

By: Jackson

S.B. No. 1048

A BILL TO BE ENTITLED

AN ACT

relating to the creation of public and private facilities and infrastructure.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapters 2267 and 2268 to read as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, that elects to

1 operate under this chapter through the adoption of a resolution by  
2 the institution's board of regents; and

3 (B) a political subdivision of this state that  
4 elects to operate under this chapter by the adoption of a resolution  
5 by the governing body of the political subdivision.

6 (6) "Interim agreement" means an agreement authorized  
7 by Section 2267.059 between a contracting person and a responsible  
8 governmental entity that proposes the development or operation of  
9 the qualifying project.

10 (7) "Lease payment" means any form of payment,  
11 including a land lease, by a governmental entity to the contracting  
12 person for the use of a qualifying project.

13 (8) "Material default" means any default by a  
14 contracting person in the performance of duties imposed under  
15 Section 2267.057(e) that jeopardizes adequate service to the public  
16 from a qualifying project.

17 (9) "Operate" means to finance, maintain, improve,  
18 equip, modify, repair, or operate a qualifying project.

19 (10) "Qualifying project" means:

20 (A) any ferry, mass transit facility, vehicle  
21 parking facility, port facility, power generation facility, fuel  
22 supply facility, oil or gas pipeline, water supply facility, public  
23 work, waste treatment facility, hospital, school, medical or  
24 nursing care facility, recreational facility, public building, or  
25 other similar facility currently available or to be made available  
26 to a governmental entity for public use, including any structure,  
27 parking area, appurtenance, and other property required to operate

1 the structure or facility and any technology infrastructure  
2 installed in the structure or facility that is essential to the  
3 project's purpose; or

4 (B) any improvements necessary or desirable to  
5 unimproved real estate owned by a governmental entity.

6 (11) "Responsible governmental entity" means a  
7 governmental entity that has the power to develop or operate an  
8 applicable qualifying project.

9 (12) "Revenue" means all revenue, income, earnings,  
10 user fees, lease payments, or other service payments that support  
11 the development or operation of a qualifying project, including  
12 money received as a grant or otherwise from the federal government,  
13 a governmental entity, or any agency or instrumentality of the  
14 federal government or governmental entity in aid of the project.

15 (13) "Service contract" means a contract between a  
16 governmental entity and a contracting person under Section  
17 2267.054.

18 (14) "Service payment" means a payment to a  
19 contracting person of a qualifying project under a service  
20 contract.

21 (15) "User fee" means a rate, fee, or other charge  
22 imposed by a contracting person for the use of all or part of a  
23 qualifying project under a comprehensive agreement.

24 Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION  
25 OF CHAPTER. (a) The legislature finds that:

26 (1) there is a public need for timely acquisition,  
27 design, construction, improvement, renovation, expansion,

1 equipping, maintenance, operation, implementation, and  
2 installation of education facilities, technology and other public  
3 infrastructure, and government facilities in this state that serve  
4 a public need and purpose;

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

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

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

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

24 (b) An action authorized under Section 2267.053 serves the  
25 public purpose of this chapter if the action facilitates the timely  
26 development or operation of a qualifying project.

27 (c) The purposes of this chapter include:

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

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

8           (3) providing governmental entities with the greatest  
9 possible flexibility in contracting with private entities or other  
10 persons to provide public services through qualifying projects  
11 subject to this chapter.

12           (d) This chapter shall be liberally construed in conformity  
13 with the purposes of this section.

14           (e) The procedures in this chapter are not exclusive. This  
15 chapter does not prohibit a responsible governmental entity from  
16 entering into an agreement for or procuring public and private  
17 facilities and infrastructure under other authority.

18           Sec. 2267.003. APPLICABILITY. This chapter does not apply  
19 to:

20           (1) the financing, design, construction, maintenance,  
21 or operation of a highway in the state highway system;

22           (2) a transportation authority created under Chapter  
23 451, 452, 453, or 460, Transportation Code; or

24           (3) any telecommunications, cable television, video  
25 service, or broadband infrastructure other than technology  
26 installed as part of a qualifying project that is essential to the  
27 project.

1 Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This  
2 chapter does not alter the eminent domain laws of this state or  
3 grant the power of eminent domain to any person who is not expressly  
4 granted that power under other state law.

5 [Sections 2267.005-2267.050 reserved for expansion]

6 SUBCHAPTER B. QUALIFYING PROJECTS

7 Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL  
8 FOR QUALIFYING PROJECT. (a) A person may not develop or operate a  
9 qualifying project unless the person obtains the approval of and  
10 contracts with the responsible governmental entity under this  
11 chapter. The person may initiate the approval process by  
12 submitting a proposal requesting approval under Section  
13 2267.053(a), or the responsible governmental entity may request  
14 proposals or invite bids under Section 2267.053(b).

15 (b) A person submitting a proposal requesting approval of a  
16 qualifying project shall specifically and conceptually identify  
17 any facility, building, infrastructure, or improvement included in  
18 the proposal as a part of the qualifying project.

19 (c) On receipt of a proposal submitted by a person  
20 initiating the approval process under Section 2267.053(a), the  
21 responsible governmental entity shall determine whether to accept  
22 the proposal for consideration in accordance with Sections 2267.052  
23 and 2267.065 and the guidelines adopted under those sections. A  
24 responsible governmental entity that determines not to accept the  
25 proposal for consideration shall return the proposal, all fees, and  
26 the accompanying documentation to the person submitting the  
27 proposal.

1       (d) The responsible governmental entity may at any time  
2 reject a proposal initiated by a person under Section 2267.053(a).

3       Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE  
4 GOVERNMENTAL ENTITIES. (a) Before requesting or considering a  
5 proposal for a qualifying project, a responsible governmental  
6 entity must adopt and make publicly available guidelines that  
7 enable the governmental entity to comply with this chapter. The  
8 guidelines must be reasonable, encourage competition, and guide the  
9 selection of projects under the purview of the responsible  
10 governmental entity.

11       (b) The guidelines for a responsible governmental entity  
12 described by Section 2267.001(5)(A) must:

13               (1) require the responsible governmental entity to:

14                       (A) make a representative of the entity available  
15 to meet with persons who are considering submitting a proposal; and

16                       (B) provide notice of the representative's  
17 availability;

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

20               (3) contain suggested timelines for selecting  
21 proposals and negotiating an interim or comprehensive agreement;

22               (4) allow the responsible governmental entity to  
23 accelerate the selection, review, and documentation timelines for  
24 proposals involving a qualifying project considered a priority by  
25 the entity;

26               (5) include financial review and analysis procedures  
27 that at a minimum consist of:

- 1           (A) a cost-benefit analysis;  
2           (B) an assessment of opportunity cost;  
3           (C) consideration of the degree to which  
4 functionality and services similar to the functionality and  
5 services to be provided by the proposed project are already  
6 available in the private market; and  
7           (D) consideration of the results of all studies  
8 and analyses related to the proposed qualifying project;  
9           (6) allow the responsible governmental entity to  
10 consider the nonfinancial benefits of a proposed qualifying  
11 project;  
12           (7) include criteria for:  
13               (A) the qualifying project, including the scope,  
14 costs, and duration of the project and the involvement or impact of  
15 the project on multiple public entities;  
16               (B) the creation of and the responsibilities of  
17 an oversight committee, with members representing the responsible  
18 governmental entity, that acts as an advisory committee to review  
19 the terms of any proposed interim or comprehensive agreement; and  
20               (C) compliance with the requirements of Chapter  
21 2268;  
22           (8) require the responsible governmental entity to  
23 analyze the adequacy of the information to be released by the entity  
24 when seeking competing proposals and require that the entity  
25 provide more detailed information, if the entity determines  
26 necessary, to encourage competition, subject to Section  
27 2267.053(g);



1           (9) establish criteria, key decision points, and  
2 approvals required to ensure that the responsible governmental  
3 entity considers the extent of competition before selecting  
4 proposals and negotiating an interim or comprehensive agreement;  
5 and

6           (10) require the posting and publishing of public  
7 notice of a proposal requesting approval of a qualifying project,  
8 including:

9                   (A) specific information and documentation  
10 regarding the nature, timing, and scope of the qualifying project,  
11 as required under Section 2267.053(a);

12                   (B) a reasonable period of not less than 45 days,  
13 as determined by the responsible governmental entity, to encourage  
14 competition and partnerships with private entities and other  
15 persons in accordance with the goals of this chapter, during which  
16 the responsible governmental entity must accept submission of  
17 competing proposals for the qualifying project; and

18                   (C) a requirement for advertising the notice on  
19 the governmental entity's Internet website and on TexasOnline or  
20 the state's official Internet website.

21           (c) The guidelines of a responsible governmental entity  
22 described by Section 2267.001(5)(B):

23                   (1) may include the provisions required under  
24 Subsection (b); and

25                   (2) must include a requirement that the governmental  
26 entity engage the services of qualified professionals, including an  
27 architect, professional engineer, or certified public accountant,

1 not otherwise employed by the governmental entity, to provide  
2 independent analyses regarding the specifics, advantages,  
3 disadvantages, and long-term and short-term costs of any proposal  
4 requesting approval of a qualifying project unless the governing  
5 body of the governmental entity determines that the analysis of the  
6 proposal is to be performed by employees of the governmental  
7 entity.

8 Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY  
9 RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other  
10 person may submit a proposal requesting approval of a qualifying  
11 project by the responsible governmental entity. The proposal must  
12 be accompanied by the following, unless waived by the responsible  
13 governmental entity:

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

17 (2) a description of the qualifying project,  
18 including:

19 (A) the conceptual design of any facility or a  
20 conceptual plan for the provision of services or technology  
21 infrastructure; and

22 (B) a schedule for the initiation of and  
23 completion of the qualifying project that includes the proposed  
24 major responsibilities and timeline for activities to be performed  
25 by the governmental entity and the person;

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

1 project;

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

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

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

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

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

19 (9) user fees, lease payments, and other service  
20 payments over the term of any applicable interim or comprehensive  
21 agreement and the methodology and circumstances for changes to the  
22 user fees, lease payments, and other service payments over time;  
23 and

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

26 (b) A responsible governmental entity may request proposals  
27 or invite bids from persons for the development or operation of a

1 qualifying project. A responsible governmental entity shall  
2 consider price as one factor in evaluating the proposals received,  
3 but is not required to select the proposal that offers the lowest  
4 price. The responsible governmental entity may consider the  
5 following factors:

- 6 (1) the proposed cost of the qualifying project;
- 7 (2) the general reputation, industry experience, and  
8 financial capacity of the person submitting a proposal;
- 9 (3) the proposed design of the qualifying project;
- 10 (4) the eligibility of the project for accelerated  
11 selection, review, and documentation timelines under the  
12 responsible governmental entity's guidelines;
- 13 (5) comments from local citizens and affected  
14 jurisdictions;
- 15 (6) benefits to the public;
- 16 (7) the person's good faith effort to comply with the  
17 goals of a historically underutilized business plan;
- 18 (8) the person's plans to employ local contractors and  
19 residents;
- 20 (9) for a qualifying project that involves a  
21 continuing role beyond design and construction, the person's  
22 proposed rate of return and opportunities for revenue sharing; and
- 23 (10) other criteria that the responsible governmental  
24 entity considers appropriate.

25 (c) The responsible governmental entity may approve as a  
26 qualifying project the development or operation of a facility  
27 needed by the governmental entity, or the design or equipping of a

1 qualifying project, if the responsible governmental entity  
2 determines that the project serves the public purpose of this  
3 chapter. The responsible governmental entity may determine that  
4 the development or operation of the project as a qualifying project  
5 serves the public purpose if:

6 (1) there is a public need for or benefit derived from  
7 the project of the type the person proposes as a qualifying project;

8 (2) the estimated cost of the project is reasonable in  
9 relation to similar facilities; and

10 (3) the person's plans will result in the timely  
11 development or operation of the qualifying project.

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

17 (e) The approval of a responsible governmental entity  
18 described by Section 2267.001(5)(A) is subject to the private  
19 entity or other person entering into an interim or comprehensive  
20 agreement with the responsible governmental entity.

21 (f) On approval of the qualifying project, the responsible  
22 governmental entity shall establish a date by which activities  
23 related to the qualifying project must begin. The responsible  
24 governmental entity may extend the date.

25 (g) The responsible governmental entity shall take action  
26 appropriate under Section 552.153 to protect confidential and  
27 proprietary information provided by the contracting person under an

1 agreement.

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

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

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

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

20 (b) Not later than the 60th day after the date an affected  
21 jurisdiction receives the notice required by Subsection (a), the  
22 affected jurisdiction that is not the responsible governmental  
23 entity for the respective qualifying project shall submit in  
24 writing to the responsible governmental entity any comments the  
25 affected jurisdiction has on the proposed qualifying project and  
26 indicate whether the facility or project is compatible with the  
27 local comprehensive plan, local infrastructure development plans,

1 the capital improvements budget, or other government spending plan.  
2 The responsible governmental entity shall consider the submitted  
3 comments before entering into a comprehensive agreement with a  
4 contracting person.

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

13 (b) In connection with a dedication under Subsection (a), a  
14 governmental entity may convey any property interest, including a  
15 license, franchise, easement, or another right or interest the  
16 governmental entity considers appropriate, subject to the  
17 conditions imposed by general law governing such conveyance and  
18 subject to the rights of an existing utility under a license,  
19 franchise, easement, or another right under law, to the contracting  
20 person for the consideration determined by the governmental entity.  
21 The consideration may include the agreement of the contracting  
22 person to develop or operate the qualifying project.

23 Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

24 (a) The contracting person has:

25 (1) the power granted by:

26 (A) general law to a person that has the same form  
27 of organization as the contracting person; and

1           (B) a statute governing the business or activity  
2 of the contracting person; and

3           (2) the power to:

4           (A) develop or operate the qualifying project;  
5 and

6           (B) collect lease payments, impose user fees, or  
7 enter into service contracts in connection with the use of the  
8 project.

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

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

18           (d) In operating the qualifying project, the contracting  
19 person may:

20           (1) establish classifications according to reasonable  
21 categories for assessment of user fees; and

22           (2) with the consent of the responsible governmental  
23 entity, adopt and enforce reasonable rules for the qualifying  
24 project to the same extent as the responsible governmental entity.

25           (e) The contracting person shall:

26           (1) develop or operate the qualifying project in a  
27 manner that is acceptable to the responsible governmental entity



1 and in accordance with any applicable interim or comprehensive  
2 agreement;

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

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

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

14 (5) comply with any applicable interim or  
15 comprehensive agreement and any lease or service contract.

16 (f) The qualifying project may be temporarily closed  
17 because of emergencies or, with the consent of the responsible  
18 governmental entity, to protect public safety or for reasonable  
19 construction or maintenance activities.

20 (g) This chapter does not prohibit a contracting person of a  
21 qualifying project from providing additional services for the  
22 qualifying project to the public or persons other than the  
23 responsible governmental entity, provided that the provision of  
24 additional service does not impair the contracting person's ability  
25 to meet the person's commitments to the responsible governmental  
26 entity under any applicable interim or comprehensive agreement.

27 Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before

1 developing or operating the qualifying project, the contracting  
2 person must enter into a comprehensive agreement with a responsible  
3 governmental entity. The comprehensive agreement shall provide  
4 for:

5 (1) delivery of letters of credit or other security in  
6 connection with the development or operation of the qualifying  
7 project, in the forms and amounts satisfactory to the responsible  
8 governmental entity, and delivery of performance and payment bonds  
9 in compliance with Chapter 2253 for all construction activities;

10 (2) review of plans and specifications for the  
11 qualifying project by the responsible governmental entity and  
12 approval by the responsible governmental entity if the plans and  
13 specifications conform to standards acceptable to the responsible  
14 governmental entity, except that the contracting person may not be  
15 required to complete the design of a qualifying project before the  
16 execution of a comprehensive agreement;

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

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

1 project;

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

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

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

10 (8) policies and procedures governing the rights and  
11 responsibilities of the responsible governmental entity and the  
12 contracting person if the comprehensive agreement is terminated or  
13 there is a material default by the contracting person, including  
14 conditions governing:

15 (A) assumption of the duties and  
16 responsibilities of the contracting person by the responsible  
17 governmental entity; and

18 (B) the transfer or purchase of property or other  
19 interests of the contracting person to the responsible governmental  
20 entity.

21 (b) The comprehensive agreement shall provide for any user  
22 fee, lease payment, or service payment established by agreement of  
23 the parties. In negotiating a user fee under this section, the  
24 parties shall establish a payment or fee that is the same for  
25 persons using a facility of the qualifying project under like  
26 conditions and that will not materially discourage use of the  
27 qualifying project. The execution of the comprehensive agreement

1 or an amendment to the agreement is conclusive evidence that the  
2 user fee, lease payment, or service payment complies with this  
3 chapter. A user fee or lease payment established in the  
4 comprehensive agreement as a source of revenue may be in addition  
5 to, or in lieu of, a service payment.

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

11 (d) The comprehensive agreement must incorporate the duties  
12 of the contracting person under this chapter and may contain terms  
13 the responsible governmental entity determines serve the public  
14 purpose of this chapter. The comprehensive agreement may contain:

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

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

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

1 affected jurisdiction, to the affected jurisdiction.

2 (e) Any change in the terms of the comprehensive agreement  
3 that the parties agree to must be added to the comprehensive  
4 agreement by written amendment.

5 (f) The comprehensive agreement may provide for the  
6 development or operation of phases or segments of the qualifying  
7 project.

8 Sec. 2267.059. INTERIM AGREEMENT. Before or in connection  
9 with the negotiation of the comprehensive agreement, the  
10 responsible governmental entity may enter into an interim agreement  
11 with the contracting person proposing the development or operation  
12 of the qualifying project. The interim agreement may:

13 (1) authorize the contracting person to begin project  
14 phases or activities for which the contracting person may be  
15 compensated relating to the proposed qualifying project, including  
16 project planning and development, design, engineering,  
17 environmental analysis and mitigation, surveying, and financial  
18 and revenue analysis, including ascertaining the availability of  
19 financing for the proposed facility or facilities of the qualifying  
20 project;

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

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

26 Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE.

27 (a) The contracting person and the responsible governmental

1 entity may use any funding resources that are available to the  
2 parties, including:

- 3 (1) accessing any designated trust funds; and  
4 (2) borrowing or accepting grants from any state  
5 infrastructure bank.

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

10 (c) If the responsible governmental entity is a state  
11 agency, any money received from the state or federal government or  
12 any agency or instrumentality of the state or federal government is  
13 subject to appropriation by the legislature.

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

19 Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the  
20 contracting person commits a material default, the responsible  
21 governmental entity may assume the responsibilities and duties of  
22 the contracting person of the qualifying project. If the  
23 responsible governmental entity assumes the responsibilities and  
24 duties of the contracting person, the responsible governmental  
25 entity has all the rights, title, and interest in the qualifying  
26 project, subject to any liens on revenue previously granted by the  
27 contracting person to any person providing financing for the

1 project.

2 (b) A responsible governmental entity that has the power of  
3 eminent domain under state law may exercise that power to acquire  
4 the qualifying project in the event of a material default by the  
5 contracting person. Any person who has provided financing for the  
6 qualifying project, and the contracting person to the extent of its  
7 capital investment, may participate in the eminent domain  
8 proceedings with the standing of a property owner.

9 (c) The responsible governmental entity may terminate, with  
10 cause, any applicable interim or comprehensive agreement and  
11 exercise any other rights and remedies available to the  
12 governmental entity at law or in equity.

13 (d) The responsible governmental entity may make any  
14 appropriate claim under the letters of credit or other security or  
15 the performance and payment bonds required by Section  
16 2267.058(a)(1).

17 (e) If the responsible governmental entity elects to assume  
18 the responsibilities and duties for a qualifying project under  
19 Subsection (a), the responsible governmental entity may:

- 20 (1) develop or operate the qualifying project;  
21 (2) impose user fees;  
22 (3) impose and collect lease payments for the use of  
23 the project; and  
24 (4) comply with any applicable contract to provide  
25 services.

26 (f) The responsible governmental entity shall collect and  
27 pay to secured parties any revenue subject to a lien to the extent

1 necessary to satisfy the contracting person's obligations to  
2 secured parties, including the maintenance of reserves. The liens  
3 shall be correspondingly reduced and, when paid off, released.

4 (g) Before any payment is made to or for the benefit of a  
5 secured party, the responsible governmental entity may use revenue  
6 to pay the current operation and maintenance costs of the  
7 qualifying project, including compensation to the responsible  
8 governmental entity for its services in operating and maintaining  
9 the qualifying project. The right to receive any payment is  
10 considered just compensation for the qualifying project.

11 (h) The full faith and credit of the responsible  
12 governmental entity may not be pledged to secure any financing of  
13 the contracting person that was assumed by the governmental entity  
14 when the governmental entity assumed responsibility for the  
15 qualifying project.

16 Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the  
17 contracting person, the responsible governmental entity may  
18 exercise any power of eminent domain that it has under law to  
19 acquire any land or property interest to the extent that the  
20 responsible governmental entity finds that the action serves the  
21 public purpose of this chapter.

22 (b) Any amounts to be paid in any eminent domain proceeding  
23 shall be paid by the contracting person.

24 Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The  
25 contracting person and each facility owner, including a public  
26 utility, a public service company, or a cable television provider,  
27 whose facilities will be affected by a qualifying project shall



1 cooperate fully in planning and arranging the manner in which the  
2 facilities will be affected.

3 (b) The contracting person and responsible governmental  
4 entity shall ensure that a facility owner whose facility will be  
5 affected by a qualifying project does not suffer a disruption of  
6 service as a result of the construction or improvement of the  
7 qualifying project.

8 (c) A governmental entity possessing the power of eminent  
9 domain may exercise that power in connection with the relocation of  
10 facilities affected by the qualifying project or facilities that  
11 must be relocated to the extent that the relocation is necessary or  
12 desirable by construction of, renovation to, or improvements to the  
13 qualifying project, which includes construction of, renovation to,  
14 or improvements to temporary facilities to provide service during  
15 the period of construction or improvement. The governmental entity  
16 shall exercise its power of eminent domain to the extent required to  
17 ensure an affected facility owner does not suffer a disruption of  
18 service as a result of the construction or improvement of the  
19 qualifying project during the construction or improvement or after  
20 the qualifying project is completed or improved.

21 (d) The contracting person shall pay any amount owed for the  
22 crossing, constructing, or relocating of facilities.

23 Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace  
24 officer of this state or of any affected jurisdiction has the same  
25 powers and jurisdiction within the area of the qualifying project  
26 as the officer has in the officer's area of jurisdiction. The  
27 officer may access the qualifying project at any time to exercise

1 the officer's powers and jurisdiction.

2 Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters  
3 2155, 2156, and 2166, any interpretations, rules, or guidelines of  
4 the comptroller and the Texas Facilities Commission, and  
5 interpretations, rules, or guidelines developed under Chapter 2262  
6 do not apply to a qualifying project under this chapter.

7 (b) A responsible governmental entity may enter into a  
8 comprehensive agreement only in accordance with guidelines that  
9 require the contracting person to design and construct the  
10 qualifying project in accordance with procedures that do not  
11 materially conflict with those specified in:

- 12 (1) Section 2166.2531;
- 13 (2) Section 44.036, Education Code;
- 14 (3) Section 271.119, Local Government Code; or
- 15 (4) Subchapter J, Chapter 271, Local Government Code  
16 for civil works projects as defined by Section 271.181(2), Local  
17 Government Code.

18 (c) This chapter does not authorize a responsible  
19 governmental entity or a contracting person to obtain professional  
20 services through any process except in accordance with Subchapter  
21 A, Chapter 2254.

22 (d) Identified team members, including the architect,  
23 engineer, or builder, may not be substituted or replaced once a  
24 project is approved and an interim or comprehensive agreement is  
25 executed without the written approval of the responsible  
26 governmental entity.

27 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC

1 ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day  
2 after the date a responsible governmental entity accepts a proposal  
3 submitted in accordance with Section 2267.053(a) or (b), the  
4 responsible governmental entity shall provide notice of the  
5 proposal as follows:

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

9 (2) for a responsible governmental entity described by  
10 Section 2267.001(5)(B), by:

11 (A) posting a copy of the proposal on the  
12 entity's Internet website; or

13 (B) publishing in a newspaper of general  
14 circulation in the area in which the qualifying project is to be  
15 performed a summary of the proposal and the location where copies of  
16 the proposal are available for public inspection.

17 (b) The responsible governmental entity shall make  
18 available for public inspection at least one copy of the proposal.  
19 This section does not prohibit the responsible governmental entity  
20 from posting the proposal in another manner considered appropriate  
21 by the responsible governmental entity to provide maximum notice to  
22 the public of the opportunity to inspect the proposal.

23 (c) Trade secrets, financial records, or other records of  
24 the contracting person excluded from disclosure under Section  
25 552.101 may not be posted or made available for public inspection  
26 except as otherwise agreed to by the responsible governmental  
27 entity and the contracting person.

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

5       (e) On completion of the negotiation phase for the  
6 development of an interim or comprehensive agreement and before an  
7 interim agreement or comprehensive agreement is entered into, a  
8 responsible governmental entity must make available the proposed  
9 agreement in a manner provided by Subsection (a) or (b).

10       (f) A responsible governmental entity that has entered into  
11 an interim agreement or comprehensive agreement shall make  
12 procurement records available for public inspection on request.  
13 For purposes of this subsection, procurement records do not include  
14 the trade secrets of the contracting person or financial records,  
15 including balance sheets or financial statements of the contracting  
16 person, that are not generally available to the public through  
17 regulatory disclosure or other means.

18       (g) Cost estimates relating to a proposed procurement  
19 transaction prepared by or for a responsible governmental entity  
20 are not open to public inspection.

21       (h) Any inspection of procurement transaction records under  
22 this section is subject to reasonable restrictions to ensure the  
23 security and integrity of the records.

24       (i) This section applies to any accepted proposal  
25 regardless of whether the process of bargaining results in an  
26 interim or comprehensive agreement.

1           CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

2                   SUBCHAPTER A. GENERAL PROVISIONS

3           Sec. 2268.001. DEFINITIONS. In this chapter:

4           (1) "Commission" means the Partnership Advisory  
5 Commission.

6           (2) "Comprehensive agreement" has the meaning  
7 assigned by Section 2267.001.

8           (3) "Detailed proposal" means a proposal for a  
9 qualifying project accepted by a responsible governmental entity  
10 beyond a conceptual level of review that defines and establishes  
11 periods related to fixing costs, payment schedules, financing,  
12 deliverables, and project schedule.

13           (4) "Interim agreement" has the meaning assigned by  
14 Section 2267.001.

15           (5) "Qualifying project" has the meaning assigned by  
16 Section 2267.001.

17           (6) "Responsible governmental entity" has the meaning  
18 assigned by Section 2267.001.

19           Sec. 2268.002. APPLICABILITY. This chapter applies only to  
20 responsible governmental entities described by Section  
21 2267.001(5)(A).

22           [Sections 2268.003-2268.050 reserved for expansion]

23                   SUBCHAPTER B. COMMISSION

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

1 Chapter 2267.

2 Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission  
3 consists of the following 11 members:

4 (1) the chair of the House Appropriations Committee or  
5 the chair's designee;

6 (2) three representatives appointed by the speaker of  
7 the house of representatives;

8 (3) the chair of the Senate Finance Committee or the  
9 chair's designee;

10 (4) three senators appointed by the lieutenant  
11 governor; and

12 (5) three representatives of the executive branch,  
13 appointed by the governor.

14 (b) The legislative members and the lieutenant governor  
15 serve on the commission until the expiration of their terms of  
16 office or until their successors qualify.

17 (c) The members appointed by the governor serve at the will  
18 of the governor.

19 Sec. 2268.053. PRESIDING OFFICER. The members of the  
20 commission shall elect from among the legislative members a  
21 presiding officer and an assistant presiding officer to serve  
22 two-year terms.

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

27 Sec. 2268.055. MEETINGS. The commission shall hold

1 meetings quarterly or on the call of the presiding officer.

2 Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL,  
3 AND OTHER SUPPORT. (a) The legislative body that the presiding  
4 officer serves shall provide administrative staff support for the  
5 commission.

6 (b) The Texas Legislative Council shall provide legal,  
7 research, and policy analysis services to the commission.

8 (c) The staffs of the House Appropriations Committee,  
9 Senate Finance Committee, and comptroller shall provide technical  
10 assistance.

11 (d) The comptroller or a state agency shall provide  
12 additional assistance as needed.

13 Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the  
14 proceedings of the commission shall be filed with the legislative  
15 body that the presiding officer serves.

16 Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR  
17 QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before  
18 beginning to negotiate an interim or comprehensive agreement, each  
19 responsible governmental entity receiving a detailed proposal for a  
20 qualifying project must provide copies of the proposal to:

21 (1) the presiding officer of the commission; and

22 (2) the chairs of the House Appropriations Committee  
23 and Senate Finance Committee or their designees.

24 (b) The following qualifying projects are not subject to  
25 review by the commission:

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

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

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

9           (d) Not later than the 10th day after the date the  
10 commission receives a complete copy of the detailed proposal for a  
11 qualifying project, the commission shall determine whether to  
12 accept or decline the proposal for review and notify the  
13 responsible governmental entity of the commission's decision.

14           (e) If the commission accepts a proposal for review, the  
15 commission shall provide its findings and recommendations to the  
16 responsible governmental entity not later than the 45th day after  
17 the date the commission receives complete copies of the detailed  
18 proposal. If the commission does not provide its findings or  
19 recommendations to the responsible governmental entity by that  
20 date, the commission is considered to have declined review of the  
21 proposal and to not have made any findings or recommendations on the  
22 proposal.

23           (f) The responsible governmental entity on request of the  
24 commission shall provide any additional information regarding a  
25 qualifying project reviewed by the commission if the information is  
26 available to or can be obtained by the responsible governmental  
27 entity.



1       (g) The commission shall review accepted detailed proposals  
2 and provide findings and recommendations to the responsible  
3 governmental entity that include:

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

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

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

12          (4) proposed general business terms.

13       (h) Review by the commission does not constitute approval of  
14 any appropriations necessary to implement a subsequent interim or  
15 comprehensive agreement.

16       (i) Except as provided by Subsection (e), the responsible  
17 governmental entity may not begin negotiation of an interim or  
18 comprehensive agreement until the commission has submitted its  
19 recommendations or declined to accept the detailed proposals for  
20 review.

21       (j) Not later than the 30th day before the date a  
22 comprehensive or interim agreement is executed, the responsible  
23 governmental entity shall submit to the commission and the chair of  
24 the House Appropriations Committee and Senate Finance Committee or  
25 their designees:

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

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

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

9           SECTION 2. Subchapter C, Chapter 552, Government Code, is  
10 amended by adding Section 552.153 to read as follows:

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

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

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

26           (A) disclosure to the public before or after the  
27 execution of an interim or comprehensive agreement would adversely

1 affect the financial interest or bargaining position of the  
2 responsible governmental entity; and

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

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

9 (A) trade secrets of the contracting person;

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

14 (C) other information submitted by the  
15 contracting person that, if made public before the execution of an  
16 interim or comprehensive agreement, would adversely affect the  
17 financial interest or bargaining position of the responsible  
18 governmental entity or the person.

19 (c) Except as specifically provided by Subsection (b), this  
20 section does not authorize the withholding of information  
21 concerning:

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

27 (2) the performance of any person developing or

1 operating a qualifying project under Chapter 2267.

2 SECTION 3. This Act takes effect September 1, 2011.