

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2458
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Government Organization
5/11/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Structural Pest Control Board (board) is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the legislature. The board was created in 1971 to ensure that those who perform pest control activities in buildings, homes, and other structures are qualified, competent, and adhere to established professional standards. The board has two primary functions: licensing commercial and non-commercial pest control professionals and enforcing the Texas Structural Pest Control Act and federal law through inspections and complaint investigations. The board currently licenses more than 16,000 pest control business and applicators, with a staff of 29 employees and an annual budget of \$1.4 million.

The Sunset Advisory Commission (commission) determined that due to ongoing problems with the board's management and leadership, the board should continue to exist for four more years, rather than the standard 12-year period, and this bill contains the commission's recommendations to improve the licensing and enforcement of pest control operators.

The commission also identified several specific areas of pest control regulation needing improvement. The board's biennial inspection requirement means the agency spends its limited resources on pest control businesses with few or no compliance problems and prevents it from focusing on other priorities. The board's current approach to inspecting school Integrated Pest Management (IPM) programs does not ensure that they are inspected regularly. The board's system for classifying pesticides in the IPM program is not sufficient to prevent inappropriate pesticide applications in school environments. Further, the board does not routinely communicate with schools, resulting in schools being unaware of important changes in regulations and practices.

The board's unstructured method of developing and revising licensing exams could result in inconsistent assessment of applicants' knowledge. Key elements of the board's licensing and regulatory functions do not conform to commonly applied licensing practices. Requiring beekeepers to be licensed to remove bees from structures without using pesticides is not needed to protect the public.

C.S.H.B. 2458 contains the commission's recommendation to continue the board for only four years, rather than 12 years, and requires the governor to designate one of the public members as the board chair.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Structural Pest Control Board in SECTION 10 (Section 1951.212, Occupations Code), SECTION 11 (Section 1951.213, Occupations Code), SECTION 15 (Section 1951.309, Occupations Code), SECTION 17 (Section 1951.311, Occupations Code), SECTION 18 (Section 1951.353, Occupations Code), and SECTION 19 (Section 1951.403, Occupations Code), of this bill.

Rulemaking authority previously granted to the Texas Structural Pest Control Board is modified in SECTION 9 (Section 1951.207, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1951.007, Occupations Code, to provide that the Texas Structural Pest Control Board (board) is abolished and this chapter (Structural Pest Control) expires September 1, 2011, rather than 2007, unless continued in existence as provided by this chapter.

SECTION 2. Amends Section 1951.056(a), Occupations Code, to provide that Chapter 1951 (Structural Pest Control), Occupations Code, does not apply to a beekeeper, as defined by Section 131.001 (Definitions), Agriculture Code, who collects, removes, or destroys honey bees, rather than a beekeeper who collects, removes, or destroys honey bees not attached to a dwelling or structure occupied by the public.

SECTION 3. Amends Sections 1951.103(a), (b), and (d), Occupations Code, as follows:

(a) Redefines "Texas trade association."

(b) Prohibits a person from being a member of the board and prohibits a person from being a board employee employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association in the field of pest control. Deletes existing text prohibiting an officer, employee, or paid consultation of a Texas trade association in the field of pest control from being a member of the board and prohibiting an employee of the board who is exempt from the state's position classification plan or who is compensated at or above a certain amount prescribed by the General Appropriations Act.

(d) Prohibits a person from being, rather than serving as, a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, due to the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Amends Section 1951.105, Occupations Code, as follows:

Sec. 1951.105. PRESIDING OFFICER. Requires the governor to designate a public member of the board as presiding officer and that the presiding officer serves at the pleasure of the governor.

SECTION 5. Amends Section 1951.106(a) and (c), Occupations Code, as follows:

(a) Provides that it is a ground for removal from the board that a member, among other things, does not have at the time of taking office, rather than appointment, the qualifications required by Section 1951.101 (Board Membership), rather than Section 1951.101 and 1951.102 (Eligibility of Public Members), as applicable, or is ineligible for membership under Section 1951.102 or 1951.103, rather than violates a prohibition established by Section 1951.103. Makes conforming and nonsubstantive changes.

(c) Requires the executive director to notify the presiding officer of the board of the potential ground for removal if one exists. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director to notify the next highest ranking officer of the board if the potential ground for removal involves the presiding officer. Requires the next highest ranking officer to then notify the governor and the attorney general that a potential grounds for removal exists.

SECTION 6. Amends Subchapter C, Chapter 1951, Occupations Code, by adding Sections 1951.108 and 1951.109, as follows:

Sec. 1951.108. TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as a member

in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

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

Sec. 1951.109. BOARD COMMITTEES. (a) Authorizes the board to appoint committees to assist the board with its functions under this chapter.

(b) Authorizes only a member of the board to serve as a member of a board committee.

SECTION 7. Amends Section 1951.154, Occupations Code, to require the board to develop and implement policies that clearly separate the policymaking, rather than define the respective, responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

SECTION 8. Amends Section 1951.201, Occupations Code, as follows:

Sec. 1951.201. New heading: SOLE LICENSING AUTHORITY; FEES. (a) Creates this subsection from existing text.

(b) Requires the board to establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering this chapter.

SECTION 9. Amends Section 1951.207(a), Occupations Code, as follows:

(a) Requires the board by rule to adopt a policy that, among other things, provides for additional inspections based on a schedule of risk-based inspections using certain criteria. Deletes existing text providing for the initiation of more frequent inspections for a business or license applicant that has violated this chapter.

SECTION 10. Amends Section 1951.212, Occupations Code, by amending Subsections (c), (d), and (e) and adding Subsections (f) and (g), as follows:

(c) Deletes existing text requiring the board to include a list of products that a school district is allowed to use in its applications in standards adopted for an integrated pest management program under this section.

(d) Requires the board by rule to establish categories of pesticides that a school district is allowed to apply. Requires the board to specify certain standards for pesticide use in each category. Deletes existing text requiring the board to require that a pesticide may be applied to a school building or on school grounds only when students are not expected to be present for normal academic instruction or organized extracurricular activities for at least 12 hours after the application.

(e) Requires each school district to adopt an integrated pest management program incorporating standards established by the board under this section, to designate an integrated pest management coordinator (coordinator) for the district, and to report to the board certain contact information of that coordinator not more than 90 days after that coordinator is named or replaced.

(f) Requires each coordinator to successfully complete six hours of continuing education in integrated pest management every three years.

(g) Requires the board to inspect each school district at least once every five years for compliance with this section. Authorizes the board to conduct additional inspections based on a schedule of risk-based inspections using certain criteria.

SECTION 11. Amends Subchapter E, Chapter 1951, Occupations Code, by adding Sections 1951.213, 1951.214, 1951.215, and 1951.216, as follows:

Sec. 1951.213. **ADVISORY COMMITTEES.** (a) Authorizes the board to establish advisory committees to advise the board in administering this chapter.

(b) Requires the board to adopt rules governing certain factors regarding the advisory committees.

Sec. 1951.214. **USE OF TECHNOLOGY.** Requires the board to implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 1951.215. **ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.** (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of board rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

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

(c) Requires the board to designate a trained person to perform certain duties regarding the implementation of the policy adopted under Subsection (a).

Sec. 1951.216. **COMPLIANCE WITH SUNSET RECOMMENDATIONS.** (a) Requires the board to comply with and implement the management action recommendations regarding the board adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of the board and report to the Sunset Advisory Commission not later than November 1, 2008, the information required regarding the board's implementation of the recommendations under Subdivision (1).

(b) Provides that this section expires June 1, 2009.

SECTION 12. Amends Section 1951.252, Occupations Code, by amending Subsections (b) and (c) and adding Subsections (d) through (g), as follows:

(b) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board. Requires the board to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring the board to keep an information file about each complaint filed with the board that the board has authority to resolve.

(c) Requires the agency to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation. Deletes existing text requiring the board to notify the parties to the complaint of the status of the complaint at least quarterly and until final disposition of the complaint unless the notice would jeopardize an undercover investigation.

(d) Requires the board to provide to a license holder against whom a complaint has been filed the allegations made in the complaint and, on the license holder's request, any information obtained by the board in its investigation of the complaint.

(e) Requires the board to provide the information required under Subsection (d) in a timely manner to allow the license holder time to respond to the complaint.

(f) Authorizes the board to allow an authorized employee of the board to dismiss a complaint if an investigation demonstrates that a violation did not occur or that the subject of the complain is outside the board's jurisdiction under this chapter.

(g) Requires an employee authorized by the board to dismiss a complaint to report said dismissal to the board in a public meeting, and for that report, to include sufficient explanation of the reason for complaint's dismissal.

SECTION 13. Amends Section 1951.254(d), Occupations Code, as follows:

(d) Requires the public information program to take certain actions, including informing certain persons about the board's enforcement process and each step in that process under this chapter and to inform a license holder that he or she may obtain information about a complaint against the license holder and request a copy of the complaint file, among the requirements of the public information program.

SECTION 14. Amends Subchapter F, Chapter 1951, Occupations Code, by adding Section 1951.255, as follows:

Sec. 1951.255. ENFORCEMENT INFORMATION. (a) Requires the board to make available to the public information about each final enforcement action taken by the board against a person. Requires the board to provide this information on its website and in other appropriate publications.

(b) Authorizes the board to determine the format in which the information required by this section will be provided.

SECTION 15. Amends Section 1951.309, Occupations Code, as follows:

Sec. 1951.309. FEE FOR INITIAL OR RENEWAL LICENSE. (a) Requires an applicant for an initial or renewal structural pest control business license (license) or for an initial or renewal endorsement of license under Section 1951.306 (Waiver for Applicant Licensed in Another State), Occupations Code, to pay an application fee established by board rule for the specific application being submitted. Deletes existing text providing the maximum amount of those fees, as determined by the board.

(b) Requires an applicant for an initial or renewal certified applicator's license to submit with the person's application an application fee established by board rule. Deletes existing text providing the maximum amount of the fee, as determined by the board.

SECTION 16. Amends Sections 1951.310(b) and (c), Occupations Code, as follows:

(b) Requires a person filing a late renewal application with the board within 30 days after the person's license's expiration date (expiration date) to pay a renewal fee that is equal to 1-1/2 times the normally required renewal fee. Deletes existing text specifying the amount of the fee.

(c) Requires a person filing a late renewal application with the board after 30 days past the expiration date but before the 60th day past the expiration date to pay a renewal fee that is equal to twice the normally required renewal fee. Deletes existing text specifying the amount of the fee.

SECTION 17. Amends Section 1951.311, Occupations Code, to make conforming changes.

SECTION 18. Amends Section 1951.353(b), Occupations Code, to make conforming changes.

SECTION 19. Amends Section 1951.403, Occupations Code, to make conforming changes.

SECTION 20. Amends Subchapter I, Chapter 1951, Occupations Code, by adding Section 1951.406, as follows:

Sec. 1951.406. EXAMINATION POLICY. (a) Requires the board to develop a written policy governing licensing examinations under this subchapter that prescribe procedures for improving the design and construction of and the administration of examinations, and a process for evaluating examinations in use.

(b) Sets forth certain procedures and guidelines that the policy is required to include.

SECTION 21. Amends Subchapter K, Chapter 1951, Occupations Code, by adding Section 1951.506, as follows:

Sec. 1951.506. EMERGENCY SUSPENSION. (a) Requires the board or a three-member panel of board members designated by the board to temporarily suspend the license of a license holder if the board or panel determines from presented evidence or information that the license holder constitutes an imminent threat to the public welfare or environment.

(b) Authorizes the suspension of a license under this section without notice or hearing on the complaint if the action is taken to initiate proceedings for a hearing before SOAH simultaneously with the temporary suspension, and if a hearing is held as soon as practicable under this chapter and Chapter 2001 (Administrative Proceedings), Government Code.

(c) Requires SOAH to hold a preliminary hearing within 14 days of the date of temporary suspension to determine if there is probable cause to believe that an imminent threat to the public welfare or environment still exists. Requires a final hearing to be held on the matter not later than the 61st day after the date of temporary suspension.

(d) Authorizes a three-member panel of the board to meet by telephone conference call in accordance with Chapter 551 (Open Meetings), Government Code, to consider an emergency suspension under this section if the threat to the public welfare or environment is imminent and it is impossible to convene the panel at one location in a timely manner.

SECTION 22. Amends Section 1951.551, Occupations Code, as follows:

Sec. 1951.551. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the board to impose an administrative penalty on a person who violates this chapter, a rule adopted or order issues under this chapter, or a cease and desist order issued under Section 1951.604, Occupation Code. Makes conforming changes.

SECTION 23. Amends Subchapter M, Chapter 1951, Occupations Code, by adding Sections 1951.604 and 1951.605, as follows:

Sec. 1951.604. CEASE AND DESIST ORDER. Authorizes the board to issue a cease and desist order prohibiting a person found to be without a license, and in violation of this chapter, a rule adopted under this chapter, or a state statute or rule relating to the practice of structural pest control, from engaging in these activities any further.

Sec. 1951.605. STOP USE ORDER. (a) Authorizes the board to issue and enforce a written or printed order to stop the use of the pesticide if the board has reason to believe that a person licensed under this chapter is using or is in possession of a pesticide that is

in violation of Chapter 76 (Pesticide and Herbicide Regulation), Agriculture Code. Requires the board to present the order to the owner or custodian of the pesticide. Prohibits the person who receives the order from using the pesticide until the board determines that the pesticide is in compliance with this chapter or does not present a hazard to the public health, safety, or welfare.

(b) Provides that this section does not limit the right of the board to proceed as authorized by another section of this chapter, including in the assessment of an administrative penalty under this chapter.

(c) Authorizes a person to appeal an order issued under this section in the manner provided by Subchapters K (Disciplinary Procedures) and L (Administrative Penalty).

SECTION 24. Repealer: Section 1951.103(c) (prohibiting a spouse of an officer, manager, or paid consultant of a Texas trade association in the field of pest control from being a member of the board), 1951.158 (Compensation of Advisory Committee Members), 1951.212(b) (requiring the board to use an advisory committee to assist in the development of standards for the integrated pest management program), 1951.254(b) (authorizing the board to create a public information program advisory committee to assist in the development of a public information program), and 1951.351(d) (authorizing the board to create a technician training program advisory committee to assist in the development of the training program), Occupations Code.

SECTION 25. Makes application of this Act, with respect to conduct that is grounds for imposition of a disciplinary sanction, prospective.

SECTION 26. Makes application of Section 1951.108, Occupations Code, as enacted by this Act, and Sections 1951.103 and 1951.106, Occupations Code, as amended by this Act, prospective.

SECTION 27. Requires the board to adopt rules and policies under Sections 1951.207(a)(2) and 1951.212(d), Occupations Code, as amended by this Act, and Section 1951.406, Occupations Code, as added by this Act, not later than March 1, 2008.

SECTION 28. Requires each school district to provide certain information regarding the district's coordinator to the board as required by Section 1951.212(e), Occupations Code, as amended by this Act, not later than March 1, 2008.

SECTION 29. Effective date: September 1, 2007.