

# SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

*Texas State Board of  
Public Accountancy*

2018–2019  
86TH LEGISLATURE



# SUNSET ADVISORY COMMISSION

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**TEXAS STATE BOARD OF  
PUBLIC ACCOUNTANCY**

**SUNSET STAFF REPORT WITH FINAL RESULTS  
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## ***HOW TO READ SUNSET REPORTS***

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

**FIRST VERSION:** The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

**SECOND VERSION:** The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

**THIRD VERSION:** **The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.**

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# FINAL RESULTS





# FINAL RESULTS

## *House Bill 1520*

### Summary

Certified Public Accountants (CPAs) play a vital role in the financial health of Texas residents, companies, and public institutions. Overall, the Sunset Commission determined the Texas State Board of Public Accountancy does its job ensuring accountants practicing in the state have the knowledge and impetus to perform their work well, as is expected from an agency with self-directed semi-independent status that allows it to operate outside the appropriations process and to raise fees to cover the cost of regulation.

House Bill 1520 continues the agency for 12 years and contains provisions to improve its licensing and enforcement programs, including standardizing fingerprint background checks for all licensed CPAs, removing unnecessary requirements on the management personnel of licensed firms, and clarifying the agency's injunctive authority. The bill also requires approval from the attorney general when contracting with outside legal counsel, following the Sunset Commission's finding that the agency's contracting processes were too informal.

The following material summarizes results of the Sunset review of Texas State Board of Public Accountancy, including management actions directed to the agency that do not require legislative action.

### ISSUE 1 — *Contracting*

**Recommendation 1.1, Adopted** — Require the board to seek approval from the office of the attorney general for all outside counsel contracts.

**Recommendation 1.2, Adopted** — Direct the board to develop a formal, agencywide contract development and solicitation process for its professional services contracts. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct the board to develop a contracting improvement process. (Management action – nonstatutory)

### ISSUE 2 — *Licensing and Enforcement*

**Recommendation 2.1, Adopted** — Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period. Exempt licensees currently on 'retired' status unless they decide to resume their practice with an active license.

**Recommendation 2.2, Adopted** — Remove subjective licensure provisions for CPAs and non-CPA firm owners.

**Recommendation 2.3, Adopted** — Remove requirement for annual license renewal for CPA firms.

**Recommendation 2.4, Modified** — Remove unnecessary licensure and continuing education provisions for non-CPA firm owners, and require the resident manager be a licensed CPA who is responsible for a firm's license to clarify that a firm's internal management would be left to the discretion of the firm's owners.

**Recommendation 2.5, Adopted** — Clarify the board’s injunctive authority to align with other regulatory agencies.

**Recommendation 2.6, Modified** — Direct the board to comply with statute directing rules and procedures for military service members, veterans, and military spouses by March 1, 2019. (Management action – nonstatutory)

**Recommendation 2.7, Adopted** — Direct the board to remove unnecessary application requirements for candidates to take the CPA exam. (Management action – nonstatutory)

**Recommendation 2.8, Adopted** — Direct the board to accept online submission of exam applications. (Management action – nonstatutory)

**Recommendation 2.9, Adopted** — Direct the board to eliminate rules and policies requiring notarized information. (Management action – nonstatutory)

**Recommendation 2.10, Adopted** — Direct the board to amend its peer review rules to account for risk posed to the public. (Management action – nonstatutory)

**Recommendation 2.11, Modified** — Direct the board to update its complaint policies and procedures by March 1, 2019. (Management action – nonstatutory)

**Recommendation 2.12, Adopted** — Direct the board to develop rules on administrative costs assessed on respondents. (Management action – nonstatutory)

### ISSUE 3 — *Continue and Governance*

**Recommendation 3.1, Adopted** — Continue the Texas State Board of Public Accountancy for 12 years.

**Recommendation 3.2, Modified** — Direct the Sunset Commission to request that the Legislature examine all state boards, including the Texas State Board of Public Accountancy, for any legislation needed to mitigate the potential liability of boards controlled by active market participants. (Management action – nonstatutory)

**Recommendation 3.3, Modified** — Update the standard across-the-board requirements related to a complaints system and board member training, including training on anticompetitive board behavior and a requirement for each board member to attest to both receiving and reviewing the training manual annually.

**Recommendation 3.4, Adopted** — Continue the board’s self-directed semi-independent status and scholarship reporting requirements but repeal the requirement on statistical analysis of complaints.

**Recommendation 3.5, Adopted** — Update the agency’s statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 3.6, Adopted** — Direct the board to revise its rules to facilitate public comment, and statutorily require the board to include public testimony as an agenda item at every regular board meeting.

## Provision Added by the Legislature

**Firm license mobility** — Remove the requirement for firms licensed in another state to obtain a firm license from the agency to practice in Texas, but maintain requirements for such firms to follow board statute and rules.

## Fiscal Implication Summary

The Sunset Commission's recommendations, as enacted in House Bill 1520, will not result in a fiscal impact to the state. The costs associated with the provision to fingerprint currently licensed CPAs will be paid by the CPAs and other provisions, such as seeking approval from the attorney general for outside counsel contracts and updating board member training, can be accomplished with existing resources. Other provisions of House Bill 1520, such as giving the board flexibility to adopt biennial licensing, could produce savings by reducing agency workload. As a self-directed semi-independent agency, the board is responsible for setting fees to cover the costs of regulation.



———— **SUNSET COMMISSION DECISIONS**  
**NOVEMBER 2018**



# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the Texas State Board of Public Accountancy, as well as modifications and new recommendations raised during the public hearing.

Accountants play a vital role in the financial health of Texas residents, companies, and public institutions. This review of the board follows a 2013 Sunset review limited to the board's self-directed semi-independent functioning outside the appropriations process, but is the first look at the board as a whole since 2002. Overall, the board does its job ensuring accountants practicing in the state have the knowledge and impetus to perform their work well, as should be expected from any agency, but especially one with the freedom to raise its fees to cover the cost of regulation. The Sunset Commission recommended continuing the board for 12 years as an independent agency.

However, the board has not always scrutinized its own performance in meeting the standards and expectations of a well-functioning regulatory agency with the same effort as it oversees its licensees. In particular, the Sunset Commission found the way the board decides how much to contract out key pieces of its enforcement function — and the processes it uses to find and retain contractors — to be too informal for a Texas state agency. The Sunset Commission also found opportunities for the board to adopt other best practices, such as streamlining paperwork, providing appropriate public access to its meetings, and being more transparent in how it assesses its administrative costs against disciplined licensees. Finally, the Sunset Commission recommended that the Legislature examine the board and other agencies for any legislation needed to mitigate the potential liability of boards controlled by active market participants.

## ISSUE 1

*The Board's Contracting Processes Do Not Meet State Standards and Expectations.*

**Recommendation 1.1, Adopted** — Require the board to seek approval from the office of the attorney general for all outside counsel contracts.

**Recommendation 1.2, Adopted** — Direct the board to develop a formal, agencywide contract development and solicitation process for its professional services contracts. (Management action – nonstatutory)

**Recommendation 1.3, Adopted** — Direct the board to develop a contracting improvement process. (Management action – nonstatutory)

## ISSUE 2

### *Key Elements of the Board's Statute and Procedures Do Not Conform to Common Regulatory Standards.*

**Recommendation 2.1, Adopted as Modified** — Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period. Exempt licensees currently on 'retired' status unless they decide to resume their practice with an active license.

**Recommendation 2.2, Adopted** — Remove subjective licensure provisions for CPAs and non-CPA firm owners.

**Recommendation 2.3, Adopted** — Remove requirement for annual license renewal for CPA firms.

**Recommendation 2.4, Adopted as Modified** — Remove unnecessary licensure and continuing education provisions for non-CPA firm owners. Also require the resident manager be a licensed CPA who is responsible for a firm's license to clarify that a firm's internal management would be left to the discretion of the firm's owners, provided that CPAs continue to supervise accountancy work regulated by the board.

**Recommendation 2.5, Adopted** — Clarify the board's injunctive authority to align with other regulatory agencies.

**Recommendation 2.6, Adopted as Modified** — Direct the board to comply with statute directing rules and procedures for military service members, veterans, and military spouses. The board should adopt the rules and procedures by March 1, 2019. (Management action – nonstatutory)

**Recommendation 2.7, Adopted** — Direct the board to remove unnecessary application requirements for candidates to take the CPA exam. (Management action – nonstatutory)

**Recommendation 2.8, Adopted** — Direct the board to accept online submission of exam applications. (Management action – nonstatutory)

**Recommendation 2.9, Adopted** — Direct the board to eliminate rules and policies requiring notarized information. (Management action – nonstatutory)

**Recommendation 2.10, Adopted** — Direct the board to amend its peer review rules to account for risk posed to the public. (Management action – nonstatutory)

**Recommendation 2.11, Adopted as Modified** — Direct the board to update its complaint policies and procedures by March 1, 2019. (Management action – nonstatutory)

**Recommendation 2.12, Adopted** — Direct the board to develop rules on administrative costs assessed on respondents. (Management action – nonstatutory)

## ISSUE 3

### *The State Has a Continuing Need to Regulate Accountancy.*

**Recommendation 3.1, Adopted** — Continue the Texas State Board of Public Accountancy for 12 years.



**Recommendation 3.2, Adopted as Modified** — Replace the original staff recommendation with the following. Direct the Sunset Commission to request that the Legislature examine all state boards, including the Texas State Board of Public Accountancy, for any legislation needed to mitigate the potential liability of boards controlled by active market participants. (Management action – nonstatutory)

**Recommendation 3.3, Adopted** — Update the standard across-the-board requirements related to board member training and complaints system.

**Recommendation 3.4, Adopted** — Continue the board’s SDSI and scholarship reporting requirements but repeal the requirement on statistical analysis of complaints.

**Recommendation 3.5, Adopted** — Update the agency’s statute to reflect the requirements of the person-first respectful language initiative.

**Recommendation 3.6, Adopted as Modified** — Direct the board to revise its rules to facilitate public comment. Also, statutorily require the board to include public testimony as an agenda item at every regular board meeting. The board should clearly provide the public the opportunity to comment on each agenda item and any other under the board’s jurisdiction aside from ongoing enforcement cases. Also require the board to remove from its rules the 20-day requirement to post comment at board meetings.

## ADOPTED NEW RECOMMENDATIONS

None adopted.

## Fiscal Implications Summary

The Sunset Commission’s recommendations would not result in a fiscal impact to the state. Updating contracting processes and board policies for enforcement cases are standard responsibilities of state agencies that can be accomplished with current resources. Other recommendations, such as eliminating paperwork or giving the board flexibility to adopt biennial licensing, could produce savings by reducing agency workload. As a self-directed semi-independent agency, the board is responsible for setting fees to cover the costs of regulation.



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**SUMMARY OF SUNSET  
STAFF RECOMMENDATIONS**



# SUMMARY

Accountants may not be the first answer one would give if asked about professionals that protect the public, but they do play a vital role in the financial health of Texas residents, companies, and public institutions. Without competent accountants, pensions, local governments like school districts, and businesses on main street would find it harder to prevent theft, make sound investments, or assure customers and creditors of their financial footing. The Texas State Board of Public Accountancy has not only pursued accountants at one of the formerly largest accounting firms in the world who failed to stop headline-grabbing fraud at Enron, but also tightened the standards and oversight of the accounting profession to make sure accountants in Texas catch bad actors and weak controls in today's complex marketplace.

This review of the board follows a 2013 Sunset review limited to the board's self-directed semi-independent functioning outside the appropriations process, but is the first look at the board as a whole since 2002. Overall, the board does its job ensuring accountants practicing in the state have the knowledge and impetus to perform their work well, as should be expected from any agency, but especially one with the freedom to raise its fees to cover the cost of regulation.

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*The board generally operates well but lacks certain practices that are expected of a state agency.*

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However, the board has not always scrutinized its own performance in meeting the standards and expectations of a well-functioning regulatory agency with the same effort as it oversees its licensees. Throughout the review, Sunset staff identified several instances where the board has not kept pace with how a modern licensing agency performs certain functions. In particular, Sunset found the way the board decides how much to contract out key pieces of its enforcement function — and the processes it uses to find and retain contractors — to be too informal for a Texas state agency. Sunset also found opportunities for the board to adopt other best practices, such as streamlining paperwork, providing appropriate public access to its functions, and being more transparent in assessing administrative costs against disciplined licensees.

Lastly, Texas and other states now face a challenge stemming from recent court decisions that raise concerns with occupational licensing agencies that have market participants on the board. Occupational licensing agencies must constantly strike a delicate balance of regulations that protect the public while not overly interfering with market forces, and courts have recognized that having a controlling number of market participants can lead to unintended shifts toward anticompetitive behavior. This board, similar to many other regulatory agencies in Texas, has struggled to maintain its balance. Adjusting board membership to ensure a majority of public members would help address some of these concerns about potential anticompetitive behavior.

The recommendations in this report are intended to help the board put in place the structure necessary to execute all of its charges even more effectively and responsibly, and to bring the board's outlier processes up to the standard expected of Texas licensing agencies. A summary follows of the Sunset staff recommendations on the Texas State Board of Public Accountancy.

## Issues and Recommendations

### *Issue 1*

#### **The Board's Contracting Processes Do Not Meet State Standards and Expectations.**

The board contracts for accountants and attorneys to support its programs related to enforcement, continuing education review, and peer review. However, the board's method of contracting for these professional services does not meet certain state contracting requirements and best practices. For example, the board rarely solicits its needs to the broader marketplace, relying instead on word-of-mouth recommendations. In addition, it applies the wrong standard for evaluating professional services proposals, allowing price to supersede considerations of quality. Finally, the board's use of outside attorneys lacks effective oversight normally provided by the office of the attorney general and the Legislature. Correcting these shortfalls and adopting a formal mechanism to regularly update its contracting processes would ensure the board's contracting is carefully developed, more fair to potential vendors and its licensees, and current with state procurement law and best practices.

#### **Key Recommendations**

- Require the board to seek approval from the office of the attorney general for all outside counsel contracts.
- Direct the board to develop a formal, agencywide contract development and solicitation process for its professional services contracts.
- Direct the board to develop a contracting improvement process.

### *Issue 2*

#### **Key Elements of the Board's Statute and Procedures Do Not Conform to Common Regulatory Standards.**

Sunset staff found that various board licensing and enforcement processes do not match model standards or common practices observed through Sunset reviews of many regulatory agencies. Specifically, the board lacks accommodations for military members required by statute. In addition, the board lacks authority to require fingerprint background checks of most of its already licensed CPAs, effectively creating two levels of oversight. The board's peer review program creates a potential barrier to CPAs providing lower-risk services by applying a one-size-fits-all standard to inspecting accountants' work. Aligning the board's rules and policies with best practices would help the agency reduce the administrative and regulatory burden on licensees, match the level of regulation with the level of risk posed to the public, and ensure the board fairly and consistently applies administrative costs to licensees in enforcement actions.

## Key Recommendations

- Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period.
- Remove unnecessary licensure and continuing education provisions for non-CPA firm owners.
- Direct the board to comply with statute directing rules and procedures for military service members, veterans, and military spouses.
- Direct the board to amend its peer review rules to account for risk posed to the public.
- Direct the board to develop rules on administrative costs assessed on respondents.

## Issue 3

### The State Has a Continuing Need to Regulate Accountancy.

Accountancy is the only profession that can perform certain services that provide the public with credible assessments that financial information presented to them is accurate. The state has regulated the practice of accountants since 1915, and continues to need to regulate these professionals and their firms to ensure qualified people practice accountancy in accordance with recognized standards. However, the board's current membership includes a majority of licensed accountants, raising concerns about the board's ability to maintain immunity from lawsuits in light of recent court decisions. In addition, the board should improve the public's ability to comment at its open meetings.

## Key Recommendations

- Continue the Texas State Board of Public Accountancy for 12 years.
- Adjust the board's composition to consist of eight public members and seven certified public accountants.
- Direct the board to revise its rules to facilitate public comment.

## Fiscal Implication Summary

These recommendations would not result in a fiscal impact to the state. Updating contracting processes and board policies for enforcement cases are standard responsibilities of state agencies that can be accomplished with current resources. Other recommendations, such as eliminating paperwork or giving the board flexibility to adopt biennial licensing, could produce savings by reducing agency workload. As a self-directed semi-independent agency, the board is responsible for setting fees to cover the costs of regulation.





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**AGENCY AT A GLANCE**

**AUGUST 2018**



# AGENCY AT A GLANCE

The Legislature established the Texas State Board of Public Accountancy in 1915 to regulate the practice of accountancy and ensure qualified accountants and auditors for Texas commerce and residents. Certified public accountants (CPAs) provide a range of services described in the textbox, *Examples of CPA Services*. The board protects the public by licensing and regulating accountants and accountancy firms. The board's major functions include

- verifying the eligibility of prospective CPAs to take the national CPA exam;
- licensing individuals who have passed the CPA exam and meet all requirements in state law;
- licensing firms that provide certain services according to nationally recognized standards; and
- investigating and resolving complaints, and taking disciplinary action when necessary to enforce the Public Accountancy Act and board rules.

## **Examples of CPA Services**

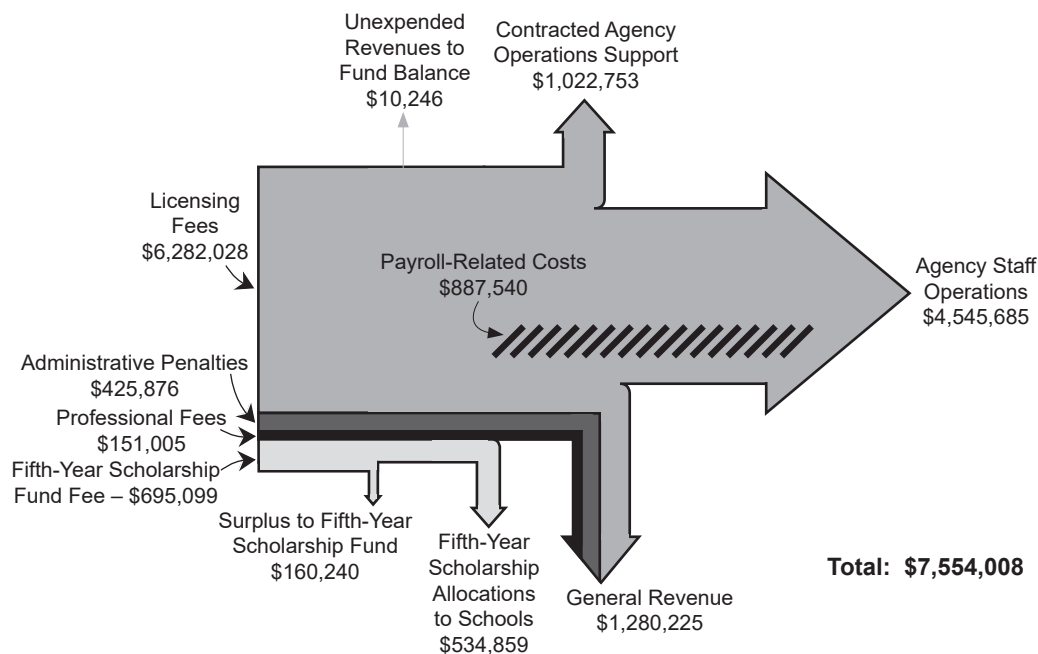
- Providing attest services that report financial data or evaluate its accuracy, performed according to certain nationally or internationally recognized standards, for both the public and private sector, such as
  - audits,
  - reviews, and
  - compilations
- Preparing individual and business tax returns
- Providing financial advice and other consulting

## Key Facts

- **Texas State Board of Public Accountancy.** The governor appoints the board's 15 members to six-year terms. Ten members are Texas-licensed CPAs — at least eight of whom must be sole proprietors or be employed in a licensed firm — and the other five members represent the public.<sup>1</sup> The board has two policymaking committees regarding its rules and executive functions, in addition to several other working committees that include non-board members appointed by the presiding officer to provide additional expertise.<sup>2</sup>
- **Funding.** The board has been a self-directed semi-independent (SDSI) agency since 2001 and operates on fees collected from prospective CPAs, licensed CPAs, and firms. As an SDSI agency, the board does not remit these fees to general revenue, but instead has authority to set and retain fees and maintain a fund balance as it deems necessary.<sup>3</sup> In fiscal year 2017, the board spent approximately \$6.1 million and collected almost \$7.6 million from fees and penalties.<sup>4</sup> In addition, the board remitted \$577,000 in administrative penalties and late fees, as well as a \$703,000 annual transfer of funds to general revenue as required under the SDSI Act.<sup>5</sup> The arrow diagram on the next page, *Flow of Texas State Board of Public Accountancy Revenue and Expenditures*, breaks out the board's funding in more detail.<sup>6</sup>

The board maintains a fund balance to cover contingencies, based on a percentage of its operating costs; \$500,000 for enforcement matters; and its annual transfer to general revenue. This fund balance at the end of fiscal year 2017 was \$3.9 million. A description of the board's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017 is included in Appendix A.

### Flow of Texas State Board of Public Accountancy Revenue and Expenditures – FY 2017



- Staffing.** At the end of fiscal year 2017, the board had 39 staff, all of whom work out of Austin. As an SDSI agency, the board is not subject to employee caps or salary schedules in the General Appropriations Act. A comparison of the agency’s workforce composition to the statewide civilian workforce for the past three years is included in Appendix B.
- Accountant licensing.** The board processes license applications for new CPAs, renewals, and CPAs already licensed in other states to practice in Texas. Applicants for licensure must have 150 semester hours of undergraduate education including required accounting courses, pass a national certification exam and exam on the state’s rules of professional conduct, and pass a fingerprint-based criminal history background check. Licensees must also complete 120 hours of continuing professional education (CPE) every three years, with at least 20 hours every year. Board staff review the courses registered CPE providers offer to ensure licensees and providers of CPE comply with board rules. At the end of fiscal year 2017, the board licensed 74,341 CPAs.
- Firm licensing.** Firms located in Texas that use accountancy titles such as “CPA Firm” or “Certified Public Accounting Firm” in their name must have a license from the board.<sup>7</sup> Firms located outside of Texas that perform certain services for in-state clients must also be licensed by the board. In fiscal year 2017, the board licensed 9,831 firms. By law, licensed CPAs must own the majority stake of a firm.
- Peer review.** State law requires CPA firms who perform any attest services, as defined by board rule, to undergo peer review every three years.<sup>8</sup> This program operates according to the peer review standards set by the American Institute of Certified Public Accountants, as implemented by the Texas Society of Certified Public Accountants (TSCPA). Individuals or firms must select an eligible peer reviewer who then examines the individual or firm’s work or quality control system and submits a report to TSCPA. If the peer reviewer finds shortcomings in consecutive reviews, the board can limit the individual or firm’s scope of work or require their attest work to be reviewed by a third party

until the board decides otherwise. At the end of fiscal year 2017, of the 9,831 firms licensed in the state, 3,583 were subject to peer review, and in fiscal year 2017, 974 peer reviews were conducted.

- Enforcement.** Board staff investigate possible violations of the Public Accountancy Act and board rules. These violations may include unauthorized practice, administrative violations such as inadequately renewing licenses, or disciplinary violations such as not following the rules of professional conduct or commonly accepted national standards for accounting. Investigation attorneys receive complaints from licensees, members of the public, licensing staff, and other local, state, and national entities, and present their findings to the appropriate enforcement committee described in the textbox, *Board Enforcement Committees*. In fiscal year 2017, the board processed 2,559 administrative and 1,315 disciplinary complaints. Also in fiscal year 2017, the board took action on 178 disciplinary violations and 611 administrative violations, and levied administrative penalties in 15 cases.<sup>9</sup> The board's actions are described in the table, *Board Enforcement Actions*.
- Scholarship fund.** Since 2011, the board has administered the Fifth-Year Scholarship Fund to provide assistance to students in the final year of their education before taking the CPA examination. The board funds the program with a statutory \$10 fee added to individuals' annual license renewal fee.<sup>10</sup> The board allocates funds to Texas universities using a formula based on the school's minority percentage, tuition costs, and academic performance of students in the school's accounting program. In fiscal year 2017, the board dispersed approximately \$538,000 in scholarships.

#### **Board Enforcement Committees**

- Constructive Enforcement** investigates violations related to the unauthorized practice of accountancy
- Technical Standards Review** investigates violations related to general accounting standards adopted in board rules
- Behavioral Enforcement** investigates violations of the Public Accountancy Act and board rules that do not relate to technical standards or unauthorized practice

#### **Board Enforcement Actions FY 2017**

Revocation	339
Suspension	235
Other	170
Limited Scope	27
Reprimand	18
Administrative Penalty	15
<b>Total</b>	<b>804</b>

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 901.051, Texas Occupations Code.

<sup>2</sup> Section 901.1525(b), Texas Occupations Code.

<sup>3</sup> Chapter 472, Texas Government Code.

<sup>4</sup> Texas State Board of Public Accountancy, *2017 Annual Financial Report*, accessed May 21, 2018, [http://www.tsbpa.state.tx.us/pdffiles/afr\\_fy2017.pdf](http://www.tsbpa.state.tx.us/pdffiles/afr_fy2017.pdf), 38–40.

<sup>5</sup> Section 472.102(c), Texas Government Code.

<sup>6</sup> The agency no longer collects a \$200 professional fee but collected \$151,000 in late professional fees that were still owed from years prior to the fee being discontinued by House Bill 7 in 2015.

<sup>7</sup> Section 901.351, Texas Occupations Code.

<sup>8</sup> Section 901.159, Texas Occupations Code.

<sup>9</sup> Texas State Board of Public Accountancy, *2017 Annual Financial Report*, 36.

<sup>10</sup> Section 901.155(a)(2), Texas Occupations Code.



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**ISSUES**





# ISSUE 1

## *The Board's Contracting Processes Do Not Meet State Standards and Expectations.*

### Background

State law authorizes agencies to contract for goods and services to help them execute their missions. In general, state agencies use competitive bidding to get the best value for goods and services.<sup>1</sup> Agencies procure services for nine professions, including certified public accountants (CPAs), engineers, and physicians, not using competitive bidding and best value, but rather by other criteria shown in the textbox, *Statutory Criteria for Contracting Evaluation*.<sup>2</sup> When state agencies need to contract for legal services, the criteria are the same as for professional services, but state law requires the office of the attorney general to approve the need for an outside attorney as well as the contract itself and subsequent invoices.<sup>3</sup>

#### **Statutory Criteria for Contracting Evaluation**

Regular goods and services (best value):

- Purchase price
- Whether good or service meets specifications

Certain professional services:

- Demonstrated competence and qualifications to perform the services
- Fair and reasonable price

The Texas State Board of Public Accountancy contracts annually for the following professional services:

- **Accountants.** The board contracts with CPAs to support its enforcement, peer review, and continuing education review programs.

Enforcement case reviewers and experts. The board contracts with a handful of CPAs to serve as expert reviewers of work papers related to complaints. These CPAs may also serve as expert witnesses for contested cases at the State Office of Administrative Hearings (SOAH), where they testify on their reviews and their assertions that professional standards were violated.

Peer review oversight. The board contracts for three CPAs to serve as the board's primary oversight of the peer review program at the Texas Society of Certified Public Accountants (TSCPA). The CPAs attend TSCPA peer review meetings and review documents and policies to evaluate if TSCPA is following standards set by the American Institute of Certified Public Accountants (AICPA). The reviewers produce an annual report and recommend whether the board should continue to recognize the program.

Continuing education review. The board has contracted for 22 CPAs to review the materials submitted by continuing education course providers registered with the board.<sup>4</sup>

- **Attorneys.** The board currently has contracts with two litigation attorneys to prepare and represent the board's cases at SOAH. The board also has a contract with an outside counsel to consult on other states' practices for its enforcement committees. In fiscal years 2016 and 2017, the board contracted with two additional attorneys to serve as staff attorneys for its enforcement program.

The board's general counsel ensures the board adheres to legal requirements for procurement, the executive director reviews and signs each contract, and the board ratifies each contract.<sup>5</sup> In fiscal year 2017, the board spent \$1,022,753 on professional, consulting, and legal services. From fiscal year 2014 to 2017, the board has averaged \$762,531 on contracted services. Enforcement contracts grew from 38 percent of the board's total enforcement costs in fiscal year 2014 to 49 percent in fiscal year 2017.

## Findings

### **The board's method of contracting for professional and legal services does not conform to certain state contracting requirements and best practices.**

When evaluating an agency's contracting operations, Sunset staff reviews the agency's compliance with state procurement and contracting laws and compares the agency's practices with the *State of Texas Contract Management Guide* and best practices. In certain instances, the board has not followed state procurement requirements as well as documented standards and best practices compiled by Sunset staff for contract planning, solicitation, and oversight.

- **Lack of a formal needs analysis for outside accountancy expertise.** An agency should contract when it has a need that it cannot fill with existing staff and it has the funds to do so, particularly a self-directed semi-independent (SDSI) agency that does not have appropriations oversight. This assessment should also include the determination that contracting instead of hiring to meet its need is the best solution, as that assessment informs other parts of contract development.<sup>6</sup> The Public Accountancy Act further directs the board to employ independent contractors "as necessary" to assist in fulfilling its mission.<sup>7</sup> The board has 10 CPAs with substantial expertise, as well as the ability to add CPAs to its working committees, so the board should carefully examine its existing capacity before contracting for additional outside CPA expertise.

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*The board should carefully examine its existing capacity before contracting for additional CPA expertise.*

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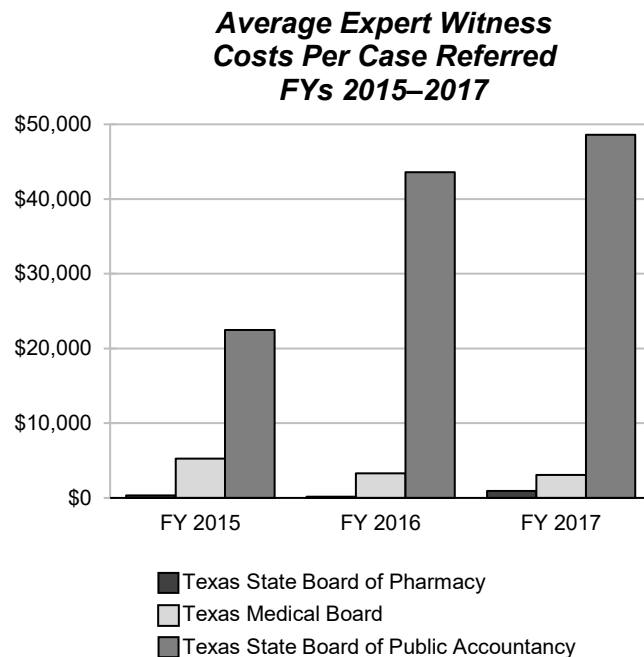
Peer review oversight. Because the board has delegated administration of the state's peer review program to a professional association, oversight of this program is crucial to ensure the state's overall interests are protected. However, the board's contracts with peer review oversight CPAs focus on ensuring TSCPA operates peer review according to national standards. While important, the adoption of the association's peer review as a state regulation introduces other concerns not addressed by AICPA's standards. However, the board has not analyzed the need for oversight beyond AICPA standards. For example, board rules contain no direction to analyze other state concerns, such as whether the peer review program costs cause CPA firms to avoid or exit the attest services market. In addition, the board has not considered if current behavior — such as the potential conflict-of-interest in having peer reviewers later serve as the monitors of firms they failed, or non-TSCPA members paying a higher administrative fee — meets the state's expectations for fair regulation. The board should analyze the full scope of its monitoring and oversight needs for this program before deciding if outsourcing oversight is best for the state.

Continuing education reviewers. While many licensing agencies pre-approve continuing education courses or review their sufficiency in-house, the board sends materials from continuing education course providers to contracted CPAs to evaluate the coursework based on the board’s criteria, shown in the textbox *Continuing Education Course Review Criteria*. The CPAs, who bill at \$115 per hour, complete the whole checklist, invariably spending time on items that do not require accountancy knowledge such as whether the provider required students to complete course evaluations or whether the advertising for the course matched what was provided. By comparison, the Texas Board of Occupational Therapy Examiners reviews continuing education courses that licensees take primarily using unlicensed staff, who only relay questions that they cannot answer to licensed board members. While in 2017 the board increased the role of non-CPA staff in reviewing continuing education and decreased contracted expenditures, it should continue to scrutinize its process to ensure it confines the use of professional knowledge — and the resulting costs — to when it is actually necessary.

**Continuing Education Course Review Criteria**

- Advanced notification
- Learning objectives
- Course content
- Instructor qualifications
- Evaluations
- Time credit measurement
- Review questions

Enforcement reviewers and expert witnesses. A needs assessment would help the board optimize what expert review it can accomplish in house before seeking the aid of consultants. Although the board consistently has enforcement case work that requires accountancy knowledge to investigate and present at SOAH, the board does not retain a licensed CPA on staff to screen cases or take on investigation elements that do not require specific subject matter expertise, and focuses on present capacity rather than the value of staff expertise that would develop over time. Instead, the board relies on specialized external experts to provide this service. As shown in the chart, *Average Expert Witness Costs Per Case Referred*, the board’s expert witness costs far outpace other licensing agencies, such as the Texas Medical Board and the Texas State Board of Pharmacy, who also have complex cases at SOAH. Because the board has the ability to marshal resources independent of legislative oversight and pass on witness costs to sanctioned licensees, the need for such analysis is more critical to ensure outside witness costs are no more than necessary to resolve a case.



- **Rare public solicitations for perennial contracting opportunities for accountants.** While state agencies should not obtain professional services contracts by traditional bidding, they must still solicit vendors and evaluate responding vendors’ qualifications.<sup>8</sup> Most agencies obtain professional

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*The board finds most contractors by word-of-mouth recommendations.*

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services using a Request for Qualifications (RFQ), where agencies post the statement of work, vendor expectations, and other performance expectations openly.<sup>9</sup> This practice allows agencies to cast a wide net, giving vendors who are able and willing the chance to offer their services. For recurring needs, solicitations also allow agencies to update their expectations of the work involved and incorporate lessons learned. The state's contract management guide recommends that an agency go no more than four years without reissuing a solicitation.<sup>10</sup> The board, in contrast, has not formally solicited for contracts in a decade.

Enforcement case reviewers. The board last submitted a formal solicitation in 2008. This request for proposals did not yield satisfactory candidates, so board staff has since procured CPAs to fill this role based on word-of-mouth recommendations. According to its last solicitation, the board wanted CPAs to review attest services of other CPAs. With more than 3,500 licensed firms performing those services at the end of fiscal year 2017, the pool of potential applicants is quite large.<sup>11</sup> Furthermore, nearly 80 percent of contracted expenditures from fiscal years 2014 through 2017 have gone to one firm.

Continuing education reviewers. The board states it has not submitted a solicitation since 2007, however the last record of a solicitation dates to 2004. According to board staff, the primary qualification to perform this work is to be a licensed CPA in good standing. With more than 70,000 licensed CPAs in good standing at the end of fiscal year 2017, this pool of potential applicants is also substantial.

Peer review oversight consultants. The board has used a handful of contracted peer review consultants since fiscal year 2008. Like the enforcement reviewers, these CPAs came to board staff by recommendation, not a proper solicitation process. According to board rules, peer review consultants should have extensive experience in accounting and auditing and be partners or other senior firm managers.<sup>12</sup>

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*The SDSI Act requires the board to follow state procurement laws.*

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While the board asserts that its contractors are qualified, its approach misses the opportunity to find better expertise or more options with whom to negotiate a fair and reasonable price. The lack of formal solicitations also denies capable vendors who do not have a relationship with the board the chance to support state business.

In addition, while the board is an SDSI agency, the SDSI Act still requires the board to follow state procurement laws, including the requirement for agencies to post solicitations on public websites for any contract — regardless of source of funds — that will exceed \$25,000 in value.<sup>13</sup> In fiscal years 2014 to 2017, the board had annual contracts with one CPA firm for enforcement review and one litigation attorney that annually averaged nearly \$208,700 and \$178,700 in actual payments, respectively. The board should have posted these solicitations on the Electronic State Business Daily website or *Texas Register* to ensure they met the state's

expectation for reaching a wide base of vendors, as awarding contracts that will exceed \$25,000 without posting on one of those sites for at least 14 days risks voiding the contract.<sup>14</sup>

- **Misused evaluation criteria.** Statute requires agencies procuring professional services to evaluate each vendor's demonstrated competence and qualifications to perform the services at "a fair and reasonable price," rather than awarding a contract to the lowest priced satisfactory bidder.<sup>15</sup> State law prescribes this approach for professional services so agencies will prioritize the technical skills needed to perform those services first; once the agency has screened out unqualified vendors, then it negotiates a price.<sup>16</sup> Such an approach ensures agencies do not allow price to supersede considerations of quality.

Departing from this standard, the board, in one of its only formal solicitations, required accountants to quote a price when they presented their qualifications.<sup>17</sup> Interviews with board staff reveal persistent concern that only current contractors will provide services at the below-market rates the board is willing to pay, even though statute requires the board to pay a fair rate. Although nobody wants agencies to spend more than necessary, with this approach the board discounts the first consideration on quality that statute prescribes, and may have deterred qualified providers who might quote higher rates from responding.

- **Lack of process improvement for contract development activities.** State agencies should improve their contracting processes based on lessons learned. According to board staff, the rarity of formally re-procuring enforcement reviewers since 2008 was because the solicitation yielded only one capable provider out of seven total responses. Neither the board's analysis of the poor solicitation responses nor its implemented change — to rely on word-of-mouth recommendations — conform with the state's expectations and requirements for professional service contracting. In fact, the board's contracting handbook contains minimal guidance for how the board identifies the risk of waste in the contractor selection process, such as a failed procurement.<sup>18</sup> The board could have re-submitted its solicitation after correcting any defects that may have contributed to fewer responses. Abandoning the process after one negative result prevents the board from assessing its own performance and ensuring it reaches qualified vendors.

### **The board's contracting for attorneys lacks effective oversight.**

The board historically contracts for outside counsel services to provide legal consulting services, similar to the duties of a staff attorney, including representing the board at SOAH, but this occurs without usual state oversight. The office of the attorney general (OAG) has the constitutional duty to represent the state in court, giving OAG an interest in reviewing any contracts for outside counsel that might represent an agency in court.<sup>19</sup> The Legislature has designated OAG with overseeing outside counsel legal services contracts directly.<sup>20</sup> OAG rules govern its process for agencies to hire outside counsel, which include several features

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*Statute requires the board to consider quality before price for certain services.*

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**OAG Outside Counsel Standards**

- Use of OAG outside counsel contract template
- Approval of agency's need
- Request for Qualifications from attorneys
- Approval of contract and any amendments
- Approval of invoices before payment to attorney

shown in the textbox, *OAG Outside Counsel Standards*. Many agencies, including other SDSI agencies and divisions in OAG itself, seek OAG approval for legal services contracts. However, OAG does not *require* its approval for an agency to have outside counsel representation at SOAH.

The board has never sought formal OAG approval for outside counsel contracts for either legal services or representation at SOAH. Although the board documented one instance of informally asking an attorney at OAG whether the board needed OAG approval for outside counsel representation at SOAH, it did not seek that advice from the OAG division

responsible for approving outside counsel contracts. Instead, the board sought advice from an OAG attorney with whom it had a working relationship. The attorney informed the board that it did not need OAG approval, but the advice was tailored to the specific question the board asked and did not fully explain OAG's approach to approving outside counsel contracts. Had the board sought official advice from the appropriate OAG division, the board would have been informed that OAG approval is not necessary for its contracts for representation at SOAH *but* that the agency needed OAG approval for its other legal services contracts.

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*The board has never sought formal OAG approval for outside counsel contracts.*

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Even though OAG does not require approval for outside counsel representation at SOAH, OAG approval for the board's use of this representation would plug a gap in the state's oversight of outside counsel usage, since the board's contracting for representation at SOAH is an outlier among state agencies. In the past decade, the board has spent nearly \$1.4 million on outside counsel contracts for representation at SOAH. Aside from one instance by the Health and Human Services Commission, no other agency has used outside counsel at SOAH in the last several years, and no other agency uses outside counsel at SOAH by default. Based on Sunset's analysis and consultation with other agencies, neither the board's case volume nor case complexity are so inherently and universally unique to merit exemption from oversight. As an SDSI agency that does not receive appropriations, the board can expend its funds on outside counsel if it chooses. However, the board's current system uses outside counsel without an objective check from OAG or the Legislature that state agencies typically receive.

## Recommendations

### ***Change in Statute***

#### **1.1 Require the board to seek approval from the office of the attorney general for all outside counsel contracts.**

This recommendation would direct the board to seek OAG approval for its outside counsel contracts for legal services, as already required by law, and would further require the board to seek OAG approval for all other outside counsel contracts, including any contracts for attorneys to represent it at SOAH. As with requests for outside counsel from non-SDSI agencies, OAG's denial of a request for outside

counsel would preclude the board from entering into a contract for outside counsel, despite its SDSI status, though the board could pursue the case with its staff attorneys. By following this process, the board would also ensure that its contracting for attorneys follows best practices, including needs analysis and request for qualifications, as these are embedded in the current OAG approval process.<sup>21</sup> Adopting this recommendation would return the board to a level of oversight similar to other state agencies.

## **Management Action**

### **1.2 Direct the board to develop a formal, agencywide contract development and solicitation process for its professional services contracts.**

This recommendation would direct the board to develop a standard, comprehensive process for developing professional services contract proposals and soliciting vendors. This process should include the following:

- A standard needs analysis that sufficiently justifies why one or more independent contractors for a certain function is necessary for the board to execute its mission. This analysis should include
  - analysis of current staff, board, and advisory member capacity, including historical supporting evidence that relates to the function;
  - cost-benefit analysis of various methods to satisfy the need for the function, such as contracting, hiring, or repurposing existing staff positions; and
  - date certain when the contract must end and the need re-evaluated and procured again. By rule, the board would formally re-procure needed services no later than every four years, and the board should require documented justification if it enters into a multiyear contract or extends a contract beyond one year.
- Formal solicitations that the board must post on the Electronic State Business Daily website and/or *Texas Register*, especially if the contract value is more than \$25,000. These solicitations should include
  - introduction and background information;
  - minimum vendor requirements;
  - scope of work, including expected performance measures and other monitoring requirements;
  - contract term and other terms and conditions;
  - response submission requirements; and
  - evaluation criteria for award that the board's scoring matrix must not deviate from in evaluating responses. The board's criteria and weights should clearly prioritize the qualifications and competence of professional services vendors before considering price or rates.<sup>22</sup>
- Documentation for each step of the contract development, solicitation, evaluation, and selection process, in addition to any other documentation or reporting requirements in state procurement laws for these activities.
- Clear assignment of responsibilities between board program staff and board staff handling contracts to ensure respondents do not inappropriately communicate with program staff while applications are open.
- Any other factors the board considers necessary.

The board should ensure its process accommodates all requirements for contracts that need outside approval, such as OAG's outside counsel approval process. The board should develop this process by May 1, 2019, so it can be used to procure professional services contracts needed for fiscal year 2020.

### **1.3 Direct the board to develop a contracting improvement process.**

This recommendation would direct the board to periodically analyze and make improvements to its contracting process. The improvement process, at a minimum, should contain:

- A purchasing accountability and risk analysis procedure that assesses the risk of fraud, abuse, or waste in the contractor selection process.
- Formal inclusion of lessons learned from previous contract closeouts, contract deliverables, and staff evaluation.

The board should, at minimum, analyze its contracting process once every four years, the same frequency it reviews its rules. The board should develop this process by September 1, 2020, so it can include fiscal year 2021 contracts in this process.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state. The board is an SDSI agency that sets fees as necessary to cover its costs, including costs or savings that would result from these recommendations. The office of the attorney general's outside counsel approval process has administrative fees for approving invoices, but the contracted attorneys pay the fees for this review. Developing a contracting system that includes a needs analysis, formal solicitations, and process improvement is a standard function of an agency and should be accomplished with existing board staff. By having a more rigorous needs analysis, the board could reduce expenditures for contractors, but any savings cannot be estimated at this time.



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1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 2155.063 and 2155.074, Texas Government Code.

2 Sections 2155.074 and 2254.003(a), Texas Government Code.

3 1 T.A.C. Section 57.3–57.5.

4 According to board rule 22 T.A.C. Section 523.119(c), half of licensees' continuing education hours must come from courses of registered sponsors.

5 Texas State Board of Public Accountancy, *Contract Handbook*, accessed June 22, 2018, <http://www.tsbpa.state.tx.us/pdffiles/contracthandbook.pdf>, 3.

6 Texas Comptroller of Public Accounts, *State of Texas Contract Management Guide*, v.1.16 (September 2016), 40.

7 Section 901.101, Texas Occupations Code.

8 Section 2254.003(a), Texas Government Code.

9 Texas Comptroller of Public Accounts, *State of Texas Contract Management Guide*, v.1.16 (September 2016), 38.

10 *Ibid.*, 55.

11 Texas State Board of Public Accountancy, *Request for Proposals: Consulting on Audit and Other Attest Services*, Volume 33 *Texas Register*, 1008–1009 (2008), accessed June 25, 2018, [http://texreg.sos.state.tx.us/public/regviewer\\$ext.RegPage?sl=R&app=9&cp\\_dir=&cp\\_rloc=177077&cp\\_tloc=&p\\_ploc=&pg=1&p\\_reg=177077&tri=&cpt=&ch=&url=&tissue=02/01/2008&z\\_chk=](http://texreg.sos.state.tx.us/public/regviewer$ext.RegPage?sl=R&app=9&cp_dir=&cp_rloc=177077&cp_tloc=&p_ploc=&pg=1&p_reg=177077&tri=&cpt=&ch=&url=&tissue=02/01/2008&z_chk=).

12 22 T.A.C. Section 527.7(c).

13 Sections 472.051(b-1), 472.107, and 2155.083, Texas Government Code.

14 Section 2155.083(j), Texas Government Code.

15 Sections 2254.003, 2155.001, and 2155.074, Texas Government Code.

16 Texas Comptroller of Public Accounts, *State of Texas Contract Management Guide*, v.1.16 (September 2016), 37 and 74.

17 Texas State Board of Public Accountancy, *Request for Proposals: Consulting on Audit and Other Attest Services*, Volume 33 *Texas Register*, 1008–1009 (2008), accessed June 25, 2018.

18 Section 2261.256(a), Texas Government Code.

19 Section 22, Article IV, Texas Constitution; 1 T.A.C. 57.3.

20 Sections 2254.154 and 402.0212, Texas Government Code.

21 1 T.A.C. Chapter 57.

22 Texas Comptroller of Public Accounts, *Texas Procurement and Contract Management Guide*, v 1.0 (2018), 50.



# ISSUE 2

## *Key Elements of the Board's Statute and Procedures Do Not Conform to Common Regulatory Standards.*

### Background

The Texas State Board of Public Accountancy licenses and regulates certified public accountants (CPAs) and accounting firms that provide auditing, compilation, and review services of financial documents, commonly called attest services. The board also licenses CPAs from other states through a reciprocal licensure process. The board enforces the Public Accountancy Act through investigating complaints and taking enforcement action when necessary. The board also has a unique function for an occupational licensing agency, as statute requires the board to provide for a peer review program to ensure CPAs that provide attest services or their firms meet professional standards.<sup>1</sup>

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the board's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Findings

#### **Statute and board procedures related to applications and licensing present unnecessary hurdles to applicants and reduce efficiency.**

- **Missing required rules and procedures related to military service members, veterans, and military spouses.** Statute requires licensing agencies to adopt rules to best accommodate military service members, military veterans, and military spouses in the licensing and renewal process.<sup>2</sup> The board does not have any rules to address these considerations, detailed in the textbox, *Licensing Accommodations for Military Service Members, Veterans, and Military Spouses*.
- **Unnecessary requirement to release sensitive records unrelated to practice of accounting.** Qualifications for licensure should ensure applicants meet

#### ***Licensing Accommodations for Military Service Members, Veterans, and Military Spouses***

- Exemption from penalty for failure to renew license timely because the licensee was serving as a military service member
- Extension of license renewal deadlines and related renewal requirements, including continuing education
- Expedited license procedures for military service members, veterans, and military spouses
- Credit verified military service, training, or education toward the licensing and experience requirements
- Exemption from license application and examination fees
- Description of provisions available to military service members, veterans, and military spouses on agency website

the minimum standards for practice, and should relate only to relevant conditions and conduct, especially regarding mental health diagnoses. The board currently requires all applicants for the CPA exam to authorize the release of their mental health records. While the board only obtains this material if it relates to the applicant's criminal history, requiring the release for all applicants regardless of criminal history is unnecessary and may deter potential applicants who do not want their mental health diagnoses disclosed.

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*The board requires all exam applicants to authorize release of their mental health records.*

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- **Subjective statutory qualification for licensure.** Qualifications for licensure should be clear and not restrict entry into practice unreasonably. Currently, statute requires CPAs and non-CPA owners of licensed firms to be of “good moral character.”<sup>3</sup> While of course Texas wants licensees to have good character, the phrase “good moral character” is a subjective, vague requirement that may be determined inconsistently. The board does not separately evaluate applicants’ moral character and is already subject to following Chapter 53, Texas Occupations Code, which provides more appropriate and objective standards to guide criminal history evaluations. Removing the statutory requirement that applicants and licensees be of good moral character would be in line with the board’s current practice of reviewing an applicant’s criminal history and denying licenses based on standards related to the practice of accountancy.
- **Missing fingerprint background checks.** To help protect the public, licensing agencies commonly conduct criminal background checks using the Department of Public Safety’s fingerprint system, which accurately identifies the individual, uncovers criminal history on applicants and licensees nationwide, and provides automatic criminal history updates. The board began conducting fingerprint background checks on new license applicants in 2014 in place of the less reliable name-based system. However, the board lacks authority to require already licensed CPAs to undergo a fingerprint background check. Instead, the board relies on these licensees to self-disclose any criminal history when renewing their licenses. The current situation results in inequitable treatment of licensee groups and can result in the board only discovering criminal activity through random internet searches of its 63,215 licensees who have not been subject to fingerprint background checks.
- **No online applications.** The application process should be as simple and straightforward as possible, to avoid creating barriers to entry unrelated to the profession. The board requires applicants for the CPA exam to submit hard copies of applications. Other state licensing agencies, including the State Board of Dental Examiners and the Texas State Board of Pharmacy, accept license applications and fees online, which is easier for the applicant.
- **Unnecessary requirements for firm owners who are not CPAs.** Statute requires the board to license firms that perform attest services in the state.<sup>4</sup> Licensed CPAs must own the majority of the firm, but the board registers

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*85 percent of CPAs have not had fingerprint background checks.*

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all non-CPA firm owners to ensure they meet the statutory requirements to be a minority owner in a CPA firm.

Education requirements. Licensure requirements should be the minimum necessary to protect the public. Statute currently requires non-CPA minority owners of licensed CPA firms to have bachelor's degrees.<sup>5</sup> This standard does not relate to the quality of the work, as CPAs must be the majority owners of the firm and resident manager CPAs must supervise all attest work the firm provides. This educational requirement is an unnecessary barrier to firm ownership that does nothing to increase public protection.

Continuing education requirements. Continuing education requirements should ensure the licensee maintains necessary expertise in the regulated field. Statute currently requires both CPAs and non-CPA firm owners to take 120 hours of continuing education in accounting every three years.<sup>6</sup> Requiring firm owners who are not CPAs and cannot own a majority stake in an accounting firm to meet the same continuing education requirements as CPAs does not increase public protection.

- **Burdensome license renewals.** A regulatory agency should have the flexibility in its renewal process to most efficiently regulate activities subject to its jurisdiction. Statute requires firms to renew their licenses annually. Requiring annual renewals in statute is unnecessarily restrictive and limits the board's ability to manage its workload and streamline regulation. Authorizing the board to renew firm licenses every two years, for example, rather than annually would help the board develop more efficient internal processes and ease the regulatory burden on licensees.
- **Unnecessary notarization requirements.** Notarization is meant to verify identity, not truthfulness, and state law already prohibits a person from knowingly making a false entry in a government record.<sup>7</sup> Requiring applicants and licensees to notarize forms is a burden to the applicant or licensee that adds no value to the process. Examples of forms the board requires notarization of include documents in the application to take the CPA exam, the oath of office, agreed consent orders, and affidavits for reinstatement of individual licenses.

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*Statute requires non-CPA firm owners to meet the same continuing education requirements as CPAs.*

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*Requiring licensees to notarize forms is a burden that adds no value.*

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### **The board's rules apply a one-size-fits-all standard to inspecting accountants' work, creating a potential barrier to providing lower-risk services.**

Statute requires the board to provide for a peer review program to review the work of all CPA firms that provide attest services.<sup>8</sup> Through rule, the board adopted the standards for performing and reporting on peer reviews promulgated by the American Institute of Certified Public Accountants (AICPA) and the Public Company Accounting Oversight Board (PCAOB).<sup>9</sup> CPA firms that audit public companies must submit to peer review through PCAOB, a nonprofit corporation the federal Sarbanes-Oxley Act created in 2002.

AICPA and its Texas affiliate, the Texas Society of Certified Public Accountants (TSCPA), however, are associations that CPAs may choose to join. Members of AICPA and TSCPA must follow AICPA's peer review requirements to maintain membership. However, the board's rule requires *all* CPA firms that provide attest services to comply with these standards. Firms must pay the CPA who conducts their review a fee for the cost of the review. TSCPA also charges a \$390 to \$1,140 administrative fee, depending on the size of the firm, which is consistently \$200 higher for nonmembers.

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*The board's peer review policy does not consider the risk posed by a CPA firm's services.*

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- **Board inspection policy does not meet standards.** Agencies should conduct inspections that focus agency resources on the highest risk areas to the public. The board uniformly requires peer review every three years for all licensed CPA firms that provide attest services, regardless of the firm's size, the type of attest services it provides, or the frequency at which the firm provides them. The board's policy does not consider the risk posed to the public and adjust requirements accordingly. As a result, this policy requires sole proprietors who conduct one lower-risk type of attest service, called a compilation, a year to submit to the same process as firms that do large volumes of higher-risk attest services. While members of AICPA and TSCPA already follow AICPA's requirements to maintain membership, the board could adjust peer review requirements for nonmembers to better align the frequency of peer review with the risk posed to the public. For example, the board defines attest services in rule to include a broader set of activities than some other states. Certain other states also exempt sole proprietorships, or firms who perform less than a certain number of compilations in a given time period. Such approaches measure and balance the onus of regulation with the risk posed to the public.

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*The board should protect the identity of complainants as long as possible.*

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### **The board's statute and policies lack updated requirements and best practices in their complaint resolution and enforcement processes.**

- **No maintenance of complainants' confidentiality.** When investigating complaints, the board generally sends an un-redacted copy of the complaint directly to the CPA for response, potentially discouraging individuals from filing legitimate complaints. This practice risks potential retaliation against complainants, who could include recipients of the service, accounting firm staff, or other accountants. While CPAs may ultimately learn who filed a complaint against them as the investigation process proceeds, or in the case of services that relate to just one individual, many health licensing and other agencies do their best to protect the identity of complainants for as long as possible.

In addition to lacking protections of complainants' confidentiality, the board's website further discourages anonymous complaints. Board rule allows staff to accept anonymous complaints as long as sufficient information is provided, the complaint appears to have factual foundation, and if missing information can be obtained from another source or the allegation can be

proved with existing evidence.<sup>10</sup> However, the board cautions publicly that “very few anonymous complaints can be successfully pursued unless the person making the complaint is willing to testify.”<sup>11</sup> Given that the board only sends approximately eight cases per year to the State Office of Administrative Hearings where testimony may be required, this guidance is misleading and may prematurely discourage otherwise valid complaints.

- **No standard complaint form.** The public should be able to easily file a complaint with the board. The board’s website provides information on how to file a complaint, but the board does not provide a form for the complainant to complete and submit.<sup>12</sup> Developing a standard fillable form for complaints would ensure complainants know what information the board needs for an investigation, and could reduce the effort board staff must undertake to obtain needed information later.
- **Not tracking all complaints.** Agencies should track and report the number and subject of all complaints, including complaints from the public that fall outside the agency’s jurisdiction. The board does not track complaints that come in related to fee disputes, actions that do not constitute a violation of the Public Accountancy Act, and other complaints that board staff may refer to other regulatory bodies or dismiss. Without tracking the number and subject of these complaints and reporting that information to its board members, the agency cannot identify trends in nonjurisdictional complaints and ensure the agency is not dismissing valid complaints without investigation. Not tracking these trends is also a missed opportunity for the board to educate the licensee population about common concerns among clients that are not violations but could be addressed through best practices in the field.
- **Unnecessary requirement for information about associations.** When determining the outcome of a complaint, board members should consider all aggravating and mitigating factors. These factors, however, should not include a respondent’s membership or affiliation with professional associations. The board requires respondents to disclose their membership in professional associations as a routine piece of its complaint investigation. This information is rarely relevant to investigations and can create the perception that the board favors one professional association over another.
- **Lack of rules and guidance on assessing administrative costs.** Statute grants the board the uncommon authority to impose the direct administrative costs incurred by the board in taking enforcement action on a licensee.<sup>13</sup> The board defines what constitutes direct administrative costs in rule, as quoted in the textbox on the following page, *Direct Administrative Costs the Board Can Impose on Licensees*.<sup>14</sup> This definition lists multiple eligible costs, including “any other cost or fee that can be reasonably attributed” to the investigation. However, the board does not provide any further guidance on how it calculates these costs. The board also does not have rules or policy to guide board members on when these costs should be imposed.

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*The board unnecessarily discourages anonymous complaints.*

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*Requiring respondents to disclose association membership can create the perception the board favors one association over another.*

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***Direct Administrative Costs the Board Can Impose on Licensees***

“Costs actually incurred by the board through payment to outside vendors and the resources expended by the board . . . , including but not limited to

- staff salary,
- payroll taxes and benefits and other non-salary related expenses,
- expert fees and expenses,
- witness fees and expenses,
- filing fees and expenses of the support staff of the office of the attorney general,
- filing fees,
- State Office of Administrative Hearings utilization fees,
- court reporting fees,
- copying fees,
- delivery fees,
- case management fees,
- costs of exhibit creation,
- technical fees,
- travel costs, and
- any other cost or fee that can reasonably be attributed to the matter.”

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*The board assessed administrative costs ranging from \$131 to more than \$19,000.*

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In fiscal year 2017, the board assessed \$25,300 in administrative costs to 24 respondents — ranging from \$131 to more than \$19,000 and averaging \$1,054 per respondent. These administrative costs are in addition to administrative penalties the board may also assess. Unlike administrative penalties, the board keeps administrative costs to use for its operations. Direct administrative costs are another penalty on the licensee and the board should be more transparent and consistent in how it calculates these costs and when assessing these costs is appropriate.

- **Unclear injunctive authority.** A regulatory agency’s statute should authorize a full range of enforcement actions and should enable the agency to move expeditiously in dealing with unlicensed practice violations. The board’s injunctive authority does not specify what court is proper venue or authorize the attorney general to seek an injunction on the board’s behalf. Clear injunctive authority, such as what the Texas State Board of Pharmacy has, contains these requirements.<sup>15</sup> Revising the Public Accountancy Act to include these provisions would strengthen the board’s ability to enforce the law in all applicable instances.



## Recommendations

### *Change in Statute*

#### **2.1 Require the board to conduct fingerprint-based criminal background checks of all licensure applicants and licensees, phased in over a two-year period.**

New licensees already undergo fingerprint-based background checks. This recommendation would require existing CPAs who did not undergo a fingerprint-based criminal background check upon initial licensure to undergo the check. Licensees would pay the approximately \$37 cost to do so. Due to the large number of CPAs licensed in Texas and the potential temporary impact on workload for the board, the recommendation would allow the board to comply by September 1, 2021, allowing for a two-year, staggered implementation. To ensure compliance, this recommendation would authorize the board to administratively suspend a CPA's license for failing to comply with the background check requirement. Obtaining up-to-date criminal history on all CPAs would ensure the board can effectively and equally monitor all CPAs for criminal conduct and take disciplinary action to protect the public when warranted.

#### **2.2 Remove subjective licensure provisions for CPAs and non-CPA firm owners.**

This recommendation would remove the outdated requirement for CPA license applicants and non-CPA firm owners to be of "good moral character," a standard that is unclear, subjective, and difficult to enforce. The board would continue to assess character by receiving and reviewing criminal history information to determine eligibility for licensure according to requirements in Chapter 53, Texas Occupations Code and the Public Accountancy Act. As a management action, the board should remove references to "good moral character" from its rules, forms, and procedures by September 1, 2019.

#### **2.3 Remove requirement for annual license renewal for CPA firms.**

This recommendation would remove statutory requirements for annual renewal of licensed CPA firms. To streamline administrative workload, the board would establish license terms in rule appropriate for regulatory oversight, an authority the board already has for CPAs. More flexible renewal requirements would allow the board to reduce time spent processing renewals and alleviate burden on licensees without compromising oversight of the firms that provide licensed services.

#### **2.4 Remove unnecessary licensure and continuing education provisions for non-CPA firm owners.**

This recommendation would remove the statutory requirements that non-CPA firm owners have a bachelor's degree or graduate degree and complete 120 hours of accountancy continuing education every three years. Removing these requirements for CPA firm owners who are not licensed CPAs would remove arbitrary and unnecessary barriers to entry into firm ownership without decreasing public protections. All attest services performed by a licensed firm would continue to be issued under the supervision of its licensed CPA resident manager.

#### **2.5 Clarify the board's injunctive authority to align with other regulatory agencies.**

This recommendation would add language to the board's existing injunctive authority to clarify the proper venue for seeking an injunction and authorize the attorney general to seek an injunction on behalf of the board. This recommendation would not expand or reduce the board's authority, but would instead give the board more statutory direction. This recommendation would ensure the board has the necessary powers to take enforcement action in the same manner as other regulatory agencies.

## **Management Action**

### **2.6 Direct the board to comply with statute directing rules and procedures for military service members, veterans, and military spouses.**

This recommendation would direct the board to create rules and policies to best accommodate military service members, veterans, and their spouses, in compliance with Chapter 55, Texas Occupations Code. By developing policies to accommodate military service members' challenging schedules, crediting related military experience, waiving examination fees, and posting provisions available to service members, veterans, and military spouses on its website, the board can better enable participation in public accounting from these groups. The board should adopt these rules by June 1, 2019.

### **2.7 Direct the board to remove unnecessary application requirements for candidates to take the CPA exam.**

This recommendation would direct the board to no longer require applicants for the national CPA exam to submit a release of mental health records. The board would still have the authority to conduct criminal history checks on applicants and request further information on criminal history related to the profession, such as mental health records. Removing this requirement would ensure the board does not deter applicants for the CPA exam based on standards unrelated to the practice of accounting, and would protect the privacy of applicants unless the records are needed to protect the public.

### **2.8 Direct the board to accept online submission of exam applications.**

This recommendation would direct the board to enable receipt of national accountancy examination applications online, as well as associated fees. This recommendation would reduce the burden on applicants by eliminating the requirement to obtain and submit hard copy application forms and mail in checks, while also reducing the administrative burden on board staff to process paperwork and payments. The board should implement this recommendation by September 1, 2020.

### **2.9 Direct the board to eliminate rules and policies requiring notarized information.**

This recommendation would direct the board to remove any requirements that applicants, complaint respondents, and licensees submit notarized documents. Rather than submitting this information via a notarized form, applicants could submit the same information online with an electronic signature, certifying that the information provided is true and correct. Current provisions of the Penal Code that make falsifying a government record a crime would continue to apply. This recommendation would ensure that the board's processes are not overly burdensome while still allowing the board access to needed information.

### **2.10 Direct the board to amend its peer review rules to account for risk posed to the public.**

This recommendation would require the board to amend its peer review rules to better align the frequency of peer review with the risk posed by the services provided by the CPA firm. In consultation with stakeholders, the board would develop rules to allow CPA firms to be reviewed on a frequency based on risk factors, such as if the CPA firm performs lower-risk work or a low volume of work. This recommendation would not change any requirement AICPA and TSCPA have for their members, but would rather require the board to develop a risk-based peer review requirement for firms that are only undergoing peer review because state law requires it. This recommendation would also require the board to ensure nonmembers of TSCPA pay the same fee for peer review administration as members. This

recommendation would allow the board to continue to use peer review to ensure adequate attest work, while minimizing the unnecessary burden of regulation on firms whose work poses minimal risk to the public. This recommendation would also ensure the board does not appear to favor membership in professional associations. The board should amend its peer review rules by September 1, 2019.

### **2.11 Direct the board to update its complaint policies and procedures.**

Although the board outlines its complaint procedures in rule, this recommendation would direct the board to improve elements of its complaint process to meet best practices. The board should implement the following recommendations by September 1, 2019.

- **Develop standard complaint forms that are easy to find on the board's website.** Developing a standard form for complaints, to submit both electronically or by mail, would ensure complainants know which details to include for the investigation, and could eliminate multiple follow-up requests for information from the board. In updating its complaint information online, the board should also amend its public complaint information to clarify the type of content necessary to successfully pursue complaints and a more balanced and realistic explanation of the limitations of anonymous complaints. Clarifying information necessary to successfully pursue complaints through standard forms and guidance would allow the board to continue to investigate legitimate complaints without discouraging complainants who may fear retribution from filing complaints.
- **Maintain complainants' confidentiality when possible.** This recommendation would direct the board to protect the identity of complainants to the extent possible, while ensuring licensees still have access to all necessary information to fully respond to complaints. To accomplish this recommendation, the board could summarize the complaint allegations or redact copies of complaints when providing notice of a complaint to respondents. By better protecting complainants' identities, this recommendation would make the public more comfortable filing complaints without fear of retaliation.
- **Remove the requirement to disclose professional associations.** This recommendation would direct the board to stop asking respondents to submit their professional association membership information to the board when investigating a complaint. Eliminating this practice would help minimize any perception that the board favors one professional association over another.
- **Track and report nonjurisdictional complaints.** This recommendation would require the board to track and report the number and subject of nonjurisdictional complaints to its board members, helping identify trends in nonjurisdictional complaints and ensuring the board is not dismissing valid complaints without investigation. Tracking these trends would also allow the board to educate the licensee population about common concerns from the public that are not violations but could be addressed through best practices in the field.

### **2.12 Direct the board to develop rules on administrative costs assessed on respondents.**

This recommendation would direct the board to develop rules on how it assesses administrative costs by September 1, 2019. The board should develop rules that clearly articulate acceptable types of costs the board can include, the formula by which the agency arrives at each cost total, when it is appropriate to include each cost, and the maximum amount or rate the board will include for each cost. The board rules would ensure the public and board members can clearly understand how the board arrived at the administrative cost assessed in each situation and what costs were included or not.

## Fiscal Implication

These recommendations would not have a fiscal impact to the state because the Texas State Board of Public Accountancy is a self-directed semi-independent agency and exempt from the legislative appropriation process.

These recommendations would also have little to no cost to the board. Updating the board's application forms, complaint forms, and website are part of an agency's normal workload and could be accomplished within existing resources. Further, these changes would increase efficiencies through eliminating paperwork for staff to process. The requirement to implement fingerprint-based criminal background checks could have a temporary impact on agency resources from investigating and potentially taking enforcement action regarding checks indicating a criminal history.

- .....
- 1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 901.159, Texas Occupations Code.
  - 2 Chapter 55, Texas Occupations Code.
  - 3 Sections 901.251, 901.253, and 901.354, Texas Occupations Code.
  - 4 Section 901.351, Texas Occupations Code.
  - 5 Section 901.354(b)(2)(C), Texas Occupations Code.
  - 6 Section 901.354(b)(2)(G), Texas Occupations Code.
  - 7 Section 37.10, Texas Penal Code.
  - 8 Section 901.159, Texas Occupations Code.
  - 9 22 T.A.C. Section 527.3.
  - 10 22 T.A.C. Section 519.20(b) and (c).
  - 11 "Certified Public Accountant Complaint Information," Texas State Board of Public Accountancy, accessed June 14, 2018, <http://www.tsbpa.state.tx.us/enforcement/filing-complaint.html>.
  - 12 Ibid.
  - 13 Section 901.501(a)(9), Texas Occupations Code.
  - 14 22 T.A.C. Section 519.2(8).
  - 15 Section 566.051, Texas Occupations Code.

# ISSUE 3

## *The State Has a Continuing Need to Regulate Accountancy.*

### Background

The Legislature created the Texas State Board of Public Accountancy in 1915 to protect the public by examining and licensing professionals who perform accounting work. The board's authority has broadened since then to include licensing firms, requiring peer review for accountants performing certain services, and providing scholarship funds for Texas accounting students. The board is composed of 15 members appointed by the governor: 10 certified public accountants (CPAs) — of whom at least eight must be sole proprietors — and five members who represent the public. For most of its committees, the board can also appoint CPAs to serve as advisory members and vote in the committee's deliberations.<sup>1</sup>

While the board has always been a separate agency, in 2001 the Legislature granted it self-directed semi-independent (SDSI) status to allow it to operate outside the Legislature's appropriations process. The board's mission is to protect the public by ensuring qualified CPAs are available in the state through licensure, enforcement, and education. In fiscal year 2017, the board licensed 74,341 accountants and 9,831 firms and operated on a budget of \$6.1 million.

### Findings

#### **Texas has a continuing interest in regulating accountancy.**

Accountancy is the only profession authorized to perform attest services, which provide the public with a credible third-party assessment that financial information presented to them is accurate.<sup>2</sup> Accountancy is a technical profession that requires specialized education, passing a national exam, and adhering to precise national accountancy standards. Improper practice of accountancy can cause or enable fraud or theft, loss of wealth, and misrepresent the soundness of an individual, business, or governmental entity's finances. In a tightly connected economy, the ripple effects of poor or unethical accounting can damage the financial well-being of Texas residents, businesses, and governmental entities both directly and indirectly.

To protect the public from improper or unethical accounting, the board requires CPAs to demonstrate competence by graduating with 150 semester hours of combined college or graduate education, passing the national accountancy examination and an exam on the state's rules of professional conduct, and passing a criminal history background check.<sup>3</sup> Accounting firms must have a firm license to provide attest services or present themselves as CPAs, and licensed CPAs must control these firms and their accounting work.<sup>4</sup> The board expects individuals and firms to perform accounting services according to nationally recognized standards, and investigates and sanctions those who do not follow these standards or other board rules.

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*Improper  
accountancy can  
cause or enable  
fraud, theft, and  
loss of wealth.*

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**All states regulate accountancy through independent or semi-autonomous boards.**

Since 1915, Texas has regulated the practice of accountancy through an independent board. All 50 states regulate the practice of accountancy. As the *Regulation of Accountancy in the United States* chart shows, while 22 states regulate accountancy through an independent board, the majority of states house their accountancy boards within a larger occupational licensing or state regulatory agency.<sup>5</sup> While certain national entities oversee some aspects of accounting like peer review, the board is the only entity in Texas that regulates accountancy.

**Regulation of Accountancy in the United States**

Independent Agency	AL, AZ, AR, CA, ID, KS, KY, LA, MN, MS, NE, NV, NC, ND, OH, OK, OR, TX, VA, WA, WV, WY	22
State Regulatory Agency or Other Agency	AK, CO, CT, DE, GA, FL, HI, IL, IN, IA, ME, MD, MA, MI, MO, MT, NH, NJ, NM, NY, PA, RI, SC, SD, TN, UT, VT, WI	28

**No substantial benefits would result from transferring the board’s functions to another agency.**

Transferring the board’s functions to another agency would not result in cost savings or improvements in efficiency, as no other agency regulates a similar profession. Furthermore, the board lacks the operational problems usually found in agencies that Sunset staff normally recommend for transfer. SDSI status allows the board to adjust staff levels to maintain good performance and customer service. Due to the board’s SDSI status, not only would no cost savings occur if it were transferred, but the state would have to resume funding the board’s operations if the Legislature transferred it to an agency that did not have SDSI status.<sup>6</sup>

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*SDSI status helps the board maintain good performance and customer service.*

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**The board’s composition could prevent the state from asserting immunity from suit in future litigation challenging a board action as being anticompetitive.**

The board’s current majority of professional members could preclude the board and state from claiming immunity from suit in future litigation challenging a board action as being anti-competitive. In Texas, occupational licensing boards exist to protect the public through regulation of a profession, and are set up to function largely as independent and autonomous state agencies. For these boards to perform effectively, the Legislature has concluded most boards should include members from the industries they regulate to provide valuable subject matter expertise to guide the boards’ decision making. However, occupational regulation is inherently anticompetitive. Allowing individuals to serve on a

state board that regulates these individuals creates a conflict of interest as those individuals naturally possess dual interests that may lead to implicit bias. The U.S. Supreme Court has warned that a board member’s “ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern.”<sup>7</sup> This bias may jeopardize the goal of the board to promote “state public policy, rather than the private interests of the profession.”<sup>8</sup>

Recent changes in antitrust law specifically raise concerns about the impact of board composition on state liability. In 2015, the Supreme Court ruled that a state board controlled by individuals regulated by the board is unable to assert state immunity unless the board proves its actions follow a clearly articulated and affirmatively expressed state policy and the board’s action is actively supervised by the state.<sup>9</sup> Federal guidance issued after the 2015 decision indicates that determining whether a board is controlled by regulated individuals can be fact specific.<sup>10</sup> In April 2018, one such factual analysis by the Federal Trade Commission used a bright-line test and found that a board made up of a majority of regulated individuals was automatically assumed to be controlled by the regulated profession, not the state.<sup>11</sup> Under this analysis, the board’s composition could be used as dispositive proof in future litigation that the board is controlled by the profession, rather than state interests, potentially preventing the board from asserting immunity from suit.

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*Recent changes in antitrust law specifically raise concerns about the impact of board composition on state liability.*

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### **The board unnecessarily restricts public comment at meetings.**

Board rules require members of the public who wish to address the board at a public meeting to request permission at least 20 days before the meeting.<sup>12</sup> The board typically posts its meeting agendas 10 to 14 days before the meeting, so the public cannot know what the board intends to discuss until the deadline to seek permission to comment has passed. In addition, the board does not have an agenda item reserved for public comment at its meetings, so the public has no standing opportunity to give input. While board staff assert these rules are necessary to prevent individuals with active enforcement cases from inappropriately trying to discuss them with board members, many agencies with active cases, such as the Texas Medical Board, Texas Board of Professional Engineers, and the Texas Board of Nursing, allow public comment at meetings. While the board should take necessary precautions to avoid contaminating its enforcement process, it should not unnecessarily restrict the opportunity for public comment.

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*The public has no standing opportunity to give input to the board.*

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### **The Public Accountancy Act does not reflect standard language typically applied across the board during Sunset reviews.**

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board recommendations reflect the Legislature’s effort to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. The provisions reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

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*Board member training should include discussions of potentially anticompetitive behavior and rulemaking.*

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- **Board member training.** The board's statute requires training for all board members but does not require board staff to create a training manual for all board members, or specify that the training must include a discussion of the scope of, and limitations on, the boards' rulemaking authority. In addition, the board's statute should be modified by adding a provision adopted by the Sunset Commission in January 2017 to address concerns of potentially anticompetitive behavior.
- **Complaint information system.** Statute requires the board to maintain a system to track complaints filed with the board. However, statute does not require the board to promptly and efficiently act on complaints, although the board generally meets this standard. Updating this requirement would ensure the board continues to maintain the standard to not only track but also take timely action on complaints.

### **Three of the board's four reporting requirements remain necessary.**

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.<sup>13</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are also not included, nor are routine notifications or notices, or posting requirements.

The board has four statutory reporting requirements, as reflected in the chart on the following page, *Texas State Board of Public Accountancy Reporting Requirements*. Sunset recommends continuing three of the reports and discontinuing the statistical analysis of complaints, which the board already includes in its annual financial report that is publicly available. This report's requirements are also similar to data required by the *SDSI Annual Report*.

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*The board can re-create its advisory committee by rule if needed.*

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### **The board's statutory advisory committee has expired.**

The Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees.<sup>14</sup> Board statute contains one advisory committee regarding the scholarships the board distributes from an annual \$10 fee paid by CPAs during license renewal.<sup>15</sup> The Texas Government Code establishes the duration of statutory advisory committees at four years from the date the advisory committee was created. Since the Legislature has not enacted a statutory continuation for this committee since it was created in 2009, the committee is effectively abolished according to state law. The board may use its existing authority to re-establish this advisory committee by rule if it determines it is still needed.<sup>16</sup>



**Texas State Board of Public Accountancy Reporting Requirements**

<b>Report</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipients</b>	<b>Sunset Evaluation</b>
1. SDSI Biennial Report	Section 472.104(a), Texas Government Code	This report requires the board to biennially report any SAO audits, financial report, changes in fees, new rules, and number of exam candidates, CPAs, and enforcement activities.	Legislature, Governor	Continue
2. SDSI Annual Report	Section 472.104(b), Texas Government Code	This report requires the board to annually report personnel salary and other expenses, board member expenses, biennial operating plan, operating budget, and trend performance data for previous five fiscal years.	House Appropriations, Senate Finance, Legislative Budget Board, Governor	Continue
3. Statistical Analysis of Complaints	Section 901.163(b), Texas Occupations Code	This report requires the board to annually report the number of complaints received and resolved, types of complaints, and the average time to resolve.	Not specified <sup>17</sup>	Eliminate
4. Fifth-Year Accounting Scholarship Program Report	Section 901.660, Texas Occupations Code	This report requires the board to biennially report the number of scholarship awards and number of minority recipients.	Legislature	Continue

**The board's statute does not use appropriate language when referring to persons with disabilities.**

The Sunset Act directs the Sunset Commission to evaluate each agency's statute for compliance with the Legislature's person-first respectful language initiative and make recommendations for appropriate statutory revisions, such as replacing terms like "handicapped" with "persons with disabilities." The Public Accountancy Act contains a term that is not consistent with the person-first respectful language initiative. The board's Sunset bill should revise the statute to use person-first respectful language.

**The board should continue to implement state cybersecurity requirements and industry best practices.**

The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>18</sup> The assessment of the board's cybersecurity practices focused on identifying whether the board complied with state requirements and industry cybersecurity best practices for its information systems. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the board's technical infrastructure. Sunset staff found no issues relating to the board's cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the board.

## Recommendations

### *Change in Statute*

#### **3.1 Continue the Texas State Board of Public Accountancy for 12 years.**

This recommendation would continue the Texas State Board of Public Accountancy until 2031 as an independent agency. This recommendation would ensure that Texas has certified public accountants and accounting firms to provide Texas residents, businesses, and units of government with reliable, accurate financial information.

#### **3.2 Adjust the board's composition to consist of eight public members and seven certified public accountants.**

Under this recommendation, the board would still consist of 15 members, but the number of CPAs to provide necessary professional expertise would decrease to seven, with at least six required to be sole practitioners or owners or employees of an accounting firm. The remaining eight members would represent the general public. This recommendation would ensure the board maintains a public protection focus and help preserve the right of the state to prove immunity in the event of anti-competitive litigation. With the reduction in professional members, the board would continue its use of advisory committees and seek stakeholder input as resources to gain needed insights beyond its experience or knowledge when addressing specific issues.

This recommendation would provide that the three professional members whose terms currently expire soonest would expire on September 1, 2019. To maintain a functioning board and conduct necessary business, board members serving on August 31, 2019, would continue to serve until new appointments are made. The newly appointed public members would serve for the term designated by the governor.

#### **3.3 Update the standard across-the-board requirements related to board member training and complaints system.**

This recommendation would update existing statutory requirements for the board to provide board member training by requiring the department to develop a training manual that each member attests to receiving annually, and require existing board member training to include information and guidance about the scope of the board's rulemaking authority, as modified to address concerns of potentially anticompetitive behavior. The recommendation would also update the statutory requirement for the board to maintain a system to act promptly and efficiently on complaints.

#### **3.4 Continue the board's SDSI and scholarship reporting requirements but repeal the requirement on statistical analysis of complaints.**

This recommendation would continue two reporting requirements in the SDSI Act and the report on the fifth-year accounting scholarship program. The recommendation would discontinue the requirement for the report regarding a statistical analysis of complaints, as that report is already included in the board's publicly available annual financial report.

#### **3.5 Update the agency's statute to reflect the requirements of the person-first respectful language initiative.**

This recommendation would direct the Texas Legislative Council to revise the board's governing statutes to conform to the person-first respectful language requirements found in Chapter 392, Texas Government Code.

## Management Action

### 3.6 Direct the board to revise its rules to facilitate public comment.

This recommendation would require the board to amend its rules for board meetings to better enable public participation. By adding an agenda item for public comment and removing the 20-day requirement to request the opportunity to comment, the board would ensure it allows those who wish to speak on board matters the opportunity to do so. To assuage the risk of those with ongoing enforcement cases trying to discuss them, the board could require those with ongoing cases to identify themselves, and could adopt rules prohibiting board members from commenting on any item not on the agenda. The board should revise its rules for board meetings by March 1, 2019.

## Fiscal Implication

These recommendations would not result in a fiscal impact to the state. As a self-directed semi-independent agency, the board is responsible for setting fees to cover the costs of regulation, so any savings or costs would be passed on to those regulated by the board. Updating and providing a training manual could be accomplished with existing resources, and the board already has a system for complaints.

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- 1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 901.1525, Texas Occupations Code.
- 2 Sections 901.002(a)(1) and 901.005(b), Texas Occupations Code.
- 3 Section 901.252, Texas Occupations Code.
- 4 Sections 901.351 and 901.354, Texas Occupations Code.
- 5 “Boards of Accountancy,” National Association of State Boards of Accountancy, accessed June 7, 2018, <https://nasba.org/stateboards/>.
- 6 Chapter 472, Texas Government Code.
- 7 *N.C. State Bd. of Dental Exam’rs v. Fed. Trade Comm’n*, 135 S. Ct. 1101, 1111 (2015).
- 8 *In the Matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374 (Federal Trade Commission, April 10, 2018), [https://www.ftc.gov/system/files/documents/cases/d09374\\_opinion\\_and\\_order\\_of\\_the\\_commission\\_04102018\\_redacted\\_public\\_version.pdf](https://www.ftc.gov/system/files/documents/cases/d09374_opinion_and_order_of_the_commission_04102018_redacted_public_version.pdf).
- 9 *N.C. State Bd. of Dental Exam’rs v. Fed. Trade Comm’n*, 135 S. Ct. at 1110 (2015).
- 10 Federal Trade Commission, *FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants*, October 2015, [https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active\\_supervision\\_of\\_state\\_boards.pdf](https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf).
- 11 *In the Matter of Louisiana Real Estate Appraisers Board*.
- 12 22 T.A.C. Section 505.9.
- 13 Section 325.012(a)(4), Texas Government Code.
- 14 Section 325.013, Texas Government Code.
- 15 Sections 901.657 and 901.155(a)(2), Texas Occupations Code.
- 16 Section 901.152, Texas Occupations Code.
- 17 Section 901.164, Texas Occupations Code, which the report references, was sent to the governor, lieutenant governor, and speaker before S.B. 1179 (82nd Regular Session) eliminated the reporting requirement.
- 18 Section 325.011(14), Texas Government Code.



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# APPENDICES



# APPENDIX A

## *Historically Underutilized Businesses Statistics 2015 to 2017*

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas State Board of Public Accountancy's use of HUBs in purchasing goods and services. The board maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of board spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

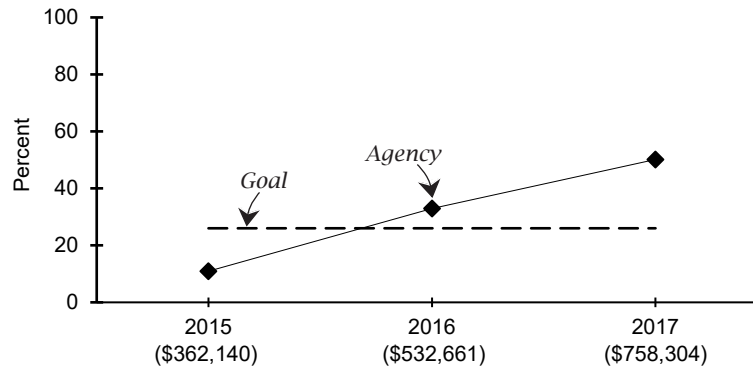
The Texas State Board of Public Accountancy exceeded the state's goal for HUB spending in the professional services, other services, and commodities categories in fiscal years 2016 and 2017. In 2015, the board fell below the state's goal in the other services and commodities categories, but exceeded the goal in professional services.



The board exceeded the state goal in this category for all three of the last fiscal years.

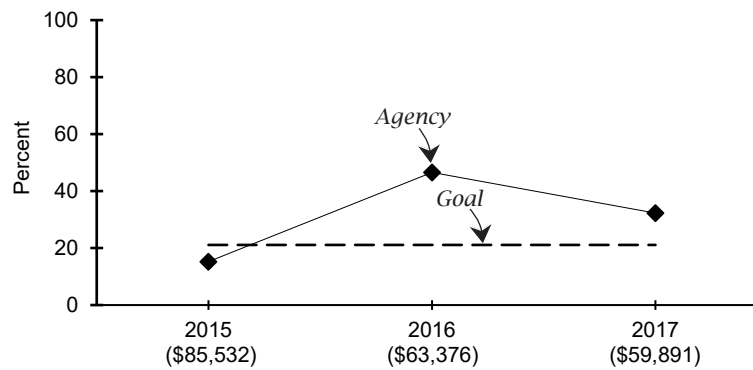
## Appendix A

### Other Services



The board exceeded the state goal in this category in 2016 and 2017, but did not meet it in 2015.

### Commodities



The board exceeded the state goal in this category in 2016 and 2017, but did not meet it in 2015.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

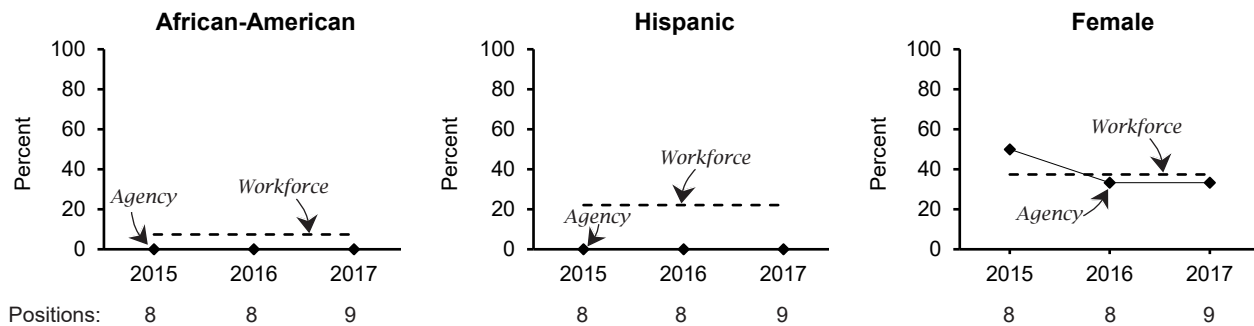


# APPENDIX B

## Equal Employment Opportunity Statistics 2015 to 2017

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas State Board of Public Accountancy.<sup>1</sup> The board maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the board's actual employment percentages in each job category from 2015 to 2017. The Texas State Board of Public Accountancy had mixed success meeting the civilian workforce percentages for African-American employees, Hispanic employees, and female employees from fiscal year 2015 to 2017. The technical and administrative support categories had too few employees to conduct a meaningful comparison to the overall civilian workforce.

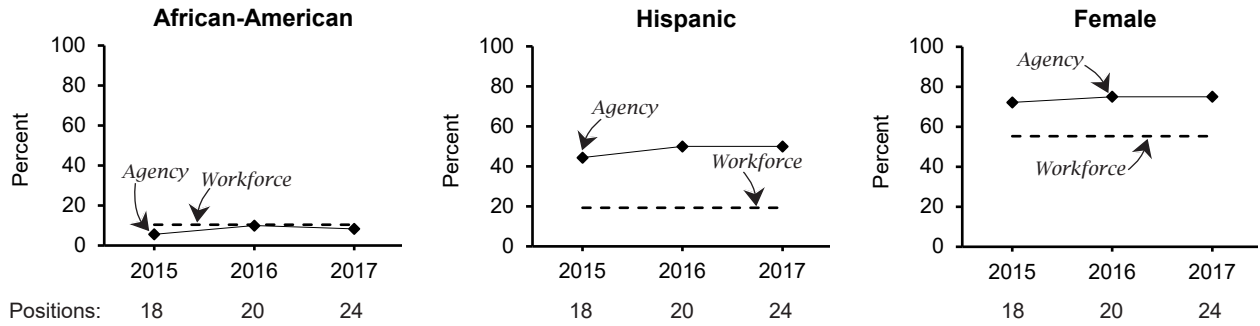
### Administration



The board fell below the civilian workforce percentages for African-Americans and Hispanics in this category for the last three fiscal years. The board also fell below the civilian workforce percentages for females in this category in 2016 and 2017, but exceeded the percentage in 2015. The board employed few staff in this category.

## Appendix B

### Professional



The board exceeded the civilian workforce percentages for Hispanics and females in this category for the last three fiscal years. The board fell below the percentage in this category for African-Americans in the same time period.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

# APPENDIX C

## ***Staff Review Activities***

During the review of the Texas State Board of Public Accountancy, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Surveyed a sample of licensees and unlicensed CPA firm owners about the board and current regulations
- Interviewed staff from the Department of Information Resources, the office of the attorney general, and the State Office of Administrative Hearings
- Observed the proceedings of a board enforcement case at the State Office of Administrative Hearings



# Sunset Staff Review of the *Texas State Board of Public Accountancy*

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