

By: Flynn

H.B. No. 2460

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas Commission  
3 on the Arts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 444.002(a), Government Code, is amended  
6 to read as follows:

7 (a) The Texas Commission on the Arts is subject to Chapter  
8 325 (Texas Sunset Act). Unless continued in existence as provided  
9 by that chapter, the commission is abolished and this chapter  
10 expires September 1, 2009 [~~2007~~].

11 SECTION 2. Section 444.003(b), Government Code, is amended  
12 to read as follows:

13 (b) A person may not be a member of [~~is not eligible for~~  
14 ~~appointment to~~] the commission if the person or the person's  
15 spouse:

16 (1) is employed by or participates in the management  
17 of a business entity or other organization receiving money from the  
18 commission;

19 (2) owns or controls, directly or indirectly,  
20 [~~directly owns or controls~~] more than a 10 percent interest in a  
21 business entity or other organization receiving money [~~funds~~] from  
22 the commission; or

23 (3) [~~(2)~~] uses or receives a substantial amount of  
24 tangible goods, services, or money [~~funds~~] from the commission,

1 other than compensation or reimbursement authorized by law for  
2 commission membership, attendance, or expenses.

3 SECTION 3. Sections 444.006(a), (b), (d), (f), and (g),  
4 Government Code, are amended to read as follows:

5 (a) A person may not be [~~serve as~~] a member of the commission  
6 or act as the general counsel to the commission if the person is  
7 required to register as a lobbyist under Chapter 305 because of the  
8 person's activities for compensation on behalf of a profession  
9 related to the operation of the commission.

10 (b) A person may not be a member of the commission and may  
11 not be a commission employee employed in a "bona fide executive,  
12 administrative, or professional capacity," as that phrase is used  
13 for purposes of establishing an exemption to the overtime  
14 provisions of the federal Fair Labor Standards Act of 1938 (29  
15 U.S.C. Section 201 et seq.) if:

16 (1) the person is an officer, employee, or paid  
17 consultant of a Texas trade association in the field of art; or

18 (2) the person's spouse is an officer, manager, or paid  
19 consultant of a Texas trade association in the field of art [~~An~~  
20 officer, employee, or paid consultant of a Texas trade association  
21 in the field of art may not be a member of the commission or employee  
22 of the commission who is exempt from the state's position  
23 classification plan or is compensated at or above the amount  
24 prescribed by the General Appropriations Act for step 1, salary  
25 group 17, of the position classification salary schedule].

26 (d) It is a ground for removal from the commission that [~~if~~]  
27 a member:

1           (1) does not have at the time of taking office the  
2 qualifications required by Section 444.003(a) [~~violates a~~  
3 ~~prohibition established by this section~~];

4           (2) does not maintain during service on the commission  
5 the qualifications required by Section 444.003(a);

6           (3) is ineligible for membership under Subsection (a)  
7 or (b);

8           (4) cannot because of illness or disability discharge  
9 the member's duties for a substantial part of the member's term [~~for~~  
10 ~~which the member is appointed~~]; or

11           (5) [~~(3)~~] is absent from more than half of the  
12 regularly scheduled commission meetings that the member is eligible  
13 to attend during a calendar year without an excuse approved [~~unless~~  
14 ~~the absence is excused~~] by majority vote of the commission.

15           (f) If the executive director has knowledge that a potential  
16 ground for removal exists, the executive director shall notify the  
17 presiding officer of the commission of the potential ground. The  
18 presiding officer shall then notify the governor and the attorney  
19 general that a potential ground for removal exists. If the  
20 potential ground for removal involves the presiding officer, the  
21 executive director shall notify the next highest ranking officer of  
22 the commission, who shall then notify the governor and the attorney  
23 general that a potential ground for removal exists.

24           (g) In [~~For the purposes of~~] this section, [~~a~~] "Texas trade  
25 association" means [~~is~~] a [~~nonprofit~~] cooperative[~~7~~] and  
26 voluntarily joined statewide association of business or  
27 professional competitors in this state designed to assist its

1 members and its industry or profession in dealing with mutual  
2 business or professional problems and in promoting their common  
3 interest [~~obtaining public money or influencing governmental~~  
4 ~~policy~~].

5 SECTION 4. Section 444.012, Government Code, is amended to  
6 read as follows:

7 Sec. 444.012. [~~INFORMATION OF INTEREST,~~] COMPLAINTS. (a)  
8 The commission shall maintain a system to promptly and efficiently  
9 act on complaints filed with the commission. The commission shall  
10 maintain information about parties to the complaint, the subject  
11 matter of the complaint, a summary of the results of the review or  
12 investigation of the complaint, and its disposition.

13 (b) The commission shall make information available  
14 describing its procedures for complaint investigation and  
15 resolution.

16 (c) The commission shall periodically notify the complaint  
17 parties of the status of the complaint until final disposition  
18 [~~prepare information of public interest describing the functions of~~  
19 ~~the commission and the procedures by which complaints are filed~~  
20 ~~with and resolved by the commission. The commission shall make the~~  
21 ~~information available to the public and appropriate state~~  
22 ~~agencies~~].

23 [~~(b) The commission by rule shall establish methods by which~~  
24 ~~consumers and grant recipients are notified of the name, mailing~~  
25 ~~address, and telephone number of the commission for the purpose of~~  
26 ~~directing complaints to the commission.~~

27 [~~(c) The commission shall keep information about each~~

1 ~~complaint filed with the commission. The information must include:~~

2 ~~[(1) the date the complaint is received,~~

3 ~~[(2) the name of the complainant,~~

4 ~~[(3) the subject matter of the complaint,~~

5 ~~[(4) a record of all persons contacted in relation to~~  
6 ~~the complaint,~~

7 ~~[(5) a summary of the results of the review or~~  
8 ~~investigation of the complaint; and~~

9 ~~[(6) for complaints for which the commission took no~~  
10 ~~action, an explanation of the reason the complaint was closed~~  
11 ~~without action.~~

12 ~~[(d) The commission shall keep a file about each written~~  
13 ~~complaint filed with the commission that the commission has~~  
14 ~~authority to resolve. The commission shall provide to the person~~  
15 ~~filing the complaint, and the persons or entities complained about,~~  
16 ~~the commission's policies and procedures pertaining to complaint~~  
17 ~~investigation and resolution. The commission, at least quarterly~~  
18 ~~and until final disposition of the complaint, shall notify the~~  
19 ~~person filing the complaint, and the persons or entities complained~~  
20 ~~about, of the status of the complaint unless the notice would~~  
21 ~~jeopardize an undercover investigation.]~~

22 SECTION 5. Section 444.014, Government Code, is amended by  
23 amending Subsections (b) and (c) and by adding Subsection (d) to  
24 read as follows:

25 (b) A person who is appointed to and qualifies for office as  
26 a member of the commission may not vote, deliberate, or be counted  
27 as a member in attendance at a meeting of the commission until the

1 person completes a training program that complies with [~~Before a~~  
2 ~~member of the commission may assume the member's duties and before~~  
3 ~~the member may be confirmed by the senate, the member must complete~~  
4 ~~at least one course of the training program established under]~~ this  
5 section.

6 (c) The training program must provide the person with  
7 information [~~to the member~~] regarding:

8 (1) the [~~enabling~~] legislation that created the  
9 commission; its programs, functions, rules, and budget [~~and its~~  
10 ~~policy-making body to which the member is appointed to serve~~];

11 (2) the results of the most recent formal audit of [~~the~~  
12 ~~programs operated by]~~ the commission;

13 (3) the requirements of laws relating to open  
14 meetings, public information, administrative procedure, and  
15 conflict of interest [~~role and functions of the commission~~]; and

16 (4) [~~the rules of the commission, with an emphasis on~~  
17 ~~the rules that relate to disciplinary and investigatory authority,~~

18 [~~(5) the current budget for the commission,~~

19 [~~(6) the results of the most recent formal audit of the~~  
20 ~~commission,~~

21 [~~(7) the requirements of the:~~

22 [~~(A) open meetings law, Chapter 551,~~

23 [~~(B) open records law, Chapter 552, and~~

24 [~~(C) administrative procedure law, Chapter 2001,~~

25 [~~(8) the requirements of the conflict of interest laws~~  
26 ~~and other laws relating to public officials, and~~

27 [~~(9)] any applicable ethics policies adopted by the~~

1 commission or the Texas Ethics Commission.

2 (d) A person appointed to the commission is entitled to  
3 reimbursement, as provided by the General Appropriations Act, for  
4 the travel expenses incurred in attending the training program  
5 regardless of whether the attendance at the program occurs before  
6 or after the person qualifies for office.

7 SECTION 6. Subchapter A, Chapter 444, Government Code, is  
8 amended by adding Sections 444.015 and 444.016 to read as follows:

9 Sec. 444.015. USE OF TECHNOLOGY. The commission shall  
10 implement a policy requiring the commission to use appropriate  
11 technological solutions to improve the commission's ability to  
12 perform its functions. The policy must ensure that the public is  
13 able to interact with the commission on the Internet.

14 Sec. 444.016. NEGOTIATED RULEMAKING AND ALTERNATIVE  
15 DISPUTE RESOLUTION POLICY. (a) The commission shall develop and  
16 implement a policy to encourage the use of:

17 (1) negotiated rulemaking procedures under Chapter  
18 2008 for the adoption of commission rules; and

19 (2) appropriate alternative dispute resolution  
20 procedures under Chapter 2009 to assist in the resolution of  
21 internal and external disputes under the commission's  
22 jurisdiction.

23 (b) The commission's procedures relating to alternative  
24 dispute resolution must conform, to the extent possible, to any  
25 model guidelines issued by the State Office of Administrative  
26 Hearings for the use of alternative dispute resolution by state  
27 agencies.

1        (c) The commission shall designate a trained person to:

2                (1) coordinate the implementation of the policy  
3 adopted under Subsection (a);

4                (2) serve as a resource for any training needed to  
5 implement the procedures for negotiated rulemaking or alternative  
6 dispute resolution; and

7                (3) collect data concerning the effectiveness of those  
8 procedures, as implemented by the commission.

9                SECTION 7. Section 444.024, Government Code, is amended by  
10 adding Subsection (d) to read as follows:

11        (d) The commission shall adopt rules to govern the review,  
12 approval, and oversight of special initiative grants. The rules  
13 must provide for:

14                (1) commission approval of special initiative grants,  
15 including expedited approval of the grants in limited circumstances  
16 for cases requiring immediate action;

17                (2) criteria to be used in reviewing and evaluating  
18 special initiative grant applications; and

19                (3) procedures to be used in determining the amounts  
20 of the special initiative grants.

21                SECTION 8. Section 444.025, Government Code, is amended by  
22 adding Subsection (j) to read as follows:

23        (j) The commission shall adopt rules to govern its  
24 acceptance of private gifts, grants, and donations to ensure that  
25 the use of the money or property supports the commission's primary  
26 functions. At a minimum, the rules must:

27                (1) require the commission to evaluate a gift, grant,



1 or donation before acceptance to ensure that the purpose of the  
2 gift, grant, or donation supports the commission's priorities as  
3 established by statute and the commission's appropriations  
4 pattern;

5 (2) prohibit the commission from creating and directly  
6 administering programs for the purpose of qualifying for or  
7 complying with a condition for the acceptance of private funding;  
8 and

9 (3) require the commission, before acceptance of a  
10 gift, grant, or donation, to evaluate any obligations the  
11 commission would have to meet in order to accept the gift, grant, or  
12 donation, including required matching funds, the amount of staff  
13 time and effort, and any other additional costs.

14 SECTION 9. Section 444.006(c), Government Code, is  
15 repealed.

16 SECTION 10. (a) In this section:

17 (1) "Sunset commission" means the Sunset Advisory  
18 Commission.

19 (2) "Commission" means the Texas Commission on the  
20 Arts.

21 (b) In performing its duties under Chapter 325, Government  
22 Code (Texas Sunset Act), during the period before the commission is  
23 scheduled to be abolished, the sunset commission shall focus on the  
24 commission's expenditures, including determining the percentage of  
25 available funding spent by the commission on overhead and  
26 administrative costs. The sunset commission may include any  
27 recommendations it considers appropriate in its report to the 81st

1 Legislature.

2 (c) This section expires September 1, 2009.

3 SECTION 11. Not later than March 1, 2008, the Texas  
4 Commission on the Arts shall:

5 (1) adopt the rules required by Sections 444.024(d)  
6 and 444.025(j), Government Code, as added by this Act; and

7 (2) adopt the policies required by Sections 444.015  
8 and 444.016, Government Code, as added by this Act.

9 SECTION 12. (a) The changes in law made by this Act in the  
10 prohibitions or qualifications applying to a member of the Texas  
11 Commission on the Arts do not affect the entitlement of a member  
12 serving on the Texas Commission on the Arts immediately before  
13 September 1, 2007, to continue to serve and function as a member of  
14 the Texas Commission on the Arts for the remainder of the member's  
15 term. Those changes in law apply only to a member appointed on or  
16 after September 1, 2007.

17 (b) The changes in law made by this Act to Section 444.012,  
18 Government Code, relating to the investigation of a complaint filed  
19 with the Texas Commission on the Arts apply only to a complaint  
20 filed on or after September 1, 2007. A complaint filed with the  
21 commission before September 1, 2007, is governed by the law as it  
22 existed immediately before that date, and the former law is  
23 continued in effect for that purpose.

24 SECTION 13. This Act takes effect September 1, 2007.