

By: Jackson
(J. Davis of Harris)

S.B. No. 1048

Substitute the following for S.B. No. 1048:

By: J. Davis of Harris

C.S.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(f) 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 the total project cost as one factor in evaluating the
3 proposals received, but is not required to select the proposal that
4 offers the lowest total project cost. The responsible governmental
5 entity may consider the 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) After obtaining any appraisal of the property
7 interest that is required under other law in connection with the
8 conveyance, a governmental entity may dedicate any property
9 interest, including land, improvements, and tangible personal
10 property, for public use in a qualifying project if the
11 governmental entity finds that the dedication will serve the public
12 purpose of this chapter by minimizing the cost of a qualifying
13 project to the governmental entity or reducing the delivery time of
14 a qualifying project.

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

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

26 (a) The contracting person has:

27 (1) the power granted by:

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

3 (B) a statute governing the business or activity
4 of the contracting person; and

5 (2) the power to:

6 (A) develop or operate the qualifying project;
7 and

8 (B) collect lease payments, impose user fees
9 subject to Subsection (b), or enter into service contracts in
10 connection with the use of the project.

11 (b) The contracting person may not impose a user fee or
12 increase the amount of a user fee until the fee or increase is
13 approved by the responsible governmental entity.

14 (c) The contracting person may own, lease, or acquire any
15 other right to use or operate the qualifying project.

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

23 (e) In operating the qualifying project, the contracting
24 person may:

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

27 (2) with the consent of the responsible governmental

1 entity, adopt and enforce reasonable rules for the qualifying
2 project to the same extent as the responsible governmental entity.

3 (f) The contracting person shall:

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

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

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

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

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

21 (g) The qualifying project may be temporarily closed
22 because of emergencies or, with the consent of the responsible
23 governmental entity, to protect public safety or for reasonable
24 construction or maintenance activities.

25 (h) This chapter does not prohibit a contracting person of a
26 qualifying project from providing additional services for the
27 qualifying project to the public or persons other than the

1 responsible governmental entity, provided that the provision of
2 additional service does not impair the contracting person's ability
3 to meet the person's commitments to the responsible governmental
4 entity under any applicable interim or comprehensive agreement.

5 Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before
6 developing or operating the qualifying project, the contracting
7 person must enter into a comprehensive agreement with a responsible
8 governmental entity. The comprehensive agreement shall provide
9 for:

10 (1) delivery of letters of credit or other security in
11 connection with the development or operation of the qualifying
12 project, in the forms and amounts satisfactory to the responsible
13 governmental entity, and delivery of performance and payment bonds
14 in compliance with Chapter 2253 for all construction activities;

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

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

26 (4) maintenance of a public liability insurance
27 policy, copies of which must be filed with the responsible

1 governmental entity accompanied by proofs of coverage, or
2 self-insurance, each in the form and amount satisfactory to the
3 responsible governmental entity and reasonably sufficient to
4 ensure coverage of tort liability to the public and project
5 employees and to enable the continued operation of the qualifying
6 project;

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

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

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

15 (8) policies and procedures governing the rights and
16 responsibilities of the responsible governmental entity and the
17 contracting person if the comprehensive agreement is terminated or
18 there is a material default by the contracting person, including
19 conditions governing:

20 (A) assumption of the duties and
21 responsibilities of the contracting person by the responsible
22 governmental entity; and

23 (B) the transfer or purchase of property or other
24 interests of the contracting person to the responsible governmental
25 entity.

26 (b) The comprehensive agreement shall provide for any user
27 fee, lease payment, or service payment established by agreement of

1 the parties. In negotiating a user fee under this section, the
2 parties shall establish a payment or fee that is the same for
3 persons using a facility of the qualifying project under like
4 conditions and that will not materially discourage use of the
5 qualifying project. The execution of the comprehensive agreement
6 or an amendment to the agreement is conclusive evidence that the
7 user fee, lease payment, or service payment complies with this
8 chapter. A user fee or lease payment established in the
9 comprehensive agreement as a source of revenue may be in addition
10 to, or in lieu of, a service payment.

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

16 (d) The comprehensive agreement must incorporate the duties
17 of the contracting person under this chapter and may contain terms
18 the responsible governmental entity determines serve the public
19 purpose of this chapter. The comprehensive agreement may contain:

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

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

1 more qualifying projects; and

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

7 (e) Any change in the terms of the comprehensive agreement
8 that the parties agree to must be added to the comprehensive
9 agreement by written amendment.

10 (f) The comprehensive agreement may provide for the
11 development or operation of phases or segments of the qualifying
12 project.

13 Sec. 2267.059. INTERIM AGREEMENT. Before or in connection
14 with the negotiation of the comprehensive agreement, the
15 responsible governmental entity may enter into an interim agreement
16 with the contracting person proposing the development or operation
17 of the qualifying project. The interim agreement may:

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

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

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

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

5 (a) The contracting person and the responsible governmental
6 entity may use any funding resources that are available to the
7 parties, including:

8 (1) accessing any designated trust funds; and

9 (2) borrowing or accepting grants from any state
10 infrastructure bank.

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

15 (c) If the responsible governmental entity is a state
16 agency, any money received from the state or federal government or
17 any agency or instrumentality of the state or federal government is
18 subject to appropriation by the legislature.

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

24 Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the
25 contracting person commits a material default, the responsible
26 governmental entity may assume the responsibilities and duties of
27 the contracting person of the qualifying project. If the

1 responsible governmental entity assumes the responsibilities and
2 duties of the contracting person, the responsible governmental
3 entity has all the rights, title, and interest in the qualifying
4 project, subject to any liens on revenue previously granted by the
5 contracting person to any person providing financing for the
6 project.

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

14 (c) The responsible governmental entity may terminate, with
15 cause, any applicable interim or comprehensive agreement and
16 exercise any other rights and remedies available to the
17 governmental entity at law or in equity.

18 (d) The responsible governmental entity may make any
19 appropriate claim under the letters of credit or other security or
20 the performance and payment bonds required by Section
21 2267.058(a)(1).

22 (e) If the responsible governmental entity elects to assume
23 the responsibilities and duties for a qualifying project under
24 Subsection (a), the responsible governmental entity may:

- 25 (1) develop or operate the qualifying project;
26 (2) impose user fees;
27 (3) impose and collect lease payments for the use of

1 the project; and

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

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

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

16 (h) The full faith and credit of the responsible
17 governmental entity may not be pledged to secure any financing of
18 the contracting person that was assumed by the governmental entity
19 when the governmental entity assumed responsibility for the
20 qualifying project.

21 Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the
22 contracting person, the responsible governmental entity may
23 exercise any power of eminent domain that it has under law to
24 acquire any land or property interest to the extent that the
25 responsible governmental entity dedicates the land or property
26 interest to public use and finds that the action serves the public
27 purpose of this chapter.

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

3 Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The
4 contracting person and each facility owner, including a public
5 utility, a public service company, or a cable television provider,
6 whose facilities will be affected by a qualifying project shall
7 cooperate fully in planning and arranging the manner in which the
8 facilities will be affected.

9 (b) The contracting person and responsible governmental
10 entity shall ensure that a facility owner whose facility will be
11 affected by a qualifying project does not suffer a disruption of
12 service as a result of the construction or improvement of the
13 qualifying project.

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

27 (d) The contracting person shall pay any amount owed for the

1 crossing, constructing, or relocating of facilities.

2 Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace
3 officer of this state or of any affected jurisdiction has the same
4 powers and jurisdiction within the area of the qualifying project
5 as the officer has in the officer's area of jurisdiction. The
6 officer may access the qualifying project at any time to exercise
7 the officer's powers and jurisdiction.

8 Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters
9 2155, 2156, and 2166, any interpretations, rules, or guidelines of
10 the comptroller and the Texas Facilities Commission, and
11 interpretations, rules, or guidelines developed under Chapter 2262
12 do not apply to a qualifying project under this chapter.

13 (b) A responsible governmental entity may enter into a
14 comprehensive agreement only in accordance with guidelines that
15 require the contracting person to design and construct the
16 qualifying project in accordance with procedures that do not
17 materially conflict with those specified in:

- 18 (1) Section 2166.2531;
19 (2) Section 44.036, Education Code;
20 (3) Section 271.119, Local Government Code; or
21 (4) Subchapter J, Chapter 271, Local Government Code,
22 for civil works projects as defined by Section 271.181(2), Local
23 Government Code.

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

1 (d) Identified team members, including the architect,
2 engineer, or builder, may not be substituted or replaced once a
3 project is approved and an interim or comprehensive agreement is
4 executed without the written approval of the responsible
5 governmental entity.

6 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC
7 ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day
8 after the date a responsible governmental entity accepts a proposal
9 submitted in accordance with Section 2267.053(a) or (b), the
10 responsible governmental entity shall provide notice of the
11 proposal as follows:

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

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

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

19 (B) publishing in a newspaper of general
20 circulation in the area in which the qualifying project is to be
21 performed a summary of the proposal and the location where copies of
22 the proposal are available for public inspection.

23 (b) The responsible governmental entity shall make
24 available for public inspection at least one copy of the proposal.
25 This section does not prohibit the responsible governmental entity
26 from posting the proposal in another manner considered appropriate
27 by the responsible governmental entity to provide maximum notice to

1 the public of the opportunity to inspect the proposal.

2 (c) Trade secrets, financial records, or other records of
3 the contracting person excluded from disclosure under Section
4 552.101 may not be posted or made available for public inspection
5 except as otherwise agreed to by the responsible governmental
6 entity and the contracting person.

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

11 (e) On completion of the negotiation phase for the
12 development of an interim or comprehensive agreement and before an
13 interim agreement or comprehensive agreement is entered into, a
14 responsible governmental entity must make available the proposed
15 agreement in a manner provided by Subsection (a) or (b).

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

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

27 (h) Any inspection of procurement transaction records under

1 this section is subject to reasonable restrictions to ensure the
2 security and integrity of the records.

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

6 CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 2268.001. DEFINITIONS. In this chapter:

9 (1) "Commission" means the Partnership Advisory
10 Commission.

11 (2) "Comprehensive agreement" has the meaning
12 assigned by Section 2267.001.

13 (3) "Detailed proposal" means a proposal for a
14 qualifying project accepted by a responsible governmental entity
15 beyond a conceptual level of review that defines and establishes
16 periods related to fixing costs, payment schedules, financing,
17 deliverables, and project schedule.

18 (4) "Interim agreement" has the meaning assigned by
19 Section 2267.001.

20 (5) "Qualifying project" has the meaning assigned by
21 Section 2267.001.

22 (6) "Responsible governmental entity" has the meaning
23 assigned by Section 2267.001.

24 Sec. 2268.002. APPLICABILITY. This chapter applies only to
25 responsible governmental entities described by Section
26 2267.001(5)(A).

27 [Sections 2268.003-2268.050 reserved for expansion]

1 SUBCHAPTER B. COMMISSION

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

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

9 (1) the chair of the House Appropriations Committee or
10 the chair's designee;

11 (2) three representatives appointed by the speaker of
12 the house of representatives;

13 (3) the chair of the Senate Finance Committee or the
14 chair's designee;

15 (4) three senators appointed by the lieutenant
16 governor; and

17 (5) three representatives of the executive branch,
18 appointed by the governor.

19 (b) The legislative members serve on the commission until
20 the expiration of their terms of office or until their successors
21 qualify.

22 (c) The members appointed by the governor serve at the will
23 of the governor.

24 Sec. 2268.053. PRESIDING OFFICER. The members of the
25 commission shall elect from among the legislative members a
26 presiding officer and an assistant presiding officer to serve
27 two-year terms.

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

5 Sec. 2268.055. MEETINGS. The commission shall hold
6 meetings quarterly or on the call of the presiding officer.

7 Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL,
8 AND OTHER SUPPORT. (a) The legislative body that the presiding
9 officer serves shall provide administrative staff support for the
10 commission.

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

13 (c) The staffs of the House Appropriations Committee,
14 Senate Finance Committee, and comptroller shall provide technical
15 assistance.

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

18 Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the
19 proceedings of the commission shall be filed with the legislative
20 body that the presiding officer serves.

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

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

27 (2) the chairs of the House Appropriations Committee

1 and Senate Finance Committee or their designees.

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

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

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

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

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

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

1 (f) The responsible governmental entity on request of the
2 commission shall provide any additional information regarding a
3 qualifying project reviewed by the commission if the information is
4 available to or can be obtained by the responsible governmental
5 entity.

6 (g) The commission shall review accepted detailed proposals
7 and provide findings and recommendations to the responsible
8 governmental entity that include:

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

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

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

17 (4) proposed general business terms.

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

21 (i) Except as provided by Subsection (e), the responsible
22 governmental entity may not begin negotiation of an interim or
23 comprehensive agreement until the commission has submitted its
24 recommendations or declined to accept the detailed proposals for
25 review.

26 (j) Not later than the 30th day before the date a
27 comprehensive or interim agreement is executed, the responsible

1 governmental entity shall submit to the commission and the chairs
2 of the House Appropriations Committee and Senate Finance Committee
3 or their designees:

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

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

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

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

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

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

26 (1) the information consists of memoranda, staff
27 evaluations, or other records prepared by the responsible

1 governmental entity, its staff, outside advisors, or consultants
2 exclusively for the evaluation and negotiation of proposals filed
3 under Chapter 2267 for which:

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

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

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

14 (A) trade secrets of the contracting person;

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

19 (C) other information submitted by the
20 contracting person that, if made public before the execution of an
21 interim or comprehensive agreement, would adversely affect the
22 financial interest or bargaining position of the responsible
23 governmental entity or the person.

24 (c) Except as specifically provided by Subsection (b), this
25 section does not authorize the withholding of information
26 concerning:

27 (1) the terms of any interim or comprehensive

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

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

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