

House Bill 2460
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

(3) [~~(2)~~] uses or receives a substantial amount of tangible goods, services, or money [~~funds~~] from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

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

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

(a) The Texas Commission on the Arts is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, **2013** [2007].

Same as House version.

SECTION 3. Substantially the same as House version.

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

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

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

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

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

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

(2) does not maintain during service on the commission

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the qualifications required by Section 444.003(a);

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

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

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

(f) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(g) In [For the purposes of] this section, [a] "Texas trade association" means [is] a [nonprofit,] cooperative[,], and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest [obtaining public money or influencing governmental policy].

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

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

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

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

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

~~[(c) The commission shall keep information about each complaint filed with the commission. The information~~

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must include:

- ~~[(1) the date the complaint is received;~~
 - ~~[(2) the name of the complainant;~~
 - ~~[(3) the subject matter of the complaint;~~
 - ~~[(4) a record of all persons contacted in relation to the complaint;~~
 - ~~[(5) a summary of the results of the review or investigation of the complaint; and~~
 - ~~[(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.~~
- ~~[(d) The commission shall keep a file about each written complaint filed with the commission that the commission has authority to resolve. The commission shall provide to the person filing the complaint, and the persons or entities complained about, the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint, and the persons or entities complained about, of the status of the complaint unless the notice would jeopardize an undercover investigation.]~~

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

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

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

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

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

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

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

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

~~[(5) the current budget for the commission;~~

~~[(6) the results of the most recent formal audit of the commission;~~

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

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

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

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

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

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~~[(9)]~~ any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

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

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

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

Sec. 444.016. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.

(a) The commission shall develop and implement a policy to encourage the use of:

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

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

(b) The commission's procedures relating to alternative

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SECTION 6. Subchapter A, Chapter 444, Government Code, is amended by adding Sections 444.015, 444.016, and 444.017 to read as follows:

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

Sec. 444.016. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY.

(a) The commission shall develop and implement a policy to encourage the use of:

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

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

(b) The commission's procedures relating to alternative

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dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

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

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

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

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

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dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

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

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

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

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

Sec. 444.017. COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a) The commission shall:

(1) comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of the commission; and

(2) report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations under Subdivision (1).

(b) This section expires June 1, 2009.

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

(d) The commission shall adopt rules to govern the review, approval, and oversight of special initiative

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grants. The rules must provide for:

- (1) commission approval of special initiative grants, including expedited approval of the grants in limited circumstances for cases requiring immediate action;
- (2) criteria to be used in reviewing and evaluating special initiative grant applications; and
- (3) procedures to be used in determining the amounts of the special initiative grants.

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

Same as House version.

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

- (1) require the commission to evaluate a gift, grant, or donation before acceptance to ensure that the purpose of the gift, grant, or donation supports the commission's priorities as established by statute and the commission's appropriations pattern;
- (2) prohibit the commission from creating and directly administering programs for the purpose of qualifying for or complying with a condition for the acceptance of private funding; and
- (3) require the commission, before acceptance of a gift, grant, or donation, to evaluate any obligations the commission would have to meet in order to accept the gift, grant, or donation, including required matching

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funds, the amount of staff time and effort, and any other additional costs.

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

Same as House version.

SECTION 10. (a) In this section:

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

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

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

(c) This section expires September 1, 2009.

SECTION 10. (a) In this section:

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

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

(b) In performing its duties under Chapter 325, Government Code (Texas Sunset Act), during the period before the commission is scheduled to be abolished, the sunset commission shall focus on the commission's expenditures, including determining the percentage of available funding spent by the commission on overhead and administrative costs. The sunset commission may include any recommendations it considers appropriate in its report to the 83rd Legislature.

(c) This section expires September 1, 2013.

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

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

(2) adopt the policies required by Sections 444.015 and

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444.016, Government Code, as added by this Act.

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

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

Same as House version.

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

Same as House version.