Texas State Board of Public Accountancy

Agency at a Glance

The Texas State Board of Public Accountancy (Board) regulates the accounting profession in an effort to provide competent, objective accountants and auditors for Texas' financial markets, banking systems, and businesses. The Board's major functions include:

- administering the Uniform Certified Public Accountant (CPA) Examination;
- certifying and licensing accountants who have passed the Exam and met all requirements;
- registering firms engaged in the practice of public accountancy; and
- enforcing provisions of the Public Accountancy Act, and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2002, the Board operated with an annual budget of $3.98 million, most of which was derived from examination and licensing fees collected from the accounting profession.
- **Staffing.** The Board has 43.5 full-time positions, all based in Austin.
- **Licensing.** The Board regulates 57,642 CPAs and 10,292 accounting firms. In fiscal year 2002, about 6,017 applicants took the CPA exam and 1,410 passed the exam and were eligible to apply for a license.
- **Enforcement.** The Board opened 4,049 complaints in fiscal year 2002. In that same year, the Board closed 3,698 complaints with an average processing time of 4.82 months.
- **Pilot Project.** The Legislature included the Board, along with the Texas Board of Professional Engineers and the Texas Board of Architectural Examiners, in the Self-Directed, Semi-Independent Licensing Agency Pilot Project (Pilot Project). Beginning in September 2001, as part of the Pilot Project, the Board was removed from the legislative appropriations process. The Board now collects its revenues directly from licensing fees. In addition, spending limitations in the General Appropriations Act, such as caps on agency full-time equivalent positions and travel expenditures, do not apply to the Board.

Board Members (15)

Billy M. Atkinson, CPA
Presiding Officer (Sugarland)
April L. Eyeington, CPA
Assistant Presiding Officer (College Station)
J. Coalter Baker, CPA (Austin)
Marcela E. Donadio, CPA (Houston)
Kimberly M. Dryden (Amarillo)
Edwardo B. Franco (Houston)
Gwen B. Gilbert, CPA (Dallas)
Rebecca B. Junker, CPA (Richmond)
Carlos Madrid, Jr. (San Antonio)
Robert C. Mann, CPA (Ft. Worth)
Reagan S. McCoy, Esq. (San Antonio)
Catherine J. Rodewald (Frisco)
Edward L. Summers, Ph.D., CPA (Austin)
Melanie G. Thompson, CPA (Canyon Lake)
Vacant

Agency Head

William Treacy, Executive Director
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Recommendations

1. Grant the Board Additional Enforcement Powers.
2. Authorize the Board's Use of Non-Board Members, Who Meet Certain Statutory Qualifications, on Enforcement Committees and Prohibit This Practice for Policymaking Committees.
3. Apply Provisions of the Sunset Licensing Model to the Public Accountancy Act.
4. Protect From Prosecution Individuals Who Report Fraudulent Accounting Practices to the Board.
5. Require the Board to Study and Report on Changes in Federal Accountancy Law.
6. Continue the Texas State Board of Public Accountancy for 12 Years.

Issue 1 The Public Accountancy Act Lacks Key Provisions Needed to Protect the Public.

Key Findings

- The Board of Public Accountancy regulates the accounting industry by enforcing the Public Accountancy Act and taking enforcement actions against violators.
- The current range of criminal and administrative penalties allowed by the Act is an insufficient deterrent to the types of violations occurring in today's business environment.
- The Board does not have the authority to order licensees to pay restitution to victims.
- The Board's enforcement efforts are hampered by confidentiality provisions in the Act, lack of subpoena power, and summary suspension authority.

The Board seeks to protect the public through its enforcement of the Accountancy Act. Recent accounting scandals have heightened interest in ensuring that the Act contains the full range of enforcement tools necessary to adequately deter and redress violations. By increasing the criminal penalties in the Public Accountancy Act, local district attorney's would be able to take effective action against major violations of the Act. The Board needs additional authority to be able to bring more significant administrative penalties, order licensees to pay restitution to victims, and compel the production of witnesses and records in investigations. In addition, the Board lacks the authority to share information with other regulatory agencies, which hampers multijurisdictional investigations.

Recommendations

Change in Statute

1.1 Expand the range of criminal penalties in the Public Accountancy Act.

This recommendation would increase the penalty for violating the Public Accountancy Act to a felony offense. The class of felony would depend upon the amount of monetary loss: less than $10,000, the maximum penalty would be two to 10 years of imprisonment; if the offense involved between $10,000 and $99,999, the maximum penalty would be two to 20 years; $100,000 or more, the penalty would be five to 99 years. This would allow the district attorneys to pursue criminal penalties that directly relate to the severity of the offense. The prosecutions would be brought by local district attorneys, while the Board's role would be limited to assisting in prosecutions.

1.2 Increase administrative penalties to a maximum of $100,000.

This change would increase the statutory cap on administrative penalties from $1,000 per violation to $100,000 per violation. With this broader range of monetary penalties, the Board can impose penalties which are more appropriate to the nature of the violations committed. The Board would pass rules to establish a matrix to identify which offenses merit higher penalties.

1.3 Authorize the Board to order licensees to pay restitution to consumers as a part of enforcement actions.

This change would authorize the Board to order the payment of restitution to victims. Refunds would be limited to actual amounts paid by consumers to licensees.

1.4 Authorize the Board to issue summary suspension orders.

This change would authorize the Board to summarily suspend the license of any person or firm that is committing fraud, violating the Public Accountancy Act, or is about to engage in fraudulent activity or violations. Summary suspension authority would be limited to situations presenting an immediate threat to the public welfare, and would be subject to appeal. A summary suspension order would continue to be in effect until the order is stayed by the Board.

1.5 Grant the Board authority to issue subpoena orders.

This recommendation would grant the Board the authority to require, by subpoena or summons issued, the attendance and testimony of witnesses and the production of all records relating to matters for which the Board has authority in the Public Accountancy Act to investigate. The production of records would include records maintained by electronic or other means. Further, this recommendation would grant the Board the authority to sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence, provided that such information is treated confidentially under terms of the Public Accountancy Act.

1.6 Grant the Board the authority to share confidential information with governmental agencies and law enforcement officials.

This recommendation would allow the Board to disclose confidential information in the Board's possession to any governmental, regulatory, or law enforcement authority without violating the Public Accountancy Act or Chapter 552, Government Code relating to public information. The Board would create rules to guide the agency when sharing this information with other jurisdictions pursuing enforcement actions.

1.7 Grant the Board authority to issue cease and desist orders to individuals who are practicing public accountancy without a license.

This recommendation would authorize the Board to issue cease and desist orders to individuals who are practicing public accountancy without a license. The cease and desist order would be an administrative action by the Board, unlike injunctive relief which involves the court system. Cease and desist authority would replace the Board's current authority to seek an injunction. The Board would be granted the Authority to levy administrative fines up to $25,000 to individuals who violate the cease and desist order.

Issue 2 The Board Benefits From the Service of Non-Board Members on Its Committees, but This Practice Is Not Authorized.

Key Findings

- Although the Board has benefitted from the use of non-Board members in working committees, the statute does not specifically allow this practice for enforcement committees.
- Non-Board members serving on working committees may have undisclosed interests in matters before the committees.
- The Board's Rules committee represents an inappropriate delegation of policymaking authority to non-Board members.

The Board has created 11 Board committees to assist in administering the Public Accountancy Act. These committees can be divided into two categories: working committees that carry out the functions of the Board, such as considering enforcement actions or overseeing the peer review process, and policymaking committees that set the direction of the Board and write rules. Because the committees are composed of both Board members and industry representatives, they are neither true advisory committees nor Board committees.

The Board's committee structure allows the Board to access needed technical assistance in its working committees, but the statute does not authorize the Board to use non-Board members in enforcement committees. In addition, this technical expertise may be provided by individuals who may have an undisclosed interest in matters coming before them because of their close ties to the accounting profession. The Board has also delegated policymaking authority to nonmembers serving on the Rules committee in a way that the Legislature has generally acted to avoid. Changing the way the Board may use nonmembers on its committees would help ensure that the Board continues to receive needed expertise and that nonmembers have the proper qualifications to serve.

Recommendations

Change in Statute

2.1 Authorize the appointment of non-Board members to Board enforcement committees.

This recommendation would repeal the current statutory language requiring the Board to make appointments to the enforcement committees from its membership and specifically authorize the Board to seek technical assistance from nonmembers. This change recognizes and continues the benefit of the technical expertise that the Board has been able to gain from these volunteers. These non-Board members would serve as full, voting members. The Board would check the compliance history of all appointees to ensure that CPAs with past enforcement actions are not evaluating enforcement cases of others.

2.2 Require non-Board members appointed to Board committees to meet the statutory qualifications of Board members and to file financial disclosure statements.

This recommendation would ensure that the non-Board members appointed to serve on Board committees meet the same qualifications as Board members, thereby reducing the possibility of nonmembers helping shape decision on a matter in which they have a direct interest. These qualifications would apply the statutory test that excludes officers and employees of Texas trade associations in the field of public accountancy from serving on the Board. To ensure that personal interests in the work of the committees is fully disclosed, the financial disclosure standards in the Ethics Code would apply to the non-Board members in the same way as it does to Board members who have been confirmed by the Senate. The Board would create rules requiring non-Board committee members to recuse themselves from discussing or voting on matters where they have a personal interest.

2.3 Prohibit the Board from appointing non-Board members to Board policymaking committees.

This recommendation would ensure that the Board does not permit non-Board members to perform its key policymaking functions, to limit the influence of the accounting profession over the policymaking work of the state agency regulating accountancy. The Board would remain free to establish its committee structure as needed, with the provision that committees performing policymaking functions, such as writing rules and formulating the direction of the agency, must only contain Board members. The Board is currently composed of 15 members, which is an adequate number to perform the policymaking work.

Issue 3 | Key Elements of the Public Accountancy Act Do Not Conform to Commonly Applied Occupational Licensing Practice.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could negatively affect the fair treatment of licensees and consumer protection.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.
- Certain administrative practices could reduce the Board's protection of the public or its ability to adapt to major change.

Various licensing and enforcement processes set up in the Board's statute and in its management practices do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 70 occupational licensing reviews in 25 years. In some cases, statutory vagueness could mislead certificate applicants or fail to prevent a conflict of interest in processing disciplinary actions. Other problems could prevent the proper allocation of exam fees, or inhibit the public's ability to learn more about disciplinary actions or the accountancy profession in general. A comparison of the Board's statute, rules, and practice with model licensing standards identified variations from these standards and needed changes to bring the Board in line with other licensing agencies.

Recommendations

Change in Statute

3.1 Require the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in the Occupations Code.

This recommendation would require the Board to apply the process in Occupations Code, Chapter 53, to define which criminal convictions disqualify an applicant from licensure as a public accountant. Current statutory provisions on good moral character demonstrated by a lack of dishonest or felonious acts would be replaced with a reference to Chapter 53 and a clear statement excluding felons from licensure. Based on the process required in this Chapter, the Board would create a list of misdemeanors with explanations on how a particular crime relates to the CPA license. In addition, the Board would publish a statement explaining the process it would use to determine which misdemeanors committed in other states would prevent licensing in Texas.

3.2 Authorize the Board to delegate the collection of Uniform CPA Examination fees.

Under this recommendation, the current statutory language requiring the Board to collect examination fees would be modified to include specific authority allowing third parties to collect exam fees on behalf of the Board.

3.3 Require Board members to recuse themselves from voting on disciplinary actions when they serve on the respective enforcement committees.

This recommendation would create a clear separation between the Board's investigative and final disciplinary action functions. Board members would be required to clearly announce their recusal from specific votes. Requiring the Board to adopt ethical rules and ex parte communications rules would ensure that future boards continue to abide by these policies.

Management Action

3.4 The Board should make detailed information about disciplinary actions available to the public.

Under this recommendation, the Board would give consumers full and easy access to public information on disciplinary rulings and licensees' disciplinary histories on its Web site. The Board would also compile detailed statistics about complaints received and resolved each year and provide this information in its annual report, including the number, type, and age of all open cases as of the end of each fiscal year.

Issue 4 | The Threat of Prosecution May Deter Individuals From Reporting Fraudulent Accounting Practices to the Board.

The Board occasionally receives voluntary reports of wrongdoings from employees of public accountancy firms. These employees are currently faced with the choice of facing prosecution for their own involvement or having to quit their jobs – a choice that may prevent individuals from providing needed information to the Board to better regulate public accountancy.

Recommendation

Change in Statute

4.1 Create protections for individuals who voluntarily report violations by public accountancy firms.

This recommendation would establish a 'safe-harbor' to protect these employees from prosecution or administrative actions by the Board.

Issue 5 | Recent Changes in Federal Public Accountancy Law May Require Additional Changes to Texas Laws.

With the recent passage of the federal Sarbanes-Oxley Act, public accountancy regulation is undergoing significant change nationally. To ensure that Texas statutes stay consistent with national requirements, the Board should study the national reforms and report to the Legislature on any needed changes.

Recommendation

Change in Statute

5.1 Require the Board to Study and Report on Changes in Federal Accountancy Law.

This recommendation would require the Board to report to the Governor, Lieutenant Governor, and Speaker of the House by December 31, 2005 regarding its review of Sarbanes-Oxley type restrictions on "Public Interest Entities," the GAO study on audit firm rotation, and the Board's implementation of rules consistent with these national standards. This report would enable the Legislature to keep Texas public accountancy laws current with national requirement.

Issue 6 Texas Has a Continuing Need for the Texas State Board of Public Accountancy.

Key Findings

- Texas has a continuing interest in regulating the practice of public accountancy.
- The Board functions effectively in its role of regulating public accountancy.
- No benefit would result from changing the agency structure or having any other federal or state agency perform the Board's functions.
- Most other states use a separate licensing agency to oversee the practice of public accountancy.

The Board licenses individual Certified Public Accountants and accounting firms. While the accounting standards by which CPAs and firms must operate are established by national accounting organizations, the Board acts to license CPAs and firms and enforce the Public Accountancy Act in Texas. Because the practice of accountancy affects the business climate in the state, and members of the public are unable to independently determine the competency of an accountant, the Board's regulatory functions continue to be needed.

The Sunset Commission concluded that the Board should continue as currently organized. Although the Board needs improvements that are discussed elsewhere in this report, the Board should be continued for the standard 12 years.

Recommendation

Change in Statute

6.1 Continue the Texas State Board of Public Accountancy for 12 years.

This recommendation continues the Texas State Board of Public Accountancy for the standard 12-year period until 2015.

Fiscal Implication Summary

These recommendations will not result in a fiscal impact to the State. The Board may incur some additional costs as a result of increased enforcement efforts, but these costs would be recovered as increased penalty payments. Under current law, the Board is permitted to retain these penalties as part of the Licensing Agency Pilot Project. However, the Sunset Commission is recommending the abolishment of the Pilot Project. Under this recommendation, administrative penalties would be returned to the General Revenue Fund, as is the practice with other licensing agencies. The Legislature may appropriate these funds to the Board to offset any increased costs.