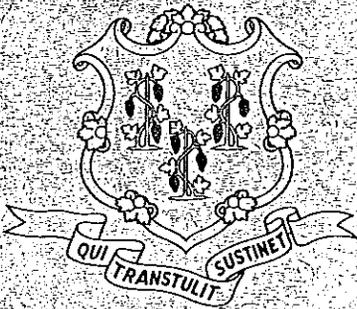


# Tree Protection Examining Board

Connecticut  
General Assembly



LEGISLATIVE  
PROGRAM REVIEW  
AND  
INVESTIGATIONS  
COMMITTEE

## SUNSET 1983

Volume IV-19  
January 1983

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements where indicated. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

1981-82 Committee Members

Senate

Carl A. Zinsser, Cochairperson  
M. Adela Eads  
John C. Daniels  
Nancy E. Johnson  
Margaret E. Morton  
Amelia P. Mustone

House

Joseph B. Harper, Jr., Cochairperson  
William J. Cibes, Jr.  
J. Peter Fuscas  
Carol A. Herskowitz  
Dorothy K. Osler  
William J. Scully, Jr.

Committee Staff

Michael L. Nauer, Ph.D., Director  
Anne E. McAloon, Program Review Coordinator  
George W. McKee, Sunset Review Coordinator  
Carrie E. Vibert, Staff Attorney  
L. Spencer Cain, Program Analyst  
Catherine McNeill Conlin, Program Analyst  
Debra S. Eyges, Program Analyst  
Jill E. Jensen, Program Analyst  
Michael O'Malley, Program Analyst  
Gary J. Reardon, Program Analyst  
Lillian B. Crovo, Administrative Assistant  
Mary Lou Gilchrist, Administrative Assistant

Staff on this Project

Debra S. Eyges, Principal Analyst

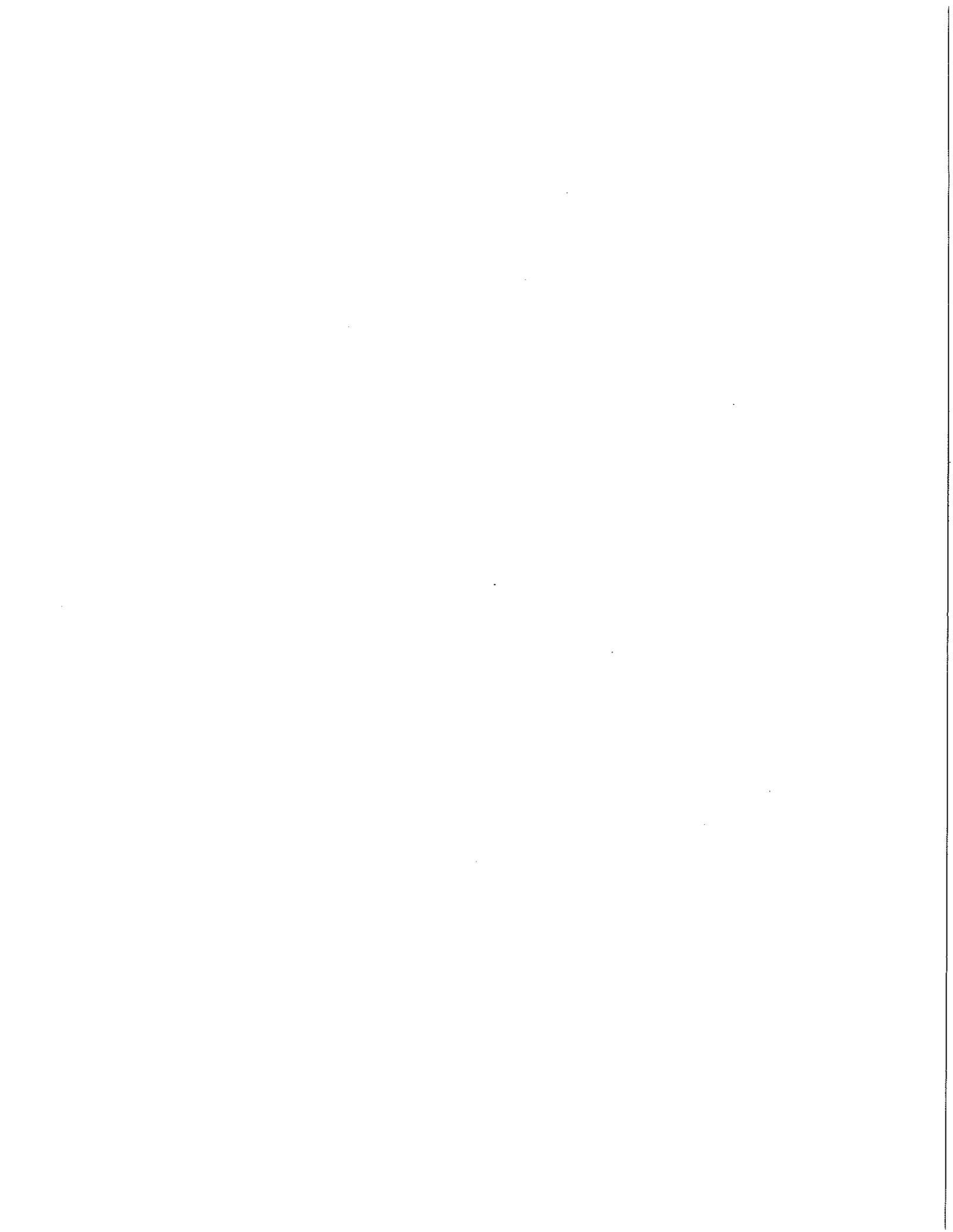
Legislative Office Building, 18 Trinity St., Hartford, CT 06106 (203)566-8480

SUNSET REVIEW 1983

TREE PROTECTION EXAMINING BOARD

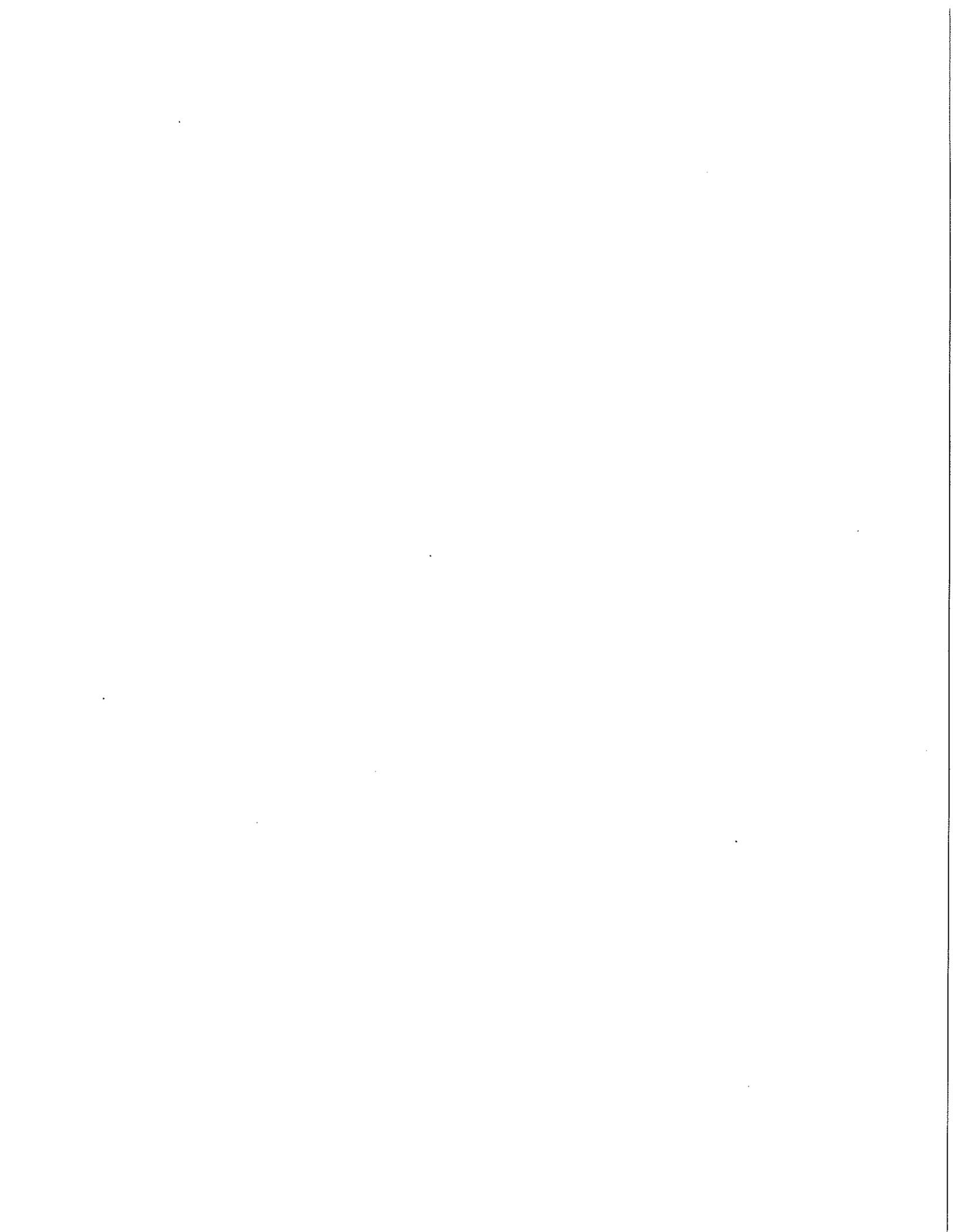
VOL IV - 19

JANUARY 1983



## TABLE OF CONTENTS

SUMMARY.....	iii
I. INTRODUCTION.....	1
Purpose and Authority.....	1
Methodology.....	2
II. BACKGROUND.....	3
Legislative History.....	3
Nature of the Profession.....	4
Other States.....	5
Structure.....	5
Purpose, Powers and Duties.....	6
Fiscal Information.....	6
III. ACTIVITIES.....	9
Licensure.....	9
Complaint Process.....	11
IV. ANALYSIS AND RECOMMENDATIONS.....	13
Level of Regulation.....	13
Existence of the Board.....	14
APPENDICES.....	
A. Summary Sheet.....	19
B. Tree Protection Examining Board Questionnaire.....	22
C. Legislative Changes.....	26



## TREE PROTECTION EXAMINING BOARD

### SUMMARY

In 1919, the General Assembly passed legislation requiring any person or firm in the business of spraying or securing fruit, shade or ornamental trees to obtain a license (Chapter 181). An examining board consisting of the botanist, the entomologist and the forester of the Connecticut Agriculture Experiment Station was created to evaluate the qualifications of applicants for licensure.

Today, the board is comprised of seven members: the plant pathologist and the forester of the Connecticut Agricultural Experiment Station and five electors of the state. Of the five electors, three are public members and two are licensed practitioners. All five are gubernatorial appointees and their terms are coterminous with the governor's.

The purpose of the Tree Protection Examining Board is to protect the public from those persons not qualified to practice arboriculture (C.G.S. Sec. 23-61a). To accomplish this task the board has the following powers and duties:

- provide an examination for the arborist license that requires knowledge of both arboriculture and the use of insecticides;
- authorize the issuance of licenses to qualified applicants;
- suspend or revoke licenses for sufficient cause;
- issue an order of immediate discontinuance of a violation of any applicable statute or regulation;
- conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records);
- may request the commissioner of consumer protection to conduct an investigation; and
- may recommend rules and regulations for adoption by the commissioner of DCP.

Total expenses for the tree board were \$1,211 in FY 1980-81 and \$1,685 in FY 1981-82. Application and license fees generated approximately \$1,240 in FY 1980-81 and approximately \$2,620 in FY 1981-82.

The board met three times in FY 1980-81 and nine times in FY 1981-82. The average length of the meetings was approximately two hours with an average attendance of six persons. The board also meets at least twice a year to administer the arborist examination. The board's primary activities are licensing arborists and handling complaints.

The Legislative Program Review and Investigations Committee's sunset review of the Tree Protection Examining Board focused on the level of regulation for arborists and the existence of the board. The committee learned that 35 states do not have any state-mandated arborist regulation. Those states that do regulate the practice tend to be moving away from state licensing towards self-certification by private professional associations. In the northeast, only Connecticut, Rhode Island and Maine license arborists. Massachusetts and New Jersey arborists are certified by professional associations, and there are no requirements for the practice of arboriculture in Vermont, New Hampshire and New York.

The program review committee found during its review that the worst possible consequence of the improper practice of arboriculture would be the death of a tree. A more serious risk to the public is tree removal, which is not a regulated activity in Connecticut.

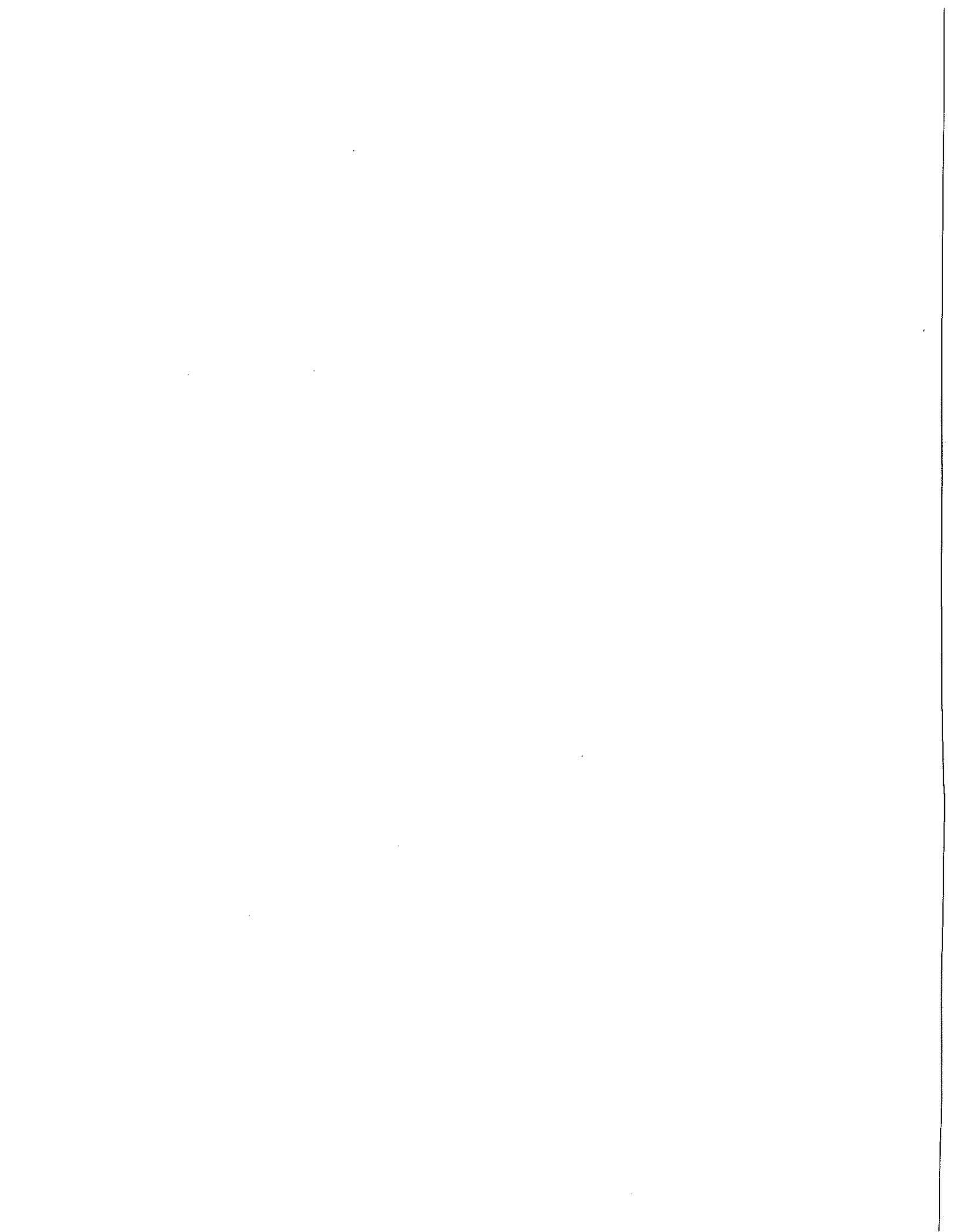
Based on the above factors, *the Legislative Program Review and Investigations Committee recommends the removal of the licensure requirements for the practice of arboriculture.*

Currently, the arborist license requires a combination of two fields of knowledge: arboriculture and the proper use of pesticides. Although the program review committee recommended the deregulation of the arboriculture requirement, it was concerned about the risk to the public that could result from the improper use of pesticides. The committee concluded that public protection in this area must be continued, and it explored alternate regulatory mechanisms.

Presently, the Pesticide Compliance Division of the Department of Environmental Protection issues all pesticide licenses in the state with the exception of the pesticide licensing requirement administered by the tree board. However, the department is responsible for developing the basic pesticide

safety test for the arborist examination. The transfer of the pesticide licensing function from the tree board to the Department of Environmental Protection would place all pesticide licensing within the scope of one department. The pesticide requirement could be merged into the department's existing examination schedule. In light of the above information, the *Legislative Program Review and Investigations Committee recommends the transfer of the pesticide licensing requirement from the Tree Protection Examining Board to the Department of Environmental Protection.*

The majority of the complaints received by the tree board during FY 1981-82 involved spraying complaints or advertising by unlicensed practitioners. The removal of the arborist licensing requirement would eliminate complaints involving advertising or operating without a license. The Department of Environmental Protection is well versed in the pesticide aspect of the arborist law, and complaints of this nature could easily be handled by the department. *The Legislative Program Review and Investigations Committee recommends that the Tree Protection Examining Board be terminated and that Section 23-61a of the Connecticut General Statutes be repealed.*



## INTRODUCTION

### Purpose and Authority

Chapter 28 of the Connecticut General Statutes provides for the periodic review of certain governmental entities and programs and for the termination or modification of those which do not significantly benefit the public health, safety, or welfare. This law was enacted in response to a legislative finding that a proliferation of governmental entities and programs had occurred without sufficient legislative oversight.

The authority for undertaking the initial review in this oversight process is vested in the Legislative Program Review and Investigations Committee. The committee is charged, under the provisions of Section 2c-3 of Chapter 28, with conducting a performance audit of each entity or program scheduled for termination. This audit must take into consideration, but is not limited to, the four criteria set forth in Section 2c-7. These criteria include: (1) whether termination of the entity or program would significantly endanger the public health, safety, or welfare; (2) whether the public could be adequately protected by another statute, entity, or program or by a less restrictive method of regulation; (3) whether the governmental entity or program produces any direct or indirect increase in the cost of goods or services and, if it does, whether the public benefits attributable to the entity or program outweigh the public burden of the increase in cost; and (4) whether the effective operation of the governmental entity or program is impeded by existing statutes, regulations or policies, including budgetary and personnel policies.

In addition to the criteria contained in Section 2c-7, the Legislative Program Review and Investigations Committee is required, when reviewing regulatory entities or programs, to consider, among other things: (1) the extent to which qualified applicants have been permitted to engage in any profession, occupation, trade, or activity regulated by the entity or program; (2) the extent to which the governmental entity involved has complied with federal and state affirmative action requirements; (3) the extent to which the governmental entity involved has recommended statutory changes which would benefit the public as opposed to the persons regulated; (4) the extent to which the governmental entity involved has encouraged public participation in the formulation of its regulations and policies; and (5) the manner in which the governmental entity involved has processed and resolved public complaints concerning persons subject to review.

## Methodology

The Legislative Program Review and Investigations Committee's sunset review process is divided into three phases. The initial phase focuses on collecting quantitative and qualitative data related to each entity's background, purpose, powers, duties, costs and accomplishments. Several methods are used by committee members and staff to obtain this information. These include: (1) a review of statutes, transcripts of legislative hearings, entity records (e.g., minutes, complaint files, administrative reports, etc.), and data and statutes of other states; (2) staff observation of meetings held by each entity during the review period; (3) surveys of selected persons and groups associated with each entity; (4) formal and informal interviews of selected individuals serving on, staffing, affected by or knowledgeable about each entity; and (5) testimony received at public hearings.

During the second phase, the staff organizes the information into descriptive packages and presents it to the committee. The presentations take place in public sessions designed to prepare committee members for the hearings, identify options for exploration and alert entity officials to the issues the committee will pursue at the hearings.

The final step of the review involves committee members and staff following up on and clarifying issues raised at briefings and public hearings. During this period, the staff prepares decision papers and presents recommendations to the committee. The committee, in public sessions, then debates and votes upon recommendations for the continuation, termination or modification of each entity.

## BACKGROUND

### Legislative History

In 1919, the General Assembly passed legislation requiring any person or firm making a business of spraying or securing fruit, shade or ornamental trees to obtain a license. No license was required if the tree work was done on a person's own property, on the property of an employer or on any property within the limits of a town of which the person was a legal resident (Chapter 181).

An examining board consisting of the botanist, the entomologist and the forester of the Connecticut Agricultural Experiment Station was created to evaluate the qualifications of applicants for licensure. The law also provided that a license be revoked or a fine of not more than \$100 be imposed for failure to comply with the law. The examination fee was set at \$5 and the annual renewal fee at \$2.

In 1929, the original act was modified by formally designating the examining board as the Tree Protection Examining Board (Chapter 76). In addition, the license exemption for a town resident was eliminated.

The board composition was enlarged in 1939 to include two additional members appointed by the governor, one of whom had to be a commercial arborist or tree expert (Chapter 117). Both members were appointed for two-year terms.

Membership on the board was increased again in 1967 (P.A. 587) to seven members with the addition of the commissioner of agriculture and natural resources as an ex officio member and one member appointed by the governor. Of the three members on the tree board appointed by the governor, two were required to be licensed, practicing tree workers. The three gubernatorial members were appointed for three-year terms. The act established a provision for reciprocity whereby the board was authorized to license without examination any nonresident licensed in another state under a law that provided substantially similar qualifications for licensure and granted the same privilege of licensure to residents of Connecticut. Additionally, the examining board was authorized by statute to elect a chairperson, a vice-chairperson and a secretary-treasurer.

In 1973, under Public Act 540, (amended by Public Act 75-551), the board was required to consult with the commissioner of the Department of Environmental Protection to establish

standards for examining applicants with respect to the proper use and application of pesticides. As a result of this act, the board currently administers a basic pesticide safety test, developed by the Department of Environmental Protection, as part of the arborist examination.

Public Act 77-206 changed the term "custom tree workers" to "arborist," and the license became renewable every five years at a cost of \$20. In 1977, the Executive Reorganization Act (P.A. 614) transferred the Tree Protection Examining Board from the Connecticut Agriculture Experiment Station to the Department of Consumer Protection. As a result of reorganization, the tree board acquired the additional powers that are assigned to all consumer protection boards and commissions. For example, the tree board was given the authority to issue orders of immediate discontinuance and request the Department of Consumer Protection to investigate a complaint.

Finally, legislation passed in 1982 (P.A. 370) made several administrative and substantive changes to all boards and commissions overseen by the Department of Consumer Protection. The major changes in the law affecting the Tree Protection Examining Board include: a requirement that the board meet quarterly, a provision that any member who misses three consecutive meetings or fails to attend 50 percent of the meetings during a calendar year is deemed to have resigned and a requirement that members are limited to serving two consecutive full terms. In addition, the complaint handling process was revised so that the Department of Consumer Protection receives all complaints. Any board member assisting in an investigation is prohibited from participating in any resulting disciplinary proceeding.

#### Nature of the Profession

Currently, the arborist license requires knowledge in two fields--arboriculture and the proper application of pesticides. By definition, "arboriculture" means any work done for hire to improve the condition of fruit, shade or ornamental trees by feeding, or fertilizing or by pruning, trimming, bracing, treating cavities or other methods of improving tree conditions, or protecting trees from diseases or curing these conditions by spraying or another method."<sup>1</sup>

Connecticut does not require a person to obtain an arborist license in order to cut down an entire tree. However, pruning

---

<sup>1</sup> Connecticut General Statutes, Sec. 23-61a(a).

or limb removal is a regulated activity and requires a person to be a licensed arborist before he/she can offer such services to the public.

Not every person performing arboriculture work needs a license. The statute provides that individuals may protect their own trees or those on the property of their employer without a license.

The arborist license is a supervisory license that permits an arborist to supervise up to 10 unlicensed individuals in the field. There are no educational requirements to obtain a license except literacy. Also, there is no requirement that the applicant have any field experience in order to obtain an arborist license. Presently, there are 526 licensed practitioners in the state.

#### Other States

The International Society of Arboriculture indicated there are only 15 states in the nation that require some type of licensing for arborists. The society reports the trend for arborist regulation is moving away from state licensing towards self-certification by private state associations. The society suggests that one reason for the trend might be a result of ineffective enforcement of arborists laws at the state level. Today, the only states in the northeastern area to license arborists are Connecticut, Rhode Island and Maine. Professional associations certify arborists in Massachusetts and New Jersey. No requirements for the practice of arboriculture are mandated in Vermont, New Hampshire and New York. However, all states have pesticide regulations as required by state and/or federal law.

#### Structure

The Tree Protection Examining Board is located within the Department of Consumer Protection (Connecticut General Statutes Section 23-61a). The board is comprised of seven members: the plant pathologist and the forester of the Connecticut Agricultural Experiment Station and five electors of the state, of which three are public members and two are licensed practitioners. All five electors are gubernatorial appointees and their terms are coterminous with the governor's. Board members receive no compensation for their services but they are reimbursed for necessary travel and other expenses.

The Tree Protection Examining Board has no full-time employees. However, the services of the legal and investigative

personnel of the Department of Consumer Protection are available as needed by the board.

#### Purpose, Powers and Duties

The general purpose of the Tree Protection Examining Board is to protect the public from those persons not qualified to practice arboriculture. To accomplish this task, the board has the following powers and duties:

- provide an examination for the arborist license that requires knowledge of both arboriculture and the use of insecticides;
- authorize the issuance of licenses to qualified applicants;
- suspend or revoke licenses for sufficient cause;
- issue an order of immediate discontinuance of a violation of any applicable statute or regulation;
- conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records);
- may request the commissioner of consumer protection to conduct an investigation; and
- may recommend rules and regulations for adoption by the commissioner of consumer protection.

#### Fiscal Information

Information on board expenses for the last three fiscal years is provided in Table II-1. The board's annual budget is prepared by the Department of Consumer Protection and is not under the control of the board. It should be noted that the figures represent approximations of actual costs since the department does not maintain separate budgets for specific boards.

The fee schedule for the arborist license is set by statute. The application fee and initial license cost \$10. The five-year renewal fee is \$20. Application and license fees generated approximately \$1,240 in FY 1980-81 and approximately \$2,620 in FY 1981-82. The board expects to receive about \$5,000 in FY 1982-83.

---

Table II-1. Tree Protection Examining Board--Expenses, Fiscal Years 1979-80, 1980-81 and 1981-82.

---

	<u>FY 1979-80</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Board	\$ 42	\$ 42	\$ 185
O&E	301	420	500
Administrative Expenses	<u>873</u>	<u>749</u>	<u>1,000</u>
Total Expenses	\$1,216	\$1,211	\$1,685

Source: Department of Consumer Protection.

---



## ACTIVITIES

The Tree Protection Examining Board does not have regularly scheduled meetings but usually meets at the call of the chairperson. A majority of members acting as a board constitute a quorum for the transaction of business. A typical meeting of the tree board generally, if not always, includes an approval of minutes, a review of correspondence received and a presentation of complaints received by the board. Table III-1 shows that the board met three times in FY 1980-81 and nine times in FY 1981-82. The average length of the meetings was approximately two hours and the average attendance was about six persons. The board also meets at least twice a year to administer the arborist examination.

---

Table III-1. Tree Protection Examining Board--Meeting Statistics.

---

	<u>FY 1980-81</u>	<u>FY 1981-82*</u>
Number of meetings	3	9
Average length of business meetings	1.5 hrs.	1.9 hrs.
Average attendance	6	5.7

\*Statistics included through May 1982.

---

### Licensure

In Connecticut, an arborist's license is obtained after taking an examination. The board meets at least twice a year, in October and March, to administer a four-part examination, which includes a tree identification test, arborist test, oral exam and a basic pesticide safety test. The exam takes about half a day to complete. The board prepares the tree identification test, the written arborist test and the oral exam questions. The Department of Environmental Protection prepares the basic pesticide safety test. A minimum score of 70 is required to pass the tree identification test and the basic pesticide safety exams requires a minimum score of 75. The applicant is required to pass the written arborist examination and the oral exam with a combined score of at least 135.

If an applicant fails any part of the test, that person must be reexamined in all areas. However, there is no limit to the number of times an applicant may take the exam.

Table III-2 contains examination data supplied by the tree board. There were 84 candidates for the arborist examination in FY 1980-81 and 178 candidates in FY 1981-82, an increase of more than 100 percent. The board reports that the increase in the number of applicants is probably attributable to the increased demand for pesticide spraying to control gypsy moth infestations in Connecticut. The overall pass-rate for the arborist license was 50 percent in FY 1980-81 and 46 percent in FY 1981-82.

---

Table III-2. Examination Data.

---

	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Number of exams given	2	4
Total number of candidates	84	178
Number passed and received license	42	81
Total number of licensed practitioners	443	526

Source: Tree Protection Examining Board.

---

### Complaint Process

Figure III-1 is an outline of the basic complaint process used by the Tree Protection Examining Board during the time period covered by the sunset review. However, it should be noted that P.A. 82-370 has made several substantive changes that affect all boards and commissions overseen by the Department of Consumer Protection. The tree board's complaint procedure was revised by the act so that the department is responsible for receiving complaints and conducting all investigations.

Table III-3 illustrates that the majority of complaints filed in FY 1980-81 involved spraying or advertising without a license. The board reports that "advertising without a license" complaints are generally filed by licensed arborists. The table indicates that the number of complaints filed in FY 1981-82 decreased by 50 percent from the previous year. The board indicated the number of complaints filed in FY 1980-81 was unusually

large and seemed to be reflective of the increased demands for the spraying of pesticides as a result of the gypsy moth infestation.

---

Figure III-1. Tree Protection Examining Board Complaint Process  
Used in FY 1981-82.

---

<u>STEP</u>	<u>ACTIVITY</u>	<u>OUTCOME</u>
Step 1	The tree board receives and logs all complaints.	
Step 2	One board member performs a preliminary investigation by contacting all involved parties.	a) Terminated 1) no jurisdiction 2) no merit 3) resolved by parties b) Continued
Step 3	If the parties fail to resolve the complaint and it is jurisdictional, the board may turn the investigation over to a DCP or DEP investigator.	a) Terminated 1) no jurisdiction 2) no merit 3) resolved by parties b) Continued
Step 4	The DEP or DCP investigator contacts all parties to the complaint, obtains facts, determines if complaint is within the department's jurisdiction and whether it has merit. The investigator reports the findings to the tree board.	a) Terminated 1) no jurisdiction 2) no merit 3) resolved by parties b) Continued
Step 5	If the parties fail to resolve the complaint, an informal hearing is held. One board member is present during the hearing conducted by the DCP attorney.	a) Terminated 1) no merit 2) resolved by parties b) Continued
Step 6	If the complaint is not resolved through the informal process, then a formal hearing is held before the board.	a) Terminated 1) resolved by parties 2) no merit 3) license revoked or suspended 4) order of immediate discontinuance issued

---

Table III-3. Analysis of Complaints for FY 1980-81 and FY 1981-82.

<u>TYPE:</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Failure to appear or return calls to customers	11	0
Spray drift	12	2
Advertising or operating without a license	15	17
Dissatisfied with work (generally involves improper spraying complaints)	9	3
Other	<u>3</u>	<u>3</u>
Total	50	25

Table III-4 illustrates the number of informal and formal hearings held by the board. Nine informal hearings were held in FY 1981-82. In two instances, the board issued letters of warning. Four formal hearings were held in FY 1980-81 involving unlicensed practitioners and in all four cases the board issued orders of immediate discontinuance. Of the five formal hearings held in FY 1981-82, the board issued three orders of immediate discontinuance and suspended one license.

Table III-4. Number of Informal and Formal Hearings Held in FY 1980-81 and FY 1981-82.

<u>Informal Hearings</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Number of informal hearings (held for licensed arborist by DCP hearing officer)	0	9
<u>Outcome of Cases</u>		
No action	0	7
Issued letter of warning	0	2
Board voted to hold a formal hearing in addition to issuing a letter of warning	0	1
<u>Formal Hearings</u>		
Number of formal hearings	4	5
Suspension or revocation of license	0	1
<u>Outcome</u> - license suspended	0	1
Show cause hearing why board should not issue order of immediate discontinuance	4	4
<u>Outcome</u> - order issued	4	3
No Action	0	1

Source: Tree Protection Examining Board.

## ANALYSIS AND RECOMMENDATIONS

The Legislative Program Review and Investigations Committee's sunset review of the Tree Protection Examining Board focused on the level of regulation for arborists and the existence of the board.

### Level of Regulation

The Legislative Program Review and Investigations Committee was informed by the International Society of Arboriculture that currently, 35 states do not have any state-mandated arborist regulation. Those states that do regulate arboriculture tend to be moving away from state licensing towards self-certification by private professional associations. In the northeastern part of the country, only Connecticut, Rhode Island and Maine license arborists. Massachusetts and New Jersey arborists are certified by professional associations and there are no requirements for the practice of arboriculture in Vermont, New Hampshire and New York.

The basic argument in favor of the licensing of arborists is the need to insure that practitioners are competent to perform tree work. However, an analysis shows that the majority of complaints filed with the board in FY 1981-82 did not involve issues of competence. Rather, most of the complaints involved advertising by unlicensed practitioners. These complaints represented 68 percent of the total tree board complaints in FY 1981-82 (see Table III-2). The tree board reports that usually complaints against unlicensed practitioners are filed by licensed arborists and not the consumer. The remaining complaints involved pesticide spraying.

The Legislative Program Review and Investigations Committee considered the consequences of arboriculture deregulation and concluded that the worst possible consequence of the improper practice of arboriculture would be the death of a tree. The program review committee believed this presented a far less serious risk to the public than tree removal, which is not a regulated activity in Connecticut.

Based on the above findings, the program review committee concluded that deregulation of the practice of arboriculture will not significantly endanger the public health, safety or welfare. *Therefore, the Legislative Program Review and Investigations Committee recommends the removal of the licensure requirement for the practice of arboriculture.*

However, the program review committee was concerned about the risk to the public that could result from the improper use of pesticides. The committee determined that public protection in this area must be continued and explored alternative regulatory mechanisms. The committee found that currently Department of Environmental Protection regulations require that a person needs a license for the commercial application of general use pesticides. Both the state and the federal government require a license for use of any restricted pesticides.

The Pesticide Compliance Division in the Department of Environmental Protection issues all pesticide licenses in the state with the exception of the pesticide licensing requirement administered by the tree board. However, although the Department of Environmental Protection does not administer the basic pesticide safety test for the arborist examination, it is responsible for developing the test. Transfer of the pesticide licensing function from the tree board to the Department of Environmental Protection would place all pesticide licensing within the scope of one department.

The Department of Environmental Protection could administer this pesticide test the same way it does other licenses. This would involve a three-part examination: the basic pesticide safety test; a specific test that requires knowledge of the target of the spraying (in this case, knowledge of the insects and diseases that might damage a tree); and an oral test. The 526 licensed arborists in the state would be grandfathered into any change in the law since they presently meet the requirements necessary for a commercial pesticide applicator's license.

The transfer of the pesticide function from the tree board to the Department of Environmental Protection should not require much additional staff time. The testing requirement could be merged into the department's present examination system. However, if there are a significant number of applicants for this license, the department might be required to offer the exam at a specified time as opposed to its existing system of individual scheduling.

*Based on this information, the Legislative Program Review and Investigations Committee recommends the transfer of the pesticide licensing requirement from the Tree Protection Examining Board to the Department of Environmental Protection.*

#### Existence of the Board

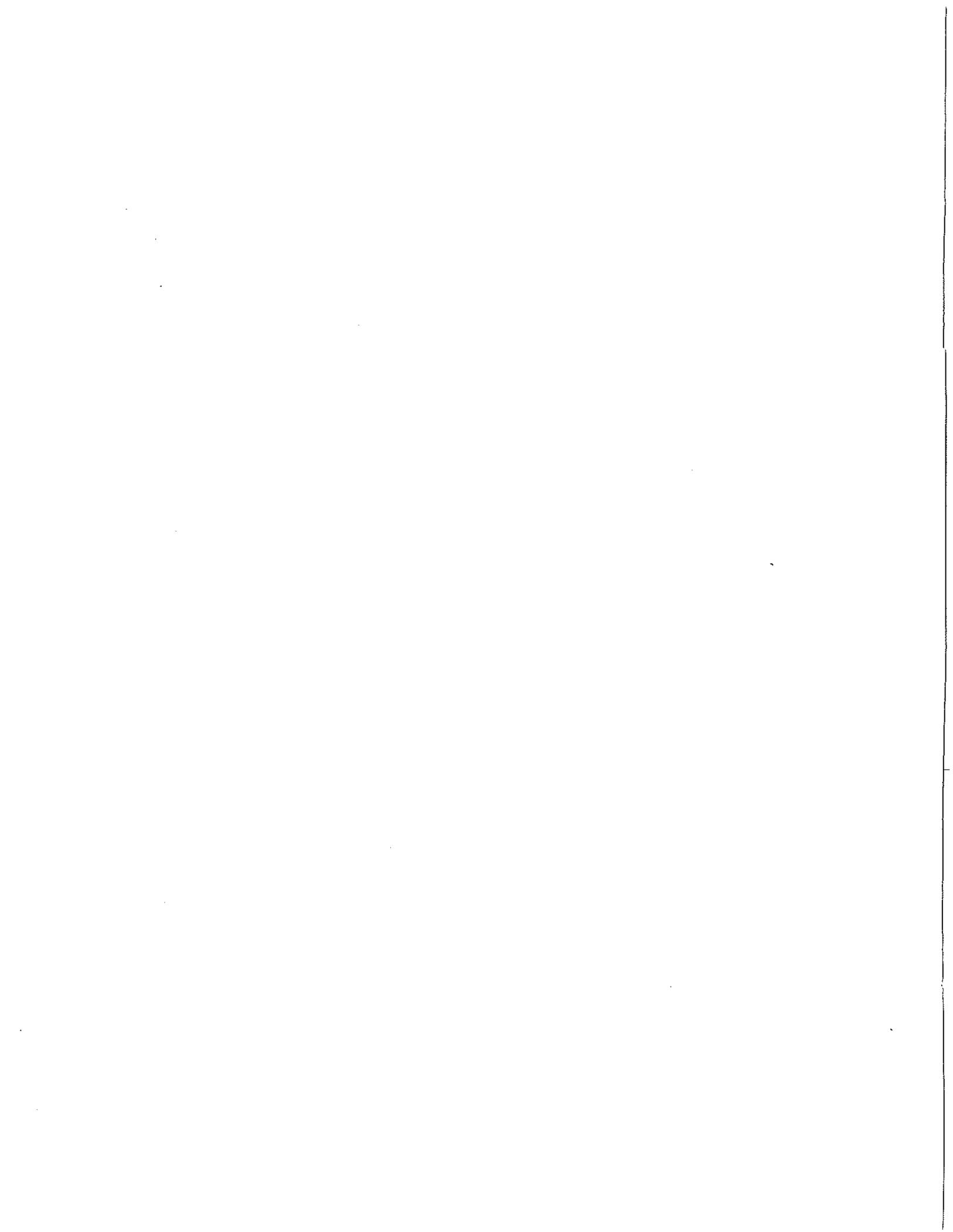
*Based on the previous recommendation, the Legislative Program Review and Investigations Committee recommends that the Tree Protection Examining Board be terminated and that Section 23-61a of the Connecticut General Statutes be repealed.*

Testimony by the Department of Consumer Protection on June 15, 1982, suggested that the tree board might be more appropriately placed within the Department of Environmental Protection. However, if the previous recommendation is accepted, there is no reason to continue the board.

The majority of the complaints received by the board during FY 1981-82 involved spraying complaints or advertising by unlicensed practitioners. The removal of the arborist license requirement would eliminate complaints involving advertising or operating without a license. Table III-2 reveals that these types of complaints accounted for 68 percent of total board complaints in FY 1981-82. Additionally, the Department of Environmental Protection is well versed in the pesticide aspect of the arborist license, and complaints of this nature could easily be handled by the department. The department investigator is a licensed arborist who is familiar with these types of complaints.



## APPENDICES



APPENDIX A

TREE PROTECTION EXAMINING BOARD

STATUTORY REF: C.G.S. 23-61a

ESTABLISHED: 1919 (Chapter 181)

ORGANIZATIONAL LOCATION: Department of Consumer Protection (DCP)

PURPOSE: To protect the public from those unqualified to do arboriculture

POWERS AND DUTIES:

- Provide examination for an arborist license which requires knowledge of both arboriculture and use of insecticides;
- Authorize DCP to issue licenses to qualified applicants;
- Suspend or revoke licenses for sufficient cause, pending inquiry by DCP;
- Issue an order of immediate discontinuance of a violation of any applicable statute or regulation;
- Conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records);
- May request the commissioner of DCP to conduct an investigation;
- May recommend rules and regulations for adoption by the commissioner of DCP.

BOARD COMPOSITION:

- The plant pathologist and the forester of the Connecticut Agricultural Experiment Station (ex officio members);
- Five electors of the state (three are public members and two are licensed arborists, all of whom are appointed by the governor).

MEETING SCHEDULE: No set schedule, a majority of members acting as a board shall constitute a quorum for the transaction of business.

STAFF: 0

<u>BUDGET:</u>	<u>FY 1979-80</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Board	\$ 42	\$ 42	\$ 185
O&E	301	420	500
Administrative Expenses	873	749	1,000
Total Expenses	<u>\$1,216</u>	<u>\$1,211</u>	<u>\$ 1,685</u>

STATISTICS

	<u>FY 1980-81</u>	<u>FY 1981-82<sup>1</sup></u>
Number of meetings	3	9
Average length of business meetings	1.5 hrs.	1.9 hrs.
Average attendance	6	5.7
Licensed practitioners	443	526

<sup>1</sup> Statistics included through May 1982.

<u>EXAMINATION DATA:</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Number of exams given	2	4
Total number of candidates	84	178
Number passed and received license	42 (50%)	81 (46%)

FEE SCHEDULE:

Examination fee and initial license - \$10  
Five year renewal of license - \$20

<u>REVENUE:</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
	approx. \$1,240	approx. \$2,620

Note: In FY 82-83 the first five-year renewal licenses due to be paid will involve over 250 licensees at \$20 a renewal, total approximately \$5,000.

<u>COMPLAINTS:</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
Total	50	25
<u>Type:</u>		
Failure to appear or return calls to customers	11	0
Spray drift	12	2
Advertising or operating without a license	15	17
Dissatisfied with work (generally involves improper spraying complaints)	9	3
Other	3	3
<u>HEARINGS:</u>	<u>FY 1980-81</u>	<u>FY 1981-82</u>
<u>Number of Informal Hearings</u>	0	9
<u>Outcome of Informal Hearings</u>		
- no action	0	7
- issued letter of warning	0	2
- board vote to hold formal hearing	0	1
<u>Number of Formal Hearings</u>	4	5
<u>Outcome of Formal Hearings</u>		
- license suspended	0	1
- order issued for immediate discontinuance	4	3
- no action	0	1

APPENDIX B

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

1983 Sunset Review  
of  
Tree Protection Examining Board

This questionnaire has been constructed to elicit information about the board. Please follow the directions for each question as the results will not be valid unless you do so.

Please feel free to provide additional comment on either a specific question or the board's activities in general. Any such comment may be included directly on the questionnaire or in a separate attachment.

1. Approximately how long have you been a member of the board?

Average 8 Years 6 Months

2. What is your occupation? \_\_\_\_\_

INSTRUCTIONS: Questions 3, 4, and 5 include a number of statements. Please circle the number of the most appropriate option to the left of EACH of the statements.

3. On a scale ranging from 1 = High Priority to 4 = Low Priority, please rate the following duties as to their importance as a reason for continuing the board. Please rate every duty. If you feel the board is not involved in a particular activity, indicate this by choosing option 5, (Not Involved).

High Priority		Low Priority		Not Involved	
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
5	2	0	0	0	Develop license tests
4	2	0	0	1	Administer and correct tests
6	1	0	0	0	General discussion of issues affecting the occupation (e.g., practice of unlicensed persons, etc.)

<u>High Priority</u>	<u>Low Priority</u>		<u>Not Involved</u>		
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
7	0	0	0	0	Suspend or revoke licenses for sufficient cause
7	0	0	0	0	Issue an order of immediate discontinuence of a violation of any applicable statute or regulation
4	3	0	0	0	Conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records)
3	3	1	0	0	Request the Commissioner of Consumer Protection to conduct an investigation
5	0	2	0	0	Recommend rules and regulations for adoption by the Commissioner of Consumer Protection.
1	0	0	0	0	Other (please specify) - <u>Develop an occupational training program to assist persons during licensure.</u>

4. On a scale from 1 = Very Effective to 4 = Not Effective, how would you rate the performance of the board in the following activities? Please rate every activity. If you feel the board is not involved in a particular activity, indicate this by choosing option number 5 (Not Involved).

<u>High Priority</u>	<u>Low Priority</u>		<u>Not Involved</u>		
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	
6	1	0	0	0	Develop license tests
7	0	0	0	0	Administer and correct tests
6	0	1	0	0	General discussion of issues affecting the occupation (e.g., practice of unlicensed persons, etc.)
5	2	0	0	0	Suspend or revoke licenses for sufficient cause
6	1	0	0	0	Issue an order of immediate discontinuence of a violation of any applicable statute or regulation

High Priority		Low Priority		Not Involved		
1	2	3	4	5		
5	2	0	0	0		Conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records)
3	4	0	0	0		Request the Commissioner of Consumer Protection to conduct an investigation
4	2	1	0	0		Recommend rules and regulations for adoption by the Commissioner of Consumer Protection
0	0	0	0	1		Other (please specify) <u>Fee schedule revised (set by statute)</u>

5. On a scale ranging from 1 = Very Satisfied to 4 = Not Satisfied, how would you rate the Department of Consumer Protection's assistance to the board in each of the following areas?

Very Satisfied		Not Satisfied		
1	2	3	4	
1	2	2	1	Develop license tests
1	1	2	2 <sup>1</sup>	Administer and correct tests
5	1	1	0	General discussion of issues affecting the occupation (e.g., practice of unlicensed persons, etc.)
6	1	0	0	Suspend or revoke licenses for sufficient cause
6	1	0	0	Issue an order of immediate discontinuance of a violation of any applicable statute or regulation
7	0	0	0	Conduct hearings (may administer oaths, issue subpoenas, and compel testimony and records)
3	4	0	0	Request the Commissioner of Consumer Protection to conduct an investigation
4	1	1	1	Recommend rules and regulations for adoption by the Commissioner of Consumer Protection
0	0	1	0	Other (please specify) <u>DCP needs an investigator trained in arboriculture.</u>

<sup>1</sup> Both respondents indicated DCP not involved.

6. Do you feel the effective operation of the Tree Protection Examining Board is impeded by any statute, regulation, policy or procedure?

2 YES 5 NO

6a. If yes, what do you feel is the major impediment? If you choose more than one, please rate in order of severity (i.e., 1 = Most Severe Impediment; 2 = Less Severe Impediment; etc.).

           Poor statutory definition of role and functions board is supposed to perform

2nd Lack of staff and funding to carry out the duties mandated by statute

           Organizational location of the board within the Department of Consumer Protection impedes effective operation

1st Lack of participation on the part of some board members

           Statutory mandate is too great for a volunteer board

• Need more effective investigatory function.

\*            Other (please specify) • Need educational/training programs for arborists.

• Board would be more effective if it had greater powers to impose penalties for violations of statutes.

These final two questions are optional. If not enough space is provided, please feel free to use additional pages.

7. If the Tree Protection Examining Board were eliminated, what do you think the most viable alternative would be for carrying out the board's current functions?

• No alternative

• Split the licensure, placing the pesticide application activities in DEP and remaining duties in DCP (3)<sup>1</sup>

• Create a specific office within DCP with mission of determining who should receive a license and also be enforcement authority

8. If you feel the board should be continued, please explain the value of having it continued.

• Board should be continued as is

• Board assures that individuals licensed to practice arboriculture are reasonably well qualified and protects public from unscrupulous or incompetent operators (5)

• Board functions at minimum cost to taxpayers (2)

• Board valuable in overseeing the identification and oral portion of the examination

<sup>1</sup> Number of people with similar response.

## APPENDIX C

### Legislative Changes Needed to Implement Legislative Program Review and Investigations Committee's Recommendations

- Repeal Sections 23-61a - 23-64, inclusive, of the Connecticut General Statutes in order to terminate the Tree Protection Examining Board and remove the licensure requirement for the practice of arboriculture.
  
- Amend Section 22a-54(h) of the Connecticut General Statutes to transfer the pesticide licensing requirement for the arborist license from the Tree Protection Examining Board to the Department of Environmental Protection.

