

**COMMISSION ON FIRE PROTECTION  
PERSONNEL STANDARDS AND EDUCATION**

**December 1989**

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## Table of Contents

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	<u>PAGE</u>
<b>Background</b>	1
Creation and Powers .....	1
Policy-making Body .....	1
Funding and Organization .....	1
Programs and Functions .....	3
 <b>Results of Review</b>	
Overall Approach to Review .....	7
Assessment of Need to Regulate	
Issue 1 - Continue regulation .....	9
Assessment of Organizational Alternatives	
Issue 2 - Attach administratively to State Fire Marshal's Office .....	11
Recommendations if Agency is Continued	
Summary .....	15
Policy-making Body	
Issue 3 - Change composition of the commission to provide additional expertise .....	17
Issue 4 - Require the governor to designate the chair .....	19
Overall Administration	
No recommendations	
Programs	
Issue 5 - Require biennial inspections using dedicated funding .....	21
Issue 6 - Remove moral standards as a criteria for certification .....	25
 <b>Across-the-Board Recommendations</b>	27

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## **BACKGROUND**

## Creation and Powers

The Commission on Fire Protection Personnel Standards and Education was created in 1969 to develop statewide minimum entry level training standards for fire protection personnel in fully paid fire departments and to encourage or conduct studies concerning fire protection or fire administration. Since 1969 the commission's statute has been modified to increase the commission's duties. The statutory modifications include expanding the categories of fire protection personnel who must meet minimum standards; issuing certificates to fire protection personnel who meet the minimum standards; developing and administering a state certification examination; collecting certification and examination fees; and setting and enforcing protective clothing standards for fire protection personnel.

## Policy-making Body

The commission is composed of nine members appointed by the governor and confirmed by the senate. The members must be qualified in the field of fire protection by their education or experience. In addition, the commissioner of education and the commissioner of higher education serve as ex-officio members on the commission. The chairman of the commission is elected by the members for a two-year term. The commission is authorized to:

- establish minimum educational, training, physical, mental, and moral standards for certification of fire protection personnel;
- encourage or conduct studies designed to improve fire protection or fire administration including research by public and private agencies;
- report to the governor annually and to the legislature at each regular session on its activities with recommendations on matters under its jurisdiction and to make other reports that it considers desirable;
- require the submission of information or reports by a state or local governmental agency that employs fire protection personnel; and
- accept donations, contributions, grants or gifts from private individuals, foundations or the federal government.

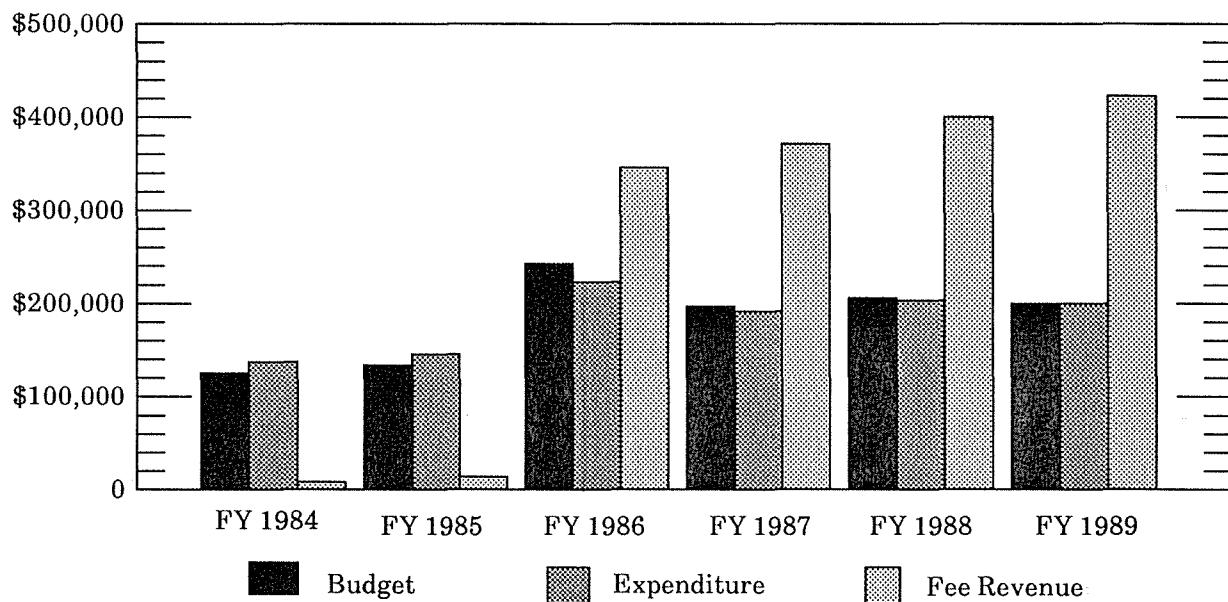
The part-time commission is not required to meet a specific number of times each year. The commission has historically met on a quarterly basis. The meetings are generally held in Austin.

## Funding and Organization

In fiscal year 1989 the commission was appropriated approximately \$200,000 from the general revenue fund. The fees collected by the commission exceed the appropriated amounts. Exhibit 1 shows commission appropriations, expenditures and revenue for fiscal years 1984 through 1989. As the exhibit demonstrates, in

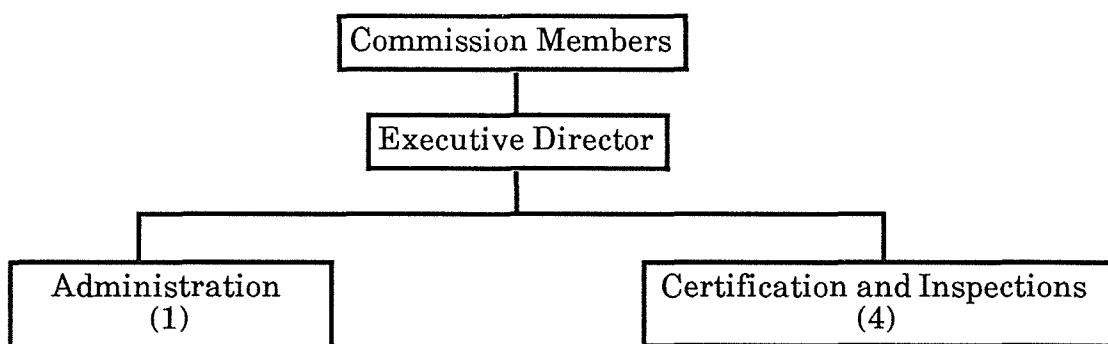
fiscal year 1989 the commission collected \$221,219 more in fees than was appropriated for its operations from general revenue funds.

**Exhibit 1**  
**Revenues and Expenditures**  
**Fiscal Years 1984 - 1989**



The commission is authorized nine staff positions, but currently employs six staff. All of the staff are located in the commission's Austin headquarters. Exhibit 2 shows the organizational structure of the commission.

**Exhibit 2**  
**Commission on Fire Protection Personnel Standards and Education**  
**Organizational Chart**



## Programs and Functions

### Certification of Fire Protection Personnel

The commission is required by statute to conduct a basic certification program for all full-time, paid fire protection personnel employed by local governments. Also, the commission is authorized to establish voluntary advanced certification programs. Local governmental agencies cannot employ fire protection personnel unless they are certified or are in the process of becoming certified. The commission ensures that the local governmental agencies are in compliance with the statute through their inspection function.

The commission has set minimum standards for the basic level of certification and issues certificates to those individuals who meet the requirements. The commission currently issues basic certificates for fire suppression personnel, fire inspector, fire and arson investigator, aircraft crash and rescue fire fighter, marine fire protection personnel, and fire protection instructor. In addition, for each of these categories, except marine fire protection personnel, one or more advanced certification programs are available to fire protection personnel. Exhibit 3 shows the number of fire protection personnel certified over the past six years.

#### Exhibit 3

#### **Annually Certified Fire Protection Personnel Fiscal Years 1984-1989**

<u>Years</u>	<u>Number of Certified Personnel</u>
1984	16,297
1985	16,323
1986	16,619
1987	16,760
1988	16,784
1989	16,825

To obtain certification, the commission requires the individual to provide evidence that the minimum standards have been met and the individual has been employed in a full-time paid position for one year. The minimum standards relate primarily to training. This training is provided by certified training facilities with certified instructors and the training is verified through testing. Once the applicant's training and employment have been verified, the commission issues the certificate and charges the fire department employing the individual a \$20 fee. The certificates are renewed on an annual basis at the rate of \$20 per individual and is paid by the employing fire department. The commission is currently developing an examination that the applicant would be required to pass before the certificate could be issued.

The certification is valid as long as the individual is employed at a full-time, paid department of a local government. Once an individual leaves active fire service employment, he or she is placed on inactive status by the commission. If the

individual returns within two years, certification is reinstated. Those personnel that remain on inactive status for more than two years must take a written proficiency examination or repeat the training requirements for basic certification.

### **Certification of Training Facilities**

The commission is required by statute to establish and maintain fire protection training programs conducted by the commission or by other entities. The commission has the authority to regulate the facilities that provide training for fire protection personnel. The commission certifies the facilities that provide training to fire personnel for basic certification. In addition, the commission approves programs that provide training for advanced levels of certification.

The commission has set minimum standards that training facilities must meet to obtain and maintain their certification. The minimum standards include the facilities, apparatus, equipment and reference materials to be used in conducting the commission's basic training curriculum. To be a certified training facility, the facility must submit an application to the commission which states that the facility meets the minimum standards and pass an on-site inspection. Once the information is verified and the inspection is conducted, the training facility is issued a certificate. A certified training facility must submit the curriculum for each training program each time it offers the program. The commission ensures compliance of training facilities through its inspection function. Currently, the commission has certified approximately 125 training facilities in the state. Certified training facilities are operated throughout the state by fire departments, community colleges and the Texas A&M University Firemen's Training School.

### **Enforcement of Protective Clothing Standards**

The statute requires local governmental agencies providing full-time, paid fire protection to provide and maintain protective clothing and self-contained breathing apparatus (SCBA) for all fire suppression personnel. This equipment must meet national standards. Protective clothing includes the fire fighter's helmet, protective hoods, coat, pants, boots and gloves. The SCBA includes the tank, mask, hose, straps and a regulator which provides breathable air to the fire fighter. The protective clothing and SCBA help to protect the fire fighter from the heat, smoke and toxic fumes while fighting a fire. The commission ensures compliance with the standards through its inspection function.

### **Technical Assistance for Training Facilities and Fire Departments**

The commission staff provides technical assistance to fire departments, city governments, other state and federal agencies, fire protection personnel and the general public. Assistance is provided over the telephone, during routine inspection visits and, in a few instances, through additional on-site visits. The commission, on average, receives over 450 contacts monthly requesting information or clarification on commission activities and requirements. During inspection visits, the staff respond to a variety of administrative and technical questions.

### **Inspections and Investigations**

The commission has the authority to revoke the certification of fire protection personnel and training facilities for failure to meet the standards set by the

commission. In addition, the commission enforces protective clothing and SCBA standards. The commission may assess an administrative penalty not to exceed \$1,000 for each violation and may enforce these penalties through the attorney general in district court in Travis County.

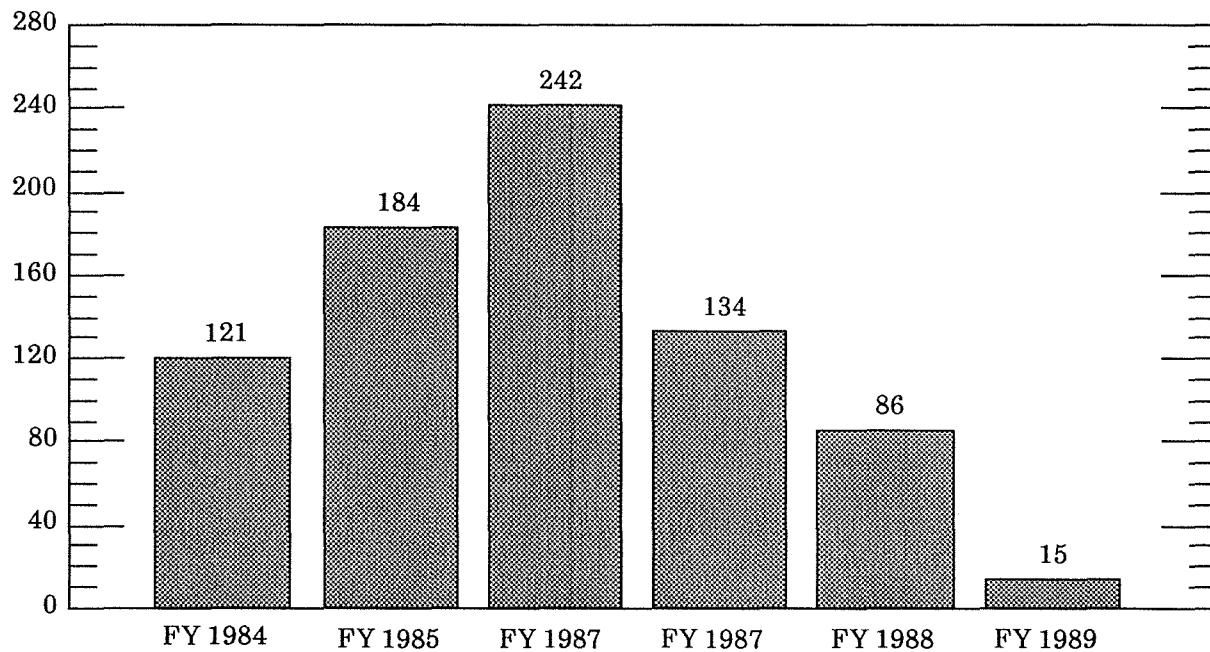
The commission enforces the statutory requirements and its rules through unannounced inspections and investigation of complaints. During an inspection of a fire department, the staff reviews records to determine whether the department is employing fire protection personnel who are certified or working toward certification; whether protective clothing is in good physical condition and meets national standards; and whether the department's SCBAs are in working condition, have been properly maintained and the air used in the tanks meets national standards. During an inspection of a training facility, the commission staff review records to determine that the training was provided to the individuals, that the appropriate training records were kept, that the facility employs only certified instructors and that the facility continues to meet all of the required standards. In addition, the staff provides information to the fire department or training facility personnel on new or pending requirements related to the operation of the department or facility.

If an inspection results in a determination that the training facility or fire department has violated the statute or commission rules, the staff documents the area of non-compliance and issues the facility or department a letter specifying the problems, necessary corrective actions and a request for compliance. If the facility or department will not come into compliance or disagrees with the corrective actions specified, an informal hearing is scheduled. At the informal hearing, one commission member serves as a hearings officer. If agreement can be reached, then a board order is drafted, signed by both parties and approved at the following meeting of the commission. All but two of the cases have been resolved at the informal hearing stage. One case that has not been resolved at the informal hearing is currently scheduled for a formal hearing. At the formal hearing, a panel of three commission members review the case. If the case is not resolved at the formal hearing, the case can be taken to district court. The commission's hearings are conducted in compliance with the Administrative Procedures and Texas Register Act.

When the commission receives a written complaint or a significant number of telephone complaints that are similar in nature, the staff conducts an investigation. Once the complaint is verified and facts are collected, an informal hearing is scheduled. From this point on, the procedure is the same as that used when violations are found during an inspection.

As shown in Exhibit 4, the number of inspections conducted by the commission have declined over the past several years and the number of complaints have remained fairly low.

**Exhibit 4**  
**Number of Inspections and Investigations**  
**Fiscal Years 1984-1989**



Generally, the commission has been successful in gaining compliance through requesting the violator to comply and through the informal hearing process. The results of the 18 hearings since 1984 fell into four categories as shown in Exhibit 5.

**Exhibit 5**  
**Results of Commission Hearings**  
**Fiscal Years 1984-1989**

<u>Number</u>	<u>Actions Taken</u>
8	Denial of certification, suspension of certification or reprimand of individuals
5	Suspension or reinstatement of training facility certifications
2	Fines and/or purchase of protective clothing
3	Miscellaneous

## **RESULTS OF REVIEW**

## **Overall Approach to the Review**

## Overall Approach to the Review

In accordance with the sunset act, the review included an assessment of the need to continue the regulating functions performed by the commission; whether benefits could be gained by performing the functions through another organizational structure; and finally if the function is continued, whether changes are needed to improve the efficiency and effectiveness of the commission.

To make the assessment of these general areas a number of efforts were undertaken. These included:

- review of documents developed by the commission, legislative reports, other states' and federal reports and books containing background resource material;
- interviews with commission staff in Austin;
- visits to two training facilities and two fire departments;
- attendance at quarterly commission meetings;
- interviews with other state agency personnel that interact with the commission;
- phone interviews with other states including California, Florida, and New York; and
- meetings with interest groups and individuals affected by the commission.

The results of the assessment of each of these areas is contained in the following material.



## **Assessment of Need to Regulate**

## Assessment of Need to Regulate

**ISSUE 1:** The state should continue to regulate paid fire protection personnel through setting standards for training and protective clothing.

### **BACKGROUND**

Fire protection is generally composed of several distinct functions: fire prevention, fire suppression, and fire investigation. Fire prevention includes areas such as enforcement of building and fire codes, regulation of fire alarms and fireworks and fire prevention education. Fire suppression includes the personnel and the equipment necessary to fight the fire. Fire investigation, determining the cause of fires, is generally associated with the investigation of arson.

Fire protection in the United States has historically been the responsibility of local governments. State governments tend to step into fire protection where deficiencies are identified or coordination between local governments is necessary. Of the three functions that make up fire protection, all states oversee one or more of them. The states have implemented their oversight of fire protection using a variety of mechanisms. These mechanisms include the use of building and fire codes, regulation of the occupation, and the implementation of Occupational Safety and Health Administration standards.

Texas also uses a variety of mechanisms to oversee fire prevention, fire suppression, and fire investigation. In addition to local control, statewide policies relating to fire protection are carried out by several state agencies. One of those agencies, the Commission for Fire Protection Personnel Standards and Education, is currently under sunset review and the continued need for its functions are discussed below. The review of the other aspects of fire protection, their relationship to each other and potential benefits of merging the aspects together are discussed in the following section, Organizational Alternatives.

The Commission on Fire Protection Personnel Standards and Education was created in 1969 to establish minimum entry level training standards for paid fire personnel. The commission was created in response to a lack of standardized training for paid fire protection personnel which was emphasized by a trend of accidents and losses that were attributed to a lack of standards. The state regulates fire protection personnel through a certification program that requires individuals to meet a minimum number of hours of training in specific topic areas and enforces protective clothing standards. The state certifies several types of fire protection personnel including fire suppression personnel, fire inspectors, fire and arson investigators, aircraft crash and rescue fire fighters, marine fire protection personnel and fire protection instructors.

In 1969, Texas began developing its standards. At that time no other standards existed for Texas to use as a guideline. Since then, the National Fire Protection Association (NFPA) has developed voluntary national standards for various aspects of the fire service. The national standards are minimum standards that

are applicable in all states. The commission has modified the Texas standards to parallel the national standards; however, differences between the Texas and national standards still exist. These differences occur where Texas exceeds the national standards or the standards are tailored to meet a specific need in the state.

The review examined the need for regulation to determine if a need existed and if the state should regulate the activity. The evaluation indicated the following:

- ▶ The need for training is recognized in almost all states. While the requirements vary among the states, most require some level of mandatory training.
- ▶ Mandatory and standardized training, similar to the commission's, is required in other public protection professions in Texas, such as police and EMS personnel.
- ▶ The unregulated practice would affect the safety and economic well-being of the public through a return to an unstandardized system of training where the public is not assured that their fire protection personnel meet minimum competence levels. Fire suppression personnel that effectively fight fires can save the lives of the structure's occupants and reduce the owners' property loss. Properly trained fire protection personnel have a positive impact on the safety and economic well-being of the public.
- ▶ Neither the federal government, the national association, nor local governments would set and enforce statewide standards without state involvement. At the national level no enforcement authority exists and the local level lacks incentive to adhere to statewide standards.

## **RECOMMENDATION**

- **The state should continue to regulate paid fire protection personnel through setting standards for training and protective clothing.**
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If regulation of paid fire protection personnel is continued, minimum standards for personnel and protective clothing would continue to be set and enforced in the state. This would continue the current level of fire suppression oversight by the state.

## **FISCAL IMPACT**

If regulation is continued using a structure similar to the current commission, the current level of funding of approximately \$200,000 would be continued. Since the commission produces more in fees and other revenues than is appropriated back in general revenue funds, no fiscal impact would be caused by continuing the regulation.

## **Assessment of Organizational Alternatives**

## Organizational Alternatives

**ISSUE 2:** The Commission on Fire Protection Personnel Standards and Education should be attached administratively to the State Fire Marshal's Office.

### BACKGROUND

As discussed in the previous section, there are three components to fire protection: fire prevention, fire suppression and fire investigation. Many organizational alternatives are used by different states to carry out these functions. These alternatives range from free standing agencies to consolidated functions within an umbrella agency. Texas has addressed these components through separate agencies. In Texas oversight of the elements of fire protection are located primarily in two state agencies: the Commission on Fire Protection Personnel Standards and Education and the State Board of Insurance.

Two of the three components, fire prevention and investigation, are primarily the responsibility of the State Fire Marshal's Office located in the State Board of Insurance. The State Fire Marshal is appointed by and reports directly to the board. The State Fire Marshal's duties include the oversight of fire prevention and safety laws related to fire escapes, fire alarms and extinguishers, and fireworks; fire and life safety inspections of buildings; and investigation of suspicious fires and arson. The State Fire Marshal's Office is headquartered in Austin and has five regional offices.

In addition to the State Fire Marshal's activities, the State Board of Insurance influences fire prevention and suppression through its key rate function. The board is responsible for setting fire insurance rates in the state. As a part of the rate setting function, the board staff evaluate cities' and towns' fire defenses including fire prevention and suppression. The purpose is to assess how much risk from fire an insurance company is accepting when it insures a building in that city. The result of the risk assessment is the "key rate" which is part of the calculation that provides the overall rate paid for fire insurance in that locality. To assess the risk and develop the key rate, board staff visit each city and evaluate all of the various elements of the city's fire defenses such as its water system, fire department, building or fire codes, fire prevention program, and the physical aspects of the city, such as the width of its streets.

Another significant component, fire suppression, is carried out by the Commission on Fire Protection Personnel Standards and Education. The commission sets standards for the training and certification of paid fire protection personnel as well as the protective clothing fire personnel must wear. Through its inspection program, the commission ensures that these standards are met. These efforts provide assurance that actual fire suppression is carried out by appropriately trained and equipped fire fighters.

The review of the components of the state's oversight of fire protection indicated the following:

- ▶ Although states use a variety of structures to oversee fire protection, in approximately 20 states the responsibility for training fire protection personnel is located in the state's fire marshal's office. In addition, in six of the 20 states, the fire marshal is located in the state's insurance agency.
- ▶ The majority of the state's fire protection oversight functions are centralized in the State Board of Insurance. In addition to the State Fire Marshal's Office and the key rate function, last session the Fire Department Emergency Board was created as an adjunct to the State Fire Marshal's Office. The board was created to provide financial assistance for equipment and training to fire departments which have had difficulty acquiring funding on their own. The board will be appointed and begin operations in January 1990.
- ▶ One oversight function, the fire suppression responsibilities of the Commission on Fire Protection Personnel Standards and Education, is located independently of the other fire related activities.
- ▶ The commission could benefit from attachment to the State Fire Marshal's Office. Benefits could include:
  - administrative support provided by the State Fire Marshal's Office;
  - access to the State Fire Marshal's regional offices when conducting inspections which would reduce travel expenses; and
  - increased communication and coordination with personnel in the State Fire Marshal's Office and the key rate division of the State Board of Insurance.
- ▶ The review determined that the commission operates satisfactorily in terms of budgeting, standards development and enforcement efforts. The commission should maintain its autonomy to carry out these responsibilities to ensure that adequate expertise is available to maintain and enforce standards.

## RECOMMENDATION

- **The Commission on Fire Protection Personnel Standards and Education should be attached administratively to the State Fire Marshal's Office.**

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Under this recommendation the commission would maintain its own policy-making body, budget oversight functions and current staff. The State Fire Marshal's Office would provide administrative support for the commission. Consolidating all fire-related activities in one agency would improve coordination.

## **FISCAL IMPACT**

The adoption of this recommendation will result in slight costs savings due to general support services that the State Fire Marshal's Office can provide which would eliminate the commission's current efforts. Additionally, the Fire Marshal's regional office structure will help the commission to meet current travel demands.



## **Recommendations if Agency is Continued**

## Summary of Recommendations

This section of the report focuses on the changes needed to improve the efficiency and effectiveness of the Commission for Fire Protection Personnel Standards and Education whether regulation of fire protection personnel is continued under the current or an alternative organizational structure.

### Policy-making Body

As a standard part of the sunset review, the commission's policy-making body was examined. The review determined that the statutory composition of the commission should be changed to ensure a more balanced commission. A second recommendation affecting the policy-making body provides for the governor to designate the chair of the commission as is currently done for many other state agencies.

### Overall Administration

The review of the administrative operations of the commission did not indicate that changes were needed to improve the current activities carried out through this function.

### Programs

#### Certification of Fire Personnel

A second area of inquiry related to the certification requirements established by the commission. The commission's statute specifies five areas in which the commission may establish requirements for certification. The review determined that one of the criteria, moral standards, was difficult to define and not substantially related to fire protection. A recommendation is included to remove the criteria from the commission's statute.

#### Inspections and Investigations

A third area of inquiry related to the commission's ability to inspect fire departments and training facilities. Over the past few years, the commission has had difficulty inspecting fire departments and training facilities on a regular basis and adequately administering its other programs. The review determined that the commission has not inspected fire departments and training facilities frequently enough to ensure compliance and should be required by statute to perform inspections at least once each biennium. In addition, a dedicated funding source should be used to fund the commission's inspection activities.

Only one of the four recommendations contained in this section of the report would have a significant fiscal impact. The recommendation dedicating funds for inspections would reduce the general revenue fund by approximately \$130,000 a year. This revenue is generated by the commission's certification fees which are currently deposited into the general revenue fund.

**ISSUE 3: The statutory composition of the commission should be changed to provide additional expertise.**

## **BACKGROUND**

The Commission on Fire Protection Personnel Standards and Education is composed of nine members appointed by the governor and confirmed by the senate. These members must be qualified by their education or experience in the field of fire protection. To date, the commission has included certified individuals primarily from larger urban areas, representatives of training facilities and the State Fire Marshal. In addition, the commissioner of education and the commissioner of higher education serve as ex-officio members of the commission. The commissioner of education and the commissioner of higher education were placed on the commission to provide educational perspective. The commission members are appointed to serve staggered six-year terms.

The commission certifies six categories of fire protection personnel employed by local governments. The commission also certifies facilities that provide training for basic certification and approves programs for advanced levels of certification. In addition, the commission sets and enforces protective clothing standards for paid fire protection personnel.

When a commission regulates an activity or occupation that encompasses several distinct groups, its membership should be structured to allow input from all the groups.

A review of the commission's membership indicated the following:

- ▶ The commission's composition, since its creation, has not consistently reflected the variety of fire protection personnel certified by the commission. For example, as many as five fire chiefs have served on the commission at the same time. Currently, fire fighters have only one representative on the commission.
- ▶ Fire protection needs and experiences depend on the size of a community. Commission members have traditionally represented larger urban areas which has precluded any assurance that the interests of smaller communities have been represented.
- ▶ Having the commissioners of education and higher education on the commission is no longer necessary. The educational perspective provided by the commissioners served a useful purpose in defining the commission's responsibilities regarding curriculum development. Now that these responsibilities have been defined, expertise is needed instead in the instructional aspects of education to assist the commission in assuring that the curriculum is presented accurately and thoroughly.

- ▶ Currently, the State Fire Marshal is not serving as a commission member because the statute does not mandate his inclusion. The State Fire Marshal, due to his responsibilities in the areas of fire prevention and arson investigation, provided valuable expertise to the commission during his 16 years on the commission.

## **PROBLEM**

The current statutory requirements do not ensure that the commission's composition includes a balance of fire protection personnel and other individuals with needed expertise to guide the commission's efforts.

## **RECOMMENDATION**

- The statute should be changed to require that the commission membership be composed of nine members and an ex-officio member as follows:
  - 3 Fire Chiefs - one from a community with a population under 50,000, one from a community with a population between 50,000 and 200,000 and one from a community with a population over 200,000;
  - 3 fire fighters - one from a community with a population under 50,000, one from a community with a population between 50,000 and 200,000 and one from a community with a population over 200,000;
  - 1 training officer or community college fire science instructor;
  - 1 city manager;
  - 1 representative from the Texas A&M University Firemen's Training School; and
  - the State Fire Marshal as a non-voting ex-officio member.

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This change would ensure that the commission has the proper balance of expertise to fulfill its responsibilities. Current commission members would continue to serve their appointed terms. As those terms expire, appointments made would reflect the new composition of the board. The transition to the new composition would be complete in 1995.

## **FISCAL IMPACT**

No fiscal impact would result from this recommendation since the number of commission members receiving expenses would not change. The State Fire Marshal would serve as a commission member in addition to his regular duties as he has in the past.

**ISSUE 4: The statute should require that the governor designate the chair of the commission.**

## **BACKGROUND**

The chair of the commission is currently elected by the members and serves for two years. The Sunset Commission has routinely recommended that the governor appoint the chair on the basis of improving accountability to the state's chief executive. Except in unusual circumstances, this provision has been included in the statutes of agencies reviewed as a result of sunset recommendations. The governor selects the chair in many other state agencies, such as the Board of Pardons and Paroles, the Texas Department of Mental Health and Mental Retardation, the Texas Air Control Board, the Texas Water Commission and the Department of Human Services. The majority of state agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

## **PROBLEM**

The election of the chair by the commission members every two years does not provide the most direct method for ensuring a continuity of policy or accountability to the state's chief executive officer.

## **RECOMMENDATION**

- **The statute should be changed to require the governor to designate the chair of the Commission on Fire Protection Personnel Standards and Education.**

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The person appointed as the chair would continue in that position at the pleasure of the governor. This would promote accountability between the commission and the governor.

## **FISCAL IMPACT**

There would be no fiscal impact as the result of this recommendation.



**ISSUE 6: The statute should require a biennial inspection of fire departments and training facilities to ensure compliance by increasing the frequency of inspections. The statute should dedicate funds to provide a reliable and adequate funding source for the inspections.**

## BACKGROUND

The commission has the statutory responsibility to ensure that fire departments employ personnel who are certified or are working on certification and comply with the protective clothing requirements. In addition, the commission has the responsibility to ensure that training facilities meet minimum standards set by the commission.

The commission has approximately 315 fire departments and 125 certified training facilities to inspect for compliance. Inspections for compliance with training and protective clothing standards help ensure that fire personnel are properly prepared to perform their duties. The commission's statute does not mandate methods or time frames to be used by the commission to ensure compliance. The commission ensures compliance with state law and commission rules through unannounced inspections of training facilities and fire departments. The commission's goal has been to inspect each department and training facility annually.

The commission has had difficulty allocating sufficient resources to effectively operate the inspection activities and carry out its other duties. The commission would need additional resources to effectively carry out all of its responsibilities. The commission currently collects a \$20 certification fee which is deposited in the general revenue fund. The commission is funded out of the general revenue fund and has a dedicated training assistance fund which it is not currently authorized to use.

The commission should have adequate resources to allow frequent enough inspections to ensure that fire departments or training facilities are in compliance with the law and rules set by the commission.

A review of the commission's inspection efforts indicated the following:

- ▶ The commission has not met its goal to inspect departments and facilities on an annual basis. The number of inspections conducted by the commission has decreased substantially over the past few years. The commission conducted 242 inspections in 1986, 134 inspections in 1987, 86 inspections in 1988, and 15 inspections in 1989. In addition, the commission does not have a schedule to systematically visit the departments, but schedules inspections when problems are identified. At the rate of 15 inspections per year (the total for 1989), visiting each fire department and training facility would take approximately 29 years.

- ▶ The commission's budget has not included sufficient funds or personnel to perform needed inspections in addition to carrying out its other functions.
  - The commission is authorized three additional staff positions, but has not been appropriated funds to allow the commission to fill the positions.
  - The commission has shifted resources from inspections to comply with increasing state and federal reporting requirements and process more applications and renewals for certification.
- ▶ To ensure fire departments and training facilities are in compliance with state law and commission rules, inspections should be conducted at least once every two years. The cost to conduct biennial inspections is estimated to be approximately \$100,000 each year.
- ▶ The 71st Legislature created a dedicated training assistance fund to be used by the commission. This dedicated fund could easily be modified to also provide a dedicated source of funds for inspections.
- ▶ The current certification fee generates approximately \$400,000 annually. Of this amount, the commission receives only \$200,000 in appropriations. An additional 20 percent of the certification fee, approximately \$70,000 in fiscal year 1990, is dedicated to the training assistance fund. Of the \$400,000 collected in fees approximately \$130,000 would be available for inspections and still allow the agency to remain self-supporting.
- ▶ The current certification fee is set in statute at \$20 preventing the commission from increasing the fee as needed to ensure that adequate funds are available in the future.

## **PROBLEM**

The commission does not have adequate funding to inspect fire departments and training facilities frequently enough to ensure compliance with the law and commission rules.

## **RECOMMENDATION**

- The statute should be changed to:
  - require a biennial inspection of all fire departments and training facilities;
  - modify the commission's training assistance fund so that one-half of the commission's certification fees are dedicated into the fund to be used for inspection personnel and related expenses and to provide training assistance to fire departments; and
  - modify the fee provision to allow the commission to set certification fees within a range with an upper limit of \$50.

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A biennial inspection requirement would ensure that each department and certified training facility is reviewed frequently enough to ensure compliance. The dedicated fund would provide a consistent, identifiable source of revenue to cover the cost of the inspection function. Of the approximately \$200,000 which would be available in the dedicated fund, 35 percent or approximately \$70,000 would be used for training assistance and the remaining 65 percent or \$130,000 would be used for inspections. The commission would have the ability to change the certification fee when necessary to ensure that sufficient revenue is generated to support the commission's activities.

## **FISCAL IMPACT**

Currently, \$400,000 is collected annually from certification fees. Dedicating an additional 30 percent of that amount would provide \$130,000 for inspections. An estimated \$100,000 is currently needed for personnel and travel expenses to inspect each fire department and training facility at least every other year.



**ISSUE 6: The statute should be changed so that the commission does not have the burden of determining moral standards as a criteria for certification.**

## **BACKGROUND**

One of the primary purposes of certification is to set reasonable standards and requirements for practicing an occupation. For these requirements to be valid, the language in the statute must be clear and have a substantial relationship to the functions and responsibilities of the regulated occupation. The commission's statute specifies a number of areas in which the commission may establish requirements for certification. These areas include minimum educational, training, physical, mental and moral standards.

Moral standards have traditionally been included in licensing statutes without any thought given to the practical implications of enforcement. Once placed in statute, removal is difficult because to do so would appear to give the approval to persons of bad moral character. The provision, therefore, continues to be included in each licensing statute as it is created. Where assessment of character is critical, other methods have been included in statute eliminating the need for the general and judgmental language of good moral character.

The Sunset Commission has an across-the-board recommendation which removes qualifiers for certification and licensure that are not clear, do not have a direct relationship to the function to be performed and are not easily determined. A review of the commission's certification qualifiers indicated the following:

- ▶ Of the five qualifiers, four were determined to be substantially related to fire protection. The commission has established in rules the minimum educational and training standards for certification. The standards identify the subject areas to be covered, several specific topics within the subject areas, and the minimum number of hours spent on each subject area. Although the commission has not established physical and mental standards, requirements in these two areas have a substantial relationship to fire protection personnel's ability to perform their job. For example, certain physical handicaps would prevent fire personnel from being able to perform their duties as would such mental conditions such as claustrophobia or acrophobia.
- ▶ One qualifier, moral standards, was determined to lack a substantial relationship to the functions and duties of fire protection personnel. The commission has not defined moral standards, nor have they received complaints based on moral standards.

- ▶ The commission's statute does not provide a standard method for assessing an individual's moral standards or character. Where it is necessary and appropriate to assess the moral standards or character of an individual, statutes usually contain specific provisions for assessing character, such as a criminal background check. This provides a standard method for uncovering activities that would provide a reasonable basis for denying a license or certification.

### **PROBLEM**

Moral standards are difficult to define and do not have a substantial relationship to the job performance of fire protection personnel.

### **RECOMMENDATION**

- The statute should be changed to remove moral standards as a criteria used by the commission when establishing certification requirements for fire protection personnel.
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Removal of the language will prevent applicants for certification from being disqualified by a requirement that is too vague and not substantially related to the occupation.

### **FISCAL IMPACT**

There would be no fiscal impact as a result of this recommendation.

## **Across the Board Recommendations**

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From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

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## Commission on Fire Protection Personnel Standards and Education

<b>Applied</b>	<b>Modified</b>	<b>Not Applied</b>	<b>Across-the-Board Recommendations</b>
<b>A. GENERAL</b>			
		X	1. Require public membership on boards and commissions. 2. Require specific provisions relating to conflicts of interest. 3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board. 4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee. 5. Specify grounds for removal of a board member. 6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute. 7. Require the board to establish skill-oriented career ladders. 8. Require a system of merit pay based on documented employee performance. 9. Provide for notification and information to the public concerning board activities. 10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process. 11. Require files to be maintained on complaints. 12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint. 13. Require development of an E.E.O. policy. 14. Require the agency to provide information on standards of conduct to board members and employees. 15. Provide for public testimony at agency meetings. 16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions. 17. Require development of accessibility plan.
X		*	

\*Already in law.

**Commission on Fire Protection Personnel Standards and Education**  
 (cont.)

<b>Applied</b>	<b>Modified</b>	<b>Not Applied</b>	<b>Across-the-Board Recommendations</b>
<b>B. LICENSING</b>			
	X		<ol style="list-style-type: none"> <li>1. Require standard time frames for licensees who are delinquent in renewal of licenses.</li> </ol>
X			<ol style="list-style-type: none"> <li>2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.</li> </ol>
X			<ol style="list-style-type: none"> <li>3. Provide an analysis, on request, to individuals failing the examination.</li> </ol>
X			<ol style="list-style-type: none"> <li>4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.</li> </ol>
X			<ol style="list-style-type: none"> <li>5. (a) Provide for licensing by endorsement rather than reciprocity.                      (b) Provide for licensing by reciprocity rather than endorsement.</li> </ol>
X			<ol style="list-style-type: none"> <li>6. Authorize the staggered renewal of licenses.</li> </ol>
X			<ol style="list-style-type: none"> <li>7. Authorize agencies to use a full range of penalties.</li> </ol>
X			<ol style="list-style-type: none"> <li>8. Specify board hearing requirements.</li> </ol>
		X	<ol style="list-style-type: none"> <li>9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.</li> </ol>
		*	<ol style="list-style-type: none"> <li>10. Authorize the board to adopt a system of voluntary continuing education.</li> </ol>

\*Already in law.

**Commission on Fire Protection Personnel  
Standards and Education**

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