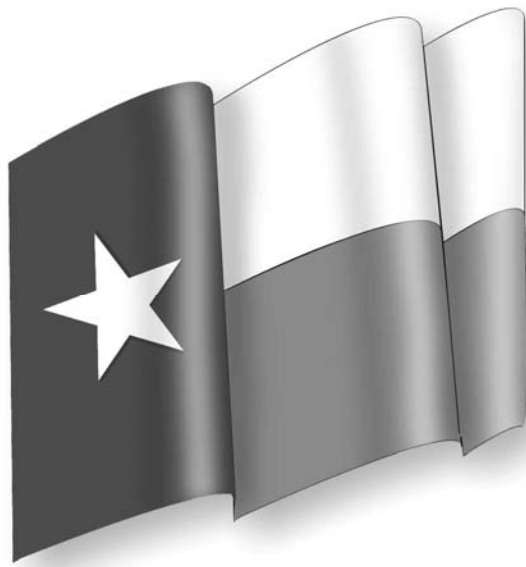


SUNSET COMMISSION DECISIONS



Texas Structural Pest Control Board

November 2006

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.

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.

Issues/Recommendations

Issue 1 Statutory Inspection Requirements Limit the Board's Ability to Focus Its Limited Resources on Areas of Highest Risk.

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.

Responses

Agency

Recommendation 1.1: The Board believes that the two-year inspection period for licensed pest control businesses is consistent with a two-year record keeping requirement for both application records and training records. In the Board's opinion, risks remain highest for licensed companies due to the volume of pesticides used, greater entry into homes, and toxicity of some products applied. The Board believes that the statutory requirement for inspection of pest control businesses once every two years along with the compliance assistance rendered has contributed greatly to a reduction in consumer complaints; therefore, it has reservations about reducing the frequency of pest control business inspections.

Recommendation 1.2: The Board states that it currently coordinates with multiple agencies and associations, but agrees that increased coordination is highly desirable. Such coordination takes staff time, which has been reduced due to budget cuts in recent years. The Board is pleased to accept the offer of assistance from the Department of State Health Services.

Recommendation 1.3: The Board believes that much of the data that the Sunset staff deems necessary for a risk-based system of inspections is collected in some form, but not tabulated in automated reports. The Board relies on anecdotal information, periodic surveys, and enforcement data reviews along with personal memory and knowledge. The Board's staff is currently evaluating the programming changes as well as any reporting and data entry changes that may be needed.

(John Lee Morrison, Chairman – Texas Structural Pest Control Board)

Affected Agency

Recommendation 1.1: The Southwest Technical Resource Center for School IPM supports the idea of inspectors visiting all school districts no less than once every four to five years. This can only increase the fairness of enforcement of school IPM regulations and would ensure that some of the smaller school districts that have yet to be visited would become aware of and in compliance with the law. (Janet A. Hurley, Extension Assistant/School IPM Program Coordinator – Southwest Technical Resource Center for School IPM, Texas Cooperative Extension, Dallas)

Recommendation 1.2: The Department of State Health Services will be happy to disseminate any survey documents that are developed by the Board to day-care centers, hotels, hospitals, and food manufacturers that are inspected by Department personnel. (Eduardo J. Sanchez, M.D., M.P.H., Commissioner – Texas Department of State Health Services, Austin)

For

Recommendation 1.1

Darrell L. Hutto – Horizon Professional and Consulting Services, Houston

Errol Cohen, President – Texas Pest Control Association, Austin

Against

None received.

Recommended Action: Adopt Recommendations 1.1 through 1.3.

Commission Decision: Adopted Recommendations 1.1 through 1.3.

Issue 2 The Agency's Unstructured Method of Developing and Revising Licensing Exams Could Result in Inconsistent Assessment of Applicants' Knowledge.

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.

Responses

Agency

Recommendation 2.1: The Board believes that its exams are adequate because they have been reviewed and approved by the U.S. Environmental Protection Agency and the agency has seen reductions in the numbers of consumer complaints. The Board's staff believes that they may not have provided the Sunset staff with adequate information in regard to this issue. However, the agency has relied upon historical performance and knowledge from training on exam preparation as well as many years of experience more than on formal written processes. The Board concurs that exams should be revised at more frequent intervals. The Board's staff will develop more complete written procedures for review by the Board.

Recommendation 2.2: The Board has been exploring external administration since 2004, as noted in the Sunset staff report. To date, the Board's staff has not found any vendor that offers to render such services as cost effectively as the Board's current practice, which is benefited by having several testing sites provided at no cost to the agency. The Board will continue to explore the issue.

(John Lee Morrison, Chairman – Texas Structural Pest Control Board)

For

Recommendation 2.1

Errol Cohen, President – Texas Pest Control Association, Austin

Debbie Aguirre, President – Elite Exterminating, Inc., Corpus Christi

Against

None received.

Modifications

1. Require the agency to include at least 200 questions on each exam and that these questions represent current industry educational materials and be asked in a straightforward manner to simply determine the knowledge level of examinees. (Darrell L. Hutto – Horizon Professional and Consulting Services, Houston)
2. Require the agency to offer its exams online or at least by computer with safeguards, such as having a proctor oversee exam administration at Texas Cooperative Extension offices statewide. (Darrell L. Hutto – Horizon Professional and Consulting Services, Houston)

Staff Comment: Both of these modifications could be considered as management actions, directing the Board to comply without requiring statutory change.

Recommended Action: Adopt Recommendations 2.1 and 2.2.

Commission Decision: Adopted Recommendations 2.1 and 2.2.

Issue 3 The Board's Guidance to Schools on Integrated Pest Management Regulations Does Not Go Far Enough to Ensure Consistent Compliance.

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.

Responses

Agency

Recommendation 3.1: The Board agrees that changes should be made in the school Integrated Pest Management program and has offered much the same suggestions in its Self-Evaluation Report to accomplish aspects of this recommendation.

Recommendation 3.2: The Board states that during the implementation phase of mandatory school Integrated Pest Management (IPM), the Board completed a number of projects for compliance assistance (primarily with federal discretionary grant funds) and to provide information on IPM to public school districts. Several publications to assist schools were made available. The agency's website has a section dedicated to this topic; however, in recent years the Board's focus has been on enforcement and most educational efforts have been relegated to the Texas Cooperative Extension, school associations, and private vendors. As indicated in the Sunset staff report, "[T]he Legislature has never earmarked funding for IPM program administration by the Board...". If the Board is to significantly increase its activities in this area, significant shifting of resources or additional resources will be needed.

(John Lee Morrison, Chairman – Texas Structural Pest Control Board)

Affected Agency

Recommendation 3.1: The Southwest Technical Resource Center for School IPM believes that some simple changes to the regulations would simplify and clarify enforcement while continuing to encourage the use of less toxic materials. The Center supports the recommendation to remove the requirement for a list in statute and instead require the Board to develop criteria. The Center also agrees with the Sunset staff's observation that different standards for indoor and outdoor posting are confusing and do not make sense. The Center feels it does make sense to require posting for both indoor and outdoor locations. The Center does not believe that requiring outdoor posting would pose an undue burden on schools, noting that many school districts undertake this voluntarily.

Recommendation 3.2: The Southwest Technical Resource Center for School IPM agrees with the recommendation that the Board develop better education resources and outreach for IPM coordinators, but would suggest that the Board may not be the best agency to provide IPM training for schools (see Modification #4). The Center finds schools more open to learning and asking questions in classes conducted by impartial trainers who are not also regulators. Unfortunately, when the school IPM legislation passed in 1991, the State failed to make provision for appropriations of funds for education.

(Janet A. Hurley, Extension Assistant/School IPM Program Coordinator – Southwest Technical Resource Center for School IPM, Texas Cooperative Extension, Dallas)

The Southwest Technical Resource Center for School IPM Modifications:

1. As a management action, the Board should ensure that all Green List products bear the “Caution” signal word.
2. Require all school districts to inform the Board of the name, address, phone number, and email address of their IPM coordinators. Further, require school districts to inform the Board within 90 days when a new coordinator is appointed.
3. Require six hours of continuing education every three years for IPM coordinators.
4. Appropriate approximately \$100,000 for educational programs targeting schools through the Texas Cooperative Extension.

(Janet A. Hurley, Extension Assistant/School IPM Program Coordinator – Southwest Technical Resource Center for School IPM, Texas Cooperative Extension, Dallas)

For

Recommendation 3.1

Thomas Kezar – CTN Educational Services, Austin

Against

None received.

Recommended Action: Adopt Recommendations 3.1 and 3.2.

Commission Decision: Adopted Recommendations 3.1 and 3.2 and Modifications 2, 3, and 4.

Issue 4 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

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 management recommendation directing the Board to conduct criminal history checks 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. The other recommendations in this issue would not have a significant fiscal impact to the State.

Responses

Agency

Recommendation 4.1: The Board agrees. The Board estimates the cost of criminal background checks through the Department of Public Safety to be approximately \$17,000 to \$20,000 annually. Additional staff time will be required to process requests and evaluate data. Department of Public Safety checks alone will not show out-of-state or federal convictions. Some additional delays in license issuance may be experienced to accommodate checks on all licensees.

Recommendations 4.2 - 4.7: The Board agrees with these recommendations. Recommendation 4.2 regarding information about the Board's enforcement process and information in complaint files has been implemented effective March 3, 2006 through new complaint resolution procedures.

Recommendations 4.8 - 4.12: The Board believes these are issues for the Legislature to decide.

(John Lee Morrison, Chairman – Texas Structural Pest Control Board)

For

None received.

Against

None received.

Modification

1. Require the Board to include persons from the industry on Board-appointed committees. (Debbie Aguirre, President – Elite Exterminating, Inc., Corpus Christi; Errol Cohen, President – Texas Pest Control Association, Austin; Ken Myers, Executive Director – Texas Pest Control Association, Austin)

Recommended Action: Adopt Recommendations 4.1 through 4.12.

Commission Decision: Adopted Recommendations 4.1 through 4.9.

Issue 5 Texas Has a Continuing Need for the Structural Pest Control Board.

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.

Responses

Agency

The Board agrees. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)

For

Thomas Kezar – CTN Educational Services, Austin

Darrell L. Hutto – Horizon Professional and Consulting Services, Houston

Errol Cohen, President – Texas Pest Control Association, Austin

Gary Gillen, Board Member – Texas Pest Control Association, Richmond

Ken Myers, Executive Director – Texas Pest Control Association, Austin

Edward Ben Silva – Gonzales

Joe Cantu, President, and nine other members – Central Texas Pest Control Association, Taylor

Roger Vasquez, President, and 14 other members – San Antonio Pest Control Association, San Antonio

Against

Ken Harris, Owner – Bell County Pest Control, Belton

Modification

1. Abolish the Structural Pest Control Board and transfer its functions to the Texas Department of Agriculture. (Lance Andrews)

Recommended Action: Adopt Recommendation 5.1.

Commission Decision: In lieu of Recommendation 5.1, the Commission voted to abolish the Structural Pest Control Board and transfer its functions to the Department of Agriculture. The Commission also voted to create an advisory committee to advise the Department on structural pest control issues. The Agriculture Commissioner would appoint the members of the advisory committee, including experts in the pest control industry and representatives of the public.

Across-the-Board Recommendations

Texas Structural Pest Control Board

Recommendations	Across-the-Board Provisions
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.

Recommended Action: Adopt staff recommendations.

Commission Decision: The Commission took no action on the across-the-board recommendations.

New Issues

New Issues

The following issues were raised in addition to the issues raised in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

6. Increase the penalty from a Class C to a Class B misdemeanor for persons who intentionally violate the law by practicing without a license. Allow the Board to impose this higher penalty on first-time offenders. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)
7. Place the Board under the Self-Directed, Semi-Independent Pilot Project, providing for it to be self-funded and self-leveling, to make adjustments as needed, and allow the Board to approve fee increases and decreases. (John Lee Morrison, Chairman – Texas Structural Pest Control Board; Thomas Kezar – CTN Educational Services, Austin; Errol Cohen, President – Texas Pest Control Association, Austin; Ken Myers, Executive Director – Texas Pest Control Association, Austin)
8. Fund the agency according to its current needs, which would require increasing its annual appropriation by approximately \$450,000 and adding eight FTEs. (John Lee Morrison, Chairman – Texas Structural Pest Control Board; Errol Cohen, President – Texas Pest Control Association, Austin; Ken Myers, Executive Director – Texas Pest Control Association, Austin; Gary Gillen, Board Member – Texas Pest Control Association, Richmond; Darrell L. Hutto – Horizon Professional and Consulting Services, Houston)
9. Clarify whether charter schools, private schools, and home-based schools should comply with the requirements of the Integrated Pest Management Program, which public schools must follow. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)

Staff Comment: The Board did not provide a specific recommendation on this issue. Instead, it would like the Legislature to decide on the right course of action.

10. Grant the Board authority to enter any premises during reasonable business hours to conduct inspections and investigate complaints. The statutory language for this entry authority could be modeled after similar language in the Agriculture Code for the Texas Department of Agriculture. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)
11. Change the agency's name from the Texas Structural Pest Control Board to the Texas Structural Pest Control Commission. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)
12. Clarify whether pest control operators should carry errors and omissions insurance coverage. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)

Staff Comment: The Board did not provide a specific recommendation on this issue. Instead, it would like the Legislature to decide on the right course of action.

13. Require minimum insurance requirements for pest control operators to be raised. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)

Staff Comment: The Board did not provide a specific recommendation on this issue. Instead, it would like the Legislature to decide on the right course of action.

14. Define the term “warehouse” as it applies to noncommercial license program. (John Lee Morrison, Chairman – Texas Structural Pest Control Board)
Staff Comment: The Board did not provide a specific recommendation on this issue. Instead, it would like the Legislature to decide on the right course of action.
15. Require the Board to properly recognize and classify accepted pre-treatment methodologies, including establishing a separate, stand-alone category for primary wood framing treatments, and discourage incomplete label applications (partial treatments). (Nisus Corporation – Rockford, TN)
16. Require pre-treatment applicators to disclose the level and type of pre-treatment of every new home to the public, instead of only to the builder. (Nisus Corporation – Rockford, TN)
17. Limit the Structural Pest Control Board’s jurisdiction to regulating those involved in the business of structural pest control. Further clarify that a person involved in the business of structural pest control is offering certain pest control services for compensation in the State of Texas. (Jay Dyer, Director of Regulatory Affairs – Texas Association of Builders, Austin)
18. Allow beekeepers to remove bees from structures without a license from the Structural Pest Control Board as long as they are not using pesticides. (John Talbert, President – Texas Beekeepers Association, Josephine; Edward Priest, President – Alamo Area Beekeepers Association, San Antonio)
19. Require additional training for Board investigators, including understanding of product labels, product application techniques, customer service, and professional conduct. (Debbie Aguirre, President – Elite Exterminating, Inc., Corpus Christi; Errol Cohen, President – Texas Pest Control Association, Austin)
20. Require the Board to develop a program to educate and assist pest control operators with compliance of regulations. (Debbie Aguirre, President – Elite Exterminating, Inc., Corpus Christi; Errol Cohen, President – Texas Pest Control Association, Austin)
21. Require the Board to refer to the Texas Department of Agriculture suspected violations of pesticide laws by an operator who holds a nurseryman's certification. (James K. Presnal – Attorney representing the Texas Nursery and Landscape Association, Bryan)

Recommended Action: Staff makes no recommendations on the new issues.

Commission Decision: Adopted New Issue 18.