

# House Bill 3180

Sponsored by Representative SCHAUFLER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Re-creates Oregon Board of Accountancy as semi-independent state agency.  
Transfers moneys from Oregon Board of Accountancy Account to depository account established by board.  
Directs board to appoint budget committee to make recommendations on board's biennial budget.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to the Oregon Board of Accountancy; creating new provisions; amending ORS 182.454, 673.170 and 673.410; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

## SEMI-INDEPENDENT STATE AGENCY

**SECTION 1.** ORS 182.454 is amended to read:

182.454. The following semi-independent state agencies are subject to ORS 182.456 to 182.472:

- (1) The Appraiser Certification and Licensure Board.
- (2) The State Board of Architect Examiners.
- (3) The State Board of Examiners for Engineering and Land Surveying.
- (4) The State Board of Geologist Examiners.
- (5) The State Landscape Architect Board.
- (6) The Oregon Board of Optometry.
- (7) The Oregon Patient Safety Commission.
- (8) The Oregon Wine Board.
- (9) The State Board of Massage Therapists.
- (10) The Physical Therapist Licensing Board.
- (11) The State Landscape Contractors Board.
- (12) The Oregon Board of Accountancy.**

**SECTION 2.** ORS 673.170 is amended to read:

673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary actions:

- (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.
- (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.
- (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.
- (d) Censure a person authorized to practice public accountancy in this state under ORS 673.153.
- (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS

673.153.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS  
2 673.160.

3 (g) Censure the holder of any registration issued under ORS 673.160.

4 (h) Censure a business organization providing accounting services in this state that is exempt  
5 from registering under ORS 673.160 (3).

6 (2) The board may take any of the actions described in subsection (1) of this section for any one  
7 or any combination of the following causes:

8 (a) Fraud or deceit in obtaining or applying for:

9 (A) A certificate under ORS 673.040 to 673.075;

10 (B) A public accountant's license under ORS 673.100;

11 (C) A registration under ORS 58.345 or 673.160;

12 (D) A permit under ORS 673.150;

13 (E) Authorization to practice public accountancy in this state under ORS 673.153; or

14 (F) Admission to the roster of authorized accountants referred to in ORS 297.670.

15 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.

16 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS  
17 673.100, certificate, permit or registration or a person authorized to practice public accountancy in  
18 this state under ORS 673.153 is incompetent in the practice of public accountancy if the holder:

19 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge  
20 the duty owed to a client or the general public; or

21 (B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply  
22 principles or skills of the practice of public accountancy, as adopted by the board.

23 (d) Violation of any of the provisions of ORS 673.010 to 673.457.

24 (e) Violation of any of the provisions of ORS 297.405 to 297.555.

25 (f) Violation of any provision of the Code of Professional Conduct or accounting standards  
26 adopted by the board under ORS 673.445 or rules adopted by the board under ORS 670.310.

27 (g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign ju-  
28 risdiction or of the United States. However, such conduct may be considered only to the extent  
29 permissible under the provisions of ORS 670.280.

30 (h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresen-  
31 tation, under the laws of any state, of any foreign jurisdiction or of the United States.

32 (i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply in-  
33 formation required under the tax laws of any state, of any foreign jurisdiction or of the United  
34 States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of  
35 any false or fraudulent list, return, account, statement or other document, or of supplying any false  
36 or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or  
37 of the United States.

38 (j) Cancellation, revocation or suspension of, or refusal to renew, authority to practice as a  
39 certified public accountant or a public accountant in any state or foreign jurisdiction.

40 (k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdic-  
41 tion or any federal agency of the right to practice law, to practice as an enrolled agent before the  
42 Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law  
43 if the cancellation, suspension, revocation or refusal to renew was related to the practice of public  
44 accountancy or if dishonesty, fraud or deception was involved.

45 (L) Failure to comply with the continuing education requirements under ORS 673.165 unless

1 such requirements have been waived by the board.

2 (m) Failure to pay a civil penalty imposed by the board after the period for requesting a hearing  
 3 on the civil penalty terminates if the person or business organization against whom the penalty is  
 4 imposed has not requested a hearing, or after the period for seeking judicial review of the order  
 5 assessing the civil penalty has passed.

6 (n) Failure to comply with the terms of a consent agreement described in subsection (3) of this  
 7 section.

8 (o) Failure to comply with any reporting or other requirement established by the board by rule.

9 (p) Issuance of a cease and desist order against the person under subsection (8) of this section.

10 (3) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into  
 11 a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the  
 12 holder of any public accountant's license, the holder of any registration described in ORS 673.160,  
 13 the holder of any permit described in ORS 673.150 or the holder of any authorization described in  
 14 ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

15 (4) In addition to the causes in subsection (2) of this section, the board may take any of the  
 16 actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in  
 17 the practice of public accountancy.

18 (5) In lieu of or in addition to any action described in subsection (1) of this section, the board  
 19 may take any of the following actions:

20 (a) Require a holder of a permit under ORS 673.150 that provides compilation services or a  
 21 business organization registered under ORS 673.160 to undergo a peer review conducted as the  
 22 board may specify; or

23 (b) Require a holder of a permit under ORS 673.150 to complete any continuing professional  
 24 education programs the board may specify.

25 (6)(a) A licensee offering or providing professional services in another state or using the title  
 26 "certified public accountant" or any abbreviation for that term in another state is subject to disci-  
 27 plinary action in this state for actions taken by the licensee in the other state that constitute a  
 28 cause for disciplinary action under this section.

29 (b) The board shall investigate any complaint made by a board of accountancy of another state.

30 (7) In the case of a registered business organization, the board may take any of the actions de-  
 31 scribed in subsection (1) of this section for any of the following additional causes:

32 (a) The cancellation, revocation or suspension of, or refusal to renew, the authority to provide  
 33 professional services, in this state or any other jurisdiction, of any partner, officer, shareholder,  
 34 member, manager or owner of the business organization; or

35 (b) The cancellation, revocation or suspension of, or refusal to renew, the authority of the  
 36 business organization to practice public accountancy or provide other professional services in any  
 37 other state or foreign jurisdiction.

38 (8) If the board has reasonable cause to believe that any person has engaged, is engaging or is  
 39 about to engage in any violation of any provision of ORS 673.010 to 673.457 or any rule or order  
 40 adopted under ORS 673.010 to 673.457, the board may issue an order, subject to ORS 673.173, di-  
 41 rected to the person, and to any other person directly or indirectly controlling the person, to cease  
 42 and desist from the violation or threatened violation.

43 (9) Notwithstanding any protective order issued under ORCP 36 C, upon motion of the board,  
 44 the court shall order disclosure of materials or information subject to a protective order under  
 45 ORCP 36 C. The board may use the material or information to take disciplinary action under this

1 section.

2 (10) If the board takes disciplinary action under this section, the board may assess against the  
 3 person disciplined costs associated with the disciplinary action. An assessment under this subsection  
 4 is in addition to, and not in lieu of, any other action taken by the board. **Notwithstanding ORS**  
 5 **670.335**, moneys collected under this subsection shall be deposited in the [*Oregon Board of*  
 6 *Accountancy Account established in the General Fund pursuant to ORS 670.335*] **account established**  
 7 **by the board under ORS 182.470.**

8 **SECTION 3.** ORS 673.410 is amended to read:

9 673.410. (1) [*There is created an*] **The Oregon Board of Accountancy** [*consisting of seven*  
 10 *members.*] **is created as a semi-independent state agency subject to ORS 182.456 to 182.472.**

11 (2) Members of the board shall be appointed by the Governor for terms of three years, subject  
 12 to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.

13 (3) The board [*members shall be*] **consists of seven members**, as follows:

14 (a) Four must have a current permit as a certified public accountant under the laws of this state  
 15 in effect for at least five years, and be actively engaged in public accountancy practice.

16 (b) One must have a current permit as a certified public accountant under the laws of this state  
 17 in effect for at least five years, and be employed in private industry, education or government or  
 18 be actively engaged in public accountancy practice.

19 (c) One shall be a member of the general public.

20 (d) One must have a current license as a public accountant under the laws of this state in effect  
 21 for at least five years and be actively engaged in public accountancy practice.

22 (4) No person shall be eligible for reappointment after the person's third consecutive term until  
 23 a period at least equal to the appointed term has elapsed.

24 (5) The authority of the board to enforce the provisions of ORS 673.010 to 673.457 includes the  
 25 authority to regulate the practice of public accountancy by persons or business organizations hold-  
 26 ing certificates, licenses, permits or registrations issued under ORS 673.010 to 673.457.

27 **SECTION 4. The unexpended balances of amounts authorized to be expended by the**  
 28 **Oregon Board of Accountancy for the biennium beginning July 1, 2011, from revenues dedi-**  
 29 **cated, continuously appropriated, appropriated or otherwise made available for the purpose**  
 30 **of administering and enforcing the duties, functions and powers of the board, all moneys in**  
 31 **the Oregon Board of Accountancy Account established in the General Fund pursuant to ORS**  
 32 **670.335 on the operative date of this section and all moneys received by the board or placed**  
 33 **to the credit of the board and remaining unobligated and unexpended on the operative date**  
 34 **of this section shall be deposited in the account established by the board pursuant to ORS**  
 35 **182.470.**

36 **SECTION 5. The reestablishment of the Oregon Board of Accountancy as a semi-**  
 37 **independent state agency by the amendments to ORS 673.410 by section 3 of this 2011 Act**  
 38 **does not affect any action, proceeding or prosecution involving or with respect to the board**  
 39 **begun before and pending on the operative date specified in section 11 of this 2011 Act.**

40 **SECTION 6. Nothing in sections 4 to 8 of this 2011 Act or the amendments to ORS**  
 41 **182.454, 673.170 and 673.410 by sections 1 to 3 of this 2011 Act relieves a person of a liability,**  
 42 **duty or obligation with respect to the Oregon Board of Accountancy.**

43 **SECTION 7. Notwithstanding the reestablishment of the Oregon Board of Accountancy**  
 44 **as a semi-independent state agency by the amendments to ORS 673.410 by section 3 of this**  
 45 **2011 Act, the rules of the board in effect on the operative date of this section continue in**

1 effect until superseded or repealed by rules of the board.

2 **SECTION 8.** For the purpose of harmonizing and clarifying statutory law, the Legislative  
3 Counsel may substitute for words designating the “Oregon Board of Accountancy Account,”  
4 wherever they occur in statutory law, words designating the “account established by the  
5 Oregon Board of Accountancy under ORS 182.470.”

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7 **BUDGET COMMITTEE**

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9 **SECTION 9.** Section 10 of this 2011 Act is added to and made a part of ORS 673.010 to  
10 673.457.

11 **SECTION 10.** (1) The Oregon Board of Accountancy shall appoint six members to a  
12 budget committee. The board may take into account the recommendations of a statewide  
13 organization of accountants in making appointments to the committee.

14 (2) The committee shall make recommendations to the board on the biennial budget re-  
15 quired by ORS 182.462, and the board shall take into account the recommendations of the  
16 committee in preparing the biennial budget required by ORS 182.462.

17 (3) The term of each member of the committee is four years, but the members of the  
18 committee serve at the pleasure of the board. A member of the committee shall serve until  
19 a successor is appointed. If a vacancy occurs, the board shall make another appointment to  
20 become immediately effective for the unexpired term.

21 (4) The committee may adopt rules necessary for the operation of the committee.

22 (5) Members of the committee are not entitled to compensation or reimbursement for  
23 expenses and serve as volunteers on the committee.

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25 **OPERATIVE DATE**

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27 **SECTION 11.** (1) Sections 4 to 10 of this 2011 Act and the amendments to ORS 182.454,  
28 673.170 and 673.410 by sections 1 to 3 of this 2011 Act become operative on the later of July  
29 1, 2011, or 20 days after the effective date of this 2011 Act.

30 (2) The Oregon Board of Accountancy may take any action before the operative date  
31 specified in subsection (1) of this section to exercise, on and after the operative date specified  
32 in subsection (1) of this section, all of the duties, functions and powers conferred on the  
33 board by sections 4 to 10 of this 2011 Act and the amendments to ORS 182.454, 673.170 and  
34 673.410 by sections 1 to 3 of this 2011 Act.

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36 **UNIT CAPTIONS**

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38 **SECTION 12.** The unit captions used in this 2011 Act are provided only for the conven-  
39 ience of the reader and do not become part of the statutory law of this state or express any  
40 legislative intent in the enactment of this 2011 Act.

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42 **EMERGENCY CLAUSE**

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44 **SECTION 13.** This 2011 Act being necessary for the immediate preservation of the public  
45 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect

1 **on its passage.**

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