

BILL ANALYSIS

S.B. 211
By: Nichols
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 16 of this bill.

Rulemaking authority is expressly granted to the General Land Office in SECTION 19 of this bill.

ANALYSIS

Requires the Commission to prepare a Capitol Complex master plan.

S.B. 211 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; detailed proposals for 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. S.B. 211 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.

After a proposed Capitol Complex master plan or proposed update is submitted and considered approved by the State Preservation Board, and before adoption by the Commission, the bill requires Commission to submit the plan or update to the Partnership Advisory Commission for review and comment. The bill requires the Partnership Advisory Commission, no later than 60 days after receiving the plan or update, by majority vote in a public hearing to approve the plan or update, or submit written comments and recommended modifications to the plan or update to the Commission.

Qualifying Projects in the Capitol Complex

S.B. 211 requires that qualifying projects for properties located in the Capitol Complex be consistent with design guidelines or standards adopted as part of the Capitol Complex Master Plan required in the bill. The bill requires a responsible governmental entity to include these guidelines and standards in the request for proposals or invitation for bids for the development or operation of a qualifying project, and inform the submitters of this requirement.

The bill requires the final proposal or invitation to be submitted to the State Preservation Board for verification that it complies with the design guidelines and standards. The bill requires a responsible governmental entity to submit a final qualifying project proposal for property in the Capitol Complex to the State Preservation Board, and allows, by a majority vote of the State Preservation Board, disapproval of the proposal within specified timeframes.

S.B. 211 prohibits a responsible governmental entity from approving a qualifying project for property located in the Capitol Complex before September 1, 2015, and provides for the expiration of the subsection on the same date.

The bill provides the section has no effect if S.B. 894, Acts of the 83rd Legislature, Regular Session, 2013, or similar legislation relating to real property within the Capitol Complex is enacted and becomes law.

Exempts Capitol Complex property from General Land Office review.

S.B. 211 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.

Prohibits the Commission from selling or leasing properties in the Capitol Complex.

The bill prohibits the Commission from leasing, selling, or disposing of real property or an interest in real property located in the Capitol Complex and specifies that the provision does not affect the Commission's authority to lease space in state office buildings and parking garages.

Exempts properties located in the Capitol Complex from development under the Public and Private Facilities and Infrastructure Act.

The bill exempts a qualifying project, located in the Capitol Complex, as defined by Sec. 443.0071, Texas Government Code, from Chapter 2267, Texas Government Code, Public and Private Facilities and Infrastructure.

Prohibits unsolicited proposals for a qualifying project on property located in the Capitol Complex.

The bill prohibits a person from developing or operating a qualifying project under the Public and Private Facilities and Infrastructure Act on property located in the Capitol Complex unless the person obtains approval from and contracts with a responsible governmental entity. The bill prohibits a person from initiating the project approval process by submitting an unsolicited proposal, but allows the responsible governmental entity to request proposals or invite bids. The bill provides the section has no effect if S.B. 894, Acts of the 83rd Legislature, Regular Session, 2013, or similar legislation relating to real property within the Capitol Complex is enacted and becomes law.

Requires the 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.

S.B. 211 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 unacceptable risks to the state; and whether an alternative delivery method is more feasible and more effectively meets the state's goals.

S.B. 211 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 the 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.

S.B. 211 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.

S.B. 211 requires commission staff to conduct an initial review of each qualifying project proposal submitted and provide a summary of the review, including an 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 determine 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 to evaluate a qualifying project proposal.

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

S.B. 211 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.

S.B. 211 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.

Applicability of municipal zoning regulations to certain qualifying projects

The bill requires qualifying projects to comply with municipal zoning and land use regulations, but exempts projects for properties located in the Capitol Complex and projects using buildings, land, or property under the control of a state agency using these assets for the same public purpose authorized under law that established the agency's use of the assets.

S.B. 211 creates a Special Board of Review to hear appeals if a municipality denies a rezoning request for a qualifying project that does not comply with the municipality's zoning and land use regulations. The bill specifies the membership of the Board of Review. The bill requires the Special Board of Review to hold one or more public hearings to consider the proposed qualifying project, held in accordance with rules adopted by the General Land Office for conduct of special review. If after the hearings, the Special Board of Review determines that local land use regulations are detrimental to the state, the bill requires the Board to issue an order establishing a development plan to govern the use of the real property relating to the qualifying project. The bill specifies development of the real property must be in accordance with the plan and comply with all applicable municipal regulations, orders, or ordinances, except as specifically identified by the order of the Special Board of Review.

The bill specifies that if substantial progress is not made in implementing the qualifying project before the fifth anniversary of the date the development plan is adopted by the Special Board of Review, the municipal zoning and land use regulations become applicable to development of the property, unless the Special Board of Review adopts a new development plan. The bill provides that a development plan adopted by the Special Board of Review and any plan accepted by a responsible governmental entity is final and binding on specified entities, including the state and municipality, unless revised by the Special Board of Review. The bill prohibits a responsible governmental entity, builder, developer or any other person from modifying the development plan without approval by the Special Board of Review. S.B. 211 establishes conflict of interest provisions for comprehensive agreements under this section.

Public and private facilities and infrastructure guidelines

The bill requires the Public and Private Facilities and Infrastructure guidelines to include a reasonable period, as determined by the responsible governmental entity, of not more than 180 days or longer to accommodate a large-scale project when posting and publishing the public notice of a proposal requesting approval of a qualifying project.

The bill requires political subdivisions to include provisions in Public and Private Facilities and Infrastructure guidelines that are also required by responsible governmental entities described by Section 2267.001(5)(A).

The bill requires a responsible governmental entity to submit Public and Private Facilities and Infrastructure guidelines to the Partnership Advisory Commission for approval, and prohibits a governmental entity from requesting or considering a qualifying project until the guidelines are approved.

The bill adds criteria required in submitted proposals, including a statement of the specific public purpose of the qualifying project and a statement on compliance with the responsible governmental entity's best value determination. The bill requires a responsible governmental entity to make best value determination in evaluating proposals. The bill adds overall quality, conformity with community plan, historical significance, and environmental impact as factors a responsible governmental entity may consider in evaluating a proposal.

The bill authorizes a responsible governmental entity to approve a qualifying project that the entity determines serves a public purpose. The bill requires a responsible governing entity to declare a project's public purpose in the comprehensive agreement. The bill requires a responsible governmental entity that approves a proposal for a project to select the contracting person by soliciting proposals. The bill applies Chapter 552, Public Information, Texas Government Code, to qualifying project proposals.

The bill requires a public hearing be held in the area where the project will be performed. The bill requires a public hearing on the final version of the comprehensive agreement no later than 10 days

before entering into the contract. The bill specifies that a contracting person may not be required to be required to provide final design documents before execution of a comprehensive agreement.

Partnership Advisory Commission

S.B. 211 changes the composition of the Partnership Advisory Commission to five members by reducing the number of representatives appointed by the Speaker of the House of Representatives from three to one; reducing the number of senators appointed by the Lieutenant Governor from three to one; requiring the Governor to appoint one public member rather than three representatives of the executive branch; and removes the ability of the Chair of the House Appropriations Committee and the Chair of the Senate Finance Committee to have designees.

The bill subjects the meetings of the Partnership Advisory Commission to Chapter 551, Open Meetings, Texas Government Code and requires the State Preservation Board to provide administrative support to the Partnership Advisory Commission.

The bill requires the Partnership Advisory Commission, by majority vote of the members present in a public hearing, to approve or disapprove each detailed proposal submitted by responsible governmental entities for review. The bill authorizes the Partnership Advisory Commission to provide findings and recommendations to a responsible governmental entity. S.B. 211 prohibits a responsible governmental entity from negotiating an agreement for a detailed proposal disapproved by the Partnership Advisory Commission.

The bill requires the Partnership Advisory Commission to provide the Lieutenant Governor, Speaker of the House, and appropriate standing committees of the Legislature recommendations on proposed amendments to Chapters 2267 and 2268, Texas Government Code, by December 1, 2016.

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

S.B. 211 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.

Transfers the facilities maintenance services for the Texas School for the Blind and Visually Impaired and Texas School for the Deaf to the Commission.

The bill requires the Commission to provide facilities maintenance services for the physical facilities of the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, including facilities construction, reconfiguration, cabling, any other services as provided by a memorandum of understanding between each school's Board and the Commission. The bill exempts facilities owned or operated by the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf from requirements that the Commission provide facilities management services to all state agency facilities in Travis County or adjacent counties.

The bill requires that not later than January 1, 2014, the powers, duties, functions, programs, and activities of the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf related to maintenance of physical facilities are transferred to the Commission. The bill also transfers to the Commission any obligations, contracts, property, and records directly related to implementing a power, duty, function, program, or activity transferred, as well as all funds appropriated for that power, duty, function, program, or activity. The bill requires that not later than January 1, 2014, the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, respectively, enter into memorandums of understanding with the Commission identifying the powers and duties transferred between the Schools and the Commission, and establishing plans for identification and transfer of records, personnel, property, and unspent appropriations directly related to the transfer of facilities maintenance services to the Commission.

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.

S.B. 211 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.

Makes a technical correction.

The bill makes nonsubstantive technical correction, changing Texas Youth Commission to Texas Department of Juvenile Justice.

The bill repeals the following statutory provisions:

- Texas Government Code, 2268.058(d), relating to 10-day notice by the Partnership Advisory Commission to the responsible governmental entity of intent to review a proposal.
- Texas Government Code, 552.153, relating to information held by a responsible governmental entity relating to a proposal for a qualifying project that is exempt from the requirements of 552.021.

EFFECTIVE DATE

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