

By: Isett

H.B. No. 1815

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of a state agency to facilitate
3 public-private partnerships to plan and take action regarding
4 governmental projects.

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

6 SECTION 1. Subtitle F, Title 10, Government Code, is
7 amended by adding Chapter 2267 to read as follows:

8 CHAPTER 2267. GOVERNMENTAL PROJECTS AND INFRASTRUCTURE: TEXAS

9 PARTNERSHIPS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 2267.001. DEFINITIONS. In this chapter:

12 (1) "Agency" means Texas Partnerships.

13 (2) "Arbitrator" means a person appointed by the
14 governor under Section 2267.055.

15 (3) "Board" means the board of directors of Texas
16 Partnerships.

17 (4) "Governmental entity" means:

18 (A) a board, commission, department, or other
19 agency of the state, including an institution of higher education
20 as defined by Section 61.003, Education Code; and

21 (B) a political subdivision of the state,
22 including a municipality, a county, or any kind of district.

23 (5) "Infrastructure" includes a road, bridge, tunnel,
24 overpass, ferry, airport, mass transit facility, vehicle parking

1 facility, port facility, fuel supply facility, oil or gas pipeline,
2 transmission system, distribution system, water supply facility,
3 public work, waste treatment facility, telecommunications
4 facility, hospital, school, medical or nursing care facility,
5 public building, or other similar facility currently available, or
6 to be made available, to a governmental entity or for public use,
7 together with any structures, parking areas, appurtenances, and
8 other property required to operate such a structure or facility.

9 (6) "Project" includes:

10 (A) the planning, procurement, operation,
11 maintenance, rehabilitation, management, or other activities
12 connected with taking action regarding infrastructure by or on
13 behalf of a governmental entity;

14 (B) the delivery of a service to the public or to
15 a governmental entity; or

16 (C) the delivery of new systems required in
17 conjunction with or in support of an infrastructure or service
18 delivery project.

19 (7) "Public-private partnership" means an arrangement
20 between a governmental entity and a person that facilitates,
21 provides for, or contemplates the undertaking of a project by the
22 person on the basis that the governmental entity will identify the
23 performance requirements necessary to achieve the desired outcome
24 and the person will achieve that outcome.

25 Sec. 2267.002. AGENCY. Texas Partnerships is an agency of
26 the state governed by the board.

27 Sec. 2267.003. APPLICATION OF SUNSET, OPEN MEETINGS, AND

1 ADMINISTRATIVE PROCEDURES LAWS. (a) The agency is subject to
2 Chapter 325 (Texas Sunset Act). Unless continued in existence as
3 provided by that chapter, the agency is abolished and this chapter
4 expires September 1, 2021.

5 (b) The agency is subject to the open meetings law, Chapter
6 551, and the administrative procedure law, Chapter 2001.

7 Sec. 2267.004. APPLICATION OF OTHER LAW. The provisions of
8 this chapter relating to projects are in addition to other
9 procedures for planning or undertaking projects under this title or
10 other law.

11 [Sections 2267.005-2267.050 reserved for expansion]

12 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

13 Sec. 2267.051. COMPOSITION OF BOARD. (a) The board is
14 composed of seven members appointed by the governor with the advice
15 and consent of the senate. Members serve for staggered terms of six
16 years, with the terms of one-third, or as close to one-third as
17 possible, of the members expiring February 1 of each odd-numbered
18 year.

19 (b) Each member of the board must have knowledge,
20 experience, and expertise relevant to the business and affairs of
21 the agency.

22 Sec. 2267.052. PRESIDING OFFICER. The governor shall
23 designate a member of the board as the presiding officer of the
24 board to serve in that capacity at the pleasure of the governor.

25 Sec. 2267.053. DUTIES OF MEMBERS. Each member of the board
26 shall, in exercising the member's powers or performing the member's
27 duties:

1 (1) act honestly and in good faith in the best
2 interests of the agency; and

3 (2) exercise the care, diligence, and skill that a
4 reasonably prudent person would in comparable circumstances.

5 Sec. 2267.054. PERSONNEL. (a) The agency shall employ an
6 executive director.

7 (b) The executive director is the chief executive officer of
8 the agency and is charged with the general direction, supervision,
9 and control of the business of the agency and may exercise other
10 powers conferred on the executive director by rule of the board.

11 (c) The executive director may employ personnel necessary
12 to implement this chapter.

13 Sec. 2267.055. ARBITRATORS. The governor shall appoint one
14 or two persons as arbitrators. Arbitrators serve for a term of two
15 years.

16 Sec. 2267.056. IMMUNITY AND INDEMNITY OF EMPLOYEES AND
17 OTHERS; REIMBURSEMENT FOR EXPENSES. (a) A civil action to impose
18 liability for damages may not be commenced against a board member or
19 employee of the agency for:

20 (1) any act done or purported to be done in carrying
21 out the duties of the agency under this chapter if the act was done
22 in good faith in the exercise or performance or intended exercise or
23 performance of a power or duty under this chapter; or

24 (2) any neglect or default arising out of any act,
25 omission, decision, or determination made or arising out of or in
26 the course of the exercise or performance in good faith of any power
27 or duty under this chapter.

1 (b) Every member of the board or employee of the agency and
2 their heirs, executors, and estates shall be indemnified and held
3 harmless by the agency with respect to all costs, charges, and
4 expenses that the individual incurs in relation to any action or
5 other proceeding brought or prosecuted against the individual in
6 connection with the performance by the individual of the
7 individual's duties as a member of the board or employee of the
8 agency, except costs, charges, and expenses that are occasioned by
9 the individual's wilful neglect or wilful default.

10 (c) A member of the board or employee of the agency is
11 entitled to reimbursement for all other costs, charges, and
12 expenses the individual incurs in connection with the performance
13 of the individual's duties as a member or employee.

14 Sec. 2267.057. RULES. The board shall adopt rules to
15 implement this chapter.

16 [Sections 2267.058-2267.070 reserved for expansion]

17 SUBCHAPTER C. POWERS AND DUTIES

18 Sec. 2267.071. GENERAL DUTIES. The agency shall:

19 (1) assist with and support and advise governmental
20 entities on the use of public-private partnerships for planning,
21 procurement, implementation, undertaking, financing, delivery,
22 operation, maintenance, management, or rehabilitation of projects,
23 including infrastructure projects;

24 (2) study, develop, formulate, establish, and
25 communicate to governmental entities policies and procedures for
26 the use of public-private partnerships for planning, procurement,
27 implementation, undertaking, financing, delivery, operation,

1 maintenance, management, or rehabilitation of projects, including
2 infrastructure projects;

3 (3) develop policies, procedures, protocols, and
4 methodology to assess and evaluate how projects should be financed
5 and otherwise undertaken through the use of public-private
6 partnerships so as to achieve optimum value for financial, social,
7 or economic benefit;

8 (4) provide services to governmental entities in
9 relation to the use of public-private partnerships for projects,
10 assess the feasibility of the use of public-private partnerships
11 for projects for governmental entities, or plan, procure,
12 implement, undertake, finance, develop, operate, maintain, manage,
13 or rehabilitate projects, including infrastructure projects,
14 through the use of public-private partnerships on behalf of
15 governmental entities;

16 (5) plan, procure, implement, undertake, finance,
17 deliver, operate, manage, maintain, rehabilitate, or otherwise
18 take action regarding projects, including infrastructure projects,
19 through the use of public-private partnerships as the governor may
20 direct;

21 (6) establish, update, and continually promote
22 consistent standards for the undertaking of projects through the
23 use of public-private partnerships within this state;

24 (7) contract with governmental entities to provide
25 service, advice, assistance, and direction in relation to the
26 undertaking of projects through the use of public-private
27 partnerships or the procurement, constructing, management,

1 maintenance, and rehabilitation of infrastructure through the use
2 of public-private partnerships;

3 (8) through the use of public-private partnerships,
4 acquire, hold, own, use, lease, license, sell, plan, design,
5 finance, refinance, develop, construct, improve, operate, manage,
6 maintain, repair, replace, alter, extend, expand, rehabilitate,
7 dispose of, or otherwise take action regarding infrastructure;

8 (9) through the use of public-private partnerships,
9 acquire, hold, own, use, lease, license, sell, dispose of, or
10 otherwise take action regarding land in conjunction with the
11 undertaking of a project or otherwise; and

12 (10) through the use of public-private partnerships,
13 carry out other activities or duties authorized by this chapter or
14 at the direction of the governor.

15 Sec. 2267.072. GENERAL POWERS. The agency may:

16 (1) through the use of public-private partnerships,
17 acquire, hold, lease, license, sell, encumber, mortgage, charge,
18 dispose of, or otherwise take action regarding land;

19 (2) through the use of public-private partnerships,
20 plan, procure, implement, undertake, finance, deliver, operate,
21 manage, maintain, rehabilitate, or otherwise take action regarding
22 projects, including infrastructure projects;

23 (3) enter into and amend an agreement with a
24 governmental entity;

25 (4) raise revenues through access fees, usage fees,
26 tolls, license fees, franchise fees, right-of-way charges, or the
27 lease or sale of commercial rights with respect to infrastructure

1 and other similar charges, in each case imposed through the use of
2 public-private partnerships in relation to projects, including
3 infrastructure projects or any infrastructure that is itself owned,
4 administered, or controlled by the agency;

5 (5) issue revenue bonds to pay for projects;

6 (6) charge fees to governmental entities with whom the
7 agency contracts or provides assistance, support, or advice in
8 relation to projects, including infrastructure projects;

9 (7) perform other activities as authorized by this
10 chapter or as incidental to or necessary for carrying out the
11 agency's duties; and

12 (8) perform other activities or duties as the governor
13 may direct.

14 Sec. 2267.073. UNDERTAKING OR EVALUATING PROJECTS. The
15 agency, in undertaking or evaluating a project through the use of
16 public-private partnerships on behalf of a governmental entity,
17 shall ensure that the project:

18 (1) provides optimal value for financial, social, or
19 economic benefits to this state; and

20 (2) enhances the economic and social well-being of
21 this state.

22 Sec. 2267.074. FINANCIAL REPORT. The agency shall, not
23 later than the 180th day after the end of the state fiscal year,
24 submit to the governor a report, in the form required by the
25 governor, on the operations of the agency during that fiscal year.

26 Sec. 2267.075. BONDS. The agency and the Texas Public
27 Finance Authority shall enter into a memorandum of understanding

1 that allocates the responsibility for issuing and selling bonds to
2 finance the acquisition or construction of buildings for which the
3 agency and the Texas Public Finance Authority, under Section
4 1232.102, each has authority.

5 [Sections 2267.076-2267.100 reserved for expansion]

6 SUBCHAPTER D. ARBITRATION

7 Sec. 2267.101. APPEAL. (a) A person who disputes liability
8 for a fee, usage fee, toll, license fee, franchise fee,
9 right-of-way charge, or other similar charge imposed in relation to
10 a project, including infrastructure that is itself owned,
11 administered, or controlled by the agency, may appeal that
12 liability to an arbitrator in accordance with the appeal procedure.

13 (b) The board by rule shall prescribe the appeal procedure.

14 Sec. 2267.102. ORDERS. On an appeal under this subchapter,
15 the arbitrator may make any order the arbitrator considers
16 appropriate, including:

17 (1) an order that the person who appealed pay none,
18 some, or all of the fee or charge; and

19 (2) an order that the person be repaid some or all of
20 the fee or charge.

21 SECTION 2. As soon as possible after the effective date of
22 this Act, the governor shall make the appointments required by
23 Chapter 2267, Government Code, as added by this Act.

24 SECTION 3. This Act takes effect September 1, 2009.