



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5717 (Substitute H-1 as passed by the House)

Sponsor: Representative Susan Munsell

House Committee: Regulatory Affairs

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-13-96

CONTENT

The bill would repeal and replace provisions in the Occupational Code regulating certified public accountants. Among other things, the bill would include a definition of "certified public accountant" (CPA); permit a licensed CPA to receive contingent fees and commissions under certain circumstances; require both individuals and firms engaging in the practice of public accounting to be licensed; and require that persons intending only to use a title or designation of CPA be registered with the Department of Consumer and Industry Services (DCIS). The bill would delete, among other things, the current residency requirement to sit for the CPA exam, the requirement that qualifying experience be completed within the six-year period preceding examination for certification as a CPA, the biennial publication of a register containing a list of registered CPAs and firms of CPAs in the State, the position of executive secretary to the Board of Accountancy, and the Administrative Committee on Public Accountancy within the Department of Consumer and Industry Services. (Executive Order 1996-2, which renamed the Department of Commerce as the Department of Consumer and Industry Services, transferred the functions of the Administrative Committee on Public Accountancy to the Director of the DCIS.)

Many of the provisions of the bill are substantially the same as existing law. The changes are summarized below.

Definitions

"Certified public accountant" would mean an individual who was qualified by education, examination, and experience; and held a certificate as a certified public accountant under provisions of the bill to engage or offer to engage in the practice of public accounting.

"Firm" would mean a corporation, partnership, limited liability company, unincorporated association, sole proprietorship operating under an assumed name, or other legal entity.

"Practice of public accounting" would mean, in addition to the current definition under the Code, offering to render an opinion on or offering to attest to the reliability of a representation or estimate as to the accuracy of financial information being audited or reviewed. Additionally, the bill specifies that the practice of public accounting would include one or more of the following activities when performed or offered to be performed by a person holding himself or herself out as a CPA:

- The issuance of reports on financial statements.
- One or more kinds of management advisory, financial advisory, or consulting services.
- The preparation of tax returns.
- The furnishing of advice on tax matters.

CPA Certification

In addition to current requirements under the Code, the bill would require that an applicant for a certificate as a CPA have two years of qualifying experience under the direction and supervision of a licensed CPA in either the practice of public accounting with a governmental agency as currently provided under the Code, or the practice of public accounting with experience obtained in one financial audit and in all of the following areas:

- The application of a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records.
- The preparation of working papers that covered examination of accounts found in accounting records for audit, review, and compilation.
- The participation in planning a program of work, including the selection of the procedures to be followed, for audit, review, and compilation.
- The participation in the preparation of reports, including written explanations and comments on the findings of the examinations and the content of the accounting records.
- The participation in the preparation and analysis of financial statements together with explanations and notes.

The bill would delete a provision pertaining to reviewing a financial statement and supporting material that covers the financial condition and operations of entities engaged in three or more distinct lines of commercial or industrial business. The bill also specifies that auditing standards could be in accordance with generally accepted auditing standards or generally accepted government auditing standards.

Currently, individuals certified as CPAs from other states or foreign countries meeting similar qualification standards are issued certificates as CPAs for Michigan. The bill would expand those eligible under this provision to those certified under the authority of a country under U.S. jurisdiction. For those with certification from a country outside of U.S. jurisdiction, the bill would require that the individual also pass a board-approved examination on topics specific to the practice of public accounting in the United States.

Licensure

Currently, each individual certified as a CPA, or firm or corporation organized for the practice of public accounting, must be registered with the DCIS. A person is prohibited from holding himself or herself out as a CPA or practicing public accounting unless licensed by the Department. The bill instead would require an individual seeking to use a title authorized under the Occupational Code and engaging in the practice of public accounting to be licensed. A person wishing only to use the title would have to apply to be registered with the DCIS. Further, the bill specifies that in order to renew an individual license, a licensee would have to complete at least 40 hours of continuing education for each year since the issuance of the original license or the last renewal. At least eight of the 40 credit hours would have to be in the areas of auditing and accounting.

A firm organized to practice public accounting would have to be licensed and would have to provide a change in address to the Department within 30 days of the change. In addition, at least two-

thirds of the equity and voting rights of a firm would have to be held by individuals who were licensed in good standing as CPAs of this or another state or licensing jurisdiction acceptable to the board, and the principal officer and each officer or director having authority for the practice of public accounting by the firm would have to be licensed in good standing as a CPA in this or another state or an approved licensing jurisdiction.

Contingent Fees

"Contingent fee" would mean a fee established for the performance of a service pursuant to an arrangement in which no fee would be charged unless a specified finding or result was attained or in an arrangement in which the amount of the fee was dependent upon a finding or result of the service. A contingent fee would not include a fee fixed by a court or other public authority and, in tax matters, a fee determined based upon the results of judicial proceedings or the findings of a governmental agency.

The bill would permit a CPA to charge or receive a contingent fee. A licensee under the Code could not charge or receive a contingent fee, however, for the preparation of an original or amended tax return or claim for a tax refund, or during the period that the licensee or a licensee's firm was engaged to perform one or more of the following services or during the period of time covered by any historical financial statements involved in those services:

- An audit or review of a financial statement.
- A compilation of a financial statement when the licensee expected, or could reasonably expect, that a third party would use the financial statement and that the compilation report did not disclose a lack of independence.
- An examination of prospective financial information.

Commissions

The bill would permit CPAs to perform services for a commission, or receive a commission for services performed. A CPA would have to disclose the arrangement to the person to whom the CPA recommended or referred a product or service to which the commission related. A licensee would not be prohibited from paying or receiving a referral fee for recommending or referring a service involving the practice of public accounting if the payment or receipt of the referral fee were disclosed to the client. A licensee would be prohibited from receiving a commission for recommending or referring a product or service to a client or for causing to be recommended, referred, or supplied to a client a product or service during the period in which the licensee or his or her firm was engaged by the client to perform one or more of the following services or during the period of time covered by any historical financial statements involved in those services:

- An audit or review of a financial statement.
- A compilation of a financial statement when the licensee expected, or could reasonably expect, that a third party would use the financial statement and that the compilation report did not disclose a lack of independence.
- An examination of prospective financial information.

Penalties

The bill would add to the list of actions subject to penalties under the Code a violation of professional standards regarding the issuance of reports on financial statements; one or more kinds of management advisory, financial advisory, or consulting services; the preparation of tax

returns; or the furnishing of advice on tax matters. The bill also specifies that a violation of Article 7 or a rule promulgated under the article would be subject to the penalties under the Code, which include a civil fine of up to \$10,000 to be paid to the Department. The bill would retain the current provision that a person or firm who engages in the practice of public accounting without a license or who uses the title of CPA is guilty of a misdemeanor punishable by a fine of up to \$5,000 or imprisonment for up to one year, or both.

MCL 339.720 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

S9596\S5717SA

This Analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.