

House Bill 2475
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

No equivalent provision.

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SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Section 2267.051, Government Code, is amended to read as follows:

Sec. 2267.051. APPROVAL REQUIRED[; ~~SUBMISSION OF PROPOSAL FOR QUALIFYING PROJECT~~]. ~~[(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~~

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~~the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).~~

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

~~[(c) On receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), the responsible governmental entity shall determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.065 and the guidelines adopted under those sections. A responsible governmental entity that determines not to accept the proposal for consideration shall return the proposal, all fees, and the accompanying documentation to the person submitting the proposal.~~

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

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, with 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:

SECTION 4. Sections 2267.052(b), (c), and (c-1), Government Code, are amended 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:

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- (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

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- (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;
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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

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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 role in the review, analysis, or evaluation 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); and

(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~~

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(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 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. Section 2267.053(d), Government Code, is amended to read as follows:

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees and fees for the center's review and consultation and for other

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~~[(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 registered municipal advisor ~~[certified public accountant]~~, not otherwise employed by the 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 ~~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 registered municipal advisor ~~[certified public accountant]~~ not otherwise employed by the governmental entity.

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

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees, ~~[and]~~ fees for financial and[-] technical~~[- and other necessary]~~

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financial and[;] technical[~~,-and other necessary~~] advisors or consultants.

SECTION 5. Section 2267.058(g), Government Code, is amended to read as follows:

(g) The comprehensive agreement must provide that a security document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge, or security interest on or against the contracting party's interest may not extend to or affect the fee simple interest of the state in the qualifying project or the state's rights or interests under the comprehensive agreement. Any holder of debt shall 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 fee simple interest of the state in the qualifying project [~~and the state's rights or interests under the comprehensive agreement~~].

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;~~

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advisors or consultants, and fees for the center's review or consultation.

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~~[(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].~~~~

No equivalent provision.

SECTION 7. Section 2268.001, Government Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:
(1) "Center" means the center for alternative finance and procurement established under Section 2152.110 by the Texas Facilities Commission.

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SECTION 8. Section 2267.066(a), Government Code, is amended to read as follows:

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

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

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

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

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

SECTION 9. Same as House version.

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

SECTION 8. Section 2268.056(d), Government Code, is amended to read as follows:

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

SECTION 10. Same as House version.

SECTION 9. Section 2268.059, Government Code, is amended to read as follows:

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

SECTION 11. Same as House version.

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

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 12. This Act takes effect September 1, 2015.

SECTION 12. The following provisions of the Government Code are repealed:

- (1) Section 2267.002(e); and
- (2) Sections 2267.053(a) and (a-1).

SECTION 13. Same as House version.

SECTION 14. Same as House version.