

BILL ANALYSIS

Senate Research Center

S.B. 1011
By: Estes
Government Organization
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Commission on Fire Protection (TCFP) is governed by Chapter 419 (Texas Commission on Fire Protection), Government Code. Currently, the law establishes TCFP as an independent agency responsible for certifying and regulating the paid fire protection service. Current law sets out the duties of the agency and its 13-member commission. TCFP ensures the protection of the public and fire fighters from the hazards of fire by establishing standards for certifying and equipping the paid fire service. To accomplish this mission, TCFP certifies fire service personnel and training providers; develops training materials; and enforces agency statute and rules by inspecting fire departments and investigating complaints. TCFP currently certifies about 36,600 paid personnel and about 190 training providers.

TCFP is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. The Sunset Advisory Commission found that setting and enforcing standards for the training, certification, and equipping of the paid fire service is vital to protecting the safety of Texans, and that TCFP is well-positioned to provide this oversight role. However, Texas does not take full advantage of TCFP's expertise in working with the State Fire Marshal's Office to help minimize fire fighter injuries. The Sunset Advisory Commission also identified other areas of TCFP needing improvement, addressed in the legislation.

S.B. 1011 enacts the recommendations of the Sunset Advisory Commission on TCFP.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Fire Protection (TCFP) in SECTION 15 (Section 419.026, Government Code), SECTION 18 (Section 419.0325, Government Code), and SECTION 20 (Section 419.036, Government Code) of this bill.

Rulemaking authority previously granted to TCFP is modified in SECTION 9 (Section 419.0082, Government Code) of this bill.

Rulemaking authority previously granted to TCFP is rescinded in SECTION 26 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 419.001(2), Government Code, to redefine "volunteer fire fighter" and "volunteer fire chief," except as otherwise provided by this chapter.

SECTION 2. Amends Section 419.003, Government Code, to provide that unless continued in existence as provided by Chapter 325 (Texas Sunset Act), the Texas Commission on Fire Protection (TCFP) is abolished and this chapter expires September 1, 2021, rather than September 1, 2009.

SECTION 3. Amends Section 419.004, Government Code, by amending Subsections (a) and (e) and adding Subsection (f), as follows:

(a) Sets forth the composition of TCFP.

(e) Provides that a person may not be, rather than a person is not eligible for appointment as, a public member of TCFP if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of fire protection, rather than TCFP;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from TCFP, rather than regulated by TCFP or receiving funds from TCFP;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from TCFP, rather than own or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by TCFP or receiving funds from TCFP;
- (4) uses or receives a substantial amount of tangible goods, services, or money, rather than funds, from TCFP, other than compensation or reimbursement authorized by law for TCFP membership, attendance, or expenses; or
- (5) is employed in the field of fire protection, rather is a member of a paid volunteer fire department.

(f) Defines "volunteer fire fighter," and "volunteer fire chief."

SECTION 4. Amends Sections 419.005(a) and (c), Government Code, as follows:

- (a) Provides that it is a ground for removal from TCFP that, rather than if, a member:
 - (1) does not have at the time of taking office, rather than appointment, the qualifications required by Section 419.004 (Composition of Commission);
 - (2) does not maintain during service on TCFP the qualifications required by Section 419.004;
 - (3) is ineligible for membership under, rather than violates a prohibition established by, Section 419.006;
 - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term, rather than for which the member is appointed because of illness or disability; or
 - (5) is absent from more than half of the regularly scheduled TCFP meetings that the member is eligible to attend during a calendar year without an excuse approved, rather than unless the absence is excused, by majority vote of TCFP.
- (c) Requires the executive director of TCFP (executive director), if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of TCFP of the potential ground. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of TCFP, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Amends Section 419.006, Government Code, as follows:

Sec. 419.006. CONFLICT OF INTEREST. (a) Redesignates Subsection (c) as Subsection (a) and redefines "Texas trade association." Deletes existing text of Subsection (a) prohibiting an officer, employee, or paid consultant of a Texas trade association in the field of fire protection from being a member of TCFP or an employee of TCFP who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. Deletes existing text of Subsection (b) prohibiting a person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of fire protection from being a member

of TCFP or an employee of TCFP who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) Prohibits a person from being a member of TCFP and and being a TCFP employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person is an officer, employee, or paid consultant of a Texas trade association in the field of fire protection or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of fire protection.

(c) Redesignates Subsection (d) as Subsection (c). Prohibits a person from being, rather than serving as, a member of TCFP or acting as the general counsel to TCFP or the agency if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), because of the person's activities for compensation on behalf of a profession related to the operation of TCFP.

SECTION 6. Amends Section 419.007(a), Government Code, to require the governor to designate a member of TCFP as the presiding officer of TCFP to serve in that capacity at the pleasure of the governor. Deletes existing text providing that the fire protection instructor appointed under Section 419.004(a)(6) (relating to the composition of TCFP to include one fire protection instructor from an institution of higher education) serves as the presiding officer of TCFP unless the governor designates another member as presiding officer.

SECTION 7. Amends Section 419.0071, Government Code, as follows:

Sec. 419.0071. COMMISSION MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of TCFP from voting, deliberating, or being counted as a member in attendance at a meeting of TCFP until the person completes a training program that complies with this section. Deletes existing text requiring that a person, to be eligible to take office as a member of TCFP, complete at least one course of a training program that complies with this section.

(b) Requires that the training program provide the person with information regarding certain information relating to TCFP. Deletes existing text requiring that the training program provide certain information.

(c) Entitles a person appointed to TCFP to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes existing text entitling a person appointed to TCFP to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of TCFP.

SECTION 8. Amends Section 419.008(c), Government Code, to delete existing text requiring TCFP to perform duties assigned by law to the Fire Department Emergency Board.

SECTION 9. Amends Section 419.0082(a), Government Code, as follows:

(a) Requires TCFP, in adopting or amending a rule under Section 419.008(a) (relating to authorizing TCFP to adopt rules for its internal management and control and for the administration of its powers and duties) or any other law, to seek the input of the fire fighter advisory committee (advisory committee), rather than the input of the advisory committee and, when appropriate, the funds allocation advisory committee. Requires the commission to permit the advisory committee, rather than the appropriate advisory committee, to review and comment on any proposed rule, including a proposed amendment to a rule, before the rule is adopted. Provides that the recommendations of

the advisory committee are subject to modification or rejection by TCFP, in TCFP's sole discretion, without the resubmission of the matter to the advisory committee.

SECTION 10. Amends Subchapter A, Chapter 419, Government Code, by adding Section 419.0083, as follows:

Sec. 419.0083. **NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION.** (a) Requires TCFP to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of TCFP rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under TCFP's jurisdiction.

(b) Requires that TCFP's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings (SOAH) for the use of alternative dispute resolution by state agencies.

(c) Requires TCFP to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by TCFP.

SECTION 11. Amends Section 419.009(c), Government Code, to require TCFP to develop and implement policies that clearly separate the policy-making responsibilities, rather than define the respective responsibilities, of TCFP and the management responsibilities of the executive director and the staff of TCFP.

SECTION 12. Amends Section 419.011, Government Code, as follows:

Sec. 419.011. **New heading: COMPLAINTS.** (a) Requires TCFP to maintain a system to promptly and efficiently act on complaints filed with TCFP. Requires TCFP to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Creates this subsection from existing text. Requires TCFP to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring TCFP to prepare information of public interest describing the functions of TCFP and TCFP's procedures by which complaints are filed with and resolved by TCFP and deletes existing text requiring TCFP to make the information available to the public and appropriate state agencies. Deletes existing text of Subsection (b) requiring TCFP to keep a file about each written complaint filed with TCFP that TCFP is authorized to resolve, and requires TCFP to provide the person filing the complaint and the persons or entities complained about TCFP's policies and procedures pertaining to complaint investigation and resolution.

(c) Creates this subsection from existing text. Requires TCFP to periodically notify the complaint parties of the status of the complaint until final disposition, rather than requiring TCFP, at least quarterly and until final disposition of the complaint, to notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation. Deletes existing text of Subsection (c) requiring TCFP to keep information about each complaint filed with TCFP including the date the complaint is received, the name of the complainant, the subject matter of the complaint, a record of all persons contacted in relation to the complaint, a summary of the results of the review or investigation of the complaint, and for complaints for which the agency took no action, an explanation of the reason the complaint was closed without action. Deletes existing text of Subsection (d) requiring TCFP to comply with federal and state laws related to

program and facility accessibility, and requiring the executive director to also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to TCFP's programs.

SECTION 13. Amends Subchapter A, Chapter 419, Government Code, by adding Section 419.012, as follows:

Sec. 419.012. **TECHNOLOGICAL SOLUTIONS.** Requires TCFP to implement a policy requiring TCFP to use appropriate technological solutions to improve TCFP's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TCFP on the Internet.

SECTION 14. Amends Section 419.023(f), Government Code to require that appointments to the advisory committee be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

SECTION 15. Amends Section 419.026(a), Government Code, to require TCFP to set and collect a fee, rather than a fee of not more than \$35, for each certificate that TCFP issues or renews under this subchapter except that if a person holds more than one certificate TCFP is authorized to collect only one fee each year for the renewal of those certificates. Requires TCFP by rule to set the amount of the fee under this subsection in an amount designed to recover TCFP's costs in connection with issuing certificates under this subchapter, including the cost to TCFP of obtaining fingerprint-based criminal history record information under Section 419.0325. Requires the employing agency or entity to pay the fee in the manner prescribed, rather than to pay this fee as provided, by TCFP rule.

SECTION 16. Amends Section 419.027, Government Code, as follows:

Sec. 419.027. **BIENNIAL INSPECTIONS.** (a) Creates this subsection from existing text.

(b) Authorizes TCFP to conduct risk-based inspections of institutions and facilities in addition to the inspections under Subsection (a) (relating to requiring TCFP to biennially visit and conduct inspections of fire training protection personnel, recruits, fire departments, and related agencies). Requires TCFP, in determining whether to conduct an inspection of an institution or facility under this subsection, to consider certain criteria.

SECTION 17. Amends Sections 419.032(a) and (d), Government Code, as follows:

(a) Prohibits a fire department from appointing a person to the fire department, except on a temporary or probationary basis, unless TCFP has approved the person's fingerprint-based criminal history record information under Section 419.0325. Makes nonsubstantive changes.

(d) Requires TCFP to adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by TCFP for approved fire protection education and training programs in this state and issue to a person meeting the rules and the requirements of Section 419.0325 a certificate evidencing satisfaction of Subsections (a) and (b). Authorizes TCFP to waive any certification requirement, except those under Section 419.0325, for an applicant with a valid license from another state having certification requirements substantially equivalent to those of this state.

SECTION 18. Amends Subchapter B, Chapter 419, Government Code, by adding Section 419.0325, as follows:

Sec. 419.0325. **CRIMINAL HISTORY RECORD INFORMATION APPROVAL REQUIRED FOR CERTIFICATION.** (a) Prohibits TCFP from certifying a person as fire protection personnel unless TCFP, after review, has approved fingerprint-based criminal history record information about the person obtained from the Department of

Public Safety (DPS) under Subchapter F (Criminal History Record Information), Chapter 411 (Department of Public Safety of the State of Texas), and the Federal Bureau of Investigation under Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency).

(b) Authorizes the applicant for certification or the fire department to submit the required fingerprint-based state and national criminal history record information to TCFP. Requires TCFP, if neither the applicant nor the fire department submits the required criminal history record information to TCFP, to obtain the required criminal history record information pursuant to Sections 411.087 and 411.1236 (Access to Criminal History Record Information: Texas Commission On Fire Protection).

(c) Requires TCFP by rule to establish criteria for denying a person certification to be fire protection personnel based on the person's criminal history record information. Requires that the criteria relate to a person's fitness to serve as fire protection personnel.

(d) Provides that criminal history record information received by TCFP is privileged and confidential and for TCFP use only.

SECTION 19. Amends Sections 419.034(a), (b), and (c), Government Code, as follows:

(a) Authorizes a fire department or other employing entity to renew an unexpired certification by, before the expiration date of the certificate, submitting evidence satisfactory to TCFP of completion of any required professional education and paying to TCFP the required renewal fee. Deletes existing text authorizing a fire department or other employing entity to renew an unexpired certification by paying to TCFP before the expiration date of the certificate the required renewal fee. Makes nonsubstantive changes.

(b) Authorizes the fire department or other employing entity, if a person's certificate has been expired for 30 days or less, to renew the certificate by submitting evidence satisfactory to TCFP of completion of any required professional education. Makes a nonsubstantive change.

(c) Authorizes the fire department or other employing entity, if a person's certificate has been expired for 30 days but less than one year, to renew the certificate by submitting evidence satisfactory to TCFP of completion of any required professional education. Makes a nonsubstantive change.

SECTION 20. Amends Section 419.036, Government Code, by adding Subsections (c) and (d), as follows:

(c) Requires that a complaint case opened by TCFP based on a violation found during an inspection conducted under Section 419.027 (Biennial Inspections) be opened not later than the 30th day after the date TCFP provides notice of the violation to the applicable department, agency, institution, or facility.

(d) Requires TCFP by rule to create a matrix for determining penalty amounts and disciplinary actions for fire departments, training providers, and certified personnel who commit violations of this chapter or a rule adopted under this chapter. Requires TCFP, in developing the matrix, to consider certain factors.

SECTION 21. Amends Subchapter B, Chapter 419, Government Code, by adding Section 419.0366, as follows:

Sec. 419.0366. TRACKING AND ANALYSIS OF COMPLAINT AND VIOLATION DATA. (a) Requires TCFP to develop and implement a method for tracking and categorizing the sources and types of complaints filed with TCFP and of violations of this chapter or a rule adopted under this chapter.

(b) Requires TCFP to analyze the complaint and violation data maintained under Subsection (a) to identify trends and areas that may require additional regulation or enforcement.

SECTION 22. Amends Subchapter B, Chapter 419, Government Code, by adding Section 419.048, as follows:

Sec. 419.048. FIRE PROTECTION PERSONNEL INJURY DATA; RECOMMENDATIONS TO REDUCE INJURIES. (a) Requires TCFP and the commissioner of insurance, pursuant to Section 417.004 (General Powers and Duties), as necessary to allow the agencies to perform their statutory duties, to transfer information between the two agencies, including injury information from the Texas Fire Incident Reporting System and workers' compensation data showing claims filed by fire protection personnel.

(b) Provides that personally identifiable information received by TCFP under this section relating to injured fire protection personnel is confidential. Prohibits TCFP from releasing, and prohibits a person from gaining access to, any information that could reasonably be expected to reveal the identify of injured fire protection personnel.

(c) Requires TCFP to evaluate information and data on fire protection personnel injuries and develop recommendations for reducing fire protection personnel injuries. Requires TCFP to forward the recommendations to the state fire marshal not later than September 1 of each year for inclusion in the annual report required by Section 417.0075 (Investigation of Firefighter Fatality).

(d) Requires TCFP to establish criteria for evaluating fire protection personnel injury information to determine the nature of injuries that TCFP should investigate. Requires TCFP, based on these investigations, to identify fire departments in need of assistance in reducing injuries and authorizes TCFP to provide assistance to those fire departments.

SECTION 23. Amends Section 419.906, Government Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes TCFP to enter a default order if a fire department or training provider fails to take action to correct a violation found during an inspection conducted under this chapter or to request an informal settlement conference before the 61st day after the date TCFP provides to the department or provider notice requiring the fire department or provider to correct the violation.

(e) Authorizes TCFP, notwithstanding Section 419.0365 (Disciplinary Hearing), to temporarily suspend a person's or regulated entity's certificate on a determination by a panel of TCFP that continued activity by the person or entity would present an immediate threat to the public or to fire service trainees. Authorizes the panel to hold a meeting for purposes of this subsection by teleconference call pursuant to Section 551.125 (Other Governmental Body). Entitles a person or regulated entity whose certificate is temporarily suspended under this subsection to a hearing before TCFP not later than the 14th day after the date of the temporary suspension.

SECTION 24. Amends Subchapter Z, Chapter 419, Government Code, by adding Section 419.908, as follows:

Sec. 419.908. COOPERATION WITH FEDERAL AND STATE ENTITIES IN A DISASTER. Requires TCFP, in a declared state of disaster under Section 418.014 (Declaration of State of Disaster), to coordinate with appropriate state and federal agencies, including the governor's office of the homeland security and the Federal Emergency Management Agency.

SECTION 25. Amends Subchapter G, Chapter 614, Government Code, by adding Section 614.105, as follows:

Sec. 614.105. SEPARATE ACCOUNT FOR MONEY FROM TEXAS COMMISSION ON FIRE PROTECTION. (a) Requires the Texas Forest Service of the Texas A&M University System (TFS) to maintain a separate account within the volunteer fire department assistance fund.

(b) Requires that the account contain money previously appropriated to TCFP for the administration of the fire department emergency program and transferred to TFS, received from the repayment of outstanding loans transferred to TFS from TCFP's fire department emergency program, and from any legislative appropriations for the purposes of Subsection (c).

(c) Authorizes the money in the account to be used only to award grants for scholarships for the education and training of firefighters or for purchasing necessary fire-fighting equipment and facilities for a municipal fire department with any number of paid personnel; a fire department operated by its members, some of whom are volunteers and some of whom are paid; or a volunteer fire department.

(d) Requires TFS to administer all outstanding loans transferred from the TCFP fire department emergency program and deposit money obtained as repayment of those loans to the credit of the account under this section.

SECTION 26. Repealer: Subchapter C (Fire Department Emergency Program), Chapter 419 (Texas Commission on Fire Protection), Government Code.

SECTION 27. (a) Requires the governor, as soon as practicable after the effective date of this Act, to designate a member of TCFP as the presiding officer of TCFP pursuant to Section 419.007 (Officers; Compensation; Meetings), Government Code, as amended by this Act.

(b) Requires TCFP, as soon as practicable after the effective date of this Act, to adopt the rules required by Section 419.0325, Government Code, as added by this Act, and Sections 419.026 (Fees for Certificates) and 419.036 (Disciplinary Actions), Government Code, as amended by this Act.

(c) Provides that TCFP, notwithstanding Section 419.048, Government Code, as added by this Act, is not required to submit its annual recommendations to the state fire marshal for inclusion in the report required by Section 417.0075, Government Code, before September 1, 2010.

SECTION 28. (a) Requires TCFP and TFS, as soon as practicable after the effective date of this Act, to develop and enter into a memorandum of understanding regarding the transfer described in this section.

(b) Provides that in accordance with the transition plan developed by TCFP and TFS under Subsection (a) of this section, on January 1, 2010, the fire department emergency program under Subchapter C, Chapter 419, Government Code, is abolished; all money, loans and other contracts, leases, property, and obligations of TCFP related to the fire department emergency program are transferred to TFS; and the unexpended and unobligated balance of any money appropriated by the legislature for TCFP related to the fire department emergency program is transferred to TFS.

(c) Authorizes TCFP before January 1, 2010, to agree with TFS to transfer any property of the fire department emergency program to implement the transfer required by this Act.

SECTION 29. (a) Makes application of Sections 419.004, 419.006, and 419.0071(a), Government Code, as amended by this Act, prospective.

- (b) Makes application of Section 419.005, Government Code, as amended by this Act, prospective.
- (c) Makes application of Section 419.0071(b), Government Code, as amended by this Act, prospective.
- (d) Makes application of Section 419.0071(c), Government Code, as amended by this Act, prospective.
- (e) Makes application of Section 419.0082, Government Code, as amended by this Act, prospective.
- (f) Makes application of Section 419.026, Government Code, as amended by this Act, prospective to January 1, 2010.
- (g) Makes application of Section 419.032, Government Code, as amended by this Act, and Section 419.0325, Government Code, as added by this Act, prospective to January 1, 2010.
- (h) Makes application of Section 419.034, Government Code, as amended by this Act, prospective.
- (i) Makes application of Section 419.906(d), Government Code, as added by this Act, prospective.

SECTION 30. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Provides that the following changes in law take effect January 1, 2010: the repeal of Subchapter C, Chapter 419, Government Code; the amendment to Section 419.026, Government Code; and the amendment to Subchapter G (Rural Volunteer Fire Department Assistance Program), Chapter 614 (Peace Officers and Fire Fighters), Government Code.