

This rule was filed as 2 NMAC 40.30.

TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
PART 30 INFRASTRUCTURE BANK

2.40.30.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department, P.O. Box 1149 Santa Fe, New Mexico 87504-1149, (505) 827-5522
[5-31-99; Recompiled 10/01/01]

2.40.30.2 SCOPE: This rule will apply to all entities seeking from the state infrastructure bank funding.
[5-31-99; Recompiled 10/01/01]

2.40.30.3 STATUTORY AUTHORITY: Adoption of these regulations is pursuant to authority granted to the state highway commission and state highway and transportation department under NMSA 1978, Sections 9-1-5, 67-3-11, 67-3-28, 67-3-69, 67-3-70.
[5-31-99; Recompiled 10/01/01]

2.40.30.4 DURATION: Permanent.
[5-31-99; Recompiled 10/01/01]

2.40.30.5 EFFECTIVE DATE: May 31, 1999, unless a later date is cited at the end of a section or paragraph.
[5-31-99; Recompiled 10/01/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

2.40.30.6 OBJECTIVE:

A. There exists an account in the custody of the state treasurer known as the state infrastructure bank. The department shall use money deposited in the bank to encourage investment in transportation systems, including facilities that contribute to the multimodal and intermodal transportation capabilities of the state.

B. The department, and when appropriate, the New Mexico finance authority, shall develop financing techniques designed to expand the availability of funding for transportation projects, reduce direct state costs, maximize private and local participation in financing projects, and improve the efficiency of the state transportation system.

C. This rule specifies the procedures and conditions by which an eligible public entity may apply for and obtain financial assistance from the bank.
[5-31-99; Recompiled 10/01/01]

2.40.30.7 DEFINITIONS:

A. "Bank" means the state infrastructure bank account in the state road fund.

B. "Commission" means the New Mexico state highway commission.

C. "Construction" means construction as defined by Title 23, United States Code, Section 101 which includes preliminary studies required to determine the feasibility of an eligible project.

D. "Department" means the New Mexico state highway and transportation department.

E. "Design manual" means the latest edition of and successor to the department's standard specifications for highway and bridge construction.

F. "Expected financing period" means the time taken to fully pay any and all liabilities incurred to finance an eligible project, including all extensions of time through refunding or restructuring.

G. "Federal Act" means Section 350 of the National Highway System Designation Act of 1995 (Pub. L. No. 104-59) and all regulations adopted under the Act.

H. "Federal-aid highway" means a highway defined in Title 23, United States Code, Section 101.

I. "Financial assistance" means extending credit by direct loan, providing credit enhancements, serving as a capital reserve for bond or debt instrument funding, subsidizing interest rates, insuring the issuance of a letter of credit or credit instrument, financing a purchase or lease agreement in connection with a transit project,

providing security for bonds and other debt instruments, or providing methods of leveraging money that have been approved by the United States secretary of transportation and which relate to the project for which the assistance is provided.

J. "Investment grade" means creditworthiness sufficient to qualify a debt as eligible for commercial bank investment under regulations issued by the United States comptroller of the currency. For bonds, these debts are limited to ratings of AAA, AA, A, and BBB by standard and poor rating services or corresponding ratings used by other nationally recognized rating services.

K. "Secondary funds" means the repayment of a loan, including interest, principal, fees, charges, or other assistance that is provided with money deposited to the credit of the bank; and the investment income generated by secondary funds deposited to the credit of the bank.

L. "Secretary" means the secretary of the department or his or her designee.

M. "Transportation system" means facilities used for the transportation of natural resources, manufactured products or passengers and includes communication and transportation structures and other facilities necessary for the operation of the transportation facilities.

N. "Transit project" means capital expenditures, excluding expenditures for commuter rail, eligible for funding under Title 49, United States Code, Sections 5307, 5309 and 5311.
[5-31-99; Recompiled 10/01/01]

2.40.30.8 GENERAL POLICIES:

A. Financial assistance is given by the bank based on application.

B. All actions of the bank will be in accordance with applicable federal and state laws, rules and regulations. Grant financing will not be considered. No actions will be knowingly taken which would result in the bank's credit rating falling below investment grade. If the bank's credit rating falls below investment grade, the commission shall take actions necessary or appropriate to return the bank's credit rating as practicable to investment grade.

C. Repayment of financial assistance from the bank will commence at the earliest reasonable date consistent with applicable federal and state laws, rules and regulations. The term for repaying any financial assistance will not exceed fifteen (15) years after the date of the first payment.

D. The federal highway administration, the federal transit administration, the comptroller general of the United States, the New Mexico department of finance and administration, and the department, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the applicant which are pertinent to financial assistance, in order to make audits, examinations, excerpts, and transcripts.

E. If financial assistance is given, the parties shall enter into an agreement in a form provided by the department.

[5-31-99; Recompiled 10/01/01]

2.40.30.9 ELIGIBILITY:

A. A public entity authorized by law to construct, maintain, or finance an eligible project is eligible to apply to the department for financial assistance.

B. The following projects are eligible for financial assistance: Construction of a federal-aid highway, including required preliminary studies; a transit project; including a project eligible for assistance under Title 49, United States Code, Section 5310, or the planning, development, construction, maintenance, or operation of a public road, provided that the project is eligible for assistance under Title 23 or Title 49, United States Code, or the department is authorized by state law to provide assistance for the project.

[5-31-99; Recompiled 10/01/01]

2.40.30.10 PROCEDURES:

A. The secretary will designate a contact within the department for the purpose of providing information and assistance to potential applicants. Assistance may include non-binding advice, counsel, and consultation regarding all aspects of a possible eligible project. If the secretary determines that the project is otherwise eligible for assistance, that the department is authorized by state law to provide assistance, and that department resources are available, the department may provide engineering and other technical assistance to aid potential applicants in developing an application. Any advice, assistance, or aid provided shall not constitute a commitment or liability on the part of the department or the commission. Potential applicants are encouraged to communicate with the contact at the earliest possible date.

B. An applicant may request any form of financial assistance authorized by this regulation. In general, all requests for financial assistance shall be treated as requests for the use of specific sums of money from the bank for certain periods of time, at stated interest rates, with scheduled repayments of principal, interest, and any appropriate charges or fees.
[5-31-99; Recompiled 10/01/01]

2.40.30.11 APPLICATION PROCEDURE:

A. An eligible entity shall submit an application to the secretary in a form prescribed by the department. The application must be accompanied by an overview of the project, which shall include a description of the project, the total cost of the project and the proposed use of the requested financial assistance, the amounts of money required to supply the requested financial assistance (including the needs of any reserve funds which must be established and held by the bank for the applicant's benefit, but which may not be expended from the bank), any proposed pledge of collateral or security and priority of claim to those items, a description of the need for the project, and the latest bond rating obtained by the applicant when using the sources of revenue to be pledged, or if not applicable, other evidence of creditworthiness similar to that required to obtain a bond rating.

B. For public roadway projects, the application must also be accompanied by a preliminary design study which includes an initial route and potential route alignments, termini, length, and junctions; the project's logical termini; any necessary utility relocation; the location of all right-of-way, facilities and equipment required to make the project functional; and revisions or changes to state highway system facilities necessitated by the project.

C. For transit projects, the application must also be accompanied by a preliminary scope study which shall include preliminary layouts, architectural drawings, equipment specifications, and an operations plan for the life of the equipment or facility, and other information necessary to fully describe the project and to comply with all requirements of the federal transit administration.

D. Depending upon, the complexity and size of the project, the type of infrastructure or asset involved, the type of financial assistance requested, the secretary may require supplemental information and data.
[5-31-99; Recompiled 10/01/01]

2.40.30.12 REQUIRED STUDIES:

A. The applicant shall submit a financial feasibility study which must include:
(1) a project construction or asset acquisition schedule identifying the timing, amount, and source of all cash required; and

(2) a description of the methods used in preparing the financial feasibility study, the assumptions contained in the study, and persons and entities responsible for the preparation of the study.

B. The study shall include an analysis based on cash basis accounting for the expected financing period of the project. The analysis must show cash revenues to be used for repayment or security by source, cash disbursements by category (including disbursements for operations), maintenance, replacement, and the length of time the amounts will be outstanding or obligated.

C. The applicant shall conduct studies analyzing the impact of the project, including any required by the National Environmental Policy Act or state laws relating to archaeological and cultural properties preservation. The studies must include how the project will be consistent with the department's statewide transportation improvement program, and if the project is in a Clean Air Act non-attainment area, how the project will be consistent with the statewide transportation improvement program.

D. The applicant shall submit:
(1) official written approval of the [sic] by the governing body of each entity which may authorize becoming liable for repaying or securing financial assistance;
(2) a binding commitment that the environmental consequences of the proposed project will be fully considered, and that the proposed project will comply with all applicable local, state, and federal environmental laws, regulations, and requirements; and
(3) appropriate documentary evidence of community involvement in development of the proposed project.

E. The secretary may waive submission of individual items of information or data required by this section if the information or data is not relevant to or required by the project, or the department already possesses information or data in a format which may be substituted for the required information or data.

F. The secretary may require the applicant to submit explanations and expansions of information or data required by this section which are relevant to the project, applicant, or financial assistance requested. in

determining when additional relevant explanations and expansions of information or data are required, the secretary will consider the complexity and size of the project, the type of infrastructure or asset involved, and the type, complexity, and amount of financial assistance requested.

[5-31-99; Recompiled 10/01/01]

2.40.30.13 DEPARTMENT AND COMMISSION ACTION:

A. The department will review the application submitted. When the application is complete, the department will so notify the applicant.

B. The secretary will perform an analysis of the application to support findings and recommendations for the commission. The secretary shall then submit the application together with findings and recommendations to the commission.

C. The commission will determine the sufficiency of the information, the probable reliability of the projections, and the anticipated financial condition of the applicant and the project.

D. Prior to granting preliminary approval of an eligible project for financial assistance, the commission will consider whether the project is on the state highway system; transportation need for and anticipated public benefit of the project; the present and projected financial condition of the bank; potential social, economic, and environmental impacts; conformity with the purposes of the bank; and evidence of local public support.

E. By granting preliminary approval, the commission authorizes the secretary to negotiate the project's limits, scope, definition and design; the amount, type and timing of disbursements of financial assistance; interest rates, fees, charges, repayment schedules, and term to maturity of any financial assistance, collateral securing the financial assistance, appropriate covenants applicable to the financial assistance, default provisions; and all other provisions necessary to complete a financial assistance agreement.

F. The commission may grant final approval if it determines that providing financial assistance will prudently provide for the protection of public funds while furthering the purposes of this rule; and the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate adverse impacts.

G. The commission may postpone final approval of an application if it finds that the current or projected financial condition of the bank warrants this action.

H. The commission may make its preliminary or final approval contingent upon the applicant making changes, performing other acts, or maintaining certain conditions necessary to provide for repayment of final approval.

I. Approval or disapproval of the project, whether preliminary or final, shall be by formal action of the commission, based upon findings and conclusions submitted to the commission by the secretary.

[5-31-99; Recompiled 10/01/01]

2.40.30.14 FINANCIAL ASSISTANCE AGREEMENTS:

A. The secretary will negotiate the terms of agreements deemed necessary to comply with any requirements of preliminary approval, and to prudently provide for the protection of public funds while furthering the purposes of this rule.

B. These agreements shall include, but not be limited to, terms provided for in this rule.

[5-31-99; Recompiled 10/01/01]

2.40.30.15 PERFORMANCE OF WORK:

A. The department may, at its discretion and consistent with state law, provide all or part of the work connected with the project. For work performed by the department, the following provisions apply:

(1) The department shall account for all costs of the project in the normal course of business as it does for all federal-aid eligible projects.

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

B. The department's actions and decisions regarding the project shall be final.

C. The applicant shall provide the department, the federal highway administration, and the federal transit administration, or their authorized representatives, with right of entry or access to all properties or locations necessary to perform activities required to execute the work, inspect the work or otherwise aid in the prompt pursuit of the work.

D. The department may, in its discretion and consistent with state law, provide that the applicant conduct all or part of the work connected with the project. For work performed by the applicant, the following provisions apply:

(1) The applicant shall comply with the Federal Act, Title 23, United States Code, Title 49, United States Code, other applicable state and federal laws, and all terms and conditions of any agreements.

(2) Where approval or concurrence of the federal highway administration, the federal transit administration, or other federal agency is required, the applicant shall seek such action through the department.

(3) The applicant shall reimburse the department for any loss of federal funds to the department resulting from the actions of the applicant.

E. The applicant shall maintain project records and accounts in accordance with generally accepted accounting principles, and all applicable federal and state requirements. The applicant shall, at the applicant's cost, have a full audit performed annually of the project records and accounts by an independent certified public accountant. The applicant shall cause the auditor to provide a full copy of the audit report and any other management letters or auditor's comments directly to the department.

F. The applicant shall hold all project records, accounts, and supporting documents open for state or federal audits. The applicant shall retain these files until all financial assistance has been repaid or released and necessary audits have been performed.

[5-31-99; Recompiled 10/01/01]

2.40.30.16 DESIGN AND CONSTRUCTION STANDARDS: For federal-aid and state highway improvement projects, plans and specifications must be in compliance with the latest version of the department's design manual. For non federal-aid projects, the applicant shall certify that the project complies with the design manual. All construction plans shall be signed and dated by a professional engineer registered in New Mexico. The department may require that certain standards and procedures be used in making any change orders.

[5-31-99; Recompiled 10/01/01]

2.40.30.17 MAINTENANCE AND OPERATIONS: When funds for repayment are derived from fees or tolls on the project, or the project or asset is collateral for the financial assistance, the department may require that certain standards and procedures be used in maintenance of the project.

[5-31-99; Recompiled 10/01/01]

2.40.30.18 FINANCIAL AND CREDIT REQUIREMENTS:

A. The applicant shall agree to provide collateral and security for repayment, or other protections as the secretary may deem necessary; repay the financial assistance at specified interest rates over specified time periods according to repayment schedules, including agreed upon bank fees or compensation; abide by provisions governing default; have periodic audits in compliance with all applicable federal and state requirements; and reimburse the department for all costs or losses of funds resulting from a failure to perform by the applicant.

B. Depending on the facts and circumstances of each project, the applicant, and type of financial assistance provided, the secretary may require additional terms and conditions necessary to protect the public welfare, prudently provide for the protection of public funds, and further the purposes and requirements of this rule.

[5-31-99; Recompiled 10/01/01]

HISTORY OF 2.40.30 NMAC: [RESERVED]