

**Subscribe**



Sign up now and get the best business technology insights

direct to your inbox.

- Daily Edge
- Business Tools & Templates
- Aligning IT & Business Goals
- Maximizing IT Investments

**SUBSCRIBE**

**Most Popular Posts**

- [LTE Versus WiMax Moves from Theoretical to Real](#)
- [Social Recruitment: Companies Try It, Largely Like It](#)
- [Smartphone Security Free Ride Will Soon Be Over](#)
- [Mobile Payments in Search of a Business Model](#)
- [HITECH Act Ramps up HIPAA Compliance Requirements](#)

**Recent Posts**

- [LTE Versus WiMax Moves from Theoretical to Real](#)
- [Mobile Payments in Search of a Business Model](#)
- [Social Recruitment: Companies Try It, Largely Like It](#)
- [Do Social Channels Help or Hinder Recruitment Efforts?](#)
- [Smartphone Security Free Ride Will Soon Be Over](#)
- [RFID Gains Leverage in the Data Center](#)
- [New Appliances Strive for 'Data Center in a Box'](#)
- [FTC Includes Social Media in Advertising Guideline Refresh](#)
- [Business Incubators Give Entrepreneurs Options in Down Economy](#)
- [Project Portfolio Management Helps City of Tacoma Get Priorities in Order](#)

# If Sarbanes-Oxley Was No More, Not Much Would Change

by [Lora Bentley](#), *IT Business Edge*  
Jan 5, 2009 12:00:00 AM

Since the Sarbanes-Oxley Act became law in 2002, there have been countless calls for the law to be toned down or repealed. For awhile after the November elections, they even seemed to get louder. Not long ago, a small Nevada accounting firm took a different tack. Beckstead & Watts, with the help of the Free Enterprise Fund, filed a federal lawsuit asking the court to declare the Public Company Accounting Oversight Board — and Sarbanes-Oxley — unconstitutional.

So far, the plaintiffs have been unsuccessful in their quest. Most recently, the U.S. Court of Appeals for the District of Columbia Circuit upheld the PCAOB's constitutionality and denied the plaintiffs' request for injunctive relief. Since there's no way to tell whether the U.S. Supreme Court will ever have any interest in hearing the case, or how it would rule if it did, Sarbanes-Oxley probably isn't going anywhere any time soon.

But indulge in a little speculation. What if the Supreme Court did hear the case and did decide Sarbox is unconstitutional? Or what if the legislature repealed the law — or at least excised the much maligned internal controls requirements of section 404?

David Kralik, Internet strategy director for [American Solutions](#), says there are venture capitalists he knows who have several companies they would take public tomorrow if Sarbanes-Oxley were repealed. Other companies would not opt to "go dark" (leave public exchanges) to avoid the cost of compliance. Small U.S. companies wouldn't run to list in London rather than registering here. Kralik says Sarbanes-Oxley is "so destructive ... wholesale repeal is the only option at this point." In other words, scrap it and start over.

Craig Carpenter, general counsel and marketing VP at records management software provider [Recommind](#), also has strong feelings about the law. "Sarbanes-Oxley has been a bludgeon instrument with little effectiveness. It has required Draconian 404 compliance procedures with little to no discernable benefit to investors." He says it is "highly unlikely" that the Supreme Court will find the law unconstitutional, or that Sarbox will be completely repealed. If it were, however, Carpenter says very little about how companies do business would change.

In the last six years, other requirements like the Federal Rules of Civil Procedure addressing e-discovery or SEC Rule 17-4(a) have come into play that also drive increased transparency and internal controls management. "Most enterprises view regulatory compliance and e-discovery preparedness as a single, homogeneous need," he says. "So whether the driver is Sarbanes-Oxley 404 compliance, SEC Rule 17-4(a) compliance, FCPA concerns, or e-discovery concerns, the issues and solutions are still essentially the same."

**By date:**

- [July 2009](#)
- [June 2009](#)
- [May 2009](#)
- [April 2009](#)
- [March 2009](#)
- [February 2009](#)
- [January 2009](#)
- [December 2008](#)
- [November 2008](#)
- [October 2008](#)
- [September 2008](#)
- [August 2008](#)
- [July 2008](#)
- [June 2008](#)
- [May 2008](#)
- [April 2008](#)
- [March 2008](#)
- [February 2008](#)

Sarbanes-Oxley Institute chairman Sanjay Anand echoes that sentiment — with one caveat. He says, "IT would continue to operate as it currently does, with maybe a few less curse words towards Sarbanes-Oxley." Having said that, though, he emphasizes that Sarbanes-Oxley, in and of itself, is not the problem. The problem lies in its implementation. **Critical Watch** founder and CIO Eva Bunker agrees, noting that "the core concept behind it is valid," but the implementation is burdensome in some circumstances.

Even Kralik, who advocates complete repeal of the law, admits that there are some aspects of Sarbanes-Oxley that won't really go away. "If shareholders want that level of transparency and accountability, they'll ask for it, and companies will do it anyway, as a matter of good business," he says.

And maybe that's the key. Ruth Horaczko, of the **Lyndon Group**, says, "Sarbanes-Oxley says you have to have internal controls over financial reporting. It doesn't tell you how to do that. It doesn't tell you how many key controls to have. It doesn't tell you when controls are enough. That's a management decision. Management needs to drive that." In Horaczko's opinion, it's not the government's place to explain how it should be done, or to make doing so easier on the company.

[Sphere: Related Content](#)



[Print](#)

[1 Comments](#)

[Permalink](#)

**Related Content**

**Topic:** [Strategic Planning](#)

- [Google's Tarnished Chrome: The Making of a Disaster](#)
- [No IT Spending Rebound This Year](#)
- [Microsoft to Continue 'Think Weeks'](#)

**Topic:** [Legislation and Regulation](#)

- [IASB Releases IFRS for Private Entities](#)
- [Create Job Applicant Screening Policies Up Front to Minimize Risk](#)
- [Resolving Identity: The Importance of Who's Who and the Search for the Perfect Engine](#)