

1-1 By: Watson, Eltife S.B. No. 507
1-2 (In the Senate - Filed February 12, 2013; February 20, 2013,
1-3 read first time and referred to Committee on Economic Development;
1-4 March 28, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 28, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

1-8	Yea	Nay	Absent	PNV
1-9	Deuell	X		
1-10	Hancock	X		
1-11	Birdwell		X	
1-12	Davis	X		
1-13	Eltife	X		
1-14	Fraser		X	
1-15	Watson	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 507 By: Watson

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to public and private facilities and infrastructure.
1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-21 SECTION 1. Section 2166.001, Government Code, is amended by
1-22 amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to
1-23 read as follows:
1-24 (1) "Capitol Complex" has the meaning prescribed by
1-25 Section 411.061(a)(1).
1-26 (1-a) "Commission" means the Texas Facilities
1-27 Commission.
1-28 (1-b) [~~(1-a)~~] "Construction" includes acquisition and
1-29 reconstruction.
1-30 SECTION 2. Section 2267.001, Government Code, as added by
1-31 Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular
1-32 Session, 2011, is amended by adding Subdivision (1-a) to read as
1-33 follows:
1-34 (1-a) "Commission" means the Partnership Advisory
1-35 Commission established under Chapter 2268.
1-36 SECTION 3. Subchapter A, Chapter 2267, Government Code, as
1-37 added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature,
1-38 Regular Session, 2011, is amended by adding Sections 2267.005,
1-39 2267.006, 2267.007, and 2267.008 to read as follows:
1-40 Sec. 2267.005. APPLICABILITY OF MUNICIPAL ZONING
1-41 REGULATIONS. (a) Except as provided by Subsection (b) and Section
1-42 2267.006, a qualifying project that is to be performed or located in
1-43 a municipality must comply with the zoning and land use regulations
1-44 of the municipality.
1-45 (b) This section does not apply to a qualifying project
1-46 that:
1-47 (1) uses a building, other structure, or land under
1-48 the control, administration, or jurisdiction of a state agency for
1-49 the same public purposes for which the state agency is authorized
1-50 under the governing law that established the agency to use the
1-51 building, structure, or land; or
1-52 (2) is located within the Capitol Complex, as defined
1-53 by Section 411.061(a)(1).
1-54 Sec. 2267.006. SPECIAL BOARD OF REVIEW. (a) If a
1-55 qualifying project does not comply with the zoning and land use
1-56 regulations of a municipality as required by Section 2267.005 and
1-57 the municipality denies a rezoning request for the qualifying
1-58 project, the matter may be appealed to a special board of review
1-59 consisting of the following members:
1-60 (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 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. An employee of a responsible governmental entity or a person related to the employee within the second degree by consanguinity or affinity, as determined under Chapter 573, may not accept money, a financial benefit, or other consideration from a contracting person that has entered into a comprehensive agreement with the responsible governmental entity.

Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES. (a) A contracting person may not employ or enter into a professional services contract or a consulting services contract under Chapter 2254 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.

(b) This section 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.

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 by amending Subsection (a) and adding

Subsection (a-1) to read as follows:

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

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

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 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 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.

(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 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) ~~[(10)]~~ 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 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) ~~[(10)]~~ 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

6-1 declaration of the specific public purpose served by the project.

6-2 SECTION 7. Subsection (a), Section 2267.058, Government
6-3 Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd
6-4 Legislature, Regular Session, 2011, is amended to read as follows:

6-5 (a) Before developing or operating the qualifying project,
6-6 the contracting person must enter into a comprehensive agreement
6-7 with a responsible governmental entity. The comprehensive
6-8 agreement shall provide for:

6-9 (1) delivery of letters of credit or other security in
6-10 connection with the development or operation of the qualifying
6-11 project, in the forms and amounts satisfactory to the responsible
6-12 governmental entity, and delivery of performance and payment bonds
6-13 in compliance with Chapter 2253 for all construction activities;

6-14 (2) review of plans and specifications for the
6-15 qualifying project by the responsible governmental entity and
6-16 approval by the responsible governmental entity indicating that
6-17 ~~[if]~~ the plans and specifications conform to standards acceptable
6-18 to the responsible governmental entity, except that the contracting
6-19 person may not be required to provide final design documents for
6-20 ~~[complete the design of]~~ a qualifying project before the execution
6-21 of a comprehensive agreement;

6-22 (3) inspection of the qualifying project by the
6-23 responsible governmental entity to ensure that the contracting
6-24 person's activities are acceptable to the responsible governmental
6-25 entity in accordance with the comprehensive agreement;

6-26 (4) maintenance of a public liability insurance
6-27 policy, copies of which must be filed with the responsible
6-28 governmental entity accompanied by proofs of coverage, or
6-29 self-insurance, each in the form and amount satisfactory to the
6-30 responsible governmental entity and reasonably sufficient to
6-31 ensure coverage of tort liability to the public and project
6-32 employees and to enable the continued operation of the qualifying
6-33 project;

6-34 (5) monitoring of the practices of the contracting
6-35 person by the responsible governmental entity to ensure that the
6-36 qualifying project is properly maintained;

6-37 (6) reimbursement to be paid to the responsible
6-38 governmental entity for services provided by the responsible
6-39 governmental entity;

6-40 (7) filing of appropriate financial statements on a
6-41 periodic basis; and

6-42 (8) policies and procedures governing the rights and
6-43 responsibilities of the responsible governmental entity and the
6-44 contracting person if the comprehensive agreement is terminated or
6-45 there is a material default by the contracting person, including
6-46 conditions governing:

6-47 (A) assumption of the duties and
6-48 responsibilities of the contracting person by the responsible
6-49 governmental entity; and

6-50 (B) the transfer or purchase of property or other
6-51 interests of the contracting person to the responsible governmental
6-52 entity.

6-53 SECTION 8. The heading to Section 2267.066, Government
6-54 Code, is amended to read as follows:

6-55 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC
6-56 ACCESS TO PROCUREMENT RECORDS; FINAL VOTE.

6-57 SECTION 9. Section 2267.066, Government Code, is amended by
6-58 amending Subsections (c) and (d) and adding Subsection (e-1) to
6-59 read as follows:

6-60 (c) Chapter 552 applies to qualifying project proposals
6-61 ~~[Trade secrets, financial records, or other records of the~~
6-62 ~~contracting person excluded from disclosure under Section 552.101~~
6-63 ~~may not be posted or made available for public inspection except as~~
6-64 ~~otherwise agreed to by the responsible governmental entity and the~~
6-65 ~~contracting person].~~

6-66 (d) The responsible governmental entity shall hold a public
6-67 hearing on the proposal during the proposal review process not
6-68 later than the 30th day before the date the entity enters into an
6-69 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 by adding Section 2267.067 to read as follows:

Sec. 2267.067. QUALIFYING PROJECT IN CAPITOL COMPLEX. (a) A qualifying project for property located in the Capitol Complex, as defined by Section 411.061(a)(1), must 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 developed thereafter.

(b) A responsible governmental entity shall include design guidelines and standards defined in Subsection (a) 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 final proposal or invitation must be submitted to the State Preservation Board for verification that the proposal complies with the standards.

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

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

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

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

(1) ~~two [the chair of the House Appropriations Committee or the chair's designee,~~

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

(2) ~~two [(3) the chair of the Senate Finance Committee or the chair's designee,~~

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

(3) ~~one public member [(5) three representatives of the executive branch,~~

~~] appointed by the governor.~~

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

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

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

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

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

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

SECTION 15. Subsection (e), Section 31.155, Natural

8-1 Resources Code, is amended to read as follows:

8-2 (e) The duties of the division to make recommendations
8-3 regarding real property and of the commissioner to prepare a report
8-4 involving real property under this subchapter do not apply to:

8-5 (1) the real property of the Texas Historical
8-6 Commission;

8-7 (2) the real property comprising the Alamo;

8-8 (3) the real property comprising the French Legation;

8-9 (4) the real property comprising the Governor's
8-10 Mansion;

8-11 (5) the real property comprising the Texas State
8-12 Cemetery, more specifically described as 17.376 acres located at
8-13 801 Comal, Lot 5, Division B, City of Austin, Travis County, Texas;

8-14 (6) the real property administered by the State
8-15 Preservation Board; ~~and~~

8-16 (7) highway rights-of-way owned by the Texas
8-17 Department of Transportation; and

8-18 (8) the real property located in the Capitol Complex
8-19 as defined by Section 411.061(a)(1), Government Code.

8-20 SECTION 16. Not later than December 1, 2016, the
8-21 Partnership Advisory Commission established under Chapter 2268,
8-22 Government Code, shall submit to the lieutenant governor, the
8-23 speaker of the house of representatives, and the appropriate
8-24 legislative standing committees recommendations on proposed
8-25 amendments to Chapters 2267 and 2268, Government Code.

8-26 SECTION 17. If Senate Bill No. 894, 83rd Legislature,
8-27 Regular Session, or similar legislation exempting property in the
8-28 Capitol Complex as defined by Subdivision (1), Subsection (a),
8-29 Section 411.061, Government Code, from Chapter 2267, Government
8-30 Code, as added by Chapter 1334 (Senate Bill No. 1048), Acts of the
8-31 82nd Legislature, Regular Session, 2011, is passed and signed into
8-32 law, Sections 4 and 10 of this Act do not take effect.

8-33 SECTION 18. This Act takes effect September 1, 2013.

8-34 * * * * *