Texas State Board of Public Accountancy

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Summary

The Texas State Board of Public Accountancy (the Board) was created in 1915 to regulate the practice of public accountancy, and to provide competent, objective accountants and auditors for Texas' financial markets, banking systems, and businesses. The Board's major functions include licensing accountants and accountancy firms, and enforcing the Public Accountancy Act by investigating and resolving complaints. The Board operates with an annual budget of about $3.98 million, and has 43.5 staff positions.

House Bill 1218 continues the Board as a separate, stand-alone agency until September 1, 2015. Also, in response to recent accounting scandals associated with the high profile bankruptcies of Enron and WorldCom, the Sunset Commission's recommendations and resulting legislation focus on enhancing the Board's enforcement authority, so that it can better protect the public. Among other things, the bill expands the range of criminal penalties for certain violations of the Public Accountancy Act and increases the maximum administrative penalty from $1,000 to $100,000 per violation. These provisions will result in a positive fiscal impact of $230,000 per year. The list below summarizes the major provisions of H.B. 1218, and a more detailed discussion follows.

Sunset Provisions

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. Conform Key Elements of the Public Accountancy Act to Commonly Applied Licensing Practices.
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.

Sunset Provisions

1. Grant the Board Additional Enforcement Powers.

To enhance the Board's enforcement program, H.B. 1218 includes the following provisions.

- Makes violations involving intentional fraud a felony offense, scaled to the amount of monetary loss: state jail felony for losses of $0 to $10,000; third degree felony for losses of more than $10,000, but less than $100,000; and, second degree felony for losses of $100,000 or more. The bill maintains the existing Class B misdemeanor penalty for all other violations of the Act.
- Increases the statutory cap on administrative penalties from $1,000 to $100,000 per violation, to allow the Board to impose monetary penalties appropriate to the nature of the violation. The Board will adopt rules to identify which offenses merit higher penalties.
- Authorizes the Board to order licensees to pay restitution to consumers as a part of enforcement actions. The legislation limits refunds to the actual amount paid under the contract, and does not allow compensation for other types of harm.
- Authorizes the Board to suspend, on an emergency basis, 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, if the person or firm presents an immediate threat to the public welfare. The Legislature modified this provision to provide for a timely appeals process.
- Authorizes the Board to issue subpoenas to compel the attendance of witnesses or the production of records relating to matters which the Board has authority in the Public Accountancy Act to investigate.
- Grants the Board the authority to share confidential information with governmental agencies and law enforcement officials for joint investigative purposes. The Board will adopt rules to guide the agency when sharing this information with other jurisdictions pursuing enforcement actions.
- Authorizes the Board to issue cease-and-desist orders to individuals who are practicing public accountancy without a license, and to impose administrative penalties up to $25,000 for violations of cease-and-desist orders.

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.

House Bill 1218 repeals current statutory language requiring the Board to make appointments to its enforcement committees from its membership, and instead specifically authorizes the appointment of non-board members to Board working committees, including its enforcement committees. Non-board members, however, may not serve on Board policymaking committees.

In appointing non-board members, the Board must check the compliance history of all appointees to ensure that licensees with past enforcement actions are not serving on the committees. In addition, non-board members must meet qualifications similar to Governor appointees, regarding potential conflicts of interest and financial disclosure. The Board will develop rules requiring committee members to recuse themselves from discussing or voting on matters in which they have a personal interest.

3. Conform Key Elements of the Public Accountancy Act to Commonly Applied Licensing Practices.

House Bill 1218 includes the following three provisions that bring the Board in line with standard licensing agency practices.

- Requires the Board to define which misdemeanor convictions disqualify an applicant from certification in the standard manner defined in Chapter 53 of the Occupations Code.
- Authorizes the Board to delegate the collection of Uniform CPA Examination fees to the entity conducting the examination.
- Requires Board members to recuse themselves from voting on disciplinary actions when they serve on respective enforcement committees.

4. Protect From Prosecution Individuals Who Report Fraudulent Accounting Practices to the Board.

House Bill 1218 provides immunity from criminal and civil liability to individuals who report or assist in the investigation of violations of the Public Accountancy Act. The bill exempts from immunity persons who report their own violations or who act in bad faith or with malicious purpose when reporting violations.

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

The Legislature modified the Sunset provision to require the Board, by December 31, 2004, to study and report on federal requirements in the Sarbanes-Oxley Act, the General Accounting Office's study on audit firm rotation, and the Board's implementation of rules consistent with these national standards. This report will enable the 2005 Legislature to take action to keep Texas public accountancy laws current with national standards.

6. Continue the Texas State Board of Public Accountancy for 12 Years.

This provision continues the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

House Bill 1218 will result in a positive fiscal impact of $230,000 per year. The bill increases the statutory cap on administrative penalties from $1,000 to $100,000 per violation, and allows the agency to impose administrative penalties up to $25,000 on persons who practice accountancy without a license and violate a cease-and-desist order. Based on historical enforcement patterns, the Board estimates a total gain of $230,000 per year from administrative penalties, $10,000 of which will result from cease-and-desist order violations. Because of the Board's participation in the Self-Directed, Semi-Independent Licensing Agency Pilot Project, the funds will be held in a special fund outside the State Treasury to pay for Board operations. Senate Bill 1382 reauthorizing the Pilot Project provides that a portion of unexpended balances related to enforcement actions be deposited annually in the General Revenue Fund.

The provision allowing the Board to issue subpoena orders will result in a slight cost to the Board; however, the Board will adjust licensing fees to cover the costs, and as a result, this provision will not have a fiscal impact to the State.