

TEXAS STRUCTURAL PEST  
CONTROL BOARD

SUNSET STAFF REPORT

FEBRUARY 2006





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# SUMMARY





# Summary

The Texas Structural Pest Control Board seeks to protect the public and the environment against the misuse of pesticides by ensuring that those who perform pest control services 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 pest control businesses and their employees, conducts inspections, investigates consumer complaints and takes disciplinary action when necessary, and ensures public school districts follow pest control guidelines designed to limit children's exposure to pesticides.

The Board believes it does not have the resources it needs to do its job as effectively as possible. While the Board could seek additional resources through the legislative appropriations process, Sunset staff focused on ways to improve the efficiency and effectiveness of the Board's activities with its existing resources. Key to this effort was identifying statutory impediments and agency practices that prevent the Board from putting its staff to best use. Improvements could also be made in the way the Board tests applicants for licensure and helps schools meet guidelines for pesticide use. Sunset staff also sought to



*The Sunset review focused on how the agency can do more with existing resources.*

conform the Board's regulatory activities with standard practices developed through 27 years of Sunset reviews. These changes would help the agency use its resources more effectively and provide better protection to the public and the environment.

Finally, the Sunset review evaluated organizational alternatives to maintaining a separate agency for regulating structural pest control professionals. While other agencies, such as the Texas Department of Licensing and Regulation or the Texas Department of Agriculture, offer opportunities for improving the regulation of structural pest control, no significant problems could be identified at the Board to justify such a restructuring.

A summary follows of the Sunset staff recommendations on the Structural Pest Control Board.

## Issues and Recommendations

### Issue 1

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

#### Key Recommendations

- ◆ Allow the agency to determine its inspection frequency based on an assessment of risk.

- ◆ The Board should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.
- ◆ The Board should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.

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## Issue 2

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

#### **Key Recommendations**

- ◆ Require the Board to develop a formal process for exam development and revision.
- ◆ The Board should contract with an external entity for exam administration, if found to be cost effective.

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## Issue 3

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

#### **Key Recommendations**

- ◆ Require the Board to more clearly define pesticide categories and specify the requirements that pertain to each category.
- ◆ The Board should develop better information resources and outreach for IPM Coordinators.

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## Issue 4

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

#### **Key Recommendations**

- ◆ The Board should conduct criminal background checks for all license applications and renewals.
- ◆ Revise the Board's enforcement activities by improving the methods for informing licensees of the complaint process, authorizing staff to dismiss complaints, allowing the Board to take immediate enforcement action when necessary, and improving public access to final disciplinary information.

- ◆ Update administrative elements by eliminating fee caps and changing the basis for assessing late renewal fees.
- ◆ Update elements related to the policy body by authorizing the Board to create committees composed of only Board members, and to create advisory committees as needed.

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## Issue 5

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### **Texas Has a Continuing Need for the Structural Pest Control Board.**

#### **Key Recommendation**

- ◆ Continue the Structural Pest Control Board for 12 years.

### **Fiscal Implication Summary**

None of the recommendations in this report would have a significant fiscal impact to the State.



# ISSUES



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

### Summary

#### Key Recommendations

- ◆ Allow the agency to determine its inspection frequency based on an assessment of risk.
- ◆ The Board should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.
- ◆ The Board should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.

#### 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.

#### Conclusion

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. Sunset staff evaluated the agency's inspection efforts and determined that the statutory requirement that it inspect all businesses every two years prevents it 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. Sunset staff's recommendations are intended to strengthen the agency's ability to ensure compliance with the law by focusing its inspection efforts on areas of highest risk.

## Support

### The agency inspects licensees to ensure compliance with the Structural Pest Control Act, Board rules, and federal law.

- ◆ The Structural Pest Control Act requires the agency to inspect each of the approximately 3,500 licensed commercial pest control businesses once every two years. According to the agency's performance measures, it must also annually inspect 20 percent of the state's 1,040 public school districts to ensure compliance with Integrated Pest Management Program requirements.



*The Board must inspect each of the state's 3,500 pest control businesses every two years.*

Another performance measure requires the agency to inspect between 400 and 500 noncommercial facilities each year. These facilities include apartment buildings; day-care centers; hospitals; nursing homes; hotels, motels, and lodges; warehouses; food-processing establishments; and all schools, both public and private. By law, these facilities are required to have their pest control performed by a commercial pest control business or, if they choose to employ staff to perform pest control, those staff must be licensed with the Board. Pest control staff of the State and political subdivisions of the State must also be licensed with the agency. In fiscal year 2005, the Board's 16 investigators conducted nearly 2,100 inspections.

- ◆ During an inspection, the agency looks for several standard items to ensure compliance with the law and Board rules. The textbox, *Points of Inspection*, highlights the items checked during inspections.

#### **Points of Inspection**

The types of details Board investigators examine when conducting inspections include the following.

- ◆ Ensure the business and all pesticide applicators are properly licensed and their licenses have not expired.
- ◆ Ensure all licensed applicators have received their required training and continuing education credits.
- ◆ Review treatment records, which must include the name of the pesticides applied, the dilution ratios used, and the target pests. For schools and noncommercial facilities, records must also indicate whether required notification was given before pesticides were applied.
- ◆ Review Wood Destroying Insect Reports for completeness.
- ◆ Inspect facilities and vehicles for proper pesticide storage.
- ◆ Inspect equipment and vehicles for proper safety measures.

### **A biennial inspection requirement means the agency spends its limited resources on businesses with few or no compliance problems.**

- ◆ Although the agency must inspect all businesses every two years, the majority of commercial pest control operators have clean compliance histories or have committed minor violations that do not affect public safety or the

environment. From fiscal year 2003 through fiscal year 2005, only about a quarter of the roughly 3,500 businesses licensed with the agency violated provisions of the law or rules. In other words, nearly three-quarters of all commercial pest control businesses had no violations in the past three years and yet were still subject to the same inspection schedule as those previously found in violation.

Further, of those found in violation, more than one-third received enforcement actions in the form of Corrective Action Notices, which are similar to traffic tickets. The agency issues these notices only for minor, first-time offenses where no known harm has occurred or is likely to occur and the licensee indicates a willingness and ability to remedy the situation and prevent it from happening again. The textbox, *Corrective Action Notices*, provides examples of violations for which the agency will issue a notice. The chart, *Enforcement Actions*, shows how the agency resolved violations it found in fiscal year 2005.

- ◆ In fiscal year 2005, the Board’s investigative staff spent approximately one-third of its time conducting inspections. Unfortunately, the agency cannot judge the results of this effort because it does not track the number of violations found during inspections. It also does not systematically track or analyze violations by the type of licensee, such as commercial business, noncommercial facility, or school district. As a result, the agency cannot properly assess which businesses or facilities have the most problems and pose the greatest risk to the public and the environment.

**Corrective Action Notices**

Examples of violations for which a CAN may be issued for minor, unintentional situations including the following.

- ◆ Pesticide application record contains minor mistake that is not intentional and not likely to cause harm to any person.
- ◆ Failure to place approximate dimensions on diagram of one out of two dozen Wood Destroying Insects Reports.
- ◆ List of needed repairs for public school buildings not prioritized.
- ◆ Apprentice training records are complete but not on form prescribed by the agency.
- ◆ License number is not placed in required location on vehicle.

**Enforcement Actions – FY 2005**

Type of Action	Number of Violations
Corrective Action Notice	335
Warning	292
Administrative Penalty	155
Refused to Issue a New License	39
Probation	30
Revocation	10
Refused to Renew a License	2
<b>Total</b>	<b>863</b>

**The biennial inspection requirement prevents the agency from focusing on other priorities.**

- ◆ By requiring the agency to focus significant resources on meeting the statutory requirement of inspecting all businesses once every two years, the agency must spend fewer resources on other important agency functions such as complaint investigations. According to its first quarter 2005 performance measurement report, the agency was not able to meet its measure for resolving complaints within an average of 75 days because of the large number of business establishments it had to inspect. The agency noted that it was working on several large, complex complaint cases that required additional time for evidence gathering. However, investigators were busy trying to meet their inspection requirement and could not divert resources to these complaint cases. More routine complaint cases were delayed as well.


- ◆ The requirement to inspect all businesses draws resources away from other inspection duties. The agency conducts inspections as part of its school Integrated Pest Management and noncommercial licensing programs, however, it is only able to inspect a small percentage of these facilities. The chart, *Inspection Activity*, compares the number of inspections performed to the total number of establishments in each licensing category.

**Inspection Activity – FY 2005**

Establishment Type	Number of Inspections Performed	Number of Establishments Subject to Inspection
Commercial Business	1,501	3,443
School District	198	1,040
Noncommercial Facility	387	28,000 (estimated)

**The Board’s current approach to inspecting school integrated pest management programs does not ensure that they are inspected regularly.**

- ◆ Current inspection practices do not ensure that all schools will be inspected in a routine or timely manner. Despite the performance measure for the agency to visit 20 percent of school districts annually, the agency does not guarantee that it will inspect a different 20 percent of districts each year, or that it will visit each district every five years. The agency does not maintain records of how often each school district has been inspected and can only say when a particular district was last inspected. Further, the agency cannot ensure that all districts have been inspected since the program was created because the date of last inspection is missing for some districts in the agency’s database.
- ◆ The frequency of school inspections is inconsistent because the agency allows its field staff to set their own inspection schedules based on economy and routing. For example, inspectors may choose to visit schools that are along their travel routes to the pest control businesses they must inspect. As a result, inspectors may visit schools in populated areas every few years, while schools in harder to reach locations may go without ever being inspected. While the agency’s Field Operations Manager reviews inspection records once or twice a year to determine whether his staff is meeting the agency’s performance measures, the agency is not required to ensure that all districts are inspected every five years, and so some districts may go long periods without being visited.
- ◆ The way the Board schedules school inspections can affect compliance with Integrated Pest Management Program requirements. Inconsistent inspections may mean that schools with violations or substandard programs go undetected for long periods of time. Schools that are inspected less frequently miss valuable opportunities for hands-on training that inspections provide. Unfortunately, the same districts that tend to be inspected less often, mainly those that are small and rural, also have fewer resources available for programs like Integrated Pest Management and may have more compliance



*Although directed to inspect twenty percent of school districts annually, the agency cannot guarantee that each one will be inspected every five years.*

problems. Other school districts, however, may require more frequent inspections because of the significance of potential problems. Large, urban districts may require more intensive attention in light of the higher risk related to their greater number of students, facilities, and staff.

**The difficulty of identifying noncommercial facilities subject to regulation affects the Board’s ability to adequately inspect and regulate these facilities.**

- ◆ The agency cannot say how many people should be licensed because it does not know how many facilities employ their own staff to perform their pest control. The agency estimates that 28,000 facilities fall under this regulation. However, the agency does not know how many of these facilities use commercial pest control companies or employ staff to perform their pest control. Despite the thousands of hotels, nursing homes, day-care centers, hospitals, warehouses, apartments, and food-processing establishments in the state, only 259 people who work for these facilities are licensed with the agency. The small number of licensees indicates that either the vast majority of these facilities hire commercial pest control companies or have not sought licensure for their pest control staff, as required by law.
- ◆ The Board’s regulation of noncommercial licensees consists of conducting random inspections and investigating complaints from the public. In fiscal year 2005, the agency inspected 387 noncommercial entities, some of which had licensees on staff, while others did not. Due to its limited resources and the large number of facilities that fall under this regulation, the agency can only inspect a small percentage each year. Further, the agency has no process governing which facilities to inspect or how often facilities should be inspected. The agency’s inspectors must simply meet their performance measurement goal of visiting 480 facilities per year. As such, inspectors will drop by a hotel, apartment, or other facility when they have extra time between their inspections of commercial pest control businesses. In fiscal year 2005, the agency investigated 42 complaints against noncommercial facilities.



*The agency does not know which noncommercial facilities hire a company or which ones use their own staff to perform pest control.*

**The Board has several opportunities to improve the effectiveness of its noncommercial license program.**

- ◆ Many of the facilities that fall under the Board’s noncommercial license program are also regulated by other agencies. Local health departments and the Department of State Health Services inspect schools, hotels, day-care centers, hospitals, and food manufacturing facilities. The main focus of their inspections is general sanitation, including proper pest control. Further, the Department of Aging and Disability Services regulates nursing homes. Since these state and local agencies have regular contact with many of the same facilities, they could help the Board seek out unlicensed noncommercial activity or disseminate information about the regulation.

- ◆ The agency has had little contact in the past with associations representing facilities under the noncommercial license program. However, groups such as the Texas Apartment Association, the Texas Hotel and Lodging Association, and the Texas Hospital Association could be valuable resources in helping the Board disseminate information about the requirements of its noncommercial license.
- ◆ The Board has successfully reached out to certain types of noncommercial facilities in the past, using small grants from the Environmental Protection Agency. In fiscal years 2004 and 2005, the agency received grant funding totaling \$40,000 each year, which it matched with equal amounts, to inspect and provide information to nursing homes and day-care centers. The 2004 grant allowed the agency to develop and send brochures to 1,200 licensed nursing homes and several associations representing nursing homes. After sending the brochures, the agency received numerous phone calls and requests for more information and presentations. The grant money also allowed the agency to perform inspections of 203 nursing homes over a six month period.

With the 2005 grant funding, the agency circulated information about its noncommercial license program to 8,700 child-care facilities via the Internet and an article published in an established day-care newsletter. The agency also conducted 200 inspections of these facilities. Unfortunately, the Environmental Protection Agency rejected the agency's proposal for additional grant funding in fiscal year 2006 due to intense competition for limited federal grant funds.

## Recommendations

### Change in Statute

#### **1.1 Allow the agency to determine its inspection frequency based on an assessment of risk.**

Requiring the agency 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 Board could shorten the inspection interval for any or all businesses as it determines necessary, especially for businesses with compliance problems. The Board could choose to continue inspecting some or all businesses every two years if it determines that frequency is necessary given its risk assessment. This approach would still ensure regular inspections of pest control businesses, but would allow the Board to focus greater attention on businesses with poor compliance histories and less attention on businesses that consistently follow the law. 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 agency should focus on detecting serious violations to protect the public and the environment from the misapplication of pesticides. Businesses would still be inspected regularly, but the agency would be able to focus more attention on facilities with previous compliance problems. Developing an inspection schedule based on compliance history and other risk factors



would allow the Board to focus its limited time and resources on those facilities that it determines need additional scrutiny. 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. Many other state agencies use risk assessment tools to guide inspections, so several examples exist on which to model inspection approaches.

## **Management Action**

### **1.2 The Board should increase coordination with other agencies and use other resources to disseminate information and seek out unlicensed noncommercial activity.**

This recommendation would direct the agency to expand its outreach efforts by taking advantage of existing resources to improve compliance with noncommercial license requirements. For example, the Board 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 Board 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 Board identify certain types of facilities or areas of the state that need assistance in complying with licensing requirements.

### **1.3 The Board should track and analyze enforcement data by license type to support its development of a risk-based approach to inspections.**

The Board 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.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State. Requiring the agency to develop a risk-based approach to its inspections would allow it to focus its inspection efforts on areas of greatest risk. By not having to inspect every business every two years, the agency could free up resources to focus on other areas, such as paying greater attention to businesses with poor compliance histories, conducting more regular inspections of school districts, and seeking out facilities that are not complying with noncommercial license requirements.



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

### **Summary**

#### **Key Recommendations**

- ◆ Require the Board to develop a formal process for exam development and revision.
- ◆ The Board should contract with an external entity for exam administration, if found to be cost effective.

#### **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.


#### **Conclusion**

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. Sunset staff evaluated the development and administration of the written exams to see if they fairly and consistently assess applicants' knowledge. The staff concluded that the Board could improve its exams by developing a formal process for exam creation and revision.

## Support

### **The Board administers written examinations to applicants seeking licensure as pest control applicators.**

- ◆ The Structural Pest Control Act authorizes the Board to administer exams to individuals seeking licensure as certified applicators or technicians. The Board requires all license applicants to demonstrate knowledge of rules, regulations, safety, and proper procedure through a series of written exams. The Board uses exams to certify applicators in seven categories of pest control: general pest control, termite control, lawn and ornamental, commodity fumigation, structural fumigation, weed control, and wood preservation.
- ◆ Certified applicators must pass at least two examinations to be licensed. The certified applicator's general exam tests knowledge of standards, laws, and regulations. Certified applicators must also pass a pest control category exam for each category in which the applicator wishes to practice. Technicians must pass just one category exam to be licensed, but must also pass separate category exams for each category of practice. In fiscal year 2004, the Board administered a total of 4,835 exams; in fiscal year 2005 it administered 5,064 exams.
- ◆ The Board offers all exams in hardcopy form. Recently, the Board has begun to offer select exams in computer-based form. Hardcopy examinations take place in rooms that the Board rents at various locations throughout the state and are proctored by Board investigators. All computer testing is done at the Board's Austin headquarters. Exams are offered once or twice per month and each exam contains fifty multiple choice questions. Applicants can take as much time as they need to complete an exam, and can take as many exams in a day as they want. The Board does not limit the number of retakes an applicant may have.



*The agency is revising its exams after being prompted to do so by the State Auditor in 2003.*

### **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 regularly update exam content. Most questions on the agency's 15 exams have not changed, or have been only slightly altered, since the agency's last revision process six years ago. While the agency is currently revising its exams, it was prompted to do so after a 2003 report by the State Auditor concluded that not changing exams created "an increased risk that individuals may learn what questions are on the exam before they take it ... [and] repeat test takers may have an opportunity to memorize exam questions."<sup>1</sup>
- ◆ Without routinely updating exams, the agency cannot guarantee that exams test knowledge of the most current laws, rules, and practices. The Board is required, as a function of its contract with the Environmental Protection Agency, to license pesticide applicators. As part of the licensing process,

applicants must verify that they are familiar with federal pesticide use and safety laws, as well as state laws and current pest control practices. While the agency does review questions to ensure they are applicable to current law and the answers are correct, it has no systematic way of incorporating new information into exams.

The Board reviews and updates its regulations every four years, typically generating numerous changes in state regulations, but again, the Board does not have a routine process for updating its exams to reflect these changes. Further, the agency has noted that new application practices emerge at a near constant rate, which also are not reflected in Board exams on a timely basis.

- ◆ The agency does not change the order of questions within individual exams, preferring instead to reuse the same hardcopy exams. The agency also does not maintain banks of questions for each exam, which would allow the agency to randomize the order of questions and create multiple versions of exams. As a result, applicants who retest may have an unfair advantage since the exam is identical each time they take it. From 2003 to 2005, approximately 1,200 applicants retested for certified applicator or technician exams at least once, and some retested multiple times. Current exams may assess some applicants' memorization skills, rather than their ability to understand the law and pest control application concepts.

**The agency does not have an adequate process to ensure that exam questions are developed in a consistent, fair, and expert manner.**

- ◆ The agency does not have a clearly defined policy to govern how or when to update exams. Several years ago the agency developed some guidelines for creating questions and administering exams. However, these guidelines provide only general instructions on exam record keeping and the types of questions that should be included in an exam. The guidelines do not include timelines for revision, requirements for reporting to the Board, or provisions for question analysis and validation, which would ensure that exams are revised in a routine and consistent manner.
- ◆ The agency does not seek expertise outside of agency staff in exam development, which may compromise exam quality. The Executive Director recently appointed one employee to coordinate the revision of all exams, with the assistance of select agency investigators in creating questions and proofing exams. However, the agency has no mechanism for incorporating additional expertise from current practitioners within the pest control industry, the public, the Board, or other entities that regulate and research pesticide use.


The current process does not solicit expertise from exam development specialists, who would be able to help the Board ensure fair and effective exams. The agency routinely seeks external advice on important policy decisions, but



*The agency does not change the order of exam questions and does not maintain banks of questions for creating multiple exams.*

has not done so with exam development. Without this additional expert input, the thoroughness and validity of exams is subject to question.

- ◆ Board members do not participate in the exam revision process in any capacity. The agency does not involve the Board in question writing or regularly report to the Board on the status of the exam revision process. As a result, the agency is unaccountable to the Board regarding the accuracy, adequacy, and fairness of the examination process.
- ◆ The agency does not routinely analyze exam results to ensure questions are clear and properly assess applicant knowledge. Following the release of new exams in 1999, the agency did review early test results to determine if all exam questions could be answered correctly. Any questions that were always, or almost always, answered incorrectly were altered or removed. Since that time the agency has not reviewed exam results or made attempts to analyze existing exams. Ongoing statistical review of exam results would allow the agency to identify changes in the performance of examinees that may indicate other problems. Questions that are almost always answered correctly, incorrectly, or not answered could be reconsidered for their overall effectiveness. This would allow to agency to better assess the adequacy and difficulty of individual exams.



*Proctoring exams diverts investigators from their primary responsibility to conduct inspections and investigate complaints.*

**The current process for writing and administering exams misallocates scarce agency resources and creates delays for exam-takers.**

- ◆ In addition to their primary duties, Board investigators are asked to provide expertise in the exam-writing process and to proctor exams. Investigators may develop questions and proof the exam when it is completed. Also, according to the agency, in 2005, investigators spent approximately 100 work days proctoring exams and traveling to and from exam sites. While the agency believes these exam sessions provide an opportunity for its investigators to interact with licensees and potential licensees, proctoring exams diverts investigators from their primary responsibility to conduct inspections, investigate complaints, and enforce the agency's regulations.
- ◆ The agency has sought to expand testing opportunities throughout the state. However, the testing process remains inconvenient for many applicants and may result in long waits before a license can be issued. The Board offers about 20 exams sessions per year, half of which are offered in Houston, Dallas, or Austin. The remaining 10 sessions are offered at various locations throughout the state. Due to the limited number of testing sessions and locations, applicants in certain regions, including the Lower Rio Grande Valley, West Texas, and the Panhandle, must often wait several months before testing or travel considerable distances to test sooner. Once exams are completed, applicants typically wait two to four weeks for exam results. Other comparable occupational licensing agencies have improved access to testing by utilizing computer testing, and contracting with testing services for exam administration.

## Recommendations

### Change in Statute

#### **2.1 Require the Board to develop a formal process for exam development and revision.**

Creating a structured process for exam revision would improve the agency's current process, and enable the Board to better ensure that exams are fair, consistent, and adequately test applicants' knowledge of pest control practices. The recommendation would require the Board 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 Board;
- ◆ development of question banks for each exam; and
- ◆ guidelines to assist the agency in developing exams from the exam banks.

As exams cover a range of material, guidelines should specify the kinds of questions, as well as the quantity of each kind of question, that should be included in each exam. By instituting this recommendation, the Board will be able to ensure that licensing exams reflect changes in the industry and accurately assess applicants' abilities.

### Management Action

#### **2.2 The Board should contract with an external entity for exam administration, if found to be cost effective.**

To date, the agency has taken some steps to investigate the use of an external entity to administer exams. However, the agency 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.

### Fiscal Implication

These recommendations will not have a fiscal impact to the State. The agency should use existing resources to meet administrative or other costs that result from the exam development process. If the agency is able to outsource exam administration, it would be able to redirect investigator and administrative staff to other duties, resulting in savings or increased efficiency and productivity for the agency.

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<sup>1</sup> State Auditor's Office, *Internal Controls and Financial Processes at the Structural Pest Control Board*, Report No. 04-0112 (Austin, Texas, 2003), p. 12.



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

**Summary**

**Key Recommendations**

- ◆ Require the Board to more clearly define pesticide categories and specify the requirements that pertain to each category.
- ◆ The Board should develop better information resources and outreach for IPM Coordinators.

**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.

**Conclusion**

The Board administers the Texas school Integrated Pest Management 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 Integrated Pest Management regulations. Sunset staff evaluated the Board's administration of the program to determine whether it adequately protects the safety of school children, is run efficiently by the Board, and can be easily implemented by school districts. The staff concluded that the Board could improve the program by providing more clear and consistent guidance to schools.

## Support

**The Board administers the Texas School Integrated Pest Management Program, which is designed to limit school children's exposure to pesticides.**

- ◆ The Texas Legislature created the school Integrated Pest Management (IPM) Program in 1991. The program is administered by the Board in cooperation with public school districts. IPM regulations require each public school district to create and abide by a pest management plan, appoint an IPM Coordinator, comply with certain record keeping and pesticide application practices, and train personnel in proper IPM techniques.

### ***Integrated Pest Management***

Integrated Pest Management describes a variety of practices that are intended to control and eliminate pests without requiring the use of pesticides. IPM techniques encourage the use of cultural, structural, technological, and other methods to control pests. Pesticides must be used judiciously, and typically only as a last resort. All pesticide applications must be performed by licensed applicators. Examples of IPM techniques include caulking cracks in walls, clearing brush from around buildings, and removing food from classrooms.

District plans encompass all school buildings and grounds. As administrator of the program, the Board conducts inspections of public schools, develops guidelines for appropriate pesticide use, and generally ensures compliance with program regulations. The textbox, *Integrated Pest Management*, provides an overview of the basic principles of IPM.

- ◆ All IPM Coordinators are required to attend one six-hour training in their first year of service. This training provides basic information on program administration and rules. In 2002, the Texas Cooperative Extension created the Southwest Technical Resources Center for IPM to provide training. While several organizations provide this sort of training, the Center trains 300 to 400 individuals each year, making it the single largest trainer of coordinators in the state. To date, the Center has provided training, consultation, and assistance to approximately 42 percent of all school districts in the state.<sup>1</sup>
- ◆ Since its creation, the IPM program has been funded mostly through existing appropriations, with some additional funding provided by the Environmental Protection Agency (EPA). The Legislature has never earmarked funding for IPM program administration by the Board, or for program implementation by school districts. Likewise, the Center does not receive a separate appropriation for IPM education and training, but is funded by the Texas Cooperative Extension at Texas A&M University and through occasional grants from EPA.



*The Integrated Pest Management Program encourages schools to use least toxic pest control measures.*

**The Board's system for classifying pesticides is not specific enough to prevent inappropriate pesticide applications in school environments.**

- ◆ The Structural Pest Control Act requires the Board to develop a list of pesticides that are approved for use in schools. However, developing a static list is difficult because pesticide formulations and availability are constantly changing. Instead, the Board developed a three-tiered classification system

for pesticides. Under the system, the Board classifies all pest control products as green, yellow, or red, according to the danger they present to human health and the environment.

The Board's guidelines for classifying pest control products are based on toxicity, EPA classification, and language on the pesticide label. The textbox, *Pesticide Classification Guidelines*, details these guidelines. School districts apply the guidelines to determine the correct category for any pesticide they plan to use, and the applicator must follow the set of application regulations that pertain to that pesticide category. Under IPM programs, applicators are encouraged to use the least toxic pesticides available. When applicators intend to use more hazardous yellow or red products, they must get prior written approval from a certified applicator and an IPM Coordinator, and comply with additional application restrictions.

#### **Pesticide Classification Guidelines**

**Green Products** – These include inorganic pesticides, insect growth regulators, insect and rodent baits in tamper-resistant containers, botanical insecticides, pesticidal soap, and horticultural oils. Green products may be used at the discretion of the licensed applicator.

**Yellow Products** – These include all EPA III and IV pesticides, except for restricted-use or state-limited-use pesticides as defined under the Federal Insecticide, Fungicide, and Rodenticide Act or the Texas Agricultural Code. These products' labels carry either the "caution" signal word or no signal word. Yellow products require certified applicator approval and the IPM Coordinator must keep a copy of the approval on file.

**Red Products** – These include all EPA category I and II pesticides, as well as most restricted-use and state-limited-use pesticides. Labels typically carry a "warning" or "danger" signal word. Red products must receive prior approval from a certified applicator and the IPM Coordinator. Red list approvals must be kept in a separate file in the pest control use records for the school.

- ◆ Although the Board's intention in creating categories was to help school districts understand which pesticides are preferred for use in schools, the categories lack the specificity needed to adequately guide schools in the proper use of some pesticides. For example, under the Board's guidelines, some products carry label signal words, such as "caution" or "warning", indicating they belong in one category, while the classification of the products as insect growth regulators places them in a different category. To determine the correct category of use for other products, school personnel must research the nature of a product's active ingredients and match them to the appropriate criteria established by the Board for each category. This process puts the onus on school personnel who may not be familiar with EPA classifications to make decisions about appropriate pesticide use without enough guidance from the Board.

Once schools determine if a pesticide is green, yellow, or red, they must then consult numerous, and sometimes inconsistent, sections of both the statute and rules to ensure they follow all relevant regulations pertaining



*Instead of a list of approved pesticides for schools, the Board classifies products as green, yellow, or red, according to danger.*



*The Board's guidelines indicate that some products belong in more than one category.*



to re-entering an area where pesticides have been used, posting notice of application, and record keeping for that category.<sup>2</sup>

- ◆ Re-entry requirements provide an example of guidelines that are inconsistent and potentially contradictory. The Act states that no pesticides may be applied if children are expected to be present for organized activities during the next 12 hours.<sup>3</sup> In contrast, the regulations allow the application of select green products if children are not within ten feet of the application site at the time of application.<sup>4</sup> The Board eased re-entry requirements for select green products because some products, like glue traps or tamper-resistant bait containers, do not present any exposure risk to children. Other green products still fall under the 12-hour requirement. By easing these restrictions the Board has introduced inconsistency and made all re-entry requirements for this category harder to interpret.
- ◆ Posting requirements for school buildings and grounds are also inconsistent. While the Act requires 48-hour prior notice for all indoor pest control treatments, regardless of toxicity, it does not require prior notice for outdoor treatments. If schools choose to use select hazardous pesticides they are required to either “mark” or “secure” outdoor areas immediately following an application. Schools may meet this requirement by posting some form of notice or, alternately, relying on existing fences or barriers to secure an area.

Many schools acknowledge the close contact that students have with playgrounds and athletic fields, and have opted to provide clear notice, in the form of signs, for all outdoor pesticide use. However, since this is not required, most schools do not provide this notice. The result is that districts must post for the use of indoor treatments that may have no risk of exposure, but not for outdoor spraying of herbicides and pesticides that may present a significantly greater risk.

- ◆ Due to confusion in the regulations, Board investigators also do not have a uniform reading of the rules that pertain to pesticide categories. Through interviews with inspectors and Resource Center staff, Sunset found that some investigators have different interpretations of the categories of pesticide, and the standards associated with those categories. These distinct interpretations can lead to different standards being applied during the inspection process. The Southwest Technical Resource Center has recognized this inconsistency and now attends the agency’s annual inspector training and provides information to help promote consistent interpretation of the rules.

**The Board does not routinely communicate with schools, resulting in schools being unaware of important changes in regulations and practices.**

- ◆ The agency does not routinely communicate with districts regarding changes in rules and regulations. The Board evaluates the IPM program every four years as part of its regulation review cycle. This process consistently generates

changes in regulations. However, the Board does not notify districts of these changes, which would be difficult anyway because the Board does not maintain contact information for IPM Coordinators.

- ◆ The Board's primary means of communication with districts is through inspections, which provide a hands-on opportunity for IPM training. However, the Board inspects 20 percent of districts each year, but does not have to inspect 100 percent of schools every five years. As a result, some districts may go many years without an inspection. Issue 1 addresses the need for more consistent school inspections.
- ◆ IPM Coordinators are not required to obtain continuing education and, therefore, have no regular means to receive current information on practices and rules. Some districts employ certified applicators or technicians, who are required to obtain continuing education as a condition of licensure. These individuals may elect to get education credits in IPM-related coursework. However, the Board does not require that continuing education be related to IPM.

At present, 48 percent of school districts have at least one certified applicator on staff. For these schools districts, continuing education may provide a mechanism for transmitting new information on rules and practices. However, the districts that do not have applicators on staff cannot avail themselves of this opportunity.



## Recommendations

### Change in Statute

#### **3.1 Require the Board to more clearly define pesticide categories and specify the requirements that pertain to each category.**

This recommendation would clarify the Board's responsibility to identify which pesticides are suitable for use in schools and how those pesticides are to be used. It would remove the current requirement for the Board to list the specific pesticides that may be used and instead require the Board to adopt categories of pesticides with clear, easier to follow guidelines as to their use. The current Board rules establishing pesticide categories need further clarification to better serve the needs of school personnel. Specifically, Board regulations should ensure that all products fit into only one category of use, and that school personnel can apply regulations to individual products without additional research. By redefining the current category system in rule, the Board will be able to provide clear guidance to school districts and assist them in using the least toxic products as safely as possible.

This recommendation would remove the statutory requirements for the Board to develop a list of acceptable pesticides, and for schools to restrict entry for 12 hours following all pesticide applications, and instead require the Board to establish clearer guidelines in rule. The Board would need to revise IPM rules to explicitly delineate pesticide categories according to the risks of human exposure and environmental harm. IPM category guidelines should be easily understandable to all school districts.

The Board should develop clear regulations that correspond to each category 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.

If differences exist between indoor and outdoor regulations they should be clearly stated. The Board should seek stakeholder input from IPM Coordinators, the Southwest Technical Resource Center, and other interested groups in this process. By more clearly defining pesticide rules, the Board will help schools to comply with the law and better protect students.

## **Management Action**

### **3.2 The Board should develop better information resources and outreach for IPM Coordinators.**

By providing more information to school districts, the Board can help coordinators to stay abreast of changes in pest control practices and assist schools in reducing students' exposure to pesticides. The Board should provide information concerning changes in regulations and practices to IPM Coordinators. This recommendation could be accomplished in several ways. The Board should post IPM information, including changes in rules, on its website in a format that school districts can easily access. The Board should consider collecting the contact information of district coordinators and using a coordinator e-mail distribution list to disseminate information. The Board might easily coordinate with the Resource Center, which already has such a distribution list.

## **Fiscal Implication**

These recommendations will not have a fiscal impact to the State. The recommendations are procedural improvements that should require only minor costs to update rules, create and maintain a list of IPM Coordinators, and make small improvements to the Board's website. Coordination with the Resource Center could reduce costs.

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<sup>1</sup> The Southwest Technical Resource Center for Integrated Pest Management, *IPM Coordinator Trainings-History*, Dallas, Texas, (Internal Reporting Memo), provided by e-mail December 19, 2005.

<sup>2</sup> Texas Occupations Code, sec. 1951.212, sec. 1951.455, sec. 1951.456; Texas Administrative Code, Title 22, part 25, rule 595.6 (c)-(e), rule 595.7 (e), (g), rule 595.8 (b)-(c), (e), rule 595.11(a)-(i), and rule 595.17(d)-(e).

<sup>3</sup> Texas Occupations Code, sec. 1951.212 (d).

<sup>4</sup> Texas Administrative Code, Title 22, part 25, rule 595.11(a)1, and rule 595.11(b)1.

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

### **Summary**

#### **Key Recommendations**

- ◆ The Board should conduct criminal background checks for all license applications and renewals.
- ◆ Revise the Board's enforcement activities by improving the methods for informing licensees of the complaint process, authorizing staff to dismiss complaints, allowing the Board to take immediate enforcement action when necessary, and improving public access to final disciplinary information.
- ◆ Update administrative elements by eliminating fee caps and changing the basis for assessing late renewal fees.
- ◆ Update elements related to the policy body by authorizing the Board to create committees composed of only Board members, and to create advisory committees as needed.

#### **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.
- ◆ Certain administrative provisions of the Board's statute conflict with standard practice, potentially reducing the Board's efficiency.

#### **Conclusion**

Over the past 27 years, the Sunset Commission has reviewed more than 90 occupational licensing agencies. In doing so, the Sunset staff has identified standards that are common practices throughout the agencies' statutes, rules, and procedures. In reviewing the Structural Pest Control Board, staff found that various licensing, enforcement, and administrative processes in statute do not match these model licensing standards. The Sunset review compared the Board's statute, rules, and practices to the model licensing standards to identify variations. Based on these variations, staff identified the recommendations needed to bring the Board in line with the model standards.

## Support


**Regulating occupations – such as structural pest control – requires common activities that the Sunset Commission has observed and documented over more than 27 years of reviews.**

- ◆ The mission of the Texas Structural Pest Control Board is 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. To provide this protection, the Board regulates more than 3,400 commercial pest control businesses and nearly 13,000 individual pesticide applicators. The Board also 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.
- ◆ The Sunset Advisory Commission has a historic role in evaluating licensing agencies, as the increase of occupational licensing programs served as an impetus behind the creation of the Commission in 1977. Since then, the Sunset Commission has completed more than 90 licensing agency reviews.
- ◆ Sunset staff has documented standards in reviewing licensing programs to guide future reviews of licensing agencies. While these standards provide a guide for evaluating a licensing program's structure, they are not intended for blanket application. The following material highlights areas where the Board's statute and rules differ from these model standards, and describes the potential benefits of conforming with standard practices.

**Infrequent checks of licensees' criminal history could potentially affect the agency's ability to protect consumers.**

- ◆ *Criminal background.* Criminal background checks during the initial application and license renewal processes help protect the public. These checks are especially important for occupations in which licensees regularly enter people's houses to do their jobs, such as structural pest control. Currently, the Board automatically performs a background check whenever someone indicates on their application or renewal form that they have been arrested. The Board also randomly selects the names of 10 applicants and renewals each month to check for criminal history with the Department of Public Safety. In contrast, the Texas Department of Licensing and Regulation conducts background checks on all new applicants and renewals in its air conditioning contractor and electrician programs.

Out of the 120 random checks each year, the agency finds four to eight with a criminal record, meaning those licensees did not answer truthfully about whether they had been arrested. Given the large number of individual pesticide applicators who work for commercial pest control companies, approximately 11,000, a significant number of licensees may have a criminal



*A significant number of licensees may have a criminal history, of which the Board is unaware.*




history of which the Board is unaware. More frequent background checks during the application and renewal processes would protect consumers from individuals who have committed crimes that the Board deems directly related to the performance of their occupation.

**Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers and providing fair treatment to licensees.**

- ◆ *Complaint procedures.* Agencies should provide sufficient information to licensees about procedures for handling complaints and what to expect if they have a complaint filed against them so they can adequately participate in their defense. Clearly communicated procedures in rules, brochures, and websites promote awareness within the regulated community.

While the Board's statute and rules define aspects of how a complaint is handled, they do not clearly lay out all of the steps in the process or a licensee's options at each step. Further, not all licensees are made aware of the fact that they may obtain a copy of their complaint file, which contains information about the agency's investigation. These files are necessary for licensees to learn the allegations against them, decide whether they should protest a sanction, and prepare for an informal settlement conference.

- ◆ *Administrative dismissal.* An agency's staff should have the authority to dismiss complaints without having to involve their governing board except to be informed of such dismissals. The Structural Pest Control Board's staff currently close complaint cases when evidence is insufficient to support a violation or when they do not have jurisdiction to take action, but the agency's statute does not explicitly outline the ability to do so. Providing for staff to dismiss complaints and report dismissals to the Board saves agency time in considering each complaint while still providing the Board with necessary information so that it is accountable for staff actions.
- ◆ *Temporary suspension.* Granting an agency authority to summarily suspend a license without an initial hearing is useful in situations where substantial harm can result if an activity is not stopped immediately. Currently, the Board may initiate enforcement action against a licensee who is misapplying pesticides and potentially exposing the public or the environment to toxic chemicals. However, while the case works its way through the Board's enforcement process, the licensee may continue applying pesticides and offering services to unsuspecting customers. Authorizing a panel or committee of the Board to temporarily suspend a license, and to meet by telephone conference call under certain circumstances, would allow the Board to better protect the public in situations where continued practice constitutes a threat to the public or the environment.



*Temporary suspension is useful where substantial harm can result if an activity is not stopped immediately.*



*Cease and desist,  
and stop sale  
and use orders,  
would allow the  
Board to stop  
harmful activities  
immediately.*

- ◆ **Immediate action orders.** An agency should be able to quickly stop unlicensed or harmful activity through the use of orders that provide immediate relief. The Board's current process of issuing a warning letter to stop unlicensed practice is ineffective because it lacks specific authority to order such action and because the standard range of sanctions does not apply to such unlicensed activity. In addition, the Board's statute does not provide any specific authority to immediately stop applicators from using pesticides or treating products, such as wood, with pesticides that have been banned by the Environmental Protection Agency. In comparison, the Texas Department of Agriculture is able to issue orders to stop the use or sale of banned pesticides.

Currently, to stop unlicensed activity or the use of banned pesticides, agency staff must seek injunctive relief through the Attorney General, which is cumbersome and time consuming. By the time the Board obtains an injunction, the harm may have already occurred. Providing the Board with the authority to issue cease and desist orders for unlicensed activity, as well as stop use and stop sale orders for the use of banned pesticides, would allow the Board to stop all harmful activities immediately, preventing additional harm to public health and the environment. Further, making violations of these orders subject to additional sanctions, such as administrative penalties, would help make them more enforceable.

- ◆ **Public information on enforcement actions.** Agencies should make all final enforcement information, such as final disciplinary orders and sanctions, available to the public. The only way for the public to get information about enforcement actions against individual pest control companies is to call the Board. While the Board provides information on its website about the amounts of administrative penalties it assesses each year for particular violations, it does not provide information about other types of enforcement actions or which companies were sanctioned. Making this information available helps to protect consumers by assisting them in making informed decisions about the pest control companies they hire. The information also ensures procedural fairness to all licensees.

**Certain administrative and policy body provisions of the Board's statute could reduce the agency's efficiency and ability to adapt to changing circumstances.**

- ◆ **Flexible fees.** The Legislature has established a practice in many programs of eliminating capped fee amounts in statute and allowing agencies to set fees by rule. This practice allows for greater administrative flexibility and is consistent with a provision in the General Appropriations Act that requires agencies to set fee amounts necessary to recover the cost of regulation. Limiting agency expenditures through the appropriations process discourages agencies from setting fees too high. The public has the opportunity to comment on proposed fees since the agency sets them in rule. Contrary to this approach, all of the Board's licensing and administrative fees are capped

by statute, limiting the agency's flexibility to set fees as needs change. The chart, *Licensing and Administrative Fee Caps*, lists fees that the agency charges and their statutory caps.

**Licensing and Administrative Fee Caps  
FY 2006**

Fee Type	Statutory Cap	Current Fee	Statutory Citation
Business License	\$180 for new applications and renewals	\$180 for new applications and renewals	Occupations Code, sec. 1951.309
Certified Applicator License	\$112.50 for new applications and renewals	\$85 for new applications \$80 for renewals	
Technician License	\$84 for new applications and renewals	\$65 for new applications \$60 for renewals	
Duplicate License	\$30	\$30	Occupations Code, sec. 1951.311
Testing Fee	\$50	\$50	Occupations Code, sec. 1951.403
Continuing Education Course Approval Fee	\$75	\$40	Occupations Code, sec. 1951.353

- ◆ **Late renewal penalties.** Licensees who fail to renew their licenses on time should pay a penalty set at a level that is reasonable to encourage timely payment, relates to the cost of renewing licenses, and provides flexibility to the agency to make changes as necessary. The Board's statute sets flat penalty amounts for late renewals. If a renewal is late by 30 days or less, the penalty is \$37.50. If a renewal is more than 30 days and less than 60 days late, the penalty is \$75. A more fair and flexible practice would be to require delinquent licensees to pay a penalty that is based on the amount of the license renewal fee, so that late fees would bear a relation to the individual's renewal cost.
- ◆ **Board committees.** Committees of boards should be composed only of board members to provide accountability to the Governor for board actions. The Structural Pest Control Board has no clear statutory authority to create committees or guidelines governing who may be appointed to these committees. Establishing the Board's authority to appoint committees, and specifying that committees must be composed only of Board members, would provide greater accountability to the Governor.
- ◆ **Advisory committees.** Advisory committees should be appointed by the governing board and fill representational gaps while maintaining responsibilities separate from the board. The Structural Pest Control Act creates three advisory committees, all of which are currently inactive, but contains no provision authorizing the Board to create additional advisory committees as needed.



*Late penalties  
should be linked  
to an individual's  
renewal cost.*

Eliminating the current inactive advisory committees and instead giving the Board general authority to create committees would allow the Board to acquire special expertise when needed without being locked into an outdated advisory committee structure. Further, without specific authority for its advisory committees, which the Legislature has considered a prerequisite for funding travel reimbursement costs, the Board would no longer need statutory authority to reimburse advisory committee members for expenses incurred in performing their duties.

## Recommendations

### Licensing

#### Management Action

##### **4.1 The Board 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 Board could develop a schedule to phase in the checks. For example, the Board could begin checking all new license applicants in the first year. The Board could check a quarter of all renewals the next year and add another quarter of renewals each year until all licensees have been checked. Since the Board is already conducting criminal history checks on all applicants and renewals who say they have previously been arrested, the vast majority of the new checks that the Board would conduct under this recommendation would be of those who have no criminal history. By conducting these checks for all applicants and renewing licensees, the Board would be informed of persons it is currently missing who provide false information regarding their previous arrest record. It would also enable the Board to be informed of persons who get convicted after they receive their license.

### Enforcement

#### Change in Statute

##### **4.2 Require the Board 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 Board's enforcement process and help licensees accused of violations prepare a response. The Board 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. The Board must also make complaint information about allegations and the Board's investigation available in time for licensees to adequately participate in their defense.

##### **4.3 Authorize agency staff to administratively dismiss complaints and report these actions to the Board.**

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

#### **4.4 Authorize the Board to temporarily suspend a license.**

Under this recommendation, the Board would be authorized to temporarily suspend a license upon determination, by a panel of three Board members, that continued practice by the licensee threatens the public or the environment. In addition, the panel would be authorized to hold a meeting by telephone conference call under provisions in the Open Meetings Act if the threat is imminent, and convening the panel at one location is impossible for the timely action required. The Board 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 Board'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.

#### **4.5 Authorize the Board to issue cease and desist orders to stop the unlicensed practice of structural pest control.**

The Board would issue cease and desist letters when it receives a complaint or otherwise hears of an individual or business practicing pest control without a license. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease and desist orders. Cease and desist authority would help the Board better protect the public and the environment from unlicensed applicators and standardize the Board's procedures with commonly applied licensing practices.

#### **4.6 Grant the Board authority to immediately stop the use of banned pesticides and the sale of products treated with banned pesticides.**

This recommendation would authorize the Board to issue stop use and stop sale orders, modeled after the Texas Department of Agriculture's current authority. The recommendation would also authorize the Board 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 Board to issue these orders would strengthen its ability to protect the public from harmful illegal pesticides.

#### **4.7 Require the Board to make information on enforcement actions available to the public on the Board'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**

#### **4.8 Eliminate the Board's licensing and administrative fee caps and authorize the Board to set fees in rule.**

This recommendation would give the Board greater flexibility to set fees as appropriate without prior legislative action. The recommendation would also give the Board 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.

#### **4.9 Require the Board to base delinquent license renewal fees on the standard renewal fee.**

The renewal fee for the Board's licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Board 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 late renewal fee would be equal to 1-1/2 times the renewal fee. If the license has been expired for more than 30 days, but less than 60 days, the renewal fee would equal to two times the 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 Board.

### **Policy Body**

#### **Change in Statute**

#### **4.10 Authorize the Board to create board committees, but only comprised of Board members.**

Providing for the Board to create committees consisting only of Board members would ensure the Board's ability to do its job, while providing needed accountability to the Governor.

#### **4.11 Eliminate all advisory committees currently in statute, and instead allow the Board to create advisory committees as needed.**

This recommendation would eliminate statutory language that outlines specific advisory committees currently in statute. Instead, the Board would have authority to create advisory committees as needed to help fill representational gaps or provide special expertise. The Board should adopt rules regarding these committees, in compliance with Chapter 2110 of the Texas Government Code, including:

- ◆ the purpose, role, responsibility, and goals of the committees;
- ◆ the size and quorum requirements of the committees;
- ◆ the qualifications of the members, such as experience or geographic location;
- ◆ the appointment procedures for the committees;
- ◆ the terms of service;
- ◆ training requirements;
- ◆ a process to regularly evaluate of the need for each committee; and
- ◆ the requirement that the committees comply with the Open Meetings Act.

#### **4.12 Eliminate statutory language that provides reimbursement for advisory committee members.**

Under this recommendation, statutory language that provides reimbursement for advisory committee members would be removed to reflect the current legislative trend.

### **Fiscal Implication**

The statutory recommendations in this issue would not have a significant fiscal impact to the State. Removing the fee caps currently in statute will provide the agency with greater flexibility to set fees to recover the costs of its regulation. While the agency will be able to increase its fees, the agency's budget will still be governed by the legislative appropriations process. Changing the basis on which the agency assesses late renewal fees would result in a negligible gain in revenue to the State. The

remaining statutory recommendations are procedural improvements that should require only minor costs to update the agency's rules, processes, and website.

The management recommendation directing the Board to conduct criminal history checks, through the Texas Department of Public Safety for all licensees would not have a fiscal impact to the state, but would require the Board to assess a \$1 fee for each applicant and licensee to cover the costs of performing the check. As a management action, the Board could determine how to phase in the implementation of this provision, for example, beginning with new licensees in the first year and checking one-quarter of license renewals in each of the following four years. Under such an approach, the Board would need to conduct background checks on 3,000 to 4,000 persons each year for five years. After this phase-in period, the Board would conduct checks on approximately 17,000 persons each year, funded by the \$1 fee for each person.

Assuming that most licensees already indicate whether they have criminal histories, the agency should not see a significant increase in its workload resulting from these additional checks. However, the greater number of background checks will likely uncover a small percentage of people who have criminal records, and the agency will have to take enforcement action against them for failing to provide truthful information on their license applications or renewals. If the agency determines that it needs additional resources to review criminal history records, it can request its resource needs through the legislative appropriations process.





*Texas Has a Continuing Need for the Structural Pest Control Board.*

## Summary

### Key Recommendation

- ◆ Continue the Structural Pest Control Board for 12 years.

### Key Findings

- ◆ Texas has a continuing interest in regulating the structural pest control industry.
- ◆ While other organizational options exist, the Board is generally effective at regulating the industry as a stand-alone agency.
- ◆ All states regulate the structural pest control industry, however most use a different organizational structure than Texas.

### Conclusion

Texas has a continuing need to regulate the structural pest control industry to protect the public and the environment from the misuse of pesticides. The Sunset review evaluated the continuing need for a single, independent agency to perform this function. Sunset staff assessed whether the agency's responsibilities could be successfully transferred to another agency. Sunset staff found that while other agencies currently perform similar functions, the benefits of transferring the functions are not sufficient to justify significant change.

## Support

**The Structural Pest Control Board's mission is to protect the health and safety of the public and the environment by regulating the use of pesticides.**

- ◆ The agency protects 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. Texas has been regulating the structural pest control industry since the Legislature created the Board in 1971.
- ◆ To accomplish its mission, the Board licenses businesses that provide pest control services to the public for hire, pesticide applicators who work for these businesses, and individuals who do pest control as part of their job responsibilities at facilities such as schools, nursing homes, and apartment buildings. The Board ensures compliance with the Texas Structural Pest Control Act, Board rules, and federal laws governing pesticide use by investigating and resolving complaints, routinely inspecting pest control businesses, and taking disciplinary action when necessary.

**Texas has a continuing interest in regulating the structural pest control industry.**

- ◆ Misuse of pesticides can cause harm to the public and the environment. Pesticide applicators must be knowledgeable of proper application procedures, as regulated by state and federal law, to prevent misuse. Overuse or use of the wrong types of pesticides, especially in the enclosed spaces of homes and other buildings can cause illness in people. Children and the elderly are especially vulnerable. Improper disposal or overuse of pesticides on lawns and around buildings can result in toxic substances entering public waterways.
- ◆ To ensure that only properly trained individuals apply pesticides, the Board licenses more than 3,400 commercial pest control businesses and nearly 13,000 individual pesticide applicators. To ensure that applicators follow regulations governing the use of pesticides, the Board conducted more than 2,000 inspections in fiscal year 2005. In that same year, the agency investigated 881 complaints that were either submitted by the public or initiated by the staff. The agency found violations in 651 of those complaints, resulting in warnings and corrective action notices in 502 cases, administrative penalties in 89 cases, license probation in 30 cases, and license revocation in 10 cases. In fiscal year 2005, the Board collected more than \$295,000 in fines.
- ◆ The Board's activities also help reduce consumer fraud in the pest control industry. Some pest control companies may fraudulently claim their product or treatment method will stop or prevent pest infestations. Fraud is a significant problem in the control of termites where the average homeowner may not know whether termites are present or whether a company's treatment was



*The Board's regulatory functions help ensure only properly trained individuals apply pesticides.*

successful. By investigating complaints and routinely inspecting businesses, the Board, with its unique expertise in structural pest control, can uncover fraud and take appropriate enforcement action. Further, the industry supports the Board's activities to keep incompetent and fraudulent pest control operators from reflecting poorly on the industry.

- ◆ If Texas were to eliminate its regulation of the structural pest control industry altogether, the Environmental Protection Agency, under federal law, would assume the regulatory role. The Federal Insecticide, Fungicide, and Rodenticide Act requires all states to certify professional pesticide applicators and to take enforcement action against individuals who violate federal law, including the misuse of pesticides. All states have chosen to create their own licensing and enforcement programs rather than allowing the federal government to regulate.

**While other organizational options exist, the Board is generally effective at regulating the industry as a stand-alone agency.**

- ◆ The Board has generally been effective in carrying out the duties assigned to it by the Legislature. The agency satisfactorily accomplishes its licensing and enforcement functions and meets its performance measures. The agency has the needed expertise to perform its duties both at the policymaking level and at the administrative level. This expertise comes from the fact that the majority of the agency's investigators are licensed certified applicators and have past experience in pest control or investigations. Further, six members of the Board either work in the pest control industry or represent other agencies involved in pest control regulation and research.
- ◆ The Board has no specific performance problems that would justify transfer of its functions to another state agency, such as the Texas Department of Agriculture (TDA), Department of State Health Services (DSHS), or Department of Licensing and Regulation (TDLR). While such a transfer could provide some opportunities for improved coordination and efficiency of similar functions and operations, this consideration must be balanced with findings of significant problems that consolidation would address. This is not the case with the Board.
- ◆ Both TDA and DSHS perform similar functions as the Board in that they regulate individuals who apply pesticides for agricultural and disease prevention purposes. However, existing coordination among the three agencies accomplishes benefits that would otherwise be gained through a merger. Coordination currently exists at the highest levels of the agencies to ensure they share resources and avoid duplication of effort. By law, the Structural Pest Control Board consists of one ex officio member representing the Commissioner of Agriculture and another ex officio member representing the Commissioner of State Health Services.

The three agencies cooperate regularly at the staff level as well. The regulatory programs of all three must meet the minimum standards set by



*The Board has no specific performance problems to justify a potential consolidation with another agency.*

the Environmental Protection Agency. To comply with federal requirements, staff meet at least quarterly to talk about areas of overlap among the agencies and to talk with a representative of the Texas Cooperative Extension about the training needs of their licensees. The three agencies' staff attend regional coordinating meetings held twice a year by the Environmental Protection Agency. They also interact regularly by phone and email about any licensing and enforcement issues that may arise.



*Only Texas and Arizona have stand-alone regulatory agencies for structural pest control.*

- ◆ TDLR, the state's umbrella licensing agency, regulates 22 professions and has a well-established structure for occupational licensing and enforcement. TDLR already regulates occupations that are similar to pest control applicators, such as electricians and air conditioning and refrigeration contractors. In the past few years, TDLR has successfully integrated several new occupational licensing programs into its existing structure, including electricians, barbers, and cosmetologists. Despite its success, TDLR needs time to fully assimilate its recently acquired programs before serious consideration of taking on additional responsibilities, such as structural pest control licensing.

**All states regulate the structural pest control industry, however most use a different organizational structure than Texas.**

- ◆ Texas and Arizona are the only states with stand-alone regulatory agencies for structural pest control. All other states regulate the industry through larger agencies. Forty-one states place structural pest control regulation within their departments of agriculture. The other seven states license structural pesticide applicators through an environmental protection, public health, or general occupational licensing agency.

## Recommendation

### Change in Statute

#### 5.1 Continue the Structural Pest Control Board for 12 years.

This recommendation would continue the Board as an independent agency, responsible for regulating the structural pest control industry.

### Fiscal Implication

If the Legislature continues the current functions of the Board, using the existing organizational structure, the agency's annual appropriation of nearly \$1.4 million would continue to be required for its operation. This appropriation is entirely paid for by the licensing fees and federal funds the agency collects.

**ACROSS-THE-BOARD RECOMMENDATIONS**





**Texas Structural Pest Control Board**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.





# **Agency Information**



# Agency Information

## Agency at a Glance

The Texas Structural Pest Control 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.



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*The Board was created to ensure that those who perform pest control are qualified, competent, and professional.*

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## Key Facts

- ◆ **Funding.** In fiscal year 2005, 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 30.5 employees. Fourteen perform licensing and administrative functions in Austin and the other 16.5 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 2005, the Board resolved 881 complaints that were either initiated by the agency or submitted by the public. In response, the Board assessed administrative penalties in 89 cases, put a licensee on probation in 21 cases, and revoked a license in 10 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.

## Organization

### Policy Body

The Texas Structural Pest Control Board consists of nine members, six of whom are appointed by the Governor. Of these appointed members, three must have at least five years experience in the business of structural pest control preceding their appointment. The remaining appointees represent the general public. In addition to appointed members, the Commissioner of Agriculture, the Commissioner of the Department of State Health Services, and the Chair of the Department of Entomology at Texas A&M University, or their designees, serve on the Board in an ex officio voting capacity. The Governor appoints a member of the Board to serve as Chair. The chart, *Texas Structural Pest Control Board*, identifies current Board members.

***Texas Structural Pest Control Board***

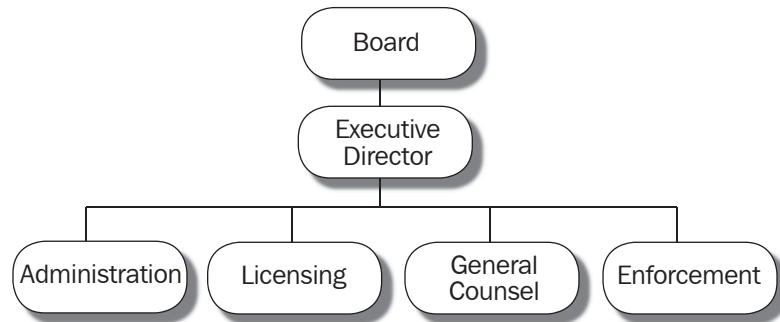
Member	City	Qualification	Term Expiration
John Lee Morrison, Chair	San Antonio	Industry Representative	2007
Madeline Kirven-Gamble, Vice Chair	Dallas	Public Member	2005
Charles Brown	Bryan	Public Member	2007
Tomas Cantu	McAllen	Industry Representative	2005
Roger Gold, Ph.D.	College Station	Ex Officio Member Texas A&M University	N/A
Brenda Hill	Nacogdoches	Public Member	2009
Randy Rivera	Austin	Ex Officio Member Texas Department of Agriculture	N/A
Richard Rogers	Richardson	Industry Representative	2009
Thandi Ziqubu-Page, MPH, Ph.D.	Austin	Ex Officio Member Texas Department of State Health Services	N/A

The Board's primary responsibilities are to make decisions regarding agency policy, approve Board rules, and review and approve disciplinary actions against licensees. The Board periodically creates subcommittees to provide greater oversight for specific activities such as the development of the agency's strategic plan and the creation of new fumigation regulations. The Board also hires the agency's Executive Director. The Board typically meets quarterly.

## Staff

The Board currently has a staff of 30.5, with a full staff capacity of 31. The Executive Director manages the day-to-day operations of the agency and implements Board policy. The agency has 14 licensing and administrative staff at its Austin headquarters, and has 16.5 investigators in the field. Field investigators are divided among nine regions. The agency's employees work in two major divisions: Licensing and Enforcement. Generally, staff administer exams; process licenses, renewals, and fees; perform inspections; and investigate complaints. The chart, *Structural Pest Control Board Organizational Chart* outlines the agency's divisions.

**Structural Pest Control Board  
Organizational Chart**



Appendix A compares the agency's workforce composition to the percentage of minorities in the statewide civilian labor force. While the agency has exceeded some of the civilian labor force percentages, it has fallen below others. However, the agency is small and has few positions in each job category, making these percentages difficult to meet.

## Funding

### Revenues

In fiscal year 2005, the regulation of the structural pest control industry generated total revenue of more than \$2.5 million through various fees, assessments, and federal funds. As a licensing agency, the Board covers its administrative costs through licensing, renewal, and examination fees; and through appropriated receipts. Revenue generated through these licensing fees and service charges totaled more than \$1.9 million during fiscal year 2005. To support the Board's licensing and enforcement activities performed on behalf of the Environmental Protection Agency, the State received more than \$224,000 in federal funding.

The Board also assesses administrative penalties, collecting more than \$295,000 in fiscal year 2005, and generates nearly \$100,000 in revenue for the Texas Online system. The revenue from penalties and the Texas Online fee is not used to cover the agency's operating costs, but goes to the General Revenue Fund.

### Expenditures

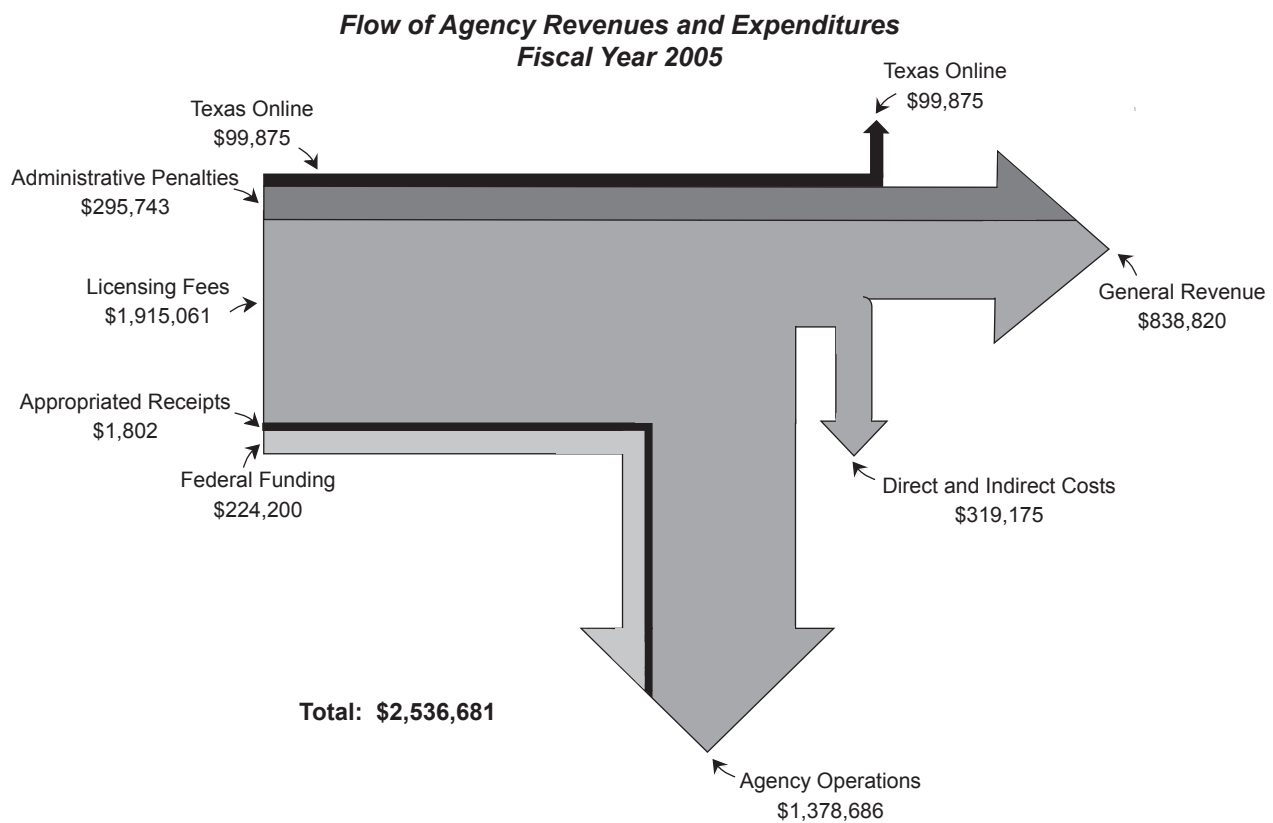
In fiscal year 2005, the Board spent nearly \$1.4 million in three areas: enforcement, licensing, and education. Of this amount, 63 percent was spent on enforcement, 33 percent was spent on licensing, and four percent was spent on education. In addition to the Board's operating expenditures,



*The Board's  
licensees paid more  
than \$1.9 million  
in fees and service  
charges in 2005.*

the Legislature has directed it and other licensing agencies that are funded by fees to also cover direct and indirect costs appropriated to other agencies that provides support services to the Board. Examples of these costs include employee benefits paid by the Employees Retirement System and accounting services provided by the Comptroller of Public Accounts. In fiscal year 2005, these indirect costs totaled more than \$319,000.

The chart, *Flow of Agency Revenues and Expenditures*, shows the overall impact of the Board’s regulation on the General Revenue Fund. Subtracting the agency’s operating expenditures and the direct and indirect costs incurred by other agencies from the total revenue generated, approximately \$839,000 went to the General Revenue Fund in fiscal year 2005 to be used for other state purposes.



Appendix B describes the Board’s use of Historically Underutilized Businesses (HUBs) in purchasing goods and services for fiscal years 2002 to 2005. The Board uses HUBs in the categories of professional services, other services, and commodities. The agency has consistently exceeded the goal for commodities and recently increased its HUB spending for other services. While the agency fell behind the goal for professional services in 2002 and 2003, it has not spent any money in that category in the past two years.

## Agency Operations

To ensure that only qualified individuals provide structural pest control services in Texas, the Structural Pest Control Board performs two core regulatory functions: licensing and enforcement. The Board also administers the Integrated Pest Management Program for pesticide use in public schools and coordinates with the Environmental Protection Agency to enforce federal pesticide laws.

### Licensing & Examination

The Board is charged with licensing both pest control businesses and their employees. The Board issues one license for establishments and three levels of pest control licensure for employees, as shown in the textbox, *Structural Pest Control Board Licenses*. Pest control operators must be certified in each category of pest control in which they provide services, such as for termite control or structural fumigation. The chart, *Categories of Structural Pest Control*, describes the seven categories of pest control certification. All licenses expire one year from the date of issue or, if insurance is required, at the date of insurance expiration.

<b>Structural Pest Control Board Licenses*</b>	
<b>License Type</b>	<b>Number</b>
Business Licenses	3,443
Individual Licenses	12,713
Certified Applicators .....	7,285
Technicians .....	3,041
Apprentices .....	2,387
*License count taken on November 14, 2005. Number of licensees will vary throughout the year.	

### Categories of Structural Pest Control

<b>Category of License</b>	<b>Services Provided</b>
<b>Pest Control</b>	Inspection and control of pests in and around homes, businesses, and industries. This category includes persons engaged in the inspection and control of pests that may invade buildings, but do not normally attack the building itself, such as roaches, silverfish, ants, flies, mosquitoes, or mice.
<b>Termite Control</b>	Inspection and control of termites and other wood-destroying organisms in homes or any other structures. This category includes persons engaged in the inspection and control of wood destroying organisms by means other than fumigation in buildings.
<b>Lawn and Ornamental</b>	Inspection and control of pests of ornamental plants, shade trees, and lawns. This category includes persons engaged in the inspection and control of pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street.
<b>Structural Fumigation</b>	This category includes persons engaged in pest inspection and control through fumigation of structures not primarily intended to contain food, feed, or grains.
<b>Commodity Fumigation</b>	This category includes persons engaged in pest inspection and control through fumigation of processed commodities and structures normally used to contain them.
<b>Weed Control</b>	This category includes persons engaged in the inspection and control of weeds around homes and industrial environs.
<b>Wood Preservation</b>	Pest control that involves the addition of preservatives to wood to extend the life of wood products by protecting them from damage caused by insects, fungi, and marine borers. Such wood products will include, but are not limited to, crossties, poles, and posts. This category is intended only for use by persons using restricted-use wood preservatives.

## **Business License**

A business license allows an individual to establish a business, or branch of a business, and to advertise services. To become a licensed business in Texas, the applicant must be a licensed certified applicator or employ a certified applicator. In addition, a business license applicant must file with the Board proof of insurance for not less than \$200,000 bodily injury and property damage coverage; and \$300,000, in aggregate, for all occurrences. If a business has multiple branches, each is required to be licensed separately, and to designate its own certified applicator. The industry is heavily dominated by small enterprises. More than half of pest control businesses have only one certified applicator, and 94 percent of businesses have five or fewer certified applicators and technicians on staff.

## **Apprentices**

Entry-level pest control operators are required to register with the agency as apprentices by submitting an Application for Technician License within the first ten days of employment, or within ten days of beginning pest control service. Upon verification of the application and a criminal background review, the applicant is issued an apprentice registration card, which is valid for one year.

### **Apprentice Training Requirements**

Apprentices must receive 20 hours of general standards training with at least two hours of classroom training in each of the following areas:

- ◆ Federal and state laws that regulate the industry;
- ◆ Recognition of pests and pest damage;
- ◆ Pesticide labels and label comprehension;
- ◆ Pesticide safety;
- ◆ Environmental protection;
- ◆ Application equipment and techniques;
- ◆ Pesticide formulations and actions;
- ◆ Emergency procedures and pesticide cleanup, and procedures for immediate reporting of spills and misapplications;
- ◆ Basic principles of mathematics, chemistry, toxicology and entomology; and
- ◆ Non-chemical pest control techniques, including biological, mechanical, and prevention techniques.

Apprentices must receive an additional eight hours of classroom training, and 40 hours of practical training, in each category in which they seek licensure.

The apprentice card allows the individual to begin required pest control training as detailed in the textbox, *Apprentice Training Requirements*. Apprentices may not provide pest control services until all required training has been completed. Once that occurs, apprentices may provide most services subject to direct supervision of a technician or certified applicator at least three times per week. While apprentices are not required to become licensed technicians, those who do not do so within one year of registration must re-register and retrain each year.

## **Technicians**

An applicator who has completed all of the apprentice training requirements may continue training toward a technician's license by completing a Board-approved six-hour Technician Training Course. Following the course, the applicant must pass an exam for each category of pest control in which the applicant wishes to provide services. The agency will issue a license once an applicant passes at least one technician-level category exam. To be licensed in additional categories, technicians must complete eight hours of classroom and 40 hours of additional practical training in each licensing category, and pass the appropriate category exams. Licensed technicians may provide services for hire and have fewer duty limitations than apprentices, but must still receive direct supervision from a certified applicator three times per week.



To maintain licensure, a technician must verify that he or she has completed at least eight hours of continuing education each year. While no specific credits are required in any one subject area, training should cover the areas listed in the textbox, *Apprentice Training Requirements*.

### **Certified Applicators**

Certified applicator is the highest licensing designation for structural pest control operators, who may provide pest control services without supervision. Certified applicators have no duty limitations and may use all pesticides, including those with label restrictions, within their category certifications. To become a certified applicator, applicants must have a degree in biological sciences or suitable experience as a licensed technician or in a related field, and must then pass both the general standards exam and at least one category exam. To be licensed and practice in additional categories, certified applicators must pass a separate exam in each category.

To maintain licensure, certified applicators must have at least three hours of continuing education, with two hours of general standards and one hour for each category in which the applicator is certified. Of the two hours of general training, one must relate to integrated pest management, laws and regulations, safety, or environmental protection.

### **Commercial and Noncommercial Licensure**

Technicians and certified applicators must be registered as either commercial or noncommercial operators. Commercial operators comprise the largest share of licensed applicators and may offer services for hire as employees of licensed pest control businesses. Noncommercial operators include individuals who perform structural pest control as employees of the State or a political subdivision or as employees of facilities for which the law requires licensed applicators. These facilities are:

- schools
- apartment buildings
- day-care centers
- hospitals
- nursing homes
- hotels, motels, and lodges
- food-processing establishments
- warehouses

The training and licensure requirements are the same for commercial and noncommercial applicators with one notable exception. A noncommercial applicator does not need to have previous education or experience in pest control, but may qualify to take the certified applicator exam by attending a six-hour training course, which is identical to the standard technician training course. Continuing education requirements are identical for commercial and noncommercial applicators. The Board licenses 2,080 noncommercial applicators, as compared to 10,633 commercial applicators.

The following chart, *Licensing Requirements*, details the experience, education and fees required to obtain each type of applicator license.



*A noncommercial applicator does not need previous education or experience in pest control.*

### Licensing Requirements

	<b>Education &amp; Practical Experience</b>	<b>Exams and Fees</b>	<b>Continuing Education</b>	<b>Duty Limitations</b>
Apprentice	<ul style="list-style-type: none"> <li>◆ No minimum requirement for registration as apprentice</li> <li>◆ Apprentice training must be completed prior to service and includes: Classroom Training                             <ul style="list-style-type: none"> <li>- 20 hours, general standards</li> <li>- 8 hours per pest control category</li> </ul>                             Practical Training                             <ul style="list-style-type: none"> <li>- 40 hours per pest control category</li> </ul> </li> </ul>	Exams <ul style="list-style-type: none"> <li>◆ None</li> </ul> Fees <ul style="list-style-type: none"> <li>◆ Application \$65</li> </ul>	<ul style="list-style-type: none"> <li>◆ Apprentice must complete all classroom and practical training requirements to maintain apprentice registration</li> </ul>	<ul style="list-style-type: none"> <li>◆ May only provide services in licensed categories</li> <li>◆ Direct supervision required 3 times per week</li> <li>◆ Cannot perform school IPM functions or complete Wood Destroying Insect Reports</li> </ul>
Commercial Technician	<ul style="list-style-type: none"> <li>◆ Apprentice training; and</li> <li>◆ 6-hour Technician Training Course</li> </ul>	Exams <ul style="list-style-type: none"> <li>◆ Technician Category Exam(s)</li> </ul> Fees <ul style="list-style-type: none"> <li>◆ Application \$65</li> <li>◆ Renewal \$60</li> <li>◆ Exams \$50</li> </ul>	<ul style="list-style-type: none"> <li>◆ 8 hours of training, maximum 2 hours of practical training</li> </ul>	<ul style="list-style-type: none"> <li>◆ May only provide services in licensed categories</li> <li>◆ May only provide services for hire</li> <li>◆ Direct supervision required 3 times per week</li> <li>◆ Certified Applicator approval required for Wood Destroying Insect Reports</li> </ul>
Noncommercial Technician	<ul style="list-style-type: none"> <li>◆ Apprentice training; and</li> <li>◆ 6-hour Technician Training Course</li> </ul>	Exams <ul style="list-style-type: none"> <li>◆ Technician Category Exam(s)</li> </ul> Fees <ul style="list-style-type: none"> <li>◆ Application \$65</li> <li>◆ Renewal \$60</li> <li>◆ Exams \$50</li> </ul>	<ul style="list-style-type: none"> <li>◆ 8 hours of training, maximum 2 hours of practical training</li> </ul>	<ul style="list-style-type: none"> <li>◆ May only provide services in licensed categories</li> <li>◆ May only provide services for employer</li> <li>◆ Direct supervision required 3 times per week</li> <li>◆ Certified Applicator approval required for Wood Destroying Insect Reports</li> </ul>
Certified Commercial Applicator	<ul style="list-style-type: none"> <li>◆ Degree from an accredited college in a related field;</li> <li>◆ Technician license with 6 months experience and 12 months supervision; or</li> <li>◆ 12 months experience in a related occupation</li> </ul>	Exams <ul style="list-style-type: none"> <li>◆ Applicator General Standards Exam</li> <li>◆ Applicator Category Exam(s)</li> </ul> Fees <ul style="list-style-type: none"> <li>◆ Application \$85</li> <li>◆ Renewal \$80</li> <li>◆ Exams \$50</li> </ul>	Classroom Training <ul style="list-style-type: none"> <li>◆ 2 hours, general standards</li> <li>◆ 1 hour per pest control category</li> </ul>	<ul style="list-style-type: none"> <li>◆ May only provide services in licensed categories</li> <li>◆ May only provide services for hire</li> </ul>
Certified Noncommercial Applicator	<ul style="list-style-type: none"> <li>◆ Completion of 6-hour Technician Training Course;</li> <li>◆ Degree from an accredited college in a related field;</li> <li>◆ Technician license with 6 months experience and 12 months supervision; or</li> <li>◆ 12 months experience in a related occupation</li> </ul>	Exams <ul style="list-style-type: none"> <li>◆ Applicator General Standards Exam</li> <li>◆ Applicator Category Exam(s)</li> </ul> Fees <ul style="list-style-type: none"> <li>◆ Application \$85</li> <li>◆ Renewal \$80</li> <li>◆ Exams \$50</li> </ul>	Classroom Training <ul style="list-style-type: none"> <li>◆ 2 hours, general standards</li> <li>◆ 1 hour per pest control category</li> </ul>	<ul style="list-style-type: none"> <li>◆ May only provide services in licensed categories</li> <li>◆ May only provide services for employer</li> </ul>

## Enforcement

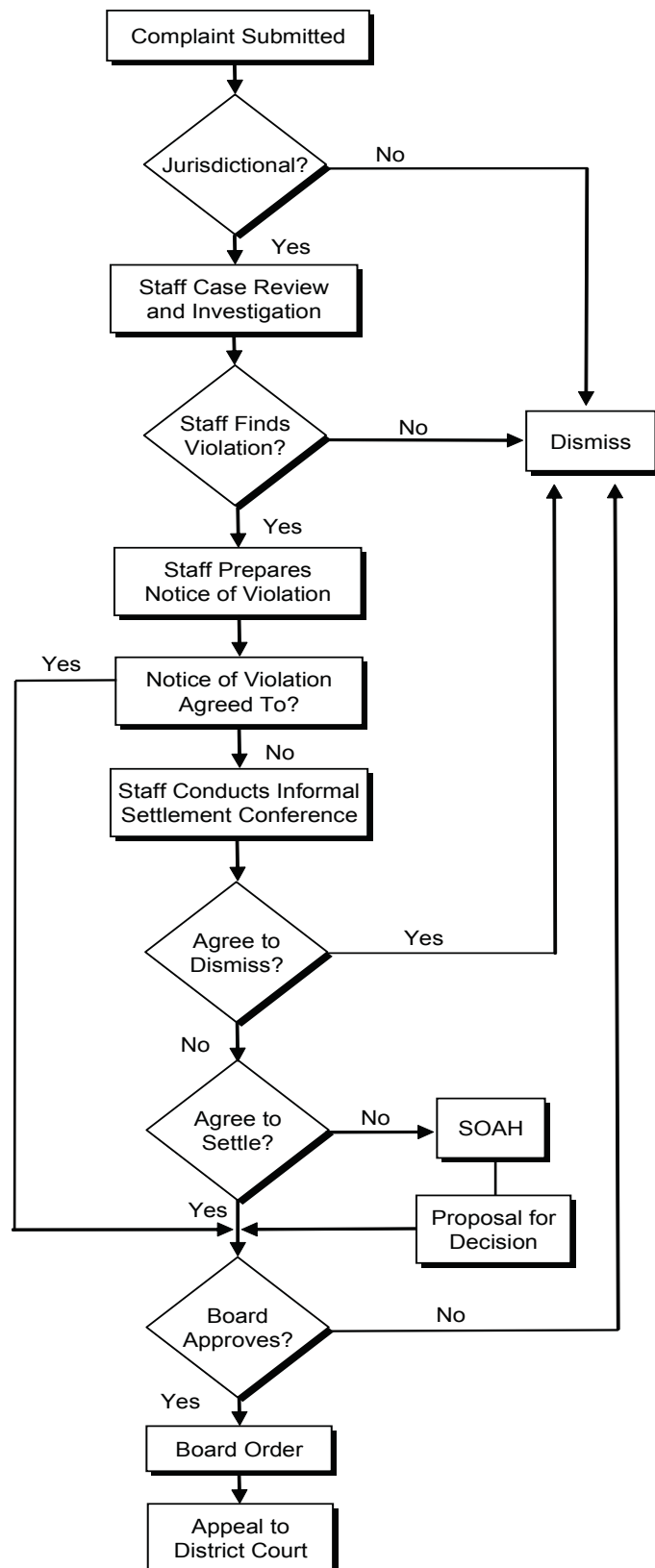
The Board regulates the structural pest control industry by conducting inspections, investigating complaints against licensed and unlicensed individuals, and, if necessary, taking enforcement action against those who violate the Texas Structural Pest Control Act, Board rules, or the Federal Insecticide, Fungicide and Rodenticide Act. The chart, *Structural Pest Control Board Enforcement Process*, shows how the Board processes its complaints administratively. Complaints are either received from the public or initiated by the agency. Most complaints are generated by Board staff as a result of violations found during inspections. Common complaints received from the public involve inaccurate or incomplete wood destroying insect reports and misapplication of pesticides.

### Inspections

To ensure compliance with Board statute and rules, the Pest Control Act requires staff investigators to inspect business license holders once every two years. The Board also inspects 20 percent of all public school districts each year and performs random inspections of facilities that fall under the noncommercial license program. In fiscal year 2005, staff conducted 2,097 inspections. The Board's 16.5 investigators are assigned regions in which they conduct their inspections and perform enforcement duties. The textbox, *Compliance Inspections*, details the activities performed by staff during an inspection.

After completing their inspections, staff may take immediate action against licensees by listing minor infractions in Corrective Action Notices (CAN). These notices are the lowest form of enforcement action taken by the Board and can result in greater enforcement action if these minor infractions are repeated. If an inspection uncovers more serious violations, Board staff will conduct an investigation to pursue greater enforcement action. The

**Structural Pest Control Board  
Enforcement Process**



most common violations found through inspections involve unlicensed activity and failure of school districts to follow integrated pest management guidelines.

#### **Compliance Inspections**

Board investigators examine each of the following areas during routine inspections.

- ◆ License information including expiration dates, appropriate applicator categories, and continuing education records.
- ◆ Records of pesticide application, which should include: product name, active ingredient, amount applied, and who conducted or supervised the application.
- ◆ Consumer information including postings used to advise consumers of upcoming application in their area and contact information given for consumers to pursue complaints, if necessary.

Board investigators also periodically conduct pesticide use observations in the field. Use observations may occur randomly when investigators see individuals applying pesticides, or may occur in response to pre-treatment or structural fumigation notifications, which the Board receives from pest control operators as required by rule. During these observations, investigators check to make sure that the pesticides are being applied properly and that the applicators are licensed.

#### **Investigations**

Once the Board receives or opens a complaint, staff determine if it is jurisdictional, and may refer complaints not within the Board's jurisdiction, such as those against individuals licensed by other agencies, to the appropriate regulatory body. All other complaints receive an investigation that includes a review of materials submitted with a complaint, a licensee's statement, and any other follow-up needed to assess an allegation. Agency staff will prepare and send notices of violation with proposed sanctions to licensees who are found to be in violation or dismiss cases when evidence is insufficient to prove a violation occurred. Of the complaints the Board investigated in fiscal year 2005, about 70 percent were initiated by the Board, 25 percent were received from the public, and 5 percent were referred from federal and state agencies.



*In FY 2005,  
twenty-five percent  
of complaints  
investigated were  
received from  
the public.*

#### **Informal Settlement Conferences and Formal Hearings**

When licensees receive a notice of violation, they can agree to the Board's proposed sanction and the Board will close the case. Licensees who do not agree with the Board's proposed sanctions may request an informal settlement conference, conducted by the Board's staff, in which licensees may present mitigating or exculpatory information. The agency will then propose a settlement offer to the licensee, and if it is not agreed to, the agency will refer the case to the State Office of Administrative Hearings (SOAH) for a formal hearing subject to final approval of the Board. In fiscal year 2005, the Board resolved 224, or about 26 percent, of its complaints through informal settlement conferences and resolved nine cases through the contested case process at SOAH.

#### **Sanctions**

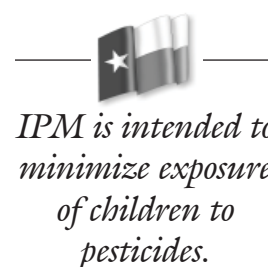
The Board can apply a variety of sanctions through its enforcement process, including CANs, written warnings, administrative penalties, probation, suspension, and revocation of a person's license. The agency may also refuse to issue or renew a license. The most commonly applied sanctions are

corrective action notices. The table, *Complaint Activity*, details the number of complaints received by the public and initiated by the Board, and shows the disposition of all complaints resolved by the Board in fiscal year 2005. For that year, the Board resolved complaints in an average of 85 days.

**Complaint Activity – Fiscal Year 2005**

Violation	Type of Action							Total
	Corrective Action Notice	Warning	Penalty	Probation	Revocation	Refuse to Issue	Refuse to Renew	
License Requirements <sup>1</sup>	124	41	9	20	3	29	2	228
Public Information & Disclosure <sup>2</sup>	78	85	21	2	2	0	0	188
Records Violations <sup>3</sup>	67	58	38	4	4	1	0	172
Unlicensed Activity	1	27	43	1	0	8	0	80
Miscellaneous <sup>4</sup>	16	34	21	3	0	1	0	75
Pesticide Misapplication <sup>5</sup>	2	35	22	0	1	0	0	60
IPM Program <sup>6</sup>	47	12	1	0	0	0	0	60
Total Violations <sup>7</sup>	335	292	155	30	10	39	2	863
Number of Complaints <sup>7</sup>	294	208	89	21	4	33	2	651

<sup>1</sup> License Requirement violations involved failing to renew a license within 30 days of its expiration date, failing to provide the Board with accurate information, and failing a criminal background check.  
<sup>2</sup> Public Information and Disclosure violations involved failure to display a license, to provide notice of pesticide application, and to provide information sheets to the public.  
<sup>3</sup> Records violations involved errors related to technician training, continuing education, and pesticide use records.  
<sup>4</sup> Miscellaneous violations involved misrepresentation to the public, errors on Wood Destroying Insect Reports, and misapplication of termite treatment stickers.  
<sup>5</sup> Pesticide Misapplication violations involved performing pesticide applications inconsistent with label directions, operating out of category, and engaging in harmful practices.  
<sup>6</sup> IPM Program violations involved school districts not following Integrated Pest Management Program requirements.  
<sup>7</sup> In fiscal year 2005, the Board took enforcement action on 651 complaints in which it found 863 violations. The Board also dismissed 230 complaints finding no violation.



**Integrated Pest Management**

In addition to its licensing and enforcement activities regarding structural pest control, the Board is responsible for oversight and enforcement of the Integrated Pest Management (IPM) Program for primary and secondary public schools throughout the state. The textbox, *Integrated Pest Management*, provides an overview of basic IPM principles. The Legislature created the school IPM program in 1991 in an effort to minimize exposure of children to pesticides.

Through its administration of the school IPM program, the Board creates regulations for the use of pesticides in schools, develops training requirements for school personnel, and inspects schools to ensure compliance. Each year Board investigators visit approximately 20 percent of all public school districts.

#### ***Integrated Pest Management***

IPM is a pest management process that uses a variety of structural, technological, natural and other methods to control pests. Pesticides may be used judiciously, and typically only as a last resort. When pesticide use is required, applicators must seek the least toxic alternatives. The benefits of IPM may include harm reduction for both humans and the environment, and possible cost savings. Popular examples of IPM include removing food from classrooms, caulking cracks in walls and clearing brush from areas adjacent to school buildings.

To comply with the program, individual school districts must develop and approve an IPM plan outlining pest management techniques for all district facilities. Districts must also appoint an employee as an IPM Coordinator who must attend Board-approved training and who is responsible for overseeing all aspects of the plan including pest control activities and keeping records of all pesticide applications. Pesticide applications must be made by a licensed applicator, or supervised by a licensed applicator if outdoors.

#### **Federal Coordination**

The Board's regulatory framework under state law also serves a federal purpose on behalf of the Environmental Protection Agency (EPA). The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for federal control of pesticide sale, distribution, and use. FIFRA gives EPA authority to regulate pesticide use, license pesticide sellers and applicators, and take enforcement action. To increase compliance with FIFRA, EPA has established cooperative agreements with each state, delegating primary regulatory responsibilities to designated state agencies.

The agreement between EPA and the Structural Pest Control Board requires the Board to license structural pesticide applicators, conduct inspections, and investigate complaints. The Board receives federal funding to support these activities. In exchange, the Board must comply with all relevant EPA regulations and guidelines. The Board reports on its activities in a mid-year and an end-of-year report. The Board also meets with EPA officials twice a year to discuss these reports and to review concerns and goals for the next year. EPA has a similar agreement with the Texas Department of Agriculture concerning agricultural pesticide use. The textbox, *Additional EPA Enforcement Requirements*, outlines additional cooperative agreement details.

#### ***Additional EPA Enforcement Requirements***

In accordance with the cooperative agreement, the Board must meet the following EPA stipulations.

- ◆ Notify EPA of any human exposure or serious misapplication incidents, and coordinate response with other state entities as appropriate.
- ◆ Conduct inspections of federal facilities.
- ◆ Attend state and regional EPA meetings.
- ◆ Conduct use observations to ensure compliance with EPA pesticide labeling.
- ◆ Collect and analyze water, soil, and pesticide samples.

# APPENDICES

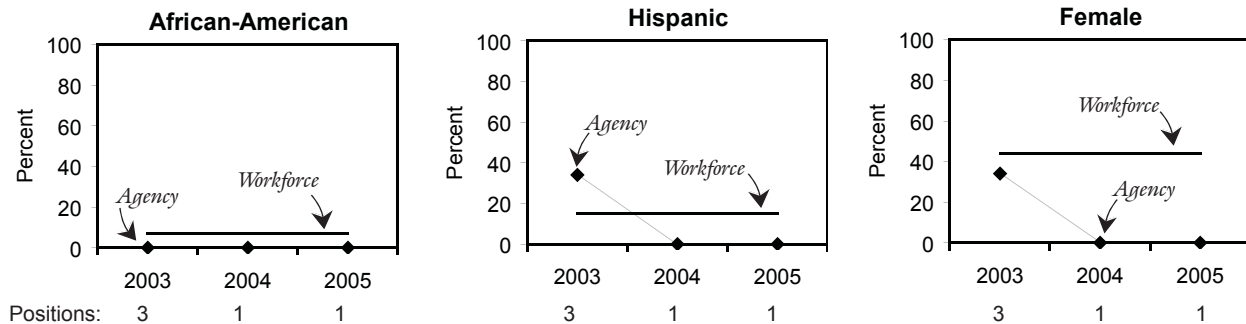




## Equal Employment Opportunity Statistics 2003 to 2005

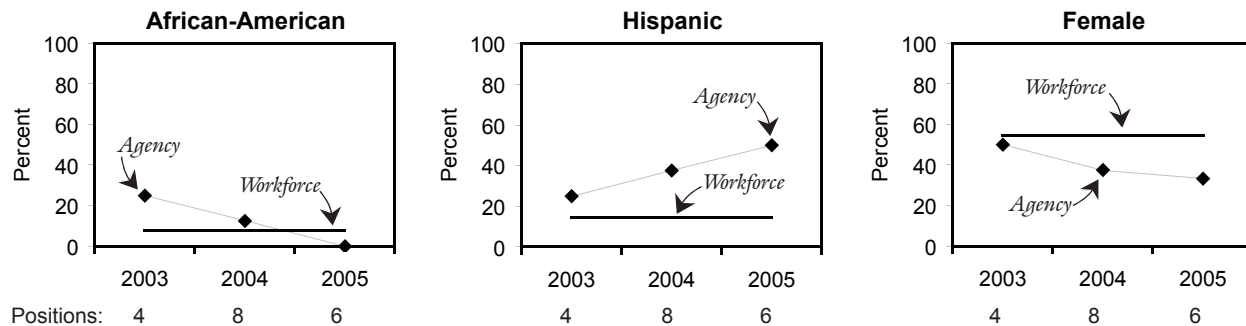
In accordance with the requirements of the Sunset Act, the following material shows trend information for the Texas Structural Pest Control Board employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2003 to 2005. The agency does not employ persons in two job categories – skilled craft and technical. While the agency has exceeded some of the civilian labor force percentages, it has fallen below others. However, the agency is small and has few positions in each job category, making these percentages difficult to meet.

### Administration



The agency exceeded the percentage for Hispanic employment in 2003, but fell short of the percentages for Hispanics in the past two years and for African-Americans and females in all three years.

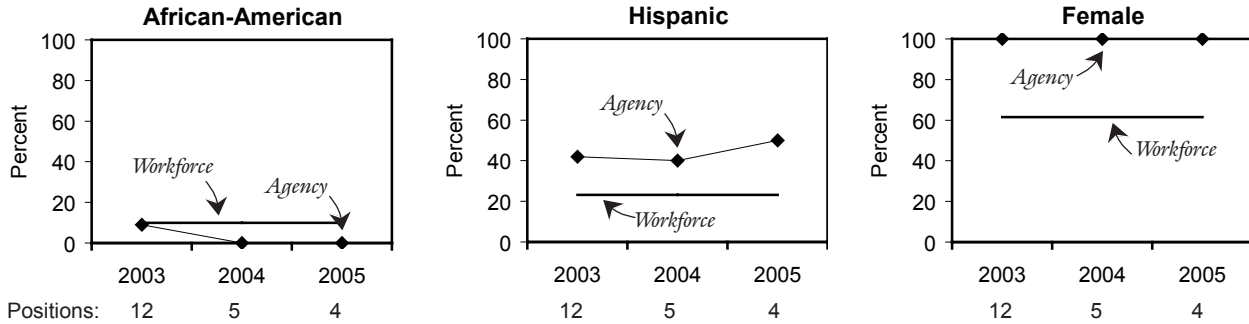
### Professional



The agency exceeded the percentages for Hispanic employment each year and for African-American employment two of the years, but fell short of the percentages for female employment during this period.

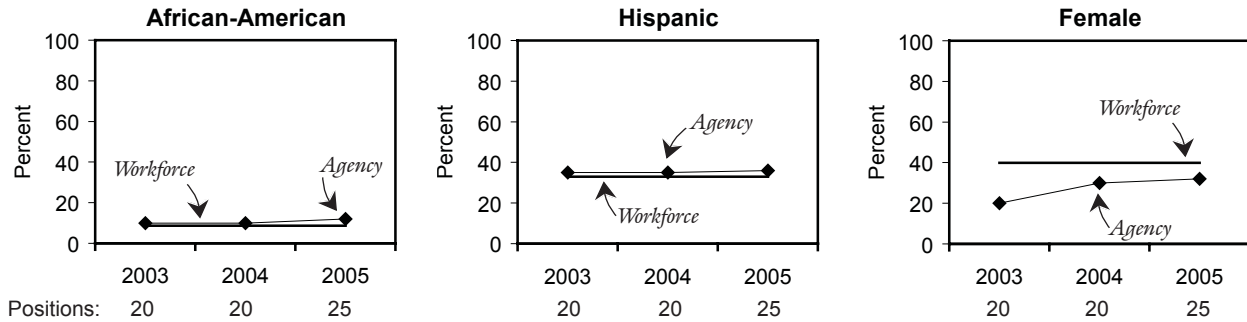
# Appendix A

## Administrative Support



The agency exceeded the percentages for Hispanic and female employment, but fell short of the percentages for African-American employment.

## Service/Maintenance



The agency met or exceeded percentages for African-American and Hispanic employment, but fell short of the percentages for female employment.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(A).

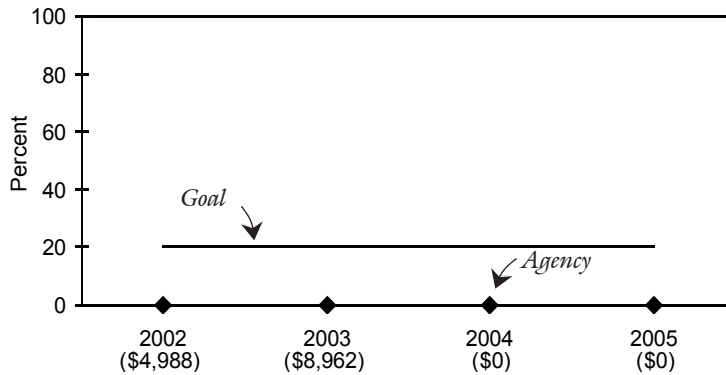
<sup>2</sup> Texas Labor Code, sec. 21.501.

## Historically Underutilized Businesses Statistics 2002 to 2005

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup> The review of the Structural Pest Control Board revealed that the agency is complying with all State requirements concerning HUB purchases.

The following material shows trend information for the Texas Structural Pest Control Board use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.<sup>2</sup> In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2002 to 2005. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. The agency has consistently exceeded the goal for commodities and recently increased its HUB spending for other services. While the agency fell behind the goal for professional services in 2002 and 2003, it has not spent any money in that category in the past two years.

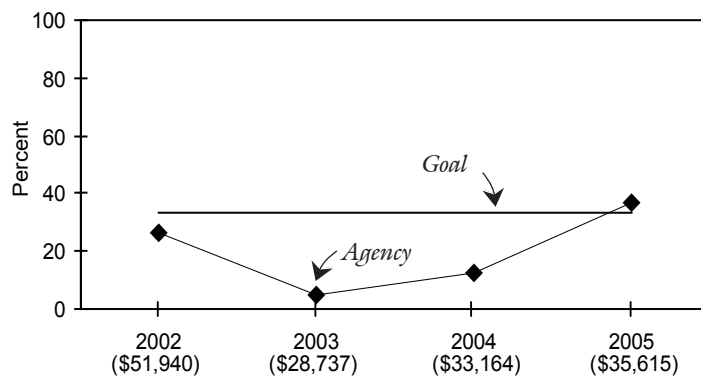
### Professional Services



In 2002 and 2003, the agency spent a small amount on professional services, but made no HUB purchases. The agency spent no money in this category in the past two years.

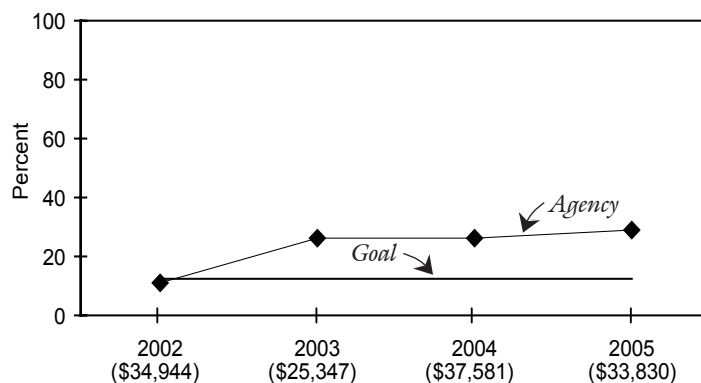
## Appendix B

### Other Services



The agency has increased its HUB spending in this category in recent years.

### Commodities



The agency exceeded the goal for commodities spending in all years except 2002.

<sup>1</sup> Texas Government Code, sec. 325.011(9)(B).

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

## Staff Review Activities

During the review of the Structural Pest Control Board, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended a Board meeting and reviewed minutes from past meetings; met with Board members; met with staff from key legislative offices; conducted interviews with and solicited written comments from interest groups and the public; reviewed agency documents, reports, complaint files, data, state statutes and rules, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

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

- ◆ Interviewed staff from the Texas Department of State Health Services, Texas Department of Agriculture, Texas Commission on Environmental Quality, Texas State Board of Plumbing Examiners, Texas Department of Licensing and Regulation, and the Southwest Technical Resource Center for Integrated Pest Management.
- ◆ Accompanied a Board investigator on an inspection of a commercial business and a school district.
- ◆ Attended a contested case hearing conducted by the State Office of Administrative Hearings.
- ◆ Reviewed federal law and guidelines that pertain to pesticide use and attended the Environmental Protection Agency's bi-annual regional meeting for pesticide regulatory agencies.
- ◆ Attended a coordination meeting between the Structural Pest Control Board, Texas Department of Agriculture, Texas Department of State Health Services, and Texas Cooperative Extension.



**SUNSET REVIEW OF THE  
TEXAS STRUCTURAL PEST CONTROL BOARD**

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