

Sunset Public Hearing Questions for  
**OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION**  
Created by Section 50-30-801, *Tennessee Code Annotated*  
(Sunset termination June 2015)

1. Provide a brief introduction to the commission, including information about its purpose, statutory duties, staff, and administrative attachments.

The TOSHA Review Commission hears appeals by parties who contest citations and penalties issued by the Tennessee Occupational Safety Health Administration. The Review Commission hears these contested cases and may uphold citations and penalties, modify them, or dismiss them. Hearings are held by the Commission at which testimony and evidence is presented to allow the Commission to make a decision. Below is an excerpt from the statute:

**50-3-802. Functions.**

**(a)** The function of the commission shall be to review citations issued under § 50-3-307 and monetary penalties assessed under §§ 50-3-402 -- 50-3-408.

**(b)** The commission may affirm, modify or revoke a citation or a monetary penalty.

2. Provide a list of current members of the commission. Please indicate which member the governor has designated to serve as chair, indicate the length of service on the commission for each appointed member as well as each member's county of principal residence. Please indicate if there are any vacancies on the commission and explain what is being done to fill those vacancies.

Chairman J. Russell Farrar  
Ten Years  
Davidson County

Member Dana Dodson  
Five Years  
Shelby County

Member Ken Gross  
Three Years  
Knox County

No Vacancies

3. How many times did the Commission meet in fiscal years 2013 and 2014? How many commission members were present at each meeting?

Two hearings, one in 2013 & one in 2014, were held during this period. The first was held with two members present. The second was held with three members present. Other hearings were scheduled, however cases on the docket settled and a hearing was not required.

4. What per diem or travel reimbursement do commission members receive? How much was paid to commission members during fiscal years 2013 and 2014?

11-20-2013 Hearing

Russ Farrar 50.00 for one day

Ken Gross 50.00 for one day Travel and per diem \$167.32

Dana Dodson did not attend

4-30-2014 Hearing

Russ Farrar 50.00 for one day

Ken Gross 50.00 for one day Travel and per diem \$167.32

Dana Dodson 50.00 for one day Travel and per diem \$443.84

5. What were the commission's revenues (by source) and expenditures (by object) for fiscal years 2013 and 2014? Does the commission carry a fund balance and, if so, what is the total of that fund balance? If expenditures exceeded revenues, and the commission does not carry a fund balance, what was the source of the revenue for the excess expenditures?

The Commission does not generate revenues. Penalty monies assessed by TOSHA and upheld by the Commission are handled in the same manner as uncontested TOSHA penalties collected. Expenses are paid directly from the TOSHA budget.

6. Is the commission subject to Sunshine law requirements (per Section 8-44-1020 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures are in place for informing the public of meetings and making minutes available to the public?

As per 8-44-102 Review Commission is not a governing body because it does not have "the authority to make decisions for or recommendations to a public body on policy or administration..." The Review Commission is an adjudicative tribunal with the authority only to decide contested cases under the TN OSH Act (see response to #1 above). Although the Review Commission is not subject to the Open Meetings law, it does post public notices of its meetings and the meetings are open to the public. Tenn. Code Ann. § 50-3-803(f) regarding TN OSHA Review Commission hearings states: "The hearings shall be open to the public and the records of hearings shall be maintained and available for examination."

7. How does the commission ensure that its members are operating in an impartial manner and that there are no conflicts of interest? If the commission operates under a formal conflict of interest policy, please attach a copy of that policy.

The Members operate under the attached Conflict of Interest policy. Each Member signs an acknowledgement form each year.

8. Has the commission promulgated rules and regulations? If yes, please cite the reference.

No, the commission does not promulgate rules or regulations. The Commission operates under Rule 1030-1-1 through 1030-7-9.

9. Does the commission have a website? Is so, please provide the web address. What kind of public information is provided on the website?

The following two web pages reference the Review Commission on the Department of Labor and Workforce Development website:

<http://www.tn.gov/labor-wfd/bdoshrc.shtml>

This page is a brief description of the Review Commission.

<http://www.tn.gov/pmn/sitemap/notice/3154.html>

This page is the Public Notice section for Hearing information.

10. Describe the nature and extent of the commission's activities and/or accomplishments in fiscal years 2013 and 2014 related to reviewing appeals of citations and monetary penalties assessed by TOSHA (for example, the number of citations or monetary penalties referred, affirmed, modified, or revoked).

In 2013, 23 TOSHA citations were contested. Of these, 18 were settled, 1 resulted in default judgment, 2 were withdrawn by the employer, and 2 were withdrawn by TOSHA.

In 2014, 31 TOSHA citations were contested. Of these, 25 were settled, 1 resulted in a default judgment, 4 were withdrawn by the employer, and 1 was withdrawn by TOSHA.

11. Has the commission developed and implemented quantitative performance measures for ensuring it is meeting its goals? (Please answer either yes or no). If the commission has developed and implemented quantitative performance measures, answer questions 12 through 19. If the commission has not developed quantitative performance measures, proceed to question 20.

No. The Review Commission's activities are dictated by the number of contested TOSHA cases and when those cases are ready to be heard.

12. What are your key performance measures for ensuring that your commission is meeting its goals? Describe so that someone unfamiliar with the program can understand what you are trying to measure and why it is important to the operation of your program.
13. What aspect[s] of the program are you measuring?
14. Who collects relevant data and how is this data collected (e.g., what types information systems and/or software programs are used) and how often is the data collected? List the specific resources (e.g., report, other document, database, customer survey) of the raw data used for the performance measure.
15. How is the actual performance measure calculated? If a specific mathematical formula is used, provide it. If possible, provide the calculations and supporting

documentation detailing your process for arriving at the actual performance measure.

16. Is the reported performance measure result a real number or an estimate? If an estimate, explain why it is necessary to use an estimate. If an estimate, is the performance measure result recalculated, revised, and formally reported once the data for an actual calculation is available?
17. Who reviews the performance measures and associated data/calculations? Describe any process to verify that the measure and calculations are appropriate and accurate.
18. Are there written procedures related to collecting the data or calculating and reviewing/verifying the performance measure? Provide copies of any procedures.
19. Describe any concerns about your commission's performance measures and any changes or improvements you think need to be made in the process.
20. Provide an explanation of any items related to the commission that may require legislative attention, including your proposed legislative changes.

No legislative changes are needed currently.

21. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare of the citizens of the State of Tennessee?

Yes, the RC should be continued. The RC ensures that TN employers are given due process when the employer has been cited by TOSHA. The Tennessee OSH Act requires that there be an independent Review Commission to adjudicate contested cases. If the Review Commission were abolished, it would jeopardize federal funding for the TOSHA program and could cause federal OSHA to take over jurisdiction in Tennessee.

22. Please list all commission programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

The commission is funded by the Tennessee Occupational Health and Safety Administration's budget. Holding hearings is the only Review Commission activity.

The amount of funds expended are a result of the number of hearings held. No federal funding is directly received by the Review Commission.

***If the commission does receive federal assistance, please answer questions 23 through 30. If the commission does not receive federal assistance, proceed directly to question 29.***

23. Does the commission prepare a Title VI plan? If yes, please provide a copy of the most recent plan.

24. Does the commission have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.
25. To which state or federal agency (if any) does the commission report concerning Title VI? Please describe the information your commission submits to the state or federal government and/or provide a copy of the most recent report submitted.
26. Describe the commission's actions to ensure that commission staff and clients/program participants understand the requirements of Title VI.
27. Describe the commission's actions to ensure it is meeting Title VI requirements. Specifically, describe any commission monitoring or tracking activities related to Title VI, and how frequently these activities occur.
28. Describe the commission's procedures for handling Title VI complaints. Has your commission received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
29. Please provide a breakdown of current commission staff by title, ethnicity, and gender.

Glen Todd Payne  
Hearing Clerk  
Caucasian  
Male

30. Please list all commission contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

The Review Commission has not entered into any contracts with any contractors.



**STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

---

**DEPARTMENTAL POLICY AND PROCEDURES**

**Subject: Conflict of Interest**

**Effective Date: May 6, 2014**

**PURPOSE:** To assure that the interests and activities of all members serving on a departmental board, commission, or committee, do not conflict or give the appearance of conflicting with the provision of unbiased service to the public.

**POLICY:** All members serving on a departmental board, commission, or committee will comply with the attached Conflict of Interest Policy.

**PROCEDURES:** All members serving on a departmental board, commission, or committee will receive a copy of the Conflict of Interest Policy, Conflict of Interest Policy Acknowledgment form, and Conflict of Interest Disclosure form. All members will be required to sign the Conflict of Interest Policy Acknowledgment form, and complete the Conflict of Interest Disclosure form annually. Said forms will be returned to the Commissioner's Designees who will keep the signed copies on file.

The Commissioner's Designees\* and their respective departmental boards, commissions, and committees will be as follows:

\* **Administrator of the Division of Occupational Safety and Health**  
Occupational Safety and Health Review Commission;

\* **Administrator of the Division of Workers Compensation**  
Medical Advisory Committee and Medical Payment Committee;

\* **Administrator of the Division of Workforce Services**  
Workforce Development Board; and

\* **Administrator of Workplace Regulations and Compliance**  
Board of Boiler Rules, Elevator and Amusement Device Safety Board, and Prevailing Wage Commission.

The Commissioner's Designees shall make copies of the aforementioned forms. The Commissioner's Designees shall provide copies of said forms to the presiding officers of the governing bodies. Said forms shall be available for public review.

Prior to the transaction of business by any governing body, all members shall be reminded by the presiding officer or legal counsel to disclose their financial or personal interests in accordance with the Conflict of Interest Policy.



**STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
220 FRENCH LANDING DRIVE  
NASHVILLE, TENNESSEE 37243**

**CONFLICT OF INTEREST POLICY**

**1. Purpose.** To assure that the individual interests of members do not conflict or give the appearance of conflicting with their duties while serving in their respective positions.

**2. Applicability.** This policy shall apply to all individuals serving on the following: Board of Boiler Rules, Elevator and Amusement Device Safety Board, Medical Advisory Committee, Medical Payment Committee, Occupational Safety and Health Review Commission, Prevailing Wage Commission, and Workforce Development Board.

**3. Definitions.**

**3.1 Conflict of Interest.** A circumstance in which a member's individual interest impairs, or gives the appearance of impairing, his or her ability to make unbiased decisions or provide unbiased public services. Also, any matter before the governing body in which a member has a financial or personal interest, which is in conflict or gives the appearance of conflict with the discharge of the member's duties.

**3.2 Financial interest** means ownership by a member of five percent (5%) or more of the stock of a corporation or any other business entity, or where the company is a business entity, which does not use stock for ownership, the legal or beneficial ownership of five percent (5%) or more of the business. This interest applies to the member or the member's relatives. For the purposes of this policy, a relative includes spouses, parents, siblings, or children.

**3.3 Personal interest** means an interest in any contract, employment or work in which the member has a public duty to vote for, let out, overlook, or in any manner to superintend any work or any contract which comes before the governing body.

**4. Conduct.**

**A.** A member shall not engage in conduct, which impairs, or gives the appearance of impairing, the member's ability to make an unbiased decision or provide unbiased public service.

**B.** A member shall not knowingly take any action, which might prejudice his or her ability, or another member's ability, to make an unbiased decision on any matter in which the member or the member's relatives have a financial or personal interest.

**C.** A member shall abstain from voting on any matter involving a person or entity in which the member or the member's relatives have a financial or personal interest.

**D. A member who is employed by, or has contracted to provide services to a person or entity seeking specific approval or action, shall abstain from voting on the approval or action.**

**E. A member shall not participate as an expert witness in a contested case before his or her governing body.**

**F. A member shall not solicit or accept any gift, gratuity, favor, entertainment, loan, or unusual discount from any person or entity, which has obtained or is seeking to obtain a decision on any matter from the governing body. This prohibition does not include food or drink or other entertainment as part of a meal or event if the value of such items does not exceed Fifty-eight Dollars (\$58.00) per occasion; nor does it include items of insignificant value routinely given in the ordinary course of business.**

**G. A member shall not accept honoraria or other compensation for activities, which are, or should be, performed as part of one's official duties, except as provided by the Comprehensive Travel Regulations of the Department of Finance and Administration.**

## **5. Disclosure.**

**A. All members shall annually review the Conflict of Interest Policy, and submit their Conflict of Interest Policy Acknowledgment forms and Conflict of Interest Disclosure forms to the Commissioner's Designees. The Commissioner's Designees shall provide copies of said forms to the presiding officers of the Boards, Commissions, and Committees. Said forms shall be available for public review.**

**B. Prior to the transaction of business by any Board, Commission, or Committee, all members shall be reminded by the presiding officer or legal counsel to disclose their financial or personal interests in accordance with the Conflict of Interest Policy.**

**C. Any member, upon determining that a matter taken up by a Board, Commission, or Committee presents a conflict of interest under this policy shall immediately notify the presiding officer and publicly acknowledge such conflict.**

**D. All members shall make every reasonable effort to avoid even the appearance of a conflict of interest.**

**E. The vote of any such member having a conflict of interest who does not so inform the Board, Commission, or Committee of such conflict may be avoidable if challenged. When a challenge is made, the Board, Commission, or Committee shall investigate the matter, determine whether or not a conflict exists, and decide what should be done given the circumstances.**



**STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
Nashville, Tennessee**

**CONFLICT OF INTEREST POLICY ACKNOWLEDGMENT**

**Name:** \_\_\_\_\_  
**(PLEASE PRINT)**

**Appointed to:** \_\_\_\_\_  
\_\_\_\_\_

**I hereby certify that I have received and read the Conflict of Interest Policy. I have reviewed said policy, and I agree to abide by its terms.**

**I am now reporting my financial interest(s) on the attached Conflict of Interest Disclosure form. I understand that I will be required to always publicly acknowledge my interest(s) whenever my governing body considers a related matter. I also understand that I have an annual obligation to report my interest(s).**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**



**STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
Nashville, Tennessee**

**CONFLICT OF INTEREST DISCLOSURE**

**As an appointed member of the \_\_\_\_\_,  
I, \_\_\_\_\_, hereby disclose the following matter(s) in which  
I have a financial interest:**

---

---

---

---

---

---

---

---

---

---

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**