

Sunset Public Hearing Questions for
State Building Commission
Created by Section 4-15-101, *Tennessee Code Annotated*
(Sunset Termination June 2020)

Enabling Statute, Purpose, and Rules and Regulations

1. Provide a brief introduction to the commission, including information about its purpose, statutory duties, staff, and administrative attachment.
 - a. The State Building Commission (“SBC”) was established pursuant to TCA §4-15-101 et. seq. The powers and duties of the SBC are delineated in TCA §4-15-102. The SBC provides approval and oversight over capital projects (design and construction projects) in addition to other statutorily required approval authority. The SBC has delegated to the Executive Subcommittee of the SBC approval and oversight of real estate transactions (acquisitions, dispositions and leases). The State Architect, whose office (“OSA”) is administratively attached to the Treasury Department, serves as the chief staff officer of the SBC. The OSA currently has six staff in total.

2. Has the commission promulgated rules and regulations? If yes, please cite the reference.
 - a. The SBC does not have any rules or regulations. (TCA § 4-5-106 exempts the commission from the requirements of the uniform administrative procedures act regarding rulemaking.)

Commission Organization

3. Provide a list of current members of the commission. For each member, please indicate who appointed the member, statutory member representation, the beginning and end of the member’s term, and whether the member is serving a consecutive term.
 - a. Pursuant to TCA §4-15-101, the SBC members are the Governor, the Speakers of the Senate and House, the Commissioner of Finance & Administration, the Secretary of State, the Treasurer, and the Comptroller of the Treasury. The current members are:
 - i. Governor Bill Lee
 - ii. Lieutenant Governor and Speaker of the Senate Randy McNally
 - iii. Speaker of the House of Representatives Cameron Sexton
 - iv. Secretary of State Tre Hargett
 - v. Comptroller of the Treasury Justin P. Wilson
 - vi. State Treasurer David H. Lillard, Jr.
 - vii. Commissioner of Finance & Administration Stuart C. McWhorter

4. How many times did the commission meet in Fiscal Years 2018 and 2019? How many members were present at each meeting? Please note meetings where the commission did not have a quorum.
 - a. The SBC meets monthly and may have additional specially called meetings if appropriate. The Executive Subcommittee (“ESC”) of the State Building Commission includes the Secretary of State, Comptroller of the Treasury, State

Treasurer and Commissioner of Finance and Administration. The ESC also meets monthly with additional specially called meetings as appropriate.

- b. Below are the meeting dates and the number of members present for each meeting.
- c. The SBC always met the requisite 4 member quorum and the ESC always met the requisite 3 member quorum requirement.

State Building Commission FY 17/18	
Meeting Date	Members Present *
07/13/2017	6
08/10/2017	5
09/14/2017	6
10/12/2017	6
11/09/2017	5
12/14/2017	6
01/11/2018	6
02/08/2018	6
03/08/2018	5
04/12/2018	5
05/10/2018	5
06/14/2018	4

Executive Subcommittee FY 17/18	
Meeting Date	Members Present
07/27/2017	3
08/21/2017	4
09/28/2017	3
10/23/2017	3
11/20/2017	4
12/18/2017	4
01/22/2018	4
02/26/2018	4
03/19/2018	3
03/29/2018	3
04/23/2018	4
05/22/2018	3
06/27/2018	4

Specially Called

State Building Commission FY 18/19	
Meeting Date	Members Present *
07/12/2018	6
08/09/2018	4
09/13/2018	5
10/11/2018	6
11/08/2018	4
12/13/2018	5
01/10/2019	5
02/14/2019	5
03/14/2019	4
04/11/2019	4
05/09/2019	4
06/13/2019	4

Executive Subcommittee FY 18/19	
Meeting Date	Members Present
07/23/2018	3
08/20/2018	4
09/24/2018	4
10/18/2018	3
10/29/2018	4
11/19/2018	4
12/17/2018	3
01/28/2019	3
02/25/2019	4
03/25/2019	4
04/22/2019	3
05/20/2019	3
06/24/2019	3

Specially Called

*The Governor does not typically attend the meetings although there is an assigned staff member from his office and the Commissioner of Finance and Administration makes sure that the Governor's office is aware of items of interest.

Financial Information

5. What were the commission's revenues and expenditure for Fiscal Years 2018 and 2019? Does the commission carry a fund balance? If yes, please provide additional relevant information regarding the fund balance.
 - a. The SBC had no revenues and the staff functions are funded from appropriations as a part of the Treasury Department budget. Expenditures did not exceed appropriations in Fiscal Years 2018 and 2019.
6. What per diem or travel reimbursements do commission members receive? How much was paid to commission members in Fiscal Years 2018 and 2019?
 - a. The SBC Members do not receive per diem or travel reimbursements for their work on the commission.

Sunshine Law, Public Meetings, and Conflict of Interest Policies

7. Is the commission subject to Sunshine law requirements (Section 8-44-101 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 does the commission have for informing the public of meetings and making minutes available to the public?
 - a. The SBC is subject to Sunshine Law requirements. Notices of meetings are posted in advance on the OSA website. Meeting minutes are posted on the OSA website and meeting recordings are also available on the Tennessee General Assembly's website, with a direct link provided on the OSA website.
8. Does the commission allow for public comment at meetings? Is prior notice required for public comment to be heard? If public comment is not allowed, how does the commission obtain feedback from the public and those they regulate?
 - a. Yes, the commission allows for public comment at meetings. Prior notice is not required for public comment to be heard.
9. Does the commission have policies to address potential conflict of interest by commission members, employees, or other state employees who work with the commission?
 - a. The SBC has an Individual and Organizational Conflicts of Interest Policy in Item 12, sections 12.01 and 12.02 of the By-laws, Policy and Procedure of the SBC. Additionally, the OSA has an Organizational Conflicts of Interest Policy.

Additional Information

10. Describe the nature and extent of the commission's activities in the last two years. Please include any major accomplishments.
 - a. Over the last two years, the commission and its executive subcommittee have met monthly in order to consider requests from State agencies and institutions for approval of various matters under their authority.
 - b. In FY 17/18 this included, the consideration of 251 new project requests; 169 revisions to existing projects, 25 early design phase approval requests, 101 land

acquisition and disposal requests, 62 lease requests, 174 designer selections, and a number of other report items.

- c. In FY 18/19 this included, the consideration of 235 new project requests; 175 revisions to existing projects, 14 early design phase approval requests, 84 land acquisition and disposal requests, 86 lease requests, 187 designer selections, and a number of other report items.
 - d. The six (6) four (4)-year higher education institutions (the Locally Governed Institutions or “LGI”s) severed their capital project and real estate functions from the Tennessee Board of Regents, in FY 18/19. Through the OSA, the commission worked to onboard five (5) of these LGIs by leading several training sessions to educate the institutions about the commission’s policies and procedures. This onboarding coincided with a substantial update to the commission’s by-laws, policy and procedure in order to make them more accessible to new users; add definitions to terms customarily used; and delegate approvals of certain matters to the OSA, the heads of the state procurement agencies and the Commissioner of Finance & Administration.
11. Briefly describe the commission’s procedures to ensure that contracts for projects under the commission’s jurisdiction are adequately advertised, equitably awarded, and awarded to qualified contractors at a reasonable price.
- a. Designer and design consultant services are advertised in accordance with SBC Policy 5.01 C. and procured on a qualifications based selection process in accordance with statute. The ranked evaluations are submitted to the ESC/OSA for final selection taking into consideration geographic preference and current work capacity. The Board of Architectural and Engineer Examiners in the Department of Commerce and Insurance establish the registration requirements for architects, engineers, landscape architects and interior designers and describe the size and scope of projects for which a registrant is needed. Compensation for these design services is based on a state approved fee schedule or on an hourly rate with a not-to exceed total. There is a cap on the maximum hourly rate that can be charged.
 - b. The commission’s policies and procedures require the competitive procurement of construction contractors except in situations where there is a proprietary product or a single source for the needed good or service. Construction services are advertised in accordance with SBC Policy 5.01 C. Approved construction delivery methods (design/bid/build (“DBB”), best value (“BV1”), and construction manager/general contractor (“CM/GC”)) and the procedures under which those contractors are selected are described in the OSA’s Policy on construction delivery methods. The commission’s procedures ensure that contracts are awarded to qualified contractors in accordance with the applicable laws and rules of the Board of Licensing Contractors which set the minimum requirements for bidding/proposing on State construction projects. The design professionals providing services on the project take input from the project management teams at the applicable state procurement agencies and the user groups for whom the projects are proposed as to any additional qualifications that may be required in order to complete the project. The majority of State construction projects are

procured under the low bid methodology (DBB). Construction Contracts procured with additional technical and experience qualifications (CM/GC and BV1) are required to allocate at least 30% of the scoring criteria to cost. The SBC requires that the designer estimate the cost throughout design; qualify the low bid contractor; and certify the bids for DBB and BV1 projects. The designer provides technical expertise to the state evaluation teams and provides independent pricing estimates in parallel with the contractor pricing for CM/GC projects.

12. Tennessee's capital project threshold was enacted into law in 1980 by Section 4-15-107(3), *Tennessee Code Annotated*. The threshold for a project to qualify as a capital project is \$100,000. What, if any, consideration has been given to adjusting/raising this threshold? What justification has been made for keeping the threshold at this level? How does Tennessee's capital project threshold compare to surrounding states?

a. SBC members have considered this matter and whether the threshold should be lowered to provide for additional oversight to make sure investments were in alignment with strategic priorities and master plans for the future of those portfolios or if increasing the threshold to allow for more decentralized decision making on investments in the portfolios was appropriate. The members determined that incremental steps in policy to be more prudent than changing the statutory requirements without testing.

In January 2012, the SBC updated their policy to allow delegated initial project approval to the State Architect and Finance & Administration for certain major maintenance projects up to \$500,000 in total project cost that did not include bond funding. Work could not commence on the project until after it was reported to the SBC. This delegation was only for the initial approval.

In January 2018, the SBC updated their policy to increase the delegated approval authority of the State Architect and Finance & Administration to include all actions for capital projects under \$500,000 except for projects funded with bonds and certain other restrictions. Additionally, the SBC delegated approval for improvement projects under \$100,000 to the Head of the State Procurement Agency. All delegated project approvals are reported to the SBC and work on new construction or building demolitions does not commence until after being reported.

b. The State of Tennessee has a unique funding structure that reflects the financial stability of the state and no surrounding states have a model similar to the State of Tennessee's centralized building commission, higher education commission and legislative funding model for capital expenditures so it's difficult to make any direct comparisons. Most states pay for their new construction and major maintenance solely through debt.

Reports and Proposed Legislative Changes

13. What reports does the commission prepare concerning its activities, operations, and accomplishments? Who receives copies of these reports? Please provide a link to any such reports issued in Fiscal Years 2018 and 2019.

- a. The SBC does not issue any reports. The minutes of the commission's meetings reflect its activities, operations and accomplishments. These minutes are posted on the OSA website.
14. Please describe any items related to the commission that require legislative attention and your proposed legislative changes.
- a. There are no current requests for legislative action related to the commission.
15. 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 Tennessee?
- a. The commission is primarily a legislative body and should continue because its review of projects helps to make sure that appropriated funds are used responsibly and for the legislature's intended purpose. Additionally, the commission makes sure that the State provides suitable facilities meeting the goals and objectives of Tennessee departments, institutions and agencies within reasonable time and budget requirements and in accordance with permissible procurement methodologies. Without the commission's oversight, these goals may not otherwise be met and the quality of building construction as well as the health, safety and welfare of those utilizing State properties could be jeopardized. The SBC has processes to approve emergency projects in an expedited manner while assuring that SPAs implement preventive measures based on lessons learned. Members have taken measures to require accountability when cost increases occur and the State Architect monitors market trends on their behalf. Through the state architect, the SBC also sets standards for design and construction procurement methodologies and contract forms.

At the request of the Chairman of the House Government Operations Committee, all agencies that provide responses to questions as part of the Q&A process should also provide the following information.

16. Identification of the appropriate agency representative or representatives possessing substantial knowledge and understanding of the responses provided to the sunset review questions.

Ann McGauran, State Architect

17. Identification of the appropriate agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

Ann McGauran, State Architect

Ashley Fuqua, Manager of Legislative and Agency Affairs,
Tennessee Treasury Department

18. Office address, telephone number, and email address of the agency representative or representatives who will respond to the questions at the scheduled sunset hearing.

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