

SUNSET ADVISORY COMMISSION

FINAL REPORT

Texas Commission on Fire Protection

July 2009



Sunset Advisory Commission



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Vacant*

Ike Sugg, Public Member

Charles McMahan, Public Member**

* Senator Kim Brimer served on the Commission from December 2005 through December 2008.

** Charles McMahan was appointed to fill the unexpired term of Michael Stevens.

Joey Longley
Director

In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

TEXAS COMMISSION ON FIRE PROTECTION



SUNSET FINAL REPORT
JULY 2009



This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission and the Legislature for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and members of the public, as well as action taken by the Sunset Commission and the Legislature in each step of the Sunset process.

- ◆ *Sunset Staff Report* – Contains all Sunset staff recommendations on an agency, including both statutory and management changes, developed after extensive evaluation of the agency.
- ◆ *Hearing Material* – Summarizes all responses from agency staff and members of the public to Sunset staff recommendations, as well as new policy issues raised for consideration by the Sunset Commission.
- ◆ *Decision Material* – Includes additional responses, testimony, or new policy issues raised during the public hearing for consideration by the Sunset Commission in its decision meeting on an agency.
- ◆ *Commission Decisions* – Contains the decisions of the Sunset Commission on staff recommendations and new policy issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
- ◆ *Final Report* – Summarizes action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.



Staff Report – August 2008

Commission Decisions – January 2009

Final Report – July 2009

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SUMMARY



Summary

The State has not decided what kind of agency it wants the Texas Commission on Fire Protection to be. At its core, the Commission is a regulatory agency that certifies persons as qualified to be in the paid fire service and checks to see that paid fire departments comply with national standards for protective equipment and safe operating procedures. The Commission is an education agency that develops course materials and approves classes for training members of the fire service. The Commission is also an assistance agency that awards grants to fire departments to purchase protective clothing and fire fighting equipment.

This clash of responsibilities and other problems with its overall approach challenge the Commission's ability to help ensure that the paid fire service can safely protect communities. It must contend with a policymaking process that hinders its ability to provide clear, timely guidance to the fire service on key regulatory issues. Its involvement in educational aspects of the fire service is unnecessary because of the availability of numerous other training resources that meet national standards, and takes resources away from more critical safety related activities. Also, its grant program does not fit well with its regulatory mission.



The Commission needs to be more squarely focused on ensuring the safety of paid fire fighters.

The Sunset review of the Commission sought to simplify its policymaking process and to scale back its educational and assistance activities so that the agency can focus more clearly on its regulatory and oversight responsibilities. The Sunset review also sought to conform the Commission's regulatory activities to standard practices developed through 30 years of Sunset reviews to promote more effective and efficient regulations.

While some concerns exist about the State's level of regulation over the volunteer fire service, lack of measurable data and information makes it difficult to determine if significant problems exist that would justify any increased regulation of volunteer fire fighters. Volunteer fire departments may opt-in for Commission regulation, and Sunset staff did not identify needed changes to this approach, or make any recommendations that would expand state regulation over the voluntary fire service.

A summary follows of the Sunset staff recommendations on the Texas Commission on Fire Protection.

Issues and Recommendations

Issue 1

Limits on Rulemaking Hinder the Commission's Ability to Lead the Agency and Provide Guidance to the Fire Service.

Key Recommendations

- ◆ Abolish the Fire Fighter Advisory Committee, and require the Commission to adopt standards for the creation and use of advisory committees.
- ◆ Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.

Issue 2

The Commission's Course Development and Approval Activities for Training Fire Fighters No Longer Serve the Needs of the Fire Service.

Key Recommendations

- ◆ Require the Commission, by rule, to specify the national standards that training provider courses must follow, instead of developing course materials on its own.
- ◆ The Commission should discontinue requiring class approval, and instead only require submittal of course information and class schedules.

Issue 3

The Commission's Grant Program Does Not Fit Well With the Agency's Responsibility to Oversee Fire Departments.

Key Recommendation

- ◆ Transfer administration of the Commission's Fire Department Emergency Program funding to the Texas Forest Service.

Issue 4

Key Elements of the Commission's Certification and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Recommendations

- ◆ Standardize the Commission's certification functions by requiring applicants to undergo national criminal history checks, and by requiring the Commission to recognize out-of-state certifications that meet national standards.
- ◆ Improve the Commission's ability to protect the public, and the paid fire service, by authorizing staff to investigate anonymous complaints, allowing risk-based inspections, and requiring reasonable timeframes for opening complaint cases.

Issue 5

Texas Has a Continuing Need for the Texas Commission on Fire Protection, and Fire Fighters Would Benefit From An Increased Focus On Reducing Injuries.

Key Recommendations

- ◆ Continue the Texas Commission on Fire Protection for 12 years.
- ◆ Require the Commission to review fire fighter injury data and forward recommendations for reducing injuries to the State Fire Marshal's Office for inclusion in the annual report on fire fighter fatalities.

Fiscal Implication Summary

- ◆ **Issue 2** – By no longer developing course materials and approving training classes, the Commission would be able to free up significant resources, including at least three staff positions, that could be re-directed towards its inspection and enforcement functions.
- ◆ **Issue 3** – Transferring the Commission's Fire Department Assistance Program funding to the Texas Forest Service would save the Commission about \$45,000 a year it currently spends to administer the program, which could be re-allocated towards supporting its inspection and enforcement functions. The Texas Forest Service would be able to administer the additional \$1 million in program funds with existing resources.
- ◆ **Issue 4** – Performing finger-print based criminal history checks on applicants for certification could have a fiscal impact to the State. However, the Commission would recover any costs by setting a reasonable fee, typically \$45, to carry out these checks for individual applicants or any fire departments that do not perform these checks when submitting certification applications to the agency.

Summary of Legislative Action

S.B. 1011 Estes (Harper-Brown)

The Legislature adopted elements of all of the Sunset Commission's recommendations, scaling back the recommendation for more independent policy making by the Fire Commission and adding provisions to expand the pool of persons eligible to serve on the Commission. The bill continues the Commission as an independent agency for twelve years, and focuses the agency more squarely on its mission to certify and regulate the paid fire service to ensure the safety of the public and fire service personnel. The list below summarizes the major provisions of S.B. 1011, and more detailed discussion is located in each issue.

Sunset Provisions

1. Authorize the Commission to decide and implement policy more independently of the Fire Fighter Advisory Committee.
2. Repeal the Commission's Fire Department Emergency Program and transfer the grants program to the Texas Forest Service, with volunteer and paid fire departments to be eligible to apply for grants.
3. Conform key elements of the Commission's certification and regulatory functions to commonly applied licensing practices.
4. Continue the Texas Commission on Fire Protection for 12 years, with an increased focus on preventing fire fighter injuries.

Provisions Added by the Legislature

1. Modify Commission member eligibility criteria to keep pace with changes in local communities and the fire service.
2. Ensure unbiased appointment of persons to serve on the Fire Fighter Advisory Committee.
3. Ensure state and federal entities coordinate when deploying fire service resources during a disaster.

Fiscal Implication Summary

Senate Bill 1011 saves the Commission one FTE and about \$45,000 a year it spends on administering its grant and loan program, allowing the Commission to apply these resources towards its regulatory functions. The Texas Forest Service can administer transferred program funding with existing resources.

Performing criminal history checks on applicants for certification will not have a net fiscal impact to the State, as the Legislature has authorized the Commission to set a fee to recover the costs of conducting these checks for those that do not provide this information to the Commission. Also, based on workloads, the Legislature authorized the Commission to hire one additional employee to conduct these checks if needed.

ISSUES



Issue 1

Limits on Rulemaking Hinder the Commission's Ability to Lead the Agency and Provide Guidance to the Fire Service.

Summary

Key Recommendations

- ◆ Abolish the Fire Fighter Advisory Committee, and require the Commission to adopt standards for the creation and use of advisory committees.
- ◆ Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.

Key Findings


- ◆ The Commission deliberates policies affecting the certification and safety of the paid fire service with input from two key committees.
- ◆ Limits on the Commission's ability to adopt rules result in significantly shifting policymaking authority to the Fire Fighter Advisory Committee.
- ◆ The Legislature has consistently shown interest in proper construction and structure of advisory committees.

Conclusion

Sunset staff evaluated the agency's decision-making processes to determine if the Commission is effectively able to incorporate stakeholder input on complex regulatory issues facing the paid fire service, and to arrive at timely consensus on these concerns. Staff found that the Commission lacks authority commonly provided state agency policy bodies, hindering its ability to independently set policy and provide clear guidance to the fire service. In addition, the Fire Fighter Advisory Committee does not conform to common criteria and standards for the operation of advisory committees.

Support

The Commission deliberates policies affecting the certification and safety of the paid fire service with input from two key committees.


*Rule proposals
 move between
 the Commission
 and the Fire
 Fighter Advisory
 Committee.*

- ◆ The Commission’s role is to deliberate and decide on policies to implement statutory directives and govern agency functions. The accompanying textbox shows the Commission’s representation. Statute authorizes the Commission to adopt rules to implement and enforce, regulatory requirements that fire departments with paid personnel and training providers must adhere to. These requirements include statutorily-mandated National Fire Protection Association (NFPA) standards that help protect the safety of fire fighters, such as standards for protective clothing, breathing apparatuses, and personal alert safety systems.

**Texas Commission on
Fire Protection**

A 13-member Commission with the following representation governs TCFP:

- ◆ 2 paid fire chiefs,
- ◆ 2 paid fire fighters,
- ◆ 2 volunteer chiefs or fire fighters,
- ◆ 1 fire protection engineer or fire inspector,
- ◆ 1 arson investigator,
- ◆ 1 instructor from higher education, and
- ◆ 4 public members.

- ◆ State agencies and policy bodies use advisory committees to provide broader perspective and external expertise on how the agency’s policies and procedures affect regulated entities or stakeholders. Advisory committees also help develop best practices for implementing and improving agency programs, and help identify needs for new agency programs and services. The term advisory committee includes a committee, task force, or other entity with multiple members whose primary function is to advise a state agency.¹

The Commission conducts its policy making with the assistance of two key committees that advise it, the statutorily-created Fire Fighter Advisory Committee, and the Curriculum and Testing Committee, formed under the Commission’s general authority to create committees. The table, *Key TCFP Advisory Committees*, provides more information on these committees.

Key TCFP Advisory Committees

Name	Membership	Charge
Fire Fighter Advisory Committee	Nine members, of which six must represent various fields in fire protection, and three must be fire service instructors. At least one member must be a volunteer fire chief or fire fighter. Current membership includes seven fire chiefs, one captain, and one lieutenant.	Assists the Commission in matters relating to paid and volunteer fire fighters and fire departments. Reviews and recommends to the Commission changes on rules affecting fire service personnel and fire departments.
Curriculum and Testing Committee	Eight members in the field of fire service training.	Reviews and recommends changes to the Commission on course materials and certification examinations.

Limits on the Commission's ability to adopt rules result in significantly shifting policymaking authority to the Fire Fighter Advisory Committee.

- ◆ Statutory restrictions on the Commission's authority contribute to its limited ability to independently set policy. Statute authorizes the Commission to pass rules, but *requires* it to seek input from the Advisory Committee on all rule proposals or modifications.² Also, statute only authorizes the Commission to make non-substantive clerical changes to rules without the Advisory Committee's review. Because of these limitations, the Commission can only vote to adopt or reject Advisory Committee rule proposals, or return them to the Committee to incorporate Commission suggestions. As a result, the Commission must act as a rubber stamp for Advisory Committee rule proposals, having adopted 371 of 383, or 97 percent, of Committee rule proposals without changes over the past six years, as shown in the textbox, *Commission Actions on Advisory Committee Rule Proposals*.

Commission Actions on Advisory Committee Rule Proposals

- ◆ Adopted Unchanged – 371
- ◆ Returned to Committee – 7
- ◆ Rejected – 5

Source: TCFP Meeting Minutes, February 2002 to April 2008.

The Fire Fighter Advisory Committee exerts significant influence over policymaking for the training and certification examination of the paid fire service, despite the existence of a separate Curriculum and Testing Committee created under the Commission's statutory authority. By rule, all proposals for new course materials, or changes to existing materials, must be submitted to the Advisory Committee for approval before being sent for Commission review. As a result, the Curriculum Committee must present even minor changes or updates to course materials to the Advisory Committee before being able to present these proposals directly to the Commission for approval.

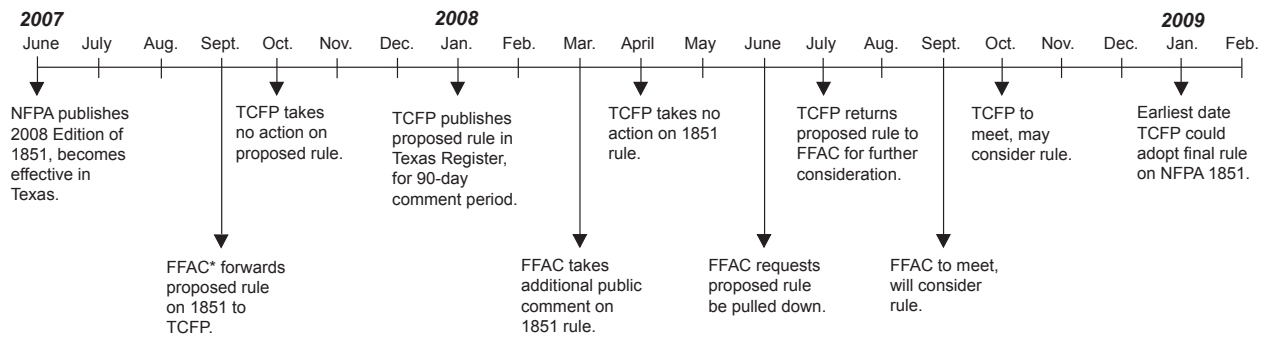
- ◆ Other statutory limitations bog down the Commission's ability to effectively set policy. At a minimum, the Commission cannot modify a rule proposal, and take a vote on it, any sooner than four to six months after receiving a proposal from the Advisory Committee. Statute prohibits the Commission from adopting a new rule or modification until at least the next meeting after receiving a rule proposal. If the Commission needs to make more than clerical changes to the rule, it cannot do so on its own and must return the rule to the Committee for further review, adding at least another two to three months to the process.
- ◆ The confusion and delay in implementing a revised national standard for protective clothing illustrates the policymaking muddle between the Commission and the Advisory Committee. Statute requires paid fire departments to meet the most recent national standard for maintaining and replacing protective clothing, NFPA Standard 1851, effective in June of 2007. Statute also requires the Commission to adopt and enforce national standards such as this, but concern about testing, inspection,

The Commission suffers from numerous restrictions on its ability to independently set policy.

and replacement of protective clothing, and the high cost associated with meeting this standard have required extensive interaction between the Commission and the Advisory Committee.

The timeline below shows this interaction, which has the effect of delaying the earliest date that the Commission can adopt a rule on the standard until January 2009 – 19 months after the revised standard was effective. The ongoing back and forth between the Commission and Advisory Committee has prevented the agency’s staff from giving clear guidance to fire departments on meeting regulatory expectations, preparing for inspections, and mitigating costs.

Commission Rulemaking Timeline for NFPA Standard 1851



* Fire Fighter Advisory Committee (FFAC)

The Legislature has consistently shown interest in proper construction and structure of advisory committees.

- ◆ The Legislature has enacted general law that gives direction to agencies to ensure that advisory committees function appropriately and effectively.³ Statute requires advisory committees to provide a balanced representation between the industry or occupation and consumers of services provided by the occupation. Also, agencies must develop rules stating the purpose and tasks of the committee, and describe the manner in which the committee will report to the agency. Agencies must annually evaluate the committee’s work, usefulness, and the costs related to the advisory committee’s operations, including staff time.

The Texas Sunset Act charges the Sunset Commission to review the objectives, need, and use of advisory committees, and to make recommendations regarding the continuation, reorganization, or abolishment of those committees.⁴ During recent reviews, the Sunset Commission has made recommendations, which were adopted by the Legislature, to abolish statutorily created advisory committees and instead allow the agency to appoint advisory committees as needed under the agency’s own authority.

One such example was the recommendation to abolish the Medical Advisory Committee to the Workers’ Compensation Commission,

The Sunset Commission frequently applies statutory standards to the operations of advisory committees.

allowing the Commission to appoint its own advisory committees as necessary. Other Sunset Commission recommendations have addressed the need for advisory committees created by the Texas Real Estate Commission, the Texas Board of Nursing, and the Texas Board of Professional Land Surveying, and required these committees to meet standard structure and operating criteria.

Recommendations

Change in Statute

1.1 Abolish the Fire Fighter Advisory Committee, and require the Commission to adopt standards for the creation and use of advisory committees.

This recommendation would abolish the Fire Fighter Advisory Committee, and also update the Commission's current authority to create advisory committees by requiring the Commission to adopt rules regarding its committees in compliance with Chapter 2110 of the Texas Government Code, including:

- ◆ the purpose, role, responsibility, and goals of the committees;
- ◆ the size and quorum requirement of the committees;
- ◆ qualifications of the members, such as experience or geographic location;
- ◆ the appointment procedures for the committees;
- ◆ the terms of service;
- ◆ training requirements;
- ◆ a process to regularly evaluate the need for each committee; and
- ◆ the requirement that the committees comply with the Open Meetings Act.

This recommendation would provide the Commission with a set of clear standards to ensure that the Commission's advisory committees are structured and used to advise Commission members and agency staff, and not involved in setting policy. The advisory committees would meet on an as-needed basis to address regulatory issues under the Commission's jurisdiction. Committees would also report directly to the Commission, rather than to other Committees as is currently the case with the Curriculum Committee and Advisory Committee. The Commission would ensure that its advisory committees continue to meet the requirements of the Open Meetings Act, including notification requirements.

1.2 Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.

This recommendation would eliminate uncommon restrictions on the Commission's authority so it can more effectively set policies and implement regulatory requirements. These limitations include being authorized to make only non-substantive rule changes without advisory committee input, and not being able to pass a rule change at its next regular meeting, after posting for public comment. The Commission will thus have the authority customarily provided to state agency policy bodies to more effectively set policy.

Fiscal Implication

These recommendations would have no fiscal impact to the State. The Commission currently does not reimburse advisory committees for travel, and these recommendations would not require the Commission to do so.

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¹ Texas Government Code, ch. 2110, sec. 2110.001.

² Texas Government Code, ch. 419, sec. 419.0082.

³ Texas Government Code, ch. 2110.

⁴ Texas Government Code, ch. 325, sec. 325.011-325.012.

Responses to Issue 1

Recommendation 1.1

Abolish the Fire Fighter Advisory Committee, and require the Commission to adopt standards for the creation and use of advisory committees.

Agency Response to 1.1

The agency and most Commissioners agree with the recommendation. The Commissioners understand the intent of this recommendation is to provide consistency and conformity with other state agencies that have advisory committees.

One Commissioner noted that the fire fighter advisory committee contributes subject matter expertise to the Commission throughout the rulemaking process. The current structure was deliberately designed to slow the rulemaking process down and to maximize the fire service's opportunity for input. The committee also provides a forum to help the fire service achieve a compromise on difficult issues. The Commission has never relinquished its determinative and final role in the rulemaking process. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 1.1

None received.

Against 1.1

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Steve Purdue, Chair – State Firemen's and Fire Marshals' Association, Austin

Jim Reidy, Chair – Fire Fighter Advisory Committee, San Antonio

Modification

1. Continue the Fire Fighter Advisory Committee in statute and clarify that the Commission has full authority to make additions or changes to rules without prior approval of the Advisory Committee. (Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin)

Recommendation 1.2

Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.

Agency Response to 1.2

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 1.2

None received.

Against 1.2

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Commission Decision



Adopted Recommendation 1.2.

Legislative Action



The Legislature modified the Sunset recommendation for the Fire Commission to set policy independently of the Fire Fighter Advisory Committee. The Legislature retained the requirement for the Commission to first seek input from the Advisory Committee, but allowed the Commission to modify or reject rule proposals submitted by the Advisory Committee without having to return the matter for review before final adoption. (Recommendation 1.2)

Issue 2

The Commission's Course Development and Approval Activities for Training Fire Fighters No Longer Serve the Needs of the Fire Service.

Summary

Key Recommendations

- ◆ Require the Commission, by rule, to specify the national standards that training provider courses must follow, instead of developing course materials on its own.
- ◆ The Commission should discontinue requiring class approval, and instead only require submittal of course information and class schedules.

Key Findings

- ◆ The Commission no longer needs to develop training course materials because of the ready availability of materials that meet national standards.
- ◆ The Commission's class approval process is burdensome for training providers, and the agency has other ways to ensure quality training.
- ◆ The Commission's course development process does not keep pace with the needs of training providers or the fire service.

Conclusion

The Commission requires certified training providers to use agency-developed course materials, and requires these providers to submit detailed information for approval before they can start training classes. While this level of direct Commission involvement in the training process may have been needed in 1995 when the agency started requiring training academies to meet national standards, materials meeting these standards are now widely available and academies have years of experience in teaching to these standards. Sunset staff found that the Commission does not need to continue its current level of involvement in these areas because the agency already has other means of ensuring safe, quality training.

Support

Training providers must use Commission course materials and be Commission-certified to train the paid fire service.

- ◆ Statute authorizes the Commission to produce course materials for the fire service disciplines it certifies. By rule, TCFP course materials must meet current National Fire Protection Association (NFPA) standards, and closely track NFPA job performance requirements. Commission-certified training providers and instructors use these materials to guide fire service training. The textbox, *TCFP Course Materials Based on NFPA Standards*, shows materials that training providers, by rule, must use. Instructors with higher certification levels may create course materials, which allows training providers to teach from their own course materials. However, these course materials must meet the same NFPA standards used by the Commission.

TCFP Course Materials Based on NFPA Standards

- ◆ Basic Fire Suppression
- ◆ Basic Aircraft Rescue Fire Suppression
- ◆ Basic Marine Fire Suppression
- ◆ Hazardous Materials Technician
- ◆ Driver/Operator Pumper
- ◆ Fire Officer I and II
- ◆ Fire Investigator
- ◆ Fire Inspector
- ◆ Fire Instructor I, II, and III

Commission certified training providers must use TCFP course materials.

- ◆ Agency rule requires TCFP to update its course materials within three years of NFPA adopting revised standards. With the assistance of three agency staff, a non-statutory, nine-member Curriculum and Testing Committee develops TCFP course materials for Commission approval. Associations and stakeholders may request that the Commission create new certifications, requiring the agency to produce the associated course materials before offering new certifications.
- ◆ The Commission certifies 186 training providers, including fire department academies, private providers, and higher education-based programs. Training facilities must submit class information for agency approval 20 days before beginning classes. The agency has four staff devoted to class approval and exam administration. Training providers must provide students with NFPA-compliant protective equipment and follow safe operating procedures. By rule, training providers must keep a 70 percent average certification exam pass rate as a condition of continued class approval. Currently, training providers have an 89 percent overall pass rate for the fire fighter certification exam.

The Commission no longer needs to develop training course materials because of the ready availability of materials that meet national standards.

- ◆ Training providers now have ready access to a wide range of fire service course materials based on NFPA standards, and the agency does not need to spend resources creating and updating these materials. Thirteen years ago, when the Commission started requiring training providers teach to NFPA standards, few course materials based on these standards were available. The Commission's development of these materials for the fire service was essential. Now, training providers can purchase off-the-shelf course materials that follow NFPA standards.

For example, entities such as Jones and Bartlett and the International Fire Service Training Association produce and sell course materials online. These materials are reasonably priced, for example, from \$158 for training instructor resource kits that include interactive media, to \$16 for supplementary materials.

- ◆ The Commission's course materials provide guidance in an outline format, however private publishers and larger university-based training providers create their own highly developed materials. For example, Texas A&M University's Texas Engineering Extension Service (TEEX) uses agency materials only as an outline and instead creates its own extensive range of fire service training materials. TEEX's course materials go beyond agency materials by providing detailed information to both instructors and students on how to meet NFPA job performance requirements. As a nationally-accredited training and certifying entity, TEEX develops course materials based on 12 NFPA standards that in turn support issuing 45 different fire service certifications.

The Commission's class approval process is burdensome for training providers, and the agency has other ways to ensure quality training.

- ◆ The Commission's class approval process is burdensome for training providers, is not needed to ensure quality training, and ultimately diverts agency resources from more worthwhile activities. Before training providers can start teaching fire service classes, they must submit detailed class information for TCFP's review and approval. Training facilities must specify the time, date, and location of classes; what instructor will teach a class; what materials will be taught each day; and provide a schedule for written exams and skills tests. Training providers must also submit for approval any deviation from class schedules or changes in instructors within three days of teaching a class.

These restrictions limit the flexibility of training providers to change classes when needed, for example when weather conditions prohibit training exercises, or when a substitute instructor needs to teach. Staff

Training providers can purchase reasonably priced off-the-shelf course materials that follow NFPA standards.

The Commission does not need to approve training classes to ensure quality training.

spends time and resources approving about 1,000 individual classes annually, however, the Commission finds few problems and rarely denies classes.

- ◆ The Commission uses class approval to ensure compliance with agency training requirements, however TCFP already has other means of ensuring safe, quality training. One reason given for approving classes is to allow the agency to track classes and conduct random audits if needed. However, in the last two fiscal years, the agency only conducted three such audits. The agency has a separate inspection function, and inspects training providers every two years to ensure they meet agency requirements for course materials, instructor certification, and providing compliant safety equipment.
- ◆ In rare instances, the Commission withholds class approval as an informal means of gaining compliance for violations of agency statute and rules, such as conducting unsafe training exercises. However, the Commission already has standard enforcement authority, including the ability to assess administrative penalties and suspend or revoke a training provider's certification if needed. The Commission also monitors examination pass rates and uses these rates as an indicator of problems in a training provider's program, leading to enforcement action, if necessary.

The Commission's course development process does not keep pace with the needs of training providers or the fire service.

- ◆ Commission course materials do not always keep up with current NFPA standards, preventing training providers from offering courses based on the latest national standards. For example, the Commission is currently revising course materials for basic fire fighter training to meet 2008 NFPA standards. However, TEEX already has its own course materials that meet 2008 NFPA fire fighter standards, but cannot use them when training candidates for Texas certification because it must train to TCFP's materials which are still based on 2002 NFPA standards. The Commission does not plan to have fire fighter course materials updated to 2008 NFPA standards until sometime in 2009.

Of 12 Commission-developed and approved course materials, eight do not match current NFPA standards. By the time the Commission proposes to revise these materials, all the materials will be at least one year out of date. For example, course materials for Fire Officer and Investigator are both based on 2003 NFPA standards, while the current certification standards are already available for 2009. A review of Commission course materials updates shows that the Commission typically takes a full three years to update course materials to the most recent NFPA standards, which complies with Commission rules. The Commission's three year updating process hinders the ability of training providers to offer courses based on the most recent NFPA standards. These delays create other

*The Commission
is slow to
update course
materials to the
latest national
standards.*

difficulties for training academies, such as having to locate and purchase older out of print textbooks.

- ◆ Because the Commission must devote staff resources to create and update course materials for all state-issued fire service certifications, the agency has limited ability to offer new certifications as requested by associations and other stakeholders. Currently, the Commission is considering several new certifications proposed by stakeholders, as shown in the textbox, *Proposed Fire Service Certifications*. However, the Commission claims that because of staffing constraints it has not, as of yet, offered more advanced certifications such as Fire Officer III and IV. While the Commission must balance the need to issue new certifications against its ability to create new course materials, the current process does not allow it to quickly respond to new developments in the fire service.

Proposed Fire Service Certifications

- ◆ Aircraft Rescue – Driver/Operator
- ◆ Tanker Driver/Operator
- ◆ Fire Officer III and IV
- ◆ Rescue Technician – Structural Collapse

Recommendations

Change in Statute

- 2.1 Require the Commission, by rule, to specify the national standards that training provider courses must follow, instead of developing course materials on its own.**

Under this recommendation, the Commission would no longer develop course materials for training providers. Instead, the Commission would pass rules specifying the NFPA standards that certified training providers must base their training programs on. Training providers would purchase NFPA-compliant materials available through other entities and associations. As a result, training academies could more quickly change training to meet new or revised NFPA standards and offer trainees the most up-to-date courses possible. The agency would shift its focus towards maintaining and updating certification exams to track changes to NFPA standards. By no longer having to develop course materials, the Commission could more quickly react to the needs of the fire service when considering new or advanced certifications.

Management Action

- 2.2 The Commission should discontinue requiring class approval, and instead only require submittal of course information and class schedules.**

Under this recommendation, the Commission would no longer approve training provider courses. Instead, providers would submit information to the Commission on their course materials and the time and location of proposed classes. This recommendation would allow the Commission to ensure that training providers use appropriate course materials and allow the agency to audit courses on an as-needed basis. The Commission would continue to oversee training safety and quality by monitoring exam pass rates and conducting regular inspections. Based on these activities, when making this change the Commission should provide technical assistance to any training providers that may experience problems maintaining acceptable exam pass rates.

Fiscal Implication

These recommendations would have no fiscal impact to the State. The Commission would free up significant resources that could be re-directed towards other activities, such as fire department and training academy inspections. The Commission dedicates seven employees to its course development, test development, class approval, and examination functions. Based on these recommendations, Sunset staff estimates that the agency could re-direct at least three staff positions towards its inspection and enforcement functions. The Commission should assess its current allocation of staffing and resources dedicated to course development and examination functions, to identify staff that could be better used to conduct inspection and enforcement activities.

Responses to Issue 2

Recommendation 2.1

Require the Commission, by rule, to specify the national standards that training provider courses must follow, instead of developing course materials on its own.

Agency Response to 2.1

The agency and most Commissioners agree with the recommendation as long as the reference to national standards is not limited specifically to National Fire Protection (NFPA) standards.

Two Commissioners feel that the agency should continue involvement in the development of course materials. The Curriculum and Testing Committee looked into this option on several occasions and concluded that most of the textbooks that claimed to be meeting a certain NFPA standard were often deficient in certain areas. The course materials provided by the agency not only meet the national standards, but can be directly tied back to a specific examination question or skill which is the basis for the agency's accreditation by IFSAC. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 2.1

None received.

Against 2.1

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Lynwood Dunseith – League City

John Gillette, Commissioner – Texas Commission on Fire Protection, University Park

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Pat McAuliff, Member – Curriculum and Testing Committee, Director of Fire Science/EMS – Collin County Community College, McKinney

Modification

1. If training provider courses must follow national standards adopted by the Commission, ensure that volunteer fire fighters are able to continue to transition to the paid fire service through Commission certification. (Chris Barron, Executive Director – State Firemen's and Fire Marshals' Association, Austin)

Recommendation 2.2

The Commission should discontinue requiring class approval, and instead only require submittal of course information and class schedules.

Agency Response to 2.2

The agency and most Commissioners agree with the recommendation.

Two Commissioners feel that the class approval process is a necessary step in the Commission's ability to coordinate the various testing aspects of the curricula. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 2.2

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Against 2.2

Lynwood Dunseith – League City

John Gillette, Commissioner – Texas Commission on Fire Protection, University Park

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Commission Decision

Not adopted. The Commission took no action on Issue 2.

Legislative Action

No action needed.

Issue 3

The Commission's Grant Program Does Not Fit Well With the Agency's Responsibility to Oversee Fire Departments.

Summary

Key Recommendation

- ◆ Transfer administration of the Commission's Fire Department Emergency Program funding to the Texas Forest Service.

Key Findings

- ◆ The Commission's grant program mostly assists volunteer fire departments, detracting the Commission from its primary mission of overseeing the paid fire service.
- ◆ The Commission's grant program has been overtaken by Texas Forest Service programs that better serve the needs of volunteer fire departments.

Conclusion

The Commission administers the Fire Department Emergency Program to provide financial assistance to fire departments in need of equipment and training. This relatively small program, with \$1 million in funding annually, is largely weighted toward assisting volunteer fire departments, which the Commission does not regulate. The program also has the potential of detracting from the Commission's primary oversight role by mixing traditional regulatory functions with advocacy activities that promote the fire service. In addition, the Commission's application process is burdensome for fire service personnel who must leave their more pressing fire service duties to come to Austin for funding meetings. Sunset staff found that the Texas Forest Service already administers a similar, much larger grant program for volunteer fire departments, and it is best positioned to administer the Commission's program funding.

Support

The Commission's Fire Department Emergency Program helps fund the equipment and training needs of local fire departments.

- ◆ The Commission provides grants, low-interest loans, and training scholarships to municipal and rural fire departments with 10 or more personnel through its Fire Department Emergency Program. The program receives \$1 million in appropriations annually from taxes on insurance policies. In fiscal year 2007, the Commission awarded 147 grants, loans, and training scholarships totaling \$1,366,545, including about \$310,000 carried over from the previous year. Statute requires funding to be split evenly between municipal and rural fire departments, and individual awards may not exceed five percent of annual appropriations, or \$50,000.^{1,2}

Historically, the Commission has awarded most of its funding as grants. In fiscal year 2007, more than 80 percent of funding was in the form of grants, with most of the remainder awarded as loans and lesser amounts as scholarships. Grant awards range from about \$5,000 to \$15,000 and help fire departments purchase needed protective clothing, breathing apparatuses, and fire fighting equipment such as hoses. Loan amounts range from about \$10,000 to \$35,000 and help fund larger equipment, such as fire trucks. The Commission also awards \$750 scholarships for personnel to attend training at Texas A&M University's Texas Engineering Extension Service.

- ◆ The statutorily created Funds Allocation Advisory Committee assists the Commission with program administration. The Committee has six members representing the fire service, with two members each appointed by the state associations representing paid fire fighters, fire chiefs, and volunteer fire fighters. The Committee meets twice a year to review applications and make funding recommendations to the Commission. When considering an application, the Committee takes into account the type of equipment needed, the applicant's financial need, and the availability of other state or federal grant programs.

The Commission's grant program mostly assists volunteer fire departments, detracting the Commission from its primary mission of overseeing the paid fire service.

- ◆ Statute requires municipal and rural departments receive equal funding, but in actuality volunteer departments, typically in rural or unincorporated areas, receive the majority of funding, while paid departments, typically in municipalities, receive little funding. The table on the following page, *TCFP Funding Awards*, shows that fire departments with all paid personnel have received as little as six percent of funding in a year. Over the past five fiscal years, fire departments with volunteer personnel have received, on average, 91 percent of all financial assistance.

The Commission's grant program receives \$1 million in appropriations annually.

Fire departments with volunteer personnel have received 91 percent of funding over the past five fiscal years.

TCFP Funding Awards, FYs 2003 – 2007

Fiscal Year	Departments With Volunteer Personnel		Departments With All Paid Personnel	
	Amount	Percent	Amount	Percent
2003	\$1,126,759	93%	\$79,395	7%
2004	\$986,714	93%	\$77,170	7%
2005	\$982,894	94%	\$67,325	6%
2006	\$682,789	87%	\$97,613	13%
2007	\$1,178,804	86%	\$187,741	14%

Based on information provided to Sunset by TCFP. Fiscal years 2003 and 2007 include funds carried over from previous years.

By making awards to volunteer fire departments, the Commission’s grant program can have a more beneficial impact than is possible with paid departments. This small grant program, even with the limitation in the size of individual awards, helps volunteer departments with limited resources purchase needed protective and fire fighting equipment that they may not otherwise be able to afford. Paid departments, by contrast, have much larger needs and more resources available to meet those needs. The program is not large enough to make a significant impact on paid departments or even potentially to serve as a meaningful incentive for them to comply with the Commission’s standards.

- ◆ Awarding grant funds has the potential to detract from the Commission’s primary mission of overseeing the paid fire service. Serving largely to assist volunteer fire departments, the grant program focuses a significant amount of Commission resources on a segment of the fire service that the agency does not regulate.

More importantly, the grant program could confuse the Commission’s fundamental regulatory role with more of an advocacy role. Effective regulatory oversight requires the objective application of standards, free from any vested interest in the outcome. In contrast, grant programs typically promote a course of action with a special interest in the outcome. While goals of regulation and promotion may at times be the same, having the two efforts together in the same agency has not been a traditional oversight approach in Texas.

The Commission’s grant program has been overtaken by Texas Forest Service programs that better serve the needs of volunteer fire departments.

- ◆ The Texas Forest Service (TFS) is part of the Texas A&M University System, and plays a significant role in assisting the volunteer fire service and helping to preserve the State’s wild land and forest resources. TFS has about 375 staff statewide, and operates on a budget of about \$36.1 million. The Forest Service does not certify or regulate the volunteer fire service, but instead administers numerous programs that help meet the needs of the volunteer fire service as shown in the textbox on the following page, *Texas Forest Service Programs Serving Volunteer Fire Departments*.


The Texas Forest Service plays a significant role in assisting the volunteer fire service.

Texas Forest Service Programs Serving Volunteer Fire Departments

The Texas Forest Service administers several programs assisting the volunteer fire service with various needs including protective clothing, equipment, training, insurance and disability claims. These programs include the following.

- ◆ The Rural Volunteer Fire Department Assistance Program
- ◆ The Volunteer Fire Assistance Program
- ◆ The Firesafe Program
- ◆ The Helping Hands Program
- ◆ The Federal Excess Personal Property Program
- ◆ The Protective Clothing Cost Share Program
- ◆ The Fire Department Training Program
- ◆ The Volunteer Fire Department Vehicle Liability Insurance Program
- ◆ The Rural Volunteer Fire Department Insurance Program

In 2001, the Legislature established the Rural Volunteer Fire Department Assistance Program, as the largest TFS fire service program. This assistance program is similar to the Commission's grant program, except larger, receiving about \$15 million annually in funding from insurance assessments. Last session, the Legislature increased the program's assessment to \$30 million annually.³ The Forest Services' program provides grants to volunteer and combination departments with up to 20 paid personnel, for equipment, protective clothing, fire trucks, and training scholarships. Created 12 years after the Commission's program, the Forest Service's program has awarded approximately \$88 million – more than five times the amount awarded by the Commission.

*The Texas Forest
Service is better
positioned to
administer
TCFP's grant
funding.*

- ◆ The Forest Service is better positioned than the Commission to assist volunteer fire departments. The Forest Service uses an open application process, where applications do not expire, and departments receive funding without appearing before the Forest Service's Funding Committee. TFS uses a rating system that gives funding priority to applicants with the greatest need, however the agency periodically re-evaluates departments, taking into consideration how long they have gone without funding. The application provides for applying for other programs, such as donated equipment and excess federal property, which Forest Service staff helps these departments acquire.

By contrast, for TCFP's program, fire chiefs and fire fighters typically present their applications before TCFP's Committee, increasing travel costs for these departments and taking these personnel away from more pressing fire protection duties. Applications expire once the Commission makes awards, so departments also must apply for funding each year.

- ◆ Maintaining a separate grant program at TCFP is inefficient because the agency spends funds for program administration that could otherwise be applied towards other agency activities. TCFP pays for about one program employee from its budget, and also uses several staff to prepare for Committee funding meetings. Agency staff must process applications, post meetings in the Texas Register, and track distribution of payments. The program also takes the time and resources of Committee members, who must travel to Austin for meetings, taking them away from their fire service duties.

In contrast, the Forest Service already has program administration and accounting structures in place for its significantly larger grant program. The Forest Service has seven staff directly funded by their program and the funding Committee already meets four times a year to review grant applications.

The loan component of the Fire Department Emergency Program is no longer effectively serving the needs of the fire service.

- ◆ The recent growth in the number and size of financial assistance programs for the fire service, especially in rural areas, has caused the Commission's low-interest loan program to lose its significance to fire departments. The program is having increasing difficulty competing with the Commission's own grant program, and with grant programs administered by the Texas Forest Service and the U.S. Department of Homeland Security. Fire departments are more interested in obtaining grant funds that do not need to be repaid, than low-interest loans, even if the loans may be for larger amounts.

The amount of loans awarded as a percentage of total awards under the Commission's program has dropped from 19 percent in 2003 to 1.4 percent in 2008. The amount of loans awarded in fiscal year 2008 was just \$15,000, compared with \$987,569 in grant funds awarded. The outstanding loan balance at the end of fiscal year 2008 is expected to be approximately \$1.5 million.

*The Commission
made just \$15,000
in loans in fiscal
year 2008.*

Recommendation

Change in Statute

3.1 Transfer administration of Fire Department Emergency Program funding from the Commission to the Texas Forest Service.

This recommendation would transfer funding for the Commission's Fire Department Emergency Program to the Texas Forest Service, to be administered under the same process as its Rural Volunteer Fire Department Assistance Program. The statute governing the Fire Department Emergency Program would be repealed, allowing the Forest Service flexibility to administer these funds under its existing program. Under this recommendation, responsibility for collecting outstanding loans would also transfer to the Texas Forest Service, which would discontinue making new loans.

Fiscal Implication

This recommendation would have no fiscal impact to the State, and would result in a slight gain in funds available to volunteer fire departments statewide. Funding to the Forest Service's Rural Volunteer Fire Department Assistance Program would increase by approximately \$1 million annually, and TFS could administer these funds with existing resources. The Commission would save about \$45,000 annually that it currently spends on about one employee to administer the program. The Commission would be able to allocate this staff position and funding to support its certification and enforcement functions. Paid fire departments and combination departments with more than 20 paid fire fighters currently receiving funds under TCFP's program would not qualify for funding under the Forest Service's program. In fiscal year 2007, the Commission made awards to 16 fire departments with more than 20 paid fire fighters, totaling \$154,121. These funds would be distributed by the Forest Service to volunteer fire departments or combination departments that have up to 20 paid fire fighters.

.....

¹ Texas Government Code, sec. 419.056(e).

² Texas Government Code, sec. 419.063(a).

³ Texas Insurance Code, sec. 2007.002. The Forest Service expects the Legislature to grant spending authority during the next legislative session.

Responses to Issue 3

Recommendation 3.1

Transfer administration of Fire Department Emergency Program funding from the Commission to the Texas Forest Service.

Agency Response to 3.1

The agency and most Commissioners agree with the recommendation; however, fire departments with more than 20 paid staff would no longer be eligible for funding if the program is administered under the same process as the Texas Forest Service's Rural Volunteer Fire Department Assistance Program.

Two Commissioners disagree with the recommendation to eliminate the eligibility of paid fire departments to the emergency funding program. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

Affected Agency Response to 3.1

Texas Forest Service has reviewed the report with special interest in Issue 3, as it contains recommendations that could affect this agency. After reviewing the findings, Texas Forest Service would not be significantly impacted by the recommendation found in Issue 3.1 should it be adopted by the Texas Legislature. (Tom G. Boggus, Interim Director – Texas Forest Service)

For 3.1

None received.

Against 3.1

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Modifications

1. If Fire Department Emergency Program funding is transferred to the Texas Forest Service, maintain involvement of the three main stakeholder groups in the Fund's administration and continue the criteria for awarding grants, loans, and scholarships. (Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin)
2. If Fire Department Emergency Program funding is transferred to the Texas Forest Service, ensure that fire departments with paid personnel are eligible for fifty percent of the funding. (John Gillette, Commissioner – Texas Commission on Fire Protection, University Park)

Modifications (continued)

3. Update the Texas Forest Service rule to cover departments with 40 or less paid staff, and base the needs on other factors besides number of acres covered by the department to also include the number of citizens served. (Bill Gardner – Leander Fire Department, Leander)
4. If program funding is transferred to Texas Forest Service, remove the cap in TFS rules that would limit this funding to fire departments with 20 or less paid fire fighters. (Steve Purdue, Chair – State Firemen’s and Fire Marshals’ Association, Austin; and Chris Barron, Executive Director – State Firemen’s and Fire Marshals’ Association, Austin)

Commission Decision

Adopted Recommendation 3.1 and Modification 4.

Legislative Action

Senate Bill 1011 transfers funding for the Commission’s grant and loan program, amounting to about \$1 million in annual funding, to the Texas Forest Service to be administered through its Rural Volunteer Fire Department Assistance Program. The bill establishes criteria similar to what the Commission currently uses to provide funding to paid and volunteer fire departments. Specifically, it allows for departments with any number of paid personnel, as well as part-paid and volunteer departments, to apply for grants from this funding. The bill also repeals the Fire Department Emergency Program, eliminating the funds allocation advisory committee. The bill requires the Forest Service to separately account for all funds and to administer any outstanding loans transferred from the Commission. The Forest Service and the Commission must also enter into a memorandum of understanding to implement the transfer by January 1, 2010. (Recommendation 3.1 and Modification 4)

Issue 4

Key Elements of the Commission's Certification and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Summary

Key Recommendations

- ◆ Standardize the Commission's certification functions by requiring applicants to undergo national criminal history checks and by requiring the Commission to recognize out-of-state certifications that meet national standards.
- ◆ Improve the Commission's ability to protect the public, and the paid fire service, by authorizing staff to investigate anonymous complaints, allowing risk-based inspections, and requiring reasonable timeframes for opening complaint cases.

Key Findings

- ◆ Provisions of the Commission's statute and rules do not follow model certification practices and could potentially affect the fair treatment of certified personnel and members of the public.
- ◆ Nonstandard enforcement provisions of the Commission's statute could reduce the agency's effectiveness in protecting the public and fire service personnel.

Conclusion

Various certification and enforcement processes in the Texas Commission on Fire Protection's governing statute do not match model standards developed by Sunset staff based on experience gained through more than 93 occupational licensing reviews over the last 30 years. Sunset staff compared the Commission's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, Sunset staff identified the recommendations needed to bring the Commission in line with the model standards to improve operations.

Support

Regulatory programs, such as for fire service personnel, require common activities that the Sunset Commission has observed and documented over more than 30 years of reviews.

The Commission regulates the training, certifying, and equipping of the paid fire service.

- ◆ The mission of the Texas Commission on Fire Protection is to ensure public safety by certifying the competency of paid fire service personnel and training providers. To fulfill its mission, the Commission sets training and certification requirements based on National Fire Protection Association (NFPA) standards. The Commission certifies about 36,600 fire service personnel and 186 training academies. The International Fire Service Accreditation College (IFSAC) accredits the Commission's certification program, authorizing it to issue IFSAC seals to supplement State certifications. The Commission also ensures fire departments provide paid personnel with NFPA-compliant safety equipment. In fiscal year 2007, the Commission inspected 327 fire departments and training providers, finding about 1,330 violations, primarily involving protective clothing and equipment.
- ◆ The Sunset Advisory Commission has a historic role in evaluating regulatory agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 93 certification and licensing agency reviews. From this experience, Sunset staff has documented standards for regulatory activities to serve as a guide for evaluating regulatory agencies. The following material highlights areas where the Commission's statute and rules differ from these model standards and describes the potential benefits of conforming the agency's statute and rules to standard practices.

Provisions of the Commission's statute and rules do not follow model certification practices and could potentially affect the fair treatment of certified personnel and members of the public.

Running national criminal history checks on fire personnel would keep those with serious convictions out of the service.

- ◆ **Criminal Background Checks.** Performing criminal background checks before certifying personnel ensures protection of the public's health and welfare. These checks are particularly important for occupations involving entrance to a home, or access to controlled substances, such as those stored in ambulances. The Commission performs Department of Public Safety (DPS) name-based criminal history checks on all new applicants and receives updates on those already certified. However, the Commission does not perform state or national fingerprint-based checks on applicants.

The Department of State Health Services (DSHS) performs national checks on fire fighters seeking reciprocity for out-of-state emergency

medical technician certification. In some cases, when conducting these checks DSHS found that TCFP already certified some fire fighters with felony convictions in other states. Performing state and national fingerprint-based criminal background checks on all applicants would help ensure that the Commission does not inappropriately certify fire fighters with serious criminal histories in Texas or other states.

- ◆ **Continuing Education.** Proper protection of the public and fire service personnel is dependent upon these personnel having a working knowledge of recent standards and techniques used in their field. Continuing education is one means of ensuring that fire service personnel have continued competence. The Commission requires fire fighters to complete 20 hours of continuing education annually. Fire departments pay for continuing education and maintain their personnel's records.

TCFP's method of reviewing records does not ensure that departments comply with these requirements by the time of certification renewal. Instead, agency inspectors review about 10 percent of a department's continuing education records during inspections once every two years. Performing this administrative function during inspections also risks taking staff away from more important safety concerns. By requiring departments to submit continuing education records to the Commission when renewing certifications, the agency could more effectively review these records and still conduct audits on an as-needed basis.

- ◆ **Reciprocity.** Qualified professionals from other states should be able to apply for Texas certification without unnecessary barriers restricting or delaying entry to the field. The Commission issues IFSAC seals and offers reciprocity for out-of-state personnel holding these seals. However, the Commission does not recognize other national certifications meeting the same NFPA standards, such as those issued through the National Board on Fire Service Professional Qualifications, or "Pro Board."

The table, *Requirements for Accreditation by National Fire Service Organizations*, shows that IFSAC and Pro Board meet the same requirements regarding the development and administration of their certification examination procedures. Also, both IFSAC and Pro Board adhere to NFPA criteria for validation of their respective certification processes.

Requirements for Accreditation by National Fire Service Organizations

Requirements	National Organization	
	IFSAC	Pro Board
Certification exams based on NFPA standards	✓	✓
Uniform and consistent exam procedures	✓	✓
Fair and objective exam procedures	✓	✓
Impartial grading of exams	✓	✓
Proper retention of exam grades	✓	✓
Undergo five year re-accreditation audits	✓	✓

Texas A&M University's Texas Engineering Extension Service (TEEX) is a TCFP-certified training provider that also holds Pro Board accreditation.

◆

TCFP Inspectors spend time reviewing continuing education records that could be better spent checking on safety requirements.

TCFP does not recognize national certifications issued by one of the world's largest training providers, Texas A&M's TEEEX.

TEEX trains and examines personnel for both TCFP and Pro Board certifications. A recent TEEEX study on Fire Officer certification showed that TCFP's and TEEEX's Fire Officer exams use the same test bank questions and have no appreciable differences in trainee pass rates.¹

Of 50 states, 47 have state agencies or educational institutions that issue IFSAC or Pro Board certifications, and of these states, twelve have agencies that issue and recognize both IFSAC and Pro Board certifications. Numerous states offer reciprocity for IFSAC and Pro Board certifications, however levels of reciprocity vary based on each state's approach to fire service certification.

By not recognizing certifications based on the same NFPA standards that Texas follows, the Commission creates unreasonable barriers to certification for personnel trained by providers such as TEEEX, and out-of-state fire fighters with substantially the same qualifications as fire fighters trained in Texas. Requiring the Commission to recognize certifications issued through national accrediting organizations would eliminate these barriers for personnel entering the fire service in Texas, while still ensuring necessary qualifications.

- ◆ **Exam Frequency.** Exams should be administered with enough frequency and in enough locations to accommodate demand, for example, by offering online exams. The Commission plans to offer online exams by September 2009, making these more accessible to trainees, and relieving TCFP inspectors of the time-consuming task of administering paper-based exams. However, the agency still requires a small portion of fire fighter skills tests to be administered on the same day as the written exam, and to be monitored by TCFP inspectors.

In fiscal year 2007, certified instructors independently administered about 137,200 skills tests associated with TCFP certifications, while inspectors monitored just 7,900, or six percent, of fire fighter skills tests administered by instructors. Tying skills tests to the written exam creates a significant barrier to offering online exams more conveniently at different locations around the state. Directing the agency to discontinue monitoring fire fighter skills tests administered at the same time as written exams would allow the agency to more effectively implement online examinations, and still allow staff to audit skills tests conducted during training if needed.

Nonstandard enforcement provisions of the Commission's statute could reduce the agency's effectiveness in protecting the public and fire service personnel.

- ◆ **Complaint Filing.** The public should have easy access to the Commission's enforcement processes through reasonable complaint filing procedures. The public, the agency, or a certificate holder should be able to file a written complaint on a simple form provided on the agency's website, through e-mail, or by regular mail. Currently, TCFP requires individuals to file written complaints, but the agency does not provide the public

Tying skills tests to written exams creates barriers to online testing.

with a complaint form. Providing access to simple complaint form would ensure that the public, and fire service personnel can easily participate in the complaint process.

The agency also does not have a clear or consistent approach towards allowing the public to make complaints in cases where a person does not wish to provide their name. While anonymous complaints do not always provide sufficient information to fully document a complaint, they can provide an important basis for the agency to take further action. In TCFP's case, these complaints have the potential to involve serious safety issues. While the agency does not formally accept anonymous complaints, staff will informally investigate issues brought to their attention anonymously. Authorizing the Commission to accept anonymous complaints, and requiring them to create a consistent policy for acting on these complaints, would improve the agency's ability to protect the safety of the public, fire service trainees, and fire fighters.

- ◆ **Inspection Authority.** Agencies should have clear procedures and authority for conducting inspections to help ensure standard treatment of inspected entities and timely compliance in correcting problems. By law, the Commission must inspect fire departments and training providers every two years. TCFP rigidly adheres to this two-year inspection cycle and does not conduct risk-based inspections as needed. As a result, the agency does not focus its resources on entities having difficulty meeting regulatory requirements or those with ongoing compliance problems. The Commission does not consistently follow up and re-inspect regulated entities with histories of continuing violations to help ensure they make required changes. A risk-based approach would allow TCFP to focus its limited resources where most needed – on entities with serious violations and poor compliance histories – while still ensuring regular inspections of other entities.
- ◆ **Violation Processing.** Violations of statute and rule should be processed and treated the same way, regardless of whether a violation results from an inspection, or from a complaint filed by the public or the agency. When TCFP finds violations resulting from inspections of fire departments or training providers, the agency allows these entities 14 days to resolve violations, and frequently grants extensions. However, TCFP does not open a complaint case for these violations unless it decides to hold an informal settlement conference, often much later in the process. The agency does not have procedures to ensure the consistent, timely opening and counting of complaint cases, whether from the public or its own inspections. The agency's current approach contributes to inspection violations going unresolved for long periods of time, for two or more years in some instances. By using a more consistent process for opening complaint cases, the Commission can ensure fair treatment of regulated entities, gain more timely compliance, and provide an accurate picture of its enforcement efforts.



By not consistently looking into anonymous complaints, the agency misses potential safety problems.



TCFP needs a more structured approach towards gaining compliance with agency statute and rules.

Without a penalty matrix, the agency cannot ensure fair and consistent enforcement actions.

By looking at trends in complaints, TCFP can determine if regulation needs to change to suit new circumstances.

- ◆ **Enforcement Matrix.** The ability of an agency to apply a full range of sanctions through the enforcement process gives agencies a powerful tool to encourage compliance. Agencies should scale the range of sanctions to the seriousness of the violation and should maintain consistency in the types of sanctions assessed. Establishing a matrix to guide decisions provides Commission members and agency staff with a method of ensuring consistent enforcement decisions based on agency precedent.

By rule, the Commission can assess fire departments and training providers fines ranging from \$300 to \$600 for minor violations, or \$500 to \$1,000 for major violations posing an immediate threat to safety, or for repeated violations. However, this formula for assessing penalties does not effectively take into account overall compliance history or mitigating factors, or offer a wider range of enforcement options, such as taking action against a certification. In cases involving training providers, TCFP attempts to gain compliance by withholding class approvals instead of taking more effective actions against a provider’s certification, even in cases involving an immediate threat to the safety of trainees. The agency’s current system for assessing penalties is not useful for assessing a broader range of sanctions scaled to the seriousness of violations, which can more effectively encourage regulated entities to come into compliance.

- ◆ **Default Orders.** The Commission lacks the authority to issue default orders, a common component of state agency enforcement procedures needed for fair and timely resolution of complaint cases. Currently, regulated entities have little incentive to respond to violations found during inspections, or resulting from investigation of a complaint, until the agency pursues an informal settlement conference to try to resolve violations through a consent order. Regulatory agencies typically provide licensees a notice of violation with a set amount of time to respond and request an informal settlement conference before the agency issues a default order. By not having the authority to issue a default order, the Commission is deprived of a needed tool to help ensure regulated entities respond to the agency’s findings of violations, and informally resolve the violations if possible.

- ◆ **Complaint Trend Analysis.** Agencies should analyze the sources and types of complaints and violations to identify problem areas and trends. Identifying such trends can help a certifying agency better understand the regulatory environment and manage its resources more effectively, leading to greater protection of the public. The Commission currently does not perform a trend analysis of complaints or violations, and as a result, misses an opportunity for determining regulatory problem areas. For example, nonprofit volunteer fire departments that hire paid fire fighters and contract with local governments to provide services are exempt from TCFP regulation. While TCFP receives some complaints about this regulatory “gap” the agency lacks information needed to determine if this issue is a significant regulatory concern or not. Conducting an analysis

on complaints and violations would allow the agency to focus on problem areas and propose regulatory changes to address these concerns.

- ◆ **Temporary Suspension.** Agencies should have authority to summarily suspend a certification without an initial hearing to respond quickly to the risk of immediate, substantial harm. For example, certified personnel charged with a serious allegation, such as arson, pose an immediate threat to public safety. Also, a training provider using inadequate safety equipment when putting trainees through exercises involving live fire can pose an immediate threat to trainees, requiring swift action that the Commission is not currently authorized to take. Authorizing a panel of the Commission to temporarily suspend a certification, and to meet by telephone conference call under certain circumstances, would allow the Commission to better protect the public.

Recommendations

Licensing – Change in Statute

4.1 Require the Commission to conduct fingerprint-based state and national criminal history checks of all applicants for certification.

Conducting statewide and national criminal background checks on all persons applying for TCFP certification would help minimize the risk that persons with criminal records enter the field in Texas. The Commission should pursue electronic fingerprinting options to ensure faster returns of national criminal history checks, which can take over a month to receive when using fingerprint cards. The Commission already requires a state criminal history check for all applicants, but only performs a DPS name check, which does not fully assess an applicant's criminal history. This recommendation would enhance the Commission's ability to fully determine the suitability of applicants by ensuring that applicants do not have a disqualifying criminal history.

This change would not be retroactively applied to fire fighters, but would be required for fire fighters seeking certification after the effective date of this provision. The Commission would be authorized to set a reasonable fee, in rule, to recover any costs associated with conducting these checks. Some larger municipal departments already perform their own background checks before hiring fire fighters to ensure that they do not train unqualified applicants. Fire departments that perform their own state and national fingerprint-based criminal history checks would be able to submit their own criminal history reports with their applications for certification, so the Commission would not duplicate these efforts. This recommendation would help ensure the State provides an appropriate level of additional oversight for fire service personnel.

4.2 Require fire departments to submit continuing education records at the time of certification renewal.

This recommendation would require fire departments to provide a record of continuing education for their personnel to the Commission when renewing their personnel's certifications. As a result, agency staff would no longer have to review these records while conducting inspections, but could instead administratively review them at the agency's central office and conduct audits on an as-needed basis. This recommendation would allow the Commission to more efficiently monitor continuing education requirements at the time of renewal, and allow staff to focus efforts on safety concerns when inspecting fire departments.

4.3 Require the Commission to recognize national certifications based on NFPA standards.

This recommendation would require the Commission to recognize fire service certifications issued by national organizations meeting NFPA standards, such as Pro Board. The Commission would offer reciprocity for these certifications to the extent that they meet Texas-specific certification requirements. For example, to be certified as a basic fire fighter in Texas, a fire fighter from another state must hold national certification as NFPA Fire Fighter I and II, as well as Haz-Mat Operations and Awareness. If the person is certified only to the level of NFPA fire fighter I, that person would be required to receive training, and pass exams, at the additional levels required by Texas before receiving a state certification. This change would remove unnecessary barriers to entry to the Texas fire service, without sacrificing state standards.

Licensing – Management Action

4.4 The Commission should fully delegate fire fighter skills testing to certified instructors, and not tie these tests to the written exam.

Under this recommendation, the Commission would allow certified instructors to independently administer all fire fighter skills tests during training, as they currently do for about 94 percent of skills tests. Instructors would no longer have to administer a small portion of skills tests at the same time and location as the written exam, and TCFP inspectors would instead oversee these skills tests on an as-needed basis during training. As a result, TCFP would be able to more effectively implement online exams, and agency staff could focus more of their efforts on carrying out fire department inspections.

Enforcement – Change in Statute

4.5 Authorize the Commission to investigate anonymous complaints.

The ability to investigate anonymous complaints would allow the Commission to investigate, under its own name, complaints from persons that do not wish to give their names. In addition, the Commission would develop a consistent approach for investigating these complaints to ensure it has a sound basis for moving forward with opening a complaint case if appropriate. This recommendation would ensure the Commission looks into all potential safety-related concerns brought to its attention through the complaint process.

4.6 Allow the Commission to establish a risk-based approach to conducting inspections.

This recommendation would ensure that the Commission takes a more strategic approach to conducting its regular inspections of fire departments and training providers. The agency would continue to inspect regulated entities at least every two years. However, by using a risk-based approach towards conducting inspections and follow ups, the agency could use its limited resources more effectively by focusing greater attention on regulated entities with higher risks of violations. In developing this approach, the Commission could consider several factors including how recently a fire department has come under regulation, compliance history, number of complaints, number of paid personnel, frequency of fire responses, and ability to inspect and maintain equipment.

4.7 Require the Commission to establish a reasonable time frame for opening a complaint case after finding inspection violations.

This recommendation would require the Commission, in rule, to set a time frame for opening a complaint case after finding violations resulting from inspections of fire departments and training providers. A reasonable time frame for opening a complaint case would be about one month after providing notice of any violations found during an inspection. This timeframe would provide regulated entities ample opportunity to resolve violations or provide TCFP a plan for doing so. By using a consistent timeframe for opening complaint cases, the Commission would treat all regulated entities fairly, improve compliance outcomes, and more accurately track its complaint cases.

4.8 Require the Commission to adopt an enforcement matrix in rule.

Establishing, in rule, a matrix to use when determining penalty amounts or disciplinary actions for fire departments, training providers, and certified personnel, would ensure that the Commission's sanctions appropriately relate to violations of agency statute and rules. This recommendation would not change the agency's current administrative penalty authority. In developing the matrix, the Commission should take into account several factors including compliance history, seriousness of the violation, the safety threat to the public or fire personnel, and any mitigating factors. Adopting the matrix in rule would provide the public with the opportunity to comment on its development, and would provide regulated entities, and fire service personnel, with ready access to the Commission's enforcement guidelines, to better understand the potential consequences of violations.

4.9 Allow the Commission to issue default orders when regulated entities do not respond to attempts to resolve violations in a timely manner.

The Commission would be authorized, but not required, to issue default orders in cases when fire departments or training providers do not respond to Commission notices to correct violations found during inspections, or do not request an informal settlement conference to resolve these issues. By issuing default orders when needed, the Commission would be able to ensure fair treatment of regulated entities and provide an incentive to come into compliance more quickly.

4.10 Require the Commission to develop a method for analyzing trends in complaints and violations.

This recommendation would require the Commission to develop a method for analyzing the sources and types of complaints and violations. The agency should establish categories for complaints and violations such as sections of Commission statute or rule, or categories related to violations found during inspections, such as protective clothing, breathing apparatus, and testing of equipment. The Commission would analyze complaints and violations to identify trends and regulatory problem areas. The Commission could use this analysis to focus its technical assistance and inspection efforts on specific areas. This recommendation would also provide the agency with improved information regarding the nature of complaints.

4.11 Authorize the Commission to issue summary suspension orders.

This recommendation would authorize the Commission to temporarily suspend the certification of a person, or regulated entity, upon determination by a panel of the Commission that continued activity would present an immediate threat to the public or fire service trainees. The panel would be authorized to hold a meeting by teleconference call under the provisions of the Open Meetings Act if threat to public safety is imminent and convening of the panel at one location is impossible for the timely action

required. The Commission would also need to ensure due process to the certificate holder through subsequent proceedings to resolve issues that are at the basis of the temporary suspension.

Enforcement – Management Action

4.12 The Commission should provide the public a simple complaint form.

Making a complaint form readily available on the Commission’s website or through e-mail, would assist the public, and certified personnel, with more easily preparing and filing complaints.

Fiscal Implication

Performing fingerprint-based criminal history checks could have a fiscal impact to the State, however the Commission would recover any costs by setting a reasonable fee, typically \$45 when done electronically. The agency should seek appropriated funds from this fee revenue to cover the costs of performing any checks not already performed by local departments. Based on fiscal year 2007 information, the Commission issued about 1,300 certifications to new applicants. However, not all of these applicants would require TCFP background checks because local fire departments already perform checks for a significant number of these applicants.

Changes to the agency’s complaint processes could result in TCFP opening more enforcement cases. The agency indicated it could potentially need to hire a staff attorney. However, other recommendations in this report would free up staff and resources currently used for the agency’s grant program, course development, and class approval functions that could be re-directed to support additional enforcement efforts. Also, resources currently devoted to reviewing continuing education records, administering written exams, and monitoring skills tests, could be applied towards conducting inspections and pursuing complaint cases, if needed. The remaining recommendations in this issue are procedural improvements that should only require minor costs to update the agency’s complaint tracking database.

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¹ Texas A&M University, Texas Engineering Extension Service Emergency Services Training Institute, *Texas Fire Officer Program, Comparison of Two National Certification Exams*, (College Station, Texas, undated), p. 1.

Responses to Issue 4

Recommendation 4.1

Require the Commission to conduct fingerprint-based state and national criminal history checks of all applicants for certification.

Agency Response to 4.1

The agency and Commissioners agree with the recommendation, however the agency does not believe that the Commission can provide a copy of a criminal background check to departments, nor can the departments provide background checks that they perform to the Commission. Additional appropriated funds will be required to cover the cost of implementing this recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

Staff Comment: The recommendation does not require the Commission to share criminal background checks with fire departments. Instead, it clarifies that departments performing their own criminal background checks may submit this information to the Commission with their certification applications. The Commission would then use this information in its certification process for fire fighters. The effect of the recommendation is to eliminate duplication from having the Commission separately require criminal background checks, thus minimizing costs.

For 4.1

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region
Director – Texas Fire Chiefs Association, Austin

Against 4.1

None received.

Recommendation 4.2

Require fire departments to submit continuing education records at the time of certification renewal.

Agency Response to 4.2

The agency and Commissioners agree with the recommendation; however in order to implement the recommendation the agency will have to develop the means to receive the continuing education records electronically, which will require additional resources. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.2

None received.

Against 4.2

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region
Director – Texas Fire Chiefs Association, Austin

Recommendation 4.3

Require the Commission to recognize national certifications based on NFPA standards.

Agency Response to 4.3

The agency and some Commissioners agree with the recommendation; however three Commissioners disagree. Their concerns are captured in the following statement:

“As a regulatory agency for the State of Texas, the Commission has chosen to be part of the International Fire Service Accreditation Congress (IFSAC). The acceptance of Pro Board would allow one, and only one, of the state’s training providers to be totally independent and not have to meet any of the required standards set forth by the agency. That alone makes the recommendation unfair to the remaining training providers in the state.” (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

Staff Comment: The recommendation will not exempt any of the state’s training providers from meeting Commission standards. The Commission’s acceptance of Pro Board certifications would instead apply to reciprocity for fire service personnel from other states who are certified by national organizations meeting NFPA standards and who also meet Texas-specific certification requirements. Texas A&M University’s TEEEX would still need to meet the same Commission standards applicable to other Texas training providers. Further, current authority of the Commission to establish qualifications for state certification – including the basic certification test – would not be affected by this recommendation. The Commission’s control over the state certification exam would be the same regardless of the national certification organization.

For 4.3

None received.

Against 4.3

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

John Gillette, Commissioner – Texas Commission on Fire Protection, University Park

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Pat McAuliff, Member – Curriculum and Testing Committee, Director of Fire Science/EMS – Collin County Community College, McKinney

Modification

1. Provide TCFP the needed resources to become Pro Board accredited so that TCFP would be the only certifying authority in Texas. (Lynwood Dunseith – League City)

Recommendation 4.4

The Commission should fully delegate fire fighter skills testing to certified instructors, and not tie these tests to the written exam.

Agency Response to 4.4

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.4

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Against 4.4

None received.

Recommendation 4.5

Authorize the Commission to investigate anonymous complaints.

Agency Response to 4.5

The Commission would agree with and welcome the authorization to investigate complaints, so long as the “anonymous” is struck from the recommendation. As written, the recommendation would provide an avenue for disgruntled fire department employees and the general public to harass an organization or fellow firefighter. Malicious anonymous complaints would require the agency to conduct numerous lengthy, costly and possible unjustified investigations. Clarification is needed to determine if this recommendation only applies to the paid fire service or to the volunteer service, over which the agency has no statutory authority. This recommendation will have significant fiscal implications.

One Commissioner commented that during a past legislative session, the Civil Service Chapter (Chapter 143, Local Government Code) was amended requiring complaints against police and firefighters to be in writing and signed by the complainant. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

Staff Comment: The recommendation would not apply to volunteer fire departments, which the Commission does not regulate. It would apply to the paid fire service and any volunteer fire departments that choose Commission regulation as currently permitted under statute.

For 4.5

None received.

Against 4.5

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Modification

2. If the Commission is authorized to investigate anonymous complaints, provide TCFP with additional resources to conduct these investigations. (John Gillette, Commissioner – Texas Commission on Fire Protection, University Park)

Recommendation 4.6

Allow the Commission to establish a risk-based approach to conducting inspections.

Agency Response to 4.6

The agency and Commissioners agree with the recommendation.

One Commissioner expressed the following concern:

“A 10 percent inspection of a fire department is not acceptable. To meet the mission of the Commission, a 95 to 100 percent inspection needs to be completed. A risk-based approach is not an acceptable way of inspecting fire departments. There is no acceptable level of risk in this profession. A 95 to 100 percent inspection must be completed of all regulated fire departments to assist in preventing the loss of a firefighter’s life.” (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.6

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Against 4.6

John Gillette, Commissioner – Texas Commission on Fire Protection, University Park

Recommendation 4.7

Require the Commission to establish a reasonable time frame for opening a complaint case after finding inspection violations.

Agency Response to 4.7

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.7

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Against 4.7

None received.

Recommendation 4.8

Require the Commission to adopt an enforcement matrix in rule.

Agency Response to 4.8

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.8

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region
Director – Texas Fire Chiefs Association, Austin

Against 4.8

None received.

Recommendation 4.9

Allow the Commission to issue default orders when regulated entities do not respond to attempts to resolve violations in a timely manner.

Agency Response to 4.9

The agency and Commissioners agree with the recommendation, presuming that sufficient resources are appropriated to the agency in order to implement the recommendation. The agency currently relies on a representative from the Attorney General's Office for all its legal issues. In implementing this recommendation, as well as Recommendation 4.11, the increase in workload would require legal services well beyond the availability of the Attorney General Office representative due to existing obligations with other state agencies. The agency would need its own in-house attorney and appropriate support staff. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.9

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region
Director – Texas Fire Chiefs Association, Austin

Against 4.9

None received.

Recommendation 4.10

Require the Commission to develop a method for analyzing trends in complaints and violations.

Agency Response to 4.10

The agency and Commissioners agree with the recommendation; however additional staff would be required to develop a model, perform data entry, and perform analytical assessments. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.10

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Against 4.10

None received.

Recommendation 4.11

Authorize the Commission to issue summary suspension orders.

Agency Response to 4.11

The agency and Commissioners agree with the recommendation; however as stated in Recommendation 4.9, the agency feels that a staff attorney would be necessary to implement these recommendations.

One Commissioner expressed concern that a firefighter subject to this recommendation could be suspended before an investigation is complete. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.11

None received.

Against 4.11

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Modification

3. Do not apply summary suspension orders to individual fire protection personnel. (Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin)

Recommendation 4.12

The Commission should provide the public a simple complaint form.

Agency Response to 4.12

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 4.12

None received.

Against 4.12

None received.

Commission Decision

Adopted Recommendations 4.1, 4.2, 4.4, and 4.6 through 4.12.

Legislative Action

Senate Bill 1011 includes eight provisions that brings the Commission in line with standard licensing agency practices, including the following.

- ◆ Requires fire departments and individuals to provide the Commission with criminal history check results, or have the Commission conduct these checks for them, before certifying fire service personnel. (Recommendation 4.1)
- ◆ Requires fire departments to submit continuing education records at the time of certification renewal. (Recommendation 4.2)
- ◆ Authorizes the Commission to conduct risk-based inspections. (Recommendation 4.6)
- ◆ Requires the Commission to open complaint cases based on inspection violations within 30 days. (Recommendation 4.7)
- ◆ Requires the Commission to adopt an enforcement matrix in rule. (Recommendation 4.8)
- ◆ Authorizes the Commission to issue default orders if regulated entities do not attempt to resolve violations within 60 days. (Recommendation 4.9)
- ◆ Requires the Commission to develop a method for analyzing trends in complaints and violations. (Recommendation 4.10)
- ◆ Authorizes temporary suspension of a certification incases involving an immediate threat to the public or fire service trainees. (Recommendation 4.11)

Issue 5

Texas Has a Continuing Need for the Texas Commission on Fire Protection, and Fire Fighters Would Benefit From An Increased Focus On Reducing Injuries.

Summary

Key Recommendations

- ◆ Continue the Texas Commission on Fire Protection for 12 years.
- ◆ Require the Commission to review fire fighter injury data and forward recommendations for reducing injuries to the State Fire Marshal's Office for inclusion in the annual report on fire fighter fatalities.

Key Findings

- ◆ Texas has a continuing need to establish and enforce minimum standards for paid fire service personnel.
- ◆ The State does not maximize the benefits of the Commission's expertise in working with the State Fire Marshal's Office to minimize fire fighter injuries.
- ◆ The Commission does not have the significant problems to justify changing its organizational structure.

Conclusion

Fire service personnel perform a critical role in protecting Texans and their homes from the hazards of fire, and do so at considerable personal risk of injury and death. For these reasons, setting and enforcing minimum standards for the training, certification, and equipping of the paid fire service is vital to the State. Sunset staff's evaluation of TCFP's functions and structure found that the Commission is uniquely positioned to establish standards for certifying paid fire service personnel, and training providers, and should be continued for another 12 years. Also, the Commission has the opportunity to further help protect the safety of fire fighters by working with the State Fire Marshal's Office to help minimize fire fighter injuries.

Support

The Texas Commission on Fire Protection seeks to ensure the competency and safety of paid fire service personnel.

- ◆ The Legislature first established minimum standards for the training and certification of paid fire fighters in 1965 by creating the Commission on Fire Personnel Standards, later re-named the Texas Commission on Fire Protection (TCFP) in 1991. TCFP's mission is to ensure local governments have trained fire service personnel that can protect the public from the threats of fire. To achieve its mission, TCFP follows selected National Fire Protection Association (NFPA) standards for the training, certifying, and equipping of fire service personnel.

TCFP Certifications

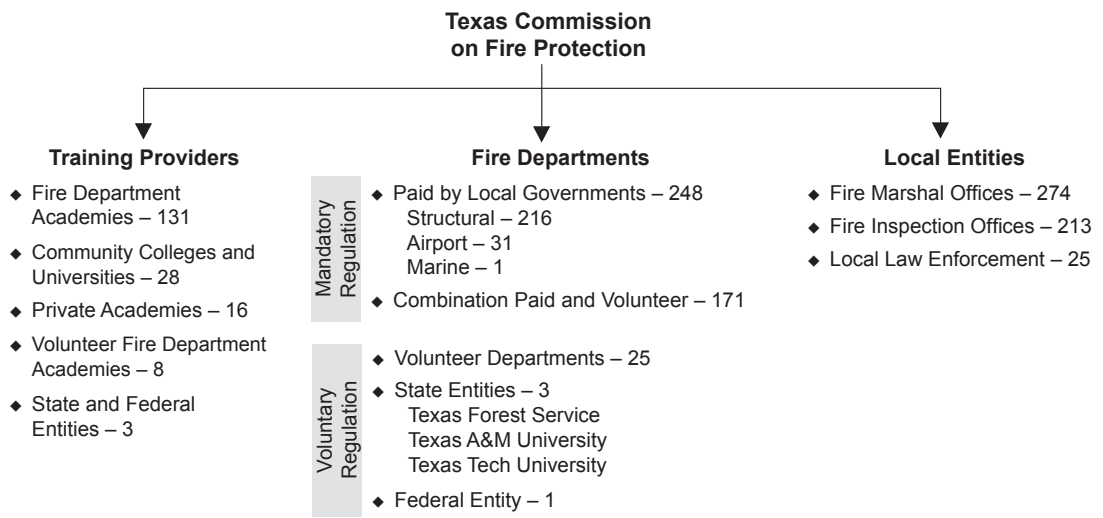
◆ Structural Fire Fighter*	◆ Head of Department
◆ Airport Fire Fighter*	◆ Fire Investigator*
◆ Marine Fire Fighter*	◆ Arson Investigator*
◆ Hazardous Materials Technician	◆ Fire Inspector*
◆ Fire Truck Operator	◆ Fire Service Instructor*
◆ Fire Officer I and II	

* Includes four levels of certification from Basic to Masters .

The Commission certifies fire service personnel paid by local governmental entities, and the textbox, *TCFP Certifications*, shows these core disciplines. About 36,600 personnel hold TCFP certifications, and because many hold multiple certifications, such as fire fighter and fire instructor, the agency has about 54,300 active certifications. TCFP-certified personnel work in about 275 fire departments throughout the state

including paid departments and volunteer departments with personnel paid by local governments. TCFP certifies individuals working for local fire marshal's and city inspector's offices. The agency inspects volunteer fire departments and state entities that opt-in for regulation. TCFP also certifies and oversees 186 training academies and providers, and develops certification course materials. The chart, *TCFP Regulation of Texas' Fire Service*, shows the number and type of fire service entities the agency oversees.

TCFP Regulation of Texas' Fire Service



- ◆ Agency staff inspect fire departments and training providers to ensure that they provide NFPA-compliant safety equipment, and train to NFPA standards. By statute, the State Fire Marshal's Office (SFMO), located in the Texas Department of Insurance (TDI), investigates fire fighter fatalities, and TCFP assists with these investigations. The agency takes disciplinary actions on violations of agency statute and rules resulting from inspections or from complaint investigations. The agency also administers the Fire Department Emergency Program that provides grants, loans, and scholarships to paid and volunteer fire departments.
- ◆ The Commission employs a staff of 33 – including six compliance officers located in five regional offices – and in fiscal year 2007 operated on a budget of \$3.2 million, of which \$1.3 million was awarded primarily as grants to fire departments. Almost 100 percent of agency funding comes from taxes on insurance policies. The Commission consists of 13 members, including six appointed from nominations by three major fire service associations, three representing fire service disciplines, and four public members.

*TCFP assists
the State Fire
Marshal's
Office with fire
fighter fatality
investigations.*

Texas has a continuing need to establish and enforce minimum standards for paid fire service personnel.

- ◆ The State has a continuing interest in ensuring that the paid fire service is trained, certified, and equipped to safely protect local communities. A fire burns every five minutes in Texas, subjecting communities to considerable loss of life and property. Communities rely on fire departments to protect them from these losses. In 2006, Texans suffered almost 96,000 structural, car, and other fires causing 179 civilian deaths and \$470 million in property loss.¹ Texans also suffer significant losses from wild fires which frequently threaten residential communities.
- ◆ Fire fighting is an inherently dangerous occupation, exposing fire personnel to significant risks of injury and death while protecting the public. Because of these risks, Texas has a continuing need to ensure that the training and certification of paid fire personnel meets NFPA standards. These standards detail the job responsibilities, operating procedures, and protective equipment needed for fire fighter training and fire suppression. By training and certifying fire personnel to NFPA standards, the State minimizes the safety risks of fire fighting.
- ◆ Texas also needs to ensure that certified fire personnel, fire departments, and training providers comply with state requirements by taking enforcement actions against those that violate agency rules and statute. TCFP can open complaint cases against fire personnel that commit criminal offenses to remove them from the field. A fire department that appoints non-certified personnel to fire suppression duties can face misdemeanor criminal penalties. The agency can assess administrative fines of \$300 to \$1,000 against fire departments that do not provide NFPA-compliant protective equipment. In addition to fines, TCFP can

*Texans suffer
tremendous losses
from fires and
need well-trained
fire personnel to
protect them.*

take actions against the certifications of training providers that fail to maintain acceptable training standards, use substandard equipment, or otherwise subject trainees to unsafe conditions.

Before taking enforcement actions the agency works with regulated entities to help bring them into compliance and provides several opportunities to do so. In fiscal year 2007, the Commission found about 1,330 violations resulting from inspections, and assessed \$26,800 in fines, which it probated to give departments the opportunity to address problems. The commission also revoked one training provider's certification, and denied one fire fighter's certification.

The State does not maximize the benefits of the Commission's expertise in working with the State Fire Marshal's Office to minimize fire fighter injuries.

Fire fighter injuries have increased 41 percent since 2001.

- ◆ In 2006, Texas fire fighters suffered 946 injuries, of which 585, or 62 percent, related directly to fire responses. In a six-year period, fire-related injuries in Texas increased by 41 percent, from 414 in 2001 to 585 in 2006.² While factors such as population growth and improved reporting may account for the upward trend in injuries, the numbers indicate a need to better understand what is happening in these events to help reduce their frequency and severity. Typically, 75 percent of fire fighter injuries are minor, however 25 percent are moderate to severe, ranging from strains, fractures, crushing, burns, heat exhaustion, and electrocution.³

TCFP helps ensure fire fighter safety by enforcing national standards for equipping fire personnel and for operating at the scene of a fire. Also, paid and volunteer fire departments report information on injuries to SFMO, which it summarizes in its annual report on fires in Texas, and TDI collects information on fire service workers' compensation claims. Statute authorizes TDI and TCFP to transfer information between the agencies as needed to carry out their duties.⁴

- ◆ The State does not maximize the benefits of TCFP's expertise and oversight of fire departments in an attempt to reduce fire fighter injuries statewide. Specifically, the Commission does not work with SFMO to analyze available information on injuries to identify the factors contributing to injuries, and how these injuries impose higher costs on local governments through workers' compensation claims. Such information can help lead to improvements in standards, procedures, and equipment that could help reduce the incidence of injuries and their associated costs.

These injuries to fire service personnel, including fire fighters, fire marshals, and emergency responders, result in increased costs to local governments through workers' compensation claims. In 2007, local governments paid an average of \$4,826 per fire protection injury claim, for a total of about \$7.6 million, after peaking at \$16.6 million in 2006 and \$15.1 million in 2005 due to higher incidences of more costly injuries.⁵

The Commission could play a greater role in helping reduce fire fighter injuries.

Because the Commission does not currently play a role in evaluating available fire fighter injury and claims data, TCFP and SFMO are not able to determine factors contributing to either the spike or the precipitous decline in fire fighter injuries. The table, *Examples of Fire Fighter Injuries and Workers' Compensation Claim Costs*, shows examples of individual injuries and claim amount paid in each case.

Examples of Fire Fighter Injuries and Workers' Compensation Claim Costs

Injury	Cost*
Heat exhaustion	\$1,800
Broken leg	\$8,600
Smoke inhalation	\$16,000
Burns	\$24,600
Crushed foot	\$82,000
Injuries from fire truck roll over	\$123,600

* Rounded amounts from 2005-07 claims data provided to Sunset by TDI.

The Commission already works with SFMO to help investigate fire fighter fatalities, by inspecting the protective equipment of fallen personnel and forwarding results for inclusion in the Fire Marshal's fatality reports. By not using this current working relationship, and ability to share information to help evaluate the causes of fire fighter injuries, the Commission misses an opportunity to work with the fire departments to help prevent these injuries.

The Commission does not have the significant problems to justify changing its organizational structure.

- ◆ In 1991, the Legislature consolidated the State's fire suppression, prevention, and investigation functions into a unified fire protection agency. This effort involved combining the functions of SFMO, TDI's Key Rate section, and the Fire Department Emergency Board into the newly-created TCFP. In 1997, after concerns about agency management and the abolishment of the Key Rate system, the Legislature abandoned its consolidated approach and transferred SFMO back to TDI. While some benefit could again result from such a consolidation, the current approach does not have the problems that would justify such a change.
- ◆ Placing TCFP in an agency responsible for establishing and imposing standards on public safety personnel and governmental entities could provide some benefit from aligning common standards-setting functions. The Texas Commission on Law Enforcement Officer Standards and Education sets training and education standards for law enforcement personnel, and regulates county jailers and 911 dispatchers. The Texas Commission on Jail Standards establishes and enforces minimum standards for jail construction, equipment, maintenance, and operations. Sharing common functions, however, does not ensure the needed expertise for setting standards in each field. In addition, the specific needs and capabilities of each agency would greatly complicate the creation of a new agency such that the benefits of this approach are not at all clear.
- ◆ The Texas Department of Licensing and Regulation serves as an umbrella licensing agency for 20 different regulatory programs. Moving the Commission's responsibilities to the Department would require a direct transfer of resources, yielding limited administrative savings, but not providing significant benefits to justify such a move.

*Little benefit
would result
from transferring
TCFP's functions
to another agency.*

While all states certify paid fire service personnel to NFPA standards, organizational structures for accomplishing this vary.

- ◆ All 50 states certify paid fire service personnel based on NFPA standards, however states vary in how many national standards they incorporate into their respective certifications. Some states have voluntary certification of fire service personnel, while others require certification. Some states base their state certification on NFPA Fire Fighter I, or I and II. A few states certify personnel through nationally accredited organizations that follow NFPA standards, rather than issue their own state certification. By requiring NFPA standards for Fire Fighter I, II, and Haz-Mat Awareness and Operations, the Commission claims to have some of the most rigorous certification requirements for fire fighters compared to other states.
- ◆ Other state’s structures for administering fire service personnel certifications vary and do not reveal a predominate approach. As shown in the table, *Other States’ Fire Service Personnel Certification Organizations*, state fire marshal’s offices house many certification programs, while many other states administer their programs from university or training academy-based organizations. In a few cases, states certify their fire service personnel through public safety or emergency management agencies.

Other States’ Fire Service Personnel Certification Organizations

Type of Entity	Number
State Fire Marshals’ Offices	15
Universities or Academies	12
Fire Commissions or Agencies	9
Other Entities*	9
Public Safety	5
Total	50

* Various entities as insurance departments, labor departments, emergency management agencies, and associations.

Recommendations

Change in Statute

5.1 Continue the Texas Commission on Fire Protection for 12 years.

This recommendation would continue the Texas Commission on Fire Protection for the standard 12-year period.

5.2 Require the Commission to review fire fighter injury data and forward recommendations for reducing injuries to the State Fire Marshal’s Office for inclusion in the annual report on fire fighter fatalities.

The Commission would review fire fighter injury reports and workers’ compensation claims data, and provide SFMO summary analysis of this information and recommendations for reducing injuries statewide. SFMO would include TCFP’s analysis and recommendations in its existing annual report on fire fighter fatalities. Both TDI and SFMO already collect information on fire fighter injuries and compensation payments, and would forward this information to TCFP on a regular basis. Commission

staff would also independently investigate serious injuries to paid fire personnel to determine if a violation of agency rule or statute contributed to an injury. The Commission would develop criteria to determine the types of fire fighter injuries, and their circumstances, that would be serious enough to warrant investigation. The Commission could also offer technical assistance to fire departments to assist them with reducing injury rates if needed. This recommendation would not require SFMO to conduct analysis of fire fighter injury data or participate in TCFP's investigations of fire fighter injuries.

Fiscal Implication

If the Legislature continues the TCFP, the Commission would require annual appropriations of about \$2.9 million for its operations. Other recommendations in this report identify savings in staff resources the Commission could use to review fire fighter injury data and investigate any serious injuries, thus no fiscal impact is anticipated.

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¹ Texas Department of Insurance, State Fire Marshal's Office, *Fires in Texas*, (Austin, Texas, September 2007), p. 5.

² *Ibid.*, p. 34.

³ National Fire Protection Association, *Patterns of Fire Ground Injuries*, (Quincy, Massachusetts, February 2007), p. 13.

⁴ Texas Government Code, ch. 417, sec. 417.004.

⁵ Average cost for claims includes occupations contained under the North American Industry Classification System code for Fire Protection, including paid fire fighters, volunteer fire fighters, fire departments, fire marshal's offices, rescue services, and ambulance services.

Responses to Issue 5

Recommendation 5.1

Continue the Texas Commission on Fire Protection for 12 years.

Agency Response to 5.1

The agency and Commissioners agree with the recommendation. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

For 5.1

Chris Connealy, Commissioner – Texas Commission on Fire Protection and Central Region Director – Texas Fire Chiefs Association, Austin

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Against 5.1

None received.

Recommendation 5.2

Require the Commission to review fire fighter injury data and forward recommendations for reducing injuries to the State Fire Marshal's Office for inclusion in the annual report on fire fighter fatalities.

Agency Response to 5.2

The agency and Commissioners agree with the recommendation; however it is important to take into consideration the potential impact on the agency's staffing and funding levels.

One Commissioner offered the following perspective:

It makes more sense for the Legislature to revise Texas Government Code Chapter 417.0075 (directed to the SFMO) to include firefighter injury investigations, along with firefighter fatality investigations, and utilize the same entities that are on the existing fatality investigation review team. (Gary L. Warren, Executive Director – Texas Commission on Fire Protection)

Affected Agency Response to 5.2

The Texas Department of Insurance and State Fire Marshal's Office looks forward to working with TCFP regarding the transfer of information between the agencies as needed to carry out their duties, and the State Fire Marshal's Office stands ready to receive the analysis and recommendations of TCFP for reducing injuries statewide and to include such information in its existing annual report on fire fighter fatalities.

(Mike Geeslin, Commissioner of Insurance – Texas Department of Insurance and Paul Maldonado, State Fire Marshal – State Fire Marshal's Office)

For 5.2

Mike Higgins, Chief of Staff/Legislative Director – Texas State Association of Fire Fighters, Austin

Against 5.2

None received.

Commission Decision

Adopted Recommendations 5.1 and 5.2.

Legislative Action

Senate Bill 1011 continues the Commission as a separate, stand-alone agency for the standard 12-year period. (Recommendation 5.1)

The bill also requires the Commission to review information on fire fighter injuries and provide the State Fire Marshal's Office (SFMO) with recommendations on reducing these injuries, to be published in SFMO's annual fatality report. The bill also authorizes the Commission to investigate serious injuries and requires the Commission to assist fire departments with reducing injuries if warranted. (Recommendation 5.2)

ACROSS-THE-BOARD RECOMMENDATIONS



Texas Commission on Fire Protection

Recommendations	Across-the-Board Provisions
Update	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Update	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Commission Decision



Adopted staff recommendations.

Legislative Action



Adopted Commission decision.

AGENCY INFORMATION

(AUGUST 2008)



Agency Information

Agency at a Glance

The Texas Commission on Fire Protection's mission is to ensure protection of the public, and fire fighters, from the hazards of fires by establishing standards for certifying and equipping fire service personnel employed by local governments. To achieve its mission, the Commission carries out the following key activities:

- ◆ certifies fire service personnel in thirteen disciplines including fire fighting, hazardous materials, and arson investigation;
- ◆ develops and administers certification examinations, including written exams and skills tests;
- ◆ regulates training facilities, develops course materials, and approves training classes;
- ◆ inspects fire departments to ensure compliance with national standards for protective equipment and safe operating procedures; and
- ◆ provides fire departments with grants to purchase protective clothing and fire fighting equipment.



Information on the training and certification of the fire service is available on the Commission's website, www.tcfp.state.tx.us.

Key Facts

- ◆ **Funding.** In fiscal year 2007, the Commission operated with a budget of about \$3.2 million, of which \$1.3 million was awarded as grants to local fire departments. The Commission is almost 100 percent funded by taxes on insurance policies, appropriated from General Revenue.
- ◆ **Staffing.** The Commission has 33 employees, of whom six work in five regional offices and the rest work in Austin.
- ◆ **Certifications.** The Commission certifies about 36,600 personnel in the paid fire service, employed by about 1,140 fire departments, fire marshal offices, code inspection offices, and training academies.
- ◆ **Examinations.** In fiscal year 2007, the agency administered about 6,700 written examinations and oversaw about 7,900 skills tests statewide.
- ◆ **Inspections.** In fiscal year 2007, the agency conducted 327 inspections of fire departments and training providers and found about 1,330 violations, primarily involving protective clothing.

Major Events in Agency History

- 1969 The Legislature creates the Commission on Fire Protection and Personnel Standards to develop standards for certification of paid fire fighters.
- 1991 Combining fire prevention, suppression, and investigation into one agency, the Legislature merges the State Fire Marshal's Office, the Fire Department Emergency Board, and the Texas Department of Insurance's (TDI's) Key Rate section into the newly-named Texas Commission on Fire Protection (TCFP).
- 1993 The Legislature creates a pathway for volunteer fire fighters certified by the State Firemen's and Fire Marshals' Association of Texas to qualify for TCFP certification.
- 1997 With Texas' repeal of the Key Rate system, the Legislature transfers the State Fire Marshal's Office back to TDI, focusing TCFP on certifying fire fighters, inspecting fire departments, and administering grants.
- 2001 In response to several fire fighter fatalities in Lake Worth, Texas, the Legislature requires fire departments to adhere to specific National Fire Protection Association standards for breathing apparatus, protective clothing, personal alert systems, and operating procedures at the fire scene.

Organization

Policy Body

A 13-member, Governor-appointed Commission governs the agency. The Commission consists of four public members and nine members related to the fire service. By law, the Governor must appoint two members each from nominees submitted by the Texas Fire Chief's Association, the Texas State Association of Fire Fighters, and the State Firemen's and Marshals' Association of Texas. Unless the Governor designates the presiding officer, statute authorizes the instructor member serve as such. The table on the following page, *TCFP Commission Members*, identifies current Commission members. The Commission meets quarterly in Austin. Two statutorily-created committees, the Fire Fighter Advisory Committee and the Funds Allocation Advisory Committee, assist the Commission with rulemaking and awarding grant funds, respectively.

Staff

The Commission employs 33 staff, of whom 26 work in Austin, and six compliance staff work out of the Commission's five regional offices. The map on page 46 shows the location of these offices. One employee works out of the Texas Forest Service office in Lufkin, and one works out of the Allen Fire Department. The Executive Director, under the direction of the Commission,

TCFP Commission Members

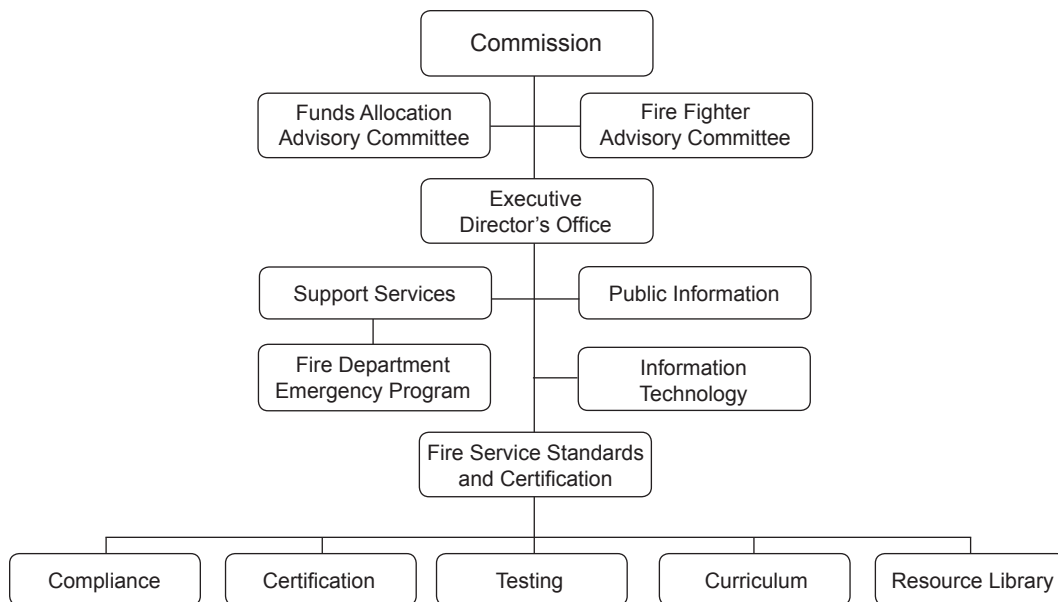
Member	City	Qualification	Term Expires
Kelly Stalder, Presiding Officer	Parker	Volunteer Fire Fighter	2009
Vacant, Assistant Presiding Officer			
David Abernathy	Pittsburg	Volunteer Fire Chief	2007
Les Bunte	Bryan	Fire Protection Instructor	2009
Juanita S. Burch	Grand Prairie	Public Member	2009
Elroy Carson	Ransom Canyon	Public Member	2011
Chris Connealy	Cedar Park	Fire Chief, population less than 50,000.*	2011
Yusuf Elias Farran	El Paso	Public Member	2009
John K. Gillette, III	Frisco	Fire Protection Engineer	2011
Joseph A. Gonzalez	Denton	Arson Investigator	2013
Arthur Pertile, III	Waco	Public Member	2007
John W. Riddle	Conroe	Fire Fighter, population less than 50,000.*	2011
Kent Worley	Fort Worth	Fire Fighter	2009

* By law, at least one fire chief and fire fighter member must be employed by a political subdivision with a population of less than 50,000.

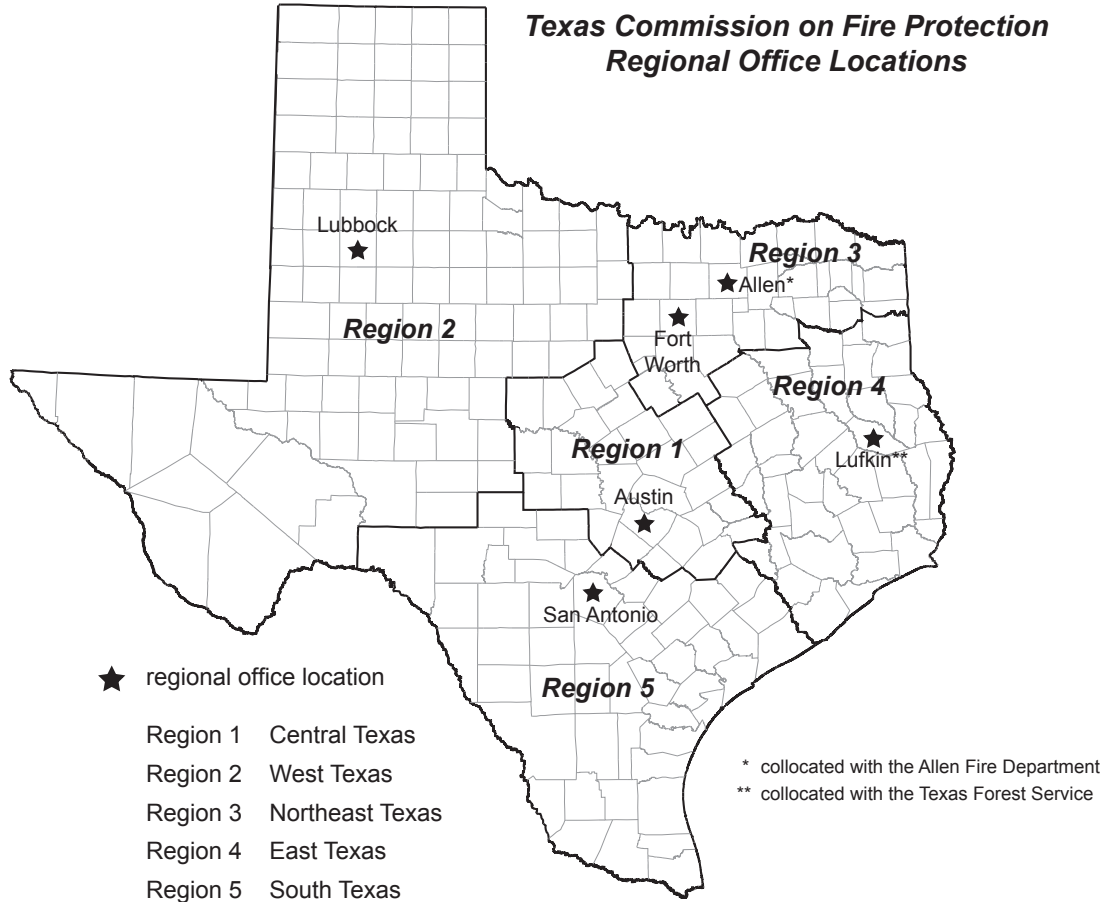
manages the agency’s day-to-day operations and implements policies set by the Commission. The chart, *Texas Commission on Fire Protection Organizational Chart*, depicts the agency’s structure.

Appendix A compares the agency’s workforce composition to the minority civilian workforce over the past three years. Generally, the agency met, or exceeded percentages for African-Americans in most categories and fell short for Hispanics and females in a few categories.

**Texas Commission on Fire Protection
Organizational Chart**



**Texas Commission on Fire Protection
Regional Office Locations**



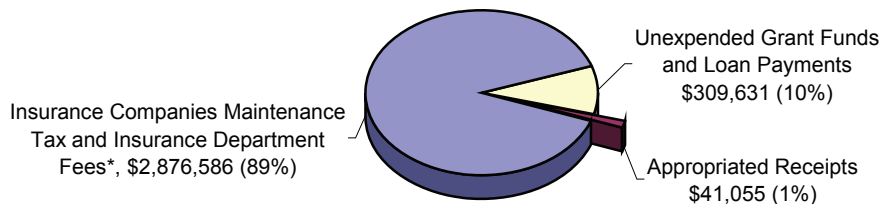
Funding

Revenues

In fiscal year 2007, the agency operated on a budget of about \$3.2 million, of which \$2.8 million was General Revenue and about \$310,000 was carried over grant funds and loan payments, as shown in the pie chart, *Sources of Revenue*. The agency’s funding comes from taxes assessed on insurance policies. In the same year, TCFP collected \$941,035 in fee revenue, but this revenue is deposited in the General Revenue fund and does not support the agency’s operations.

TCFP is not funded by certification fees – rather by taxes on insurance policies.

**Sources of Revenue
FY 2007**

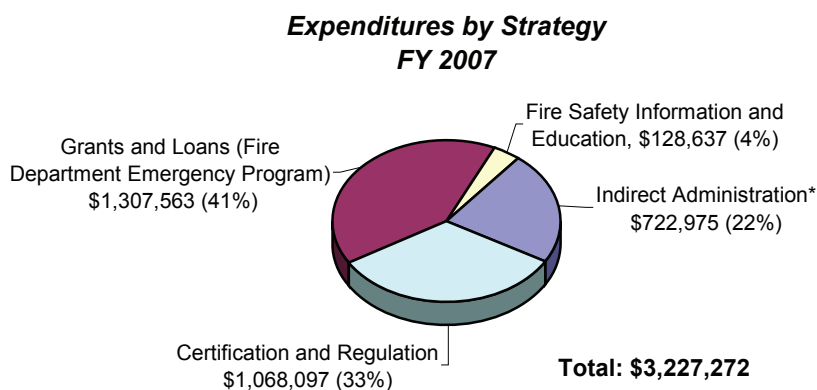


Total: \$3,227,272

* Amount includes \$92,558 in salary increases from Contingency Appropriation and a reduction of \$45,451 for moving expenses incurred in fiscal year 2006.

Expenditures

In fiscal year 2007, the agency spent about \$3.2 million as shown in the pie chart, *Expenditures by Strategy*. Of this amount, about \$1.3 million was funding awarded through the Fire Department Emergency Program, and the remainder directly supported the agency's operations.



* Amount includes a percentage of Commission salaries and other operating expenses.

—◆—

*About \$1 million
of TCFP funding
is for its grant and
loan program.*

—◆—

Appendix B describes the agency's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2004 to 2007. During the last four fiscal years, the agency has met or exceeded goals, except goals for special trades where TCFP had almost no expenditures.

Agency Operations

The Texas Commission on Fire Protection ensures the training, certification, and equipping of the paid fire service is accomplished according to nationally recognized standards, as explained in the textbox, *National Fire Protection Association Standards*. To achieve this goal, the Commission certifies fire fighting personnel and training providers; oversees the training, testing, and continuing education of the fire service; inspects fire departments and training providers; enforces agency statute and rules; and provides grants to fire departments.

National Fire Protection Association Standards

The National Fire Protection Association (NFPA) develops and publishes more than 300 recognized standards for the fire service, covering training, certification, operating procedures, and safety.

Statute requires paid fire departments to adhere to NFPA standards for:

- ◆ purchasing and maintaining fire fighter protective gear, breathing apparatus, and personal alert systems; and
- ◆ managing emergency incidents and accounting for fire fighters at the scene.

Fire Fighter Certification

The Commission certifies about 36,600 individuals in the fire service, including paid fire fighters, fire truck operators, arson investigators, fire inspectors, hazardous materials technicians, and fire training instructors. Fire departments hold and renew all of their personnel's certificates. Personnel

TCFP Active Certifications – 2008

Type	Number
Structural Fire Fighter	26,116*
Airport Fire Fighter	2,567
Marine Fire Fighter	71
Hazardous Materials Technician	3,272
Fire Truck Operator	6,217
Fire Officer I and II	2,450
Head of Department	294**
Fire Investigator	1,436
Arson Investigator	1,277
Fire Inspector	2,679
Fire Service Instructor	7,926
Total	54,305

* Includes 91 volunteer fire fighters.

** Includes seven Head of Suppression certifications.

can hold several fire service certifications at the same time. For example, certified instructors would also hold certifications in disciplines they instruct. The table, *TCFP Active Certifications*, shows that the Commission has about 54,300 active certifications issued to paid fire service personnel statewide.

While not required in statute, the Commission bases its certification of the paid fire service on NFPA job performance requirements. To become a Texas-certified fire fighter, a person typically enrolls in a training academy, and must take 468 hours of training in four different NFPA disciplines for Fire Fighter I and II and Haz-Mat Awareness and Operations. On completion of training, a person is eligible to take TCFP’s written exam and skills tests and has up to one year to apply for certification. In addition, a person must complete a medical training program such as Emergency Care Attendant recognized by the

Texas Department of State Health Services, or equivalent programs offered by groups such as the Red Cross.

Fire departments typically hire non-certified trainees on a probationary basis; however statute prohibits departments from assigning them to fire fighting duties until they become certified. As individuals gain experience and meet additional education requirements, they can advance to higher certification levels such as Advanced or Master Fire Fighter. Departments must notify the Commission when they hire or terminate personnel so the agency can monitor certification status. In fiscal year 2007, the agency processed about 5,400 appointment and termination notices.

Continuing Education

Every year, fire protection personnel must take 20 hours of continuing education to renew all certifications they hold, or 30 hours for those holding Hazardous Material Technician certifications. Continuing education training must be provided by TCFP-certified instructors, training facilities, institutions of higher education, or nationally-recognized providers. Fire chiefs must attest that all continuing education is current when renewing their personnel’s certifications, and TCFP staff review these records when inspecting fire departments. Individuals renewing their certifications must provide proof to the agency at the time of renewal.

Examinations

The Commission creates and maintains examinations for its fire service certifications. When developing and updating exams, staff works with the ad-hoc Curriculum and Testing Committee, composed of nine fire service training members. The agency bases exams on NFPA job performance requirements and tests applicants on these standards.

*TCFP staff
check continuing
education records
when conducting
fire department
inspections.*

Commission staff administers about 75 percent of written exams while non-agency designated examiners administer about 25 percent. Trainees can take written exams at locations throughout the state including fire departments, regional testing centers, and community colleges. Of 21 certification exams, all but one include skills tests to evaluate applicants' abilities to carry out tasks such as using breathing apparatus or driving a fire truck. Certified instructors administer these skills tests, both during training and when taking final exams. For example, Houston's fire department instructors train their own personnel for fire truck operator certification, and conduct required skills tests on the Commission's behalf. For fire fighter certification exams only, the agency oversees instructors administering three skills tests. In fiscal year 2007, the Commission administered 6,740 written exams and monitored instructors administering 7,917 fire fighter skills tests.


*Virtually
all TCFP
certifications
require trainees to
pass skills tests to
gain certification.*

International Fire Service Accreditation Congress Seals

The International Fire Service Accreditation Congress (IFSAC) is a national accrediting body that approves certification processes, allowing the agency to issue IFSAC seals to certificate holders. This accreditation ensures that State certifications meet NFPA training standards and IFSAC's standards for examination integrity, allowing approved fire fighters to move more freely amount other IFSAC-accredited states, Fire fighter examinees have the option of receiving IFSAC seals by taking the State's certification exam and passing each of the four sections with at least a 70 percent score, instead of the 70 percent overall score required to receive only TCFP certification. Texas offers reciprocity to fire service personnel from 39 other IFSAC states. As shown in the table, *IFSAC Seals*, the Commission issued 7,882 seals in fiscal year 2007.

IFSAC Seals – FY 2007

Type	Number
Hazardous Materials	2,884
Structural Fire Fighter	2,481
Fire Instructor	1,107
Fire Inspector	487
Fire Truck Operator	364
Fire Officer	199
Fire Investigator	168
Plans Examiner	99
Airport Fire Fighter	93
Total	7,882

Fire Fighter Training

The Commission certifies training providers such as fire department academies, community colleges, and private providers to train fire service personnel. In fiscal year 2007, the agency regulated 186 training providers, as detailed in the table, *Certified Training Providers*. To be certified, providers must submit documentation showing their ability to train, classroom availability, access to a drill tower; and must provide NFPA-compliant equipment, such as protective gear and breathing apparatuses. Training providers must employ certified chief training officers and instructors. In fiscal year 2007, the Commission issued training providers 634 certifications to offer courses in disciplines such as structural fire suppression, fire truck operator, and fire investigator. By rule, training providers must maintain at least a 70

Certified Training Providers – FY 2007

Type	Number
Paid Fire Department Academies	131
Community Colleges and Universities	28
Private Academies	16
Volunteer Fire Department Academies	8
Federal Agencies*	2
State Agency**	1
Total	186

* United States Naval Air Station in Fort Worth and Pantex Plant Fire Department near Amarillo.

** State Fire Marshal's Office.

percent overall pass rate on certification exams. In fiscal year 2007, the state's average pass rate for the fire fighter certification exam was 89 percent.

Course Development and Approval

The Commission develops and updates course materials based on NFPA job performance requirements. Agency staff works with the Curriculum and Testing Committee to develop and update course materials. When teaching and conducting training, providers must use curricula based on TCFP's course materials. The agency only prepares course materials tied to its certifications, and does not provide fire science curricula for degree programs offered by community colleges and universities.

By rule, the Commission must approve training provider proposed classes before training starts. Training providers apply for class approval by sending TCFP information on certified instructors, hours devoted to course subjects, class schedules, and times and locations for certification exams. Staff reviews this information to ensure providers meet TCFP requirements for instructor certification, class subject matter, number of exams, and any skills tests. In fiscal year 2007, the agency reviewed and approved 937 fire service classes.


Fire Service Regulation and Oversight

In fiscal year 2007, TCFP regulated 1,143 entities involved in the fire service, such as paid fire departments, fire marshal offices, and training academies as summarized in the table, *TCFP Regulated Entities*. The Commission has two

types of regulation: mandatory and voluntary. By law, the Commission regulates fire departments that employ personnel paid by municipalities, counties, Emergency Services Districts, and other political subdivisions of the state. Fire departments must provide these personnel with NFPA-compliant protective clothing and equipment, and departments must adopt NFPA procedures for managing personnel at fire scenes. Statute requires fire departments, and ultimately local governments, to comply with these regulations.

Many Commission-regulated entities do not employ fire fighters but employ other personnel, such as local fire marshals offices that employ arson investigators, and municipalities that employ fire inspectors. Entities such as all-volunteer fire departments, state agencies, and federal agencies can choose Commission

regulation. By opting-in for regulation, these entities can undergo inspections to ensure they meet state standards and receive needed technical assistance. This regulation can also assist all-volunteer departments with making the transition to mandatory regulation as they begin to employ paid fire fighters.



Training providers must get TCFP approval before teaching classes.

TCFP Regulated Entities – FY 2007

Type	Number
Mandatory Regulation	
Fire Departments – Paid	216
Fire Departments – Volunteer and Paid*	171
Airport Fire Departments	31
Marine Fire Department	1
Fire Marshal Offices	274
Local Fire Inspection Offices	213
Police Departments and Sheriff's Offices	25
Training Providers	186
Voluntary Regulation	
Volunteer Fire Departments	25
State Agencies	3
Federal Agencies	2
Total	1,143

* TCFP only regulates agency-certified personnel in volunteer departments that are employees of municipalities, counties, or Emergency Services Districts.

Inspections and Compliance

The Commission inspects fire departments and training providers to ensure compliance with regulations that help ensure the safety of fire fighters and trainees. The textbox, *Key TCFP Safety Standards for Regulated Entities*, shows the standards fire departments and training providers must adhere to.

Key TCFP Safety Standards for Regulated Entities

By law, fire departments and training providers must adhere to the following safety requirements based on NFPA standards and federal regulations.

- ◆ Provide, inspect, and maintain, NFPA-compliant personal protective equipment and safety alert systems.
- ◆ Provide, inspect, and maintain NFPA-compliant breathing apparatus and independently test air tanks and breathing air quality.
- ◆ Maintain NFPA-compliant fire response procedures that recognize hazards, prevent injuries, and account for all fire fighting personnel at fire scene.
- ◆ Adhere to the Occupational Safety and Health Administration's "two-in/two-out" procedure for responding to structural fires.

Statute requires TCFP to inspect regulated entities at least every two years for compliance with state law and agency rules. The table, *TCFP Inspections*, shows that the agency carried out 327 inspections in fiscal year 2007. When inspecting a fire department, compliance staff check the protective equipment of on-duty fire fighters, review equipment maintenance records and operating procedures, and check about 10 percent of continuing education records. Small fire departments may be inspected in a few hours by a single compliance officer, while the Houston fire department can require all six compliance officers to be on site for a week. When inspecting training providers, staff also check instructor certifications and check for TCFP approval of course materials.

TCFP Inspections – FY 2007

Type of Entity Inspected	Number
Fire Department – Paid	219
Fire Department – Volunteer and Paid	75
Training Providers	27
State Agency	5
Federal Agency	1
Total	327

The Commission found 1,335 violations while conducting inspections in fiscal year 2007, as detailed in the table, *Summary of TCFP Inspection Violations*. After conducting an inspection, compliance staff provide the fire chief or training provider a report with any violations found. Unless immediate action is required for violations that may jeopardize fire fighter safety, the agency allows the regulated entity 14 days to remedy violations, or provide a plan for resolving violations if more time is needed.

Summary of TCFP Inspection Violations – FY 2007

Type of Violations	Number
Personal protective equipment damaged, dirty, or non-complaint with NFPA standards.	802
Continuing education records incomplete or not available.	353
Breathing apparatus damaged or personal alert system not working.	125
Other violations such as failure to notify of employment or operating procedures not updated.	53
Total	1,335

Source: TCFP Inspection Violation Data provided to Sunset staff.

Enforcement

If regulated entities do not come into compliance by resolving violations within agreed timeframes, the agency may open a complaint case and take further enforcement measures. Staff can assess administrative fines of \$300 to \$600 per violation for a violation not posing an immediate safety threat, or \$500 to \$1,000 per violation for more serious or repeated violations. Regulated entities can request an informal settlement conference with the agency to resolve violations. In fiscal year 2007, the Commission conducted six conferences, of which five resulted in agreed orders and one in revocation of a training provider's certification. In these cases, staff assessed \$1,800 in probated fines against a training provider, and \$25,000 in probated fines against a fire department. TCFP generally probates fines to give departments the opportunity to use these funds to resolve violations, for example by purchasing new protective equipment.

The agency can assess fines of up to \$1,000 per violation for serious or repeated violations.

Complaints

Commission staff open complaint cases for inspection violations that go unresolved, and for complaints generated by TCFP's database or filed by the public. When the Commission investigates a complaint, the central office may refer to regional compliance staff for investigation if the complaint involves a fire department or training provider in that region. The table, *TCFP Complaint Cases*, shows the sources of complaints investigated by the Commission and their disposition.

TCFP Complaint Cases – FY 2007

Source	Number	Disposition	Number
Initiated by Agency – Database*	47	Cases Resolved Informally	47
Initiated by Agency – Inspections	6	Cases Resulting in Disciplinary Action	5
Initiated by Agency – Public	2	Cases with No Violations Found	3
Case Pending From Previous Year	1	Case Left Pending	1
Total	56	Total	56

* Automatically generated when a fire department employs a fire fighter for more than one year without seeking certification.

The Commission's most frequent complaint involves fire departments hiring personnel for more than one year without applying for certification. Appointing a non-certified person to fire fighting duties is a misdemeanor punishable by a fine of up to \$1,000. In these cases, staff contacts the fire department to resolve the violation informally by requesting the department submit a certification application.

The Commission can also take enforcement actions against individuals who violate agency statute and rules by revoking, suspending or probating, a certificate. The agency can assess administrative and civil penalties against a certificate holder of up to \$1,000 per violation. A person subject to Commission disciplinary action is entitled to a hearing before the State Office of Administrative Hearings. In fiscal year 2007, the Commission renewed one fire fighter's certification conditionally, and denied one applicant certification.

Most TCFP complaint cases are automatically generated by it's database.

Line of Duty Fatality Investigations

The State Fire Marshal's Office (SFMO) investigates, and reports on, all fire fighter line of duty fatalities in Texas. The Commission assists SFMO with these efforts by inspecting the deceased's protective equipment, continuing education records, and the department's operating procedures. The Commission forwards these inspection results to SFMO for inclusion in its fatality report. SFMO summarizes the findings of its fatality investigations in its annual report, which includes strategies for preventing future fatalities. In fiscal year 2007, the Commission assisted SFMO with two reports involving three fire fighter fatalities.

The Commission assists the State Fire Marshal's Office with fire fighter fatality investigations.

Grants and Loans

The Fire Department Emergency Program provides loans, grants, and training scholarships to municipal and rural fire departments. The table, *Fire Department Emergency Program Awards*, shows the types and amounts of funds awarded in fiscal year 2007. The Legislature appropriates \$1 million annually in General Revenue from taxes on insurance policies to fund the program. In fiscal year 2007, about \$1.1 million, of \$1.3 million available, went to grants to help pay for basic fire department needs such as protective equipment, hoses, and ladders. For training scholarships, the Commission awards \$750 per person to attend Texas A&M University's Emergency Services Training Institute. A statutorily created, six-member Funds Allocation Advisory Committee meets twice each year to assist the Commission in administering the program by reviewing applications and making award recommendations.

Fire Department Emergency Program Awards – FY 2007

Type	Number of Awards	Amount of Awards
Grants	123	\$1,128,780
Loans	6	\$183,000
Scholarships	18	\$54,765
Total	147	\$1,366,545*

* Includes about \$310,000 in funds carried over from fiscal year 2006.

Fire Service Resources and Information

The Commission maintains the Ernest A. Emerson Fire Protection Resource Library with information on numerous areas of the fire service, including certification standards, fire fighting techniques, fire investigations, and training. The library offers more than 1,700 audio-visual materials and 1,500 fire service publications free of charge to fire departments, training academies, and the general public. In fiscal year 2007, the Commission received 1,158 training and education requests and 212 research requests. TCFP has the library's catalog online for checking out materials.

APPENDICES

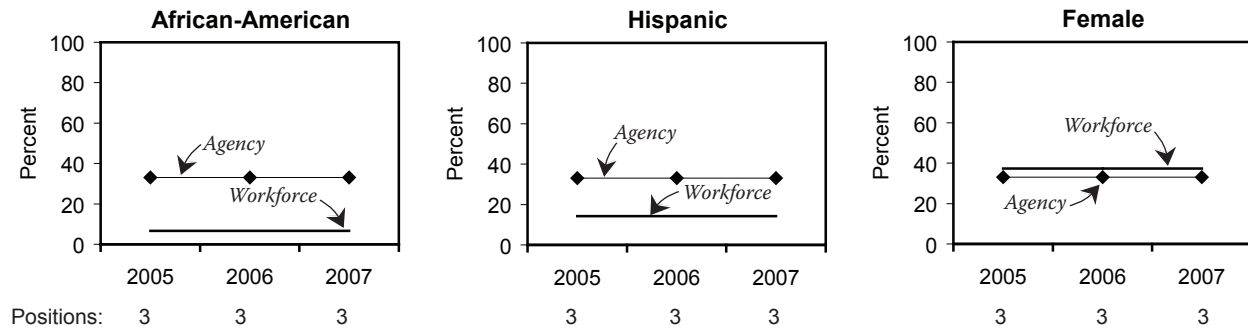


Appendix A

Equal Employment Opportunity Statistics 2005 to 2007

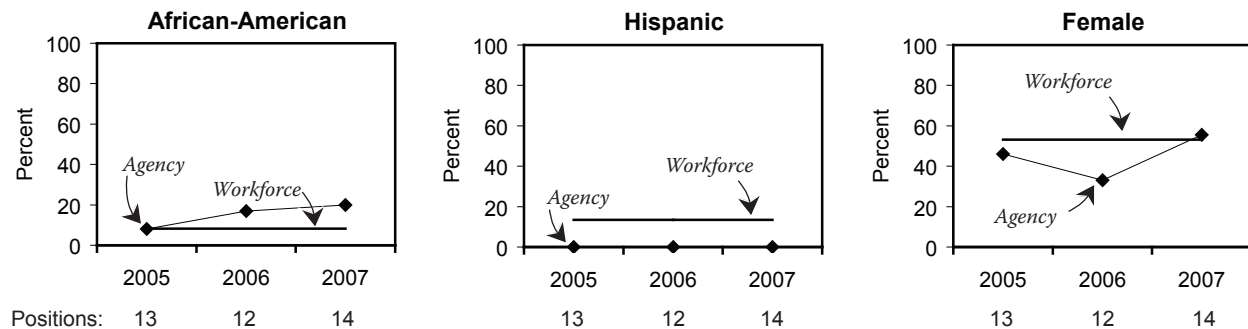
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Commission on Fire Protection.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2005 to 2007. The agency generally met or exceeded the civilian workforce percentages in the Administration category for the three fiscal years. The agency exceeded, or met, the civilian workforce percentages for African-Americans in the Professional and Technical categories, but fell short of the percentages for Hispanics and females in these categories over the last three years. However, the agency exceeded civilian workforce percentages for women in the Administrative Support category for the three years, and the agency's minority workforce percentages have increased in this category in recent years.

Administration



Generally, the agency has met or exceeded civilian percentages for African-Americans, Hispanics, and females in all three years.

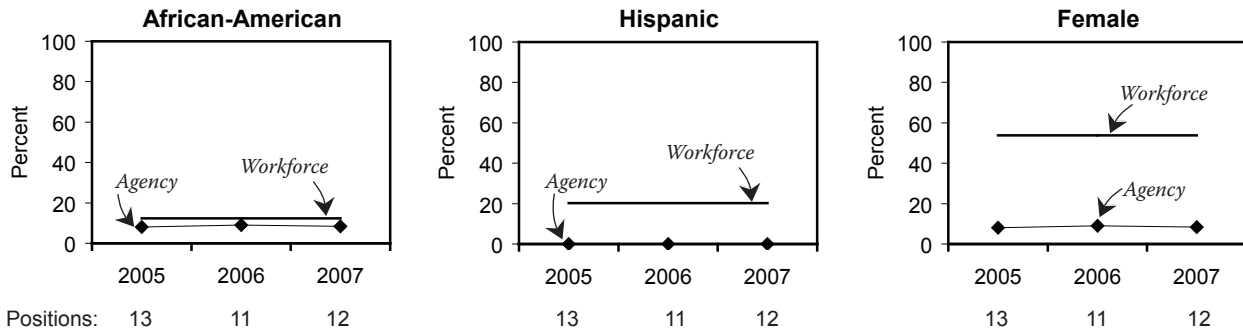
Professional



The agency met or exceeded the civilian workforce percentages for African-Americans in the last three years. The agency fell below the civilian workforce percentages for Hispanics in those same years, and for females in two of those years.

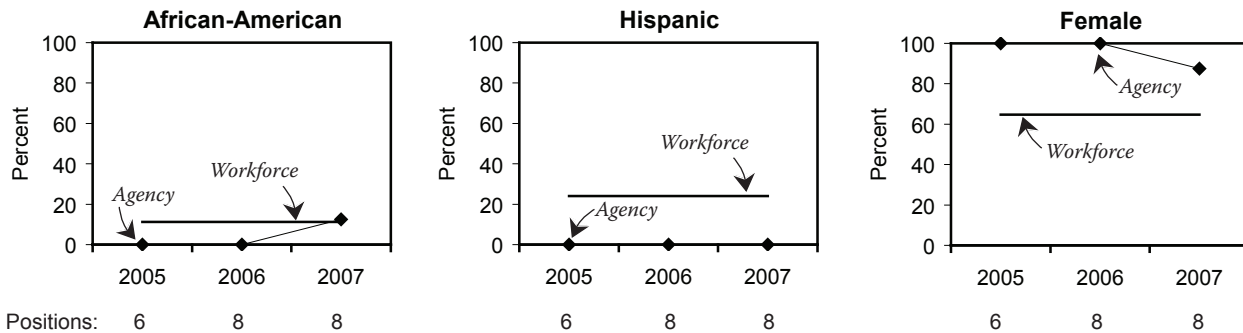
Appendix A

Technical



The agency met the civilian workforce percentages for African-Americans in all three years. The agency fell below the civilian workforce percentages for Hispanic and females in the same years.

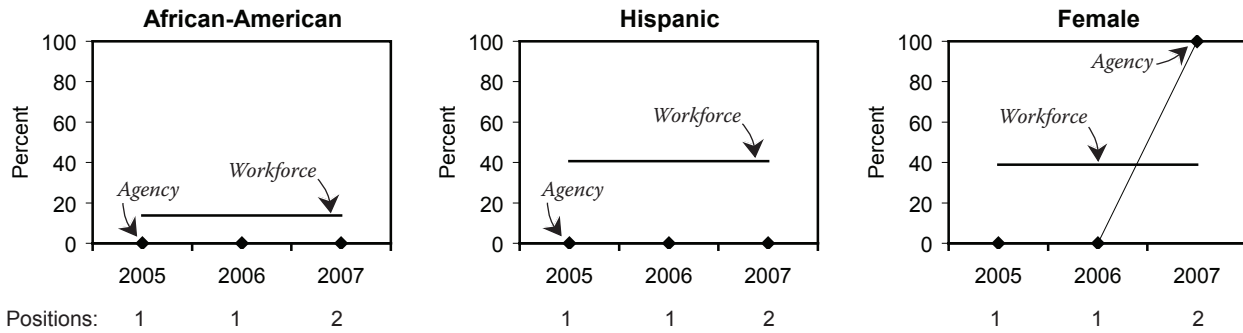
Administrative Support



The agency exceeded the civilian workforce percentages for females in the last three years. Although the agency did not meet the civilian workforce percentages in this category for Hispanics in the last three years, and for African-Americans in two of the years, the agency's minority workforce percentages in this category has increased in the last year.

Appendix A

Service/Maintenance³



Representing the smallest category of staff, the agency was able to meet the civilian workforce percentages for females the last year. The agency was not able to meet the civilian workforce percentages for African-Americans and Hispanics the last three fiscal years.

¹ Texas Government Code, sec. 325.011(9)(A).

² Texas Labor Code, sec. 21.501.

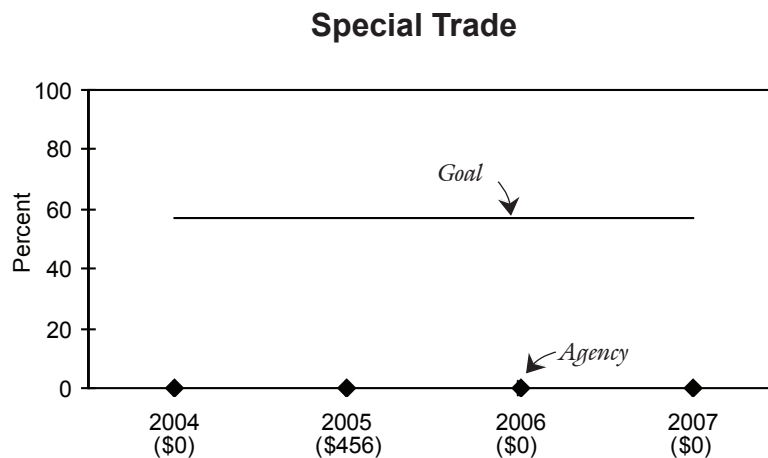
³ The Service/Maintenance category includes three distinct occupational categories: Service/Maintenance, Para-Professionals, and Protective Services. Protective Service Workers and Para-Professionals used to be reported as separate groups.

Appendix B

Historically Underutilized Businesses Statistics 2004 to 2007

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

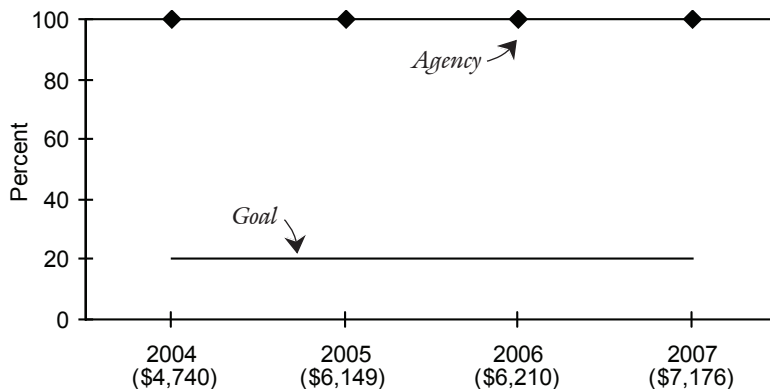
The following material shows trend information for the Texas Commission on Fire Protection's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2004 to 2007. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency has consistently surpassed the goal for professional services, generally exceeded the goal for other services, met the goal for commodities, and has not met the goal for special trades, however the agency has had few expenditures in this area.



While the agency fell below the State's goal for spending, the agency had no expenditures in this area in fiscal years 2004, 2006, and 2007, and minimal expenditures in fiscal year 2005.

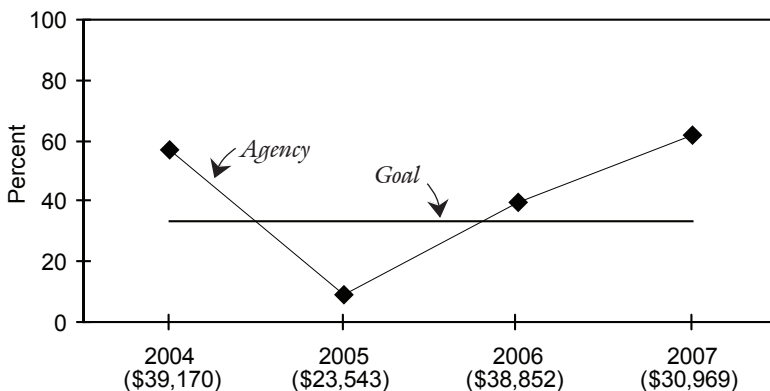
Appendix B

Professional Services



The agency exceeded the State's goal for spending, however expenditures in this category were not significant.

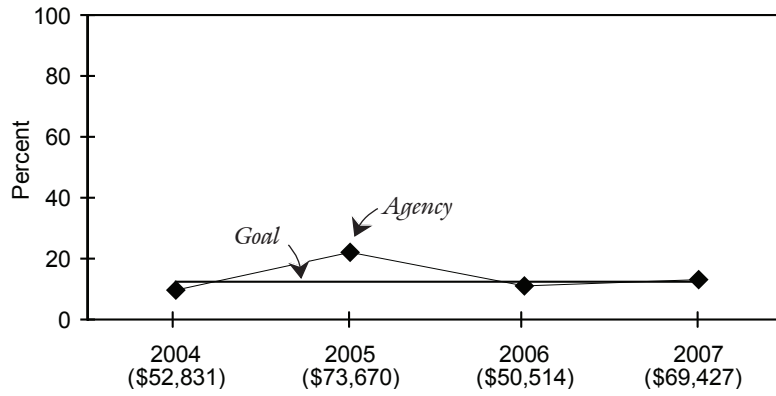
Other Services



In fiscal years 2004, 2006, and 2007, the agency exceeded the State's goal for spending for professional services. While the agency fell short of this goal in fiscal year 2005, its expenditures were still a high percentage of previous years expenditures.

Appendix B

Commodities



The agency has met or exceeded the State's goal for HUB purchasing of commodities.

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¹ Texas Government Code, sec. 325.011(9)(B).

² Texas Government Code, ch. 2161.

Appendix C

Staff Review Activities

During the review of the Texas Commission on Fire Protection, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; spoke with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- ◆ Attended meetings and reviewed meeting minutes of the Commission and the Fire Fighter Advisory Committee.
- ◆ Attended meetings of the Fire Department Emergency Program Funds Allocation Advisory Committee.
- ◆ Attended a meeting of the Fire Consortium, composed of interest groups and representatives of state agencies.
- ◆ Interviewed volunteer fire chiefs and fire fighters from various areas of the state.
- ◆ Interviewed staff from Texas A&M University's Texas Engineering Extension Service, toured its training facilities, and participated in a training exercise.
- ◆ Interviewed staff from the State Fire Marshal's Office, the Texas Forest Service, and the Office of Rural Community Affairs.
- ◆ Accessed and researched the Texas Forest Service's Fire Department Directory.
- ◆ Observed inspections of fire departments by Commission staff.
- ◆ Observed certification examinations administered by Commission staff and skills tests administered by certified instructors.
- ◆ Observed an informal settlement conference conducted by Commission staff.
- ◆ Conducted a review of Commission enforcement case files.

NEW ISSUES



New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

6. Require volunteer fire chiefs to meet the same training standards as career fire chiefs. (Ryan Todd)
7. Make the Commission responsible for overseeing volunteer fire departments the same as it oversees paid departments. (Ryan Todd)

Commission Decision



The Commission did not adopt any of the new issues.

Legislative Action



No action needed.

PROVISIONS ADDED BY LEGISLATURE



Provisions Added by Legislature

1. Modify Commission member eligibility criteria to keep pace with changes in local communities and the fire service.

The Legislature added provisions to improve the ability of fire service associations to nominate qualified members to serve on the Commission. The bill increases the population threshold for members representing political subdivisions from 50,000 to 100,000. The bill also allows volunteer fire fighters who may be employed full-time in the fire service to be eligible to serve on the Commission.

2. Ensure unbiased appointment of persons to serve on the Fire Fighter Advisory Committee.

The Legislature added a provision requiring that Commission appointments to the Fire Fighter Advisory Committee be made without regard to the race, color, disability, sex, religion, age or national origin of appointees.

3. Ensure state and federal entities coordinate when deploying fire service resources during a disaster.

The Legislature added a provision requiring the Commission to coordinate with appropriate state and federal entities, including the Governor's Office of Homeland Security and Federal Emergency Management Agency, during a declared disaster.

SUNSET STAFF REVIEW OF THE TEXAS COMMISSION ON FIRE PROTECTION



REPORT PREPARED BY:

Christian Ninaud, Project Manager

Steven Ogle

Janet Wood

Joe Walraven, Project Supervisor

Joey Longley

Director

Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

Robert E. Johnson Bldg., 6th Floor
1501 North Congress Avenue
Austin, TX 78701

512-463-1300 Fax 512-463-0705

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