

## **BILL ANALYSIS**

C.S.H.B. 3062  
By: Hilderbran  
Culture, Recreation, & Tourism  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

To honor and celebrate Texas' rich musical legacy the state needs an official museum of Texas music history. The museum would preserve, recognize, and celebrate Texas music and music history. The museum would operate using a similar framework to the one created for the Bullock Museum of Texas History, but no state money would be appropriated to create the museum. This legislation would provide the state's blessing on the creation of a music museum and incentivize whatever group is able to put the best proposal together. A proposal advisory council would be created to oversee selection of a contractor for construction and initial operation of the museum through a request for proposal. The proposal advisory council would consist of six members and advise the music office in the Governor's Office based on specified criteria. A second advisory board appointed by the Governor would advise the museum on content, once the operator for the museum has been chosen. The museum operator would be able to sell music, host live music performances, and to host recordings. In all other respects, the museum operator would market the museum and be able to operate as a contractor to make a profit. The Governor's music office would administer the contract with the operator. The operator, however, would retain the ability to contract with third parties to build the museum, solicit donations, charge fees, and receive charitable contributions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Adds Chapter 446 of the Government Code, by adding Subchapter A, A-1, B, C, D, and E as follows.

Subchapter A GENERAL PROVISIONS.

Sec. 446.001 DEFINITIONS

(1) Establishes that the museum operator is the person selected to operate the museum by the music office.

(2) States that the music office is the Texas Commission on the Arts established in the Governor's Office by Chapter 485 of the Government Code.

Sec. 446.002 CREATION; PURPOSE

(a) States that the purpose of the museum is to educate, preserve, and recognize Texas music.

(b) Exempts the museum from the naming procedures required for state buildings.

SUBCHAPTER A-1

Sec. 446.021 DEFINITION

Defines proposal advisory council for the subchapter.

Sec. 446.022 REQUEST FOR PROPOSAL PROCESS

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States that the Governor's music office shall establish a process to select a museum operator.

Sec. 446.023 CRITERIA

- (a) Directs the music office to establish criteria for selecting a contractor.
- (b) Requires certain criteria to be amongst those set forth by the music office.
  - (1) No money can be required from the state.
  - (2) Certain information must be required in the proposals
    - (A) Information on the construction cost;
    - (B) Proposed location of the museum;
    - (C) Sources of Funding for construction of the museum;
    - (D) Annual revenue and usage of the museum;
    - (E) Proposed museum operator
  - (3) The music office must be allowed to change the museum operator after a set period of time.

Sec. 446.024 PROPOSAL ADVISORY COUNCIL

- (a) Establishes a proposal advisory council to advise the music office on the request for proposal process.
- (b) Sets the membership of the council at six members to be appointed by the Governor and requires that the 6 members be appointed from:
  - (1) One representative from the Texas Commission on the Arts;
  - (2) One representative from the State Preservation Board;
  - (3) One representative from the Texas Historical Commission;
  - (4) One representative from the Texas Economic Development and Tourism Office;
  - (5) One representative involved in Tourism-related activities at the Texas Department of Transportation;
  - (6) One representative from the music office
- (c) The music office representative serves as the presiding member of the Council.
- (d) The council meets when the music office representative sets meetings.
  
- (e) The council shall advise the music office regarding:
  - (1) criteria used to select a proposal for construction and operation of the museum;
  - (2) selection of an operator after the constructor and operator of the museum has been selected.
- (f) Government Code Section 2110, state law regarding advisory councils, does not apply to this bill.

Section 446.026 The proposal advisory council is abolished one year after the music office contracts with the initial museum operator.

SUBCHAPTER B ADMINISTRATIVE PROVISIONS

Sec. 446.051 ADMINISTRATION.

Provides that the music office shall be the actual administrator of the contract with the museum operator.

Sec. 446.052 ADVISORY BOARD.

- (a) Creates an advisory board, which is different from the proposal board identified in SUBCHAPTER A-1, which would advise the music office on content and other music related issues.
- (b) The Governor's office would appoint this Advisory Board and one member must be from the Texas Commission on the Arts.

Sec. 446.053 MUSEUM NAME.

Allows the music office to pick the name for the museum and requires that the music office consider the names chosen by the operator, but does not bind the music office to use the identified names.

Sec. 446.054 PERSONNEL.

Allows that the museum operator may hire personnel necessary for the museum, but states that such personnel are not state office employees.

## SUBCHAPTER C POWERS AND DUTIES

Sec. 446.101 GENERAL POWERS

- (a) Establishes that exhibits, programs and activities for carrying out the purpose of celebrating Texas music shall be conducted by the museum. Refers to the broad variety of Texas musical styles that form some of the music to be showcased in the museum.
- (b) Gives the music office or museum operator broad authority to promote the museum's purpose.

Sec. 446.102 SALE OF MUSIC

The museum operator is authorized to sell music from the museum's website.

Sec. 446.103 LIVE MUSIC

The museum operator may host live performances.

Sec. 446.104 FILMS, RECORDINGS, AND OTHER PRODUCTS

The museum operator is authorized to develop and produce films, musical recordings or compilations and may retain royalties from the production, distribution, exhibition or sale of these events.

Sec. 446.105 MEMBERSHIP PROGRAM

Authorizes the museum operator to establish a membership program.

Sec. 446.106 MARKETING AND PUBLIC RELATIONS

- (a) The museum operator is authorized to market and publicize the museum's exhibits, programs, and activities.
- (b) The museum operator is authorized to
  - (1) Use public relations
  - (2) Publish promotional materials and information
  - (3) Advertise

Sec. 446.107 VENDING FACILITIES

- (a) The museum operator is also authorized to operate:
  - (1) a gift shop
  - (2) food services, including restaurants, cafeterias, and vending machines
  - (3) such other services and facilities convenient or necessary for visitors to the museum.
  - (4) pay phones
  - (5) other services and facilities necessary for the museum
- (b) The law requiring that blind people be able to operate the vending machines in the museum is not applicable to the museum operators.

Sec. 446.108 TOURS; PARKING AND TRANSPORTATION

The museum operator may provide for parking and coordinate tours with other folks.

Sec. 446.109 PRIVATE EVENTS.

The museum operator may hold private events at the museum and may restrict attendance to the events.

Sec. 446.110 ALCOHOLIC BEVERAGES

The museum operator may sell alcoholic beverages for consumption on the premises, as long as the operator must obtain the appropriate permit or license from the Texas Alcoholic Beverage Commission.

Sec. 446.111 SUPPORT ORGANIZATIONS

The museum operator may establish and maintain organizations for the purpose of supporting the museum. This section permits creation of a nonprofit to support the museum.

SUBCHAPTER D CONTRACTS

Sec. 446.151 CONTRACT TO OPERATE THE MUSEUM

- (a) The music office shall contract with the museum operator for the following purposes
  - (1) construct the museum, with the state as the owner of the museum and the operator the holder of a lease to operate the museum; or
  - (2) operate the museum on private property owned or leased by the museum operator. The music office has the option of approving either public ownership of the museum and land or private ownership, but the contents of the museum shall merely be leased by the operator and shall be owned by the state.
- (b) The music office shall award the contract based on the criteria developed initially by the music office.
- (c) The music office may not spend state money to construct or operate the museum, but may spend state money to administer the contract with the museum operator.
- (d) The contracting provisions regarding bidding in Subtitle D of Title 10, and Government Code Section 2261 and 2260 do not apply to this bill. The request for proposal process run by the music office does not have to conform with the lowest competitive bidding requirements.

Sec. 446.152 CONTRACT TERMS

- (a) The music office may include in the contract with the museum operator:
  - (1) provisions requiring the music office's duties to market the museum, including promotion of the museum in tourist publications;
  - (2) provisions relating to the museum operator's right to access and exhibit music paraphernalia;
  - (3) any other provisions necessary to encourage potential operators to submit bids. This provision is intentionally written broadly to encourage the music office to provide incentives for bids.
- (b) The music office may amend or enter into a new contract

Sec. 446.153 CONTRACTS BETWEEN OPERATOR AND THIRD PARTIES

The museum operator may enter into contracts with third parties for exhibits, programs and such other services as our necessary to construct and operate the museum.

SUBCHAPTER E FINANCIAL PROVISIONS

Sec. 446.201 GENERAL FUNDING AND SPENDING AUTHORITY

- (a) The cost of operating the museum shall be paid for by revenues generated by the museum.
- (b) The museum operator may spend any money received for any purpose connected with the museum.
- (c) The museum may share revenue generated by the museum with the state.

Sec. 446.202 GIFTS, GRANTS AND DONATIONS

- (a) The museum operator must raise money from individuals, and private and non-profit organizations.
- (b) The music office may accept donations and grants for the museum.
- (c) Items donated to the museum operator are state property.

Sec. 446.203 FEES

- (a) The museum operator is authorized to collect fees for:
  - (1) admission to exhibits, theaters, programs, and activities in the museum;
  - (2) the parking facilities and transportation;
  - (3) facility rental

Sec. 446.204 AUDIT

The transaction, funds, and programs of the museum are subject to audit by the state auditor.

Sec. 446.205 STATE EMPLOYEE CHARITABLE CONTRIBUTIONS

- (1) the museum is eligible for charitable funding from state employees through state employee giving campaigns under Chapter 659 of the Government Code;
- (2) a state employee is entitled to authorize a deduction to contribute to the museum

Sec 446.206 INSURANCE

The museum operator shall purchase insurance for the museum and for the museum contents.

**EFFECTIVE DATE**

SECTION 2. Effective date: upon passage or September 1, 2005.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute moves text regarding construction from Section 446.022 because the topic of construction is addressed in Section 446.024. The substitute adds to Section 446.024 the text which had been in Section 446.025. More substantively, the substitute changes Section 446.025 and alters the date when the proposal advisory council which chooses the operator is abolished one year after adoption of the bill instead of in 2011 as in the original bill.

In Subchapter B, Section 446.051, the substitute specifies that the music office shall administer the contract with the operator rather than the chapter as a whole. The substitute adds Section 446.053 which adds a provision allowing the music office to name the museum. The substitute adds the specification in Section 446.054 that employees of the museum operator are not state employees.

In Subchapter C, the bill adds several additional types of music to those listed in the original draft in Section 446.101. In Section 446.102, the substitute cuts subsection (b) which would have allowed the operator to sell commercially produced music in addition to music from the museum. The substitute also adds Section 446.110 which allows the operator to sell alcohol with the appropriate permit, a slight alteration from the former Section 446.109(b) which did not require the permit. The substitute also cuts the former Section 446.112 which required facility accessibility and a plan for ensuring that the languages other English can be discussed.

Subchapter D regarding Contracts expands and amends what formerly had been Section 446.111. The new Section 446.151 states that the music office must contract with the museum operator to operate and construct the museum rather than may as in the old Section 446.111. The remaining additions to Section 446.151 require that the music office must be awarded based on the criteria developed for to select the initial operator. Under Section 446.151, the music office is prohibited from directly spending its own money to construct or operate the museum and is only allowed to administer the contract with the operator. Finally, this subchapter adds a provision in Section 446.151 which states that the public bidding statutes in Government Code Sections 2261 and Section 2262 do not apply. Section 446.152 of this subchapter is also new, allowing the music office discretion to fashion bids as it sees fit to market the museum, provide access to the contents, and include other provisions necessary to solicit bids. Section 446.153 clarifies that contracts with third parties may be entered into. This addition changes the old Section 446.111 by clarifying that marketing and loans of exhibits are allowed.

Subchapter E in the substitute was subchapter D with several changes. Subsection (c) of Section 446.201 is added to allow the museum operator to share revenue generated by the museum with the state. Section 446.202 adds a section that specifies that all items donated to the museum operator or the music office are state property. Section 446.156 regarding a state fund for the museum is struck. The comptroller and the state auditors oversight roles and the annual report in the former Section 446.156 were also struck. The author deemed neither necessary as the museum operator will be responsible for funding and the music office shall oversee the process.

The substitute strikes Music, Film, Television, and Multimedia Office established in Chapter 485 from Page 1, Lines 11 and 12 and substitute the Texas Commission on the Arts.