *Texas Register* for the purpose of receiving public comments.

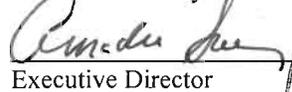
The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:



Director, Finance Division

Recommended by:



Executive Director

112303 JUN 24 10

Minute Number Date Passed

Proposed Preamble

1
2 The Texas Department of Transportation (department) proposes
3 amendments to §6.1, Purpose, §6.2, Definitions, and §6.3,
4 General Policies, the repeal of §6.4, Applicability, new §6.4,
5 Separate Subaccounts, and the repeal of §6.5, Separate
6 Subaccounts; amendments to §6.11, Eligible Entities, and §6.12,
7 Eligible Properties, and new §6.13, Eligibility for Financial
8 Assistance from General Obligation Bond Proceeds; amendments to
9 §6.21, Department Contact, §6.22, Requested Financial
10 Assistance, and §6.23, Application Procedure, the repeal of
11 §6.24, Suspension of Applications, new §6.24, Limitation on
12 Applications - Loans from General Obligation Bond Proceeds, and
13 new §6.25, Suspension of Applications; amendments to §6.31,
14 Department Action, and §6.32, Commission Action, and new §6.33,
15 Commission Action - Loans from General Obligation Bond Proceeds;
16 amendments to §6.41, Executive Director, §6.42, Performance of
17 Work, and §6.43 Design, Construction, and Procurement Standards,
18 the repeal of §6.44, Maintenance and Operations, and new §6.44,
19 Design and Construction - Loans from General Obligation Bond
20 Proceeds, the repeal of §6.45, Financial and Credit
21 Requirements, and new §6.45, Maintenance, the repeal of §6.46,
22 Other Requirements, and new §6.46, Financial and Credit
23 Requirements, all concerning the State Infrastructure Bank.

24

25 EXPLANATION OF PROPOSED AMENDMENTS, REPEALS, AND NEW SECTIONS

26 A rules advisory committee was appointed by the Texas

1 Transportation Commission (commission) in September 2009. The
2 committee met three times, once in April and twice in May of
3 2010. Members representing the Alamo Regional Mobility
4 Authority, the Central Texas Regional Mobility Authority, The
5 Harris County Toll Road Authority, the North Texas Tollway
6 Authority, the Texas Association of Counties, the Texas
7 Municipal League, the Texas Water Development Board and a Texas
8 public international bridge operator attended at least one of
9 the meetings. The proposed rules are believed to reflect the
10 consensus agreement of the committee members, although four of
11 these eight representatives did not vote on the final version of
12 the proposed rules. Of the other four representatives, two of
13 them voted in favor of the rules, one representative voted in
14 favor except for one provision, and one representative wished to
15 be shown as not taking a position on the rules.

16
17 Transportation Code, Chapter 222, Subchapter D establishes the
18 state infrastructure bank (bank) and authorizes the commission
19 to provide financial assistance from money in the bank for
20 qualified projects. The bank has been functioning since 1998
21 and was capitalized with federal funds and money from the state
22 highway fund.

23
24 The Texas Constitution, Article 3, Section 49-p and
25 Transportation Code, §222.004 authorize the commission to issue
26 general obligation bonds for the purpose of paying all or part

1 of the cost of highway improvement projects, and the General
2 Appropriations Act, as amended by House Bill 1, 81st
3 Legislature, First Called Session, 2009, appropriated \$1 billion
4 of proceeds of the general obligation bonds to be used to
5 capitalize the bank for the purpose of making loans to public
6 entities.

7
8 The capitalization of the bank with general obligation bond
9 proceeds requires revisions to the rules governing financial
10 assistance from the bank because the purposes for which the
11 proceeds of the general obligation bonds can be used is limited,
12 the size of loans from the proceeds is contemplated to be
13 substantially larger than those made from existing sources, and
14 a portion of the loans from the proceeds is expected to be used
15 to secure revenue bonds, the proceeds of which can be used to
16 make additional loans.

17
18 Additionally, revisions to the existing sections are made to
19 reflect changes in the department's practices and procedures
20 since the rules were initially adopted and to clarify some of
21 the existing provisions.

22
23 Amendments to §6.1, Purpose, clarify that there may be legal
24 restrictions on the use of money deposited in the bank. As a
25 result of the changes made by the amendment of the chapter, not
26 all of the funds deposited into the bank can legally be used for

1 all of the purposes set out in §6.1(a).

2

3 Amendments to §6.2, Definitions, update the "design manual"
4 definition to reflect the names of the publications currently
5 used by the department, and add definitions for "environmental
6 permits, issues, and commitments (EPIC)," "general obligation
7 bonds," and "program call." The definition of "financial
8 assistance" is amended to clarify that financial assistance does
9 not include all of the types of assistance listed in the
10 definition for all sources of money. The definition of "Unified
11 Transportation Program, Construct and Develop designations" is
12 deleted as it is not used in Chapter 6.

13

14 Amendments to §6.3, General Policies, update the requirements
15 for the bank to maintain an investment grade rating to be
16 consistent with current federal law. Existing subsection (f),
17 relating to the timing of repayment of financial assistance, is
18 deleted and placed in §6.41, Financial Assistance Agreements,
19 since it is more appropriately a contract term rather than a
20 general policy, and becomes subsection (b) of that section.

21

22 Existing §6.4, Applicability, is repealed because the section is
23 time sensitive and the period of its application has passed.

24

25 §6.5, Separate Subaccounts, is repealed and readopted as new
26 §6.4, with clarifying changes in the language. The change

1 provides for the creation of an additional subaccount
2 capitalized with proceeds of the general obligation bonds and
3 secondary funds derived from the repayments of loans made from
4 general obligation bond proceeds. The additional subaccount is
5 needed to keep these funds separate from federal and state
6 highway funds because the purposes for and the limitations on
7 these types of funds are distinct from the other funds due to
8 constitutional restrictions on the use of general obligation
9 funds.

10

11 Amendments to §6.11, Eligible Entities, clarify that eligibility
12 to apply for financial assistance is limited by other provisions
13 of Chapter 6.

14

15 Amendments of §6.12, Eligible Projects, provide for an exception
16 from the eligibility criteria because, as addressed in new
17 §6.13, financial assistance from general obligation bond
18 proceeds is subject to additional limitations. Further changes
19 clarify that, for a transit project, financial assistance is
20 limited to bank funds that may be lawfully expended for that
21 purpose.

22

23 New §6.13, Eligibility for Financial Assistance from General
24 Obligation Bond Proceeds, creates limits, categories, and
25 methods regarding loans from the bank. New §6.13(a) limits the
26 use of general obligation bond proceeds to public entities of

1 direct loans to pay costs of highway improvement projects on or
2 off of the state highway system, as is required by
3 Transportation Code, §222.004. New §6.13(b) establishes the
4 categories of loans that may be made: 1) loans of sufficient
5 credit quality to be the security for revenue bonds issued under
6 Transportation Code, §222.075; and 2) loans of lesser credit
7 quality, if the loan is anticipated to be refinanced by the
8 applicant within three years of completion of the project, the
9 loan is a part and represents not more than 20 percent of a much
10 larger financing that would not be feasible unless the loan is
11 made on a subordinate basis, or the loan is in the amount of \$4
12 million or less. The commission intends that bank loans from
13 general obligation bond proceeds "revolve" as soon as reasonably
14 feasible, or be "leveraged" to the maximum extent feasible. New
15 §6.13(b) provides two methods of leverage: 1) loans that are
16 security for revenue bonds; and 2) loans that are smaller parts
17 of larger financings that could not be completed without those
18 loans. Section 6.13(b) provides one method for revolving loans:
19 loans that are anticipated to be refinanced within three years
20 of completion of the project. New §6.13(c) limits the use of
21 repayments of loans to making new loans or securing revenue
22 bonds, because repayments of general obligation bonds are
23 considered to be legally limited to these uses. New §6.13(d)
24 requires that senior or parity debt, except for TIFIA loans,
25 payable from the same revenue that would secure the loan from
26 the bank, have an investment grade rating, because having an

1 investment grade rating on such a debt is a good indication of
2 the credit quality of the revenue source and, conversely, the
3 absence of an investment grade rating may indicate the revenue
4 source is of low credit quality. TIFIA loans are excluded as
5 they are frequently not rated as a matter of U.S. Department of
6 Transportation policy.

7

8 Amendments to §6.21, Department Contact, specify that the
9 director of the department's finance division, or the director's
10 designee, is the contact within the department for potential
11 applicants for financial assistance because the finance division
12 is responsible for administering the state infrastructure bank
13 program.

14

15 Amendments to §6.22, Requested Financial Assistance, clarify
16 that the form of financial assistance that may be provided by
17 the bank is limited in accordance with other law and as set out
18 by Chapter 6. The existing rule incorrectly implies that there
19 is no limitation on the forms of financial assistance available.

20

21 Amendments to §6.23, Application Procedure, add to the
22 information that must be submitted with the application. The
23 requirements for additional information were added because a
24 more sophisticated analysis of the ability of an applicant to
25 repay is needed for the potentially large loans that will be
26 made from the bank using general obligation bond proceeds, and

1 the additional information is necessary to make such an
2 analysis. Section 6.23(a)(5) requires submission of the most
3 recent official statement for any outstanding debt of the
4 applicant payable from the revenue proposed to be used to repay
5 the financial assistance along with financial documents related
6 to that debt. Section 6.23(b)(1) makes mandatory, unless the
7 requirement is waived by the executive director as provided by
8 §6.23(c), the submission of a financial feasibility study that,
9 under the existing rules, need not be submitted unless
10 requested. Section 6.23(b)(1)(C) is amended to clarify and
11 modify what the pro forma analysis is required to show and to
12 add a requirement for a preliminary traffic and revenue study
13 for toll road projects so that the provision, as amended, will
14 help ensure the information received will be of the type and in
15 the form that is needed to enable the department to effectively
16 analyze financial feasibility. Section 6.23(b)(1)(G) is amended
17 to limit interest rate subsidies to economically disadvantaged
18 counties, cities within economically disadvantaged counties, or
19 another public entity that has within its boundary at least one
20 entire disadvantaged county. Section 6.23(b)(2) requires the
21 submission of the applicant's most recent annual budget, the
22 five most recent comprehensive annual reports or audits of the
23 applicant, the applicant's current capital planning document
24 that addresses uses of the revenue proposed to be used for
25 repayment of the financial assistance, and additional
26 information on any known environmental, social, economic, or

1 cultural resource issues, plus an explanation of the status of
2 obtaining environmental approvals. Section 6.23(c)(1) adds
3 whether the source of the financial assistance will be general
4 obligation bond proceeds as a factor the executive director is
5 to consider in deciding whether to waive submission of any item
6 of data required by the §6.23, because, if these proceeds are
7 the source, it is more likely that the information will be
8 needed.

9
10 New §6.24, Limitation on Applications - Loans from General
11 Obligation Bond Proceeds, adds a "program call" by which the
12 commission specifies the periods during which the department
13 will accept applications, requires that the department publish a
14 notice in the *Texas Register* soliciting applications, and
15 specifying that the notice shall contain: the period for
16 accepting applications, the estimated available amount of funds
17 in the bank, the conditions for the submission of applications,
18 and any other information the commission or the department
19 considers appropriate. This section is needed to ensure that
20 qualified applicants have an equal opportunity to have their
21 application considered by the commission in an orderly fashion,
22 rather than on a first-come, first-served basis that is
23 appropriate for the smaller loans made from sources other than
24 general obligation bond proceeds.

25
26 Current §6.24 is repealed and the language of that section is

1 readopted without change as §6.25 because of the addition of the
2 new §6.24.

3

4 Amendments to §6.31, Department Action, add a requirement that
5 the department advise an applicant of any required information
6 that is missing from the application and set out periods for
7 analysis of an application by the department. The analysis must
8 be completed in 30 days after the application process is
9 completed, but the executive director may extend the time by up
10 to 45 additional days if more time for analysis is needed. The
11 executive director may further extend the time if additional
12 time is needed because of the receipt of a substantial number of
13 applications within a short period of time. These changes are
14 made to provide definite time lines and an established process
15 for reviewing applications and to retain some flexibility when
16 extending the time is reasonable.

17

18 The amendments change the heading of §6.32 to "Commission Action
19 - Financial Assistance from Other Than General Obligation Bond
20 Proceeds" to clarify that the section does not apply to
21 financial assistance provided from the proceeds of general
22 obligation bonds, which is now covered by the new §6.33.

23

24 New §6.33, Commission Action - Loans from General Obligation
25 Bond Proceeds, sets out the requirements for preliminary and
26 final approval of such a loan. These new provisions establish

1 parameters and procedures for commission action on loans from
2 general obligation bond proceeds and are needed because the
3 existing parameters and procedures for providing financial
4 assistance from the bank are not appropriate for the larger,
5 more complex loans anticipated to be made from general
6 obligation bond proceeds.

7
8 New §6.33(a) sets out the factors to be considered by the
9 commission and the requirements that must be met prior to
10 granting preliminary approval, and, subject to §6.33(a)(4), the
11 minimum amount of bank capital to be allocated to each category
12 if there is insufficient capital to fund all of the qualifying
13 loan applications.

14
15 Under §6.33(a)(1), the commission, prior to granting preliminary
16 approval, will consider the need for and benefits of the
17 proposed project, the availability of funding from all sources,
18 the percentage of the project cost that will be covered by the
19 requested loan, the financial feasibility of the project, the
20 potential for leveraging the loan, potential social, economic,
21 and environmental impacts of the project, the interoperability
22 of the toll collection system if the loan is for a toll project,
23 evidence of public support, and the applicant's experience.

24
25 New §6.33(a)(2) provides a framework for the allocation of bank
26 capital, and is intended to provide a basis for allocation if

1 there are insufficient funds to make loans to all applicants
2 with qualified projects. However, in order to give the
3 commission and the department additional flexibility in
4 allocating loan amounts for preliminary approval, §6.33(a)(3)
5 states that the minimum allocations are target allocations and
6 that the department may recommend and the commission may approve
7 applications that are not within the target allocations based on
8 the considerations set forth in §6.33(a)(1) if there are
9 insufficient applications in one of the categories or if the
10 department or the commission determines that a different
11 allocation is warranted. The target allocations for each
12 program call as provided for in §6.33(a)(2) are: (A) not less
13 than 25 percent to loans of sufficient credit quality to be the
14 security for, and source of repayment of, revenue bonds issued
15 under Transportation Code, §222.075, as determined by the
16 executive director; (B) not less than 25 percent to loans of
17 credit quality below that described in (A), as determined by the
18 executive director, such as loans that are subordinated to
19 existing or proposed debt for a project or of an applicant, if,
20 as determined by the commission, the loan is anticipated to be
21 refinanced by the applicant within three years of completion of
22 the project, or the loan is a part and represents not more than
23 20 percent of a larger financing that would not be feasible
24 unless the loan is made on a subordinate basis; and (C) of the
25 amount allocated subparagraph (A) or (B), not less than 10
26 percent shall be allocated to loans of \$4 million or less.

1
2 New §6.33(a)(4) sets out the minimum requirements for granting
3 of preliminary approval by the commission, including, to the
4 extent applicable, that the project is consistent with the
5 Statewide Transportation Plan, with the metropolitan
6 transportation plan developed by an MPO, the Statewide
7 Transportation Improvement Program, with the conforming plan and
8 Transportation Improvement Program for the MPO in which the
9 project is located, and with the State Implementation Plan; that
10 the project will improve the efficiency of the state's
11 transportation systems and expand the availability of funding
12 for transportation projects or reduce direct state costs; and
13 that the application shows that the project and the applicant
14 are likely to have sufficient revenues to assure repayment of
15 the loan. These provisions are consistent with requirements for
16 other department financial assistance programs.

17
18 New §6.33(a)(5) provides that, by granting preliminary approval,
19 the commission authorizes the executive director to take
20 specified actions that are necessary for the application to
21 receive final approval for funding of the loan, and without
22 which the commission would have insufficient basis for granting
23 final approval. The executive director will evaluate the
24 project and identify any adverse features, negotiate the amount,
25 type, and timing of loan disbursements, negotiate an interest
26 rate, repayment schedule, collateral securing the loan, and

1 default provisions, and negotiate provisions for subordination
2 of the loan to other debt of the project if authorized to do so
3 by the commission in the preliminary approval.

4

5 Under new §6.33(a)(6) if the executive director is seeking
6 changes to the limits, scope, design, or other aspects of the
7 project, the executive director must consider the applicant's
8 past experience with similar projects and whether the project is
9 intended to become part of the state highway system or otherwise
10 be subject to the jurisdiction of the department.

11

12 New §6.33(b) requires an applicant to complete the environmental
13 review, because delays in obtaining the required environmental
14 approvals delay the construction of a project and delay the use
15 of encumbered loan proceeds. For a toll project, §6.33(b)
16 requires an applicant to obtain an investment grade traffic and
17 revenue report for the project, because the ability of an
18 applicant to repay the loan will depend on toll revenues, making
19 a more sophisticated report important to the final approval.

20 Section 6.33(b)(2) gives the executive director the authority to
21 waive a requirement of subsection (b)(1) if the executive
22 director determines that the requirement is inapplicable or
23 unnecessary due to the nature of the requested assistance.

24

25 New §6.33(c) provides that the commission may grant final
26 approval after completion of negotiations and compliance with

1 the requirements of §6.33, if it determines that making the loan
2 will prudently provide for the protection of public funds and
3 the project will provide for all reasonable and feasible
4 measures to avoid, minimize, or mitigate environmental impacts.
5 Because the commission may desire to grant final approval only
6 if certain conditions are met or if certain changes are made to
7 the project, new §6.33(d) provides that the commission may make
8 its preliminary approval contingent on the applicant's making
9 changes or performing other acts, or establishing certain
10 conditions necessary to provide for the adequacy of any required
11 repayments and may make its final approval subject to the
12 applicant's fulfilling specified conditions precedent to the
13 release of loan funds. Since the financial viability of a toll
14 road project can be determined in advance only through a traffic
15 and revenue study and accurate cost information, §6.33(e)
16 provides that the commission may make its preliminary or final
17 approval contingent on the department's receiving an updated
18 traffic and revenue report and updated cost information showing
19 no changes have occurred that materially and adversely affect
20 the financial status of the project or the applicant.

21
22 Amendments to §6.41, Executive Director, change the section
23 title to Financial Assistance Agreements, designate the current
24 section as subsection (b), move language relating to financial
25 assistance from current §6.3, and add provisions that are
26 permissible for or required in financial assistance agreements.

1

2 New §6.41(a) provides that an agreement evidencing a loan or
3 other financial assistance may be in the form of a contract or
4 similar document, or may be in the form of a bond, note, or
5 other obligation issued by the applicant.

6

7 The language of current §6.3(f) is added as subsection (c). The
8 subsection requires repayment at the earliest possible time,
9 with an added exception allowing the commission to defer the
10 initial repayment of financial assistance for up to five years
11 after the date of initial funding of financial assistance to
12 give additional flexibility to make loans that meet the needs of
13 applicants.

14

15 New §6.41(d) requires interest to be paid semiannually on
16 February 1 and August 1, and principal to be paid on February 1.
17 New §6.41(e) allows prepayments without penalty on any February
18 1 or August 1 after the date specified in the financial
19 assistance agreement. These provisions allow repayments and
20 prepayments in a manner that is not as administratively complex
21 or inefficient as accepting those payments on any date.

22

23 New §6.41(f) adds terms for assistance from general obligation
24 bond proceeds, including requirements for a certified copy of
25 the resolution of the applicant, certificates relating to
26 federal tax and securities law and state law as specified by the

1 executive director, and, if requested by the executive director,
2 a bond counsel opinion and a certificate that the applicant will
3 make reasonable efforts to obtain the approval of the financial
4 assistance agreement by the Office of the Attorney General's
5 Public Finance Division, because these terms are necessary for
6 the loans to be eligible to secure revenue bonds.

7

8 New §6.41(g) requires the department to provide necessary,
9 reasonable, and customary assurances in the financial assistance
10 agreement if the assurances are consistent with the agreement
11 and are necessary for the applicant to obtain funding from other
12 sources.

13

14 Amendments to §6.42, Performance of Work, clarify that the
15 department and the applicant may agree for the department to
16 provide all or part of the work on a project. The provisions of
17 §6.42(b) relating to work performed by the applicant are deleted
18 and replaced by new paragraphs (1) - (7), which require the
19 applicant to comply with applicable state and federal law and
20 the agreement; to maintain, with some exceptions, its books and
21 records in accordance with generally accepted accounting
22 principles; to have, for loans of greater than \$1 million, a
23 full audit and provide a copy of the report to the department;
24 to retain or cause the auditor to retain all work papers and
25 reports for at least four years and make them available to the
26 department; to retain all original project files until the later

1 of the time that the project is completed, financial assistance
2 has been repaid, or legally required retention periods have
3 passed, unless the department agrees to a shorter period; and to
4 maintain the project accordance with §6.45 if it will become
5 part of the state highway system and the department will assume
6 jurisdiction, and transfer the specified information to the
7 department when it assumes jurisdiction. These changes are made
8 to bring these provisions in line with current department
9 requirements in other programs in which the department provides
10 financial assistance to other governmental entities. For loans
11 of \$1 million or less, the previous requirements in §6.42(b)(3)
12 and (4) are retained and placed in new §6.42(b)(4). With
13 respect to the audit requirement of §6.42(b)(3), it should be
14 noted that, for a county that has appointed an operating board
15 and established a separate toll operating entity under
16 Transportation Code, Chapter 284, the audit requirement applies
17 to the toll operating entity rather than to the county.

18

19 The amendments change the heading of §6.43 to "Design,
20 Construction, and Procurement Standards - Financial Assistance
21 from Other Than General Obligation Bond Proceeds" to indicate
22 that the section does not apply to financial assistance provided
23 from the proceeds of general obligation bonds, which is now
24 covered by the new §6.44.

25

26 Current §6.44, Maintenance and Operations, is repealed and

1 replaced with a new §6.44. New §6.44, Design and Construction -
2 Loans from General Obligation Bond Proceeds, sets out the
3 requirements for the design and construction of a project. New
4 §6.44(a) makes the applicant solely responsible for the design
5 and construction of the project, except to the extent the
6 department provides the work. New §6.44(b) requires project
7 plans and specifications to be in compliance with the design
8 manuals or American Association of State Highway and
9 Transportation Officials standards, unless an exception is
10 approved by the executive director after determining that the
11 particular criteria could not reasonably be met and that the
12 proposed design is a prudent engineering solution, or that the
13 deviation meets some other design criteria acceptable to the
14 department.

15
16 New §6.44(c) requires, for projects that will change access to
17 an interstate highway, that the applicant submit data necessary
18 for the department to request Federal Highway Administration
19 approval, and, when the design is 30 percent complete, that the
20 applicant submit design details including a completed design
21 summary report form; a design schematic; typical sections
22 showing dimensions, cross slopes, location of profile grade
23 line, pavement thickness and composition, and right of way
24 lines; bridge, retaining, and sound wall layouts; hydraulic
25 studies; anticipated handling of traffic during construction;
26 the structural capacity of each bridge; and the location and

1 text of mainlane guide signs. Section 6.44(c) further requires
2 that all plans, specifications, and estimates conform to the
3 latest version of the department's standard specifications, and,
4 if applicable, alternative specifications approved by the
5 executive director. Subsection (c) additionally requires that
6 the applicant must submit for approval final design plans and
7 contract administration procedures in accordance with the
8 financial assistance agreement, including seven copies of the
9 plans, specifications, and engineer's estimate (PS&E) with
10 summarized or highlighted revisions, showing the locations and
11 descriptions of all EPIC, and a proposal for bidding in
12 compliance with state and federal requirements. Subsection (c)
13 further requires that the applicant oversee construction
14 inspection and oversight, that all contract revisions comply
15 with the latest versions of applicable national or state
16 administration criteria and manuals, that as-build plans be
17 filed with the department, that all materials be delivered
18 electronically, if available, that the applicant provide or
19 obtain all required permits, plans, and other documentation, and
20 that all work on state right of way be done pursuant to written
21 agreement with the department. These added provisions are
22 appropriate for the larger loans anticipated to be made from
23 general obligation bond proceeds, and are consistent with
24 current department requirements in other programs in which the
25 department provides financial assistance to other governmental
26 entities.

1
2 Current §6.45, Financial and Credit Requirements, is repealed
3 and replaced with a new §6.45. New §6.45, Maintenance, allows
4 the department to require minimum maintenance standards, and
5 requires that all bridges be maintained in compliance with
6 applicable requirements and that the department perform safety
7 inspections of the bridges. New §6.45(c) requires the
8 department, in determining minimum maintenance standards, to
9 consider the applicant's past experience and whether the project
10 is intended to be subject to the jurisdiction of the department.
11 The new provisions are needed to have maintenance requirements
12 that are consistent with current department requirements in
13 other programs in which the department provides financial
14 assistance to other governmental entities.

15
16 Current §6.46, Other Requirements, is repealed as unnecessary
17 because the requirements of the section are addressed in other
18 sections and is replaced with a new §6.46. New §6.46, Financial
19 and Credit Requirements, requires an applicant to repay
20 financial assistance in accordance with the financial assistance
21 agreement; to submit annual and supplemental operating and
22 capital budgets within 30 days of their adoption; to submit to
23 the department, for all debt payable from the same revenue that
24 is to repay the financial assistance, annual financial
25 information and notices of material events within 30 days after
26 their submission to Electronic Municipal Market Access System

1 (EMMA) of the Municipal Securities Rulemaking Board, or advise
2 the department in writing that the submission to EMMA has been
3 made and provide in that writing the associated CUSIP number;
4 and to abide by provisions governing default. These provisions
5 are similar to those of the repealed §6.45, but are updated to
6 be consistent with current department requirements in other
7 programs in which the department provides financial assistance
8 to other governmental entities

9

10 FISCAL NOTE

11 James Bass, Chief Financial Officer, has determined that for
12 each of the first five years the amendments, repeals, and new
13 sections are in effect, there will be fiscal implications for
14 state or local governments as a result of administering the
15 amendments, repeals, and new sections. The state will
16 experience some increase in administrative costs as a result of
17 reviewing and analyzing applications for loans from state
18 general obligation bond proceeds. This cost cannot be
19 determined because it will depend on the quality of the
20 applications and the financial sophistication of the applicant.
21 However, any cost should be insignificant because it is
22 anticipated that the review and analysis can be accomplished by
23 existing staff of the department, with additional training.
24 Local governments that apply for highway improvement loans from
25 general obligation bond proceeds may incur additional staff
26 costs and consultant fees in the preparation of the application.

1 Those persons not applying for a loan will incur no costs. The
2 amount of this cost cannot be determined because it will depend
3 on an applicant's existing staff qualifications and the
4 complexity of the project and associated financing.

5
6 Brian Ragland, Director, Finance Division, has certified that
7 there will be no significant impact on local economies or
8 overall employment as a result of enforcing or administering the
9 amendments, repeals, and new sections.

10

11 PUBLIC BENEFIT AND COST

12 Mr. Ragland has also determined that for each year of the first
13 five years the sections are in effect, the public benefit
14 anticipated as a result of administering the amendments,
15 repeals, and new sections will be the availability of
16 substantial additional funding for loans for highway improvement
17 projects. There are no anticipated economic costs for persons
18 other than those persons wishing to file a loan application as
19 required by the rules as proposed. There will be no adverse
20 economic effect on small businesses.

21

22 SUBMITTAL OF COMMENTS

23 Written comments on the proposed amendments to §§6.1 - 6.3,
24 §6.11, §6.12, §§6.21 - 6.23, §6.31, §6.32, and §§6.41 - 6.43,
25 the repeal of §6.4, §6.5, §6.24, and §§6.44 - 6.46, and new
26 §6.4, §6.13, §6.24, §6.25, §6.33, and §§6.44 - 6.46 may be

1 submitted to Brian Ragland, Director, Finance Division, Texas
2 Department of Transportation, 125 East 11th Street, Austin,
3 Texas 78701-2483. The deadline for receipt of comments is 5:00
4 p.m. on August 9, 2010.

5

6 STATUTORY AUTHORITY

7 The amendments, repeals, and new sections are proposed under
8 Transportation Code, §201.101, which provides the commission
9 with the authority to establish rules for the conduct of the
10 work of the department, and more specifically, Transportation
11 Code, §222.004, which authorizes the commission to issue general
12 obligation bonds for the purpose of paying all or part of the
13 cost of highway improvement projects, and Transportation Code,
14 §222.077, which authorizes the commission to adopt rules to
15 implement Transportation Code, Chapter 222, Subchapter D
16 relating to the state infrastructure bank.

17

18 CROSS REFERENCE TO STATUTE

19 Transportation Code, §222.004 and Chapter 222, Subchapter D.

1 SUBCHAPTER A. GENERAL PROVISIONS

2 §6.1. Purpose.

3 (a) Transportation Code, Chapter 222, Subchapter D,
4 establishes a state infrastructure bank as an account within the
5 state highway fund, to be administered by the Texas
6 Transportation Commission. Consistent with applicable legal
7 restrictions on its use, the [~~The~~] commission shall use money
8 deposited in the bank to:

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

14 (2) develop financing techniques designed to:

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

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

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

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

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

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

(2) Commission--The Texas Transportation Commission.

(3) 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.

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

(5) Design manual--The latest editions of and successors to all design manuals available from the department, including the:

(A) Roadway Design Manual [~~operations and procedures manual of the design division~~];

(B) Environmental Affairs Division Operations and Procedures Manual;

(C) Pavement Design Manual;

(D) [~~(B)~~] Bridge Design Manual [~~bridge operational planning manual of the design division~~];

(E) Bridge Project Development Manual;

(F) Bridge Geotechnical Manual;

1 (G) [(C)] Hydraulic Design Manual [~~hydraulic manual of~~
2 ~~the design division~~];

3 (H) [(D)] Texas Manual on Uniform Traffic Control
4 Devices;

5 (I) Project Development Process Manual;

6 (J) [(E)] standard highway sign designs for Texas; and

7 (K) [(F)] traffic control standard sheets booklet of
8 the traffic operations division.

9 (6) Environmental Permits, Issues, and Commitments
10 (EPIC)--Any permit, issue, coordination, commitment, or
11 mitigation obtained to satisfy social, economic, or
12 environmental impacts of a project, including sole source
13 aquifer coordination, wetland permits, stormwater permits,
14 traffic noise abatement, threatened or endangered species
15 coordination, archeological permits, and any mitigation or other
16 commitment associated with any of those issues.

17 (7) Interoperability--the ability of transponders used or
18 to be used by an applicant to be read and properly processed by
19 the transponder technology used by the department and other
20 governmental and private entities operating toll facilities in
21 this state, and the ability of the transponder technology used
22 or to be used by an applicant to read and properly process
23 information transmitted by transponders used by the department

1 and other governmental and private entities operating toll
2 facilities in this state.

3 (8) [~~(6)~~] Executive director--The executive director of
4 the Texas Department of Transportation, or his or her designee.

5 (9) [~~(7)~~] Expected financing period--The time taken to
6 fully pay any and all liabilities incurred to finance an
7 eligible project, including all extensions of time through
8 refunding or restructuring.

9 (10) [~~(8)~~] Federal Act--Section 350 of the National
10 Highway System Designation Act of 1995 (Public Law Number 104-
11 59) and all rules and regulations adopted under the Act.

12 (11) [~~(9)~~] Federal-aid highway--A term as defined in
13 Title 23, United States Code, §101.

14 (12) [~~(10)~~] Financial assistance--A term which may
15 include [~~includes~~], as applicable:

16 (A) extending credit by direct loan;

17 (B) providing credit enhancements;

18 (C) serving as a capital reserve for bond or debt
19 instrument funding;

20 (D) subsidizing interest rates;

21 (E) insuring the issuance of a letter of credit or
22 credit instrument;

23 (F) financing a purchase or lease agreement in

1 connection with a transit project;

2 (G) providing security for bonds and other debt

3 instruments; or

4 (H) providing methods of leveraging money that have
5 been approved by the United States Secretary of Transportation
6 and which relate to the project for which the assistance is
7 provided.

8 (13) General obligation bonds--Bonds, notes, or other
9 public securities issued by the commission under Transportation
10 Code, §222.004.

11 (14) [~~+11~~] Investment grade rating--Creditworthiness
12 sufficient to qualify a debt as eligible for commercial bank
13 investment under regulations issued by the Comptroller of the
14 Currency. For bonds, these debts are limited to ratings of
15 "AAA," "AA," "A," and "BBB" by Standard and Poor's Rating
16 Services or corresponding ratings used by other rating services.

17 (15) [~~+12~~] Metropolitan planning organization (MPO)--An
18 organization designated in certain urbanized areas to carry out
19 the transportation planning process as required by Title 23,
20 United States Code, §134.

21 (16) Program call--Commission action initiating the
22 period during which applications for loans from general
23 obligation bond proceeds will be accepted as described in §6.24

1 of this chapter (relating to Limitation on Applications - Loans
2 from General Obligation Bond Proceeds).

3 (17) [~~(13)~~] Secondary Funds--A term which includes:

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

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

9 (18) [~~(14)~~] State Act--Transportation Code, Chapter 222,
10 Subchapter D, §222.071 et.seq., relating to a State
11 Infrastructure Bank.

12 (19) [~~(15)~~] Transit project--Capital expenditures
13 eligible for funding under Title 49, United States Code, §5307,
14 §5309, and §5311.

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

20

21 §6.3. General Policies.

22 (a) All actions of the bank will be in accordance with
23 applicable federal and state law, and applicable rules and

1 regulations.

2 (b) Grant financing will not be considered.

3 (c) The commission will ensure that the bank maintains on a
4 continuing basis an investment grade rating on its debt
5 issuances or has a sufficient level of bond or debt financing
6 instrument insurance to maintain the viability of the bank [~~No~~
7 ~~actions will be knowingly taken which would result in the bank's~~
8 ~~credit rating falling below investment grade].~~

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

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

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

20 (d) [~~(g)~~] The Federal Highway Administration, the Federal
21 Transit Administration, and the Comptroller General of the
22 United States, each if applicable, and the Texas State Auditor's
23 Office, and the department, or any of their authorized

1 representatives, shall have the right of access to any books,
2 documents, papers, or other records of the applicant which are
3 pertinent to any agreement, in order to make audits,
4 examinations, excerpts, and transcripts.

5 (e) [~~(h)~~] Federal funds received by the state under the
6 federal act, matching state funds in an amount required by that
7 act, proceeds from bonds issued under the state act, secondary
8 funds, other state funds deposited into the bank by order of the
9 commission, and other money received by the state that is
10 eligible for deposit in the bank, may be deposited into the
11 bank.

12
13 [~~§6.4. Applicability. The requirements of this chapter do not~~
14 ~~apply, and the commission may authorize the bank to provide~~
15 ~~financial assistance, to an eligible project for which an~~
16 ~~innovative financing proposal has been submitted by the~~
17 ~~department and approved by the Federal Highway Administration~~
18 ~~prior to September 1, 1997.~~]

19
20 §6.4 [~~§6.5~~]. Separate Subaccounts.

21 (a) The bank consists of the separate subaccounts specified
22 in this section [~~shall consist of at least two separate~~
23 ~~subaccounts, a highway subaccount and a transit subaccount~~].

1 (b) The bank contains a highway subaccount and a transit
2 subaccount, each of which is capitalized with federal funds or a
3 combination of state and federal funds.

4 (c) [(b)] In addition to the subaccounts described by
5 subsection (b) [under subsection (a)] of this section, the bank
6 contains a subaccount that is [commission may create one or more
7 subaccounts that are] capitalized with only the proceeds of
8 general obligation bonds and secondary funds derived from
9 repayments of loans made from general obligation bond proceeds
10 [state funds only]. This subaccount is [Subaccounts capitalized
11 with state funds only are] not subject to the federal act.

12 (d) The commission may create additional subaccounts
13 capitalized with state funds only. Additional subaccounts
14 capitalized with state funds only are not subject to the federal
15 act.

SUBCHAPTER B. ELIGIBILITY

§6.11. Eligible Entities. As provided by this chapter, a [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) Except as provided by §6.13 of this subchapter
(relating to Eligibility for Financial Assistance from General
Obligation Bond Proceeds), the [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, but only to the extent of funds in
the bank that lawfully may be expended for 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

1 provide assistance for the project; and~~[]~~

2 (C) if the project is a transit project, financial
3 assistance is limited to funds in the bank that lawfully may be
4 expended for a transit project.

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

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

9 (2) is constructed or operated in cooperation with a
10 state agency or political subdivision in accordance with an
11 agreement between that state agency or political subdivision and
12 a private entity.

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

17

18 §6.13. Eligibility for Financial Assistance from General
19 Obligation Bond Proceeds.

20 (a) General. General obligation bond proceeds may be used
21 only to provide to public entities direct loans to pay costs of
22 highway improvement projects on or off of the state highway
23 system, including acquisition of the highway, construction,

1 reconstruction, and major maintenance, including any necessary
2 design, and the acquisition of rights-of-way.

3 (b) Loan categories. General obligation bond proceeds may
4 be used for the following categories of loans:

5 (1) a loan of sufficient credit quality to be the
6 security for, and source of repayment of, revenue bonds issued
7 under Transportation Code, §222.075, as determined by the
8 executive director;

9 (2) a loan of credit quality below that described in
10 paragraph (1) of this subsection, as determined by the executive
11 director, such as loans that are subordinated to existing or
12 proposed debt for a project or of an applicant, if, as
13 determined by the commission:

14 (A) the loan is anticipated to be refinanced by the
15 applicant within three years of completion of the project;

16 (B) the loan is a part and represents not more than 20
17 percent of a larger financing, and the larger financing would
18 not be feasible unless the loan is made on a subordinate basis;
19 or

20 (C) the loan is in the amount of \$4 million or less.

21 (c) Eligibility - secondary funds. Secondary funds derived
22 from repayments of loans made from general obligation bond
23 proceeds may only be used:

1 (1) to make loans in the same manner and subject to the
2 same provisions of this chapter as loans made from general
3 obligation bond proceeds; or

4 (2) to secure, including as reserves, revenue bonds
5 issued under Transportation Code, §222.075.

6 (d) Required ratings on other debt. All senior or parity
7 debt payable from the same revenue that would secure the loan,
8 including any senior or parity debt that will be part of the
9 financing of the project for which the loan has been requested,
10 but excluding loans for the project received under the
11 Transportation Infrastructure Finance and Innovation Act (TIFIA
12 loans) or under a successor or similar federal program, must
13 have an investment grade rating.

SUBCHAPTER C. PROCEDURES

1
2 §6.21. Department Contact. The director of the department's
3 finance division, or that director's designee, is the [The
4 ~~executive director will designate a]~~ contact within the
5 department for the purpose of providing information and
6 assistance to potential applicants. Assistance may include non-
7 binding advice, counsel, and consultation regarding all aspects
8 of a possible eligible project. If the executive director
9 determines that the project is otherwise eligible for
10 assistance, that the department is authorized by state law to
11 provide assistance, and that department resources are available,
12 the department may provide engineering and other technical
13 assistance to aid potential applicants in developing an
14 application. Any advice, assistance, or aid provided will not
15 constitute a commitment or liability on the part of the
16 department or the commission. Potential applicants are
17 encouraged to communicate with the contact at the earliest
18 possible date.

19
20 §6.22. Requested Financial Assistance. An applicant may
21 request any form of financial assistance authorized by this
22 chapter, but the form of financial assistance provided from
23 general obligation bond proceeds, money from the state highway

1 fund that is dedicated under state law, and potentially other
2 sources, is limited as provided by this chapter and other law.

3 [~~In general, all requests for financial assistance shall be~~
4 ~~treated as requests for the use of specific sums of money from~~
5 ~~the bank for certain periods of times at stated interest rates~~
6 ~~with scheduled repayments of principal, interest, and any~~
7 ~~appropriate charges or fees.]~~

8

9 §6.23. Application Procedure.

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

13 (1) an overview of the project, including a description
14 of the project, the total cost of the project, and the proposed
15 use of the requested financial assistance;

16 (2) the amount of money required to supply the requested
17 assistance, including any reserve funds that must be established
18 and held by the bank for the applicant's benefit, but that may
19 not be expended from the bank;

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

22 (4) a description of the need for the project and its
23 potential effect on traffic congestion and mobility; and

1 (5) the most recent official statement for any
2 outstanding debt of the applicant payable from the revenue
3 proposed to be used to repay the financial assistance, along
4 with the financial documents related to that debt, including any
5 master and supplemental resolutions, indentures of trust, and
6 authorizing resolutions, ordinances, or orders, unless
7 previously provided [~~the latest bond rating obtained by the~~
8 ~~applicant when using the sources of revenue to be pledged~~], or
9 if not applicable, other evidence of creditworthiness, provided
10 that the entity may provide any of the information described by
11 this paragraph electronically instead of with the application;

12 (6) official written approval of the project by the
13 governing body of each entity that may become liable for
14 repayment of any financial assistance;

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

20 (8) for public roadway projects, a preliminary design
21 study, including:

22 (A) an initial route and potential alignments; and

23 (B) revisions or changes to state highway system

1 facilities necessitated by the project; and

2 (9) for transit projects, a preliminary scope study,
3 including preliminary layouts, architectural drawings, equipment
4 specifications, and other information necessary to describe the
5 project fully and to comply with all requirements of the Federal
6 Transit Administration.

7 (b) Supplemental information and data. Except as provided
8 in subsection (c) of this section, the applicant shall submit
9 the [~~The applicant may be required to submit any or all of the~~
10 ~~following~~] supplemental information and data required by this
11 subsection. [~~if the executive director finds that information or~~
12 ~~data to be relevant to the project and the requested financing.~~
13 ~~In determining the relevance of supplemental information and~~
14 ~~data, the executive director will consider the complexity and~~
15 ~~size of the project, the type of infrastructure or asset~~
16 ~~involved, the type and complexity of financial assistance~~
17 ~~requested, the complexity of the project's and the applicant's~~
18 ~~financial status, and how soon transportation benefits will~~
19 ~~begin.~~]

20 (1) Financial feasibility study. The applicant shall
21 [~~may be required to~~] submit a financial feasibility study that
22 includes [~~, including~~]:

23 (A) a project construction or asset acquisition

1 schedule identifying the timing, amount, and source of all funds
2 [~~cash~~] required;

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

5 (C) a pro forma annual cash flow analysis [~~based on~~
6 ~~generally accepted accounting principles~~] for the expected
7 financing period of the project showing [~~, including~~]:

8 (i) anticipated revenues to be used in repayment by
9 source, including a preliminary traffic and revenue study,
10 acceptable to the executive director, for toll roads;

11 (ii) anticipated disbursements [~~by category,~~
12 ~~including disbursements~~] for preliminary studies and
13 engineering, construction, EPIC, right of way acquisition,
14 utility adjustments, operations, and maintenance[~~, renewal, and~~
15 ~~replacement~~];

16 [~~(iii) anticipated balances at the close of each~~
17 ~~calendar or fiscal year; and~~]

18 (iii) [~~(iv)~~] funds used to meet the requirements of
19 any sinking funds, reserve funds, and amortization payments; and

20 (iv) loan (debt service) coverage ratios and
21 associated cash flow surpluses or deficits;

22 (D) a description of the methods used in preparing the
23 financial feasibility study, the assumptions contained in the

1 study, and persons responsible for the preparation of the study;

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

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

6 (G) any interest rate subsidies requested by: [÷]

7 (i) an economically disadvantaged county, as defined
8 in Transportation Code, §222.053;

9 (ii) a city located wholly or partially within an
10 economically disadvantaged county; or

11 (iii) another public entity within whose boundary is
12 at least one entire disadvantaged county;

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

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

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

18 (ii) reduce direct state costs;

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

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

23 (v) accelerate the project's transportation benefits

1 over conventional financing methods.

2 (2) Other financial information. The applicant shall
3 submit the following information, if the information is not
4 provided with the feasibility study:

5 (A) the applicant's most recent annual budget;

6 (B) the five most recent comprehensive financial
7 reports or audits of the applicant;

8 (C) the current capital planning document that
9 addresses uses of the revenue proposed to be used for repayment
10 of the financial assistance;

11 (D) the most recent rating agency report on the credit
12 of the applicant, if any;

13 (3) [~~+2~~] Project impacts. The applicant shall submit
14 [~~may be required to conduct studies analyzing the impact of the~~
15 project, including]:

16 (A) information explaining how the project will be
17 consistent with the Statewide Transportation Plan and, if
18 appropriate, with the metropolitan transportation plan [~~(MTP)~~]
19 developed by an MPO;

20 (B) if the project is in a Clean Air Act non-attainment
21 area, information explaining how the project will be consistent
22 with the Statewide Transportation Improvement Program [~~(STIP)~~],
23 with the conforming plan and Transportation Improvement Program

1 [~~(TIP)~~] for the MPO in which the project is located (if
2 necessary), and with the State Implementation Plan [~~(SIP)~~];

3 (C) a preliminary identification of any known
4 environmental, social, economic, or cultural resource issues,
5 such as hazardous material sites, impacts on wetlands and other
6 water resources, endangered species, parks, neighborhoods,
7 businesses, historic buildings or bridges, and archeological
8 sites; and [~~the economic impact based on a study assessing the~~
9 ~~potential impact of the project on the economy of the region in~~
10 ~~which the project is to be located, including the economies of~~
11 ~~each county in which the project is to be located and of the~~
12 ~~municipalities within those counties;~~]

13 (D) an explanation of the status of obtaining an
14 environmental approval under Chapter 2, Subchapter A of this
15 title (relating to Environmental Review and Public Involvement
16 For Transportation Projects) and of obtaining any other required
17 environmental permits. [~~a preliminary identification of~~
18 ~~potential social, economic, and environmental impacts; and]~~

19 [~~(E) appropriate documentary evidence of community~~
20 ~~involvement in the development of the proposed project and of~~
21 ~~public support for it.]~~

22 (c) Waiver of required information or data. The executive
23 director may waive submission of any individual item of

1 information or data required by this section under either of the
2 following circumstances:

3 (1) the information or data is not relevant to the
4 project, applicant, or financial assistance requested (in
5 determining the relevance of supplemental information and data,
6 the executive director will consider the complexity and size of
7 the project, the type of infrastructure or asset involved, the
8 type and complexity of financial assistance requested, the
9 complexity of the project's and the applicant's financial
10 status, whether the source of the financial assistance will be
11 general obligation bond proceeds, and how soon transportation
12 benefits will begin); or

13 (2) the department already possesses information or data
14 in a format that can be substituted for the required information
15 or data.

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

1 the project's and the applicant's financial status.

2

3 §6.24. Limitation on Applications - Loans from General
4 Obligation Bond Proceeds.

5 (a) Program call. The commission shall specify the periods
6 during which the department will accept applications for loans
7 to be funded from general obligation bond proceeds and, for each
8 specific period, prescribe conditions for submission of the
9 applications.

10 (b) Publication of Notice. Upon the commission's
11 determination under subsection (a) of this section, the
12 department will publish a notice in the *Texas Register*
13 soliciting applications for loans to be funded from general
14 obligation bond proceeds. The notice will specify:

15 (1) the period during which the department will accept
16 applications under the notice;

17 (2) the estimated amount of funds in the bank that can be
18 allocated to applications submitted under the notice;

19 (3) the conditions for the submission of applications
20 prescribed by the commission; and

21 (4) any other information the commission or department
22 considers appropriate.

23

1 §6.25 [~~§6.24~~]. Suspension of Applications. If the commission
2 determines that bank funding is fully committed or other
3 uncertainties exist which warrant suspension of acceptance of
4 applications, the department may publish a notice in the Texas
5 Register providing that applications will no longer be accepted.
6 When conditions change, the commission shall publish a notice in
7 the Texas Register that applications are again being accepted.

1 SUBCHAPTER D. DEPARTMENT AND COMMISSION ACTION

2 §6.31. Department Action.

3 (a) Review of application [~~Notification~~]. The department
4 will review an [~~the~~] application submitted under Subchapter C of
5 this chapter and advise the applicant of any required
6 information or data that is missing. When the application is
7 complete, the department will so notify the applicant.

8 (b) Analysis. Within 30 days after the date that notice of
9 completion is sent under subsection (a) of this section, the
10 [~~The~~] executive director will perform an analysis of the
11 application and prepare [~~to support~~] findings and
12 recommendations for the commission. The executive director, by
13 notifying the applicant, may extend the 30-day period for up to
14 45 additional days if additional time is needed to analyze the
15 application and prepare the findings and recommendations. If
16 after the extension of the period additional time is still
17 needed because of the receipt of a substantial number of
18 applications within a short period of time, the executive
19 director may extend the time for analysis of the applications
20 and preparation of findings and recommendations for an
21 additional period. If the application is for a loan to be
22 funded from general obligation bond proceeds, the findings and
23 recommendations will address each of the considerations and

1 requirements for preliminary approval specified in §6.33(a)(1)
2 and (5) of this subchapter. [~~The executive director will submit~~
3 ~~the application together with findings and recommendations to~~
4 ~~the commission.~~]

5 (c) Submission to commission. Upon completion of the
6 analysis, the executive director will submit the application
7 together with findings and recommendations to the commission for
8 consideration at the first regular commission meeting held after
9 the 30th day following the day that the executive director gives
10 the submission to the commission.

11

12 §6.32. Commission Action - Financial Assistance from Other Than
13 General Obligation Bond Proceeds.

14 (a) Commission analysis. The commission will consider all
15 relevant information, including the sufficiency of the
16 information, the probable reliability of the projections, and
17 the anticipated financial condition of the applicant and the
18 project.

19 (b) Applications for limited financial assistance.

20 (1) Applications for financial assistance in the amount
21 of \$250,000 or less may be approved by the commission without
22 going through both the preliminary and final approval processes
23 prescribed in subsections (c) and (e) of this section. These

1 applications may be approved by the commission using one final
2 approval process.

3 (2) Applications under this subsection must meet all the
4 requirements and are subject to all the conditions applicable
5 either to preliminary or final approval of financial assistance,
6 except that the negotiation process under subsection (c)(3) of
7 this section may be completed after final approval.

8 (3) The commission may require applications under this
9 subsection to receive preliminary and final approval separately.
10 In making this determination, the commission will consider the
11 complexity and size of the project, the type of infrastructure
12 or asset involved, and the complexity of the project's and the
13 applicant's financial status.

14 (c) Preliminary approval.

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

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

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

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

22 (D) potential social, economic, and environmental
23 impacts;

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

2 (F) evidence of local public support; and

3 (G) any other relevant consideration.

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

7 (A) the project is consistent with the Statewide
8 Transportation Plan and, if appropriate, with the metropolitan
9 transportation plan [~~MTP~~] developed by an MPO;

10 (B) if the project is in a Clean Air Act non-attainment
11 area, the project will be consistent with the Statewide
12 Transportation Improvement Program [~~STIP~~], with the conforming
13 plan and Transportation Improvement Program [~~TIP~~] for the MPO
14 in which the project is located (if necessary), and with the
15 State Implementation Plan [~~SIP~~];

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

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

20 (E) the application shows that the project and the
21 applicant are likely to have sufficient revenues to assure
22 repayment of the financial assistance.

23 (3) Authorized actions. By granting preliminary

1 approval, the commission authorizes the executive director to
2 negotiate:

3 (A) the project's limits, scope, definition, design,
4 and any other factors that may affect [~~effect~~] the financing of
5 the project;

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

8 (C) the interest rates, including subsidies;

9 (D) the fees;

10 (E) the charges;

11 (F) the repayment schedules;

12 (G) the term to maturity of any financial assistance;

13 (H) the collateral securing the financial assistance;

14 (I) the appropriate covenants applicable to the
15 financial assistance;

16 (J) the default provisions; and

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

19 (d) Social, economic, and environmental impact.

20 (1) Before final approval is granted under subsection (e)
21 of this section, the department or the applicant must complete a
22 study of the social, economic, and environmental impact of the
23 project. The study must meet all requirements for a federal or

1 state project as if the project had been undertaken directly by
2 the department.

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

10 (3) For a project on the state highway system, the
11 department will be responsible for completing required studies
12 of social, economic, and environmental impacts with any costs to
13 be charged to the project.

14 (e) Final approval. After preliminary approval under
15 subsection (c) of this section, the completion of negotiations
16 under subsection (c)(3) of this section, and the approval of the
17 social, economic, and environmental study required by subsection
18 (d) of this section, the commission may grant final approval if
19 it determines that:

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

23 (2) the project will provide for all reasonable and

1 feasible measures to avoid, minimize, or mitigate for adverse
2 environmental impacts.

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

6 (g) Contingencies. The commission may make its preliminary
7 or final approval contingent on further actions by the
8 applicant, including making changes in the application, levying
9 taxes, and maintaining specified conditions necessary to assure
10 repayment.

11 (h) Order of approval or disapproval. Approval or
12 disapproval of financial assistance, whether preliminary or
13 final, will be by written order of the commission and will
14 include the rationale, findings, and conclusions on which
15 approval or disapproval is based. Approval or disapproval will
16 be in the sole discretion of the commission, and nothing in this
17 subchapter is intended to require approval of any financial
18 assistance.

19

20 §6.33 Commission Action - Loans from General Obligation Bond
21 Proceeds.

22 (a) Preliminary approval.

23 (1) Considerations. Prior to granting preliminary

1 approval of an eligible project, the commission will consider:

2 (A) the transportation need for and anticipated public
3 benefit of the project, including factors such as the project's
4 potential ability to accelerate needed transportation facilities
5 or to reduce financial and other burdens on the commission and
6 the department regarding the development, operation, and
7 maintenance of those facilities;

8 (B) availability of funding from all sources;

9 (C) the percentage of the total project cost that is
10 represented by the requested loan;

11 (D) the financial feasibility of the project;

12 (E) the potential for leveraging the loan, including
13 using the loan as security for revenue bonds issued under
14 Transportation Code, §222.075;

15 (F) potential social, economic, and environmental
16 impacts of the project;

17 (G) for a toll project, the extent to which the
18 applicant's toll collection system or plan for a toll collection
19 system provides interoperability;

20 (H) evidence of local public support; and

21 (I) the applicant's past experience with similar
22 projects and past performance working in collaboration with the
23 department in the development of similar projects, if

1 applicable.

2 (2) Allocation of bank capital. For each program call,
3 if there is insufficient bank capital to fund all of the
4 qualifying loan applications, the commission shall, subject to
5 paragraph (3) of this subsection, allocate the available bank
6 capital as follows:

7 (A) not less than 25 percent to the category of loan
8 described in §6.13(b)(1) of this chapter (relating to
9 Eligibility for Financial Assistance from General Obligation
10 Bond Proceeds);

11 (B) not less than 25 percent to the category of loan
12 described in §6.13(b)(2) of this chapter; and

13 (C) of the amounts allocated in subparagraphs (A) and
14 (B) of this paragraph, not less than 10 percent of each amount
15 shall be allocated to loans of \$4 million or less within the
16 category.

17 (3) Allocations as targets. The allocations set forth in
18 paragraph (2) of this subsection are target allocations and the
19 department may recommend and the commission may approve
20 applications that are not within the target allocations if
21 applications in one of the categories are insufficient to use
22 the bank capital for that category or if, based on the
23 considerations set forth in paragraph (1) of this subsection,

1 the department or the commission determine that a different
2 allocation is warranted.

3 (4) Project requirements. The commission may grant
4 preliminary approval of a project for financing if it finds
5 that:

6 (A) the project is consistent with the Statewide
7 Transportation Plan and, if appropriate, with the metropolitan
8 transportation plan developed by an MPO;

9 (B) if the project is in a nonattainment area, the
10 project will be consistent with the Statewide Transportation
11 Improvement Program, with the conforming plan and Transportation
12 Improvement Program for the MPO in which the project is located
13 (if necessary), and with the State Implementation Plan;

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

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

18 (E) the application shows that the project and the
19 applicant are likely to have sufficient revenues to assure
20 repayment of the loan according to the terms of the agreement.

21 (5) Authorized actions. By granting preliminary
22 approval, the commission authorizes the executive director to:

23 (A) evaluate the project's limits, scope, definition,

1 design, and other features, and identify any that adversely
2 affect the financing of the project, including EPIC, and
3 determine whether to negotiate changes in accordance with
4 paragraph (6) of this subsection;

5 (B) negotiate the amount, type, and timing of
6 disbursements of the loan;

7 (C) negotiate an interest rate, a repayment schedule,
8 collateral securing the loan, including any reserve, and default
9 provisions;

10 (D) negotiate provisions providing for the
11 subordination of loan financing provided under this chapter to
12 any other debt financing for the project, whether the other
13 financing is currently in place or will be incurred concurrently
14 with the loan or after the loan is made, but only if authority
15 to negotiate those provisions is provided to the executive
16 director in the preliminary approval and if subordination is
17 necessary for the project's financial feasibility; and

18 (E) negotiate all other provisions that are necessary
19 to complete an agreement under this chapter.

20 (6) Factors for changes to project's features. In
21 determining the extent to which the executive director will seek
22 changes to the features described in paragraph (5)(A) of this
23 subsection, the executive director will consider:

1 (A) the applicant's past experience with similar
2 projects; and

3 (B) whether the project is intended to become part of
4 the state highway system or otherwise be subject to the
5 jurisdiction of the department.

6 (b) Environmental documents; traffic and revenue report.

7 (1) Prior to receiving final approval under subsection
8 (c) of this section for the loan of funds for the construction
9 of a project, the applicant shall:

10 (A) complete the environmental review and public
11 involvement requirements in Chapter 2, Subchapter A of this
12 title (relating to Environmental Review and Public Involvement
13 for Transportation Projects); and

14 (B) for a toll project, obtain an investment grade
15 traffic and revenue report for the project from a nationally
16 recognized traffic engineer.

17 (2) The executive director may waive the requirements of
18 paragraph (1)(A) or (B) of this subsection if he or she
19 determines that the study or report is inapplicable or
20 unnecessary due to the nature of the requested assistance.

21 (c) Final approval. After preliminary approval, completion
22 of negotiations, and compliance with this section, the
23 commission may grant final approval if it determines that:

1 (1) making the loan will prudently provide for the
2 protection of public funds; and

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

6 (d) Contingencies - general. The commission may make its
7 preliminary approval contingent on the applicant's making
8 changes, performing other acts, or establishing certain
9 conditions necessary to provide for the adequacy of any required
10 repayments. The commission may make its final approval subject
11 to the applicant's fulfilling specified conditions precedent to
12 the release of loan funds and, if so, the conditions precedent
13 will also be in the financial assistance agreement. The
14 necessity and nature of the changes, acts, or conditions under
15 this subsection will be determined after considering the
16 applicant's past experience with similar projects and past
17 performance working in collaboration with the department in the
18 development of similar projects, especially with regard to the
19 applicant's previous use of the commission's financial
20 assistance.

21 (e) Contingencies - toll projects. The commission may make
22 its preliminary or final approval contingent on the department's
23 receiving updated cost information and an update of the traffic

1 and revenue report required by subsection(b) of this section
2 that together show no changes have occurred that materially and
3 adversely affect the financial status of the project or the
4 applicant. If this contingency is in the final approval it will
5 also be in the financial assistance agreement as a condition
6 precedent to funding the loan.

1 SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS

2 §6.41. Financial Assistance Agreements [~~Executive Director~~].

3 [~~The executive director will negotiate the terms of agreements~~
4 ~~deemed necessary to comply with any requirements of preliminary~~
5 ~~approval, to protect the public's safety, and to prudently~~
6 ~~provide for the protection of public funds while furthering the~~
7 ~~purposes of this chapter. These agreements shall include, but~~
8 ~~not be limited to, terms provided for in this subchapter, as~~
9 ~~applicable to the nature of the project.~~]

10 (a) Form of agreement. An agreement evidencing a loan or
11 other financial assistance may be in the form of a contract or
12 similar document, or may be in the form of a bond, note, or
13 other obligation issued by the applicant.

14 (b) Negotiation of terms. The executive director will
15 negotiate the terms of agreements deemed necessary to comply
16 with any requirements of preliminary approval, to protect the
17 public's safety, and to prudently provide for the protection of
18 public funds while furthering the purposes of this chapter.
19 These agreements shall include, but not be limited to, terms
20 provided for in this subchapter, as applicable to a particular
21 project.

22 (c) Initial repayment date. Unless the commission defers
23 the beginning of repayment, repayment of any financial

1 assistance from the bank will begin on the earliest reasonable
2 date consistent with applicable federal and state law, rules,
3 and regulations. If approved by the commission, the initial
4 repayment of financial assistance may be deferred to the date
5 specified by the commission, which may not be later than the
6 fifth anniversary of the date of the initial funding of the
7 financial assistance. The term for repaying any financial
8 assistance will not exceed 30 years after the date of the first
9 scheduled payment.

10 (d) Payment dates. Interest shall be paid semiannually, on
11 February 1 and August 1. Principal shall be paid annually on
12 February 1. If a date for payment is not a business day the
13 payment shall be made on the next following business day.

14 (e) Prepayments. Principal and interest may be prepaid
15 without penalty on the first business day of any February or
16 August as provided in, and after the date specified in, the
17 financial assistance agreement.

18 (f) Terms for assistance from general obligation bond
19 proceeds. Agreements for loans from general obligation bond
20 proceeds also must require that the applicant will provide:

21 (1) a certified copy of the resolution of the applicant,
22 in the form specified by the executive director, authorizing
23 execution of the financial assistance agreement and containing,

1 if applicable, covenants relating to the status of the
2 applicant's repayment obligation in relation to federal tax law;

3 (2) any other certification of the applicant concerning
4 federal tax law, federal securities law, and state law in
5 relation to authorization of the financial assistance agreement
6 as specified by the executive director;

7 (3) if requested by the executive director, a bond
8 counsel opinion from a recognized bond counsel in a form
9 satisfactory to the executive director;

10 (4) a certification that the applicant will, if requested
11 by the executive director, cooperate with the department and
12 make all reasonable efforts requested by the department for
13 obtaining the approval of the financial assistance agreement by
14 the Public Finance Division of the Office of the Attorney
15 General of the State of Texas.

16 (g) Assurances. The department will provide in a financial
17 assistance agreement assurances that are reasonably and
18 customarily required by the applicant and that are necessary for
19 obtaining financing for, developing, or operating a particular
20 project, if, in the department's reasonable judgment, the
21 assurances are consistent with the agreement.

22

23 §6.42. Performance of Work.

1 (a) Work performed by the department. The department and
2 the applicant may agree that the department will, consistent
3 with state law, [~~may in its discretion and consistent with state~~
4 ~~law,~~] provide all or part of the work connected with the project
5 in the department's normal course of business. For work
6 performed by the department, the following provisions will
7 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. Financial assistance proceeds shall not be used
11 to pay for project costs incurred prior to execution of the
12 financial assistance agreement.

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

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

21 (4) The applicant shall provide the department, and if
22 applicable, the Federal Highway Administration, and the Federal
23 Transit Administration, or their authorized representatives as

1 applicable, with right of entry or access to all properties or
2 locations necessary to perform activities required to execute
3 the work, inspect the work or aid otherwise in the prompt
4 pursuit of the work.

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

10 (1) The applicant shall comply with applicable state and
11 federal law, and with all terms and conditions of an applicable
12 agreement. If approval or concurrence of the Federal Highway
13 Administration, the Federal Transit Administration, or any other
14 federal agency is required, the department may require that the
15 applicant seek that approval or concurrence through the
16 department. [~~The applicant shall comply with applicable~~
17 ~~requirements of the federal act, Title 23, United States Code,~~
18 ~~Title 49, United States Code, other applicable state and federal~~
19 ~~law, and all terms and conditions of any agreements. Where~~
20 ~~approval or concurrence of the Federal Highway Administration,~~
21 ~~the Federal Transit Administration, or other federal agency is~~
22 ~~required, the applicant shall seek such action through the~~
23 ~~department. The applicant shall reimburse the department for~~

1 ~~any loss of federal funds to the department resulting from the~~
2 ~~applicant's failure to comply.]~~

3 (2) The applicant shall maintain its books and records in
4 accordance with generally accepted accounting principles in the
5 United States, as promulgated by the Governmental Accounting
6 Standards Board, the Financial Accounting Standards Board, or
7 pursuant to applicable federal or state laws or regulations, and
8 with all other applicable federal and state requirements,
9 subject to any exceptions required by existing bond indentures
10 of the applicant that are applicable to the project, and any
11 exceptions the applicant has historically implemented that have
12 been acceptable to the public debt markets. [The applicant shall
13 ~~maintain project records and accounts in accordance with~~
14 ~~generally accepted accounting principles, and all applicable~~
15 ~~federal and state requirements.]~~

16 (3) For loans of more than \$1 million, the applicant
17 shall, at the applicant's cost, have a full audit of its books
18 and records performed annually by an independent certified
19 public accountant selected by the applicant and reasonably
20 acceptable to the department. The audit must be conducted in
21 accordance with generally accepted auditing standards
22 promulgated by the Financial Accounting Standards Board, the
23 Governmental Accounting Standards Board, or the standards of the

1 Office of Management and Budget Circular A-133, Audits of
2 States, Local Governments and Non-profit Organizations, as
3 applicable, and with all other applicable federal and state
4 requirements. The applicant shall cause the auditor to provide
5 a full copy of the audit report and any other management letters
6 or auditor's comments directly to the department within a
7 reasonable period of time after they have been provided to the
8 governing body of the applicant. [~~The applicant shall, at the~~
9 ~~applicant's cost and in a format prescribed by the department,~~
10 ~~submit an annual report to the department listing project~~
11 ~~expenditures, providing an accounting of financial assistance~~
12 ~~proceeds, and providing any other information requested by the~~
13 ~~department.]~~

14 (4) For loans of \$1 million or less, the applicant shall:
15 [~~In addition to the annual report, the applicant shall, on~~
16 ~~request of the department and at the applicant's cost, provide a~~
17 ~~report containing the same or similar information as required in~~
18 ~~the annual report under subsection (b)(3) of this section or~~
19 ~~information relating to project expenditures that the applicant~~
20 ~~is required to provide to another local, state, or federal~~
21 ~~agency.]~~

22 (A) at the applicant's cost and in a format prescribed
23 by the department, submit an annual report to the department

1 listing project expenditures, providing an accounting of
2 financial assistance proceeds, and providing any other
3 information requested by the department;

4 (B) on request of the department and at the applicant's
5 cost, provide a report containing the same or similar
6 information as required in the annual report under paragraph
7 (4)(A)of this section or information relating to project
8 expenditures that the applicant is required to provide to
9 another local, state, or federal agency;

10 (C) hold all project records, accounts, and supporting
11 documents open for state or federal audits until project
12 completion; and

13 (D) forward to the department, upon completion of the
14 project, all project files and reports as requested by the
15 department.

16 (5) If required to have an audit under paragraph 3 of
17 this subsection, the applicant shall retain, or cause the
18 auditor to retain, all work papers and reports until the fourth
19 anniversary of the date of the audit report, unless the
20 department notifies the applicant in writing of a later date for
21 the end of the retention period. During the retention period,
22 the applicant shall make audit work papers available to the
23 department within 30 days of the date that the department

1 requests those papers. [~~The applicant shall hold all project~~
2 ~~records, accounts, and supporting documents open for state or~~
3 ~~federal audits until project completion.~~]

4 (6) Unless the department in writing provides a shorter
5 period, the applicant shall retain all original project files,
6 records, accounts, and supporting documents until the later of
7 the date that: [~~Upon completion of the project, the applicant~~
8 ~~shall forward to the department all project files and reports as~~
9 ~~requested by the department. The department shall retain these~~
10 ~~files until all financial assistance has been repaid and any~~
11 ~~necessary audits have been performed.~~]

12 (A) project is completed;

13 (B) all financial assistance under this chapter has
14 been repaid, if applicable; or

15 (C) the retention period required by applicable federal
16 and state law ends.

17 (7) If a project will become a part of the state highway
18 system and the department will assume jurisdiction of the
19 project, the applicant shall ensure that the project, including
20 all its components and appurtenances, is maintained in
21 accordance with §6.45 of this subchapter (relating to
22 Maintenance). The applicant shall transfer all design data,
23 surveys, construction plans, right of way maps, utility permits,

1 and agreements with other entities relating to the project to
2 the department when the department assumes jurisdiction of the
3 project. [~~Financial assistance proceeds shall not be used to pay~~
4 ~~for project costs incurred prior to execution of the financial~~
5 ~~assistance agreement.~~]

6

7 §6.43. Design, Construction, and Procurement Standards -
8 Financial Assistance from Other Than General Obligation Bond
9 Proceeds.

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

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

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

21

22 §6.44. Design and Construction - Loans from General Obligation
23 Bond Proceeds.

1 (a) Responsibility.

2 (1) Except to the extent the department and the applicant
3 have agreed in writing that the department will provide all or
4 part of the work connected with the project, as provided in
5 §6.42 of this subchapter, the applicant is solely responsible
6 for the design and construction of the project, including:

7 (A) ensuring that all EPIC are addressed in the project
8 design;

9 (B) assessing field changes for potential environmental
10 impacts; and

11 (C) obtaining any necessary EPIC required for field
12 changes.

13 (2) All construction plans must be signed, sealed, and
14 dated by a professional engineer licensed in Texas.

15 (b) Design criteria.

16 (1) Plans and specifications. Project plans and
17 specifications must be in compliance with either the latest
18 version of the design manuals or the latest version of the
19 American Association of State Highway and Transportation
20 Officials (AASHTO) standards, including the AASHTO Policy on
21 Geometric Design of Highways and Streets, the AASHTO Pavement
22 Design Guide, and the AASHTO Bridge Design Specifications.

23 (2) Exceptions to design criteria. An applicant may

1 request approval to deviate from the required design criteria
2 for a particular design element on a case-by-case basis. The
3 request for approval must state the criteria for which an
4 exception is being requested and must include a comprehensive
5 description of the circumstances and engineering analysis
6 supporting the request. The executive director may approve an
7 exception request after determining that the particular criteria
8 could not reasonably be met due to physical, environmental, or
9 other relevant factors and that the proposed design is a prudent
10 engineering solution, or that the deviation meets some other
11 design criteria acceptable to the department. In making a
12 determination under this paragraph, the executive director shall
13 consider whether the project is intended to become part of the
14 state highway system or otherwise [~~to be~~] subject to the
15 jurisdiction of the department, and the applicant's experience
16 with similar projects.

17 (c) Project development.

18 (1) Access. For proposed projects that will change the
19 access to an interstate highway, the applicant shall submit to
20 the department all data necessary for the department to request
21 Federal Highway Administration approval.

22 (2) Preliminary design submission and approval. When
23 design is approximately 30 percent complete, the applicant shall

1 send to the department for review and approval in accordance
2 with the procedures and time line established in the financial
3 assistance agreement:

4 (A) a completed design summary report form as contained
5 in the department's Project Development Process Manual or an
6 equivalent document as contained in or authorized by another
7 appropriate department manual;

8 (B) a design schematic depicting plan, profile, and
9 superelevation information for each roadway;

10 (C) typical sections showing existing and proposed
11 horizontal dimensions, cross slopes, location of profile grade
12 line, pavement layer thickness and composition, earthen slopes,
13 and right of way lines;

14 (D) bridge, retaining wall, and sound wall layouts;

15 (E) hydraulic studies and drainage area maps showing
16 the drainage of waterways entering the project and local project
17 drainage;

18 (F) an explanation of the anticipated handling of
19 existing traffic during construction;

20 (G) if a structure meeting the definition of a bridge
21 as defined by the National Bridge Inspection Standards is
22 proposed, an indication of structural capacity in terms of
23 design loading;

1 (H) an explanation of how the U.S. Army Corps of
2 Engineers permit requirements, including associated
3 certification requirements of the Texas Commission on
4 Environmental Quality, will be satisfied if the project involves
5 discharges into waters of the United States; and

6 (I) the location and text of proposed mainlane guide
7 signs shown on a schematic that includes lane miles or arrows
8 indicating the number of lanes.

9 (3) Construction specifications.

10 (A) All plans, specifications, and estimates developed
11 by or on behalf of the applicant must conform to the latest
12 version of the department's Standard Specifications for
13 Construction and Maintenance of Highways, Streets, and Bridges,
14 and to all alternative specifications applicable under
15 subparagraph (B) of this paragraph.

16 (B) The executive director may approve the use of an
17 alternative specification if the proposed specification is
18 determined to be sufficient to ensure the quality and durability
19 of the finished product for the intended use and the safety of
20 the traveling public. In deciding whether to approve the use of
21 an alternative specification, the executive director shall
22 consider whether the project is intended to become part of the
23 state highway system or otherwise to be subject to the

1 jurisdiction of the department, and the applicant's experience
2 with similar projects.

3 (4) Submission and approval of final design plans and
4 contract administration procedures. When final plans are
5 complete, the applicant shall send to the executive director for
6 review and approval in accordance with the procedures and time
7 line established in the financial assistance agreement:

8 (A) seven copies of the final set of plans,
9 specifications, and engineer's estimate (PS&E) that have been
10 signed and sealed by the responsible engineer;

11 (B) summarized or highlighted revisions to information
12 provided with the preliminary design submission;

13 (C) a proposal necessary for bidding the project in
14 compliance with applicable state and federal requirements;

15 (D) contract administration procedures containing
16 criteria that comply with the applicable national or state
17 administration criteria and manuals; and

18 (E) the location and description of all EPIC addressed
19 in construction.

20 (5) Contract bidding and award. The applicant may not
21 advertise the project for receipt of bids until it has received
22 approval of the PS&E from the department. Procedures relating
23 to bidder qualification, bidding, award, and execution of a

1 contract for the development and maintenance of a project that
2 is financed with state or federal funds must comply with:

3 (A) the policies and procedures prescribed in Chapter
4 9, Subchapter B of this title (relating to Highway Improvement
5 Contracts); or

6 (B) policies and procedures that comply with the
7 applicable requirements of federal law and with the applicable
8 requirements of state law that are intended to ensure fair and
9 open competition.

10 (6) Construction inspection and oversight. The applicant
11 shall oversee all construction operations, including the
12 oversight and follow-through with all EPIC. Inspection and
13 project oversight shall be performed in accordance with
14 requirements prescribed in the financial assistance agreement.

15 (7) Contract revisions. All contract revisions must
16 comply with the latest version of the applicable national or
17 state administration criteria and manuals. The applicant shall
18 submit all contract revisions to the department for its records.
19 The applicant shall submit any revision that affects prior
20 environmental approvals or significantly revises the project
21 scope or the geometric design to the executive director and must
22 receive the executive director's approval before the revised
23 construction work may begin. Procedures governing the executive

1 director's approval, including time limits for department
2 review, shall be included in the financial assistance agreement.

3 (8) As-built plans. On completion of construction of the
4 project, the applicant shall file with the department a set of
5 the as-built plans incorporating all contract revisions. The
6 plans must be signed, sealed, and dated by a licensed
7 professional engineer in Texas, who certifies that the project
8 was constructed in accordance with the plans and specifications.

9 (9) Document and information exchange. If available, the
10 applicant shall deliver electronically to the department all
11 materials used in the development of the project including, but
12 not limited to, aerial photography, computer files, surveying
13 information, engineering reports, environmental documentation,
14 general notes, specifications, and contract provision
15 requirements.

16 (10) State and federal law. The applicant shall comply
17 with all federal and state laws and regulations applicable to
18 the project, and shall provide or obtain all applicable permits,
19 plans, and other documentation required by a federal, state, or
20 local governmental entity.

21 (11) Work on state right of way. All work required
22 within the limits of state owned right of way shall be
23 accomplished only pursuant to express written agreement with the

1 department.

2

3 [~~§6.44. Maintenance and Operations.~~]

4 [~~(a) Maintenance. When funds for repayment are derived from~~

5 ~~fees or tolls on the project, or the project or asset is~~

6 ~~collateral for the financial assistance, the department may:]~~

7 [~~(1) require standards and procedures to be used in~~

8 ~~maintenance of the project:]~~

9 [~~(2) monitor.~~]

10 [~~(b) Speed limits. If applicable, speed limits shall be~~

11 ~~posted in accordance with procedures used by the department for~~

12 ~~the state highway system, but in no case shall such limits~~

13 ~~exceed the maximum prima facie speed limits prescribed by state~~

14 ~~law for a public road having the same characteristics.]~~

15

16 §6.45. Maintenance.

17 (a) The department may require minimum specific standards

18 and procedures to be used in maintenance of the project during

19 the term of financial assistance.

20 (b) All structures defined as a bridge by the National

21 Bridge Inspection Standards shall be maintained in compliance

22 with applicable state and federal requirements. The department

23 will perform safety inspections of these structures in

1 accordance with federal requirements.

2 (c) In establishing the standards and procedures described
3 in subsection (a) of this section, if any, or in considering
4 exceptions to the standards and inspection procedures described
5 in subsection (b) of this section, the department shall
6 consider:

7 (1) the applicant's past experience with similar projects
8 (if applicable); and

9 (2) whether the project is intended to become part of the
10 state highway system or otherwise to be subject to the
11 jurisdiction of the department.

12

13 [~~§6.45. Financial and Credit Requirements. The applicant shall~~
14 ~~agree to:~~]

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

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

20 [~~(3) abide by provisions governing default;~~]

21 [~~(4) submit reports and have periodic audits in~~
22 ~~compliance with all applicable federal and state requirements or~~
23 ~~as requested by the department; and]~~

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

3

4 §6.46. Financial and Credit Requirements. An applicant
5 receiving financial assistance under this chapter shall:

6 (1) repay the financial assistance at the specified
7 interest rate over a specified period as provided in the
8 financial assistance agreement;

9 (2) submit to the department within 30 days of the date
10 of their adoption the annual operating and capital budgets
11 adopted by the applicant each fiscal year under a trust
12 agreement or indenture or equivalent document securing bonds
13 issued for a project, and any amended or supplemental operating
14 or capital budget, approved by the governing body of the
15 applicant and certified as correct by its chief administrative
16 officer or chief financial officer;

17 (3) for all debt payable from the same revenue that is to
18 repay the financial assistance, within 30 days after the date of
19 submission to the Electronic Municipal Market Access System
20 (EMMA) of the Municipal Securities Rulemaking Board of annual
21 financial information and notices of material events required to
22 be disclosed under Rule 15c2-12 of the United States Securities
23 and Exchange Commission (17 C.F.R. §240.15c2-12), submit the

1 information or notice to the department or advise the department
2 in writing that the submission to EMMA has been made and provide
3 in that writing the associated CUSIP number; and
4 (4) abide by provisions governing default.

5
6 [~~§6.46. Other Requirements. Depending on the facts and~~
7 ~~circumstances of each project, the applicant, and type of~~
8 ~~financial assistance provided, the executive director may~~
9 ~~require additional terms and conditions necessary to protect the~~
10 ~~public safety, prudently provide for the protection of public~~
11 ~~funds, and further the purposes and requirements of this~~
12 ~~chapter.]~~