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## It's Time to Review Sarbanes-Oxley

By [Tom Feeney](#)

Last week's guilty verdict of 25 counts in the case against Enron executives, Ken Lay and Jeffery Skilling, demonstrates that the corporate governance laws in place prior to the passage of the Sarbanes-Oxley Act were effective in bringing those who defraud our investors to justice.

Post-Enron, there is general agreement that after Sarbanes-Oxley was passed, financial reporting reporter requirements are tighter, internal controls have improved, and there is more transparency in the overall auditing process than pre-Enron. However, data clearly shows that the cost of the implementation of a minor provision of the Act now outweighs the actual benefits of the entire Act.

Section 404 of SOX is only 168 words long but is regarded as the most burdensome part of this legislation. This section requires both an internal audit of financial accounting controls and an external audit. The implementation of these audits has been costly and time consuming for all businesses and unaffordable for many small and medium-sized businesses that are trying to compete in the global marketplace. The SEC initially estimated the costs to comply with Section 404 to be \$91,000 per company; some studies estimate that actual compliance costs have been 30 times that figure. And the indirect costs on our economy are incalculable.

As a result, many companies have chosen to list on foreign exchanges in lieu of listing on an U.S. exchange. The *Wall Street Journal* reported that in 2000 "nine out of every 10 dollars raised by foreign companies through new stock offerings were done in New York....But by 2005, the reverse was true: Nine of every 10 dollars were raised through new company listings in London or Luxembourg..."

America's century-old lead in world capital formation is being outsourced due to self-inflicted policy wounds. When we ask how America is actively chasing away capital investment, a chorus responds with "Sarbanes-Oxley 404" (SOX). Our competitors agree -- the London Exchange advertises itself as a "SOX Free" zone.

A recent American Enterprise Institute study concluded that SOX has imposed a net cost on the American economy of \$1.4 trillion. That is a 10% tax on the entire GDP of the United States. This hurts both employment growth and investors. Much of this superfluous regulatory tax can be eliminated by simply clarifying the 168 words in Section 404 that have caused so much confusion.

This is why I have introduced the COMPETE Act (Competitive and Open Markets that Protect and Enhance the Treatment of Entrepreneurs Act), to advance the reasonable application of SOX.

First, my legislation will allow smaller public companies to voluntarily opt-out of onerous Section 404 reporting requirements. They will still be required to maintain enhanced internal controls, more transparency, and prohibitions on conflicts of interest.

Secondly, the legislation instructs the SEC and PCAOB to define the standard of what is a true material weakness. This will allow auditors to focus on substantial issues truly affecting the investor's bottom line rather than auditing every insignificant transaction or accounting for every minor asset.

Thirdly, my legislation allows companies conducting an internal audit to receive technical advice from their external auditors. While PCAOB and external auditors claim that guidance has been issued to address this problem, the message is simply not getting through to auditors on the ground - resulting in an often hostile and costly relationship between the business and their auditing firms.

Lastly, under the COMPETE Act, all companies that have to comply with Section 404 will be subject to less frequent random external audits after first year of successful compliance.

My local paper, the *Orlando Business Journal* had it right when they said that "nobody favors further erosion of protection and confidence in corporations. At the same time, saddling smaller public companies with exorbitant accounting expenses isn't justified."

I believe it is time to review the effects of Sarbanes-Oxley; keep that which is a net advantage to investors, and reform or eliminate those provisions that are a net disadvantage to investors. Congress needs to help restore America's lead in the world's capital markets.

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