

BILL ANALYSIS

Senate Research Center
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S.B. 1048
By: Jackson
Economic Development
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1048 seeks to provide structure and clear permissive authority regarding delivery of public projects in conjunction with private investment that will decrease the financial burden of repairing existing infrastructure as it ages and satisfying the demand of new infrastructure as the state's population continues to grow. These relationships are not new in Texas and have been utilized to deliver such projects, as the Texas Capitol Building in 1882, and the new Dallas Cowboys Stadium in 2009, and have been utilized for decades in the academic setting to further scientific research and development at our state universities.

In the last decade, 33 states, including Texas, and two territories have enacted legislation to address one or a number of forms of public/private transactions. These predominantly have been enacted to deliver transportation, public assembly, and corrections projects. Several states, including Arizona, California, and Virginia, have adopted comprehensive permissive statutes that would allow flexibility for such transactions to be applied to a wide range of infrastructure needs.

In addition to the legislation enacted in 2007, related to roads under Chapters 223 (Bids and Contracts for Highway Projects), 227 (Trans-Texas Corridor), and 370 (Regional Mobility Authority) of the Texas Transportation Code, which are not affected by this statute, the Texas Legislature passed other specific purpose legislation in the 2007 and 2009 sessions providing for the Southeast Biotechnology Park (Section 488.006, Government Code) and for hospital districts to enter into development agreements related to their public function (Section 281.050, Health and Safety Code).

S.B. 1048 is permissive and applies to the infrastructure needs of any Texas governmental entity in a manner that allows flexible joining of private sector creativity and capital with public need in a manner deemed advantageous to the taxpayer. The proposed bill provides three features that do not exist in current applicable Texas law for these transactions. First, the proposed bill provides a process for unsolicited proposals in which the private sector can initiate the proposal process. Second, the proposed bill provides that any governmental entity considering such a project must retain qualified financial experts to review the proposals and provide recommendations. Third, the proposed bill creates an oversight commission that will have the opportunity to review the transactions and provide recommendations before the governmental entity enters into an agreement with the private entity.

As proposed, S.B. 1048 amends current law relating to the creation of public and private facilities and infrastructure.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the comptroller of public accounts and the Texas Facilities Commission is restricted in SECTION 1 (Section 2267.066, Government Code) of this bill.

Rulemaking authority is expressly granted to a responsible governmental entity in SECTION 1 (Section 2267.057, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle F, Title 10, Government Code, by adding Chapters 2267 and 2268, as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. Defines "affected jurisdiction," "comprehensive agreement," "contracting person," "develop," "governmental entity," "interim agreement," "lease payment," "material default," "operate," "qualifying project," "responsible governmental entity," "revenue," "service contract," "service payment," and "user fee" in this chapter.

Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION OF CHAPTER. (a) Provides that:

(1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology infrastructure, and other public infrastructure and government facilities in this state that serve a public need and purpose;

(2) the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

(3) there are inadequate resources to develop new education facilities, technology infrastructure, and other public infrastructure and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

(4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

(5) authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

(b) Provides that an action authorized under Section 2267.053 serves the public purpose of this chapter if the action facilitates the timely development or operation of a qualifying project.

(c) Provides that the purposes of this chapter include:

(1) encouraging investment in this state by private entities and other persons;

(2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of qualifying projects in order to expand and accelerate financing for qualifying projects that improve and add to the convenience of the public; and

(3) providing governmental entities with the greatest possible flexibility in contracting with private entities or other persons to provide public services subject to this chapter.

(d) Requires this chapter to be liberally construed in conformity with the purposes of this section.

Sec. 2267.003. **APPLICABILITY.** Provides that this chapter does not apply to the financing, design, construction, maintenance, or operation of a highway in the state highway system, or a transportation authority created under Chapter 451 (Metropolitan Rapid Transit Authorities), 452 (Regional Transportation Authorities), 453 (Municipal Transit Departments), or 460 (Coordinated County Transportation Authorities), Transportation Code.

[Reserves Sections 2267.004-2267.050 for expansion.]

SUBCHAPTER B. QUALIFYING PROJECTS

Sec. 2267.051. **APPROVAL REQUIRED; SUBMISSION OF PROPOSAL FOR QUALIFYING PROJECT.** (a) Prohibits a person from developing or operating a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. Authorizes the person to initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the authorizes responsible governmental entity to request proposals or invite bids under Section 2267.053(b).

(b) Requires a person submitting a proposal requesting approval of a qualifying project to specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal as a part of the qualifying project.

(c) Requires the responsible governmental entity, on receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), to determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.066 and the guidelines adopted under those sections. Requires a responsible governmental entity that determines not to accept the proposal for consideration to return the proposal, all fees, and the accompanying documentation to the person submitting the proposal.

(d) Authorizes the responsible governmental entity to at any time reject a proposal initiated by a person under Section 2267.053(a).

Sec. 2267.052. **ADOPTION OF GUIDELINES BY RESPONSIBLE GOVERNMENTAL ENTITIES.** (a) Requires a responsible governmental entity, before requesting or considering a proposal for a qualifying project, to adopt and make publicly available guidelines that enable the governmental entity to comply with this chapter. Requires the guidelines to be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

(b) Requires that the guidelines for a responsible governmental entity described by Section 2267.001(5)(A):

(1) require the responsible governmental entity to make a representative of the entity available to meet with persons who are considering submitting a proposal, and provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

- (3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;
- (4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considering a priority by the entity;
- (5) include financial review and analysis procedures that a minimum consist of a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project;
- (6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;
- (7) include criteria for the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities; the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and compliance with the requirements of Chapter 2268;
- (8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);
- (9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreements; and
- (10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a); a reasonable period of not less than 45 days, as determined by the responsible governmental entity, to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity is required to accept submission of competing proposals for the qualifying project; and a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) Provides that the guidelines of a responsible governmental entity described by Section 2267.001(5)(B):

- (1) are authorized to include the provisions required under Subsection (b); and
- (2) are required to include a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines

that the analysis of the proposal is to be performed by employees of the governmental entity.

Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY RESPONSIBLE GOVERNMENTAL ENTITY. (a) Authorizes a private entity or other person to submit a proposal requesting approval of a qualifying project by the responsible governmental entity. Requires that the proposal be accompanied by the following, unless waived by the responsible governmental entity:

(1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;

(2) a description of the qualifying project, including the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;

(3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;

(4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any public utility facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of the interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time; and

(10) any additional material and information the responsible governmental entity reasonably requests.

(b) Authorizes a responsible governmental entity to request proposals or invite bids from persons for the development or operation of a qualifying project.

(c) Authorizes the responsible governmental entity to approve as a qualifying project the development or operation of a facility needed by the governmental entity, or the design or equipping of a qualifying project, if the responsible governmental entity determines that the project serves the public purpose of this chapter. Authorizes the responsible governmental entity to determine that the development or operation of the project as a qualifying project serves the public

purpose if there is a public need for or benefit derived from the project of the type the person proposes as a qualifying project, the estimated cost of the project is reasonable in relation to similar facilities, and the person's plans will result in the timely development or operation of the qualifying project.

(d) Authorizes the responsible governmental entity to charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees and fees for financial, technical and other necessary advisors or consultants.

(e) Provides that the approval of the responsible governmental entity is subject to the private entity or other person entering into an interim or comprehensive agreement with the responsible governmental entity.

(f) Requires the responsible governmental entity, on approval of the qualifying project, to establish a date by which activities related to the qualifying project is required to begin. Authorizes the responsible governmental entity to extend the date.

(g) Requires the responsible governmental entity to take action appropriate under Section 552.153 to protect confidential and proprietary information provided by the contracting person under an agreement.

(h) Requires each responsible governmental entity described by Section 2267.001(5)(A), before entering into the negotiation of an interim or comprehensive agreement, to submit copies of detailed proposals to the Partnership Advisory Commission (commission) in accordance with Chapter 2268.

(i) Provides that this chapter and an interim or comprehensive agreement entered into under this chapter do not enlarge, diminish, or affect any authority a responsible governmental entity has to take action that would impact the debt capacity of this state.

Sec. 2267.054. SERVICE CONTRACTS. Authorizes a responsible governmental entity to contract with a contracting person for the delivery of services to be provided as part of a qualifying project in exchange for service payments and other consideration as the governmental entity considers appropriate.

Sec. 2267.055. AFFECTED JURISDICTIONS. (a) Requires a person submitting a proposal to a responsible governmental entity under Section 2267.053 to notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

(b) Requires the affected jurisdiction that is not the responsible governmental entity for the respective qualifying project, not later than the 60th day after the date an affected jurisdiction receives the notice required by Subsection (a), to submit in writing to the responsible governmental entity any comments the affected jurisdiction has on the proposed qualifying project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Requires the responsible governmental entity to consider the submitted comments before entering into a comprehensive agreement with a contracting person.

Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC PROPERTY. (a) Authorizes a governmental entity to dedicate any property interest, including land, improvements, and tangible personal property, for public use in a qualifying project if the governmental entity finds that the dedication will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the governmental entity or reducing the delivery time of a qualifying project.

(b) Authorizes a governmental entity, in connection with a dedication under Subsection (a), to convey any property interest, including licenses, franchises, easements, or any other right or interest the governmental entity considers appropriate, subject to the conditions imposed by general law governing such conveyances, to the contracting person for the consideration determined by the governmental entity. Authorizes the consideration to include the agreement of the contracting person to develop or operate the qualifying project.

Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON. Provides that the contracting person has the power granted by general law to a person that has the same form of organization as the contracting person and also has the power to develop or operate the qualifying project, and collect lease payments, impose user fees, or enter into service contracts in connection with the use of the project.

(b) Authorizes the contracting person to own, lease, or acquire any other right to use or operate the qualifying project.

(c) Authorizes the contracting person to finance a qualifying project in the amounts and on the terms determined by the contracting person. Authorizes the contracting person to issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(d) Authorizes the contracting person, in operating the qualifying project, to establish classifications according to reasonable categories for assessment of user fees, and with the consent of the responsible governmental entity, adopt and enforce reasonable rules for the qualifying project to the same extent as the responsible governmental entity.

(e) Requires the contracting person to:

(1) develop or operate the qualifying project in a manner that is acceptable to the responsible governmental entity and in accordance with the interim or comprehensive agreement;

(2) subject to Subsection (f), keep the qualifying project open for use by the public at all times, or as appropriate based on the use of the project, after its initial opening on payment of the applicable user fees, lease payments, or service payments;

(3) maintain, or provide by contract for the maintenance or upgrade of, the qualifying project, if required by the interim or comprehensive agreement;

(4) cooperate with the responsible governmental entity to establish any interconnection with the qualifying project requested by the responsible governmental entity; and

(5) comply with the interim or comprehensive agreement and any lease or service contract.

(f) Authorizes the qualifying project to be temporarily closed because of emergencies or, with the consent of the responsible governmental entity, to protect public safety or for reasonable construction or maintenance activities. Authorizes access to be limited as determined by the conditions of the interim or comprehensive agreement, if a qualifying project is technology infrastructure.

(g) Provides that this chapter does not prohibit a contracting person of a qualifying project from providing additional services for the qualifying project to

the public or persons other than the responsible government entity, provided that the provision of additional service does not impair the contracting person's ability to meet the person's commitments to the responsible governmental entity under the interim or comprehensive agreement.

Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Requires the contracting person, before developing or operating the qualifying project, to enter into a comprehensive agreement with the responsible governmental entity. Requires the comprehensive agreement to provide for:

(1) delivery of maintenance, performance, and payment bonds letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity and in compliance with all applicable statutes for those components of the qualifying project that involve construction;

(2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity if the plans and specifications conform to standards acceptable to the responsible government entity, except the contracting person is prohibited from being required to complete design of a qualifying project before the execution of a comprehensive agreement;

(3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;

(4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing assumption of the duties and responsibilities of the contracting person by the responsible governmental entity, and the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.

(b) Requires the comprehensive agreement to provide for any user fee, lease payment, or service payment established by agreement of the parties. Requires the parties, in negotiating a user fee under this section, to establish a payment or fee that is the same for persons using a facility of the qualifying project under like conditions and that will not materially discourage use of the qualifying project. Provides that the execution of the comprehensive evidence or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with this chapter. Authorizes a user fee or lease payment

established in the comprehensive agreement as a source of revenue to be in addition to, or in lieu of, a service payment.

(c) Authorizes a comprehensive agreement to include a provision that authorizes the responsible governmental entity to make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government.

(d) Requires the comprehensive agreement to incorporate the duties of the contracting person under this chapter and authorizes the comprehensive agreement to contain terms the responsible governmental entity determines serve the public purpose of this chapter. Authorizes the comprehensive agreement to contain:

(1) provisions that requires the responsible governmental entity to provide notice of default and cure rights for the benefit of the contracting person and the persons specified in the agreement as providing financing for the qualifying project;

(2) other lawful terms to which the contracting person and the responsible governmental entity mutually agree, including provisions regarding unavoidable delays or providing for a loan of public money to the contracting person to develop or operate one or more qualifying projects; and

(3) provisions in which the authority and duties of the contracting person under this chapter cease and the qualifying project is dedicated for public use to the responsible governmental entity or, if the qualifying project was initially dedicated by an affected jurisdiction, to the affected jurisdiction.

(e) Provides that any change in the terms of the comprehensive agreement that the parties agree to must be added to the comprehensive agreement by written amendment.

(f) Authorizes the comprehensive agreement to provide for the development or operation of phases or segments of the qualifying project.

Sec. 2267.059. INTERIM AGREEMENT. Authorizes the responsible governmental entity, before or in connection with the negotiation of the comprehensive agreement, to enter into an interim agreement with the contracting person proposing the development or operation of the qualifying project. Authorizes the interim agreement to:

(1) authorize the contracting person to begin project phases or activities for which the contracting person is authorized to be compensated relating to the proposed qualifying project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;

(2) establish the process and timing of the negotiation of the comprehensive agreement; and

(3) contain any other provision related to any aspect of the development or operation of a qualifying project that the parties consider appropriate.

Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a) Authorizes the contracting person and the responsible governmental entity to use any funding resources that are available to the parties, including accessing any designated trust funds, and borrowing or accepting grants from any state infrastructure bank.

(b) Authorizes the responsible governmental entity to take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and to enter into any contracts required to receive the assistance.

(c) Provides that if the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the legislature.

(d) Authorizes the responsible governmental entity to determine that it serves the public purpose of this chapter for all or part of the costs of a qualifying project to be directly or indirectly paid from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality of the government.

Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) Authorizes the responsible governmental entity, if the contracting person commits a material default, to assume the responsibilities and duties of the contracting person of the qualifying project. Provides that if the responsible governmental entity assumes the responsibilities and duties of the contracting person, the responsible governmental entity has all the rights, title, and interest in the qualifying project, subject to any liens on revenue previously granted by the contracting person to any person providing financing for the project.

(b) Authorizes a responsible governmental entity has the power of eminent domain under state law to exercise that power to acquire the qualifying project in the event of a material default by the contracting person. Authorizes any person who has provided financing for the qualifying project, and the contracting person to the extent of its capital investment, to participate in the eminent domain proceedings with the standing of a property owner.

(c) Authorizes the responsible governmental entity to terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies available to the governmental entity at law or in equity.

(d) Authorizes the responsible governmental entity to make any appropriate claim under the maintenance, performance, or payment bonds or letters of credit required by Section 2267.058(a)(1).

(e) Authorizes the responsible governmental entity, if the responsible governmental entity elects to assume the responsibilities and duties for a qualifying project under Subsection (a), to:

(1) develop or operate the qualifying project;

(2) impose user fees;

(3) impose and collect lease payments for use of the project; and

(4) comply with any applicable contract to provide services.

(f) Requires the responsible governmental entity to collect and pay to secured parties any revenue subject to a lien to the extent necessary to satisfy the contracting person's obligations to secured parties, including the maintenance of reserves. Requires the liens to be correspondingly reduced and, when paid off, released.

(g) Authorizes the responsible governmental entity, before any payment is made to or for the benefit of a secured party, to use revenue to pay the current operation and maintenance costs of the qualifying project, including compensation to the

responsible governmental entity for its services in operating and maintaining the qualifying project. Provides that the right to receive any payment is considered just compensation for the qualifying project.

(h) Prohibits the pledging of the full faith and credit use of the responsible governmental entity to secure any financing of the contracting person the governmental entity assumed when it assumed responsibility for the qualifying project.

Sec. 2267.062. EMINENT DOMAIN. (a) Authorizes the responsible governmental entity, at the request of the contracting person, to exercise any power of eminent domain that it has under law to acquire any land or property interest to the extent that the responsible governmental entity finds the action serves the purpose of this chapter.

(b) Requires that any amounts to be paid in any eminent domain proceeding be paid by the contracting person.

Sec. 2267.063. AFFECTED PUBLIC UTILITY. (a) Requires the contracting person and each public utility, including a public service company or cable television provider, whose facilities will be affected by a qualifying project to cooperate fully in planning and arranging the manner in which the facilities will be affected.

(b) Authorizes a governmental entity possessing the power of eminent domain to exercise that power in connection with the relocation of facilities affected by the qualifying project or that is required to be relocated to the extent that the relocation is necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which includes construction of, renovation to, or improvements to temporary facilities to provide service during the period of construction or improvement.

(c) Requires the contracting person to pay any amount owed for the crossing, constructing, or relocating of facilities.

(d) Authorizes the Public Utility Commission of Texas (PUC), if the contracting person and the public utility cannot agree on a plan for the public utility facility affected by the project, to determine the manner in which the crossing, constructing, or relocating of the facility is to be accomplished and any damage due arising out of the crossing, construction, or relocation. Authorizes PUC, at the expense of the contracting person, to employ expert engineers to examine the location and plans for the crossing, constructing, or relocating, hear any objections and consider modifications, and make a recommendation to PUC.

(e) Requires PUC to make the determination not later than the 90th day after the 90th day after the date PUC is notified by the contracting person that the qualifying project will affect utilities subject to PUC jurisdiction.

Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. Provides that a peace officer of this state or of any affected jurisdiction has the same powers and jurisdiction within the area of the qualifying project as the officer has in the officer's area of jurisdiction. Authorizes the officer to access the qualifying project at any time to exercise the officer's powers and jurisdiction.

Sec. 2267.065. SOVEREIGN IMMUNITY. (a) Provides that this chapter is not a waiver of the sovereign immunity of this state, any responsible governmental entity, or any affected jurisdiction or of any officer or employee of this state, responsible governmental entity, or affected jurisdiction with respect to the participation in or approval of all or part of the qualifying project or its operation, including interconnection of the qualifying project with any other infrastructure or project.

(b) Provides that a county or municipality in which a qualifying project is located has sovereign immunity with respect to its design, construction, and operation to the same extent provided by Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments), Local Government Code.

Sec. 2267.066. **PROCUREMENT GUIDELINES.** (a) Provides that Chapters 2155 (Purchasing: General Rules and Procedures), 2156 (Purchasing Methods), and 2166 (Building Construction and Acquisition), any interpretations, rules, or guidelines of the comptroller of public accounts (comptroller) and the Texas Facilities Commission (TFC), and interpretations, rules, or guidelines developed under Chapter 2262 (Statewide Contract Management) do not apply to a qualifying project under this chapter.

(b) Authorizes a responsible governmental entity, except as provided by Subsection (c), to enter into a comprehensive agreement only in accordance with guidelines adopted by the entity that are consistent with contracts for procurement using the design-build method specified as appropriate in Section 2166.2531 (Design-Build Method), Section 44.036 (Design-Build Contracts for Facilities), Education Code, or Section 271.119 (Design-Build Contracts for Facilities), Local Government Code.

(c) Requires the responsible governmental entity to proceed in accordance with the guidelines adopted under Subsection (b) unless it determines that proceeding in accordance with alternate guidelines adopted by the entity is likely to be advantageous to the entity and the public based on the probable scope, complexity, or priority of the project; risk sharing, including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the contracting person; or an increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available.

(d) Requires the entity, if the responsible governmental entity determines to proceed according to the guidelines adopted by the entity under Subsection (c), to state in writing the reasons for its determination, and obtain the approval of the comptroller if the governmental entity is a governmental entity described by Section 2267.001(5)(A).

(e) Provides that this chapter does not authorize or require a responsible governmental entity to obtain professional services through any process except in accordance with guidelines adopted by the entity consistent with Chapter 2254 (Professional and Consulting Services).

Sec. 2267.067. **POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS.** (a) Requires the responsible governmental entity, not later than the 10th day after the date a responsible governmental entity accepts a proposal submitted in accordance with Section 2267.053(a) or (b), to provide notice of the proposal as follows:

(1) for a responsible governmental described by Section 2267.001(5)(A), by posting the proposal on the entity's Internet website; and

(2) for a responsible governmental entity described by Section 2267.001(5)(B) by posting a copy of the proposal on the entity's Internet website, or publishing in a newspaper of general circulation in the area in which the qualifying project is to be performed a summary of the proposal and the location where copies of the proposal are available for public inspection.

(b) Requires the responsible governmental entity to make available for public inspection at least one copy of the proposal. Provides that this section does not prohibit the responsible governmental entity from posting the proposal in another

in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

(c) Prohibits trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 (Exception: Confidential Information) from being posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

(d) Requires the responsible governmental entity to hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement.

(e) Requires the responsible governmental entity, on completion of the negotiating phase for the development of an interim or comprehensive agreement and before an interim agreement or comprehensive agreement is entered into, to make available the proposed agreement in a manner provided by Subsection (a) or (b).

(f) Requires a responsible governmental entity that has entered into an interim agreement or comprehensive agreement to make procurement records available for public inspection on request. Provides that for purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other name.

(g) Provides that cost estimates relating to a proposed procurement transaction prepared by or for a responsible governmental entity are not open to public inspection.

(h) Provides that any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.

(i) Provides that this section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

Sec. 2267.068. **COMPTROLLER REVIEW.** (a) Requires the comptroller to periodically review interim and comprehensive agreements entered into under this chapter to ensure compliance with this chapter.

(b) Requires a responsible governmental entity to electronically file copies of the agreements and supporting documents with the comptroller. Requires the comptroller to make the electronic copies of the agreements available on the online database maintained by the comptroller.

CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2268.001. **DEFINITIONS.** Defines "commission," "comprehensive agreement," "detailed proposal," "interim agreement," "qualifying project," and "responsible governmental entity" in this chapter.

[Reserves Sections 2268.002-2268.050 for expansion.]

SUBCHAPTER B. COMMISSION

Sec. 2268.051. ESTABLISHMENT OF COMMISSION. Provides that the Partnership Advisory Commission is an advisory commission in the legislative branch that advises responsible governmental entities described by Section 2267.001(5)(A) on proposals received under Chapter 2267.

Sec. 2268.052. COMPOSITION AND TERMS. (a) Provides that the commission consists of the following 11 members:

- (1) the chair of the House Appropriations Committee or the chair's designee;
- (2) four representatives appointed by the speaker of the house of representatives;
- (3) the chair of the Senate Finance Committee or the chair's designee;
- (4) two senators appointed by the chair of the Senate Rules Committee;
- (5) the lieutenant governor or the lieutenant governor's designee; and
- (6) two representatives of the executive branch who are required to be employees of the governor's office, appointed by the governor.

(b) Provides that the legislative members and the lieutenant governor serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) Provides that the members appointed by the governor serve at the will of the governor.

Sec. 2268.053. PRESIDING OFFICER. Requires the members of the commission to elect from among the legislative members a presiding officer and an assistant presiding officer to serve two-year terms.

Sec. 2268.054. COMPENSATION; REIMBURSEMENT. Provides that a member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for all reasonable and necessary expenses incurred in performing duties as a member.

Sec. 2268.0055. MEETINGS. Requires the commission to hold meetings quarterly or on the call of the presiding officer.

Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL, AND OTHER SUPPORT. (a) Requires the legislative body that the presiding officer serves to provide administrative staff support for the commission.

(b) Requires the Texas Legislative Council (TLC) to provide legal, research, and policy analysis services to the commission.

(c) Requires the staffs of the House Appropriations Committee, Senate Finance Committee, and comptroller to provide technical assistance.

(d) Requires the comptroller or a state agency to provide additional assistance as needed.

Sec. 2268.057. COMMISSION PROCEEDINGS. Requires a copy of the proceedings of the commission to be filed with the legislative body that the presiding officer serves.

Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Requires each responsible governmental entity receiving a detailed proposal for a qualifying project, before beginning to negotiate an interim or comprehensive agreement, to provide copies of the proposal to the presiding officer of the commission, and the chairs of the House Appropriations, House Ways and Means Committee, and Senate Finance Committee or their designees.

(b) Provides that the following qualifying projects are not subject to review by the commission:

(1) any proposed qualifying project with a total cost of less than \$5 million; and

(2) any proposed qualifying project with a total cost of more than \$5 million but less than \$50 million for which money has been specifically appropriated as a public-private partnership in the General Appropriations Act.

(c) Authorizes the commission to undertake additional reviews of any qualifying project that will be completed in phases and for which an appropriation has not been made for any phase other than the current phase of the project.

(d) Requires the commission, not later than the 10th day after the date the commission receives a complete copy of the detailed proposal for a qualifying project, to determine whether to accept or declined the proposal for review and notify the responsible governmental entity of the commission's decision.

(e) Requires the commission, if the commission accepts a proposal for review, to provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. Provides that if the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to have declined review of the proposal and to not have made any findings or recommendations on the proposal.

(f) Requires the responsible governmental entity on request of the commission to provide any additional information regarding a qualifying project reviewed by the commission if the information is available to or can be obtained by the responsible governmental entity.

(g) Requires the commission to review accepted detailed proposals and provide findings and recommendations to the responsible governmental entity that include:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(h) Provides that review by the commission does not constitute approval of any appropriations necessary to implement a subsequent interim or comprehensive agreement.

(i) Prohibits the responsible governmental entity, except as provided by Subsection (e), from beginning a negotiation of an interim or comprehensive agreement until the commission has submitted its recommendations or declined to accept the detailed proposals for review.

(j) Requires the responsible governmental entity, not later than the 30th day before the date a comprehensive or interim agreement is executed, to submit to the commission and the chair of the House Appropriations Committee, House Ways and Means Committee, and Senate Finance Committee or their designees:

(1) a copy of the proposed interim or comprehensive agreement; and

(2) a report describing the extent to which the commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Requires records and information afforded protection under Section 552.153 that are provided by a responsible governmental entity to the commission to continue to be protected from disclosure when in the possession of the commission.

SECTION 2. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.153, as follows:

Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS INVOLVED IN CERTAIN PARTNERSHIPS. (a) Provides that, in this section, "affected jurisdiction," "comprehensive agreement," "contracting person," "interim agreement," "qualifying project," and "responsible governmental entity" have the meanings assigned those terms by Section 2267.001.

(b) Provides that information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project authorized under Chapter 2267 is excepted from the requirements of Section 552.021 if:

(1) the information consists of memoranda, staff evaluations, or other records prepared by the responsible governmental entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under Chapter 2267 for which:

(A) disclosure to the public before or after the execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

(B) the basis for the determination under Paragraph (A) is documented in writing by the responsible governmental entity; or

(2) the records are provided by a contracting person to a responsible governmental entity or affected jurisdiction under Chapter 2267 and contain:

(A) trade secrets of the contracting person;

(B) financial records of the contracting person, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or other means; or

(C) other information submitted by the contracting person that, if made public before the execution of an interim or comprehensive

agreement, would adversely affect the financial interest or bargaining position of the responsible governmental entity or the person.

(c) Provides that, except as specifically provided by Subsection (c), this section does not authorize the withholding of information concerning:

(1) the terms of any interim or comprehensive agreement, service contract, lease, partnership, or agreement of any kind entered into by the responsible governmental entity and the contracting person or the terms or the terms of any financing arrangement that involves the use of any public money; or

(2) the performance of any person developing or operating a qualifying project under Chapter 2267.

SECTION 3. Effective date: September 1, 2011.