

BILL ANALYSIS

Senate Research Center

S.B. 371
By: Armbrister
State Affairs
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DIGEST

In 1991, the Texas Commission on Fire Protection (commission) was created by the 72nd Legislature in order to perform certain functions relating to local fire protection. The commission is subject to review by the Sunset Commission. As a result of the Sunset review of the commission, this bill provides for the recommended continuation of the commission and adds provisions regarding the functions of the commission.

PURPOSE

As proposed, S.B. 371 adds provisions relating to the continuation and functions of the Texas Commission on Fire Protection.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Commission on Fire Protection in SECTION 2.01 (Section 419.0082, Government Code), SECTION 3.06 (Section 5, Article 5.43-4, Insurance Code), SECTION 4.03 (Chapter 419.0225, Government Code), SECTION 4.06 (Section 8A, Article 5.43-1, Insurance Code), SECTION 4.07 (Section 6A, Article 5.43-2, Insurance Code), and SECTION 4.09 (Sections 16A and 18, Article 5.43-4, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. OPERATIONS OF THE COMMISSION

SECTION 1.01. Amends Section 419.003, Government Code, to require this chapter regarding the abolishment of the Texas Commission on Fire Protection (commission) to expire September 1, 2009, rather than September 1, 1997.

SECTION 1.02. Amends Section 419.004, Government Code, to require at least one of two, rather than two of three, chief officers to be the head of a fire department. Requires one of the officers to be employed by a political subdivision with a population of less than 50,000 and one of the officers to be employed by a political subdivision with a population of at least 50,000, rather than a population of 50,000 to 200,000. Deletes a provision requiring one of the officers to be employed by a political subdivision with a population of more than 200,000. Requires the commission to be composed of three representatives of the public. Adds standard language as updated by the Sunset Commission, regarding the composition of the commission.

SECTION 1.03. Amends Section 419.005(c), Government Code, by adding standard language as updated by the Sunset Commission, regarding the removal of a presiding officer.

SECTION 1.04. Amends Chapter 419A, Government Code, by adding Section 419.0071, to add standard language as updated by the Sunset Commission, regarding commission member training.

SECTION 1.05. Amends Sections 419.009(d)-(g), Government Code, by adding standard language as updated by the Sunset Commission, regarding the development of an intraagency career ladder program, the development of an annual performance evaluation, and certain policies.

SECTION 1.06. Amends Sections 419.010 and 419.011, Government Code, by adding standard

language as updated by the Sunset Commission, regarding the fiscal reports and public interest information and complaints.

SECTION 1.07. Amends Section 419.901, Government Code, as follows:

Sec. 419.901. New heading: FIRE SUPPRESSION RATINGS SCHEDULE. Deletes a provision requiring the commission to review the key schedule of the State Board of Insurance and a provision requiring the commission to inspect municipalities. Requires the commission and the Texas Department of Insurance (department), rather than the State Board of Insurance, to adopt a memorandum of understanding that coordinates their respective duties relating to the department's fire suppression ratings, rather than key rate, schedule. Authorizes the commission to provide technical assistance to paid fire departments, volunteer fire departments, and local governments responding to the use of the fire suppression rating schedule.

SECTION 1.08. Amends Chapter 419Z, Government Code, by adding Section 419.907, as follows:

Sec. 419.907. STATEWIDE MUTUAL AID PROGRAM. Requires the commission, in consultation with the division of emergency management of the office of the governor, to develop a statewide mutual aid program specifying how and when the state will provide and coordinate emergency assistance to local authorities during a fire emergency.

SECTION 1.09. Makes application of this Act prospective.

ARTICLE 2. RULEMAKING

SECTION 2.01. Amends Chapter 419A, Government Code, by adding Section 419.0082, as follows:

Sec. 419.0082. RULEMAKING. Requires the commission to seek the input of the appropriate advisory bodies to the commission, in adopting or amending a rule under Section 419.008(a) or any other law. Requires the commission to permit each appropriate advisory body to review and comment on any proposed rule, including an amendment to a rule, before the commission meeting held after the commission meeting at which the rule is first proposed. Provides that this section does not apply to an emergency rule adopted under Section 2001.034.

ARTICLE 3. ADVISORY BODIES

SECTION 3.01. Amends Section 419.023, Government Code, as follows:

Sec. 419.023. New heading: FIRE FIGHTER ADVISORY COMMITTEE. Requires the committee to establish a fire fighter, rather than a fire protection personnel, advisory committee. Requires the committee to assist in matters relating to certain entities, including volunteer fire fighters, and volunteer fire departments. Requires three, rather than six, members of the committee to be fire protection personnel. Requires three members to be volunteer fire fighters. Requires the members appointed under this section to collectively represent various areas in the field of fire protection. Requires three members of the committee to be instructors of fire protection personnel or volunteer fire fighters. Authorizes the State Firemen's and Fire Marshals' Association of Texas to recommend volunteer fire fighters and instructors for appointment to the committee, upon request of the commission. Authorizes the Texas State Association of Fire Fighters to recommend fire protection personnel, retired fire protection personnel, and instructors of fire protection personnel for appointment to the committee, on request by the commission. Requires the committee to periodically review certain matters, including other fire fighters and firefighting organizations that are subject to regulation under this subchapter. Deletes a provision requiring the commission to submit all proposed changes and additions to the rules that relate to fire protection personnel and fire departments.

SECTION 3.02. Amends Sections 419.054(a) and (c), Government Code, to require the funds

allocation advisory committee to be composed of six members appointed by the commission. Authorizes the State Firemen's and Fire Marshals' Association of Texas, and the Texas State Association of Fire Fighters to recommend individuals for appointment to the committee, on request by the commission. Provides that a committee member serves at the will of the commission, rather than the authority that appointed the member. Deletes a provision requiring the commission to submit all proposed changes and additions to the rules that relate to the program to the committee.

SECTION 3.03. Amends Section 9, Article 5.43-1, Insurance Code, as follows:

Art. 9. New heading: FIRE EXTINGUISHER ADVISORY COUNCIL. Authorizes the commission, rather than the State Board of Insurance, to delegate certain authority to members appointed to the commission, rather than the State Board of Insurance (board). Requires the commission to periodically review commission rules implementing this article and recommend changes in the rules to the commission, rather than rules adopted in accordance with Section 417.0041, Government Code. Requires members of the council to be experienced in certain areas.

SECTION 3.04. Amends Section 6, Article 5.43-2, Insurance Code, as follows:

Sec. 6. New heading: POWERS AND DUTIES OF THE TEXAS COMMISSION ON FIRE PROTECTION. Requires the commission to delegate certain authority, and the state fire marshall, along with the assistance of an advisory council (council) appointed by the commission, rather than the board, to implement rules determined by the commission, rather than rules determined by the board in accordance with Section 417.0014, Government Code. Provides that an advisory council appointed under this section is composed of seven individuals. Sets forth individuals composing the advisory council. Requires the advisory council to periodically review rules implementing this article and recommend changes in the rules to the commission. Makes a conforming change.

SECTION 3.05. Amends Section 6, Article 5.43-3, Insurance Code, as follows:

Sec. 6. ADVISORY COUNCIL. Authorizes the commission to have seven members, among which include one volunteer fire fighter, rather than one member of the State Firemen's and Fire Marshal's Association of Texas. Authorizes the State Firemen's and Fire Marshals' Association of Texas, on request by the commission, to recommend a volunteer fire fighter for appointment to the council. Makes conforming changes.

SECTION 3.06. Amends Section 5, Article 5.43-4, Insurance Code, to require the commission, rather than the board, to issue rules for the administration of this article through the state fire marshall in accordance with Section 5B of this article, rather than Section 417.0041, Government Code. Makes conforming changes.

SECTION 3.07. Amends Section 5B, Article 5.43-4, Insurance Code, as follows:

Sec. 5B. ADVISORY COUNCIL. Requires the commission to establish an advisory council to assist the commission in the administration of this article. Authorizes the Texas Pyrotechnic Association to recommend individuals for appointment to the council, on request by the commission. Requires the council to periodically review commission rules relating to the program and recommend changes in the rules to the commission. Requires the commission to submit all proposed changes and additions to the rules that relate to administration of this article to the council for development. Requires the commission to indicate to the council the reasons that the commission did not approve the rule and return the rule to the council for further development, if the commission does not approve a rule developed by the council. Deletes a provision requiring the council to assist the commission in the review and adoption of rules under this article as provided by Section 417, Government Code.

SECTION 3.08. Amends Chapter 419B, Government Code, as follows:

SUBCHAPTER B. New heading: REGULATING AND ASSISTING FIRE FIGHTERS AND
FIRE DEPARTMENTS

SECTION 3.09. Repealers: Section 417.0041, Government Code (Participation of Certain Advisory Councils in Rulemaking); Section 2(3), Article 5.43-2, Insurance Code (Definition of "advisory council"); Section 1(4), Article 5.43-3, Insurance Code (Definition of "advisory council").

SECTION 3.10. Provides that the Fire Protection Personnel Advisory Committee is abolished.

ARTICLE 4. CERTIFICATION AND LICENSING FUNCTIONS

SECTION 4.01. Amends Chapter 419B, Government Code, by adding Section 419.0341, to add standard language as updated by the Sunset Commission, regarding an individual certificate holder and certificate renewal.

SECTION 4.02. Amends Chapter 419D, Government Code, as follows:

SUBCHAPTER D. VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

Sec. 419.071. VOLUNTARY CERTIFICATION PROGRAM FOR VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS. Requires the program to include the same components and requirements as the certification program established under Subchapter B. Provides that the certification program for volunteer fire fighters and volunteer fire departments may take into account the different circumstances of volunteer fire fighters in establishing deadlines for completion of various components or requirements of the program. Provides that a certificate for a given type and level of certification that is issued under the certification program established under this section is equivalent to a certificate for the same type and level issued under Subchapter B. Provides that the certificate is subject to the same issuance and renewal requirements as a certificate issued under Subchapter B, and provides that a certificate holder may be disciplined and regulated in the same manner as provided by Subchapter B. Deletes provisions regarding components of the program developed by the commission. Deletes provisions requiring the commission to contract with statewide organizations that include certain members. Authorizes a volunteer fire department with which a member is affiliated to pay the certificate fee for a volunteer fire fighter certified under this subchapter. Provides that the volunteer fire department is not required to pay the certificate fee. Requires the commission to send written notice of the impending certificate expiration to the last known address of the fire fighter according to the records of the commission, at least 30 days before the expiration of a volunteer fire fighter's certificate. Deletes existing Subsections (d)-(f). Deletes Sections 419.073-419.074.

Sec. 419.072. New heading: OBTAINING PAID EMPLOYMENT AS FIRE FIGHTER. Authorizes a fire department to appoint as fire protection personnel or employ as a part-time fire protection employee a volunteer fire fighter or former volunteer fire fighter who is certified by the commission under this subchapter, notwithstanding anything to the contrary in Subchapter B. Provides that a person is considered to be certified fire protection personnel or a certified part-time fire protection employee, as applicable, on receiving the appointment from or obtaining part-time employment with the fire department. Deletes text regarding the certification of a volunteer fire fighter. Defines "fire department."

Sec. 419.073. INDIVIDUAL CERTIFICATE HOLDER; CERTIFICATE RENEWAL. Adds standard language as updated by the Sunset Commission, regarding an individual certificate holder and certificate renewal.

SECTION 4.03. Amends Chapter 419B, Government Code, by adding Sections 419.0225 and 419.0365, to add standard language as updated by the Sunset Commission, regarding certain prohibited rules and a disciplinary hearing.

SECTION 4.04. Amends Chapter 411F, Government Code, by adding Section 411.1236, as follows:

Sec. 411.1236. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS COMMISSION ON FIRE PROTECTION. Provides that this section applies to circumstances in which the commission or the state fire marshal or another person, including a state agency or local government, performs certain duties. Requires the commission or the state fire marshal to obtain criminal history record information from the person who has obtained the required information as described by Subsection (a)(2) in a circumstance described by Subsection (a). Requires the person to provide the information to the commission or the state fire marshal, on request from the commission or the state fire marshal under this section. Authorizes the commission to disclose to certain persons the fact that issuance or renewal of a license, permit, certificate, or similar authorization was denied because of certain criminal history record, notwithstanding any other law or rule. Prohibits the commission or state fire marshal from disclosing the content of the criminal history record information under Subsection (c)(2).

SECTION 4.05. Amends Section 7(b), Article 5.43-1, Insurance Code, to authorize the commission, through the state fire marshal, to suspend, revoke, or refuse to issue or renew certain documents in accordance with Section 13 of this article. Deletes provisions allowing the commission to conduct certain hearings or proceedings through the state fire marshal.

SECTION 4.06. Amends Article 5.43-1, Insurance Code, by adding Sections 8A and 13, to add standard language as updated by the Sunset Commission, regarding certain prohibited rules, and disciplinary hearings.

SECTION 4.07. Amends Article 5.43-2, Insurance Code, by adding Sections 6A and 10A, to add standard language as updated by the Sunset Commission, regarding certain prohibited rules, and disciplinary hearings.

SECTION 4.08. Amends Article 5.43-3, Insurance Code, by adding Section 7A and 9A, to add standard language as updated by the Sunset Commission, regarding certain prohibited rules, and disciplinary hearings.

SECTION 4.09. Amends Article 5.43-4, Insurance Code, by amending Section 18 and adding Sections 16A and 18A, as follows:

Sec. 16A. CERTAIN RULES PROHIBITED. Adds standard language as updated by the Sunset Commission, regarding certain prohibited rules.

Sec. 18. New heading: ISSUANCE, SUSPENSION, REVOCATION, AND RENEWAL OF LICENSES AND PERMITS. Requires the commission to adopt rules for applications and set qualifications for licenses and permits. Authorizes the commission through the state fire marshal to suspend, revoke, or refuse to issue or renew a license or permit, rather than to conduct hearings or proceedings concerning the suspension, revocation, or refusal to issue or renew a license or permit. Authorizes renewal of a license to be refused if it is determined, after notice and a public hearing conducted under Section 18A of this article, that any provision of this article, or any rule promulgated under this article, has been violated.

Sec. 18A. Adds standard language as updated by the Sunset Commission, regarding a disciplinary hearing.

SECTION 4.10. Provides that the volunteer fire fighter advisory committee established under Section 419.072, Government Code, is abolished.

SECTION 4.11. Makes application of this Act prospective.

ARTICLE 5. EFFECTIVE DATE; EMERGENCY

SECTION 5.01. Effective date: September 1, 1997.

SECTION 5.02. Emergency clause.