

(The House considered SB 1011 by Estes, the Senate companion bill, in lieu of HB 3390, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 1011.)

HOUSE		HB 3390
RESEARCH		Harper-Brown, et al.
ORGANIZATION	bill analysis	(CSHB 3390 by Gutierrez)
	5/11/2009	

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**SUBJECT:** Continuing and revising the Texas Commission on Fire Protection

**COMMITTEE:** Urban Affairs — committee substitute recommended

**VOTE:** 11 ayes — Y. Davis, C. Howard, Alvarado, Fletcher, Gutierrez, Kent, Mallory Caraway, Miklos, Pierson, C. Turner, Walle

0 nays

**WITNESSES:** For — Chris Connealy, Texas Commission on Fire Protection, Texas Fire Chiefs Association; Mike Higgins, Texas State Association of Fire Fighters; Mike Melton, Texas Commission on Fire Protection, City of Gilmer

Against — Chris Barron, State Fireman's and Fire Marshals' Association; Henry Perry, Bastrop Fire Department

On — Christian Ninaud, Sunset Advisory Commission; Gary Warren, Texas Commission on Fire Protection

**BACKGROUND:** The Texas Commission on Fire Protection (TCFP) was established in 1969 as the Commission on Fire Protection and Personnel Standards. It establishes equipment standards for the paid fire service, certifies fire service personnel and training providers, develops training materials, inspects fire departments, and investigates complaints. The commission has a voluntary certification program for volunteer firefighters and departments.

The commission also administers the Fire Department Emergency Program, which provides grants to paid and volunteer fire departments to purchase firefighting equipment and protective clothing. Program applicants must participate in the Texas Fire Incident Reporting System and the National Incident Management System, and must be participating in a certification program at the time of application.

The TCFP is governed by 13 commissioners appointed by the governor,

nine of whom are related to the fire service and four of whom are public members. Of the nine fire service-related members, two must be chief officers nominated by the Texas Fire Chiefs' Association, one of whom must be the head of his or her department, and one of whom must be employed by a municipality with a population of less than 50,000; two must be paid firefighters nominated by the Texas State Association of Fire Fighters, both of whom must hold a rank of battalion chief or below and one of whom must be employed by a municipality with a population of less than 50,000; two must be volunteer firefighters nominated by the State Firemen's and Fire Marshals' Association of Texas; one must be a certified fire protection engineer; one must be a certified arson investigator or fire protection inspector; and one must be a fire protection instructor from a college or university. The instructor member is considered the commission's presiding officer unless one is designated by the governor.

The commission has a staff of 33, six of whom work in regional offices while the remainder work in Austin. There are also three advisory committees that assist the TCFP. The Fire Fighter Advisory Committee is responsible for drafting and reviewing the commission's administrative rules. The Funds Allocation Advisory Committee determines how grant funds will be distributed. The Curriculum and Testing Committee reviews and recommends changes to the commission's testing and training programs. The TCFP's annual budget is about \$2.9 million, of which about \$1 million is awarded as grants. It currently certifies about 36,000 paid fire personnel and about 190 training providers.

If not continued by the 81st Legislature, the commission will be abolished September 1, 2009.

**DIGEST:**

CSHB 3390 would continue the Texas Commission on Fire Protection until September 1, 2021, and rename it the Texas Fire Protection Agency. It would allow the agency to train and regulate volunteer firefighters and establish penalties for violating agency rules, and would require the agency to collect and share firefighter injury data.

The bill would add standard sunset provisions governing membership of the agency, conflicts of interest, grounds for removal, rulemaking and dispute resolution, and effective use of technology. It also would require the governor to designate a commission member as the presiding officer.

**Volunteer firefighters.** The agency would be allowed to establish

minimum educational and training standards for the state's volunteer firefighters and to assist volunteer firefighters and departments with problems related to firefighting techniques, clothing, and equipment. The agency would be allowed to prohibit a person from serving as a volunteer firefighter unless he or she met certain training and certification criteria determined by agency rule. The agency also would be required to adopt rules and procedures for administering a training assistance program for volunteer firefighters and departments.

A volunteer fire department would be defined as one operated by its members, including a part-paid fire department, on a not-for-profit basis, including a department that was listed as a tax exempt organization in sec. 501(c)(3) of the federal Internal Revenue Code.

**Injury data.** The agency would be required to exchange information with the state commissioner of insurance, including injury information from the Texas Fire Incident Reporting System and workers' compensation data showing claims filed by fire protection personnel. The agency would be required to evaluate the information and data and develop recommendations for reducing fire protection personnel injuries. Such recommendations would have to be forwarded to the state fire marshal no later than September 1 of each year for inclusion in the fire marshal's annual report on firefighter fatalities, beginning September 1, 2010.

The agency also would be required to evaluate the injury information to determine the nature of the injuries and any specific fire departments in need of assistance, and would be allowed to assist those departments in reducing injuries. Any personally identifiable information obtained by the agency would be considered confidential.

**Background checks.** CSHB 3390 would require the agency to approve fingerprint-based criminal history record information obtained from the state Department of Public Safety or Federal Bureau of Investigation before certifying a person as fire protection personnel, even if that person had a valid license from another state whose certification requirements were substantially equivalent.

A person also could not be appointed to a fire department until the agency had approved the person's fingerprint-based criminal history information. The agency would be required to establish criteria for denying a person fire protection certification based on criminal history record information,

and the information would be considered privileged, confidential, and for agency use only.

**Certification renewal.** In order to renew a certification that was either unexpired or expired for less than a year, a fire department or other employing entity would have to submit evidence of satisfactory completion of any required professional certification along with payment of the required renewal fee. The agency would be required to establish a rule setting the certification fee in an amount designed to cover the agency's costs in issuing certificates, including the cost of obtaining the fingerprint-based criminal history record information required for certification.

**Inspections.** The agency would be allowed to conduct risk-based inspections training and fire protection facilities in addition to regular biennial compliance inspections. The agency would be required to consider how recently the facility had come under regulation, a facility's compliance with state law and agency rules, the number of complaints filed with the agency regarding a facility during the previous year, the number of paid personnel in a facility, the frequency of a facility's fire response, the facility's ability to inspect and maintain equipment, and any other factor the agency deemed appropriate.

**Complaints.** The agency would be required to maintain a system for acting promptly and efficiently on complaints filed with the agency. Any complaint cases opened based on a violation found during inspection would have to be opened within 30 days of the agency's providing notice of the violation to the applicable department, agency, institution, or facility.

The agency would be required to make available information regarding its complaint investigation and resolution procedures and to notify periodically complaint parties of the status of the complaint until final disposition. It also would be required to develop and implement a system to track and categorize complaints and identify any trends or areas that possibly would require additional regulation or enforcement.

**Penalties.** The agency would be required to adopt a rule determining penalty amounts and disciplinary actions for fire departments, training providers, and certified personnel who violate agency rules. When determining penalties, the agency would be required to consider

compliance history, the seriousness of a violation, any safety threat to the public or to fire personnel, any mitigating factors, or any other factors deemed appropriate.

The agency also would be able to enter a default order in court if a fire department or training provider failed to take action to correct a violation found during a biennial inspection or to request an informal settlement conference within 60 days of the agency's providing notice requiring the department or training provider to correct the violation.

It also would be able to suspend temporarily the certificate of a firefighter, fire department, or training provider on a determination of a panel of the agency that continued activity by the person or regulated entity would present an immediate threat to the public or to fire service trainees. A person or entity whose certificate was suspended would be entitled to a hearing within 14 days of the suspension.

**Advisory committees.** CSHB 3390 would require appointments to the Fire Fighter and Funds Allocation Advisory Committees to be made without regard to race, color, disability, sex, religion, age, or national origin. Additionally, the Fire Fighter Advisory Committee would be required to review agency rules and recommend changes at the agency's request.

**Disaster coordination.** In a declared state of disaster, the agency would be required to coordinate with other state and federal agencies, including the Governor's Office of Homeland Security and the Federal Emergency Management Agency.

**Effective dates.** The bill's certification requirements would take effect January 1, 2010. The provision allowing the agency to prohibit a person from serving as a volunteer firefighter until the person had met certain training and certification requirements would take effect September 1, 2010. All other provisions would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 3390 would continue the necessary functions performed by the Texas Commission on Fire Protection, rename it the Texas Fire Protection Agency, and adopt minimum certification and training requirements for volunteer firefighters. Many smaller cities rely on volunteers because they lack the resources to support a larger, paid fire service, but still deserve adequately trained fire personnel. Even if the volunteers were not required to meet the same standards as paid firefighters, setting minimum

certification requirements for them would provide for their own safety and would ensure that these smaller communities had a well-trained fire service. Any volunteer training and certification requirements would be subject to the current agency rulemaking process, and both volunteer and paid firefighters would be allowed to give input.

The Fire Department Emergency Program should remain with the Texas Fire Protection Agency so that the agency could assist those volunteer fire departments that it would regulate. Transferring the program's funding to the Texas Forest Service also would make many paid fire departments ineligible to receive the grants.

The agency should continue to develop its own course materials in order to ensure that trainees are receiving the specific information they would need to meet the commission's certification requirements. While there are textbooks available that claim to meet certain national standards, many of them do not contain information required for the agency's certification process.

The Fire Fighter Advisory Committee provides the commission with valuable input and subject matter expertise throughout the rulemaking process. It has functioned well for many years, and the advisory committee should be allowed to maintain its current role. Requiring that the commission wait to adopt a rule until after the meeting in which it is proposed would provide for greater deliberation and a greater chance at reaching compromise on difficult issues. Current law already provides for an emergency or expedited rulemaking process if needed.

OPPONENTS  
SAY:

There is not a pressing need for the level of regulation and oversight of volunteer fire departments that would be permitted by CSHB 3390. Volunteer firefighters and departments already may submit voluntarily to the TCFP's training and certification requirements or may receive certification through their state association. Additionally, the Fire Department Emergency Program detracts from the commission's regulatory functions and has served more volunteer fire departments than paid services. The program's funding should be transferred to the Texas Forest Service, which already administers several programs that assist volunteer firefighters and departments at higher levels of funding, including the Volunteer Fire Assistance Program and the Rural Volunteer Fire Department Assistance Program.

The bill also fails to address the issue of training materials. While the commission's training materials must meet certain standards required by the National Fire Protection Association, TCFP continues to form its own standards and allow course instructors to produce their own commission-approved materials. Relying on readily available training materials rather than developing them through the commission would free significant resources that could be directed elsewhere, such as inspection and enforcement.

The commission's rulemaking process needs further reform. Currently, the TCFP cannot make any substantive rules changes without seeking input from the Fire Fighter Advisory Committee, making the commission little more than a rubber stamp for committee proposals. The Fire Fighter Advisory Committee should either be abolished or given less influence over the rulemaking process, as many of its advisory functions could be carried out by the other two committees.

Under current law, the commission cannot adopt any rules changes until the meeting after the meeting at which the change is proposed, which has added months to the rulemaking process. The commission should be allowed to adopt a rule at the same hearing in which it is proposed, in order to shorten the timeframe for adopting rules changes.

**NOTES:**

The substitute differs from the bill as filed by keeping the Fire Department Emergency Program within the TCFP and changing the commission's name to the Texas Fire Protection Agency; defining "volunteer fire departments" and granting the agency authority over volunteer firefighters and departments after September 1, 2010; retaining the requirement that the agency seek input from the Fire Fighter Advisory Committee and, when appropriate, the Funds Allocation Advisory Committee, when adopting or amending a rule; retaining the prohibition on adopting a commission rule or amendment to a commission rule before the commission meeting held after the meeting at which the rule or amendment was first proposed; requiring that appointments to the Fire Fighter and Funds Allocation Advisory Committees be made without regard to race, color, disability, sex, religious, age, or national origin; and requiring the agency to coordinate with appropriate federal and state agencies during a declared disaster.

The companion bill, SB 1011 by Estes, passed the Senate by 30-0 on April 20 and was reported favorably, as substituted, by the House Urban

Affairs Committee on May 7.