

By: Jackson

S.B. No. 1048

A BILL TO BE ENTITLED

AN ACT

relating to the creation of public and private facilities and infrastructure.

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

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapters 2267 and 2268 to read as follows:

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is located.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code; and

1 (B) a political subdivision of this state,
2 including a municipality, a county, or any kind of district.

3 (6) "Interim agreement" means an agreement authorized
4 by Section 2267.059 between a contracting person and a responsible
5 governmental entity that proposes the development or operation of
6 the qualifying project.

7 (7) "Lease payment" means any form of payment,
8 including a land lease, by a governmental entity to the contracting
9 person for the use of a qualifying project.

10 (8) "Material default" means any default by a
11 contracting person in the performance of duties imposed under
12 Section 2267.057(e) that jeopardizes adequate service to the public
13 from a qualifying project.

14 (9) "Operate" means to finance, maintain, improve,
15 equip, modify, repair, or operate a qualifying project.

16 (10) "Qualifying project" means:

17 (A) any ferry, mass transit facility, vehicle
18 parking facility, port facility, fuel supply facility, oil or gas
19 pipeline, transmission system, distribution system, water supply
20 facility, public work, waste treatment facility,
21 telecommunications or automated data processing facility,
22 hospital, school, medical or nursing care facility, recreational
23 facility, public building, or other similar facility currently
24 available or to be made available to a governmental entity for
25 public use, including any structure, parking area, appurtenance,
26 and other property required to operate the structure or facility;

27 (B) technology infrastructure, services, and

1 applications, including:

2 (i) telecommunications, automated data
3 processing, and word processing and management information
4 systems; and

5 (ii) related information, equipment,
6 goods, and services;

7 (C) any services designed to increase the
8 productivity or efficiency of the responsible governmental entity
9 through the use of technology or other means; or

10 (D) any improvements necessary or desirable to
11 unimproved real estate owned by a governmental entity.

12 (11) "Responsible governmental entity" means a
13 governmental entity that has the power to develop or operate an
14 applicable qualifying project.

15 (12) "Revenue" means all revenue, income, earnings,
16 user fees, lease payments, or other service payments that support
17 the development or operation of a qualifying project, including
18 money received as a grant or otherwise from the federal government,
19 a governmental entity, or any agency or instrumentality of the
20 federal government or governmental entity in aid of the project.

21 (13) "Service contract" means a contract between a
22 governmental entity and a contracting person under Section
23 2267.054.

24 (14) "Service payment" means a payment to a
25 contracting person of a qualifying project under a service
26 contract.

27 (15) "User fee" means a rate, fee, or other charge

1 imposed by a contracting person for the use of all or part of a
2 qualifying project under a comprehensive agreement.

3 Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION
4 OF CHAPTER. (a) The legislature finds that:

5 (1) there is a public need for timely acquisition,
6 design, construction, improvement, renovation, expansion,
7 equipping, maintenance, operation, implementation, and
8 installation of education facilities, technology infrastructure,
9 and other public infrastructure and government facilities in this
10 state that serve a public need and purpose;

11 (2) the public need may not be wholly satisfied by
12 existing methods of procurement in which qualifying projects are
13 acquired, designed, constructed, improved, renovated, expanded,
14 equipped, maintained, operated, implemented, or installed;

15 (3) there are inadequate resources to develop new
16 education facilities, technology infrastructure, and other public
17 infrastructure and government facilities for the benefit of the
18 citizens of this state, and there is demonstrated evidence that
19 partnerships between public entities and private entities or other
20 persons can meet these needs by improving the schedule for
21 delivery, lowering the cost, and providing other benefits to the
22 public;

23 (4) financial incentives exist under state and federal
24 tax provisions that encourage public entities to enter into
25 partnerships with private entities or other persons to develop
26 qualifying projects; and

27 (5) authorizing private entities or other persons to

1 develop or operate one or more qualifying projects may serve the
2 public safety, benefit, and welfare by making the projects
3 available to the public in a more timely or less costly fashion.

4 (b) An action authorized under Section 2267.053 serves the
5 public purpose of this chapter if the action facilitates the timely
6 development or operation of a qualifying project.

7 (c) The purposes of this chapter include:

8 (1) encouraging investment in this state by private
9 entities and other persons;

10 (2) facilitating bond financing or other similar
11 financing mechanisms, private capital, and other funding sources
12 that support the development or operation of qualifying projects in
13 order to expand and accelerate financing for qualifying projects
14 that improve and add to the convenience of the public; and

15 (3) providing governmental entities with the greatest
16 possible flexibility in contracting with private entities or other
17 persons to provide public services subject to this chapter.

18 (d) This chapter shall be liberally construed in conformity
19 with the purposes of this section.

20 Sec. 2267.003. APPLICABILITY. This chapter does not apply
21 to:

22 (1) the financing, design, construction, maintenance,
23 or operation of a highway in the state highway system; or

24 (2) a transportation authority created under Chapter
25 451, 452, 453, or 460, Transportation Code.

26 [Sections 2267.004-2267.050 reserved for expansion]

27 SUBCHAPTER B. QUALIFYING PROJECTS

1 Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL
2 FOR QUALIFYING PROJECT. (a) A person may not develop or operate a
3 qualifying project unless the person obtains the approval of and
4 contracts with the responsible governmental entity under this
5 chapter. The person may initiate the approval process by submitting
6 a proposal requesting approval under Section 2267.053(a), or the
7 responsible governmental entity may request proposals or invite
8 bids under Section 2267.053(b).

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

13 (c) On receipt of a proposal submitted by a person
14 initiating the approval process under Section 2267.053(a), the
15 responsible governmental entity shall determine whether to accept
16 the proposal for consideration in accordance with Sections 2267.052
17 and 2267.066 and the guidelines adopted under those sections. A
18 responsible governmental entity that determines not to accept the
19 proposal for consideration shall return the proposal, all fees, and
20 the accompanying documentation to the person submitting the
21 proposal.

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

24 Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE
25 GOVERNMENTAL ENTITIES. (a) Before requesting or considering a
26 proposal for a qualifying project, a responsible governmental
27 entity must adopt and make publicly available guidelines that

1 enable the governmental entity to comply with this chapter. The
2 guidelines must be reasonable, encourage competition, and guide the
3 selection of projects under the purview of the responsible
4 governmental entity.

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

7 (1) require the responsible governmental entity to:

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

10 (B) provide notice of the representative's
11 availability;

12 (2) provide reasonable criteria for choosing among
13 competing proposals;

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

16 (4) allow the responsible governmental entity to
17 accelerate the selection, review, and documentation timelines for
18 proposals involving a qualifying project considered a priority by
19 the entity;

20 (5) include financial review and analysis procedures
21 that at a minimum consist of a cost-benefit analysis, an assessment
22 of opportunity cost, and consideration of the results of all
23 studies and analyses related to the proposed qualifying project;

24 (6) allow the responsible governmental entity to
25 consider the nonfinancial benefits of a proposed qualifying
26 project;

27 (7) include criteria for:

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

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

8 (C) compliance with the requirements of Chapter
9 2268;

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

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

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

24 (A) specific information and documentation
25 regarding the nature, timing, and scope of the qualifying project,
26 as required under Section 2267.053(a);

27 (B) a reasonable period of not less than 45 days,

1 as determined by the responsible governmental entity, to encourage
2 competition and partnerships with private entities and other
3 persons in accordance with the goals of this chapter, during which
4 the responsible governmental entity must accept submission of
5 competing proposals for the qualifying project; and

6 (C) a requirement for advertising the notice on
7 the governmental entity's Internet website and on TexasOnline or
8 the state's official Internet website.

9 (c) The guidelines of a responsible governmental entity
10 described by Section 2267.001(5)(B):

11 (1) may include the provisions required under
12 Subsection (b); and

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

23 Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY
24 RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other
25 person may submit a proposal requesting approval of a qualifying
26 project by the responsible governmental entity. The proposal must
27 be accompanied by the following, unless waived by the responsible

1 governmental entity:

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

5 (2) a description of the qualifying project,
6 including:

7 (A) the conceptual design of any facility or a
8 conceptual plan for the provision of services or technology
9 infrastructure; and

10 (B) a schedule for the initiation of and
11 completion of the qualifying project that includes the proposed
12 major responsibilities and timeline for activities to be performed
13 by the governmental entity and the person;

14 (3) a statement of the method the person proposes for
15 securing necessary property interests required for the qualifying
16 project;

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

21 (5) a list of all permits and approvals required for
22 the development and completion of the qualifying project from
23 local, state, or federal agencies and a projected schedule for
24 obtaining the permits and approvals;

25 (6) a list of any public utility facilities that will
26 be affected by the qualifying project and a statement of the
27 person's plans to accommodate the affected facilities;

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

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

7 (9) user fees, lease payments, and other service
8 payments over the term of the interim or comprehensive agreement
9 and the methodology and circumstances for changes to the user fees,
10 lease payments, and other service payments over time; and

11 (10) any additional material and information the
12 responsible governmental entity reasonably requests.

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

16 (c) The responsible governmental entity may approve as a
17 qualifying project the development or operation of a facility
18 needed by the governmental entity, or the design or equipping of a
19 qualifying project, if the responsible governmental entity
20 determines that the project serves the public purpose of this
21 chapter. The responsible governmental entity may determine that the
22 development or operation of the project as a qualifying project
23 serves the public purpose if:

24 (1) there is a public need for or benefit derived from
25 the project of the type the person proposes as a qualifying project;

26 (2) the estimated cost of the project is reasonable in
27 relation to similar facilities; and

1 (3) the person's plans will result in the timely
2 development or operation of the qualifying project.

3 (d) The responsible governmental entity may charge a
4 reasonable fee to cover the costs of processing, reviewing, and
5 evaluating the proposal, including reasonable legal fees and fees
6 for financial, technical, and other necessary advisors or
7 consultants.

8 (e) The approval of the responsible governmental entity is
9 subject to the private entity or other person entering into an
10 interim or comprehensive agreement with the responsible
11 governmental entity.

12 (f) On approval of the qualifying project, the responsible
13 governmental entity shall establish a date by which activities
14 related to the qualifying project must begin. The responsible
15 governmental entity may extend the date.

16 (g) The responsible governmental entity shall take action
17 appropriate under Section 552.153 to protect confidential and
18 proprietary information provided by the contracting person under an
19 agreement.

20 (h) Before entering into the negotiation of an interim or
21 comprehensive agreement, each responsible governmental entity
22 described by Section 2267.001(5)(A) must submit copies of detailed
23 proposals to the Partnership Advisory Commission in accordance with
24 Chapter 2268.

25 (i) This chapter and an interim or comprehensive agreement
26 entered into under this chapter do not enlarge, diminish, or affect
27 any authority a responsible governmental entity has to take action

1 that would impact the debt capacity of this state.

2 Sec. 2267.054. SERVICE CONTRACTS. A responsible
3 governmental entity may contract with a contracting person for the
4 delivery of services to be provided as part of a qualifying project
5 in exchange for service payments and other consideration as the
6 governmental entity considers appropriate.

7 Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person
8 submitting a proposal to a responsible governmental entity under
9 Section 2267.053 shall notify each affected jurisdiction by
10 providing a copy of its proposal to the affected jurisdiction.

11 (b) Not later than the 60th day after the date an affected
12 jurisdiction receives the notice required by Subsection (a), the
13 affected jurisdiction that is not the responsible governmental
14 entity for the respective qualifying project shall submit in
15 writing to the responsible governmental entity any comments the
16 affected jurisdiction has on the proposed qualifying project and
17 indicate whether the facility or project is compatible with the
18 local comprehensive plan, local infrastructure development plans,
19 the capital improvements budget, or other government spending plan.
20 The responsible governmental entity shall consider the submitted
21 comments before entering into a comprehensive agreement with a
22 contracting person.

23 Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC
24 PROPERTY. (a) A governmental entity may dedicate any property
25 interest, including land, improvements, and tangible personal
26 property, for public use in a qualifying project if the
27 governmental entity finds that the dedication will serve the public

1 purpose of this chapter by minimizing the cost of a qualifying
2 project to the governmental entity or reducing the delivery time of
3 a qualifying project.

4 (b) In connection with a dedication under Subsection (a), a
5 governmental entity may convey any property interest, including
6 licenses, franchises, easements, or any other right or interest the
7 governmental entity considers appropriate, subject to the
8 conditions imposed by general law governing such conveyances, to
9 the contracting person for the consideration determined by the
10 governmental entity. The consideration may include the agreement of
11 the contracting person to develop or operate the qualifying
12 project.

13 Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

14 (a) The contracting person has the power granted by general law to a
15 person that has the same form of organization as the contracting
16 person and also has the power:

17 (1) to develop or operate the qualifying project; and
18 (2) to collect lease payments, impose user fees, or
19 enter into service contracts in connection with the use of the
20 project.

21 (b) The contracting person may own, lease, or acquire any
22 other right to use or operate the qualifying project.

23 (c) The contracting person may finance a qualifying project
24 in the amounts and on the terms determined by the contracting
25 person. The contracting person may issue debt, equity, or other
26 securities or obligations, enter into sale and leaseback
27 transactions, and secure any financing with a pledge of, security

1 interest in, or lien on any or all of its property, including all of
2 its property interests in the qualifying project.

3 (d) In operating the qualifying project, the contracting
4 person may:

5 (1) establish classifications according to reasonable
6 categories for assessment of user fees; and

7 (2) with the consent of the responsible governmental
8 entity, adopt and enforce reasonable rules for the qualifying
9 project to the same extent as the responsible governmental entity.

10 (e) The contracting person shall:

11 (1) develop or operate the qualifying project in a
12 manner that is acceptable to the responsible governmental entity
13 and in accordance with the interim or comprehensive agreement;

14 (2) subject to Subsection (f), keep the qualifying
15 project open for use by the public at all times, or as appropriate
16 based on the use of the project, after its initial opening on
17 payment of the applicable user fees, lease payments, or service
18 payments;

19 (3) maintain, or provide by contract for the
20 maintenance or upgrade of, the qualifying project, if required by
21 the interim or comprehensive agreement;

22 (4) cooperate with the responsible governmental
23 entity to establish any interconnection with the qualifying project
24 requested by the responsible governmental entity; and

25 (5) comply with the interim or comprehensive agreement
26 and any lease or service contract.

27 (f) The qualifying project may be temporarily closed

1 because of emergencies or, with the consent of the responsible
2 governmental entity, to protect public safety or for reasonable
3 construction or maintenance activities. If a qualifying project is
4 technology infrastructure, access may be limited as determined by
5 the conditions of the interim or comprehensive agreement.

6 (g) This chapter does not prohibit a contracting person of a
7 qualifying project from providing additional services for the
8 qualifying project to the public or persons other than the
9 responsible governmental entity, provided that the provision of
10 additional service does not impair the contracting person's ability
11 to meet the person's commitments to the responsible governmental
12 entity under the interim or comprehensive agreement.

13 Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before
14 developing or operating the qualifying project, the contracting
15 person must enter into a comprehensive agreement with the
16 responsible governmental entity. The comprehensive agreement shall
17 provide for:

18 (1) delivery of maintenance, performance, and payment
19 bonds and letters of credit in connection with the development or
20 operation of the qualifying project, in the forms and amounts
21 satisfactory to the responsible governmental entity and in
22 compliance with all applicable statutes for those components of the
23 qualifying project that involve construction;

24 (2) review of plans and specifications for the
25 qualifying project by the responsible governmental entity and
26 approval by the responsible governmental entity if the plans and
27 specifications conform to standards acceptable to the responsible

1 governmental entity, except the contracting person may not be
2 required to complete design of a qualifying project before the
3 execution of a comprehensive agreement;

4 (3) inspection of the qualifying project by the
5 responsible governmental entity to ensure that the contracting
6 person's activities are acceptable to the responsible governmental
7 entity in accordance with the comprehensive agreement;

8 (4) maintenance of a public liability insurance
9 policy, copies of which must be filed with the responsible
10 governmental entity accompanied by proofs of coverage, or
11 self-insurance, each in the form and amount satisfactory to the
12 responsible governmental entity and reasonably sufficient to
13 ensure coverage of tort liability to the public and project
14 employees and to enable the continued operation of the qualifying
15 project;

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

19 (6) reimbursement to be paid to the responsible
20 governmental entity for services provided by the responsible
21 governmental entity;

22 (7) filing of appropriate financial statements on a
23 periodic basis; and

24 (8) policies and procedures governing the rights and
25 responsibilities of the responsible governmental entity and the
26 contracting person if the comprehensive agreement is terminated or
27 there is a material default by the contracting person, including

1 conditions governing:

2 (A) assumption of the duties and
3 responsibilities of the contracting person by the responsible
4 governmental entity; and

5 (B) the transfer or purchase of property or other
6 interests of the contracting person to the responsible governmental
7 entity.

8 (b) The comprehensive agreement shall provide for any user
9 fee, lease payment, or service payment established by agreement of
10 the parties. In negotiating a user fee under this section, the
11 parties shall establish a payment or fee that is the same for
12 persons using a facility of the qualifying project under like
13 conditions and that will not materially discourage use of the
14 qualifying project. The execution of the comprehensive agreement
15 or an amendment to the agreement is conclusive evidence that the
16 user fee, lease payment, or service payment complies with this
17 chapter. A user fee or lease payment established in the
18 comprehensive agreement as a source of revenue may be in addition
19 to, or in lieu of, a service payment.

20 (c) A comprehensive agreement may include a provision that
21 authorizes the responsible governmental entity to make grants or
22 loans to the contracting person from money received from the
23 federal, state, or local government or any agency or
24 instrumentality of the government.

25 (d) The comprehensive agreement must incorporate the duties
26 of the contracting person under this chapter and may contain terms
27 the responsible governmental entity determines serve the public

1 purpose of this chapter. The comprehensive agreement may contain:

2 (1) provisions that require the responsible
3 governmental entity to provide notice of default and cure rights
4 for the benefit of the contracting person and the persons specified
5 in the agreement as providing financing for the qualifying project;

6 (2) other lawful terms to which the contracting person
7 and the responsible governmental entity mutually agree, including
8 provisions regarding unavoidable delays or providing for a loan of
9 public money to the contracting person to develop or operate one or
10 more qualifying projects; and

11 (3) provisions in which the authority and duties of
12 the contracting person under this chapter cease and the qualifying
13 project is dedicated for public use to the responsible governmental
14 entity or, if the qualifying project was initially dedicated by an
15 affected jurisdiction, to the affected jurisdiction.

16 (e) Any change in the terms of the comprehensive agreement
17 that the parties agree to must be added to the comprehensive
18 agreement by written amendment.

19 (f) The comprehensive agreement may provide for the
20 development or operation of phases or segments of the qualifying
21 project.

22 Sec. 2267.059. INTERIM AGREEMENT. Before or in connection
23 with the negotiation of the comprehensive agreement, the
24 responsible governmental entity may enter into an interim agreement
25 with the contracting person proposing the development or operation
26 of the qualifying project. The interim agreement may:

27 (1) authorize the contracting person to begin project

1 phases or activities for which the contracting person may be
2 compensated relating to the proposed qualifying project, including
3 project planning and development, design, engineering,
4 environmental analysis and mitigation, surveying, and financial
5 and revenue analysis, including ascertaining the availability of
6 financing for the proposed facility or facilities of the qualifying
7 project;

8 (2) establish the process and timing of the
9 negotiation of the comprehensive agreement; and

10 (3) contain any other provision related to any aspect
11 of the development or operation of a qualifying project that the
12 parties consider appropriate.

13 Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a)
14 The contracting person and the responsible governmental entity may
15 use any funding resources that are available to the parties,
16 including:

17 (1) accessing any designated trust funds; and

18 (2) borrowing or accepting grants from any state
19 infrastructure bank.

20 (b) The responsible governmental entity may take any action
21 to obtain federal, state, or local assistance for a qualifying
22 project that serves the public purpose of this chapter and may enter
23 into any contracts required to receive the assistance.

24 (c) If the responsible governmental entity is a state
25 agency, any money received from the state or federal government or
26 any agency or instrumentality of the state or federal government is
27 subject to appropriation by the legislature.

1 (d) The responsible governmental entity may determine that
2 it serves the public purpose of this chapter for all or part of the
3 costs of a qualifying project to be directly or indirectly paid from
4 the proceeds of a grant or loan made by the local, state, or federal
5 government or any agency or instrumentality of the government.

6 Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the
7 contracting person commits a material default, the responsible
8 governmental entity may assume the responsibilities and duties of
9 the contracting person of the qualifying project. If the
10 responsible governmental entity assumes the responsibilities and
11 duties of the contracting person, the responsible governmental
12 entity has all the rights, title, and interest in the qualifying
13 project, subject to any liens on revenue previously granted by the
14 contracting person to any person providing financing for the
15 project.

16 (b) A responsible governmental entity that has the power of
17 eminent domain under state law may exercise that power to acquire
18 the qualifying project in the event of a material default by the
19 contracting person. Any person who has provided financing for the
20 qualifying project, and the contracting person to the extent of its
21 capital investment, may participate in the eminent domain
22 proceedings with the standing of a property owner.

23 (c) The responsible governmental entity may terminate, with
24 cause, the interim or comprehensive agreement and exercise any
25 other rights and remedies available to the governmental entity at
26 law or in equity.

27 (d) The responsible governmental entity may make any

1 appropriate claim under the maintenance, performance, or payment
2 bonds or letters of credit required by Section 2267.058(a)(1).

3 (e) If the responsible governmental entity elects to assume
4 the responsibilities and duties for a qualifying project under
5 Subsection (a), the responsible governmental entity may:

6 (1) develop or operate the qualifying project;

7 (2) impose user fees;

8 (3) impose and collect lease payments for the use of
9 the project; and

10 (4) comply with any applicable contract to provide
11 services.

12 (f) The responsible governmental entity shall collect and
13 pay to secured parties any revenue subject to a lien to the extent
14 necessary to satisfy the contracting person's obligations to
15 secured parties, including the maintenance of reserves. The liens
16 shall be correspondingly reduced and, when paid off, released.

17 (g) Before any payment is made to or for the benefit of a
18 secured party, the responsible governmental entity may use revenue
19 to pay the current operation and maintenance costs of the
20 qualifying project, including compensation to the responsible
21 governmental entity for its services in operating and maintaining
22 the qualifying project. The right to receive any payment is
23 considered just compensation for the qualifying project.

24 (h) The full faith and credit of the responsible
25 governmental entity may not be pledged to secure any financing of
26 the contracting person the governmental entity assumed when it
27 assumed responsibility for the qualifying project.

1 Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the
2 contracting person, the responsible governmental entity may
3 exercise any power of eminent domain that it has under law to
4 acquire any land or property interest to the extent that the
5 responsible governmental entity finds the action serves the public
6 purpose of this chapter.

7 (b) Any amounts to be paid in any eminent domain proceeding
8 shall be paid by the contracting person.

9 Sec. 2267.063. AFFECTED PUBLIC UTILITY. (a) The
10 contracting person and each public utility, including a public
11 service company or cable television provider, whose facilities will
12 be affected by a qualifying project shall cooperate fully in
13 planning and arranging the manner in which the facilities will be
14 affected.

15 (b) A governmental entity possessing the power of eminent
16 domain may exercise that power in connection with the relocation of
17 facilities affected by the qualifying project or that must be
18 relocated to the extent that the relocation is necessary or
19 desirable by construction of, renovation to, or improvements to the
20 qualifying project, which includes construction of, renovation to,
21 or improvements to temporary facilities to provide service during
22 the period of construction or improvement.

23 (c) The contracting person shall pay any amount owed for the
24 crossing, constructing, or relocating of facilities.

25 (d) If the contracting person and the public utility cannot
26 agree on a plan for the public utility facility affected by the
27 project, the Public Utility Commission of Texas may determine the

1 manner in which the crossing, constructing, or relocating of the
2 facility is to be accomplished and any damages due arising out of
3 the crossing, construction, or relocation. The commission, at the
4 expense of the contracting person, may employ expert engineers to:

5 (1) examine the location and plans for the crossing,
6 constructing, or relocating;

7 (2) hear any objections and consider modifications;
8 and

9 (3) make a recommendation to the commission.

10 (e) The Public Utility Commission of Texas shall make the
11 determination not later than the 90th day after the date the
12 commission is notified by the contracting person that the
13 qualifying project will affect utilities subject to the
14 commission's jurisdiction.

15 Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace
16 officer of this state or of any affected jurisdiction has the same
17 powers and jurisdiction within the area of the qualifying project
18 as the officer has in the officer's area of jurisdiction. The
19 officer may access the qualifying project at any time to exercise
20 the officer's powers and jurisdiction.

21 Sec. 2267.065. SOVEREIGN IMMUNITY. (a) This chapter is not
22 a waiver of the sovereign immunity of this state, any responsible
23 governmental entity, or any affected jurisdiction or of any officer
24 or employee of the state, responsible governmental entity, or
25 affected jurisdiction with respect to the participation in or
26 approval of all or part of the qualifying project or its operation,
27 including interconnection of the qualifying project with any other

1 infrastructure or project.

2 (b) A county or municipality in which a qualifying project
3 is located has sovereign immunity with respect to its design,
4 construction, and operation to the same extent provided by Chapter
5 271, Local Government Code.

6 Sec. 2267.066. PROCUREMENT GUIDELINES. (a) Chapters 2155,
7 2156, and 2166, any interpretations, rules, or guidelines of the
8 comptroller and the Texas Facilities Commission, and
9 interpretations, rules, or guidelines developed under Chapter 2262
10 do not apply to a qualifying project under this chapter.

11 (b) Except as provided by Subsection (c), a responsible
12 governmental entity may enter into a comprehensive agreement only
13 in accordance with guidelines adopted by the entity that are
14 consistent with contracts for procurement using the design-build
15 method specified as appropriate in:

- 16 (1) Section 2166.2531;
17 (2) Section 44.036, Education Code; or
18 (3) Section 271.119, Local Government Code.

19 (c) The responsible governmental entity shall proceed in
20 accordance with the guidelines adopted under Subsection (b) unless
21 it determines that proceeding in accordance with alternate
22 guidelines adopted by the entity is likely to be advantageous to the
23 entity and the public based on:

- 24 (1) the probable scope, complexity, or priority of the
25 project;
26 (2) risk sharing, including guaranteed cost or
27 completion guarantees, added value, or debt or equity investments

1 proposed by the contracting person; or

2 (3) an increase in funding, dedicated revenue source,
3 or other economic benefit that would not otherwise be available.

4 (d) If the responsible governmental entity determines to
5 proceed according to the guidelines adopted by the entity under
6 Subsection (c), the entity before entering into a comprehensive
7 agreement must:

8 (1) state in writing the reasons for its
9 determination; and

10 (2) obtain the approval of the comptroller if the
11 governmental entity is a governmental entity described by Section
12 2267.001(5)(A).

13 (e) This chapter does not authorize or require a responsible
14 governmental entity to obtain professional services through any
15 process except in accordance with guidelines adopted by the entity
16 consistent with Chapter 2254.

17 Sec. 2267.067. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC
18 ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day
19 after the date a responsible governmental entity accepts a proposal
20 submitted in accordance with Section 2267.053(a) or (b), the
21 responsible governmental entity shall provide notice of the
22 proposal as follows:

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

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

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

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

7 (b) The responsible governmental entity shall make
8 available for public inspection at least one copy of the proposal.
9 This section does not prohibit the responsible governmental entity
10 from posting the proposal in another manner considered appropriate
11 by the responsible governmental entity to provide maximum notice to
12 the public of the opportunity to inspect the proposal.

13 (c) Trade secrets, financial records, or other records of
14 the contracting person excluded from disclosure under Section
15 552.101 may not be posted or made available for public inspection
16 except as otherwise agreed to by the responsible governmental
17 entity and the contracting person.

18 (d) The responsible governmental entity shall hold a public
19 hearing on the proposal during the proposal review process not
20 later than the 30th day before the date the entity enters into an
21 interim or comprehensive agreement.

22 (e) On completion of the negotiation phase for the
23 development of an interim or comprehensive agreement and before an
24 interim agreement or comprehensive agreement is entered into, a
25 responsible governmental entity must make available the proposed
26 agreement in a manner provided by Subsection (a) or (b).

27 (f) A responsible governmental entity that has entered into

1 an interim agreement or comprehensive agreement shall make
2 procurement records available for public inspection on request.
3 For purposes of this subsection, procurement records do not include
4 the trade secrets of the contracting person or financial records,
5 including balance sheets or financial statements of the contracting
6 person, that are not generally available to the public through
7 regulatory disclosure or other means.

8 (g) Cost estimates relating to a proposed procurement
9 transaction prepared by or for a responsible governmental entity
10 are not open to public inspection.

11 (h) Any inspection of procurement transaction records under
12 this section is subject to reasonable restrictions to ensure the
13 security and integrity of the records.

14 (i) This section applies to any accepted proposal
15 regardless of whether the process of bargaining results in an
16 interim or comprehensive agreement.

17 Sec. 2267.068. COMPTROLLER REVIEW. (a) The comptroller
18 shall periodically review interim and comprehensive agreements
19 entered into under this chapter to ensure compliance with this
20 chapter.

21 (b) A responsible governmental entity shall electronically
22 file copies of the agreements and supporting documents with the
23 comptroller. The comptroller shall make the electronic copies of
24 the agreements available on the online database maintained by the
25 comptroller.

1 CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 2268.001. DEFINITIONS. In this chapter:

4 (1) "Commission" means the Partnership Advisory
5 Commission.

6 (2) "Comprehensive agreement" has the meaning
7 assigned by Section 2267.001.

8 (3) "Detailed proposal" means a proposal for a
9 qualifying project accepted by a responsible governmental entity
10 beyond a conceptual level of review that defines and establishes
11 periods related to fixing costs, payment schedules, financing,
12 deliverables, and project schedule.

13 (4) "Interim agreement" has the meaning assigned by
14 Section 2267.001.

15 (5) "Qualifying project" has the meaning assigned by
16 Section 2267.001.

17 (6) "Responsible governmental entity" has the meaning
18 assigned by Section 2267.001.

19 [Sections 2268.002-2268.050 reserved for expansion]

20 SUBCHAPTER B. COMMISSION

21 Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The
22 Partnership Advisory Commission is an advisory commission in the
23 legislative branch that advises responsible governmental entities
24 described by Section 2267.001(5)(A) on proposals received under
25 Chapter 2267.

26 Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission
27 consists of the following 11 members:

1 (1) the chair of the House Appropriations Committee or
2 the chair's designee;

3 (2) four representatives appointed by the speaker of
4 the house of representatives;

5 (3) the chair of the Senate Finance Committee or the
6 chair's designee;

7 (4) two senators appointed by the chair of the Senate
8 Rules Committee;

9 (5) the lieutenant governor or the lieutenant
10 governor's designee; and

11 (6) two representatives of the executive branch who
12 must be employees of the governor's office, appointed by the
13 governor.

14 (b) The legislative members and the lieutenant governor
15 serve on the commission until the expiration of their terms of
16 office or until their successors qualify.

17 (c) The members appointed by the governor serve at the will
18 of the governor.

19 Sec. 2268.053. PRESIDING OFFICER. The members of the
20 commission shall elect from among the legislative members a
21 presiding officer and an assistant presiding officer to serve
22 two-year terms.

23 Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of the
24 commission is not entitled to compensation for service on the
25 commission but is entitled to reimbursement for all reasonable and
26 necessary expenses incurred in performing duties as a member.

27 Sec. 2268.055. MEETINGS. The commission shall hold

1 meetings quarterly or on the call of the presiding officer.

2 Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL,
3 AND OTHER SUPPORT. (a) The legislative body that the presiding
4 officer serves shall provide administrative staff support for the
5 commission.

6 (b) The Texas Legislative Council shall provide legal,
7 research, and policy analysis services to the commission.

8 (c) The staffs of the House Appropriations Committee,
9 Senate Finance Committee, and comptroller shall provide technical
10 assistance.

11 (d) The comptroller or a state agency shall provide
12 additional assistance as needed.

13 Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the
14 proceedings of the commission shall be filed with the legislative
15 body that the presiding officer serves.

16 Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR
17 QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before
18 beginning to negotiate an interim or comprehensive agreement, each
19 responsible governmental entity receiving a detailed proposal for a
20 qualifying project must provide copies of the proposal to:

21 (1) the presiding officer of the commission; and

22 (2) the chairs of the House Appropriations Committee,
23 House Ways and Means Committee, and Senate Finance Committee or
24 their designees.

25 (b) The following qualifying projects are not subject to
26 review by the commission:

27 (1) any proposed qualifying project with a total cost

1 of less than \$5 million; and

2 (2) any proposed qualifying project with a total cost
3 of more than \$5 million but less than \$50 million for which money
4 has been specifically appropriated as a public-private partnership
5 in the General Appropriations Act.

6 (c) The commission may undertake additional reviews of any
7 qualifying project that will be completed in phases and for which an
8 appropriation has not been made for any phase other than the current
9 phase of the project.

10 (d) Not later than the 10th day after the date the
11 commission receives a complete copy of the detailed proposal for a
12 qualifying project, the commission shall determine whether to
13 accept or decline the proposal for review and notify the
14 responsible governmental entity of the commission's decision.

15 (e) If the commission accepts a proposal for review, the
16 commission shall provide its findings and recommendations to the
17 responsible governmental entity not later than the 45th day after
18 the date the commission receives complete copies of the detailed
19 proposal. If the commission does not provide its findings or
20 recommendations to the responsible governmental entity by that
21 date, the commission is considered to have declined review of the
22 proposal and to not have made any findings or recommendations on the
23 proposal.

24 (f) The responsible governmental entity on request of the
25 commission shall provide any additional information regarding a
26 qualifying project reviewed by the commission if the information is
27 available to or can be obtained by the responsible governmental

1 entity.

2 (g) The commission shall review accepted detailed proposals
3 and provide findings and recommendations to the responsible
4 governmental entity that include:

5 (1) a determination on whether the terms of the
6 proposal and proposed qualifying project create state
7 tax-supported debt, taking into consideration the specific
8 findings of the comptroller with respect to the recommendation;

9 (2) an analysis of the potential financial impact of
10 the qualifying project;

11 (3) a review of the policy aspects of the detailed
12 proposal and the qualifying project; and

13 (4) proposed general business terms.

14 (h) Review by the commission does not constitute approval of
15 any appropriations necessary to implement a subsequent interim or
16 comprehensive agreement.

17 (i) Except as provided by Subsection (e), the responsible
18 governmental entity may not begin negotiation of an interim or
19 comprehensive agreement until the commission has submitted its
20 recommendations or declined to accept the detailed proposals for
21 review.

22 (j) Not later than the 30th day before the date a
23 comprehensive or interim agreement is executed, the responsible
24 governmental entity shall submit to the commission and the chair of
25 the House Appropriations Committee, House Ways and Means Committee,
26 and Senate Finance Committee or their designees:

27 (1) a copy of the proposed interim or comprehensive

1 agreement; and

2 (2) a report describing the extent to which the
3 commission's recommendations were addressed in the proposed
4 interim or comprehensive agreement.

5 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS
6 SUBMITTED TO COMMISSION. Records and information afforded
7 protection under Section 552.153 that are provided by a responsible
8 governmental entity to the commission shall continue to be
9 protected from disclosure when in the possession of the commission.

10 SECTION 2. Subchapter C, Chapter 552, Government Code, is
11 amended by adding Section 552.153 to read as follows:

12 Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS
13 INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected
14 jurisdiction," "comprehensive agreement," "contracting person,"
15 "interim agreement," "qualifying project," and "responsible
16 governmental entity" have the meanings assigned those terms by
17 Section 2267.001.

18 (b) Information in the custody of a responsible
19 governmental entity that relates to a proposal for a qualifying
20 project authorized under Chapter 2267 is excepted from the
21 requirements of Section 552.021 if:

22 (1) the information consists of memoranda, staff
23 evaluations, or other records prepared by the responsible
24 governmental entity, its staff, outside advisors, or consultants
25 exclusively for the evaluation and negotiation of proposals filed
26 under Chapter 2267 for which:

27 (A) disclosure to the public before or after the

1 execution of an interim or comprehensive agreement would adversely
2 affect the financial interest or bargaining position of the
3 responsible governmental entity; and

4 (B) the basis for the determination under
5 Paragraph (A) is documented in writing by the responsible
6 governmental entity; or

7 (2) the records are provided by a contracting person
8 to a responsible governmental entity or affected jurisdiction under
9 Chapter 2267 and contain:

10 (A) trade secrets of the contracting person;

11 (B) financial records of the contracting person,
12 including balance sheets and financial statements, that are not
13 generally available to the public through regulatory disclosure or
14 other means; or

15 (C) other information submitted by the
16 contracting person that, if made public before the execution of an
17 interim or comprehensive agreement, would adversely affect the
18 financial interest or bargaining position of the responsible
19 governmental entity or the person.

20 (c) Except as specifically provided by Subsection (b), this
21 section does not authorize the withholding of information
22 concerning:

23 (1) the terms of any interim or comprehensive
24 agreement, service contract, lease, partnership, or agreement of
25 any kind entered into by the responsible governmental entity and
26 the contracting person or the terms of any financing arrangement
27 that involves the use of any public money; or

1 (2) the performance of any person developing or
2 operating a qualifying project under Chapter 2267.

3 SECTION 3. This Act takes effect September 1, 2011.