

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK RESPONSE TO LAC RECOMMENDATIONS August 15, 2016

Number	LAC Recommendation	Agency Response	Agency Action Required	Implementation Timeline
1	The South Carolina Transportation Infrastructure Bank should report on its website a comprehensive list of grants, loans, total commitments, and disbursements for all of its projects since the agency's inception in 1997.	Concur	The Bank will consider using a chart similar to Table 2.1 on page 6 of the LAC Report on its website. The Bank is considering contracting to upgrade current website.	Prior to 12/31/16 - SC.GOV is currently working on new design for website
2	The General Assembly should amend state law in one of the following ways: <ul style="list-style-type: none"> Discontinue South Carolina Transportation Infrastructure Bank and its Board of Directors and assign the mission of managing the entire state-level, highway and public transportation system to the South Carolina Department of Transportation. Make South Carolina Transportation Infrastructure Bank a unit of South Carolina Department of Transportation, while maintaining the South Carolina Transportation Infrastructure Bank Board in an advisory capacity. 	Non-Concur	There is no analysis by the LAC of how or if this massive change could be done legally, financially, or practically. The Bank has been successfully issuing revenue bonds over a period of almost 20 years and has established strong relationships with rating agencies, investment banks, investors and bondholders. It has material contractual obligations to its bondholders that may not be impaired by the actions of the State and are protected by the impairment of contract provisions in the United States and South Carolina Constitutions. SCDOT is a significant debtor of the Bank, and its payments to the Bank are pledged to the payment of revenue bonds. The Bank has the responsibility of enforcing those payment obligations. Under SC Code Section 11-43-210(A), the Bank may request that the State Treasurer intercept State funds or funds administered by the State allotted or appropriated to SCDOT if SCDOT fails to make such a payment and apply those funds to those bond obligations. This proposal is inconsistent with Act 275 of 2016 and would disrupt the implementation of the financial structure continued and expanded upon by the Act.	

3	When implementing either of the above recommendations, the General Assembly should amend state law to increase the classes of bonds that may be issued to finance South Carolina Department of Transportation's projects or amend the South Carolina Constitution to increase South Carolina Department of Transportation's debt service limit for highway bonds.	Non-Concur	Any consideration of SCDOT's absorbing the Bank's debt would need to address, analyze and determine answers to a number of crucial questions a few of which are: (1) If the security features and obligations arising from the debtor-creditor relationship between the Bank and SCDOT are altered, will that create an impairment of contract or give rise to litigation by bondholders or others? (2) How will this massive change affect the credit rating, value and liquidity of outstanding and future bond issues? (3) What will the possible additional interest costs to the State be? (4) What will be the effect on the State's ability to market bonds? If the State issues general obligation debt to refinance or replace the Bank's \$1.94 billion in revenue bonds or to finance its transportation needs, the State would be pledging the full faith and taxing power of the State to pay those bonds while the current sole source of such payment for the Bank's revenue bonds is the non-state tax revenue sources pledged by the Bank as authorized by the General Assembly. That pledge does not put the State's taxing power at risk.	
4	If the General Assembly does not discontinue the function of the South Carolina Transportation Infrastructure Bank, it should implement the remaining recommendations in this report.	Non-Concur	Please see other comments in this response.	
5	The South Carolina Transportation Infrastructure Bank should formally and publicly communicate the availability of funding.	Concur	The Bank is in the process of adopting policy changes that address this. Funds availability will be announced publicly.	Prior to 12/31/16 - See Section 12 of Operating Guidelines
6	The South Carolina Transportation Infrastructure Bank should adopt an annual timeline for publicly communicating updated criteria regarding the application process.	Concur	The Bank is in the process of adopting policy changes that address this. Application criteria and deadlines will be announced publicly.	Prior to 12/31/16 - See Section 12 of Operating Guidelines
7	The South Carolina Transportation Infrastructure Bank should create an annual deadline, that is consistent from year to year, for accepting applications when funding is available and establish a structured timeline for the review and award processes.	Concur	The Bank is in the process of adopting policy changes that address this. Application criteria and deadlines will be announced publicly.	Prior to 12/31/16 - See Section 12 of Operating Guidelines
8	The South Carolina Transportation Infrastructure Bank should require a new application for funding requests which differ from the initial application.	Concur	The Bank is in the process of adopting policy changes that address this comment for material changes to applications.	Prior to 12/31/16 - See Sections 7 and 8 of Operating Guidelines

9	The South Carolina Transportation Infrastructure Bank should promulgate, in regulation, its criteria and process for awarding financial assistance.	Non-Concur	The Bank submits that the comments concerning regulations are legally incorrect. There is no requirement in law that the Bank must adopt regulations. See, <u>Stogsdill v. SCDHEC</u> , 410 S.C. 273, 763 S.E.2d 638 (Ct. App. 2014). Further, the guidelines and policies the Bank follows and are developing are not required to be in the form of regulations because they are not of general public applicability and are not intended to have the force or effect of law. SC Code Section 1-23-10(4). Such an approach also would hamper the ability of the Bank to promptly respond to needed changes to increase the effectiveness of the Bank's review of applications, such as the recommendations in the LAC Report.	
10	The South Carolina Transportation Infrastructure Bank should develop formal policies regarding its practice of awarding financial assistance.	Concur	The Bank in the process of adopting policy changes that address this. Application criteria and deadlines will be announced publicly.	Prior to 12/31/16 - See Operating Guidelines
11	The South Carolina Transportation Infrastructure Bank should adopt a formal scoring sheet for evaluating project applications.	Concur	Revised evaluation criteria and project scoring is under consideration.	Prior to 12/31/16 - Being reviewed by Evaluation Committee - See Section 12 C of Operating Guidelines
12	The South Carolina General Assembly should amend the South Carolina Code of Laws Section 11-43-130(6) by adding clarity as to what constitutes a "project" and what constitutes "major."	NA	Recommendation is wholly within the prerogative of the General Assembly.	
13	The General Assembly should amend state law to establish the minimum amount of matching funds applicants are required to contribute, for both grants and loans, to be eligible and qualify for financial assistance.	NA	Recommendation is wholly within the prerogative of the General Assembly. Section 6 of Act 275 of 2016 provides that minimum costs of a project must be \$25 million.	
14	The South Carolina Infrastructure Bank should require an increased recipient match when additional funding is awarded due to cost overruns.	Non-Concur	Restricts Board's ability to be flexible in decision making where circumstances on a project justify such flexibility. Such decisions are reviewed by JBRC and now SCDOT.	
15	The General Assembly should amend state law to establish the acceptable types of financial and in-kind matches required of entities that receive financial assistance from the South Carolina Transportation Infrastructure Bank.	NA	Recommendation is wholly within the prerogative of the General Assembly.	
16	The South Carolina Transportation Infrastructure Bank should consistently apply all its requirements to all applicants.	Concur	Bank's proposed policy changes are designed to promote consistency in the evaluation and selection process.	Prior to 12/31/16 - See Operating Guidelines

17	The General Assembly should amend state law to require the South Carolina Transportation Infrastructure Bank only projects that are included in the South Carolina Department of Transportation's priority list.	NA	Recommendation is wholly within the prerogative of the General Assembly. Section 7 of Act 275 of 2016 requires Bank to prioritize projects in accordance with criteria in SC Code Section 57-1-370 (B)(8).	
18	The South Carolina Transportation Infrastructure Bank should require applicants to demonstrate whether the benefits of the project would exceed the costs.	Concur	Addressed in the Bank's application documents and process whereby the applicant is required to supply a cost/benefit analysis.	
19	The South Carolina Transportation Infrastructure Bank should develop a minimum rating to use in the evaluation process to determine which projects qualify for funding.	Concur	Revised evaluation criteria and project scoring is under consideration, taking into account Act 275 of 2016.	Prior to 12/31/16
20	The General Assembly should amend state law to clarify whether Act 98 funds are available to entities other than the South Carolina Department of Transportation.	NA	Act 98 of 2013, S.C. Code Section 11-43-165, is clear to SCDOT, the General Assembly and the Bank. The Act requires the Bank to select and fund certain types of defined projects from a list submitted to the Bank from SCDOT. Act 98 would need to be amended for Bank to consider non-SCDOT projects.	
21	The General Assembly should amend state law to clarify the award criteria for Act 98 funds.	NA	See #20	
22	The South Carolina Transportation Infrastructure Bank should develop a formal written process for evaluating Act 98 applications.	NA	See #20	
23	The S.C. State Infrastructure Bank should institute a policy that requires the source of payment for all travel and related expenses be documented.	Concur	The Bank will develop a policy on travel reimbursement that is consistent with state regulations. Some LAC comments on this point are inaccurate.	Prior to 12/31/16
24	The General Assembly should amend S.C. Section 8-13-710 to make it illegal for all state public officials, board members, and employees to accept any gifts over a specific dollar amount that are a result of their holding state government positions.	NA	Recommendation is wholly within the prerogative of the General Assembly.	

25	<p>The General Assembly should obtain a formal opinion from the South Carolina Office of Attorney General on the sources of funds used to repay SCTIB revenue bonds to ensure that it is compliance with:</p> <ul style="list-style-type: none"> • Article 10, Section 13, Subsection 9 of the S.C. Constitution, which prohibits the use of taxes to repay revenue bonds. • The legal principle which states and act that is forbidden to be done directly may not be done indirectly. 	Non-Concur	<p>The LAC raises the issue of whether the Bank is indirectly using state tax sources of revenues to pay debt service on its revenue bonds. <u>The comments on that subject made in the Report are incorrect factually and legally and are potentially damaging to the State.</u></p> <p>The Bank does not use state tax sources or revenues to pay debt service. As established by the Bank's Enabling Act, Master Revenue Bond Resolution and relevant agreements, the Bank has pledged only non-state tax revenues to the payment of those bonds and uses only non-state tax revenues to make payments of debt service on those bonds. The accounting records of the Bank and SCDOT establish those facts. The foregoing comments are supported by the opinion of the Bank's bond counsel.</p>	
26	The South Carolina Transportation Infrastructure Bank should implement a standard process for the allocation of interest earnings on funds held by it for other entities.	Concur	The Bank will discuss development of a standard process with its Audit Firm and Financial Advisor.	Prior to 12/31/16
27	The General Assembly should amend state law to clarify whether the Act 92 of 2015 funds are recurring.	NA	Provisio 117.135 of the 2016-17 Appropriations Act transfers the funds from the Bank to the South Carolina Department of Transportation. This comment is moot.	