

By: Howard

H.B. No. 3811

A BILL TO BE ENTITLED

AN ACT

relating to the planning and contracting process for certain state agencies and state property; 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 443.023, Government Code, is amended to read as follows:

Sec. 443.023. PURCHASE AND LEASE REQUIREMENTS FOR CERTAIN EXPENDITURES. Subtitle D, Title 10, does not apply to a purchase or lease under this chapter except that the board must comply with Section 443.007(a-1) and to the extent applicable any provision in Chapter 2165 or 2166 specifically related to the Capitol Complex.

The executive director, as appropriate, may approve in writing the purchase or lease of goods and services needed to repair or improve an area within the Capitol, Capitol extension, Capitol grounds, or General Land Office building, if the cost of the purchase or lease will not exceed \$50,000. The executive director shall notify the board in writing of any expenditures in excess of \$50,000 made under

1 this chapter.

2 SECTION 3. Subchapter B, Chapter 2165, Government Code, is
3 amended by adding Sections 2165.059, 2165.060, 2165.061, 2165.062,
4 2165.063, and 2165.064 to read as follows:

5 Sec. 2165.059. ADOPTION OF COMMISSION CONTRACTING
6 POLICIES. (a) The commission shall adopt in a public meeting a
7 detailed policy on selecting project delivery methods and on
8 issuing job order contracts authorized under Subchapter I, Chapter
9 2267, as added by Chapter 1129 (H.B. 628), Acts of the 82nd
10 Legislature, Regular Session, 2011. The policy must:

11 (1) specify by contract type the circumstances in
12 which one delivery method is more appropriate than an alternative
13 delivery method;

14 (2) require commission staff to include in reports to
15 the commission justifications for the recommended delivery method;

16 (3) require commission approval of job order contracts
17 in amounts that exceed \$25,000; and

18 (4) require commission staff to report to the
19 commission specific reasons why a contract needed on an expedited
20 basis requires the use of a job order contract.

21 (b) The commission shall adopt a policy to restrict the use
22 of interagency contracts for procurements in amounts less than
23 \$100,000 except in an emergency. Commission staff shall provide
24 justification to the commission on the specific reasons a contract
25 constitutes an emergency. The commission must approve any
26 interagency contract in an amount of \$100,000 or more.

27 (c) The commission shall develop general guidelines on

1 consolidating two or more contracts for goods or services into one
2 contract, including criteria on the appropriate scope of the
3 contract and minimum and maximum amounts for the contract.

4 Sec. 2165.060. INSURANCE REVIEW PROCESS. (a) The
5 commission shall develop a centralized insurance review process to
6 be performed by commission staff qualified to review insurance
7 policies and coverage.

8 (b) Contract administrators in each commission program area
9 shall assist the commission in determining insurance requirements
10 for the program area and in continually monitoring whether the
11 requirements are met.

12 Sec. 2165.061. PROCEDURES FOR SOLICITING AND AWARDING
13 CERTAIN CONTRACTS; NEGOTIATION PLAN. (a) The commission shall
14 perform a risk and needs assessment for each contract, record the
15 assessment results, and retain a copy of the assessment in its
16 central contract file maintained under Section 2165.064. The
17 commission shall develop a template to record the assessment
18 information in the central contract files.

19 (b) The commission staff for each contract submitted for
20 review to the Contract Advisory Team established under Subchapter
21 C, Chapter 2262, shall:

22 (1) record any contract recommendations made by the
23 team;

24 (2) indicate which recommendations were implemented;

25 (3) explain in writing the reasons any recommendation
26 was not implemented; and

27 (4) retain a copy of the information required under

1 Subdivisions (1)-(3) in the commission's central contract file
2 maintained under Section 2165.064.

3 (c) Commission staff must develop a written negotiation
4 plan before each contract negotiation and document the outcome of
5 the negotiation. The staff shall use the negotiation information
6 to:

7 (1) evaluate the outcome of the negotiation compared
8 to the original negotiation plan;

9 (2) determine whether negotiation goals were met; and

10 (3) analyze possible reasons any negotiation goal was
11 not met.

12 (d) The evaluation required under Subsection (c) may not
13 reveal specific details about the commission's negotiation
14 strategy.

15 Sec. 2165.062. TRAINING. The commission shall develop a
16 written policy requiring all commission contract administrators,
17 procurement staff, and legal staff who deal with contracts to
18 receive contract training, including:

19 (1) general training on procurement and the legal
20 requirements for a contract; and

21 (2) contract administration training specifically
22 tailored to each commission program area with responsibility for
23 contracts.

24 Sec. 2165.063. CONTRACTING POLICY AND REQUIREMENTS. (a)
25 The commission shall develop for each contract an administration
26 plan that tailors the details of the plan to commission needs and
27 accounts for the complexity and risk of the contract. The plan must

1 identify risk areas and include monitoring plans, communication
2 plans, and other elements necessary to administer the contract. The
3 commission may develop a template for an administrative plan for
4 each commission program area.

5 (b) Each commission program area shall timely update and
6 document its contract monitoring processes. The documentation must
7 include the contract monitoring plans and any correspondence
8 related to contract sanctions. The commission shall retain the
9 documentation in its central contract file.

10 (c) The commission shall develop criteria for determining
11 whether to use building commissioning for each commission or client
12 state agency project. The criteria must include risk-based analysis
13 that considers the size and complexity of the project. In
14 developing the criteria, the commission may consult with and use
15 resources from organizations with expertise in verifying that
16 building construction requirements have been met.

17 (d) The commission shall establish procedures for
18 commission staff in each commission program area to assess
19 contractor and commission performance at contract closeout,
20 including an evaluation of what could be learned from the contract
21 experience, and for each major contract the staff shall provide the
22 assessment information to the commission. The commission shall use
23 the assessment information to improve its contract management and
24 to improve the use of contractor performance information in future
25 procurements.

26 (e) The commission's facilities design and construction
27 division shall:

1 (1) perform a comprehensive evaluation of change
2 orders and amendments to its completed and active construction
3 project contracts, including an evaluation of any time extensions
4 and unforeseen circumstances;

5 (2) explain significant contract changes, including
6 changes outside the commission's control; and

7 (3) report a summary of any significant contract
8 changes to the commission.

9 Sec. 2165.064. CENTRAL CONTRACT FILE. The commission shall
10 develop a central master file for contracts, including the
11 commission's facilities design and construction division
12 contracts, that contains documentation of the contracting process
13 from initial planning to final closeout and assessment of the
14 contract. Commission staff may consult with the comptroller on the
15 assessment information to be included in the file.

16 SECTION 4. Subchapter C, Chapter 2165, Government Code, is
17 amended by adding Section 2165.1031 to read as follows:

18 Sec. 2165.1031. CHILD CARE FACILITY CONTRACTS. The
19 commission shall include in each contract to provide a child care
20 facility in a state building:

21 (1) a contract monitoring plan that:

22 (A) specifies the frequency of any commission
23 inspections and reporting requirements; and

24 (B) includes review of state inspection reports
25 and accreditation requirements; and

26 (2) a range of sanctions that includes a corrective
27 action plan.

1 SECTION 5. Chapter 2165, Government Code, is amended by
2 adding Subchapter H to read as follows:

3 SUBCHAPTER H. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE:

4 QUALIFYING PROJECTS

5 Sec. 2165.351. DEFINITIONS. In this subchapter:

6 (1) "Partnership Advisory Commission" means the
7 Partnership Advisory Commission created by Chapter 2268.

8 (2) "Qualifying project" has the meaning assigned by
9 Section 2267.001, as added by Chapter 1334 (S.B. 1048), Acts of the
10 82nd Legislature, Regular Session, 2011.

11 Sec. 2165.352. COMMISSION REVIEW GUIDELINES AND POLICIES.

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

18 (b) The review criteria required under Subsection (a) at a
19 minimum must include:

20 (1) the extent to which the qualifying project meets a
21 public need;

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

26 (3) the technical and legal feasibility of the
27 project;

1 (4) the adequacy of the qualifications, experience,
2 and financial capacity of the person submitting the proposal;

3 (5) any potentially unacceptable risks to this state;
4 and

5 (6) whether an alternative delivery method is
6 available or practical.

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

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

13 (2) the range of professional expertise needed at each
14 stage of the project to evaluate the qualifying project proposal,
15 assess and allocate risk, negotiate a contract, and oversee the
16 contract performance over the term of the contract.

17 (d) The expertise described by Subsection (c) may be
18 provided by commission staff or outside experts.

19 (e) The commission shall develop a policy to ensure that
20 commission staff apply all applicable contracting best practices to
21 qualifying project contracts, including procedures and
22 documentation related to planning, risk assessment, performance
23 measures, and ongoing contract oversight.

24 Sec. 2165.353. QUALIFYING PROJECT FEES. (a) The commission
25 shall develop and adopt a qualifying project proposal fee schedule
26 sufficient to cover the costs of processing, reviewing, and
27 evaluating the proposals.

1 (b) The commission shall use the professional expertise
2 information required under Section 2165.352(c) to determine the
3 amount of the fee charged by the commission to review a qualifying
4 project proposal. The amount must be reasonable in comparison to
5 the level of professional expertise required for the project and
6 may include the cost of staff time required to process the proposal
7 and other direct costs.

8 (c) The commission may charge additional fees to cover the
9 commission's costs of negotiating, implementing, and overseeing an
10 executed qualifying project contract throughout the duration of the
11 contract, including fees generated from the project's revenue.

12 Sec. 2165.354. INITIAL REVIEW OF QUALIFYING PROJECT
13 PROPOSAL. (a) The commission staff shall conduct an initial review
14 of each qualifying project proposal submitted to the commission and
15 provide to commission members a summary of the review, including an
16 analysis and recommendations.

17 (b) The commission shall use a value for money analysis in
18 evaluating each qualifying project proposal to:

19 (1) ensure the commission determines the best approach
20 for developing state property;

21 (2) conduct a thorough risk analysis of the proposal
22 that:

23 (A) evaluates the financial and qualitative
24 benefits of the proposal; and

25 (B) identifies specific risks shared between
26 this state and the private partner and subjects the risks to
27 negotiation in the contract;

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

3 (4) determine if the project will provide a tangible
4 public benefit; and

5 (5) address the opportunity costs of alternative uses
6 of the state property.

7 (c) The commission shall coordinate with the commission's
8 office of internal audit for review and receipt of comments on the
9 reasonableness of the assumptions used in the value for money
10 analysis required under Subsection (b).

11 Sec. 2165.355. INITIAL PUBLIC HEARING ON QUALIFYING PROJECT
12 PROPOSAL. (a) Before submitting a detailed qualifying project
13 proposal to the Partnership Advisory Commission as required under
14 Section 2268.058, the commission must hold an initial public
15 hearing on the proposal.

16 (b) The commission must post a copy of the detailed
17 qualifying project proposal on the commission's Internet website
18 before the required public hearing and, before posting the
19 proposal, redact all confidential information included in the
20 proposal.

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

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

24 (2) include the public comments in the documents
25 submitted to the Partnership Advisory Commission and provide any
26 additional information necessary for the evaluation required under
27 Chapter 2268.

1 Sec. 2165.356. SUBMISSION OF QUALIFYING PROJECT CONTRACT TO
2 CONTRACT ADVISORY TEAM. (a) Not later than the 60th day before the
3 date the commission is scheduled to vote on approval of a qualifying
4 project contract, the commission must submit to the Contract
5 Advisory Team established under Subchapter C, Chapter 2262, a copy
6 of:

- 7 (1) the final draft of the contract;
8 (2) the detailed qualifying project proposal; and
9 (3) any executed interim or other agreement.

10 (b) The Contract Advisory Team shall review the
11 documentation submitted under Subsection (a) and provide written
12 comments and recommendations to the commission. The review must
13 focus on best practices for contract management and
14 administration.

15 (c) The commission shall provide to the Partnership
16 Advisory Commission:

- 17 (1) a copy of the Contract Advisory Team's written
18 comments and recommendations; and
19 (2) the commission's response to the comments and
20 recommendations.

21 Sec. 2165.357. SUBMISSION OF FINANCIAL INFORMATION AND
22 ANALYSIS TO LEGISLATIVE BUDGET BOARD. (a) The commission on a
23 regular basis shall provide to the Legislative Budget Board:

24 (1) information on potential and actual revenue
25 generated from qualifying projects; and

26 (2) a financial analysis, forecast, and other related
27 information obtained from the evaluation and implementation of

1 qualifying projects.

2 (b) The Legislative Budget Board shall monitor this state's
3 financial interest in qualifying projects of the commission and
4 make recommendations to the commission on the use and management of
5 revenue generated from qualifying projects.

6 Sec. 2165.358. PROHIBITED EMPLOYMENT OF COMMISSION
7 EMPLOYEE. (a) A commission employee may not be employed by any
8 other person to perform duties that relate to the employee's duties
9 on a qualifying project.

10 (b) The commission shall obtain from each commission
11 employee who is also employed by another person sufficient
12 information to determine whether a potential conflict of interest
13 exists between the employee's commission duties and the employee's
14 duties with the other employer.

15 (c) Each commission employee whose commission duties relate
16 to a qualifying project shall attest that the employee is aware of
17 and agrees to the commission's ethics and conflict-of-interest
18 policies.

19 (d) To the extent the employment is authorized by commission
20 policy, this section does not prohibit additional employment for a
21 commission employee whose commission duties are not related to a
22 qualifying project.

23 SECTION 6. Section 2166.001, Government Code, is amended by
24 amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to
25 read as follows:

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

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

3 (1-b) [~~(1-a)~~] "Construction" includes acquisition and
4 reconstruction.

5 SECTION 7. Subchapter C, Chapter 2166, Government Code, is
6 amended by adding Sections 2166.105, 2166.106, and 2166.107 to read
7 as follows:

8 Sec. 2166.105. CAPITOL COMPLEX MASTER PLAN. (a) The
9 commission shall prepare a Capitol Complex master plan to:

10 (1) provide a clear long-range vision for the Capitol
11 Complex by outlining the strategy and goals for developing the
12 Capitol Complex;

13 (2) recommend actions for meeting the strategies and
14 goals;

15 (3) guide decision making on future development and
16 improvements in the Capitol Complex; and

17 (4) provide the commission a basis for evaluating
18 proposals affecting the Capitol Complex.

19 (b) The Capitol Complex master plan must include:

20 (1) an overview and summary of the commission's
21 previous plans for the Capitol Complex;

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

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

27 (4) in consultation with the General Land Office, an

1 analysis of real estate market conditions in the Austin area;

2 (5) detailed, site-specific proposals for developing
3 state property in the Capitol Complex, including proposals on the
4 use of property and space for public or private sector purposes;

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

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

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

14 (9) schedules for implementing the plan components and
15 any projects identified in the plan;

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

18 (11) other information relevant to the Capitol Complex
19 as the commission determines appropriate.

20 (c) The commission shall discuss a proposed Capitol Complex
21 master plan and any proposed updates to the plan at a public meeting
22 before the plan or update is officially adopted by the commission.

23 (d) Not later than July 1 of each even-numbered year, the
24 commission shall submit updates to the Capitol Complex master plan
25 to the governor, lieutenant governor, speaker of the house of
26 representatives, comptroller, and Legislative Budget Board.

27 (e) The commission may perform additional studies necessary

1 to implement components of or projects identified in the Capitol
2 Complex master plan.

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

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

14 (a-1) Not later than the 90th day after the date the State
15 Preservation Board receives a proposed Capitol Complex master plan
16 from the commission, the board:

17 (1) by a public vote may disapprove the plan if the
18 board determines that the goals or recommendations in the plan are
19 not in the best interest of the state or of the Capitol Complex; and

20 (2) if the board disapproves the plan, shall submit to
21 the commission written comments and recommended modifications to
22 the plan.

23 (a-2) The proposed Capitol Complex master plan is
24 considered to be approved by the State Preservation Board if the
25 board does not hold the public vote required under Subsection (a-1)
26 on or before the 90th day after the date the proposed plan is
27 received by the board.

1 (a-3) This subsection and Subsections (a-1) and (a-2)
2 expire September 1, 2015.

3 (b) The commission shall:

4 (1) consider any written comments or recommendations
5 on the proposed Capitol Complex master plan submitted by the State
6 Preservation Board or the General Land Office; and

7 (2) modify the plan as the commission determines
8 necessary to address the comments and recommendations.

9 (c) Not later than the 60th day before the date the
10 commission holds a public meeting to discuss a proposed update to
11 the Capitol Complex master plan, the commission must submit the
12 proposed update to the State Preservation Board and the General
13 Land Office for review and comment.

14 (d) In preparing the final draft of a proposed update to the
15 Capitol Complex master plan, the commission shall consider any
16 written comments or recommendations submitted to the commission by
17 the State Preservation Board or the General Land Office.

18 Sec. 2166.107. COMPREHENSIVE PLANNING AND DEVELOPMENT
19 PROCESS. (a) The commission by rule shall adopt a comprehensive
20 process for planning and developing state property in the
21 commission's inventory, including property in the Capitol Complex,
22 and for assisting state agencies in space development planning for
23 state property.

24 (b) The process under this section must promote
25 constructive participation by the public, interested parties, and
26 other state agencies to provide the critical perspectives necessary
27 to balance competing needs.

1 (c) The process under this section at a minimum must
2 include:

3 (1) a clear approach and specific schedules for
4 obtaining input throughout the planning and development process
5 from the public, interested parties, and state agencies, including
6 the General Land Office and, for Capitol Complex property, the
7 State Preservation Board and the Texas Historical Commission;

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

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

14 (4) confidentiality policies consistent with Chapter
15 552.

16 SECTION 8. Subchapter D, Chapter 2166, Government Code, is
17 amended by adding Section 2166.158 to read as follows:

18 Sec. 2166.158. AUSTIN PROJECT. Not later than the 30th day
19 before the date the commission is scheduled to meet and vote on a
20 project to develop or improve state property in the city of Austin,
21 the commission staff must:

22 (1) place the project on the commission's meeting
23 agenda to provide the public with notice of the meeting and an
24 opportunity to comment; and

25 (2) present sufficient information to commission
26 members to enable the members to adequately prepare for the meeting
27 and to address the members' questions and concerns.

1 SECTION 9. Subchapter B, Chapter 2268, Government Code, is
2 amended by adding Section 2268.0581 to read as follows:

3 Sec. 2268.0581. SUBMISSION OF REPORT TO TEXAS FACILITIES
4 COMMISSION. (a) The commission shall submit to the Texas
5 Facilities Commission a written report of the commission's
6 evaluation of any detailed proposal of a Texas Facilities
7 Commission qualifying project that the commission accepts for
8 review under Section 2268.058.

9 (b) The report required under Subsection (a) must include
10 the commission's findings and recommendations and specify the
11 schedules, procedures, and documentation recommended by the
12 commission for the proposed qualifying project.

13 (c) The Texas Facilities Commission shall:

14 (1) post on the Texas Facilities Commission's Internet
15 website the commission's review report for the detailed proposal;
16 and

17 (2) before posting the documents required under
18 Subdivision (1), redact all confidential information contained in
19 the documents.

20 SECTION 10. Section 31.1571(a), Natural Resources Code, is
21 amended to read as follows:

22 (a) At any time, the commissioner may make a report to the
23 governor recommending real estate transactions or other actions
24 involving any real property included in the most recent evaluation
25 report and identified as not used or substantially underused. The
26 report must conform to the real property provisions in the Capitol
27 Complex master plan developed by the Texas Facilities Commission

1 under Section 2166.105, Government Code.

2 SECTION 11. (a) The Texas Facilities Commission shall:

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

4 (A) adopt the contract policies required by
5 Section 2165.059, Government Code, as added by this Act;

6 (B) develop the insurance review process
7 required by Section 2165.060, Government Code, as added by this
8 Act;

9 (C) develop the risk assessment template and
10 negotiation plan required by Section 2165.061, Government Code, as
11 added by this Act;

12 (D) develop the training required by Section
13 2165.062, Government Code, as added by this Act;

14 (E) develop the contracting policy and
15 requirements required by Section 2165.063, Government Code, as
16 added by this Act;

17 (F) develop the central contract file required by
18 Section 2165.064, Government Code, as added by this Act;

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

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

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

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

2 (A) prepare the Capitol Complex master plan
3 required by Section 2166.105, Government Code, as added by this
4 Act; and

5 (B) submit the plan as required by that section.

6 (b) Notwithstanding Chapter 2267, Government Code, as added
7 by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular
8 Session, 2011, the Texas Facilities Commission may not take any
9 formal action on a qualifying project under that chapter before:

10 (1) September 1, 2013; or

11 (2) if the project is within the Capitol Complex, as
12 that term is defined by Section 2166.001, Government Code, as
13 amended by this Act, the commission develops the Capitol Complex
14 master plan required by Section 2166.105, Government Code, as added
15 by this Act.

16 SECTION 12. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2013.