



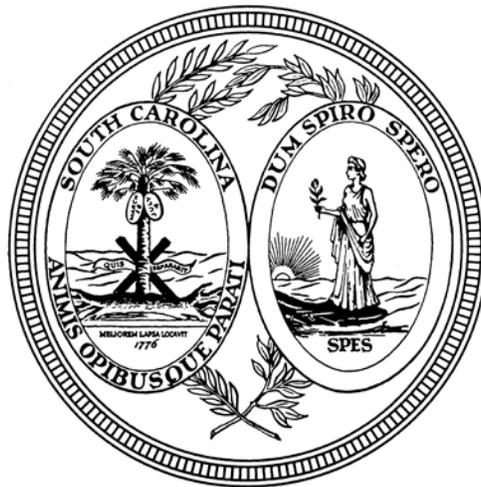
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SOUTH CAROLINA GENERAL ASSEMBLY

Legislative Audit Council

May 2016

A REVIEW OF THE SOUTH CAROLINA TRANSPORTATION INFRASTRUCTURE BANK



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Introduction and Background

Audit Objectives

Members of the General Assembly asked the Legislative Audit Council to review the operations of the South Carolina Transportation Infrastructure Bank (SCTIB), a state agency that awards grants and loans to local and state agencies primarily for large transportation construction projects.

Our primary audit objectives were to review compliance with state law and policies regarding:

- The awarding of grants and loans for transportation construction projects.
- The use of project revenues and whether funds dedicated to specific projects have been comingled with funds dedicated to other projects.
- Proper accounting and reporting procedures.
- The process for repayment of revenue bonds.
- Hiring of consultants, attorneys, and bond credit rating agencies.
- Ethics.

Act 121 of 2014 directs the Legislative Audit Council to include in its audits a determination of “the effectiveness of organizations, programs, activities, or functions and whether these organizations, programs, activities, or functions should be continued, revised, or eliminated.”

Scope and Methodology

The period addressed by our review was primarily FY 05-06 through FY 14-15, with limited consideration of other periods. Information used in this report was obtained from sources including:

- State law and regulation.
- SCTIB policies and guidelines.
- SCTIB board meeting minutes.
- Applications to SCTIB for grants and loans.
- Government accounting standards.
- Financial reports.
- Revenue bond documents.
- Bond credit rating reports.
- Intergovernmental agreements.
- Accounting systems — Statewide (SAP) and SCTIB’s accounting system.
- Interviews with staff at SCTIB, the S.C. Department of Transportation (SCDOT), the S.C. Office of the Comptroller General, the S.C. Office of the State Treasurer (STO), the Department of Administration, the S.C. Office of the Attorney General, the Federal Highway Transportation Administration, and transportation officials in other states.

The criteria used to measure performance included state law, government accounting standards, bond credit rating agencies, and agency policies.

We reviewed judgment-based samples of a cross-section of the SCTIB records pertaining to the awarding of grants and loans, tracking of project costs, and procurement. We also assessed internal controls and reliability in reviewing SCTIB data.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

SCTIB was authorized by Act 148 of 1997. With partial federal funding in its first year, SCTIB was created as a separate state agency to finance larger transportation projects in South Carolina. In the preamble to the Act, the General Assembly noted that:

- (1) Adequate transportation facilities are an important element in the ability of a community to provide for the health and welfare of its citizens and the continuing economic growth and development that will provide jobs for the citizens of South Carolina.
- (2) Traditional transportation financing methods in South Carolina cannot generate the resources necessary to fund the cost of transportation facilities which are required for continued economic viability and future economic expansion.
- (3) The State of South Carolina has the ability to provide for alternative methods of financing highway and transportation projects which, when combined with existing financing sources and methods, will allow the State to address its transportation needs in a more timely and responsive manner.

(4) Loans and other financial assistance to government units and private entities can play an important part in meeting transportation needs. This assistance is in the public interest for the public benefit and good as a matter of legislative intent.

(5) The chapter provides an instrumentality to assist government units and private entities in constructing and improving highway and transportation facilities by providing loans and other financial assistance.

(6) It is the General Assembly's intent for the instrumentality created by this act to focus greater attention on larger transportation projects, and thereby allow the South Carolina Department of Transportation's resources to be devoted sooner to smaller, but yet important, rural transportation projects.

Finances

In FY 14-15, SCTIB's revenues totaled \$220.0 million, while expenditures totaled \$282.1 million. The primary expenditure category was \$158.1 million in debt service payments on bonds previously sold by the agency. At the end of FY 14-15, outstanding revenue bonded debt, backed by pledged revenue streams, totaled \$1.94 billion, while outstanding general obligation bonded debt, backed by the "full faith and credit" of the state, totaled \$42.1 million.

From 1998 through 2015, SCTIB assisted in financing 22 transportation projects which include component projects. The combined cost of these projects was \$6.2 billion, toward which SCTIB awarded \$1.0 billion in loans and \$3.8 billion in grants.

SCTIB Projects and a Comparison of SCTIB with SCDOT and Infrastructure Banks in Other States

Since its inception in 1997, SCTIB has awarded grants and loans for various transportation projects in South Carolina. During our review, we found no function performed by SCTIB that could not also be performed by discontinuing SCTIB and transferring its funds to SCDOT. In addition, we found that SCTIB has significantly more debt and allocates significantly more funding than infrastructure banks in other states.

Transportation Projects Funded by SCTIB

SCTIB does not publicly report a comprehensive list of its grants, loans, total commitments, and disbursements for any of the projects it has funded to date. We reviewed original and amended intergovernmental agreements (IGA), SCTIB financial statements, and SCTIB expenditure reports for each SCTIB-funded project to identify the type and amount of financial assistance awarded (committed) as well as expenditures (disbursements).

Table 2.1 lists commitments and disbursements for all SCTIB-funded projects that have been approved by the SCTIB Board and included in a signed IGA, with the exceptions of the SCDOT Bridge Replacement project and the I-73 project, which were approved by the SCTIB Board without an IGA. We have included a \$150 million grant for the Mark Clark Expressway in Charleston County approved by the SCTIB Board that has not been formally awarded through an IGA. Also included is a \$22.563 million loan to Berkeley County that the county has not formally accepted. Map 2.2 indicates the location and amount of SCTIB-funded projects in South Carolina. Some of these figures differ from agency reports.

We found that SCTIB committed \$3.8 billion in grants and \$1.0 billion in loans for an overall total of \$4.9 billion. As of June 30, 2015, total disbursements were \$3.2 billion.

Table 2.1: South Carolina Transportation Infrastructure Bank Projects as of June 30, 2015

APPLICANTS & PROJECTS	GRANTS COMMITTED	LOANS COMMITTED	TOTAL SCTIB COMMITMENTS	DISBURSEMENTS
FY 97-98				
HORRY COUNTY RIDE multiple projects	\$385,256,000	\$756,577,664	\$1,141,833,664 *	\$1,138,828,941
YORK COUNTY Road Corridors Project	\$176,800,000	\$6,600,000	\$183,400,000	\$175,500,000
FY 98-99				
CHARLESTON COUNTY Cooper River Bridges Construction, Grace & Pearman Bridges Demolition	\$540,000,000	\$62,100,000	\$602,100,000 **	\$602,100,000
BEAUFORT COUNTY SC-170 Widening	\$64,696,357		\$64,696,357	\$64,696,000
LEXINGTON COUNTY & SCE&G SC-6 & SC-60 Widening (routes across the Dam), Widening & Strengthening of the Dam	\$48,000,000	\$59,000,000	\$107,000,000	\$104,229,000
ANDERSON, GREENVILLE, & SPARTANBURG COUNTIES Upstate GRID Plan	\$406,000,000		\$406,000,000	\$406,235,000
FY 00-01				
SCDOT Median Barriers Project (Anderson, Calhoun, Charleston, Cherokee, Greenville, Horry, Kershaw, Laurens, Lexington, Newberry, Oconee, Orangeburg, Richland, & Spartanburg counties)	\$30,000,000		\$30,000,000	\$30,000,000
FY 01-02				
AIKEN COUNTY I-520/Bobby Jones Expressway Ext	\$208,062,923		\$208,062,923	\$199,400,000
FY 05-06				
HORRY COUNTY Carolina Bays Pkwy Ext	\$225,000,000		\$225,000,000	\$104,400,000
CITY OF MOUNT PLEASANT US-17 & I-526 Interchange Construction	\$57,410,000		\$57,410,000	\$54,700,000
SCDOT US-17 Widening in Beaufort County		\$113,000,000	\$113,000,000	\$102,000,000
CHARLESTON COUNTY I-526/Mark Clark Expressway Ext	\$570,000,000		\$570,000,000 [†]	\$26,100,000
FLORENCE COUNTY Forward Project	\$340,000,000		\$340,000,000	\$85,100,000
FY 06-07				
I-73 Project (Dillon, Horry, Marion, & Marlboro counties)	\$10,000,000		\$10,000,000	

Chapter 2
SCTIB Projects and a Comparison of SCTIB with SCDOT and Infrastructure Banks
in Other States

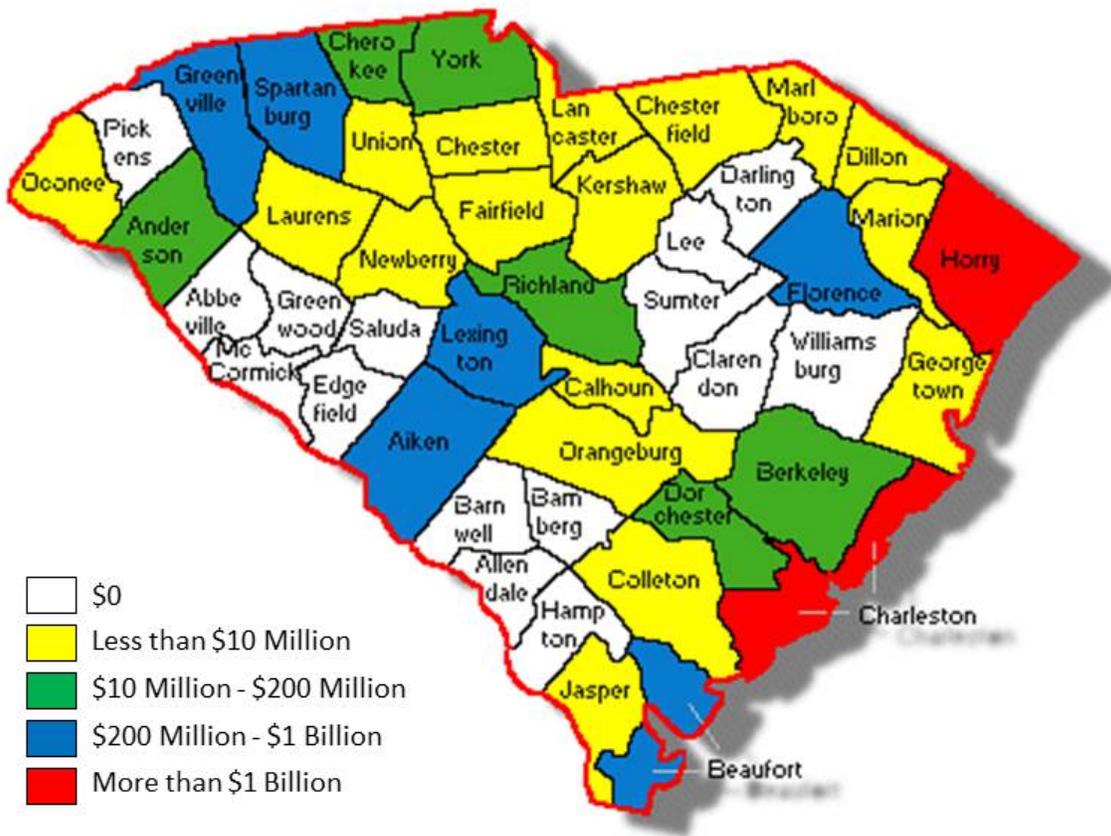
APPLICANTS & PROJECTS	GRANTS COMMITTED	LOANS COMMITTED	TOTAL SCTIB COMMITMENTS	DISBURSEMENTS
FY 07-08				
BERKELEY COUNTY multiple projects	\$23,600,000	\$28,964,000	\$52,564,000 ^{††}	
FY 11-12				
DORCHESTER COUNTY multiple projects	\$49,000,000		\$49,000,000	\$1,800,000
BEAUFORT COUNTY SC-170 Widening Project	\$24,900,000		\$24,900,000	\$17,900,000
CITY OF CHARLESTON US-17/Septima Clark Water Drainage Facilities Project	\$88,000,000		\$88,000,000	
SCDOT Statewide Bridge Replacement Project (Charleston, Cherokee, Chester, Chesterfield, Colleton, Fairfield, Horry, Jasper, Lancaster, Laurens, Marion, & Union counties)		\$12,000,000	\$12,000,000	\$12,000,000
JASPER COUNTY & CITY OF HARDEEVILLE I-95 Exit 3 Project	\$3,900,000		\$3,900,000	\$500,000
CITY OF AIKEN multiple projects	\$6,000,000		\$6,000,000	
FY 13-14				
SCDOT Act 98 Projects (Aiken, Berkeley, Cherokee, Dorchester, Greenville, Lexington, Richland & Spartanburg counties)	\$555,400,000		\$555,400,000	\$35,900,000
TOTAL	\$3,812,025,280	\$1,038,241,664	\$4,850,266,944	\$3,161,388,941

Fiscal years refer to the date funding was first approved by the SCTIB Board.

- * Includes a \$209 million loan to SCDOT, which awarded a grant of \$209 million to Horry County for the project.
- ** Includes a \$62.1 million loan to SCDOT, which awarded a grant of \$62.1 million to Charleston County for the project.
- † Includes a \$150 million grant approved by the SCTIB Board to Charleston County that has not been formally awarded through an intergovernmental agreement.
- †† Includes a \$22.563 million loan approved by the SCTIB Board to Berkeley County that the County has not formally accepted.

Sources: SCTIB IGAs, SCTIB financial statements, and SCTIB expenditure reports.

Map 2.2: Funds Awarded by SCTIB, by County and Amount, Since Inception Through June 30, 2015



Funding was divided evenly between the multiple counties within these projects — SCDOT Median Barriers (14 counties), SCDOT Statewide Bridge Replacement (12 counties), and Interstate 73 (4 counties). For Act 98 projects, funding was allocated to counties listed in the SCDOT application to SCTIB and in the SCTIB Board minutes. A portion of Horry County's Carolina Bays Parkway project was in Georgetown County.

Sources: SCTIB IGAs and other documentation provided by SCTIB

Recommendation

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.
-

Potential for Combining SCTIB with SCDOT

The General Assembly created SCTIB in 1997 as a separate agency. The newly-created agency was charged with financing large transportation projects, allowing the resources of SCDOT to be "devoted sooner to smaller, but yet important, rural transportation projects." Consolidating SCTIB and SCDOT would:

- Enable better coordination and prioritization of transportation projects.
- Focus accountability in one state agency.
- Permit the implementation of transportation policy to be managed exclusively by the executive branch of government.

Below are additional factors that may be relevant when considering a merger of the two organizations.

SCTIB Operates in the SCDOT Headquarters Building and Receives Administrative Services from SCDOT

Officials from both agencies report that SCDOT provides SCTIB with administrative support such as office space, information technology services, human resource services, and procurement services.

SCDOT Is a Significantly Larger Organization than SCTIB

Table 2.3 shows that in FY 14-15, SCTIB revenues were 13.3% of the combined revenues of SCTIB and SCDOT. In the same year, SCTIB expenditures were 18.5% of the combined expenditures of SCTIB and SCDOT.

Table 2.3: SCTIB and SCDOT Revenues and Expenditures, FY 14-15 (in Thousands)

	SCTIB	SCDOT*	COMBINED
Revenues	\$220,019 (13.3%)	\$1,432,351 (86.7%)	\$1,652,370
Expenditures	\$282,092 (18.5%)	\$1,241,118 (81.5%)	\$1,523,210

* Revenues and expenditures are net of \$77.444 million transferred to SCTIB.

Sources: SCTIB and SCDOT FY 14-15 financial statements

Both Agencies Provide Financial Assistance for Locally-Identified Transportation Projects

Because SCDOT has a record of funding locally-identified projects, the funds allocated by SCTIB could instead be allocated by SCDOT. In FY 14-15, SCDOT allocated \$264.3 million in transportation funds to the following local entities and programs:

- Metropolitan Planning Organizations.
- Councils of Government.
- C-Programs.

Agencies Have Different Restrictions on the Bonds Issued to Finance Transportation Projects

SCDOT and SCTIB have different restrictions on the bonds issued to finance transportation projects.

SCDOT Limits on Bonded Debt

Highway [General Obligation] Bonds

S.C. Code §57-11-220 and §57-11-250 authorize the issuance of a class of general obligation bond called highway bonds to fund SCDOT projects, backed by the “full faith, credit, and taxing power” of the State. Article 10, Section 13(6)(a) of the S.C. Constitution states that:

General obligation bonds for highway purposes (highway bonds) may be issued if such bonds shall be additionally secured by a pledge of the revenues derived from the ‘sources of revenue’ as such term is defined in this subsection; provided, that the maximum annual debt service on all highway bonds so additionally secured which shall thereafter be outstanding *shall not exceed fifteen percent of the proceeds received from the sources of revenue for the fiscal year next preceding* [emphasis added].

For the purpose of this subsection, the term ‘sources of revenue’ shall mean so much of the revenues as may be made applicable by the General Assembly for state highway purposes from any and all taxes or licenses imposed upon individuals or vehicles for the privilege of using the public highways of the State.

As of June 30, 2015, the debt service limitation for highway bonds was \$96.2 million, with an additional annual debt service margin of \$39.7 million.

Turnpike Revenue Bonds

Article 10, Section 13, Subsection 9 of the S.C. Constitution authorizes the issuance of revenue bonds:

The General Assembly may authorize the State or any of its agencies, authorities or institutions to incur indebtedness for any public purpose payable solely from a revenue-producing project or from a special source, *which source does not involve revenues from any tax* [emphasis added] but may include fees paid for the use of any toll bridge, toll road or tunnel. Such indebtedness may be incurred upon such terms and conditions as the General Assembly may prescribe by law....

S.C. Code §57-5-1350 and §57-5-1380 authorize the issuance of turnpike revenue bonds for SCDOT projects if they are backed by toll revenues “derived from the turnpike facility financed by the bonds to the extent and in the manner prescribed by the bond resolution.” There is *no limit* in state law on the debt that can be incurred from the issuance of turnpike revenue bonds.

SCTIB Limits on Bonded Debt

Transportation Infrastructure [General Obligation] Bonds

S.C. Code §11-43-520 and §11-43-550 authorize the issuance of a category of general obligation bonds called transportation infrastructure bonds to finance SCTIB projects, backed by the “full faith, credit, and taxing power” of the State.

Article 10, Section 13(6)(c), of the S.C. Constitution states that:

General obligation bonds for any public purpose ... may be issued; provided, that the maximum annual debt service on all general obligation bonds of the State thereafter to be outstanding (excluding highway bonds, state institution bonds, tax anticipation notes, and bond anticipation notes) *must not exceed five percent of the general revenues of the State* [emphasis added] for the fiscal year next preceding (excluding revenues which are authorized to be pledged for state highway bonds and state institution bonds).

Upon implementation of the provisions of this item by law, the percentage rate of general revenues may be reduced to four [percent] or increased to seven percent by legislative enactment passed by a two-thirds vote of the total membership of the Senate and a two-thirds vote of the total membership of the House of Representatives.

As of June 30, 2015, the debt service limitation for general obligation bonds statewide (excluding state institution bonds, highway bonds, and bond anticipation notes) was \$392.5 million, with an additional annual debt service margin statewide of \$251.5 million.

Revenue Bonds

As described above, Article 10, Section 13, Subsection 9 of the S.C. Constitution authorizes the issuance of revenue bonds. S.C. Code §11-43-315 and §11-43-320 authorize the issuance of revenue bonds for SCTIB projects. There is *no limit* in state law on the debt that can be incurred from issuance of revenue bonds for SCTIB projects.

SCTIB Has Significantly More Bonded Debt than SCDOT

The bonded debt of SCTIB is significantly larger than the bonded debt of SCDOT. As shown in Table 2.4, as of June 30, 2015, SCTIB had total bonded debt of \$1.99 billion, while SCDOT had bonded debt of \$311.0 million.

Table 2.4: SCTIB and SCDOT Bonded Debt as of June 30, 2015 (in Thousands)

	SCTIB	SCDOT	COMBINED
Revenue Bonds	\$1,942,456 (100%)	\$0 (0%)	\$1,942,456
General Obligation Bonds	\$42,061 (11.9%)	\$311,034 (88.1%)	\$353,095
TOTAL Bonded Debt	\$1,984,517 (86.5%)	\$311,034 (13.5%)	2,295,551

Sources: SCTIB and SCDOT FY 14-15 financial statements

Merging the Agencies Would Require Modification of SCDOT’s Authority to Incur Bonded Debt

SCTIB debt service payments were \$158.1 million in FY 14-15 for revenue bonds and general obligation bonds. At the end of the same year, the state government collectively was authorized to make up to \$251.1 million in *additional* annual debt service payments for general obligation bonds that exclude highway bonds, higher education institution bonds, and bond anticipation notes.

SCDOT is not authorized to incur general obligation bonded debt other than highway bonds, nor is it authorized to incur revenue bonded debt unrelated to toll projects. At the end of FY 14-15, SCDOT had the authority to make additional annual debt service payments for highway bonds of \$39.7 million.

A merger would require amending state law to increase the classes of bonds that may be issued for SCDOT projects or amending the S.C. Constitution to increase SCDOT’s debt service limit for highway bonds.

It Is Uncertain Whether the Process Required for Repaying SCTIB Revenue Bonds Is Consistent with the S.C. Constitution

Each year the General Assembly allocates specific *tax funds* to SCDOT and then requires SCDOT to reallocate *non-tax funds of the same dollar amount* to SCTIB for the repayment of revenue bonds. It is uncertain whether this process is consistent with the Constitution, which prohibits the use of taxes to repay revenue bonds. How revenue bonds are repaid will need to be addressed whether SCTIB remains independent or is combined with SCDOT. For a detailed analysis, see Chapter 4.

SCDOT Has Outstanding Loans from SCTIB

As of June 30, 2015, SCDOT owed \$250.1 million for three loans it received from SCTIB for road projects around the state.

SCTIB's Governing Body May Contain Conflicts of Interest

Two members of the SCTIB Board are members of the General Assembly, who can influence the funding, staffing, and mission of the agency. Another member of the SCTIB Board is the chairperson of the Commission that governs SCDOT, which is a primary recipient of SCTIB funding. Both of these situations may be conflicts of interest.

S.C. Code §11-43-140 requires SCTIB to have a seven-member board of directors, all of whom have authority to cast votes, consisting of:

- Two appointees of the Governor, one whom serves as chairman of the SCTIB Board.
- The chairperson of the SCDOT Commission.
- Two appointees of the Speaker of the House of Representatives, one of whom must be a member of the House of Representatives.
- Two appointees of the President Pro Tempore of the Senate, one of whom must be a member of the Senate.

S.C. Code §8-13-770 states that “[a] member of the General Assembly may not serve in any capacity as a member of a state board or commission....” SCTIB and a number of state boards, however, are exempted from this restriction. State law does not prohibit legislative members of the SCTIB Board from voting on any issue.

SCTIB employees and non-legislative board members may be less likely to express disagreement with board members who are legislators. In addition, because SCDOT is a recipient of SCTIB funds and has a seat on the board, there is, at minimum, the appearance of a conflict of interest.

It is important to note that on June 12, 2013, the South Carolina Supreme Court issued a ruling that having legislators on the SCTIB Board did not violate the Constitutional requirement that branches of the state government be separate. Our analysis of the SCTIB Board did not question the constitutionality of the assignment of its members.

Conclusion

Although there would be transitional requirements in combining SCTIB with SCDOT, particularly regarding bonded debt, the long-term benefits could include unified prioritization and planning of transportation projects, a single focus of accountability, and increased executive branch authority over an executive branch agency.

Comparison of Infrastructure Banks in Other States

We conducted an analysis of seven of the twelve states with the most state-administered lane miles, excluding two states without state infrastructure banks (SIB) as of FY 14-15 and three states from which we could not obtain reliable data. The data indicated that South Carolina's infrastructure bank:

- Provided significantly more financial assistance to state and local entities than infrastructure banks in other states.
- Focused on grants for which repayment is not required, while infrastructure banks in other states focused on loans.
- Generally required that funding be accompanied by a recipient match while the other states generally did not.
- Had a minimum project size significantly larger than in other states.
- Was an independent agency, while infrastructure banks in other states were part of departments of transportation or other entities.
- Had significantly more bonded debt than infrastructure banks in other states.

Number of Infrastructure Banks Nationwide

We identified 38 states that have authorized transportation infrastructure banks, some of which may be inactive.

Table 2.5: States that Have Authorized Transportation Infrastructure Banks

1.	Alabama	20.	New Mexico
2.	Alaska	21.	New York
3.	Arizona	22.	North Carolina
4.	Arkansas	23.	North Dakota
5.	California	24.	Ohio
6.	Colorado	25.	Oregon
7.	Delaware	26.	Pennsylvania
8.	Florida	27.	Rhode Island
9.	Georgia	28.	South Carolina
10.	Indiana	29.	South Dakota
11.	Iowa	30.	Tennessee
12.	Kansas	31.	Texas
13.	Louisiana	32.	Utah
14.	Maine	33.	Vermont
15.	Michigan	34.	Virginia
16.	Minnesota	35.	Washington
17.	Missouri	36.	West Virginia
18.	Nebraska	37.	Wisconsin
19.	New Hampshire	38.	Wyoming

Source: National Conference of State Legislatures

Public Road Lane Miles

Table 2.6 shows public road lane miles as of 2014 in the seven states that were the focus of our detailed analysis. Nationwide, South Carolina ranked fourth in state highway agency lane miles.

Table 2.6: Public Road Lane Miles 2014 *

STATE	STATE HIGHWAY AGENCY LANE MILES	COUNTY AND MUNICIPAL GOVERNMENT LANE MILES	TOTAL
California	51,897	367,737	419,634
Florida	43,602	224,164	267,766
Georgia	49,131	216,024	265,155
Missouri	76,313	194,520	270,833
Ohio	49,438	209,116	258,554
South Carolina	90,365	66,485	156,850
Texas	195,755	474,898	670,653

Figures are rounded.

* The Federal Highway Administration indicates that these totals do not include roads in state parks, state toll roads, or federally-owned roads.

Source: Federal Highway Administration

Total Loans and Grants

In FY 14-15, total loans and grants committed to recipients since inception of the seven infrastructure banks we reviewed ranged from \$55.0 million in Georgia to \$4.9 billion in South Carolina.

As shown in Table 2.7, the states with the smallest and largest amount of loans committed per year, respectively, were Georgia and Florida. While all of the states have awarded loans, only South Carolina and Georgia have awarded grants, for which repayment is not required.

Table 2.7: Total Infrastructure Bank Loans and Grants Committed from Inception through FY 14-15

STATE	YEAR OF INCEPTION OF SIB	LOANS COMMITTED	GRANTS COMMITTED
California	1994	\$500 million	\$0
Florida	1997	\$1.3 billion	\$0
Georgia	2008	\$15.1 million	\$39.9 million
Missouri	1997	\$244 million	\$0
Ohio *	1997	\$572.2 million	\$0
South Carolina	1997	\$1.038 billion	\$3.812 billion
Texas **	1997	\$501 million	\$0

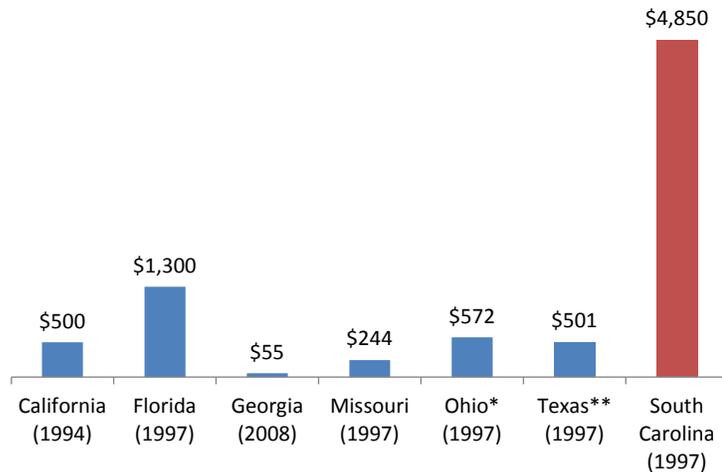
Figures are rounded.

* Ohio reports its loans committed as of September 30, 2015.

** Texas reports its loans committed as of August 31, 2015.

Sources: State infrastructure bank documents and laws from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Chart 2.8: Total Infrastructure Bank Funds Committed from Year of Inception through FY 14-15 (in Millions)



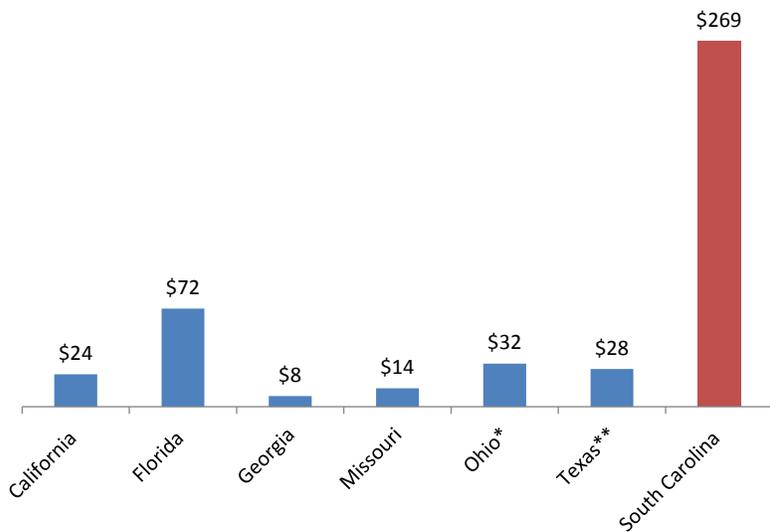
Figures are rounded.

* Ohio reports its loans committed as of September 30, 2015.

** Texas reports its loans committed as of August 31, 2015.

Sources: Financial reports and documents from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Chart 2.9: Average Infrastructure Bank Funds Committed per Year from Year of Inception through FY 14-15 (in Millions)



Figures are rounded.

* Ohio reports its loans committed as of September 30, 2015.

** Texas reports its loans committed as of August 31, 2015.

Sources: Financial reports and documents from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Recipient Match and Minimum Project Size

South Carolina and Georgia are the only states we reviewed that require or encourage a minimum recipient match for grants and loans. South Carolina generally requires a 33⅓ % recipient match for loans and grants, and Georgia has no formal recipient match requirement in policy, but projects with less than 20% match usually do not score high enough to receive funding; additional requirements may be added to individual award rounds. In addition, the states with the smallest and largest minimum project size amounts for loans are Ohio and South Carolina, respectively, and for grants are Georgia and South Carolina, respectively.

Table 2.10: Minimum Recipient Match and Minimum Project Size for Loans and Grants (in Dollars)

STATE	LOANS		GRANTS *	
	MINIMUM RECIPIENT MATCH	MINIMUM PROJECT SIZE	MINIMUM RECIPIENT MATCH	MINIMUM PROJECT SIZE
CALIFORNIA	None	\$50,000	NA	NA
FLORIDA	None	\$1,000,000 **	NA	NA
GEORGIA	None	\$25,000 ***	Although there is no formal recipient match requirement stated in policy, projects with less than 20% match usually do not score high enough to receive funding, and additional requirements may be added to individual award rounds.	No formal requirement; however, project sizes are typically above \$1 million.
MISSOURI	None	\$50,000	NA	NA
OHIO	None	\$12,600	NA	NA
SOUTH CAROLINA	33⅓ %	\$100,000,000	33⅓ %	\$100,000,000
TEXAS	None	None	NA	NA

* Only Georgia and South Carolina have awarded grants.

** Florida may grant exceptions on a limited basis for small or unique projects.

*** In Georgia, the lowest loan amount awarded through FY 14-15 was \$165,000.

Sources: State infrastructure bank documents from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Organizational Structure of State Infrastructure Banks

Of the seven states we reviewed, California, Georgia, and South Carolina were the only states that had a SIB program separate from the state department of transportation (DOT).

Table 2.11: Oversight Agencies

STATE	OVERSIGHT AGENCIES
California *	Governor's Office of Business and Economic Development
Florida	Florida DOT
Georgia	State Road and Tollway Authority
Missouri	Legally separate from the Missouri DOT. Governed by a commission consisting of three DOT commissioners, three DOT staff, and two at-large members.
Ohio	Ohio DOT
South Carolina	Independent Agency
Texas	Texas DOT

* California's infrastructure bank subsidizes more than just transportation projects.

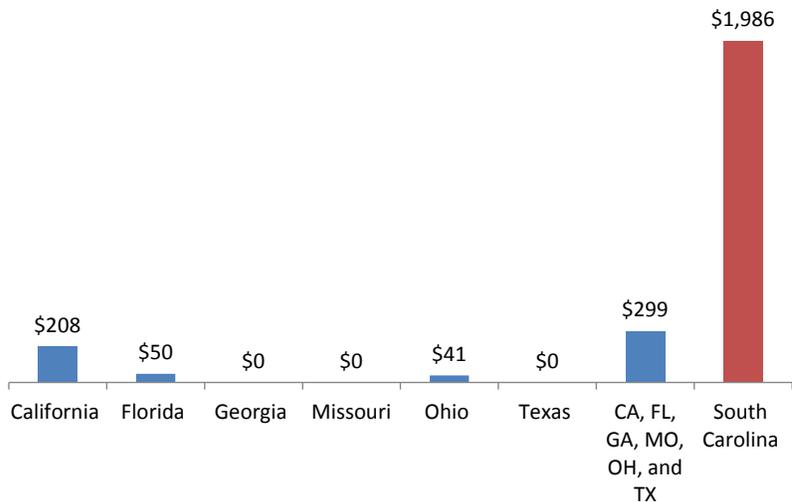
Sources: State infrastructure bank documents and laws from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Infrastructure Bank Bonded Debt

South Carolina has more infrastructure bank bonded debt than the combined infrastructure bank bonded debt of the other states we reviewed. Infrastructure bank bonded debt ranged from \$0 in Georgia, Missouri, and Texas to \$1.99 billion in South Carolina.

While South Carolina has significant bonded debt within its infrastructure bank, other states have significant bonded debt outside of their infrastructure banks. For example, although Missouri had no bonded debt in its infrastructure bank at the end of FY 14-15, outstanding bonded debt owed by its DOT was approximately \$2.5 billion. In addition, Texas had no bonded debt in its infrastructure bank at the end of FY 14-15, but outstanding bonded debt owed by its DOT was approximately \$14.6 billion.

Chart 2.12: Total Infrastructure Bank Bonded Debt as of the End of FY 14-15 (in Millions)



Figures are rounded.

Sources: Financial reports and documents from California, Florida, Georgia, Missouri, Ohio, Texas, and South Carolina.

Recommendations

2. The General Assembly should amend state law in one of the following ways:
 - Discontinue the South Carolina 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 the South Carolina Infrastructure Bank a unit of the South Carolina Department of Transportation, while maintaining the South Carolina Infrastructure Bank Board in an advisory capacity.
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 the South Carolina Department of Transportation's projects or amend the South Carolina Constitution to increase the South Carolina Department of Transportation's debt service limit for highway bonds.
4. If the General Assembly does not discontinue the functions of the South Carolina Transportation Infrastructure Bank, it should implement the remaining recommendations in this report.

Application and Evaluation Practices for Awarding Financial Assistance

Summary

We were asked to determine whether the agency has promoted efficiency and fairness through a consistent application of award criteria. We reviewed the S.C. Transportation Infrastructure Bank's (SCTIB) statute, regulations, policies, and process to identify the criteria the agency requires and uses to evaluate applicants for financial assistance. We also reviewed a sample of applicants to determine whether the awarding practice is fair and consistent. We found that SCTIB:

- Does not publicly communicate when it has funds available for financial assistance.
- Does not have a formal timeline for releasing updated application information, accepting applications, reviewing applications, or awarding funds.
- Has awarded funds to projects without an application.
- Contrary to state law, has not promulgated regulations regarding its award criteria or process.
- Has no formal policies for awarding financial assistance.
- Has not clearly defined what constitutes a project.
- Requires that funded projects exceed \$100 million, but will accept applications that reach \$100 million only by allowing multiple projects to be combined.
- Requires a 33⅓ % match for grants and loans and does not formally communicate this requirement.
- Accepted private expenditures on toll roads as matching funds for publicly-funded roads.
- Does not require that SCTIB-approved projects be derived from the S.C. Department of Transportation's prioritization list.
- Does not require a minimum rating for applicants to receive funding.
- Does not require applicants to demonstrate whether the benefits of the project would exceed the costs.

We also reviewed SCTIB's management of projects funded under Act 98 of 2013 and found that it awarded funds only to the S.C. Department of Transportation (SCDOT) under a different process than other requests for financial assistance. Act 98 provided additional funding for financing bridge replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates.

LAC Sampling Methodology for Non-Act 98 Projects

We reviewed a sample of 12 applications to assess whether SCTIB's application and award process is consistent and fair. Since its inception in 1997, SCTIB reported receiving 24 applications. Eighteen applications were accepted, five applications were not accepted for various reasons, and one is pending.

We reviewed applications approved between FY 03-04 through FY 12-13, as FY 12-13 was the most recent fiscal year applications were approved. We then narrowed our focus to applications receiving \$50 million or more from SCTIB. The inclusion of Beaufort County in our sample is an exception to this methodology. We reviewed seven applications that were accepted:

- BEAUFORT COUNTY multiple projects.
- BERKELEY COUNTY multiple projects.
- CHARLESTON COUNTY Mark Clark Expressway extension project.
- CITY OF CHARLESTON Septima Clark/US 17 transportation and drainage projects.
- FLORENCE COUNTY Forward Project.
- HORRY COUNTY Carolina Bays project.
- SCDOT widening of US 17 project in Beaufort and Colleton counties.

We also reviewed all five applications which were not accepted:

- ANDERSON COUNTY multiple projects.
- BERKELEY, CHARLESTON, DORCHESTER COUNCIL OF GOVERNMENTS and FUTUREX monobeam project.
- BERKELEY, CHARLESTON, DORCHESTER COUNCIL OF GOVERNMENTS regional rail infrastructure project.
- WACCAMAW REGIONAL PLANNING AND DEVELOPMENT COUNCIL widening project.
- YORK COUNTY Dave Lyle Boulevard extension project.

Award Criteria and Process

The SCTIB Act outlines requirements and recommendations for the SCTIB Board to consider in awarding financial assistance. S.C. Code §11-43-180 requires:

- Preference to eligible projects with local financial support.
- Consideration of projected feasibility of projects.
- Consideration of the amount and degree of risk to be assumed by the bank.

State law gives the board discretion with additional criteria stating that the board may consider, but must not be limited to, the following:

- Local support of the project expressed in resolutions by the governing bodies in the areas and the financial or in-kind contributions to the project.
- Maximum economic benefit, enhancement of mobility, enhancement of public safety, acceleration of project completion, and enhancement of transportation services.
- Ability of the loan applicants to repay the loans.
- Financial or in-kind contributions to the project.
- Whether the projects are in areas of the state experiencing high unemployment.
- Resolutions or certifications from the local governing body or Advisory Coordinating Council for Economic Development of the S.C. Department of Commerce that the project is essential to economic development in the state.

SCTIB incorporates these legal requirements and recommendations along with other non-legal criteria into its application form.

The processes an applicant would need to follow in order to receive financial assistance from SCTIB are as follows.

Application

According to an agency official, prior to submitting an application, SCTIB meets with potential applicants in a pre-application meeting to discuss application criteria and content. The SCTIB application form requires applicants to address three areas, including public benefits, financial plan, and project approach and indicates the documentation necessary to substantiate various criteria. Due to the amount of labor in drafting an application, applicants often hire a consultant to draft an application.

Once an application is formally submitted, an applicant then often presents to the full SCTIB Board. After presentations are complete, the board decides whether the application is eligible and, if so, refers it to the SCTIB evaluation committee for a more detailed review.

Letter of Interest

In 2015, the SCTIB Board began allowing, but did not require, applicants to submit a letter of interest prior to submitting an application to assess an applicant's qualification. The minutes from the April 20, 2015, board meeting indicate that the letter of interest was introduced to reduce the burden of drafting costly applications for projects that might not be eligible, as well as to expedite the process. During this board meeting, the board referred a favorable letter of interest to the evaluation committee for preliminary pre-application evaluation.

Evaluation

The current SCTIB evaluation committee comprises the Board Chairman and two board members. According to an agency official, it is not unusual for the evaluation committee to comprise appointed members of the public and then switch to include members of the SCTIB Board. At its March 2016 meeting, the board discussed blending SCTIB members with non-SCTIB members.

Generally, the members of the evaluation committee separately review each application under consideration, weigh the merits, and assign scores for each application. The evaluation committee may convene on several occasions to determine whether more information is needed from the applicant, conduct site visits, and discuss, score, and rank all applications. The evaluation committee presents its findings and recommendations to the full board for its consideration of an applicant's qualification.

Approval and Amendments

Upon consideration of the SCTIB evaluation committee's recommendation, the board may vote to qualify a project and then determine the amount and type of funding it will award; projects may receive grants, loans, or both. The amounts awarded are subject to approval by the Joint Bond Review Committee (JBRC) of the General Assembly. Once approved by JBRC, the applicant, SCTIB, and, if participating in the project, SCDOT enter into an intergovernmental agreement (IGA). During the course of projects, the SCTIB Board has considered requests from applicants to amend their IGAs for various reasons.

Award Process Issues

We reviewed SCTIB's revised and current application forms, board minutes, and our sample of applications to assess the fairness and consistency of SCTIB's awarding of financial assistance. We found that SCTIB:

- Does not publicly communicate when it has funds available for financial assistance.
- Does not have a formal timeline for releasing updated application information, accepting applications, reviewing applications, or awarding funds.
- Has awarded funds to projects without an application.

Inadequate Communication of the Availability of Funds for Financial Assistance

If SCTIB does not have funding available to provide loans or grants, applications are held in abeyance until SCTIB has funds available. Once funding is available, SCTIB contacts the entities it was not able to fund in the past and may request updates to the application rather than require a new application.

There is no formal process to inform potential applicants of the availability of funding. SCTIB could increase public awareness of funding sources by formally and publicly communicating the availability of funding. This could be accomplished by means of a website and media outlets. Without a formal process in place to inform potential applicants of available funds, there may be a possibility that acquaintances or other known applicants of those associated with SCTIB are being informed first of the available funds.

Recommendation

5. The South Carolina Transportation Infrastructure Bank should formally and publicly communicate the availability of funding.

No Established Timelines and No Policy for Releasing New Criteria

SCTIB has no established timelines for releasing updated application forms with new criteria, accepting applications, reviewing applications, or awarding financial assistance. The SCTIB Board discussed establishing an annual schedule for accepting applications and rendering decisions at its March 2016 meeting; however, no action was taken on the matter.

We found that the board has, at times, unofficially imposed timelines for accepting applications from known applicants and reviewing applications by the evaluation committee. A SCTIB official stated that the application process does not have a standardized beginning and ending date.

Revisions to Application Requirements Not Publicly Announced

SCTIB altered its application criteria three times since the original application form was first issued in 1997. According to board minutes, after the approval of each revision, there was no recorded discussion of informing potential applicants about the newly revised application form. Neither the original criteria nor the revised criteria were promulgated in state regulation (see *SCTIB Regulations*).

For example, in April of 2015, SCTIB announced the use of a letter of interest as a new, optional step in the application process. The letter of interest is an abbreviated application intended to reduce costs and streamline the application process. According to SCTIB's April 20, 2015 board minutes, York County was the first to apply to the board under this new process. However, the agency's current application form, in effect since October 2013, does not contain information regarding a letter of interest. An agency official stated that the agency does not have instructions on this process yet. Beyond this phase, the process is unclear since the agency has not formally incorporated the letter of interest in its process.

Uninformed applicants may file an application rather than a letter of interest or an application that does not meet the current criteria, unnecessarily wasting time and resources.

No Formal Application Submission Deadlines

Since 1997, SCTIB has not had a formal application submission deadline. The original 1997 application form listed a submission deadline, but such a deadline is absent from each of the three revised versions. A SCTIB official stated that when an application is submitted and there are no funds available, the agency holds the application until funds become available again.

We also found an instance of the SCTIB Board setting an unofficial deadline. At the board's October 2005 meeting, the board set an application submission deadline of ten days prior to its December 2005 meeting for all known potential applicants. No mention was made of informing other potential applicants of the revisions.

No Established Timeline for SCTIB Evaluation of Application

There are also no timelines for the evaluation committee to finish reviewing applications. We found the average time for the evaluation committee to review applications was almost 11 months, although the length of time for review seems to be contingent upon if SCTIB has funds available. While there are no official timelines for reviewing applications, we found that, in May 2005, the SCTIB Board Chairman requested the evaluation committee report back within two months regarding the Florence County application. Without formal timelines, applications may not be considered in an equitable manner.

Average Time to Award Funding Almost Two Years

The average timeline from application submission to approval by the Joint Bond Review Committee (JBRC) was 13½ months and over 9 months from JBRC approval until an IGA was signed. The entire process from submission to entering into an IGA averaged almost two years. A Berkeley County 2006 application had remained pending with the evaluation committee for 13 months and did not have final approval from JBRC for another 15 months because SCTIB did not have available funds and the county was awaiting passage of a local ordinance. Beaufort County's 2008 application remained pending with the evaluation committee for over three years. A SCTIB official explained the evaluation committee followed up with Beaufort County for more information. However, the application had been pending with the evaluation committee for over three years before the follow up. The extensive time lapse may have negatively impacted project costs.

Lack of Timelines May Have Adverse Effect

The lack of timelines may adversely affect the status of a proposed project in a pending application. For example, time constraints forced Anderson County to withdraw its December 2005 application. According to the county's withdrawal letter, the county was led to believe that the SCTIB Board would make a decision by February 2006. However, due to the lack of a firm commitment from SCTIB as late as May 31, 2006, the county chose not to pass a resolution authorizing a referendum to fund the matching funds. Consequently, the SCTIB Board removed the application from consideration.

Recommendations

6. The South Carolina Transportation Infrastructure Bank should adopt an annual timeline for publicly communicating updated criteria regarding the application process.
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.

Funds Awarded to Projects Without an Application

The SCTIB Board has approved additional funding without requiring a separate application. Additionally, the SCTIB Board approved reallocation of SCTIB funds to a project not listed in an application.

Approved Funding Requests Not in Application

The SCTIB Board referred a Berkeley County application to the evaluation committee in October 2006, but it was not reviewed until November 2007 when the county gave a presentation showing increased project costs from \$138.7 million to \$178.3 million. The amount of the *grant* requested also increased from \$85.2 million to \$115.8 million. The SCTIB Board approved financial assistance “from the next available funds of the Bank” which differed from the application as project costs and the match had been revised without requiring a new or revised application.

In May 2008, as SCTIB funds had not been available in November 2007, the county changed the form of financial assistance by requesting two *loans* for component projects without submitting a new or revised application. The SCTIB Board approved two loans, together not to exceed \$29.0 million, without requiring a new or revised application from the county.

Funds Reallocated to Interstate 73 Project Not Listed in an Application

In 2009, the SCTIB Board allowed Horry County to reallocate \$10 million of SCTIB funding from SC Highway 31/Carolina Bays Parkway to be used by SCDOT for I-73 construction costs, a project not listed in the county’s application. Horry County unexpectedly received \$10 million in federal funding for the county’s approved SCTIB project, thereby freeing up \$10 million previously awarded from SCTIB. Without filing a formal application for the I-73 project, the county submitted a letter to the SCTIB Board requesting the reallocation; the SCTIB Board approved the request and adopted a resolution regarding the matter.

Cost Overruns

In August 2012, Florence County requested additional funding for projects listed in the county's May 2005 application; an additional \$80 to \$90 million was approved by the SCTIB Board at that time and by the JBRC in December 2013 without requiring a new application.

Recommendation

-
8. The South Carolina Transportation Infrastructure Bank should require a new application for funding requests which differ from the initial application.
-

Award Criteria Issues

We were asked to determine whether the agency has promoted efficiency and fairness through a consistent application of award criteria. We reviewed the SCTIB's policies and process for awarding financial assistance and a sample of applications. We found that SCTIB:

- Contrary to state law, has not promulgated regulations regarding its award criteria or process.
- Has no formal policy for awarding financial assistance.
- Has not clearly defined what constitutes a project.
- Requires that funded projects exceed \$100 million, but will accept applications that reach \$100 million only by allowing multiple projects to be combined.
- Requires a 33⅓ % match for grants and loans and does not formally communicate this requirement.
- Accepted private expenditures on toll roads as matching funds for publicly-funded roads.
- Does not require that all the SCTIB-approved projects be derived from SCDOT's prioritization list.
- Does not require a minimum rating for applicants to receive funding.
- Does not require applicants to demonstrate whether the benefits of the project would exceed the costs.

SCTIB Regulations

SCTIB has not promulgated regulations regarding how the agency awards financial assistance. The Administrative Procedure Act requires the promulgation of regulations when a process has general public applicability. Because the SCTIB's financial assistance is open to the state's governments and private entities, the practice has general public applicability.

SCTIB Policies

Absence of Formal Policies

SCTIB has no formal policies regarding its process of awarding financial assistance. The agency provided the Legislative Audit Council with draft Operating Procedures and Financial Assistance Conditions. The agency did not have formal guidelines prior to this document and these guidelines have been in draft form since September 25, 2014. These draft guidelines have been discussed by the board on as many as four separate occasions, but the board has yet to approve them more than 18 months later. According to an agency official, there is no formal scoring sheet to guide evaluators. Without agency policies, it is difficult for the board to fairly and consistently address requests from project to project through the years.

Limited Scope of Draft Guidelines

Also, the content of these draft guidelines is limited in scope. The draft guidelines contain primarily financial guidance such as project budget, project costs, and surplus property. The draft guidelines do not contain the policy approved by the SCTIB Board that eligible projects are limited to those large or major projects whose costs exceed \$100 million. Also, there is no guidance on recipient matches and incomplete information on the types of projects SCTIB will finance.

The absence of formal policies limits an applicant's awareness of the types of projects acceptable for funding. For example, in 2012, the SCTIB Board approved, as part of a road project, funding for Beaufort County's request for a multi-use path or sidewalk alongside a road for safety reasons. However, in 2014, Dorchester County's request to fund a footpath in a park that was related to a road project was met with discussion about setting such a precedent for non-transportation projects; ultimately, the project was not funded.

The draft guidelines do not specifically address the differences between a multi-use path and a footpath, nor do they broadly address non-transportation projects. Greater clarity regarding acceptable types of projects may prevent applicants from proposing unacceptable requests and may reduce an applicant's time and money in developing unallowable requests.

Recommendations

9. The South Carolina Transportation Infrastructure Bank should promulgate, in regulation, its criteria and process for awarding financial assistance.
10. The South Carolina Transportation Infrastructure Bank should develop formal policies regarding its practice of awarding financial assistance.
11. The South Carolina Transportation Infrastructure Bank should adopt a formal scoring sheet for evaluating project applications.

Inadequate Definition of Criteria

Unclear Definition of "Project"

It has been the board's practice to regard an application as an overall project that may include several component projects. S.C. Code §11-43-130(6) defines an eligible project as a highway, including bridges, or transit project that provides a public benefit. The SCTIB application form defines a major project as the construction of or improvement to highways, including bridges, which exceeds \$100 million. Neither of these definitions is specific enough to include or exclude the practice of allowing applicants to present several smaller component projects that are unconnected under one overall project. It is important to define what constitutes a project as the application of the agency's "major" criterion is contingent upon this definition. A clear definition may also impact whether some applicants would consider applying.

Defining the "Major" Criterion

According to Section 1(6) of Act 148 of 1997, it was the General Assembly's intent that SCTIB focus greater attention on larger transportation projects thereby allowing SCDOT to focus its resources on smaller, rural projects. S.C. Code §1-43-120(C) states that the purpose of the agency is to finance major qualified projects. The law does not define the terms "larger" or "major" or provide any financial threshold to quantify the terms.

At the SCTIB Board's second meeting on August 19, 1997, the board adopted the following policy:

...eligible projects are limited to those large or major projects whose costs exceed \$100,000,000, excluding financing or interest costs; and that project costs may include the cost for design, environmental documents preparation, right-of-way acquisition, construction and construction management.

According to an agency official, the large price tag of the earliest projects was the reason the threshold was set at its current amount.

Applying the “Major” Criterion to an Unclear Definition of Project

Without a clear understanding of what constitutes a project, it is unclear how to apply the “major” criterion to a project. Beginning with its first award, it has been a practice of the SCTIB Board to not only approve applications with a single project exceeding \$100 million as eligible, but also applications with several component projects that combine to exceed the \$100 million threshold.

Under this practice, applicants have been given discretion over defining what constitutes a project based on their applications. Applicants have included component projects in their applications that alone would not meet the \$100 million threshold requirement. For example, the Florence County Forward Project initially included five component projects, two of which were below the \$100 million threshold. Also, Horry County's projects included eight component projects of which all but one was below the \$100 million threshold.

If applicants need to combine several component projects to meet the \$100 million threshold, then it is questionable as to whether these component projects align with the original intent of the SCTIB Act.

Recent Legislative Considerations

Recently, the South Carolina General Assembly considered legally formalizing the agency's total project cost threshold. In FY 15-16, House Bill 3579 was introduced to legally establish a \$25 million minimum threshold for SCTIB's projects. The bill passed the House and received a favorable report with an amendment from the Senate Finance Committee. Currently, however, adjusting the threshold amount is under the authority and discretion of the SCTIB Board.

Recommendation

Unclear and Inconsistent Requirement Regarding Amount of Recipient Match

12. The South Carolina General Assembly should amend the South Carolina Code of Laws §11-43-130(6) by adding clarity as to what constitutes a “project” and what constitutes “major.”
-

Unclear Amount Required for Recipient Match

The SCTIB Act does not require a recipient match but rather states that SCTIB should give preference to eligible projects which have local financial support. Neither the SCTIB draft guidelines nor the application form identify an amount for the match. However, the board unofficially requires a recipient match for both grants and loans in the amount of one-third of the total project cost. An agency official was unable to tell us when this unofficial requirement became agency practice, but that applicants are informed of the requirement during preliminary meetings with agency staff. If potential applicants must meet with agency staff to learn of this requirement, then this awareness is only extended to these applicants and not others.

Inconsistent Application of Amount of Recipient Match

Five of the seven applications we reviewed had a recipient match of 33⅓ % or more based on the original IGAs made between the applicants and SCTIB. However, these matches ranged from an unquantified amount to 60% of the total project costs. The following lists the applicants and percent of match per total project costs based on the original IGAs:

- BEAUFORT COUNTY multiple projects, 60%.
- BERKELEY COUNTY multiple projects, 35%.
- CHARLESTON COUNTY Mark Clark Expressway extension project, 28%.
- CITY OF CHARLESTON Septima Clark/US 17 drainage and improvements projects, 43%.
- FLORENCE COUNTY Forward Project, 33⅓ %.
- HORRY COUNTY Carolina Bays project, 38%.
- SCDOT widening of US 17 project in Beaufort, and Colleton counties, unquantified financial and in-kind contribution.

It is unclear if the abovementioned applicants would have altered their match amounts if the requirement had been formally communicated or if they were aware of what other applicants were proposing. However, SCTIB should be clear on what is acceptable so as to not deter potential applicants from applying and promote greater equity between all the applicants that do apply.

A Single Match Claimed by Two Applicants

In 2006, the Charleston County IGA indicated a recipient match of \$117 million worth of county work on state roads for the Mark Clark Expressway. Also in 2006, Mount Pleasant's IGA also indicated a recipient match of \$117 million worth of county work on state roads for the US 17/Mark Clark Expressway interchange. According to an agency official, the \$117 match in both IGAs is the same match. Therefore, the \$117 million match to the combined original award amount of \$460 million renders a 25% match, or eight percentage points below the threshold.

Unquantified Match Amount

SCDOT's widening of US 17 in Beaufort and Colleton counties had an unquantified financial and in-kind match. In June 2006, the SCTIB Board approved a \$93 million loan for the southern section of work on US 17. Per the IGA, SCDOT:

...committed other financial and in-kind contributions to the Project which involve federal and SCDOT funds and has made and intends to make in-kind contributions of engineering, project management and other services...

Only \$82 million was eventually loaned and spent for the southern section of the project. According to a SCTIB official, the recipient match for the reduced total project cost for the southern section of US 17 was a total of \$15 million sourced from SCDOT, the Federal Highway Administration, and Beaufort and Colleton counties, in various amounts. This match amounts to 18% of total project costs just over half the unofficially required amount. Not only was the match amount below the unofficial required amount, the match amount was not included in the IGA as it was with other awardees. According to agency officials, a local match is of less value to SCTIB if a project sponsor is repaying the agency for the full project cost, with interest, and those payments are pledged to revenue bonds, as in this instance.

Cost Overruns Not Required to Have Specified Matching Funds

The SCTIB Board has not required a specified increase in matching funds when an increase in financial assistance is awarded. For example, Horry County was awarded an additional grant of \$85 million in November 2007 based on the county's initial December 2005 application for the Carolina Bays Parkway project without submitting a new application. Although the SCTIB Board approved the additional grant with the stipulation that any amounts received from the sale of surplus right-of-way be paid to SCTIB or credited against the SCTIB's grant, there was not a specified committed match. Also, an additional \$80 to \$90 million awarded to Florence County in December 2013 did not require a specified increased match.

Inconsistent Requirement Regarding Type of Recipient Match

State law is silent on the type of recipient match an applicant can offer. The SCTIB application form states the following with regard to recipient match:

The Act requires the Board to give preference to eligible projects which have local financial support. Local financial support may include local fees, grants, tolls, private contributions, donated rights of way, local taxes, or similar payments. The Board reserves the right to determine the suitability of the form of the local financial support.

According to an agency official, there is much flexibility with the application. Of the seven accepted applications we reviewed, we found that the applicants presented the following types of matches in their applications, as either a standalone match or in various combinations:

- Local sales tax.
- Local cash contribution from city, county, or other local government organization.
- U.S. Department of Transportation grants.
- Other federal grants.
- SCDOT grants.
- User impact fees.
- Donated rights-of-way.
- Local sales tax spent on state roads.

Inequitable Acceptance of Similar Match Proposals for Charleston County's Mark Clark Expressway Extension and York County's Dave Lyle Boulevard Extension

While the SCTIB Board maintains discretion for determining acceptable matches, we found that the board did not consistently apply this discretion to all applicants. In 2006, the board approved Charleston County's proposed match for the Mark Clark Expressway extension project in the form of \$117 million worth of county work on state roads generated from a sales tax.

In 2009, York County had proposed \$173 million in state roadway improvements from a local sales tax for its match of the Dave Lyle Boulevard extension. York County eventually withdrew its request stating, in part, the following:

We are also very proud of our substantial contributions to State roads through our Pennies for Progress initiatives and believe they should be recognized appropriately as contributing to the local match for this project. However, we also understand that opinions differ about the appropriate consideration of capital sales tax commitments and we know the criteria for assessing local match are evolving.

The language in the application form regarding matches did not change between the dates of Charleston County's submission and York County's submission. Qualifying one applicant and not another for proposing the same type of match is inequitable.

Southern Connector Construction as the Recipient Match for Unrelated Projects

We were asked to review the fairness and consistency of the use of the state's two toll roads as the recipient match. The state's two toll roads are the Cross Island Parkway on Hilton Head Island and the Southern Connector in Greenville. The Cross Island Parkway has no connection with SCTIB.

The Southern Connector was included in the Upstate GRID's (Growth, Reduce Congestion, Improve Safety, and Design for the Future) application as one of ten projects, however, applicants did not request funding for the project; the project was independently financed through the sale of revenue bonds by a public-private partnership. Although unrelated to GRID, the construction of the Southern Connector in Greenville was essentially the match for the 1999 Upstate GRID project amounting to \$202 million out of \$211 million in total match for the overall SCTIB-funded project.

Recommendations

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.
14. The South Carolina Infrastructure Bank should require an increased recipient match when additional funding is awarded due to cost overruns.
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.
16. The South Carolina Transportation Infrastructure Bank should consistently apply all its requirements to all applicants.

Inadequate Application Requirements

SCDOT's Priority Ranking of SCTIB-Approved Projects

According to S.C. Regulation 63-10C.1, SCTIB's approval of transportation projects is not subject to a prioritization process similar to SCDOT's projects. However, we asked SCDOT where projects approved by the SCTIB Board over the last 10 years ranked on its priority lists to determine the importance of these projects on a statewide level. During this period, there were 10 SCTIB applications that included 22 component projects. Of the 22 component projects, SCDOT staff were only able to identify 7 projects on its statewide priority lists. Without a prioritization process integrated with SCDOT's prioritization process, SCTIB may fund less urgent projects.

No Requirement to Demonstrate the Benefits of the Project Exceed the Costs

SCTIB does not require applicants to conduct economic analyses to determine whether a project would be a good investment or whether the project would be economically beneficial to the area and surrounding areas. The value of an investment can be measured through a benefit-cost analysis which analyzes the status quo compared to alternatives and provides a mathematical means of comparison.

A complement to a benefit-cost analysis is an economic impact analysis which can provide the data on the economic impact of the project to the area and surrounding areas. Projects may have a positive economic impact to the area, but have a net or negative effect on the surrounding areas. Our review of applications showed that some applicants conducted both benefit-cost and economic impact analyses.

No Minimum Project Evaluation Score Required

SCTIB does not require applicants to score a minimum rating to receive financial assistance. According to the current application form, there is a point total for each of the sections — 30 points for public benefits, 50 points for financial plan, and 20 points for project approach. However, the application form does not indicate a minimum score for receiving funds, and, according to an agency official, SCTIB has always funded projects when the agency has funds available. Without a minimum rating requirement, it is possible for less deserving requests to be funded, especially when there is only one application under consideration at a time.

Recommendations

17. The General Assembly should amend state law to require that the South Carolina Transportation Infrastructure Bank only fund projects that are included in the South Carolina Department of Transportation's priority list.
18. The South Carolina Transportation Infrastructure Bank should require applicants to demonstrate whether the benefits of the project would exceed the costs.
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.

Act 98 Funding Based on SCDOT Prioritization

In 2013, the General Assembly began appropriating an additional \$50 million a year in non-tax funds to SCDOT with instructions that SCDOT transfer an equivalent amount each year to SCTIB. We reviewed the SCTIB process for allocating \$555.4 million, which will come from accumulated cash and the sale of revenue bonds. In our review, we found that state law does not clarify the entities that are eligible to receive Act 98 funding. We also found that neither state law nor SCTIB policies:

- Require a specified application format for entities requesting funding.
- Establish a minimum project size.
- Establish a minimum match for entities requesting funding.
- Specify the criteria for evaluating projects.

State Law and SCTIB's Interpretation

S.C. Code §11-43-165, commonly referred to as Act 98, states the following:

Each fiscal year, the South Carolina Department of Transportation shall transfer fifty million dollars from nontax sources to the South Carolina Transportation Infrastructure Bank. The department may transfer the total amount in one lump sum or it may transfer the amount quarterly in four equal installments. The general fund revenue appropriated to the department for "Highway Engineering Permanent Improvements" in the annual general appropriations act is exempt from any across-the-board reductions. The transferred funds must be used solely by the bank to finance bridge replacement, rehabilitation projects, and expansion and improvements to existing mainline interstates. The department shall submit a list of bridge and road projects to the bank for its consideration. Transferred funds may not be used for projects approved by the bank before July 1, 2013. The bank shall submit all projects proposed to be financed by this section to the Joint Bond Review Committee as provided in Section 11-43-180, prior to approving a project for financing.

State law does not clarify the entities that are eligible to receive Act 98 funding from SCTIB. We found SCTIB solely awarded Act 98 funds to SCDOT. The intent of SCTIB is to use this stream of funding to support issuance of revenue bonds.

Awards Process

We evaluated the SCDOT August 2013 application — the only application submitted to SCTIB for financial assistance for Act 98 funds since inception of the act. The application was not in the same format as required of other SCTIB applicants that are not seeking funds under Act 98. Although the required sections were included in the application — public benefit, financial plan, and program approach — the application did not follow the active SCTIB application format. Neither state law nor SCTIB policies require a specified application format for entities requesting Act 98 funding.

No Minimum Project Size and No Minimum Match Required

Of the four projects on the application submitted by SCDOT, only one project was intended to receive funds from SCDOT; the remaining three were to be fully funded by SCTIB. There was also a wide range in the project costs, from \$38.7 million to \$262 million. Neither state law nor SCTIB policies establish a minimum project size nor designate a required minimum match for entities requesting funding.

SCTIB Scoring Process Was Not Followed

The SCTIB Board referred SCDOT's application to the evaluation committee for review; however, in its evaluation, the evaluation committee did not follow the scoring process established for other SCTIB applicants. The evaluation committee presented three funding options to the board for consideration based on the interstate project priority list provided by SCDOT. The board and JBRC gave approval based on this approach. Neither state law nor SCTIB policies specify the criteria for evaluating Act 98 projects.

Awards Without an Application

In 2013, SCTIB awarded up to \$535.4 million of Act 98 funds to SCDOT for four projects based on an application with detailed cost estimates. However, SCTIB additionally awarded up to \$20 million without an application or cost estimates as shown in Table 3.1.

Table 3.1: Act 98 Funds Awarded Without an Application

PROJECT	GRANTS AWARDED
Richland/Lexington Counties, Is-20/26/126	\$10,000,000
Cherokee County, I-85 Phase III	4,000,000
Spartanburg County, I-26	1,754,000
Aiken County, I-20	915,000
Berkeley/Dorchester Counties, I-26	2,645,000
TOTAL	\$19,314,000

Source: SCTIB Board Minutes

Recommendations

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.
21. The General Assembly should amend state law to clarify the award criteria for Act 98 funds.
22. The South Carolina Transportation Infrastructure Bank should develop a formal written process for evaluating Act 98 applications.

Agency Administration and Financial Management

We reviewed the S.C. law and the S.C. Constitution and found the following:

- SCTIB was unable to provide documentation for its Board Chairman and other agency representatives for travel expenditures, on two separate occasions, while conducting business on behalf of the state.
- The state ethics law permits any public employee or official to receive gifts of any dollar amount from entities other than lobbyists based on the subjective decision that the gifts are not intended to influence public decisions.
- It is uncertain whether the process established in state law to repay SCTIB revenue bonds is consistent with the S.C. Constitution.
- SCTIB manages the interest earnings on funds held for funding recipients inconsistently.

Agency Administration

We reviewed several administrative issues at SCTIB, including the agency's procurement procedures, whether the agency's board meetings were conducted in accordance with state law, and ethical issues, such as gifts to the SCTIB Board and staff. We found no evidence of non-compliance with the agency's procurement processes. We also found no evidence that the agency's board meetings were in violation of state law. However, we found issues regarding travel by a board member and agency representatives.

Procurement

We reviewed SCTIB's procurements of attorneys and consultants for the last five fiscal years. We found no evidence of non-compliance with state law.

S.C. Code §1-7-170(A) states that:

A department or agency of state government may not engage on a fee basis an attorney at law except upon the written approval of the Attorney General and upon a fee as must be approved by him.

Since FY 12-13, SCTIB spent \$252,085 on 9 different attorneys and/or law firms. We reviewed the Office of Attorney General's approval forms for the attorneys that SCTIB hired over these years and found no evidence of non-compliance with the hiring of the agency's attorneys.

On June 29, 2009, the S.C. Budget and Control Board approved a policy that requires the Office of the State Treasurer's (STO) approval before an agency can hire a bond counsel. State agencies are allowed to select an attorney from a list of approved bond counsel compiled by STO. The bond counsel that SCTIB used over the last five fiscal years was on STO's approved list.

We also reviewed the agency's multiple procurements of a financial advisor. Since FY 12-13, SCTIB spent \$95,978 on the financial advisor. These procurements were made through a request for proposal process, and we found no evidence of non-compliance with the procurement code.

Board Meetings

We were asked to look at the SCTIB's Board meetings to see whether non-public meetings took place, whether a quorum was present at all meetings, and to review the meetings' agendas. We reviewed SCTIB documents and other sources and found no evidence of non-compliance.

S.C. Code §30-4-80 states:

(A)...An agenda for regularly scheduled or special meetings must be posted on a bulletin board in a publicly accessible place at the office or meeting place of the public body and on a public website maintained by the body, if any, at least twenty-four hours prior to such meetings....Such notice must include the agenda, date, time, and place of the meeting, and must be posted as early as is practicable but not later than twenty four hours before the meeting...Once an agenda for a regular, called, special, or rescheduled meeting is posted pursuant to this subsection, no items may be added to the agenda without an additional twenty-four hours notice to the public, which must be in the same manner as the original posting...

(E) All public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the times, dates, places, and agenda of all public meetings, whether scheduled, rescheduled, or called, and the efforts made to comply with this requirement must be noted in the minutes of the meetings.

We reviewed minutes of the SCTIB's 25 Board meetings from July 2010 through December 2015 and found no evidence that meetings were not announced to the public. We also found that a quorum was present at each board meeting we reviewed. We found that the SCTIB's Board Chairman was the only board member to attend New York City meetings (see *Travel*) regarding bond rating and thus no board quorum was present at those meetings. Finally, we found that meeting agendas were created and followed.

SCTIB sends notice of a meeting to a list of interested parties it maintains, posts upcoming board meetings on its website, has SCDOT post the board meeting on its website, has SCDOT's communication director send out the agenda to interested parties, and also posts the meeting agenda at the agency at least 24 hours in advance. We reviewed a sample of SCTIB's notifications to interested parties and available archived internet SCDOT and SCTIB webpages which verified those meetings were posted on SCDOT's and SCTIB's respective websites.

Travel

We were asked to review whether the SCTIB Board members and staff have complied with state ethics law regarding the acceptance of gifts or compensation from persons with whom the agency does business, either directly or indirectly. SCTIB did not have documentation regarding who paid for certain travel expenses during SCTIB trips to New York City in 2012 and 2013.

S.C. Code §8-13-705(A) states:

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee *with the intent to: (1) influence* [emphasis added] the discharge of a public official's, public member's, or public employee's official responsibilities.

We reviewed travel-related SCTIB documents for the last five fiscal years and had questions relating to two trips to New York City by the SCTIB Board Chairman, staff, and agency representatives.

The SCTIB's Board Chairman, agency director, bond counsel, a separate attorney, and financial consultant, along with representatives from STO, and a representative from SCDOT all went on overnight trips to New York City in March 2012 and September 2013 to meet with bond credit rating agencies. SCTIB provided us with the March 2012 trip travel reimbursement documentation for all individuals except the SCTIB Board Chairman, representatives from STO, and the SCDOT representative. According to agency staff, the SCTIB Board Chairman did not request reimbursement for the March 2012 trip to New York City.

For the September 2013 trip to New York City, SCTIB provided reimbursement documents for all individuals except the SCTIB Board Chairman and the SCDOT representative. According to agency staff, the SCTIB Board Chairman did not request reimbursement for the September 2013 trip to New York City. Also, there was no evidence to show who paid for some of the meals of the SCTIB Board Chairman, staff, and agency representatives on those trips. We requested, but did not receive, documentation of who paid for the trips of these individuals. We also reviewed all statements of economic interests for SCTIB Board members and staff for the last five fiscal years. These forms are kept on file at the S.C. Ethics Commission (see *Inadequate Ethics Law*). We found no reports on the statements of economic interests for gifts related to these trips to New York City.

Inadequate Ethics Law

S.C Code §8-13-705(A) allows state public officials, board members, and employees to receive gifts (including meals, entertainment, travel, etc.) of any dollar value as a result of their positions in the government based on the subjective decision that there is no intent to influence public decisions. Without a limit on the dollar value of items given to state public officials, board members, and employees, there is an increased probability that businesses and other outside entities will use gifts to influence public decisions. Gifts from lobbyists are covered under the more restrictive S.C. Code §2-17-90.

According to an S.C. Ethics Commission official, under S.C. Code §8-13-715, most state employees are not required to report items of value given to them as a result of their positions in government unless the gift is the result of a speaking engagement.

If a public official, board member, agency director, agency deputy director, chief procurement officer, or chief finance officer accepts a gift, meal, etc. worth \$25 or more in a day or \$200 or more in a year, he is required to list it on a statement of economic interests with the S.C. Ethics Commission.

S.C. Code §8-13-710 states:

- (B) A public official, public member, or public employee required to file a statement of economic interests...who receives, accepts, or takes, directly or indirectly, from a person, anything of value worth twenty-five dollars or more in a day and anything worth two hundred dollars or more in the aggregate in a calendar year must report on his statement of economic interests...the thing of value from:
 - (1) a person, if there is reason to believe the donor would not give the thing of value but for the public official's, public member's, or public employee's office or position;
 - (2) a person, or from an officer or director of a person, if the public official, public member, or public employee has reason to believe the person:
 - (a) has or is seeking to obtain contractual or other business or financial relationships with the public official's, public member's, or public employee's governmental entity;
 - (b) conducts operations or activities which are regulated by the public official's, public member's, or public employee's governmental entity.

The acceptance of gifts in certain instances could give the appearance that these gifts would not have been given without the expectation of the giver receiving something in return at a future date. Increased controls over gifts to public officials and employees could reduce the likelihood of undue influence on these individuals.

Recommendations

- 23. The South Carolina Transportation Infrastructure Bank should institute a policy that requires that the source of payment for all travel and related expenses be documented.
- 24. The General Assembly should amend the South Carolina Code §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.

Indirect Transfer of State Tax Funds to Repay Revenue Bonds

In the audit request for this project, we were asked to determine compliance with the section of the S.C. Constitution that pertains to the use of bonds to borrow funds.

The S.C. Constitution prohibits the use of tax funds to repay revenue bonds. Separate from the Constitution, however, state law requires an indirect process of using state taxes to repay SCTIB revenue bonds. In this process, each year the General Assembly allocates specific *tax funds* to SCDOT and then requires SCDOT to reallocate *non-tax funds of the same dollar amount* to SCTIB. It is uncertain whether this process is consistent with the S.C. Constitution.

Background

In FY 14-15, SCTIB revenues totaled \$220.0 million, while expenditures totaled \$282.1 million. The primary expenditure category was \$158.1 million in debt service payments on bonds previously sold by the agency. At the end of FY 14-15, outstanding revenue bonded debt, back by pledged revenue streams, totaled \$1.94 billion, while outstanding general obligation bonded debt, backed by the “full faith and credit” of the state, totaled \$42.1 million.

Table 4.1 shows that in FY 14-15, SCDOT transferred non-tax funds to SCTIB based on the amount of state tax funds received by SCDOT.

Table 4.1: SCTIB Revenue Sources, FY 14-15

REVENUE SOURCE	DESCRIPTION OF FUNDS TRANSFERRED TO SCTIB	AMOUNT OF FUNDS TRANSFERRED TO SCTIB (IN MILLIONS)
SCDOT	Non-tax funds transferred by SCDOT <i>in an amount equivalent to an earmarked tax-based appropriation to SCDOT from the General Assembly.</i>	\$50.0
SCDOT	Non-tax funds transferred by SCDOT <i>in an amount to equal to one-half of the portion of electric power tax revenues greater than \$20 million.</i>	4.2
SCDOT	Non-tax funds transferred by SCDOT <i>in an amount equivalent to a percentage of motor fuel tax (user fee) revenues.</i>	27.4
SC Dept. of Motor Vehicles	Direct transfer of truck registration fee revenues.	67.5
SC Dept. of Motor Vehicles	Direct transfer of motor vehicle registration fee revenues.	41.2
Other Agencies	Intergovernmental loan revenues.	11.2
Various Investments	Interest / investment income.	18.3
TOTAL		\$220.0

Figures are rounded.

Sources: FY 14-15 SCTIB financial statement and S.C. Code of Laws

Sources of Funds for the Repayment of Revenue Bonds

In a legal document called the “official statement” for \$157 million in SCTIB revenue bonds issued in July 2015, the following sources of repayment were pledged, which are similar to revenues pledged for SCTIB revenue bonds issued prior to 2015:

Revenue from Fees, Taxes, and Investment Earnings

- An amount equivalent to one cent per gallon of motor fuel user fee revenues.
- Truck registration fees and penalties.
- Motor vehicle registration fees and penalties.
- An amount equivalent to half of wholesale electric power tax revenues above \$20 million.
- Investment earnings.

Revenue from Loan Repayments

- Horry County Loan I payments.
- Horry County Loan II payments.
- SCDOT Conway bypass loan payments.
- SCE&G Lexington payments.
- SCDOT Cooper River bridge payment.
- SCDOT multi-project funding payments.
- US 17 widening payments.

S.C. Constitution, State Law, and Legal Opinions

Categories of Funds Authorized by the S.C. Constitution for Repayment of SCTIB Bonds

Below is a summary of the bonds issued to finance SCTIB projects.

General Obligation Bonds

S.C. Code §11-43-520 and §11-43-550 authorize the issuance of a form of general obligation bond called transportation infrastructure bonds. Article 10, Section 13, Subsection 2 of the S.C. Constitution states:

‘General obligation debt’ shall mean any indebtedness of the State which shall be secured in whole or in part by a pledge of the full faith, credit and taxing power of the State.

It is, therefore, legal to use state tax revenues to repay general obligation bonds.

Revenue Bonds

Revenue bonds are repaid using specified funds pledged by the issuer. They are not supported “by a pledge of the full, faith, credit and taxing power of the state,” as required of general obligation bonds. If the revenues pledged to repay a specific bond are inadequate to meet the repayment schedule, the State is not legally obligated to make up the difference from other sources.

The S.C. Constitution cites toll roads and bridges as examples of revenue-producing projects funded by revenue bonds. Other projects funded by revenue bonds, such as SCTIB projects, produce no revenue, requiring that other sources of revenue be used for repayment.

S.C. Code §11-43-310 and §11-43-320 authorize SCTIB to issue revenue bonds backed by “any of its revenue or funds ... subject only to any prior agreements with the holders of particular bonds....”

The above statutes, however, are contradicted by Article 10, Section 13, Subsection 9 of the S.C. Constitution which states that only non-tax revenues may be used to repay revenue bonds:

The General Assembly may authorize the State or any of its agencies, authorities or institutions to incur indebtedness for any public purpose payable solely from a revenue-producing project or from a special source, *which source does not involve revenues from any tax* [emphasis added] but may include fees paid for the use of any toll bridge, toll road or tunnel. Such indebtedness may be incurred upon such terms and conditions as the General Assembly may prescribe by law....

Determining Whether SCTIB Revenue Sources Are Taxes

Before determining whether South Carolina is indirectly repaying revenue bonds with state tax revenues, it is necessary to determine whether the funds originally allocated to SCDOT are taxes.

S.C. Code §11-43-160 requires that SCDOT transfer to SCTIB “an annual contribution set by the board of an amount not to exceed revenues produced by one cent a gallon of the tax on gasoline....” A March 30, 2015, opinion of the Attorney General concluded that the state motor fuel user fee is a tax because its primary purpose is to raise revenue. Based on this principle, it is likely that state appropriations (derived primarily from income taxes and sales taxes) and the state electric power tax are also taxes.

S.C. Code §12-28-2915 requires that SCDOT transfer to SCTIB each year, from non-state tax sources, an amount equivalent to fifty percent of revenues above \$20 million received from a tax on sellers of electricity.

S.C. Code §11-43-165 states that “[e]ach fiscal year, the South Carolina Department of Transportation shall transfer fifty million dollars from non-tax sources to the South Carolina Transportation Infrastructure Bank.” This transfer from SCDOT to SCTIB is contingent on an appropriation of \$50 million, comprised largely of tax funds, from the General Assembly to SCDOT.

S.C. Code §56-3-910 requires that the S.C. Department of Motor Vehicles each year transfer truck and motor vehicle registration fees to “the state highway account of the South Carolina Transportation Infrastructure Bank except for those fees and penalties which must be credited to a different account as otherwise provided for by law.” Based on the opinion cited above that the motor fuel user fee is a tax, it might appear that a truck or motor vehicle registration fee is also a tax. However, an April 13, 1992, decision of the South Carolina Supreme Court concluded that a road maintenance fee charged for each vehicle in Horry County was a fee and not a tax.

Indirect Non-Compliance Prohibited

A November 24, 2015, opinion of the Attorney General concluded that “*it is a well-recognized principle of law that an act that is forbidden to be done directly cannot be accomplished indirectly* [emphasis added].” Although this opinion is not directed to SCTIB, the legal principal used has been applied to various cases over the years. The South Carolina Supreme Court applied the principle in a decision in 1922.

Because the General Assembly allocates state tax funds to SCDOT and then requires SCDOT to reallocate non-tax funds of the same dollar amount to SCTIB, a reasonable argument could be made that this practice may be an indirect transfer of tax funds.

Viewpoint of Bond Counsel for SCTIB

The law firm that serves as bond counsel for SCTIB has stated that the current practice of repaying SCTIB revenue bonds is consistent with the S.C. Constitution.

The firm stated:

[Bond] counsel is of the firm opinion that [the prohibition against using tax funds to repay revenue bonds] means the State may not be compelled to levy a state tax to pay a revenue bond as the State must when it issues a general obligation bond....

What the SCTIB cannot do directly or indirectly is pledge State’s ‘full faith, credit, and taxing power’ to a revenue bond issued by the SCTIB.

Here the SCTIB is not pledging the State’s full faith, credit and taxing power to anything, directly or indirectly. Rather it is, as directed by the SCTIB Enabling Act, using non-state revenues as the sole source of ‘Pledged Revenues’ for payment of SCTIB revenue bonds.

Conclusion

The S.C. Constitution prohibits the use of taxes to repay revenue bonds. State Attorney General opinions have cited a “well-established legal principle,” used in various court cases, indicating that an action that may not be done directly under the law also may not be done indirectly. This principle has also been used by the South Carolina Supreme Court. Although the State of South Carolina may not have pledged or obligated state tax dollars to repay revenue bonds, it is nonetheless using state taxes as an indirect source of funds for the repayment of revenue bonds.

Our conclusion is that there is uncertainty regarding the constitutionality of this practice. An opinion on this matter from the S.C. Office of the Attorney General could provide additional clarity.

Recommendation

25. The General Assembly should obtain a formal opinion from the South Carolina Office of the Attorney General on the sources of funds used to repay South Carolina Transportation Infrastructure Bank revenue bonds to ensure that it is in compliance with:

- Article 10, Section 13, Subsection 9 of the South Carolina Constitution, which prohibits the use of taxes to repay revenue bonds.
- The legal principle which states an act that is forbidden to be done directly may not be done indirectly.

Accounts and Project Cost

SCTIB is required to establish state and federal accounts to meet the requirements of any state or federal programs. Our review of the accounting structure, which included a limited review of financial activity, did not identify issues of non-compliance. We did, however, identify concerns with whether Act 92 of 2015 funding is recurring and whether SCTIB has inconsistently handled interest earnings on funds held for award recipients.

State Law

S.C. Code §11-43-170 requires the following:

- (A) Earnings on balances in the federal accounts must be credited and invested according to federal law. Earnings on state accounts must be credited to the state highway account or state transit account that generates the earnings. The bank may establish accounts and subaccounts within the state accounts and federal accounts as considered desirable to effectuate the purposes of this chapter, or to meet the requirements of any state or federal programs. All accounts must be held in trust by the State Treasurer.
- (B) For necessary and convenient administration of the bank, the board shall direct the State Treasurer to establish federal and state accounts and subaccounts within the bank necessary to meet any applicable federal law requirements or as the bank shall determine necessary or desirable in order to implement the provisions of the chapter.
- (C) The bank shall comply with all applicable federal laws and regulations prohibiting the commingling of certain federal funds deposited in the bank.

Act 98 of 2013 states that each year SCDOT shall transfer \$50 million from non-tax sources to SCTIB. The funds must be used solely by SCTIB to finance bridge replacement, rehabilitation projects, and expansion and improvement to existing mainline interstates.

Act 92 of 2015 states that for FY 15-16, STO shall transfer \$50 million from general fund non-tax sources to SCTIB. The funds must be used solely to leverage bonds to finance bridge replacement, resurfacing, and rehabilitation projects, and expansion and improvements to existing mainline interstates.

Financial Activity

SCTIB was established to select and assist in financing major qualified projects by providing loans and other financial assistance to government units and private entities for constructing and improving highway and transportation facilities necessary for public purposes, including economic development. In order to facilitate this mission, SCTIB tracks the source of funds, project expenditures, and other operating activities using separate accounts within its accounting system.

Establishment of Accounts

SCTIB has established accounts with STO for the separation of state highway funds, funds for Act 98 of 2013, funds for Act 92 of 2015, and other funds.

SCTIB does not receive federal funds; therefore, a separate federal fund is not required. Should SCTIB receive federal funds in the future, a separate federal fund will need to be established to maintain the separation of state and federal funds and earnings on those funds as required by state law.

Project and Budgetary Analysis

SCTIB requires all project managers, as identified by the intergovernmental agreements, to provide an estimate of expenditures for the next year in order to prepare the agency budget for the upcoming year. This information is reviewed by SCTIB and SCTIB's financial management consultant to determine the amount of funds that need to be on hand and whether bonds will need to be issued to support the projects. In this process, state highway funds are reviewed separately from Act 98 funds.

SCTIB Interest Earnings

SCTIB funds are invested by STO as part of the statewide interest income sweep on a monthly basis. A sweep occurs when excess funds are transferred from SCTIB's accounts to be invested by STO. At the end of the month, the funds are transferred back to SCTIB's accounts with investment income or loss for the period. For SCTIB, the investment earnings are returned to the respective accounts on which it was earned. For example, the Act 98 fund receives its respective investment earnings on a monthly basis at the end of the month, as does the state highway fund, etc.

Inconsistent Process for Interest Earnings on Funds Held by SCTIB for Other Entities

Interest earnings on funds being held by SCTIB for project award recipients are based on written intergovernmental agreements or informal agreements, as noted below. Transparency and consistency would be improved by implementing a standard process for the allocation of interest earnings on funds held by SCTIB for other entities. Examples include:

HORRY COUNTY

Horry County's loan agreement requires that 1.5% of the Road Special Revenue Fund of its hospitality fee be transferred to SCTIB and be held in a separate interest-bearing account. These funds are held by SCTIB with STO. These funds are invested by STO and receive monthly investment earnings. The loan balance, as of June 30, 2015, was approximately \$176 million while the cash balance of the loan reserve account and the loan servicing account was approximately \$62 million.

FLORENCE COUNTY

Florence County submitted sales tax funds to SCTIB for use on the Florence County Project. Due to delays in the project, Florence requested interest earnings on the funds being held by SCTIB. Based on an informal agreement, SCTIB pays interest quarterly. As of June 30, 2015, the balance being held for Florence is approximately \$115 million.

Project Cost

SCTIB tracks individual transportation projects by the use of cost center designations. A cost center is established for each approved project. As financial transactions are processed, the cost center designation is keyed into SCTIB's accounting system to track funds that are being received and paid.

Expenditures

In order to test whether Act 98 funds were used to pay for other SCTIB projects, a selection of payments from the State Highway Fund and the Act 98 fund were reviewed to determine whether the invoices were paid with the appropriate source of funds and to determine whether the invoices were charged to the appropriate project. The sample included 38 of 374 transactions, and the dollars reflect 48% or \$15.7 million of \$32.6 million in FY 15-16 activity. The test results indicated that invoices were paid with the appropriate source of funds, and the costs were charged to the appropriate project. For invoices that included charges for multiple projects, testing showed that the project costs were allocated to the respective projects based on the invoice documentation and were paid from the appropriate source of funds.

Revenues

SCTIB tracks incoming funds required by individual intergovernmental agreements by utilizing the cost center code to identify the source of the funds and the project they were received for. Receivable accounts are established for proper tracking of funds due from intergovernmental agreements. For example:

BERKELEY COUNTY

Berkeley County loan payments are received and recorded in the State Highway Fund using cost center, *20801 Berkeley County Loans*, which are further defined by a receivable schedule reflecting the specific IGA, *IGA-08-01 Berkeley Co Loan Receivable*. By utilizing the cost center, Berkeley's payments are tracked separately from those of Beaufort which is identified by cost center *20703 Beaufort County – US 17 Improvements*.

FLORENCE COUNTY

Funds received from Florence County for the Florence County Forward Project are tracked separately as unearned revenue by SCTIB using cost center *22101 Florence Co Contrib Rec and IGA-21-01 Florence Co Contrib Rec*. Unearned revenue consists of advance payments for construction projects and other contractual payments which have not been earned. Unearned revenues become earned revenues as actual project expenditures are paid. As project expenditures are paid for the Florence County Project, one third (matching funds) of the balance is transferred from unearned revenue to earned revenue and the remaining portion of the expenditure is paid with SCTIB funds. As of June 30, 2015, SCTIB has unearned revenues of approximately \$115 million for Florence County.

A limited review of revenues including truck registration fees, motor vehicle registration fees, gas tax revenues, and the electric power tax was completed. Separate accounts are established to record gasoline tax, Act 98 funds, Act 92 funds, truck registration fees, motor vehicle registration fees, and interest. No issues were identified within the limited sample; however, the source of funds and whether they are eligible for use as pledged revenue for the repayment of bonds is considered separately in Chapter 4. Project funding and award is reviewed in Chapter 3.

Appropriation Act 92 of 2015 Funding Needs Clarification

SCTIB holds Act 92 of 2015 funds in a separate account that is restricted for the intended purpose as designated in Act 92 of 2015. The funds are designated for the leveraging of bonds by SCTIB to finance bridge replacement, resurfacing, and rehabilitation projects, and expansion and improvements to existing mainline interstates via the Supplemental Appropriation Bill for FY 15-16. No funds have been spent due to the uncertainty as to whether the funds will be available each year for the repayment of bonds.

Agency Funds

SCTIB has two “agency funds” that are held for Horry County for loans associated with an intergovernmental agreement to ensure repayment of the loan. SCTIB pays itself from the Loan Servicing Account for quarterly loan payments as they are due. If the balance of the account is not sufficient to make the loan payment, a request is made to STO to make the payment from the Loan Reserve Account. Should the reserve account not be sufficient, STO, pursuant to S.C. Code § 11-43-210, has the authority to withhold any funds held by the state and allotted or appropriated to Horry County in order to repay the loan. Unspent funds in the Loan Servicing Account must be transferred to the Loan Reserve Account at the end of each year.

Upon completion of the requirements of the intergovernmental agreement, the balance remaining in the Loan Reserve Account will be paid to Horry County. A limited review of the financial transactions did not identify improper activity.

Recommendations

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.
 27. The General Assembly should amend state law to clarify whether Act 92 of 2015 funds are recurring.
-

Accounting and Reporting

S.C. Code §11-43-150(A)(9) authorizes SCTIB to establish policies and procedures for the making and administering of loans and other financial assistance, and to ensure proper accounting and reporting. SCTIB has procedures for fiscal controls and accounting procedures; however, formal policies and procedures for loans and financial assistance do not exist.

Policies and Procedures

Loans and Other Financial Assistance

SCTIB does not have formal policies and procedures that indicate the criteria used to determine the type of financial assistance that may be awarded. A detailed discussion is available in Chapter 3.

Accounting and Financial Reporting

SCTIB receives authoritative guidance for handling accounting and financial reporting activity from multiple sources.

Master Revenue Bond Resolution

The Master Revenue Bond Resolution authorizes the issuance of SCTIB Revenue Bonds for financing a portion of the costs of acquisition and construction. It also provides for the rights, security, and remedies of the owners of the bonds. The resolution includes guidance on the legal hierarchy of bonds, bond payments, pledged sources of funds for the repayment of bonds, and the creation of funds and accounts in the accounting system, as well as other criteria.

Generally Accepted Accounting Principles/Government Auditing Standards

SCTIB complies with Generally Accepted Accounting Principles and the financial statements are independently audited in accordance with Government Auditing Standards. Our review of the last three years of financial statements indicated that the independent auditor determined that:

...the financial statements ... present fairly, in all material respects, the respective financial position of the governmental activities, major fund, and aggregate remaining fund information of the Bank as of June 30, 2015, and the respective changes in financial position for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Operations and System Navigation Manual

SCTIB is in the process of updating the S.C. Transportation Infrastructure Bank Operations Manual. This manual includes information on the following: accountability report, annual report, application process, audit, bonds, budgets, business plans, fiscal sufficiency, Joint Bond Review Committee, loan agreements and repayment schedules, personnel, and other categories.

Further updates to the operations manual will include information on SCTIB's new accounting system. SCTIB reports that it is in the process of transferring from an accounting system using Microsoft Access to a web based system. The new system will be a multi-user system and may have enhanced capabilities that allow data to be transferred from the new system to the statewide accounting system. Currently, SCTIB manually enters data into the statewide accounting system. SCTIB is similar to over 50 other state entities, including higher educational institutions and SCDOT, that submit audited financial statement information to the S.C. Comptroller General's office for statewide financial reporting.

In conjunction with the operations manual, SCTIB is developing a system navigation manual that will provide guidance on how to use the new accounting system. It will provide information similar to the previous system navigation guidance including how to move around from task to task, how to enter data into the system, and how to run reports along with other accounting system processes and procedures.

Agency Comments

Appendix
Agency Comments

BOARD OF DIRECTORS

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Representative Chip Limehouse

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May 24, 2016

K. Earle Powell, Director
Legislative Audit Council
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Dear Mr. Powell:

The South Carolina Transportation Infrastructure Bank (the Bank) appreciates the opportunity to respond to "A Review of the South Carolina Transportation Infrastructure Bank" dated May 17, 2016 (the Report). The Bank's Board of Directors appreciates the amount of time the Legislative Audit Council (the Council) staff devoted to making this review as comprehensive as possible given the tasks assigned.

The Bank agrees with many of the recommendations in the Report and welcomes suggestions on how it may improve its operations and services. However, there are some issues raised in this report that cause the Bank great concern with regards to suggested changes in structure of the Bank and in the South Carolina Constitution and the Code of Laws. Most of the areas of concern are suggestions for the General Assembly to consider taking action on, not the Bank. Those areas require a much more detailed analysis than the Report provides, especially on the potential repercussions to the Bank's and State's financing structures, outstanding bonds, credit ratings, and ability to issues bonds.

Transportation Projects Funded by SCTIB

The Bank agrees with recommendation #1 that the Bank report on its website a comprehensive list of grants, loans, commitments and disbursements for all of its projects since the agency's inception in 1997. The Bank will consider using a chart similar to Table 2.1 on page 6 of the Report.

Potential for Combining SCTIB with SCDOT

On page 5 of the Report, the statement is made that no function performed by SCTIB that could not also be performed by discontinuing SCTIB and transferring its funds to SCDOT. There is no analysis 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 obligations.

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:

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?

How will this massive change affect the credit rating, value and liquidity of outstanding and future bond issues?

What will the possible additional interest costs to the State be?

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 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. Article X, Section 13, South Carolina Constitution.

Comparison of Infrastructure Banks in Various States

South Carolina has comparatively more conservative limitations on transportation general obligation bonds than the statutory or constitutional limitations in many of the other states listed in the Report which is one of the reasons the Bank was established. There is no constitutional or statutory cap on the amount of revenue bonds the Bank may issue. As noted in Section 1 of Act 148 of 1997 which established the Bank: "Traditional transportation financing methods in South Carolina cannot generate the resources necessary to fund the cost of transportation facilities which are required for continued economic viability and future economic expansion." Section 1 further stated that the State needed to provide alternative methods of financing transportation projects. The need for alternative financing that does not rely on tax-backed or general obligation bonds has persisted based on the State's large transportation infrastructure needs that have outgrown transportation revenue growth.

David Miller of Public Financial Management (PFM), the financial advisory firm for the Bank, has commented that the comparison of the various state transportation banks in the Report lacks the full context with respect to how each of the listed states, and most others, finance transportation infrastructure as a whole. According to Thomson Reuters, a firm which independently provides market data, PFM has served as the financial advisor for more state transportation debt issues over the last 20 years than any other firm. According to PFM, state transportation infrastructure banks were initially authorized under Federal law but not provided with significant Federal funding. Thus, most remained comparatively small. South Carolina, however, choose to capitalize the Bank with significant state funds due to the constitutional limitations on issuing state tax-backed or general obligation bonds. Most states with Federal transportation infrastructure banks also have far more transportation debt issued by various agencies other than just what is listed for their respective infrastructure banks. Most states have far less limitations on the issuance of general obligation bonds for transportation than South Carolina and have far

greater flexibility to issue non-general obligation revenue bonds. South Carolina uses the Bank to do what most states accomplish via various transportation entities without needing to use their infrastructure bank.

The Report also indicates that having a state transportation infrastructure bank separate from its department of transportation is unusual. However the Report at page 17 notes that three of the seven referenced infrastructure banks are separate from their departments of transportation. Also, Alabama recently established a transportation infrastructure bank in 2015 through legislation similar to the Bank's enabling act.

Application and Evaluation Process for Awarding Financial Assistance

Although the agency does not agree with many statements made in pages 19-23 of the Report, the Bank Board has been considering for some time policy changes to address the subjects in Council's following recommendations:

5. South Carolina Transportation Infrastructure Bank should formally and publicly communicate the availability of funding.
6. The South Carolina Transportation Infrastructure Bank should adopt an annual timeline for publicly communicating updated criteria regarding the application process.
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.
8. The South Carolina Transportation Infrastructure Bank should require a new application for funding requests which differ from the initial application.

The Council was provided with draft documents on the Bank's review and consideration of these subjects.

SCTIB Regulations

The Bank submits that the comments on page 27 concerning regulations are legally incorrect. There is no requirement in law that the Bank must adopt regulations. See, Stogsdill v. SCDHEC, 410 S.C. 273, 763 S.E.2d 638 (Ct. App. 2014), certiorari withdrawn by S.C. Supreme Court (2016). Further, the guidelines 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. Thus, the Bank does not agree with the recommendation #9 that it should promulgate in regulation its criteria and process for awarding financial assistance.

SCTIB Policies

The Bank Board has been working on the subjects raised in recommendations #10 and #11 on page 28 of the Report. Those concern the development of more complete formal policies and scoring sheets for awarding financial assistance. As discussed above, the Board is reviewing actions on these recommendations.

Inconsistent Requirement Regarding Type and Amount of Match

On page 32 of the Report, the statement is made that “state law is silent on the type of match an applicant can offer”. The SCTIB Act requires the Board to give preference to eligible projects which have local financial support sometimes referred to as a “local match.” The flexibility in determining the local match allows applicants to be innovative in offering financial support for projects and supports the legislative mission that the Bank provide alternative methods of funding transportation projects.

Inadequate Application Requirements

Recommendation #17 on page 34 of the Report that the General Assembly amend state law to require the Bank only fund projects on the SCDOT priority lists. The application the Bank uses covers substantially all the same elements found in Act 114 of 2007. The Bank’s 1997 enabling act requires that projects are submitted by application from qualified applicants. The proposed limitation is inconsistent with the mission of the Bank as established in its enabling act. This proposal is a matter fully within the prerogative of the General Assembly.

Recommendation #18 on page 34 of the report is addressed in the Bank’s application documents and process whereby the applicant is required to supply a cost/benefit analysis.

Recommendation #19 is substantially the same as recommendations #10 and #11 addressed above.

Act 98 Funding Based on SCDOT Prioritization

Act 98 of 2013, SC 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. SCDOT compiles and submits to the Bank an initial list of such projects using the criteria for prioritizing projects in Act 114 of 2007. The SCDOT list serves in effect as the application to the Bank. The Bank reviews that list and other projects in the top tier of unfunded priority interstate projects identified by SCDOT.

After extensive discussions with SCDOT and review the funding of certain interstate improvement projects on SCDOT’s list are then approved by the Bank Board. The funding of the selected projects are then reviewed and approved by the JBRC. The comments in the Report that the Bank, SCDOT, and the JBRC should follow a different process, is not supported by the language or intent of Act 98. The Bank conferred with the General Assembly before initiating the process for Act 98. To have proceeded as proposed by the Council would violate Act 98.

Table 3.1, on page 36, lists smaller design/preconstruction grants that the Bank and JBRC approved for interstate projects under Act 98. During the initial consideration of projects under Act 98, SCDOT and the Bank discussed the need to reduce the amount of time in getting SCDOT prioritized interstate projects to a point where they could move more quickly to construction once other Federal or State funds become available. It was decided that having some smaller amounts of funds allocated to design and pre-construction activities on prioritized interstate projects would be beneficial. SCDOT identified the projects and suggested amounts, which included \$10 million for the I-20/26 Project in Richland and Lexington Counties, SCDOT’s number one unfunded priority project. Further, those design/preconstruction grants listed in Table 3.1 came from the Act 98 capacity remaining after the Bank and JBRC awarded grants for the full projects from SCDOT’s Act 98 list totaling approximately \$535.4 million. This process complies with Act 98.

Recommendations 20 and 21 on page 37 of the report are unnecessary. Recommendation # 22 is contrary to Act 98.

Travel

Recommendation #23, that the Bank institute a policy that requires that the source of payment for all travel and related expenses that are not reimbursed by the Bank, has merit. The Bank welcomes any help the Council might provide as the best practice for implementing this recommendation. It must be noted that this comment arose in part from the fact that some Board members pay for their own travel expenses and do not seek reimbursement from the Bank.

Recommendation #24 is wholly within the prerogative of the General Assembly.

Indirect Transfer of Tax Funds to Repay Revenue Bonds

On pages 43-47 of the Report, the Council raises the issue of whether the Bank is indirectly using state tax sources of revenues to pay debt service on its revenue bonds. The comments on that subject made in the Report are incorrect factually and legally and are potentially damaging to the State. 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.

In support of the Bank's response, it is providing herewith the opinion of its bond counsel. Please note that this bond counsel has significant experience in serving as bond counsel to the State and State agencies and institutions.

On page 44 of the Report under the heading Revenue from Fees, Taxes and Investment Earnings, there is one misstatement and one statement requiring clarification concerning what the Report identifies as the Bank's revenues pledged to its revenue bonds. First, the Bank has not pledged and does not receive any revenues from the motor fuel user fee. SCDOT is obligated to pay, and pays, the Bank from non-state tax sources only each year an amount equal to the revenue generated by \$.01 per gallon from the motor vehicle user fee. Second, the writer includes in the same list "wholesale electric power funds" which requires clarification. Again, the Bank has not pledged and does not receive any revenues from the wholesale electric power tax. SCDOT is obligated to pay, and pays, the Bank from non-state tax sources only an amount equivalent to the amount credited to SCDOT from that source. The Bank does not receive any state tax revenues whatsoever that it pledges to or uses to make payments on its revenue bonds.

Conclusion

The foregoing responses were prepared with the assistance of the Bank's staff, legal counsel, bond counsel and financial advisor. It was not possible within the page limitation applicable to this response to address every comment or statement in the Report that may have merited clarification.

The General Assembly has determined that the issuance of transportation revenue bonds is an essential component of funding transportation infrastructure improvements in South Carolina. As established by legislation in 1997, the Bank provides a vital role in executing that mission through innovative approaches. Based on the significant transportation needs of the State and the demands on transportation funding at the Federal and State level, the need for innovation in transportation financing

will increase. These innovative approaches were used successfully to fund the Ravenel Bridge, the Upstate GRID Project, and crucial projects in Horry and York Counties among others.

The Council's Report raises some constructive criticisms. We thank you for the opportunity to clarify the record and look forward to participating in a positive discourse about the future of South Carolina's transportation funding.

A handwritten signature in black ink, appearing to read 'V. Graham', written over a horizontal line.

Vincent G. Graham, Chairman

cc: South Carolina Transportation Infrastructure Bank Board Members
Mr. William Youngblood
Mr. David Miller
Mr. James Holly
Ms. Tami Reed

May 23, 2016

South Carolina Transportation Infrastructure Bank
Columbia, SC 20201

Re: Legislative Audit Council Final Draft Report dated May 17, 2016

You have asked us in our role as bond counsel to comment on the LAC findings and recommendations under the heading Indirect Transfer of Tax Funds to Repay Revenue Bonds (pp. 43-47 of the LAC Draft Report dated May 17, 2016).

The SCTIB Enabling Act (Title 11, Chapter 43 of the South Carolina Code) provides various sources of capitalization of the SCTIB. In each instance there is either a reference to transferring non-state tax sources (e.g., Section 11-43-165 of the Enabling Act) or to a formula for determining the amount of non-state tax sources required to be transferred (e.g., an amount equivalent to the revenues generated by one cent a gallon imposed pursuant to Section 12-28-310 of the South Carolina Code). The methodology for determining the amount of non-state tax revenue to be transferred by reference to an amount equivalent to revenues generated under South Carolina Code Section 12-28-310 is simply a formula and does not turn a non-state tax source of revenue into a state tax source of revenue.

The SCTIB Master Revenue Bond Resolution, adopted September 21, 1998, defines “Pledged Revenues” and in each instance those Pledged Revenues are from non-state tax sources (a copy of the Master Revenue Bond Resolution, conformed with all amendments to date appears as Exhibit B to the final Official Statement for the SCTIB’s Series 2015A Bonds which has been provided to and is cited in the LAC Draft Report). The SCTIB’s revenue bonds are payable solely from the Pledged Revenues which are non-state tax sources. There is no pledge of the State’s full faith, credit and taxing power to the payment of SCTIB revenue bonds and no pledge of, or obligation to use, state taxes to pay the bonds.

The constitutional distinction between a revenue bond and a general obligation bond is critical here. General obligation debt through the issuance of bonds refers to indebtedness secured by a pledge of the full faith, credit and taxing power of the State pursuant to South Carolina Constitution, Article X, Section 13(2).

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Section 11-43-550 of the SCTIB Enabling Act highlights the constitutional distinction between general obligations and revenue obligations and spells out in practical terms each of the required elements of the “full faith, credit and taxing power” if the State issues general obligation bonds on behalf of the SCTIB:

First, “... there is pledged the full faith, credit and taxing power of this State ...”;

Second, “... the General Assembly authorizes the allocation on an annual basis of sufficient tax revenues to provide for the punctual payment ...”;

Third, “... there is also pledged such revenue as may be available to the board, and the State Treasurer is authorized to use such revenue ...”; and

Fourth, “... If the revenues so pledged prove insufficient to meet the payments ... then the State Treasurer shall set aside from the general tax revenues ... so much of the general tax revenues as are needed for the purpose ...” [emphasis added]

On the other hand, Section 11-43-330 of the SCTIB Enabling Act makes clear that revenue bonds issued by the SCTIB “do not constitute a debt or a pledge of the full faith and credit of this state ... but are payable solely from the revenue, money or property of the bank as provided in this chapter.” This fact must be clearly stated on the face of each SCTIB revenue bond. If there is a shortfall of Pledged Revenues, the State is not required to make up the shortfall from any other source.

The LAC Final Draft Report puts much emphasis on the phrase “... does not involve revenues from any tax ...” in South Carolina Constitution Article X, Section 13, paragraph 9, authorizing revenue indebtedness. While there has been no South Carolina Supreme Court opinion interpreting the phrase “... does not involve revenues from any tax ...”, bond counsel is of the firm opinion that it means the State may not be compelled to levy a general state tax to pay a revenue bond as the State must when it issues a general obligation bond. This opinion is based upon the evolution of Article X in the South Carolina Constitution of 1895, as amended in 1977 and, in particular the “special fund doctrine” as interpreted prior to the 1977 constitutional amendment.

Broadly speaking under the South Carolina Constitution of 1895, prior to the 1977 amendments to Article X thereof, the State was prohibited from incurring “debt” without a vote of the people. The practical difficulty of securing an affirmative statewide vote to authorize such debt, led to the development of the “special fund doctrine.”

Thus, in cases decided prior to 1977, the South Carolina Supreme Court ruled that the General Assembly may authorize the issuance of general obligation bonds of the State without submitting the question as to the creation of such debt to the qualified electors where such obligations are secured by the pledge of a fund established or set aside which is reasonably

sufficient to pay such obligations without resorting to the levy of a property tax or a general state tax. *Mims v. McNair*, 252 S.C. 64, 165 S.E. 2nd 355 (1969); *Painter v. West*, 261 S.C. 277, 199 S.E. 2nd 538 (1973); *Arthur v. Byrnes*, 224 S.C. 51, 77 S.E. 2nd 311 (1953); *State v. Byrnes*, 219 S.C. 485, 66 S.E. 2nd 33 (1951); *Crawford v. Johnston*, 177 S.C. 399, 181 S.E. 476 (1935).

Thus, in *State ex. rel. Roddy v. Byrnes*, the South Carolina Supreme Court looked back to the intent of the framers of the Constitution of 1895, as follows:

“As expressed in our earlier authorities, the framers of the Constitution of 1895 had in mind indebtedness which should have to be paid from the proceeds of annual tax levies upon property. Moreover, as also said by this court before, general liability in special fund cases is contingent in nature and would become effective only upon failure of the special fund and to the extent only of such failure.” 665 S.E. 2nd at 38.

From its earliest decisions upholding the special fund doctrine the South Carolina Supreme Court expressed concern about the pledge of the full faith, credit and taxing power of the State.

Thus, in *Arthur v. Byrnes* the court reasoned:

“Although a number of courts have held that an obligation payable from a special fund created by the imposition of fees, penalties, or excise taxes is not a debt within the meaning of constitutional debt limitations, in none of these cases, so far as our investigation discloses, was the general credit of the State pledged. The sufficiency of the fund or tax pledged was, therefore, of no serious concern to the taxpayer. Those primarily interested in that question were the purchasers of the bonds. The proposed bonds now under consideration present a different situation. Here there is pledged the full faith, credit and taxing power of the State. Where such is the case, the sufficiency of the fund is of vital interest to the taxpayer and bears directly on the soundness of the credit of the State.” 775 S.E. 2nd at 314.

This reasoning was further amplified in *Arthur v. Byrnes* as follows:

“Implicit in all of our decisions involving the application of the special fund doctrine is the assumption that it will never be necessary to resort to general taxation to pay the obligations proposed to be issued.” (emphasis added) 775 S.E. 2nd at 314.

New Article X constituted a major revision of the limitations upon incurring general obligation debt and incurring revenue indebtedness. While the phrase “... a special source, which source does not involve revenues from any tax ...” did not appear in Article X prior to the 1977 amendment, the many cases decided under the special fund doctrine made it clear that the draftsmen of new Article X were sensitive to ensuring that the State could never be compelled to levy general state taxes to repay a revenue bond but would be compelled to levy general state taxes

to repay a general obligation bond. Section 13(2) of Article X defining general obligation debt establishes this distinction.

Thus, the argument that the State or the SCTIB may be doing indirectly what they cannot do directly is inconsistent with the careful distinctions between general obligations and revenue obligations drawn in the South Carolina Constitution itself and the decisions of the South Carolina Supreme Court.

What the SCTIB cannot do directly or indirectly is pledge the State's "full faith, credit and taxing power" to a revenue bond issued by the SCTIB.

Here the SCTIB is not pledging the State's full faith, credit and taxing power to anything, directly or indirectly. Rather it is, as directed by the SCTIB Enabling Act, using non-state tax revenues as the sole source of "Pledged Revenues" for payment of SCTIB revenue bonds.

Bond counsel is not aware of any South Carolina Supreme Court opinion holding, in the context of the facts presented here, that a non-state tax is transformed into a state tax solely on the basis of the methodology by which its quantum is calculated, i.e., "an amount equivalent to ..." some other notional amount. There is no factual or legal basis here for finding a violation of the principle that an act forbidden to be done directly may not be done indirectly. The cases cited in the Attorney General Opinion on school resource officers referred to in the LAC Draft Report in support of this principle do not apply to the facts here concerning issuance of bonds.

Under South Carolina Constitution Article X, Section 13, paragraph 6(a), the State may issue general obligation highway bonds only to the extent that the maximum annual debt service on all such highway bonds which shall thereafter be outstanding shall not exceed 15% of the proceeds received from the sources of revenue for the fiscal year next preceding.

Under South Carolina Constitution Article X, Section 13, paragraph 6(c), the State may also issue general obligation bonds for any public purpose (this is the constitutional authorization for the general obligations which the State may issue on behalf of the SCTIB, which authorization is implemented by Section 11-43-550 of the SCTIB Enabling Act), only to the extent that debt service on all types of bonds issued under this category (e.g., State Capital Improvement Bonds, etc.) does not exceed 5% of the general revenues of the State for the fiscal year next preceding (excluding revenues which are authorized to be pledged for State highway bonds and State institution bonds).

The foregoing limitations on general obligation bonds and the evident desire of the General Assembly to provide a structure that would not expose the full faith, credit and taxing power of the State, led the General Assembly to enact the SCTIB Enabling Act in 1997 to provide an innovative structure for issuing revenue bonds to address the State's substantial transportation infrastructure needs. The provision in Section 11-43-160 on the use of amounts equivalent to

revenues generated by the user fee on gasoline which is part of that structure has been in effect and relied on for almost 20 years.

Very truly yours,

McNAIR LAW FIRM, P.A.

McNair Law Firm, P.A.



South Carolina
Department of Transportation

Christy A. Hall, P.E.
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May 23, 2016

K. Earle Powell, Director
Legislative Audit Council
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Dear Mr. Powell:

Thank you for the opportunity to respond on the "Indirect Transfer of Tax Funds to Repay Revenue Bonds" and "Potential for Combining SCTIB with SCDOT" sections of the Legislative Audit Council's (LAC) review of the SCTIB.

First and foremost, we disagree with the LAC's assertion that SCDOT is indirectly transferring state tax funds to the SCTIB. SCDOT understands and adheres to its obligations to the SCTIB to ensure that it transfers funds to the SCTIB that are from nontax source revenues in order to ensure that the SCTIB can service the debt on the revenue bonds. As such, SCDOT utilizes funds from several revenue sources outside of the state motor fuel user fee and general fund appropriations to satisfy this requirement. For example, in state fiscal year 2015, SCDOT transferred \$128,432,537 to the SCTIB. In that same year, SCDOT received \$775,647,658 in nontax revenues, primarily from reimbursements from the Federal Highway Administration (FHWA). This indicates that SCDOT had a coverage ratio equivalent to six times (6x) the amount of nontax source revenues that were transferred to the SCTIB. This high coverage ratio assures the SCTIB and others that SCDOT has ample nontax source revenues available to make the necessary transfers.

Additionally, we appreciate the LAC recognizing the key difference between SCDOT and SCTIB regarding bonding authority. SCDOT is unable to issue revenue bonds (except for toll facilities) and must rely solely on general obligation highway bonds to self-finance large projects. SCDOT's current annual debt service capacity of less than \$40 Million has resulted in the stalling of several high priority infrastructure investment projects and SCDOT's reliance on the SCTIB to select and finance those projects.

Finally, we concur that the SCDOT-SCTIB relationship should be re-evaluated by the state's policymakers. A closer and more effective working relationship between the state's lead transportation agency, SCDOT, and a financing agency, the SCTIB, has the potential to ensure that all available transportation funds are dedicated in a cohesive and collaborative manner for our citizens.

Sincerely,

Christy A. Hall, P.E.
Secretary of Transportation

This report was published for a total cost of \$108; 60 bound copies were printed at a cost of \$1.80 per unit.

