

Senate Fiscal Agency  
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**SFA**



**BILL ANALYSIS**

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Senate Bill 227 (as enrolled)  
Senate Bill 228 (as enrolled)  
Sponsor: Senator Michael J. Bouchard  
Senate Committee: Economic Development, International Trade and Regulatory Affairs  
House Committee: Regulatory Affairs

**PUBLIC ACT 122 of 1997**  
**PUBLIC ACT 123 of 1997**

Date Completed: 6-2-98

### **RATIONALE**

Article 20 of the Occupational Code allows a firm to engage in the practice of architecture, professional engineering, or professional surveying in Michigan, if at least two-thirds of the firm's principals are licensees in those professions. The Code also requires that a nonlicensed principal and his or her firm apply for and receive an approval from the Department of Consumer and Industry Services (DCIS) to engage in the practice of architecture, professional engineering, or professional surveying, if the conduct of the firm and its principals complies with rules promulgated by the DCIS. Public Act 23 of 1993 created the Michigan Limited Liability Company (LLC) Act to provide certain liability protections and tax advantages to those who choose to organize their business as an LLC. The LLC Act, however, requires that *each* member and manager of a professional LLC be a licensed person in one or more of the professional services rendered by the company.

Although these provisions of the Occupational Code and the LLC Act may appear to be in conflict, the Michigan Attorney General ruled that they are not and that a person who was not licensed as an architect could not be a member of an LLC formed solely to provide the professional service of an architect (Opinion of the Attorney General (OAG), 1995-1996, No. 6845 (April 26, 1995)). Some people felt, however, that firms providing architectural, engineering, and surveying professional services under the two-thirds membership requirement of the Occupational Code should be allowed to secure the liability protections and tax benefits available to a business organized as an LLC. (See **BACKGROUND** for a description of the OAG.)

### **CONTENT**

Senate Bill 227 amended Article 20 of the Occupational Code, which regulates architects, professional engineers, and land surveyors, to include a limited liability company in the Article's definition of "firm" (which also means a sole proprietorship, partnership, or corporation through which a person licensed under Article 20 offers or provides a service to the public). In addition, the bill added a member of an LLC to the Article's definition of "principal" (which also includes a sole proprietor, partner, or the president, vice-president, secretary, treasurer, or director of a corporation).

Senate Bill 228 amended the Michigan Limited Liability Company Act to specify that an LLC may engage in the practice of architecture, professional engineering, or professional surveying in Michigan if at least two-thirds of the company's members or managers are licensed in this State to render one or more of the professional services offered. For a professional LLC to engage in the practice of architecture, professional engineering, or professional surveying, however, all members and managers must be licensed in Michigan to render one or more of the professional services offered.

In addition, the bill specifies that a professional LLC may engage in the practice of public accounting in Michigan if at least two-thirds of the equity and voting rights of the professional LLC are held directly or beneficially by people who are licensed in good standing as certified public accountants (CPAs) acceptable to the board of accountancy created in the Occupational Code (MCL 339.721).

MCL 339.2001 (S.B. 227)  
450.4904 (S.B. 228)

### **BACKGROUND**

Opinion of the Attorney General, 1995-1996, No. 6845 was issued in response to a legislator's inquiring whether a person who was not licensed as an architect could be a member of a limited liability company formed solely to provide the professional service of architecture. In examining the construction of the LLC Act, the OAG pointed out that Article 9, Section 901 specifies that a professional LLC and its members and managers are subject to Article 9 and that Article 9 takes precedence over any other provision of the Act in event of conflict. Article 9, Section 904 of the LLC Act requires that, for a professional LLC, "...each member and manager must be a licensed person in 1 or more of the professional services rendered by the company" (emphasis included in the OAG).

While noting that architects are licensed under the Occupational Code and that the Code allows a firm to "...engage in the practice of architecture, professional engineering, or professional surveying...if not less than 2/3 of the principals of the firm are licensees", the OAG pointed out that the Occupational Code defined "firm" as "a sole proprietorship, partnership, or corporation...". Two licensed architects and one nonlicensed individual, then, could form a partnership or corporation to provide professional architectural services, but, since an LLC is an unincorporated association, the OAG reasoned, an LLC was not included in the Occupational Code's definition of "firm", and there was no conflict between the Occupational Code's two-thirds membership provision and the LLC Act's full membership requirement.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Senate Bill 228 extended the Michigan LLC Act's liability protections and tax benefits to architectural, engineering, and surveying firms in which not every member is a licensed architect, engineer, or surveyor, by allowing an LLC to engage in those practices if at least two-thirds of the LLC's managers or members are licensed in those fields. (A professional LLC, however, may engage in those practices only if all members or managers are licensed.) Since the LLC Act's general licensure requirement for members of a firm is more strict than the membership requirements for architectural, engineering, and surveying firms operating under the Occupational Code, those

business operations with an unlicensed member previously were unable to avail themselves of the benefits of operating as a limited liability company rather than as a corporation or partnership. One of the aims of the LLC Act, according to its proponents, was to improve Michigan's business climate, especially for small businesses, by allowing persons to convert an existing enterprise to an LLC. Senate Bill 228 helps to advance that goal by making the LLC Act's membership licensure requirements for an architectural, engineering, or surveying business consistent with the membership requirements for those operations under the Occupational Code.

In addition, the bill allows an accounting firm to operate as a professional LLC if at least two-thirds of its equity and voting rights are held by CPAs.

### **Opposing Argument**

Senate Bill 228 is not quite consistent with the Occupational Code's membership requirements. Although the Code allows a firm to engage in the business of architecture, engineering, or surveying if at least two-thirds of its members are licensed, it also requires the nonlicensed principal and the firm to apply for and receive approval from the DCIS to engage in those professional practices. Senate Bill 228 should include a similar requirement for operation as an LLC.

**Response:** It may not be necessary to include that requirement in the LLC Act, because Senate Bill 227 includes an LLC in the Occupational Code's definition of "firm" and a member of an LLC in the definition of "principal". An LLC, then, is subject to the Code's requirement that a firm's nonlicensed principal secure the DCIS Director's approval to engage in the firm's professional practices.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

### **A9798\S227EA**

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.