

By: Swinford

H.B. No. 3949

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the transfer of the Texas Commission on the Arts to the
3 office of the governor and the dedication of certain sales and use
4 tax and franchise tax revenue to the Music, Film, and Arts Office
5 operating fund.

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

7 SECTION 1. The heading to Chapter 485, Government Code, is
8 amended to read as follows:

9 CHAPTER 485. MUSIC, FILM, [~~TELEVISION,~~] AND ARTS [~~MULTIMEDIA~~]
10 INDUSTRIES

11 SECTION 2. Subchapter A, Chapter 485, Government Code, is
12 amended to read as follows:

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 485.001. DEFINITIONS. In this chapter:

15 (1) "Council" means the Texas Advisory Council on the
16 Arts.

17 (2) "Director" means the director appointed under
18 Section 485.003.

19 (3) "Office" [~~,"office"]~~ means the Music, Film,
20 [~~Television,~~] and Arts [~~Multimedia~~] Office.

21 Sec. 485.002. ESTABLISHMENT. The Music, Film,
22 [~~Television,~~] and Arts [~~Multimedia~~] Office is established in the
23 office of the governor.

24 Sec. 485.003. DIRECTOR; STAFF. The governor may appoint

1 ~~[employ]~~ a director who may employ other employees necessary to
2 carry out the office's duties.

3 Sec. 485.004. PROMOTION; DUTIES. (a) The office shall
4 promote the development of the music, film, and arts industries
5 ~~[industry]~~ in the state by informing members of those industries
6 ~~[that industry]~~ and the public about the resources available in the
7 state for music, film, and art production.

8 (b) ~~[The office shall promote the development of the film,~~
9 ~~television, and multimedia industries in this state by informing~~
10 ~~members of those industries and the public of the resources~~
11 ~~available in this state for film, television, and multimedia~~
12 ~~production.~~

13 ~~[(c)]~~ State agencies and political subdivisions of this
14 state shall cooperate with the office to the greatest extent
15 possible to fully implement the goal of promoting the development
16 of the music, film, ~~[television,~~ and arts ~~[multimedia]~~ industries
17 in this state.

18 Sec. 485.005. ADVISORS. (a) The office may appoint
19 advisors to assist in the administration of this chapter.

20 (b) An advisor serves without compensation but is entitled
21 to necessary and actual expenses incurred in performing duties
22 under this chapter.

23 (c) The Texas Advisory Council on the Arts is an advisory
24 council to the governor.

25 Sec. 485.00501. COUNCIL COMPOSITION. (a) The Texas
26 Advisory Council on the Arts is composed of nine members appointed
27 by the governor.

1 (b) Council members must represent all fields of the arts
2 and be widely known for their professional competence and
3 experience in connection with the arts. Appointments to the
4 council shall be made without regard to the race, color,
5 disability, sex, religion, age, or national origin of the
6 appointees.

7 (c) A person is not eligible for appointment to the council
8 if the person or the person's spouse:

9 (1) directly owns or controls more than a 10 percent
10 interest in a business entity or other organization receiving funds
11 from the council; or

12 (2) uses or receives a substantial amount of tangible
13 goods, services, or funds from the council, other than compensation
14 or reimbursement authorized by law for membership, attendance, or
15 expenses.

16 Sec. 485.00502. COMPENSATION. A member of the council is
17 entitled to reimbursement for travel and other necessary expenses
18 in the performance of council business in an amount not exceeding
19 the amount authorized to be paid a member of the legislature for
20 similar expenses.

21 Sec. 485.00503. OFFICERS. The governor shall designate a
22 member of the council as the presiding officer of the council to
23 serve in that capacity at the pleasure of the governor. The council
24 may elect from its members other officers.

25 Sec. 485.00504. CONFLICT OF INTEREST; APPLICABILITY OF
26 OTHER LAW. (a) A person may not serve as a member of the council if
27 the person is required to register as a lobbyist under Chapter 305

1 because of the person's activities for compensation on behalf of a
2 profession related to the operation of the council.

3 (b) Chapter 2110 does not apply to the council.

4 Sec. 485.00505. MEETINGS. The council may meet at the times
5 and places within the state that the governor designates.

6 Sec. 485.00506. RULES. The council may adopt rules to
7 govern itself, its officers, and its committees and may prescribe
8 the duties of its officers, consultants, and employees.

9 Sec. 485.00507. CONSULTANTS. The council may appoint
10 uncompensated volunteer consultants to the council.

11 Sec. 485.00508. RESPONSIBILITIES OF COUNCIL, EXECUTIVE
12 DIRECTOR, AND STAFF. (a) The council shall develop and implement
13 policies that clearly delineate the criteria for funding
14 recommendations under this subchapter.

15 (b) In advising the governor on prospective grant goals, the
16 council may consider:

17 (1) methods to develop a receptive climate for the
18 arts that will culturally enrich and benefit residents of this
19 state;

20 (2) methods to make visits and vacations to the state
21 more appealing to the world;

22 (3) methods to attract outstanding artists to become
23 state residents;

24 (4) activities such as the sponsorship of lectures and
25 exhibitions and the central compilation and dissemination of
26 information on the progress of the arts in the state;

27 (5) information necessary to advise the governor on

1 the creation, acquisition, construction, erection, or remodeling
2 by the state of a work of art; and

3 (6) information necessary to advise the governor, on
4 the governor's request, on the artistic character of buildings
5 constructed, erected, or remodeled by the state.

6 (c) The council may not knowingly foster, encourage,
7 promote, or fund any project that includes obscene material as
8 defined by Section 43.21, Penal Code.

9 Sec. 485.00509. EXPENDITURES FOR FINE ARTS PROJECTS ON
10 CERTAIN PUBLIC CONSTRUCTION PROJECTS. (a) In this section,
11 "construction," "cost of a project," "project," and "using agency"
12 have the meanings assigned by Section 2166.001.

13 (b) Any using agency exempt from the application of Chapter
14 2166 under Section 2166.003 and any county, municipality, or other
15 political subdivision of this state undertaking a public
16 construction project estimated to cost more than \$250,000 may
17 specify that a percentage not to exceed one percent of the cost of
18 the project shall be used for fine arts projects at or near the site
19 of the construction project.

20 (c) The using agency or the governing body of a political
21 subdivision may consult and cooperate with the council for advice
22 in determining how to use the portion of the cost set aside for fine
23 arts purposes.

24 (d) The council shall place emphasis on works by living
25 Texas artists whenever feasible and, when consulting with the
26 governing body of a political subdivision, shall place emphasis on
27 works by artists who reside in or near the political subdivision.

1 Consideration shall be given to artists of all ethnic origins.

2 Sec. 485.00510. CULTURAL AND FINE ARTS DISTRICT PROGRAM.

3 (a) The office shall develop a cultural and fine arts district
4 program to designate districts that significantly contribute to the
5 culture and fine arts of this state.

6 (b) The council shall develop:

7 (1) eligibility criteria for a designation under this
8 section; and

9 (2) procedures to administer the program created under
10 this section.

11 Sec. 485.00511. TEXAS MUSIC PROJECT. (a) The office shall
12 develop and implement a Texas music compact disc project under
13 which the office shall create, promote, and distribute a series of
14 compact discs that feature the work of established and emerging
15 music artists of this state.

16 (b) The office shall seek donations of time, talent, and
17 property from music artists and other persons to help facilitate
18 the project.

19 (c) All proceeds from the sale of compact discs under the
20 project shall be deposited in the Texas cultural endowment fund
21 under Section 485.0071.

22 (d) In accordance with this chapter and office policy, the
23 office shall use part of the interest earned on the proceeds of the
24 project to fund grants of money that promote music education.

25 Sec. 485.006. GIFTS AND GRANTS. (a) The office may accept
26 gifts, grants, and other funds specifically designated by the donor
27 or grantor for use in developing the music, film, and arts

1 ~~[television, and multimedia]~~ industries of this state.

2 (b) An applicant for a grant of money from the office shall
3 specify in the grant application a minimum and maximum amount of
4 money requested.

5 (c) The office may make grants for the promotion of the arts
6 from funds appropriated for that purpose.

7 Sec. 485.0061. DONATIONS; APPROPRIATIONS; LICENSING AND
8 SALES REVENUE; AUDIT. (a) The office may accept on behalf of the
9 state donations of money, property, and art objects as it
10 determines best further the orderly development of the artistic
11 resources of the state. Except as provided by Subsection (b), money
12 paid to the office under this chapter shall be deposited in the
13 Texas cultural endowment fund.

14 (b) The office may solicit donations from an appropriate
15 source. A person may designate a donation as intended for the Texas
16 cultural endowment fund or the Music, Film, and Arts Office
17 operating fund. If the person designates that a donation is
18 intended for a specific fund, the donation shall be deposited in the
19 designated fund.

20 (c) The office shall establish an acquisition policy for
21 accepting property and art objects.

22 (d) The legislature may make appropriations to the office to
23 carry out the purposes of this chapter.

24 (e) The office may license for a fee the use of its name or
25 logo and any other artwork or graphics developed by the office to a
26 private vendor for the promotion of the arts in Texas, for
27 fund-raising for the office, or for any other lawful purpose of the

1 office. The office shall require that the use of the licensed
2 property be consistent with the mission of the office. The
3 licensing fees shall be deposited in the Music, Film, and Arts
4 Office operating fund.

5 (f) The office may purchase and resell items described by
6 Subsection (e) as it determines appropriate for the promotion of
7 the arts in Texas, provided that the value of office inventory, as
8 determined by generally accepted accounting principles, may not
9 exceed \$50,000 at the end of a state fiscal year. The net profits
10 from those sales shall be deposited in the Music, Film, and Arts
11 Office operating fund.

12 (g) The financial transactions of the office are subject to
13 audit by the state auditor in accordance with Chapter 321,
14 Government Code.

15 (h) The office shall prepare annually a complete and
16 detailed written report accounting for all funds received and
17 disbursed by the office during the preceding fiscal year. The
18 annual report must meet the reporting requirements applicable to
19 financial reporting provided in the General Appropriations Act.

20 (i) Money paid to the office under this chapter, other than
21 money required to be deposited in the Texas cultural endowment
22 fund, is subject to Subchapter F, Chapter 404.

23 Sec. 485.007. MUSIC, FILM, [~~TELEVISION~~] AND ARTS
24 [~~MULTIMEDIA~~] FUND. The music, film, [~~television~~] and arts
25 [~~multimedia~~] fund is in the state treasury. Gifts [~~The continued~~
26 existence of this fund is determined by the provisions of S.B. No.
27 3, Acts of the 72nd Legislature, 1st Called Session, 1991. All

1 ~~gifts~~], grants, and other funds received by the office under this
2 chapter may [~~shall~~] be deposited to the credit of the fund and [~~may~~
3 ~~be~~] used [~~only~~] for the purposes of this chapter.

4 Sec. 485.0071. TEXAS CULTURAL ENDOWMENT FUND. (a) The
5 Texas cultural endowment fund is a trust fund outside the state
6 treasury.

7 (b) The legislature may not appropriate money in the
8 endowment fund.

9 (c) Interest and income earned on money deposited in the
10 endowment fund shall be deposited to the credit of the endowment
11 fund and then transferred by the council on September 1 of each year
12 to the Music, Film, and Arts Office operating fund.

13 (d) This section is exempt from the application of Sections
14 403.095 and 404.071.

15 Sec. 485.0072. MUSIC, FILM, AND ARTS OFFICE OPERATING FUND.

16 (a) The Music, Film, and Arts Office operating fund is a special
17 fund in the state treasury.

18 (b) Money deposited to the credit of the operating fund may
19 be appropriated only to carry out the council's powers and duties
20 under this chapter and for necessary administrative costs incurred
21 by the council under this chapter.

22 (c) The operating fund is exempt from the application of
23 Sections 403.095 and 404.071. Interest received from investments
24 of money in the operating fund shall be allocated monthly by the
25 comptroller to the operating fund.

26 Sec. 485.0073. ENDOWMENT FUND INVESTMENT AND MANAGEMENT.

27 (a) The director shall appoint investment managers for the

1 management and investment of the Texas cultural endowment fund by
2 contracting for professional investment management services with
3 one or more organizations that are in the business of managing
4 investments.

5 (b) In choosing and contracting for professional investment
6 management services and in continuing the use of an investment
7 manager, the director shall act prudently and in the interest of the
8 beneficiaries of the endowment fund.

9 (c) In making and supervising investments of the endowment
10 fund, an investment manager and the director shall discharge their
11 respective duties solely in the interest of the beneficiaries of
12 the fund:

13 (1) for the exclusive purposes of providing benefits
14 for the beneficiaries of the fund and defraying reasonable expenses
15 of administering this chapter;

16 (2) with the care, skill, prudence, and diligence
17 under the prevailing circumstances that a prudent person acting in
18 a like capacity and familiar with matters of the type would use in
19 the conduct of an enterprise with a like character and like aims;

20 (3) by diversifying the investments of the fund to
21 minimize the risk of large losses, unless under the circumstances
22 it is clearly prudent not to do so; and

23 (4) in accordance with the documents and instruments
24 governing the fund to the extent that the documents and instruments
25 are consistent with this section.

26 (d) To be eligible for appointment under this section, an
27 investment manager must be:

1 (1) registered under the Investment Advisers Act of
2 1940 (15 U.S.C. Section 80b-1 et seq.);

3 (2) a bank as defined by that Act that has a trust
4 department; or

5 (3) an insurance company qualified to perform
6 investment services under the laws of more than one state.

7 (e) In a contract made under this section, the director
8 shall specify any policies, requirements, or restrictions,
9 including criteria for determining the quality of investments and
10 for the use of standard rating services, that the director adopts
11 for investments of the endowment fund.

12 (f) An investment manager appointed under Subsection (a)
13 shall acknowledge in writing the manager's fiduciary
14 responsibilities to the endowment fund.

15 (g) The director may at any time and shall frequently
16 monitor the investments made by each investment manager for the
17 endowment fund. The director may contract for professional
18 evaluation services to fulfill this requirement.

19 (h) The director may enter into an investment custody
20 account agreement designating a bank or a depository trust company
21 to serve as custodian for all assets allocated to or generated under
22 a contract for professional investment management services.

23 (i) Under a custody account agreement, the director shall
24 require the designated custodian to perform the duties and assume
25 the responsibilities for the endowment fund that are performed and
26 assumed, in the absence of a contract, by the custodian of the
27 endowment fund. The custodian shall furnish to the director,

1 annually or more frequently if required by office rule, a sworn
2 statement of the amount of the endowment fund assets in the
3 custodian's custody.

4 (j) For purposes of this section, the beneficiaries of the
5 Texas cultural endowment fund are the persons who appreciate art,
6 artists, and arts organizations that benefit from the performance
7 of the office's powers and duties under this chapter.

8 SECTION 3. Section 3104.001, Government Code, is amended to
9 read as follows:

10 Sec. 3104.001. DEFINITIONS. In this chapter:

11 (1) [~~"Commission" means the Texas Commission on the~~
12 ~~Arts.~~

13 [~~(2)~~] "Committee" means the Texas Poet Laureate, State
14 Musician, and State Artist Committee.

15 (2) "Office" means the Music, Film, and Arts Office
16 established under Subchapter A, Chapter 485.

17 SECTION 4. Section 3104.002(b), Government Code, is amended
18 to read as follows:

19 (b) The committee shall choose the poet laureate, state
20 musician, and state artists from a list of persons submitted by the
21 office [~~commission~~].

22 SECTION 5. Section 3104.004, Government Code, is amended to
23 read as follows:

24 Sec. 3104.004. RECOMMENDATIONS FROM OFFICE [~~COMMISSION~~].

25 (a) The office [~~commission~~] shall solicit nominations from the arts
26 and cultural community for the poet laureate, state musician, and
27 state artists. The office [~~commission~~] shall use the office's

1 ~~[commission's]~~ Texas Cultural & Arts Network, the media, public
2 meetings, newsletters, the Writer's League of Texas, and other
3 appropriate methods to distribute information about the nomination
4 process.

5 (b) The office ~~[commission]~~ may receive submissions from
6 poets, musicians, and artists who have been nominated.

7 (c) The office ~~[commission]~~ may assemble a group of artists,
8 musicians, writers, scholars, and other appropriate experts in the
9 fields of literature, music, and visual arts to:

10 (1) review the submissions from the nominated poets,
11 musicians, and artists; and

12 (2) provide advice and recommendations to the office
13 ~~[commission]~~ on who should be considered for designation as poet
14 laureate, state musician, and state artists.

15 (d) For each category specified under Section 3104.002(a),
16 the office ~~[commission]~~ shall submit to the committee a list of not
17 more than 10 persons who are worthy of being designated for that
18 category.

19 SECTION 6. Section 151.801, Tax Code, is amended by
20 amending Subsection (a) and adding Subsection (d-1) to read as
21 follows:

22 (a) Except for the amounts allocated under Subsections (b),
23 ~~[and]~~ (c), and (d-1), all proceeds from the collection of the taxes
24 imposed by this chapter shall be deposited to the credit of the
25 general revenue fund.

26 (d-1) The amount of the proceeds from the collection of
27 taxes imposed by this chapter on the purchase of taxable musical

1 instruments shall be deposited to the credit of the Music, Film, and
2 Arts Office operating fund. The comptroller may determine the
3 amount to be deposited to the fund using any appropriate method,
4 including available statistical data. In addition, the comptroller
5 may require taxpayers to report to the comptroller as necessary to
6 make the allocation.

7 SECTION 7. Section 171.401, Tax Code, as effective January
8 1, 2008, is amended to read as follows:

9 Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND AND
10 MUSIC, FILM, AND ARTS OFFICE OPERATING FUND. (a) Except as
11 provided by Subsection (b) and Section 171.4011, the [The] revenue
12 from the tax imposed by this chapter shall be deposited to the
13 credit of the general revenue fund.

14 (b) The revenue from the tax imposed by this chapter on
15 revenue received from the sale of musical instruments in this state
16 shall be deposited to the credit of the Music, Film, and Arts Office
17 operating fund. The comptroller may require taxpayers to submit
18 information to the comptroller as necessary to make the allocation.
19 This subsection does not affect the amount required to be deposited
20 to the property tax relief fund under Section 171.4011.

21 SECTION 8. Section 7.027(b), Education Code, is amended to
22 read as follows:

23 (b) The Music, Film, [~~Television,~~] and Arts [~~Multimedia~~]
24 Office in the governor's office shall administer the account. The
25 agency may spend money credited to the account only to make grants
26 to benefit music-related educational and community programs
27 sponsored by nonprofit organizations based in this state. An

1 administration fee of \$5 per license plate shall be retained by the
2 Music, Film, [~~Television,~~] and Arts [~~Multimedia~~] Office for
3 performance of administrative duties.

4 SECTION 9. Sections 2166.552(a) through (d), Government
5 Code, are amended to read as follows:

6 (a) A using agency that requests a project analysis by the
7 commission for a building construction project that is estimated to
8 cost more than \$250,000 may specify in the general description of
9 the project that up to one percent of the amount of the original
10 project cost estimate be spent for fine arts projects at or near the
11 site of the project. The using agency may consult the Music, Film,
12 and Arts Office [~~Texas Commission on the Arts~~] in preparing the
13 general description of the project.

14 (b) The using agency, the commission, and the Music, Film,
15 and Arts Office [~~Texas Commission on the Arts~~] may conduct a public
16 hearing to take testimony from interested persons regarding the
17 costs and benefits of using a portion of the cost of the project for
18 fine arts projects.

19 (c) The commission shall initiate negotiations for and
20 enter into a memorandum of understanding with the Music, Film, and
21 Arts Office [~~Texas Commission on the Arts~~] to establish guidelines
22 for implementing this section. The memorandum of understanding
23 must be adopted by the governing bodies of the commission and the
24 Music, Film, and Arts Office [~~Texas Commission on the Arts~~]. After
25 a memorandum of understanding is adopted, the Music, Film, and Arts
26 Office [~~Texas Commission on the Arts~~] shall publish the memorandum
27 of understanding in the Texas Register.

1 (d) If the legislature authorizes and appropriates money
2 for a fine arts project, the commission shall cooperate with the
3 Music, Film, and Arts Office [~~Texas Commission on the Arts~~] and
4 consult it for advice in determining how to use the money
5 appropriated for the fine arts project.

6 SECTION 10. Section 504.604, Transportation Code, is
7 amended to read as follows:

8 Sec. 504.604. MUSIC, FILM, AND ARTS OFFICE [~~TEXAS~~
9 ~~COMMISSION ON THE ARTS~~] LICENSE PLATES. (a) The department shall
10 issue specialty license plates including the words "State of the
11 Arts." The department shall design the license plates in
12 consultation with the Music, Film, and Arts Office [~~Texas~~
13 ~~Commission on the Arts~~].

14 (b) After deduction of the department's administrative
15 costs, the remainder of the fee for issuance of the license plates
16 shall be deposited to the credit of the Music, Film, and Arts Office
17 [~~Texas Commission on the Arts~~] operating fund established under
18 Section 485.0072 [~~444.027~~], Government Code.

19 SECTION 11. Chapter 444, Government Code, is repealed.

20 SECTION 12. (a) The Texas Commission on the Arts is
21 abolished.

22 (b) All powers, duties, obligations, rights, contracts,
23 appropriations, records, real or personal property, and personnel
24 of the Texas Commission on the Arts are transferred to the Music,
25 Film, and Arts Office.

26 (c) The governor's office shall adopt any necessary
27 procedures to implement the transfer of powers, duties,

1 obligations, rights, contracts, appropriations, records, real or
2 personal property, and personnel under this Act.

3 SECTION 13. As soon as practicable after the effective date
4 of this Act, the governor shall appoint nine members to serve on the
5 Texas Advisory Council on the Arts.

6 SECTION 14. (a) Except as provided by Subsection (b) of
7 this section, this Act takes effect September 1, 2007.

8 (b) Section 171.401, Tax Code, as amended by this Act, takes
9 effect January 1, 2008.