

BILL ANALYSIS

C.S.H.B. 2475
By: Geren
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties explain that prior legislation authorized the Texas Facilities Commission to organize and participate in public-private partnerships (P3) by entering into agreements with private entities to deliver projects and services in a more timely, cost-effective manner than could otherwise be provided by the public sector. The parties note that an interim report discussed findings with respect to the underuse of this law and concluded that a P3 center of excellence is needed to help determine the best projects for that method of delivery, create value for the taxpayer, and identify the projects that should be built with traditional financing methods. The parties assert that the center of excellence would provide an objective resource to lawmakers to determine the value of alternative financing on a given project and would also provide a valuable resource to smaller cities with smaller budgets that often benefit most from alternative financing projects but cannot afford to hire expensive consultants. C.S.H.B. 2475 seeks to establish such a center.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2475 amends the Government Code to require the Texas Facilities Commission (TFC) to establish the center for alternative finance and procurement to consult with governmental entities regarding best practices for procurement and the financing of qualifying public and private facilities and infrastructure projects and to assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of qualifying projects under statutory provisions governing public and private facilities and infrastructure and the partnership advisory commission. The bill requires the TFC, as soon as practicable after the bill's effective date, to adopt the rules necessary to establish the center.

C.S.H.B. 2475 requires a responsible governmental entity that adopts and makes public the required guidelines that enable the governmental entity to comply with statutory provisions relating to public and private facilities and infrastructure to perform these actions with the assistance of the center. The bill changes certain criteria that must be included in the guidelines of a responsible governmental entity that is a state governmental entity to include criteria for the center's involvement in the procurement and delivery of the qualifying project and to remove criteria requiring compliance with the requirements of statutory provisions governing the partnership advisory commission. The bill revises the requirements of the guidelines of a

responsible governmental entity that is a local governmental entity to include, as an alternative to engaging the services of qualified professionals not otherwise employed by the governmental entity, engaging the services of the center to provide independent analyses regarding certain aspects of a qualifying project. The bill authorizes a responsible governmental entity to charge a reasonable fee to cover costs relating to the center's review and consultation.

C.S.H.B. 2475 removes a requirement that any holder of debt under a comprehensive agreement for a qualifying project acknowledge that the mortgage, pledge, or encumbrance or a lien, charge, or security interest on or against the contracting party's interest is subordinate to the state's rights or interests under the agreement. The bill makes the conditional authorization for a responsible governmental entity to enter into a comprehensive agreement contingent on the agreement being entered into in accordance with procurement guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with Government Code provisions relating to certain design-build procedures for facilities projects and civil works projects. The bill removes references to design-build procedures for facilities in other statutory codes with which the procedures must not materially conflict.

C.S.H.B. 2475 expands the information afforded protection under state public information law relating to proprietary records and trade secrets involved in certain partnerships to include records and information provided by a responsible governmental entity to the presiding officer of the House Appropriations Committee and of the Senate Finance Committee, or their designees, when in the possession of the TFC and the presiding officers or their designees.

C.S.H.B. 2475 repeals Section 2267.002(e), Government Code, specifying that statutory provisions governing public and private facilities and infrastructure procedures are not exclusive and do not prohibit a responsible governmental entity from entering into an agreement for or procuring public and private facilities and infrastructure under other statutory authority.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2475 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subchapter C, Chapter 2152, Government Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 2267.001, Government Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Sections 2267.052(a), (b), (c), and (c-1), Government Code, are amended to read as follows: (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must, <u>with</u>	SECTION 3. Sections 2267.052(a), (b), (c), and (c-1), Government Code, are amended to read as follows: (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must, <u>with</u>

the assistance of the center, adopt and make publicly available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

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

(8) include criteria for:

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

(B) the creation of and the responsibilities of an oversight committee, with members

the assistance of the center, adopt and make publicly available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

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

(8) include criteria for:

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

(B) the creation of and the responsibilities of an oversight committee, with members

representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) the center's involvement in the procurement and delivery of the qualifying project [~~compliance with the requirements of Chapter 2268~~];

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

(10) 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

(11) 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, 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) the provisions required under Subsection (b); and

(2) a requirement that the governmental entity engage the services of the center [~~qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed~~

representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) the center's involvement in the procurement and delivery of the qualifying project [~~compliance with the requirements of Chapter 2268~~];

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

(10) 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

(11) 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, 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) the provisions required under Subsection (b); and

(2) 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

~~by the governmental entity,~~ to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of ~~[any proposal requesting approval of]~~ a qualifying project unless the governing body of the governmental entity determines that the analysis ~~[of the proposal]~~ is to be performed by similarly qualified employees of the governmental entity.

(c-1) For a proposal with an estimated cost of \$5 million or more for ~~[the]~~ construction or renovation under ~~[of]~~ a qualifying ~~[structure or]~~ project, the analysis conducted under Subsection (c)(2) must include review ~~[of the proposal]~~ by an architect, a professional engineer, and a certified public accountant not otherwise employed by the governmental entity.

SECTION 4. Section 2267.053(d), Government Code, is amended.

SECTION 5. Section 2267.058(g), Government Code, is amended.

SECTION 6. Section 2267.065(b), Government Code, is amended to read as follows:

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Subchapter G, Chapter 2269, for facilities projects ~~[Section 2166.2531]; or~~

(2) Subchapter H, Chapter 2269 ~~[Section 44.036, Education Code;~~

~~[(3) Section 51.780, Education Code;~~

~~[(4) Section 271.119, Local Government Code; or~~

~~[(5) Subchapter J, Chapter 271, Local Government Code], for civil works projects [as defined by Section 271.181(2), Local Government Code].~~

SECTION 7. Section 2268.001, Government Code, is amended.

governmental entity, or the center to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of ~~[any proposal requesting approval of]~~ a qualifying project unless the governing body of the governmental entity determines that the analysis ~~[of the proposal]~~ is to be performed by similarly qualified employees of the governmental entity.

(c-1) For a proposal with an estimated cost of \$5 million or more for ~~[the]~~ construction or renovation under ~~[of]~~ a qualifying ~~[structure or]~~ project, the analysis conducted under Subsection (c)(2) must include review ~~[of the proposal]~~ by an architect, a professional engineer, and a certified public accountant not otherwise employed by the governmental entity.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Section 2267.065(b), Government Code, is amended to read as follows:

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Subchapter G, Chapter 2269, for facilities projects described by Section 2269.302 ~~[2166.2531]; or~~

(2) Subchapter H, Chapter 2269 ~~[Section 44.036, Education Code;~~

~~[(3) Section 51.780, Education Code;~~

~~[(4) Section 271.119, Local Government Code; or~~

~~[(5) Subchapter J, Chapter 271, Local Government Code], for civil works projects as defined by Section 2269.351~~ ~~[271.181(2), Local Government Code].~~

SECTION 7. Same as introduced version.

SECTION 8. Section 2268.056(d), Government Code, is amended.

SECTION 8. Same as introduced version.

SECTION 9. Section 2268.059, Government Code, is amended.

SECTION 9. Same as introduced version.

SECTION 10. Section 2267.002(e), Government Code, is repealed.

SECTION 10. Same as introduced version.

SECTION 11. As soon as practicable after the effective date of this Act, the Texas Facilities Commission shall adopt the rules necessary to establish the center for alternative finance and procurement in accordance with Section 2152.110, Government Code, as added by this Act.

SECTION 11. Same as introduced version.

SECTION 12. This Act takes effect September 1, 2015.

SECTION 12. Same as introduced version.