

SUBJECT: Continuing the Texas Commission on Fire Protection

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 9 ayes — Hill, Bailey, Burnam, Clark, Ehrhardt, Garcia, Hodge, Shields, Wohlgemuth
0 nays

SENATE VOTE: On final passage, May 6 — 30-0, 1 present, not voting (Brown)

WITNESSES: *(On the original version of House companion, HB 2111)*
For — Mike Higgins, Texas State Association of Fire Fighters; Anthony Calagna
Against — Forrest W. Jenkins, National Security Association; Mark Thomas
On — Larry Graham, Sunset Advisory Commission; R.F. Sullivan, State Firemen's and Fire Marshall's Association; Malcomb Reed, Texas Burglar and Fire Alarm Association; Deloss Edwards

BACKGROUND
:
The Texas Commission on Fire Protection (TCFP) was created by the Legislature in 1991 to combine the three main aspects of fire protection — prevention, suppression, and investigation — under one agency. The commission enforces statewide laws and assists local governments to ensure that the lives and property of the public and of the fire service are adequately protected from fires and related hazards. The commission also establishes minimum standards for education, training and employment of firefighters; certifies paid firefighters, and fire departments; conducts fire and arson investigations and fire safety inspections; and licenses and regulates the fire alarm, extinguisher, fire protection sprinklers, and fireworks industries.

The commission is composed of three fire chiefs (two of whom must be department heads), three paid firefighters, three volunteer firefighters, one certified fire protection engineer, one certified arson investigator, and one fire protection instructor. The members representing fire chiefs, paid firefighters and volunteer fire chiefs or firefighters are selected from a list of candidates submitted by their professional organizations.

All rule recommendations that come before the commission must be approved by one of nine advisory committees responsible for specific areas regulated by the commission. Advisory committees study, draft, and recommend rule proposals based on the needs of the general public, the fire service, and the fire protection industries. If the commission rejects a proposed rule, it may send the rule back to the advisory committee for recommended action, but it cannot amend a proposed rule without the advisory committee's approval.

The TCFP is responsible for inspecting and recommending to the Texas Department of Insurance (TDI) key rates, one of the elements used to set insurance rates for homeowners. Key rates measure how well a city's fire suppression capabilities meet its needs and the adequacy of public education efforts and other factors. Beginning in 1997, TDI will no longer use a key rate schedule to set homeowners insurance rates in Texas, but instead will use a fire suppression rating schedule adopted by the Insurance Services Office.

The TCFP is subject to the Sunset Act and underwent Sunset Advisory Commission review during the interim. It is scheduled to expire on September 1, 1997, unless continued by the Legislature.

DIGEST:

CSSB 371 would continue the Texas Commission on Fire Protection until September 1, 2009. The bill would add three members of the general public to the commission and reduce from three to two the members representing chief officers, firefighters, and volunteer fire chiefs or firefighters. A certified fire protection inspector could serve in place of a certified arson inspector.

The commission could adopt or amend rules after seeking input and comments from the appropriate advisory council. Advisory councils would have to periodically review relevant rules and recommend changes. The commission would appoint members of advisory councils.

CSSB 371 would eliminate the commission's responsibilities for reviewing key rate schedules. The commission would have to adopt a memorandum of understanding with TDI coordinating each agency's responsibilities for fire suppression ratings. The commission could provide technical assistance to

paid and volunteer fire departments and local governments concerning the fire suppression ratings schedule.

CSSB 371 would transfer from TDI to the commission oversight of fire alarm protection systems and fireworks. The commission would appoint advisory councils to review and comment on rules governing security systems and fireworks. The bill would require people who supervise fireworks displays to have a pyrotechnic special effects operator's license, with an annual fee of no more than \$100. The price of multiple display licences could not exceed \$400.

The division of emergency management would have to consult with the commission to develop a statewide mutual aid program for fire emergencies.

CSSB 371 would combine paid and volunteer firefighter certification and eliminate employment or affiliation with a volunteer fire department as a requirement for maintaining a firefighter certificate. A paid fire department could hire a firefighter who was a current or former volunteer firefighter. Applicants for this license would be required to pass a written examination.

The bill would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSSB 371 would ensure that Texas continues to have a regulatory agency committed to overseeing the training and regulation of paid fire protection personnel and paid fire departments and regulating industries related to fire protection. These are continuing needs that cannot be met as effectively by other agencies. While other state agencies have similar duties of setting standards, licensing and enforcement, the Texas Commission on Fire Protection, with its specific focus on fire protection, is best suited to carrying out these responsibilities.

In its first five years, the TCFP has gotten off to a rocky start partly because of difficulties in the structure of the agency. CSSB 371 would address and correct many of these problems by reducing the authority of advisory committees, adjusting the makeup of the commission to include public members, and streamlining and clarifying the agency's mission. New commission members and a new executive director have begun to make significant improvements in the overall operation of the agency in response

to reviews by the State Auditor's Office, the Comptroller's Office, and the Sunset Advisory Commission. TCFP should be given the opportunity to make these improvements under the provisions of CSSB 371 before major portions of the agency are transferred to another state agency.

CSSB 371 would strengthen the commission's ability to regulate the industries it oversees by eliminating requirements that rules or amendments be approved by one of the advisory committees, which are made up of representatives of industries the commission regulates. While advisory committees can provide important information and should be involved in the rulemaking process, they should not be the final decisionmakers about rules governing their industries. The statute should be changed to give the commission full authority to regulate the industries it oversees.

CSSB 371 also would streamline licensing requirements for paid and volunteer firefighters. Under the current system, a volunteer firefighter who wants to become a paid firefighter has to go through a rigorous training program that is very similar to the training program for volunteer firefighters. This unnecessary duplication creates a barrier to attracting volunteer firefighters to the paid firefighting force, and requires fire departments to spend limited resources on training an already skilled firefighter.

CSSB 371 would allow TCFP to continue to oversee the fire marshal's office, and the fire alarm, sprinkler, extinguisher and fireworks industries to ensure that consumers receive quality services and protection. The fire marshal's office alone makes up about two-thirds of the TCFP. According to the Sunset Advisory Commission, no other state agency can assume these functions with increased benefits to the state or with significantly reduced costs.

**OPPONENTS
SAY:**

CSSB 371 would continue an agency that has been ineffective and mismanaged during its five years of existence. Rather than trusting the new executive director to do a better job, the Legislature should transfer back to TDI responsibility for overseeing the fire marshal's office and other important functions of the agency. TDI has an established framework that makes it better equipped to serve many of these functions. For example,

TDI has a much more extensive public information network and could do a better job of educating Texans about fire protection issues.

Advisory committees, particularly the Fireworks Advisory Council, should have a stronger voice in the adoption of rules and amendments to rules than would be allowed under CSSB 371. Most firefighters do not have the understanding of or knowledge about fireworks to make appropriate and fair decisions in this area. Advisory committee members, who are experts in these fields, should continue to have strong input into rules adopted by the commission.

NOTES:

The Senate-passed version would have transferred to TDI the following functions of TCFP: the office of State Fire Marshal, the commission's education and information division, the Texas Fire Incident Reporting System, authority for providing technical assistance to rural fire prevention districts, and oversight of the fire alarm, sprinkler, extinguisher and fireworks industries. The Senate-passed version also would have prohibited people from serving on the commission if their spouse was a paid or volunteer firefighter.

The committee substitute added a provision prohibiting local governments from privatizing fire protection functions unless the change was approved by a majority of voters.