

BILL ANALYSIS

C.S.H.B. 2298
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Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas first started certifying fire service personnel in 1969, by creating the Commission on Fire Protection and Personnel Standards, now named the Texas Commission on Fire Protection, which focuses on regulating the paid fire service. The agency's mission is to ensure 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 the agency certifies fire service personnel and training providers; develops training materials; and enforces agency statute and rules by inspecting fire departments and investigating complaints. The Commission also awards grants to paid and volunteer fire departments. The agency currently certifies about 36,600 paid personnel and about 190 training providers, with a staff of 33 employees and on an annual budget of approximately \$2.9 million, of which \$1 million was awarded as grants.

The Fire Protection Commission is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the Legislature. C.S.H.B. 2298 continues the Commission until 2021, standardizes some provisions related to the Commission, and adds new responsibilities to help ensure the safety and effectiveness of the fire service in Texas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly delegated to the Commission on Fire Protection, renamed the Texas Fire Protection Agency in C.S.H.B. 2298 in SECTION 18, SECTION 21, SECTION 23, SECTION 27, SECTION 30, and SECTION 32.

ANALYSIS

Naming of the Agency

C.S.H.B. 2298 changes the name of the agency from the Texas Commission on Fire Protection to the Texas Fire Protection Agency.

Continuation of the Commission

C.S.H.B. 2298 changes the Commission's Sunset review date to 2021 to continue the agency for 12 years.

Authorizes the Commission to establish training and education requirements for volunteer fire fighters, and requires the Commission to establish a training program for volunteers.

C.S.H.B. 2298 authorizes the Commission to prohibit a person from serving as a volunteer fire fighter unless the person meets certain requirements established in Commission rules, including initial minimum education and training, and continuing education requirements. The bill requires the Commission to administer a training assistance program for volunteer fire departments and volunteer fire fighters, and allows the Commission to assist these departments through the Commission's existing training assistance program. The bill also authorizes the Commission to assist volunteer fire departments and volunteer fire fighters in the same manner that it assists other fire departments with problems related to fire fighting techniques, clothing, and equipment.

Requires the Commission to review data and make recommendations for reducing fire fighter injuries

The bill requires the Commission, the Texas Department of Insurance, and the State Fire Marshal's Office (SFMO) to share data and information on fire fighter injuries, and for the Commission to conduct analysis of this information and provide SFMO with recommendations to reduce these injuries to be published in SFMO's annual report on fire fighter fatalities. The bill provides that personally identifiable information on fire fighter injuries provided to the Commission is confidential and not subject to release. The bill requires the Commission to establish criteria to determine the nature of fire fighter injuries that the agency

may investigate, and based on these injuries identify fire departments that the Commission may provide technical assistance to.

Clarifies the Commission's rule revision process

The bill provides that on request of the Commission, the Fire Fighter Advisory Committee shall review agency rules and make recommendations on changes rather than doing so periodically on its own initiative.

Appointments to Commission advisory committees

C.S.H.B. 2298 requires that appointments to the Fire Fighter Advisory Committee and the Funds Allocation Advisory Committee be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Cooperation with federal and state entities in a disaster

C.S.H.B. 2298 requires the Commission, in a declared disaster, to coordinate with appropriate state and federal agencies, including the governor's office of homeland security and the Federal Emergency Management Agency.

Conforms key elements of the Commission's certification and regulatory functions to commonly applied licensing practices

C.S.H.B. 2298 provides that the Commission may not certify a person as fire protection personnel unless it has approved fingerprint-based criminal history record information about the person from the Department of Public Safety or the FBI. The bill provides for the Commission to obtain criminal history information in cases where individuals or fire departments do not provide this information to the Commission, and authorizes the Commission to charge a reasonable fee to recover the costs of obtaining this information if not provided to the Commission. The bill authorizes the applicant for certification or the fire department to provide criminal history check information to the Commission, and makes this information confidential. The bill also requires the approval of criminal history record information for certification for applicants for initial certification on or after January 1, 2010.

The bill authorizes the Commission to conduct risk-based inspections of regulated entities in addition to regular biennial inspections and provides risk criteria for the Commission to consider when determining which entities to inspect. The bill requires fire departments to provide evidence of meeting continuing education requirements when renewing certifications. The bill requires the Commission to open complaint case based on violations found during inspections within 30 days of providing notice of violation to regulated entities.

The bill requires the Commission, by rule, to establish a schedule of administrative penalties and disciplinary actions against regulated entities and individuals who violate state laws or Commission rules to ensure that the severity of sanctions is appropriate to the type of violation, and it outlines the factors to be considered in determining the appropriate disciplinary action. The bill requires the Commission to develop a method for analyzing the sources and types of complaints and violations to identify trends and regulatory problem areas to focus its regulatory efforts. The bill authorizes the Commission to enter into default orders if regulated entities or individuals do not take actions to resolve violations, or request an informal settlement conference, within 60 days of notice to correct violations. The bill authorizes the Commission to issue emergency suspension orders against regulated entities or individuals whose actions pose an immediate threat to public safety, or fire service trainees, and provides for a hearing before the Commission within 14 days of suspension.

Applies standard across-the-board recommendations developed by the Sunset Commission

C.S.H.B. 2298 adds standard language developed by the Sunset Commission requiring the Commission on Fire Protection to make effective use of technology in its delivery of services and provision of information to the public and requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill also updates standard Sunset language regarding the Governor's designation of the Commission's presiding officer, eligibility of public members, Commission member training, certain conflict of interest provisions, grounds for removing a Commission member, separation of policymaking and management functions, and complaint processes.

EFFECTIVE DATE

The Act takes effect September 1, 2009, with exception of changes in law relating to criminal history background checks which take effect January 1, 2010, and changes in law relating to establishment of education and training requirements for volunteer fire fighters which take effect September 1, 2010.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The committee substitute adds new provisions not contained in the original bill as follows.

- Changing the name of the Commission to the Texas Fire Protection Agency.
- Authorizing the Commission to establish training and educational requirements for volunteer fire fighters; and requiring the Commission to establish a training assistance program for volunteer fire departments and volunteer fire fighters.
- Requiring that appointments to advisory committees be made without regard race, color, disability, sex, religion, age, or national origin.
- Requiring the Commission, the Texas Department of Insurance, and the State Fire Marshal's Office (SFMO) to share information on fire fighter injuries; maintaining the confidentiality of this information; requiring the Commission to analyze this information and provide SFMO with recommendations to reduce injuries; requiring the Commission to determine types of injuries the agency may investigate; and requiring the Commission to identify fire departments needing technical assistance.
- Prohibiting Commission from certifying a person as a fire fighter unless it has approved criminal history record information; authorizing applicants for certification or fire departments to provide this information to the Commission; authorizing the Commission to obtain this information in cases where individuals or fire departments do not provide it; making this information confidential; and authorizing the Commission to charge a fee to recover the costs of obtaining criminal history record information if needed.
- Authorizing the Commission to create criteria for, and conduct, risk-based inspections; establishing a schedule of penalties and disciplinary actions; authorizing the Commission to enter into default orders and issue emergency suspension orders; and requiring the Commission to analyze complaints by sources and types.
- Requiring fire departments to provide evidence of meeting continuing education requirements when renewing certifications.
- Updating and adding standard Sunset provisions relating to effective use of technology; use of negotiated rulemaking and alternative dispute resolution; designation of the Commission's presiding officer; conflicts of interest; grounds for removal of Commission members; separation of policymaking and management functions; Commission member training; and information on complaints.

The committee substitute removes provisions included in the original bill to reflect current law in retaining the Fire Department Emergency Program at the Commission, rather than abolishing the program and transferring program funding to the Texas Forest Service by a memorandum of understanding as provided in the introduced bill.

The committee substitute deletes provisions in the original version of the bill to reflect current law requiring the Commission to seek the input of the Fire Fighter Advisory Committee when adopting rules and authorizing the Commission to pass only non-substantive clerical changes to rules without review by an advisory committee and prohibiting the Commission from adopting a rule, or rule change, at the same time the rule is proposed.