

By: Alvarado, Blanco

S.B. No. 1984

A BILL TO BE ENTITLED

AN ACT

relating to public-private partnerships for public and private facilities and infrastructure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Public-Private Partnership Act.

SECTION 2. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2267A to read as follows:

CHAPTER 2267A. PUBLIC-PRIVATE PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267A.001. DEFINITIONS. In this chapter:

(1) "Definitive agreement" means a public-private partnership agreement between a private entity and a governmental entity that is executed in accordance with this chapter. The term includes a development agreement, master lease, ground lease, concession agreement, performance-based contract, and master services agreement.

(2) "Governmental entity" means a governmental entity to which this chapter applies under Section 2267A.002(a).

(3) "Interim agreement" means a provisional public-private partnership agreement between a private entity and a governmental entity that is executed in accordance with this chapter.

(4) "Private entity" means an individual,

1 corporation, general partnership, limited liability company,
2 limited partnership, joint venture, business trust, public benefit
3 corporation, nonprofit entity, or other nongovernmental entity
4 that is authorized to conduct business in this state.

5 (5) "Public-private partnership" means a
6 collaboration between a private entity and a governmental entity to
7 plan, design, finance, acquire, construct, operate, or maintain a
8 qualifying project authorized under this chapter.

9 (6) "Qualifying project" means a project described by
10 Section 2267A.003.

11 Sec. 2267A.002. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a)
12 Except as provided by Subsection (b), this chapter applies to:

13 (1) a state agency as defined by Section 2151.002;

14 (2) a local government or political subdivision of
15 this state, including:

16 (A) a county;

17 (B) a municipality;

18 (C) a public school district;

19 (D) a local government corporation;

20 (E) a public facilities corporation; and

21 (F) a special district or authority, including:

22 (i) a hospital district;

23 (ii) a defense base development authority
24 established under Chapter 379B, Local Government Code;

25 (iii) a conservation and reclamation
26 district; and

27 (iv) a river authority or another type of

1 water district;

2 (3) a public junior college as defined by Section
3 61.003, Education Code;

4 (4) a board of trustees for a port improvement or
5 facility that is governed by Chapter 54, Transportation Code; or

6 (5) another state or local governmental entity
7 authorized by state law to undertake a qualifying project.

8 (b) This chapter does not apply to:

9 (1) the Texas Department of Transportation regarding
10 a contract executed by the department or a project funded with money
11 from the state highway fund; or

12 (2) a regional tollway authority organized under
13 Chapter 366, Transportation Code.

14 Sec. 2267A.003. QUALIFYING PROJECTS. A governmental entity
15 may enter into a public-private partnership under this chapter to
16 accomplish:

17 (1) a public work, public improvement, or other
18 project or facility, with its related equipment and appurtenances,
19 that serves a public purpose of the governmental entity, regardless
20 of its public ownership, including:

21 (A) a public utility and related infrastructure,
22 including a road, bridge, multimodal transportation project,
23 right-of-way improvement, water and wastewater utility, stormwater
24 and flood management infrastructure, street lighting, and electric
25 and autonomous vehicle infrastructure;

26 (B) smart technology infrastructure and a
27 broadband or telecommunications facility;

1 (C) an electric transmission and generation
2 utility;

3 (D) a facility for commerce or other critical
4 infrastructure, including a ferry or mass transit facility and
5 related equipment, vehicle parking facility, airport or seaport
6 facility, rail facility and related equipment, fuel supply
7 facility, and oil or gas pipeline;

8 (E) civic infrastructure and related public
9 facilities, including a courthouse, justice facility,
10 administrative facility, workforce or affordable housing, first or
11 emergency response facility and related equipment, hospital,
12 nursing facility, civic center, park, public venue, recreational
13 facility, cultural facility, educational facility, public health
14 facility, laboratory, and research facility; and

15 (F) social infrastructure and a public facility
16 for entertainment, economic development, or promotion of the
17 hospitality and tourism industry, including an auditorium,
18 coliseum, stadium, theater, amphitheater, museum, conference and
19 convention facility, and convention center hotel; or

20 (2) a project or improvement, regardless of its public
21 ownership, that the governmental entity determines:

22 (A) promotes state or local economic development
23 or stimulates business and commercial activity within the
24 governmental entity's jurisdiction; or

25 (B) benefits the public through the use of public
26 property and other resources to generate income for the
27 governmental entity.

1 Sec. 2267A.004. DELIVERY METHODS FOR QUALIFYING PROJECTS.

2 A governmental entity may use any of the following methods for
3 delivery of a qualifying project through a public-private
4 partnership under this chapter:

5 (1) the design-build-finance-maintain method to
6 design, construct, finance, and maintain a qualifying project over
7 a contractually defined period;

8 (2) the design-build-operate method to design,
9 construct, and operate a qualifying project over a contractually
10 defined period;

11 (3) the design-build-finance-operate-maintain method
12 to design, construct, finance, operate, and maintain a qualifying
13 project over a contractually defined period; or

14 (4) the design-build-finance-transfer method to
15 design, construct, finance, and deliver a qualifying project.

16 Sec. 2267A.005. LOCATION OF QUALIFYING PROJECT. (a) A
17 political subdivision may not undertake a qualifying project at a
18 location outside of its boundaries or the limits of its
19 jurisdiction, except as provided by an interlocal agreement with
20 another governmental entity where the qualifying project will be
21 located.

22 (b) A local government corporation, public facilities
23 corporation, or other specially created corporation or district may
24 not undertake a qualifying project at a location outside of the
25 boundaries or the limits of the jurisdiction of its sponsoring
26 political subdivision, except as provided by an interlocal
27 agreement with another governmental entity where the qualifying

1 project will be located.

2 Sec. 2267A.006. CONFLICTS OF INTEREST. An employee of a
3 governmental entity or a person related to the employee within the
4 second degree by consanguinity or affinity, as determined under
5 Chapter 573, may not accept money, a financial benefit, or other
6 consideration from a private entity that has executed an interim
7 agreement or definitive agreement with the governmental entity
8 under this chapter.

9 Sec. 2267A.007. PARKLAND. This chapter may not be
10 construed as superseding any requirement or limitation relating to
11 the conversion or repurposing of public parkland as provided by the
12 Natural Resources Code.

13 Sec. 2267A.008. APPLICABILITY OF EMINENT DOMAIN LAW. This
14 chapter may not be construed to alter the eminent domain laws of
15 this state or grant the power of eminent domain to a person who is
16 not expressly granted that power under other state law.

17 SUBCHAPTER B. PUBLIC-PRIVATE PARTNERSHIPS

18 Sec. 2267A.051. PUBLIC-PRIVATE PARTNERSHIPS. (a) A
19 governmental entity may enter into a public-private partnership
20 under this chapter to plan, develop, redevelop, design, construct,
21 equip, finance, use, operate, or maintain a qualifying project
22 using a delivery method authorized under Section 2267A.004.

23 (b) A public-private partnership entered into under this
24 chapter must be evidenced by a definitive agreement.

25 (c) A governmental entity does not violate this chapter by
26 soliciting, procuring, or contracting for a project by another
27 means authorized under state law.

1 Sec. 2267A.052. COOPERATION BETWEEN GOVERNMENTAL ENTITIES.

2 Two or more governmental entities may enter into an interlocal
3 cooperation agreement to pursue a public-private partnership under
4 this chapter to plan, develop, redevelop, design, construct, equip,
5 finance, use, operate, or maintain a qualifying project using a
6 delivery method authorized under Section 2267A.004.

7 Sec. 2267A.053. RULES, POLICIES, GUIDELINES, AND
8 ASSISTANCE. (a) A governmental entity may adopt rules, policies,
9 and guidelines the entity considers necessary or desirable
10 governing the consideration, solicitation, evaluation, and
11 implementation of a public-private partnership under this chapter.

12 (b) A governmental entity may seek the assistance of the
13 center for alternative finance and procurement established under
14 Section 2152.110 regarding best practices, model guidelines,
15 procurement resources, and professional and advisory services for
16 public-private partnerships.

17 Sec. 2267A.054. PUBLIC-PRIVATE PARTNERSHIP ADVISORY
18 SERVICES. (a) A governmental entity may use professional
19 advisory, legal, financial, consulting, pre-design,
20 pre-development, brokerage, or other professional services in
21 considering, soliciting, evaluating, negotiating, or implementing
22 a public-private partnership under this chapter.

23 (b) A professional services contract for an amount
24 exceeding \$150,000 must be procured in the manner established by
25 Section 2254.004 to the extent Chapter 2254 otherwise applies to
26 those services.

27 SUBCHAPTER C. SOLICITATION AND SELECTION OF PUBLIC-PRIVATE

PARTNERSHIP

1
2 Sec. 2267A.101. INDUCEMENT RESOLUTION OR ORDER. Before
3 issuing a request for qualifications or proposals for a
4 public-private partnership under this chapter, the governing body
5 of a governmental entity must adopt an inducement resolution or
6 similar order granting preliminary authorization to solicit
7 proposals for the public-private partnership.

8 Sec. 2267A.102. AUTHORITY TO SOLICIT PUBLIC-PRIVATE
9 PARTNERSHIP. A governmental entity may solicit proposals to enter
10 into a public-private partnership for a qualifying project by:

11 (1) issuing a single request for proposals and
12 concurrently evaluating with the submitted proposals the
13 qualifications of the private entities that submit the proposals;
14 or

15 (2) issuing an initial request for qualifications,
16 evaluating the qualifications of the private entities that submit
17 qualifications, and inviting the most qualified private entities to
18 submit proposals if the governmental entity proceeds with a request
19 for proposals.

20 Sec. 2267A.103. SOLICITATION REQUIREMENTS. A request for
21 qualifications or proposals for a public-private partnership under
22 this chapter must:

23 (1) state the request is for a public-private
24 partnership under this chapter;

25 (2) generally describe the qualifying project, the
26 public purpose or public benefit to be achieved through the
27 qualifying project, and the objectives and priorities of the

1 governmental entity in using a public-private partnership;

2 (3) identify the delivery method the governmental
3 entity prefers and whether the governmental entity will consider
4 alternate delivery methods;

5 (4) clearly describe the evaluation criteria for
6 submitted qualifications or proposals and the weighted value for
7 each criterion; and

8 (5) identify the process and schedule for the request
9 for qualifications or proposals and the place and delivery method
10 for submitting qualifications or proposals.

11 Sec. 2267A.104. EVALUATION CRITERIA. When establishing the
12 evaluation criteria and corresponding weighted values for a request
13 for qualifications or proposals, a governmental entity may consider
14 any factor not otherwise prohibited by law that the governmental
15 entity determines is relevant to achieving the public purposes,
16 objectives, and priorities of the governmental entity, including:

17 (1) the professional qualifications, experience, and
18 reputation of the private entity and the private entity's
19 employees;

20 (2) the plan of finance, including the total cost of
21 capital that accounts for both public and private sources of
22 funding;

23 (3) innovative design techniques, construction
24 methods, or cost-saving methods;

25 (4) quality of design and construction and project
26 delivery schedule;

27 (5) a private entity's ability to access federal money

- 1 and grants available for the qualifying project;
2 (6) lease revenue generation, revenue participation,
3 and total rate of return to the governmental entity;
4 (7) the operational capabilities, qualifications, and
5 experience of the private entity;
6 (8) operating and maintenance costs, useful life, and
7 the total life-cycle cost of the project;
8 (9) general business terms, risk allocation, and risk
9 mitigation methodologies;
10 (10) the project's environmental, social, cultural,
11 equitable, and community impacts, including impacts on properties
12 and residents surrounding the project location;
13 (11) job creation and the private entity's commitment
14 to employment of local residents and workforce training;
15 (12) the private entity's commitment to prevailing or
16 living wages, workplace safety standards, and workers' rights;
17 (13) the private entity's plans and commitments to
18 subcontract with historically small businesses, local businesses,
19 underutilized businesses, or otherwise disadvantaged businesses;
20 (14) financing or investment commitments from local
21 residents; and
22 (15) the private entity's community engagement plan
23 and strategy.

24 Sec. 2267A.105. NOTICE OF REQUEST FOR QUALIFICATIONS OR
25 PROPOSALS. (a) A governmental entity at a minimum shall provide
26 notice of a request for qualifications or proposals on the entity's
27 Internet website and in the procurement directory on the

1 comptroller's Internet website not later than the 30th day before
2 the last date for submission.

3 (b) The notice at a minimum must include:

4 (1) a brief description of the qualifying project and
5 services desired;

6 (2) the last date for submission; and

7 (3) the name and contact information of the individual
8 an interested private entity may contact to inquire about the
9 solicitation.

10 Sec. 2267A.106. EVALUATION AND SELECTION OF PROPOSALS. (a)
11 A governmental entity shall select the proposal the governmental
12 entity determines will provide the best overall value to the
13 governmental entity, considering the public purposes, public
14 benefits, objectives, and priorities of the governmental entity as
15 stated in the request for proposals.

16 (b) A governmental entity may reject all proposals if the
17 governmental entity determines none of the submitted proposals
18 demonstrate sufficient value to justify a public-private
19 partnership.

20 Sec. 2267A.107. NOTICE OF SELECTION OR NON-SELECTION. A
21 governmental entity shall notify each private entity that submits
22 qualifications or a proposal under this chapter of the private
23 entity's selection or non-selection.

24 Sec. 2267A.108. REQUEST FOR EVALUATION AND RANKING
25 DOCUMENTS. (a) A private entity that submits to a governmental
26 entity qualifications or a proposal for a public-private
27 partnership under this chapter may, after receiving notice required

1 under Section 2267A.107, submit a written request to the
2 governmental entity for the documents evaluating the private
3 entity's submission.

4 (b) Not later than the 30th day after the date a private
5 entity submits a request under Subsection (a), the governmental
6 entity shall deliver to the private entity the documents evaluating
7 the private entity's qualifications or proposal, including any
8 applicable ranking of the entity's qualifications or proposal.

9 SUBCHAPTER D. NEGOTIATIONS AND AGREEMENTS

10 Sec. 2267A.151. NEGOTIATIONS WITH PRIVATE ENTITY. (a) A
11 governmental entity may negotiate the terms of an interim agreement
12 or definitive agreement with the selected private entity following
13 the notice required under Section 2267A.107.

14 (b) If a governmental entity is unable to negotiate a
15 satisfactory agreement with the selected private entity, the
16 governmental entity may end negotiations with that private entity
17 and begin negotiations with the next highest ranking private entity
18 as listed in the ranking of proposals for the qualifying project.

19 Sec. 2267A.152. INTERIM AGREEMENT. (a) Before entering
20 into a definitive agreement with a selected private entity, the
21 governing body of a governmental entity may execute an interim
22 agreement with the private entity.

23 (b) An interim agreement may:

24 (1) authorize the selected private entity to begin
25 activities or provide services relating to the qualifying project,
26 including project planning and development, site due diligence,
27 design, engineering, environmental analysis and mitigation,

1 surveying, and economic and financial feasibility analysis;

2 (2) provide for compensation to be paid to the
3 selected private entity for goods or services provided to the
4 governmental entity before the definitive agreement is executed;

5 (3) establish for the definitive agreement the
6 preliminary terms, significant development points, processes, and
7 timing for negotiation; or

8 (4) include other terms or provisions governing any
9 aspect of qualifying project development that the governmental
10 entity and private entity consider appropriate.

11 (c) An interim agreement must:

12 (1) have a defined term, which may be subject to
13 renewal or extension; and

14 (2) expressly provide that the interim agreement will
15 be superseded by a definitive agreement.

16 Sec. 2267A.153. DEFINITIVE AGREEMENT. (a) If a
17 governmental entity proceeds with a public-private partnership
18 after selecting a proposal and completing negotiations with a
19 private entity, the governing body of a governmental entity shall
20 authorize the execution of a definitive agreement with the private
21 entity and any necessary ancillary agreements relating to the
22 qualifying project.

23 (b) A definitive agreement must include all the material
24 terms relating to the public-private partnership, including a
25 definitive scope of work and pricing methodology for the services
26 to be provided under the agreement.

27 (c) A definitive agreement must have a defined term, which

1 may be subject to renewal or extension.

2 Sec. 2267A.154. AFFILIATE OR SUBSIDIARY OF SELECTED PRIVATE
3 ENTITY. Notwithstanding any other provision of this chapter, a
4 governmental entity may enter into an interim agreement or a
5 definitive agreement with a private entity that is an affiliate or
6 subsidiary of the selected private entity if:

7 (1) the selected private entity retains a majority of
8 the voting interests of the affiliate or subsidiary;

9 (2) the selected private entity retains managerial
10 control over the business affairs of the affiliate or subsidiary;
11 and

12 (3) the governmental entity determines the
13 governmental entity will continue to benefit from the material
14 terms, conditions, and considerations presented in the selected
15 private entity's proposal.

16 SUBCHAPTER E. FINANCING FOR PUBLIC-PRIVATE PARTNERSHIPS;

17 PREVAILING WAGE

18 Sec. 2267A.201. GRANT OR COMMITMENT OF PUBLIC MONEY. (a)
19 Subject to Subsection (b), a governmental entity may grant public
20 money for a qualifying project or commit to payment of public money
21 in an interim agreement or definitive agreement.

22 (b) Before granting or committing public money for a period
23 that extends beyond a governmental entity's current budget year,
24 the governing body of the governmental entity must determine that:

25 (1) the grant or commitment of public money,
26 considering the collective benefits and other consideration
27 provided for in the interim agreement or definitive agreement,

1 serves a legitimate public purpose of the governmental entity and
2 will result in adequate consideration and benefits to the
3 governmental entity;

4 (2) the interim agreement or definitive agreement
5 contains or will contain sufficient safeguards to ensure the public
6 purposes of the governing body will continue to be satisfied
7 throughout the term of the agreement; and

8 (3) the interim agreement or definitive agreement
9 expressly provides that the payment of commitments for the project
10 beyond the current budget year is expressly conditioned on
11 continued:

12 (A) funding by the governing body; or

13 (B) for a state agency, appropriations by the
14 legislature.

15 Sec. 2267A.202. PRIVATE FINANCING. (a) A definitive
16 agreement may provide for private financing of part or all of a
17 qualifying project through one or more debt or equity financing
18 arrangements.

19 (b) Any private financing payable from or secured by a
20 private entity's right to receive public money or any other
21 contractual obligations of the governmental entity must expressly
22 provide that financing is not a debt or obligation of the
23 governmental entity or of this state.

24 (c) Private financing used in connection with a qualifying
25 project may not be guaranteed by the governmental entity or secured
26 by a pledge or lien on any public property or money of the
27 governmental entity or of this state.

1 (d) Private financing may be secured by a pledge or lien on a
2 borrower's leasehold or other possessory interest in public
3 property or a private entity's contractual right to receive public
4 money.

5 Sec. 2267A.203. PERFORMANCE AND PAYMENT BONDS. (a)
6 Section 2253.021 applies to the components of a qualifying project
7 that are financed wholly or partly by public money.

8 (b) Except as provided by Subsection (c), the amount of the
9 performance and payment bonds delivered to the governmental entity
10 must be based on the full value of the construction elements of the
11 components of the qualifying project described by Subsection (a)
12 and not on the total value of the definitive agreement.

13 (c) Except as otherwise provided by Subsection (d), a
14 governmental entity may accept a performance and payment bond for
15 less than full value if the governmental entity reasonably
16 determines the full value is not commercially available or
17 practical.

18 (d) A governmental entity may not accept a performance and
19 payment bond in an amount less than 50 percent of full value.

20 Sec. 2267A.204. PREVAILING WAGE. Chapter 2258 applies to a
21 prime contract for the construction of a qualifying project for a
22 governmental entity, but only for those components of a qualifying
23 project that are financed wholly or partly by public money.

24 SUBCHAPTER F. PUBLIC PROPERTY; STATE TAXES

25 Sec. 2267A.251. SALE OR CONVEYANCE OF PUBLIC PROPERTY. (a)
26 After obtaining a certified independent appraisal, a governmental
27 entity may sell, transfer, or otherwise convey its interests in

1 public land or real property for use in a qualifying project or as
2 consideration for a qualifying project.

3 (b) A governmental entity's interest in land or real
4 property may be sold or conveyed for less than fair market value if
5 the governing body of the governmental entity determines that the
6 conveyance will result in adequate consideration and benefits to
7 the governmental entity that are reasonably expected to be
8 commensurate with the property's current appraised value, after
9 considering retained repurchase options, possessory interests,
10 uses, or other property interests received in return, and all other
11 public benefits realized from the qualifying project.

12 Sec. 2267A.252. LEASE OF PUBLIC PROPERTY. (a) A
13 governmental entity may grant to a private entity for use in a
14 qualifying project a leasehold or other possessory interest in
15 public land or real property, including a ground lease, facility
16 lease, master lease, or a lease-leaseback transaction, and any
17 furnishings, fixtures, and equipment relating to the land or
18 property.

19 (b) A qualifying project improvement constructed on public
20 property and leased to a private entity as part of a qualifying
21 project reverts to the governmental entity on termination of the
22 lease, including any improvement installed during the term of the
23 lease.

24 Sec. 2267A.253. CONDOMINIUM OWNERSHIP. (a) A governmental
25 entity may submit its interests in public land to a condominium
26 declaration under Chapter 82, Property Code, in connection with a
27 qualifying project.

1 (b) A condominium unit conveyed by a governmental entity for
2 use in a qualifying project is subject to the conditions
3 established by Section 2267A.251.

4 Sec. 2267A.254. PRIVATE USE OF QUALIFYING PROJECT. A
5 qualifying project may include private commercial, residential,
6 retail, and other private uses on public land or real property that
7 the governmental entity determines:

8 (1) are necessary, desirable, or appurtenant to a
9 qualifying project's public purpose; or

10 (2) otherwise serve, promote, or advance the
11 legitimate public purposes of the governmental entity, including,
12 as applicable, the promotion of state or local economic
13 development.

14 Sec. 2267A.255. USE OF STATE PROPERTY. A qualifying
15 project located on real property belonging to this state for
16 purposes of Section 31.161, Natural Resources Code, is considered
17 to be for governmental purposes and a development plan is not
18 required for any part of the qualifying project.

19 Sec. 2267A.256. PROPERTY TAX. (a) A portion of a
20 qualifying project is property used for public purposes within the
21 meaning of Section 11.11, Tax Code, and exempt from taxation if the
22 portion is for:

23 (1) the primary use of the governmental entity or a
24 combination of governmental entities under an interlocal
25 agreement;

26 (2) general public use; or

27 (3) the support, maintenance, and benefit of the

1 governmental entity, a combination of governmental entities under
2 an interlocal agreement, or the general public.

3 (b) An appraisal district shall value the interest in a
4 portion of a qualifying project that is a possessory interest in
5 public property and that is required to be listed under Section
6 25.07, Tax Code, after considering the legal restrictions,
7 reservations, and limitations on use of that interest.

8 (c) A qualifying project undertaken by a local government
9 corporation, public facilities corporation, or other specially
10 created corporation or partnership is not exempt from property tax
11 unless the exemption is approved by the governing body of its
12 sponsoring political subdivision.

13 Sec. 2267A.257. STATE SALES AND USE TAX. An improvement to
14 real property or a component of a qualifying project, including
15 fixtures, furniture, equipment, and supplies used in maintenance or
16 operations encompassed in the scope of a definitive agreement, that
17 a private entity purchases is exempt from state sales and use tax
18 under Section 151.311, Tax Code, if the improvement or component is
19 purchased for the primary use and benefit of a governmental entity.

20 SECTION 3. Section 552.153, Government Code, is amended to
21 read as follows:

22 Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS
23 INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section,
24 "definitive [~~"affected jurisdiction," "comprehensive]~~ agreement,"
25 "governmental entity," [~~"contracting person,"~~ "interim
26 agreement," "private entity," and "qualifying project" [~~project,"~~
27 and "~~responsible governmental entity~~"] have the meanings assigned

1 those terms by Section 2267A.001 [~~2267.001~~].

2 (b) Information in the custody of a [~~responsible~~]
3 governmental entity that relates to a proposal for a qualifying
4 project authorized under Chapter 2267A [~~2267~~] is excepted from the
5 requirements of Section 552.021 if:

6 (1) the information consists of memoranda, staff
7 evaluations, or other records prepared by the [~~responsible~~]
8 governmental entity, its staff, outside advisors, or consultants
9 exclusively for the evaluation and negotiation of proposals filed
10 under Chapter 2267A [~~2267~~] for which:

11 (A) disclosure to the public before or after the
12 execution of an interim or definitive [~~comprehensive~~] agreement
13 would adversely affect the financial interest or bargaining
14 position of the [~~responsible~~] governmental entity; and

15 (B) the basis for the determination under
16 Paragraph (A) is documented in writing by the [~~responsible~~]
17 governmental entity; or

18 (2) the records are provided by a private entity
19 [~~proposer~~] to a [~~responsible~~] governmental entity [~~or affected~~
20 ~~jurisdiction~~] under Chapter 2267A [~~2267~~] and contain:

21 (A) trade secrets of the private entity
22 [~~proposer~~];

23 (B) financial records of the private entity
24 [~~proposer~~], including balance sheets and financial statements,
25 that are not generally available to the public through regulatory
26 disclosure or other means; or

27 (C) work product related to a competitive bid or

1 proposal submitted by the private entity [~~proposer~~] that, if made
2 public before the execution of an interim or definitive
3 [~~comprehensive~~] agreement, would provide a competing private
4 entity [~~proposer~~] an unjust advantage or adversely affect the
5 financial interest or bargaining position of the [~~responsible~~]
6 governmental entity or the private entity [~~proposer~~].

7 (c) Except as specifically provided by Subsection (b), this
8 section does not authorize the withholding of information
9 concerning:

10 (1) the terms of any interim or definitive
11 [~~comprehensive~~] agreement, service contract, lease, partnership,
12 or agreement of any kind entered into by the [~~responsible~~]
13 governmental entity and the contracting private entity [~~person~~] or
14 the terms of any financing arrangement that involves the use of any
15 public money; or

16 (2) the performance of any person developing or
17 operating a qualifying project under Chapter 2267A [2267].

18 [~~(d) In this section, "proposer" has the meaning assigned by~~
19 ~~Section 2267.001.~~]

20 SECTION 4. Section 2152.104(e), Government Code, is amended
21 to read as follows:

22 (e) The commission shall provide professional service staff
23 and the expertise of financial, technical, and other necessary
24 advisors and consultants, authorized under Section 2152.111
25 [~~2267.053(d)~~], to support the center for alternative finance and
26 procurement [~~Partnership Advisory Commission~~] in its review and
27 evaluation of qualifying project proposals.

1 SECTION 5. Section 2152.110, Government Code, is amended to
2 read as follows:

3 Sec. 2152.110. CENTER FOR ALTERNATIVE FINANCE AND
4 PROCUREMENT. The commission shall establish the center for
5 alternative finance and procurement to consult with governmental
6 entities regarding best practices for procurement and the financing
7 of qualifying projects and to assist governmental entities in the
8 receipt of proposals, negotiation of interim and definitive
9 ~~[comprehensive]~~ agreements, and management of qualifying projects
10 under Chapter 2267A [~~Chapters 2267 and 2268~~].

11 SECTION 6. Subchapter C, Chapter 2152, Government Code, is
12 amended by adding Section 2152.111 to read as follows:

13 Sec. 2152.111. PROFESSIONAL AND CONSULTING SERVICES. (a)
14 The center for alternative finance and procurement established
15 under Section 2152.110 may retain one or more providers of
16 professional or non-professional services, or a group or
17 association of providers, in accordance with Chapter 2254 to
18 provide the services for qualifying projects under Chapter 2267A.

19 (b) A governmental entity to which Chapter 2267A applies may
20 use the professional or non-professional services of a provider of
21 services retained by the center for alternative finance and
22 procurement for purposes of considering, soliciting, evaluating,
23 negotiating, and administering a public-private partnership under
24 Chapter 2267A, and those services must be provided on the same terms
25 as agreed on by the provider and the center.

26 (c) The center for alternative finance and procurement may
27 charge a reasonable fee to the governmental entity for the services

1 available to the governmental entity related to a qualifying
2 project. The fee may not exceed an amount of \$5,000 or 10 percent of
3 the contract value of the professional services provided to the
4 governmental entity.

5 SECTION 7. Section 2165.259(d), Government Code, is amended
6 to read as follows:

7 (d) The commission may enter into a public-private
8 partnership in accordance with Chapter 2267A to develop or operate
9 a qualifying project, as that term is defined by Section 2267A.001
10 [~~2267.001~~], in the Capitol Complex if:

11 (1) the legislature by general law specifically
12 authorizes the project; and

13 (2) before the commission enters into a definitive
14 [~~comprehensive~~] agreement for the project, the legislature
15 individually approves the project [~~under Section 2268.058~~].

16 SECTION 8. Section 379B.0012(b), Local Government Code, is
17 amended to read as follows:

18 (b) Chapters 2267A [~~2267~~] and 2269, Government Code, do not
19 apply to a qualifying project of an authority.

20 SECTION 9. Section 3501.005(b), Special District Local Laws
21 Code, is amended to read as follows:

22 (b) Chapters 2267A [~~2267~~] and 2269, Government Code, do not
23 apply to a qualifying project of the authority.

24 SECTION 10. Section 172.211(b), Transportation Code, is
25 amended to read as follows:

26 (b) A county acting through the commissioners court or a
27 local government corporation may adopt an order that authorizes the

1 county and a navigation district located wholly or partly in the
2 county to:

3 (1) develop rail facilities as a qualifying project
4 under Chapter 2267A [~~2267~~], Government Code; and

5 (2) issue bonds for rail facilities secured by a
6 pledge of the revenues of the facilities, including contract
7 revenue, grant revenue, or other revenue collected in connection
8 with the facilities.

9 SECTION 11. The following laws are repealed:

10 (1) Subchapter H, Chapter 2165, Government Code;

11 (2) Section 2166.106, Government Code; and

12 (3) Chapters 2267 and 2268, Government Code.

13 SECTION 12. Chapter 2267A, Government Code, as added by
14 this Act, applies only to a contract for a public-private
15 partnership entered into on or after the effective date of this Act.
16 A contract for a public-private partnership entered into under
17 Chapters 2267 and 2268, Government Code, before the effective date
18 of this Act, is governed by the law in effect on the date the
19 contract was entered into, and the former law is continued in effect
20 for that purpose.

21 SECTION 13. This Act takes effect September 1, 2023.