

# Sunset Review

## ROUND ONE

By JOHN SHARBAUGH, CAE

TSCPA Managing Director, Governmental Affairs



**T**he Sunset Review process for the Texas State Board of Public Accountancy (TSBPA) and the Texas Public Accountancy Act (TPAA) recently finished round one with the Texas Sunset Commission. The Commission conducted a public hearing on August 30, where it received a report on TSBPA from the Sunset staff and heard from representatives of TSBPA and the public at large. TSCPA representatives attended the hearing to provide testimony and input to the process. Current TSCPA Chairman Stephen Parker, CPA-Houston, and I testified. The report from the Sunset staff on TSBPA contained a number of specific recommendations (21 in total), which can be viewed in their entirety [here](#). Perhaps the most significant recommendation by the staff was to support the continuation of TSBPA for another 12 years, until the next Sunset Review process. The norm in Texas is for boards and agencies to be reviewed every 12 years. In its report, the Sunset staff noted: “Without competent accountants, pensions, local governments like school districts, and businesses on Main Street would find it harder to prevent theft and make sound investments or assure

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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.”

TSCPA was pleased to see this recommendation by the

John Sharbaugh, CAE, is TSCPA’s managing director of governmental affairs. Contact him at [jsharbaugh@tscpa.net](mailto:jsharbaugh@tscpa.net).

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Sunset staff to continue TSBPA. We concur with the staff's assessment that the regulation of CPAs is warranted and necessary to provide adequate protection to the public.

One of the other significant recommendations from the Sunset staff, which TSCPA did not agree with, pertained to the composition of the State Board. Currently, there are 15 members of the Board, with 10 CPAs and five public members. The Sunset staff was recommending that the composition be changed to have eight public members and seven CPAs. This was an issue of major concern to TSCPA, as well as TSBPA, NASBA and AICPA. Each organization spoke against this recommendation in their formal written comments. TSCPA objected to this recommendation in its formal comment letter sent to the Commission earlier in the month. You can see the TSCPA letter [here](#). Collectively, TSBPA, TSCPA, NASBA and AICPA all noted that a reduction in the number of CPAs serving on TSBPA would be detrimental, as it would reduce the number of qualified individuals with the necessary competence and experience to help adjudicate complaints and other matters before the Board. TSCPA noted that while having public members on the Board is also important to bring that perspective to the Board's proceedings, the general public is not really equipped to adequately assess issues of substandard practice and other technical accounting and tax issues that the Board must address.

The issue of moving to a "majority" public member board arose in response to a recent U.S. Supreme Court case involving a licensing board (Dental Board) in North Carolina that had exceeded its authority in pursuing and prohibiting teeth-whitening operations. The Supreme Court ruled the board in this case had committed anti-trust violations in its enforcement actions. As a result, state governments around the country are looking at ways to help mitigate these anti-trust concerns in how their licensing and regulatory boards operate. The Sunset staff recommendation to move to a majority public member board was in response to this issue.

Fortunately, the Sunset Commission decided not to adopt this particular recommendation at this time. Rather, the Commission is recommending that the Texas Legislature study this issue to determine the best solution for all boards in Texas, rather than handling the issue on a case-by-case

basis. One alternative identified by the U.S. Supreme Court and guidance coming out of the Federal Trade Commission is to establish some kind of "active state supervision" mechanism for all rule proposals and proposed actions by licensing boards, to assure that anti-trust violations do not occur through board actions. We will have to wait and see

if the legislature chooses this option or some other means of dealing with this concern.

Another matter TSCPA commented on was a recommendation by the Sunset staff to modify the current mandatory Peer Review program to provide a different frequency for reviews based on risk. The Staff Report was recommending that Compilations be treated differently under peer review and that if CPAs only provide Compilations or only conduct one peer review a year that

they be reviewed less frequently or not at all.

TSCPA argued against this move, as did AICPA, TSBPA and NASBA in their comment letters, noting that the Peer Review program is a national program that is followed by the vast majority of states. Compilation reports are relied on by the public and there is a greater likelihood of substandard work when the service is only performed on an occasional basis. In his testimony at the hearing, TSCPA Chairman Stephen Parker pointed out that deviating from the national standards for peer review could also create mobility issues for Texas CPAs who wish to practice in other states.

TSCPA also encouraged the Commission to include some provisions to bring Texas into alignment with most other states and the Uniform Accountancy Act of AICPA and NASBA with respect to mobility and the ability of CPAs and CPA firms to practice across state lines and manage their firms. TSCPA provided these suggestions to the legislature in its formal comment letter, as well.

The Sunset Commission will now take all of the information it received at this hearing and from the public comments and develop a final report and recommendations for submission to the legislature. That final report and proposed legislation will be discussed and voted on at the next Sunset Commission hearing scheduled for November 14-15, 2018. TSCPA will be there to represent our members and we'll continue to report on new developments as this matter continues to evolve. Stay tuned for future reports. 🌸



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