

BILL ANALYSIS

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S.B. 211
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Facilities Commission (TFC) manages the building construction, maintenance, and leasing needs of state agencies. TFC also maintains state-owned facilities in a secure and cost-efficient manner.

The TFC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the legislature. The Sunset Commission found that TFC continues to be needed, but needs to operate with greater transparency, collaboration, and accountability, particularly when planning for the future development of the Capitol Complex and other state properties.

S.B. 211 continues TFC for eight years. It requires TFC to develop and adopt a Capitol Complex Master Plan to guide decision making on the Complex' future development. The bill additionally requires TFC to submit the Capitol Complex Master Plan to the State Preservation Board for review and comment, and potential disapproval.

It exempts the General Land Office from making recommendations on the use or sale of state property within the Capitol Complex, and requires TFC to adopt a comprehensive planning and development process that will ensure more meaningful public and stakeholder input in developing state properties.

The bill includes numerous safeguards to protect the state's interests, should TFC pursue public-private partnerships to develop state assets. Lastly, it requires TFC to develop a comprehensive plan for all its deferred maintenance and capital improvement needs.

As proposed, S.B. 211 amends current law relating to the continuation and functions of the Texas Facilities Commission, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Facilities Commission in SECTION 3 (Section 2152.066, Government Code) and SECTION 12 (Section 2166.107, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 443.007, Government Code, by adding Subsection (a-1) to require the State Preservation Board (SPB), if SPB updates or modifies its long-range master plan for the preservation, maintenance, restoration, and modification of the Capitol and the Capitol grounds, to conform its plan to the Capitol Complex master plan prepared by the Texas Facilities Commission (TFC) under Section 2166.105.

SECTION 2. Amends Section 2152.002, Government Code, as follows:

Sec. 2152.002. SUNSET PROVISION. Provides that TFC, rather than the Texas Building and Procurement Commission, is subject to Chapter 325 (Texas Sunset Act). Provides that TFC, unless continued in existence as provided by that chapter, is abolished and this subtitle, except for Chapter 2170 (Telecommunications Services) and Section

2157.121 (Acquisition Through Competitive Sealed Proposals), expires September 1, 2021, rather than expires September 1, 2013.

SECTION 3. Amends Subchapter B, Chapter 2152, Government Code, by adding Section 2152.006, as follows:

Sec. 2152.066. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires TFC to develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of TFC rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under TFC's jurisdiction.

(b) Requires TFC's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires TFC to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures.

SECTION 4. Amends Section 2165.055, Government Code, to require TFC on January 1 of each even-numbered year, rather than biennially on December 1st, to electronically submit a report to the governor, lieutenant governor, speaker of the house of representatives, comptroller of public accounts of the State of Texas (comptroller), and Legislative Budget Board (LBB) on certain improvements, repairs, and conditions of property under its control.

SECTION 5. Amends Section 2165.2035(e), Government Code, to require TFC, on or before December 1 of each even-numbered year, to electronically submit a report to the legislature and LBB describing the effectiveness of the program under this section.

SECTION 6. Amends Section 2165.2046, Government Code, to require TFC, on or before December 1, rather than on or before October 1, of each even-numbered year, to electronically submit a report to the legislature and LBB describing the effectiveness of parking programs developed by TFC under this subchapter.

SECTION 7. Amends Chapter 2165, Government Code, by adding Subchapter H, as follows:

SUBCHAPTER H. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE:
QUALIFYING PROJECTS

Sec. 2165.351. DEFINITIONS. Defines "Partnership Advisory Commission" and "qualifying project" in this subchapter.

Sec. 2165.352. COMMISSION REVIEW GUIDELINES AND POLICIES. (a) Requires TFC, in adopting the qualifying project review guidelines required by Section 2267.052 (Notice Requirements), as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, to include review criteria and documentation to guide the initial review of each substantially complete qualifying project proposal received by TFC.

(b) Requires that the review criteria required under Subsection (a) at a minimum include:

- (1) the extent to which the qualifying project meets a public need;
- (2) the extent to which the project meets the objectives and priorities of TFC and aligns with any applicable TFC plans, including the Capitol Complex master plan developed under Section 2166.105;
- (3) the technical and legal feasibility of the project;
- (4) the adequacy of the qualifications, experience, and financial capacity of a private entity or other person submitting the proposal;
- (5) any potentially unacceptable risks to this state; and
- (6) whether an alternative delivery method is feasible and more effectively meets this state's goals.

(c) Requires TFC's qualifying project review guidelines to:

- (1) specify the types of professional expertise, including financial, real estate, legal, and other related expertise, needed to effectively protect this state's interest when considering and implementing a qualifying project;
- (2) specify the range of professional expertise needed at each stage of the project, including proposal evaluation, financial analysis, risk allocation analysis, contract negotiation, and contract and performance monitoring, to evaluate the qualifying project proposal; and
- (3) require the oversight committee established by TFC for each qualifying project (oversight committee) to report to TFC the results of the committee's evaluation of the project, including the schedules, procedures, proposal evaluation criteria, and documentation required in the guidelines for the evaluation.

(d) Requires TFC to:

- (1) for each qualifying project proposal, post on TFC's Internet website the oversight committee's review report and other evaluation documents; and
- (2) before posting the report and documents required under Subdivision (1), redact all information included in the report and documents that is considered confidential under Section 2267.066(c) (relating to the prohibition of responsible governmental entities posting, or making available for public inspection, trade secrets, financial records, or other records of the contracting person excluded from disclosure through certain notices).

(e) Authorizes the expertise described by Subsection (c) to be provided by TFC staff or outside experts.

Sec. 2165.353. **QUALIFYING PROJECT FEES.** (a) Authorizes TFC to charge a reasonable fee to cover the costs of reviewing a qualifying project. Requires TFC to develop and adopt a qualifying project proposal fee schedule sufficient to cover its costs, including at a minimum the costs of processing, reviewing, and evaluating the proposals.

(b) Requires TFC to use the professional expertise information required under Section 2165.352(c) to determine the amount of the fee charged by TFC to review a qualifying project proposal. Requires that the amount be reasonable in comparison to the level of professional expertise required for the project and

authorizes the amount to include the cost of staff time required to process the proposal and other direct costs.

(c) Authorizes TFC to use the money from the fees collected under this section to hire or contract with persons who have the professional expertise necessary to effectively evaluate a qualifying project proposal.

Sec. 2165.354. INITIAL REVIEW OF QUALIFYING PROJECT PROPOSAL. (a) Requires TFC staff to conduct an initial review of each qualifying project proposal submitted to TFC and provide to TFC members a summary of the review, including an analysis and recommendations.

(b) Requires TFC, subject to Subsection (c), to use a value for money analysis in evaluating each qualifying project proposal to conduct a thorough risk analysis of the proposal that identifies specific risks shared between this state and the private partner and subjects the risks to negotiation in the contract, determine if the proposal is in the best long-term financial interest of this state, and determine if the project will provide a tangible public benefit to this state.

(c) Requires TFC staff, if the staff determine that a value for money analysis is not appropriate for evaluating a specific qualifying project proposal, to submit to TFC a written report stating the reasons for using an alternative analysis methodology.

(d) Requires TFC to coordinate with TFC's office of internal audit for review and receipt of comments on the reasonableness of the assumptions used in the value for money analysis or alternative analysis methodology used to evaluate a qualifying project proposal under this section.

Sec. 2165.355. INITIAL PUBLIC HEARING ON QUALIFYING PROJECT PROPOSAL. (a) Requires TFC, before submitting a detailed qualifying project proposal to the Partnership Advisory Commission as required under Section 2268.058, to hold an initial public hearing on the proposal.

(b) Requires TFC to post a copy of the detailed qualifying project proposal on TFC's Internet website before the required public hearing and, before posting the proposal, redact all information included in the proposal that is considered confidential under Section 2267.066(c).

(c) Requires TFC, after the hearing, to modify the proposal as TFC determines appropriate based on the public comments, and include the public comments in the documents submitted to the Partnership Advisory Commission and provide any additional information necessary for the evaluation required under Chapter 2268 (Partnership Advisory Commission).

Sec. 2165.356. SUBMISSION OF QUALIFYING PROJECT CONTRACT TO CONTRACT ADVISORY TEAM. (a) Requires TFC, not later than the 60th day before the date TFC is scheduled to vote on approval of a qualifying project contract, to submit to the Contract Advisory Team established under Subchapter C (Contract Advisory Team), Chapter 2262 (Statewide Contract Management), documentation of the modifications to a proposed qualifying project made during TFC's evaluation and negotiation process for the project, including a copy of the final draft of the contract, the detailed qualifying project proposal, and any executed interim or other agreement.

(b) Requires the Contract Advisory Team to review the documentation submitted under Subsection (a) and provide written comments and recommendations to TFC. Requires that the review focus on, but not be limited to, best practices for contract management and administration.

(c) Requires TFC staff to provide to TFC members a copy of the Contract Advisory Team's written comments and recommendations, and the staff's response to the comments and recommendations.

Sec. 2165.357. PROHIBITED EMPLOYMENT OF COMMISSION EMPLOYEE. (a) Prohibits a TFC employee from being 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) Requires TFC to obtain from each TFC employee sufficient information for TFC to determine whether the employee is employed by another person, and a potential conflict of interest exists between the employee's commission duties and the employee's duties with the other employer.

(c) Requires each TFC employee whose TFC duties relate to a qualifying project, including long-range planning, real estate management, space management, and leasing services, to attest that the employee is aware of and agrees to TFC's ethics and conflict-of-interest policies.

(d) Provides that to the extent the employment is authorized by TFC policy, this section does not prohibit additional employment for a TFC employee whose TFC duties are not related to a qualifying project.

SECTION 8. Amends Section 2166.001, Government Code, by amending Subdivision (1) and (1-a) and adding Subdivision (1-b), to define "Capitol Complex" and to make nonsubstantive changes.

SECTION 9. Amends Section 2166.101(d), Government Code, to require TFC to summarize its findings on the status of state-owned buildings and current information on construction costs in an electronically submitted report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and LBB, not later than July 1 of each even-numbered year, rather than to require TFC to summarize its findings on the status of state-owned buildings and current information on construction costs in a report it is required to make available to the governor, the legislature, and the state's budget offices.

SECTION 10. Amends Section 2166.102(b), Government Code, as follows:

(b) Requires TFC to maintain a six-year capital planning cycle and electronically submit, rather than file, a master facilities plan with the governor, lieutenant governor, speaker of the house of representatives, LBB, and comptroller before July 1 of each even-numbered year. Deletes existing text requiring a master facilities plan to be filed with the Governor's Office of Budget and Planning. Makes nonsubstantive changes.

SECTION 11. Amends Section 2166.103(b), Government Code, to require TFC, not later than July 1 of each even-numbered year, to electronically submit to the governor, the lieutenant governor, the speaker of the house of representatives, the comptroller, and LBB a report identifying counties in which more than 50,000 square feet of usable office space is needed and TFC's recommendations for meeting that need. Deletes existing text requiring TFC, before each legislative session, to send to the governor, the speaker of the house of representatives, and LBB the report.

SECTION 12. Amends Subchapter C, Chapter 2166, Government Code, by adding Sections 2166.105, 2166.106, 2166.107, and 2166.108, as follows:

Sec. 2166.105. CAPITOL COMPLEX MASTER PLAN. (a) Requires TFC to prepare a Capitol Complex master plan that at a minimum includes:

(1) an overview and summary of the previous plans for the Capitol Complex;

- (2) a stated strategic vision and long-term goals for the Capitol Complex;
- (3) an analysis of state property, including buildings, in the Capitol Complex and of the extent to which this state satisfies its space needs through use of the property;
- (4) in consultation with the Texas General Land Office (GLO), an analysis of the current and forecasted real estate market conditions in the Austin area;
- (5) detailed, site-specific proposals for developing state property in the Capitol Complex, including proposals on the use of property and space for public or private sector purposes;
- (6) an analysis of and recommendations for building design guidelines to ensure appropriate quality in new or remodeled buildings in the Capitol Complex;
- (7) an analysis of and recommendations for Capitol Complex infrastructure needs, including transportation, utilities, and parking;
- (8) for projects identified in the plan, an analysis of and recommendations for financing options, including private sector participation;
- (9) time frames for implementing the plan components and any projects identified in the plan;
- (10) consideration of alternative options for meeting state space needs outside the Capitol Complex; and
- (11) other information relevant to the Capitol Complex as TFC determines appropriate.

(b) Requires TFC to ensure that GLO, SPB, the Texas Historical Commission (THC), and other relevant interested parties are included in each stage of the development of the Capitol Complex master plan.

(c) Requires TFC to submit to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and LBB, not later than July 1, 2014, the initial Capitol Complex master plan, and not later than July 1 of each even-numbered year thereafter, updates to the plan.

(d) Requires TFC to ensure that the Capitol Complex master plan and the master facilities plan developed under Section 2166.102 do not conflict and together comprehensively address the space needs of state agencies.

Sec. 2166.106. REVIEW OF PROPOSED CAPITOL COMPLEX MASTER PLAN BY STATE PRESERVATION BOARD AND GENERAL LAND OFFICE. (a) Requires TFC, not later than the 90th day before the date TFC holds a public meeting to discuss a proposed Capitol Complex master plan, to submit the proposed plan to SPB and GLO for review and comment.

(b) Requires TFC, not later than the 60th day before the date TFC holds a public meeting to discuss a proposed update to the Capitol Complex master plan, to submit the proposed update to SPB and GLO for review and comment.

(c) Authorizes SPB, not later than the 90th day after the date SPB receives from TFC a proposed Capitol Complex master plan, and not later than the 60th day after the date SPB receives from TFC a proposed update to the plan, to, by a

public vote, disapprove the plan or update if SPB determines that the goals or recommendations in the plan or update are not in the best interest of the state or of the Capitol Complex, and submit to TFC written comments and recommended modifications to the plan or update.

(d) Provides that the proposed Capitol Complex master plan or the proposed update to the plan is considered to be approved by the SPB if SPB does not hold the public vote authorized by Subsection (c) on or before the date required under that subsection.

(e) Provides that the review of the Capitol Complex master plan under this section is in addition to the review required for a proposed project under Section 443.0071 (Review of Construction in Capitol Complex).

Sec. 2166.107. COMPREHENSIVE PLANNING AND DEVELOPMENT PROCESS.

(a) Requires TFC by rule to adopt a comprehensive process for planning and developing state property in TFC's inventory, including property in the Capitol Complex, and for assisting state agencies in space development planning for state property under Sections 2165.105 (State Agency Request for Space; Commission Determinations) and 2165.1061 (Space Allocation Plans; Transition Plans).

(b) Requires that the process under this section at a minimum include:

(1) a clear approach and specific time frames for obtaining input throughout the planning and development process from the public, interested parties, and state agencies, including GLO and, for Capitol Complex property, SPB and THC;

(2) specific schedules for providing to TFC regular updates on planning and development efforts;

(3) a public involvement policy to ensure that before TFC makes a decision on the use or development of state property the public and interested parties have the opportunity to review and comment on TFC's plans; and

(4) confidentiality policies consistent with Chapter 552 (Public Information).

Sec. 2166.108. COMPREHENSIVE CAPITAL IMPROVEMENT AND DEFERRED MAINTENANCE PLAN. (a) Requires TFC 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.

(b) Requires that the comprehensive capital improvement and deferred maintenance plan:

(1) with respect to deferred maintenance projects:

(A) list, with regular updates, deferred maintenance projects that contain critical high-priority projects and lower-priority, non-health and safety projects;

(B) state TFC's plan for addressing the projects;

(C) account for the completion of high-priority projects;

(D) estimate when the lower-priority projects may become higher-priority projects; and

(E) be modified as necessary to include additional maintenance projects;

(2) contain a list of all predictable capital improvement projects, including a time frame and a cost estimate for each project; and

(3) contain a plan, updated biennially, for responding to emergency repairs and replacements that, in consultation with LBB, identifies potential sources of funds, which may include bonds and bond interest, that may be used to pay the costs of emergency repair and replacement projects.

(c) Requires that the comprehensive capital improvement and deferred maintenance plan include for each segment of the plan described by Subsection (b) a prioritized list by state agency facility of each project that includes an estimate of the project's cost and the aggregate costs for all facility projects.

(d) Requires TFC to include the comprehensive capital improvement and deferred maintenance plan and regular updates to the plan in its long-range plan under Section 2166.102. Requires that the information included in the long-range plan include the aggregate project costs for each state agency but is authorized to exclude the cost of each specific facility project.

SECTION 13. Amends Section 31.155(d), Natural Resources Code, to provide that the duty under this subchapter of the asset management division of the GLO or any other division delegated the duties of the asset management division by the commissioner of GLO (division) to review and verify real property records and to make recommendations regarding real property and of the commissioner of GLO to prepare a report involving real property does not apply to certain real property, including the real property included in the Capitol Complex as defined by Section 411.061(a)(1) (relating to the geographic area of the "Capitol Complex"), Government Code.

SECTION 14. Requires TFC to:

(1) no later than January 1, 2014:

(A) develop the qualifying project review guidelines required by Section 2165.352, Government Code, as added by this Act;

(B) develop the qualifying project proposal fee schedule required by Section 2165.353, Government Code, as added by this Act; and

(C) adopt the comprehensive planning and development process required by Section 2166.107, Government Code, as added by this Act; and

(2) no later than July 1, 2014:

(A) prepare the Capitol Complex master plan required by Section 2166.105, Government Code, as added by this Act, and submit the plan as required by that section; and

(B) prepare the comprehensive capital improvement and deferred maintenance plan required by Section 2166.108, Government Code, as added by this Act.

SECTION 15. Effective date: upon passage or September 1, 2013.