

**RULES AND REGULATIONS
BY THE
COLORADO DEPARTMENT OF TRANSPORTATION
FOR THE
COLORADO STATE INFRASTRUCTURE BANK
2 CCR 605-1**

RULE I – General Provisions

SECTION 1. Authority – These rules are adopted pursuant to the authority contained in sections 43-1-113.5 (3) CRS.

SECTION 2. Purpose – The purpose of these rules shall be to define eligibility requirements, prescribe the application and selection processes, and to detail certain terms for securing financial assistance, for public transportation projects within the state, from the bank.

SECTION 3. Applicability – These rules shall be applicable to any public or private project sponsor of public transportation projects within the state.

RULE II – Definitions

Definitions of terms – The following definitions shall apply to terms used in the Rules.

- (1) “Bank” shall refer to the Colorado state infrastructure bank (CO SIB).
- (2) “CFR” shall mean the code of federal regulations.
- (3) “Commission” shall refer to the transportation commission of Colorado – the state’s transportation decision-making body.
- (4) “CRS” shall mean the Colorado revised statutes, as amended.
- (5) “Department” shall refer to the Colorado department of transportation.
- (6) “Federal-aid program” shall refer to any funds authorized by the congress to assist states in providing for transportation.
- (7) “Financial assistance” shall mean a loan or any credit assistance that the Colorado state infrastructure bank is authorized to offer.
- (8) “Market rate” shall refer to an interest rate, which corresponds to the Merrill Lynch bond index rate for a seven to twelve year general obligation bond.
- (9) “OFMB” shall refer to the Colorado department of transportation’s office of financial management and budget.
- (10) “Political subdivision” shall mean a county, municipality, service authority, or special district authorized to enter into intergovernmental agreements pursuant to 29-1-203 (2) CRS.
- (11) “Project sponsor” shall refer to the entity or organization that is requesting financial assistance.
- (12) “Public-private initiative” shall mean a nontraditional arrangement between the department and one or more private or public entities as defined in 43-1-1201 (3) CRS.

(13) “State” shall refer to the state of Colorado.

(14) “State agency” shall mean every entity in the executive branch of the state’s government including boards, commissions, departments, divisions, and offices.

(15) “TIP/STIP” shall mean the metropolitan planning organization’s multiyear transportation improvement program/statewide transportation improvement program.

(16) “Transportation project” shall mean the planned undertaking of an endeavor for the purpose of conveying passengers or goods.

RULE III – Eligibility Requirements for Financial Assistance

SECTION 1. Eligible project sponsors – Entities eligible to receive financial assistance from the bank shall include public entities such as political subdivisions and state agencies. Also, private companies and non-profit organizations shall be eligible either with a local government partner, or under the authority of the public-private initiative.

SECTION 2. Eligible projects – (1) All qualified projects shall be eligible for financial assistance. Qualified projects shall include any commission-authorized project, right-of-way acquisition, federal-aid project, maintenance project, and safety project.

(2) **Commission authorized projects** – Any public or private transportation project as authorized by the commission including, but not limited to planning, environmental impact studies, feasibility studies, engineering, construction, reconstruction, resurfacing, restoring, rehabilitation, or replacement of a public or private transportation facility within the state shall be eligible.

(3) **Right-of-way acquisitions** – The acquisition of real or personal property, or interests therein, for a public or private transportation facilities within the state shall be eligible.

(4) **Federal projects** – Any highway, transit, aviation, rail, or other transportation project within the state that is eligible for financing or financial assistance under state or federal law.

(5) **Maintenance projects** – The maintenance, repair, improvement, or construction of any public or private highway, road, street, parkway, transit, aviation, or rail project within the state shall be eligible.

(6) **Safety Projects** – The acquisition, improvement, or construction of rights-of-way, bridges, tunnels, railroad-highway crossings, drainage structures, signs, guardrails, or protective structures within this state shall be eligible.

SECTION 3. Ineligible Projects – Qualified projects shall not include transportation facilities and other transportation projects that are restricted to private use.

RULE IV – Disbursement of Moneys

SECTION 1. Application process – (1) Applications shall be accepted not less than annually on condition that funds are available in the bank. The department shall provide public notification of the availability of funds for financial assistance, instructions for requesting an application package, and the deadline to submit an application to the department for financial assistance.

(2) **Application package** – The application package shall contain instructions and guidelines for completing the application and such package shall be available upon request not less than forty-five days in advance of the application deadline. The project sponsor shall be responsible for requesting an application package from the department.

(3) **Application deadline** – All applications shall be submitted by the deadline date. The application shall be completed as described in the application package. If an application is received by the department after the deadline date or is incomplete, at that time it shall be rejected and not considered for financial assistance.

SECTION 2. Project selection – The overall objective of the project selection process shall be to provide a mechanism for the evaluation of potential transportation projects for financial assistance. The evaluation shall identify how such project will benefit from financial assistance and how well the project sponsor can meet the terms for debt repayment. The OFMB shall rank projects and provide documentation regarding ranking of projects to the commission.

SECTION 3. Selection criteria – (1) Project rankings shall be accomplished by incorporating a rating scheme across certain criteria as described below:

(2) **Project Type** – Project sponsors shall identify the type of project (road and highway, transit, aviation, and rail). This shall allow the commission to promote its objectives regarding types of transportation projects assisted by the bank.

(3) **Public/Private Partnerships** – Project sponsors shall indicate whether it is a public or private entity. An evaluation on the basis of public/private partnerships shall allow the bank to facilitate transportation projects that promote public purposes and feature some private financing.

(4) **Financial Need** – Project sponsors shall submit certain financial information to help identify how sponsored transportation projects would benefit financially from financial assistance.

(5) **Repayment Source** – The project sponsor shall be required to present a statement of revenue sources for the purpose of paying back loans, e.g., fees, HUTF revenues, local option sales taxes, and general fund property taxes. This criterion shall allow the sponsor to demonstrate its ability to repay the loan.

(6) **Security Provisions** – The project sponsor shall be required to identify security provisions, e.g., HUTF revenues, property, bank reserves. This criterion shall allow a measure of the project sponsor's potential to secure the loan.

(7) **Leverage Ratio** – Project sponsors shall provide information on the total cost of the project. This criterion shall demonstrate the project sponsor's commitment to its project.

(8) **Term of Financial Obligation** – The project sponsor shall indicate how long it needs to repay the loan. This criterion shall illustrate the length of the bank's financial obligation to a project sponsor's transportation project, which is key to replenishing the bank's capital for subsequent rounds of financial assistance.

(9) **Project Viability** – Project sponsors shall reveal any other options for funding the project. This criterion shall provide a measure of a project's viability without financial assistance from the bank.

(10) **Project Benefits** – Project sponsors shall be required to briefly describe the benefits of its transportation project by using financial assistance from the bank. As a counterpoint, project sponsors shall also be required to describe the likely negative effects of NOT receiving financial assistance from the bank. This criterion shall identify benefits gained, from the transportation project receiving financial assistance, to transportation system.

(11) **Project Planning** – In order to demonstrate local commitment as part of a fiscally constrained plan, project sponsors shall indicate if their project is in the TIP/STIP, eligible to be amended into the TIP/STIP, in another approved transportation planning document, or not in any plan.

SECTION 4.Ranking procedures – (1) the OFMB shall assign quantitative scores to potential projects based upon an evaluation of the responses to the criteria described in section 3 of Rule IV herein.

(1) **Highway and road related projects** – The OFMB shall coordinate with the appropriate engineering region regarding technical approval of highway or road related projects and then shall arrive at a final ranking of the projects.

(2) **Aviation projects** – The OFMB shall coordinate with the Colorado aeronautical board in conjunction with the division of aeronautics regarding technical approval of aviation projects and then shall arrive at a final ranking of the projects.

(3) **Transit and rail projects** – The OFMB shall coordinate with the division of transportation development regarding technical approval of transit or rail projects and then shall arrive at a final ranking of the projects.

SECTION 5.Funding procedure – (1) The OFMB shall present its recommendation and final ranking to the commission for funding approval, and the commission shall set the maximum level of financial assistance for the project.

SECTION 6.Loan agreement – (1) The OFMB shall negotiate the terms of a loan agreement with the approved project sponsor.

RULE V – Interest Rates and Fees

SECTION 1.Interest Rates and Fees – (1) Interest earnings and origination fees required to re-capitalize the bank and to offset a portion of the cost of its administration, shall be set on an annual basis. There shall be no interest free loans. However, interest payments may be delayed for up to two years, and all accrued interest can be capitalized into the principal outstanding balance. In addition, an origination fee to partially offset the cost of administering the bank may be assessed. If such fee is assessed, the calculated amount can be added to principal and be repaid according to the agreed upon amortization schedule.

(2) **Interest Rate** – The annual interest rate for loans from the bank shall be established and by resolution, adopted by the commission not later than June 30, of each year for the ensuing fiscal year. Such rate shall correspond to a rate equal to or less than the market rate.

(3) **Origination Fee** – Pursuant to 43-1-113.5 (7) CRS a fee may be charged to reimburse the department for reasonable expenses incurred while administering the bank. Not later the

June 30, of each year the commission shall determine whether or not to assess an origination fee for the ensuing fiscal year. If assessed the origination fee schedule shall be as follows: a maximum of one percent for loan proceeds up to \$1 million, three-quarters of a percent for loan proceeds over \$1 million and up to \$2.5 million, one-half percent on the amount of loan proceeds over \$2.5 million and up to \$5 million, and one-quarter percent on the amount of loan proceeds over \$5 million.

RULE VI – Repayment of Loans

SECTION 1. Loan amortization – Financial assistance in the form of a loan shall be amortized and simple interest shall be applied to the outstanding principal of each loan. Amortization schedules shall be issued to borrowers on an annual basis.

SECTION 2. Payback Period – The payback period for financial assistance shall be not more than ten years. The term of a loan requested by a project sponsor shall be one of the criteria used for evaluation.

SECTION 3 Remedies – (1) If a recipient of financial assistance from the bank fails to meet any of the terms or conditions of the loan, the department may bring a right of action against such recipient in district court to seek any applicable legal or equitable remedy, including reasonable attorneys fees.

(2) **Remedies against governmental entities** – If the recipient is a municipality or county and such recipient defaults on repayment of a loan from the bank, the department may withhold funds that it would otherwise disburse to the recipient and in an amount that does not exceed what a recipient owes to the fund. Such funds shall be deposited in the bank account from which the recipient received the loan and credited towards the amount due from the recipient. The department may only withhold disbursements to a municipality or county from the highway user tax fund if the loan was for construction, and maintenance of a public road or highway in the state.