



August 16, 2018

Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-1300

Dear Sunset Commission Members:

Thank you for the opportunity to respond and provide input regarding the Sunset Staff Report regarding the Texas State Board of Public Accountancy (TSBPA). The Texas Society of CPAs (TSCPA) is a private, voluntary, non-profit professional association comprised of approximately 28,000 members from across the state of Texas. TSCPA was founded in 1915 and for more than 100 years, it has strived to elevate the accounting profession in Texas by promoting high standards of ethical behavior and competency for all CPAs as they provide financial and accounting services to the public.

As the Sunset Staff Report notes, CPAs “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.”

We concur with the Sunset Staff recommendation that the state of Texas has a continuing need to regulate accountancy and that the TSBPA should be continued for another 12 years. We strongly support this recommendation and encourage the Commission to adopt it in its final report to the legislature.

We also agree with the general assessment that the TSBPA does a good job in fulfilling its mission to regulate CPAs and protect the public. Our experience demonstrates that the CPAs and members of the public who serve on the TSBPA, and the staff that supports them, strive to carry out their responsibilities in a fair and reasonable manner. As CPAs, we understand that improvements can certainly be made to any organization or process, and we acknowledge that the Sunset Staff, through its review, has identified several items to help the TSBPA operate more effectively and efficiently.

We concur with and support many of those recommendations; however, there are a few that we differ with and wish to present additional information for the Commission to consider as part of its deliberations. We also wish to offer a few items for consideration that were not addressed in the Sunset Staff Report, that they might be incorporated into the final version of your Report to the legislature. We detail these issues below.

Sunset Staff Recommendation 3.2 – Composition of the TSBPA – We Oppose Moving to a Majority of Public Members

The Sunset Staff Report is recommending that the composition of the TSBPA be changed to require a majority of public members. Specifically, the recommendation is to decrease the number of CPAs serving on the board from 10 to seven and increasing the number of public members from five to eight. Our understanding is this recommendation is being made primarily in response to concerns raised by the 2015 U.S. Supreme Court decision in the case involving the N.C. State Board of Dental Examiners and possible antitrust concerns emanating from that decision for licensing boards in general.

While we understand the underlying issues of that court decision, and the guidance that has been issued by the Federal Trade Commission, we respectfully disagree that this recommendation by the Sunset Staff is the best solution for the TSBPA or other state boards in Texas. We encourage the Sunset Commission and the legislature to give this issue further study to develop the best answer for all licensing boards in Texas. Texas should not rush to implement new strategies in response to an isolated case without giving serious consideration to the long-term effects on the licensing and regulatory operations in Texas.

The FTC Guidance issued on this Supreme Court decision notes that going to a majority public member board is not a panacea to potential antitrust concerns for state licensing boards. The FTC states that even if a board is comprised of a majority of public members (non-licensees), it could still be considered under the control of the licensees depending on how it operates. So, any antitrust claim would be weighed on a case-by-case analysis of how the board operates and how the licensed members on the board affect decision making.

The FTC and the Supreme Court state that if a board can demonstrate that there is “active state supervision” of the board’s processes and actions, it is then eligible to invoke the state-action antitrust immunity. Having a process of “active state supervision” assures that the board’s actions follow a clearly articulated and affirmatively expressed state policy. Thus, a better solution than simply moving to a majority of public members on boards may be to implement some kind of “active state supervision” of those boards. This appears to be the approach that other states are taking in response to this Supreme Court decision.

We think establishing a system of active state supervision is a more effective approach to the concerns of potential antitrust violations raised by the N.C. Board of Dental Examiners decision. It is important for the TSBPA and many other boards in Texas to have an adequate supply of licensed individuals on the board with the technical expertise and experience to properly adjudicate on matters. While public members are important and play a vital role to an effective licensing board, CPAs’ experience and expertise are needed on the TSBPA to make decisions on complex accounting issues. If the TSBPA loses this expertise, it will impact the Board’s effectiveness in rulemaking, enforcement actions and continuing professional education decisions. Thus, TSCPA supports maintaining the composition of the board as it is currently constituted and encourages Texas to establish a process for active state supervision for all licensing boards in Texas. This will ensure that potential anticompetitive actions are not taken unless they are clearly supported by the state for reasons of public protection.

Sunset Staff Recommendation 2.10 – Peer Review Rules – We Oppose Amending the Peer Review Rules for CPAs to Allow for Less Frequent Reviews and to Prohibit TSCPA from Charging a Non-member Fee

The Sunset Staff Report is recommending that the TSBPA amend its peer review 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 low volume of work.” The Report also recommends that the TSBPA amend its peer review rules to “ensure that nonmembers of TSCPA pay the same fee for peer review administration as members.”

We respectfully disagree with these proposals by the Sunset Staff. The current peer review rules/system already accounts for the risk factors of the types of service a CPA or CPA firm is providing. In the Texas Public Accountancy Act (TPAA) (Sec. 901.002), attest services are defined to include audits, reviews and compilations, in addition to other attestation and assurance services that CPAs provide. While CPAs perform a wide variety of services for their clients, attest services are the only ones that are restricted to licensed CPAs by law. Non-CPAs are prohibited from providing these services to the public.

We believe the legislature has restricted these services to licensed CPAs because of the important nature of these services and the risk to the public if the services are performed improperly. This is because the public places a high degree of reliance on attest services and the potential damage that could occur if they are not performed competently.

The Texas Public Accountancy Act (Sec. 901.159) also stipulates that the TSBPA will provide for a peer review program to verify that “each individual in a certified public accountancy firm who is responsible for supervising attest services and who signs or authorizes another person to sign an accountant’s report on financial statements on behalf of the firm meets the competency requirements of the professional standards that apply to those services.” Thus, the peer review program is intended to only review the work of CPAs who perform attest services. It does not review the many other services (tax, consulting, etc.) that most CPAs perform for their clients. And this relates to the “risk” level of these services.

Allowing CPAs who only perform Compilations to undergo peer review on a less frequent basis than the current three-year interval or allowing CPAs who only perform one Compilation a year to undergo peer review less frequently does not make sense. The focus of the program should be on the services provided regardless of the number of times they are offered. As stated, Compilations are part of “attest services” as defined in the TPAA and therefore carry a greater risk of harm to the public if not performed correctly. Most clients will use a Compilation financial statement to take to their bank or other lender to obtain a loan, or they are used by other members of the public to make decisions about buying or investing in a business. Therefore, it is critical that Compilations performed by CPAs be done correctly and comply with professional accounting standards. This is true whether a CPA performs one Compilation a year or 100.

Also, the way the TSBPA currently handles this issue is consistent with most other state boards around the country. Compilations are included in the peer review program of 41 states and no states currently provide for a different peer review frequency schedule for CPAs who only perform Compilations or only perform one Compilation a year. The AICPA/NASBA Uniform Accountancy Act also recommends that Compilations be included in peer review and that peer reviews be performed every three years for any CPA or CPA firm that performs attest services. If Texas chooses to take a different path for peer review, it could cause mobility issues for CPAs or CPA firms that practice in other states. For all these reasons, we strongly support maintaining the peer review program and requirements as currently constituted.

With respect to TSCPA eliminating the non-member fee for CPAs who wish to participate in our peer review program, we respectfully disagree with this recommendation. Any person or organization is free to develop and administer a peer review program in Texas to offer to CPAs as long as they comply with the peer review requirement spelled out in the TPAA. Nothing in the law or the rules of the TSBPA gives the TSCPA a monopoly on this process. Any organization can qualify to administer a peer review program if they meet the standards for peer review and are approved by the TSBPA Peer Review Oversight Board. At one time, there were other organizations administering peer reviews in Texas, but they chose to discontinue the service. We assume they made this decision because running a peer review program requires significant resources to do it properly.

The TSCPA has operated a peer review program for its members for several decades dating back to before peer review was a mandatory/statutory requirement. We have always permitted non-members to participate in our program for an additional “non-member” fee because our program is designed primarily for our members and because our members financially support the program through their dues to TSCPA. Dictating that TSCPA cannot charge a non-member fee runs counter to the free enterprise system of our country. We should be free to charge appropriate non-member fees to those who wish to use our services as long as they are reasonable and not excessive. And other groups or organizations are free to develop their own peer review program if they are so inclined and charge the fees they wish for the service. For these reasons, we object to this recommendation by the Sunset Staff.

Sunset Staff Recommendation 2.1 – Require a Fingerprint-based Criminal Background Check for All Licensure Applicants and Licensees – Do Not Impose this Requirement on CPAs in “Retired Status”

The Sunset Staff is recommending that all CPA licensees who did not go through a fingerprint-based criminal background check upon initial licensure be required to undergo such a check by September 2021. The TSBPA implemented this requirement for new licensees in 2014, but all CPA licensees prior to that time have not undergone this kind of background check and will be required to do so if this recommendation is adopted. While we are not opposed to this requirement and understand that this is now being applied broadly for all Texas licensed professionals, not just CPAs, we do have one concern about its implementation and that is how it will be applied to CPAs in “retired status” with the TSBPA.

Under the TSBPA rules, a licensee who is at least 60 years of age, may seek “retired status” if they are no longer associated with any accounting services. A “retired” CPA licensee is prohibited from rendering professional services that require them to use their signature as a CPA. Licensed CPAs in retired status must also put the term “retired” after their CPA title on business cards and letterhead.

We recommend that the requirement for a fingerprint-based criminal background check not be applied to the CPAs who are in retired status since they are not offering services to the public. If a CPA licensee in retired status wishes to re-enter the workforce, they are required to complete a new license renewal application and demonstrate that they have completed CPE since they were granted the retired status. These individuals could be required to go through a criminal background check at that point in time. We see no valid reason to make retired CPAs undergo this type of background check just to maintain their retired status.

Other Items for Consideration Related to CPA Firm Mobility and the Management of CPA Firms with Non-CPA Owners

We want to take this opportunity to offer for the Sunset Commission's consideration some items that are not part of the Sunset Staff Report that we feel will improve the Texas Public Accountancy Act and be responsive to the world in which CPAs now operate.

CPA Firm Mobility

The first item relates to the mobility of CPAs and the ability to practice across state lines without undue regulatory burdens. This is beneficial for CPAs, as well as the public they serve, by eliminating restrictive rules that do not provide for public protection. Several items in the current TPAA already support these concepts, as Texas provides for licensed CPAs from other states to operate in Texas without obtaining a license unless they operate an office in Texas or have a physical presence here. Otherwise, they can rely on the license they hold from another state with the understanding and their agreement that they are subject to the authority of the TSBPA while they offer services in Texas. These mobility provisions exist now in the TPAA for all services except for attest services. We encourage the Sunset Commission to add "attest services" to the mobility provisions within the TPAA. This would bring Texas into line with the AICPA/NASBA Uniform Accountancy Act, as well as the laws for most other states.

Management of CPA Firms with Non-CPA Owners

Another change to the TPAA we encourage the Sunset Commission to consider relates to the management of CPA firms and the current requirement that all offices of a firm must be managed by a licensed CPA. In firms that have non-CPA owners, this prohibits them from having an active management role in the firm. Non-CPA owners can only be a minority of the firm's ownership and must also be registered with the TSBPA. They also must meet several other requirements such as: being actively involved in the firm by offering services to clients or by playing an active role in the operation of the firm, such as a Chief Operating Officer or some other firm function, passive ownership by non-CPAs is not permitted; and they must also pass an exam on the rules of professional conduct. With these requirements it seems overly restrictive to say they cannot be placed in any kind of office management position within the firm. We think this decision should rest with the firm to decide how to best manage its operations.

There is a requirement in the TPAA that all attest services must be under the supervision of a licensed CPA and that a licensed CPA be responsible for the registration of the firm with the TSBPA. We support the continuation of those requirements and feel they provide adequate protection for the public. Thus, restricting the ability of non-CPA owners in a firm to manage an office seems to be unnecessary. And it is inconsistent with most other states on this point and runs contrary to the provisions in the AICPA/NASBA Uniform Accountancy Act.

We encourage the Sunset Commission to adopt changes on these two issues as part of its final report to the legislature. We are attaching a suggested draft of how the TPAA could be amended to incorporate these concepts. We would be happy to work with the Commission or staff to help implement these recommendations.

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Again, we thank the Sunset Commission for the opportunity to submit our comments for your consideration. We appreciate the job you do on behalf of the citizens of Texas to assure that all licensing boards and agencies are meeting their assigned mission and operating in an effective and efficient manner for the benefit of the public.

Sincerely,



Stephen G. Parker, CPA
Chairman



Jodi Ann Ray
President & CEO

cc. TSCPA Executive Board

Attachment