

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09

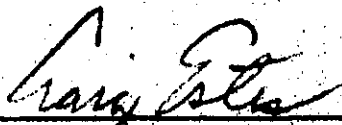
Date


Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

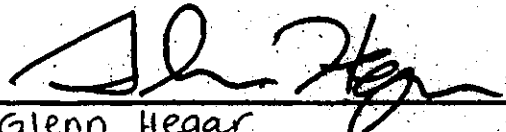
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 1011 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

  
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Craig Estes, Chair

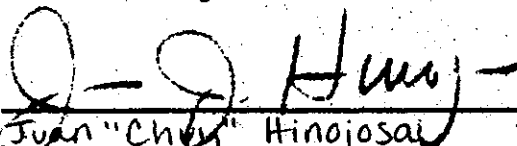
  
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Linda Harper-Brown (Chair)

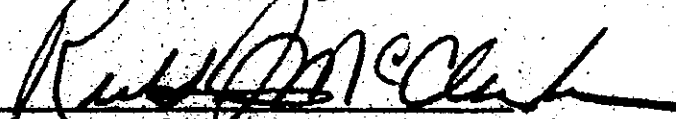
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Troy Fraser

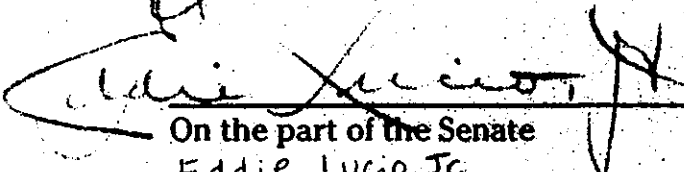
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Yvonne Davis

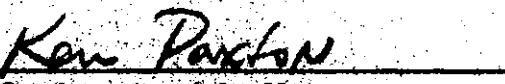
  
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Glenn Hegar

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Jodie Laubenberg

  
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Juan "Chuy" Hinojosa

  
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Ruth McClendon

  
\_\_\_\_\_  
On the part of the Senate  
Eddie Lucio, Jr.

  
\_\_\_\_\_  
On the part of the House  
Ken Paxton

### Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

S.B. No. 1011

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation and functions of the Texas Commission  
3 on Fire Protection.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subdivision (2), Section 419.001, Government  
6 Code, is amended to read as follows:

7 (2) Except as otherwise provided in this chapter,  
8 "volunteer [~~Volunteer~~] fire fighter" and "volunteer fire chief" do  
9 not include a person who is also employed full-time in the fire  
10 service.

11 SECTION 2. Section 419.003, Government Code, is amended to  
12 read as follows:

13 Sec. 419.003. SUNSET PROVISION. The Texas Commission on  
14 Fire Protection is subject to Chapter 325 (Texas Sunset Act).  
15 Unless continued in existence as provided by that chapter, the  
16 commission is abolished and this chapter expires September 1, 2021  
17 [~~2009~~].

18 SECTION 3. Section 419.004, Government Code, is amended by  
19 amending Subsections (a) and (e) and adding Subsection (f) to read  
20 as follows:

21 (a) The commission is composed of the following 13 members:

22 (1) two members to be selected from a list of five  
23 names submitted by the Texas Fire Chiefs Association who are chief  
24 officers with a minimum rank that is equivalent to the position

1 immediately below that of the fire chief and who are employed in  
2 fire departments as defined by Section 419.021 that are under the  
3 jurisdiction of the commission, at least one of whom must be the  
4 head of a fire department and one of whom must be employed by a  
5 political subdivision with a population of less than 100,000  
6 ~~[50,000]~~;

7           (2) two members to be selected from a list of five  
8 names submitted by the Texas State Association of Fire Fighters who  
9 are fire protection personnel as defined by Section 419.021 with  
10 the rank of battalion chief or below and who are employed in fire  
11 departments or other appropriate local authorities under the  
12 jurisdiction of the commission, one of whom must be employed by a  
13 political subdivision with a population of less than 100,000  
14 ~~[50,000]~~;

15           (3) two members to be selected from a list of five  
16 names submitted by the State Firemen's and Fire Marshals'  
17 Association of Texas who are volunteer fire chiefs or volunteer  
18 fire fighters;

19           (4) one certified fire protection engineer;

20           (5) one certified arson investigator or certified fire  
21 protection inspector;

22           (6) one fire protection instructor from an institution  
23 of higher education as defined by Section 61.003, Education Code;  
24 and

25           (7) four public members.

26           (e) A person may not be ~~[is not eligible for appointment as]~~  
27 a public member of the commission if the person or the person's

1 spouse:

2 (1) is registered, certified, or licensed by a  
3 regulatory agency in the field of fire protection [~~the commission~~];

4 (2) is employed by or participates in the management  
5 of a business entity or other organization regulated by [~~the~~  
6 ~~commission~~] or receiving money [~~funds~~] from the commission;

7 (3) owns or controls, directly or indirectly, more  
8 than a 10 percent interest in a business entity or other  
9 organization regulated by [~~the commission~~] or receiving money  
10 [~~funds~~] from the commission;

11 (4) uses or receives a substantial amount of tangible  
12 goods, services, or money [~~funds~~] from the commission, other than  
13 compensation or reimbursement authorized by law for commission  
14 membership, attendance, or expenses; or

15 (5) is employed in the field of [~~a member of a paid or~~  
16 ~~volunteer~~] fire protection [~~department~~].

17 (f) For purposes of this section, "volunteer fire fighter"  
18 and "volunteer fire chief" mean a person who is a member of a  
19 nonprofit volunteer fire department, and the term may include a  
20 person who is also employed full-time in the fire service.

21 SECTION 4. Subsections (a) and (c), Section 419.005,  
22 Government Code, are amended to read as follows:

23 (a) It is a ground for removal from the commission that [~~if~~]  
24 a member:

25 (1) does not have at the time of taking office  
26 [~~appointment~~] the qualifications required by Section 419.004;

27 (2) does not maintain during service on the commission

1 the qualifications required by Section 419.004;

2 (3) is ineligible for membership under [~~violates a~~  
3 ~~prohibition established by~~] Section 419.006;

4 (4) cannot, because of illness or disability,  
5 discharge the member's duties for a substantial part of the member's  
6 term [~~for which the member is appointed because of illness or~~  
7 ~~disability~~]; or

8 (5) is absent from more than half of the regularly  
9 scheduled commission meetings that the member is eligible to attend  
10 during a calendar year without an excuse approved [~~unless the~~  
11 ~~absence is excused~~] by majority vote of the commission.

12 (c) If the executive director has knowledge that a potential  
13 ground for removal exists, the executive director shall notify the  
14 presiding officer of the commission of the potential ground. The  
15 presiding officer shall then notify the governor and the attorney  
16 general that a potential ground for removal exists. If the  
17 potential ground for removal involves the presiding officer, the  
18 executive director shall notify the next highest ranking officer of  
19 the commission, who shall then notify the governor and the attorney  
20 general that a potential ground for removal exists.

21 SECTION 5. Section 419.006, Government Code, is amended to  
22 read as follows:

23 Sec. 419.006. CONFLICT OF INTEREST. (a) In [~~An officer,~~  
24 ~~employee, or paid consultant of a Texas trade association in the~~  
25 ~~field of fire protection may not be a member of the commission or an~~  
26 ~~employee of the commission who is exempt from the state's position~~  
27 ~~classification plan or is compensated at or above the amount~~

1 ~~prescribed by the General Appropriations Act for step 1, salary~~  
2 ~~group 17, of the position classification salary schedule.~~

3 ~~[(b) A person who is the spouse of an officer, manager, or~~  
4 ~~paid consultant of a Texas trade association in the field of fire~~  
5 ~~protection may not be a commission member and may not be a~~  
6 ~~commission employee who is exempt from the state's position~~  
7 ~~classification plan or is compensated at or above the amount~~  
8 ~~prescribed by the General Appropriations Act for step 1, salary~~  
9 ~~group 17, of the position classification salary schedule.~~

10 ~~[(c) For the purposes of]~~ this section, "Texas trade  
11 association" means ~~[a Texas trade association is]~~ a ~~[nonprofit,~~  
12 cooperative~~]~~ and voluntarily joined statewide association of  
13 business or professional competitors in this state designed to  
14 assist its members and its industry or profession in dealing with  
15 mutual business or professional problems and in promoting their  
16 common interest.

17 (b) A person may not be a member of the commission and may  
18 not be a commission employee employed in a "bona fide executive,  
19 administrative, or professional capacity," as that phrase is used  
20 for purposes of establishing an exemption to the overtime  
21 provisions of the federal Fair Labor Standards Act of 1938 (29  
22 U.S.C. Section 201 et seq.), if:

23 (1) the person is an officer, employee, or paid  
24 consultant of a Texas trade association in the field of fire  
25 protection; or

26 (2) the person's spouse is an officer, manager, or paid  
27 consultant of a Texas trade association in the field of fire

1 protection.

2       (c) [~~(d)~~] A person may not be [~~serve as~~] a member of the  
3 commission or act as the general counsel to the commission or the  
4 agency if the person is required to register as a lobbyist under  
5 Chapter 305 because of the person's activities for compensation on  
6 behalf of a profession related to the operation of the commission.

7       SECTION 6. Subsection (a), Section 419.007, Government  
8 Code, is amended to read as follows:

9       (a) The governor shall designate a member of the commission  
10 [~~fire protection instructor appointed under Section 419.004(a)(6)~~]  
11 ~~serves~~] as the presiding officer of the commission to serve in that  
12 capacity at the pleasure of [~~unless~~] the governor [~~designates~~  
13 ~~another member as presiding officer~~]. The commission shall elect  
14 from among its members an assistant presiding officer and a  
15 secretary.

16       SECTION 7. Section 419.0071, Government Code, is amended to  
17 read as follows:

18       Sec. 419.0071. COMMISSION MEMBER TRAINING. (a) A [~~To be~~  
19 ~~eligible to take office as a member of the commission, a~~] person who  
20 is appointed to and qualifies for office as a member of the  
21 commission may not vote, deliberate, or be counted as a member in  
22 attendance at a meeting of the commission until the person  
23 completes [~~must complete at least one course of~~] a training program  
24 that complies with this section.

25       (b) The training program must provide [~~information to~~] the  
26 person with information regarding:

27       (1) the [~~enabling~~] legislation that created the

1 commission;

2 (2) the programs, ~~[operated by the commission,~~  
3 ~~[(3) the role and]~~ functions, ~~[of the commission,~~  
4 ~~[(4) the]~~ rules, and ~~[of the commission with an~~  
5 ~~emphasis on the rules that relate to disciplinary and investigatory~~  
6 ~~authority,~~

7 ~~[(5) the current]~~ budget of of ~~[for]~~ the commission;

8 (3) ~~[(6)]~~ the results of the most recent formal audit  
9 of the commission;

10 (4) ~~[(7)]~~ the requirements of laws relating to ~~[the~~  
11 ~~[(A)]~~ open meetings [law], public information  
12 ~~[Chapter 551,~~

13 ~~[(B) open records law, Chapter 552, and~~

14 ~~[(C) administrative procedure law], and [Chapter~~  
15 ~~2001,~~

16 ~~[(8) the requirements of the conflict]~~ conflicts of  
17 interest ~~[interests laws and other laws relating to public~~  
18 ~~officials]; and~~

19 (5) ~~[(9)]~~ any applicable ethics policies adopted by  
20 the commission ~~[agency]~~ or the Texas Ethics Commission.

21 (c) A person appointed to the commission is entitled to  
22 reimbursement, as provided by the General Appropriations Act, for  
23 the travel expenses incurred in attending the training program  
24 regardless of whether the attendance at the program occurs before  
25 or after ~~[, as provided by the General Appropriations Act and as if]~~  
26 the person qualifies for office ~~[were a member of the commission].~~

27 SECTION 8. Subsection (c), Section 419.008, Government



1 Code, is amended to read as follows:

2 (c) The commission shall perform duties assigned by law to  
3 the Commission on Fire Protection Personnel Standards and Education  
4 [~~or to the Fire Department Emergency Board~~].

5 SECTION 9. Subsection (a), Section 419.0082, Government  
6 Code, is amended to read as follows:

7 (a) In adopting or amending a rule under Section 419.008(a)  
8 or any other law, the commission shall seek the input of the fire  
9 fighter advisory committee [~~and, when appropriate, the funds~~  
10 ~~allocation advisory committee~~]. The commission shall permit the  
11 [~~appropriate~~] advisory committee to review and comment on any  
12 proposed rule, including a proposed amendment to a rule, before the  
13 rule is adopted. The recommendations of the advisory committee are  
14 subject to modification or rejection by the commission, in the  
15 commission's sole discretion, without the resubmission of the  
16 matter to the advisory committee.

17 SECTION 10. Subchapter A, Chapter 419, Government Code, is  
18 amended by adding Section 419.0083 to read as follows:

19 Sec. 419.0083. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE  
20 RESOLUTION. (a) The commission shall develop and implement a  
21 policy to encourage the use of:

22 (1) negotiated rulemaking procedures under Chapter  
23 2008 for the adoption of commission rules; and

24 (2) appropriate alternative dispute resolution  
25 procedures under Chapter 2009 to assist in the resolution of  
26 internal and external disputes under the commission's  
27 jurisdiction.

1        (b) The commission's procedures relating to alternative  
2 dispute resolution must conform, to the extent possible, to any  
3 model guidelines issued by the State Office of Administrative  
4 Hearings for the use of alternative dispute resolution by state  
5 agencies.

6        (c) The commission shall designate a trained person to:

7                (1) coordinate the implementation of the policy  
8 adopted under Subsection (a);

9                (2) serve as a resource for any training needed to  
10 implement the procedures for negotiated rulemaking or alternative  
11 dispute resolution; and

12                (3) collect data concerning the effectiveness of those  
13 procedures, as implemented by the commission.

14        SECTION 11. Subsection (c), Section 419.009, Government  
15 Code, is amended to read as follows:

16        (c) The commission shall develop and implement policies  
17 that clearly separate the policy-making [~~define the respective~~]  
18 responsibilities of the commission and the management  
19 responsibilities of the executive director and the staff of the  
20 commission.

21        SECTION 12. Section 419.011, Government Code, is amended to  
22 read as follows:

23        Sec. 419.011. [~~PUBLIC INTEREST INFORMATION AND~~]  
24 COMPLAINTS. (a) The commission shall maintain a system to  
25 promptly and efficiently act on complaints filed with the  
26 commission. The commission shall maintain information about  
27 parties to the complaint, the subject matter of the complaint, a

1 summary of the results of the review or investigation of the  
2 complaint, and its disposition.

3 (b) The commission shall make [prepare] information  
4 available [of public interest] describing its [the functions of the  
5 commission and the commission's] procedures for complaint  
6 investigation and resolution [by which complaints are filed with  
7 and resolved by the commission. The commission shall make the  
8 information available to the public and appropriate state agencies.

9 ~~[(b) The commission shall keep a file about each written~~  
10 ~~complaint filed with the commission that the commission has~~  
11 ~~authority to resolve. The commission shall provide to the person~~  
12 ~~filing the complaint and the persons or entities complained about~~  
13 ~~the commission's policies and procedures pertaining to complaint~~  
14 ~~investigation and resolution].~~

15 (c) The commission[~~, at least quarterly and until final~~  
16 disposition of the complaint,] shall periodically notify the  
17 [person filing the] complaint parties [and the persons or entities  
18 complained about] of the status of the complaint until final  
19 disposition [unless the notice would jeopardize an undercover  
20 investigation.

21 ~~[(c) The commission shall keep information about each~~  
22 ~~complaint filed with the commission. The information shall~~  
23 ~~include:~~

24 ~~[(1) the date the complaint is received,~~

25 ~~[(2) the name of the complainant,~~

26 ~~[(3) the subject matter of the complaint,~~

27 ~~[(4) a record of all persons contacted in relation to~~

1 ~~the complaint,~~

2 ~~[(5) a summary of the results of the review or~~  
3 ~~investigation of the complaint, and~~

4 ~~[(6) for complaints for which the agency took no~~  
5 ~~action, an explanation of the reason the complaint was closed~~  
6 ~~without action.~~

7 ~~[(d) The commission shall comply with federal and state laws~~  
8 ~~related to program and facility accessibility. The executive~~  
9 ~~director shall also prepare and maintain a written plan that~~  
10 ~~describes how a person who does not speak English can be provided~~  
11 ~~reasonable access to the commission's programs].~~

12 SECTION 13. Subchapter A, Chapter 419, Government Code, is  
13 amended by adding Section 419.012 to read as follows:

14 Sec. 419.012. TECHNOLOGICAL SOLUTIONS. The commission  
15 shall implement a policy requiring the commission to use  
16 appropriate technological solutions to improve the commission's  
17 ability to perform its functions. The policy must ensure that the  
18 public is able to interact with the commission on the Internet.

19 SECTION 14. Section 419.023, Government Code, is amended by  
20 adding Subsection (f) to read as follows:

21 (f) Appointments to the committee shall be made without  
22 regard to the race, color, disability, sex, religion, age, or  
23 national origin of the appointees.

24 SECTION 15. Subsection (a), Section 419.026, Government  
25 Code, is amended to read as follows:

26 (a) The commission shall set and collect a fee [~~of not more~~  
27 ~~than \$35]~~ for each certificate that the commission issues or renews

1 under this subchapter, except that if a person holds more than one  
2 certificate the commission may collect only one fee each year for  
3 the renewal of those certificates. The commission by rule shall set  
4 the amount of the fee under this subsection in an amount designed to  
5 recover the commission's costs in connection with issuing  
6 certificates under this subchapter, including the cost to the  
7 commission of obtaining fingerprint-based criminal history record  
8 information under Section 419.0325. The employing agency or entity  
9 shall pay the [~~this~~] fee in the manner prescribed [~~as provided~~] by  
10 commission rule. The certificate must be renewed annually.

11 SECTION 16. Section 419.027, Government Code, is amended to  
12 read as follows:

13 Sec. 419.027. BIENNIAL INSPECTIONS. (a) At least  
14 biennially, the commission shall visit and inspect each institution  
15 or facility conducting courses for training fire protection  
16 personnel and recruits, each fire department, and each local  
17 governmental agency providing fire protection to determine if the  
18 department, agency, institution, or facility is complying with this  
19 chapter and commission rules.

20 (b) The commission may conduct risk-based inspections of  
21 institutions and facilities in addition to the inspections under  
22 Subsection (a). In determining whether to conduct an inspection of  
23 an institution or facility under this subsection, the commission  
24 shall consider:

25 (1) how recently the institution or facility has come  
26 under regulation;

27 (2) the institution's or facility's history of

- 1 compliance with state law and commission rules;  
2           (3) the number of complaints filed with the commission  
3 regarding the institution or facility during the last year;  
4           (4) the number of paid personnel in the institution or  
5 facility;  
6           (5) the frequency of fire responses;  
7           (6) the institution's or facility's ability to inspect  
8 and maintain equipment; and  
9           (7) any other factor the commission considers  
10 appropriate to assess an institution's or facility's safety risk.

11           SECTION 17. Subsections (a) and (d), Section 419.032,  
12 Government Code, are amended to read as follows:

13           (a) A fire department may not appoint a person to the fire  
14 department, except on a temporary or probationary basis, unless:

- 15           (1) the person:  
16                   (A) [~~1~~] has satisfactorily completed a  
17 preparatory program of training in fire protection at a school  
18 approved by the commission; and  
19                   (B) [~~2~~] meets the qualifications established  
20 by the commission under Subsection (b); and

21           (2) the commission has approved the person's  
22 fingerprint-based criminal history record information under  
23 Section 419.0325.

24           (d) The commission may certify persons who are qualified  
25 under this subchapter to be fire protection personnel. The  
26 commission shall adopt rules relating to presentation of evidence  
27 of satisfactory completion of a program or course of instruction in

1 another jurisdiction equivalent in content and quality to that  
2 required by the commission for approved fire protection education  
3 and training programs in this state and shall issue to a person  
4 meeting the rules and the requirements of Section 419.0325 a  
5 certificate evidencing satisfaction of Subsections (a) and (b).  
6 The commission may waive any certification requirement, except  
7 those under Section 419.0325, for an applicant with a valid license  
8 from another state having certification requirements substantially  
9 equivalent to those of this state.

10 SECTION 18. Subchapter B, Chapter 419, Government Code, is  
11 amended by adding Section 419.0325 to read as follows:

12 Sec. 419.0325. CRIMINAL HISTORY RECORD INFORMATION  
13 APPROVAL REQUIRED FOR CERTIFICATION. (a) The commission may not  
14 certify a person as fire protection personnel unless the  
15 commission, after review, has approved fingerprint-based criminal  
16 history record information about the person obtained from the  
17 Department of Public Safety under Subchapter F, Chapter 411, and  
18 from the Federal Bureau of Investigation under Section 411.087.

19 (b) The applicant for certification or the fire department  
20 may submit the required fingerprint-based state and national  
21 criminal history record information to the commission. If neither  
22 the applicant nor the fire department submits the required criminal  
23 history record information to the commission, the commission shall  
24 obtain the required criminal history record information pursuant to  
25 Sections 411.087 and 411.1236.

26 (c) The commission by rule shall establish criteria for  
27 denying a person certification to be fire protection personnel

1 based on the person's criminal history record information. The  
2 criteria must relate to a person's fitness to serve as fire  
3 protection personnel.

4 (d) Criminal history record information received by the  
5 commission is privileged and confidential and for commission use  
6 only.

7 SECTION 19. Subsections (a), (b), and (c), Section 419.034,  
8 Government Code, are amended to read as follows:

9 (a) A fire department or other employing entity may renew an  
10 unexpired certification by, ~~[paying to the commission]~~ before the  
11 expiration date of the certificate:

12 (1) submitting evidence satisfactory to the  
13 commission of completion of any required professional education;  
14 and

15 (2) paying to the commission the required renewal fee.

16 (b) If a person's certificate has been expired for 30 days  
17 or less, the fire department or other employing entity may renew the  
18 certificate by:

19 (1) submitting evidence satisfactory to the  
20 commission of completion of any required professional education;  
21 and

22 (2) paying to the commission the required renewal fee  
23 and a fee that is one-half of the certification fee for the  
24 certificate.

25 (c) If a person's certificate has been expired for longer  
26 than 30 days but less than one year, the fire department or other  
27 employing entity may renew the certificate by:



1           (1) submitting evidence satisfactory to the  
2 commission of completion of any required professional education;  
3 and

4           (2) paying to the commission all unpaid renewal fees  
5 and a fee that is equal to the certification fee.

6           SECTION 20. Section 419.036, Government Code, is amended by  
7 adding Subsections (c) and (d) to read as follows:

8           (c) A complaint case opened by the commission based on a  
9 violation found during an inspection conducted under Section  
10 419.027 must be opened not later than the 30th day after the date  
11 the commission provides notice of the violation to the applicable  
12 department, agency, institution, or facility.

13           (d) The commission by rule shall create a matrix for  
14 determining penalty amounts and disciplinary actions for fire  
15 departments, training providers, and certified personnel who  
16 commit violations of this chapter or a rule adopted under this  
17 chapter. In developing the matrix, the commission shall consider  
18 the following factors:

19                   (1) compliance history;

20                   (2) seriousness of the violation;

21                   (3) the safety threat to the public or fire personnel;

22                   (4) any mitigating factors; and

23                   (5) any other factors the commission considers  
24 appropriate.

25           SECTION 21. Subchapter B, Chapter 419, Government Code, is  
26 amended by adding Section 419.0366 to read as follows:

27           Sec. 419.0366. TRACKING AND ANALYSIS OF COMPLAINT AND

1 VIOLATION DATA. (a) The commission shall develop and implement a  
2 method for tracking and categorizing the sources and types of  
3 complaints filed with the commission and of violations of this  
4 chapter or a rule adopted under this chapter.

5 (b) The commission shall analyze the complaint and  
6 violation data maintained under Subsection (a) to identify trends  
7 and areas that may require additional regulation or enforcement.

8 SECTION 22. Subchapter B, Chapter 419, Government Code, is  
9 amended by adding Section 419.048 to read as follows:

10 Sec. 419.048. FIRE PROTECTION PERSONNEL INJURY DATA;  
11 RECOMMENDATIONS TO REDUCE INJURIES. (a) Pursuant to Section  
12 417.004, the commission and the commissioner of insurance, as  
13 necessary to allow the agencies to perform their statutory duties,  
14 shall transfer information between the two agencies, including  
15 injury information from the Texas Fire Incident Reporting System  
16 and workers' compensation data showing claims filed by fire  
17 protection personnel.

18 (b) Personally identifiable information received by the  
19 commission under this section relating to injured fire protection  
20 personnel is confidential. The commission may not release, and a  
21 person may not gain access to, any information that could  
22 reasonably be expected to reveal the identity of injured fire  
23 protection personnel.

24 (c) The commission shall evaluate information and data on  
25 fire protection personnel injuries and develop recommendations for  
26 reducing fire protection personnel injuries. The commission shall  
27 forward the recommendations to the state fire marshal not later

1 than September 1 of each year for inclusion in the annual report  
2 required by Section 417.0075.

3 (d) The commission shall establish criteria for evaluating  
4 fire protection personnel injury information to determine the  
5 nature of injuries that the commission should investigate. Based  
6 on these investigations, the commission shall identify fire  
7 departments in need of assistance in reducing injuries and may  
8 provide assistance to those fire departments.

9 SECTION 23. Section 419.906, Government Code, is amended by  
10 adding Subsections (d) and (e) to read as follows:

11 (d) The commission may enter a default order if a fire  
12 department or training provider fails to take action to correct a  
13 violation found during an inspection conducted under this chapter  
14 or to request an informal settlement conference before the 61st day  
15 after the date the commission provides to the department or  
16 provider notice requiring the department or provider to correct the  
17 violation.

18 (e) Notwithstanding Section 419.0365, the commission may  
19 temporarily suspend a person's or regulated entity's certificate on  
20 a determination by a panel of the commission that continued  
21 activity by the person or entity would present an immediate threat  
22 to the public or to fire service trainees. The panel may hold a  
23 meeting for purposes of this subsection by teleconference call  
24 pursuant to Section 551.125. A person or regulated entity whose  
25 certificate is temporarily suspended under this subsection is  
26 entitled to a hearing before the commission not later than the 14th  
27 day after the date of the temporary suspension.

1 SECTION 24. Subchapter Z, Chapter 419, Government Code, is  
2 amended by adding Section 419.908 to read as follows:

3 Sec. 419.908. COOPERATION WITH FEDERAL AND STATE ENTITIES  
4 IN A DISASTER. In a declared state of disaster under Section  
5 418.014, the commission shall coordinate with appropriate state and  
6 federal agencies, including the governor's office of the homeland  
7 security and the Federal Emergency Management Agency.

8 SECTION 25. Subchapter G, Chapter 614, Government Code, is  
9 amended by adding Section 614.105 to read as follows:

10 Sec. 614.105. SEPARATE ACCOUNT FOR MONEY FROM TEXAS  
11 COMMISSION ON FIRE PROTECTION. (a) The service shall maintain a  
12 separate account within the volunteer fire department assistance  
13 fund.

14 (b) The account shall contain money:

15 (1) previously appropriated to the Texas Commission on  
16 Fire Protection for the administration of the fire department  
17 emergency program and transferred to the service;

18 (2) received from the repayment of outstanding loans  
19 transferred to the service from the Texas Commission on Fire  
20 Protection fire department emergency program; and

21 (3) from any legislative appropriations for the  
22 purposes of Subsection (c).

23 (c) The money in the account may be used only to award grants  
24 for scholarships for the education and training of firefighters or  
25 for purchasing necessary firefighting equipment and facilities  
26 for:

27 (1) a municipal fire department with any number of

1 paid personnel;

2 (2) a fire department operated by its members, some of  
3 whom are volunteers and some of whom are paid; or

4 (3) a volunteer fire department.

5 (d) The service shall administer all outstanding loans  
6 transferred from the Texas Commission on Fire Protection fire  
7 department emergency program and deposit money obtained as  
8 repayment of those loans to the credit of the account created under  
9 this section.

10 SECTION 26. Subchapter C, Chapter 419, Government Code, is  
11 repealed.

12 SECTION 27. (a) As soon as practicable after the effective  
13 date of this Act, the governor shall designate a member of the Texas  
14 Commission on Fire Protection as the presiding officer of the  
15 commission pursuant to Section 419.007, Government Code, as amended  
16 by this Act.

17 (b) As soon as practicable after the effective date of this  
18 Act, the Texas Commission on Fire Protection shall adopt the rules  
19 required by Section 419.0325, Government Code, as added by this  
20 Act, and Sections 419.026 and 419.036, Government Code, as amended  
21 by this Act.

22 (c) Notwithstanding Section 419.048, Government Code, as  
23 added by this Act, the Texas Commission on Fire Protection is not  
24 required to submit its annual recommendations to the state fire  
25 marshal for inclusion in the report required by Section 417.0075,  
26 Government Code, before September 1, 2010.

27 SECTION 28. (a) As soon as practicable after the effective

1 date of this Act, the Texas Commission on Fire Protection and the  
2 Texas Forest Service shall develop and enter into a memorandum of  
3 understanding regarding the transfer described in this section.

4 (b) In accordance with the transition plan developed by the  
5 Texas Commission on Fire Protection and the Texas Forest Service  
6 under Subsection (a) of this section, on January 1, 2010:

7 (1) the fire department emergency program under  
8 Subchapter C, Chapter 419, Government Code, is abolished;

9 (2) all money, loans and other contracts, leases,  
10 property, and obligations of the Texas Commission on Fire  
11 Protection related to the fire department emergency program are  
12 transferred to the Texas Forest Service; and

13 (3) the unexpended and unobligated balance of any  
14 money appropriated by the legislature for the Texas Commission on  
15 Fire Protection related to the fire department emergency program is  
16 transferred to the Texas Forest Service.

17 (c) Before January 1, 2010, the Texas Commission on Fire  
18 Protection may agree with the Texas Forest Service to transfer any  
19 property of the fire department emergency program to implement the  
20 transfer required by this Act.

21 SECTION 29. (a) Sections 419.004 and 419.006 and  
22 Subsection (a), Section 419.0071, Government Code, as amended by  
23 this Act, apply only to a person who is appointed or reappointed as  
24 a member of the Texas Commission on Fire Protection on or after the  
25 effective date of this Act. A person appointed or reappointed as a  
26 member of the commission before the effective date of this Act is  
27 governed by the law in effect immediately before that date, and the

1 former law is continued in effect for that purpose.

2 (b) Section 419.005, Government Code, as amended by this  
3 Act, applies only to a ground for removal that occurs on or after  
4 the effective date of this Act. A ground for removal that occurs  
5 before the effective date of this Act is governed by the law in  
6 effect immediately before that date, and the former law is  
7 continued in effect for that purpose.

8 (c) Subsection (b), Section 419.0071, Government Code, as  
9 amended by this Act, applies only to a training program attended on  
10 or after the effective date of this Act. A training program  
11 attended before the effective date of this Act is governed by the  
12 law in effect immediately before that date, and the former law is  
13 continued in effect for that purpose.

14 (d) Subsection (c), Section 419.0071, Government Code, as  
15 amended by this Act, applies only to expenses incurred on or after  
16 the effective date of this Act. Expenses incurred before the  
17 effective date of this Act are governed by the law in effect  
18 immediately before that date, and the former law is continued in  
19 effect for that purpose.

20 (e) Section 419.0082, Government Code, as amended by this  
21 Act, applies to a rule adopted on or after the effective date of  
22 this Act. A rule adopted before the effective date of this Act is  
23 governed by the law in effect immediately before that date, and the  
24 former law is continued in effect for that purpose.

25 (f) Section 419.026, Government Code, as amended by this  
26 Act, applies only to a certificate issued or renewed on or after  
27 January 1, 2010. A certificate issued or renewed before January 1,

1 2010, is governed by the law in effect on the date the certificate  
2 was issued or renewed, and the former law is continued in effect for  
3 that purpose.

4 (g) Section 419.032, Government Code, as amended by this  
5 Act, and Section 419.0325, Government Code, as added by this Act,  
6 apply only to a person who applies for an initial certificate on or  
7 after January 1, 2010. A person who applies for an initial  
8 certificate before January 1, 2010, is governed, even in relation  
9 to the person's renewal of the certificate on or after that date, by  
10 the law in effect immediately before that date, and the former law  
11 is continued in effect for that purpose.

12 (h) Section 419.034, Government Code, as amended by this  
13 Act, applies to a certificate renewed on or after the effective date  
14 of this Act. A certificate renewed before the effective date of  
15 this Act is governed by the law in effect immediately before that  
16 date, and the former law is continued in effect for that purpose.

17 (i) Subsection (d), Section 419.906, Government Code, as  
18 added by this Act, applies only to an order pursuant to a violation  
19 that occurs on or after the effective date of this Act. An order  
20 pursuant to a violation that occurs before the effective date of  
21 this Act is governed by the law in effect immediately before that  
22 date, and the former law is continued in effect for that purpose.

23 SECTION 30. (a) Except as provided by Subsection (b) of  
24 this section, this Act takes effect September 1, 2009.

25 (b) The following changes in law take effect January 1,  
26 2010:

27 (1) the repeal of Subchapter C, Chapter 419,



1 Government Code;

2                   (2) the amendment to Section 419.026, Government Code;

3 and

4                   (3) the amendment to Subchapter G, Chapter 614,

5 Government Code.

**Senate Bill 1011**  
**Conference Committee Report**  
**Section-by-Section Analysis**  
**Texas Commission on Fire Protection Sunset Bill**

<b>SENATE VERSION</b>	<b>HOUSE VERSION</b>	<b>CONFERENCE</b>
No equivalent provision.	SECTION 1. Amends heading to Chapter 419, Government Code to change name of the Texas Commission on Fire Protection to the Texas Fire Protection Agency.	Same as Senate version.
No equivalent provision.	SECTION 2. Amends Section 419.001, Government Code, as follows:  (1) to change name of the Texas Commission on Fire Protection to the Texas Fire Protection Agency.	Same as Senate version.
No equivalent provision.	(2) to provide an exception as otherwise provided that the definition of volunteer fire fighter or volunteer fire chief do not include a person employed full-time in the fire service. (Floor Amendment 4, by Harper-Brown)	SECTION 1. Same as House version.
No equivalent provision.	SECTION 3. Amends Section 419.002, Government Code to change name of the Texas Commission on Fire Protection to the Texas Fire Protection Agency.	Same as Senate version.
No equivalent provision.	SECTION 4. Amends Subchapter A, Chapter 419, Government Code, to add Section 419.0025 to clarify that a reference to the Texas Commission on Fire Protection means the Texas Fire Protection Agency.	Same as Senate version.
SECTION 1. Amends Section 419.003, Government Code, to update the Texas Commission on Fire Protections' Sunset date to September 1, 2021.	SECTION 5. Same as Senate version, except for conforming changes regarding the name of the agency.	SECTION 2. Same as Senate version.
SECTION 2. Amends Section 419.004(e), Government Code, to update current statutory language requiring public membership on state agency policy making bodies.	SECTION 6. Same as Senate version.	SECTION 3. Same as Senate version.

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<b>SENATE VERSION</b>	<b>HOUSE VERSION</b>	<b>CONFERENCE</b>
No equivalent provision.	Amends Section 419.004(a)(1) and (a)(2), Government Code, to change the population threshold from 50,000 to 100,000 for chief officers and fire protection personnel members on the Commission representing political subdivisions. (Floor Amendment 3, by Harper-Brown)	Same as House version.
No equivalent provision.	Amends Section 419.004, Government Code, by adding Subsection (f) to provide that for the purpose of appointments to the Commission a "volunteer fire fighter" and "volunteer fire chief" means a person who is a member of a nonprofit volunteer fire department, and may include a person who is also employed full-time in the fire service. (Floor amendment 4, by Harper-Brown)	Same as House version.
SECTION 3. Amends Section 419.005(a) and (c), Government Code, to update current statutory language specifying the grounds for removing a board member.	SECTION 7. Same as Senate version.	SECTION 4. Same as Senate version.
SECTION 4. Amends Section 419.006, Government Code, to update current statutory language relating to conflicts of interest.	SECTION 8. Same as Senate version.	SECTION 5. Same as Senate version.
SECTION 5. Amends Section 419.007(a), Government Code, to update current statutory language requiring the Governor to designate the board's presiding officer.	SECTION 9. Same as Senate version.	SECTION 6. Same as Senate version.
SECTION 6. Amends Section 419.0071, Government Code, to require members of the board to complete training before assuming their duties.	SECTION 10. Same as Senate version.	SECTION 7. Same as Senate version.
SECTION 7. Amends Section 419.008(c), Government Code, to remove reference to the Fire Department Emergency Board.	No equivalent provision.	SECTION 8. Same as Senate version.

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**SENATE VERSION**

SECTION 8. Amends Section 419.0082(a), Government Code, to remove provisions requiring the commission to seek the input of the fire fighter advisory committee and funds allocation committee on any proposed rule before the rule is adopted.

SECTION 9. Amends Subchapter A, Chapter 419, Government Code, to add 419.0083, requiring the commission to develop and use appropriate alternative rulemaking and dispute resolution procedures.

SECTION 10. Amends Section 419.009(c), Government Code, to update current statutory language requiring separation of policymaking and agency staff functions.

SECTION 11. Amends Section 419.011, Government Code, to update current statutory language requiring information to be maintained on complaints.

SECTION 12. Amends Subchapter A, Chapter 419, Government Code, to add 419.012, to update current statutory language requiring agencies to use technology to increase public access.

SECTION 13. Amends Section 419.023(e), Government Code, to require that the fire fighter advisory committee review commission rules upon request from the commission instead of on a periodic basis.

**HOUSE VERSION**

SECTION \_\_. Amends Section 419.0082(a), Government Code, adding language specifying that recommendations of an advisory commission are subject to rejection or modification by the commission without having to resubmit the matter to the advisory committee. (Floor Amendment 3, by Harper-Brown)

SECTION 11. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 13. Same as Senate version.

SECTION 14. Same as Senate version.

No equivalent provision. (Floor Amendment 3, by Harper-Brown)

**CONFERENCE**

SECTION 9. Same as House version.

SECTION 10. Same as Senate version.

SECTION 11. Same as Senate version.

SECTION 12. Same as Senate version.

SECTION 13. Same as Senate version.

Same as House version.

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**SENATE VERSION**

No equivalent provision.

SECTION 14. Amends Section 419.026(a), Government Code, to require the commission, by rule, to set the fees for conducting criminal background checks.

SECTION 15. Amends Section 419.027, Government Code, to authorize the commission to conduct risk based inspections of fire stations and fire training providers.

SECTION 16. Amends Section 419.032(a) and (d), Government Code, to provide that a fire department may not appoint a person to the fire department, except on a temporary basis, unless the commission has approved the person's finger-print based criminal history record.

SECTION 17. Amends Subchapter B, Chapter 419, Government Code, to add 419.0325, to prohibit the commission from certifying a person as fire protection personnel unless it has approved fingerprint-based criminal history record information about the person and establishes a process for obtaining and using such information.

SECTION 18. Amends Sections 419.034(a), (b), and (c), Government Code to provide for the submission of continuing education information as a condition of renewing a certification.

**HOUSE VERSION**

SECTION 17. Amends Section 419.023, Government Code, by adding Subsection (f) to require appointments to Fire Fighter Advisory Committee be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 18. Same as Senate version.

SECTION 19. Same as Senate version.

SECTION 20. Same as Senate version.

SECTION 21. Same as Senate version.

SECTION 22. Same as Senate version.

**CONFERENCE**

SECTION 14. Same as House version.

SECTION 15. Same as Senate version.

SECTION 16. Same as Senate version.

SECTION 17. Same as Senate version.

SECTION 18. Same as Senate version.

SECTION 19. Same as Senate version.

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**SENATE VERSION**

SECTION 19. Amends Section 419.036, Government Code, by adding Subsections (c) and (d) to require the Commission to open complaint case based on violations found during inspections within 30 days of providing notice of violation to regulated entities and to establish a matrix for determining administration penalty amounts and disciplinary actions.

SECTION 20. Amends Subchapter B, Chapter 419, Government Code, by adding Section 419.0366 to require the Commission to develop a method for analyzing the sources and types of complaints and violations to identify trends and regulatory problem areas to focus its regulatory efforts.

SECTION 21. Amends Subchapter B, Chapter 419, Government Code, by adding Section 419.048 to require the Commission and the Texas Department of Insurance to share data and information on fire fighter injuries, and for the Commission to conduct analysis of this information and make recommendations for reducing these injuries.

No equivalent provision.

SECTION 22. Amends Section 419.906, Government Code, by adding Subsections (d) and (e) to authorize the Commission to enter into default orders and to authorize the Commission to temporarily suspend a person's or regulated entity's certificate.

**HOUSE VERSION**

SECTION 23. Same as Senate version.

SECTION 24. Same as Senate version.

SECTION 25. Same as Senate version.

SECTION 26. Amends Section 419.054, Government Code, by adding Subsection (e) to require appointments to Funds Allocation Advisory Committees be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 28. Same as Senate version.

**CONFERENCE**

SECTION 20. Same as Senate version.

SECTION 21. Same as Senate version.

SECTION 22. Same as Senate version.

Same as Senate version.

SECTION 23. Same as Senate version.

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**SENATE VERSION**

No equivalent provision.

SECTION 23. Amends Subchapter G, Chapter 614, Government Code, by adding Section 614.105 to transfer administration of the Commission's grant program to the Texas Forest Service and requires the Forest Service to account for these funds in a separate account within its volunteer fire department assistance fund. Provides for money to only be used for grants to municipal fire departments with any number of paid personnel, fire departments that are part-paid and part-volunteer, and volunteer fire departments.

No equivalent provision.

**HOUSE VERSION**

SECTION 29. Amends Subchapter Z, Chapter 419, Government Code by adding Section 419.008 to require the Commission, in a declared disaster, to coordinate with appropriate state and federal agencies, including the governor's office of homeland security and the Federal Emergency Management Agency.

No equivalent provision.

SECTION \_\_. Establishes a joint interim committee to study the feasibility and desirability of consolidating and expanding functions of the agency relating to volunteer firefighters and volunteer fire departments, including the possible transfer of the volunteer fire department grant program at the Texas Forest Service to the Commission and the establishment of minimum standards for volunteer firefighters and volunteer fire departments. (Floor Amendment 4 by Davis of Dallas and Floor Amendment 1, by McReynolds)

**CONFERENCE**

SECTION 24. Same as House version.

SECTION 25. Same as Senate version.

Same as Senate version.

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**SENATE VERSION**

**HOUSE VERSION**

**CONFERENCE**

SECTION 24. (a) Repeals Government Code, Sections 419.0082(b) prohibiting the Commission from adopting or amending rules at the same meeting the rule is proposed and allowing the Commission to make nonsubstantive, clerical rule changes without review by the Fire Fighter Advisory Committee; (c) providing an exception for the Commission to adopt emergency rules without review by the Advisory Committee; and (d) relating to nonsubstantive clerical changes to a rule the Commission is authorized to make.

No equivalent provision.

Same as House version.

(b) Repeals Subchapter C, Chapter 419, Government Code, the Fire Department Emergency Program.

No equivalent provision.

SECTION 26. Same as Senate version.

SECTION 25. (a) Provides for the designation the Commission's presiding officer of by the Governor.  
(b) Requires the adoption of newly authorized rules as soon as practicable after the effective date of this Act.  
(c) Provides for the Commission to have at least one year before it must submit its first recommendations for reducing fire fighter injuries.

SECTION 30. Same as Senate version, except for conforming changes regarding the name of the agency

SECTION 27. Same as Senate version.



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**SENATE VERSION**

**HOUSE VERSION**

**CONFERENCE**

SECTION 26. (a) Requires the Commission and the Texas Forest Service, as soon as practicable after the effective date of this Act, to develop and enter into a memorandum of understanding regarding the transfer of the grant fund.

(b) Provides for the abolishment of the fire department emergency program on January 1, 2010, and the transfer of all money, loans and other contracts, leases, property, and obligations related to the fire department emergency program to the Forest Service.

(c) Authorizes the Commission and the Forest Service to agree to transfer property of the fire department emergency program before January 1, 2010.

No equivalent provision.

SECTION 28. Same as Senate version.

SECTION 27. Makes prospective, provisions of the bill related to Commission appointments, grounds for removing Commission members, and training Commission members, and the application of newly adopted rules, certificates issued or renewed, criminal history checks, continuing education, and temporary suspension.

SECTION 31. Same as Senate version. (Floor Amendment 3, by Harper-Brown)

SECTION 29. Same as Senate version.

No equivalent provision.

SECTION 32. Provides for renaming the Texas Commission on Fire Protection as the Texas Fire Protection Agency and changing references in statute or administrative rule.

Same as Senate version.

SECTION 28. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

SECTION 33. (a) Same as Senate version.

SECTION 30. Same as Senate version.

(b) Provides that changes related to fees for criminal history checks and the transfer of the grant program take effect January 1, 2010.

(b) Provides that changes related to fees for criminal history checks take effect January 1, 2010.

Same as Senate version.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** SB1011 by Estes (Relating to the continuation and functions of the Texas Commission on Fire Protection.), **Conference Committee Report**

**No significant fiscal implication to the State is anticipated.**

The Texas Commission on Fire Protection (TCFP) is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the Legislature. The bill continues the agency for the standard 12-year period and contains the following Sunset Commission recommendations and other provisions:

- Repeals TCFP's Fire Department Emergency Program and transfers funding for the grant program to the Texas Forest Service (TFS), maintaining the existing eligibility of departments without regard to the number of paid personnel.
- Establishes the TCFP Sunset date as September 1, 2021.
- Broadens the population threshold for members on the Commission representing political subdivisions to 100,000.
- Defines "volunteer fire fighter" and "volunteer fire chief" to mean a person who is a member of a nonprofit volunteer fire department, or who is also employed full-time in the fire service to allow volunteers who are also employed full time to serve on the Commission.
- Requires TCFP to conduct fingerprint-based state and national criminal background checks of all applicants for certifications if not separately provided by applicants or fire departments, and to collect a fee in an amount necessary to recover costs. Provides authority to raise fees for certification and fingerprinting in order to recover associated costs.
- Requires fire departments to submit continuing education records to TCFP at the time of certification renewal.
- Authorizes TCFP to establish a risk-based approach to conducting inspections and provides risk criteria to guide TCFP.
- Requires TCFP to timely open a complaint case on a violation found during an inspection.
- Requires TCFP to establish an enforcement matrix in rule to guide TCFP in determining penalty amounts or disciplinary actions for regulated entities and certified personnel.
- Authorizes TCFP to issue a default order when a regulated entity does not respond to attempts to resolve the violation.
- Requires TCFP to develop a method for analyzing trends in complaints and violations.
- Authorizes TCFP to temporarily suspend a certification.
- Requires TCFP to review fire fighter injury information and make recommendations to the State Fire Marshal's Office for reducing these injuries. Allows TCFP, based on these investigations, to provide technical assistance to identified fire departments.
- Requires the Commission, in a declared disaster, to coordinate with appropriate state and federal agencies, including the governor's office of homeland security and the Federal Emergency Management Agency.
- Applies and updates other standard Sunset Across-the-Board recommendations.

The majority of the bill would become effective September 1, 2009. The transfer of the Fire Department Emergency Program; the agency's ability to collect fees for fingerprint-based criminal history background checks; and authority to increase fees would become effective January 1, 2010.

The bill would provide TCFP with the ability to increase certification fees and collect additional fees for fingerprinting to cover the costs of these procedures. This analysis assumes that the provisions of the bill would require one additional FTE related to submittal of education records, reviewing complaint data, and reviewing firefighter injury information. However, the transfer of the Fire Department Emergency Program to the Texas Forest Service would free up one FTE, which could be assigned the duties of the new provisions of the bill. The agency was also appropriated seven additional

FTEs in the budget process, which could also be partially utilized for this purpose. This analysis assumes no significant fiscal impact to the State with the passage of the bill.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

### **Source Agencies:**

**LBB Staff: JOB, DB, AI**