

GOVERNMENT CODE

CHAPTER 2166. BUILDING CONSTRUCTION AND ACQUISITION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2166.001. DEFINITIONS. In this chapter:

- (1) "Construction" includes acquisition and reconstruction.
 - (2) "Cost of a project" includes the cost of:
 - (A) real estate;
 - (B) other property;
 - (C) rights and easements;
 - (D) utility services;
 - (E) site development;
 - (F) construction and initial furnishing and equipment;
 - (G) architectural, engineering, and legal services;
 - (H) surveys, plans, and specifications; and
 - (I) other costs, including those incurred by the commission, that are necessary or incidental to determining the feasibility or practicability of a project.
 - (3) "Private design professional" means a design professional as described by Subdivisions (6)(A) and (B)(ii).
 - (4) "Project" means a building construction project that is financed wholly or partly by a specific appropriation, a bond issue, or federal money. The term includes the construction of:
 - (A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishings; and
 - (B) an addition to, or alteration, rehabilitation, or repair of, an existing building, structure, or appurtenant facility or utility.
 - (5) "Project analysis" means work done before the legislative appropriation for a project to develop a reliable estimate of the cost of the project to be used in the appropriations request.
 - (6) "Design professional" means an individual registered as an architect under Chapter 1051, Occupations Code, or a person licensed as an engineer under Chapter 1001, Occupations Code:
 - (A) who provides professional architectural or engineering services and has overall responsibility for the design of a building construction undertaking; and
 - (B) who:
 - (i) is employed on a salary basis; or
 - (ii) is in private practice and is retained for a specific project under a contract with the commission.
 - (7) "Rehabilitation" includes renewal, restoration, extension, enlargement, and improvement.
 - (8) "Small construction project" means a project that:
 - (A) has an estimated value of less than \$100,000; and
 - (B) requires advance preparation of working plans or drawings.
 - (9) "Staged construction" means the construction of a project in phases, with each phase resulting in one or more trade packages, features, buildings, or structures that individually or together may be built, regardless of whether later phases of the project are authorized.
 - (10) "Using agency" means:
 - (A) an instrumentality of the state that occupies and uses a state-owned or state-leased building; or
 - (B) the commission, with respect to a state-owned building maintained by the commission.
- Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1329, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 309, Sec. 7.39, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.778, eff. Sept. 1, 2003.

Sec. 2166.002. APPLICABILITY OF CHAPTER. This chapter applies only to a building construction project of the state.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.003. EXCEPTIONS. (a) Unless otherwise provided, this chapter does not apply to:

- (1) a project constructed by and for the Texas Department of Transportation;

(2) a project constructed by and for a state institution of higher education;

(3) a pen, shed, or ancillary building constructed by and for the Department of Agriculture for the processing of livestock before export;

(4) a project constructed by the Parks and Wildlife Department;

(5) a repair or rehabilitation project, except a major renovation, of buildings and grounds on the commission inventory;

(6) a repair and rehabilitation project of another using agency, if all labor for the project is provided by the regular maintenance force of the using agency under specific legislative authorization and the project does not require the advance preparation of working plans or drawings;

(7) a repair and rehabilitation project involving the use of contract labor, if the project has been excluded from this chapter by commission rule and does not require the advance preparation of working plans or drawings;

(8) an action taken by the Texas Commission on Environmental Quality under Subchapter F or I, Chapter 361, Health and Safety Code;

(9) a repair, rehabilitation, or construction project on property owned by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation; or

(10) a project constructed by and for the Veterans' Land Board.

(b) Only Sections 2166.104, 2166.151, 2166.152, 2166.153, 2166.154, 2166.155, 2166.251, 2166.252, and Subchapter H apply to a construction project undertaken by or for the institutional division of the Texas Department of Criminal Justice.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 980, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.19, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 17, Sec. 2, eff. Sept. 1, 2005.

Sec. 2166.004. ADDITIONAL EXCEPTIONS. In addition to the exceptions provided by Section 2166.003, this chapter does not apply to:

(1) a project constructed by or under the supervision of a public authority created by the laws of this state; or

(2) a state-aided local government project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.005. COMMISSION PARTICIPATION IN OTHER BUILDING PROJECTS. (a) Section 2166.003 does not prohibit the commission from undertaking on a cost recovery basis a project generally excluded from the application of this chapter by that section.

(b) A service provided under this section is not subject to the requirements of Chapter 771. The commission shall establish a system of charges and billings for services provided to ensure recovery of the cost of providing the services and shall submit a purchase voucher or a journal voucher after the close of each month to an agency for which services were performed.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.006. LEGAL REPRESENTATION OF COMMISSION. (a) The attorney general shall represent the commission in legal matters.

(b) The attorney general may employ special assistants to assist in the performance of duties arising under this chapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.007. VENUE. A suit for breach of a contract under this chapter shall be brought in Travis County.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 2166.051. ADMINISTERING AGENCY. The commission shall administer this chapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.052. ACQUISITION AND DISPOSITION OF PROPERTY. (a) The commission, as provided by law and by legislative appropriation, may:

(1) acquire necessary real and personal property and modernize, remodel, build, or equip buildings for state purposes; and

(2) contract as necessary to accomplish these purposes.

(b) The commission may not sell or otherwise dispose of real property of the state except by specific authority:

(1) granted by the legislature if the legislature is in session; or

(2) granted jointly by the governor and the Legislative Budget Board if the legislature is not in session.

(c) The commission may enter into a contract with the City of Austin to govern the transfer, sale, or exchange of real property and interests in real property, including the vacation of street rights-of-way, easements, and other interests, as necessary or advantageous to both parties. The agreement may provide for the transfer, sale, or exchange by one party in favor of the other for a reasonable value established by the parties and may provide for a transfer, sale, or exchange to be credited against future property or interests to be transferred, sold, or exchanged between the parties. Section 272.001, Local Government Code, does not apply to a transaction governed by this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 587, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 660, Sec. 1, eff. June 11, 1997.

Sec. 2166.053. CONTRACT AUTHORITY. To the extent permitted by appropriations, the commission may take action and contract to obtain sites that it considers necessary for the orderly future development of the state building program.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.054. TITLE TO AND CONTROL OF BUILDINGS; INITIAL OCCUPANTS. (a) The commission shall obtain title for the state and retain control of:

- (1) real property acquired for a building site; and
- (2) any building located on the site.

(b) The commission or the legislature shall determine the initial state agency occupants of a building.

(c) Repealed by Acts 1997, 75th Leg., ch. 658, Sec. 1, eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 658, Sec. 1, eff. Sept. 1, 1997.

Sec. 2166.055. EMINENT DOMAIN. The commission may exercise the power of eminent domain under the general laws to obtain a building site.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.056. GRANT OF EASEMENT, FRANCHISE, LICENSE, OR RIGHT-OF-WAY; JOINT USE AGREEMENTS. (a) The commission may grant a permanent or temporary easement, franchise, license, or right-of-way over and on the land of a state agency on a project administered by the commission or enter into a joint use agreement regarding the land if it is necessary to ensure the efficient and expeditious construction, improvement, renovation, use, or operation of a building or facility of the project.

(b) The commission shall submit an easement or right-of-way that may extend beyond the period of construction to the asset management division of the General Land Office for written comment not later than the 30th day before the date it is granted by the commission. The commission may enter into a joint use agreement or grant a franchise or license at the commission's discretion and for the period determined by the commission if the commission determines that the joint use agreement, franchise, or license is in the best interests of the state and if adequate consideration is received by the state under the agreement or under the terms of the franchise or license.

(c) The commission shall consider comments submitted by the asset management division of the General Land Office before granting an easement or right-of-way.

(d) The commission shall approve all joint use agreements, franchises, and licenses under this section by a majority vote in an open meeting.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1437, Sec. 1, eff. June 19, 1999.

Sec. 2166.057. COORDINATION OF MULTIAGENCY PROJECTS. The commission is the coordinating authority for the construction of any multiagency state office building authorized by the legislature.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.058. ASSISTANCE BY OTHER AGENCIES. (a) The commission may call on a department of state government to assist it in executing this chapter.

(b) The commission may call on the Texas Department of Transportation to make appropriate tests and analyses of the natural materials at the site of a building proposed to be constructed under this chapter to ensure that the foundation of the building is adequate for the building's life.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.059. ASSIGNMENT OF COMMISSION EMPLOYEE TO OTHER AGENCY. (a) The commission may assign a qualified professional employee to a using agency if, because of the volume of projects, the commission and using agency agree that full-time coordination between them is beneficial. The commission and using agency shall jointly determine the qualifications and duties of the assigned employee.

(b) The salary and related expenses of an assigned employee shall be charged against the projects of the using agency to which the employee is assigned.

(c) The commission shall terminate the assignment if the commission determines it is not required.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.060. SITE SELECTION AND CONSTRUCTION IN TEXAS MUNICIPALITIES. (a) The commission may select and purchase a site in a municipality in this state to construct a state office building and adjoining parking spaces if the construction is considered necessary to house a state department or agency in the municipality.

(b) The commission may plan, construct, and initially equip a state office building and adjoining parking spaces on the site selected and purchased.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.061. GENERAL COMMISSION OVERSIGHT DURING CONSTRUCTION. The commission is responsible for protecting the state's interests during the actual construction of a project subject to this chapter.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.062. RULEMAKING AUTHORITY. (a) The commission may adopt rules necessary to implement its powers and duties under this chapter.

(b) A rule adopted under this section is binding on a state agency on filing of the rule with the secretary of state.

(c) The commission shall prepare and publish a manual to assist using agencies in complying with this chapter and commission rules.

(d) Copies of the manual required by this section shall be:

(1) distributed to using agencies; and

(2) available to architects, engineers, contractors, and others who need and request copies.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.063. FEDERAL REQUIREMENTS. (a) The commission may waive, suspend, or modify a provision of this chapter that conflicts with a federal statute or a rule, regulation, or administrative procedure of a federal agency if a waiver, suspension, or modification is essential to receive federal money for a project.

(b) If a project is wholly financed with federal money, a standard required by an enabling federal statute or required by a rule or regulation of the administering federal agency controls.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. STATEWIDE PLANNING AND REPORTING

Sec. 2166.101. COMPILATION OF CONSTRUCTION AND MAINTENANCE INFORMATION. (a) This section applies to a state-owned building, including a building otherwise exempt from this chapter under Section 2166.003, except that this section does not apply to a building owned by an institution of higher education as defined by Section 61.003, Education Code.

(b) The commission shall biennially obtain the following information for each state-owned building from the using agency:

(1) the year of completion;

(2) the general construction type;

(3) the size;

(4) the use; and

(5) the general condition.

(c) The commission shall, for a building completed on or after September 1, 1979, obtain from a using agency information showing the total cost of the project and the cost of construction with other information necessary to meaningfully compare the cost

of similar buildings.

(d) The commission shall summarize its findings on the status of state-owned buildings and current information on construction costs in a report it shall make available to the governor, the legislature, and the state's budget offices.

(e) State agencies, departments, and institutions shall cooperate with the commission in providing the information necessary for the report.

(f) Repealed by Acts 2003, 78th Leg., ch. 1266, Sec. 5.05. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 118, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 5.04, 5.05, eff. June 20, 2003.

Sec. 2166.102. LONG-RANGE PLAN FOR STATE AGENCY SPACE NEEDS. (a) The commission shall prepare a long-range plan on the needs of state agencies in Travis County that obtain or occupy space under this subtitle.

(b) The commission shall maintain a six-year capital planning cycle and shall file a master facilities plan with the Governor's Office of Budget and Planning, the Legislative Budget Board, and the comptroller before July 1 of each even-numbered year.

(c) The master facilities plan must contain:

(1) projections of the amount of administrative office space and client service space needed by state agencies;

(2) an examination of the use, age, condition, and economic life of state-owned buildings on the commission's inventory;

(3) an analysis, in accordance with Subchapter D, of projects that have been requested by state agencies;

(4) an examination of the extent to which the state satisfies its need for space by leasing building space;

(5) an examination of state-paid operation and maintenance costs, including costs for telecommunications services, for existing buildings owned or leased by the state;

(6) a discussion of the economic and market conditions affecting the costs of the construction or lease of buildings;

(7) an analysis of whether the state will benefit more from satisfying its needs for space by:

(A) engaging in new projects;

(B) leasing built space; or

(C) satisfying its needs in another manner;

(8) an examination of the amount of exempt and nonexempt office space under Section 2165.104(c); and

(9) other information relevant to the long-range plan that is:

(A) considered appropriate by the commission; or

(B) requested in writing by the governor or the presiding officer of either house of the legislature.

(d) Each state agency housed wholly or partly in a facility on the commission's inventory or in a facility leased by the commission shall participate in the long-range planning process required by this section.

(e) For purposes of this section, "administrative office space" has the meaning assigned by Section 2165.1061.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1398, Sec. 2, eff. Sept. 1, 1997.

Sec. 2166.103. BIENNIAL REPORT ON SPACE NEEDS. (a) The commission shall continuously survey the state's office space needs to determine the space needed and the location of the need.

(b) Before each legislative session, the commission shall send to the governor, the lieutenant governor, the speaker of the house of representatives, and the Legislative Budget Board a report identifying counties in which more than 50,000 square feet of usable office space is needed and the commission's recommendations for meeting that need. The commission may recommend leasing or purchasing and renovating one or more existing buildings or constructing one or more buildings.

(c) The commission may collect appropriate information it considers necessary for preparing its recommendations and report.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.104. BIENNIAL REPORT ON REQUESTED PROJECTS. (a) On or before a date specified by the state's budget agencies in each year immediately preceding a regular session of the legislature,

the commission shall send to the budget agencies a report listing all projects requested under Subchapter D.

(b) The report must contain:

(1) a brief and specific justification prepared by the using agency for each project;

(2) a summary of the project analysis or, if the analysis was not made, a statement briefly describing the method used to estimate costs for the project;

(3) a project cost estimate developed in accordance with Subchapter D, detailed enough to allow the budget agencies, the governor, and the legislature the widest possible latitude in developing policy regarding each project request;

(4) an estimate, prepared by the commission with the cooperation of both the using agency and any private design professional retained, of the annual cost of maintaining the completed project, including the estimated cost of utility services; and

(5) an estimate, prepared by the using agency, of the annual cost of staffing and operating the completed project, excluding maintenance cost.

(c) If appropriate, the commission, with the using agency's approval, may indicate:

(1) the feasibility of stage construction of a requested project; and

(2) the degree to which money will be required in the next biennium if the project is undertaken in stages.

(d) If a using agency requests three or more projects, it shall designate its priority rating for each project. The budget agencies shall, with the commission's cooperation, develop detailed instructions to implement the priority system required by this subsection. The commission's report must show the designated priority of each project to which a priority rating has been assigned.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. INDIVIDUAL PROJECT ANALYSIS

Sec. 2166.151. USING AGENCY'S GENERAL PROJECT DESCRIPTION; INITIATION OF PROJECT ANALYSIS PROCESS. (a) A using agency requesting a project shall prepare and send to the commission a general description of the project. The description must specify whether the using agency requests that a portion of the cost of the project be used for fine arts projects at or near the site of the project as provided by Section 2166.552.

(b) The commission shall study a project description sent to it and shall initiate the preparation of a project analysis for:

(1) a new construction project; and

(2) any other project for which, in the commission's opinion, the cost of preparing a project analysis is justified.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.06(a), eff. Sept. 1, 1997.

Sec. 2166.152. PREPARATION OF PROJECT ANALYSIS. (a) The commission may retain a private design professional or use its own staff to prepare a project analysis.

(b) A private design professional retained to prepare a project analysis shall be selected as provided by Subchapter E.

(c) In preparing a project analysis, the commission and any private design professional it retains shall cooperate and work closely with the using agency so that the project analysis fully reflects the using agency's needs.

(d) A contract to prepare a project analysis must specify that the analysis becomes the commission's property.

(e) Money appropriated by the legislature may not be used for a capital construction project for which a project analysis described by this section is required until the analysis is filed with the Legislative Budget Board, the budget division of the governor's office, and the comptroller.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1999, 76th Leg., ch. 281, Sec. 9, eff. Sept. 1, 1999.

Sec. 2166.153. CONTENTS OF PROJECT ANALYSIS. (a) A project analysis consists of:

(1) a complete description of the project and a justification of the project prepared by the using agency;

(2) a detailed estimate of the amount of space needed to meet the needs of the using agency and to allow for realistic

growth;

(3) a description of the proposed project prepared by a design professional that:

(A) includes schematic plans and outline specifications describing the type of construction and probable materials to be used; and

(B) is sufficient to establish the general scope and quality of construction;

(4) an estimate of the probable cost of construction;

(5) a description of the proposed site of the project and an estimate of the cost of site preparation;

(6) an overall estimate of the cost of the project, including necessary funding for life-cycle costing, whole building integrated design, commissioning, and postoccupancy building performance verification;

(7) information prepared under Section 2166.451 about historic structures considered as alternatives to new construction;

(8) an evaluation of energy alternatives and energy-efficient architectural and engineering design alternatives as required by Sections 2166.401, 2166.403, and 2166.408; and

(9) other information required by the commission.

(b) A project analysis may include two or more alternative proposals for meeting the using agency's space needs by:

(1) new construction;

(2) the acquisition and rehabilitation of an existing or historic structure; or

(3) a combination of new and existing structures.

(c) If any part of a project involves the construction or rehabilitation of a building that is to be used primarily as a parking garage or for office space for state government, the project analysis also must include:

(1) a description of the amount and location of space in the building that can be made available for lease to private tenants under Subchapter E, Chapter 2165; or

(2) a statement of the reason that lease of space in the building to private tenants is not feasible.

(d) All estimates involved in the preparation of a project analysis shall be carefully and fully documented and incorporated into the project analysis.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 856, Sec. 2, eff. June 17, 2005.

Sec. 2166.154. USE OF PROJECT ANALYSIS OR COST ESTIMATE IN APPROPRIATIONS PROCESS. The using agency shall use the cost of the project as determined by the project analysis or the cost estimate developed under Section 2166.155 as the basis of a request to the state's budget offices.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.155. ESTIMATE OF PROJECT COSTS IN LIEU OF PROJECT ANALYSIS. (a) If the commission determines that the cost of a project analysis is not justified or required, the commission shall, in cooperation with the using agency, develop a realistic estimate of the project's cost.

(b) If necessary, the commission shall arrange for an on-site inspection and analysis of the proposed project by a commission staff member.

(c) The commission shall inform a using agency of a cost estimate developed under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.156. PREPARATION OF PRELIMINARY AND WORKING PLANS AND SPECIFICATIONS. (a) The preliminary plans and outline specifications and the working plans and specifications for a project shall be prepared by:

(1) a private design professional selected and retained by the commission in accordance with Subchapter E; or

(2) unless the commission is required to retain a design professional under Subsection (b), the commission's professional staff.

(b) The commission shall retain a private design professional for:

(1) a new construction project estimated to cost more than \$100,000; or

(2) a new construction project for which the using agency requests a private design professional.

(c) The commission shall ensure that plans and specifications:

- (1) are clear and complete;
- (2) permit execution of the project with appropriate economy and efficiency; and
- (3) conform with the requirements described by the previously prepared project analysis.

(d) The commission must approve plans and specifications before the using agency may accept or use them.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.157. ACCOUNTING FOR PROJECT ANALYSIS EXPENSES. When the legislature approves a project and appropriates money for its construction, the engineering, architectural, and other planning expenses necessary to make a project analysis are the first charge against the project for which the analysis was made.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER E. PRIVATE DESIGN PROFESSIONALS

Sec. 2166.202. SELECTION OF PRIVATE DESIGN PROFESSIONAL; RULES. (a) The commission is responsible for selecting any private design professional retained for a project subject to this chapter.

(b) The commission, in consultation with the Texas Board of Architectural Examiners and the Texas Board of Professional Engineers, shall adopt by rule criteria to evaluate the competence and qualifications of a prospective private design professional.

(c) The commission shall select a private design professional in accordance with a rule adopted under this section and the ethical standards of the professional societies of architects and engineers.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.779, eff. Sept. 1, 2003.

Sec. 2166.203. INTERVIEW NOTIFICATION TO PRIVATE DESIGN PROFESSIONAL. (a) Except as provided by Subsection (b), the commission shall notify a private design professional selected for an interview on a project of the person's selection not later than the 30th day before the date of the interview to allow preparation for the interview.

(b) The commission shall notify a private design professional selected for an interview on a small construction project of the person's selection not later than the 14th day before the date of the interview to allow preparation for the interview.

(c) Subsections (a) and (b) do not apply in an emergency situation that:

- (1) presents an imminent peril to the public health, safety, or welfare;
- (2) presents an imminent peril to property;
- (3) requires expeditious action to prevent a hazard to life, health, safety, welfare, or property; or
- (4) requires expeditious action to avoid undue additional cost to the state.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1329, Sec. 2, eff. Sept. 1, 1997.

Sec. 2166.204. USING AGENCY RECOMMENDATIONS. The commission shall request that the using agency make recommendations regarding private design professionals. The commission shall consider the recommendations in selecting a private design professional to be retained for a particular project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.07, eff. Sept. 1, 1997.

Sec. 2166.205. COMPENSATION OF PRIVATE DESIGN PROFESSIONAL. (a) A private design professional retained under this chapter shall be compensated under this section.

(b) The commission shall establish compensation for a new project or rehabilitation project by studying compensation paid in this state by private clients for projects of comparable size and complexity. Compensation may not exceed the minimum recommended for similar projects by the:

- (1) Texas Society of Architects, if the private design professional is an architect; or
- (2) Texas Society of Professional Engineers, if the private design professional is an engineer.

(c) Compensation established by the commission covers all

professional services rendered by a private design professional, including professional inspection as defined by Section 2166.351. If the commission requires detailed inspection as defined by Section 2166.351, the commission shall increase compensation by an amount equal to the actual cost of providing the detailed inspection.

(d) Compensation for preparation of a project analysis under Subchapter D may not exceed one percent of the estimated cost of construction. If the project is approved by the legislature in substantially the form originally requested and the same private design professional is retained for the later phases of design, compensation paid for preparing the project analysis under this subsection shall be deducted from compensation paid under Subsections (b) and (c).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.206. INFORMATION FURNISHED BY STATE. The state shall furnish to a private design professional retained under this chapter:

(1) detailed information on space requirements and relationships and the justification for, use of, and general requirements for the project; and

(2) a complete site survey and soil analysis.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. PROJECT AUTHORIZATION; BIDDING AND CONTRACT PROCEDURES

Sec. 2166.251. LEGISLATIVE AUTHORIZATIONS AND APPROPRIATIONS. (a) Only the legislature may authorize a project.

(b) A legislative appropriation for a project is directly to a using agency unless the project is to be constructed by the commission, in which event the appropriation is to the commission.

(c) An appropriation for the construction of a project expresses the legislative intent that the project be completed within the limits of the appropriation.

(d) If the legislative authorization provides for stage construction of a project, the commission shall proceed with the project through the specifically authorized stage.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.2511. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Contractor" in the context of a contract for a project means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the project at the contracted price.

(3) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

(4) "Facility" means buildings or structures the design and construction of which is governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(5) "Fee" in the context of a contract for a project means the payment a construction manager receives for its overhead and profit in performing its services.

(6) "General conditions" in the context of a contract for a project means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.780, eff. Sept. 1, 2003.

Sec. 2166.252. MODIFYING PROJECT TO CONFORM TO APPROPRIATIONS. (a) If money appropriated for a project is less than the amount originally requested or is less than the amount required for the project as originally submitted to the state budget agencies, the commission and the using agency shall confer on how to bring the project cost within the amount appropriated.

The commission and the using agency shall make every effort to comply with legislative intent to modify the project as originally submitted.

(b) The commission shall notify the using agency that it considers the project canceled if it is impossible to modify the project to bring the cost within the amount appropriated.

(c) If authorized by an act appropriating money for a project, a using agency may appeal the decision of the commission to cancel a project to the governor by submitting a request that:

(1) the project be undertaken as stage construction;
or

(2) the money available for the project be supplemented by the transfer of money appropriated to the same using agency for other projects of equal or lower priority or from the unused contingency reserves of any project of the same using agency.

(d) The governor shall, after obtaining the advice of the Legislative Budget Board, rule on a request submitted under Subsection (c). If the ruling favors the using agency, the commission shall proceed with the project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The commission shall adopt rules that determine the circumstances for use of each method of contracting allowed under this subchapter for design and construction services. In developing the rules, the commission shall solicit advice and comment from design and construction professionals regarding the criteria the commission will use in determining which contracting method is best suited for a project.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.02, eff. Sept. 1, 2001.

Sec. 2166.2526. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) For each project, the commission must, before advertising, establish which method of contracting provides the best value for the commission or using agency.

(b) Under each method of contracting, the commission shall base its selection among the offerors on criteria established by the commission. The commission shall publish in the request for bids, proposals, or qualifications all of the criteria that will be used to evaluate the offerors.

(c) The commission shall document the basis of its selection of an offeror and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.03, eff. Sept. 1, 2001.

Sec. 2166.253. LOWEST AND BEST BID METHOD. (a) The commission may use the lowest and best bid method for a project. In using that method, the commission shall follow the procedures provided by Subsections (b)-(g).

(b) After final approval of a project's working plans and specifications and their acceptance by a using agency, the commission shall advertise in one newspaper of general circulation and the Texas Register for bids or proposals for the construction of and related work on the project.

(c) Except as provided by Subsection (d), the commission shall allow bidders not less than 30 days after the date the commission issues the bid documents to respond to an invitation to bid.

(d) The commission shall allow bidders for small construction projects not less than 14 days after the date the commission issues the bid documents to respond to an invitation to bid.

(e) The commission may shorten the time for response to prevent undue additional costs to a state agency or, for emergency projects, to prevent or remove a hazard to life or property.

(f) A contract shall be awarded to the qualified bidder making the lowest and best bid in accordance with the law on awarding a state contract.

(g) The commission may reject all bids.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1329, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1422, Sec. 9.04, eff. Sept. 1, 2001.

Sec. 2166.2531. DESIGN-BUILD METHOD. (a) In this section:

(1) "Design-build contract" means a single contract

with a design-build firm for the design and construction of a facility.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and a builder qualified to engage in building construction in this state.

(3) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to the commission's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the commission considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(b) The commission may use the design-build method for a project. In using that method and in entering into a contract for the services of a design-build firm, the commission and the design-build firm shall follow the procedures provided by Subsections (c)-(k).

(c) The commission shall designate an engineer or architect to act as its representative. If the commission's engineer or architect is not a full-time employee of the commission, any engineer or architect designated shall be selected on the basis of demonstrated competence and qualifications in accordance with Subchapter A, Chapter 2254.

(d) The commission shall prepare a request for qualifications that includes general information on the project site, project scope, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, or the practice of architecture within the meaning of Chapter 1051, Occupations Code, those services shall be provided in accordance with the applicable law.

(e) The commission or its representative shall publish the request for qualifications in a manner prescribed by the commission.

(f)(1) The commission or its representative shall evaluate statements of qualifications and select a design-build firm in two phases.

(2) In phase one, the commission or its representative shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the commission that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. The commission or its representative shall qualify a maximum of five offerors to submit additional information and, if the commission or its representative chooses, to interview for final selection.

(3) In phase two, the commission or its representative shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. The commission or its representative may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The commission or its representative may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The commission or its representative shall

rank each proposal submitted on the basis of the criteria specified in the request for qualifications. The commission or its representative shall select the design-build firm that submits the proposal offering the best value for the commission or using agency on the basis of the published selection criteria and on its ranking evaluations. The commission or its representative shall first attempt to negotiate a contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission shall, formally and in writing, end all negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(g) Following selection of a design-build firm under Subsection (f), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance by the commission's engineer or architect before or concurrently with the beginning of construction.

(h) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code.

(i) The commission shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(j) The design-build firm shall supply a signed and sealed set of construction documents for the project to the commission at the conclusion of construction.

(k) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the commission shall each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the commission to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.05, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.40, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.781, eff. Sept. 1, 2003.

Sec. 2166.2532. CONSTRUCTION MANAGER-AT-RISK METHOD. (a) The commission may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the commission shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the commission regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the commission shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The commission's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk

under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit a commission engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) The commission shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004.

(e) The commission shall select the construction manager-at-risk in either a one-step or two-step process. The commission shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one-step or two-step process; and other information that may assist the commission in its selection of a construction manager-at-risk. The commission shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the commission may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the commission may not request fees or prices in step one. In step two, the commission may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) The commission shall publish the request for qualifications in a manner prescribed by the commission.

(g) At each step, the commission shall receive, publicly open, and read aloud the names of the offerors. Within 45 days after the date of opening the proposals, the commission or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(h) The commission or its representative shall select the offeror that submits the proposal that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission or its representative shall first attempt to negotiate a contract with the selected offeror. If the commission or its representative is unable to negotiate a satisfactory contract with the selected offeror, the commission or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(i) A construction manager-at-risk shall publicly advertise, in the manner prescribed by the commission, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the commission determines that the construction manager-at-risk's bid or proposal provides the best value for the commission or using agency.

(j) The construction manager-at-risk and the commission or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or commission. All bids or proposals shall be made public after the award of the contract or within seven days after the date of final selection of bids and proposals, whichever

is later.

(k) If the construction manager-at-risk reviews, evaluates, and recommends to the commission a bid or proposal from a trade contractor or subcontractor but the commission requires another bid or proposal to be accepted, the commission shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the commission's requirement that another bid or proposal be accepted.

(l) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(m) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the commission must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the commission to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.06, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.41, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1229, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.782, eff. Sept. 1, 2003.

Sec. 2166.2533. COMPETITIVE SEALED PROPOSAL METHOD. (a) The commission may select a contractor for a project using the competitive sealed proposal method prescribed by this section.

(b) The commission shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

(c) The commission shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the commission. The commission shall select those services for which it contracts in accordance with Section 2254.004 and shall identify them in the request for proposals.

(d) The commission shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, project scope, schedule, and other information that contractors may require to respond to the request. The commission shall state in the request for proposals all of the selection criteria that will be used in selecting the successful offeror.

(e) The commission shall publish notice of the request for proposals in a manner prescribed by the commission.

(f) The commission shall receive, publicly open, and read aloud the names of the offerors. Within 45 days after the date of opening the proposals, the commission shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(g) The commission shall select the offeror that offers the best value for the commission or using agency based on the published selection criteria and on its ranking evaluation. The commission shall first attempt to negotiate a contract with the selected offeror. The commission and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the commission is unable to reach a contract with the selected offeror, the commission shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(h) In determining the best value for the commission or

using agency, the commission is not restricted to considering price alone but may consider any other factor stated in the selection criteria.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 9.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.42, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.783, eff. Sept. 1, 2003.

Sec. 2166.2535. CONSTRUCTION MANAGER-AGENT. (a) The commission may use the construction manager-agent method for a project. In using that method and in entering into a contract for the services of a construction manager-agent, the commission shall follow the procedures prescribed by this section.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the commission regarding construction, rehabilitation, alteration, or repair of a facility. The commission, when using the construction manager-agent method, may, under the contract between the commission and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the commission in a fiduciary capacity.

(c) Before or concurrently with selecting a construction manager-agent, the commission shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code, as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004. A commission engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit a commission engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) The commission shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004.

(e) When using the construction manager-agent method, the commission shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) The commission or the construction manager-agent shall procure in accordance with Section 2254.004 all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the commission.

Added by Acts 2003, 78th Leg., ch. 1229, Sec. 1, eff. Sept. 1, 2003.

Sec. 2166.254. REVIEW OF CERTAIN BIDS BY HISTORICAL COMMISSION. (a) Before a contract is awarded for the major repair or renovation of a state structure designated by the Texas Historical Commission as a Recorded Texas Historic Landmark, the commission shall forward to the Texas Historical Commission a copy of bids received and an evaluation of the bidders' qualifications.

(b) The Texas Historical Commission shall review the bids and qualifications and recommend to the commission the bidder to which the award should be made.

(c) The commission may award the contract to a bidder other than the lowest bidder based on the Texas Historical Commission's recommendation.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.255. AMOUNT OF CONTRACT. A contract may not be awarded for an amount greater than the amount that the comptroller certifies to be available for the project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 9.08, eff. Sept. 1, 2001.

Sec. 2166.2551. CONTRACT NOTIFICATION. The commission or an

agency whose project is exempted from all or part of this chapter under Section 2166.003 shall provide written notice to the Legislative Budget Board of a contract for a construction project if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed not later than the 10th day after the date the agency enters into the contract.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 10, eff. Sept. 1, 1999.

Sec. 2166.256. ACQUISITION OF ITEMS NOT FURNISHED UNDER CONSTRUCTION CONTRACT. Equipment or furnishings not constructed or installed under a construction contract shall be acquired through regular state purchasing methods.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.257. CONTRACT PAYMENT ADMINISTRATION. (a) On receipt of notice and itemized statements from the commission, the comptroller shall:

(1) account for prior expenditures on behalf of a project as expenditures from the project's appropriation, based on the amount of those expenditures certified by the commission; and

(2) reserve from a project's appropriation an amount estimated by the commission to be sufficient to cover contingencies over the amounts obligated by contract or otherwise for:

(A) planning, engineering, and architectural work;

(B) site acquisition and development; and

(C) construction, equipment, and furnishings contracts.

(b) The money reserved under Subsection (a)(2) may be used only if:

(1) the design professional or contractor recommends and justifies the proposed contingency expenditures by submitting a change order request;

(2) the proposed change order request is approved by the design professional;

(3) the proposed change order request is approved by the using agency and the agency makes a formal request for the allocation of money from the contingency reserve; and

(4) the director of facilities construction and space management appointed under Section 2152.104 investigates the nature of the change order and concurs in the necessity of the proposed expenditure or refuses to concur not later than the 15th day after the date of receiving the request.

(c) If the director of facilities construction and space management refuses to concur in a proposed contingency expenditure, the using agency may appeal to the commission. The commission's findings are final. The commission shall adopt rules on the procedures for an appeal under this subsection.

(d) If an approved change order results in a reduction of construction cost, the amount of the contingency reserve shall be increased by the amount of the reduction.

(e) The comptroller shall issue warrants to pay progress payments and final payments on construction under this chapter on the commission's written approval.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.258. COMMON SURETY OR INSURER. (a) The commission or an agency whose project is exempted from all or part of this chapter under Section 2166.003 may negotiate an arrangement advantageous to the state with a surety or an insurer, as appropriate, authorized to do business in this state to furnish bonds, insurance, or both that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 614,
Sec. 1

(b) In accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may not require a contractor or subcontractor for any public building or other construction contract to obtain a surety bond from any specific insurance or surety company, agent, or broker. To the extent consistent with that law, the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the negotiated arrangement.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 1422,
Sec. 9.09

(b) Except as provided by Subsection (c), notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency.

Text of subsec. (c) as added by Acts 2001, 77th Leg., ch. 614, Sec. 1

(c) For the purposes of this section, the General Services Commission shall establish a program to provide surety technical assistance services for the benefit of small businesses and historically underutilized businesses. The commission may contract with insurance companies, surety companies, agents, or brokers to implement this program.

Text of subsec. (c) as added by Acts 2001, 77th Leg., ch. 1422, Sec.
9.09

(c) To assist historically underutilized businesses, small businesses, or any other businesses, if an agency by rule requires a proposal guaranty as a condition for bidding on a contract, the guaranty may be in the form of a:

(1) cashier's check or money order drawn on an account with a financial entity determined by the agency;

(2) bid bond issued by a surety authorized to do business in this state; or

(3) any other method approved by the agency.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 614, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1422, Sec. 9.09, eff. Sept. 1, 2001.

Sec. 2166.259. SMALL CONTRACTOR PARTICIPATION ASSISTANCE PROGRAM. (a) This section applies only to a contract for a public works project that has an estimated cost of more than \$20 million.

(b) The commission shall maintain a small contractor participation assistance program to ensure full opportunity for participation in public works projects by small contractors. The program must include a:

(1) system for the centralized purchase of necessary insurance coverage for the public works project that is required under Subsection (c);

(2) public outreach plan to:
(A) provide public information about the program; and

(B) encourage small contractors to participate in the program;

(3) technical assistance plan to aid small contractors in developing the skills necessary to participate in the program in accordance with Subsection (d); and

(4) financing assistance plan to provide administrative and other assistance to small contractors in obtaining necessary financing arrangements to make the participation of those contractors possible.

(c) The commission shall provide for the centralized purchasing of:

(1) workers' compensation insurance coverage;
(2) employer's liability insurance coverage;
(3) commercial general and excess liability coverage;
(4) payment and performance bonds; and
(5) other similar coverage the commission considers necessary and reasonable for the public works project.

(d) A technical assistance plan adopted by the commission must include information on and assistance in:

(1) bid estimation, the bidding process, scheduling, and the understanding of bid documents;

(2) the reading of construction drawings and other analogous documents;

(3) business accounting, bonds, and bond requirements;

(4) negotiation with general contractors; and

(5) other technical and administrative matters considered appropriate and necessary given the complexity and scope of the public works project.

(e) The commission may negotiate contracts with persons or firms having expertise in the areas that must be included in the

commission's technical assistance plan to provide the information and assistance.

(f) In this section:

(1) "Public works project" means a construction project designed to serve the public necessity, use, or convenience that is undertaken and executed by the commission, including a project for the construction, alteration, or repair of a public building.

(2) "Small contractor" means a contractor that operates as a small-business concern as defined by the Small Business Act (15 U.S.C. Chapter 14A).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.260. APPROVAL OF CERTAIN EXPENDITURES REQUIRED. A state agency may not spend more than the amount authorized for the cost of a project unless the governor and the Legislative Budget Board approve the expenditure. Once the cost of a project reaches the amount authorized for the project, each change to approved project plans must be approved by the governor and the Legislative Budget Board.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 7.43, eff. June 18, 2003.

SUBCHAPTER G. UNIFORM GENERAL CONDITIONS IN STATE CONSTRUCTION CONTRACTS

Sec. 2166.301. EXCEPTIONS. Sections 2166.303 and 2166.304 do not apply to a contract made with a person subject to the safety standards and administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.26, eff. Sept. 1, 1999.

Sec. 2166.302. ADOPTION OF CONDITIONS. (a) Except as provided by Subsections (b) and (c), the commission shall adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for a project excluded from this chapter by Section 2166.003, but not including a contract for a project excluded from this chapter by Section 2166.004.

(b) The commission is not required to adopt uniform general conditions for small construction projects, as defined by Section 2166.001.

(c) Subsection (a) does not apply to a project constructed by and for the Texas Department of Transportation.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.44, eff. June 18, 2003; Acts 2005, 79th Leg., ch. 281, Sec. 2.92, eff. June 14, 2005.

Sec. 2166.303. UNIFORM TRENCH SAFETY CONDITIONS. (a) The uniform general conditions for a construction project in which trench excavation will exceed a depth of five feet must require that the bid documents provided to all bidders and the contract include:

(1) a reference to the federal Occupational Safety and Health Administration's standards for trench safety that will be in effect during the construction of the project;

(2) a copy of the state's special shoring requirements, if any, with a separate pay item for the special shoring requirements;

(3) a copy of geotechnical information obtained by the owner for use by the contractor in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench safety is determined by the linear feet of trench excavated. The separate pay item for the state's special shoring requirements, if any, is determined by the square feet of shoring used.

(c) In this section, "trench" has the meaning assigned by the standards adopted by the federal Occupational Safety and Health Administration.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.304. PRE-BID CONFERENCE. (a) A state agency may require bidders to attend a pre-bid conference to coordinate a geotechnical investigation of the project site by the bidders.

(b) In awarding a contract, an agency may not consider a bid from a bidder who failed to attend a pre-bid conference required under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.305. REVIEW OF UNIFORM GENERAL CONDITIONS. (a) The commission shall require a review of the uniform general conditions of state building construction contracts whenever the commission considers review worthwhile, but not less frequently than once every five years.

(b) A committee appointed by the commission shall perform the review. The committee consists of:

(1) the director of facilities construction and space management appointed under Section 2152.104, who serves as the presiding officer of the committee;

(2) seven individuals appointed by the commission, one each from the lists of nominees submitted respectively by the:

(A) president of the Texas Society of Architects;

(B) president of the Texas Society of Professional Engineers;

(C) presiding officer of the Executive Council of the Texas Associated General Contractors Chapters;

(D) executive secretary of the Mechanical Contractors Associations of Texas, Incorporated;

(E) executive secretary of the Texas Building and Construction Trades Council;

(F) president of the Associated Builders and Contractors of Texas; and

(G) executive director of the National Association of Minority Contractors, with the list composed of persons who reside in this state;

(3) one individual appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code;

(4) one individual appointed by the commission representing a state agency that has a substantial ongoing construction program;

(5) one individual appointed by the commission representing the attorney general's office; and

(6) one individual appointed by the commission representing the interests of historically underutilized businesses.

(c) Members of the committee serve without compensation but may be reimbursed for actual and necessary expenses.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 7.45, eff. June 18, 2003.

SUBCHAPTER H. PROJECT INSPECTION

Sec. 2166.351. DEFINITIONS. In this subchapter:

(1) "Detailed inspection" means close, technical, on-site examination of materials, structure, and equipment and surveillance of the quality and methods of work, performed by one or more full-time personnel at the project site, to reasonably ensure that the project is accomplished in compliance with information in the contract documents and with good construction practices.

(2) "General inspection" means the examination and inspection of the project at periodic intervals by commission employees.

(3) "Professional inspection" means the periodic examination of all elements of the project to reasonably ensure that they meet the performance and design features and the technical and functional requirements of the contract documents.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.352. CATEGORIES OF INSPECTION. The three categories of inspection during construction are:

(1) detailed inspection;

(2) general inspection; and

(3) professional inspection.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.353. DETAILED INSPECTION. (a) The decision to require a detailed inspection is in the commission's sole discretion. The commission shall base its decision on the project's size and complexity.

(b) The full cost of detailed inspection is a charge against the project.

(c) A project construction inspector appointed by the design professional with the commission's approval shall perform detailed inspection.

(d) The project construction inspector shall:

(1) become thoroughly conversant with the drawings,

specifications, details, and general conditions for executing the work;

(2) keep records of the work as required by the design professional and the commission;

(3) make reports to the design professional with copies to the commission and the using agency as required by the design professional and the commission;

(4) maintain at the construction site copies of the records and reports required under Subdivisions (2) and (3) with the plans, specifications, shop drawings, change orders, and correspondence dealing with the project;

(5) endeavor to ensure that the contractor is fulfilling the requirements of the contract documents;

(6) endeavor to ensure that all authorized changes are properly incorporated in the work and that a change is not made unless properly authorized;

(7) notify the design professional if conditions encountered at the project vary from the contract documents and comply with the design professional's directives in endeavoring to correct those conditions;

(8) review shop drawings in relation to their adaptability to job conditions and advise the design professional in that regard;

(9) endeavor to ensure that materials and equipment furnished comply with the specifications;

(10) ensure that records are kept on construction plans of the principal elements of mechanical and electrical systems;

(11) ensure that accurate records are kept of all underground utility installations at the project site, including existing installations uncovered in the process of construction, so that the information may be recorded on site plans or drawings that may be established and maintained by the commission or the using agency;

(12) keep a daily written log of all significant happenings on the job, including the number of workers working each day and the weather conditions during the day;

(13) observe and give prompt written notice to the construction contractor's representative and the design professional of noncompliance with contract documents on the part of the contractor's representative and notify the design professional and the commission of a failure to take corrective measures promptly;

(14) initiate, attend, and participate in progress meetings and inspections with the contractor;

(15) review every contractor's invoice against the value of partially or fully completed work and the materials stored at the project site before the invoice is forwarded to the design professional and promptly notify the design professional of a discrepancy between the review of the work and the invoice; and

(16) be responsible to the design professional for the proper administration of the duties listed in this section and comply with other instructions and assignments of the design professional.

(e) If the commission requires detailed inspection of a project's construction, the design professional shall select, subject to the commission's approval, the project construction inspector and is responsible for the proper administration of the duties listed in Subsection (d). The design professional shall pay the salary of the project construction inspector and shall be reimbursed for the salary costs and the overhead expenses directly applicable to the salary.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.354. GENERAL INSPECTION. (a) On a project for which a project construction inspector is employed by a design professional, the general inspector shall work with and through the project construction inspector and the design professional. On all other projects, the general inspector shall work with and through the design professional and shall exercise the detailed inspection functions the commission requires.

(b) The cost of general inspection is a charge against the project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.355. PROFESSIONAL INSPECTION; RELATED SERVICES. (a) The design professional or the design

professional's authorized representative shall perform professional inspection.

(b) The design professional or the design professional's authorized representative shall:

(1) assist the commission in obtaining proposals from contractors and in awarding and preparing construction contracts;

(2) be responsible for interpretation of the contract documents and changes made to the contract documents;

(3) provide an interpretation of plans and specifications as required during construction;

(4) check and approve samples, schedules, shop drawings, and other submissions only for conformance with the design concept of the project and for compliance with the information in the contract documents;

(5) approve or disapprove all change order requests and, subject to Section 2166.257, prepare all change orders;

(6) assemble all written guarantees required of the contractors;

(7) make periodic visits to the project site to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the contract documents;

(8) make a written inspection report after each visit to the project site and send a copy of the report to the contractor and the commission;

(9) keep the commission informed of the progress of the work and endeavor to guard against defects and deficiencies in contractors' work;

(10) determine periodically the amount owing to the contractors and recommend to the commission payment of that amount; and

(11) conduct inspections to determine the dates of substantial and final completion and notify the commission and the using agency of the determination.

(c) The amount of time that on-site inspections under Subsection (b)(7) take is computed by dividing the total compensation for professional services, excluding payments for detailed inspection, by 100, with the result expressed as the number of hours to be devoted to on-site inspections, project conferences with the contractor and others, and travel to and from those inspections and conferences.

(d) A recommendation under Subsection (b)(10) constitutes a representation to the commission that:

(1) based on observations and other pertinent information, the work has progressed to the point indicated; and

(2) to the best of the design professional's knowledge, information, and belief, the quality of the work is in accordance with the plans, specifications, and contract documents.

(e) This section does not:

(1) require the design professional to assume responsibility for or guarantee the complete adherence of the contractor to the plans and specifications and contract documents; or

(2) make the design professional liable for defects in construction.

(f) If a private design professional is retained, the fee paid that design professional is considered to cover professional inspection but not the additional cost of detailed inspection beyond the administrative duties specifically encompassed by Section 2166.353(e). If the commission's staff serves as design professional, the commission is responsible for professional supervision and the cost of supervision is a charge against the project.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.356. FINAL INSPECTION; FINAL PAYMENT; INSPECTION DURING GUARANTEE PERIOD. (a) The commission is responsible for directing final payment for work done on each project. If on final inspection of a project it determines that the plans, specifications, contract, or change orders for the project have not been fully complied with, the commission shall, until compliance has occurred or adjustments satisfactory to the commission have been made, refuse to direct final payment.

(b) Final inspection consists of an on-site inspection by the design professional, a commission representative, a using agency representative, and at least one representative of each

contractor.

(c) The commission shall schedule the final inspection not later than the 10th day after the date the design professional notifies the commission that the contract has been performed according to the plans and specifications.

(d) On completion of the project, the commission shall release the project to the using agency.

(e) The commission is responsible for inspecting the project before the expiration of the guarantee period to observe defects that may appear not later than the first anniversary of the date the contract is completed. The commission shall give prompt written notice to the contractor of defects that are due to faulty materials or work. This subsection does not require the contractor to assume responsibility for or guarantee defects other than those due to faulty materials or work or failure on the contractor's part to adhere to the contract documents.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER I. CONSERVATION OF ENERGY AND WATER

Sec. 2166.401. EVALUATION OF ENERGY ALTERNATIVES. (a) For each project for which a project analysis is prepared under Subchapter D and for which the construction, alteration, or repair involves installing or replacing all or part of an energy system, energy source, or energy-consuming equipment, the commission or the private design professional retained by the commission shall prepare a written evaluation of energy alternatives for the project.

(b) The evaluation must include information about the economic and environmental impact of various energy alternatives, including an evaluation of economic and environmental costs both initially and over the life of the system, source, or equipment.

(c) The evaluation must identify the best energy alternative for the project considering both economic and environmental costs and benefits.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.402. ENERGY OR WATER CONSERVATION STANDARDS FOR ENTITIES OTHERWISE EXCLUDED FROM CHAPTER. (a) The governing body of a state agency, commission, or institution that is exempt from this chapter under Section 2166.003 shall adopt and publish energy or water conservation design standards as provided by Section 447.004 for a new building under the entity's authority. The standards must be:

(1) consistent with those adopted by the commission for other state buildings; and

(2) prepared in cooperation and consultation with the state energy conservation office.

(b) The state energy conservation office shall assist the governing body of a state agency, commission, or institution subject to Subsection (a) in preparing energy conservation standards by providing technical assistance and advice.

(c) The Texas Water Development Board shall assist the governing body of a state agency, commission, or institution described by Subsection (a) in preparing water conservation standards by providing technical assistance and advice.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 573, Sec. 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1158, Sec. 58, eff. June 15, 2001.

Sec. 2166.403. ALTERNATIVE ENERGY AND ENERGY-EFFICIENT ARCHITECTURAL AND ENGINEERING DESIGN IN NEW BUILDING CONSTRUCTION. (a) This section applies to the construction of a new state building, including a building construction project otherwise exempt from this chapter under Section 2166.003.

(b) Except as provided by Subsection (c-1), during the planning phase of the proposed construction, the commission, or the governing body of the appropriate agency that is undertaking a project otherwise exempt from this chapter under Section 2166.003, must present a detailed written evaluation at an open meeting to verify the economic feasibility of:

(1) using energy-efficient architectural or engineering design alternatives; or

(2) incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling, water heating, electrical loads, and interior lighting.

(b-1) A detailed written evaluation under Subsection (b) must be made available to the public at least 30 days before the

open meeting at which it is presented.

(b-2) In each detailed written evaluation under Subsection (b), the commission or governing body shall determine economic feasibility for each function by comparing the estimated cost of providing energy for all or part of the function using conventional design practices and energy systems or operating under conventional architectural or engineering designs with the estimated cost of providing energy for all or part of the function using alternative energy devices or operating under alternative energy-efficient architectural or engineering designs during the economic life of the building. The comptroller's state energy conservation office, or its successor, must approve any methodology or electronic software used by the commission or governing body, or an entity contracting with the commission or governing body, to make a comparison or determine feasibility under this subsection.

(c) If the use of alternative energy devices or energy-efficient architectural design alternatives for a particular function is determined to be economically feasible under Subsection (b-2), the commission or governing body shall include the use of alternative energy devices or energy-efficient architectural design alternatives for that function in the construction plans.

(c-1) For a project constructed by and for a state institution of higher education, the governing body of the institution shall, during the planning phase of the proposed construction for the project, verify in an open meeting the economic feasibility of incorporating into the building's design and proposed energy system alternative energy devices for space heating and cooling functions, water heating functions, electrical load functions, and interior lighting functions. The governing body of the institution shall determine the economic feasibility of each function listed in this subsection by comparing the estimated cost of providing energy for the function, based on the use of conventional design practices and energy systems, with the estimated cost of providing energy for the function, based on the use of alternative energy devices, during the economic life of the building.

(c-2) If the use of alternative energy devices for a specific function is determined to be economically feasible under Subsection (c-1), the governing body shall include the use of alternative energy devices for that function in the construction plans for the project.

(d) In this section:

(1) "Alternative energy" means a renewable energy resource. The term includes solar energy, biomass energy, geothermal energy, and wind energy.

(2) "Alternative energy collector" means an assembly, structure, or design, including passive elements, used to absorb, concentrate, convert, reflect, or otherwise capture or redirect alternative energy for later use as thermal, mechanical, or electrical energy.

(3) "Alternative energy device" means an alternative energy collector or alternative energy storage mechanism that collects, stores, or distributes alternative energy.

(4) "Alternative energy storage mechanism" means equipment, components, or elements designed and used to store for later use alternative energy captured by an alternative energy collector in the form in which the energy will eventually be used or in an intermediate form. The term includes thermal, electrochemical, chemical, electrical, and mechanical storage mechanisms.

(5) "Biomass energy" means energy that is created in living plants through photosynthesis.

(6) "Solar energy" means energy from the sun that may be collected and converted into useful thermal, mechanical, or electrical energy.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 856, Sec. 3, to 5, eff. June 17, 2005.

Sec. 2166.404. XERISCAPE ON NEW CONSTRUCTION. (a) The commission, in consultation with the Texas Natural Resource Conservation Commission, the Texas Department of Transportation, and the Industry Advisory Committee, by rule shall adopt guidelines for the required use of xeriscape on state property associated with the construction of a new state building, structure, or facility

that begins on or after January 1, 1994, including a project otherwise exempt from this chapter under Section 2166.003.

(b) The guidelines adopted under this section must:

(1) establish standards for landscape design, installation, and maintenance that result in water conservation, including the use of appropriate plants, soil analysis, compost, efficient irrigation systems, and other water-conserving practices;

(2) identify beneficial plant species;

(3) specify the maximum percentage of turf and the maximum percentage of impervious surface allowed in a xeriscaped area;

(4) establish standards for selection and installation of turf;

(5) establish standards for land clearing;

(6) require preservation of existing native vegetation identified as beneficial; and

(7) establish a monitoring program to ensure implementation of and compliance with this section.

(c) The Industry Advisory Committee is composed of nine members who are Texas residents appointed by the commission. Three members must be nursery-product growers, three members must be turf-growers, and three members must be landscape contractors. The commission shall make appointments from a list of recommendations submitted to the commission by the Texas Association of Nurserymen for the nursery-product-grower positions, the Texas Turf Association for the turf-grower positions, and the Texas Association of Landscape Contractors for the landscape-contractor positions. Appointments are for staggered three-year terms arranged so that one person from each group is appointed each year. The appointments to the committee must reflect this state's gender and ethnic diversity.

(d) In this section, "xeriscape" means a landscaping method that maximizes the conservation of water by using plants that are appropriate to the site and efficient water-use techniques. The term includes:

(1) planning and design;

(2) appropriate choice of plants;

(3) soil analysis;

(4) soil improvement using compost;

(5) efficient and appropriate irrigation;

(6) practical use of turf;

(7) appropriate use of mulches; and

(8) proper maintenance.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.405. XERISCAPE PHASE-IN. The commission shall develop a five-year program for phasing in the use of xeriscape on state property associated with a state-owned building, structure, or facility on which construction began before January 1, 1994.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation of:

(1) insulation of a building structure and systems within the building;

(2) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(3) automatic energy control systems, including computer software and technical data licenses;

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(5) lighting fixtures that increase energy efficiency;

(6) energy recovery systems;

(7) electric systems improvements;

(8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures,

appliances, and equipment;

(9) water-conserving landscape irrigation equipment;

(10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(b) Notwithstanding any other provision of this chapter, a state agency, without the consent of the commission, may enter into an energy savings performance contract in accordance with this section.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control to be returned to the potable water supply.

(d) A state agency may enter into energy savings performance contracts only with a person who is experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, a state agency shall require the provider of the energy or water conservation measures to file with the agency a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253. The agency may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) The state agency may enter into an energy savings performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 15 years from the date of installation.

(g) An energy savings performance contract with respect to existing buildings or facilities may be financed:

(1) under a lease/purchase contract that has a term not to exceed 15 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed 15 years from the final date of installation.

(h) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the state agency under the contract. If the term of the contract exceeds one year, the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost

savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the state agency in this subsection, divided by the number of years in the contract term.

(i) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004. Notice of the request for qualifications shall be given in the manner provided by Section 2156.002. The State Energy Conservation Office shall establish guidelines and an approval process for awarding energy savings performance contracts. The guidelines adopted under this subsection must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. An energy savings performance contract may not be entered into unless the contract has been approved by the State Energy Conservation Office. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

(j) The legislature shall base an agency's appropriation for energy, water, and wastewater costs during a fiscal year on the sum of:

(1) the agency's estimated energy, water, and wastewater costs for that fiscal year; and

(2) if an energy savings performance contract is in effect, the agency's estimated net savings resulting from the contract during the contract term, divided by the number of years in the contract term.

Added by Acts 1997, 75th Leg., ch. 1142, Sec. 3, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 361, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 9, 13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 58, 121(14), eff. June 20, 2003.

Sec. 2166.408. EVALUATION OF ARCHITECTURAL AND ENGINEERING DESIGN ALTERNATIVES. (a) For each project for which a project analysis is prepared under Subchapter D and for which architectural or engineering design choices will affect the energy-efficiency of the building, the commission or the private design professional retained by the commission shall prepare a written evaluation of energy-efficient architectural or engineering design alternatives for the project.

(b) The evaluation must include information about the economic and environmental impact of various energy-efficient architectural or engineering design alternatives, including an evaluation of economic and environmental costs both initially and over the life of the architectural or engineering design.

(c) The evaluation must identify the best architectural and engineering designs for the project considering both economic and environmental costs and benefits.

Added by Acts 2005, 79th Leg., ch. 856, Sec. 6, eff. June 17, 2005.

SUBCHAPTER J. ACQUISITION OF EXISTING BUILDINGS

Sec. 2166.451. ACQUISITION OF HISTORIC STRUCTURES. (a) In acquiring real property, each using agency shall first consider a building that is designated as a historic structure under Section 442.001 or a building that has been designated a landmark by the local governing authority if:

(1) the building meets requirements and specifications; and

(2) the cost is not substantially higher than that of other available structures that meet requirements and specifications.

(b) If the using agency rejects acquisition of a historic structure because of the structure's cost, the agency shall forward to the commission for inclusion in the project analysis for the new construction or acquisition a comparison of the cost of the new construction or acquisition with the cost of the purchase and rehabilitation of the historic structure.

(c) In determining the feasibility of acquiring a historic structure, the using agency shall evaluate the possibility of providing the space needed by the agency by combining new construction with acquisition of the historic structure.

(d) On request of the using agency, the commission shall assist the agency in evaluating the feasibility of acquiring a

historic structure and in preparing the information required by Subsection (b).

(e) The commission shall comply with Subsections (a)-(c) for a:

(1) project for which it is the using agency; or

(2) multiagency state office building for which it serves as the coordinating authority.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.08(a), eff. Sept. 1, 1997.

Sec. 2166.452. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE TO NEW CONSTRUCTION. (a) If the legislature authorizes the issuance of bonds by the Texas Public Finance Authority to construct one or more buildings and improvements in a county, the commission may solicit and receive proposals, using the same procedures that apply to the purchase of other real property, for the purchase of one or more existing buildings with bond proceeds. If the commission's evaluation of the proposals demonstrates that purchase of one or more existing buildings is an appropriate and financially advantageous means of meeting all or part of the state's office space needs in that county, the commission shall certify that fact to the authority and request the authority to issue all or part of its bonds previously authorized by the legislature for that purpose.

(b) The commission shall determine financial advantage under Subsection (a) after comparing construction and purchase as fairly as possible. In making its determination, the commission shall impute value and consider factors as it considers appropriate, including consideration of the:

(1) estimated cost of construction and of acquiring land for the construction;

(2) anticipated purchase price of one or more existing buildings;

(3) estimated cost of converting one or more existing buildings to state building specifications, including reconstruction costs only when reconstruction is necessary;

(4) efficiency and suitability of an existing building's space as configured for state use;

(5) estimated occupancy dates for proposed construction compared with estimated occupancy dates for an existing building;

(6) value of an existing building's location, parking, landscaping, and other enhancements;

(7) remaining useful life of mechanical components of an existing building; and

(8) estimated cost of maintenance and operations, including the cost of telecommunications services, for each option considered by the commission.

(c) On a determination under Subsection (a) that a purchase is more advantageous to the state, the commission may abandon construction plans. If additional costs, over available bond proceeds, must be incurred to accomplish the purchase and any necessary renovation of the purchased property, the commission may use available appropriated money and request additional bonds of the Texas Public Finance Authority in an amount of up to five percent of the acquisition cost for that purpose.

(d) A purchase under this section must be approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(e) A person from whom real property or an existing building or other improvement is purchased under this section shall provide to the commission the name and the last known address of each person who:

(1) owns record legal title to the real property or building or other improvement; or

(2) owns a beneficial interest in the real property or building or other improvement through a trust, nominee, agent, or other legal entity.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.453. ACQUISITION OF REAL PROPERTY AS ALTERNATIVE TO LEASING SPACE. (a) This section applies only to meeting space needs of one or more state agencies in a county in which the state leases 50,000 square feet or more of space.

(b) The commission may meet space needs of one or more state agencies that are being met through leased space by purchasing or

constructing one or more buildings under this section. The purchase or construction of a building may include the purchase of the building's grounds and related improvements. The purchase or construction of a building under this section must be:

- (1) financed through bonds issued by the Texas Public Finance Authority; and
- (2) approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(c) The commission may purchase or construct a building under this section only if the commission determines that the projected annual total space occupancy costs of the purchased or constructed space will not exceed, over the term of the bonded indebtedness, the projected annual total space occupancy costs of meeting the same space needs through leased space.

(d) If the commission makes the necessary determination under Subsection (c) and the purchase or construction is approved under Subsection (b), the Texas Public Finance Authority shall issue and sell bonds to finance the purchase or construction under Chapter 1232, and the commission may purchase or construct the building under that chapter and other applicable law.

(e) The limitation prescribed by Section 1232.102 relating to the location of a building for which bonds may be issued and sold does not apply to financing the purchase or construction of a building under this section.

(f) A person from whom real property or an existing building or other improvement is purchased under this section shall provide to the commission the name and the last known address of each person who:

- (1) owns record legal title to the real property or building or other improvement; or
- (2) owns a beneficial interest in the real property or building or other improvement through a trust, nominee, agent, or other legal entity.

(g) If a state agency vacates leased space to move into space in a building purchased or constructed under this section or if the leased space itself is purchased under this section, the money specifically appropriated by the legislature or the money available to and budgeted by the agency for lease payments for the leased space for the remainder of the biennium may be used only for rental or installment payments for the purchased or constructed space under Section 1232.116(b) and for the payment of operating expenses for the purchased or constructed space that are incurred by the commission. The comptroller may adopt rules for the administration of this subsection.

(h) In this section, "total space occupancy costs" include:

- (1) for leased space, the direct cost of the lease payments for the space;
- (2) for purchased or constructed space, the direct cost of rental or installment payments for the space under Section 1232.116(b);

- (3) the cost of necessary renovations;
- (4) operating costs, including janitorial and utility costs; and

(5) for purchased or constructed space, the cost of maintaining a cash replacement reserve sufficient to service structural maintenance requirements reflecting the expected performance life of the major capital expense items of the building for the term of the bonded indebtedness.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 999, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.241, eff. Sept. 1, 2001.

Sec. 2166.454. PURCHASING OR OBTAINING MORE FAVORABLE LEASE WITH OPTION TO PURCHASE AGREEMENTS WITH REGARD TO CERTAIN LEASED SPACE.

Text of section effective until September 2, 2008.

(a) This section and Sections 2166.4541 and 2166.4542 apply only in relation to space currently occupied by a state agency under one of seven lease with an option to purchase agreements:

- (1) entered into by the state before December 1994, for the benefit of the Texas Commission on Environmental Quality or its predecessor agency, the office of the attorney general, the successor of the Department of Human Services, the Department of Family and Protective Services, or the Texas Department of

Transportation; and

(2) under which the state may acquire title to the space by paying the purchase price remaining under the terms of the agreement on September 1 of an odd-numbered year.

(b) If the commission determines that it is advantageous to the state, the commission may:

(1) request the Texas Public Finance Authority to issue revenue bonds to finance the purchase of any or all of the space to which this section applies in accordance with Section 2166.4542 and Chapter 1232, if the commission determines that it is more advantageous to the state to purchase the space than to enter into a more favorable lease with an option to purchase agreement under Section 2166.4541 for that space; or

(2) enter into a more favorable lease with an option to purchase agreement with regard to any or all of the space to which this section applies by taking the actions authorized by Section 2166.4541 under the conditions prescribed by Section 2166.4541, if the commission determines that it is more advantageous to the state to enter into a more favorable lease with an option to purchase agreement for that space than to purchase the space under Section 2166.4542 and Chapter 1232.

(c) This section expires September 2, 2008, except that this section is continued in effect after that date for the limited purpose of applying with regard to any transaction authorized by this section and Section 2166.4541 or 2166.4542 that occurs before that date.

Added by Acts 2005, 79th Leg., ch. 1310, Sec. 1, eff. June 18, 2005.

Sec. 2166.4541. ENTERING INTO MORE FAVORABLE LEASE WITH OPTION TO PURCHASE AGREEMENTS.

Text of section effective until September 2, 2008.

(a) Subject to Section 2166.454(b), the commission may issue sale and lease purchase revenue obligations in accordance with this section and use the proceeds of the revenue obligations to:

(1) pay the commission's expenses in connection with issuing the revenue obligations;

(2) purchase any or all of the space described by Section 2166.454(a) according to the terms of the applicable existing lease with an option to purchase agreement or agreements; and

(3) if it is advisable to make capital improvements to the space, pay for making the capital improvements.

(b) The revenue obligations issued under Subsection (a) must be paid in their entirety immediately after issuance by using the proceeds of the concurrent sale of the space by the commission to a third party who agrees to lease the space back to the state with an option to purchase under the following conditions:

(1) the term of the new lease with an option to purchase agreement does not exceed the remaining term on the applicable existing lease with an option to purchase agreement, as of the date on which the transactions described by this section occur; and

(2) the cost to the state under the new lease with an option to purchase agreement is less than the cost to the state under the existing lease with an option to purchase agreement and the difference in cost justifies any costs incurred by the commission and the state in taking actions under this section with regard to the space.

(c) The commission shall obtain the approval of the Bond Review Board before issuing a sale and lease purchase revenue obligation under this section.

(d) Any sale and lease purchase revenue obligations issued by the commission under this section and any lease with an option to purchase agreement entered into under this section must be submitted to the attorney general for review and approval. If the attorney general determines that the obligation or agreement, as applicable, entered into under this section complies with this section, the attorney general shall approve the issuance of the obligation or the agreement, as applicable. On approval by the attorney general, the obligation or agreement, as applicable, is incontestable for any cause.

(e) A sale and lease purchase revenue obligation issued under this section is not a debt of the state or any state agency, is not a pledge of the faith and credit or the taxing power of the state, and may be paid only from the proceeds of the concurrent sale

of the space to which the sale and lease purchase revenue obligation relates. A sale and lease purchase revenue obligation issued under this section must contain a statement to that effect.

(f) A lease with an option to purchase agreement entered into under this section must contain a statement that the agreement is not a debt of the state or any state agency and is contingent on continued legislative appropriations for making the lease payments.

(g) This section expires September 2, 2008, except that this section is continued in effect after that date for the limited purpose of applying with regard to any transaction authorized by Section 2166.454 and this section that occurs before that date.

Added by Acts 2005, 79th Leg., ch. 1310, Sec. 1, eff. June 18, 2005.

Sec. 2166.4542. PURCHASING CERTAIN LEASED SPACE.

Text of section effective until September 2, 2008.

(a) Subject to Section 2166.454(b), the commission may purchase any or all of the space described by Section 2166.454(a) in accordance with this section and Chapter 1232.

(b) The commission shall request the Texas Public Finance Authority to issue revenue obligations to finance the purchase price of any or all of the space described by Section 2166.454(a) that the commission elects to purchase under this section. The authority shall issue the revenue obligations in accordance with and subject to all provisions of Chapter 1232 applicable to revenue obligations, including all provisions relating to ensuring that the revenue obligations are paid, except that Section 1232.108(2) does not apply.

(c) The authority shall issue the revenue obligations in amounts sufficient to:

(1) pay the authority's expenses in connection with issuing the revenue obligations;

(2) pay the purchase price of the space described by Section 2166.454(a) included in the request of the commission according to the terms of the applicable existing lease with an option to purchase agreement or agreements; and

(3) if the commission considers it advisable to make capital improvements to the space, pay for making the capital improvements.

(d) At the time that a building is purchased under this section, money specifically appropriated by the legislature to an agency occupying space in the building for lease payments under the applicable lease with an option to purchase agreement, or the money available to and budgeted by the agency for that purpose, shall be transferred to the commission and used by the commission only to make the required lease or rental payments to the authority during the remainder of the state fiscal biennium during which the building was purchased under this section.

(e) This section expires September 2, 2008, except that this section is continued in effect after that date for the limited purpose of applying with regard to any transaction authorized by Section 2166.454 and this section that occurs before that date.

Added by Acts 2005, 79th Leg., ch. 1310, Sec. 1, eff. June 18, 2005.

SUBCHAPTER K. MONUMENTS, MEMORIALS, AND HISTORIC SITES

Sec. 2166.501. MONUMENTS AND MEMORIALS. (a) A monument or memorial for Texas heroes of the Confederate States of America or the Texas War for Independence or to commemorate another event or person of historical significance to Texans and this state may be erected on land owned or acquired by the state or, if a suitable contract can be made for permanent preservation of the monument or memorial, on private property or land owned by the federal government or other states.

(b) The graves of Texans described by Subsection (a) may be located and marked.

(c) The commission shall maintain a monument or memorial erected by this state to commemorate the centenary of Texas' independence.

(d) Before the erection of a new monument or memorial, the commission must obtain the approval of the Texas Historical Commission regarding the form, dimensions, and substance of, and inscriptions or illustrations on, the monument or memorial.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.5011. REMOVAL, RELOCATION, OR ALTERATION OF A MONUMENT OR MEMORIAL. (a) In this section, "monument or memorial" means a permanent monument, memorial, or other designation, including a statue, portrait, plaque, seal, symbol, building name,

or street name, that:

- (1) is located on state property; and
- (2) honors a citizen of this state for military or war-related service.

(b) Notwithstanding any other provision of this code, a monument or memorial may be removed, relocated, or altered only:

- (1) by the legislature;
- (2) by the Texas Historical Commission;
- (3) by the State Preservation Board; or
- (4) as provided by Subsection (c).

(c) A monument or memorial may be removed, relocated, or altered in a manner otherwise provided by this code as necessary to accommodate construction, repair, or improvements to the monument or memorial or to the surrounding state property on which the monument or memorial is located. Any monument or memorial that is permanently removed under this subsection must be relocated to a prominent location.

Added by Acts 2001, 77th Leg., ch. 377, Sec. 7, eff. Sept. 1, 2001.

Sec. 2166.502. CONTRACTS WITH TEXAS HISTORICAL COMMISSION. The commission may negotiate and contract with the Texas Historical Commission to assist and advise the commission with regard to the:

- (1) proper monuments and memorials to be erected, repaired, or moved to new locations;
- (2) selection of sites for those monuments and memorials; and
- (3) locating and marking of graves.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2166.503. ACQUISITION OF ARCHAEOLOGICAL, PALEONTOLOGICAL, AND HISTORIC SITES. (a) The commission may acquire by gift, devise, purchase, or exercise of its general power of eminent domain land in this state on which is located:

- (1) a building, site, or landmark of statewide historical significance associated with historic events or personalities;
- (2) a prehistoric ruin;
- (3) a burial ground;
- (4) an archaeological site;
- (5) a vertebrate paleontological site; or
- (6) a site containing fossilized footprints, an inscription made by human agency, or another archaeological, paleontological, or historic feature.

(b) For a historic site, building, or structure, the commission may exercise the power of eminent domain under Subsection (a) only on a proper showing that the exercise is necessary to prevent destruction or deterioration of the historic site, building, or structure.

(c) The commission may request from the Texas Historical Commission a certification or authentication of the worthiness of preservation of a feature listed in Subsection (a).

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER L. SPECIAL USES AND FACILITIES

Sec. 2166.551. CHILD CARE FACILITY IN STATE BUILDING. (a) The commission, in consultation with the Child Care Advisory Committee, shall determine whether a child care facility may be included in a state-owned office building constructed after September 1, 1989, that contains 100,000 square feet or more of net usable space.

(b) Before developing a rehabilitation or renovation plan for a project to rehabilitate or renovate substantially an existing state-owned office building containing 100,000 square feet or more of net usable space, the commission, in consultation with the Child Care Advisory Committee, shall determine whether a child care facility may be included in the rehabilitation or renovation project.

(c) The commission shall include a child care facility in a construction, rehabilitation, or renovation project if the commission, in consultation with the Child Care Advisory Committee, determines that the child care facility should be included.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 761, Sec. 12, eff. Sept. 1, 2001.

Sec. 2166.552. FINE ARTS PROJECTS. (a) A using agency that requests a project analysis by the commission for a building construction project that is estimated to cost more than \$250,000

may specify in the general description of the project that up to one percent of the amount of the original project cost estimate be spent for fine arts projects at or near the site of the project. The using agency may consult the Texas Commission on the Arts in preparing the general description of the project.

(b) The using agency, the commission, and the Texas Commission on the Arts may conduct a public hearing to take testimony from interested persons regarding the costs and benefits of using a portion of the cost of the project for fine arts projects.

(c) The commission shall initiate negotiations for and enter into a memorandum of understanding with the Texas Commission on the Arts to establish guidelines for implementing this section. The memorandum of understanding must be adopted by the governing bodies of the commission and the Texas Commission on the Arts. After a memorandum of understanding is adopted, the Texas Commission on the Arts shall publish the memorandum of understanding in the Texas Register.

(d) If the legislature authorizes and appropriates money for a fine arts project, the commission shall cooperate with the Texas Commission on the Arts and consult it for advice in determining how to use the money appropriated for the fine arts project.

(e) In selecting a fine arts project, emphasis should be placed, whenever feasible, on works by living Texas artists. Consideration shall be given to artists of all ethnic origins.

(f) This section does not limit, restrict, or prohibit the commission from including expenditures for fine arts in its original project cost estimate.

(g) In this section, "fine arts project" includes murals, fountains, mosaics, and other aesthetic improvements. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.06(b), eff. Sept. 1, 1997.

Sec. 2166.553. ACQUISITION AND CONSTRUCTION OF BUILDINGS FOR HEALTH AND HUMAN SERVICES AGENCIES. (a) The commission may not acquire or approve construction of a building, including a building the acquisition or construction of which is financed under Chapter 1232, to serve the needs of a single health and human services agency unless the agency can provide a reason to the commission for not sharing space in the building with one or more other health and human services agencies.

(b) In this section, "health and human services agency" means the:

- (1) Interagency Council on Early Childhood Intervention Services;
- (2) Texas Department on Aging;
- (3) Texas Commission on Alcohol and Drug Abuse;
- (4) Texas Commission for the Blind;
- (5) Texas Commission for the Deaf and Hard of Hearing;
- (6) Texas Department of Health;
- (7) Texas Department of Human Services;
- (8) Texas Department of Mental Health and Mental Retardation;
- (9) Texas Rehabilitation Commission; and
- (10) Department of Protective and Regulatory Services.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 53, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.242, eff. Sept. 1, 2001.