

GOVERNMENT CODE
TITLE 4. EXECUTIVE BRANCH
SUBTITLE B. LAW ENFORCEMENT AND PUBLIC PROTECTION
CHAPTER 419. TEXAS COMMISSION ON FIRE PROTECTION

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**SUBCHAPTER A
GENERAL PROVISIONS**

§ 419.001. Definitions

In this chapter:

(1) "Commission" means the Texas Commission on Fire Protection.

(2) Except as otherwise provided in this chapter, "volunteer fire fighter" and "volunteer fire chief" do not include a person who is also employed full-time in the fire service.

§ 419.002. Commission

The Texas Commission on Fire Protection is an agency of the state.

§ 419.003. Sunset Provision

The Texas Commission on Fire Protection is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2021.

§ 419.004. Composition of Commission

(a) The commission is composed of the following 13 members:

(1) two members to be selected from a list of five names submitted by the Texas Fire Chiefs Association who are chief officers with a minimum rank that is equivalent to the position immediately below that of the fire chief and who are employed in fire departments as defined by Section 419.021 that are under the jurisdiction of the commission, at least one of whom must be the head of a fire department and one of whom must be employed by a political subdivision with a population of less than 100,000;

(2) two members to be selected from a list of five names submitted by the Texas State Association of Fire Fighters who are fire protection personnel as defined by Section 419.021 with the rank of battalion chief or below and who are employed in fire departments or other appropriate local authorities under the jurisdiction of the commission, one of whom must be employed by a political subdivision with a population of less than 100,000;

(3) two members to be selected from a list of five names submitted by the State Firemen's and Fire Marshals' Association of Texas who are volunteer fire chiefs or volunteer fire fighters;

(4) one certified fire protection engineer;

(5) one certified arson investigator or certified fire protection inspector;

(6) one fire protection instructor from an institution of higher education as defined by Section 61.003, Education Code; and

(7) four public members.

(b) The members of the commission are appointed by the governor with the advice and consent of the senate for staggered terms of six years with four or five members' terms expiring February 1 of each odd-numbered year.

(c) The duties of a public officer or employee on the commission constitute additional duties of the member's office or employment.

(d) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(e) A person may not be a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of fire protection;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission;

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(5) is employed in the field of fire protection.

(f) For purposes of this section, "volunteer fire fighter" and "volunteer fire chief" means a person who is a member of a nonprofit volunteer fire department, and the term may include a person who is also employed full-time in the fire service.

§ 419.005. Removal of Commission Members

(a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 419.004;

(2) does not maintain during service on the commission the qualifications required by Section 419.004;

(3) is ineligible for membership under Section 419.006;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

§ 419.006. Conflict of Interest

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of fire protection; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of fire protection.

(c) A person may not be a member of the commission or act as the general counsel to the commission or the agency if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

§ 419.007. Officers; Compensation; Meetings

(a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. The commission shall elect from among its members an assistant presiding officer and a secretary.

(b) The commission shall meet at least quarterly.

(c) A member of the commission may not receive compensation for service on the commission. A member is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the commission.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

§ 419.0071. Commission Member Training

(a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

- (2) the programs, functions, rules, and budget of the commission;
- (3) the results of the most recent formal audit of the commission;
- (4) the requirements of laws relating to open meetings, public information, and conflicts of interest; and
- (5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

§ 419.008. General Powers and Duties

(a) The commission may adopt rules for its internal management and control and for the administration of its powers and duties.

(b) The commission shall perform the duties assigned to the commission under this chapter or other law.

(c) The commission shall perform duties assigned by law to the Commission on Fire Protection Personnel Standards and Education.

(d) The commission may accept gifts, grants, and contributions from private individuals or foundations and from the federal government.

(e) Not later than January 1 of each odd-numbered year, the commission shall report to the governor and to the legislature on the commission's activities. The commission may make recommendations in those reports on matters under its jurisdiction. The commission may make other reports in its discretion.

(f) The commission may appoint advisory committees to assist it in the performance of its duties. A member of an advisory committee appointed by the commission or otherwise appointed under this chapter may not receive compensation for service on the advisory committee. A member appointed under this chapter is entitled to receive reimbursement, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, for actual and necessary expenses incurred in performing services as a member of the advisory committee.

§ 419.0082. Rulemaking

(a) In adopting or amending a rule under Section 419.008(a) or any other law, the commission shall seek the input of the fire fighter advisory committee. The commission shall permit the advisory committee to review and comment on any proposed rule, including a proposed amendment to a rule, before the rule is adopted. The recommendations of the advisory committee are subject to modification or rejection by the commission, in the commission's sole discretion, without the resubmission of the matter to the advisory committee.

(b) The commission may not adopt a rule, including an amendment to a rule, before the commission meeting held after the commission meeting at which the rule is first proposed.

(c) This section does not apply to an emergency rule adopted under Section 2001.034.

(d) Notwithstanding other provisions of this section, the commission may, without review by an advisory committee, make nonsubstantive clerical changes to a rule.

§419.0083. Negotiated Rulemaking; Alternative Dispute Resolution

(a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of commission rules;
and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

§ 419.009. Personnel

(a) The commission shall employ an executive director who shall employ other personnel necessary for the performance of commission functions.

(b) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

(d) The executive director or the executive director's designee shall develop an intraagency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intraagency postings of all positions concurrently with any public posting.

(e) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

(f) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission work force that meets federal and state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission work force of all persons for whom federal or state laws, rules, regulations, and instructions directly adopted under those laws, rules, or regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(g) A policy statement prepared under Subsection (f) must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (f)(1), and be filed with the governor's office.

(h) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (g). The report may be made separately or as a part of other biennial reports made to the legislature.

§ 419.0091. General Counsel

The commission may employ not more than one attorney. The attorney shall serve as general counsel of the commission.

§ 419.011. Complaints

(a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the complaint parties of the status of the complaint until final disposition.

§419.012 Technological Solutions

The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

[Sections 419.013-419.020 reserved for expansion]

SUBCHAPTER B
REGULATING AND ASSISTING FIRE FIGHTERS AND FIRE DEPARTMENTS

§ 419.021. Definitions

In this subchapter:

(1) "Aircraft rescue and fire protection personnel" means permanent, full-time local governmental employees who, as a permanent duty assignment, fight aircraft fires at airports, stand by for potential crash landings, and perform aircraft crash rescue.

(2) "Fire department" means a department of a local government that is staffed by permanent, full-time employees of the local government that is organized to prevent or suppress fires.

(3) "Fire protection personnel" means:

(A) permanent, full-time law enforcement officers designated as fire and arson investigators by an appropriate local authority;

(B) aircraft rescue and fire protection personnel; or

(C) permanent, full-time fire department employees who are not secretaries, stenographers, clerks, budget analysts, or similar support staff persons or other administrative employees and who are assigned duties in one or more of the following categories:

(i) fire suppression;

(ii) fire inspection;

(iii) fire and arson investigation;

(iv) marine fire fighting;

(v) aircraft rescue and fire fighting;

(vi) fire training;

(vii) fire education;

(viii) fire administration; and

(ix) any other position necessarily or customarily related to fire prevention or suppression.

(4) "Local government" means a municipality, a county, a special-purpose district or authority, or any other political subdivision of the state.

(5) "Marine fire protection personnel" means permanent, full-time local governmental employees who work aboard a fireboat and fight fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(6) "Protective clothing" means garments, including turnout coats, bunker coats, bunker pants, boots, gloves, trousers, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations, including wildland fire suppression.

(7) "Structure fire protection personnel" means permanent, full-time local government employees who engage in fire-fighting activities involving structures and may perform other emergency activities typically associated with fire-fighting duties such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire-fighting.

§ 419.022. General Powers Relating to this Subchapter

(a) The commission may:

(1) require the submission of reports and information by a local governmental agency in this state that employs fire protection personnel;

(2) assist fire departments and fire protection personnel with problems related to fire-fighting techniques, clothing, and equipment;

(3) assist fire departments and local governments with the development and updating of local fire codes;

(4) on request, assist in performing staffing studies of fire departments; and

(5) establish minimum educational, training, physical, and mental standards for admission to employment as fire protection personnel in a permanent, temporary, or probationary status and for advanced or specialized fire protection personnel positions.

(b) The commission may not change a minimum standard under Subsection (a)(5) to a standard that is less stringent than the applicable standard set by the Commission on Fire Protection Personnel Standards and Education in rules that were in effect on August 31, 1991.

§ 419.0225. Certain Rules Prohibited

(a) The commission may not adopt rules restricting competitive bidding or advertising by a certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certificate holder; or

(4) restricts the certificate holder's advertisement under a trade name.

§ 419.023. Fire Fighter Advisory Committee

(a) The commission shall establish a fire fighter advisory committee to assist the commission in matters relating to fire protection personnel, volunteer fire fighters, fire departments, and volunteer fire departments. The committee shall be composed of nine members appointed by the commission.

(b) Six members of the committee must be fire protection personnel or retired fire protection personnel who collectively represent various areas in the field of fire protection. Three members of the

committee must be certified instructors of fire protection personnel. At least one member of the committee must be a volunteer fire fighter or volunteer fire chief.

(c) A committee member serves at the will of the commission.

(d) The committee shall elect a member of the committee as the presiding officer of the committee. The committee shall meet at least twice each calendar year at the call of the presiding officer or at the call of the commission.

(e) The committee periodically shall review commission rules relating to fire protection personnel, fire departments, and other fire fighters and fire fighting organizations that are subject to regulation under this subchapter and recommend changes in the rules to the commission.

(f) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

§ 419.024. Local Government Powers

Except as expressly provided by this chapter, this subchapter does not limit the powers, rights, duties, or responsibilities of a local government and does not affect Chapter 143, Local Government Code.

§ 419.025. Manual

The commission shall set and collect a fee for a manual that states rules and minimum standards for fire protection personnel. The amount of the fee may not exceed the cost of preparing, printing, and distributing the manual.

§ 419.026. Fees for Certificates

(a) The commission shall set and collect a fee for each certificate that the commission issues or renews under this subchapter, except that if a person holds more than one certificate the commission may collect only one fee each year for the renewal of those certificates. The commission by rule shall set the amount of the fee under this subsection in an amount designed to recover the commission's costs in connection with issuing certificates under this subchapter, including the cost to the commission of obtaining fingerprint-based criminal history record information under Section 419.0325. The employing agency or entity shall pay the fee in a manner prescribed by commission rule. The certificate must be renewed annually.

(b) The commission shall set and collect a fee for each examination given to fire protection personnel for basic certification under this subchapter. The amount of the fee may not exceed the cost of preparing, printing, administering, and grading the examination.

(c) The commission may revoke, refuse to issue, or refuse to renew the certificate of fire protection personnel for failure to pay a fee required under Subsection (a).

(d) The commission shall send the fees authorized by Subsection (a) and Section 419.033(b) to the comptroller. The comptroller shall deposit a portion of the fees collected into a special account in the general revenue fund dedicated for use by the commission. In any state fiscal biennium, the comptroller may not deposit into the account fees in an amount that exceeds the amount appropriated to the commission for that biennium, less any other amount appropriated to the commission from a source other than the fees. The account is exempt from the application of Section 403.095. The comptroller shall deposit the remainder of the fees in the general revenue fund.

§ 419.027. Biennial Inspections

(a) At least biennially, the commission shall visit and inspect each institution or facility conducting courses for training fire protection personnel and recruits, each fire department, and each local governmental agency providing fire protection to determine if the department, agency, institution, or facility is complying with this chapter and commission rules.

(b) The commission may conduct risk-based inspections of institutions and facilities in addition to the inspections under Subsection (a). In determining whether to conduct an inspection of an institution or facility under this subsection, the commission shall consider:

- (1) how recently the institution or facility has come under regulation;
- (2) the institution's or facility's history of compliance with state law and commission rules;
- (3) the number of complaints filed with the commission regarding the institution or facility during the last year;
- (4) the number of paid personnel in the institution or facility;
- (5) the frequency of fire responses;
- (6) the institution's or facility's ability to inspect and maintain equipment; and
- (7) any other factor the commission considers appropriate to assess an institution's or facility's safety risk.

§ 419.028. Training Programs and Instructors

The commission may:

- (1) authorize reimbursement for a local governmental agency for expenses in attending training programs as authorized by the legislature;
- (2) through issuance or revocation of a certificate, approve or revoke the approval of an institution or facility for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits;
- (3) certify persons as qualified fire protection personnel instructors under conditions that the commission prescribes;
- (4) contract with persons or public or private agencies, as the commission considers necessary, for studies and reports that the commission requires to cooperate with local governmental agencies in training programs, and to otherwise perform its functions;
- (5) revoke the certification of fire protection personnel instructors; and
- (6) provide staff or educational materials on request to training programs or fire departments.

§ 419.029. Training Curriculum

The commission may establish minimum curriculum requirements for preparatory, in-service, and advanced courses and programs for a school operated by or for this state or a local government specifically for training fire protection personnel or recruits.

§ 419.030. Cooperation with Other Entities for Training Purposes

The commission may consult and cooperate with a local governmental agency, other governmental agency, university, college, junior college, or another institution concerning the development of training schools and programs of courses of instruction for fire protection personnel, including the preparation or implementation of continuing education or training programs.

§ 419.031. Training Assistance

The commission shall adopt rules and procedures for the administration of a training assistance program under this subchapter. The training assistance provided to fire departments under this subchapter may be provided by any of the following methods:

- (1) purchasing and providing training aids to fire departments on a temporary or permanent basis;
- (2) financing training seminars for fire departments; or
- (3) paying instructor fees to teach specialized courses for fire departments that employ fully paid fire protection personnel.

§ 419.032. Appointment of Fire Protection Personnel

(a) A fire department may not appoint a person to the fire department, except on a temporary or probationary basis, unless:

- (1) the person:
 - (A) has satisfactorily completed a preparatory program of training in fire protection at a school approved by the commission; and
 - (B) meets the qualifications established by the commission under Subsection (b); and
- (2) the commission has approved the person's fingerprint-based criminal history record information under Section 419.0325.

(b) The commission by rule may establish qualifications relating to minimum age, education, physical and mental condition, citizenship, basic certification tests, continuing education or training programs, and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel. The commission shall prescribe the means of presenting evidence of fulfillment of these qualifications. This chapter does not preclude an employing agency from establishing qualifications and standards for hiring fire protection personnel that exceed the minimum qualifications set by the commission.

(c) Fire protection personnel who receive temporary or probationary appointment and who fail to satisfactorily complete a basic course in fire protection, as prescribed by the commission, before one year after the date of the original appointment forfeit, and shall be removed from, the position. A temporary or

probationary appointment may not be extended beyond one year by renewal of appointment or otherwise, except that on petition of a fire department one year or more after the date of the forfeiture and removal, the commission may reinstate the person's temporary or probationary employment. Fire protection personnel must complete a commission-approved training course in fire suppression before being assigned full-time to fire suppression duties. The commission may, on application by a fire department and after receiving the comments and advice of the fire fighter advisory committee, extend from one year to a period not to exceed two years the time allowed for fire protection personnel receiving a temporary or probationary appointment to successfully complete a basic course in fire protection.

(d) The commission may certify persons who are qualified under this subchapter to be fire protection personnel. The commission shall adopt rules relating to presentation of evidence of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the commission for approved fire protection education and training programs in this state and shall issue to a person meeting the rules and the requirements of Section 419.0325 a certificate evidencing satisfaction of Subsection (a) and (b). The commission may waive any certification requirement, except those under Section 419.0325, for an applicant with a valid license from another state having certification requirements substantially equivalent to those of this state.

(e) Fire protection personnel serving under permanent appointment before September 1, 1972, are not required to meet a requirement of Subsection (a) or (b) as a condition of tenure or continued employment or for eligibility for a promotional examination for which they are otherwise eligible. The fire protection personnel are eligible to attend training courses subject to commission rules.

(f) A local government may appoint a person to the position of head of the fire department, though the person is not certified by the commission as fire protection personnel, if the person either has at least 10 years' experience as a volunteer fire fighter or may be eligible to become certified under the provisions of Subsection (d) relating to other states or jurisdictions. The appointment is on a temporary basis pending certification of the person as fire protection personnel by the commission under this subsection. The temporary appointment may not be extended beyond one year by renewal of appointment or otherwise. In addition to rules adopted under Subsection (d) relating to other states or jurisdictions, the commission shall adopt rules for purposes of this subsection relating to presentation of evidence that a person has been a volunteer fire fighter for the required period. The rules may not include more stringent requirements on the nature of the volunteer fire departments with which a person may accumulate the required period of volunteer service than the requirements contained in the definition of an organized volunteer fire department under Chapter 615. The commission shall certify as fire protection personnel a person who is serving as a temporarily appointed department head under this subsection and who:

(1) presents satisfactory evidence that the person has been a volunteer fire fighter for at least 10 years and passes the commission's basic certification examination administered under this subchapter on the first or second attempt;

(2) presents satisfactory evidence that the person is eligible to be certified as fire protection personnel under Subsection (d) and passes the commission's basic certification examination administered under this subchapter on the first or second attempt; or

(3) satisfies the requirements of Subsections (a) and (b).

(g) This chapter does not prevent a fire department from assigning volunteer fire fighters, or other auxiliary fire fighters who are not fire protection personnel to fire suppression, fire education, or fire station duties.

(h) This chapter does not prevent an employee of a local government from being a volunteer fire fighter.

§ 419.0321. Part-Time Fire Protection Employees

(a) A fire department may employ part-time fire protection employees under this section. The commission shall create a separate certification class for part-time fire protection employees.

(b) To become certified as a part-time fire protection employee, a person must:

(1) satisfy the requirements of Sections 419.032(a) and (b) or Section 419.032(d) for certification as fire protection personnel; and

(2) be employed by a fire department as a temporary or probationary part-time fire protection employee.

(c) A fire department may not employ a person as a part-time fire protection employee, except on a temporary or probationary basis, unless the person has been certified by the commission as a part-time fire protection employee. A temporary or probationary employment may not extend beyond one year or be renewed, except that on petition of a fire department one year or more after the date that a temporary or probationary part-time employment expires, the commission may reinstate the person's temporary or probationary part-time employment.

(d) A person who is certified as a part-time fire protection employee and a fire department or local government that employs a part-time fire protection employee are subject to this subchapter and applicable commission rules to the same extent that this subchapter and applicable commission rules apply to certified fire protection personnel and to a fire department or local government in the employment of fire protection personnel.

(e) A part-time fire protection employee may not:

(1) work more than 24 hours a week or average more than approximately 24 hours a week during a work cycle, as appropriate, for an employing fire department; or

(2) work more than 500 hours a year for an employing fire department in duties related to fire suppression.

(f) A part-time fire protection employee may work, on a temporary basis only, in place of a person who is fire protection personnel who is absent from work because of vacation, illness, injury, or administrative leave. Work may not be assigned under this subsection in a manner that will cause a reduction in the number of authorized full-time positions in a fire department. Hours worked under this subsection are not counted when computing hours under Subsection (e) (1).

§ 419.0322. Categories and Designation of Persons Performing Fire Protection Duties

(a) Each person who is assigned by a fire department to perform one or more duties listed under Section 419.021 (3) (C) must be:

(1) fire protection personnel;

(2) a part-time fire protection employee; or

(3) a volunteer or other auxiliary fire fighter.

(b) Each fire department shall designate each person who is assigned by the department to perform one or more duties listed under Section 419.021(3) (C) as fire protection personnel, a part-time fire protection employee, or a volunteer or auxiliary fire fighter, but a department may not designate the same person under more than one category under this section. The designation shall be made on the records

of the department and the designation shall be made available for inspection by the commission or sent to the commission on request.

(c) A fire department may not compensate, reimburse, or provide benefits to a person the department has designated as a volunteer or other auxiliary fire fighter to the extent that the person would be considered fully paid fire protection personnel.

(d) A person designated as a part-time fire protection employee under this section is subject to Section 419.0321.

§419.0325. Criminal History Record Information Approval Required for Certification

(a) The commission may not certify a person as fire protection personnel unless the commission, after review, has approved fingerprint-based criminal history record information about the person obtained from the Department of Public Safety under Subchapter F, Chapter 411, and from the Federal Bureau of Investigation under Section 411.087.

(b) The applicant for certification or the fire department may submit the required fingerprint-based state and national criminal history record information to the commission. If neither the applicant nor the fire department submits the required criminal history record information to the commission, the commission shall obtain the required criminal history record information pursuant to Sections 411.087 and 411.1236.

(c) The commission by rule shall establish criteria for denying a person certification to be fire protection personnel based on the person's criminal history record information. The criteria must relate to a person's fitness to serve as fire protection personnel.

(d) Criminal history record information received by the commission is privileged and confidential and for commission use only.

§ 419.033. Certificate Expiration

(a) The commission by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, certificate fees payable on the date set by commission rule shall be prorated on a monthly basis so that each fire department or other employing entity shall pay only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(b) The commission shall issue to a person who has held a commission certificate but is no longer employed by an entity that is regulated by the commission a one-time certificate that states the level of certification held by the person on the date the person left the regulated entity's employment. The commission shall prescribe the procedure under which a person applies for a certificate under this subsection. The commission shall set and collect from the person a fee of not more than \$35 for the certificate.

§ 419.034. Certificate Renewal

(a) A fire department or other employing entity may renew an unexpired certification before the expiration date of the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee.

(b) If a person's certificate has been expired for 30 days or less, the fire department or other employing entity may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(c) If a person's certificate has been expired for longer than 30 days but less than one year, the fire department or other employing entity may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(d) If a person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to recover the cost of administering the proficiency examination. The fire department or other employing entity shall pay the certification fee.

(e) Notwithstanding any other law, the commission by rule may establish a procedure to waive the late fees or examination required by this section if:

(1) the person's certificate expired because of the employing entity's good faith clerical error, including the failure of the employing entity to submit fees in a timely manner; or

(2) the person's certificate expired as a result of termination of the person's employment and the person has been restored to employment as a result of a disciplinary procedure or a court action.

(f) At least 30 days before the expiration of a person's certificate, the commission shall send written notice of the impending certificate expiration to the last known fire department or other employing entity employing the regulated person according to the records of the commission.

§ 419.0341. Individual Certificate Holder; Certificate Renewal

(a) Notwithstanding any other provision of this subchapter, a person may be certified as fire protection personnel and continue to hold and renew the certificate without regard to whether the person is employed or continues to be employed by a local authority or fire department.

(b) A person who is certified as fire protection personnel who is not employed by a local authority or fire department may renew an unexpired certificate before the expiration of the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee.

(c) If the person's certificate has been expired for 30 days or less, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(d) If the person's certificate has been expired for longer than 30 days but less than one year, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee for the certificate.

(e) If the person's certificate has been expired for one year or longer, the person may not renew the certificate. The person may obtain a new certificate by submitting to the proficiency examination or repeating the requirements and procedures for obtaining an original certificate. The commission shall charge a fee to cover the cost of administering the proficiency examination.

(f) At least 30 days before the expiration of the certificate of a person who is not employed by a local authority or fire department, the commission shall send written notice of the impending certificate expiration to the last known address of the person according to the records of the commission.

(g) The commission shall establish by rule the procedures and requirements for evidence of compliance with this section.

(h) Notwithstanding any other law, the commission by rule may establish a procedure to waive the late fees or examination required by this section for a person whose certificate expired because of the person's good faith clerical error, including the person's failure to submit fees in a timely manner.

§ 419.035. Certification Examinations

(a) Not later than the 30th day after the date on which a certification examination is administered under this subchapter, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails an examination administered under this subchapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

§ 419.036. Disciplinary Actions

(a) The commission may revoke or suspend a certificate, place on probation a person whose certificate has been suspended, or reprimand a regulated person for a violation of this subchapter or a rule of the commission. If a regulated person's suspension is probated, the commission may require the practitioner:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) If the commission proposes to suspend or revoke a person's certificate, the person is entitled to a hearing before the commission or a hearing officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission.

(c) A complaint case opened by the commission based on a violation found during an inspection conducted under Section 419.027 must be opened not later than the 30th day after the date the commission provides notice of the violation to the applicable department, agency, institution, or facility.

(d) The commission by rule shall create a matrix for determining penalty amounts and disciplinary actions for fire departments, training providers, and certified personnel who commit violations of this chapter or a rule adopted under this chapter. In developing the matrix, the commission shall consider the following factors:

- (1) compliance history;
- (2) seriousness of the violation;
- (3) the safety threat to the public or fire personnel;
- (4) any mitigating factors; and
- (5) any other factors the commission considers appropriate.

§ 419.0365. Disciplinary Hearing

If the commission proposes to suspend, revoke, or refuse to renew a person's certificate, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001. Rules of practice adopted by the commission under Section 2001.004 applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

§419.0366 Tracking and Analysis of Complaint and Violation Data

(a) The commission shall develop and implement a method for tracking and categorizing the sources and types of complaints filed with the commission and of violations of this chapter or a rule adopted under this chapter.

(b) The commission shall analyze the complaint and violation data maintained under Subsection (a) to identify trends and areas that may require additional regulation or enforcement.

§ 419.037. Appointment as Marine Fire Protection Personnel

(a) The commission shall adopt requirements for certification of marine fire protection personnel. A person may not be appointed to a marine fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Marine fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Marine fire protection personnel serving under permanent appointment with five or more years' service before September 1, 1978, have satisfied the training requirements by experience.

§ 419.038. Appointment to Aircraft Fire Fighting and Rescue Fire Protection Personnel Position

(a) The commission shall adopt requirements for certification of aircraft fire fighting and rescue fire protection personnel. A person may not be appointed to an aircraft fire fighting and rescue fire protection personnel position, except on a probationary basis, unless the person has completed the training prescribed by the commission.

(b) Aircraft fire fighting and rescue fire protection personnel appointed on a probationary basis must complete the prescribed training before two years after the date of appointment.

(c) Aircraft fire fighting and rescue fire protection personnel serving under permanent appointment with two or more years' service before September 1, 1984, have satisfied the training requirements.

§ 419.039. Criminal Penalty

(a) A person commits an offense if the person:

- (1) accepts an appointment in violation of Section 419.032 or 419.037;
- (2) knowingly accepts an appointment in violation of Section 419.038;
- (3) appoints or retains a person in violation of Section 419.032; or
- (4) appoints a person in violation of Section 419.037 or 419.038.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

§ 419.040. Protective Clothing

(a) A fire department shall purchase, provide, and maintain a complete ensemble of appropriate protective clothing for each of its fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists.

(b) The protective clothing shall be suitable for the task that the individual is expected to perform and must comply with the minimum standards of the National Fire Protection Association or its successor.

(c) The fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its protective clothing.

§ 419.041. Self-Contained Breathing Apparatus

(a) A fire department shall furnish with self-contained breathing apparatus all of its fire protection personnel who engage in operations where the personnel might encounter atmospheres that are immediately dangerous to life or health, where the potential for such exposure exists, or where the atmosphere is unknown.

(b) All self-contained breathing apparatus shall comply with the minimum standards of the National Fire Protection Association or its successor.

(c) A fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its breathing apparatus.

(d) A fire department shall require each self-contained breathing apparatus used by the department to be inspected at least monthly. The inspection shall comply with the minimum standards of the National Fire Protection Association or its successor.

(e) A fire department shall require each self-contained breathing apparatus used by the department to be tested annually for overall condition and proper functioning. The tests shall comply with the minimum standards of the National Fire Protection Association or its successor.

(f) A fire department that uses self-contained breathing apparatus shall have samples of the breathing air used to refill the cylinders of the self-contained breathing apparatus tested at least every six months by a competent testing laboratory that has equipment designed to test compressed breathing air. The quality of the compressed breathing air and the laboratory conducting the tests of the compressed breathing air quality must conform with the quality and testing procedures established by the National Fire Protection Association or its successor.

§ 419.042. Personal Alert Safety Systems

(a) A fire department shall purchase, provide, and maintain a personal alert safety system for each of its fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists.

(b) The personal alert safety system must comply with minimum standards of the National Fire Protection Association or its successor.

(c) The fire department shall develop and maintain a standard operating procedure covering the proper use, selection, care, and maintenance of all of its personal alert safety systems.

§ 419.043. Applicable National Fire Protection Association Standard

The National Fire Protection Association standard applicable to protective clothing, self-contained breathing apparatus, or personal alert safety systems is the standard in effect when a fire-fighting agency contracts to purchase the item. The agency may continue to use an item that was in use or contracted for before a change in a standard unless the commission determines that the continued use constitutes an undue risk to the wearer, in which case the commission shall order the use be discontinued and shall set an appropriate date for compliance with the revised standard.

§ 419.044. Incident Management System

(a) A fire department shall develop and maintain an incident management system. The system shall include a written standard operating procedure for the management of emergency incidents. The system shall require operations to be conducted in a manner that recognizes hazards and prevents accidents and injuries.

(b) A fire department shall require all fire protection personnel to be trained in and to use the incident management system. The system shall also be applied to all drills, exercises, and other situations that involve hazards similar to those encountered at actual emergency incidents.

(c) The incident management system shall comply with the minimum standards established by the National Fire Protection Association or its successor.

§ 419.045. Personnel Accountability System

(a) A fire department shall develop and maintain a standard operating procedure for personnel accountability. The system shall provide a rapid accounting of all personnel at an emergency incident.

(b) A fire department shall require all personnel to be trained in and to use the personnel accountability system.

(c) The personnel accountability system shall comply with the minimum standards established by the National Fire Protection Association or its successor. If the National Fire Protection Association standard applicable to personnel accountability systems is revised, the fire department shall comply with the new standard within one year from the effective date of the new standard.

§ 419.046. Fire Protection Personnel Operating at Emergency Incidents

(a) A fire department shall develop, maintain, and use a standard operating procedure covering fire protection personnel operating at emergency incidents. The procedure shall specify an adequate number of personnel to safely conduct emergency scene operations. The procedure shall limit operations to those that can be safely performed by the personnel available at the scene.

(b) A fire department shall require all personnel to be trained in and to use the standard operating procedure pertaining to fire protection personnel operating at emergency incidents.

(c) The minimum standards established by the National Fire Protection Association or its successor for operating procedures for fire protection personnel operating at an emergency incident may be used as a guideline for fire departments when developing standard operating procedures.

(d) The standard operating procedures for structure fires shall comply with the Occupational Safety and Health Administration's Final Rule, 29 C.F.R. Section 1910.134 (g)(4), procedures for interior structural fire fighting of July 1, 1998.

§ 419.047. Commission Enforcement

The commission shall enforce Sections 419.040, 419.041, 419.042, 419.043, 419.044, 419.045, and 419.046. The commission may adopt minimum standards consistent with those sections for protective clothing, self-contained breathing apparatus, personal alert safety systems, incident management systems, personnel accountability systems, fire protection personnel operating at emergency incidents, and applicable National Fire Association standards for fire protection personnel.

§ 419.048 Fire Protection Personnel Injury Data; Recommendations to Reduce Injuries

(a) Pursuant to Section 417.004, the commission and the commissioner of insurance, as necessary to allow the agencies to perform their statutory duties, shall transfer information between the two agencies, including injury information from the Texas Fire Incident Reporting System and workers' compensation data showing claims filed by fire protection personnel.

(b) Personally identifiable information received by the commission under this section relating to injured fire protection personnel is confidential. The commission may not release, and a person may not gain access to, any information that could reasonably be expected to reveal the identity of injured fire protection personnel.

(c) The commission shall evaluate information and data on fire protection personnel injuries and develop recommendations for reducing fire protection personnel injuries. The commission shall forward the recommendations to the state fire marshal not later than September 1 of each year for inclusion in the annual report required by Section 417.0075.

(d) The commission shall establish criteria for evaluating fire protection personnel injury information to determine the nature of injuries that the commission should investigate. Based on these investigations, the commission shall identify fire departments in need of assistance in reducing injuries and may provide assistance to those fire departments.

[Sections 419.049-419.070 reserved for expansion]

SUBCHAPTER D VOLUNTEER FIRE FIGHTERS AND FIRE DEPARTMENTS

§ 419.071. Voluntary Certification Program for Volunteer Fire Fighters and Fire Departments

(a) The commission shall develop a voluntary certification program for volunteer fire fighters and volunteer fire departments. The program must include the same components and requirements as the certification program established under Subchapter B. 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.

(b) 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. The certificate is subject to the same issuance and renewal requirements as a certificate issued under Subchapter B, and a certificate holder may be disciplined and regulated in the same manner as provided by Subchapter B.

(c) A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters is not required to participate in any component of the commission's program under this chapter. A volunteer fire fighter, volunteer fire department, or facility that provides training to volunteer fire fighters may on request participate in one or more components of the program under this subchapter as appropriate. The volunteer fire department with which a volunteer fire fighter is affiliated may, but is not required to, pay the certificate fee for a volunteer fire fighter certified under this subchapter.

(d) At least 30 days before the expiration of a volunteer fire fighter's certificate, the commission shall send written notice of the impending certificate expiration to the last known address of the fire fighter according to the records of the commission.

§ 419.072. Obtaining Paid Employment as Fire Fighter

(a) Notwithstanding anything to the contrary in Subchapter B, a fire department may appoint as fire protection personnel a volunteer fire fighter or former volunteer fire fighter who is certified by the commission under this subchapter. On receiving the appointment from the employing fire department, the person is considered to be certified fire protection personnel.

(b) In this section, "fire department" has the meaning assigned by Section 419.021.

§ 419.073. Individual Certificate Holder; Certificate Renewal

(a) A volunteer fire fighter certified under this subchapter may continue to hold and renew the certificate without regard to whether the person continues to be affiliated with a volunteer fire department.

(b) A former volunteer fire fighter who is no longer affiliated with a volunteer fire department may renew an unexpired certificate before the expiration of the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee.

(c) If a person's certificate has been expired for 30 days or less, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission the required renewal fee and a fee that is one-half of the certification fee for the certificate.

(d) If a person's certificate has been expired for longer than 30 days but less than one year, the person may renew the certificate by:

(1) submitting evidence satisfactory to the commission of completion of any required professional education; and

(2) paying to the commission all unpaid renewal fees and a fee that is equal to the certification fee.

(e) If a person's certificate has been expired for one year or longer, the person may not renew the certificate.

(f) The commission shall establish by rule the requirements evidence must meet to be considered satisfactory for the purpose of complying with this section.

(g) Notwithstanding any other law, the commission may by rule establish a procedure to recertify a person if:

(1) the person's certification has lapsed because of the person's good faith clerical error, including the person's failure to submit fees in a timely manner; or

(2) the person's certification has lapsed as a result of termination of the person's employment and the person has been restored to employment as a result of a disciplinary procedure.

[Sections 419.074-419.080 reserved for expansion]

SUBCHAPTER E
PAID FIRE FIGHTERS AND FIRE DEPARTMENTS NOT CONNECTED
WITH A LOCAL GOVERNMENT

§ 419.081. Mandatory Inspection and Regulation of Certain State Agencies

(a) Each state agency providing fire protection shall furnish all of its employees who engage in fire fighting with self-contained breathing apparatus as provided by Section 419.041 for local fire departments.

(b) At least biennially, the commission shall visit and inspect each state agency providing fire protection to determine if the agency is complying with applicable portions of this chapter and commission rules.

§ 419.082. Training for State Agency Fire Fighters

The commission may allow a state agency employee who provides fire protection to attend fire protection training programs conducted under Subchapter B, including an employee who is not regulated under Section 419.083. The commission may authorize reimbursement for a state agency's costs under this section as authorized by the legislature, whether or not the agency is regulated under Section 419.083.

§ 419.083. Voluntary Regulation of Certain State Officials, State Agencies, and State Agency Employees

(a) Certain state officials, state agencies, and state agency employees may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A state agency employee who would be fire protection personnel under Section 419.021 if the person were employed by a local government, or who is employed full-time in the field of fire instruction or fire training evaluation and who meets the commission's training and experience requirements for fire protection personnel, may apply to the commission for regulation under this section. The fact that a state agency employee becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section, except that the commission may require reports from the agency that relate to the employee. A state agency may pay an employee's fees under this subsection.

(c) A person who is elected to public office in state government and who holds a commission certificate at the time the person takes office may maintain the certificate by applying to the commission for regulation under this section and by paying the required renewal fee in accordance with Section 419.034. A person applying for regulation under this section must comply with continuing education requirements applicable to the discipline in which the certificate is held in order to maintain the certificate.

(d) A state agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(e) The commission shall prescribe the procedures under which a state official, state agency, or agency employee may apply for regulation under this section and the means by which the state official, state agency, or agency employee may present evidence that the official, agency, or employee is eligible for regulation under this section.

(f) The commission shall determine whether a state official, state agency, or agency employee that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the official, agency, or employee meets the requirements of Subsection (b), (c), or (d), and the commission shall notify the applying official, agency, or employee of its decision.

(g) A state official, state agency, or agency employee regulated under this section is subject to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(h) A state agency or agency employee that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a state agency or agency employee must come into compliance with each requirement.

§ 419.084. Voluntary Regulation of Certain Federal Agencies and Federal Fire Fighters

(a) Certain federal agencies and federal fire fighters may apply to the commission for regulation under one or more discrete components of the commission's regulatory authority under Subchapter B. The commission shall define the components by rule.

(b) A federal fire fighter who would be fire protection personnel under Section 419.021 if the person were employed by a local government may apply to the commission for regulation under this section. The fact that a federal fire fighter becomes regulated by the commission under this section does not make the employing agency subject to commission regulation under this section.

(c) A federal agency may apply to the commission for regulation under this section if the agency is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021.

(d) The commission shall prescribe the procedures under which a federal agency or federal fire fighter may apply for regulation under this section and the means by which a federal agency or federal fire fighter may present evidence that the agency or fire fighter is eligible for regulation under this section.

(e) The commission shall determine whether a federal agency or federal fire fighter that has applied for regulation is eligible for regulation under this section. The commission shall approve a request for regulation if the agency or fire fighter meets the requirements of Subsection (b) or (c), and the commission shall notify the applying agency or fire fighter of its decision.

(f) A federal agency or federal fire fighter regulated under this section is subject, to the extent allowed by federal law, to the appropriate component or components of Subchapter B and applicable rules adopted under this chapter to the same extent as a local government, a fire department, or fire protection personnel employed by a local government.

(g) A federal agency or federal fire fighter that is subject to regulation under this section is entitled to a reasonable period in which to comply with applicable requirements. The commission by rule shall determine the time period in which a federal agency or federal fire fighter must come into compliance with each requirement.

(h) In this section, "federal fire fighter" means a person who is employed to provide fire protection to property of the federal government by:

- (1) an agency of the federal government; or
- (2) an entity that contracts with the federal government.

§ 419.085. Voluntary Regulation of Certain Nongovernmental Departments

(a) A nongovernmental entity may apply to the commission for regulation under Subchapter B if:

(1) the entity is the employing authority for persons who, if employed by a local government, would be fire protection personnel under Section 419.021; and

(2) at the time of application, those fire protection employees are employed to provide fire protection for an unincorporated area that:

(A) constitutes a rating territory established by the State Board of Insurance with a protected key rate assigned by the board; and

(B) has a population of more than 25,000.

(b) The commission shall prescribe the procedures under which a nongovernmental entity may apply for regulation under this section and the means by which it may present evidence that it is eligible for regulation under Subsection (a).

(c) The commission shall determine whether an entity that has applied for regulation under this section is eligible for regulation under Subsection (a). The commission shall approve a request for regulation if the entity meets the requirements of Subsection (a), and the commission shall notify the applying entity and the affected fire protection employees of its decision.

(d) A nongovernmental entity, department, and fire protection employee regulated under this section are subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a local government, a fire department, or fire protection personnel employed by a local government.

(e) A person, department, or other entity that is subject to regulation under this section is entitled to a reasonable period in which to comply with the requirements of Subchapter B and applicable commission rules. The commission by rule shall determine the time period in which a person, department, or other entity must come into compliance with each requirement.

§ 419.086. Eligibility for Certain Training Assistance

If an entity or the employees of an entity are regulated under this subchapter so that as a consequence of the regulation a certification fee is paid to the commission on behalf of each employee of the entity who would be fire protection personnel under Section 419.021 if the employee were employed by a local government, the commission shall use the special account in the general revenue fund created under Section 419.026(d) to provide training assistance to the entity to the same extent that the commission provides training assistance to a fire department under Section 419.031.

§ 419.087. Mandatory Regulation of Certain Nongovernmental Organizations and Personnel

(a) In this section, "fire department," "fire protection personnel," and "local government" have the meanings assigned by Section 419.021.

(b) An organization that is not a local government, a department of a local government, or a state or federal agency is subject to regulation by the commission under Subchapter B if the organization:

(1) provides fire protection for a local government for profit under a contract or other agreement with the local government; and

(2) would be a fire department if it were a department of a local government.

(c) A person who is not an employee of a local government or of a state or federal agency is subject to regulation by the commission under Subchapter B if the person:

(1) provides fire protection for a local government under a contract or other agreement between the local government and either the person or an organization subject to regulation under Subsection (b); and

(2) would be fire protection personnel if employed by a local government.

(d) A person or organization that is subject to regulation by the commission under this section is subject to Subchapter B and applicable commission rules to the same extent that Subchapter B and applicable commission rules apply to a fire department or to fire protection personnel.

(e) The commission may create a separate certification class for persons regulated under this section.

(f) A local government which provided fire protection for its citizens utilizing a fire department and fire protection personnel as of May 31, 1997, may not thereafter provide fire protection by utilizing an organization which is not a local government, a department of local government, or a state or federal agency and which provides fire protection for the local government for profit under a contract or other agreement with the local government without approval of a majority of the voters at an election called for that purpose.

[Sections 419.088 - 419.100 reserved for expansion]

SUBCHAPTER F REVIEW OF FIRE DEPARTMENT TESTS

§ 419.101. Applicability

This subchapter applies to the initial tests administered by a fire department used to measure the ability of a person to perform the essential functions of a job.

§ 419.102. Review of Tests

(a) The commission shall authorize the Commission on Human Rights to review the administration of tests by fire departments to determine whether the tests are administered in a manner that complies with Chapter 21, Labor Code.

(b) The Commission on Human Rights shall by rule establish an objective system to determine how to select the departments the Commission on Human Rights will review and when the Commission on Human Rights will review a certain department.

§ 419.103. Discrimination Prohibited; Disparate Impact

(a) A test may not be administered in a manner that discriminates on the basis of race or color. A test may not be administered in a manner that discriminates on the basis of disability, religion, sex, national origin, or age unless the discrimination is a result of a bona fide occupational qualification.

(b) In determining whether the administration of a test complies with Chapter 21, Labor Code, the Commission on Human Rights shall ascertain whether the test has had a disparate impact on any group defined by race, color, disability, religion, sex, national origin, or age. If the disparate impact on a group is the result of a bona fide occupational qualification, the fire department has complied with that chapter.

§ 419.104. Violation; Recommendations of Commission on Human Rights

(a) If the Commission on Human Rights determines that the administration of a test by a fire department does not comply with Chapter 21, Labor Code, the Commission on Human Rights shall recommend appropriate changes for the administration of the test.

(b) The department shall consider a recommendation made under Subsection (a) and shall revise the administration of its tests to comply with this chapter.

§ 419.105. Authority to Administer Test

This subchapter does not affect the authority of a fire department to administer, devise, or conduct a test or to require a certain level of performance on a test as a prerequisite to employment or continued employment.

[Sections 419.106 - 419.901 reserved for expansion]

**SUBCHAPTER Z
MISCELLANEOUS PROVISIONS**

§ 419.902. Coordination with Firemen's Training School

The commission and the director of the Texas Engineering Extension Service of the Texas A&M University System shall enter into a memorandum of understanding to coordinate the responsibilities of the commission with the training provided by the firemen's training school operated under Section 86.16, Education Code.

§ 419.903. Coordination with Texas Forest Service

The commission and the director of the Texas Forest Service shall enter into a memorandum of understanding to coordinate the provision of training assistance and other assistance to fire-fighting entities.

§ 419.904. Technical Assistance to Emergency Services Districts

The commission may on request provide technical assistance to emergency services districts, including advice on the efficient and effective provision of fire protection within a district.

§ 419.905. Appeal of Commission Decisions

(a) A person dissatisfied with an action of the commission may appeal the action in accordance with Chapter 2001.

(b) The attorney general, the district or county attorney, or an assistant of one of these persons shall represent the commission in an appeal under this section.

§ 419.906. Administrative and Civil Penalties; Injunction

(a) In addition to other penalties imposed by law, a person who violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed \$1,000 for each violation. In addition to the administrative penalty, the person must pay costs incurred by the attorney general's office under this subsection. The administrative penalty shall be assessed in a proceeding conducted in accordance with Chapter 2001.

(b) The attorney general or the commission may institute a suit for an injunction to enforce this chapter. Venue for the suit is in a district court in Travis County. The court may also award the commission a civil penalty not to exceed \$1,000 for each violation of this chapter or a rule adopted under this chapter, plus court costs, reasonable attorney fees, and costs incurred by the commission or the attorney general's office under this subsection.

(c) The commission may enter into a consent order or settlement agreement with any person under the commission's jurisdiction under this chapter or other law. The consent order or settlement agreement may include an agreement between the commission and the person under which the person will make restitution to a third party or pay a monetary penalty to the commission. The consent order or settlement agreement is valid and enforceable without regard to whether the commission is authorized to order restitution or impose the monetary penalty under other law in the absence of the affected person's agreement.

(d) The commission may enter a default order if a fire department or training provider fails to take action to correct a violation found during an inspection conducted under this chapter or to request an informal settlement conference before the 61st day after the date the commission provides to the department or provider notice requiring the department or provider to correct the violation.

(e) Notwithstanding Section 419.0365, the commission may temporarily suspend a person's or regulated entity's certificate on a determination by a panel of the commission that continued activity by the person or entity would present an immediate threat to the public or to fire service trainees. The panel may hold a meeting for purposes of this subsection by teleconference call pursuant to Section 551.125. A person or regulated entity whose certificate is temporarily suspended under this subsection is entitled to a hearing before the commission not later than the 14th day after the date of the temporary suspension.

§419.907. Location of Offices of Commission, State Fire Marshal, and Texas Forest Service

(a) To the extent feasible, the commission, the state fire marshal, and the Texas Forest Service shall co-locate office space outside of Travis County used for related functions performed by the three entities.

(b) The commission, the commissioner of insurance, and the Texas Forest Service may enter into a memorandum of understanding to implement this section.

§ 419.908 Cooperation with Federal and State Entities in a Disaster

In a declared state of disaster under Section 418.014, the commission shall coordinate with appropriate state and federal agencies, including the governor's office of the homeland security and the Federal Emergency Management Agency.

§419.909. Fire Safety Inspections

(a) Only an individual certified by the commission as a fire inspector may conduct a fire safety inspection required by a state or local law, rule, regulation, or ordinance.

(b) A fire safety inspection required by a state or local law, rule, regulation, or ordinance must be conducted in accordance with:

- (1) the most recent local fire code; or
- (2) the most recent fire code adopted by the state fire marshal.

(c) This section does not apply to state agency personnel who conduct a life safety code survey of a building or facility in connection with determining whether to issue or renew a license under Chapter 142, 241, 242, 243, 244, 245, 247, 248, 251, 252, 464, 466, or 577, Health and Safety Code, or Chapter 103, Human Resources Code.