

Amend SB 211 as follows:

(1) On page 6, line 11, between "Complex" and the period, insert the following:

, except as specifically granted the authority:

(1) by the legislature, if the legislature is in session; or

(2) jointly by the governor and the Legislative Budget Board, if the legislature is not in session

(2) On page 8, line 11, strike "The" and substitute "On completion of the negotiation phase for the development of a comprehensive agreement and before a comprehensive agreement is entered into, the".

(3) On page 17, lines 19-20, strike ", including the General Land Office".

(4) On page 19, line 15, strike "Subdivision (1-a)" and substitute "Subdivisions (1-a), (5-a), (9-a), (9-b), (9-c), and (10-a) and amending Subdivisions (10) and (12)".

(5) On page 19, between lines 18 and 19, insert the following:

(5-a) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land;

(B) the installation of water, sewer, or drainage lines on, above, or under land;

(C) the paving of undeveloped land; and

(D) specialized software that in any manner is related to the control, management, maintenance, or operation of an improvement.

(9-a) "Private entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(9-b) "Property" means any matter or thing capable of public or private ownership.

(9-c) "Proposer" means a private entity that submits a proposal to a responsible governmental entity or affected jurisdiction.

(10) "Qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to ~~[unimproved]~~ real property ~~[estate]~~ owned by a governmental entity.

(10-a) "Real property" means:

(A) improved or unimproved land;

(B) an improvement;

(C) a mine or quarry;

(D) a mineral in place;

(E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property described by Paragraphs (A) through (E).

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that arise out of or in connection with ~~[support]~~ the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the project.

(6) On page 20, line 6, between "443.0071" and the period, insert the following:

, except as specifically granted the authority:

(A) by the legislature, if the legislature is in session; or

(B) jointly by the governor and the Legislative

Budget Board, if the legislature is not in session

(7) On page 20, line 10, strike "2267.007, and 2267.008" and substitute "and 2267.007".

(8) Strike page 20, line 11, through page 22, line 17, and substitute the following:

Sec. 2267.005. PROHIBITED EMPLOYMENT OF RESPONSIBLE GOVERNMENTAL ENTITY EMPLOYEES. (a) An employee of a responsible governmental entity may not be employed or hired by another person to perform duties that relate to the employee's specific duties in developing and implementing a qualifying project, including review, evaluation, development, and negotiation of a qualifying project proposal.

(b) The responsible governmental entity shall obtain from each employee sufficient information to determine whether:

(1) the employee is employed by another person; and

(2) a potential conflict of interest exists between the employee's duties for the entity and the employee's duties with the other employer.

(c) Each employee of a responsible governmental entity whose duties relate to a qualifying project shall attest that the employee is aware of and agrees to the responsible governmental entity's ethics and conflict-of-interest policies.

(d) To the extent the other employment is authorized by the responsible governmental entity's policy, this section does not prohibit additional employment for an employee of a responsible governmental entity whose duties are not related to a qualifying project.

(9) On page 22, line 18, strike "2267.007" and substitute "2267.006".

(10) On page 22, line 25, strike "2267.008" and substitute "2267.007".

(11) On page 27, strike lines 20-21 and substitute the following:

commission consistent with the requirements of Section 2267.052(b). The commission shall prescribe the procedure for submitting the guidelines for review under this section, provided that the commission completes its review not later than the 60th day

after the date the commission receives the guidelines and provides written comments and recommendations to the governmental entity to ensure timely compliance with Section 2267.052(b). The

(12) On page 27, line 27, strike "and (b)" and substitute ", (b), (g), and (h)".

(13) On page 29, lines 22-23, strike "approves a proposal for a qualifying project under Subsection (a)" and substitute "accepts an unsolicited proposal for a qualifying project under Subsection (a), in accordance with the requirements of Section 2267.052(b)(10)(B),".

(14) On page 31, between lines 15 and 16, insert the following:

(g) The responsible governmental entity shall take action appropriate under Section 552.153 to protect confidential and proprietary information provided by a private entity submitting the proposal and by the contracting person under an agreement.

(h) Before completing the negotiation and entering into [~~the negotiation of~~] an interim or comprehensive agreement, each responsible governmental entity described by Section 2267.001(5)(A) must submit copies of detailed proposals, including drafts of any interim agreement and the comprehensive agreement, to the Partnership Advisory Commission in accordance with Chapter 2268.

(15) On page 33, strike lines 20-25 and substitute the following:

(c) Trade secrets, proprietary information, financial records, and work product [~~or other records~~] of a proposer are [~~the contracting person~~] excluded from disclosure under Section 552.101 and may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the proposer [~~contracting person~~]. After submission by a responsible governmental entity of a detailed qualifying project proposal to the commission, the trade secrets, proprietary information, financial records, and work product of the proposer are not protected from disclosure unless expressly excepted from the requirements of Chapter 552 or considered confidential under other law.

(16) Strike page 35, line 16, through page 36, line 2.

(17) On page 36, line 8, strike "(a)" and substitute "(d)".

(18) On page 36, strike lines 10-12 and substitute the following:

(d) The Texas Facilities Commission, using the qualifying project fees authorized under Section 2165.353, [comptroller or a state agency] shall provide, on a cost recovery basis, professional services of its architectural, engineering, and real estate staff and the expertise of financial, technical, and other necessary advisors and consultants, authorized under Section 2267.053(d), as necessary to support the Partnership Advisory Commission in its review and evaluation of proposals, including financial and risk allocation analysis and ongoing contract performance monitoring of qualifying projects. The Texas Facilities Commission shall assign staff and contracted advisors and consultants necessary to perform the duties required by this subsection [additional assistance as needed].

(19) On page 37, line 12, strike "negotiate" and substitute "enter into".

(20) On page 37, strike lines 17-22.

(21) On page 38, strike lines 13-15.

(22) Add the following appropriately numbered SECTIONS to the bill:

SECTION _____. Section 552.153, Government Code, as added by Chapter 1334 (**SB 1048**), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

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

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

(A) disclosure to the public before or after the

execution of an interim or comprehensive agreement would adversely affect the financial interest or bargaining position of the responsible governmental entity; and

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

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

(A) trade secrets of the proposer [~~contracting person~~];

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

(C) work product related to a competitive bid or proposal [~~other information~~] submitted by the proposer [~~contracting person~~] that, if made public before the execution of an interim or comprehensive agreement, would provide a competing proposer an unjust advantage or adversely affect the financial interest or bargaining position of the responsible governmental entity or the proposer [~~person~~].

(d) In this section, "proposer" has the meaning assigned by Section 2267.001, as added by Chapter 1334 (SB 1048), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION _____. Section 2152.104, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The commission shall establish a public private partnership division to perform its duties assigned under Chapters 2165 and 2267. The commission may hire or assign the staff necessary for the division to perform the duties required under Subchapter H, Chapter 2165, and Chapters 2267 and 2268. The commission shall provide professional service staff and the expertise of financial, technical, and other necessary advisors and consultants, authorized under Section 2267.053(d), to support the Partnership Advisory Commission in its review and evaluation of qualifying project proposals.

SECTION _____. The heading to Chapter 2166, Government Code, is amended to read as follows:

CHAPTER 2166. BUILDING CONSTRUCTION AND ACQUISITION AND
DISPOSITION OF REAL PROPERTY

SECTION _____. Section 2166.002, Government Code, is amended to read as follows:

Sec. 2166.002. APPLICABILITY OF CHAPTER. This chapter applies only to a building construction project of the state, the acquisition of real property for state purposes, and the disposition of real property owned by the state.

SECTION _____. Section 2267.055(a), Government Code, as added by Chapter 1334 (**SB 1048**), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) A private entity whose proposal, other than a proposal for a service contract, is accepted for conceptual stage evaluation [~~A person submitting a proposal to a responsible governmental entity~~] under Section 2267.053 shall notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

SECTION _____. Section 2267.058, Government Code, as added by Chapter 1334 (**SB 1048**), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Subsection (g) to read as follows:

(g) The comprehensive agreement must provide that a security document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge, or security interest on or against the contracting party's interest may not extend to or affect the fee simple interest of the state in the qualifying project or the state's rights or interests under the comprehensive agreement. Any holder of debt shall acknowledge that the mortgage, pledge, or encumbrance or a lien, charge, or security interest on or against the contracting party's interest is subordinate to the fee simple interest of the state in the qualifying project and the state's rights or interests under the comprehensive agreement.

(23) Renumber the SECTIONS of the bill appropriately.