

- SUBJECT:** Continuing the State Board of Public Accountancy
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 10 ayes — T. King, Goldman, Geren, Harless, Hernandez, Herrero, K. King, Kuempel, Paddie, S. Thompson
- 0 nays
- 1 absent — Guillen
- WITNESSES:** For — John Sharbaugh, Texas Society of Certified Public Accountants
- Against — (*Registered, but did not testify*: Vance Ginn, Texas Public Policy Foundation)
- On — (*Registered, but did not testify*: Alan Leonard, Sunset Advisory Commission; William Treacy, Texas State Board of Public Accountancy)
- BACKGROUND:** The State Board of Public Accountancy was created by the 34th Legislature in 1915. The board is responsible for licensing and regulating accountants and accountancy firms.
- Functions.** The board verifies the eligibility of prospective certified public accountants (CPAs) to take the national CPA exam, licenses individuals who have passed the CPA exam and who meet all requirements in state law, and licenses firms that provide certain accounting services according to nationally recognized standards. The board also investigates and resolves complaints, which includes taking disciplinary action when necessary to enforce the Public Accountancy Act and board rules.
- Governing Structure.** The State Board of Public Accountancy is governed by 15 members appointed by the governor to six-year terms. Ten of these members are Texas-licensed CPAs, at least eight of whom

must be sole proprietors or employed in a licensing firm, and the other five members represent the public.

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. In fiscal 2017, the board collected almost \$7.6 million from fees and penalties and spent about \$6.1 million. The board also transferred \$703,000 to general revenue as required under the SDSI Act and remitted \$577,000 in administrative penalties and late fees.

The board maintains a fund balance for contingencies. At the end of fiscal 2017, this fund balance was \$3.9 million.

Staffing. The board had 39 staff as of the end of fiscal 2017. As an SDSI agency, the board is not subject to employee caps or salary schedules under the General Appropriations Act.

The State Board of Public Accountancy would be discontinued on September 1, 2019, if not continued in statute.

DIGEST:

CSHB 1520 would continue the State Board of Public Accountancy until September 1, 2031.

Outside counsel. The bill would require the board to obtain the attorney general's approval before entering into any contract with outside legal counsel, including representation before the State Office of Administrative Hearings (SOAH).

Background checks. The board would be required to conduct a fingerprint-based criminal history record information check of applicants for a CPA exam or license and non-licensed firm owners based on information from the Department of Public Safety (DPS) and the Federal Bureau of Investigation. This requirement would replace previous language requiring applicants and non-licensed firm owners be of "good moral character."

An individual would be required to submit fingerprints to the board or DPS for the purpose of acquiring criminal history record information if the individual previously had not done so and was:

- an applicant for the uniform CPA exam;
- an applicant for a certificate or license;
- an applicant for the renewal of a license, unless the individual was not practicing public accountancy because of retirement or permanent disability; or
- a non-licensed owner or prospective owner of a CPA firm, upon the board's request.

An individual who was previously exempted from this requirement would be required to provide fingerprints for a criminal history check if the individual no longer qualified for the exemption.

An individual who failed to submit fingerprints would be prohibited from taking the uniform CPA exam or being issued a certificate or license. The board also could suspend or refuse to renew the license of an individual who did not comply with this requirement.

The board would be allowed to enter into an agreement with DPS to conduct the criminal history record information check of such individuals and could authorize DPS to collect a fee from each individual for the costs that DPS incurred in conducting the check.

Firm license. CSHB 1520 would require an office established or maintained in the state by a firm or a foreign person registered with the board to designate a resident manager licensed by the board, who would be responsible for the license of the firm or person.

Education and continuing education requirements for non-licensed owners of a CPA firm would be eliminated from the requirements for a firm license, and firm licenses no longer would be required to be renewed annually.

Out-of-state firms. The bill would expand the services that a firm licensed by another state that did not have an office in Texas could provide without obtaining a firm license to include:

- financial statement audits or engagements to be performed according to the Statements on Auditing Standards;
- examinations of prospective financial information or other engagements to be performed according to the Statements on Standards for Attestation Engagements; and
- engagements to be performed according to the auditing standards of the Public Company Accounting Oversight Board or its successors.

Such services would be required to be provided by an individual licensed by the board or practicing under a privilege.

Injunction. CSHB 1520 would authorize the attorney general, at the request of the board, to petition a district court for an injunction to prohibit a person from continuing to violate the Public Accountancy Act. Venue for a suit for injunctive relief would be in Travis County.

Public comment. The bill would require that the agenda of each regular meeting of the board include an opportunity for public comment on each agenda item or issue before the board made a decision on the item or issue. A person who wished to make a public comment at a meeting could not be required to notify the board in advance. The board could prohibit public comment at a meeting on an active investigation or enforcement proceeding.

Standard recommendations. CSHB 1520 also would apply several standard Sunset recommendations to the board, including updating provisions on board member training and on the board's complaints system.

Effective date. The bill's updated board member training requirements would apply to any member of the board appointed before, on, or after the

effective date. Any member of the board who completed board member training before this date would be required to complete additional training by December 1, 2019.

Each applicant for renewal of a license first would be required to submit fingerprints to the board or DPS by September 1, 2021.

The board would be required to adopt or amend any rules necessary as soon as possible after the effective date of the bill.

The bill would take effect on September 1, 2019, and would apply to any contract with outside legal counsel entered into, complaint filed, and application submitted to the board on or after this date.

**SUPPORTERS
SAY:**

CSHB 1520 would ensure that the State Board of Public Accountancy continued to regulate public accounting effectively and would improve the board's oversight, transparency, and ability to enforce the Public Accountancy Act. The bill also would ease administrative burdens on both the board and CPA firms.

Continued regulation. The State Board of Public Accountancy was created to protect the public by licensing and regulating professionals and firms who perform accounting work, and its continued existence and fulfillment of this mission is necessary. Accountancy is a technical profession that requires specialized education and adherence to precise standards. The improper practice of accountancy could lead to fraud or theft, which could harm the financial well-being of Texas residents and businesses. Continuing the board would help prevent this.

Oversight. CSHB 1520 would establish a level of oversight for the board's outside legal contracting that would be similar to that of other agencies. The approval of the attorney general already is required for most contracts that agencies enter into for outside legal counsel, excluding representation before State Office of Administrative Hearings (SOAH).

Over the past several years, the board of accountancy has hired outside

counsel for representation before SOAH more frequently than have other agencies. Requiring the approval of the attorney general for the use of all outside counsel would allow the attorney general to monitor more closely controversies involving the board to ensure that the interests of the state were being represented effectively. The current attorney general approval process also would ensure that the board's contracting for attorneys followed best practices, including needs analysis and requests for qualifications.

Enforcement. The bill would ensure that all licensed CPAs had gone through a fingerprint-based background check by requiring current CPAs who had not previously undergone a background check to submit fingerprints for such a check, as well as by requiring all new applicants to submit fingerprints. This would ensure that the board could effectively and equally monitor all CPAs for criminal conduct and take any appropriate disciplinary action to protect the public. New licensees already go through fingerprint-based criminal background checks, but older licensees may not have.

Eliminating language requiring that CPA license applicants and non-CPA owners be of "good moral character" would free the board from an unclear, subjective standard that is difficult to enforce. This standard would be replaced by the fingerprint-based criminal record check, which would be more enforceable and would better protect the public.

The bill also would clarify the mechanisms for the board to seek an injunction to prevent violations of the Public Accountancy Act. This would ensure that the board had the necessary authority to take enforcement action in the same manner as other regulatory agencies.

Administration. The bill would ease administrative burdens on both the accountancy board and CPA firms. Removing the annual license renewal requirement would reduce the time the board spent processing renewals as well as the burden on licensees without sacrificing oversight. Eliminating unnecessary education and continuing education requirements for non-licensed owners of a firm likewise would remove unnecessary barriers to

entry to firm ownership without decreasing public protection.

Firm mobility. The bill's expansion of the services that out-of-state CPA firms could provide in the state would align Texas more closely with national standards and reduce administrative burdens on firms, providing the public with more choice. Such firms would still be subject to the rules of the board.

Increased business mobility and continuing technological development allows CPAs to assist clients anywhere and at any time. Since 2007, Texas has allowed out-of-state CPA firms to practice in Texas without a firm license as long as they do not establish an office in the state or provide financial statement audits or other attest services for a client in Texas. Over the past 12 years, several other state legislatures have passed similar statutes that are broader and do not exclude audit or attest services. The American Institute of Certified Public Accountants and the National Association of State Boards of Accountancy also promote this broader standard.

CSHB 1520 would bring Texas in line with what is becoming the accepted standard on the services that may be provided by out-of-state CPA firms. By reducing administrative burdens on CPA firms, the bill would enhance cross-border practice, providing the public with more choice in obtaining services from CPA firms, while still offering sufficient protection for the public.

OPPONENTS
SAY:

CSHB 1520 would perpetuate an unnecessary barrier to entry for those wishing to practice accountancy in the state by continuing the Texas State Board of Public Accountancy, which should be allowed to expire. CPA licensing requirements set and enforced by the board exclude those who are not licensed from the market, increasing wages for those who are licensed and making accountancy services more costly for the public. It is not clear that the benefits of CPA licensing requirements, oversight, and enforcement outweigh the costs of this barrier to entry.

OTHER

CSHB 1520 could result in increased costs and delays to the board by

OPPONENTS
SAY:

requiring the board to obtain the attorney general's approval before hiring outside attorneys, and this provision is not needed in the bill. Extending fingerprint-based background checks also could be intrusive.