

SUBJECT: Transferring pest control board duties to the Agriculture Department

COMMITTEE: Agriculture and Livestock —favorable, without amendment

VOTE: 7 ayes — Miller, Anderson, B. Brown, Aycock, Gallego, Garcia, Heflin
0 nays

WITNESSES: For — Mitchell Wassom, Collin Services, Inc.; J.D. Fuller; Tim Gafford; Larry R. Rider; Van Wilson; (*Registered, but did not testify*: Brian Yarbrough, Terminex)

Against — Debbie D. Aguirre, Texas Pest Control Association/Elite Exterminating, Inc.; Greg Aguirre Jr., Elite Exterminating, Inc.; Matt R. Burns and Anthony Patek, ABC Pest and Lawn Services; Joe Cantu, Texas Pest Control Association; Errol Cohen, Texas Pest Control Association; Ned Ewart, Bobby Jenkins, Eric Melass, Janis Reed, Texas Pest Control Association; Julie Fredlund, Chem-Free Pest and Lawn Services; Reggie James, Consumer's Union of OS Inc.; Dennis Jenkins, ABC Pest and Lawn Service of DFW, Inc.; Joel Roehling, Termimesh, LLC; Harvey L. West, Chapter 1, GHPCA; Bob Davis; Michael W. Dickens; David Fincannon; Mike Howard; Thomas Rasberry; (*Registered, but did not testify*: Dauphin Ewart)

On — Charlotte Wells, Texas Alternatives to Pesticides; (*Registered, but did not testify*: Jimmy Bush, Texas Department of Agriculture; Annabelle R. Dillard, Texas Department of State Health Services/Division of Regulatory Services; Glen Grunberger, Texas Structural Pest Control Board; Janet Hurley, Texas Cooperative Extensions/Southwest Technical Resource Center for School IPM; Karen Latta, Sunset Advisory Commission; Rita Martinez, Structural Pest Control Board)

BACKGROUND: The Texas Structural Pest Control Board (SPCB) was created by the Legislature in 1971 to regulate the structural pest control industry. Structural pest control consists of the prevention, management, and eradication of pests in and around households and other structures.

Currently, the agency is charged with protecting the public and the environment against pesticide misuse by ensuring that persons engaged in pest control activities are qualified, competent, and abide by professional

standards. To carry out this mission, SPCB licenses commercial and noncommercial pest control professionals and issues information to licensees and the general public. The agency also oversees compliance with state and federal laws by investigating and resolving complaints, inspecting pest control businesses, and taking disciplinary action when necessary.

With 31 employees, the agency regulates more than 3,400 pest control businesses and 13,000 individual pesticide applicators. In 2005, SPCB spent almost \$1.4 million in funding received from licensing fees, examination fees, and federal grants. More than 881 complaints were resolved in 2005 by the board. SPCB also oversees Integrated Pest Management (IPM) Programs at school districts.

If not continued by the 80th Legislature, SPCB will be abolished September 1, 2007.

DIGEST:

Abolition of SPCB. HB 2458 would abolish SPCB and transfer its current duties and obligations to the Texas Department of Agriculture (TDA). The board would continue to exist until March 1, 2008, for the purpose of transferring functions to TDA. For the remainder of fiscal 2007, SPCB would be required to perform any computer programming and other tasks necessary for the transition of its duties, including accounting and reporting responsibilities, to TDA.

The department would adopt rules and policies required by HB 2458 by September 1, 2008. All rules of the agency would be continued by TDA until superseded by rules of the department.

Advisory committee. The bill would create a Structural Pest Control Advisory Committee in place of SPCB. The commissioner of agriculture would appoint to the committee members of the general public and experts in structural pest control. The committee's duties would include gathering and providing information on structural pest control and advising TDA on educational and enforcement standards in the industry. TDA would adopt rules to govern the committee.

Fees, licensing, and examinations. Under HB 2458, TDA would be authorized to establish fees to cover the cost of programs and activities pertaining to structural pest control. Current fee caps would be eliminated. Late fee provisions for license renewals would be adjusted.

New regulations would require the department to inspect licensed businesses within the first year of operations and at least once every four years thereafter. TDA would inspect school districts for compliance with IPM programs at least once every five years. However, such tests would occur more frequently according to risk assessment. The department would use compliance history to determine risk.

The bill would establish new rules for school districts' IPM programs. It would eliminate the required list of acceptable pesticide products for use in IPM programs. Instead, the department would establish certain categories of permissible pesticides and detailed use requirements for each category. Guidelines would be created on obtaining approval for pesticide use, applying pesticides, and posting notices and maintaining records of pesticide applications. Each school district would appoint an IPM coordinator, subject to certain education requirements.

The department would create a new exam policy to improve the design, administration, and evaluation of licensing examinations. This would include assistance from experts in the field of pest control, an exam schedule, and certain procedural requirements.

Powers of the commissioner. Under HB 2458, the commissioner would hold certain powers currently granted to the agency and the board's executive director. New rules would permit the commissioner to suspend licenses on an emergency basis. The commissioner also could issue cease and desist orders to prohibit pesticide use. The department would be authorized to issue and enforce orders to stop the use and distribution of unauthorized pesticides.

Other provisions. The bill would permit beekeepers to remove bees from structures without a license from TDA as long as pesticides were not used in the process.

Standard Sunset provisions would be included to improve complaint response and dismissal procedures. Also, the bill would include certain stipulations to better inform license applicants, license holders, and members of the general public about the complaint process and enforcement action. Other standard provisions would be designed to limit special interests on the Structural Pest Control Advisory Committee.

The bill would take effect September 1, 2007, except that the section regarding SPCB's responsibilities in fiscal 2007 to facilitate the transition of its duties to TDA would take immediate effect if the bill were finally passed by a two-thirds record vote of the membership of each house. If the bill failed to receive the vote necessary for immediate effect, the section governing SPCB's fiscal 2007 transitional responsibilities would not take effect.

**SUPPORTERS
SAY:**

HB 2458 would improve the quality, efficiency, and cost effectiveness of state structural pest control regulation by abolishing SPCB and transferring its duties and responsibilities to TDA.

Abolition of SPCB. Given that pesticide misuse can harm the public and the environment, Texas should continue to regulate the structural pest control industry. However, SPCB lacks certain resources and authority to adequately carry out its important duties. The bill would abolish the agency and place its duties under TDA, thereby resolving current concerns regarding SPCB's practices. TDA is better equipped to oversee structural pest control practices, as demonstrated by its successes in overseeing agricultural pesticide use across the state. This administrative modification also would result in cost savings and greater efficiency.

All states regulate the structural pest control industry. However, only Texas and Arizona have stand-alone regulatory agencies for structural pest control. Forty-one states place structural pest control regulation within their departments of agriculture, as HB 2458 would establish. There is no need to maintain a separate agency to regulate pest control operators, and Texas should join the majority of other states by abolishing its pest control board.

Advisory committee. Complaints abound regarding board members' adherence to special interests and refusal to hear concerns of other groups. The leadership exerted by board members often is inadequate, resulting in poorly regulated structural pest control management practices. The bill would address these complaints by creating a Structural Pest Control Advisory Committee overseen by the commissioner of agriculture. The committee would be more regulatory in nature and thus better able to carry out certain duties rather than appeasing special interests. In addition, this change would put an elected official in charge of the committee's functions, thereby elevating public oversight and improving leadership.

Originally, it was thought that SPCB's failures were related to personnel and leadership changes. However, during the Sunset process, the agency failed to exhibit significant interest in making necessary improvements. In addition, the agency was unable to provide certain information, such as when inspections of school districts' IPM programs last occurred. The agency's lack of concern and organization demonstrates that SPCB's problems are in fact systemic in nature. Consequently, the agency should be dissolved, with its duties placed under TDA.

Risk-based assessments. SPCB focuses its efforts on investigating paperwork violations, which can leave violations of pesticide use in the field unaddressed. This poses concerns regarding human exposure to dangerous chemicals. A recent incident in which students were sprayed with DDT demonstrates the need for improved regulation over pesticide use.

HB 2458 would establish risk-based enforcement mechanisms to better oversee licensing of structural pest control operators. TDA would determine inspection frequency based on risk assessments, allowing the department to use resources where they were most needed. The bill would enable the department to track and analyze businesses and school districts with previous compliance problems. Improved coordination with other agencies further would allow TDA to prevent unlicensed activities.

Exam development and administration. Unstructured methods for developing and revising license examinations can result in inconsistent assessments. Also, current exams used by the board are out of date. For instance, a recent examination requested information on products not currently in compliance with certain federal standards.

The establishment of a formal process for examination development and revision would allow TDA to license operators in a more consistent manner. HB 2458 includes procedures to improve the design, content, administration, and evaluation of exams. If necessary and cost effective, TDA could contract with outside entities for examination administration.

School district IPM programs. To reduce students' exposure to pesticides, HB 2458 would revise current practices in school district IPM programs. Pesticides would be categorized based on risks of human exposure and environmental harm, thus enabling school districts to better determine which pesticides are safe. School districts also would benefit

from receiving information issued by the department containing greater detail on proper application processes. The bill further would improve compliance and safety by mandating that an IPM coordinator oversaw each districts' IPM program. The coordinator would receive periodic training and information, thus staying up-to-date with safety regulations in the structural pest control industry.

OPPONENTS
SAY:

Abolition of the board. Although other organizational options exist, the SPCB generally is effective at regulating the structural pest control industry in Texas. Board members and the agency carry out their assigned duties in a diligent manner. Few consumer complaints against the board exist. SPCB's current problems are internal in origin and easily can be resolved. Specific performance problems do not justify the proposed transfer of the agency's functions to TDA. Instead, SPCB should be permitted to continue and act on the Sunset recommendations contained in HB 2458.

In making an agency more efficient, its benefit to the people of Texas must be considered. Currently, the agency's small size allows it to approach certain matters with immediacy and in a personable manner. In this sense, these functions would not improve if transferred to TDA. Additionally, certain issues of concern would lose importance if placed under TDA. A large bureaucracy is less well equipped to effectively respond to the specific concerns of the structural pest control industry. In other states, agriculture departments carry out duties currently assigned to SPCB. These departments are known to exert poor management over structural pest control practices.

TDA oversees agricultural practices throughout rural Texas. By contrast, structural pest control typically concerns urban areas. TDA has little familiarity with structural pest control practices in urban settings, and the proposal to combine agricultural and urban interests under TDA is highly questionable. SPCB's board members possess knowledge in the field of structural pest control and represent different and diverse groups. This knowledge should be maintained and not dismissed.

Other issues. The fee caps should not be removed. By allowing TDA to increase fees for licensing and examination, the bill could place a financial burden on many structural pest control businesses.

Current exams used by SPCB are adequate and have been reviewed and approved by the U.S. Environmental Protection Agency. Staff members have years of experience and are knowledgeable about exam preparation.

NOTES:

According to the Legislative Budget Board (LBB), the cost to TDA of administering structural pest control programs and activities is estimated at \$1.8 million in fiscal 2008 and \$1.2 million in fiscal 2009. Currently, SPCB collects an estimated \$2.2 million each year in fees.

SPCB currently has 31 employees that regulate structural pest control, whereas TDA would only need 23 employees to provide the same services and fulfill the duties stipulated in HB 2458. This would result in a cost savings of \$218,389 a fiscal year, according to the LBB.

In fiscal 2008, TDA would incur a one-time cost of \$238,000 to purchase vehicles for structural pest control operators. Also, an estimated \$91,400 would be needed to incorporate activities associated with structural pest control regulation into TDA's information management system.

The companion bill, SB 906 by Brimer, has been referred to the Senate Government Organization Committee.