

# SUNSET ADVISORY COMMISSION

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## STAFF REPORT



### Texas Commission on Fire Protection

2020–2021

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87TH LEGISLATURE

# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. Elaborate, custom-designed hardware accentuates the beautifully carved wooden doors. The Sargent and Co. of New Haven, Connecticut created the glass molds especially for the building in the 1880s. The Capitol hardware features incised designs of geometric and stylized floral motifs. This reflects the shift from the Renaissance Revival style of the building's interior architecture to the simpler Aesthetic Movement for its decorative details. Photo credit: Janet Wood*

# TEXAS COMMISSION ON FIRE PROTECTION

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87<sup>TH</sup> LEGISLATURE

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](http://sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](http://sunset.texas.gov).

### **CURRENT VERSION: Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# TABLE OF CONTENTS

| Page

- Summary of Sunset Staff Recommendations ..... 1
  
- Agency at a Glance ..... 5
  
- Issues/Recommendations
  - 1 The State Has a Continuing Need for the Texas Commission on Fire Protection, but the Effectiveness and Transparency of Its Advisory Committees Could Be Improved ..... 9
  
  - 2 The Texas Commission on Fire Protection’s Statute and Operations Do Not Reflect Some Regulatory Best Practices and Standard Elements of Sunset Reviews ..... 15
  
- Appendixes
  - Appendix A — Historically Underutilized Businesses Statistics ..... 21
  
  - Appendix B — Equal Employment Opportunity Statistics..... 23
  
  - Appendix C — Staff Review Activities..... 25



# SUMMARY OF SUNSET STAFF REPORT

Since 1961, the Texas Commission on Fire Protection (TCFP) has regulated training for paid fire fighters in Texas. Over the years, the Legislature has both expanded and narrowed TCFP's duties and responsibilities, including combining the agency with the State Fire Marshal's Office and then separating it again into a standalone agency. Today, TCFP focuses on certifying paid fire fighters and training providers, and also inspects fire departments for compliance with minimum safety standards.

The Sunset review found TCFP's current regulatory scope is appropriate and that the agency should be continued. The review did not identify any significant problems to merit changing the agency's structure, including combining it with another state fire service-related agency. In addition, while many stakeholders proposed changing the composition of the commission to address concerns about the underrepresentation of fire fighters from large cities who are regulated by TCFP and overrepresentation of volunteer fire fighters who are not, necessary changes were not clearly apparent. The current commission structure does not prevent fire fighters from large cities from being appointed as commission members, and some volunteer fire fighters voluntarily choose to hold TCFP certifications, or work for a fire department regulated by the agency. Moreover, whether to expand TCFP's regulation to volunteer fire fighters, as some suggested, is a policy question that exceeds the scope of a Sunset staff review.

The review also determined TCFP's certifications provide an important benefit to the state. These certifications ensure paid fire fighters receive standardized training statewide to help prevent injury and death, and the agency depends on the certification fees to finance its operations and to meet the requirement in the state budget to provide \$1.5 million to the General Revenue Fund. In fiscal year 2019, TCFP certified about 34,000 individuals in 15 different disciplines and sent \$2.8 million in certification fees to general revenue above the agency's operating costs, almost double its \$1.5 million requirement. While TCFP's certifications are beneficial, Sunset staff found the agency has some nonstandard statutory provisions and agency procedures that create unnecessary hurdles for those renewing their certifications and for fire fighters transferring to Texas from other states.

The Sunset review also identified several ongoing concerns with TCFP's Fire Fighter Advisory Committee, which were first identified in the agency's 2009 Sunset review. The statutory requirement for the advisory committee to review all of the agency's rules has resulted in the commission acting as a rubber stamp for the advisory committee's rule recommendations, when the commission should take the lead on policymaking. More importantly, the Fire Fighter Advisory Committee has continued to operate even though it has

**TCFP should be continued but needs to improve the effectiveness and transparency of its advisory committees.**

been abolished by general law both in statute and rule, as have most of the agency's other committees. If TCFP chooses to re-establish the Fire Fighter Advisory Committee or its other advisory committees, it should ensure they continue to serve a needed purpose. The commission should regularly evaluate their usefulness and effectiveness, and specify each committee's purpose, role, responsibility, and goals along with an abolishment date in rule. Other recommendations in this report aim to improve TCFP's rulemaking process and apply standard review elements to TCFP's statute.

The following material highlights Sunset staff's key recommendations for the Texas Commission on Fire Protection.

## **Sunset Staff Issues and Recommendations**

### **ISSUE 1**

**The State Has a Continuing Need for the Texas Commission on Fire Protection, but the Effectiveness and Transparency of Its Advisory Committees Could Be Improved.**

TCFP provides an important benefit to the state by helping to ensure fire departments and paid fire fighters have the proper equipment and training to effectively protect Texas communities, and the agency should be continued for 12 years. While TCFP continues to be needed, the review identified several concerns with its Fire Fighter Advisory Committee, including that it duplicates the composition of the commission itself, does not provide additional expertise, and has been abolished by default along with most of the agency's other committees. In addition, TCFP's statute does not contain updated requirements for commission member training, and TCFP does not have a formal system to track complaints.

#### **Key Recommendations**

- Continue the Texas Commission on Fire Protection for 12 years, until 2033.
- Update the standard across-the-board requirement for commission member training.
- Direct TCFP to evaluate the continued usefulness and effectiveness of its advisory committees.
- Direct TCFP to maintain documentation on complaints.

### **ISSUE 2**

**The Texas Commission on Fire Protection's Statute and Operations Do Not Reflect Some Regulatory Best Practices and Standard Elements of Sunset Reviews.**

TCFP certifies fire service personnel and inspects fire departments for compliance with state and national standards, but TCFP's statute and operations are missing certain standard elements and practices seen at other regulatory agencies. Specifically, TCFP's certification renewals could be more efficient, and reciprocity agreements with other state certification agencies would streamline the process for fire fighters

moving to Texas. Additionally, TCFP should align its rules with statute requiring agencies to consider only criminal convictions directly related to the relevant profession as reason to deny certification, and should also adopt a policy to better encourage stakeholder input in rulemaking.

### **Key Recommendations**

- Authorize TCFP to provide biennial renewal for certifications.
- Authorize TCFP to enter into reciprocity agreements with other state fire personnel certification agencies.
- Direct the commission to review rules covering how criminal convictions relate to eligibility for certification.
- Direct TCFP to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.

### **Fiscal Implication Summary**

Overall, these recommendations would not have a fiscal impact to the state. Based on fiscal year 2019 appropriations, continuing TCFP would require about \$2.1 million annually. These costs are entirely paid for by the certification and other fees the agency collects.



# AGENCY AT A GLANCE

The Texas Commission on Fire Protection (TCFP) helps protect Texans' lives and property by developing and enforcing professional standards for the fire service, including paid fire fighters and other fire service personnel, fire training facilities, and fire departments. To achieve its mission, TCFP carries out the following key activities:

- Certifies fire service personnel in 44 levels of certification within 15 disciplines including structure fire fighting, fire inspection, and arson investigation.
- Inspects fire departments and other regulated facilities for compliance with state law and agency rules.
- Develops and maintains certification curricula and exams based on national standards.
- Regulates training providers and approves training courses for TCFP certifications.
- Provides fire education and research materials and gathers fire service personnel injury data.

## Key Facts

- **Governance.** The governor appoints the 13-member commission, with the advice and consent of the Senate, to staggered six-year terms. The table, *TCFP Commission Composition*, details the commission's membership requirements.<sup>1</sup> The governor appoints the fire chief, paid fire fighter, and volunteer members from a list of names submitted by three fire service associations.<sup>2</sup>

Statute also establishes a nine-member Fire Fighter Advisory Committee consisting of fire service personnel, and requires the commission to seek input from the committee before adopting or amending a rule.<sup>3</sup> The commission also uses seven other committees to develop certification curricula, give input on exams, and inform policy development.

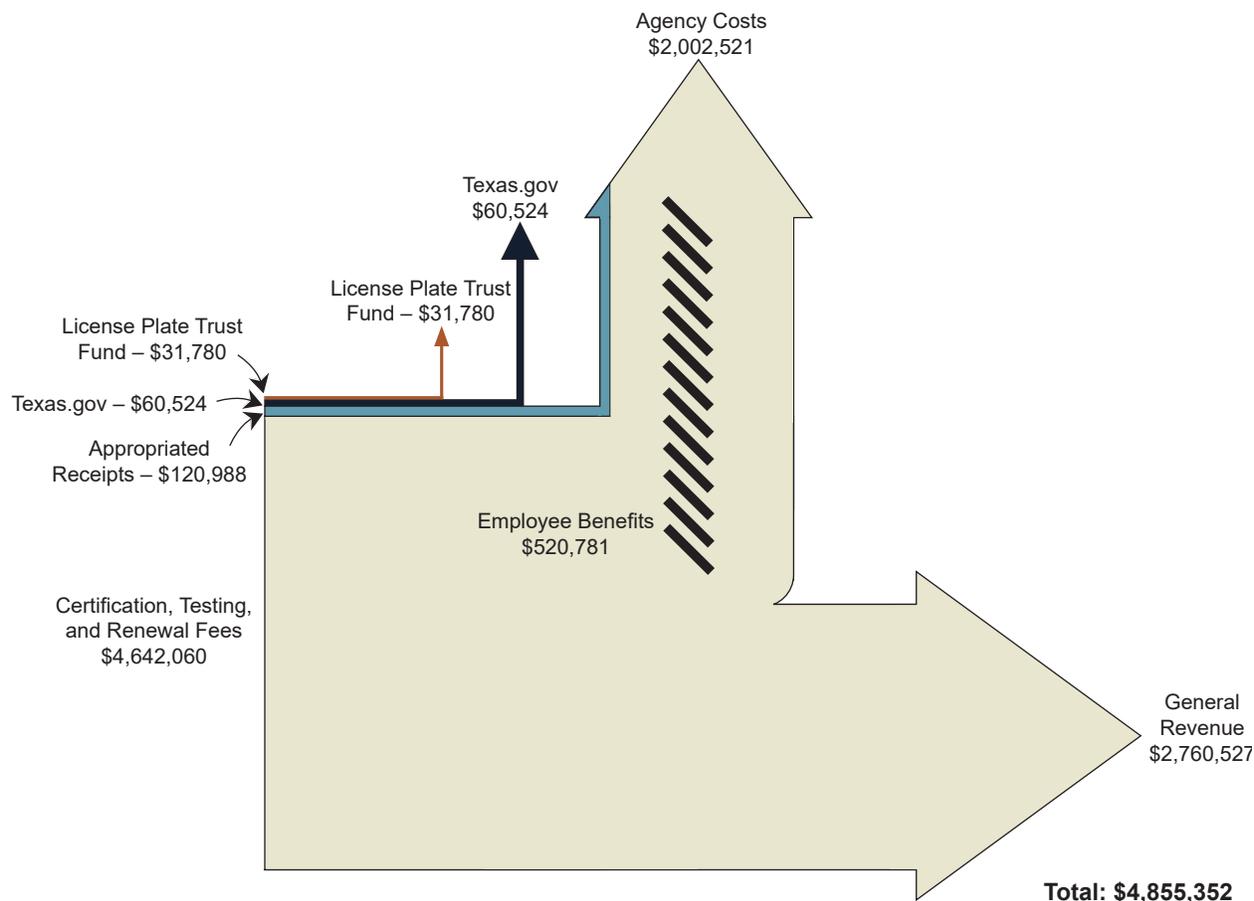
- **Funding.** In fiscal year 2019, TCFP received approximately \$4.9 million in revenue, mostly from fees generated by testing and from issuing and renewing certifications. The chart on the following page, *Flow of TCFP Revenue and Expenditures*, provides more detail. TCFP must cover the cost of its operations and collect an additional \$1.5 million in revenue across the biennium, as required by a budget rider.<sup>4</sup> In fiscal year 2019, TCFP collected approximately \$2.8 million in revenue above its operating costs.

In fiscal year 2019, TCFP spent about \$2.1 million on agency operations, as detailed in the chart on the following page, *TCFP Expenditures*. TCFP spends about 56 percent of its funds on the certification and regulation of fire service personnel and fire departments. Appendix A outlines TCFP's use of historically underutilized businesses in purchasing goods and services for fiscal years 2017–19.

## TCFP Commission Composition

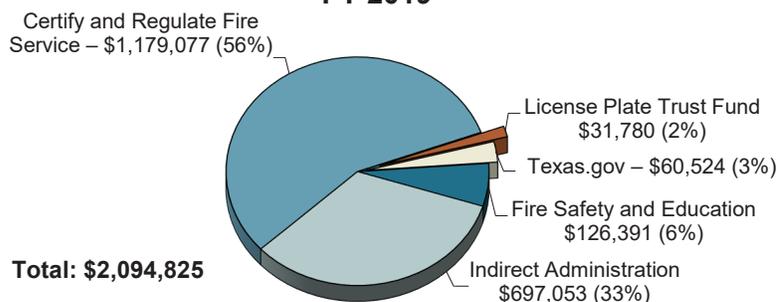
One fire protection instructor from a higher education institution
One fire protection inspector or arson investigator
One fire protection engineer
Two paid fire fighters with a rank of battalion chief or below, one from a political subdivision with a population under 100,000
Two fire chiefs, one who is the head of his or her department, and one from a political subdivision with a population under 100,000
Two volunteer fire fighters
Four public members

### Flow of TCFP Revenue and Expenditures FY 2019<sup>5</sup>



- Staff.** In fiscal year 2019, TCFP employed 31 staff, most of whom work at the main office in Austin. TCFP’s largest program, compliance, employs seven staff, including the compliance manager in Austin and one field inspector working in each of six regions across the state. Appendix B compares TCFP’s workforce composition to the percentage of minorities in the statewide civilian labor force for fiscal years 2017–19.

### TCFP Expenditures FY 2019



- Certification.** All paid fire service personnel assigned to fire fighting, inspection, investigation, and training duties must hold a TCFP certification. Applicants gain certification by completing a training course, passing both practical skills and written portions of an exam, completing medical training, passing a background check, and paying an annual fee.<sup>6</sup> While volunteers and individuals not affiliated with a paid fire department can choose to hold certifications, TCFP’s regulatory authority generally

does not cover the volunteer fire service.<sup>7</sup> TCFP certified about 34,000 individuals in fiscal year 2019, including fire fighters, fire investigators, and fire inspectors. Fire service personnel can hold multiple active certifications as shown in the table, *Most Common TCFP Certifications*.

The National Fire Protection Association (NFPA) develops and publishes national standards for the fire service, which form the basis for TCFP's curricula and are used in courses by certified training providers and tested in certification exams. TCFP is accredited by the International Fire Service Accreditation Congress (IFSAC), which enables the commission to issue internationally recognized IFSAC certificates for most disciplines.

- **Continuing education.** TCFP requires fire service personnel to renew certifications annually and obtain at least 18 hours of continuing education each year.<sup>8</sup> TCFP staff verify compliance with continuing education requirements through audits of volunteers who choose to hold certifications and individuals not affiliated with a fire department certified by TCFP. TCFP inspectors also check continuing education documentation as part of the biennial fire department inspection process.
- **Curricula and exams.** For each certification it offers, TCFP develops and maintains curricula and exams, which have a written portion and a practical skills portion. Staff work with TCFP's advisory and ad hoc committees to ensure each certification curriculum and test question bank is current and conforms to state law, agency rule, and NFPA standards. In fiscal year 2019, TCFP administered 12,597 exams.
- **Regulation of training providers.** TCFP certifies on-site and online training providers in each type of certification it provides.<sup>9</sup> In fiscal year 2019, TCFP certified 319 training providers to deliver 2,660 courses. TCFP requires training instructors to be certified in the discipline they teach, and all instructors must have at least a basic fire instructor certification.<sup>10</sup>
- **Inspections.** Statute requires TCFP to biennially inspect each training facility, fire department, and local governmental agency providing fire protection.<sup>11</sup> The table on the following page, *TCFP Inspection Activity*, provides a breakdown of the facilities inspected in fiscal year 2019. TCFP's six field staff inspect fire departments and local fire marshals' offices for compliance with minimum standards for protective clothing, self-contained breathing apparatuses, personal alert safety systems, and other administrative checks such as continuing education documentation and proof of standard operating procedures.<sup>12</sup> TCFP also inspects training facilities for compliance with TCFP training requirements and investigates complaints filed against a regulated entity or individual. The agency investigated just two complaints in fiscal year 2019.

### Most Common TCFP Certifications FY 2019

Certification Type	Number of Certified Individuals
Structure Fire Fighter	35,023
Fire Instructor	15,068
Fire Inspector	5,366
Aircraft Rescue Fire Fighter	3,356
Fire Investigator	3,069
Arson Investigator	1,571
Head of Department – Suppression	462
Marine Fire Fighter	265
Head of Department – Prevention	51
<b>Total</b>	<b>64,231*</b>

\* Individuals can hold multiple active certifications.

- **Education resources.** TCFP makes available over 4,000 education and research materials, such as curriculum textbooks, technique manuals, and audiovisual resources, to the fire service and the public through its library. In fiscal year 2019, TCFP staff checked out 54 print and audiovisual resources, and fulfilled 107 research requests.
- **Injury reporting.** Statute requires TCFP to work with the State Fire Marshal's Office at the Texas Department of Insurance to collect and analyze fire fighter injury data, and publish the information annually.<sup>13</sup> In fiscal year 2019, TCFP received and analyzed 3,794 injuries reported by fire departments and other regulated entities. TCFP, the State Fire Marshal's Office, and fire departments use injury report data to develop trainings and safety guidelines based on trends.

### TCFP Inspection Activity FY 2019

Inspected Entity	Number of Inspections
Training Facility	393
Fire Department	215
Local Fire Marshal Office	88
Law Enforcement Office	28
State Agency*	9
<b>Total</b>	<b>733</b>

\*TCFP regulates some state agency activities, including certifying fire investigators and fire code safety inspectors at the State Fire Marshal's Office.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 419.004, Texas Government Code.

<sup>2</sup> Section 419.004(a)(1-3), Texas Government Code. The three associations are the State Firemen's and Fire Marshals' Association of Texas, the Texas Fire Chiefs Association, and the Texas State Association of Fire Fighters.

<sup>3</sup> Sections 419.0082(a) and 419.023, Texas Government Code.

<sup>4</sup> Rider 2, page V-23, Article V (H.B. 1), Acts of the 86th Legislature, Regular Session, 2019 (the General Appropriations Act).

<sup>5</sup> Revenue and expenditures for the License Plate Trust Fund pass through TCFP's budget to the Texas State Association of Fire Fighters for a grant program.

<sup>6</sup> Sections 419.021(3) and 419.032, Texas Government Code; and 37 T.A.C. Section 421.17(a).

<sup>7</sup> Section 419.071, Texas Government Code.

<sup>8</sup> 37 T.A.C. Section 441.5.

<sup>9</sup> 37 T.A.C. Chapter 427.

<sup>10</sup> 37 T.A.C. Section 427.307.

<sup>11</sup> Section 419.027(a), Texas Government Code.

<sup>12</sup> 37 T.A.C. Section 445.1.

<sup>13</sup> Section 419.048, Texas Government Code.

# ISSUE 1

## The State Has a Continuing Need for the Texas Commission on Fire Protection, but the Effectiveness and Transparency of Its Advisory Committees Could Be Improved.

### Background

The Legislature created the Texas Commission on Fire Protection (TCFP) in 1961 to certify fire protection training and education programs, conduct fire protection research, and recommend curricula for fire service training in higher education institutions. In 1991, the Legislature combined the agency's functions with the State Fire Marshal's Office and re-focused the agency's mission on the three main aspects of fire protection — prevention, suppression, and investigation. In 1997, the Legislature returned the State Fire Marshal's Office to the Texas Department of Insurance, and subsequently tasked TCFP with inspecting fire departments for compliance with standards for personal protective equipment, breathing apparatuses, and standard operating procedures.

Today, TCFP certifies paid fire service personnel, such as fire fighters and fire inspectors, certifies training facilities and instructors, and develops certification curricula and exams. TCFP also inspects fire departments and other regulated entities for compliance with state and national standards, collects and reports fire service injury data, and maintains a fire service library. TCFP has a Fire Fighter Advisory Committee to review all rules proposed or modified by the agency, although this committee has been abolished by default as discussed below, and uses seven other advisory committees to review certification curricula and provide recommendations on health and wellness. In fiscal year 2019, TCFP had 31 staff and \$2.1 million in operating expenditures.

### Findings

#### The state benefits from regulating paid fire service personnel.

TCFP provides an important benefit to the state by inspecting fire departments to help ensure they have the proper equipment and meet state and national standards to effectively protect Texas communities. The state also has a continuing interest in ensuring professional fire fighters have standardized training to provide a consistent level of service across the state, and that statewide health and safety regulations are effectively enforced. Fire fighting is a high-risk profession, with a high incidence of injuries and death connected to the job.<sup>1</sup> While fire fighter fatalities have declined over the last 20 years as certification increased, nine Texas fire fighters died on duty in 2020, according to the U.S. Fire Administration.<sup>2</sup> Over 3,700 fire fighters also reported injuries to TCFP in 2019.<sup>3</sup>

- **Standardized training.** Studies have shown standardized training and certification help prevent injuries and deaths related to fire fighting.<sup>4</sup> TCFP ensures paid fire service personnel in Texas have this important training and expertise, which aligns with nationally recognized safety standards. TCFP also helps ensure fire fighter training across the state is standardized by certifying fire service training providers and developing curricula, including

The state has a continuing interest in ensuring professional fire fighters are properly trained.

TCFP's  
inspections  
ensure fire  
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practical skills training, to ensure applicants for a TCFP certification are knowledgeable about state and national standards for health and safety. In fiscal year 2019, TCFP certified 34,000 fire service personnel, as well as 319 training providers to offer 2,660 fire certification courses.

- **Inspections and enforcement.** TCFP inspects fire departments and other regulated entities to ensure they comply with minimum safety standards, such as maintaining the correct personal protective equipment. In fiscal year 2019, TCFP conducted 733 inspections. The state has a continuing interest to ensure professional fire fighters are properly equipped to fight fires, as Texas fire departments responded to over two million fire incidents in 2019.<sup>5</sup> Over 100 Texans died in residential fires in 2019, and fire damage causes hundreds of millions of dollars in Texas property losses annually.<sup>6</sup> Moreover, as a regulatory agency, TCFP can enforce continuing education requirements so paid firefighters stay up to date with the most recent national health and safety standards; if they do not, TCFP can take enforcement action, such as issuing fines, against fire departments and individuals.

### **No substantial benefits would result from changing TCFP's organizational structure.**

Sunset staff considered organizational alternatives for administering TCFP's programs, but concluded no significant benefit would result from transferring functions or merging TCFP with the state's other fire service-related agencies: the Texas A&M Engineering Extension Service (TEEX), Texas A&M Forest Service, and the State Fire Marshal's Office. While both TEEX and the Forest Service also train or certify some fire fighters, no other state agency has the same statewide regulatory and compliance function as TCFP. Also, TCFP is the only state agency that inspects fire departments for compliance with statewide safety standards. In 1997, the Legislature intentionally separated the duties of the State Fire Marshal's Office from TCFP, and the review did not find any apparent benefit to combining the two agencies' separate functions. Although TCFP certifies fire inspectors hired by both the state fire marshal and local fire departments, and assists the State Fire Marshal's Office with fire fighter fatality investigations, no regulatory overlap exists. The State Fire Marshal's Office concentrates on conducting fire safety inspections of state agencies and buildings in areas of Texas not served by local fire inspection authorities.

No other state  
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TCFP.

While organizational structures for regulating paid fire fighters vary, all 50 states certify fire fighters and other fire service personnel. Almost all states, including Texas, regulate fire fighters through a state agency or higher education institution, while others use a nonprofit organization. In addition, 31 states are accredited by both the International Fire Service Accreditation Congress (IFSAC) and the National Board on Fire Service Professional Qualifications (Pro Board) to issue certifications. In Texas, TCFP is accredited by IFSAC and TEEX is accredited by Pro Board.

## The Fire Fighter Advisory Committee is duplicative of the commission and does not function as intended by statute.

As defined in general law, advisory committees are meant to advise state agencies regarding an industry or occupation regulated or directly affected by the agency, and must include balanced representation between the regulated occupation and consumers of services provided by the agency, industry, or occupation.<sup>7</sup> Advisory committees also should provide expertise on areas not already represented by the membership of the agency's governing board. TCFP's Fire Fighter Advisory Committee, by contrast, almost mirrors the composition of the commission itself, though it does not include public members, and does not provide additional expertise, as shown in the table, *Comparison of the Fire Fighter Advisory Committee to the Commission*. Additionally, the advisory committee members have never had term limits, either in statute or rule. Several members have served longer than 10 years, almost double the term for a TCFP commission member, and some past members have served more than 20 years. As a result, the commission hears from some of the same voices for many years without an opportunity for new or differing input or expertise.

While statute requires the Fire Fighter Advisory Committee to review all rules proposed or modified by the commission, in practice, the advisory committee goes beyond this authority, reviewing work done by the Curriculum and Testing Committee and six other committees before the commission may consider their recommended changes to the curriculum or related rules.<sup>8</sup> This results in the advisory committee essentially duplicating the policymaking function of the commission instead of acting as an advisory body.

The statutory requirement to review all of the commission's proposed or modified rules also results in the advisory committee significantly influencing the commission's rule decisions.<sup>9</sup> The 2009 TCFP Sunset review included a very similar finding, in which Sunset staff found the commission had adopted 97 percent of the advisory committee's rule proposals without changes. In the last three years, the commission adopted 92 percent of the advisory committee's rule proposals without changes, as shown in the textbox, *Commission Actions on Advisory Committee Rule Proposals*. In response to Sunset's 2009 finding, the Legislature authorized the commission to modify or reject the advisory committee recommendations, but prohibited it from resubmitting a proposed rule to the advisory committee for a second review.<sup>10</sup> However, from 2017 to 2020, the commission has violated this statutory provision, and sent two rules related to fire safety inspector certifications back to the Fire Fighter Advisory Committee more than once.

### Comparison of the Fire Fighter Advisory Committee to the Commission

Committee	Commission
Six active or retired <b>fire protection personnel</b>	Six <b>fire protection personnel</b> , including three fire chiefs, one employed by a small municipality
At least one <b>volunteer fire fighter or fire chief</b>	At least two <b>volunteer fire fighters</b>
Three certified <b>fire protection instructors</b>	One <b>fire protection instructor</b> from an institution of higher education, one fire protection engineer, and one certified arson investigator or fire protection inspector
	Four public members

#### Commission Actions on Advisory Committee Rule Proposals

- Proposals Adopted Unchanged — 163
- Rejected — 12
- Returned to Committee — 2

*Source: TCFP Meeting Minutes, 2017–20*

The Fire Fighter Advisory Committee was effectively abolished in 2005.

Both the advisory committee and its enabling statute have effectively been abolished. General law authorizes agencies to set abolishment dates for their advisory committees in rule; otherwise, they are automatically abolished on September 1, 2005, or four years after the year they were created, whichever date is later.<sup>11</sup> TCFP created the Fire Fighter Advisory Committee by rule in 1998 and has not set an abolishment date, resulting in its abolishment in 2005.<sup>12</sup> However, the advisory committee has improperly continued operating for 15 years after its abolishment date. TCFP would need to re-establish the advisory committee in rule and include an abolishment date to continue using it.

### **TCFP lacks clear guidance for its seven other advisory committees.**

Only one of TCFP's seven other advisory committees, the Curriculum and Testing Committee, is established in rule, though it has also effectively been abolished. The other committees, including several ad hoc curriculum review committees and the Health and Wellness Committee, have operated for several years without the agency establishing them in rule, or defining their purpose or duration in rule. General law requires agencies to establish in rule the purpose and tasks of its advisory committees and to describe the manner in which the committee will report to the agency.<sup>13</sup> Statute also requires a state agency to annually evaluate each advisory committee's work, usefulness, and costs related to its existence.<sup>14</sup> Establishing an annual review process and creating guidance for all of TCFP's advisory committees would allow commission members to regularly evaluate whether they are still useful and necessary, and improve transparency for stakeholders interested in the commission's policymaking process.

### **TCFP's statute does not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

TCFP's statute does not contain new requirements for commission member training.

- **Commission member training.** TCFP's statute contains standard language requiring commission members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the commission's rulemaking authority. Statute also does not require that the agency create a training

manual for all commission members or specify that commission members must attest to receiving and reviewing the training manual annually.

- **Complaint information.** TCFP's governing laws require it to maintain complete information on complaints, but the agency has not fully complied with this requirement and does not actively track all complaints received, such as complaints related to examinations. While TCFP does not receive many complaints about fire service personnel, departments, or the agency itself, it still should maintain a system for tracking all complaints received, acting on those within its jurisdiction, and keeping proper documentation to help protect the public by ensuring it addresses problems in a timely fashion.

## Sunset Staff Recommendations

### *Change in Statute*

#### **1.1 Continue the Texas Commission on Fire Protection for 12 years.**

This recommendation would continue the Texas Commission on Fire Protection as an independent agency until September 1, 2033.

#### **1.2 Update the standard across-the-board requirement related to commission member training.**

This recommendation would require TCFP to develop a training manual that each commission member attests to receiving annually, and require existing commission member training to include information about the scope of and limitations on the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

### *Management Action*

#### **1.3 Direct TCFP to evaluate the continued usefulness and effectiveness of its advisory committees.**

Under this recommendation, TCFP would annually evaluate each advisory committee's work, usefulness, and costs of staff time and resources spent in support of the committee's activities. TCFP also would evaluate the necessity of each of its advisory committees to ensure they continue to serve their intended and still needed purpose. TCFP should adopt policies specifying each advisory committee's:

- Purpose, role, responsibility, and goals
- Abolishment date
- Members' qualifications, experience, and training requirements

If TCFP establishes or re-establishes an advisory committee, it should take into account the need for input from stakeholders who are not represented on the commission, such as active fire fighters from large municipal fire departments.

#### 1.4 Direct TCFP to maintain documentation on complaints.

Under this recommendation, TCFP would develop and maintain a formal system to document and track complaints against the agency as well as against regulated individuals and entities, as required by statute. The system also should track complaints related to certification exams, including exam appeals. TCFP should periodically notify complaint parties of the status of complaints, unless it would jeopardize an investigation.

### Fiscal Implication

These recommendations would not have a fiscal impact to the state and could be accomplished with the agency's existing resources.

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<sup>1</sup> U.S. Fire Administration, *Risk Management Practices in the Fire Service*, accessed October 21, 2020, [https://www.usfa.fema.gov/downloads/pdf/publications/risk\\_management\\_practices.pdf](https://www.usfa.fema.gov/downloads/pdf/publications/risk_management_practices.pdf).

<sup>2</sup> "Texas fire loss/fire department profile," U.S. Fire Administration, <https://www.usfa.fema.gov/data/statistics/states/texas.html>.

<sup>3</sup> Texas Commission on Fire Protection, *Texas Commission on Fire Protection Injury Report*, accessed November 9, 2020, [https://www.tcfp.texas.gov/Services/GetPdf?filename=%2FInjury%2F2019\\_Injury\\_Report\\_v07.pdf](https://www.tcfp.texas.gov/Services/GetPdf?filename=%2FInjury%2F2019_Injury_Report_v07.pdf).

<sup>4</sup> The National Institute for Occupational Safety and Health, *Preventing Injuries and Deaths of Firefighters*, accessed October 19, 2020, <https://www.cdc.gov/niosh/docs/94-125/default.html>.

<sup>5</sup> Texas Department of Insurance, *2019 TEXFIRS Incidents Successfully Processed*, accessed October 20, 2020, <https://www.tdi.texas.gov/fire/documents/fmtex19incid.pdf>.

<sup>6</sup> "Texas fire loss/fire department profile," U.S. Fire Administration, <https://www.usfa.fema.gov/data/statistics/states/texas.html>; Texas State Fire Marshal's Office, *Texas Fire Incident Reporting System Fires in Texas 2016 Annual Fire Statistics*, accessed October 20, 2020, <https://www.tdi.texas.gov/reports/fire/documents/fmtexfirs2016.pdf>.

<sup>7</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 2110.002, Texas Government Code.

<sup>8</sup> 37 T.A.C. Section 443.1(a); The seven other advisory committees are the Aircraft and Rescue Fire Fighter Ad Hoc Committee, Curriculum and Testing Committee, Fire Fighter Health and Wellness Committee, Hazmat Ad Hoc Committee, Inspector Ad Hoc Committee, Investigator Ad Hoc Committee, and Marine Ad Hoc Committee.

<sup>9</sup> Section 419.0082(a), Texas Government Code.

<sup>10</sup> Section 419.0082, Texas Government Code.

<sup>11</sup> Section 2110.008, Texas Government Code.

<sup>12</sup> 37 T.A.C. Section 421.1.

<sup>13</sup> Section 2110.005, Texas Government Code.

<sup>14</sup> Section 2110.006, Texas Government Code.

## ISSUE 2

# The Texas Commission on Fire Protection's Statute and Operations Do Not Reflect Some Regulatory Best Practices and Standard Elements of Sunset Reviews.

### Background

The Texas Commission on Fire Protection (TCFP) certifies the competency of fire service personnel and inspects fire departments and other facilities for compliance with state and national standards. TCFP certified about 34,000 individuals in 15 different disciplines in fiscal year 2019, and renews these certifications annually.

The Sunset Advisory Commission has a long history of evaluating regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. This issue highlights areas where TCFP's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

Additionally, Sunset reviews over the years have included a number of standard elements from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes necessary to address the need for TCFP's required reports and update statute to reflect the state's person-first respectful language initiative.

### Findings

#### **Nonstandard statutory provisions and agency procedures present unnecessary hurdles to applicants and reduce TCFP's efficiency.**

- **Burdensome certification renewals.** A regulatory agency should have the flexibility in its renewal process to most efficiently regulate activities subject to its jurisdiction. Statute requires all of TCFP's certificate holders to renew their certifications annually.<sup>1</sup> Requiring annual renewals in statute is unnecessarily restrictive and limits TCFP's ability to manage staff workload and streamline regulation. Authorizing TCFP to renew certifications every two years rather than annually could help the agency develop more efficient internal processes and ease the regulatory burden on certified individuals and fire departments.
- **Inefficient certification reciprocity process.** An agency should have the authority and procedures to certify out-of-state applicants if the applicant holds a certification from another state or a national organization that has requirements substantially similar to Texas' requirements. Statute

Authorizing biennial certification renewals could improve TCFP's efficiency.

TCFP lacks policies to ensure out-of-state applicants are treated equally.

authorizes TCFP to waive any certification requirement except the criminal history check for an applicant with a certification from another state with substantially equivalent requirements.<sup>2</sup> However, statute does not authorize TCFP to enter into formal reciprocity agreements with another state certification board to recognize certificate holders. Certification by reciprocity for certificate holders from another state with equivalent requirements would reduce the administrative burden on TCFP, especially since most fire certification boards and agencies in other states also rely on the same national standards and accreditation agencies to develop training, testing, and certification standards. TCFP staff currently must perform a time consuming review of individual records for most out-of-state applicants, for which it charges \$75, and the agency does not have policies to ensure out-of-state applicants with the same qualifications will be treated equally.

TCFP allows reciprocity for certifications issued by the Texas A&M Engineering Extension Service (TEEX), which is accredited by the National Board on Fire Service Professional Qualifications (Pro Board) to conduct training and issue fire service certifications. However, TCFP, which is accredited to issue certifications by a different organization, the International Fire Service Accreditation Congress, does not allow reciprocity with other states that are accredited by Pro Board. By only offering reciprocity for Pro Board certificates issued by TEEX but not for applicants holding a Pro Board certification from outside Texas, TCFP's policy results in unequal treatment for out-of-state certificate holders. Reciprocity agreements would establish uniform requirements for all applicants and treat in-state and out-of-state applicants equally. Having uniform requirements would also ease the administrative burden on both TCFP staff and applicants. In addition, developing state-specific reciprocity policies would help ensure TCFP staff consistently apply certification standards to fire fighters transferring from the same state.

TCFP should only disqualify applicants with criminal convictions directly related to the fire service.

- **Criminal convictions unrelated to profession.** An agency should only consider criminal convictions directly related to the relevant profession as reason to deny, suspend, or revoke a certification.<sup>3</sup> A TCFP rule covering certification eligibility for applicants with a criminal conviction, which was last updated by the commission in 1999 and reviewed in 2017, takes a broader approach, listing several statutes that contain convictions only tangentially related to the fire service, including computer crimes, failure to pay toll invoices, money laundering, and health care fraud.<sup>4</sup> By using such a broad list of convictions, TCFP is potentially disqualifying applicants from certification based on convictions unrelated to fire service activity. Additionally, to comply with recent state law, before denying a certification, an agency should provide an applicant with written notice and at least 30 days to provide additional information for consideration.<sup>5</sup> TCFP's rule covering procedures for certification denial due to criminal conviction only offers a 15-day window for appeal and does not clearly offer an opportunity for an applicant to provide additional information.<sup>6</sup>

- **Missing complaint form.** An agency should use a clear, well-designed, and easily found complaint form to handle incoming complaints about the regulated community or the agency itself. While TCFP provides information about filing a complaint on its website, the information is not easy to find, and the agency does not provide a standardized complaint form, an email address, or phone number. Instead, TCFP directs the public to submit complaints about the regulated community through U.S. Postal Service mail.

TCFP does not provide a standard complaint form or clearly allow for electronic complaint submission.

### **TCFP conducts its required four-year rule review with insufficient stakeholder engagement.**

The Sunset Act directs the Sunset Commission to assess each agency's rulemaking process, including the extent to which agencies encourage public participation in rulemaking.<sup>7</sup> As part of this assessment, Sunset considers an agency's compliance with statutory requirements in the Administrative Procedure Act, including an agency's review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.<sup>8</sup>

TCFP met the minimum requirement by posting and re-adopting all of its rules in 2017, but received no comments from the public and made changes to only one rule chapter. While TCFP regularly readopts its rules, by reviewing rules without meaningful stakeholder input, TCFP risks readoption without careful consideration of the continuing need and appropriateness of its rules. The four-year rule review process is intended to be more than simply posting rules in the *Texas Register* for public comment before readoption. A meaningful rule review should consider whether the initial factual, legal, and policy reasons for adopting each rule are still relevant.<sup>9</sup> As part of its analysis, an agency should consider the practical experience the agency, stakeholders, and the public have had with each rule over the past four years.<sup>10</sup>

TCFP should better engage the public in its rule review process.

### **TCFP has one reporting requirement that is no longer necessary.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>11</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.

Statute requires TCFP to report to the governor and Legislature every two years on the agency's activities.<sup>12</sup> However, statute does not specify what the report should include, and TCFP has inconsistently complied with this statutory requirement since it was added several decades ago. The governor's office and Legislature have other opportunities for oversight of TCFP, which can provide specific information upon request, so this biennial report is no longer needed.

### **TCFP's statute does not use appropriate language when referring to persons with disabilities.**

Statute requires Sunset to consider and recommend, as appropriate, statutory revisions in accordance with the person-first respectful language outlined in general law.<sup>13</sup> The stated intent of the law is to try to affect society's attitudes toward people with disabilities by changing the way the language refers to them. Sunset only changes language that occurs in chapters of law that are opened by the Sunset Commission's recommendations. The governing statute for TCFP contains a term that is not consistent with the person-first respectful language initiative.<sup>14</sup>

## **Sunset Staff Recommendations**

### ***Change in Statute***

#### **2.1 Authorize TCFP to provide biennial renewal for certifications.**

This recommendation would authorize, but not require, TCFP to provide biennial renewal for its certifications. TCFP would determine the frequency of renewal appropriate for regulatory oversight. When considering whether to allow certificate holders to renew biennially, TCFP should conduct a cost-benefit analysis to identify potential efficiencies in staff time and resources, as well as any associated savings or losses based on the timing of the renewals. This recommendation would provide flexibility for TCFP to reduce time spent processing renewals and alleviate a burden on the regulated community, without compromising agency oversight of the industry.

#### **2.2 Authorize TCFP to enter into reciprocity agreements with other state fire personnel certification agencies.**

This recommendation would authorize, but not require, TCFP to enter into reciprocal certification agreements with other states that have substantially equivalent certification requirements as compared to Texas. As part of this statutory authorization, the commission could determine and set the requirements for reciprocal certification in rule, including potentially waiving the exam requirement for an applicant from another state. As part of this recommendation, the commission would work with TCFP staff to establish policies for uniform use of certification through reciprocity to ensure TCFP uses consistent and objective criteria when considering out-of-state applicants or applicants with a certification from a regulatory entity accredited by Pro Board.

#### **2.3 Abolish TCFP's general reporting requirement on the commission's activities.**

This recommendation would eliminate TCFP's one reporting requirement. TCFP would no longer submit a report on agency activities every other year to the governor and Legislature and could continue to provide information upon request.

#### **2.4 Update TCFP's statute to reflect the requirements of the person-first respectful language initiative.**

This recommendation would direct the Texas Legislative Council to revise TCFP's governing statutes to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code.

## **Management Action**

### **2.5 Direct TCFP to create a standard complaint form and publish it in a prominent location on the agency's website.**

This recommendation would direct TCFP to create a clear and well-designed complaint form to use for complaints about the regulated community and the agency by March 1, 2021. The form should include enough information for TCFP to start an investigation, but not be so detailed or technical as to discourage complaints. Upon completion, TCFP should publish the form in a prominent location on its website and accept submissions in a variety of ways, including electronically, either through email or its website.

### **2.6 Direct the commission to review rules covering how criminal convictions relate to eligibility for certification.**

This recommendation would direct the commission to review its rules in Title 37, Part 13, Chapter 403 of the Texas Administrative Code by September 1, 2021. As part of this recommendation, TCFP should form an ad hoc committee and work with the committee to develop specific guidelines determining which crimes directly relate to the occupation and how, using Section 53.022 of the Texas Occupations Code. Additionally, the commission should ensure its rules covering procedures for certification denial due to criminal conviction adhere to all requirements in Chapter 53 of the Texas Occupations Code.

### **2.7 Direct TCFP to adopt a policy to ensure each rule undergoes meaningful review pursuant to state law.**

This recommendation would direct TCFP to adopt a policy requiring the four-year review of its rules. The policy should require the review to include the consideration of current factual, legal, and policy reasons for readopting each rule, as well as practical experience the agency, regulated community, and public have had with each rule over the past four years. Undergoing a more substantive analysis would allow TCFP to better engage the public and maintain its rules based on current circumstances and factors. TCFP would be required to provide an update on its progress toward implementing this recommendation to the Sunset Commission by March 1, 2021.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state.

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 419.026(a), Texas Government Code.
- <sup>2</sup> Section 419.032(d), Texas Government Code.
- <sup>3</sup> Section 53.021(a)(1), Texas Occupations Code.
- <sup>4</sup> 37 T.A.C. Section 403.7.
- <sup>5</sup> Section 53.0231, Texas Occupations Code.
- <sup>6</sup> 37 T.A.C. Section 403.11.
- <sup>7</sup> Section 325.011(8), Texas Government Code.
- <sup>8</sup> Section 2001.039, Texas Government Code.
- <sup>9</sup> Ronald L. Beal, *Texas Administrative Practice and Procedure*, (New York: Matthew Bender & Company, 2018), §3.8, 36–37.
- <sup>10</sup> *Ibid.*
- <sup>11</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.
- <sup>12</sup> Section 419.008(e), Texas Government Code.
- <sup>13</sup> Section 325.0123, Texas Government Code.
- <sup>14</sup> Section 419.004(d), Texas Government Code.

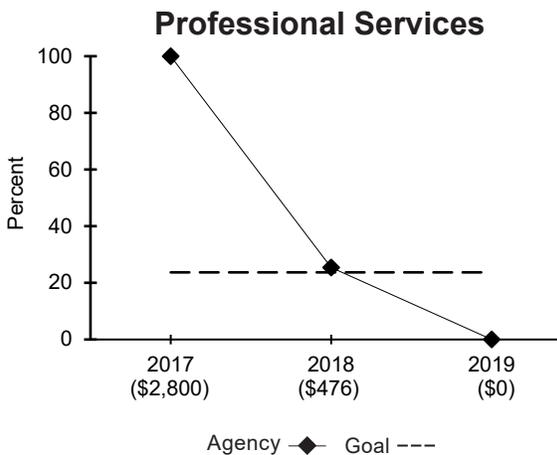
# APPENDIX A

## Historically Underutilized Businesses Statistics, FYs 2017–2019

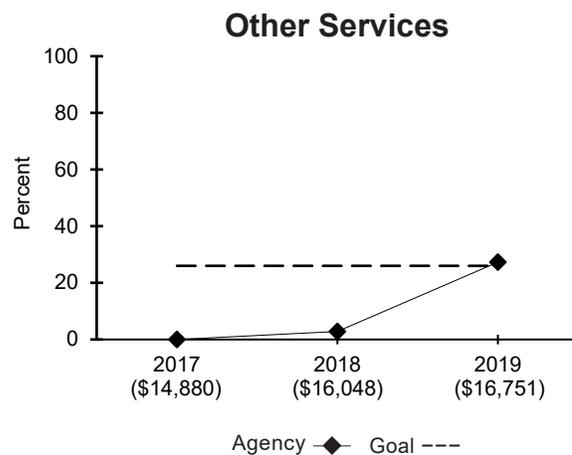
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies’ compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Commission on Fire Protection’s (TCFP) use of HUBs in purchasing goods and services. TCFP maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller’s office. The diamond lines represent the percentage of TCFP spending with HUBs in each purchasing category from fiscal years 2017–19. Finally, the number in parentheses under each year shows the total amount TCFP spent in each purchasing category.

TCFP did not have purchases in the building construction, heavy construction, or special trade categories in fiscal years 2017–19. TCFP consistently exceeded statewide goals in the commodities and professional services category, but not the other services category.

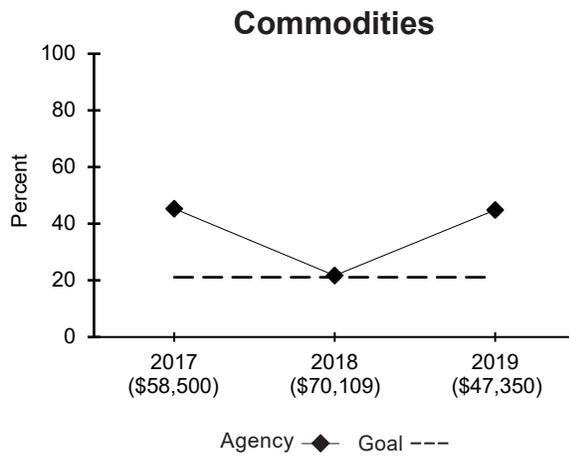


TCFP exceeded the statewide purchasing goal for professional services in fiscal years 2017–18, and did not have any expenditures in this category in fiscal year 2019.



TCFP did not meet statewide purchasing goals for other services in fiscal years 2017–18, but exceeded the goal in fiscal year 2019.

## Appendix A



TCFP exceeded the statewide purchasing goal for commodities in fiscal years 2017–19.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

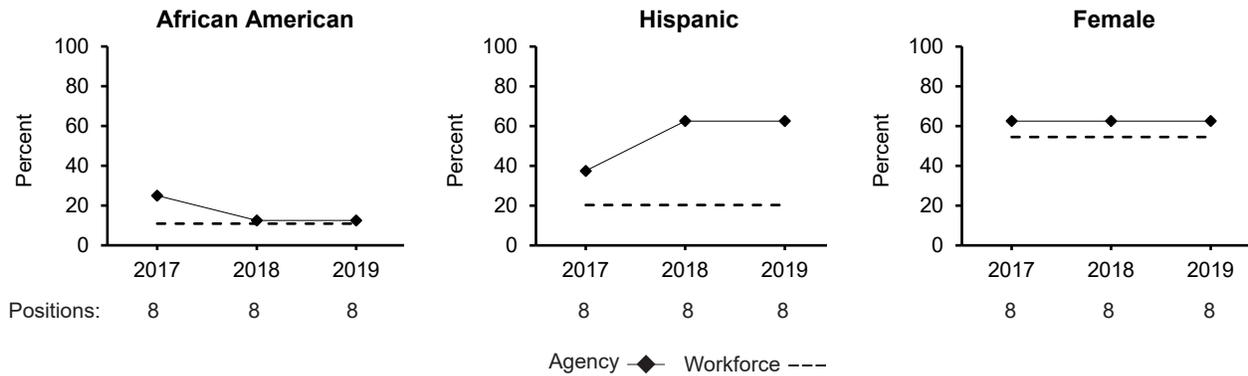
# APPENDIX B

## Equal Employment Opportunity Statistics, FYs 2017–2019

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Commission on Fire Protection (TCFP).<sup>1</sup> TCFP maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies’ performance in employing persons in each of these groups. The diamond lines represent TCFP’s actual employment percentages in each job category from fiscal years 2017–19.

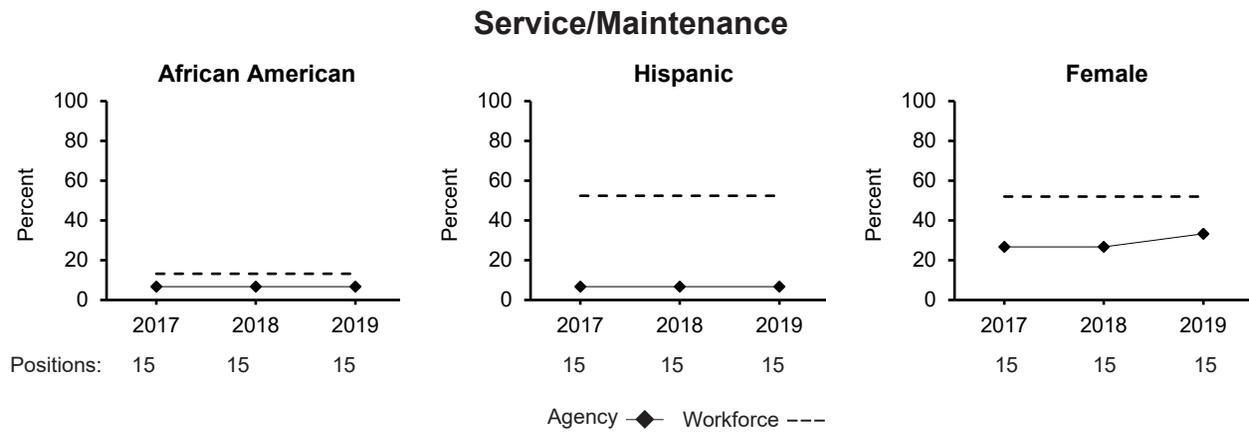
Generally, TCFP met or nearly met statewide civilian workforce percentages in the professional category, but not the service/maintenance category. TCFP does not have any employees in the skilled craft category, and too few employees in the administration, administrative support, and technical categories to conduct a meaningful analysis.

### Professional



TCFP exceeded statewide civilian workforce percentages in fiscal years 2017–19 for all three categories.

## Appendix B



TCFP did not meet statewide civilian workforce percentages for all three categories in fiscal years 2017–19, falling especially short in the Hispanic employees category.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

## APPENDIX C | Staff Review Activities

During the review of the Texas Commission on Fire Protection, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency.

- Interviewed commission and advisory committee members.
- Reviewed commission and advisory committee meeting minutes and recordings.
- Interviewed staff from the State Fire Marshal's Office, Texas A&M Engineering Extension Service, and Texas A&M Forest Service.



# Sunset Staff Review of the *Texas Commission on Fire Protection*

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