

# Application Guidelines for Pass-Through Toll Financing of Highway Projects



Revised December 2010

# **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

Introduction.....	1
Submitting Pass-Through Toll Financing Proposals .....	1
Proposal Contents .....	2
Negotiating Pass-Through Toll Financing Agreements .....	2
Final Pass-Through Toll Financing Approval Process .....	3
Execution of the Work .....	4
Repayment Process of Pass-Through Toll Projects .....	4
Appendix A – Transportation Code §§222.104-222.107	
Appendix B – Texas Administrative Code §§5.51-5.60	
Appendix C – Pass-Through Toll Financing Proposal Forms	
Appendix D – Total Project Cost & Reimbursement Templates	
Appendix E – Map of TxDOT Districts	
Appendix F – Pass-Through Toll Financing Process Flow Chart	
Appendix G – Contact Information	

## Introduction

The Pass-Through Toll Financing program was established as a means to benefit local areas by accelerating improvements in mobility and safety on the state highway system. Texas Transportation Code, §222.104(b) (See Appendix A), authorizes the Texas Department of Transportation (Department or TxDOT) to enter into an agreement with a public or private entity for the payment of pass-through tolls as reimbursement for costs associated with the design, development, financing, construction, maintenance or operation of a toll or non-toll facility on the state highway system. The pass-through toll is a dollar amount that is tied to a measure of actual usage of a highway and is used as a means of calculating the reimbursement.

The Pass-Through Toll Financing program terminology is statutory and does not imply that each proposed project must have a physical toll collection component. A proposed project may or may not have this component.

The schedule of pass-through reimbursements is based on TxDOT's traffic projections for the highway, and the number and frequency of payments are negotiated between the Department and the public or private entity. The amount of the total reimbursement is also based on the Department's estimated total cost to construct the facility.

Unless otherwise authorized by the Texas Transportation Commission (Commission) and incorporated in the pass-through financing agreement, the Department's liability under a pass-through agreement is not increased nor decreased by cost overruns or underruns. Projects must be on the state highway system to be eligible to be developed under a pass-through toll financing agreement.

Texas Administrative Code §§5.51-5.60 (See Appendix B) prescribes the rules governing the implementation of Transportation Code, §222.104(b). These rules describe the responsibilities of the applicant to ensure that all projects are developed in accordance with applicable federal and state laws and design criteria.

## Submitting Pass-Through Toll Financing Proposals

The process may be initiated either by TxDOT issuing a program call for projects as directed by the Commission, or, absent a program call, the applicant may initiate the process by meeting with the local TxDOT District Office to discuss the proposal. A map of TxDOT districts can be found in Appendix E. The district will advise the applicant on the requirements for a complete proposal. The applicant and the District Office also work together to fine tune the scope of work necessary for the project. When the proposal is complete, the applicant submits an electronic copy of the proposal in Adobe PDF format on a labeled compact disk, along with one hard copy, to the TxDOT Assistant Executive Director for Engineering Operations in Austin, and to the local TxDOT District Office where the proposed project will be located. The district staff reviews project cost estimates and other information provided and prepares a detailed,

independent estimate for the cost of each phase of project development. The District Office forwards the independent estimate to the Texas Turnpike Authority Division.

The Texas Turnpike Authority Division will coordinate the review of the proposal(s) with various department offices as applicable, and in the case of a program call establishes a review committee. The applicant may be asked to provide additional information, or in the case of a program call a letter of clarification may be requested, throughout the TxDOT review process. A summary of the proposal(s) analysis or analyses is presented to the Commission which may then authorize, by minute order, the Executive Director, or the Executive Director's designee, to negotiate an agreement with the public or private entity.

Proposals received from private entities will be subject to requests for competing proposals before the department can negotiate a pass-through toll financing agreement.

The Executive Director, or the Executive Director's designee, will submit a summary of the final terms of the negotiated agreement to the Commission. The Commission may then authorize, by a second minute order, the Executive Director to execute the agreement on behalf of the Department. A flow chart of this process can be found in Appendix F.

## **Proposal Contents**

In addition to the proposal requirements as prescribed in the Texas Administrative Code §5.53, the applicant must also include the information shown in Appendix C, page 1 of 6. The district staff will work with the applicant to obtain any missing information before the proposal can be submitted.

## **Negotiating Pass-Through Toll Agreements**

TxDOT may begin negotiations only after the Commission grants approval to negotiate by minute order. In authorizing the Executive Director or his designee to negotiate an agreement with a private or public entity, the Commission must consider the following (in accordance with 43 TAC §5.55):

### **(A) Eligibility Considerations**

- The proposer's proposed financial contribution to the project from sources other than the department, in relation to total project cost;
- The geographic area affected;
- Local public support for the project;
- For a highway project, whether the project is in TxDOT's Unified Transportation Program (UTP);
- The extent the project will relieve congestion on the state highway system;
- The potential safety benefit that may be derived from the project;
- Potential benefits to regional air quality that may be derived from the project;

- The compatibility of the proposed project with existing and planned transportation facilities;
- The extent to which the project will close gaps in the state transportation system;
- Whether the entity has or intends to designate a contiguous geographic area in the jurisdiction of the entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E, if the proposer is a public entity;
- The proposer's proposed amount and period for department reimbursement and proposed pass-through payment schedule;
- The economic development potential in the area;
- The financial strength of the proposing entity;
- Whether the project is part of a hurricane evacuation route;
- Whether the project has application to a military base realignment or closure;
- The experience of the proposer in developing similar transportation projects; and
- The relationship of the proposed project to stated commission goals.

If the applicant is a public entity, TxDOT will attempt to negotiate a satisfactory agreement with the entity to provide the best value to the state. If an agreement cannot be negotiated with the public entity, TxDOT will formally end negotiations.

If the Commission approves by minute order the further evaluation of a proposal by a private entity, TxDOT will publish notice of that decision and provide an opportunity for the submission of competing proposals. TxDOT will publish a notice in the Texas Register and in one or more newspapers of general circulation. TxDOT will accept for simultaneous consideration any competing proposal within 45 days of the initial publication of notice in the Texas Register, or such additional time as authorized by a minute order of the Commission. The original proposer may submit a revised proposal in response to the notice. Upon expiration of the 45-day period, or such additional time as authorized by the Commission, TxDOT will evaluate the proposal of the original proposer and any properly submitted competing proposals, utilizing the evaluation criteria set forth in the request for proposals. If an agreement cannot be negotiated with a selected proposer, TxDOT will formally end negotiations with that proposer. TxDOT may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party.

## **Final Pass-Through Toll Financing Approval Process**

Once a tentative agreement has been reached through negotiations, the Executive Director, or the Executive Director's designee will submit to the Commission a summary of the final terms of the pass-through agreement. The Commission may authorize by minute order the Executive Director to execute the agreement if it finds that the proposed agreement is in the best interest of the state and the project:

- Serves the public interest;
- Is compatible with existing and planned transportation facilities; and,

- Furthers state, regional, and local transportation plans, programs, policies, and goals.

## **Execution of the Work**

The parties may execute the pass-through toll agreement after the Commission approves a minute order authorizing the Executive Director to proceed. Work on the project must not begin before the agreement is executed. The agreement will include details regarding the responsibilities of each party. The applicant must be careful to comply with all terms of the agreement throughout project development. Applicants should refer to the department's Local Government Project Procedures (LGPP) available at <http://www.txdot.gov/business/governments/lgpp.htm> for important information about the roles and responsibilities pertinent to developing a project on the state highway system.

## **Repayment Process for Pass-Through Toll Projects**

The amount to be reimbursed to the applicant from TxDOT will be through the periodic payment of pass-through tolls, for an overall amount equal to the amount specified in the agreement and approved by the Commission. The agreement should specify that the developing entity will give 60 days prior notification, by letter, to the local District office of when and what amount is to be reimbursed. Repayment cannot commence until the project is open to traffic and traffic data have been collected. The agreement should specify how the traffic data will be collected. The traffic data collected will be overseen by the local District office.

- Appendices:**
- A. Transportation Code §§222.104-222.107**
  - B. Texas Administrative Code §§5.51-5.60**
  - C. Pass-Through Toll Financing Proposal Forms**
  - D. Total Project Cost & Reimbursement Templates**
  - E. Map of TxDOT Districts**
  - F. Process Flow Chart**
  - G. Contact Information**

**Appendix A  
Transportation Code 222.104-107**

**Sec. 222.104. PASS-THROUGH TOLLS.**

(a) In this section, "pass-through toll" means a per vehicle fee or a per vehicle mile fee that is determined by the number of vehicles using a highway.

(b) The department may enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system by the public or private entity.

(c) The department may enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or nontoll facility on the state highway system that is financed by the department.

(d) The department and a regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 may enter into an agreement that provides for:

(1) the payment of pass-through tolls to the authority or county as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway transferred to the authority or county after being converted to a toll facility that the department estimates it would have incurred if the highway had not been converted; or

(2) the payment by the authority or county of pass-through tolls to the department as reimbursement for all or a portion of the costs incurred by the department to design, develop, finance, construct, and maintain a state highway or a portion of a state highway transferred to the authority or county after being converted to a toll facility.

(d-1) Unless there is an insufficient number of approved proposals for projects to be developed under an agreement providing for the payment of pass-through tolls, in any state fiscal year that begins on or after September 1, 2007, the amount the department agrees to pay under agreements entered into under this section as reimbursement to a public or private entity for project costs may not be less than the yearly average of such amounts from the date of the creation by the commission of the pass-through toll program. This subsection expires September 1, 2009.

(e) The department may use any available funds for the purpose of making a pass-through toll payment under this section except funds derived from the issuance of bonds under Section 201.943.

(f) A regional mobility authority, a regional tollway authority, or a county acting under Chapter 284 is authorized to secure and pay its obligations under an agreement under this section from any lawfully available funds.

(g) The commission may adopt rules necessary to implement this section. Rules adopted under this subsection may include criteria for:

(1) determining the amount of pass-through tolls to be paid under this section; and

(2) allocating the risk that traffic volume will be higher or lower than the parties to an agreement under this section anticipated in entering the agreement.

Text of Subsec. (h) as added by Acts 2005, 79th Leg., Ch. 281, § 2.18

# Application Guidelines for Pass-Through Toll Financing of Highway Projects

(h) Money repaid to the department under this section shall be deposited to the credit of the fund from which the money was originally provided and is exempt from the application of Section 403.095, Government Code.

Text of Subsec. (h) as added by Acts 2005, 79th Leg., Ch. 994, § 1

(h) An agreement under this section should prescribe the roles and responsibilities of the parties and establish time frames for any department reviews or approvals in a manner that will, to the maximum extent possible, expedite the development of the project.

(i) To the maximum extent permitted by law, the department may delegate the full responsibility for design, bidding, and construction, including oversight and inspection, to a municipality, county, regional mobility authority, or regional tollway authority with which the department enters into an agreement under this section.

(j) An agreement under this section must provide that the municipality, county, regional mobility authority, or regional tollway authority is required to meet state design criteria, construction specifications, and contract administration procedures unless the department grants an exception.

(k) An agreement under this section must prescribe the roles and responsibilities of the parties and establish time frames for any department reviews or approvals in a manner that will, to the maximum extent possible, expedite the development of the project.

## Sec. 222.1045. CONTRACTS OF CERTAIN PUBLIC ENTITIES.

(a) In this section, "public entity" means a municipality, county, regional mobility authority, or regional tollway authority.

(b) A public entity may contract with a private entity to act as the public entity's agent in:

(1) the design, financing, maintenance, operation, or construction, including oversight and inspection, of a toll or nontoll facility under Section 222.104(b); or

(2) the maintenance of a state highway or a portion of a state highway subject to an agreement under Section 222.104(d)(1).

(c) A public entity shall:

(1) select a private entity under Subsection (b) on the basis of the private entity's qualifications and experience; and

(2) enter into a project development agreement with the private entity.

(d) A private entity selected shall comply with Chapter 1001, Occupations Code, and all laws related to procuring engineering services and construction bidding that are applicable to the public entity that selected the private entity.

(e) A public entity may assign the public entity's right to payment of pass-through tolls under Section 222.104(b) or (d)(1) to the private entity.

Added by Acts 2005, 79th Leg., Ch. 281, Sec. 2.19, eff. June 14, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 994, Sec. 2

For text of section as added by Acts 2005, 79th Leg., R.S., Ch. 281, Sec. 2.19, see other Sec. 222.1045.



**Sec. 222.1045. CONTRACTS OF CERTAIN PUBLIC ENTITIES.**

(a) In this section, "public entity" means a municipality, county, regional mobility authority, or a regional tollway authority.

(b) A public entity may contract with a private entity to act as the public entity's agent in:

(1) the design, financing, maintenance, operation, or construction, including oversight and inspection, of a toll or nontoll facility under Section 222.104(b); or

(2) the maintenance of a state highway or a portion of a state highway converted to a toll facility under Section 222.104(c).

(c) A public entity shall:

(1) select a private entity under Subsection (b) on the basis of the private entity's qualifications and experience; and

(2) enter into a project development agreement with the private entity.

(d) A private entity selected shall comply with Chapter 1001, Occupations Code, and all laws related to procuring engineering services and construction bidding that are applicable to the public entity that selected the private entity.

(e) A public entity may assign the public entity's right to payment of pass-through tolls under Section 222.104(b) or (c) to the private entity.

Added by Acts 2005, 79th Leg., Ch. 994, Sec. 2, eff. June 18, 2005.

**Sec. 222.105. PURPOSES.**

The purposes of Sections 222.106 and 222.107 are to:

(1) promote public safety;

(2) facilitate the development or redevelopment of property;

(3) facilitate the movement of traffic; and

(4) enhance a local entity's ability to sponsor a project authorized under Section 222.104.

**Sec. 222.106. MUNICIPAL TRANSPORTATION REINVESTMENT ZONES.**

(a) In this section:

(1) the amount of a municipality's tax increment for a year is the amount of ad valorem taxes levied and collected by the municipality for that year on the captured appraised value of real property taxable by the municipality and located in a transportation reinvestment zone under this section;

(2) the captured appraised value of real property taxable by a municipality for a year is the total appraised value of all real property taxable by the municipality and located in a transportation reinvestment zone for that year less the tax increment base of the municipality; and

(3) the tax increment base of a municipality is the total appraised value of all real property taxable by the municipality and located in a transportation reinvestment zone for the year in which the zone was designated under this section.

(b) This section applies only to a municipality the governing body of which intends to enter into an agreement with the department under Section 222.104.

(c) If the governing body determines an area to be unproductive and underdeveloped and that action under this section will further the purposes stated in Section 222.105, the governing body of the municipality by ordinance may designate a contiguous geographic area in the

## **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

## *Appendix A*

jurisdiction of the municipality to be a transportation reinvestment zone to promote a transportation project described by Section 222.104 that cultivates development or redevelopment of the area.

(d) The governing body must comply with all applicable laws in the application of this chapter.

(e) Not later than the 30th day before the date the governing body of the municipality proposes to adopt an ordinance designating an area as a transportation reinvestment zone under this section, the governing body must hold a public hearing on the designation of the zone and its benefits to the municipality and to property in the proposed zone. At the hearing an interested person may speak for or against the creation of the zone or its boundaries. Not later than the seventh day before the date of the hearing, notice of the hearing and the intent to create the zone must be published in a newspaper having general circulation in the municipality.

(f) Compliance with the requirements of this section constitutes designation of an area as a transportation reinvestment zone without further hearings or other procedural requirements.

(g) The ordinance designating an area as a transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect immediately on passage of the ordinance;

(3) assign a name to the zone for identification, with the first zone designated by a municipality designated as "Transportation Reinvestment Zone Number One, (City or Town, as applicable) of (name of municipality)," and subsequently designated zones assigned names in the same form, numbered consecutively in the order of their designation;

(4) establish an ad valorem tax increment account for the zone; and

(5) contain findings that promotion of the transportation project will cultivate development or redevelopment of the zone.

(h) From taxes collected on property in a zone, the municipality shall pay into the tax increment account for the zone an amount equal to the tax increment produced by the municipality.

(i) Money deposited to a tax increment account must be used to fund projects authorized under Section 222.104, including the repayment of amounts owed under an agreement entered into under that section.

(j) Except as provided by Subsection (k), a transportation reinvestment zone terminates on December 31 of the year in which the municipality complies with a contractual requirement, if any, that included the pledge of money deposited to a tax increment account or the repayment of money owed under the agreement under Section 222.104 in connection with which the zone was designated.

(k) A transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated, if before that date the municipality has not used the zone for the purpose for which it was designated.

(l) Any surplus remaining on termination of a zone may be used for transportation projects of the municipality in or outside of the zone.

### **Sec. 222.107. COUNTY TRANSPORTATION REINVESTMENT ZONES; TAX ABATEMENTS; ROAD UTILITY DISTRICTS.**

(a) In this section:

(1) the amount of a county's tax increment for a year is the amount of ad valorem taxes levied and collected by the county for that year on the captured appraised value of real property taxable by the county and located in a transportation reinvestment zone under this section;

(2) the captured appraised value of real property taxable by a county for a year is the total appraised value of all real property taxable by the county and located in a transportation reinvestment zone for that year less the tax increment base of the county; and

(3) the tax increment base of a county is the total appraised value of all real property taxable by the county and located in a transportation reinvestment zone for the year in which the zone was designated under this section.

(b) This section applies only to a county the commissioner's court of which intends to enter into a pass-through toll agreement with the department under Section 222.104.

(c) The commissioner's court of the county, after determining that an area is unproductive and underdeveloped and that action under this section would further the purposes described by Section 222.105, by order or resolution may designate a contiguous geographic area in the jurisdiction of the county to be a transportation reinvestment zone to promote a transportation project described by Section 222.104 that cultivates development or redevelopment of the area and for the purpose of abating ad valorem taxes imposed by the county on real property located in the zone.

(d) The commissioner's court must comply with all applicable laws in the application of this chapter.

(e) Not later than the 30th day before the date the commissioner's court proposes to designate an area as a transportation reinvestment zone under this section, the commissioner's court must hold a public hearing on the creation of the zone, its benefits to the county and to property in the proposed zone, and the abatement of ad valorem taxes imposed by the county on real property located in the zone. At the hearing an interested person may speak for or against the designation of the zone, its boundaries, or the abatement of county taxes on real property in the zone. Not later than the seventh day before the date of the hearing, notice of the hearing and the intent to create a zone must be published in a newspaper having general circulation in the county.

(f) The order or resolution designating an area as a transportation reinvestment zone must:

(1) describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone;

(2) provide that the zone takes effect immediately on adoption of the order or resolution; and

(3) assign a name to the zone for identification, with the first zone designated by a county designated as "Transportation Reinvestment Zone Number One, County of (name of county)," and subsequently designated zones assigned names in the same form numbered consecutively in the order of their designation.

(g) Compliance with the requirements of this section constitutes designation of an area as a transportation reinvestment zone without further hearings or other procedural requirements.

(h) The commissioner's court by order or resolution may enter into an agreement with the owner of any real property located in the transportation reinvestment zone to abate a portion of the ad valorem taxes imposed by the county on the owner's property. All abatements granted by the commissioner's court in a transportation reinvestment zone must be equal in rate. In the alternative, the commissioner's court by order or resolution may elect to abate a portion of the ad

## **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

## *Appendix A*

valorem taxes imposed by the county on all real property located in the zone. In any ad valorem tax year, the total amount of the taxes abated under this section may not exceed the amount calculated under Subsection (a)(1) for that year.

(i) To assist the county in developing a project authorized under Section 222.104, if authorized by the commission under Chapter 441, a road utility district may be formed under that chapter that has the same boundaries as a transportation reinvestment zone created under this section.

(j) In any ad valorem tax year, a road utility district formed as provided by Subsection (i) may impose taxes on property in the district at a rate that when applied to the property in the district would impose taxes in an amount equal to the amount of taxes abated by the commissioner's court of the county under Subsection (h). Notwithstanding Section 441.192(a), an election is not required to approve the imposition of the taxes.

(k) A road utility district formed as provided by Subsection (i) may enter into an agreement with the county to assume the obligation, if any, of the county to fund a project under Section 222.104 or to repay funds owed to the department under Section 222.104. Any amount paid for this purpose is considered to be an operating expense of the district. Any taxes collected by the district that are not paid for this purpose may be used for any district purpose.

(l) Except as provided by Subsection (m), a tax abatement agreement entered into under Subsection (h), or an order or resolution on the abatement of taxes under that subsection, terminates on December 31 of the year in which the county completes any contractual requirement that included the pledge of money collected under this section.

(m) A transportation reinvestment zone terminates on December 31 of the 10th year after the year the zone was designated, if before that date the county has not used the zone for the purpose for which it was designated.

**Appendix B  
Texas Administrative Code Sections 5.51 – 5.60**

**TITLE 43 TRANSPORTATION  
PART 1 TEXAS DEPARTMENT OF TRANSPORTATION  
CHAPTER 5 FINANCE  
SUBCHAPTER E PASS-THROUGH FARES AND TOLLS**

Rules

§5.51 Purpose

§5.52 Definitions

§5.53 Proposal

§5.54 Participation in the Program

§5.55 Commission Approval To Negotiate

§5.56 Proposals from Private Entities

§5.57 Final Approval

§5.58 Calculation of Pass-Through Fares and Tolls

§5.59 Project Development by Public or Private Entity

§5.60 Operation

**RULE §5.51 Purpose**

Transportation Code, §222.104(b) authorizes the Texas Department of Transportation to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. Transportation Code, §222.104(c) authorizes the department to enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. Transportation Code, §91.075(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger railway facility or a freight railway facility by the entity. This subchapter prescribes the policies and procedures governing the department's implementation of these statutory provisions.

**RULE §5.52 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Department estimate--An estimate of what it would cost the department to perform the work proposed by the public or private entity, whether the work is proposed to be performed by the department or whether it is proposed to be performed by the public or private entity. The estimate is developed or updated by the department after receipt of a public or private entity's request and prior to the time the department executes an agreement with the public or private entity.

(4) Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a project, including sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.

(5) Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.

(6) Highway--Includes any facility convenient or necessary to the operation of a highway.

(7) Operation--Includes maintenance.

(8) Pass-through agreement--A pass-through toll agreement or a pass-through agreement entered under the terms of this subchapter by the department and a public or private entity.

(9) Pass-through fare--A dollar amount, including a surcharge or user fee for freight shipments, that is tied to a measure of actual usage of a railway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of acquiring, designing, developing, financing, constructing, relocating, maintaining, or operating a passenger or freight railway.

(10) Pass-through toll--A dollar amount that is tied to a measure of actual usage of a highway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of designing, developing, financing, constructing, maintaining, or operating a highway on the state highway system.

(11) Public or private entity--Any entity authorized by law to enter into a pass-through agreement with the department under this subchapter for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a highway or railway.

(12) Railway--Includes both passenger and freight railways and any facility convenient or necessary to the operation of a railway.

### **RULE §5.53 Proposal**

(a) Proposal requirements. A public or private entity may submit in writing to the department a proposal for a project or a series of projects to be developed under a pass-through agreement. The proposal must include:

(1) a description of the project, including the project limits, connections with other transportation facilities, any services to be provided, and the geographic area affected;

(2) an application, on a form provided by the department, that includes all scope and estimate documentation forms and related attachments and any other materials and information required by the application;

(3) a statement of the benefits anticipated to result from completion of the project, including the economic development potential in the area, reduced congestion on the state highway system, enhanced safety, and improved air quality in the region;

## **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

## ***Appendix B***

(4) a description of and documentation evidencing the local public support for the project and any local public opposition;

(5) a proposed project development and implementation schedule, including an estimated date when the project will be open to traffic;

(6) a description of the entity's experience in developing highway projects, if the proposer is a public entity and if the proposal is for the development of a highway project by that entity;

(7) a description of the entity's experience in developing railway projects, if the proposer is a public entity and if the proposal is for the development of a railway project by that entity;

(8) complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, and the capability of the proposer to develop the proposed projects, if the proposer is a private entity and if the proposal is for the development of a project by that entity;

(9) financial information sufficient to show the financial strength and capability of the proposer to develop and complete the project, or to make all projected future payments if the proposal is for the development of a project by the department;

(10) the total amount and period of reimbursement requested and proposed pass-through payment schedule;

(11) the project funding sources and amounts by fiscal year proposed for each of the project cost categories including design, development, financing, construction, maintenance, and operation;

(12) the type of funding and other kinds of department contributions and participation requested for the project, other than reimbursement from the pass-through toll program;

(13) for a highway project, a statement indicating whether the proposer intends for the project to be tolled and, if the proposer intends for a tolled project to be first opened to traffic as a non-tolled highway, the approximate date on which the highway will begin to be tolled;

(14) a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity and if the proposal is for the development of a project by that entity;

(15) a statement indicating whether the entity has or intends to designate a contiguous geographic area in the jurisdiction of the entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E, if the proposer is a public entity;

(16) a statement indicating whether the project is intended to function as part of a hurricane evacuation route; and

(17) a statement indicating whether the project has application to a military base realignment or closure.

(b) Public release of proposal. If requested, and unless prohibited by law, the department will release to the public a proposal submitted under this section.

(c) Certain contracting requirements. The private entity and the department may agree to develop a project under a comprehensive development agreement if authorized by other law. For a highway project that is developed by the proposer, notwithstanding any other provision of this subchapter, Chapter 27, Subchapter A, of this title (relating to Comprehensive Development Agreements), applies to the solicitation, advertisement, negotiation, and execution of a comprehensive development agreement. For a railway project that is developed by the proposer, notwithstanding any other provision of this subchapter, Chapter 7, Subchapter B, of this title

## **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

(relating to Contracts) applies to the solicitation, advertisement negotiation, and execution of a comprehensive development agreement.

### **RULE §5.54 Participation in the Program.**

(a) If the commission determines that funds available for use in the pass-through toll program are limited, or other circumstances exist that may impair the ability of entities to equally participate in the program, the commission may periodically limit the periods of time during which the department will accept proposals for projects to be developed and, for each specific period, prescribe conditions for submission and the costs that may be reimbursed under a pass-through agreement.

(b) Upon the commission's designation of a specific period for acceptance of proposals and determination of the applicable conditions, the department will publish a notice in the *Texas Register* soliciting proposals for projects to be developed under a pass-through agreement under this subchapter. The notice will specify:

- (1) the deadline for submitting proposals under the notice;
- (2) the estimated amount of funds available in the pass-through toll program that can be allocated to proposals submitted under the notice;
- (3) whether submissions will be accepted from only public entities or from both public and private entities;
- (4) whether submissions will be accepted for only highway projects, only railway projects, or for both highway and railway projects;
- (5) the categories of project costs, as described by §5.53(a)(11) of this subchapter, that will be considered as eligible for reimbursement; and
- (6) any other condition deemed appropriate by the commission.

(c) A proposal submitted in response to a notice must contain the information required by §5.53 of this subchapter.

(d) The department will evaluate the submitted proposals using the items of consideration set forth in §5.55 of this subchapter and present its analyses to the commission.

### **RULE §5.55 Commission Approval To Negotiate**

The commission may authorize the executive director to negotiate the financial terms of a potential pass-through agreement under this subchapter or, if the proposer is a private entity, authorize the department to solicit competitive proposals under §5.56 of this subchapter, after considering:

- (1) the proposer's proposed financial contribution to the project from sources other than the department, in relation to total project cost;
- (2) the geographic area affected;
- (3) local public support for the project;
- (4) for a highway project, whether the project is in the department's Unified Transportation Program;
- (5) the extent to which the project will relieve congestion on the state highway system;
- (6) the potential safety benefit that may be derived from the project;
- (7) potential benefits to regional air quality that may be derived from the project;
- (8) the compatibility of the proposed project with existing and planned transportation facilities;
- (9) the extent to which the project will close gaps in the state transportation system;



(10) whether the entity has or intends to designate a contiguous geographic area in the jurisdiction of the entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E, if the proposer is a public entity;

(11) the proposer's proposed amount and period for department reimbursement and proposed pass-through payment schedule;

(12) the economic development potential in the area;

(13) the financial strength of the proposing entity;

(14) whether the project is part of a hurricane evacuation route;

(15) whether the project has application to a military base realignment or closure;

(16) the experience of the proposer in developing similar transportation projects; and

(17) the relationship of the proposed project to stated commission goals.

**RULE §5.56 Proposals from Private Entities**

(a) If the commission approves the further evaluation of a proposal of a private entity under §5.55 of this subchapter, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals.

(b) The department will publish a notice in the Texas Register and in one or more newspapers of general circulation. The notice will state that the department has received a proposal under this subchapter, that it intends to evaluate the proposal, that it may negotiate a pass-through agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals that the department receives in accordance with this subchapter within 45 days of the initial publication of the notice in the Texas Register, or such additional time as authorized by the commission. In determining whether to authorize additional time for submission of competing proposals, the commission will consider the complexity of the proposal.

(c) The notice will summarize the proposed project and identify its proposed location. The notice will also specify the general criteria that will be used to evaluate all proposals. Specific evaluation criteria will be set forth in the request for proposals. The criteria will include:

(1) the factors listed in §5.55 of this subchapter, to the extent applicable;

(2) the proposer's qualifications, technical competence, and financial capability;

(3) an analysis of the proposer's project implementation schedule; and

(4) any other factor deemed appropriate by the department.

(d) A proposal submitted in response to a notice must contain the information required by §5.53 of this subchapter.

(e) The original proposer may submit a revised proposal in response to a notice.

(f) Upon expiration of the 45-day period, or such additional time as authorized by the commission, the department will evaluate the proposal of the original proposer and any properly submitted competing proposals, utilizing the evaluation criteria set forth in the request for proposals.

(g) The department will rank all proposals after the evaluation described in subsection (f) of this section, and may select the private entity whose proposal provides the best value to the department. The executive director will direct the department's attempt to negotiate a pass-through agreement with that proposer.

(h) If an agreement satisfactory to the executive director cannot be negotiated with the proposer, the department will formally end negotiations with that proposer. The department may

reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party.

**RULE §5.57 Final Approval**

(a) Authorization to negotiate final agreement. The executive director will submit to the commission a summary of the final financial terms of a proposed pass-through agreement. The final financial terms may consist of specific payment terms and schedules or may consist of a range of acceptable parameters. The commission may authorize the executive director to negotiate and execute a final agreement only if it finds that:

- (1) the project serves the public interest and not merely a private interest;
- (2) the proposed pass-through agreement is in the best interest of the state;
- (3) the project is compatible with existing and planned transportation facilities; and
- (4) the project furthers state, regional, and local transportation plans, programs, policies, and goals.

(b) Contents of pass-through agreement. Before any work is done for which reimbursement will be requested through a pass-through toll or fare, the department and the public or private entity shall execute a pass-through agreement containing, at a minimum, the following:

- (1) identification of the scope and nature of the work to be performed;
- (2) identification of the one or more categories of project costs, as described by §5.53(a)(11) of this subchapter, that the department will reimburse;
- (3) all financial terms, as applicable, including the levels of pass-through tolls or fares, maximum and minimum periodic payments, and maximum and minimum total payments;
- (4) allocation of responsibility for all significant work to be performed, including environmental documentation, right of way acquisition, utility adjustments, engineering, construction, and maintenance;
- (5) provision for the collection and use of toll or other revenues, if applicable;
- (6) all provisions required by state or federal law;
- (7) a map showing the location of the project;
- (8) a proposed project schedule;
- (9) an estimated budget;
- (10) deadlines for key stages of project development;
- (11) procedures and timelines for the submission of materials and for approvals;
- (12) for a local government, a copy of the resolution or ordinance authorizing execution of the agreement;
- (13) provisions for termination of the agreement; and
- (14) if applicable, a copy of the order, resolution, or ordinance designating a contiguous geographic area in the jurisdiction of a public entity as a transportation reinvestment zone under Transportation Code, Chapter 222, Subchapter E.

**RULE §5.58 Calculation of Pass-Through Fares and Tolls**

(a) Pass-through fares.

- (1) Amount to be reimbursed.

(A) General. The commission shall establish the level of pass-through fares or shall establish parameters within which the department may negotiate the level of pass-through fares.

# Application Guidelines for Pass-Through Toll Financing of Highway Projects

## Appendix B

In establishing the level of pass-through fares or parameters within which the department may negotiate the level of pass-through fares, the commission shall consider whether:

- (i) the project's estimated benefits to mobility warrant a pass-through fare at a level that is more or less than the department's estimate of project costs;
- (ii) the project will result in a significant economic gain or loss to the entity responsible for its development;
- (iii) the public or private entity proposes to share in the cost of the project; and
- (iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

### (B) Limits on pass-through fare levels.

(i) The commission will not approve payment by the department of a level of pass-through fares that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through fares that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through fares, the commission will not consider any financing cost incurred by the public or private entity.

### (2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through fare payments will be calculated based on the department's traffic projections for the railway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum periodic amount to be paid annually or in total.

(B) Variable payments. The pass-through fare may vary on any basis that reasonably reflects the value of improvements, the nature of the railway traffic, or benefits to the highway system, including:

- (i) number, type, and class of passengers;
- (ii) type of freight;
- (iii) tonnage of freight;
- (iv) number or type of cars;
- (v) mileage traveled; or
- (vi) characteristics of track.

### (3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns. Pass-through fare payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through fare will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if

# **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

## *Appendix B*

required, payments shall continue until the total of all payments equals the total pass-through fare amount specified by the commission in approving the pass-through fare.

(b) Pass-through tolls.

(1) Level of pass-through tolls.

(A) General. The commission shall establish the level of pass-through tolls or shall establish parameters within which the department may negotiate the level of pass-through tolls. In establishing the level of pass-through tolls or parameters within which the department may negotiate the level of pass-through tolls, the commission shall consider whether:

(i) the project's estimated benefits to mobility warrant a pass-through toll at a level that is more or less than the department's estimate of project costs;

(ii) the project will result in a significant economic gain or loss to the entity responsible for its development;

(iii) the public or private entity proposes to share in the cost of the project; and

(iv) the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through toll levels.

(i) The commission will not approve payment by the department of a level of pass-through tolls that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through tolls that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

(ii) In determining the level of pass-through tolls, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum annual amount to be paid periodically or in total.

(B) Variable payments. The pass-through toll may vary on any basis that reasonably reflects the value of improvements, the nature of the highway, or benefits to other aspects of the highway system, including:

(i) the number of vehicles using the highway;

(ii) the number of vehicle-miles traveled on the highway;

(iii) the condition of the highway; and

(iv) whether the highway is tolled.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns.

(i) Projects developed by the public or private entity. If the project is being developed by the public or private entity, the pass-through toll payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(ii) Projects developed by the department. If the project is being developed by the department, the pass-through agreement shall provide that the pass-through toll or the maximum amount payable, or both, shall be adjusted to reflect the department's actual costs unless the commission specifically directs that the department shall bear the risk of cost overruns or underruns.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through toll will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through toll amount specified by the commission in approving the pass-through toll.

**RULE §5.59 Project Development by Public or Private Entity**

(a) Social and environmental impact.

(1) General. A public or private entity that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department approval. The department must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. A public or private entity may request written approval to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity shall comply with the latest version of the department's manuals.

(i) Highway projects. Each highway project shall, at a minimum, comply with the:

- (I) Roadway Design Manual;
- (II) Pavement Design Manual;
- (III) Hydraulic Design Manual;
- (IV) Texas Manual on Uniform Traffic Control Devices;
- (V) Bridge Design Manual;
- (VI) Texas Accessibility Standards;
- (VII) 16 TAC Chapter 68 relating to Elimination of Architectural Barriers;

and

- (VIII) Americans with Disabilities Act Accessibility Guidelines.

(ii) Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. A public or private entity may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access to a highway project.

(A) Access management. Access to a highway shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete or as otherwise provided in a pass-through agreement, the public or private entity shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway construction specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the public and the railway system.

(7) Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity shall send the following information to the department for review and approval in accordance with the procedures and timelines established in the contract described in §5.57(b) of this subchapter:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity is responsible for:

(i) overseeing all construction operations, including the oversight and follow through with all EPIC;

(ii) assessing contract revisions for potential environmental impacts; and

(iii) obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) Contract revisions. All revisions to any construction contract entered into under a pass-through agreement under this subchapter shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the department for approval prior to beginning the revised construction work. Procedures governing the department's approval, including time limits for department review, shall be included in the agreement described in §5.57(b) of this subchapter.

(10) As-built plans. Within six months after final completion of the construction project, the public or private entity shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) Document and information exchange. The public or private entity agrees to deliver to the department all materials used in the development of the project including aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, contract provision requirements, and all information necessary for the department to update legacy data systems.

(12) State and federal law. The public or private entity shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(d) Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

(f) Bond financing.

(1) Department review. If any public or private entity responsible for financing a portion of a project to be developed under a pass-through agreement intends to sell bonds and use pass-through toll or fare payments from the department as evidence of financial capability to repay the bonds, the entity shall provide the department an opportunity to review and comment on bond offering documents prior to sale of the bonds.

(2) Pass-through agreement. The pass-through agreement must provide that:

(A) the department will have at least five business days after the date on which it receives all of the bond offering documents to review those documents;



## **Application Guidelines for Pass-Through Toll Financing of Highway Projects**

## ***Appendix B***

(B) the public or private entity must obtain department pre-approval of any provision in the bond offering documents that describes the pass-through agreement, the department's obligations under the agreement, the interrelationship of the department, commission, and state highway fund, and the department's obligation to provide bond investors with updated information on the status of the state highway fund.

(3) Business day. For purposes of this subsection, "business day" excludes Saturday, Sunday, a federal holiday, the Friday after Thanksgiving, and December 24 and 26.

### **RULE §5.60 Operation**

(a) Agreement. A pass-through agreement may provide for a public or private entity to operate a highway or a railway.

(b) Responsibility. To the extent provided in the agreement, a public or private entity shall perform or cause to be performed all work required to operate the highway or railway. This work includes all maintenance and repair required to ensure that the highway or railway functions as intended and meets the performance standards established for maintenance under subsection (c) of this section.

(c) Maintenance of highways. In performing work under this section on a highway, the public or private entity shall meet or exceed the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways as established by the commission in its implementation of Government Accounting Standards Board Statement No. 34. If the highway will be tolled, the public or private entity shall meet or exceed the minimum rating requirements for interstate highways.

(d) Maintenance of railways. In performing work under this section on a railway, the public or private entity shall meet all standards for safety and maintenance established by the Federal Railroad Administration and the National Transportation Safety Board, including all standards published in 49 CFR Subtitle B, Chapters II and VIII.

(e) Alternative standards. A public or private entity may request approval to use alternative maintenance standards. The executive director may approve the use of alternative maintenance standards if the director determines that the alternative standards are sufficient to protect the safety of the public and to protect the integrity of the transportation system.

**Pass-Through Toll Financing Project Proposal**

**SECTION I—Applicant Information**

Applicant Name:	_____	Classification:	Public ( )	Private ( )
Primary Contact:	_____	Contact's Title:	_____	
Street Address:	_____	Phone No.:	_____	
City, State, Zip:	_____	Fax Number:	_____	
Project Description:	_____	Email address:	_____	

**SECTION II—Required Financial Information**

The following six items must be included in the proposal:

- Financial information sufficient to show the financial strength and capability of the proposer to develop and complete the project or to make all projected future payments if the proposal is for the development of a project by the department.
- The projected funding sources and amounts by fiscal year proposed for each of the project cost categories including as applicable design, development, financing, construction, maintenance, and operation (see Appendix D).
- Total amount and period of reimbursement requested and proposed pass-through payment schedule (see Appendix D).
- The type of funding and other kinds of department contributions and participation requested for the project, other than reimbursement from the pass-through toll program.
- A statement indicating the applicant's intention to toll or not to toll the project and, if tolled, the approximate date the highway will begin to be tolled.
- A statement indicating whether the applicant has or intends to designate a transportation reinvestment zone (TRZ) under Texas Transportation Code §§222.105-222.107. If applicable, provide information regarding the location and limits for the zone, and how the TRZ will be used to finance the proposed project.

**SECTION III—Required Project Information**

The following six items must be included in the proposal:

- Specific project limits and project length(s) including, if applicable, connections to other transportation facilities, (include CSJ numbers, if available and obtainable from District Office,) and a project location map.
- Existing (if applicable) and proposed typical roadway cross sections.
- Existing and projected (at new facility opening and at the end of the reimbursement period) traffic volumes (average daily traffic – ADT).
- Total estimated project cost including breakouts for preliminary engineering, environmental mitigation (if applicable), ROW, utility adjusts./relocate., construction, construction engineering, maintenance (if applicable), operations (if applicable), contingencies, indirect costs and other project related costs (see Appendix D).
- Proposed project development and implementation schedule including estimated date when total project will be open to traffic.
- Names, addresses, telephone numbers, facsimile numbers and email addresses for any additional contacts.

**SECTION IV—Acknowledgment and Certification**

I certify that:

I have the authority to submit the proposal for pass-through toll financing described in this application. To the best of my knowledge, all information contained in this application is valid and accurate and the governing body of the undersigned jurisdiction has authorized the submission of this application.

<i>Signature of highest official</i>	<i>Date</i>
<i>Printed Name</i>	<i>Title, Jurisdiction</i>

\*\*\*\*\*

**Note: The following worksheets are intended to be used as a guide in developing the proposal.**

\*\*\*\*\*

**Pass-Through Toll Financing Project  
Scope and Estimate Documentation Form  
(Suggested Worksheet)**

Date \_\_\_\_\_ Applicant Name: \_\_\_\_\_  
Primary Contact: \_\_\_\_\_  
E-mail address: \_\_\_\_\_

District \_\_\_\_\_ CSJ (if any) \_\_\_\_\_  
County \_\_\_\_\_ UTP Authority (if any) \_\_\_\_\_  
(PLAN, DEVELOP or CONSTRUCT)

Highway: \_\_\_\_\_

Limits:

From \_\_\_\_\_

To \_\_\_\_\_

Project Length: \_\_\_\_\_ miles

Corridor Section Length: \_\_\_\_\_ miles

(This length is defined as the project corridor length from NHS to NHS route)

Project Scope: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tentative Letting Date: \_\_\_\_\_

Estimated duration of construction: \_\_\_\_\_ (working days) \*

(\* A working day is defined as a calendar day.)

**Advanced Project Development Elements**

A. Schematic development

1. Schematic status

a. Percent complete \_\_\_\_\_ %

b. Approval authority:  FHWA  TxDOT-DES  TxDOT-District

B. Environmental Commitments & Issues

1. Anticipated type of environmental document required  CE  EA  EIS

2. Has environmental document been approved?  yes  no

Status \_\_\_\_\_

3. Office responsible for preparing environmental document \_\_\_\_\_

\*\*\*\*\*

**Note: The following worksheets are intended to be used as a guide in developing the proposal.**

\*\*\*\*\*

**Pass-Through Toll Financing Project  
Scope and Estimate Documentation Form  
(Suggested Worksheet)**

C. Potential Environmental Impacts

- 1. Historical/Archeological sites \_\_\_\_\_
- 2. Disruption of Schools/Neighborhoods \_\_\_\_\_
- 3. Agricultural or Recreational Lands \_\_\_\_\_
- 4. Air/Water Quality \_\_\_\_\_
- 5. Potential hazardous material sites \_\_\_\_\_
- 6. Wetlands, Streams, Lakes, Floodplains \_\_\_\_\_
- 7. Social, economic, environmental justice \_\_\_\_\_
- 8. Endangered Species \_\_\_\_\_
- 9. Located within a Coastal Zone \_\_\_\_\_
- 10. Adverse effects of noise \_\_\_\_\_

**Proposed Right Of Way & Utility Elements**

A. Right of way elements

- 1. Proposed Usual ROW width \_\_\_\_\_
- 2. Is additional ROW required?     yes     no

B. Major utility facilities - Preliminary utility inventory

Utility	Type	Crossing or Parallel?	Describe potential conflict

\*\*\*\*\*

**Note: The following worksheets are intended to be used as a guide in developing the proposal.**

\*\*\*\*\*

**Pass-Through Toll Financing Project  
Scope and Estimate Documentation Form  
(Suggested Worksheet)**

**Proposed Roadway Design Elements**

A. Functional classification:

- Freeway     Arterial     Major collector     Minor collector     Local

B. Highway type:

- Urban     Suburban     Rural  
 Freeway     Frontage road     Multilane road     Two-lane road

C. Proposed Scope:

- Mobility Corridor (5R)     4R/new construction     3R     2R

D. Terrain:  Level     Rolling

E. Traffic

Roadway	Existing ADT	% Trucks	ADT (letting year)	ADT (opening year)	ADT (end of reimb. period)

Data Source: \_\_\_\_\_

F. Design criteria

1. Posted Speed: \_\_\_\_\_ Design Speed: \_\_\_\_\_  
 2. Grades: Minimum \_\_\_\_\_ Maximum \_\_\_\_\_

G. Are design exceptions/waivers anticipated?  yes     no

If yes, what design elements? \_\_\_\_\_

H. Pavement Design

- a. Proposed pavement type:  Rigid     Flexible

**Proposed Hydraulic Elements**

A. Is the design of any special drainage facility required?  yes     no

If yes, explain \_\_\_\_\_

\*\*\*\*\*

**Note: The following worksheets are intended to be used as a guide in developing the proposal.**

\*\*\*\*\*

**Pass-Through Toll Financing Project  
Scope and Estimate Documentation Form  
(Suggested Worksheet)**

B. Are any of the communities (county/city/town) participating in the National Flood Insurance Program (NFIP)?  yes  no

If yes, have the appropriate Flood Plain Administrators (FPA) been notified?  yes  no  
Names / Communities)

C. Is there any existing development in the floodplain, or adjacent to the ROW but not in the floodplain, that may be impacted at any stage by changes (no matter how small) brought about by the project?

yes  no

**Proposed Traffic Operations Elements**

A. Is signalization proposed?  yes  no  
If yes, are traffic signals warranted?  yes  no  
At which intersections are signals proposed? \_\_\_\_\_

B. Is safety lighting proposed?  yes  no  
If yes, where? \_\_\_\_\_

C. Is continuous lighting proposed?  yes  no  
If yes, where? \_\_\_\_\_

D. Are Intelligent Transportation System (ITS) items proposed?  yes  no

**Proposed Miscellaneous Elements**

A. Geotechnical exploration  
Is geotechnical exploration needed for any of the following (mark all that apply)?  
 Roadway  Bridge  Retaining/Noise wall  Storm Drain  Other

B. Will all requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), Texas Accessibility Standards (TAS) and related rules be met?  
 yes  no

C. Are railroad agreements needed?  yes  no If yes, where? \_\_\_\_\_

D. Are airway/highway clearance permits required?  yes  no

\*\*\*\*\*

**Note: The following worksheets are intended to be used as a guide in developing the proposal.**

\*\*\*\*\*

**Pass-Through Toll Financing Project  
Scope and Estimate Documentation Form  
(Suggested Worksheet)**

**Attachments to be provided by the applicant:**

1. Project location map (drawn to scale) showing proposed alignments and approximate locations for the following items:
  - a. Roadway layout \*\*
  - b. Potential environmental issues (e.g. natural habitat, wetlands, cemeteries, historic features, contaminated sites)
  - c. Railroad crossings
2. Existing and Proposed Typical Sections for roadways and bridges including the following items at a minimum:
  - a. Lane, shoulder, median and speed change lane widths
  - b. Cross slopes, side slopes, horizontal clearance and ROW limits
  - c. Provisions for pedestrians, bicyclists and parking ( if applicable)
  - d. Pavement layer thickness and composition (e.g. sub base, base, surface course)
3. Typical sections for major phases of construction traffic control.
4. Detailed cost estimate or basis for the cost estimate provided
5. If project is proposed as a toll facility, provide the following:
  - a. Description and/or layout of the segments to be tolled, and those that will not be tolled,
  - b. Estimated revenue to be collected from tolled segments during the first ten years of operation, and
  - c. Breakdown of estimated costs for tolled and non-tolled segments.

\*\* NOTE: For new location roadway facilities, please provide a location map highlighting the county, project limits (beginning and ending parameters), rural or urban functional classification and highway designation of the existing route that is being replaced by this new facility.

# Application Guidelines for Pass-Through Toll Financing of Highway Projects

## Appendix D

### TOTAL PROJECT COST AND PROJECTED FUNDING SUMMARY

<b>Highway</b> US 12	<b>Control-Section-Job No.(s)</b> 1111-22-333, 4444-55-666, 7777-88-999
<b>Limits</b> From: To:	<b>Project Length:</b>

	Prelim. Eng.	Environ. Mitiga. (if applicable)	Right of Way	Utility Adj./ Relocate	Const. Cost *	Const. Eng.	Maint. (if applicable)	Operations (if applicable)	Conting.	Indirect Costs	Other Costs	TOTAL COST	Amount of Funding Provided: (in millions)			
													City	County	Private	Other
FY XXXX												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
FY												\$0.000				
<b>TOTAL PROJECT COST (in millions)</b>	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	\$0.000	<b>\$0.000</b>	\$0.000	\$0.000	\$0.000	\$0.000

If more than one project, include a separate sheet for each project, as well as a summary sheet of all projects.

\* A separate sheet(s) should be prepared to show a further breakdown of the construction costs.



**Application Guidelines for Pass-Through  
Toll Financing of Highway Projects**

*Appendix D*

**PROPOSED REIMBURSEMENT SCHEDULE SUMMARY (Subject to Negotiation)**

<b>Highway</b>	US 12								
<b>Limits Control-Section-Job No.(s)</b>	From:	To:	Project Length:						
	1111-22-333, 4444-55-666, 7777-88-9999								
		<b>Est. ADT</b>	<b>Est. Annual Traffic</b>	<b>Annual Vehicle Miles</b>	<b>Proposed Rate</b>	<b>Est. Annual Reimbursement</b>	<b>Suggested Maximum Reimbursement</b>	<b>Suggested Minimum Reimbursement</b>	
FY XXXX *	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
FY	\$0.000								
<b>TOTAL REIMBURSEMENT AMOUNT</b>	<b>\$0.000</b>								

If more than one project, a separate sheet should be prepared for each project and a summary sheet of the total reimbursement schedule included.

\* FY XXXX = Opening Year - Increment by years until project is paid off.

Estimated ADT by fiscal year must be provided by TxDOT or TxDOT must agree to the methodology and estimated traffic volumes furnished.

Estimated annual traffic is equal to 365 days (or portion of year in days open to traffic) multiplied by the estimated ADT.

Annual vehicle miles are equal to the estimated annual traffic multiplied by project mileage.

Proposed rate is the entity's proposed reimbursement rate per mile subject to negotiation (ex., \$0.10 per mile).

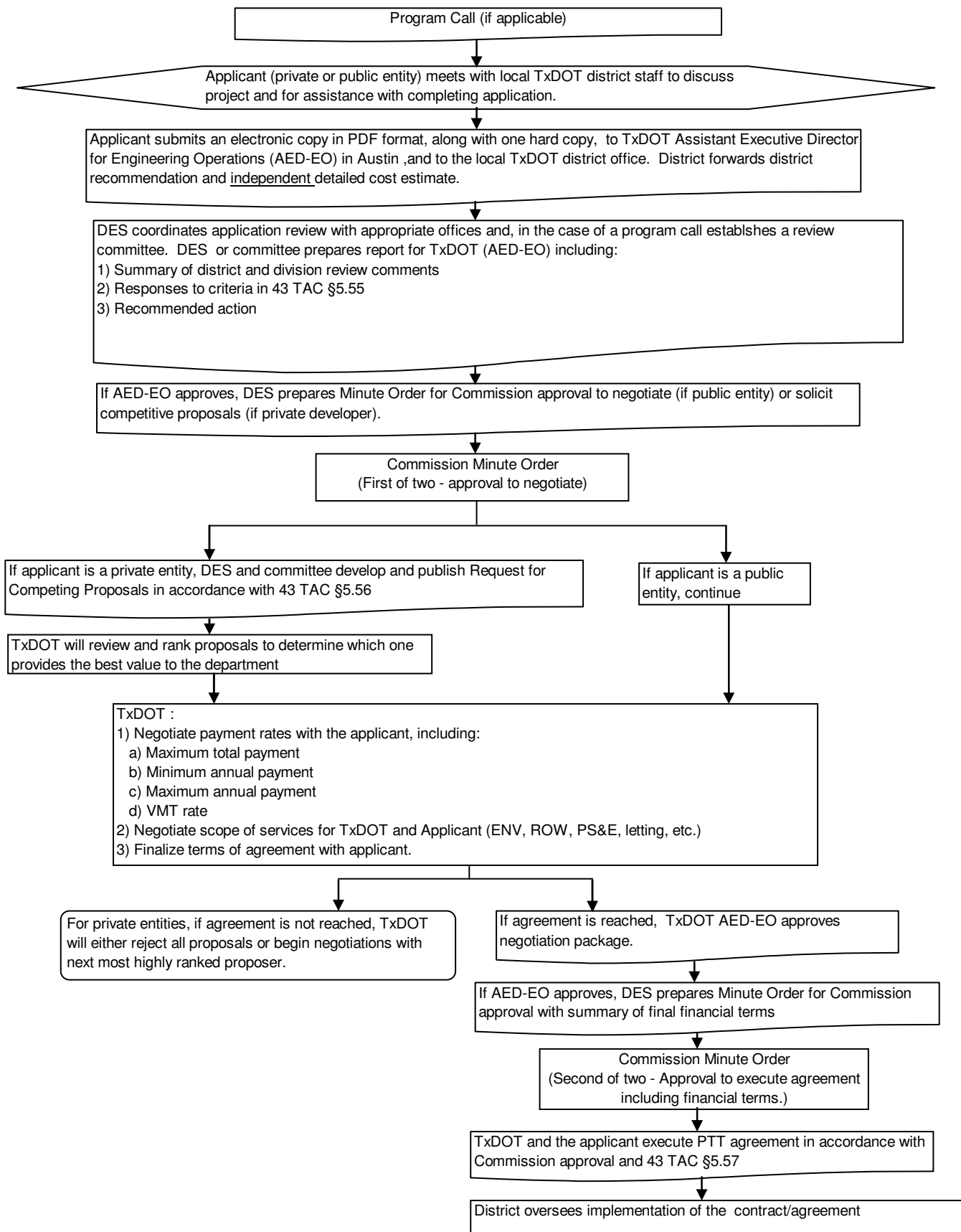
Estimated annual reimbursement equals the annual vehicle miles multiplied by the proposed reimbursement rate.

Suggested maximum reimbursement is the proposed maximum reimbursement for the fiscal year.

Suggested minimum reimbursement is the proposed minimum reimbursement for the fiscal year.



# Application Guidelines for Pass-Through Toll Financing of Highway Projects



## **Contact Information**

For additional information, please see our web-site at [www.txdot.gov](http://www.txdot.gov).

Still have questions? Please call:

Roger Beall, P.E.  
Texas Turnpike Authority Division  
(512) 904-1636

Dorn Smith  
Debt Management Section  
Finance Division  
(512) 486-5595