

1-1 By: Geren (Senate Sponsor - Eltife) H.B. No. 2475  
 1-2 (In the Senate - Received from the House May 18, 2015;  
 1-3 May 18, 2015, read first time and referred to Committee on Business  
 1-4 and Commerce; May 22, 2015, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
 1-6 May 22, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13			X	
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2475 By: Eltife

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the establishment of the center for alternative finance  
 1-22 and procurement within the Texas Facilities Commission and to  
 1-23 public and private partnerships; authorizing a fee.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subchapter C, Chapter 2152, Government Code, is  
 1-26 amended by adding Section 2152.110 to read as follows:

1-27 Sec. 2152.110. CENTER FOR ALTERNATIVE FINANCE AND  
 1-28 PROCUREMENT. The commission shall establish the center for  
 1-29 alternative finance and procurement to consult with governmental  
 1-30 entities regarding best practices for procurement and the financing  
 1-31 of qualifying projects and to assist governmental entities in the  
 1-32 receipt of proposals, negotiation of interim and comprehensive  
 1-33 agreements, and management of qualifying projects under Chapters  
 1-34 2267 and 2268.

1-35 SECTION 2. Section 2267.001, Government Code, is amended by  
 1-36 amending Subdivision (1-a) and adding Subdivision (1-b) to read as  
 1-37 follows:

1-38 (1-a) "Center" means the center for alternative  
 1-39 finance and procurement established under Section 2152.110 by the  
 1-40 Texas Facilities Commission.

1-41 (1-b) "Commission" means the Partnership Advisory  
 1-42 Commission established under Chapter 2268.

1-43 SECTION 3. Section 2267.051, Government Code, is amended to  
 1-44 read as follows:

1-45 ~~Sec. 2267.051. APPROVAL REQUIRED[, SUBMISSION OF PROPOSAL~~  
 1-46 ~~FOR QUALIFYING PROJECT]. [(a)] A person may not develop or operate~~  
 1-47 ~~a qualifying project unless the person obtains the approval of and~~  
 1-48 ~~contracts with the responsible governmental entity under this~~  
 1-49 ~~chapter. [The person may initiate the approval process by~~  
 1-50 ~~submitting a proposal requesting approval under Section~~  
 1-51 ~~2267.053(a), or the responsible governmental entity may request~~  
 1-52 ~~proposals or invite bids under Section 2267.053(b).]~~

1-53 ~~[(b) A person submitting a proposal requesting approval of a~~  
 1-54 ~~qualifying project shall specifically and conceptually identify~~  
 1-55 ~~any facility, building, infrastructure, or improvement included in~~  
 1-56 ~~the proposal as a part of the qualifying project.]~~

1-57 ~~[(c) On receipt of a proposal submitted by a person~~  
 1-58 ~~initiating the approval process under Section 2267.053(a), the~~  
 1-59 ~~responsible governmental entity shall determine whether to accept~~  
 1-60 ~~the proposal for consideration in accordance with Sections 2267.052~~

2-1 ~~and 2267.065 and the guidelines adopted under those sections. A~~  
2-2 ~~responsible governmental entity that determines not to accept the~~  
2-3 ~~proposal for consideration shall return the proposal, all fees, and~~  
2-4 ~~the accompanying documentation to the person submitting the~~  
2-5 ~~proposal.~~

2-6 ~~[(d) The responsible governmental entity may at any time~~  
2-7 ~~reject a proposal initiated by a person under Section 2267.053(a).]~~

2-8 SECTION 4. Sections 2267.052(b), (c), and (c-1), Government  
2-9 Code, are amended to read as follows:

2-10 (b) The guidelines for a responsible governmental entity  
2-11 described by Section 2267.001(5)(A) must:

2-12 (1) require the responsible governmental entity to:

2-13 (A) make a representative of the entity available  
2-14 to meet with persons who are considering submitting a proposal; and

2-15 (B) provide notice of the representative's  
2-16 availability;

2-17 (2) provide reasonable criteria for choosing among  
2-18 competing proposals;

2-19 (3) contain suggested timelines for selecting  
2-20 proposals and negotiating an interim or comprehensive agreement;

2-21 (4) allow the responsible governmental entity to  
2-22 accelerate the selection, review, and documentation timelines for  
2-23 proposals involving a qualifying project considered a priority by  
2-24 the entity;

2-25 (5) include financial review and analysis procedures  
2-26 that at a minimum consist of:

2-27 (A) a cost-benefit analysis;

2-28 (B) an assessment of opportunity cost;

2-29 (C) consideration of the degree to which  
2-30 functionality and services similar to the functionality and  
2-31 services to be provided by the proposed project are already  
2-32 available in the private market; and

2-33 (D) consideration of the results of all studies  
2-34 and analyses related to the proposed qualifying project;

2-35 (6) allow the responsible governmental entity to  
2-36 consider the nonfinancial benefits of a proposed qualifying  
2-37 project;

2-38 (7) ensure that the governmental entity, for a  
2-39 proposed project to improve real property, evaluates design  
2-40 quality, life-cycle costs, and the proposed project's relationship  
2-41 to any relevant comprehensive planning or zoning requirements;

2-42 (8) include criteria for:

2-43 (A) the qualifying project, including the scope,  
2-44 costs, and duration of the project and the involvement or impact of  
2-45 the project on multiple public entities;

2-46 (B) the creation of and the responsibilities of  
2-47 an oversight committee, with members representing the responsible  
2-48 governmental entity, that acts as an advisory committee to review  
2-49 the terms of any proposed interim or comprehensive agreement; and

2-50 (C) the center's role in the review, analysis, or  
2-51 evaluation of the qualifying project ~~[compliance with the~~  
2-52 ~~requirements of Chapter 2268];~~

2-53 (9) require the responsible governmental entity to  
2-54 analyze the adequacy of the information to be released by the entity  
2-55 when seeking competing proposals and require that the entity  
2-56 provide more detailed information, if the entity determines  
2-57 necessary, to encourage competition, subject to Section  
2-58 2267.053(g); and

2-59 (10) establish criteria, key decision points, and  
2-60 approvals required to ensure that the responsible governmental  
2-61 entity considers the extent of competition before selecting  
2-62 proposals and negotiating an interim or comprehensive agreement~~+~~  
2-63 ~~and~~

2-64 ~~[(11) require the posting and publishing of public~~  
2-65 ~~notice of a proposal requesting approval of a qualifying project,~~  
2-66 ~~including:~~

2-67 ~~[(A) specific information and documentation~~  
2-68 ~~regarding the nature, timing, and scope of the qualifying project,~~  
2-69 ~~as required under Section 2267.053(a);~~

3-1 [~~(B) a reasonable period, as determined by the~~  
3-2 ~~responsible governmental entity, of not less than 45 days or more~~  
3-3 ~~than 180 days, or a longer period specified by the governing body of~~  
3-4 ~~the responsible governmental entity to accommodate a large-scale~~  
3-5 ~~project, to encourage competition and partnerships with private~~  
3-6 ~~entities and other persons in accordance with the goals of this~~  
3-7 ~~chapter, during which the responsible governmental entity must~~  
3-8 ~~accept submission of competing proposals for the qualifying~~  
3-9 ~~project; and~~

3-10 [~~(C) a requirement for advertising the notice on~~  
3-11 ~~the governmental entity's Internet website and on TexasOnline or~~  
3-12 ~~the state's official Internet website].~~

3-13 (c) The guidelines of a responsible governmental entity  
3-14 described by Section 2267.001(5)(B) must include:

3-15 (1) the provisions required under Subsection (b); and

3-16 (2) a requirement that the governmental entity engage  
3-17 the services of qualified professionals, including an architect,  
3-18 professional engineer, or registered municipal advisor [~~certified~~  
3-19 ~~public accountant~~], not otherwise employed by the governmental  
3-20 entity, or the center to provide independent analyses regarding the  
3-21 specifics, advantages, disadvantages, and long-term and short-term  
3-22 costs of [~~any proposal requesting approval of~~] a qualifying project  
3-23 unless the governing body of the governmental entity determines  
3-24 that the analysis [~~of the proposal~~] is to be performed by similarly  
3-25 qualified employees of the governmental entity.

3-26 (c-1) For a proposal with an estimated cost of \$5 million or  
3-27 more for [~~the~~] construction or renovation of a qualifying  
3-28 [~~structure or~~] project, the analysis conducted under Subsection  
3-29 (c)(2) must include review [~~of the proposal~~] by an architect, a  
3-30 professional engineer, and a registered municipal advisor  
3-31 [~~certified public accountant~~] not otherwise employed by the  
3-32 governmental entity.

3-33 SECTION 5. Section 2267.053(d), Government Code, is amended  
3-34 to read as follows:

3-35 (d) The responsible governmental entity may charge a  
3-36 reasonable fee to cover the costs of processing, reviewing, and  
3-37 evaluating the proposal, including reasonable legal fees, [~~and~~]  
3-38 fees for financial and [~~7~~] technical [~~, and other necessary~~] advisors  
3-39 or consultants, and fees for the center's review or consultation.

3-40 SECTION 6. Section 2267.058(g), Government Code, is amended  
3-41 to read as follows:

3-42 (g) The comprehensive agreement must provide that a  
3-43 security document or other instrument purporting to mortgage,  
3-44 pledge, encumber, or create a lien, charge, or security interest on  
3-45 or against the contracting party's interest may not extend to or  
3-46 affect the fee simple interest of the state in the qualifying  
3-47 project or the state's rights or interests under the comprehensive  
3-48 agreement. Any holder of debt shall acknowledge that the mortgage,  
3-49 pledge, or encumbrance or a lien, charge, or security interest on or  
3-50 against the contracting party's interest is subordinate to the fee  
3-51 simple interest of the state in the qualifying project [~~and the~~  
3-52 ~~state's rights or interests under the comprehensive agreement~~].

3-53 SECTION 7. Section 2267.065(b), Government Code, is amended  
3-54 to read as follows:

3-55 (b) A responsible governmental entity may enter into a  
3-56 comprehensive agreement only in accordance with guidelines that  
3-57 require the contracting person to design and construct the  
3-58 qualifying project in accordance with procedures that do not  
3-59 materially conflict with those specified in:

3-60 (1) Subchapter G, Chapter 2269, for facilities  
3-61 projects described by Section 2269.302 [~~2166.2531~~]; or

3-62 (2) Subchapter H, Chapter 2269 [~~Section 44.036,~~  
3-63 ~~Education Code,~~

3-64 [~~(3) Section 51.780, Education Code,~~

3-65 [~~(4) Section 271.119, Local Government Code, or~~

3-66 [~~(5) Subchapter J, Chapter 271, Local Government~~  
3-67 ~~Code], for civil works projects as defined by Section 2269.351  
3-68 [~~271.181(2), Local Government Code~~].~~

3-69 SECTION 8. Section 2267.066(a), Government Code, is amended

4-1 to read as follows:

4-2 (a) Not later than the 10th day after the date a responsible  
4-3 governmental entity accepts a proposal submitted in accordance with  
4-4 Section 2267.053(b) [~~2267.053(a) or (b)~~], the responsible  
4-5 governmental entity shall provide notice of the proposal as  
4-6 follows:

4-7 (1) for a responsible governmental entity described by  
4-8 Section 2267.001(5)(A), by posting the proposal on the entity's  
4-9 Internet website; and

4-10 (2) for a responsible governmental entity described by  
4-11 Section 2267.001(5)(B), by:

4-12 (A) posting a copy of the proposal on the  
4-13 entity's Internet website; or

4-14 (B) publishing in a newspaper of general  
4-15 circulation in the area in which the qualifying project is to be  
4-16 performed a summary of the proposal and the location where copies of  
4-17 the proposal are available for public inspection.

4-18 SECTION 9. Section 2268.001, Government Code, is amended by  
4-19 amending Subdivision (1) and adding Subdivision (1-a) to read as  
4-20 follows:

4-21 (1) "Center" means the center for alternative finance  
4-22 and procurement established under Section 2152.110 by the Texas  
4-23 Facilities Commission.

4-24 (1-a) "Commission" means the Partnership Advisory  
4-25 Commission.

4-26 SECTION 10. Section 2268.056(d), Government Code, is  
4-27 amended to read as follows:

4-28 (d) The center [~~Texas Facilities Commission~~], using the  
4-29 qualifying project fees authorized under Section 2165.353, shall  
4-30 provide, on a cost recovery basis, professional services [~~of its~~  
4-31 ~~architectural, engineering, and real estate staff and the~~  
4-32 ~~expertise~~] of financial, technical, and other necessary advisors  
4-33 and consultants, authorized under Section 2267.053(d), as  
4-34 necessary to support the Partnership Advisory Commission in its  
4-35 review and evaluation of proposals, including financial and risk  
4-36 allocation analysis and ongoing contract performance monitoring of  
4-37 qualifying projects. The center [~~Texas Facilities Commission~~]  
4-38 shall assign staff and contracted advisors and consultants  
4-39 necessary to perform the duties required by this subsection.

4-40 SECTION 11. Section 2268.059, Government Code, is amended  
4-41 to read as follows:

4-42 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS  
4-43 SUBMITTED TO COMMISSION. Records and information afforded  
4-44 protection under Section 552.153 that are provided by a responsible  
4-45 governmental entity to the commission and the presiding officer of  
4-46 the House Appropriations Committee and of the Senate Finance  
4-47 Committee, or their designees, shall continue to be protected from  
4-48 disclosure when in the possession of the commission and the  
4-49 presiding officers or their designees.

4-50 SECTION 12. The following provisions of the Government Code  
4-51 are repealed:

4-52 (1) Section 2267.002(e); and

4-53 (2) Sections 2267.053(a) and (a-1).

4-54 SECTION 13. As soon as practicable after the effective date  
4-55 of this Act, the Texas Facilities Commission shall adopt the rules  
4-56 necessary to establish the center for alternative finance and  
4-57 procurement in accordance with Section 2152.110, Government Code,  
4-58 as added by this Act.

4-59 SECTION 14. This Act takes effect September 1, 2015.

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