

BILL ANALYSIS

H.B. 2460
By: Flynn
Culture, Recreation, & Tourism
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Commission on the Arts (TCA) helps develop a receptive climate for the arts through the support and development of arts and cultural industries in Texas. The agency's main functions include: providing grants to nonprofit arts, educational, and governmental organizations; promoting arts and cultural events to increase participation in the arts and encourage tourism; and marketing and raising funds to support the agency's programs.

The agency operates with an annual budget of about \$5 million and a staff of 19. About two-thirds of TCA's funding supports grants.

The agency is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Sunset Commission found that state support of the arts can help stimulate economic development and tourism. However, with limited resources available, the Sunset Commission expressed concern about the agency's expenditures, particularly its administrative costs.

House Bill 2460 continues the TCA for two years and requires a follow-up Sunset review focused on how the agency spends its funds. HB 2460 requires TCA to adopt rules to govern the acceptance of private funds to ensure that the use of the funds supports the agency's key functions. HB 2460 requires the TCA to adopt rules to ensure accountability of its special initiative grants.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Commission on the arts in SECTION 7 and SECTION 8.

ANALYSIS

House Bill 2460 continues the Texas Commission on the Arts (TCA) for two years. HB 2460 continues the agency through 2009, subject to abolishment unless continued by the 81st Legislature. The bill requires public membership on TCA's policymaking body. HB 2460 provides that a person may not be a member of the TCA if the person or his/her spouse is employed by or participates in the management of a business or other organization receiving money from the TCA; the bill also provides that a person may not be a member of TCA if the person or his/her spouse owns or controls, directly or indirectly, more than 10 percent interest in a business entity or other organization receiving money from the TCA. HB 2460 provides that a person may not be a member of the TCA if the person or his/her spouse uses or receives a substantial amount of money from the TCA, other than compensation or reimbursement authorized by law for TCA activities. The bill removes prior language regarding the ability of an art Texas Trade Association officer, employee, or paid consultant to be a commission member or employee and states that a person may not be a commission member or employee in a "bona fide executive, administrative, or professional capacity," as the term is used according to the Fair Labor Standards Act of 1938 if the person is an officer, employee, or consultant of an art Texas Trade Association or the person's spouse is an officer, employee, or paid consultant of an art Texas Trade Association.

HB 2460 specifies grounds for removal of a member of the TCA policymaking and body requires specific provisions relating to conflicts of interest. Includes a specification that the definition of the Texas Trade Association to means a statewide association. HB 2460 requires that information be maintained on complaints, and provides for the TCA to make information available describing its procedures for complaint investigation and resolution. The bill provides for the TCA to periodically notify the complaint parties of the status of the complaint until final disposition, and removes the prior language regarding complaints.

HB 2460 requires the training of members of policy making bodies of the TCA, and provides for the training program to give the person information regarding:

- legislation that creates the TCA's programs, functions, rules, and the budget;
- results of the most recent formal audit;
- requirements of laws relating to open meeting, public information, administrative procedure, and conflict of interest; and,
- Ethics policies.

All other training program information is removed.

HB 2460 provides for a person appointed to the TCA to be entitled to reimbursement for travel expenses incurred in attending the training program.

HB 2460 requires the TCA to implement a policy requiring the use of appropriate technology to improve functionality of the commission; the bill also requires the policy to ensure that the public is able to interact with the TCA via the Internet.

HB 2460 requires the TCA to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution (ADR) procedures. The bill provides for the conforming TCA's ADR procedures to model guidelines used by the State Office of Administrative Hearings. The bill requires the TCA to designate a trained person to coordinate the implementation of the policy, serve a resource for training needed to implement the procedures for negotiated rulemaking or ADR, and to collect data relevant to the effectiveness of such procedures.

HB 2460 requires the TCA to adopt rules to govern the review, approval and oversight of its special initiative grants. The bill requires rules to provide for TCA's approval of these grants, except in limited circumstances requiring immediate action. The bill requires rules to specify criteria for review and evaluation of these grants, and procedures for determining the amounts of these grants.

HB 2460 requires the TCA to adopt rules to govern the acceptance of private gifts, grants, and donations to ensure that the use of the gifts, grants, and donations supports the agency's key functions. HB 2460 requires TCA, through its adopted rules, to ensure the purpose of the gifts, grants, and donations support their statutory priorities and funding strategies, prohibit the agency from creating and directly administering programs to qualify for, or comply with, conditions for accepting a private donation, and to evaluate any obligations it may have to meet in order to accept the gift, including required matching funds and another other additional costs.

Section 444.006(c) of the Government Code is repealed. The bill requires a follow-up Sunset review, to include any recommendations, that focuses on TCA spends its funds, particularly its expenditures on administration and overhead. The rules and policies required under this bill shall be adopted by March 1, 2008. Further, the language regarding members of the TCA only apply to members appointed on or after September 1, 2007. The language regarding complaints only affects those filed on or after September 1, 2007.

EFFECTIVE DATE

September 1, 2007.