

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2460
By: Flynn et al. (Deuell)
Government Organization
5/17/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

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

C.S.H.B. 2460 continues the TCA for two years and requires a follow-up Sunset review focused on how the agency spends its funds. C.S.H.B. 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 and to adopt rules to ensure accountability of its special initiative grants.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on the Arts in SECTION 7 (Section 444.024, Government Code) and SECTION 8 (Section 444.024, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 444.002(a), Government Code, to extend the expiration date of this chapter to September 1, 2009, rather than September 1, 2007.

SECTION 2. Amends Section 444.003(b), Government Code, as follows:

(b) Prohibits a person from being a member of the Texas Commission on the Arts (commission), rather than being eligible for appointment to the commission, if the person or the person's spouse is employed by or participates in the management of a business entity or other organization receiving money from the commission; owns or controls, directly or indirectly, rather than directly owns or controls, more than a 10 percent interest in a business entity or other organization receiving money, rather than funds, from the commission; or uses or receives a substantial amount of tangible goods, services, or money, rather than funds, from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 3. Amends Sections 444.006(a), (b), (d), (f), and (g), Government Code, as follows:

(a) Prohibits a person from being, rather than serving as, a member of the commission or from acting 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) Prohibits a person from being a member of the commission and from being 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 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, rather than prohibiting an officer, employee, or paid consultant of a Texas trade association in the field of art from being 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) Sets forth the grounds for removal from the commission

(f) Requires the executive director to notify the presiding officer of the commission of a potential ground for removal, if the executive director has knowledge that a potential ground from removal exists. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director to notify the next highest ranking officer of the commission, if the potential ground for removal involves the presiding officer, who is then required to notify the governor and the attorney general that a potential ground for removal exists.

(g) Redefines "Texas trade association."

SECTION 4. Amends Section 444.012, Government Code, as follows:

Sec. 444.012. New heading: COMPLAINTS. (a) Requires the commission to maintain a system to promptly and efficiently act on complaints filed with the commission. Requires the commission to 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 complain, and its disposition.

(b) Requires the commission to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the commission to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text of Section 444.012 relating to information of interest regarding the commission and complaints filed with the commission.

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

(b) Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section, rather than requiring a member to complete at least one course of the training program before assuming the member's duties and before being confirmed by the senate.

(c) Requires the training program to provide the person with information regarding the legislation that created the commission; its program, functions, rules, and budget, rather than its policy-making body to which the member is appointed to serve; the results of the most recent formal audit of the commission, rather than the programs operated by it; the requirements of law relating to open meeting, public information, administrative procedure, and conflict of interest, rather than the role and functions of the commission; and any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(d) Provides that 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. Amends Subchapter A, Chapter 444, Government Code, by adding Sections 444.015, 444.016, and 444.017, as follows:

Sec. 444.015. **USE OF TECHNOLOGY.** Requires the commission to implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. Requires that the policy 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) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 for the adoption of commission rules and appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) Requires the commission's procedures relating to alternative dispute resolution to 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) Requires the commission to designate a trained person to perform certain duties.

Sec. 444.017. **COMPLIANCE WITH SUNSET RECOMMENDATIONS.** Requires the commission to 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 to 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 this section. Provides that this section expires June 1, 2009.

SECTION 7. Amends Section 444.024, Government Code, by adding Subsection (d), as follows:

(d) Requires the commission to adopt rules to govern the review, approval, and oversight of special initiative grants. Requires that the rules provide for commission approval of special initiative grants, including expedited approval of the grants in limited circumstances for cases requiring immediate action; criteria to be used in reviewing and evaluating special initiative grant applications; and procedures to be used in determining the amounts of special initiative grants.

SECTION 8. Amends Section 444.025, Government Code, by adding Subsection (j), as follows:

(j) Requires the commission to 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. Sets forth specific requirements for commission rules adopted under this subsection.

SECTION 9. Repealer: Section 444.006(c) (Conflict of Interest; Removal Provisions) Government Code.

SECTION 10. (a) Defines "sunset commission" and "commission."

(b) Requires the sunset commission, in performing its duties under Chapter 325, Government Code (Texas Sunset Act), to focus on the commission's expenditures, including determining the percentage of available funding spent by the commission on

overhead and administrative costs. Authorizes the sunset commission to include any recommendations it considers appropriate in its report to the 81st Legislature.

(c) Provides that this section expires September 1, 2009.

SECTION 11. Requires the Texas Commission on the Arts, not later than March 1, 2008, to:

(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 Section 444.015 and 444.016, Government Code, as added by this Act.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2007.