

BILL ANALYSIS

C.S.S.B. 507
By: Watson
Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point to a need to reform public-private partnerships to increase transparency and accountability and to ensure that the state receives the best deal on these contracts. C.S.S.B. 507 amends current law relating to public and private facilities and infrastructure.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the General Land Office in SECTION 3 of this bill.

ANALYSIS

C.S.S.B. 507 amends Subchapter A, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, to require a qualifying project that is to be performed or located in a municipality to comply with the zoning and land use regulations of the municipality. The bill exempts from this requirement a qualifying project that uses a building, other structure, or land under the control, administration, or jurisdiction of a state agency for the same public purposes for which the state agency is authorized under the governing law that established the agency to use the building, structure, or land and exempts a qualifying project located within the Capitol Complex.

C.S.S.B. 507, if a qualifying project involving a state facility or state-owned land does not comply with the zoning and land use regulations of a municipality and the municipality denies a rezoning request for the qualifying project, authorizes the matter to be appealed to a special board of review consisting of the following members: the land commissioner, the administrative head of the governing body of the responsible governmental entity, the mayor of the municipality, the county judge of the county in which the municipality is located, one state senator from the area impacted by the project selected by the lieutenant governor, one member of the house of representatives from the area impacted by the project selected by the speaker of the house of representatives, and the Partnership Advisory Commission member appointed by the governor. The bill requires the land commissioner to serve as presiding officer of the special board of review. The bill requires the special board of review to conduct one or more public hearings to consider the proposed qualifying project and requires the hearings to be conducted in accordance with rules adopted by the General Land Office for conduct of special review. The bill specifies that the hearings are not considered a contested case proceeding under the Administrative Procedure Act.

C.S.S.B. 507 requires the special board of review, if it determines that the zoning and land use regulations are detrimental to the best interest of the state after conducting the hearings required by the bill, to issue an order establishing a development plan to govern the use of the real property related to the qualifying project. The bill requires development of the real property to be in accordance with the plan and to comply with all applicable municipal regulations, orders, or ordinances except as specifically identified by the order of the special board of review. The bill, 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, establishes that 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 specifies 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 the state, the responsible governmental entity, lessees, successors in interest and assigns, and the affected 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 specific approval by the special board of review.

C.S.S.B. 507 prohibits an employee of a responsible governmental entity or a person related to the employee within the second degree by consanguinity or affinity from accepting money, a financial benefit, or other consideration from a contracting person that has entered into a comprehensive agreement with the responsible governmental entity. The bill prohibits a contracting person from employing or entering into a professional services contract or a consulting services contract under the Professional Services Procurement Act with a former or retired employee of the responsible governmental entity with which the person has entered into a comprehensive agreement before the first anniversary of the date on which the former or retired employee terminates employment with the entity and specifies that this provision does not prohibit the contracting person from entering into a professional services contract with a corporation, firm, or other business organization that employs a former or retired employee of the responsible governmental entity before the first anniversary of the date the former or retired employee terminates employment with the entity if the former or retired employee does not perform services for the corporation, firm, or other business organization under the comprehensive agreement with the responsible governmental entity that the former or retired employee worked on before terminating employment with the entity.

C.S.S.B. 507, in a provision that does not take effect if legislation exempting property in the Capitol Complex from provisions governing public and private facilities and infrastructure is passed and signed into law, amends Section 2267.051, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011. The bill creates an exception for a qualifying project on property located within the Capitol Complex to provisions of law requiring approval of the responsible governmental entity before a person can develop or operate a qualifying project. The bill prohibits a person from developing or operating a qualifying project on property located within the Capitol Complex unless the person obtains the approval of and contracts with the responsible governmental entity under the relevant statutory provisions. The bill prohibits the person from initiating the approval process by submitting a proposal requesting approval, except that the responsible governmental entity is authorized to request proposals or invite bids.

C.S.S.B. 507 amends Section 2267.052, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, to require the established guidelines that must be adopted and made publicly available before a responsible governmental entity that is a state agency or institution of higher education may request or consider a proposal for a qualifying project to require the entity to evaluate the design quality, life-cycle costs, and relationship to any relevant comprehensive planning or zoning requirements of a proposed qualifying project that improves real property. The bill, in provisions requiring those guidelines to require public notice of a proposal requesting approval of a qualifying project to be posted and published for a certain period, to require the notice to be posted and published for not less than 45 days or more than 180 days, or a longer period specified by the governing body of the responsible governmental entity to accommodate a large-scale project. The bill requires the guidelines for a responsible governmental entity that is a political subdivision of the state to include the guidelines established by law and by the bill for an entity that is a state agency or institution of higher education.

C.S.S.B. 507 requires the employees of a governmental entity used to provide independent

analyses of a proposal for a qualifying project as an alternative to using qualified professionals to provide the analyses to be employees who are similarly qualified to the qualified professionals. The bill requires the analyses, if the qualifying project proposal is for the construction or renovation of a structure and the estimated cost of the project is \$5 million or more, to include an analysis by an architect, a professional engineer, and a certified public accountant. The bill requires an entity that is a state agency or institution of higher education to submit a copy of such guidelines adopted by the entity to the Partnership Advisory Commission for approval. The bill requires the commission to prescribe the procedure for submitting the guidelines for review. The bill prohibits the entity from requesting or considering a proposal for a qualifying project until the guidelines are approved by the commission. The bill specifies that the guidelines are considered disapproved unless the commission by majority vote of the commission members present and voting approves the guidelines not later than the 90th day after the date the commission receives the copy of the guidelines from the responsible governmental entity.

C.S.S.B. 507 amends Section 2267.053, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, in provisions requiring a proposal requesting approval of a qualifying project from a private entity or other person to be accompanied by certain items, unless waived by the responsible governmental entity, to require the proposal to be accompanied by a statement of the specific public purpose served by the qualifying project and a statement describing the qualifying project's compliance with the responsible governmental entity's best value determination. The bill requires a responsible governmental entity that accepts an unsolicited proposal for a qualifying project, in accordance with statutory provisions and bill provisions relating to notice for certain projects, to select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals, or invitation to bid.

C.S.S.B. 507 requires a responsible governmental entity to make a best value determination in evaluating the proposals received. The bill, in provisions authorizing the entity to consider certain factors when evaluating the proposals received, authorizes the entity to consider the overall quality of the qualifying project; the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying project; the historic significance of the property on which the qualifying project is proposed to be located; and the environmental impact of the qualifying project. The bill authorizes a responsible governmental entity to approve a qualifying project that the governmental entity determines serves a public purpose and requires the entity to include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project. The bill requires the responsible entity to take action to protect confidential and proprietary information provided by a proposer, in addition to the contracting person, under an agreement. The bill includes drafts of any interim agreement or comprehensive agreement in the copies of detailed proposals that each responsible governmental entity is required to submit to the commission before entering into an interim or comprehensive agreement and removes the specification that such copies of detailed proposals be submitted before entering into the negotiation of an interim or comprehensive agreement.

C.S.S.B. 507 amends Section 2267.058(a), Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, to revise provisions requiring a comprehensive agreement between a contracting person and a responsible governmental entity to provide for the review of plans and specifications for the qualifying project by the entity. The bill prohibits the contracting person from being required to provide final design documents for a qualifying project before the execution of a comprehensive agreement, rather than prohibiting the contracting person from being required to complete the design of a qualifying project before such execution.

C.S.S.B. 507 amends the Government Code to remove provisions relating to specified records of a contracting person becoming public information. The bill instead excludes trade secrets, proprietary information, and financial records of a proposer, as defined by the bill, from

disclosure under specified provisions of state public information law and prohibits such information from being posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the proposer. The bill specifies that the trade secrets, proprietary information, and financial records of the proposer, after submission by a responsible governmental entity of a detailed qualifying project proposal to the commission, are not protected from disclosure unless expressly excepted from the requirements of the state public information law or considered confidential under other law. The bill requires the public hearing on a proposal during the proposal review process to be held in the area in which the proposed qualifying project is to be performed. The bill requires the responsible governmental entity, after making the proposed comprehensive agreement available for public inspection, to hold a public hearing on the final version of the proposed comprehensive agreement and vote on the proposed agreement after the hearing. The bill requires the hearing to be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

C.S.S.B. 507 amends Subchapter B, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, in provisions that do not take effect if legislation exempting property in the Capitol Complex from provisions governing public and private facilities and infrastructure is passed and signed into law, to require a qualifying project for property located in the Capitol Complex to be consistent with Capitol Complex design guidelines or standards adopted as part of a 1989 planning process or subsequently adopted based on a Capitol Complex master plan. The bill requires a responsible governmental entity to include the design guidelines and standards in the request for proposals or invitation for bids for the development or operation of a qualifying project and inform the persons who submit proposals of the requirement to comply with the design guidelines and standards. The bill requires the final proposal or invitation to be submitted to the State Preservation Board for verification that the proposal complies with the standards. The bill requires an entity to submit a final qualifying project proposal for property located in the Capitol Complex to the State Preservation Board. The bill authorizes the State Preservation Board by majority vote to disapprove the proposal not later than the 60th day after the date the proposal is received. The bill, in a temporary provision set to expire September 1, 2015, prohibits a responsible governmental entity from approving a qualifying project proposal for property in the Capitol Complex before September 1, 2015.

C.S.S.B. 507 amends the Government Code to decrease from 11 to six the number of members of the Partnership Advisory Commission, to decrease from three to one the number of representatives serving on the commission appointed by the speaker of the house of representatives, and to decrease from three to one the number of senators appointed by the lieutenant governor. The bill removes provisions authorizing the designees of the chairs of the House Appropriations Committee and the Senate Finance Committee to serve on the commission. The bill also changes the governor's appointments to the commission to remove the three representatives of the executive branch appointed by the governor and to instead add one public member to the commission appointed by the governor. The bill adds the executive director of the State Preservation Board to the commission and provides that the executive director serves as a nonvoting member. The bill requires the executive director to serve as presiding officer of the commission, rather than requiring commission members to elect a presiding officer from among the legislative members. The bill requires the State Preservation Board to provide administrative staff support for the commission. The bill authorizes the commission by majority vote to disapprove a qualifying project proposal submitted by a governmental entity that is a state agency or institution of higher education.

C.S.S.B. 507 amends Section 552.153, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, to revise the conditions under which information in the custody of a responsible governmental entity that relates to a proposal for a qualifying project is excepted from the requirements of the state public information law by replacing references to a contracting person with references to a proposer and by specifying that

"proposer," for purposes of these conditions, means a private entity that submits a proposal for a qualifying project to a responsible governmental entity. The bill specifies that information in the custody of an entity that relates to such a proposal is excepted from those requirements if the records provided by the proposer contain proprietary information that, if made public, would provide a competing proposer an unjust advantage.

C.S.S.B. 507 amends the Local Government Code to create an exception for the bill's provisions relating to the applicability of municipal zoning regulation to provisions of law establishing exceptions to municipal zoning authority.

C.S.S.B. 507 amends the Natural Resources Code to exempt the real property located in the Capitol Complex from statutory provisions relating to duties of the asset management division of the General Land Office in connection with certain real property.

C.S.S.B. 507 provides that the term of the presiding officer of the Partnership Advisory Commission serving immediately before the bill's effective date expires on the bill's effective date and specifies that this provision does not affect the entitlement of that individual to continue to serve as a member of the commission. The bill requires the commission, not later than December 1, 2016, to submit to the lieutenant governor, the speaker of the house of representatives, and the appropriate legislative standing committees recommendations on proposed amendments to statutory provisions relating to public and private facilities and infrastructure and statutory provisions relating to the commission.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 507 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 2166.001, Government Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Section 2267.001, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Subdivision (1-a) to read as follows: <u>(1-a) "Commission" means the Partnership Advisory Commission established under Chapter 2268.</u>	SECTION 2. Section 2267.001, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Subdivisions (1-a) and (9-b) to read as follows: <u>(1-a) "Commission" means the Partnership Advisory Commission established under Chapter 2268.</u> <u>(9-b) "Proposer" means a private entity that submits a proposal for a qualifying project to a responsible governmental entity.</u>
SECTION 3. Subchapter A, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is	SECTION 3. Subchapter A, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is

amended by adding Sections 2267.005, 2267.006, 2267.007, and 2267.008 to read as follows:

Sec. 2267.005. APPLICABILITY OF MUNICIPAL ZONING REGULATIONS.

Sec. 2267.006. SPECIAL BOARD OF REVIEW. (a) If a qualifying project does not comply with the zoning and land use regulations of a municipality as required by Section 2267.005 and the municipality denies a rezoning request for the qualifying project, the matter may be appealed to a special board of review consisting of the following members:

- (1) the land commissioner;
- (2) the administrative head of the governing body of the responsible governmental entity;
- (3) the mayor of the municipality;
- (4) the county judge of the county in which the municipality is located;
- (5) one state senator selected by the lieutenant governor;

(6) one member of the house of representatives selected by the speaker of the house; and

(7) the commission member appointed by the governor.

(b) The land commissioner shall serve as presiding officer of the special board of review.

(c) The special board of review shall conduct one or more public hearings to consider the proposed qualifying project. The hearings must be conducted in accordance with rules adopted by the General Land Office for conduct of special review. The hearings are not considered a contested case proceeding under Chapter 2001.

(d) If after the hearings, the special board of review determines that the zoning and land use regulations are detrimental to the best interest of this state, the special board of review shall issue an order establishing a development plan to govern the use of the real property related to the qualifying project. 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

amended by adding Sections 2267.005, 2267.006, 2267.007, and 2267.008 to read as follows:

Sec. 2267.005. APPLICABILITY OF MUNICIPAL ZONING REGULATIONS.

Sec. 2267.006. SPECIAL BOARD OF REVIEW. (a) If a qualifying project involving a state facility or state-owned land does not comply with the zoning and land use regulations of a municipality as required by Section 2267.005 and the municipality denies a rezoning request for the qualifying project, the matter may be appealed to a special board of review consisting of the following members:

- (1) the land commissioner;
- (2) the administrative head of the governing body of the responsible governmental entity;
- (3) the mayor of the municipality;
- (4) the county judge of the county in which the municipality is located;
- (5) one state senator from the area impacted by the project, selected by the lieutenant governor;

(6) one member of the house of representatives from the area impacted by the project, selected by the speaker of the house of representatives; and

(7) the commission member, appointed by the governor.

(b) The land commissioner shall serve as presiding officer of the special board of review.

(c) The special board of review shall conduct one or more public hearings to consider the proposed qualifying project. The hearings must be conducted in accordance with rules adopted by the General Land Office for conduct of special review. The hearings are not considered a contested case proceeding under Chapter 2001.

(d) If after the hearings, the special board of review determines that the zoning and land use regulations are detrimental to the best interest of this state, the special board of review shall issue an order establishing a development plan to govern the use of the real property related to the qualifying project. 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. 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.

(e) A development plan adopted by the special board of review and any plan accepted by a responsible governmental entity is final and binding on the state, the responsible governmental entity, lessees, successors in interest and assigns, and the affected municipality unless revised by the special board of review.

(f) A responsible governmental entity, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

Sec. 2267.007. CONFLICT OF INTEREST.

Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES.

SECTION 4. Section 2267.051, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended.

SECTION 5. Section 2267.052, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing

special board of review. 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.

(e) A development plan adopted by the special board of review and any plan accepted by a responsible governmental entity is final and binding on the state, the responsible governmental entity, lessees, successors in interest and assigns, and the affected municipality unless revised by the special board of review.

(f) A responsible governmental entity, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

Sec. 2267.007. CONFLICT OF INTEREST.

Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES.

SECTION 4. Same as engrossed version.

SECTION 5. Section 2267.052, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (b) and (c) and adding Subsections (c-1) and (d) to read as follows:

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing

among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers

among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) for a proposed qualifying project to improve real property, require the responsible governmental entity to evaluate the project's design quality, life-cycle costs, and relationship to any relevant comprehensive planning or zoning requirements;

(8) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(9) [(8)] require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(10) [(9)] establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity

the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period, as determined by the responsible governmental entity, of not less than 45 days or more than 180 days, or a longer period specified by the governing body of the responsible governmental entity to accommodate a large-scale project, ~~[as determined by the responsible governmental entity,]~~ to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B) must include:

(1) ~~[may include]~~ the provisions required under Subsection (b); and

(2) ~~[must include]~~ a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by employees of the governmental entity.

considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(11) [(10)] require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period, as determined by the responsible governmental entity, of not less than 45 days or more than 180 days, or a longer period specified by the governing body of the responsible governmental entity to accommodate a large-scale project, ~~[as determined by the responsible governmental entity,]~~ to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B) must include:

(1) ~~[may include]~~ the provisions required under Subsection (b); and

(2) ~~[must include]~~ a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by similarly qualified employees of the governmental entity.

(c-1) If the qualifying project proposal is for the construction or renovation of a structure and the estimated cost of the project is \$5 million or more, the analyses required under Subsection (c)(2) must include an analysis by an architect, a

(d) A responsible governmental entity described by Section 2267.001(5)(A) shall submit a copy of the guidelines adopted by the entity under this section to the commission for approval by the commission. The commission shall prescribe the procedure for submitting the guidelines for review under this section. The governmental entity may not request or consider a proposal for a qualifying project until the guidelines are approved by the commission.

SECTION 6. Section 2267.053, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (b-1), and (b-2) to read as follows:

(a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

- (1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;
- (2) a description of the qualifying project, including:
 - (A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and
 - (B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;
- (3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;
- (4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a

professional engineer, and a certified public accountant.

(d) A responsible governmental entity described by Section 2267.001(5)(A) shall submit a copy of the guidelines adopted by the entity under this section to the commission for approval by the commission. The commission shall prescribe the procedure for submitting the guidelines for review under this section. The governmental entity may not request or consider a proposal for a qualifying project until the guidelines are approved by the commission. The guidelines are considered disapproved unless the commission by majority vote of the commission members present and voting approves the guidelines not later than the 90th day after the date the commission receives the copy of the guidelines from the responsible governmental entity.

SECTION 6. Section 2267.053, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a), (b), (g), and (h) and adding Subsections (a-1), (b-1), and (b-2) to read as follows:

(a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

- (1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;
- (2) a description of the qualifying project, including:
 - (A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and
 - (B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;
- (3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;
- (4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a

governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time;

(10) a statement of the specific public purpose served by the qualifying project;

(11) a statement describing the qualifying project's compliance with the responsible governmental entity's best value determination under Subsection (b-1); and

(12) ~~[(40)]~~ any additional material and information the responsible governmental entity reasonably requests.

(a-1) A responsible governmental entity that approves a proposal for a qualifying project under Subsection (a) shall select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals, or invitation to bid.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project.

(b-1) A responsible governmental entity shall make a best value determination in evaluating the proposals received and consider the total project cost as one factor

governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time;

(10) a statement of the specific public purpose served by the qualifying project;

(11) a statement describing the qualifying project's compliance with the responsible governmental entity's best value determination under Subsection (b-1); and

(12) ~~[(40)]~~ any additional material and information the responsible governmental entity reasonably requests.

(a-1) A responsible governmental entity that accepts an unsolicited proposal for a qualifying project under Subsection (a), in accordance with the requirements of Section 2267.052(b)(11)(B), shall select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals, or invitation to bid.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project.

(b-1) A responsible governmental entity shall make a best value determination in evaluating the proposals received and consider the total project cost as one factor

in evaluating the proposals. The responsible governmental entity [received, but] is not required to select the proposal that offers the lowest total project cost and ~~and~~ The responsible governmental entity may consider the following factors:

- (1) the proposed cost of the qualifying project;
 - (2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;
 - (3) the proposed design and overall quality of the qualifying project;
 - (4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;
 - (5) comments from local citizens and affected jurisdictions;
 - (6) benefits to the public;
 - (7) the person's good faith effort to comply with the goals of a historically underutilized business plan;
 - (8) the person's plans to employ local contractors and residents;
 - (9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing;
 - (10) the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying project;
 - (11) the historic significance of the property on which the qualifying project is proposed to be located;
 - (12) the environmental impact of the qualifying project; and
 - (13) ~~(14)~~ other criteria that the responsible governmental entity considers appropriate.
- (b-2) A responsible governmental entity may approve a qualifying project that the governmental entity determines serves a public purpose. The responsible governmental entity must include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project.

in evaluating the proposals. The responsible governmental entity [received, but] is not required to select the proposal that offers the lowest total project cost and ~~and~~ The responsible governmental entity may consider the following factors:

- (1) the proposed cost of the qualifying project;
 - (2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;
 - (3) the proposed design and overall quality of the qualifying project;
 - (4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;
 - (5) comments from local citizens and affected jurisdictions;
 - (6) benefits to the public;
 - (7) the person's good faith effort to comply with the goals of a historically underutilized business plan;
 - (8) the person's plans to employ local contractors and residents;
 - (9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing;
 - (10) the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying project;
 - (11) the historic significance of the property on which the qualifying project is proposed to be located;
 - (12) the environmental impact of the qualifying project; and
 - (13) ~~(14)~~ other criteria that the responsible governmental entity considers appropriate.
- (b-2) A responsible governmental entity may approve a qualifying project that the governmental entity determines serves a public purpose. The responsible governmental entity must include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project.

(g) The responsible governmental entity shall take action appropriate under Section 552.153 to protect confidential and proprietary information provided by a proposer and by the contracting person

SECTION 7. Subsection (a), Section 2267.058, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended.

SECTION 8. The heading to Section 2267.066, Government Code, is amended.

SECTION 9. Section 2267.066, Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (e-1) to read as follows:

(c) Chapter 552 applies to qualifying project proposals [Trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person].

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement. The public hearing shall be held in the area in which the proposed qualifying project is to be performed.

(e-1) After making the proposed comprehensive agreement available as required by Subsection (e), the responsible governmental entity shall hold a public hearing on the final version of the proposed comprehensive agreement and vote on the

under an agreement.

(h) Before 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.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Section 2267.066, Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (e-1) to read as follows:

(c) Trade secrets, proprietary information, and financial records[, 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, and financial records of the proposer are not protected from disclosure unless expressly excepted from the requirements of Chapter 552 or considered confidential under other law.

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement. The public hearing shall be held in the area in which the proposed qualifying project is to be performed.

(e-1) After making the proposed comprehensive agreement available as required by Subsection (e), the responsible governmental entity shall hold a public hearing on the final version of the proposed comprehensive agreement and vote on the

proposed comprehensive agreement after the hearing. The hearing must be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

SECTION 10. Subchapter B, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended.

SECTION 11. Subsection (a), Section 2268.052, Government Code, is amended to read as follows:

(a) The commission consists of the following five ~~[44]~~ members:

(1) the chair of the House Appropriations Committee ~~[or the chair's designee];~~

(2) one representative ~~[three representatives]~~ appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee ~~[or the chair's designee];~~

(4) one senator ~~[three senators]~~ appointed by the lieutenant governor; and

(5) one public member ~~[three representatives of the executive branch,]~~ appointed by the governor.

No equivalent provision.

SECTION 12. Subsection (a), Section 2268.056, Government Code, is amended.

SECTION 13. Subchapter B, Chapter 2268, Government Code, is amended.

No equivalent provision.

proposed comprehensive agreement after the hearing. The hearing must be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

SECTION 10. Same as engrossed version.

SECTION 11. Subsection (a), Section 2268.052, Government Code, is amended to read as follows:

(a) The commission consists of the following six ~~[44]~~ members:

(1) the chair of the House Appropriations Committee ~~[or the chair's designee];~~

(2) one representative ~~[three representatives]~~ appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee ~~[or the chair's designee];~~

(4) one senator ~~[three senators]~~ appointed by the lieutenant governor; ~~[and]~~

(5) the executive director of the State Preservation Board, who serves as a nonvoting member; and

(6) one public member ~~[three representatives of the executive branch,]~~ appointed by the governor.

SECTION 12. Section 2268.053, Government Code, is amended to read as follows:

Sec. 2268.053. PRESIDING OFFICER. (a) The executive director of the State Preservation Board shall serve as presiding officer of the commission.

(b) The members of the commission shall elect from among the legislative members [a presiding officer and] an assistant presiding officer to serve a two-year term [terms].

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

SECTION 15. Section 552.153, Government Code, as added by Chapter 1334 (S.B. 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) proprietary [~~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 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 14. Subsection (c), Section 211.013, Local Government Code, is amended.

SECTION 15. Subsection (e), Section 31.155, Natural Resources Code, is

SECTION 16. Same as engrossed version.

SECTION 17. Same as engrossed version.

amended.

SECTION 16.

Not later than December 1, 2016, the Partnership Advisory Commission established under Chapter 2268, Government Code, shall submit to the lieutenant governor, the speaker of the house of representatives, and the appropriate legislative standing committees recommendations on proposed amendments to Chapters 2267 and 2268, Government Code.

SECTION 17. Section 552.153, Government Code, as added by Section 2, Chapter 1334 (Senate Bill No. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is repealed.

SECTION 18. If Senate Bill No. 894, 83rd Legislature, Regular Session, or similar legislation exempting property in the Capitol Complex as defined by Subdivision (1), Subsection (a), Section 411.061, Government Code, from Chapter 2267, Government Code, as added by Chapter 1334 (Senate Bill No. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is passed and signed into law, Sections 4 and 10 of this Act do not take effect.

SECTION 19. This Act takes effect September 1, 2013.

SECTION 18. (a) The term of the presiding officer of the Partnership Advisory Commission serving immediately before the effective date of this Act expires on the effective date of this Act. This subsection does not affect the entitlement of that individual to continue to serve as a member of the commission.

(b) Not later than December 1, 2016, the Partnership Advisory Commission established under Chapter 2268, Government Code, shall submit to the lieutenant governor, the speaker of the house of representatives, and the appropriate legislative standing committees recommendations on proposed amendments to Chapters 2267 and 2268, Government Code.

No equivalent provision.

SECTION 19. Same as engrossed version.

SECTION 20. Same as engrossed version.