

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt amendments to §§6.2 - 6.4, 6.12, 6.21 - 6.23, 6.31, 6.32, and 6.41 - 6.43; the repeal of §§6.13, 6.24, 6.25, 6.33, and 6.44 - 6.46; and new §§6.24, 6.44, and 6.45 all relating to the State Infrastructure Bank to be codified under Title 43, Texas Administrative Code, Part 1.

The preamble and the adopted amendments, repeals, and new sections 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 §§6.2 - 6.4, 6.12, 6.21 - 6.23, 6.31, 6.32, and 6.41 - 6.43; the repeal of §§6.13, 6.24, 6.25, 6.33, and 6.44 - 6.46; and new §§6.24, 6.44, and 6.45 are adopted and are authorized for filing with the Office of the Secretary of State.

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

113110 MAY 31 12

Minute Number Date Passed

Adoption Preamble

1
2 The Texas Department of Transportation (department) adopts
3 amendments to §§6.2 - 6.4, relating to General Provisions;
4 amendments to §6.12 and repeal of §6.13, relating to
5 Eligibility; amendments to §§6.21 - 6.23, the repeal of §6.24
6 and §6.25, and new §6.24, relating to Procedures; amendments to
7 §6.31 and §6.32 and repeal of §6.33, relating to Department and
8 Commission Action; amendments to §§6.41 - 6.43, the repeal of
9 §§6.44 - 6.46, and new §6.44 and §6.45, relating to Financial
10 Assistance Agreements, all concerning the State Infrastructure
11 Bank. The amendments to §§6.2 - 6.4, §6.12, §§6.21 - 6.23,
12 §6.31, §§6.41 - 6.43, repeal of §6.13, §6.24 and §6.25, §6.33,
13 §§6.44 - 6.46, and new §6.24, §6.44 and §6.45 are adopted
14 without changes to the proposed text as published in the March
15 9, 2012 issue of the *Texas Register* (37 TexReg 1682) and will
16 not be republished. The amendments to §6.32 are adopted with
17 changes to the proposed text as published in the March 9, 2012
18 issue of the *Texas Register* (37 TexReg 1682).

19
20 EXPLANATION OF ADOPTED AMENDMENTS, REPEALS, AND NEW SECTIONS
21 Transportation Code, Chapter 222, Subchapter D establishes the
22 state infrastructure bank as an account in the state highway
23 fund and authorizes the Texas Transportation Commission
24 (commission) to provide financial assistance from money in the
25 bank for qualified projects. The bank has been functioning
26 since 1997 and was capitalized with federal funds and money from

1 the state highway fund.

2

3 The Texas Constitution, Article III, Section 49-p and
4 Transportation Code, §222.004 authorize the commission to issue
5 general obligation bonds for the purpose of paying all or part
6 of the cost of highway improvement projects, but proceeds of
7 general obligation bonds have not been, and are not expected to
8 be, appropriated for the purpose of making loans from the bank.

9

10 The inability to capitalize the bank with general obligation
11 bond proceeds requires revisions to the rules. The rules as
12 currently written provide for an application and approval
13 process for loans made from general obligation bond proceeds
14 that is different from that for loans from any other funds.
15 This is confusing to applicants, making the program more time-
16 intensive to implement by the department. Rule revisions are
17 also needed because the existing rules incorrectly imply that
18 general obligation bond proceeds have been appropriated to
19 provide financial assistance.

20

21 Therefore, these amendments revise or repeal certain sections of
22 existing rules to eliminate provisions relating to the use of
23 general obligation bond proceeds to provide financial assistance
24 from the bank. Additionally, the amendments reflect changes in
25 the department's practices and procedures that have been made
26 since the rules were last revised and clarify some existing

1 provisions.

2

3 Amendments to §6.2, Definitions, eliminate the defined terms
4 "general obligation bonds" and "program call", each relating to
5 the use of general obligation bond proceeds for financial
6 assistance, and renumber the defined terms to reflect the
7 elimination of those terms. An amendment to the definition of
8 "expected financing period" clarifies that the period includes
9 any time during which payments are deferred. An amendment to
10 the defined term "secondary funds" clarifies that repayments
11 made with federal funds do not constitute secondary funds.

12

13 Amendments to §6.3, General Policies, move and modify the
14 language from existing §6.42 that provides financial assistance
15 from the bank may not be used to reimburse an applicant for
16 project costs incurred before the execution of a financial
17 assistance agreement. The relocation of that language clarifies
18 that the limitation applies regardless of whether the department
19 or the applicant performs the work on the project. The
20 amendments also clarify that an applicant may be reimbursed with
21 financial assistance from the bank for consultant costs incurred
22 in preparation of the application for the assistance and the
23 financial assistance agreement if the reimbursement is permitted
24 by state and federal law but only if the application results in
25 the disbursement of financial assistance to the applicant. The
26 amendments also clarify that for applicants that are required to

1 comply with certain provisions in Title 43, Chapter 27,
2 Subchapter E, Financial Assistance for Toll Facilities, in
3 addition to the requirements of Chapter 6, if there is a
4 conflict between a provision of Chapter 27, Subchapter E, and a
5 provision of Chapter 6, Chapter 6 controls to the extent of that
6 conflict.

7
8 Amendments to §6.4, Separate Subaccounts, eliminate existing
9 subsection (c) that allows for the creation of a separate
10 subaccount to hold general obligation bond proceeds, because
11 this subaccount is no longer necessary. The amendments
12 redesignate existing subsection (d) as subsection (c).

13
14 Amendments to §6.12, Eligible Projects, eliminate a reference to
15 §6.13, Eligibility for Financial Assistance from General
16 Obligation Bond Proceeds, because that section is repealed by
17 these amendments.

18
19 Section 6.13, Eligibility for Financial Assistance from General
20 Obligation Bond Proceeds, is repealed to eliminate the
21 eligibility requirements for assistance from general obligation
22 bond proceeds because the department does not have the authority
23 to provide assistance from those proceeds.

24
25 Amendments to §6.21, Department Contact, establish the Chief
26 Financial Officer as the department's contact for applicants for

1 assistance from the bank. The amendments authorize the Chief
2 Financial Officer to designate an appropriate department
3 employee to act in that capacity.

4

5 Amendments to §6.22, Requested Financial Assistance, eliminate a
6 reference to general obligation bond proceeds because the
7 section incorrectly implies that general obligation bond
8 proceeds may be used to provide financial assistance.

9

10 Amendments to §6.23(a)(1), Application Procedure, clarify that
11 the total estimated, and not the final, cost of a project is to
12 be included in an application. Subsection (a)(5) requires
13 submission with an application of the most recent official
14 statement for any outstanding debt of the applicant payable from
15 the revenue proposed to be used to repay the financial
16 assistance from the bank. Amendments to subsection (a)(5)
17 provide that any type of offering document, whether it is an
18 official statement, remarketing memorandum, or other document,
19 may be used to satisfy that requirement. The amendments clarify
20 that the offering document and related bond documents may be
21 submitted electronically. Amendments to subsection (c),
22 regarding the waiver of required information or data, eliminate
23 the reference to general obligation bond proceeds. The
24 amendments also correct punctuation and grammar errors.

25

26 Section 6.24, Limitation on Applications - Loans from General

1 Obligation Bond Proceeds, is repealed because the department is
2 not authorized to use general obligation bond proceeds to
3 provide financial assistance. Current §6.25 is redesignated as
4 new §6.24 without change.

5
6 Amendments to §6.31(b), Department Action, clarify that the
7 executive director has at least 30 days to analyze an
8 application and remove the limitation on the reasons that the
9 executive director may allow additional time for analysis of an
10 application. Amendments to subsection (b) also eliminate the
11 department's need, in analyzing an application, to consider
12 factors specific to the use of general obligation bond proceeds.
13 Amendments to subsection (c) remove the time requirement for the
14 commission to consider an application so that the commission can
15 consider an application at the earliest possible regular
16 commission meeting.

17
18 Amendments to §6.32 change the heading of the section from
19 "Commission Action - Financial Assistance from Other Than
20 General Obligation Bond Proceeds" to "Commission Action" to
21 clarify that the commission does not provide financial
22 assistance with the proceeds of general obligation bonds. The
23 department proposed amendments that would allow, but not
24 require, the commission to consider final approval of loans of
25 \$3 million or less (instead of loans for \$250,000 or less)
26 without going through both the preliminary and final approval

1 processes. Complex loans of \$3 million or less could still go
2 through both processes. Any loan may still receive final
3 commission approval contingent on the completion or occurrence
4 of any condition that the commission considers to be necessary.
5 These amendments result in a more timely and efficient loan
6 process for many applicants while still allowing for a thorough
7 evaluation process. Subsection (e) is amended to more
8 accurately describe the prerequisites for the commission's final
9 approval of an application. Comments received by the department
10 resulted in changes to §6.32 that differ from the proposed
11 language. Those changes are addressed in the COMMENTS section
12 of this preamble.

13
14 Section 6.33, Commission Action - Loans from General Obligation
15 Bond Proceeds, is repealed because the department does not have
16 the ability to capitalize the bank with general obligation bond
17 proceeds.

18
19 Amendments to §6.41(d), Financial Assistance Agreements,
20 eliminate the requirement that loan payments and prepayments be
21 made on February 1 and August 1. Without the ability to make
22 loans from general obligation bond proceeds, the potential of
23 leveraging loans is significantly decreased and, therefore,
24 there is no need for consistent payment dates. The amendments
25 delete subsection (f), regarding terms for assistance from
26 general obligation bond proceeds. Existing subsection (g) is

1 redesignated as subsection (f).

2

3 Amendments to §6.42, Performance of Work, delete language
4 relating to the use of assistance from the bank that is moved to
5 §6.3, General Policies, for the reasons provided in the
6 explanation of amendments to that section. The amendments to
7 subsection (b)(4)(C) require an applicant to hold records open
8 for audits consistent with the record retention requirements
9 described in existing subsection (b)(6). A section cross
10 reference in subsection (b)(7) is changed from §6.45 to §6.44
11 because existing §6.44 will be repealed, and existing §6.45 will
12 be readopted as §6.44 as further described below.

13

14 Amendments to §6.43 change the section's heading from "Design,
15 Construction, and Procurement Standards - Financial Assistance
16 from Other Than General Obligation Bond Proceeds" to "Design,
17 Construction, and Procurement Standards" to reflect that
18 financial assistance from the bank may not be provided from the
19 proceeds of general obligation bonds.

20

21 Section 6.44, Design and Construction - Loans from General
22 Obligation Proceeds, is repealed because the department may not
23 use general obligation bond proceeds to provide financial
24 assistance from the bank. Because of the repeal of §6.44,
25 existing §6.45, Maintenance, is redesignated as new §6.44, and
26 existing §6.46, Financial and Credit Requirements, is

1 redesignated as new §6.45.

2

3 COMMENTS

4 Comments on the proposed amendments, repeals, and new sections
5 were received from C. Brian Cassidy at Locke Lord LLP on behalf
6 of Alamo Regional Mobility Authority, Cameron County Regional
7 Mobility Authority, Camino Real Regional Mobility Authority,
8 Central Texas Regional Mobility Authority, Grayson County
9 Regional Mobility Authority, and North East Texas Regional
10 Mobility Authority (collectively, the "Regional Mobility
11 Authorities").

12

13 Comment: The Regional Mobility Authorities recommended
14 amendments to proposed §6.32, Commission Action, that would
15 eliminate the requirement that applications for \$10 million or
16 less be submitted to the commission for preliminary approval;
17 such applications would be submitted to the commission for
18 consideration for final approval only. In addition, the
19 Regional Mobility Authorities recommended that applications for
20 more than \$10 million be submitted for consideration by the
21 commission in separate actions for preliminary and final
22 approval, unless for any particular application, the commission
23 waives the requirement to consider such application in a
24 separate action for preliminary approval.

25

26 Response: The department agrees with the comments and §6.32 has

1 been changed: (1) to eliminate the requirement that applications
2 for \$10 million or less be submitted to the commission for
3 preliminary approval; and (2) to require that applications for
4 more than \$10 million be submitted for consideration by the
5 commission in separate actions for preliminary and final
6 approval, unless for any particular application, the commission
7 waives the requirement to consider such an application for
8 preliminary approval. The factors that the commission will
9 consider for the waiver of the preliminary approval are the
10 complexity and size of the project, the type of infrastructure
11 or asset involved, the type and complexity of the financial
12 assistance requested, the financial status of the project and
13 the applicant, and the need to expedite the financing of the
14 project. These amendments result in a more timely and efficient
15 loan process for many applicants while still allowing for a
16 thorough evaluation process.

17

18 STATUTORY AUTHORITY

19 The amendments, repeals, and new sections are adopted under
20 Transportation Code, §201.101, which provides the commission
21 with the authority to establish rules for the conduct of the
22 work of the department, and Transportation Code, §222.077, which
23 authorizes the commission to adopt rules to implement
24 Transportation Code, Chapter 222, Subchapter D relating to the
25 state infrastructure bank.

26

- 1 CROSS REFERENCE TO STATUTE
- 2 Transportation Code, Chapter 222, Subchapter D.

1 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

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

15 (A) Roadway Design Manual;

16 (B) Environmental Affairs Division Operations and
17 Procedures Manual;

18 (C) Pavement Design Manual;

19 (D) Bridge Design Manual;

20 (E) Bridge Project Development Manual;

21 (F) Bridge Geotechnical Manual;

22 (G) Hydraulic Design Manual;

23 (H) Texas Manual on Uniform Traffic Control Devices;

1 (I) Project Development Process Manual;

2 (J) Standard Highway Sign Designs [~~standard highway~~
3 ~~sign designs~~] for Texas; and

4 (K) Traffic Control Standard Sheets booklet [~~traffie~~
5 ~~control standard sheets~~] of the traffic operations division.

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

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

23 (8) Executive director--The executive director of the

1 Texas Department of Transportation, or his or her designee.

2 (9) Expected financing period--The time taken to fully
3 pay any and all liabilities incurred to finance an eligible
4 project, including any period during which payments are deferred
5 and all extensions of time through refunding or restructuring.

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

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

11 (12) Financial assistance--A term which may include, as
12 applicable:

13 (A) extending credit by direct loan;

14 (B) providing credit enhancements;

15 (C) serving as a capital reserve for bond or debt
16 instrument funding;

17 (D) subsidizing interest rates;

18 (E) insuring the issuance of a letter of credit or
19 credit instrument;

20 (F) financing a purchase or lease agreement in
21 connection with a transit project;

22 (G) providing security for bonds and other debt
23 instruments; or

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

5 [~~(13) General obligation bonds--Bonds, notes, or other~~
6 ~~public securities issued by the commission under Transportation~~
7 ~~Code, §222.004.~~]

8 (13) [(+14)] Investment grade rating--Creditworthiness
9 sufficient to qualify a debt as eligible for commercial bank
10 investment under regulations issued by the Comptroller of the
11 Currency. For bonds, these debts are limited to ratings of
12 "AAA," "AA," "A," and "BBB" by Standard and Poor's Rating
13 Services or corresponding ratings used by other rating services.

14 (14) [(+15)] Metropolitan planning organization (MPO)--An
15 organization designated in certain urbanized areas to carry out
16 the transportation planning process as required by Title 23,
17 United States Code, §134.

18 [~~(16) Program call--Commission action initiating the~~
19 ~~period during which applications for loans from general~~
20 ~~obligation bond proceeds will be accepted as described in §6.24~~
21 ~~of this chapter (relating to Limitation on Applications--Loans~~
22 ~~from General Obligation Bond Proceeds).]~~

23 (15) [(+17)] Secondary Funds--A term which includes:

1 (A) the repayment, with funds other than federal funds,
2 of a loan, including interest, principal, fees, or charges, or
3 other assistance that is provided with money deposited to the
4 credit of the bank; and

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

7 (16) [~~18~~] State Act--Transportation Code, Chapter 222,
8 Subchapter D, §222.071 et.seq., relating to a State
9 Infrastructure Bank.

10 (17) [~~19~~] Transit project--Capital expenditures
11 eligible for funding under Title 49, United States Code, §§5307,
12 5309, and 5311.

13

14 §6.3. General Policies.

15 (a) All actions of the bank will be in accordance with
16 applicable federal and state law, and applicable rules and
17 regulations.

18 (b) Grant financing will not be considered.

19 (c) The commission will ensure that the bank maintains on a
20 continuing basis an investment grade rating on its debt
21 issuances or has a sufficient level of bond or debt financing
22 instrument insurance to maintain the viability of the bank.

23 (d) The Federal Highway Administration, the Federal Transit

1 Administration, and the Comptroller General of the United
2 States, each if applicable, and the Texas State Auditor's
3 Office, and the department, or any of their authorized
4 representatives, shall have the right of access to any books,
5 documents, papers, or other records of the applicant which are
6 pertinent to any agreement, in order to make audits,
7 examinations, excerpts, and transcripts.

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

15 (f) Financial assistance from the bank may not be used to
16 pay for project costs incurred before the execution of the
17 financial assistance agreement evidencing the financial
18 assistance. If permissible under state and federal law,
19 financial assistance from the bank may be used to pay for
20 consultant costs, if any, incurred by the applicant in the
21 preparation of the application for the financial assistance or
22 preparation of the financial assistance agreement. However,
23 financial assistance from the bank may not be used to pay for

1 costs incurred for an application that did not result in the
2 disbursement of financial assistance to the applicant.

3 (g) Applicants requesting financial assistance from the
4 bank for a toll facility may also be required to comply with
5 Chapter 27, Subchapter E of this title (relating to Financial
6 Assistance for Toll Facilities). If a provision of Chapter 27,
7 Subchapter E of this title conflicts with this chapter, this
8 chapter controls to the extent of the conflict.

9

10 §6.4. Separate Subaccounts.

11 (a) The bank consists of the separate subaccounts specified
12 in this section.

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

16 [~~(c) In addition to the subaccounts described by subsection~~
17 ~~(b) of this section, the bank contains a subaccount that is~~
18 ~~capitalized with only the proceeds of general obligation bonds~~
19 ~~and secondary funds derived from repayments of loans made from~~
20 ~~general obligation bond proceeds. This subaccount is not~~
21 ~~subject to the federal act.]~~

22 (c) [~~(d)~~] The commission may create additional subaccounts
23 capitalized with state funds only. Additional subaccounts

1 capitalized with state funds only are not subject to the federal
2 act.

SUBCHAPTER B. ELIGIBILITY

§6.12. Eligible Projects.

(a) The [~~Except as provided by §6.13 of this subchapter~~
~~(relating to Eligibility for Financial Assistance from General~~
~~Obligation Bond Proceeds), 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;

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

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

(b) Financial assistance to a private entity shall be

1 limited to an eligible project that:

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

4 (2) is constructed or operated in cooperation with a
5 state agency or political subdivision in accordance with an
6 agreement between that state agency or political subdivision and
7 a private entity.

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

12

13 [~~§6.13. Eligibility for Financial Assistance from General~~
14 ~~Obligation Bond Proceeds.~~]

15 [~~(a) General. General obligation bond proceeds may be used~~
16 ~~only to provide to public entities direct loans to pay costs of~~
17 ~~highway improvement projects on or off of the state highway~~
18 ~~system, including acquisition of the highway, construction,~~
19 ~~reconstruction, and major maintenance, including any necessary~~
20 ~~design, the acquisition of rights of way, and other costs~~
21 ~~directly resulting from the construction or reconstruction of a~~
22 ~~highway improvement project.~~]

23 [~~(b) Loan categories. General obligation bond proceeds may~~

1 ~~be used for the following categories of loans:~~]

2 ~~[(1) a loan of sufficient credit quality to allow~~
3 ~~secondary funds to be the security for, and source of repayment~~
4 ~~of, revenue bonds issued under Transportation Code, §222.075, as~~
5 ~~determined by the executive director;~~]

6 ~~[(2) a loan of credit quality below that described in~~
7 ~~paragraph (1) of this subsection, as determined by the executive~~
8 ~~director, such as loans that are subordinated to existing or~~
9 ~~proposed debt for a project or of an applicant, if, as~~
10 ~~determined by the commission;~~]

11 ~~[(A) the loan is anticipated to be refinanced by the~~
12 ~~applicant within three years of completion of the project;~~]

13 ~~[(B) the loan is a part and represents not more than 20~~
14 ~~percent of a larger financing, and the larger financing would~~
15 ~~not be feasible unless the loan is made on a subordinate basis;~~
16 ~~or]~~

17 ~~[(C) the loan is in the amount of \$4 million or less.]~~

18 ~~[(c) Eligibility — secondary funds. Secondary funds~~
19 ~~derived from repayments of loans made from general obligation~~
20 ~~bond proceeds may only be used;]~~

21 ~~[(1) to make loans in the same manner and subject to the~~
22 ~~same provisions of this chapter as loans made from general~~
23 ~~obligation bond proceeds; or]~~

1 ~~[(2) to secure, including as reserves, revenue bonds~~
2 ~~issued under Transportation Code, §222.075 for the purpose of~~
3 ~~funding highway improvement projects.]~~

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

SUBCHAPTER C. PROCEDURES

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

18
19 §6.22. Requested Financial Assistance. An applicant may
20 request any form of financial assistance authorized by this
21 chapter, but the form of financial assistance provided from
22 [~~general obligation bond proceeds,~~] money from the state highway
23 fund that is dedicated under state law, and potentially other

1 sources, is limited as provided by this chapter and other law.

2

3 §6.23. Application Procedure.

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

7 (1) an overview of the project, including a description
8 of the project, the total estimated cost of the project, and the
9 proposed use of the requested financial assistance;

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

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

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

18 (5) the most recent offering document [~~official~~
19 ~~statement~~] for any outstanding debt of the applicant payable
20 from the revenue proposed to be used to repay the financial
21 assistance, along with the financial documents related to that
22 debt, including any master and supplemental resolutions,
23 indentures of trust, and authorizing resolutions, ordinances, or

1 orders, unless previously provided, or if not applicable, other
2 evidence of creditworthiness, provided that the entity may
3 provide any of the information described by this paragraph
4 electronically [~~instead of with the application~~];

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

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

13 (8) for public roadway projects, a preliminary design
14 study, including:

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

16 (B) revisions or changes to state highway system

17 facilities necessitated by the project; and

18 (9) for transit projects, a preliminary scope study,
19 including preliminary layouts, architectural drawings, equipment
20 specifications, and other information necessary to describe the
21 project fully and to comply with all requirements of the Federal
22 Transit Administration.

23 (b) Supplemental information and data. Except as provided

1 in subsection (c) of this section, the applicant shall submit
2 the supplemental information and data required by this
3 subsection.

4 (1) Financial feasibility study. The applicant shall
5 submit a financial feasibility study that includes:

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

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

11 (C) a pro forma annual cash flow analysis for the
12 expected financing period of the project showing:

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

16 (ii) anticipated disbursements for preliminary
17 studies and engineering, construction, EPIC, right of way
18 acquisition, utility adjustments, operations, and maintenance;

19 (iii) funds used to meet the requirements of any
20 sinking funds, reserve funds, and amortization payments; and

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

23 (D) a description of the methods used in preparing the

1 financial feasibility study, the assumptions contained in the
2 study, and persons responsible for the preparation of the study;

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

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

7 (G) any interest rate subsidies requested by:

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

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

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

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

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

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

19 (ii) reduce direct state costs;

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

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

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

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

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

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

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

12 (D) the most recent rating agency report on the credit
13 of the applicant, if any.[+]

14 (3) Project impacts. The applicant shall submit:

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

19 (B) if the project is in a Clean Air Act non-attainment
20 area, information explaining how the project will be consistent
21 with the Statewide Transportation Improvement Program, with the
22 conforming plan and Transportation Improvement Program for the
23 MPO in which the project is located (if necessary), and with the

1 State Implementation Plan;

2 (C) a preliminary identification of any known
3 environmental, social, economic, or cultural resource issues,
4 such as hazardous material sites, impacts on wetlands and other
5 water resources, endangered species, parks, neighborhoods,
6 businesses, historic buildings or bridges, and archeological
7 sites; and

8 (D) an explanation of the status of obtaining an
9 environmental approval under Chapter 2 (relating to
10 Environmental Review of Transportation Projects~~[, Subchapter A~~
11 ~~of this title (relating to Environmental Review and Public~~
12 ~~Involvement For Transportation Projects)]~~ and of obtaining any
13 other required environmental permits.

14 (c) Waiver of required information or data. The executive
15 director may waive submission of any individual item of
16 information or data required by this section under either of the
17 following circumstances:

18 (1) the information or data is not relevant to the
19 project, applicant, or financial assistance requested (in
20 determining the relevance of supplemental information and data,
21 the executive director will consider the complexity and size of
22 the project, the type of infrastructure or asset involved, the
23 type and complexity of financial assistance requested, the

1 complexity of the project's and the applicant's financial
2 status, [~~whether the source of the financial assistance will be~~
3 ~~general obligation bond proceeds,~~] and how soon transportation
4 benefits will begin); or

5 (2) the department already possesses information or data
6 in a format that can be substituted for the required information
7 or data.

8 (d) Requirement of additional information. The executive
9 director may require the applicant to submit explanations and
10 expansions of information or data required by this section. In
11 determining when additional relevant explanations and expansions
12 of information or data will be required, the executive director
13 will consider the complexity and size of the project, the type
14 of infrastructure or asset involved, the type, complexity, and
15 amount of financial assistance requested, and the complexity of
16 the project's and the applicant's financial status.

17

18 [~~§6.24. Limitation on Applications — Loans from General~~
19 ~~Obligation Bond Proceeds.~~]

20 [~~(a) Program call. — The commission shall specify the~~
21 ~~periods during which the department will accept applications for~~
22 ~~loans to be funded from general obligation bond proceeds and,~~
23 ~~for each specific period, prescribe conditions for submission of~~

1 ~~the applications.]~~

2 ~~[(b) Publication of notice. Upon the commission's~~
3 ~~determination under subsection (a) of this section, the~~
4 ~~department will publish a notice in the Texas Register~~
5 ~~soliciting applications for loans to be funded from general~~
6 ~~obligation bond proceeds. The notice will specify:]~~

7 ~~[(1) the period during which the department will accept~~
8 ~~applications under the notice;]~~

9 ~~[(2) the estimated amount of funds in the bank that can~~
10 ~~be allocated to applications submitted under the notice;]~~

11 ~~[(3) the conditions for the submission of applications~~
12 ~~prescribed by the commission; and]~~

13 ~~[(4) any other information the commission or department~~
14 ~~considers appropriate.]~~

15

16 §6.24. [~~§6.25.~~] Suspension of Applications. If the commission
17 determines that bank funding is fully committed or other
18 uncertainties exist which warrant suspension of acceptance of
19 applications, the department may publish a notice in the Texas
20 Register providing that applications will no longer be accepted.
21 When conditions change, the commission shall publish a notice in
22 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. The department will review an
4 application submitted under Subchapter C of this chapter
5 (relating to Procedures) and advise the applicant of any
6 required information or data that is missing. When the
7 application is complete, the department will so notify the
8 applicant.

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

1 and recommendations for an additional period. [~~If the~~
2 ~~application is for a loan to be funded from general obligation~~
3 ~~bond proceeds, the findings and recommendations will address~~
4 ~~each of the considerations and requirements for preliminary~~
5 ~~approval specified in §6.33(a)(1) and (4) of this subchapter~~
6 ~~(relating to Commission Action — Loans from General Obligation~~
7 ~~Bond Proceeds).~~]

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

14

15 §6.32. Commission Action [~~Financial Assistance from Other~~
16 ~~Than General Obligation Bond Proceeds)].~~

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

22 (b) Consideration of applications for preliminary and final
23 approval [~~Applications for limited financial assistance)].~~

1 (1) Applications for financial assistance in the amount
2 of \$10 million [~~\$250,000~~] or less will be considered [~~may be~~
3 ~~approved~~] by the commission for final approval without going
4 through [~~both~~] the preliminary [~~and final~~] approval process
5 [~~processes~~] prescribed in subsection (c) [~~subsections (c) and~~
6 ~~(e)~~] of this section. [~~These applications may be approved by~~
7 ~~the commission using one final approval process.~~]

8 (2) Applications for financial assistance in the amount
9 of more than \$10 million must be submitted to the commission for
10 consideration for preliminary and final approval separately
11 unless, for a particular application, the commission waives the
12 preliminary approval requirement for that application [~~under~~
13 ~~this subsection must meet all the requirements and are subject~~
14 ~~to all the conditions applicable either to preliminary or final~~
15 ~~approval of financial assistance, except that the negotiation~~
16 ~~process under subsection (c)(3) of this section may be completed~~
17 ~~after final approval~~]. In determining whether to waive the
18 preliminary approval requirement for an application, the
19 commission will consider the complexity and size of the project,
20 the type of infrastructure or asset involved, the type and
21 complexity of the financial assistance requested, the financial
22 status of the applicant, the financial feasibility of the
23 project, and the need to expedite the financing of the project.

1 (3) Applications that are submitted to the commission for
2 final approval without first being considered for preliminary
3 approval must meet all the requirements and are subject to all
4 the conditions applicable either to preliminary or final
5 approval of financial assistance, except that the negotiation
6 process under subsection (c)(3) of this section may be completed
7 after final approval [~~The commission may require applications~~
8 ~~under this subsection to receive preliminary and final approval~~
9 ~~separately. In making this determination, the commission will~~
10 ~~consider the complexity and size of the project, the type of~~
11 ~~infrastructure or asset involved, and the complexity of the~~
12 ~~project's and the applicant's financial status].~~

13 (c) Preliminary approval.

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

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

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

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

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

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

1 (F) evidence of local public support; and

2 (G) any other relevant consideration.

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

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

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

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

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

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

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

1 negotiate:

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

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

7 (C) the interest rates, including subsidies;

8 (D) the fees;

9 (E) the charges;

10 (F) the repayment schedules;

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

12 (H) the collateral securing the financial assistance;

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

15 (J) the default provisions; and

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

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, if required, the completion of
16 negotiations under subsection (c)(3) of this section unless
17 excepted under subsection (b)(3) of this section, and the
18 approval of the social, economic, and environmental study
19 required by subsection (d) of this section, the commission may
20 grant final approval if it determines that:

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

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

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

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

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

20

21 [~~§6.33 Commission Action — Loans from General Obligation Bond~~
22 ~~Proceeds.~~]

23 [~~(a) Preliminary approval.~~]

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

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

9 ~~[(B) availability of funding from all sources;]~~

10 ~~[(C) the percentage of the total project cost that is~~
11 ~~represented by the requested loan;]~~

12 ~~[(D) the financial feasibility of the project;]~~

13 ~~[(E) the potential for leveraging the loan, including~~
14 ~~using secondary funds as security for revenue bonds issued under~~
15 ~~Transportation Code, §222.075;]~~

16 ~~[(F) potential social, economic, and environmental~~
17 ~~impacts of the project;]~~

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

21 ~~[(H) evidence of local public support; and]~~

22 ~~[(I) the applicant's past experience with similar~~
23 ~~projects and past performance working in collaboration with the~~

1 ~~department in the development of similar projects, if~~
2 ~~applicable.]~~

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

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

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

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

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

1 ~~considerations set forth in paragraph (1) of this subsection,~~
2 ~~the department or the commission determine that a different~~
3 ~~allocation is warranted.]~~

4 ~~[(4) Project requirements. The commission may grant~~
5 ~~preliminary approval of a project for 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 developed by an MPO:]~~

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

15 ~~[(C) the project will improve the efficiency of the~~
16 ~~state's transportation systems:]~~

17 ~~[(D) the project will expand the availability of~~
18 ~~funding for transportation projects or reduce direct state~~
19 ~~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 loan according to the terms of the agreement.]~~

23 ~~[(5) Authorized actions. By granting preliminary~~

1 ~~approval, the commission authorizes the executive director to:]~~

2 ~~[(A) evaluate the project's limits, scope, definition,~~
3 ~~design, and other features, and identify any that adversely~~
4 ~~affect the financing of the project, including EPIC, and~~
5 ~~determine whether to negotiate changes in accordance with~~
6 ~~paragraph (6) of this subsection;]~~

7 ~~[(B) negotiate the amount, type, and timing of~~
8 ~~disbursements of the loan;]~~

9 ~~[(C) negotiate an interest rate, a repayment schedule,~~
10 ~~collateral securing the loan, including any reserve, and default~~
11 ~~provisions;]~~

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

20 ~~[(E) negotiate all other provisions that are necessary~~
21 ~~to complete an agreement under this chapter.]~~

22 ~~[(6) Factors for changes to project's features. In~~
23 ~~determining the extent to which the executive director will seek~~

1 ~~changes to the features described in paragraph (5)(A) of this~~
2 ~~subsection, the executive director will consider:]~~

3 ~~[(A) the applicant's past experience with similar~~
4 ~~projects; and]~~

5 ~~[(B) whether the project is intended to become part of~~
6 ~~the state highway system or otherwise be subject to the~~
7 ~~jurisdiction of the department.]~~

8 ~~[(b) Environmental documents; traffic and revenue report.]~~

9 ~~[(1) Prior to receiving final approval under subsection~~
10 ~~(c) of this section for the loan of funds for the construction~~
11 ~~of a project, the applicant shall:]~~

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

16 ~~[(B) for a toll project, obtain an investment grade~~
17 ~~traffic and revenue report for the project from a nationally~~
18 ~~recognized traffic engineer.]~~

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

23 ~~[(c) Final approval. After preliminary approval,~~

1 ~~completion of negotiations, and compliance with this section,~~
2 ~~the commission may grant final approval if it determines that:]~~

3 ~~[(1) making the loan will prudently provide for the~~
4 ~~protection of public funds; and]~~

5 ~~[(2) the project will provide for all reasonable and~~
6 ~~feasible measures to avoid, minimize, or mitigate adverse~~
7 ~~environmental impacts.]~~

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

23 ~~[(e) Contingencies — toll projects. The commission may~~

1 ~~make its preliminary or final approval contingent on the~~
2 ~~department's receiving updated cost information and an update of~~
3 ~~the traffic and revenue report required by subsection (b) of~~
4 ~~this section that together show no changes have occurred that~~
5 ~~materially and adversely affect the financial status of the~~
6 ~~project or the applicant. If this contingency is in the final~~
7 ~~approval it will also be in the financial assistance agreement~~
8 ~~as a condition precedent to funding the loan.]~~

1 SUBCHAPTER E. FINANCIAL ASSISTANCE AGREEMENTS

2 §6.41. Financial Assistance Agreements.

3 (a) Form of agreement. An agreement evidencing a loan or
4 other financial assistance may be in the form of a contract or
5 similar document, or may be in the form of a bond, note, or
6 other obligation issued by the applicant.

7 (b) Negotiation of terms. The executive director will
8 negotiate the terms of agreements deemed necessary to comply
9 with any requirements of preliminary approval, to protect the
10 public's safety, and to prudently provide for the protection of
11 public funds while furthering the purposes of this chapter.

12 These agreements shall include, but not be limited to, terms
13 provided for in this subchapter, as applicable to a particular
14 project.

15 (c) Initial repayment date. Unless the commission defers
16 the beginning of repayment, repayment of any financial
17 assistance from the bank will begin on the earliest reasonable
18 date consistent with applicable federal and state law, rules,
19 and regulations. If approved by the commission, the initial
20 repayment of financial assistance may be deferred to the date
21 specified by the commission, which may not be later than the
22 fifth anniversary of the date of the initial funding of the
23 financial assistance. The term for repaying any financial

1 assistance will not exceed 30 years after the date of the first
2 scheduled payment.

3 (d) Payment dates. Interest and principal shall be paid on
4 the dates specified in the financial assistance agreement.

5 [~~semiannually, on February 1 and August 1. Principal shall be~~
6 ~~paid annually on February 1.~~] If a date for payment is not a
7 business day the payment shall be made on the next following
8 business day.

9 (e) Prepayments. Principal and interest may be prepaid
10 without penalty on any date or dates as provided in [~~the first~~
11 ~~business day of any February or August as provided in, and after~~
12 ~~the date specified in,~~] the financial assistance agreement.

13 [~~(f) Terms for assistance from general obligation bond~~
14 ~~proceeds. Agreements for loans from general obligation bond~~
15 ~~proceeds also must require that the applicant will provide:]~~

16 [~~(1) a certified copy of the resolution of the applicant,~~
17 ~~in the form specified by the executive director, authorizing~~
18 ~~execution of the financial assistance agreement and containing,~~
19 ~~if applicable, covenants relating to the status of the~~
20 ~~applicant's repayment obligation in relation to federal tax~~
21 ~~law:]~~

22 [~~(2) any other certification of the applicant concerning~~
23 ~~federal tax law, federal securities law, and state law in~~

1 ~~relation to authorization of the financial assistance agreement~~
2 ~~as specified by the executive director;]~~

3 ~~[(3) if requested by the executive director, a bond~~
4 ~~counsel opinion from a recognized bond counsel in a form~~
5 ~~satisfactory to the executive director;]~~

6 ~~[(4) a certification that the applicant will, if~~
7 ~~requested by the executive director, cooperate with the~~
8 ~~department and make all reasonable efforts requested by the~~
9 ~~department for obtaining the approval of the financial~~
10 ~~assistance agreement by the Public Finance Division of the~~
11 ~~Office of the Attorney General of the State of Texas.]~~

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

18

19 §6.42. Performance of Work.

20 (a) Work performed by the department. The department and
21 the applicant may agree that the department will, consistent
22 with state law, provide all or part of the work connected with
23 the project in the department's normal course of business. For

1 work performed by the department, the following provisions will
2 apply.

3 (1) The department will account for all costs of the
4 project in the normal course of business in accordance with
5 applicable law. [~~Financial assistance proceeds shall not be~~
6 ~~used to pay for project costs incurred prior to execution of the~~
7 ~~financial assistance agreement.~~]

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

14 (3) The department's actions and decisions regarding the
15 project shall not be contestable by the applicant, except as
16 expressly provided in the financial assistance agreement.

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

1 (b) Work performed by applicant. For work performed by the
2 applicant, the following provisions apply.

3 (1) The applicant shall comply with applicable state and
4 federal law, and with all terms and conditions of an applicable
5 agreement. If approval or concurrence of the Federal Highway
6 Administration, the Federal Transit Administration, or any other
7 federal agency is required, the department may require that the
8 applicant seek that approval or concurrence through the
9 department.

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

20 (3) For loans of more than \$1 million, the applicant
21 shall, at the applicant's cost, have a full audit of its books
22 and records performed annually by an independent certified
23 public accountant selected by the applicant and reasonably

1 acceptable to the department. The audit must be conducted in
2 accordance with generally accepted auditing standards
3 promulgated by the Financial Accounting Standards Board, the
4 Governmental Accounting Standards Board, or the standards of the
5 Office of Management and Budget Circular A-133, Audits of
6 States, Local Governments and Non-profit Organizations, as
7 applicable, and with all other applicable federal and state
8 requirements. The applicant shall cause the auditor to provide
9 a full copy of the audit report and any other management letters
10 or auditor's comments directly to the department within a
11 reasonable period of time after they have been provided to the
12 governing body of the applicant.

13 (4) For loans of \$1 million or less, the applicant shall:

14 (A) at the applicant's cost and in a format prescribed
15 by the department, submit an annual report to the department
16 listing project expenditures, providing an accounting of
17 financial assistance proceeds, and providing any other
18 information requested by the department;

19 (B) on request of the department and at the applicant's
20 cost, provide a report containing the same or similar
21 information as required in the annual report under paragraph
22 (4)(A) of this subsection or information relating to project
23 expenditures that the applicant is required to provide to

1 another local, state, or federal agency;

2 (C) hold all project records, accounts, and supporting
3 documents open for state or federal audits for the retention
4 period described in paragraph (6) of this subsection [~~until~~
5 ~~project completion~~]; and

6 (D) forward to the department, upon completion of the
7 project, all project files and reports as requested by the
8 department.

9 (5) If required to have an audit under paragraph (3) of
10 this subsection, the applicant shall retain, or cause the
11 auditor to retain, all work papers and reports until the fourth
12 anniversary of the date of the audit report, unless the
13 department notifies the applicant in writing of a later date for
14 the end of the retention period. During the retention period,
15 the applicant shall make audit work papers available to the
16 department within 30 days of the date that the department
17 requests those papers.

18 (6) Unless the department in writing provides a shorter
19 period, the applicant shall retain all original project files,
20 records, accounts, and supporting documents until the later of
21 the date that:

22 (A) project is completed;

23 (B) all financial assistance under this chapter has

1 been repaid, if applicable; or

2 (C) the retention period required by applicable federal
3 and state law ends.

4 (7) If a project will become a part of the state highway
5 system and the department will assume jurisdiction of the
6 project, the applicant shall ensure that the project, including
7 all its components and appurtenances, is maintained in
8 accordance with §6.44 [~~§6.45~~] of this subchapter (relating to
9 Maintenance). The applicant shall transfer all design data,
10 surveys, construction plans, right of way maps, utility permits,
11 and agreements with other entities relating to the project to
12 the department when the department assumes jurisdiction of the
13 project.

14

15 §6.43. Design, Construction, and Procurement Standards [~~-~~
16 ~~Financial Assistance from Other Than General Obligation Bond~~
17 ~~Proceeds~~].

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

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

3 (c) Transit projects. Transit projects must comply with
4 all requirements established under §§31.39 - 31.49 [~~§§31.42-~~
5 ~~31.47~~] of this title (relating to Program Administration).

6
7 [~~§6.44. Design and Construction - Loans from General Obligation~~
8 ~~Bond Proceeds.~~]

9 [~~(a) Responsibility.~~]

10 [~~(1) Except to the extent the department and the~~
11 ~~applicant have agreed in writing that the department will~~
12 ~~provide all or part of the work connected with the project, as~~
13 ~~provided in §6.42 of this subchapter (relating to Performance of~~
14 ~~Work), the applicant is solely responsible for the design and~~
15 ~~construction of the project, including:~~]

16 [~~(A) ensuring that all EPIC are addressed in the~~
17 ~~project design;~~]

18 [~~(B) assessing field changes for potential~~
19 ~~environmental impacts; and]~~

20 [~~(C) obtaining any necessary EPIC required for field~~
21 ~~changes.~~]

22 [~~(2) All construction plans must be signed, sealed, and~~
23 ~~dated by a professional engineer licensed in Texas.~~]

1 ~~[(b) Design criteria.]~~

2 ~~[(1) Plans and specifications. Project plans and~~
3 ~~specifications must be in compliance with either the latest~~
4 ~~version of the design manuals or the latest version of the~~
5 ~~American Association of State Highway and Transportation~~
6 ~~Officials (AASHTO) standards, including the AASHTO Policy on~~
7 ~~Geometric Design of Highways and Streets, the AASHTO Pavement~~
8 ~~Design Guide, and the AASHTO Bridge Design Specifications.]~~

9 ~~[(2) Exceptions to design criteria. An applicant may~~
10 ~~request approval to deviate from the required design criteria~~
11 ~~for a particular design element on a case by case basis. The~~
12 ~~request for approval must state the criteria for which an~~
13 ~~exception is being requested and must include a comprehensive~~
14 ~~description of the circumstances and engineering analysis~~
15 ~~supporting the request. The executive director may approve an~~
16 ~~exception request after determining that the particular criteria~~
17 ~~could not reasonably be met due to physical, environmental, or~~
18 ~~other relevant factors and that the proposed design is a prudent~~
19 ~~engineering solution, or that the deviation meets some other~~
20 ~~design criteria acceptable to the department. In making a~~
21 ~~determination under this paragraph, the executive director shall~~
22 ~~consider whether the project is intended to become part of the~~
23 ~~state highway system or otherwise be subject to the jurisdiction~~

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

3 ~~[(c) Project development.]~~

4 ~~[(1) Access. For proposed projects that will change the~~
5 ~~access to an interstate highway, the applicant shall submit to~~
6 ~~the department all data necessary for the department to request~~
7 ~~Federal Highway Administration approval.]~~

8 ~~[(2) Preliminary design submission and approval. When~~
9 ~~design is approximately 30 percent complete, the applicant shall~~
10 ~~send to the department for review and approval in accordance~~
11 ~~with the procedures and time line established in the financial~~
12 ~~assistance agreement:]~~

13 ~~[(A) a completed design summary report form as~~
14 ~~contained in the department's Project Development Process Manual~~
15 ~~or an equivalent document as contained in or authorized by~~
16 ~~another appropriate department manual:]~~

17 ~~[(B) a design schematic depicting plan, profile, and~~
18 ~~superelevation information for each roadway:]~~

19 ~~[(C) typical sections showing existing and proposed~~
20 ~~horizontal dimensions, cross slopes, location of profile grade~~
21 ~~line, pavement layer thickness and composition, earthen slopes,~~
22 ~~and right of way lines:]~~

23 ~~[(D) bridge, retaining wall, and sound wall layouts:]~~

1 ~~[(E) hydraulic studies and drainage area maps showing~~
2 ~~the drainage of waterways entering the project and local project~~
3 ~~drainage;]~~

4 ~~[(F) an explanation of the anticipated handling of~~
5 ~~existing traffic during construction;]~~

6 ~~[(G) if a structure meeting the definition of a bridge~~
7 ~~as defined by the National Bridge Inspection Standards is~~
8 ~~proposed, an indication of structural capacity in terms of~~
9 ~~design loading;]~~

10 ~~[(H) an explanation of how the U.S. Army Corps of~~
11 ~~Engineers permit requirements, including associated~~
12 ~~certification requirements of the Texas Commission on~~
13 ~~Environmental Quality, will be satisfied if the project involves~~
14 ~~discharges into waters of the United States; and]~~

15 ~~[(I) the location and text of proposed mainlane guide~~
16 ~~signs shown on a schematic that includes lane miles or arrows~~
17 ~~indicating the number of lanes.]~~

18 ~~[(3) Construction specifications.]~~

19 ~~[(A) All plans, specifications, and estimates developed~~
20 ~~by or on behalf of the applicant must conform to the latest~~
21 ~~version of the department's Standard Specifications for~~
22 ~~Construction and Maintenance of Highways, Streets, and Bridges,~~
23 ~~and to all alternative specifications applicable under~~

1 ~~subparagraph (B) of this paragraph.]~~

2 ~~[(B) The executive director may approve the use of an~~
3 ~~alternative specification if the proposed specification is~~
4 ~~determined to be sufficient to ensure the quality and durability~~
5 ~~of the finished product for the intended use and the safety of~~
6 ~~the traveling public. In deciding whether to approve the use of~~
7 ~~an alternative specification, the executive director shall~~
8 ~~consider whether the project is intended to become part of the~~
9 ~~state highway system or otherwise to be subject to the~~
10 ~~jurisdiction of the department, and the applicant's experience~~
11 ~~with similar projects.]~~

12 ~~[(4) Submission and approval of final design plans and~~
13 ~~contract administration procedures. When final plans are~~
14 ~~complete, the applicant shall send to the executive director for~~
15 ~~review and approval in accordance with the procedures and time~~
16 ~~line established in the financial assistance agreement;]~~

17 ~~[(A) seven copies of the final set of plans,~~
18 ~~specifications, and engineer's estimate (PS&E) that have been~~
19 ~~signed and sealed by the responsible engineer;]~~

20 ~~[(B) summarized or highlighted revisions to information~~
21 ~~provided with the preliminary design submission;]~~

22 ~~[(C) a proposal necessary for bidding the project in~~
23 ~~compliance with applicable state and federal requirements;]~~

1 ~~[(D) contract administration procedures containing~~
2 ~~criteria that comply with the applicable national or state~~
3 ~~administration criteria and manuals; and]~~

4 ~~[(E) the location and description of all EPIC addressed~~
5 ~~in construction.]~~

6 ~~[(5) Contract bidding and award. The applicant may not~~
7 ~~advertise the project for receipt of bids until it has received~~
8 ~~approval of the PS&E from the department. Procedures relating~~
9 ~~to bidder qualification, bidding, award, and execution of a~~
10 ~~contract for the development and maintenance of a project that~~
11 ~~is financed with state or federal funds must comply with:]~~

12 ~~[(A) the policies and procedures prescribed in Chapter~~
13 ~~9, Subchapter B of this title (relating to Highway Improvement~~
14 ~~Contracts); or]~~

15 ~~[(B) policies and procedures that comply with the~~
16 ~~applicable requirements of federal law and with the applicable~~
17 ~~requirements of state law that are intended to ensure fair and~~
18 ~~open competition.]~~

19 ~~[(6) Construction inspection and oversight. The~~
20 ~~applicant shall oversee all construction operations, including~~
21 ~~the oversight and follow through with all EPIC. Inspection and~~
22 ~~project oversight shall be performed in accordance with~~
23 ~~requirements prescribed in the financial assistance agreement.]~~

1 ~~[(7) Contract revisions. All contract revisions must~~
2 ~~comply with the latest version of the applicable national or~~
3 ~~state administration criteria and manuals. The applicant shall~~
4 ~~submit all contract revisions to the department for its records.~~
5 ~~The applicant shall submit any revision that affects prior~~
6 ~~environmental approvals or significantly revises the project~~
7 ~~scope or the geometric design to the executive director and must~~
8 ~~receive the executive director's approval before the revised~~
9 ~~construction work may begin. Procedures governing the executive~~
10 ~~director's approval, including time limits for department~~
11 ~~review, shall be included in the financial assistance~~
12 ~~agreement.]~~

13 ~~[(8) As built plans. On completion of construction of~~
14 ~~the project, the applicant shall file with the department a set~~
15 ~~of the as built plans incorporating all contract revisions. The~~
16 ~~plans must be signed, sealed, and dated by a licensed~~
17 ~~professional engineer in Texas, who certifies that the project~~
18 ~~was constructed in accordance with the plans and~~
19 ~~specifications.]~~

20 ~~[(9) Document and information exchange. If available,~~
21 ~~the applicant shall deliver electronically to the department all~~
22 ~~materials used in the development of the project including, but~~
23 ~~not limited to, aerial photography, computer files, surveying~~

1 ~~information, engineering reports, environmental documentation,~~
2 ~~general notes, specifications, and contract provision~~
3 ~~requirements.]~~

4 ~~[(10) State and federal law. The applicant shall comply~~
5 ~~with all federal and state laws and regulations applicable to~~
6 ~~the project, and shall provide or obtain all applicable permits,~~
7 ~~plans, and other documentation required by a federal, state, or~~
8 ~~local governmental entity.]~~

9 ~~[(11) Work on state right of way. All work required~~
10 ~~within the limits of state owned right of way shall be~~
11 ~~accomplished only pursuant to express written agreement with the~~
12 ~~department.]~~

13

14 §6.44. [~~§6.45.~~] Maintenance.

15 (a) The department may require minimum specific standards
16 and procedures to be used in maintenance of the project during
17 the term of financial assistance.

18 (b) All structures defined as a bridge by the National
19 Bridge Inspection Standards shall be maintained in compliance
20 with applicable state and federal requirements. The department
21 will perform safety inspections of these structures in
22 accordance with federal requirements.

23 (c) In establishing the standards and procedures described

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

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

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

10

11 §6.45. [~~§6.46.~~] Financial and Credit Requirements. An
12 applicant receiving financial assistance under this chapter
13 shall:

14 (1) repay the financial assistance at the specified
15 interest rate over a specified period as provided in the
16 financial assistance agreement;

17 (2) submit to the department within 30 days of the date
18 of their adoption the annual operating and capital budgets
19 adopted by the applicant each fiscal year under a trust
20 agreement or indenture or equivalent document securing bonds
21 issued for a project, and any amended or supplemental operating
22 or capital budget, approved by the governing body of the
23 applicant and certified as correct by its chief administrative

1 officer or chief financial officer;

2 (3) for all debt payable from the same revenue that is to
3 repay the financial assistance, within 30 days after the date of
4 submission to the Electronic Municipal Market Access System
5 (EMMA) of the Municipal Securities Rulemaking Board of annual
6 financial information and notices of material events required to
7 be disclosed under Rule 15c2-12 of the United States Securities
8 and Exchange Commission (17 C.F.R. §240.15c2-12), submit the
9 information or notice to the department or advise the department
10 in writing that the submission to EMMA has been made and provide
11 in that writing the associated CUSIP number; and

12 (4) abide by provisions governing default.