

# Texas Commission on Fire Protection


---

## Agency at a Glance

Created by the Legislature in 1969, Texas Commission on Fire Protection (TCFP) seeks to ensure protection of the public, and fire fighters, by establishing standards for certifying and equipping paid fire service personnel. To achieve its mission, the Commission carries out the following key activities:

- ◆ certifies fire service personnel in 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; and
- ◆ provides fire departments with grants to purchase equipment and protective gear.

---



*For additional information,  
please contact Christian  
Ninaud at (512) 463-1300.*

---

## Key Facts

- ◆ **Funding.** In fiscal year 2008, the Commission operated with a budget of about \$2.9 million, of which \$1 million was awarded as grants. The Commission is almost 100 percent funded by assessments on insurance policies, appropriated from General Revenue.
- ◆ **Staffing.** The Commission has 33 employees, of whom five 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 2008, the agency administered about 13,700 written examinations and oversaw about 2,600 skills tests statewide.

## **Commission Members (13)**

Chris Connealy, Presiding Officer (Cedar Park)

Les Bunte (Bryan)

Jane Burch (Grand Prairie)

Elroy Carson (Ransom Canyon)

Rhea Cooper (Lubbock)

Yusuf Elias Farran (El Paso)

John Kelly Gillette III (Frisco)

Jody Gonzalez (Krugerville)

Micheal Melton (Gilmer)

Arthur (Art) Pertile, III (Katy)

Kelley Stalder, (Parker)

Vacant

Vacant

## **Agency Head**

Gary L. Warren Sr., Executive Director

(512) 936-3812

## **Recommendations**

1. Remove restrictions on the Commission's ability to effectively decide and implement policy as directed by the Legislature.
2. Repeal the Commission's Fire Department Emergency Program and transfer the one million dollars in annual funding for grants 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.

# Issue 1

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

### **Key Finding**

- ◆ Statute limits the Commission's ability to adopt rules in a timely manner and shifts significant policymaking authority away from the Commission, to the Fire Fighter Advisory Committee.

As the Governor's appointed body responsible for overseeing the fire service in Texas, the Commission should have full authority to adopt rules and establish policy direction. By statute, however, the Commission must rely too heavily on the Fire Fighter Advisory Committee for rule proposals and modifications. The effect is to shift too much authority away from the Governor's appointed body, ultimately hindering decisive action needed to guide the fire service.

### **Recommendation**

#### **Change in Statute**

- 1.1 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. The Commission would no longer be required to seek input from the Fire Fighter Advisory Committee before adopting or amending rules, but would instead have the authority to seek such input as it sees fit. Other limitations on the Commission that would be eliminated 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 meeting, after posting for public comment. The Commission would thus have the authority customarily provided to state agency policy bodies to more effectively set policy.

# Issue 2

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

### **Key Finding**

- ◆ The Commission's grant program detracts the agency from its primary mission of certifying and overseeing the paid fire service, and the Texas Forest Service is better positioned to administer these funds.

The Commission administers the Fire Department Emergency Program to provide financial assistance to fire departments in need of equipment and training. This program, with \$1 million in funding annually, largely serves volunteer fire departments, which the Commission does not regulate, but also provides some funding to paid departments. The Texas Forest Service already administers a similar,

much larger grant program, for volunteer departments and departments with 20 or fewer paid personnel. Maintaining a separate program at the Commission is duplicative and has the potential of distracting from the Commission's primary oversight role by involving it in advocacy activities that promote the fire service.

## **Recommendation**

### **Change in Statute**

#### **2.1 Repeal the Commission's Fire Department Emergency Program and transfer the one million dollars in annual funding for grants to the Texas Forest Service, with volunteer and paid fire departments to be eligible to apply for grants.**

This recommendation would transfer funding for the Commission's grant and loan program to the Texas Forest Service, to be administered under the same process as its Rural Volunteer Fire Department Assistance Program. However, fire departments with more than 20 paid personnel eligible through the Commission's program would still be able to apply for grants from the Texas Forest Service. This transfer would promote greater efficiency in the distribution of funds to fire departments, while protecting the interests of departments that currently benefit from the Commission's grant program.

## *Issue 3*

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

#### **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.

Various certification and enforcement processes in the Texas Commission on Fire Protection's governing statute do not match model standards developed from experience gained through more than 93 occupational licensing reviews over the last 30 years. Comparing the Commission's statute, rules, and practices to the model licensing standards identified variations that need to be brought in line with the model standards.

## **Recommendations**

### **Licensing – Change in Statute**

#### **3.1 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 ensure that persons who enter the field in Texas do not have disqualifying criminal history. The Commission would be authorized to set a reasonable fee, in rule, to recover any

costs associated with conducting these checks. 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.

### **3.2 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 the continuing education requirements at the time of renewal, and allow staff to focus efforts on safety concerns when inspecting fire departments.

## **Licensing – Management Action**

### **3.3 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**

### **3.4 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. 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. By using a risk-based approach towards conducting inspections and follow-ups, the agency could use its limited resources more effectively by focusing its attention on regulated entities with higher risks of violations.

### **3.5 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. Currently, the Commission does not open a complaint case for these violations unless it holds an informal settlement conference, confusing the Commission's overall enforcement efforts and contributing to delays in resolving these violations. Establishing a reasonable time frame for opening a complaint case, while still providing regulated entities ample opportunity to resolve violations, would improve compliance outcomes and complaint tracking.

### **3.6 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. 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.

### **3.7 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.

### **3.8 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, and focus its technical assistance and inspection efforts.

### **3.9 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.

## **Enforcement – Management Action**

### **3.10 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.

# Issue 4

## ***Texas Has a Continuing Need for the Texas Commission on Fire Protection, and the Agency Should Increase Its Focus On Reducing Fire Fighter Injuries.***

### **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.

Setting and enforcing standards for the training, certification, and equipping of the paid fire service is vital to protecting the safety of Texans. The agency is uniquely positioned to establish standards for certifying fire service personnel and should be continued for 12 years. 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.

### **Recommendations**

#### **Change in Statute**

##### **4.1 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.

##### **4.2 Require the Commission to review fire fighter injuries data and provide the State Fire Marshal's Office recommendations for reducing these injuries.**

The Commission would annually review fire fighter injury reports and workers' compensation claims data, and provide the State Fire Marshal's Office (SFMO) analysis of this information and recommendations to be published in SFMO's annual report on fire fighter fatalities. The Commission would also investigate serious injuries to determine if a violation of agency rule or statute contributed to an injury. By analyzing trends in fire fighter injuries and investigating the cause of serious injuries, the Commission would help reduce injuries and their associated costs.

# *Fiscal Implication Summary*

These recommendations would have no net fiscal implications to the State, as summarized below.

- ◆ **Issue 2** – Transferring the Commission’s Fire Department Assistance Program funding to the Texas Forest Service would save the Commission one FTE and about \$45,000 a year it currently spends on program administration, which the Commission could redirect towards its regulatory functions. The Texas Forest Service can administer the transferred funding with existing resources.
- ◆ **Issue 3** – Performing fingerprint-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.