

GOVERNMENT CODE

CHAPTER 444. TEXAS COMMISSION ON THE ARTS

SUBCHAPTER A. GENERAL PROVISIONS AND ADMINISTRATION

Sec. 444.001. COMMISSION. The Texas Commission on the Arts is an agency of the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 444.002. APPLICATION OF SUNSET, OPEN MEETINGS, AND ADMINISTRATIVE PROCEDURES LAWS. (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, 2007.

(b) The commission is subject to the open meetings law, Chapter 551, and the administrative procedure law, Chapter 2001. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 2.12, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(50), (83), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 108, Sec. 1, eff. Sept. 1, 1995.

Sec. 444.003. COMPOSITION. (a) The commission is composed of 17 members appointed by the governor with the advice and consent of the senate. The members must represent all fields of the arts and be widely known for their professional competence and experience in connection with the arts. At least two members must be residents of a county with a population of less than 50,000. Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) A person is not eligible for appointment to the commission if the person or the person's spouse:

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

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

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 2, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1170, Sec. 3.01, eff. Sept. 1, 2003.

Sec. 444.004. COMPENSATION. (a) A member of the commission is entitled to per diem as set by legislative appropriation for each day that the member engages in commission business.

(b) A member is not entitled to other compensation for service on the commission but is entitled to reimbursement for travel and other necessary expenses in the performance of commission business in an amount not exceeding the amount authorized to be paid a member of the legislature for similar expenses.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 444.005. OFFICERS. The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. The commission may elect from its members other officers.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 3, eff. Sept. 1, 1995.

Sec. 444.006. CONFLICT OF INTEREST; REMOVAL PROVISIONS. (a) A person may not 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) 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.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of art may not be a member of the commission and may not be an 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 if a member:

(1) violates a prohibition established by this section;

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

(3) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(e) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(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 officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

(g) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in obtaining public money or influencing governmental policy.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 4, eff. Sept. 1, 1995.

Sec. 444.007. RESPONSIBILITIES OF COMMISSION, EXECUTIVE DIRECTOR AND STAFF. (a) The commission may employ an executive director. The executive director shall hire the staff of the commission.

(b) The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 5, eff. Sept. 1, 1995.

Sec. 444.008. MEETINGS. (a) The commission may meet at the times and places within the state that the commission designates.

(b) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 6, eff. Sept. 1, 1995.

Sec. 444.009. RULES. The commission may adopt rules to govern itself, its officers, and its committees and may prescribe the duties of its officers, consultants, and employees.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 444.010. EMPLOYMENT PRACTICES. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this section.

(c) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission's work force that meets federal and state guidelines;

(3) procedures by which a determination can be made about the extent of underuse in the commission work force of all

persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to address those areas of underuse appropriately.

(d) A policy statement prepared under Subsection (c) must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (c)(1), and be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 7, eff. Sept. 1, 1995.

Sec. 444.011. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to commission employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 8, eff. Sept. 1, 1995.

Sec. 444.012. INFORMATION OF INTEREST; COMPLAINTS. (a) The commission shall 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 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.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 9, eff. Sept. 1, 1995.

Sec. 444.013. ACCESSIBILITY. The commission shall comply with federal and state laws related to program and facility accessibility. The executive director shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

Added by Acts 1995, 74th Leg., ch. 108, Sec. 11, eff. Sept. 1, 1995.

Sec. 444.014. TRAINING. (a) The commission shall establish a training program for commission members.

(b) 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 information to the member regarding:

(1) the enabling legislation that created the commission and its policy-making body to which the member is appointed to serve;

(2) the programs operated by the commission;

- (3) the role and functions of the commission;
- (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
- (9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

Added by Acts 1995, 74th Leg., ch. 108, Sec. 11, eff. Sept. 1, 1995.

SUBCHAPTER B. POWERS AND DUTIES; FUNDING

Sec. 444.021. GENERAL DUTIES. (a) The commission shall:

- (1) foster the development of a receptive climate for the arts that will culturally enrich and benefit state citizens in their daily lives;
- (2) make visits and vacations to the state more appealing to the world;
- (3) attract, through appropriate programs of publicity and education, additional outstanding artists to become state residents;
- (4) direct activities such as the sponsorship of lectures and exhibitions and the central compilation and dissemination of information on the progress of the arts in the state;
- (5) provide advice to the General Services commission, Texas Historical Commission, Texas State Library, Texas Tourist Development Agency, Texas Department of Transportation, and other state agencies to provide a concentrated state effort in encouraging and developing an appreciation for the arts in the state;
- (6) provide advice relating to the creation, acquisition, construction, erection, or remodeling by the state of a work of art; and
- (7) provide advice, on request of the governor, relating to the artistic character of buildings constructed, erected, or remodeled by the state.

(b) The commission shall not knowingly foster, encourage, promote, or fund any project which includes obscene material as defined in Section 43.21, Penal Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 108, Sec. 10, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(35), eff. Sept. 1, 1995.

Sec. 444.022. GATHERING OF INFORMATION. The commission may conduct research, investigations, and inquiries necessary to inform the commission of the development of the arts in the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 444.023. COMMITTEES; CONSULTANTS. (a) The commission may appoint committees from its membership and prescribe their duties.

(b) The commission may appoint consultants to the commission. In appointing consultants, the commission shall attempt to achieve representation from each geographic area of the state and from the various racial and ethnic groups present in the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 444.024. GRANTS. (a) An applicant for a grant of money from the commission shall specify in the grant application a minimum and maximum amount of money requested.

(b) Before making a grant of money, the commission shall submit the grant application to a panel of commission consultants for its recommendations. The panel shall include in its recommendations its determination of the reasonableness of the proposed amounts of funding.

(c) The commission by rule shall adopt equitable procedures for the distribution of grants to recipients who reflect the geographical, cultural, and ethnic diversity of the state's population.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 951, Sec. 2, eff. Sept. 1, 1993.

Sec. 444.025. DONATIONS; APPROPRIATIONS; LICENSING AND

SALES REVENUE; AUDIT. (a) The commission may accept on behalf of the state donations of money, property, and art objects as it determines best further the orderly development of the artistic resources of the state. Except as provided by Subsection (b), money paid to the commission under this chapter shall be deposited in the Texas cultural endowment fund.

(b) The commission may solicit donations from an appropriate source. A person may designate a donation as intended for the Texas cultural endowment fund or the Texas Commission on the Arts operating fund. If the person designates that a donation is intended for a specific fund, the donation shall be deposited in the designated fund.

(c) The commission by rule shall establish an acquisition policy for accepting property and art objects.

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

(e) The commission may license for a fee the use of its name or logo and any other artwork or graphics developed by the commission to a private vendor for the promotion of the arts in Texas, for fundraising for the commission, or for any other lawful purpose of the commission. The commission shall require that the use of the licensed property be consistent with the mission of the commission. The licensing fees shall be deposited in the Texas Commission on the Arts operating fund.

(f) The commission may purchase and resell such items described in Subsection (e) as it determines appropriate for the promotion of the arts in Texas, provided that the value of commission inventory, as determined by generally accepted accounting principles, shall not exceed \$50,000 at the end of any fiscal year. The net profits from those sales shall be deposited in the Texas Commission on the Arts operating fund.

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

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

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

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 94, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 951, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 108, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 346, Sec. 1, eff. Sept. 1, 1997.

Sec. 444.026. TEXAS CULTURAL ENDOWMENT FUND. (a) The Texas cultural endowment fund is a trust fund outside the state treasury.

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

(c) Interest and income earned before September 1, 1994, on money deposited in the endowment fund shall be deposited to the credit of the endowment fund. Interest and income earned on or after September 1, 1994, on money deposited in the endowment fund shall be deposited to the credit of the endowment fund and then transferred by the commission on September 1 of each year to the Texas Commission on the Arts operating fund.

(d) This section is exempt from the application of Sections 403.094(h), 403.094(i), 403.095, and 404.071.

Added by Acts 1993, 73rd Leg., ch. 951, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 951, Sec. 5, eff. Sept. 1, 1993.

Sec. 444.027. TEXAS COMMISSION ON THE ARTS OPERATING FUND. (a) The Texas Commission on the Arts operating fund is a special fund in the state treasury.

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

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

Added by Acts 1993, 73rd Leg., ch. 951, Sec. 4, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.16, eff. Sept. 1, 1997.

Sec. 444.028. ENDOWMENT FUND INVESTMENT AND MANAGEMENT. (a) The commission shall appoint investment managers for the management and investment of the Texas cultural endowment fund by contracting for professional investment management services with one or more organizations that are in the business of managing investments.

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

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

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

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

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

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

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

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

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

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

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

(f) A member of the commission is not liable for the acts or omissions of an investment manager appointed under Subsection (a). A member of the commission is not permitted or obligated to invest or otherwise to manage any asset of the fund subject to management by the investment manager.

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

(h) The commission may at any time and shall frequently monitor the investments made by each investment manager for the endowment fund. The commission may contract for professional evaluation services to fulfill this requirement.

(i) The commission shall enter into an investment custody account agreement designating a bank or a depository trust company to serve as custodian for all assets allocated to or generated under a contract for professional investment management services.

(j) Under a custody account agreement, the commission shall require the designated custodian to perform the duties and assume the responsibilities for the endowment fund that are performed and assumed, in the absence of a contract, by the custodian of the endowment fund. The custodian shall furnish to the commission, annually or more frequently if required by commission rule, a sworn statement of the amount of the endowment fund assets in the custodian's custody.

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

Added by Acts 1993, 73rd Leg., ch. 951, Sec. 4, eff. Sept. 1, 1993.

Sec. 444.029. EXPENDITURES FOR FINE ARTS PROJECTS ON CERTAIN PUBLIC CONSTRUCTION PROJECTS. (a) Any using agency exempt from Chapter 2166 under Section 2166.003 and any county, municipality, or other political subdivision of this state undertaking a public construction project estimated to cost more than \$250,000 may

specify that a percentage not to exceed one percent of the cost of the construction project shall be used for fine arts projects at or near the site of the construction project.

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

(c) The commission shall place emphasis on works by living Texas artists whenever feasible and, when consulting with the governing body of a political subdivision, shall place emphasis on works by artists who reside in or near the political subdivision. Consideration shall be given to artists of all ethnic origins.

(d) In this section, "construction," "cost of a project," "project," and "using agency" have the meanings assigned by Section 2166.001.

Acts 1979, 66th Leg., p. 1908, ch. 773, Sec. 5.19, eff. Sept. 1, 1979. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 8, Sec. 2.20, eff. Sept. 1, 1991. Redesignated from Vernon's Ann.Civ.St. art. 601b, Sec. 5.19 and amended by Acts 1995, 74th Leg., ch. 41, Sec. 2, eff. Sept. 1, 1995.

Sec. 444.030. MEMORANDA OF UNDERSTANDING WITH OTHER STATE AGENCIES. (a) The commission shall initiate negotiations for and enter into a memorandum of understanding with each state agency involved in the arts to cooperate in program planning and budgeting.

(b) The commission shall enter into an agreement as required by Subsection (a) with the:

(1) Central Education Agency regarding the arts in education program in the public schools;

(2) Music, Film, Television, and Multimedia Office in the governor's office regarding work with the state's music and film industries; and

(3) Texas Department of Commerce, Texas Department of Transportation, and Parks and Wildlife Department regarding state tourism promotion efforts.

(c) Each agency listed in Subsection (b) may enter into memoranda of understanding in areas other than those listed for the respective agency.

(d) A memorandum of understanding between the commission and another state agency must be adopted by the governing bodies of the commission and the other state agency.

(e) After a memorandum of understanding is adopted, the commission shall publish the memorandum of understanding in the Texas Register.

Added by Acts 1995, 74th Leg., ch. 108, Sec. 13, eff. Sept. 1, 1995. Renumbered from V.T.C.A., Government Code Sec. 444.029 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(38), eff. Sept. 1, 1997.

Sec. 444.031. CULTURAL AND FINE ARTS DISTRICT PROGRAM. (a) The commission shall develop a cultural and fine arts district program to designate districts that significantly contribute to the culture and fine arts of this state.

(b) The commission shall develop:

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

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

Added by Acts 2005, 79th Leg., ch. 219, Sec. 1, eff. Sept. 1, 2005.

Sec. 444.032. TEXAS MUSIC PROJECT. (a) The commission shall develop and implement a Texas music compact disc project under which the commission shall create, promote, and distribute a series of compact discs that feature the work of established and emerging music artists of this state.

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

(c) All proceeds from the sale of compact discs under the project shall be deposited in the Texas cultural endowment fund under Section 444.026.

(d) In accordance with this chapter and commission policy, the commission shall use part of the interest earned on the proceeds of the project to fund grants of money that promote music education through the commission's arts education grant program.

Added by Acts 2003, 78th Leg., ch. 686, Sec. 1, eff. June 20, 2003.