

1-1 By: Jackson S.B. No. 1048
1-2 (In the Senate - Filed March 1, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Economic Development;
1-4 April 14, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 14, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1048 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the creation of public and private facilities and
1-11 infrastructure.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle F, Title 10, Government Code, is
1-14 amended by adding Chapters 2267 and 2268 to read as follows:

1-15 CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 2267.001. DEFINITIONS. In this chapter:

1-18 (1) "Affected jurisdiction" means any county or
1-19 municipality in which all or a portion of a qualifying project is
1-20 located.

1-21 (2) "Comprehensive agreement" means the comprehensive
1-22 agreement authorized by Section 2267.058 between the contracting
1-23 person and the responsible governmental entity.

1-24 (3) "Contracting person" means a person who enters
1-25 into a comprehensive or interim agreement with a responsible
1-26 governmental entity under this chapter.

1-27 (4) "Develop" means to plan, design, develop, finance,
1-28 lease, acquire, install, construct, or expand a qualifying project.

1-29 (5) "Governmental entity" means:

1-30 (A) a board, commission, department, or other
1-31 agency of this state, including an institution of higher education
1-32 as defined by Section 61.003, Education Code, that elects to
1-33 operate under this chapter through the adoption of a resolution by
1-34 the institution's board of regents; and

1-35 (B) a political subdivision of this state,
1-36 including a municipality, a county, or any kind of district.

1-37 (6) "Interim agreement" means an agreement authorized
1-38 by Section 2267.059 between a contracting person and a responsible
1-39 governmental entity that proposes the development or operation of
1-40 the qualifying project.

1-41 (7) "Lease payment" means any form of payment,
1-42 including a land lease, by a governmental entity to the contracting
1-43 person for the use of a qualifying project.

1-44 (8) "Material default" means any default by a
1-45 contracting person in the performance of duties imposed under
1-46 Section 2267.057(e) that jeopardizes adequate service to the public
1-47 from a qualifying project.

1-48 (9) "Operate" means to finance, maintain, improve,
1-49 equip, modify, repair, or operate a qualifying project.

1-50 (10) "Qualifying project" means:

1-51 (A) any ferry, mass transit facility, vehicle
1-52 parking facility, port facility, power generation facility, fuel
1-53 supply facility, oil or gas pipeline, water supply facility, public
1-54 work, waste treatment facility, hospital, school, medical or
1-55 nursing care facility, recreational facility, public building, or
1-56 other similar facility currently available or to be made available
1-57 to a governmental entity for public use, including any structure,
1-58 parking area, appurtenance, and other property required to operate
1-59 the structure or facility and any technology infrastructure
1-60 installed in the structure or facility that is essential to the
1-61 project's purpose; or

1-62 (B) any improvements necessary or desirable to
1-63 unimproved real estate owned by a governmental entity.

2-1 (11) "Responsible governmental entity" means a
2-2 governmental entity that has the power to develop or operate an
2-3 applicable qualifying project.

2-4 (12) "Revenue" means all revenue, income, earnings,
2-5 user fees, lease payments, or other service payments that support
2-6 the development or operation of a qualifying project, including
2-7 money received as a grant or otherwise from the federal government,
2-8 a governmental entity, or any agency or instrumentality of the
2-9 federal government or governmental entity in aid of the project.

2-10 (13) "Service contract" means a contract between a
2-11 governmental entity and a contracting person under Section
2-12 2267.054.

2-13 (14) "Service payment" means a payment to a
2-14 contracting person of a qualifying project under a service
2-15 contract.

2-16 (15) "User fee" means a rate, fee, or other charge
2-17 imposed by a contracting person for the use of all or part of a
2-18 qualifying project under a comprehensive agreement.

2-19 Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION
2-20 OF CHAPTER. (a) The legislature finds that:

2-21 (1) there is a public need for timely acquisition,
2-22 design, construction, improvement, renovation, expansion,
2-23 equipping, maintenance, operation, implementation, and
2-24 installation of education facilities, technology and other public
2-25 infrastructure, and government facilities in this state that serve
2-26 a public need and purpose;

2-27 (2) the public need may not be wholly satisfied by
2-28 existing methods of procurement in which qualifying projects are
2-29 acquired, designed, constructed, improved, renovated, expanded,
2-30 equipped, maintained, operated, implemented, or installed;

2-31 (3) there are inadequate resources to develop new
2-32 education facilities, technology and other public infrastructure,
2-33 and government facilities for the benefit of the citizens of this
2-34 state, and there is demonstrated evidence that partnerships between
2-35 public entities and private entities or other persons can meet
2-36 these needs by improving the schedule for delivery, lowering the
2-37 cost, and providing other benefits to the public;

2-38 (4) financial incentives exist under state and federal
2-39 tax provisions that encourage public entities to enter into
2-40 partnerships with private entities or other persons to develop
2-41 qualifying projects; and

2-42 (5) authorizing private entities or other persons to
2-43 develop or operate one or more qualifying projects may serve the
2-44 public safety, benefit, and welfare by making the projects
2-45 available to the public in a more timely or less costly fashion.

2-46 (b) An action authorized under Section 2267.053 serves the
2-47 public purpose of this chapter if the action facilitates the timely
2-48 development or operation of a qualifying project.

2-49 (c) The purposes of this chapter include:

2-50 (1) encouraging investment in this state by private
2-51 entities and other persons;

2-52 (2) facilitating bond financing or other similar
2-53 financing mechanisms, private capital, and other funding sources
2-54 that support the development or operation of qualifying projects in
2-55 order to expand and accelerate financing for qualifying projects
2-56 that improve and add to the convenience of the public; and

2-57 (3) providing governmental entities with the greatest
2-58 possible flexibility in contracting with private entities or other
2-59 persons to provide public services through qualifying projects
2-60 subject to this chapter.

2-61 (d) This chapter shall be liberally construed in conformity
2-62 with the purposes of this section.

2-63 (e) The procedures in this chapter are not exclusive. This
2-64 chapter does not prohibit a responsible governmental entity from
2-65 entering into an agreement for or procuring public and private
2-66 facilities and infrastructure under other authority.

2-67 Sec. 2267.003. APPLICABILITY. This chapter does not apply
2-68 to:

2-69 (1) the financing, design, construction, maintenance,

3-1 or operation of a highway in the state highway system;
3-2 (2) a transportation authority created under Chapter
3-3 451, 452, 453, or 460, Transportation Code; or
3-4 (3) any telecommunications, cable television, video
3-5 service, or broadband infrastructure other than technology
3-6 installed as part of a qualifying project that is essential to the
3-7 project.

3-8 Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This
3-9 chapter does not alter the eminent domain laws of this state or
3-10 grant the power of eminent domain to any person who is not expressly
3-11 granted that power under other state law.

3-12 [Sections 2267.005-2267.050 reserved for expansion]

3-13 SUBCHAPTER B. QUALIFYING PROJECTS

3-14 Sec. 2267.051. APPROVAL REQUIRED; SUBMISSION OF PROPOSAL
3-15 FOR QUALIFYING PROJECT. (a) A person may not develop or operate a
3-16 qualifying project unless the person obtains the approval of and
3-17 contracts with the responsible governmental entity under this
3-18 chapter. The person may initiate the approval process by
3-19 submitting a proposal requesting approval under Section
3-20 2267.053(a), or the responsible governmental entity may request
3-21 proposals or invite bids under Section 2267.053(b).

3-22 (b) A person submitting a proposal requesting approval of a
3-23 qualifying project shall specifically and conceptually identify
3-24 any facility, building, infrastructure, or improvement included in
3-25 the proposal as a part of the qualifying project.

3-26 (c) On receipt of a proposal submitted by a person
3-27 initiating the approval process under Section 2267.053(a), the
3-28 responsible governmental entity shall determine whether to accept
3-29 the proposal for consideration in accordance with Sections 2267.052
3-30 and 2267.065 and the guidelines adopted under those sections. A
3-31 responsible governmental entity that determines not to accept the
3-32 proposal for consideration shall return the proposal, all fees, and
3-33 the accompanying documentation to the person submitting the
3-34 proposal.

3-35 (d) The responsible governmental entity may at any time
3-36 reject a proposal initiated by a person under Section 2267.053(a).

3-37 Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE
3-38 GOVERNMENTAL ENTITIES. (a) Before requesting or considering a
3-39 proposal for a qualifying project, a responsible governmental
3-40 entity must adopt and make publicly available guidelines that
3-41 enable the governmental entity to comply with this chapter. The
3-42 guidelines must be reasonable, encourage competition, and guide the
3-43 selection of projects under the purview of the responsible
3-44 governmental entity.

3-45 (b) The guidelines for a responsible governmental entity
3-46 described by Section 2267.001(5)(A) must:

3-47 (1) require the responsible governmental entity to:
3-48 (A) make a representative of the entity available
3-49 to meet with persons who are considering submitting a proposal; and
3-50 (B) provide notice of the representative's
3-51 availability;

3-52 (2) provide reasonable criteria for choosing among
3-53 competing proposals;

3-54 (3) contain suggested timelines for selecting
3-55 proposals and negotiating an interim or comprehensive agreement;

3-56 (4) allow the responsible governmental entity to
3-57 accelerate the selection, review, and documentation timelines for
3-58 proposals involving a qualifying project considered a priority by
3-59 the entity;

3-60 (5) include financial review and analysis procedures
3-61 that at a minimum consist of:

3-62 (A) a cost-benefit analysis;

3-63 (B) an assessment of opportunity cost;

3-64 (C) consideration of the degree to which
3-65 functionality and services similar to the functionality and
3-66 services to be provided by the proposed project are already
3-67 available in the private market; and

3-68 (D) consideration of the results of all studies
3-69 and analyses related to the proposed qualifying project;

4-1 (6) allow the responsible governmental entity to
4-2 consider the nonfinancial benefits of a proposed qualifying
4-3 project;
4-4 (7) include criteria for:
4-5 (A) the qualifying project, including the scope,
4-6 costs, and duration of the project and the involvement or impact of
4-7 the project on multiple public entities;
4-8 (B) the creation of and the responsibilities of
4-9 an oversight committee, with members representing the responsible
4-10 governmental entity, that acts as an advisory committee to review
4-11 the terms of any proposed interim or comprehensive agreement; and
4-12 (C) compliance with the requirements of Chapter
4-13 2268;
4-14 (8) require the responsible governmental entity to
4-15 analyze the adequacy of the information to be released by the entity
4-16 when seeking competing proposals and require that the entity
4-17 provide more detailed information, if the entity determines
4-18 necessary, to encourage competition, subject to Section
4-19 2267.053(g);
4-20 (9) establish criteria, key decision points, and
4-21 approvals required to ensure that the responsible governmental
4-22 entity considers the extent of competition before selecting
4-23 proposals and negotiating an interim or comprehensive agreement;
4-24 and
4-25 (10) require the posting and publishing of public
4-26 notice of a proposal requesting approval of a qualifying project,
4-27 including:
4-28 (A) specific information and documentation
4-29 regarding the nature, timing, and scope of the qualifying project,
4-30 as required under Section 2267.053(a);
4-31 (B) a reasonable period of not less than 45 days,
4-32 as determined by the responsible governmental entity, to encourage
4-33 competition and partnerships with private entities and other
4-34 persons in accordance with the goals of this chapter, during which
4-35 the responsible governmental entity must accept submission of
4-36 competing proposals for the qualifying project; and
4-37 (C) a requirement for advertising the notice on
4-38 the governmental entity's Internet website and on TexasOnline or
4-39 the state's official Internet website.
4-40 (c) The guidelines of a responsible governmental entity
4-41 described by Section 2267.001(5)(B):
4-42 (1) may include the provisions required under
4-43 Subsection (b); and
4-44 (2) must include a requirement that the governmental
4-45 entity engage the services of qualified professionals, including an
4-46 architect, professional engineer, or certified public accountant,
4-47 not otherwise employed by the governmental entity, to provide
4-48 independent analyses regarding the specifics, advantages,
4-49 disadvantages, and long-term and short-term costs of any proposal
4-50 requesting approval of a qualifying project unless the governing
4-51 body of the governmental entity determines that the analysis of the
4-52 proposal is to be performed by employees of the governmental
4-53 entity.
4-54 Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY
4-55 RESPONSIBLE GOVERNMENTAL ENTITY. (a) A private entity or other
4-56 person may submit a proposal requesting approval of a qualifying
4-57 project by the responsible governmental entity. The proposal must
4-58 be accompanied by the following, unless waived by the responsible
4-59 governmental entity:
4-60 (1) a topographic map, with a 1:2,000 or other
4-61 appropriate scale, indicating the location of the qualifying
4-62 project;
4-63 (2) a description of the qualifying project,
4-64 including:
4-65 (A) the conceptual design of any facility or a
4-66 conceptual plan for the provision of services or technology
4-67 infrastructure; and
4-68 (B) a schedule for the initiation of and
4-69 completion of the qualifying project that includes the proposed

5-1 major responsibilities and timeline for activities to be performed
5-2 by the governmental entity and the person;
5-3 (3) a statement of the method the person proposes for
5-4 securing necessary property interests required for the qualifying
5-5 project;
5-6 (4) information relating to any current plans for the
5-7 development of facilities or technology infrastructure to be used
5-8 by a governmental entity that are similar to the qualifying project
5-9 being proposed by the person for each affected jurisdiction;
5-10 (5) a list of all permits and approvals required for
5-11 the development and completion of the qualifying project from
5-12 local, state, or federal agencies and a projected schedule for
5-13 obtaining the permits and approvals;
5-14 (6) a list of any facilities that will be affected by
5-15 the qualifying project and a statement of the person's plans to
5-16 accommodate the affected facilities;
5-17 (7) a statement on the person's general plans for
5-18 financing the qualifying project, including the sources of the
5-19 person's funds and identification of any dedicated revenue source
5-20 or proposed debt or equity investment for the person;
5-21 (8) the name and address of each individual who may be
5-22 contacted for further information concerning the request;
5-23 (9) user fees, lease payments, and other service
5-24 payments over the term of any applicable interim or comprehensive
5-25 agreement and the methodology and circumstances for changes to the
5-26 user fees, lease payments, and other service payments over time;
5-27 and
5-28 (10) any additional material and information the
5-29 responsible governmental entity reasonably requests.
5-30 (b) A responsible governmental entity may request proposals
5-31 or invite bids from persons for the development or operation of a
5-32 qualifying project. A responsible governmental entity shall
5-33 consider price as one factor in evaluating the proposals received,
5-34 but is not required to select the proposal that offers the lowest
5-35 price. The responsible governmental entity may consider the
5-36 following factors:
5-37 (1) the proposed cost of the qualifying project;
5-38 (2) the general reputation, industry experience, and
5-39 financial capacity of the person submitting a proposal;
5-40 (3) the proposed design of the qualifying project;
5-41 (4) the eligibility of the project for accelerated
5-42 selection, review, and documentation timelines under the
5-43 responsible governmental entity's guidelines;
5-44 (5) comments from local citizens and affected
5-45 jurisdictions;
5-46 (6) benefits to the public;
5-47 (7) the person's good faith effort to comply with the
5-48 goals of a historically underutilized business plan;
5-49 (8) the person's plans to employ local contractors and
5-50 residents;
5-51 (9) for a qualifying project that involves a
5-52 continuing role beyond design and construction, the person's
5-53 proposed rate of return and opportunities for revenue sharing; and
5-54 (10) other criteria that the responsible governmental
5-55 entity considers appropriate.
5-56 (c) The responsible governmental entity may approve as a
5-57 qualifying project the development or operation of a facility
5-58 needed by the governmental entity, or the design or equipping of a
5-59 qualifying project, if the responsible governmental entity
5-60 determines that the project serves the public purpose of this
5-61 chapter. The responsible governmental entity may determine that
5-62 the development or operation of the project as a qualifying project
5-63 serves the public purpose if:
5-64 (1) there is a public need for or benefit derived from
5-65 the project of the type the person proposes as a qualifying project;
5-66 (2) the estimated cost of the project is reasonable in
5-67 relation to similar facilities; and
5-68 (3) the person's plans will result in the timely
5-69 development or operation of the qualifying project.

6-1 (d) The responsible governmental entity may charge a
 6-2 reasonable fee to cover the costs of processing, reviewing, and
 6-3 evaluating the proposal, including reasonable legal fees and fees
 6-4 for financial, technical, and other necessary advisors or
 6-5 consultants.

6-6 (e) The approval of a responsible governmental entity
 6-7 described by Section 2267.001(5)(A) is subject to the private
 6-8 entity or other person entering into an interim or comprehensive
 6-9 agreement with the responsible governmental entity.

6-10 (f) On approval of the qualifying project, the responsible
 6-11 governmental entity shall establish a date by which activities
 6-12 related to the qualifying project must begin. The responsible
 6-13 governmental entity may extend the date.

6-14 (g) The responsible governmental entity shall take action
 6-15 appropriate under Section 552.153 to protect confidential and
 6-16 proprietary information provided by the contracting person under an
 6-17 agreement.

6-18 (h) Before entering into the negotiation of an interim or
 6-19 comprehensive agreement, each responsible governmental entity
 6-20 described by Section 2267.001(5)(A) must submit copies of detailed
 6-21 proposals to the Partnership Advisory Commission in accordance with
 6-22 Chapter 2268.

6-23 (i) This chapter and an interim or comprehensive agreement
 6-24 entered into under this chapter do not enlarge, diminish, or affect
 6-25 any authority a responsible governmental entity has to take action
 6-26 that would impact the debt capacity of this state.

6-27 Sec. 2267.054. SERVICE CONTRACTS. A responsible
 6-28 governmental entity may contract with a contracting person for the
 6-29 delivery of services to be provided as part of a qualifying project
 6-30 in exchange for service payments and other consideration as the
 6-31 governmental entity considers appropriate.

6-32 Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A person
 6-33 submitting a proposal to a responsible governmental entity under
 6-34 Section 2267.053 shall notify each affected jurisdiction by
 6-35 providing a copy of its proposal to the affected jurisdiction.

6-36 (b) Not later than the 60th day after the date an affected
 6-37 jurisdiction receives the notice required by Subsection (a), the
 6-38 affected jurisdiction that is not the responsible governmental
 6-39 entity for the respective qualifying project shall submit in
 6-40 writing to the responsible governmental entity any comments the
 6-41 affected jurisdiction has on the proposed qualifying project and
 6-42 indicate whether the facility or project is compatible with the
 6-43 local comprehensive plan, local infrastructure development plans,
 6-44 the capital improvements budget, or other government spending plan.
 6-45 The responsible governmental entity shall consider the submitted
 6-46 comments before entering into a comprehensive agreement with a
 6-47 contracting person.

6-48 Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC
 6-49 PROPERTY. (a) A governmental entity may dedicate any property
 6-50 interest, including land, improvements, and tangible personal
 6-51 property, for public use in a qualifying project if the
 6-52 governmental entity finds that the dedication will serve the public
 6-53 purpose of this chapter by minimizing the cost of a qualifying
 6-54 project to the governmental entity or reducing the delivery time of
 6-55 a qualifying project.

6-56 (b) In connection with a dedication under Subsection (a), a
 6-57 governmental entity may convey any property interest, including a
 6-58 license, franchise, easement, or another right or interest the
 6-59 governmental entity considers appropriate, subject to the
 6-60 conditions imposed by general law governing such conveyance and
 6-61 subject to the rights of an existing utility under a license,
 6-62 franchise, easement, or another right under law, to the contracting
 6-63 person for the consideration determined by the governmental entity.
 6-64 The consideration may include the agreement of the contracting
 6-65 person to develop or operate the qualifying project.

6-66 Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON.

6-67 (a) The contracting person has:

6-68 (1) the power granted by:

6-69 (A) general law to a person that has the same form

7-1 of organization as the contracting person; and
7-2 (B) a statute governing the business or activity
7-3 of the contracting person; and
7-4 (2) the power to:
7-5 (A) develop or operate the qualifying project;
7-6 and
7-7 (B) collect lease payments, impose user fees, or
7-8 enter into service contracts in connection with the use of the
7-9 project.
7-10 (b) The contracting person may own, lease, or acquire any
7-11 other right to use or operate the qualifying project.
7-12 (c) The contracting person may finance a qualifying project
7-13 in the amounts and on the terms determined by the contracting
7-14 person. The contracting person may issue debt, equity, or other
7-15 securities or obligations, enter into sale and leaseback
7-16 transactions, and secure any financing with a pledge of, security
7-17 interest in, or lien on any or all of its property, including all of
7-18 its property interests in the qualifying project.
7-19 (d) In operating the qualifying project, the contracting
7-20 person may:
7-21 (1) establish classifications according to reasonable
7-22 categories for assessment of user fees; and
7-23 (2) with the consent of the responsible governmental
7-24 entity, adopt and enforce reasonable rules for the qualifying
7-25 project to the same extent as the responsible governmental entity.
7-26 (e) The contracting person shall:
7-27 (1) develop or operate the qualifying project in a
7-28 manner that is acceptable to the responsible governmental entity
7-29 and in accordance with any applicable interim or comprehensive
7-30 agreement;
7-31 (2) subject to Subsection (f), keep the qualifying
7-32 project open for use by the public at all times, or as appropriate
7-33 based on the use of the project, after its initial opening on
7-34 payment of the applicable user fees, lease payments, or service
7-35 payments;
7-36 (3) maintain, or provide by contract for the
7-37 maintenance or upgrade of, the qualifying project, if required by
7-38 any applicable interim or comprehensive agreement;
7-39 (4) cooperate with the responsible governmental
7-40 entity to establish any interconnection with the qualifying project
7-41 requested by the responsible governmental entity; and
7-42 (5) comply with any applicable interim or
7-43 comprehensive agreement and any lease or service contract.
7-44 (f) The qualifying project may be temporarily closed
7-45 because of emergencies or, with the consent of the responsible
7-46 governmental entity, to protect public safety or for reasonable
7-47 construction or maintenance activities.
7-48 (g) This chapter does not prohibit a contracting person of a
7-49 qualifying project from providing additional services for the
7-50 qualifying project to the public or persons other than the
7-51 responsible governmental entity, provided that the provision of
7-52 additional service does not impair the contracting person's ability
7-53 to meet the person's commitments to the responsible governmental
7-54 entity under any applicable interim or comprehensive agreement.
7-55 Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before
7-56 developing or operating the qualifying project, the contracting
7-57 person must enter into a comprehensive agreement with a responsible
7-58 governmental entity. The comprehensive agreement shall provide
7-59 for:
7-60 (1) delivery of letters of credit or other security in
7-61 connection with the development or operation of the qualifying
7-62 project, in the forms and amounts satisfactory to the responsible
7-63 governmental entity, and delivery of performance and payment bonds
7-64 in compliance with Chapter 2253 for all construction activities;
7-65 (2) review of plans and specifications for the
7-66 qualifying project by the responsible governmental entity and
7-67 approval by the responsible governmental entity if the plans and
7-68 specifications conform to standards acceptable to the responsible
7-69 governmental entity, except that the contracting person may not be

8-1 required to complete the design of a qualifying project before the
8-2 execution of a comprehensive agreement;
8-3 (3) inspection of the qualifying project by the
8-4 responsible governmental entity to ensure that the contracting
8-5 person's activities are acceptable to the responsible governmental
8-6 entity in accordance with the comprehensive agreement;
8-7 (4) maintenance of a public liability insurance
8-8 policy, copies of which must be filed with the responsible
8-9 governmental entity accompanied by proofs of coverage, or
8-10 self-insurance, each in the form and amount satisfactory to the
8-11 responsible governmental entity and reasonably sufficient to
8-12 ensure coverage of tort liability to the public and project
8-13 employees and to enable the continued operation of the qualifying
8-14 project;
8-15 (5) monitoring of the practices of the contracting
8-16 person by the responsible governmental entity to ensure that the
8-17 qualifying project is properly maintained;
8-18 (6) reimbursement to be paid to the responsible
8-19 governmental entity for services provided by the responsible
8-20 governmental entity;
8-21 (7) filing of appropriate financial statements on a
8-22 periodic basis; and
8-23 (8) policies and procedures governing the rights and
8-24 responsibilities of the responsible governmental entity and the
8-25 contracting person if the comprehensive agreement is terminated or
8-26 there is a material default by the contracting person, including
8-27 conditions governing:
8-28 (A) assumption of the duties and
8-29 responsibilities of the contracting person by the responsible
8-30 governmental entity; and
8-31 (B) the transfer or purchase of property or other
8-32 interests of the contracting person to the responsible governmental
8-33 entity.
8-34 (b) The comprehensive agreement shall provide for any user
8-35 fee, lease payment, or service payment established by agreement of
8-36 the parties. In negotiating a user fee under this section, the
8-37 parties shall establish a payment or fee that is the same for
8-38 persons using a facility of the qualifying project under like
8-39 conditions and that will not materially discourage use of the
8-40 qualifying project. The execution of the comprehensive agreement
8-41 or an amendment to the agreement is conclusive evidence that the
8-42 user fee, lease payment, or service payment complies with this
8-43 chapter. A user fee or lease payment established in the
8-44 comprehensive agreement as a source of revenue may be in addition
8-45 to, or in lieu of, a service payment.
8-46 (c) A comprehensive agreement may include a provision that
8-47 authorizes the responsible governmental entity to make grants or
8-48 loans to the contracting person from money received from the
8-49 federal, state, or local government or any agency or
8-50 instrumentality of the government.
8-51 (d) The comprehensive agreement must incorporate the duties
8-52 of the contracting person under this chapter and may contain terms
8-53 the responsible governmental entity determines serve the public
8-54 purpose of this chapter. The comprehensive agreement may contain:
8-55 (1) provisions that require the responsible
8-56 governmental entity to provide notice of default and cure rights
8-57 for the benefit of the contracting person and the persons specified
8-58 in the agreement as providing financing for the qualifying project;
8-59 (2) other lawful terms to which the contracting person
8-60 and the responsible governmental entity mutually agree, including
8-61 provisions regarding unavoidable delays or providing for a loan of
8-62 public money to the contracting person to develop or operate one or
8-63 more qualifying projects; and
8-64 (3) provisions in which the authority and duties of
8-65 the contracting person under this chapter cease and the qualifying
8-66 project is dedicated for public use to the responsible governmental
8-67 entity or, if the qualifying project was initially dedicated by an
8-68 affected jurisdiction, to the affected jurisdiction.
8-69 (e) Any change in the terms of the comprehensive agreement

9-1 that the parties agree to must be added to the comprehensive
9-2 agreement by written amendment.

9-3 (f) The comprehensive agreement may provide for the
9-4 development or operation of phases or segments of the qualifying
9-5 project.

9-6 Sec. 2267.059. INTERIM AGREEMENT. Before or in connection
9-7 with the negotiation of the comprehensive agreement, the
9-8 responsible governmental entity may enter into an interim agreement
9-9 with the contracting person proposing the development or operation
9-10 of the qualifying project. The interim agreement may:

9-11 (1) authorize the contracting person to begin project
9-12 phases or activities for which the contracting person may be
9-13 compensated relating to the proposed qualifying project, including
9-14 project planning and development, design, engineering,
9-15 environmental analysis and mitigation, surveying, and financial
9-16 and revenue analysis, including ascertaining the availability of
9-17 financing for the proposed facility or facilities of the qualifying
9-18 project;

9-19 (2) establish the process and timing of the
9-20 negotiation of the comprehensive agreement; and

9-21 (3) contain any other provision related to any aspect
9-22 of the development or operation of a qualifying project that the
9-23 parties consider appropriate.

9-24 Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE.

9-25 (a) The contracting person and the responsible governmental
9-26 entity may use any funding resources that are available to the
9-27 parties, including:

9-28 (1) accessing any designated trust funds; and

9-29 (2) borrowing or accepting grants from any state
9-30 infrastructure bank.

9-31 (b) The responsible governmental entity may take any action
9-32 to obtain federal, state, or local assistance for a qualifying
9-33 project that serves the public purpose of this chapter and may enter
9-34 into any contracts required to receive the assistance.

9-35 (c) If the responsible governmental entity is a state
9-36 agency, any money received from the state or federal government or
9-37 any agency or instrumentality of the state or federal government is
9-38 subject to appropriation by the legislature.

9-39 (d) The responsible governmental entity may determine that
9-40 it serves the public purpose of this chapter for all or part of the
9-41 costs of a qualifying project to be directly or indirectly paid from
9-42 the proceeds of a grant or loan made by the local, state, or federal
9-43 government or any agency or instrumentality of the government.

9-44 Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the
9-45 contracting person commits a material default, the responsible
9-46 governmental entity may assume the responsibilities and duties of
9-47 the contracting person of the qualifying project. If the
9-48 responsible governmental entity assumes the responsibilities and
9-49 duties of the contracting person, the responsible governmental
9-50 entity has all the rights, title, and interest in the qualifying
9-51 project, subject to any liens on revenue previously granted by the
9-52 contracting person to any person providing financing for the
9-53 project.

9-54 (b) A responsible governmental entity that has the power of
9-55 eminent domain under state law may exercise that power to acquire
9-56 the qualifying project in the event of a material default by the
9-57 contracting person. Any person who has provided financing for the
9-58 qualifying project, and the contracting person to the extent of its
9-59 capital investment, may participate in the eminent domain
9-60 proceedings with the standing of a property owner.

9-61 (c) The responsible governmental entity may terminate, with
9-62 cause, any applicable interim or comprehensive agreement and
9-63 exercise any other rights and remedies available to the
9-64 governmental entity at law or in equity.

9-65 (d) The responsible governmental entity may make any
9-66 appropriate claim under the letters of credit or other security or
9-67 the performance and payment bonds required by Section
9-68 2267.058(a)(1).

9-69 (e) If the responsible governmental entity elects to assume

10-1 the responsibilities and duties for a qualifying project under
 10-2 Subsection (a), the responsible governmental entity may:

- 10-3 (1) develop or operate the qualifying project;
 10-4 (2) impose user fees;
 10-5 (3) impose and collect lease payments for the use of
 10-6 the project; and
 10-7 (4) comply with any applicable contract to provide
 10-8 services.

10-9 (f) The responsible governmental entity shall collect and
 10-10 pay to secured parties any revenue subject to a lien to the extent
 10-11 necessary to satisfy the contracting person's obligations to
 10-12 secured parties, including the maintenance of reserves. The liens
 10-13 shall be correspondingly reduced and, when paid off, released.

10-14 (g) Before any payment is made to or for the benefit of a
 10-15 secured party, the responsible governmental entity may use revenue
 10-16 to pay the current operation and maintenance costs of the
 10-17 qualifying project, including compensation to the responsible
 10-18 governmental entity for its services in operating and maintaining
 10-19 the qualifying project. The right to receive any payment is
 10-20 considered just compensation for the qualifying project.

10-21 (h) The full faith and credit of the responsible
 10-22 governmental entity may not be pledged to secure any financing of
 10-23 the contracting person that was assumed by the governmental entity
 10-24 when the governmental entity assumed responsibility for the
 10-25 qualifying project.

10-26 Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the
 10-27 contracting person, the responsible governmental entity may
 10-28 exercise any power of eminent domain that it has under law to
 10-29 acquire any land or property interest to the extent that the
 10-30 responsible governmental entity finds that the action serves the
 10-31 public purpose of this chapter.

10-32 (b) Any amounts to be paid in any eminent domain proceeding
 10-33 shall be paid by the contracting person.

10-34 Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The
 10-35 contracting person and each facility owner, including a public
 10-36 utility, a public service company, or a cable television provider,
 10-37 whose facilities will be affected by a qualifying project shall
 10-38 cooperate fully in planning and arranging the manner in which the
 10-39 facilities will be affected.

10-40 (b) The contracting person and responsible governmental
 10-41 entity shall ensure that a facility owner whose facility will be
 10-42 affected by a qualifying project does not suffer a disruption of
 10-43 service as a result of the construction or improvement of the
 10-44 qualifying project.

10-45 (c) A governmental entity possessing the power of eminent
 10-46 domain may exercise that power in connection with the relocation of
 10-47 facilities affected by the qualifying project or facilities that
 10-48 must be relocated to the extent that the relocation is necessary or
 10-49 desirable by construction of, renovation to, or improvements to the
 10-50 qualifying project, which includes construction of, renovation to,
 10-51 or improvements to temporary facilities to provide service during
 10-52 the period of construction or improvement. The governmental entity
 10-53 shall exercise its power of eminent domain to the extent required to
 10-54 ensure an affected facility owner does not suffer a disruption of
 10-55 service as a result of the construction or improvement of the
 10-56 qualifying project during the construction or improvement or after
 10-57 the qualifying project is completed or improved.

10-58 (d) The contracting person shall pay any amount owed for the
 10-59 crossing, constructing, or relocating of facilities.

10-60 Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace
 10-61 officer of this state or of any affected jurisdiction has the same
 10-62 powers and jurisdiction within the area of the qualifying project
 10-63 as the officer has in the officer's area of jurisdiction. The
 10-64 officer may access the qualifying project at any time to exercise
 10-65 the officer's powers and jurisdiction.

10-66 Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters
 10-67 2155, 2156, and 2166, any interpretations, rules, or guidelines of
 10-68 the comptroller and the Texas Facilities Commission, and
 10-69 interpretations, rules, or guidelines developed under Chapter 2262

11-1 do not apply to a qualifying project under this chapter.

11-2 (b) A responsible governmental entity may enter into a
 11-3 comprehensive agreement only in accordance with guidelines that
 11-4 require the contracting person to design and construct the
 11-5 qualifying project in accordance with procedures that do not
 11-6 materially conflict with those specified in:

11-7 (1) Section 2166.2531;

11-8 (2) Section 44.036, Education Code;

11-9 (3) Section 271.119, Local Government Code; or

11-10 (4) Subchapter J, Chapter 271, Local Government Code
 11-11 for civil works projects as defined by 271.181(2), Local Government
 11-12 Code.

11-13 (c) This chapter does not authorize a responsible
 11-14 governmental entity or a contracting person to obtain professional
 11-15 services through any process except in accordance with Subchapter
 11-16 A, Chapter 2254.

11-17 (d) Identified team members, including the architect,
 11-18 engineer, or builder, may not be substituted or replaced once a
 11-19 project is approved and an interim or comprehensive agreement is
 11-20 executed without the written approval of the responsible
 11-21 governmental entity.

11-22 Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC
 11-23 ACCESS TO PROCUREMENT RECORDS. (a) Not later than the 10th day
 11-24 after the date a responsible governmental entity accepts a proposal
 11-25 submitted in accordance with Section 2267.053(a) or (b), the
 11-26 responsible governmental entity shall provide notice of the
 11-27 proposal as follows:

11-28 (1) for a responsible governmental entity described by
 11-29 Section 2267.001(5)(A), by posting the proposal on the entity's
 11-30 Internet website; and

11-31 (2) for a responsible governmental entity described by
 11-32 Section 2267.001(5)(B), by:

11-33 (A) posting a copy of the proposal on the
 11-34 entity's Internet website; or

11-35 (B) publishing in a newspaper of general
 11-36 circulation in the area in which the qualifying project is to be
 11-37 performed a summary of the proposal and the location where copies of
 11-38 the proposal are available for public inspection.

11-39 (b) The responsible governmental entity shall make
 11-40 available for public inspection at least one copy of the proposal.
 11-41 This section does not prohibit the responsible governmental entity
 11-42 from posting the proposal in another manner considered appropriate
 11-43 by the responsible governmental entity to provide maximum notice to
 11-44 the public of the opportunity to inspect the proposal.

11-45 (c) Trade secrets, financial records, or other records of
 11-46 the contracting person excluded from disclosure under Section
 11-47 552.101 may not be posted or made available for public inspection
 11-48 except as otherwise agreed to by the responsible governmental
 11-49 entity and the contracting person.

11-50 (d) The responsible governmental entity shall hold a public
 11-51 hearing on the proposal during the proposal review process not
 11-52 later than the 30th day before the date the entity enters into an
 11-53 interim or comprehensive agreement.

11-54 (e) On completion of the negotiation phase for the
 11-55 development of an interim or comprehensive agreement and before an
 11-56 interim agreement or comprehensive agreement is entered into, a
 11-57 responsible governmental entity must make available the proposed
 11-58 agreement in a manner provided by Subsection (a) or (b).

11-59 (f) A responsible governmental entity that has entered into
 11-60 an interim agreement or comprehensive agreement shall make
 11-61 procurement records available for public inspection on request.
 11-62 For purposes of this subsection, procurement records do not include
 11-63 the trade secrets of the contracting person or financial records,
 11-64 including balance sheets or financial statements of the contracting
 11-65 person, that are not generally available to the public through
 11-66 regulatory disclosure or other means.

11-67 (g) Cost estimates relating to a proposed procurement
 11-68 transaction prepared by or for a responsible governmental entity
 11-69 are not open to public inspection.

12-1 (h) Any inspection of procurement transaction records under
12-2 this section is subject to reasonable restrictions to ensure the
12-3 security and integrity of the records.

12-4 (i) This section applies to any accepted proposal
12-5 regardless of whether the process of bargaining results in an
12-6 interim or comprehensive agreement.

12-7 CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

12-8 SUBCHAPTER A. GENERAL PROVISIONS

12-9 Sec. 2268.001. DEFINITIONS. In this chapter:

12-10 (1) "Commission" means the Partnership Advisory
12-11 Commission.

12-12 (2) "Comprehensive agreement" has the meaning
12-13 assigned by Section 2267.001.

12-14 (3) "Detailed proposal" means a proposal for a
12-15 qualifying project accepted by a responsible governmental entity
12-16 beyond a conceptual level of review that defines and establishes
12-17 periods related to fixing costs, payment schedules, financing,
12-18 deliverables, and project schedule.

12-19 (4) "Interim agreement" has the meaning assigned by
12-20 Section 2267.001.

12-21 (5) "Qualifying project" has the meaning assigned by
12-22 Section 2267.001.

12-23 (6) "Responsible governmental entity" has the meaning
12-24 assigned by Section 2267.001.

12-25 Sec. 2268.002. APPLICABILITY. This chapter applies only to
12-26 responsible governmental entities described by Section
12-27 2267.001(5)(A).

12-28 [Sections 2268.003-2268.050 reserved for expansion]

12-29 SUBCHAPTER B. COMMISSION

12-30 Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The
12-31 Partnership Advisory Commission is an advisory commission in the
12-32 legislative branch that advises responsible governmental entities
12-33 described by Section 2267.001(5)(A) on proposals received under
12-34 Chapter 2267.

12-35 Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission
12-36 consists of the following 11 members:

12-37 (1) the chair of the House Appropriations Committee or
12-38 the chair's designee;

12-39 (2) three representatives appointed by the speaker of
12-40 the house of representatives;

12-41 (3) the chair of the Senate Finance Committee or the
12-42 chair's designee;

12-43 (4) three senators appointed by the lieutenant
12-44 governor; and

12-45 (5) three representatives of the executive branch,
12-46 appointed by the governor.

12-47 (b) The legislative members and the lieutenant governor
12-48 serve on the commission until the expiration of their terms of
12-49 office or until their successors qualify.

12-50 (c) The members appointed by the governor serve at the will
12-51 of the governor.

12-52 Sec. 2268.053. PRESIDING OFFICER. The members of the
12-53 commission shall elect from among the legislative members a
12-54 presiding officer and an assistant presiding officer to serve
12-55 two-year terms.

12-56 Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of
12-57 the commission is not entitled to compensation for service on the
12-58 commission but is entitled to reimbursement for all reasonable and
12-59 necessary expenses incurred in performing duties as a member.

12-60 Sec. 2268.055. MEETINGS. The commission shall hold
12-61 meetings quarterly or on the call of the presiding officer.

12-62 Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL,
12-63 AND OTHER SUPPORT. (a) The legislative body that the presiding
12-64 officer serves shall provide administrative staff support for the
12-65 commission.

12-66 (b) The Texas Legislative Council shall provide legal,
12-67 research, and policy analysis services to the commission.

12-68 (c) The staffs of the House Appropriations Committee,
12-69 Senate Finance Committee, and comptroller shall provide technical

13-1 assistance.

13-2 (d) The comptroller or a state agency shall provide
13-3 additional assistance as needed.

13-4 Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the
13-5 proceedings of the commission shall be filed with the legislative
13-6 body that the presiding officer serves.

13-7 Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR
13-8 QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before
13-9 beginning to negotiate an interim or comprehensive agreement, each
13-10 responsible governmental entity receiving a detailed proposal for a
13-11 qualifying project must provide copies of the proposal to:

13-12 (1) the presiding officer of the commission; and

13-13 (2) the chairs of the House Appropriations Committee
13-14 and Senate Finance Committee or their designees.

13-15 (b) The following qualifying projects are not subject to
13-16 review by the commission:

13-17 (1) any proposed qualifying project with a total cost
13-18 of less than \$5 million; and

13-19 (2) any proposed qualifying project with a total cost
13-20 of more than \$5 million but less than \$50 million for which money
13-21 has been specifically appropriated as a public-private partnership
13-22 in the General Appropriations Act.

13-23 (c) The commission may undertake additional reviews of any
13-24 qualifying project that will be completed in phases and for which an
13-25 appropriation has not been made for any phase other than the current
13-26 phase of the project.

13-27 (d) Not later than the 10th day after the date the
13-28 commission receives a complete copy of the detailed proposal for a
13-29 qualifying project, the commission shall determine whether to
13-30 accept or decline the proposal for review and notify the
13-31 responsible governmental entity of the commission's decision.

13-32 (e) If the commission accepts a proposal for review, the
13-33 commission shall provide its findings and recommendations to the
13-34 responsible governmental entity not later than the 45th day after
13-35 the date the commission receives complete copies of the detailed
13-36 proposal. If the commission does not provide its findings or
13-37 recommendations to the responsible governmental entity by that
13-38 date, the commission is considered to have declined review of the
13-39 proposal and to not have made any findings or recommendations on the
13-40 proposal.

13-41 (f) The responsible governmental entity on request of the
13-42 commission shall provide any additional information regarding a
13-43 qualifying project reviewed by the commission if the information is
13-44 available to or can be obtained by the responsible governmental
13-45 entity.

13-46 (g) The commission shall review accepted detailed proposals
13-47 and provide findings and recommendations to the responsible
13-48 governmental entity that include:

13-49 (1) a determination on whether the terms of the
13-50 proposal and proposed qualifying project create state
13-51 tax-supported debt, taking into consideration the specific
13-52 findings of the comptroller with respect to the recommendation;

13-53 (2) an analysis of the potential financial impact of
13-54 the qualifying project;

13-55 (3) a review of the policy aspects of the detailed
13-56 proposal and the qualifying project; and

13-57 (4) proposed general business terms.

13-58 (h) Review by the commission does not constitute approval of
13-59 any appropriations necessary to implement a subsequent interim or
13-60 comprehensive agreement.

13-61 (i) Except as provided by Subsection (e), the responsible
13-62 governmental entity may not begin negotiation of an interim or
13-63 comprehensive agreement until the commission has submitted its
13-64 recommendations or declined to accept the detailed proposals for
13-65 review.

13-66 (j) Not later than the 30th day before the date a
13-67 comprehensive or interim agreement is executed, the responsible
13-68 governmental entity shall submit to the commission and the chair of
13-69 the House Appropriations Committee and Senate Finance Committee or

14-1 their designees:
14-2 (1) a copy of the proposed interim or comprehensive
14-3 agreement; and

14-4 (2) a report describing the extent to which the
14-5 commission's recommendations were addressed in the proposed
14-6 interim or comprehensive agreement.

14-7 Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS
14-8 SUBMITTED TO COMMISSION. Records and information afforded
14-9 protection under Section 552.153 that are provided by a responsible
14-10 governmental entity to the commission shall continue to be
14-11 protected from disclosure when in the possession of the commission.

14-12 SECTION 2. Subchapter C, Chapter 552, Government Code, is
14-13 amended by adding Section 552.153 to read as follows:

14-14 Sec. 552.153. PROPRIETARY RECORDS AND TRADE SECRETS
14-15 INVOLVED IN CERTAIN PARTNERSHIPS. (a) In this section, "affected
14-16 jurisdiction," "comprehensive agreement," "contracting person,"
14-17 "interim agreement," "qualifying project," and "responsible
14-18 governmental entity" have the meanings assigned those terms by
14-19 Section 2267.001.

14-20 (b) Information in the custody of a responsible
14-21 governmental entity that relates to a proposal for a qualifying
14-22 project authorized under Chapter 2267 is excepted from the
14-23 requirements of Section 552.021 if:

14-24 (1) the information consists of memoranda, staff
14-25 evaluations, or other records prepared by the responsible
14-26 governmental entity, its staff, outside advisors, or consultants
14-27 exclusively for the evaluation and negotiation of proposals filed
14-28 under Chapter 2267 for which:

14-29 (A) disclosure to the public before or after the
14-30 execution of an interim or comprehensive agreement would adversely
14-31 affect the financial interest or bargaining position of the
14-32 responsible governmental entity; and

14-33 (B) the basis for the determination under
14-34 Paragraph (A) is documented in writing by the responsible
14-35 governmental entity; or

14-36 (2) the records are provided by a contracting person
14-37 to a responsible governmental entity or affected jurisdiction under
14-38 Chapter 2267 and contain:

14-39 (A) trade secrets of the contracting person;

14-40 (B) financial records of the contracting person,
14-41 including balance sheets and financial statements, that are not
14-42 generally available to the public through regulatory disclosure or
14-43 other means; or

14-44 (C) other information submitted by the
14-45 contracting person that, if made public before the execution of an
14-46 interim or comprehensive agreement, would adversely affect the
14-47 financial interest or bargaining position of the responsible
14-48 governmental entity or the person.

14-49 (c) Except as specifically provided by Subsection (b), this
14-50 section does not authorize the withholding of information
14-51 concerning:

14-52 (1) the terms of any interim or comprehensive
14-53 agreement, service contract, lease, partnership, or agreement of
14-54 any kind entered into by the responsible governmental entity and
14-55 the contracting person or the terms of any financing arrangement
14-56 that involves the use of any public money; or

14-57 (2) the performance of any person developing or
14-58 operating a qualifying project under Chapter 2267.

14-59 SECTION 3. This Act takes effect September 1, 2011.

14-60 * * * * *