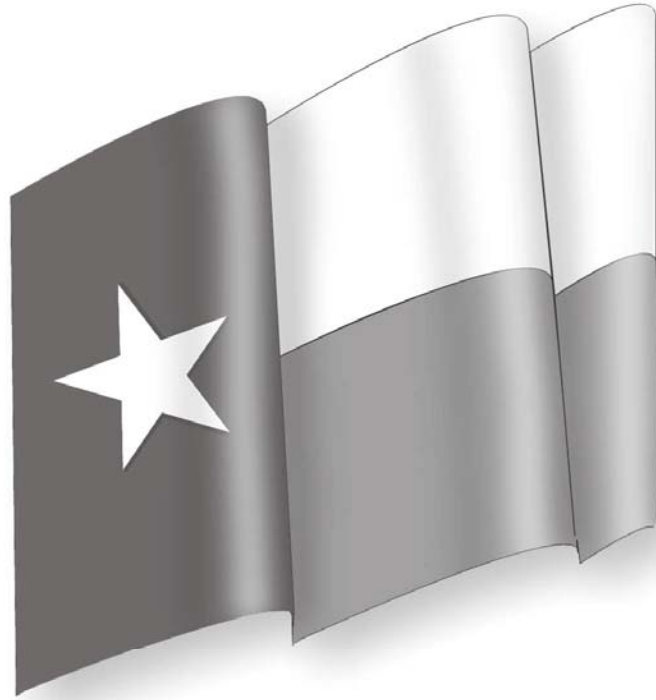


*Summary of Sunset
Commission Recommendations*



Texas Structural Pest Control Board

**March 2007
(Revised)**





Texas Structural Pest Control Board

Agency at a Glance

The Texas Structural Pest Control Board (the Board) seeks to protect the public and the environment against the misuse of pesticides by ensuring that those who perform pest control activities in buildings, homes, and other structures are qualified, competent, and adhere to established professional standards. The Legislature created the Board in 1971 to regulate the structural pest control industry. To accomplish its mission, the Board:

- ◆ licenses commercial and noncommercial pest control professionals;
- ◆ ensures compliance with the Texas Structural Pest Control Act, Board rules, and federal law by investigating and resolving complaints, routinely inspecting pest control businesses, and taking disciplinary action when necessary; and
- ◆ provides information to licensees and the public.



*For additional information,
please contact Karen Latta
at (512) 463-1300.*

Key Facts

- ◆ **Funding.** In fiscal year 2006, the Board spent nearly \$1.4 million, funded primarily from licensing and examination fees, but also from federal grants from the Environmental Protection Agency.
- ◆ **Staffing.** The Board currently has 29 employees. Thirteen and a half perform licensing and administrative functions in Austin and the other 15.5 work throughout the state as field investigators.
- ◆ **Licensing.** The Board regulates more than 3,400 commercial pest control businesses and nearly 13,000 individual pesticide applicators. Individual applicators fall into three skill levels: apprentice, technician, and certified applicator. In addition, the agency licenses school employees and the employees of certain facilities who perform pest control as part of their jobs.
- ◆ **Enforcement.** In fiscal year 2006, the Board resolved 868 complaints that were either initiated by the agency or submitted by the public. In response, the Board assessed administrative penalties in 90 cases, put a licensee on probation in seven cases, and revoked a license in six cases.
- ◆ **Pest Control in Schools.** Statute requires all public school districts to implement an Integrated Pest Management Program to ensure they use the least toxic pest control alternatives available. The Board meets this requirement by inspecting school districts and ensuring that school pesticide applicators are licensed.
- ◆ **Federal Coordination.** Federal law requires all states to regulate the use of pesticides by licensing certified applicators and taking enforcement action when necessary. The Board performs these duties, in addition to its state-mandated regulatory duties, and receives some federal grant funding in return.

Board Members (9)

Tomas Cantu, Chair (McAllen)
Madeline Kirven-Gamble, Vice Chair (Dallas)
Charles Brown (Bryan)
Roger Gold, Ph.D., Ex Officio, Department
of Entomology at Texas A&M University
(College Station)
Brenda Hill (Nacogdoches)
John Lee Morrison (San Antonio)
Randy Rivera, Ex Officio, Texas Department of
Agriculture (Austin)
Richard Rogers (Richardson)
Thandi Ziqubu-Page, MPH, Ph.D., Ex Officio,
Texas Department of State Health Services
(Austin)

Agency Head

Rita Martinez, Acting Executive Director
(512) 305-8250

Recommendations

1. Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture.
2. Allow the agency to determine its inspection frequency based on an assessment of risk.
3. Require the agency to develop a formal process for exam development and revision.
4. Improve the Integrated Pest Management Program to provide more clear and consistent guidance to schools.
5. Conform key elements of the agency's licensing and regulatory functions to commonly applied licensing practices.
6. Allow beekeepers to remove bees from structures without a pest control license, as long as they do not use pesticides.

Issue 1

Texas No Longer Needs an Independent Agency to Regulate Structural Pest Control.

Texas has a continuing need to regulate the structural pest control industry to protect the public and the environment from the misuse of pesticides. However, Texas does not have a continuing need for a separate, independent agency to perform this function. The agency's responsibilities could be successfully transferred to the Department of Agriculture (the Department).

Recommendation

Change in Statute

1.1 Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture.

This recommendation would abolish the Board as an independent agency and transfer the regulation of the structural pest control industry to the Department of Agriculture. The Commissioner of Agriculture would be responsible for administering the Structural Pest Control Act, including licensing and taking enforcement action against pest control operators and providing information to licensees, school districts, and the public. This recommendation would also create an advisory committee to advise the Department on structural pest control issues. The Agriculture Commissioner would appoint the members of the advisory committee, including experts in the pest control industry and representatives of the public.

The following material details specific problems relating to the Structural Pest Control Board that, because of the recommendation to abolish and transfer, would need to be addressed as recommendations to the Texas Department of Agriculture.

Issue 2

Statutory Inspection Requirements Limit the Board's Ability to Focus Its Limited Resources on Areas of Highest Risk.

Key Findings

- ◆ A biennial inspection requirement means the agency spends its limited resources on businesses with few or no compliance problems.
- ◆ The biennial inspection requirement prevents the agency from focusing on other priorities.
- ◆ The Board's current approach to inspecting school integrated pest management programs does not ensure that they are inspected regularly.
- ◆ The difficulty of identifying noncommercial facilities subject to regulation affects the Board's ability to adequately inspect and regulate these facilities.

The Board conducts inspections of commercial pest control businesses, public schools, and certain other facilities to ensure compliance with state and federal laws and Board rules. Statute requires the Board to inspect all businesses every two years, but this requirement prevents the agency from focusing

its limited resources on other risk areas. Further, the agency does not collect sufficient information to determine the effectiveness of its inspections or which businesses and facilities pose the greatest risk to the public.

Recommendations

Change in Statute

2.1 Allow the Department of Agriculture to determine its inspection frequency based on an assessment of risk.

Requiring the Department to conduct its inspection activities according to risk would allow the agency to place its limited resources where it believes they are needed most, rather than being required to inspect all businesses every two years as the statute currently provides. The agency would be required to inspect all businesses in their first year of operation and at least once every four years thereafter. However, the agency could shorten the inspection interval for any or all businesses as it determines necessary, especially for businesses with compliance problems. Further, the agency should ensure it inspects all school districts at least every five years, and more frequently as it deems necessary.

Under the risk-based approach, the Department should focus on detecting serious violations to protect the public and the environment from the misapplication of pesticides. This approach would still ensure regular inspections of pest control businesses, but would allow the agency to focus greater attention on businesses with poor compliance histories and less attention on businesses that consistently follow the law. A risk-based approach would also allow the agency to focus more resources on inspections of school districts under the Integrated Pest Management Program and facilities that fall under the noncommercial license program.

Management Action

2.2 The Department of Agriculture should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.

This recommendation directs the Department to expand outreach efforts by taking advantage of existing resources to improve compliance with noncommercial license requirements. For example, the agency could provide information materials to the Department of State Health Services, Department of Aging and Disability Services, local health departments, and associations, which they could then distribute to those they regulate or represent. The Department could also develop a survey for these other agencies and associations to distribute to determine how many facilities hire commercial pest control companies or employ their own staff to perform pest control. This survey information could help the agency identify certain types of facilities or areas of the state that need assistance in complying with licensing requirements.

2.3 The Department of Agriculture should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.

The agency should compile detailed statistics on complaints filed and violations found. This information would support the agency's efforts to develop a risk-based approach to inspections by providing a better picture of where complaints originate, and which segments of the structural pest control industry are committing the most violations. These statistics should include:

- ◆ the origin of the complaint, the allegation, and the basis for the complaint, including complaints in which the agency finds no violation;

- ◆ the type of establishment against whom the complaint was lodged, such as a commercial business, noncommercial facility, or school district;
- ◆ the type of licensee against whom the complaint was lodged, such as a business licensee, certified applicator, technician, or apprentice; and
- ◆ the outcome of the complaint, including the number dismissed, the reason for dismissal, and the type of disciplinary action taken.

Issue 3

The Board's Unstructured Method of Developing and Revising Licensing Exams Could Result in Inconsistent Assessment of Applicants' Knowledge.

Key Findings

- ◆ The agency does not routinely update or randomize test questions, limiting its ability to gauge competence and ensure fairness for all applicants.
- ◆ The agency does not have an adequate process to ensure that exam questions are developed in a consistent, fair, and expert manner.
- ◆ The current process for writing and administering exams misallocates scarce agency resources and creates delays for exam-takers.

The Board has responsibility for protecting public safety and the environment by ensuring that pesticide applicators are qualified and competent. As such, the Board administers written examinations to applicants for licensure to test their knowledge of laws, rules, and proper procedures for pesticide use. However, the Board has no formal method for developing its exams to ensure they are fair and adequately test applicants' knowledge of pest control laws and practices.

Recommendations

Change in Statute

3.1 Require the Department of Agriculture to develop a formal process for exam development and revision.

Creating a structured process for exam revision would enable the Department to better ensure that exams are fair, consistent, adequately test applicants' knowledge of pest control practices, and reflect changes in the industry. The recommendation would require the agency to create a written policy to govern the exam process. The policy should prescribe procedures to improve the design and construction of exams, the content of exams, the procedures in place to administer exams, and the process for evaluating exams that are in use.

Specifically, the exam policy should include the following elements:

- ◆ provisions for seeking assistance in the development of exams and exam content from experts in the fields of pest control, pest control education, and exam creation and validation;
- ◆ timelines for exam revision and maintenance, including how often exams will be updated;
- ◆ mechanisms for routine exam analysis and validation;

- ◆ specific requirements for reporting to the agency;
- ◆ development of question banks for each exam; and
- ◆ guidelines to assist the agency in developing exams from the exam banks.

Management Action

3.2 The Department of Agriculture should contract with an external entity for exam administration, if found to be cost effective.

To date, the Structural Pest Control Board has taken some steps to investigate the use of an external entity to administer exams. However, the Department of Agriculture should commit to a more formal process. Specifically, the agency should develop a request for proposal to determine whether an external entity could administer exams more effectively and efficiently than doing so internally. In determining whether to contract for exam administration, the agency should consider advantages and disadvantages to licensees, such as availability of computer exams, exam locations, and more frequent testing opportunities. The agency should also consider benefits to the agency, such as reductions in the examination duties of administrative and investigative staff, and the efficiencies this might create.

Issue 4

The Board’s Guidance to Schools on Integrated Pest Management Regulations Does Not Go Far Enough to Ensure Consistent Compliance.

Key Findings

- ◆ The Board’s system for classifying pesticides is not specific enough to prevent inappropriate pesticide applications in school environments.
- ◆ The Board does not routinely communicate with schools, resulting in schools being unaware of important changes in regulations and practices.

The Board administers the Texas school Integrated Pest Management (IPM) Program to protect the health and safety of public school children. The Board develops regulations for the safe use of pesticides in schools, and inspects schools to ensure compliance with IPM regulations. However, the Board does not effectively communicate the requirements of the program to school districts, which causes confusion and could lead to improper pesticide use in schools.

Recommendations

Change in Statute

4.1 Require the Department of Agriculture to more clearly define pesticide categories and specify the requirements that pertain to each category.

This recommendation would clarify the agency’s responsibility to identify which pesticides are suitable for use in schools and how those pesticides are to be used. The recommendation would remove the statutory requirement for schools to restrict entry for 12 hours following all pesticide applications, and instead require the agency to establish guidelines appropriate for each type of pesticide in rule. It would also remove the current requirement for the agency to list the specific pesticides that may be used and instead require the agency to adopt categories of pesticides with clear, easier to follow guidelines as to

their use. By redefining the current category system in rule, the agency will be able to provide clear guidance to school districts and assist them in using the least toxic products as safely as possible.

The Department should develop clear regulations that correspond to each category of pesticide that include:

- ◆ the physical distance required between application sites and students at the time of application;
- ◆ reporting, record keeping, and pesticide approval requirements;
- ◆ re-entry requirements; and
- ◆ posting regulations for indoor and outdoor pesticide use.

Improving the program by providing more clear and consistent guidance to schools would help ensure that the program is easily implemented by school districts, runs efficiently, and protects the safety of school children.

4.2 Require all school districts to provide contact information for their IPM Coordinators.

This recommendation would require school districts to inform the Department of the name, address, phone number, and email address of their IPM Coordinators, who are responsible for overseeing pest control on school property. Further, school districts would have to inform the agency within 90 days when a new coordinator is appointed. Using this contact information, the agency would be better able to disseminate information about IPM requirements to coordinators.

4.3 Require continuing education for IPM Coordinators.

This recommendation would require IPM Coordinators to complete six hours of continuing education every three years to keep them up-to-date on program requirements and changes in pest control practices.

Management Action

4.4 The Department of Agriculture should develop better information resources and outreach for IPM Coordinators.

By providing more information to school districts, the Department can help coordinators to stay abreast of changes in pest control practices and assist schools in reducing students' exposure to pesticides. The agency should provide information concerning changes in regulations and practices to IPM Coordinators. Ways to accomplish this include posting IPM information, including changes in rules, on the agency's website in a format that school districts can easily access and developing a coordinator e-mail distribution list to disseminate information.

Change in Appropriations

4.5 The Legislature should appropriate \$100,000 for educational programs targeting schools through the Texas Cooperative Extension.

This recommendation expresses the will of the Sunset Commission that the Legislature, through the appropriations process, allocate \$100,000 for IPM educational programs. This funding would go to the Southwest Technical Resource Center for School IPM at the Texas Cooperative Extension, which currently provides training and technical assistance to school districts on proper pest control practices.

Issue 5

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- ◆ Infrequent checks of licensees' criminal history could potentially affect the agency's ability to protect consumers.
- ◆ Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers and providing fair treatment to licensees.
- ◆ Fee caps in the Board's statute conflict with standard practice, potentially reducing the Board's efficiency.

Over the past 29 years, the Sunset Commission has reviewed more than 90 occupational licensing agencies, and in doing so, has identified common standards among them. A comparison of the Board's statute, rules, and practices with model licensing standards identified variations from these standards and the needed changes to bring the Board in line with other licensing agencies.

Recommendations

Licensing – Management Action

5.1 The Department of Agriculture should conduct criminal background checks for all license applications and renewals.

Conducting background checks through the Texas Department of Public Safety on all licensees would help ensure pest control professionals who enter people's homes do not have serious criminal records. The agency could develop a schedule to phase in the checks. By conducting these checks for all applicants and renewing licensees, the agency would be informed of persons it is currently missing who provide false information regarding their previous arrest record and persons who get convicted after they receive their license.

Enforcement – Change in Statute

5.2 Require the Department of Agriculture to clearly outline its enforcement process and make this information and information in complaint files accessible to licensees.

This recommendation would promote a better understanding of the agency's enforcement process and help licensees accused of violations prepare a response. The agency must outline its enforcement process and the steps a complaint would take from initial filing until final disposition, including appeal options, various hearings, and a licensee's ability to obtain copies of complaint files. Information should be made available in the agency's brochures and website and any other available information resources.

5.3 Authorize agency staff to administratively dismiss complaints and report these actions to the Commissioner of Agriculture.

This recommendation would promote greater accountability of staff actions by clearly authorizing it to dismiss complaints and report these actions to the Commissioner. Dismissal information reported to the Commissioner should contain sufficient explanation indicating why complaints were dismissed.

5.4 Authorize the Commissioner of Agriculture to temporarily suspend a license.

This recommendation would enable the Commissioner to take faster action to suspend a license upon determination that continued practice by the licensee presents an imminent danger to the public or the environment. The Commissioner would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension. This recommendation would strengthen the agency's enforcement process and increase protection of the public and the environment against harm or imminent danger by enabling a faster response against serious violators.

5.5 Authorize the Department of Agriculture to issue cease-and-desist orders to stop the unlicensed practice of structural pest control.

The Department would be able to issue cease-and-desist letters to stop individuals or businesses from practicing pest control without a license. The recommendation would also authorize the Commissioner of Agriculture to assess administrative penalties against persons who violate cease-and-desist orders. Cease-and-desist authority would help the agency better protect the public and the environment from unlicensed applicators and standardize its procedures with commonly applied licensing practices.

5.6 Grant the Department of Agriculture authority to immediately stop the use of banned pesticides and the sale of products treated with banned pesticides.

This recommendation would authorize the Department to issue stop use and stop sale orders for structural pest control, reflecting the same authority the Department already has for agricultural pest control. The recommendation would also authorize the Commissioner of Agriculture to assess administrative penalties against persons who violate stop use and stop sale orders, and allow licensees to appeal the orders and penalties through the normal enforcement process. Allowing the agency to issue these orders would strengthen its ability to protect the public from harmful illegal pesticides.

5.7 Require the Department of Agriculture to make information on enforcement actions available to the public on the agency's website and in other appropriate publications.

Improving access to disciplinary information about individual pest control operators would help consumers make more informed decisions about the companies they hire. Increasing accessibility could include creating a quarterly listing of all enforcement orders and sanctions arranged alphabetically by licensee name. In addition to helping the public, this listing may reduce the amount of time staff must dedicate to handling consumer inquiries.

Administration – Change in Statute

5.8 Eliminate licensing and administrative fee caps and authorize the Commissioner of Agriculture to set fees in rule.

This recommendation would give the Commissioner greater flexibility to set fees as appropriate without prior legislative action. The recommendation would also give the Commissioner flexibility to set fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act.

5.9 Require the Department to base delinquent license renewal fees on the standard renewal fee.

The renewal fee for the agency's licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Commissioner of Agriculture rather than the same fixed amount to all licensees as currently specified in statute. To renew a license that has been expired for 30 days or less, the licensee would have to pay 1 1/2 times the standard renewal fee. If the license has

been expired for more than 30 days, but less than 60 days, the licensee would have to pay twice the standard renewal fee. This recommendation would maintain the existing statutory requirement that persons whose licenses have expired for more than 60 days must be re-examined by the Department to obtain a license.

Issue 6

Requiring Beekeepers to Be Licensed to Remove Bees From Structures Without Using Pesticides Is Not Needed to Protect the Public.

The Structural Pest Control Act requires beekeepers who remove bees from structures to be licensed. Some beekeepers are able to perform this service without using pesticides and usually remove the bees at no charge to the structure's owner. Further, these beekeepers generally do not perform other pest control services that would require licensure. Beekeepers are not required to be licensed to remove or destroy bees that are not attached to a dwelling or other structure occupied by the public. Requiring beekeepers to be licensed to remove bees from structures creates an undue burden on people who volunteer to remove bees and is not necessary to protect public safety.

Recommendation

Change in Statute

6.1 Allow beekeepers to remove bees from structures without a license from the Department of Agriculture, as long as they do not use pesticides.

This recommendation would clarify that the Structural Pest Control Act does not require beekeepers to obtain a pest control operator license to remove bees from structures. Existing language would provide that they may not use pesticides or electrical devices other than conventional bee smokers when removing bees from structures.

Fiscal Implication Summary

Three recommendations regarding the Structural Pest Control Board could have a fiscal impact to the State. The fiscal impact of the recommendations is summarized below.

Issue 1 – Abolishing the Structural Pest Control Board and transferring its functions to the Department of Agriculture may result in savings from reduced administrative costs and staff positions by taking advantage of the existing administrative structure of the Department.

Issue 4 – Appropriating funds for educational programs targeting schools would result in a cost to the State. While the Sunset Commission has recommended that the Legislature appropriate \$100,000 for this effort, the specific amount would need to be determined through the appropriations process. The fiscal impact would not be reflected in the fiscal note for the Pest Control Board Sunset bill.

Issue 5 – Directing the Department to conduct criminal history checks for all license applications and renewals could require additional funding from the Legislature. Through the appropriations process, the Legislature could decide funding levels to cover the cost of performing the history check. The Legislature could also decide whether to devote additional staff to review the background information and take appropriate action when an applicant or licensee is found to have a criminal record. The fiscal impact would not be reflected in the fiscal note for the Pest Control Board Sunset bill.