

BILL ANALYSIS

Senate Research Center
86R17721 SOS-D

H.B. 1520
By: Thompson, Senfronia et al. (Watson)
Business & Commerce
4/15/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Board State of Public Accountancy regulates the practice of public accountancy in the state through the licensing and regulation of certified public accountants (CPAs) and certain accountancy firms. The board sets standards for the practice of accountancy and investigates and resolves complaints against licensed CPAs and firms. The accountancy board is also subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature.

While the Sunset Advisory Commission concluded that the agency is generally well-run, the commission recommended additional best practices to ensure continued effective regulation, better transparency, and improved oversight of the use of outside counsel.

Specifically, H.B. 1520 would: (1) continue the accountancy board for 12 years; (2) require the accountancy board to use the existing process of the Office of the Attorney General to evaluate the agency's need to contract for outside counsel, including for the accountancy board's representation at the State Office of Administrative Hearings; (3) update licensing and enforcement practices to meet best practices, such as requiring fingerprint background checks for all current licensees; and (4) update standard Sunset good government provisions and improve agency transparency, such as ensuring that public comment is included as an agenda item for every meeting and that members are adequately trained. The bill would also increase firm mobility by removing the requirement that firms licensed in another state be licensed with the agency to serve clients in Texas; and clarify that while work performed by accountants needs to be under supervision of a licensed CPA, the offices themselves do not.

H.B. 1520 amends current law relating to the continuation and functions of the Texas State Board of Public Accountancy.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas State Board of Public Accountancy (TSBPA) is modified in SECTION 10 (Section 901.351, Occupations Code) of this bill.

Rulemaking authority previously granted to TSBPA is rescinded in SECTION 21 (Section 901.253) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 901.006, Occupations Code, to provide that the Texas State Board of Public Accountancy (TSBPA), unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act), is abolished and this chapter (Accountants) expires September 1, 2031, rather than September 1, 2019.

SECTION 2. Amends Section 901.059, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Deletes existing text of Subdivision (3) and redesignates existing Subdivisions (4)–(8) as Subdivisions (3)–(7). Requires the training program to provide the person with information regarding:

- (1) the law governing TSBPA operations, rather than this chapter;
- (2) TSBPA's programs, functions, rules, and budget, rather than the programs operated by TSBPA;
- (3) the scope of and limitations on the rulemaking authority of TSBPA, rather than the rules of TSBPA, with an emphasis on rules that relate to disciplinary and investigative authority;
- (4) the types of TSBPA rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business TSBPA regulates, including any rule, interpretation, or enforcement action that:
 - (A) regulates the scope of practice of persons in a profession or business TSBPA regulates;
 - (B) restricts advertising by persons in a profession or business TSBPA regulates;
 - (C) affects the price of goods or services provided by persons in a profession or business TSBPA regulates; or
 - (D) restricts participation in a profession or business TSBPA regulates;
- (5) the results of the most recent formal audit of TSBPA;
- (6) deletes existing designations of Paragraphs (B)-(D) and reletters the following paragraph accordingly and the requirements of:
 - (A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts-of-interest, rather than the open meetings law, Chapter 551 (Open Meetings), Government Code, the public information law, Chapter 552 (Public Information), Government Code, the administrative procedure law, Chapter 2001 (Administrative Procedure), Government Code; and
 - (B) other laws applicable to members of a state policymaking body in performing their duties, rather than other laws relating to public officials, including conflict-of-interest laws; and
- (7) any applicable ethics policies adopted by TSBPA or the Texas Ethics Commission.

(d) Requires the executive director of TSBPA (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of TSBPA. Requires each member of TSBPA, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 3. Amends Subchapter D, Chapter 901, Occupations Code, by adding Sections 901.164 and 901.169, as follows:

Sec. 901.164. OUTSIDE LEGAL COUNSEL. Prohibits TSBPA from contracting with outside legal counsel to provide legal services to TSBPA, including representation of TSBPA in a matter referred to the State Office of Administrative Hearings, unless the contract is approved by the Texas attorney general (attorney general) as provided by Section 402.0212 (Provision of Legal Services--Outside Counsel), Government Code, regardless of the source of money to be used to pay the outside counsel.

Sec. 901.169. CRIMINAL HISTORY RECORD INFORMATION. (a) Requires TSBPA to require an individual to submit a complete and legible set of fingerprints, on a form prescribed by TSBPA, to TSBPA or to the Department of Public Safety of the State of Texas (DPS) for the purpose of obtaining criminal history record information from DPS and the Federal Bureau of Investigation (FBI) if:

(1) the individual has not previously submitted fingerprints for the purpose of TSBPA obtaining criminal history record information; and

(2) the individual:

(A) is an applicant to take the uniform CPA examination;

(B) is an applicant for a certificate;

(C) is an owner or seeks to become an owner of a certified public accountancy firm and the individual is not a license holder, if requested by TSBPA under Section 901.354(e);

(D) is an applicant for a license under Subchapter I (License Requirements, Issuance, and Renewal); or

(E) is an applicant for renewal of a license under Subchapter I, unless the applicant is an individual who does not engage in the practice of public accountancy because of retirement or permanent disability.

(b) Prohibits TSBPA from allowing an individual who does not comply with the requirements of Subsection (a) to take the uniform CPA examination or issuing a certificate or license to such an individual.

(c) Authorizes TSBPA to administratively suspend or refuse to renew the license of an individual who is an applicant for renewal of a license under Subchapter I and who does not comply with the requirement of Subsection (a).

(d) Requires TSBPA to require a license holder who qualified for an exemption described by Subsection (a)(2)(E) to comply with the requirement of Subsection (a) if the license holder no longer qualifies for the exemption.

(e) Requires TSBPA to conduct a criminal history record information check of each individual required to submit fingerprints under Subsection (a) using information:

(1) provided by the individual under this section; and

(2) made available to TSBPA by DPS, the FBI, and any other criminal justice agency under Chapter 411 (Department of Public Safety of The State of Texas), Government Code.

(f) Authorizes TSBPA to enter into an agreement with DPS to administer a criminal history record information check required under this section and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the criminal history record information check.

SECTION 4. Amends Section 901.203, Occupations Code, as follows:

Sec. 901.203. COMPLAINT INFORMATION. (a) Requires TSBPA to maintain a system to promptly and efficiently act on complaints filed with TSBPA. Requires TSBPA to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and

its disposition. Deletes existing text requiring a file on each written complaint filed with TSBPA to include certain information.

(b) Requires TSBPA to make information available describing its procedures for complaint investigation and resolution, rather than requiring TSBPA to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TSBPA's policies and procedures relating to complaint investigation and resolution.

(c) Requires TSBPA to periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation, rather than requiring TSBPA, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 5. Amends Section 901.204, Occupations Code, by adding Subsections (c), (d), and (e), as follows:

(c) Requires TSBPA to include on the agenda of each regular TSBPA meeting an opportunity for public comment on each agenda item or other issue before TSBPA makes a decision on the item or issue, except as otherwise provided by Subsection (d).

(d) Authorizes TSBPA to prohibit public comment at a meeting of TSBPA regarding an active investigation or enforcement proceeding by TSBPA.

(e) Prohibits TSBPA from requiring a person who wishes to make a public comment at a meeting of TSBPA to notify TSBPA in advance of the meeting.

SECTION 6. Amends Section 901.252, Occupations Code, as follows:

Sec. 901.252. ELIGIBILITY REQUIREMENTS. Requires a person, to be eligible to receive a certificate, to meet certain requirements, including to satisfy the requirements of Section 901.253, rather than be of good moral character as determined under Section 901.253.

SECTION 7. Amends the heading to Section 901.253, Occupations Code, to read as follows:

Sec. 901.253. BACKGROUND INVESTIGATION.

SECTION 8. Amends Section 901.253(a), Occupations Code, as follows:

(a) Requires TSBPA to ensure that an applicant to take the uniform CPA examination or to receive a certificate lacks a history of dishonest or felonious acts, rather than requiring TSBPA to ensure that an applicant to take the uniform CPA examination or to receive a certificate is of good moral character as demonstrated by a lack of history of dishonest or felonious acts. Requires TSBPA to require each applicant to comply with the requirements of Section 901.169(a).

SECTION 9. Amends Section 901.309, Occupations Code, as follows:

Sec. 901.309. REEXAMINATION. Authorizes a person who fails all or part of an examination to apply for a subsequent examination, subject to TSBPA's satisfaction that the person meets the requirements of this chapter relating to the person's background investigation, rather than moral character, and education.

SECTION 10. Amends Sections 901.351(a-1), (b), and (e), Occupations Code, as follows:

(a-1) Requires a firm to hold a firm license under this subchapter (Firm License Requirements) if the firm establishes or maintains an office in this state. Deletes existing

text relating to a provision that a firm is required to hold a firm license under this subchapter if the firm performs for an entity with its principal office in this state certain financial activities.

(b) Deletes existing text requiring TSBPA to grant or renew a firm license to practice as a certified public accountancy firm to a firm originally licensed as a certified public accountancy firm in another state that is required to hold a firm license under Subsection (a-1).

(e) Requires TSBPA by rule to specify the term of a firm license. Makes nonsubstantive changes.

SECTION 11. Amends Section 901.353(a), Occupations Code, as follows:

(a) Requires an office established or maintained in this state by a firm of certified public accountants, a firm of public accountants, or a person described by Section 901.355 (Registration for Certain Foreign Applicants) to designate a resident manager who is responsible for the license of the firm or person, as applicable, rather than to be under the direct supervision of a resident manager. Requires the resident manager to be a person who holds a certain position. Makes nonsubstantive changes.

SECTION 12. Amends Sections 901.354(b), (e), and (f), Occupations Code, as follows:

(b) Authorizes a certified public accountancy firm to include individuals as owners who are not license holders if:

(1) the firm designates to TSBPA as responsible for the firm's license a license holder who resides in this state. Deletes existing text authorizing a certified public accountancy firm to include individuals as owners who are not license holders if the firm designates to TSBPA as responsible for the firm's license and the supervision of the firm a license holder who resides in this state or if the firm is required under Section 901.351(a-1)(2) to hold a firm license, and individual practicing under a privilege under Section 901.462 (Practice by Out-of-State Practitioner With Substantially Equivalent Qualifications);

(2) deletes existing Paragraphs (C) and (G) and renumbers paragraphs accordingly. Each owner who is not a license holder and who is a resident of this state determined by board rule:

(A) makes no changes to this paragraph;

(B) lacks a history of dishonest or felonious acts, rather than is of good moral character as demonstrated by a lack of history of dishonest or felonious acts;

(D) makes a nonsubstantive change to this paragraph; and

(E) makes a nonsubstantive change to this paragraph; and

(3) makes no changes to this subdivision.

(e) Authorizes TSBPA to require an individual who is not a license holder under this chapter to comply with the requirement of Section 901.169(a), rather than submit a complete set of fingerprints. Authorizes TSBPA, if the individual does not comply with the requirement of that subsection, rather than if the individual does not provide the complete set of fingerprints, on request, to refuse to allow that individual to become an owner of a certified public accountancy firm and to cancel or refuse to issue or renew a firm license to the firm.

(f) Requires an applicant for issuance or renewal of a firm license under this section to register each office of the firm in this state and show that all attest services performed in this state, rather than all attest services performed in this state and each office in this state, are under the supervision of a person who holds a certificate issued under this chapter or by another state.

SECTION 13. Amends Section 901.402(a), Occupations Code, to require TSBPA, on payment of the required fees, to issue a license to an applicant who complies with the requirement of Section 901.169(a) and holds certain certificates or licenses.

SECTION 14. Amends Section 901.403, Occupations Code, by adding Subsection (c) to require TSBPA to require an applicant for renewal of a license to comply with the requirement of Section 901.169(a).

SECTION 15. Amends the heading to Section 901.409, Occupations Code, to read as follows:

Sec. 901.409. FEE REDUCTION FOR RETIRED PERSONS OR PERSONS WITH DISABILITIES.

SECTION 16. Amends Section 901.411(d), Occupations Code, to authorize TSBPA by rule to exempt certain license holders, including license holders who are persons with disabilities, retired, or not associated with accounting, as defined by TSBPA rule, rather than license holders who are disabled, retired, or not associated with accounting, as defined by TSBPA rule, from all or part of the requirements of this section.

SECTION 17. Amends Section 901.451(c), Occupations Code, to prohibit the title or designation "certified public accountant" and the abbreviation "CPA" from being used in connection with an office that does not meet the requirements of Sections 901.353 (Resident Manager) and 901.354 (Firm License Information and Eligibility), rather than an office that is required to be under the supervision of a resident manager under Section 901.353 unless the resident manager holds a certificate and a license issued under this chapter.

SECTION 18. Amends Sections 901.461(a) and (b), Occupations Code, as follows:

(a) Authorizes a certified public accountancy firm that is not licensed in this state but is licensed in another state, rather than a certified public accountancy firm that is licensed and has its primary place of business in another state and is not required to hold a firm license under Section 901.351(a-1) (relating to a provision that a firm is required to hold a certain firm license), to practice in this state without a firm license or notice to TSBPA if the firm's practice in this state is performed by an individual who holds a license under this chapter or who practices under a privilege under Section 901.462.

(b) Deletes existing Subdivisions (1)–(2) and redesignates existing Paragraphs (A)–(B) as Subdivisions (1)–(2). Authorizes a firm described by Subsection (a) to exercise all the practice privileges of a firm license holder, except that the firm is authorized to perform the services described by Section 901.002(a)(1) (relating to the definition of "attest service"), rather than Sections 901.002(a)(1)(B) and (D), for an entity with its home office in this state only if:

(1) the firm meets the ownership requirements, rather than the requirements, of Sections 901.354(a) (relating to certain requirements for issuance of a firm license) and (b); and

(2)–(3) makes no further changes to these subdivisions.

SECTION 19. Amends Subchapter M, Chapter 901, Occupations Code, by adding Section 901.6011, as follows:

Sec. 901.6011. INJUNCTIVE RELIEF. (a) Authorizes the attorney general at the request of TSBPA to petition a district court for an injunction to prohibit a person who is violating this chapter from continuing the violation.

(b) Provides that venue in a suit for injunctive relief is in Travis County.

(c) Requires the district court, after application and a finding that a person is violating this chapter, to grant the injunctive relief the facts warrant.

SECTION 20. Amends Section 901.656(a), Occupations Code, to delete existing text requiring TSBPA, in consultation with the advisory committee appointed under Section 901.657 (Advisory Committee), to determine the maximum amount of any scholarship awarded under this subchapter (Scholarships For Fifth-Year Accounting Students).

SECTION 21. Repealer: Section 901.163 (Statistical Analysis of Complaints), Occupations Code.

Repealer: Section 901.253(b) (relating to authorizing TSBPA by rule to adopt a system to investigate an applicant's background), Occupations Code.

Repealer: Section 901.253(c) (relating to authorizing TSBPA to obtain criminal history record information maintained by certain law enforcement agencies to investigate the qualifications of an individual who applies to take the uniform CPA examination), Occupations Code.

Repealer: Section 901.351(d) (relating to requiring a firm license to be renewed annually), Occupations Code.

Repealer: Section 901.462(e) (relating to requiring a certain individual practicing under this section to practice through a firm that holds a certain license), Occupations Code.

Repealer: Section 901.657 (Advisory Committee), Occupations Code.

SECTION 22. (a) Provides that, except as provided by Subsection (b) of this section, Section 901.059, Occupations Code, as amended by this Act, applies to a member of TSBPA appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TSBPA who, before the effective date of this Act, completed the training program required by Section 901.059, Occupations Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 901.059, Occupations Code. Prohibits a board member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TSBPA held on or after December 1, 2019, until the member completes the additional training.

(c) Makes application of Section 901.164, Occupations Code, as added by this Act, prospective.

(d) Requires TSBPA to require each applicant for renewal of a license under Subchapter I, Chapter 901, Occupations Code, to first comply with the requirement of Section 901.169(a), Occupations Code, as added by this Act, not later than September 1, 2021. Provides that, notwithstanding Sections 901.169(a)(2)(E) and 901.403(c), Occupations Code, as added by this Act, an applicant for renewal of a license is not required to comply with Section 901.169(a) until first required to by TSBPA as provided by this subsection.

(e) Makes application of Section 901.203, Occupations Code, as amended by this Act, prospective.

(f) Makes application of Sections 901.252, 901.253, and 901.309, Occupations Code, as amended by this Act, prospective.

(g) Requires TSBPA, as soon as possible after the effective date of this Act, to adopt or amend any rules necessary to implement the changes in law made by this Act to Chapter 901, Occupations Code.

SECTION 23. Effective date: September 1, 2019.