

GOVERNMENT CODE  
CHAPTER 2152. TEXAS BUILDING AND PROCUREMENT COMMISSION  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2152.001. COMMISSION. The Texas Building and Procurement Commission is an agency of the state. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.06, eff. Sept. 1, 2001.

Sec. 2152.002. SUNSET PROVISION. The Texas Building and Procurement Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this subtitle, except for Chapter 2170 and Section 2157.121, expires September 1, 2013. Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1169, Sec. 2.05, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1449, Sec. 1.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1422, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 2152.003. AUTHORITY TO ADOPT RULES. The commission may adopt rules to efficiently and effectively administer this subtitle. Added by Acts 1997, 75th Leg., ch. 1206, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2152.051. COMPOSITION OF COMMISSION. (a) The commission consists of:

- (1) three members appointed by the governor;
- (2) two additional members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives; and
- (3) two members appointed by the lieutenant governor.

(b) In making an appointment under Subsection (a)(2), the governor may reject one or more of the nominees on a list submitted by the speaker of the house of representatives and request a new list of different nominees.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 2152.052. APPOINTMENTS. (a) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) In making appointments under this section, the governor and lieutenant governor shall attempt to appoint women and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 2152.053. ELIGIBILITY. An individual is not eligible for appointment to the commission if the individual or the individual's spouse:

- (1) is employed by or participates in the management of a business entity or other organization that contracts with the commission;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that contracts with the state; or
- (3) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.054. CONFLICTS OF INTEREST. (a) An individual may not serve as a member of the commission or act as the general counsel to the commission if the individual is required to register as a lobbyist under Chapter 305 because of the individual's activities for compensation on behalf of a profession related to the operation of the commission or a business entity that contracts with the state.

(b) An officer, employee, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

- (1) serve as a commission member; or
- (2) be employed as a commission employee 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.) and its subsequent amendments.

(c) An individual who is the spouse of an officer, manager, or paid consultant of a Texas trade association of business entities that contracts with the state may not:

(1) serve as a commission member; or

(2) be employed as a commission employee 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.) and its subsequent amendments.

(d) For purposes of this section, a trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.10, eff. Sept. 1, 2001.

Sec. 2152.055. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commission shall provide its members and employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.056. REMOVAL OF COMMISSION MEMBER. (a) It is a ground for removal from the commission that a member:

(1) violates a prohibition established by Section 2152.054;

(2) cannot discharge because of illness or disability 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.

(b) 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.

(c) 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.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.11, eff. Sept. 1, 2001.

Sec. 2152.057. TERMS. Commission members serve staggered six-year terms with two or three members' terms expiring January 31 of each odd-numbered year.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 2152.058. PRESIDING OFFICER; MEETINGS. (a) The governor annually shall appoint a presiding officer from among the commission members.

(b) The commission shall meet at least quarterly. The commission may meet at other times at the call of the presiding officer or as provided by the commission's rules.

(c) Four members of the commission constitute a quorum.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 309, Sec. 1.01, eff. June 18, 2003.

Sec. 2152.0581. TRAINING FOR COMMISSION MEMBERS. (a) 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 the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the commission;
- (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:
  - (A) the open meetings law, Chapter 551;
  - (B) the public information law, Chapter 552;
  - (C) the administrative procedure law, Chapter 2001; and
  - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) 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.  
Added by Acts 2001, 77th Leg., ch. 1422, Sec. 1.13, eff. Jan. 31, 2003.

Sec. 2152.059. REIMBURSEMENT FOR EXPENSES. A commission member is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a commission member.  
Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.060. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the commission's functions and the procedures by which complaints are filed with and resolved by the commission. The commission by rule shall establish methods by which consumers, service recipients, and persons contracting with the state under this subtitle are notified of the commission's name, mailing address, and telephone number for directing complaints to the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(c) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the complaint's status unless the notice would jeopardize an undercover investigation.

(d) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.  
Amended by Acts 2001, 77th Leg., ch. 1422, Sec. 1.14, eff. Sept. 1, 2001.

Sec. 2152.061. PUBLIC ACCESS. (a) The commission shall prepare and maintain a written plan that describes how an individual who does not speak English can be provided reasonable access to the commission's programs.

(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 commission's jurisdiction.

(c) The commission shall comply with federal and state laws

for program and facility accessibility.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.062. ACTIVITY AND EFFICIENCY REPORT. Not later than the 30th day after the date on which the regular session of the legislature begins, the commission shall report to the legislature concerning the commission's activities during the preceding legislative interim. The commission shall recommend amendments to law that would result in increased efficiency, economy, or productivity in the areas monitored by the commission.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.063. FISCAL REPORT. (a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all money received and disbursed by the commission during the preceding fiscal year.

(b) The annual report must comply with form and time requirements provided by the General Appropriations Act.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.065. REPRESENTATION ON BOARD OR COMMITTEE. If the commission must be represented on a board or committee, the executive director or the executive director's designee shall serve as the commission's representative on the board or committee unless the presiding officer of the commission elects to personally serve as the commission's representative or appoints a specific person to serve as the commission's representative on the board or committee.

Added by Acts 2003, 78th Leg., ch. 309, Sec. 1.02, eff. June 18, 2003.

#### SUBCHAPTER C. PERSONNEL

Sec. 2152.101. EXECUTIVE DIRECTOR. (a) The commission shall employ an executive director who has demonstrated executive and organizational ability.

(b) The executive director serves at the commission's pleasure.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.103. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director shall manage the commission's affairs under the commission's direction.

(b) The commission's directions to the executive director shall be:

- (1) made only at an open meeting of the commission; and
- (2) included in the commission's minutes for the meeting.

(c) The executive director may employ staff necessary to administer the commission's functions.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.104. ASSOCIATE DEPUTY DIRECTORS; DIVISIONS; DIVISION DIRECTORS. (a) The commission shall have an appropriate number of associate deputy directors.

(b) Each division shall be managed by a division director who shall report to the associate deputy director who administers the division.

(c) The commission may assign directly to the executive director the duty to administer, under the commission's direction, the surplus and salvage property division.

(d) In accordance with this subchapter, the executive director shall appoint a director of facilities construction and space management, who shall:

(1) be a registered architect or registered professional engineer; and

(2) have proven administrative ability and experience in the fields of building design and construction.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 127, Sec. 1, eff. May 19, 1997; Acts 2003, 78th Leg., ch. 309, Sec. 1.03, eff. June 18, 2003.

Sec. 2152.105. RESPONSIBILITIES OF COMMISSION AND COMMISSION STAFF. The commission shall develop and implement policies that clearly define the responsibilities of the commission and the commission's staff.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.106. PROHIBITION OF GRANT OF AUTHORITY BY POWER OF ATTORNEY. A commission member may not by power of attorney grant authority to the executive director or another commission employee.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.107. MERIT PAY. (a) The executive director or the

executive director's designated representative shall develop a system of annual performance evaluations.

(b) Merit pay for commission employees must be based on the system established under this section.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.108. CAREER LADDER. The executive director or the executive director's designated representative shall develop an intra-agency career ladder program. The program must require intra-agency posting of all non-entry-level positions concurrently with any public posting.

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.109. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designated representative 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 comply with Chapter 21, Labor Code;

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

(3) procedures by which a determination can be made of significant underuse in the commission's workforce of all individuals for whom federal or state guidelines encourage a more equitable balance; and

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

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated at least annually;

(3) be reviewed annually by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor's office.

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

Added by Acts 1995, 74th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1995.

Sec. 2152.110. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 1.15, eff. Sept. 1, 2001.