

By: Watson, Eltife

S.B. No. 507

A BILL TO BE ENTITLED

AN ACT

relating to public and private facilities and infrastructure.

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

SECTION 1. 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 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:

(1-a) "Commission" means the Partnership Advisory Commission established under Chapter 2268.

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. (a) Except as provided by Subsection (b) and Section

1 2267.006, a qualifying project that is to be performed or located in
2 a municipality must comply with the zoning and land use regulations
3 of the municipality.

4 (b) This section does not apply to a qualifying project
5 that:

6 (1) uses a building, other structure, or land under
7 the control, administration, or jurisdiction of a state agency for
8 the same public purposes for which the state agency is authorized
9 under the governing law that established the agency to use the
10 building, structure, or land; or

11 (2) is located within the Capitol Complex, as defined
12 by Section 411.061(a)(1).

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

19 (1) the land commissioner;

20 (2) the administrative head of the governing body of
21 the responsible governmental entity;

22 (3) the mayor of the municipality;

23 (4) the county judge of the county in which the
24 municipality is located;

25 (5) one state senator selected by the lieutenant
26 governor;

27 (6) one member of the house of representatives

1 selected by the speaker of the house; and

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

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

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

10 (d) If after the hearings, the special board of review
11 determines that the zoning and land use regulations are detrimental
12 to the best interest of this state, the special board of review
13 shall issue an order establishing a development plan to govern the
14 use of the real property related to the qualifying project.
15 Development of the real property must be in accordance with the plan
16 and comply with all applicable municipal regulations, orders, or
17 ordinances except as specifically identified by the order of the
18 special board of review. If substantial progress is not made in
19 implementing the qualifying project before the fifth anniversary of
20 the date the development plan is adopted by the special board of
21 review, the municipal zoning and land use regulations become
22 applicable to development of the property, unless the special board
23 of review adopts a new development plan.

24 (e) A development plan adopted by the special board of
25 review and any plan accepted by a responsible governmental entity
26 is final and binding on the state, the responsible governmental
27 entity, lessees, successors in interest and assigns, and the

1 affected municipality unless revised by the special board of
2 review.

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

6 Sec. 2267.007. CONFLICT OF INTEREST. An employee of a
7 responsible governmental entity or a person related to the employee
8 within the second degree by consanguinity or affinity, as
9 determined under Chapter 573, may not accept money, a financial
10 benefit, or other consideration from a contracting person that has
11 entered into a comprehensive agreement with the responsible
12 governmental entity.

13 Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED
14 GOVERNMENTAL ENTITY EMPLOYEES. (a) A contracting person may not
15 employ or enter into a professional services contract or a
16 consulting services contract under Chapter 2254 with a former or
17 retired employee of the responsible governmental entity with which
18 the person has entered into a comprehensive agreement before the
19 first anniversary of the date on which the former or retired
20 employee terminates employment with the entity.

21 (b) This section does not prohibit the contracting person
22 from entering into a professional services contract with a
23 corporation, firm, or other business organization that employs a
24 former or retired employee of the responsible governmental entity
25 before the first anniversary of the date the former or retired
26 employee terminates employment with the entity if the former or
27 retired employee does not perform services for the corporation,

1 firm, or other business organization under the comprehensive
2 agreement with the responsible governmental entity that the former
3 or retired employee worked on before terminating employment with
4 the entity.

5 SECTION 4. Section 2267.051, Government Code, as added by
6 Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular
7 Session, 2011, is amended by amending Subsection (a) and adding
8 Subsection (a-1) to read as follows:

9 (a) Except as provided by Subsection (a-1), a [A] person may
10 not develop or operate a qualifying project unless the person
11 obtains the approval of and contracts with the responsible
12 governmental entity under this chapter. The person may initiate
13 the approval process by submitting a proposal requesting approval
14 under Section 2267.053(a), or the responsible governmental entity
15 may request proposals or invite bids under Section 2267.053(b).

16 (a-1) A person may not develop or operate a qualifying
17 project on property located within the Capitol Complex, as defined
18 by Section 411.061(a)(1), unless the person obtains the approval of
19 and contracts with the responsible governmental entity under this
20 chapter. The person may not initiate the approval process by
21 submitting a proposal requesting approval under Section
22 2267.053(a). However, the responsible governmental entity may
23 request proposals or invite bids under Section 2267.053(b).

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

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

3 (1) require the responsible governmental entity to:

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

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

8 (2) provide reasonable criteria for choosing among
9 competing proposals;

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

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

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

18 (A) a cost-benefit analysis;

19 (B) an assessment of opportunity cost;

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

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

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

1 project;

2 (7) include criteria for:

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

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

10 (C) compliance with the requirements of Chapter
11 2268;

12 (8) require the responsible governmental entity to
13 analyze the adequacy of the information to be released by the entity
14 when seeking competing proposals and require that the entity
15 provide more detailed information, if the entity determines
16 necessary, to encourage competition, subject to Section
17 2267.053(g);

18 (9) establish criteria, key decision points, and
19 approvals required to ensure that the responsible governmental
20 entity considers the extent of competition before selecting
21 proposals and negotiating an interim or comprehensive agreement;
22 and

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

26 (A) specific information and documentation
27 regarding the nature, timing, and scope of the qualifying project,

1 as required under Section 2267.053(a);

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

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

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

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

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

1 (d) A responsible governmental entity described by Section
2 2267.001(5)(A) shall submit a copy of the guidelines adopted by the
3 entity under this section to the commission for approval by the
4 commission. The commission shall prescribe the procedure for
5 submitting the guidelines for review under this section. The
6 governmental entity may not request or consider a proposal for a
7 qualifying project until the guidelines are approved by the
8 commission.

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

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

17 (1) a topographic map, with a 1:2,000 or other
18 appropriate scale, indicating the location of the qualifying
19 project;

20 (2) a description of the qualifying project,
21 including:

22 (A) the conceptual design of any facility or a
23 conceptual plan for the provision of services or technology
24 infrastructure; and

25 (B) a schedule for the initiation of and
26 completion of the qualifying project that includes the proposed
27 major responsibilities and timeline for activities to be performed

1 by the governmental entity and the person;

2 (3) a statement of the method the person proposes for
3 securing necessary property interests required for the qualifying
4 project;

5 (4) information relating to any current plans for the
6 development of facilities or technology infrastructure to be used
7 by a governmental entity that are similar to the qualifying project
8 being proposed by the person for each affected jurisdiction;

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

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

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

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

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

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

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

4 (12) [~~(10)~~] any additional material and information
5 the responsible governmental entity reasonably requests.

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

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

14 (b-1) A responsible governmental entity shall make a best
15 value determination in evaluating the proposals received and
16 consider the total project cost as one factor in evaluating the
17 proposals. The responsible governmental entity [~~received, but~~] is
18 not required to select the proposal that offers the lowest total
19 project cost and[. ~~The responsible governmental entity~~] may
20 consider the following factors:

21 (1) the proposed cost of the qualifying project;

22 (2) the general reputation, industry experience, and
23 financial capacity of the person submitting a proposal;

24 (3) the proposed design and overall quality of the
25 qualifying project;

26 (4) the eligibility of the project for accelerated
27 selection, review, and documentation timelines under the

1 responsible governmental entity's guidelines;

2 (5) comments from local citizens and affected
3 jurisdictions;

4 (6) benefits to the public;

5 (7) the person's good faith effort to comply with the
6 goals of a historically underutilized business plan;

7 (8) the person's plans to employ local contractors and
8 residents;

9 (9) for a qualifying project that involves a
10 continuing role beyond design and construction, the person's
11 proposed rate of return and opportunities for revenue sharing;

12 (10) the relationship and conformity of the qualifying
13 project to a state or local community plan impacted by the
14 qualifying project or to the uses of property surrounding the
15 qualifying project;

16 (11) the historic significance of the property on
17 which the qualifying project is proposed to be located;

18 (12) the environmental impact of the qualifying
19 project; and

20 (13) [~~(10)~~] other criteria that the responsible
21 governmental entity considers appropriate.

22 (b-2) A responsible governmental entity may approve a
23 qualifying project that the governmental entity determines serves a
24 public purpose. The responsible governmental entity must include
25 in the comprehensive agreement for the qualifying project a written
26 declaration of the specific public purpose served by the project.

27 SECTION 7. Subsection (a), Section 2267.058, Government

1 Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd
2 Legislature, Regular Session, 2011, is amended to read as follows:

3 (a) Before developing or operating the qualifying project,
4 the contracting person must enter into a comprehensive agreement
5 with a responsible governmental entity. The comprehensive
6 agreement shall provide for:

7 (1) delivery of letters of credit or other security in
8 connection with the development or operation of the qualifying
9 project, in the forms and amounts satisfactory to the responsible
10 governmental entity, and delivery of performance and payment bonds
11 in compliance with Chapter 2253 for all construction activities;

12 (2) review of plans and specifications for the
13 qualifying project by the responsible governmental entity and
14 approval by the responsible governmental entity indicating that
15 ~~[if]~~ the plans and specifications conform to standards acceptable
16 to the responsible governmental entity, except that the contracting
17 person may not be required to provide final design documents for
18 ~~[complete the design of]~~ a qualifying project before the execution
19 of a comprehensive agreement;

20 (3) inspection of the qualifying project by the
21 responsible governmental entity to ensure that the contracting
22 person's activities are acceptable to the responsible governmental
23 entity in accordance with the comprehensive agreement;

24 (4) maintenance of a public liability insurance
25 policy, copies of which must be filed with the responsible
26 governmental entity accompanied by proofs of coverage, or
27 self-insurance, each in the form and amount satisfactory to the

1 responsible governmental entity and reasonably sufficient to
2 ensure coverage of tort liability to the public and project
3 employees and to enable the continued operation of the qualifying
4 project;

5 (5) monitoring of the practices of the contracting
6 person by the responsible governmental entity to ensure that the
7 qualifying project is properly maintained;

8 (6) reimbursement to be paid to the responsible
9 governmental entity for services provided by the responsible
10 governmental entity;

11 (7) filing of appropriate financial statements on a
12 periodic basis; and

13 (8) policies and procedures governing the rights and
14 responsibilities of the responsible governmental entity and the
15 contracting person if the comprehensive agreement is terminated or
16 there is a material default by the contracting person, including
17 conditions governing:

18 (A) assumption of the duties and
19 responsibilities of the contracting person by the responsible
20 governmental entity; and

21 (B) the transfer or purchase of property or other
22 interests of the contracting person to the responsible governmental
23 entity.

24 SECTION 8. The heading to Section 2267.066, Government
25 Code, is amended to read as follows:

26 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC
27 ACCESS TO PROCUREMENT RECORDS; FINAL VOTE.

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

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

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

16 (e-1) After making the proposed comprehensive agreement
17 available as required by Subsection (e), the responsible
18 governmental entity shall hold a public hearing on the final
19 version of the proposed comprehensive agreement and vote on the
20 proposed comprehensive agreement after the hearing. The hearing
21 must be held not later than the 10th day before the date the entity
22 enters into a comprehensive agreement with a contracting person.

23 SECTION 10. Subchapter B, Chapter 2267, Government Code, as
24 added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature,
25 Regular Session, 2011, is amended by adding Section 2267.067 to
26 read as follows:

27 Sec. 2267.067. QUALIFYING PROJECT IN CAPITOL COMPLEX.

1 (a) A qualifying project for property located in the Capitol
2 Complex, as defined by Section 411.061(a)(1), must be consistent
3 with Capitol Complex design guidelines or standards adopted as part
4 of a 1989 planning process or subsequently adopted based on a
5 Capitol Complex master plan developed thereafter.

6 (b) A responsible governmental entity shall include design
7 guidelines and standards defined in Subsection (a) in the request
8 for proposals or invitation for bids for the development or
9 operation of a qualifying project and inform the persons who submit
10 proposals of the requirement to comply with the design guidelines
11 and standards. The final proposal or invitation must be submitted
12 to the State Preservation Board for verification that the proposal
13 complies with the standards.

14 (c) A responsible governmental entity shall submit a final
15 qualifying project proposal for property in the area described by
16 Subsection (a) to the State Preservation Board. The State
17 Preservation Board by majority vote may disapprove the proposal not
18 later than the 60th day after the date the proposal is received.

19 (d) A responsible governmental entity may not approve a
20 qualifying project proposal for property in the area described by
21 Subsection (a) before September 1, 2015. This subsection expires
22 September 1, 2015.

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

25 (a) The commission consists of the following five [~~11~~]
26 members:

27 (1) the chair of the House Appropriations Committee

1 ~~[or the chair's designee];~~

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

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

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

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

10 SECTION 12. Subsection (a), Section 2268.056, Government
11 Code, is amended to read as follows:

12 (a) The State Preservation Board ~~[legislative body that the~~
13 ~~presiding officer serves]~~ shall provide administrative staff
14 support for the commission.

15 SECTION 13. Subchapter B, Chapter 2268, Government Code, is
16 amended by adding Section 2268.0585 to read as follows:

17 Sec. 2268.0585. DISAPPROVAL OF QUALIFYING PROJECT
18 PROPOSALS OF CERTAIN RESPONSIBLE GOVERNMENTAL ENTITIES. The
19 commission by majority vote may disapprove a qualifying project
20 proposal submitted by a governmental entity described by Section
21 2267.001(5)(A).

22 SECTION 14. Subsection (c), Section 211.013, Local
23 Government Code, is amended to read as follows:

24 (c) Except as provided by Section 2267.005, Government
25 Code, this ~~[This]~~ subchapter does not apply to a building, other
26 structure, or land under the control, administration, or
27 jurisdiction of a state or federal agency.

1 SECTION 15. Subsection (e), Section 31.155, Natural
2 Resources Code, is amended to read as follows:

3 (e) The duties of the division to make recommendations
4 regarding real property and of the commissioner to prepare a report
5 involving real property under this subchapter do not apply to:

6 (1) the real property of the Texas Historical
7 Commission;

8 (2) the real property comprising the Alamo;

9 (3) the real property comprising the French Legation;

10 (4) the real property comprising the Governor's
11 Mansion;

12 (5) the real property comprising the Texas State
13 Cemetery, more specifically described as 17.376 acres located at
14 801 Comal, Lot 5, Division B, City of Austin, Travis County, Texas;

15 (6) the real property administered by the State
16 Preservation Board; ~~and~~

17 (7) highway rights-of-way owned by the Texas
18 Department of Transportation; and

19 (8) the real property located in the Capitol Complex
20 as defined by Section 411.061(a)(1), Government Code.

21 SECTION 16. Not later than December 1, 2016, the
22 Partnership Advisory Commission established under Chapter 2268,
23 Government Code, shall submit to the lieutenant governor, the
24 speaker of the house of representatives, and the appropriate
25 legislative standing committees recommendations on proposed
26 amendments to Chapters 2267 and 2268, Government Code.

27 SECTION 17. Section 552.153, Government Code, as added by

1 Section 2, Chapter 1334 (Senate Bill No. 1048), Acts of the 82nd
2 Legislature, Regular Session, 2011, is repealed.

3 SECTION 18. If Senate Bill No. 894, 83rd Legislature,
4 Regular Session, or similar legislation exempting property in the
5 Capitol Complex as defined by Subdivision (1), Subsection (a),
6 Section 411.061, Government Code, from Chapter 2267, Government
7 Code, as added by Chapter 1334 (Senate Bill No. 1048), Acts of the
8 82nd Legislature, Regular Session, 2011, is passed and signed into
9 law, Sections 4 and 10 of this Act do not take effect.

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