

BILL ANALYSIS

Senate Research Center
83R5489 YDB-D

C.S.S.B. 507
By: Watson; Eltife
Economic Development
3/27/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill is designed to reform public-private partnerships to increase transparency and accountability and ensure the state gets the best deal on these contracts.

C.S.S.B. 507 amends current law relating to public and private facilities and infrastructure.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2166.001, Government Code, by amending Subdivisions (1) and (1-a) and adding Subdivision (1-b) to define "Capitol Complex" and redesignate existing definitions for "commission" and "construction" in this section.

SECTION 2. Amends Section 2267.001, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by adding Subdivision (1-a) to define "commission."

SECTION 3. Amends Subchapter A, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by adding Sections 2267.005, 2267.006, 2267.007, and 2267.008, as follows:

Sec. 2267.005. **APPLICABILITY OF MUNICIPAL ZONING REGULATIONS.** (a) Requires a qualifying project that is to be performed or located in a municipality, except as provided by Subsection (b) and Section 2267.006, to comply with the zoning and land use regulations of the municipality.

(b) Provides that this section does not apply to a qualifying project that:

(1) uses a building, other structure, or land under the control, administration, or jurisdiction of a state agency for the same public purposes for which the state agency is authorized under the governing law that established the agency to use the building, structure, or land; or

(2) is located within the Capitol Complex, as defined by Section 411.061(a)(1) (relating to property upon which the Capitol Complex resides).

Sec. 2267.006. **SPECIAL BOARD OF REVIEW.** (a) Authorizes the matter, if a qualifying project does not comply with the zoning and land use regulations of a municipality as required by Section 2267.005 and the municipality denies a rezoning request for the qualifying project, to be appealed to a special board of review consisting of the following members:

(1) the land commissioner;

- (2) the administrative head of the governing body of the responsible governmental entity;
- (3) the mayor of the municipality;
- (4) the county judge of the county in which the municipality is located;
- (5) one state senator selected by the lieutenant governor;
- (6) one member of the house of representatives selected by the speaker of the house; and
- (7) the Partnership Advisory Commission (commission) member appointed by the governor.

(b) Requires the land commissioner to serve as presiding officer of the special board of review.

(c) Requires that the special board of review conduct one or more public hearings to consider the proposed qualifying project. Requires that the hearings be conducted in accordance with rules adopted by the General Land Office for conduct of special review. Provides that the hearings are not considered a contested case proceeding under Chapter 2001 (Administrative Procedure).

(d) Requires that the special board of review, if after the hearings the special board of review determines that the zoning and land use regulations are detrimental to the best interest of this state, issue an order establishing a development plan to govern the use of the real property related to the qualifying project. Requires that development of the real property be in accordance with the plan and comply with all applicable municipal regulations, orders, or ordinances except as specifically identified by the order of the special board of review. Provides that, if substantial progress is not made in implementing the qualifying project before the fifth anniversary of the date the development plan is adopted by the special board of review, the municipal zoning and land use regulations become applicable to development of the property, unless the special board of review adopts a new development plan.

(e) Provides that a development plan adopted by the special board of review and any plan accepted by a responsible governmental entity is final and binding on the state, the responsible governmental entity, lessees, successors in interest and assigns, and the affected municipality unless revised by the special board of review.

(f) Prohibits a responsible governmental entity, builder, developer, or any other person from modifying the development plan without specific approval by the special board of review.

Sec. 2267.007. CONFLICT OF INTEREST. Prohibits an employee of a responsible governmental entity or a person related to the employee within the second degree by consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), from accepting money, a financial benefit, or other consideration from a contracting person that has entered into a comprehensive agreement with the responsible governmental entity.

Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES. (a) Prohibits a contracting person from employing or entering into a professional services contract or a consulting services contract under Chapter 2254 (Professional and Consulting Services) with a former or retired employee of the responsible governmental entity with which the person has

entered into a comprehensive agreement before the first anniversary of the date on which the former or retired employee terminates employment with the entity.

(b) Provides that this section does not prohibit the contracting person from entering into a professional services contract with a corporation, firm, or other business organization that employs a former or retired employee of the responsible governmental entity before the first anniversary of the date the former or retired employee terminates employment with the entity if the former or retired employee does not perform services for the corporation, firm, or other business organization under the comprehensive agreement with the responsible governmental entity that the former or retired employee worked on before terminating employment with the entity.

SECTION 4. Amends Section 2267.051, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Prohibits a person, except as provided by Subsection (a-1), from developing or operating a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter.

(a-1) Prohibits a person from developing or operating a qualifying project on property located within the Capitol Complex, as defined by Section 411.061(a)(1), unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. Prohibits the person from initiating the approval process by submitting a proposal requesting approval under Section 2267.053(a). Authorizes the responsible governmental entity, however, to request proposals or invite bids under Section 2267.053(b).

SECTION 5. Amends Section 2267.052, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires the guidelines for a responsible governmental entity described by Section 2267.001(5)(A) (defining "governmental entity") to require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including 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, rather than a reasonable period as determined by the responsible governmental entity, to encourage competition and partnerships with private entities and other person in accordance with the goals of this chapter, during which the responsible governmental entity is required to accept submission of competing proposals for the qualifying project.

(c) Requires, rather than authorizes, the guidelines of a responsible governmental entity described by Section 2267.001 (5)(B) (defining "governmental entity") to include the provisions required under Subsection (b) and makes nonsubstantive changes.

(d) Requires a responsible governmental entity described by Section 2267.001(5)(A) to submit a copy of the guidelines adopted by the entity under this section to the Partnership Advisory Commission (commission) for approval by the commission. Requires the commission to prescribe the procedure for submitting the guidelines for review under this section. Prohibits the governmental entity from requesting or considering a proposal for a qualifying project until the guidelines are approved by the commission.

SECTION 6. Amends Section 2267.053, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsections (a) and (b) and adding Subsections (a-1), (b-1), and (b-2), as follows:

(a) Requires that a proposal requesting approval of a qualifying project by the responsible governmental entity be accompanied by, unless waived by the responsible governmental entity, a statement of the specific public purpose served by the qualifying project and a statement describing the qualifying project's compliance with the responsible governmental entity's best value determination under Subsection (b-1).

(a-1) Requires a responsible governmental entity that approves a proposal for a qualifying project under Subsection (a) to select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals or invitation to bid.

(b) Makes no changes to this subsection.

(b-1) Creates this subsection from existing text. Requires a responsible governmental entity to make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating the proposals. Provides that the responsible governmental entity is not required to select the proposal that offers the lowest total project cost and is authorized to consider certain enumerated factors, including the proposed design and overall quality of the qualifying project, the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying project, the historic significance of the property on which the qualifying project is proposed to be located, and the environmental impact of the qualifying project. Makes nonsubstantive changes.

(b-2) Authorizes a responsible governmental entity to approve a qualifying project that the governmental entity determines serves a public purpose. Requires the governmental entity to include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project.

SECTION 7. Amends Section 2267.058(a), Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, as follows:

(a) Requires the comprehensive agreement between a contracting person and a responsible governmental entity to provide for certain enumerated actions, including review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity indicating that the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person is prohibited from being required to provide final design documents for, rather than to complete the design of, a qualifying project before the execution of a comprehensive agreement.

SECTION 8. Amends the heading to Section 2267.066, Government Code, to read as follows:

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS; FINAL VOTE.

SECTION 9. Amends Section 2267.066, Government Code, by amending Subsections (c) and (d) and adding Subsection (e-1), as follows:

(c) Provides that Chapter 552 (Public Information) applies to qualifying project proposals. Deletes existing text prohibiting trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 (Exception; Confidential Information), from being posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person.

(d) Requires that the public hearing of the responsible government entity be held in the area in which the proposed qualifying project is to be performed.

(e-1) Requires the responsible governmental entity, after making the proposed comprehensive agreement available as required by Subsection (e), to hold a public hearing on the final version of the proposed comprehensive agreement and vote on the proposed comprehensive agreement after the hearing. Requires that the hearing be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

SECTION 10. Amends Subchapter B, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, by adding Section 2267.067, as follows:

Sec. 2267.067. QUALIFYING PROJECT IN CAPITOL COMPLEX. (a) Requires that a qualifying project for property located in the Capitol Complex, as defined by Section 411.061(a)(1), be consistent with Capital Complex design guidelines or standards adopted as part of a 1989 planning process or subsequently adopted based on a Capitol Complex master plan developed thereafter.

(b) Requires that a responsible governmental entity include design guidelines and standards defined in Subsection (a) in the request for proposals or invitation for bids for the development or operation of a qualifying project and inform the persons who submit proposals of the requirement to comply with the design guidelines and standards. Requires that the final proposal or invitation be submitted to the State Preservation Board for verification that the proposal complies with the standards.

(c) Requires that a responsible governmental entity submit a final qualifying project proposal for property in the area described by Subsection (a) to the State Preservation Board. Authorizes the State Preservation Board by majority vote to disapprove the proposal not later than the 60th day after the date the proposal is received.

(d) Prohibits a responsible governmental entity from approving a qualifying project proposal for property in the area described by Subsection (a) before September 1, 2015. Provides that this subsection expires September 1, 2015.

SECTION 11. Amends Section 2268.052(a), Government Code, as follows:

(a) Provides that the commission consists of the following five members:

- (1) two representatives appointed by the speaker of the house of representatives;
- (2) two senators appointed by the lieutenant governor; and
- (3) one public member appointed by the governor.

Deletes existing text providing that the commission consists of the following 11 members: the chair of the House Appropriations Committee or the chair's designee; three representatives appointed by the speaker of the house of representatives; the chair of the Senate Finance Committee or the chair's designee; three senators appointed by the lieutenant governor; and three representatives of the executive branch, appointed by the governor.

SECTION 12. Amends Section 2268.056(a), Government Code, to require that the State Preservation Board, rather than the legislative body that the presiding officer of the commission serves, to provide administrative staff support for the commission.

SECTION 13. Amends Subchapter B, Chapter 2268, Government Code, by adding Section 2268.0585, as follows:

Sec. 2268.0585. DISAPPROVAL OF QUALIFYING PROJECT PROPOSALS OF CERTAIN RESPONSIBLE GOVERNMENTAL ENTITIES. Authorizes the commission by majority vote to disapprove a qualifying project proposal submitted by a governmental entity described by Section 2267.001(5)(A).

SECTION 14. Amends Section 211.013(c), Local Government Code, to provide that, except as provided by Section 2267.005, Government Code, this subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

SECTION 15. Amends Section 31.155(e), Natural Resources Code, to provide that the duties of the asset management division of the General Land Office to make recommendations regarding real property and of the Commissioner of the General Land Office to prepare a report involving real property under this subchapter do not apply to certain enumerated property, including the real property located in the Capitol Complex as defined by Section 411.061(a)(1), Government Code.

SECTION 16. Requires the commission established under Chapter 2268 (Partnership Advisory Commission), Government Code, not later than December 1, 2016, to submit to the lieutenant governor, the speaker of the house of representatives, and the appropriate legislative standing committees recommendations on proposed amendments to Chapters 2267 (Contracting and Delivery Procedures for Construction Projects) and 2268, Government Code.

SECTION 17. Provides that, if S.B. 894, 83rd Legislature, Regular Session, or similar legislation exempting property in the Capitol Complex as defined by Section 411.061(a)(1), Government Code from Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is passed and signed into law, SECTIONS 4 and 10 of this Act do not take effect.

SECTION 18. Effective date: September 1, 2013.