

Legislative Oversight Committee
South Carolina House of Representatives
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Notification of Economic Development, Transportation and Natural Resources Subcommittee Study South Carolina Transportation Infrastructure Bank

March 10, 2017

In accordance with Standard Practice 12.5, notice is hereby provided that the Economic Development, Transportation, Natural Resources Subcommittee study of the State Transportation Infrastructure Bank is available for consideration by the full committee.

Laurie Slade Funderburk
Committee First Vice-Chair

cc: The Honorable Neal A. Collins
The Honorable Mandy Powers Norrell
The Honorable Robert L. Ridgeway, III

Legislative Oversight Committee

Subcommittee Study of the South Carolina Transportation Infrastructure Bank *March 10, 2017*



FULL COMMITTEE OPTIONS STANDARD PRACTICE 13	FULL COMMITTEE ACTION(S)	DATE(S) OF FULL COMMITTEE ACTION(S)
(1) Refer the study and investigation back to the subcommittee or an ad hoc committee for further evaluation; (2) Approve the subcommittee’s study; or (3) further evaluate the agency as a full committee, utilizing any of the available tools of legislative oversight available		

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Table 1. Key Dates and Actions of the Study Process, 2015–2016, **South Carolina Transportation Infrastructure Bank.**

House Legislative Oversight Committee's Actions

- April 14, 2015 - Approves the priority of the study of the agency
- April 15 - 22, 2015 - Provides the agency with notification about the start of its oversight study as well as the Speaker of the House, committee chairs in the House, Members of the House, Clerk of the Senate, and Governor
- September 1, 2015 - Issues press release announcing public survey opportunity for the agency

Economic Development, Transportation, and Natural Resources Subcommittee's Actions

- April 21, 2015 - **(Meeting 1)** Holds introductory meeting with the agency to discuss the legislative oversight process
- March 9, 2016 - Provides Staff Study to Agency
- March 10, 2016 - **(Meeting 2)** Holds meeting with the agency and receives an overview of the agency
- March 23, 2016 - Sends agency a follow up letter requesting information on project selection, bank administration, and projects for local governments
- April 8, 2016 - Notifies House Members about the public input meeting and issues press release about public input meeting
- April 28, 2016 - **(Meeting 3)** Holds meeting to receive public input about the agency
- May 26, 2016 - **(Meeting 4)** Holds meeting to receive information about the Legislative Audit Council's May 2016 audit of the agency
- June 15, 2016 - Sends agency a follow up letter requesting information pertaining to the audit of the agency
- July 6, 2016 - Sends agency a follow up letter requesting an updated organizational chart; summary document of new operating guidelines, noting those which implement or begin the implementation process of any Legislative Audit Council recommendations; general timeline for implementation of Legislative Audit Council recommendations; and any recommendations the agency would like the Subcommittee to consider for inclusion in its study
- June 28, 2016 - **(Meeting 5)** Holds meeting with the agency to further discuss the Legislative Audit Council's recommendations and the status of the agency's development of its strategic plan
- August 25, 2016 - **(Meeting 6)** Holds meeting with the agency to discuss a timeline of the agency's implementation of any of the Legislative Audit Council's recommendations; new agency operating guidelines; and study recommendations
- September 19, 2016 - **(Meeting 7)** Holds meeting with the agency for further discussion of recommendations
- October 31, 2016 - **(Meeting 8)** Holds meeting and requests in writing additional information from the agency
- January 26, 2017 - **(Meeting 9)** Holds a work session to update new Subcommittee Members on status of study and approves recommendations made during the 121st General Assembly relating to the study
- February 28, 2017 - **(Meeting 10)** Holds meeting and receives clarification about an issue identified in the audited financial statements and an update on implementation of Act 275 of 2016

South Carolina Transportation Infrastructure Bank's Actions

- March 31, 2015 - Submits its Restructuring and Seven-Year Plan Report to the Committee
- July 27, 2015 - Submits its Program Evaluation Report to the Committee
- January 12, 2016 - Submits its Annual Restructuring Report to the Committee
- March 11, 2016 - Submits its response to the Staff Study
- April 23, 2016 - Provides Subcommittee information in response to the Subcommittee's March 23, 2016, letter
- August 15, 2016 - Provides Subcommittee information in response to the Subcommittee's July 6, 2016, letter
- December 16, 2016 - Provides Subcommittee information in response to the Subcommittee's November 4, 2016, letter

Public's Actions

- September 1 - 30, 2015 - Survey about the agency is available online for the public to provide input (complete responses are available for review on the Oversight Committee's webpage on the General Assembly's website - www.scstatehouse.gov)
- April 28, 2016 - Opportunity for public input at Subcommittee meeting
- Ongoing - Public may submit written comments on the Oversight Committee's webpage

EXECUTIVE SUMMARY

Study Process

The Economic Development, Transportation, and Natural Resources Subcommittee (“Subcommittee”) of the House Oversight Committee (“Committee”) is studying the South Carolina Transportation Infrastructure Bank (“agency” or “SCTIB”). The Subcommittee has met with SCTIB ten times during this study. Key dates and actions of the study process are listed in Table 1 on the previous page.

Purpose of Oversight Study

As stated in SC Code of Laws Section 2-2-20(B), “[t]he **purpose of these oversight studies** and investigations is to **determine if agency laws and programs** within the subject matter jurisdiction of a standing committee: (1) **are being implemented** and carried out **in accordance with the intent of the General Assembly**; and (2) **should be continued, curtailed, or eliminated.**” In making these determinations the Subcommittee evaluates (1) the application, administration, execution, and effectiveness of the agency’s laws and programs, (2) the organization and operation of the agency, and (3) any conditions or circumstances that may indicate the necessity or desirability of enacting new or additional legislation pertaining to the agency.¹

Recommendations

While the Subcommittee does not have any specific recommendations with regards to continuance of agency programs or elimination of agency programs, it does have four recommendations. The Subcommittee recommends two revisions relating to the agency, and both have been implemented by the agency through revision to its internal operation guidelines during the study. The Subcommittee has one recommendation for follow up with the agency. The Subcommittee has one recommendation that applies to agencies in general. A summary of these recommendations is included in Table 2 on the next page, and more information about the recommendations is included in the Recommendation Details section of this study beginning on page 7.

Table 2. Summary of recommendations.

Topic	Recommendation for . . .
	. . . Agencies in general
Gifts received by state public officials, board members, and employees	The Subcommittee recommends implementation of the Legislative Audit Council’s recommendation number 24 from its comprehensive audit released May 26, 2016. Specifically, this is a recommendation that “[t]he General Assembly should amend South Carolina Code of Laws § 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.” ²
	. . . SCTIB in particular
\$25,000,000 minimum project cost	The Subcommittee recommends SCTIB not fund projects that have been “bundled together” to meet the minimum project

	<p>threshold amount, if the smaller projects individually do not reach the \$25,000,000 minimum project cost required by statute.³</p> <p>Note: SCTIB has internally implemented this recommendation. SCTIB formally adopted a provision addressing this issue in revisions to its operating guidelines approved December 14, 2016. “Applicants may not combine improvements to more than one project for the purpose of meeting the minimum amount of eligible project costs in SC Code Section 11-43-180(C).”⁴</p>
Local match	<p>The Subcommittee recommends SCTIB adopt, in its publicly available operating guidelines, a definition of the term “local match.”⁵</p> <p>Note: SCTIB has internally implemented this recommendation. SCTIB formally adopted a definition in revisions to its operating guidelines approved December 14, 2016.⁶</p>
. . . Follow up	
Approval process for providing a loan or other financial assistance	<p>The Subcommittee recommends follow up with SCTIB in the next year to obtain more information about the working relationship between SCTIB and the Department of Transportation (DOT) in light of the changes effected by Act 275 of 2016 with regards to the approval process for providing a loan or other financial assistance to a qualified borrower on a qualified project. Notably, SCTIB and DOT are still in the process of determining how Act 275 will be implemented and it was noted by agency representatives during the February 28, 2017, meeting.⁷ While several applications for financing have been received for this fiscal year, action will not be taken on those applications until September.⁸</p>

Additional Information of Interest

This Subcommittee Study references additional information of interest relating to the agency, including information about the agency’s implementation of recommendations from a comprehensive audit of the agency conducted by the Legislative Audit Council. These materials of interest are all available online as well as the materials relating to the study of the agency.⁹

STUDY PROCESS

House Legislative Oversight Committee’s Actions

On January 7, 2015, the House Legislative Oversight Committee approves a proposed seven-year study schedule for the Speaker of the House.¹⁰ The Speaker approves the Committee’s recommendations, which are published in the House Journal on January 13, 2015.¹¹ The South Carolina Transportation Infrastructure

Bank is an agency subject to legislative oversight.¹² The **Committee approves the study of the agency** on April 14, 2015.¹³

The **Committee notifies the agency** about the study on April 15, 2015.¹⁴ As the Committee encourages **collaboration in its legislative oversight process**, the Speaker, standing committee chairs in the House, members of the House, Clerk of the Senate, and Governor are also notified about the agency study.

Subcommittee Studying the Agency

The **Economic Development, Transportation, and Natural Resources Subcommittee of the House Oversight Committee is studying the agency**. As of March 3, 2017, the chair of the Subcommittee is vacant due to the resignation of the Honorable Ralph W. Norman from the House of Representatives on February 16, 2017; other members include: the Honorable Neal A. Collins, the Honorable Mandy Powers Norrell, and the Honorable Robert L. Ridgeway, III.¹⁵ The study begins in the 121st General Assembly by the Economic Development, Transportation, Natural Resources and Regulatory Subcommittee. The chair of the Subcommittee for the 121st General Assembly is the Honorable Phyllis J. Henderson; other members include: the Honorable Ralph W. Norman, the Honorable Robert L. Ridgeway, III, and the Honorable Samuel Rivers, Jr.¹⁶

Meetings with the Agency

The **Subcommittee has met on ten occasions**. Videos and minutes of meetings are available online. Key dates and actions of the study process are listed in Table 1 on page 3.

Information from the Public

By the time the Subcommittee approves this Subcommittee Study, **members of the public have had an opportunity to participate anonymously in a public survey, provide comments anonymously after the public survey closes over via a link on the Committee website, and appear in person before the Subcommittee**.

During the month of September, 2015, the Committee posts an online survey to solicit comments from the public about the South Carolina Transportation Infrastructure Bank and other agencies. Communication about this survey is sent to all House members to forward to their constituents, and a statewide media release is issued about this opportunity. The survey notes “input and observations from those citizens who [choose] to provide responses are very important . . . because they may help direct the Committee to potential areas for improvement with these agencies.”¹⁷ The public is informed of a continuous opportunity to submit written comments about agencies online after the public survey closes.¹⁸ Also, the public is informed that comments submitted online are not considered testimony.¹⁹ During the April 28, 2016, meeting the Committee invites the public to provide comments and recommendations about to the agency directly to the Subcommittee.²⁰

Information from the Agency

The **Committee asks the agency to conduct a self-analysis** by completing and submitting a 2015 Restructuring Report, Seven-Year Plan for cost savings and increased efficiencies, Program Evaluation Report, and 2016 Annual Restructuring Report. The agency submits its 2015 Restructuring Report and Seven-Year Plan, which EW combined into a single report for 2015, on March 31, 2015.²¹ The agency submits its Program Evaluation Report on July 27, 2015.²² The agency submits its 2016 Annual

Restructuring Report on January 12, 2016.²³ Committee staff provide the agency the committee staff study on March 11, 2016.²⁴ The agency has ten business days to provide a response; a response is not required.²⁵ House Members are notified about the staff study on April 6, 2016.²⁶ These reports are available online.

Next Steps

Pursuant to Committee Standard Practice 12.4, **individual members of this Subcommittee have an opportunity to provide a separate written statement for inclusion with the Subcommittee’s Study.** After an opportunity to provide written statements, pursuant to Committee Standard Practice 12.5 notice shall be provided to the Committee Chair that a Subcommittee Study is available for consideration by the full Committee.

Once the **Committee Chair receives written notification of the availability of the Subcommittee Study, the full Committee Chair shall, pursuant to Committee Standard Practice 13.1, include the Subcommittee Study on the agenda for a full committee meeting.** During a full Committee meeting at which the Subcommittee Study is discussed, the full Committee may vote, pursuant to Committee Standard Practice 13.2, to take one of the following three options: (1) refer the study and investigation back to the Subcommittee for further evaluation; (2) approve the Subcommittee’s study; or (3) further evaluate the agency as a full Committee, utilizing any of the available tools of legislative oversight available.

When the full Committee approves a final study, any member of the Committee may provide a written statement for inclusion with the final study. The final study, and written statements, will be published online and the agency, as well as all House Standing Committees, will receive a copy. Lastly, the full Committee shall offer at least one briefing to Members of the House about the contents of the final oversight study approved by the Committee. The Committee Chair may also provide briefings to the public about the final oversight study.

RECOMMENDATION DETAILS

Recommendations

The following recommendations include areas identified for potential improvement by the Subcommittee. The **Subcommittee recognizes these recommendations will not satisfy everyone nor address every issue or potential area of improvement at the agency.** These recommendations are based on the agency’s self-analysis requested by the full Committee, discussion with the agency during multiple meetings with the Subcommittee, and analysis of the information obtained by the Subcommittee, including the comprehensive audit of the agency by the General Assembly’s Legislative Audit Council and the agency’s response to this audit. This information, including, but not limited to the Staff Study, various agency reports to the Committee, and videos of meetings with the agency are available on the Committee’s website.

Continue

The Subcommittee **does not have any specific recommendations with regards to continuance of agency programs.**

Eliminate

The Subcommittee **does not have any specific recommendations with regards to elimination of agency programs.**

Revise (i.e., curtail)

The Subcommittee **recommends two revisions to agency operations, which have been implemented by the agency.** Also, the Subcommittee **has one recommendation that applies to agencies in general.** A summary of these recommendations is included in Table 2 on pages 4-5.

On May 26, 2016, the General Assembly **receives a comprehensive audit of the agency conducted by the Legislative Audit Council.**²⁷ Notably, SCTIB concurs with 12 of the audit recommendations, and on August 15, 2016, SCTIB provides the Subcommittee with an implementation timeline for the recommendations in which the agency concurs.²⁸ Further, the agency updates the Subcommittee on its implementation timeline in January 2017, which is included in Attachment A.²⁹

While the Subcommittee has included the recommendations from the Legislative Audit Council for information purposes in this report to the full Committee, the Subcommittee **recommends the General Assembly implement Legislative Audit Council Recommendation #24.**³⁰ Specifically, this is a recommendation that “[t]he General Assembly should amend South Carolina Code of Laws § 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.”³¹ The Subcommittee notes this recommendation applies to agencies in general and not to SCTIB in particular.

With regards to the issue of receipt of gifts by state public officials, board members, and employees, Secretary of Transportation Christy A. Hall testifies during the study that cabinet agencies and some other agencies have adopted an employee code of conduct and established their own ethics officers.³² Executive Order 2014-23 established a State Employee Code of Conduct Task Force, and the task force issued its final report on August 7, 2014, which recommended a model code of conduct for state employees.³³ Cabinet agency employees are required to have training on these issues at least once a year. The Department of Administration assists in this process by providing online training modules for employees to complete. There is a training module which discusses policies on policy on gifts and other things of value, and the stated best practice is to avoid accepting gifts or other things of value.³⁴

The Subcommittee **acknowledges revisions in law enacted in Act 275 of 2016 by the General Assembly pertaining to SCTIB.** The complete text of Act 275 of 2016 is available on the General Assembly’s website. The portions of Act 275 of 2016 pertaining to SCTIB are set forth below in an excerpt from a summary of the legislation prepared by the Office of House Research.

Before providing a loan or other financial assistance, the board of directors that oversees [SCTIB] must . . . submit its decision to the Department of Transportation Commission for its consideration. The [Department of Transportation] Commission can, in turn, approve or reject the decision or request additional information from the bank’s board of directors. [SCTIB’s policy of following the SC Department of Transportation’s project priority criteria is established as a statutory requirement. The General Assembly may, however, enact a joint resolution specifically allowing the bank to fund a project without using [Department of Transportation’s] prioritization criteria. The minimum project amount set in [SCTIB’s]

requirements is lowered from \$100 million to \$25 million. This threshold is lowered to allow more areas to be able to afford local match requirements and take advantage of the bank's bonding capabilities for financing their transportation projects.³⁵

The **Subcommittee recommends that SCTIB not fund projects that have been “bundled together” to meet the minimum threshold amount** if the smaller projects individually do not reach the \$25,000,000 minimum project cost.³⁶ After approval of this recommendation, on September 15, 2016, SCTIB provides the Subcommittee with a copy of proposed revisions to its operating guidelines, which among other things, included a proposed revisions relating to bundling projects.³⁷ **SCTIB internally implements this change on December 14, 2016, by formally adopting the revision listed below to its internal operating guidelines.**³⁸

As provided by SC Code Section 11-43-180(C), the Bank may not provide any loans or other financial assistance, including bond proceeds, to any project unless the eligible costs of the project are at least \$25 million. Applicants may not combine improvements to more than one project for the purpose of meeting the minimum amount of eligible project costs in SC Code Section 11-43-180(C).³⁹

The **Subcommittee recommends SCTIB adopt, in its publicly available operating guidelines, a definition of the term “local match.”**⁴⁰ Section 11-43-180(B) provides that “[t]he board shall determine which projects are eligible projects and then select from among the eligible projects those qualified to receive a loan or other financial assistance. Preference must be given to eligible projects which have local financial support.” On August 15, 2016, SCTIB provided the Subcommittee with a copy of its new operating guidelines that were approved in May 2016.⁴¹ After approval of this recommendation, on September 15, 2016, SCTIB provides the Subcommittee with a copy of proposed revisions to its new operating guidelines, which among other things, includes proposed revisions relating to local matches.⁴² **SCTIB internally implements this change on December 14, 2016, by formally adopting the revision listed below to its internal operating guidelines.**⁴³

Local matches must consist of the payment of monies by the project sponsor or owner to support the project. Local matches or loan payments on a project consisting of payments to the Bank that may be pledged to revenue bonds will be scored higher than other forms payments. Next in order of scoring will be local matches that consist of payments of projects costs or loan payments that may not be pledged to revenue bonds. Local matches that are in kind or consist of the project sponsor or owner improving roads that are collateral to or not part of the project will not be considered.⁴⁴

Additional Information of Interest

This Subcommittee Study references additional information of interest relating to the agency, which are not recommendations of the Subcommittee. These materials of interest are available online as well as the study materials relating to the study of SCTIB.⁴⁵

General Assembly's Legislative Audit Council

Materials of interest from the General Assembly's Legislative Audit Council include the following:

- comprehensive audit of SCTIB released May, 2016;
- executive summary of the comprehensive audit;

- presentations about the audit made by Legislative Audit Council staff;
- agency's official responses to the comprehensive audit;
- agency's bond counsel's official response to the comprehensive audit;
- presentations about the comprehensive audit made by SCTIB Chairman Vince Graham;
- list of audit recommendations and the agency's response to each recommendation, including a timeline of implementation for those recommendations in which the agency is in agreement;
- Department of Transportation's official response to the comprehensive audit of SCTIB;
- presentations about the audit made by Secretary of Transportation Christy A. Hall; and
- an October 25, 2016, Attorney General Opinion relating to the Legislative Audit Council's recommendation number 25.

South Carolina Transportation Infrastructure Bank

Also, the following materials are available online relating to the study of the agency:

- video archives;
- minutes of Subcommittee meetings;
- oversight reports and studies;
- public survey and public input via the Legislative Oversight Committee's webpage;
- correspondence with the agency;
- organizational charts;
- strategic budgeting;
- Act 148 of 1997 legislative findings;
- minutes from SCTIB Board meetings (April 1, 2004 - May 18, 2016);
- presentations provided by SCTIB to the Subcommittee;
- SCTIB operating guidelines;
- application process documents provided by SCTIB;
- applications submitted to SCTIB for project funding;
- project summary for fiscal year 2016; and
- audited financial statements year ended June 30, 2016.

Follow Up

The Subcommittee recommends following up with SCTIB in the subsequent year to **obtain more information about the working relationship between SCTIB and the Department of Transportation (DOT) in light of the changes effected by Act 275 of 2016 with regards to the approval process for providing a loan or other financial assistance to a qualified borrower on a qualified project.** Notably, SCTIB and DOT provided the Subcommittee with an update on the implementation status during the February 28, 2017, meeting. During this meeting the agency's legal counsel noted several applications for financing have been received for this fiscal year but action will not be taken on those applications until September.⁴⁶

ATTACHMENT A

SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK RESPONSE TO LAC RECOMMENDATIONS				
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.	COMPLETE - Website updated January 2017.
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 Act 275.	Non-Concur
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.	Non-Concur

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, 2 and 3 above.	Non-Concur
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.	COMPLETE - 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.	COMPLETE - 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.	COMPLETE - 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.	COMPLETE - 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.	Non-Concur
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.	COMPLETE - 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.	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. See 13, below.	Matter for 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.	Matter for the General Assembly.
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. Revised Operating Guidelines require new application if additional funding exceeds 10%, or \$2.5 million, and Bank may require additional match.	COMPLETE
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.	Matter for 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.	COMPLETE - 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).	Matter for the General Assembly.
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 are under further consideration, taking into account Act 275 of 2016. Minimum score for current application period posted on website.	COMPLETE -Being reviewed further by Evaluation Committee. Minimum score posted online.

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.	Matter for the General Assembly.
21	The General Assembly should amend state law to clarify the award criteria for Act 98 funds.	NA	See #20	Matter for the General Assembly.
22	The South Carolina Transportation Infrastructure Bank should develop a formal written process for evaluating Act 98 applications.	NA	See #20	Matter for the General Assembly.
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.	COMPLETE
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.	Matter for the General Assembly.
25	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: <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	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> 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.	COMPLETE - Attorney General issued opinion on October 25, 2016 agreeing with the Bank's position.
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.	COMPLETE
27	The General Assembly should amend state law to clarify whether the Act 92 of 2015 funds are recurring.	NA	Proviso 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.	COMPLETE

SELECTED AGENCY INFORMATION CITED

SC Transportation Infrastructure Bank. *Program Evaluation Report*, 2015.

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2015%20Program%20Evaluation%20Reports/State%20Transportation%20Infrastructure%20Program%20Evaluation%20Report.PDF>

SC Transportation Infrastructure Bank. *Restructuring and Seven-Year Plan Report*, 2015.

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/TransportationInfrastructureBank.php>

SC Transportation Infrastructure Bank. *September 2015 Survey Results*.

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/Survey/September%202015%20Survey%20Results.pdf>

SC Transportation Infrastructure Bank. *Annual Restructuring Report*, 2016.

[http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2016%20ARR/2016%20ARR%20-%20SCTIB%20\(PDF\).PDF](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/2016%20ARR/2016%20ARR%20-%20SCTIB%20(PDF).PDF)

ENDNOTES

¹ *SC Code of Laws*, sec. 2-2-20(C).

² SC House of Representatives, House Legislative Oversight Committee, “June 28, 2016 Meeting Minutes,” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee,” under “Transportation Infrastructure Bank, S.C.,” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016) A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>.

³ SC House of Representatives, House Legislative Oversight Committee, “August 25, 2016 Meeting Minutes,” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee,” under “Transportation Infrastructure Bank, S.C.,” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016) A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>. The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

⁴ SC Transportation Infrastructure Bank, “Operating Guidelines revised December 14, 2016,” paragraph E, page 10.

⁵ SC House of Representatives, House Legislative Oversight Committee, “August 25, 2016 Meeting Minutes.” The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

⁶ SC Transportation Infrastructure Bank, “Operating Guidelines revised December 14, 2016,” paragraph C, page 10.

⁷ SC House of Representatives, House Legislative Oversight Committee, “August 25, 2016 Meeting Minutes.” The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

⁸ SC House of Representatives, House Legislative Oversight Committee, “February 28, 2017 Meeting Minutes.” These meeting minutes will be posted online when approved by the Subcommittee at a subsequent meeting.

⁹ *SC Transportation Infrastructure Bank study materials*.

¹⁰ SC House of Representatives, House Legislative Oversight Committee, “January 7, 2015 Meeting Minutes,” under “Citizens’ Interest,” under “Agency Oversight by House Legislative Oversight Committee,” under “Meeting Minutes and Handouts,” and under “Full Committee Minutes,” <http://www.scstatehouse.gov/committeeinfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes.php> (accessed June 21, 2015). A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>.

¹¹ The committee’s recommendations, letters to the Speaker of the House of Representatives and House Clerk, and a direct link to the January 13, 2015, House Journal are available on the committee’s website under “Citizens’ Interest,” under “Agency Oversight by House Legislative Oversight Committee,”

<http://www.scstatehouse.gov/committeeinfo/houselegislativeOversightCommittee.php> (accessed June 21, 2015).

¹² *SC Code of Laws*, sec. 2-2-10(1).

¹³ SC House of Representatives, House Legislative Oversight Committee, “April 14, 2015 Full Committee Minutes,” under “Citizens’ Interest,” under “Agency Oversight by House Legislative Oversight Committee,” under “Meeting Minutes and Handouts,” and under “Full Committee Minutes,”

<http://www.scstatehouse.gov/committeefinfo/HouseLegislativeOversightCommittee/FullCommitteeMinutes.php> (accessed June 21, 2015). A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>.

¹⁴ SC House of Representatives, House Legislative Oversight Committee, “Letter from Oversight Committee to STIB” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee,” under “Transportation Infrastructure Bank, S.C.” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

¹⁵ *Subcommittees - 2017*.

¹⁶ *Subcommittees -2016*.

¹⁷ SC House of Representatives, House Legislative Oversight Committee, “September 2015 Public Survey.” The survey is closed. The survey sought comments from the public about the South Carolina Transportation Infrastructure Bank; South Carolina School for the Deaf and the Blind; Commission for the Blind; Department of Public Safety; and the Treasurer’s Office.

¹⁸ SC House of Representatives, House Legislative Oversight Committee, “Provide Input About Agencies,” under “Citizens’ Interest,” under “Agency Oversight by House Legislative Oversight Committee.”

¹⁹ *Standard Practice 10.4*.

²⁰ SC House of Representatives, House Legislative Oversight Committee, “April 28, 2016 Meeting Minutes,” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee” ” under “Transportation Infrastructure Bank, S.C.” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016). A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>.

²¹ SC House of Representatives, House Legislative Oversight Committee, “2015 - Agency ARR and Seven-Year Plan (March 31, 2015),” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee” ” under “Transportation Infrastructure Bank, S.C.”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016)

²² SC House of Representatives, House Legislative Oversight Committee, “Agency PER” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee” ” under “Transportation Infrastructure Bank, S.C.”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

²³ SC House of Representatives, House Legislative Oversight Committee, “2016 Agency ARR” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee” ” under “Transportation Infrastructure Bank, S.C.”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

²⁴ SC House of Representatives, House Legislative Oversight Committee, “Staff Study and Agency Response (March 11, 2016)” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee” ” under “Transportation Infrastructure Bank, S.C.,” <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016) A video of the meeting is available at <http://www.scstatehouse.gov/video/videofeed.php>.

²⁵ *Standard Practice*, 11.5. The agency opted not to provide a response to the staff study.

²⁶ SC House of Representatives, House Legislative Oversight Committee, “2015-2016 Summary - House Legislative Oversight Committee” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

²⁷ SC General Assembly, Legislative Audit Council, “A Review of the SC South Carolina Transportation Infrastructure Bank,” under “Recent Publications” http://lac.sc.gov/LAC_Reports/2016/Documents/SCDOT.pdf (accessed July 21, 2016).

²⁸ SC House of Representatives, House Legislative Oversight Committee, “Correspondence from State Transportation Infrastructure Bank (August 15, 2016) response to Legislative Audit Council’s recommendations” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee,” under “Transportation Infrastructure Bank, S.C.”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

²⁹ SC House of Representatives, House Legislative Oversight Committee, “January 2017 - Updated Agency Response to LAC Recommendations,” under “Citizens’ Interest,” under “Agency Oversight by the House Legislative Oversight Committee,” under “Transportation Infrastructure Bank, S.C.”

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/Updated%20Response%20to%20LAC%20Recommendations%20January.pdf> (accessed March 1, 2017).

³⁰ *June 28, 2016 Meeting Minutes*. The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

³¹ SC General Assembly, Legislative Audit Council, “A Review of the SC South Carolina Transportation Infrastructure Bank,” under “Recent Publications” http://lac.sc.gov/LAC_Reports/2016/Documents/SCDOT.pdf (accessed July 21, 2016).

³² Secretary Christy’s Hall testimony is available for review on the June 28, 2016, video of the Subcommittee meeting at 50:39.

³³ This Executive Order and the task force’s report are both available online by visiting the website of South Carolina Office of the Governor Nikki R. Haley.

³⁴ The training modules are available online by visiting the website of the South Carolina Department of Administration. Specifically, Module 2 relates to gifts and other things of value.

³⁵ SC House of Representatives, Office of House Research, "Legislative Update June 7, 2016," under "Publications," under "Legislative Updates" <http://www.scstatehouse.gov/hupdate.php> (accessed September 8, 2016).

³⁶ *August 25, 2016 Meeting Minutes*. The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

³⁷ SC House of Representatives, House Legislative Oversight Committee, "Correspondence from State Transportation Infrastructure Bank (September 15, 2016) - draft revised SCTIB operating guidelines," under "Citizens' Interest," under "Agency Oversight by the House Legislative Oversight Committee" " " under "Transportation Infrastructure Bank, S.C." [http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/Draft%20STIB%20Operation%20Guidelines%20\(September%2019,%202016\).pdf](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/Draft%20STIB%20Operation%20Guidelines%20(September%2019,%202016).pdf) (accessed October 17, 2016). SCTIB formally adopted the new operating guidelines in December 2016.

³⁸ SC House of Representatives, House Legislative Oversight Committee, "STIB Operating Guidelines - Adopted May 26, 2016; Revised December 14, 2016," " " under "Citizens' Interest," under "Agency Oversight by the House Legislative Oversight Committee" " " under "Transportation Infrastructure Bank, S.C." <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/STIB%20Operating%20Guidelines%20Revised%20December%2014,%202016.pdf> (accessed January 9, 2017).

³⁹ *Ibid*, paragraph E - page 10 .

⁴⁰ *August 25, 2016 Meeting Minutes*. The Subcommittee studying the agency in the 122nd General Assembly, approved the recommendation of the prior Subcommittee studying the agency in the 121st General Assembly during its January 26, 2017, work session.

⁴¹ SC House of Representatives, House Legislative Oversight Committee, "Correspondence from State Transportation Infrastructure Bank (August 25, 2016) - SCTIB operating guidelines," under "Citizens' Interest," under "Agency Oversight by the House Legislative Oversight Committee" " " under "Transportation Infrastructure Bank, S.C.," <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed September 7, 2016).

⁴² SC House of Representatives, House Legislative Oversight Committee, "Correspondence from State Transportation Infrastructure Bank (September 15, 2016) - draft revised SCTIB operating guidelines," under "Citizens' Interest," under "Agency Oversight by the House Legislative Oversight Committee" " " under "Transportation Infrastructure Bank, S.C." [http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/Draft%20STIB%20Operation%20Guidelines%20\(September%2019,%202016\).pdf](http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/TransportationInfrastructureBank/Draft%20STIB%20Operation%20Guidelines%20(September%2019,%202016).pdf) (accessed October 17, 2016). SCTIB formally adopted the new operating guidelines in December 2016.

⁴³ STIB Operating Guidelines - Adopted May 26, 2016; Revised December 14, 2016.

⁴⁴ *Ibid*, paragraph C- page 10.

⁴⁵ SC House of Representatives, House Legislative Oversight Committee, under "Citizens' Interest," under "Agency Oversight by House Legislative Oversight Committee," <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee.php> (accessed April 23, 2016).

⁴⁶ SC House of Representatives, House Legislative Oversight Committee, "February 28, 2017 Meeting Minutes." These meeting minutes will be posted online when approved by the Subcommittee at a subsequent meeting.

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