

BILL ANALYSIS

H.B. 2107
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Originally created by the Legislature in 1919 as the State Board of Control, and now named the Texas Facilities Commission, the agency's mission is to plan for and manage state facilities. The Commission carries out this mission by maintaining state-owned facilities; managing construction and deferred maintenance projects; assisting state agencies with their office and space needs, and other support services; and administering the state and federal surplus property programs. The Commission is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. As a result of its review of the Commission, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications that are contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Facilities Commission in SECTION 12 of this bill.

ANALYSIS

Requires the Commission to prepare a Capitol Complex master plan.

H.B. 2107 requires the Commission to prepare a Capitol Complex master plan and requires the plan to include certain components, including an overview of previous plans; a strategic vision and long-term goals; a building and space needs analysis; a real estate market analysis; detailed proposals for developing state property in the Capitol Complex; analysis and recommendations on design guidelines, infrastructure needs, and financing options; timeframes for implementing the plan and projects; and consideration of options for meeting state space needs outside the Capitol Complex. The bill requires the Commission to ensure the Capitol Complex master plan and the Commission's master facilities plan do not conflict. The bill requires the Commission to submit the initial Capitol Complex master plan to the Governor, Lieutenant Governor, Speaker of the House of Representatives, Comptroller of Public Accounts, and Legislative Budget Board by July 1, 2014, and updates by July 1 of even-numbered years thereafter.

The bill requires the Commission to ensure that the State Preservation Board, General Land Office, Texas Historical Commission, and other interested parties are included in developing the Capitol Complex master plan. H.B. 2107 requires the Commission to submit the proposed master plan to the General Land Office and State Preservation Board for review and comment and specifies timeframes for the review. The bill authorizes the State Preservation Board to disapprove the proposed Capitol Complex master plan and any updates, within specified timeframes. The bill specifies that the plan, including any subsequent updates, is considered to be approved by the State Preservation Board if it does not hold a public vote to disapprove the plan within specified timeframes after receiving the plan. The bill requires that if the State Preservation Board updates or modifies its long-range master plan for the Capitol and Capitol grounds, the plan must conform to the Commission's Capitol Complex master plan.

Exempts Capitol Complex property from General Land Office review.

H.B. 2107 specifies that the General Land Office does not have to review and verify real property records and make recommendations and prepare a report regarding real property in the Capitol Complex.

Requires the Texas Facilities Commission to adopt a comprehensive planning and development process for state property.

The bill requires the Commission to adopt, by rule, a comprehensive process for planning and developing state property in the Commission's inventory, and for assisting state agencies in space

development planning for state property. The bill specifies the process must include certain components, including a clear approach and timeframes for obtaining input; a public involvement policy to ensure public review and comment before Commission decisions on the use and development of state property are made; specific schedules for providing regular updates on planning and development efforts to the Commission; and confidentiality policies. The bill requires the Commission to adopt the planning and development process not later than January 1, 2014.

Requires the Commission to include a complete and clearly documented process for evaluating proposals in its guidelines.

H.B. 2107 requires the Commission to include review criteria and documentation to guide the initial review of each substantially complete qualifying proposal received. The bill specifies the review criteria must include certain components, including the extent a project meets a public need and Commission priorities and objectives; technical and legal feasibility of the project; submitter qualifications; potential risks to the state; and whether an alternative delivery method more effectively meets the state's goals.

H.B. 2107 requires the Oversight Committee to report its project evaluation results to the Commission. The bill requires the Commission, for each qualifying project proposal, to post the Oversight Committee's review report and other evaluation documents on its website, with information considered confidential under the Public and Private Facilities and Infrastructure Act redacted. The bill requires the Commission to develop guidelines for review of qualifying projects not later than January 1, 2014.

Requires the Commission's guidelines to include policies on acquiring needed professional expertise to evaluate, negotiate, and oversee proposals.

The bill requires the Commission's qualifying project review guidelines to specify types of professional expertise needed to protect the state's interest when considering and implementing a qualifying project, and at each stage of a project to evaluate the qualifying proposal. The bill provides that expertise may be provided by Commission staff or outside experts.

Authorizes the Commission to charge a qualifying project fee.

H.B. 2107 authorizes the Commission to charge a reasonable fee to cover the costs of reviewing a qualifying project, and requires the Commission to develop and adopt a qualifying project proposal fee schedule, sufficient to cover its costs. The bill requires the Commission to use information related to professional expertise needed to determine the amount of the fee. The bill authorizes the Commission to use the fee revenue to hire or contract with persons with professional expertise necessary to effectively evaluate a qualifying project proposal. The bill requires the Commission to develop a fee schedule no later than January 1, 2014.

Requires an initial review and the use of a value for money analysis when evaluating each qualifying project proposal, if appropriate.

H.B. 2107 requires agency staff to conduct an initial review of each qualifying project proposal and provide a summary of the review, including analysis and recommendations, to the Commission. The bill requires the Commission to use a value for money analysis in evaluating each qualifying project proposal to identify risks, and determine if the proposal is in the best interest of and provides a tangible public benefit to the state. If commission staff determines a value for money analysis is not appropriate, the bill requires the staff to submit a written report to the Commission stating the reasons for using an alternative analysis methodology. The bill also requires the Commission to coordinate with its office of internal audit for review and comment on the reasonableness of assumptions used in any type of analysis methodology used.

Requires the Commission to hold an initial public hearing on a qualifying project proposal.

H.B. 2107 requires the Commission to hold a public hearing on a qualifying project proposal before submitting it to the Partnership Advisory Commission. The bill specifies the proposal must be posted on the agency's Internet website before the public hearing, with information considered confidential under the Public and Private Facilities and Infrastructure Act redacted. The bill requires the Commission, after the hearing, to modify the proposal as the Commission determines appropriate based on the public comments; and include the comments in the documents submitted to the Partnership Advisory Commission and provide additional information as necessary.

Requires the Commission to submit each qualifying project contract to the Contract Advisory Team.

The bill requires the Commission, no later than the 60th day before which it is scheduled to vote on approval of a qualifying project contract, to submit specific documentation of the modifications to a

proposed qualifying project, made during the Commission's evaluation and negotiation process, to the Contract Advisory Team. The bill requires the Contract Advisory Team to review the documentation and provide written comments and recommendations to the Commission. The bill specifies the review must focus on, but not be limited to, contract management and administration best practices. The bill requires Commission staff to provide the Contract Advisory Team's written comments and recommendations, and the staff's response to them to the Commission members.

Prohibits outside employment of certain Commission staff.

H.B. 2107 prohibits a Commission employee from being employed or hired by another person to perform duties that relate to the employee's duties in developing and implementing a qualifying project. The bill requires the Commission to obtain information from each employee to determine whether an employee is employed by another person and a potential conflict of interest exists. The bill also requires each Commission employee whose duties relate to a qualifying project to attest they are aware of and agree to the Commission's ethics and conflict-of-interest policies. The bill does not prohibit additional employment for a commission employee whose commission duties are not related to a qualifying project.

Requires the Commission to develop a comprehensive capital improvement and deferred maintenance plan.

H.B. 2107 requires the commission to develop a comprehensive capital improvement and deferred maintenance plan that clearly defines the capital improvement needs and critical and noncritical maintenance needs of state buildings. The bill requires certain components of the plan, including a regularly updated list of deferred maintenance projects; a list of all predictable capital improvement projects, including a timeframe and cost estimate for each project; and a biennial plan for responding to emergency repairs and replacements, including potential sources of funds for these projects. The bill requires the plan to include a prioritized listing of projects by state agency facility, including estimated project costs and aggregated costs for all facility projects. The bill requires the Commission to include the plan and updates in its long-range plan, which must include aggregate project costs for each agency. The bill requires the comprehensive plan be developed no later than January 1, 2014.

Adjusts the due dates and recipients of selected Commission reports.

The bill makes the recipients and due dates of selected agency reports consistent and requires reports to the Legislature be submitted electronically.

Applies a standard Sunset across-the-board recommendation.

H.B. 2107 adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Continues the Texas Facilities Commission

The bill changes the date of the Texas Facilities Commission's next Sunset review to 2021, continuing the agency for 8 years.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2013.