

## **BILL ANALYSIS**

Senate Research Center  
84R31280 AAF-D

C.S.H.B. 2475  
By: Geren (Elife)  
Business & Commerce  
5/22/2015  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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

C.S.H.B. 2475 amends current law relating to the establishment of the center for alternative finance and procurement within the Texas Facilities Commission and to public and private partnerships and authorizes a fee.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Facilities Commission in SECTION 13 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 2152, Government Code, by adding Section 2152.110, as follows:

Sec. 2152.110. CENTER FOR ALTERNATIVE FINANCE AND PROCUREMENT. Requires the Texas Facilities Commission (TFC) establish the center for alternative finance and procurement to consult with governmental entities regarding best practices for procurement and the financing of qualifying projects and to assist governmental entities in the receipt of proposals, negotiation of interim and comprehensive agreements, and management of qualifying projects under Chapters 2267 (Public and Private Facilities and Infrastructure) and 2268 (Partnership Advisory Commission).

SECTION 2. Amends Section 2267.001, Government Code, by amending Subdivision (1-a) and adding Subdivision (1-b), to define "center" and "commission."

SECTION 3. Amends Section 2267.051, Government Code, as follows:

Sec. 2267.051. New heading: APPROVAL REQUIRED. Prohibits a person from developing or operating a qualifying project unless the person obtains the approval of and contracts with the reasonable government entity. Deletes the designation of Subsection (a) and existing text authorizing a person to initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

Deletes existing Subsection (b) requiring a person submitting a proposal requesting approval of a qualifying project to specifically and conceptually identify any facility, building, infrastructure, or improvement included in the proposal as a part of the qualifying project. Deletes existing Subsection (c) requiring the responsible governmental entity, on receipt of a proposal submitted by a person initiating the approval process under Section 2267.053(a), to determine whether to accept the proposal for consideration in accordance with Sections 2267.052 and 2267.065 and the guidelines adopted under those sections. Deletes existing Subsection (c) text requiring a responsible governmental entity that determines not to accept the proposal for consideration to return the proposal, all fees, and the accompanying documentation to the person submitting the proposal. Deletes existing Subsection (d) authorizing the responsible governmental entity to at any time reject a proposal initiated by a person under Section 2267.053(a).

SECTION 4. Amends Sections 2267.052(b), (c), and (c-1), Government Code, as follows:

(b) Requires that the guidelines for a responsible governmental entity described by Section 2267.001(5)(A) (defining "governmental entity"):

(1)-(7) Makes no change to these subdivisions;

(8) include criteria for:

(A) and (B) Makes no change to these paragraphs;

(C) the center's involvement in the procurement and delivery of the qualifying project, rather than compliance with the requirements of Chapter 2268;

(9) and (10) Makes no change to these subdivisions.

Deletes existing Subdivision (11) requiring that the guidelines for a responsible governmental entity described by Section 2267.001(5)(A) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including: specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a); a reasonable period, as determined by the responsible governmental entity, of not less than 45 days or more than 180 days, or a longer period specified by the governing body of the responsible governmental entity to accommodate a large-scale project, to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) Requires that the guidelines of a responsible governmental entity described by Section 2267.001(5)(B) (defining "governmental entity") include:

(1) Makes no change to this subdivision;

(2) a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or registered municipal advisor, not otherwise employed by the governmental entity, or the center to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a qualifying project unless the governing body of the governmental entity determines that the analysis is to be performed by similarly qualified employees of the governmental entity, rather than a requirement that the governmental entity engage the services of qualified

professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by similarly qualified employees of the governmental entity.

(c-1) Requires the analysis conducted under Subsection (c)(2), for a proposal with an estimated cost of \$5 million or more for construction or renovation of a qualifying project, to include review by an architect, a professional engineer and a registered municipal advisor not otherwise employed by the governmental entity, rather than requires the analysis conducted under Subsection (c)(2), for a proposal with an estimated cost of \$5 million or more for the construction or renovation of a structure or project, to include review of the proposal by an architect, a professional engineer, and a certified public accountant not otherwise employed by the governmental entity.

SECTION 5. Amends Section 2267.053(d), Government Code, to authorize the responsible governmental entity to charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees, fees for financial and technical advisors or consultants, and fees for the center's review or consultants, rather than legal fees and fees for financial, technical, and other necessary advisors and consultants.

SECTION 6. Amends Section 2267.058(g), Government Code, as follows:

(g) Requires any holder of debt to acknowledge that the mortgage, pledge, or encumbrance or a lien, charge, or security interest on or against the contracting party's interest is subordinate to the fee simple interest of the state in the qualifying project. Deletes existing text requiring any holder of debt to acknowledge that the mortgage, pledge, or encumbrance or a lien, charge, or security interest on or against the contracting party's interest is subordinate to the fee simple interest of the state in the qualifying project and the state's rights or interests under the comprehensive agreement.

SECTION 7. Amends Section 2267.065(b), Government Code, as follows:

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

(1) Subchapter G (Building Using Design-Build Method), Chapter 2269, for facilities projects described by Section 2269.302; or

(2) Subchapter H (Design-Build Procedures for Certain Civil Works Projects), Chapter 2269, for civil works projects as defined by Section 2269.351 (Definitions).

Deletes existing text authorizing a responsible governmental entity to enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in Section 2166.2531, Section 44.036, Education Code, Section 51.780, Education Code, Section 271.119, Local Government Code, or Subchapter J, Chapter 271, Local Government Code, for civil works projects as defined by Section 271.181(2), Local Government Code.

SECTION 8. Amends Section 2267.066(a), Government Code, to change a reference to Section 2267.053(a) or (b) to Section 2267.053(b) (authorizing a responsible governmental entity to request proposals or invite bids from persons for the development or operation of a qualifying project).

SECTION 9. Amends Section 2268.001, Government Code, by amending Subdivision (1) and adding Subdivision (1-a) to define "center" and "commission."

SECTION 10. Amends Section 2268.056(d), Government Code, as follows:

(d) Requires the center using the qualifying project fees authorized under Section 2165.353 (Qualifying Project Fees), to provide, on a cost recovery basis, professional services of financial, technical, and other necessary advisors and consultants, authorized under Section 2267.053(d), as necessary to support the Partnership Advisory Commission in its review and evaluation of proposals, including financial and risk allocation analysis and ongoing contract performance monitoring of qualifying projects. Deletes existing text authorizing TFC, using the qualifying project fees authorized under Section 2165.353, to provide, on a cost recovery basis, professional services of its architectural, engineering, and real estate staff and the expertise of financial, technical, and other necessary advisors and consultants, authorized under Section 2267.053(d), as necessary to support the Partnership Advisory Commission in its review and evaluation of proposals, including financial and risk allocation analysis and ongoing contract performance monitoring of qualifying projects. Changes a reference to TFC to center.

SECTION 11. Amends Section 2268.059, Government Code, as follows:

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Requires that records and information afforded protection under Section 552.153 (Proprietary Records and Trade Secrets Involved in Certain Partnerships) that are provided by a responsible governmental entity to TFC and the presiding officer of the House Appropriations Committee and of the Senate Finance Committee, or their designees, to continue to be protected from disclosure when in the possession of TFC and the presiding officers or their designees.

SECTION 12. Repealer: Section 2267.002(e) (providing that this chapter does not prohibit a responsible governmental entity from entering into an agreement for or procuring public and private facilities and infrastructure under other statutory authority), Government Code.

Repealers: Sections 2267.053(a) (authorizing a private entity or other person to submit a proposal that meets certain requirements requesting approval of a qualifying project by the responsible governmental entity) and (a-1) (requiring a responsible governmental entity that accepts an unsolicited proposal for a qualifying project under Subsection (a), in accordance with certain requirements, to select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals, or invitation to bid).

SECTION 13. Requires TFC, as soon as practicable after the effective date of this Act, to adopt the rules necessary to establish the center for alternative finance and procurement in accordance with Section 2152.110, Government Code, as added by this Act.

SECTION 14. Effective date: September 1, 2015.