

By: Dutton

H.B. No. 2107

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Facilities Commission; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 443.007, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the board updates or modifies its long-range master plan for the preservation, maintenance, restoration, and modification of the Capitol and the Capitol grounds, the board must conform its plan to the Capitol Complex master plan prepared by the Texas Facilities Commission under Section 2166.105.

SECTION 2. Section 2152.002, Government Code, is amended to read as follows:

Sec. 2152.002. SUNSET PROVISION. The Texas Facilities ~~[Building and Procurement]~~ Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this subtitle, except for Chapter 2170 and Section 2157.121, expires September 1, 2021 ~~[2013]~~.

SECTION 3. Subchapter B, Chapter 2152, Government Code, is amended by adding Section 2152.066 to read as follows:

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

1 (1) negotiated rulemaking procedures under Chapter
2 2008 for the adoption of commission rules; and

3 (2) appropriate alternative dispute resolution
4 procedures under Chapter 2009 to assist in the resolution of
5 internal and external disputes under the commission's
6 jurisdiction.

7 (b) The commission's procedures relating to alternative
8 dispute resolution must conform, to the extent possible, to any
9 model guidelines issued by the State Office of Administrative
10 Hearings for the use of alternative dispute resolution by state
11 agencies.

12 (c) The commission shall:

13 (1) coordinate the implementation of the policy
14 adopted under Subsection (a);

15 (2) provide training as needed to implement the
16 procedures for negotiated rulemaking or alternative dispute
17 resolution; and

18 (3) collect data concerning the effectiveness of those
19 procedures.

20 SECTION 4. Section 2165.055, Government Code, is amended to
21 read as follows:

22 Sec. 2165.055. REPORT ABOUT IMPROVEMENTS AND REPAIRS. The
23 commission [~~biennially~~] on July 1 of each even-numbered year
24 [~~December 1st~~] shall electronically submit a report to the
25 governor, lieutenant governor, speaker of the house of
26 representatives, comptroller, and Legislative Budget Board on:

27 (1) all improvements and repairs that have been made,

1 with an itemized account of receipts and expenditures; and

2 (2) the condition of all property under its control,
3 with an estimate of needed improvements and repairs.

4 SECTION 5. Section 2165.2035(e), Government Code, is
5 amended to read as follows:

6 (e) On or before December 1 of each even-numbered year, the
7 commission shall electronically submit a report to the legislature
8 and the Legislative Budget Board describing the effectiveness of
9 the program under this section.

10 SECTION 6. Section 2165.2046, Government Code, is amended
11 to read as follows:

12 Sec. 2165.2046. REPORTS ON PARKING PROGRAMS. On or before
13 December [~~October~~] 1 of each even-numbered year, the commission
14 shall electronically submit a report to the legislature and
15 Legislative Budget Board describing the effectiveness of parking
16 programs developed by the commission under this subchapter. The
17 report must, at a minimum, include:

- 18 (1) the yearly revenue generated by the programs;
19 (2) the yearly administrative and enforcement costs of
20 each program;
21 (3) yearly usage statistics for each program; and
22 (4) initiatives and suggestions by the commission to:
23 (A) modify administration of the programs; and
24 (B) increase revenue generated by the programs.

25 SECTION 7. Chapter 2165, Government Code, is amended by
26 adding Subchapter H to read as follows:

1 SUBCHAPTER H. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE:

2 QUALIFYING PROJECTS

3 Sec. 2165.351. DEFINITIONS. In this subchapter:

4 (1) "Partnership Advisory Commission" means the
5 Partnership Advisory Commission created by Chapter 2268.

6 (2) "Qualifying project" has the meaning assigned by
7 Section 2267.001, as added by Chapter 1334 (S.B. 1048), Acts of the
8 82nd Legislature, Regular Session, 2011.

9 Sec. 2165.352. COMMISSION REVIEW GUIDELINES AND POLICIES.

10 (a) In adopting the qualifying project review guidelines required
11 by Section 2267.052, as added by Chapter 1334 (S.B. 1048), Acts of
12 the 82nd Legislature, Regular Session, 2011, the commission must
13 include review criteria and documentation to guide the initial
14 review of each substantially complete qualifying project proposal
15 received by the commission.

16 (b) The review criteria required under Subsection (a) at a
17 minimum must include:

18 (1) the extent to which the qualifying project meets a
19 public need;

20 (2) the extent to which the project meets the
21 objectives and priorities of the commission and aligns with any
22 applicable commission plans, including the Capitol Complex master
23 plan developed under Section 2166.105;

24 (3) the technical and legal feasibility of the
25 project;

26 (4) the adequacy of the qualifications, experience,
27 and financial capacity of a private entity or other person

1 submitting the proposal;

2 (5) any potentially unacceptable risks to this state;

3 and

4 (6) whether an alternative delivery method is feasible
5 and more effectively meets this state's goals.

6 (c) The commission's qualifying project review guidelines
7 must:

8 (1) specify the types of professional expertise,
9 including financial, real estate, legal, and other related
10 expertise, needed to effectively protect this state's interest when
11 considering and implementing a qualifying project;

12 (2) specify the range of professional expertise needed
13 at each stage of the project, including proposal evaluation,
14 financial analysis, risk allocation analysis, contract
15 negotiation, and contract and performance monitoring, to evaluate
16 the qualifying project proposal; and

17 (3) require the oversight committee established by the
18 commission for each qualifying project to report to the commission
19 the results of the committee's evaluation of the project, including
20 the schedules, procedures, proposal evaluation criteria, and
21 documentation required in the guidelines for the evaluation.

22 (d) The commission shall:

23 (1) for each qualifying project proposal, post on the
24 commission's Internet website the oversight committee's review
25 report and other evaluation documents; and

26 (2) before posting the report and documents required
27 under Subdivision (1), redact all information included in the

1 report and documents that is considered confidential under Section
2 2267.066(c).

3 (e) The expertise described by Subsection (c) may be
4 provided by commission staff or outside experts.

5 Sec. 2165.353. QUALIFYING PROJECT FEES. (a) The
6 commission may charge a reasonable fee to cover the costs of
7 reviewing a qualifying project. The commission shall develop and
8 adopt a qualifying project proposal fee schedule sufficient to
9 cover its costs, including at a minimum the costs of processing,
10 reviewing, and evaluating the proposals.

11 (b) The commission shall use the professional expertise
12 information required under Section 2165.352(c) to determine the
13 amount of the fee charged by the commission to review a qualifying
14 project proposal. The amount must be reasonable in comparison to
15 the level of professional expertise required for the project and
16 may include the cost of staff time required to process the proposal
17 and other direct costs.

18 (c) The commission may use the money from the fees collected
19 under this section to hire or contract with persons who have the
20 professional expertise necessary to effectively evaluate a
21 qualifying project proposal.

22 Sec. 2165.354. INITIAL REVIEW OF QUALIFYING PROJECT
23 PROPOSAL. (a) The commission staff shall conduct an initial review
24 of each qualifying project proposal submitted to the commission and
25 provide to commission members a summary of the review, including an
26 analysis and recommendations.

27 (b) Subject to Subsection (c), the commission shall use a

value for money analysis in evaluating each qualifying project proposal to:

(1) 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;

(2) determine if the proposal is in the best long-term financial interest of this state; and

(3) determine if the project will provide a tangible public benefit to this state.

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

(d) The commission shall coordinate with the commission'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) Before submitting a detailed qualifying project proposal to the Partnership Advisory Commission as required under Section 2268.058, the commission must hold an initial public hearing on the proposal.

(b) The commission must post a copy of the detailed qualifying project proposal on the commission's Internet website

1 before the required public hearing and, before posting the
2 proposal, redact all information included in the proposal that is
3 considered confidential under Section 2267.066(c).

4 (c) After the hearing, the commission shall:

5 (1) modify the proposal as the commission determines
6 appropriate based on the public comments; and

7 (2) include the public comments in the documents
8 submitted to the Partnership Advisory Commission and provide any
9 additional information necessary for the evaluation required under
10 Chapter 2268.

11 Sec. 2165.356. SUBMISSION OF QUALIFYING PROJECT CONTRACT TO
12 CONTRACT ADVISORY TEAM. (a) Not later than the 60th day before the
13 date the commission is scheduled to vote on approval of a qualifying
14 project contract, the commission must submit to the Contract
15 Advisory Team established under Subchapter C, Chapter 2262,
16 documentation of the modifications to a proposed qualifying project
17 made during the commission's evaluation and negotiation process for
18 the project, including a copy of:

19 (1) the final draft of the contract;

20 (2) the detailed qualifying project proposal; and

21 (3) any executed interim or other agreement.

22 (b) The Contract Advisory Team shall review the
23 documentation submitted under Subsection (a) and provide written
24 comments and recommendations to the commission. The review must
25 focus on, but not be limited to, best practices for contract
26 management and administration.

27 (c) Commission staff shall provide to the commission

1 members:

2 (1) a copy of the Contract Advisory Team's written
3 comments and recommendations; and

4 (2) the staff's response to the comments and
5 recommendations.

6 Sec. 2165.357. PROHIBITED EMPLOYMENT OF COMMISSION
7 EMPLOYEE. (a) A commission employee may not be employed or hired by
8 another person to perform duties that relate to the employee's
9 specific duties in developing and implementing a qualifying
10 project, including review, evaluation, development, and
11 negotiation of a qualifying project proposal.

12 (b) The commission shall obtain from each commission
13 employee sufficient information for the commission to determine
14 whether:

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

16 (2) a potential conflict of interest exists between
17 the employee's commission duties and the employee's duties with the
18 other employer.

19 (c) Each commission employee whose commission duties relate
20 to a qualifying project, including long-range planning, real estate
21 management, space management, and leasing services, shall attest
22 that the employee is aware of and agrees to the commission's ethics
23 and conflict-of-interest policies.

24 (d) To the extent the employment is authorized by commission
25 policy, this section does not prohibit additional employment for a
26 commission employee whose commission duties are not related to a
27 qualifying project.

SECTION 8. Section 2166.001, Government Code, is amended by amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to read as follows:

(1) "Capitol Complex" has the meaning prescribed by Section 411.061(a)(1).

(1-a) "Commission" means the Texas Facilities Commission.

(1-b) ~~[(1-a)]~~ "Construction" includes acquisition and reconstruction.

SECTION 9. Section 2166.101(d), Government Code, is amended to read as follows:

(d) The commission shall summarize its findings on the status of state-owned buildings and current information on construction costs in an electronically submitted ~~[a]~~ report ~~[it shall make available]~~ to the governor, lieutenant governor, speaker of the house of representatives, comptroller, and Legislative Budget Board not later than July 1 of each even-numbered year ~~[the legislature, and the state's budget offices]~~.

SECTION 10. Section 2166.102(b), Government Code, is amended to read as follows:

(b) The commission shall maintain a six-year capital planning cycle and shall electronically submit ~~[file]~~ a master facilities plan with the governor, lieutenant governor, speaker of the house of representatives, ~~[Governor's Office of Budget and Planning, the]~~ Legislative Budget Board, and ~~[the]~~ comptroller before July 1 of each even-numbered year.

SECTION 11. Section 2166.103(b), Government Code, is

1 amended to read as follows:

2 (b) Not later than July 1 of each even-numbered year [~~Before~~
3 ~~each legislative session~~], the commission shall electronically
4 submit [~~send~~] to the governor, the lieutenant governor, the speaker
5 of the house of representatives, the comptroller, and the
6 Legislative Budget Board a report identifying counties in which
7 more than 50,000 square feet of usable office space is needed and
8 the commission's recommendations for meeting that need. The
9 commission may recommend leasing or purchasing and renovating one
10 or more existing buildings or constructing one or more buildings.

11 SECTION 12. Subchapter C, Chapter 2166, Government Code, is
12 amended by adding Sections 2166.105, 2166.106, 2166.107, and
13 2166.108 to read as follows:

14 Sec. 2166.105. CAPITOL COMPLEX MASTER PLAN. (a) The
15 commission shall prepare a Capitol Complex master plan that at a
16 minimum includes:

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

19 (2) a stated strategic vision and long-term goals for
20 the Capitol Complex;

21 (3) an analysis of state property, including
22 buildings, in the Capitol Complex and of the extent to which this
23 state satisfies its space needs through use of the property;

24 (4) in consultation with the General Land Office, an
25 analysis of the current and forecasted real estate market
26 conditions in the Austin area;

27 (5) detailed, site-specific proposals for developing

1 state property in the Capitol Complex, including proposals on the
2 use of property and space for public or private sector purposes;

3 (6) an analysis of and recommendations for building
4 design guidelines to ensure appropriate quality in new or remodeled
5 buildings in the Capitol Complex;

6 (7) an analysis of and recommendations for Capitol
7 Complex infrastructure needs, including transportation, utilities,
8 and parking;

9 (8) for projects identified in the plan, an analysis
10 of and recommendations for financing options, including private
11 sector participation;

12 (9) time frames for implementing the plan components
13 and any projects identified in the plan;

14 (10) consideration of alternative options for meeting
15 state space needs outside the Capitol Complex; and

16 (11) other information relevant to the Capitol Complex
17 as the commission determines appropriate.

18 (b) The commission shall ensure that the General Land
19 Office, the State Preservation Board, the Texas Historical
20 Commission, and other relevant interested parties are included in
21 each stage of the development of the Capitol Complex master plan.

22 (c) The commission shall submit to the governor, lieutenant
23 governor, speaker of the house of representatives, comptroller, and
24 Legislative Budget Board:

25 (1) not later than July 1, 2014, the initial Capitol
26 Complex master plan; and

27 (2) not later than July 1 of each even-numbered year

1 thereafter, updates to the plan.

2 (d) The commission shall ensure that the Capitol Complex
3 master plan and the master facilities plan developed under Section
4 2166.102 do not conflict and together comprehensively address the
5 space needs of state agencies.

6 Sec. 2166.106. REVIEW OF PROPOSED CAPITOL COMPLEX MASTER
7 PLAN BY STATE PRESERVATION BOARD AND GENERAL LAND OFFICE. (a) Not
8 later than the 90th day before the date the commission holds a
9 public meeting to discuss a proposed Capitol Complex master plan,
10 the commission must submit the proposed plan to the State
11 Preservation Board and the General Land Office for review and
12 comment.

13 (b) Not later than the 60th day before the date the
14 commission holds a public meeting to discuss a proposed update to
15 the Capitol Complex master plan, the commission must submit the
16 proposed update to the State Preservation Board and the General
17 Land Office for review and comment.

18 (c) Not later than the 90th day after the date the State
19 Preservation Board receives from the commission a proposed Capitol
20 Complex master plan and not later than the 60th day after the date
21 the board receives from the commission a proposed update to the
22 plan, the board may:

23 (1) by a public vote disapprove the plan or update if
24 the board determines that the goals or recommendations in the plan
25 or update are not in the best interest of the state or of the Capitol
26 Complex; and

27 (2) submit to the commission written comments and

1 recommended modifications to the plan or update.

2 (d) The proposed Capitol Complex master plan or the proposed
3 update to the plan is considered to be approved by the State
4 Preservation Board if the board does not hold the public vote
5 authorized by Subsection (c) on or before the date required under
6 that subsection.

7 (e) The review of the Capitol Complex master plan under this
8 section is in addition to the review required for a proposed project
9 under Section 443.0071.

10 Sec. 2166.107. COMPREHENSIVE PLANNING AND DEVELOPMENT
11 PROCESS. (a) The commission by rule shall adopt a comprehensive
12 process for planning and developing state property in the
13 commission's inventory, including property in the Capitol Complex,
14 and for assisting state agencies in space development planning for
15 state property under Sections 2165.105 and 2165.1061.

16 (b) The process under this section at a minimum must
17 include:

18 (1) a clear approach and specific time frames for
19 obtaining input throughout the planning and development process
20 from the public, interested parties, and state agencies, including
21 the General Land Office and, for Capitol Complex property, the
22 State Preservation Board and the Texas Historical Commission;

23 (2) specific schedules for providing to the commission
24 regular updates on planning and development efforts;

25 (3) a public involvement policy to ensure that before
26 the commission makes a decision on the use or development of state
27 property the public and interested parties have the opportunity to

1 review and comment on the commission's plans; and

2 (4) confidentiality policies consistent with Chapter
3 552.

4 Sec. 2166.108. COMPREHENSIVE CAPITAL IMPROVEMENT AND
5 DEFERRED MAINTENANCE PLAN. (a) The commission shall develop a
6 comprehensive capital improvement and deferred maintenance plan
7 that clearly defines the capital improvement needs and critical and
8 noncritical maintenance needs of state buildings.

9 (b) The comprehensive capital improvement and deferred
10 maintenance plan must:

11 (1) with respect to deferred maintenance projects:

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

15 (B) state the commission's plan for addressing
16 the projects;

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

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

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

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

26 (3) contain a plan, updated biennially, for responding
27 to emergency repairs and replacements that, in consultation with

1 the Legislative Budget Board, identifies potential sources of
2 funds, which may include bonds and bond interest, that may be used
3 to pay the costs of emergency repair and replacement projects.

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

9 (d) The commission shall include the comprehensive capital
10 improvement and deferred maintenance plan and regular updates to
11 the plan in its long-range plan under Section 2166.102. The
12 information included in the long-range plan must include the
13 aggregate project costs for each state agency but may exclude the
14 cost of each specific facility project.

15 SECTION 13. Section 31.155(d), Natural Resources Code, is
16 amended to read as follows:

17 (d) The duty under this subchapter of the division to review
18 and verify real property records and to make recommendations
19 regarding real property and of the commissioner to prepare a report
20 involving real property does not apply to:

21 (1) the real property of an institution of higher
22 education;

23 (2) the real property that is part of a fund created or
24 specifically authorized by the constitution of this state and that
25 is administered by or with the assistance of the land office;

26 (3) the real property of the Employees Retirement
27 System of Texas; ~~and~~

1 (4) the real property of the Teacher Retirement System
2 of Texas; and

3 (5) the real property included in the Capitol Complex
4 as defined by Section 411.061(a)(1), Government Code.

5 SECTION 14. The Texas Facilities Commission shall:

6 (1) not later than January 1, 2014:

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

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

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

16 (2) not later than July 1, 2014:

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

20 (B) prepare the comprehensive capital
21 improvement and deferred maintenance plan required by Section
22 2166.108, Government Code, as added by this Act.

23 SECTION 15. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2013.