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BILL ANALYSIS

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Senate Bills 722, 723, and 724 (as enrolled) **PUBLIC ACTS 277, 278, & 279 of 2005**
Sponsor: Senator Jim Barcia (S.B. 722)
Senator Michael D. Bishop (S.B. 723 & 724)
Senate Committee: Banking and Financial Institutions
House Committee: Banking and Financial Services

Date Completed: 3-14-06

CONTENT

Senate Bills 722, 723, and 724 amended, respectively, the State License Fee Act, the Occupational Code, and the Code of Criminal Procedure, to do all of the following:

- **Increase the fees for application, licensure, registration, and temporary practice to engage in public accounting.**
- **Impose a peer review fee on those engaging in, or seeking to engage in, public accounting.**
- **Create the "Accountancy Enforcement Fund" for the Department of Labor and Economic Growth (DLEG) to use in enforcing Article 7 (Public Accounting) of the Occupational Code.**
- **Require licensed firms and sole practitioners to participate in a peer review program established by DLEG for renewal or relicensure.**
- **Delete a provision allowing a person to sit for a certified public accountant (CPA) exam if he or she was scheduled to receive an appropriate bachelor's degree within 30 days after the exam.**
- **Allow a CPA to disclose otherwise confidential information to a law enforcement or governmental agency if the CPA has reason to believe a client has violated the law.**
- **Exempt certain information in DLEG's possession from the Freedom of Information Act (FOIA).**
- **Elevate from a misdemeanor to a felony, and increase the penalties for, the unauthorized practice of public accounting and the misuse of titles and abbreviations restricted for CPAs, and include that violation in the sentencing guidelines.**

The bills took effect on December 19, 2005.

Senate Bill 722

Fees

The bill deleted and replaced the fee schedule for a person certified, registered, or licensed or seeking certification, registration, or licensure to engage in the practice of public accounting under Article 7 of the Occupational Code. The previous fees were as follows:

- Application processing fee: $25.
- Annual fee for license to practice and registration of certificate: $40 through September 30, 2007, or $25 beginning October 1, 2007.
- Annual fee for an individual's registration of certificate: $15 through September 30, 2007, or $10 beginning October 1, 2007.
- Annual fee for a firm's or corporation's registration: $35 through September 30, 2007, or $25 beginning October 1, 2007.
- Annual branch office registration fee: $25.
- Permit for temporary practice: $15.

Under the bill, instead, the fees are the following:

- Application processing for individuals and firms: $100.

-- License to practice for individual and firms, per year: $100.
-- Individual registration, per year: $25.
-- Permit for temporary practice, per year: $100.
-- Peer review: $100.

Fund

The bill created the Accountancy Enforcement Fund in the State Treasury. The Fund must be administered by DLEG. Beginning October 1, 2006, the money representing the increase in fees under the bill and the peer review fee must be deposited into the Fund. The Department must use the Fund for the enforcement of Article 7 of the Occupational Code regarding unlicensed activity, licensee and registrant disciplinary actions, and the peer review program conducted by the State Board of Accountancy, as well as to reimburse the Attorney General for expenses incurred in conducting prosecutions of any unlicensed practice and disciplinary actions. A reasonable amount of money in the Fund may be used for expenses regarding participation in national accounting organizations essential to the regulation of CPAs, as determined and approved by DLEG. Any unspent balance in the Fund at the end of a fiscal year must carry forward to the next fiscal year.

Senate Bill 723

Peer Review

Under the bill, beginning March 1, 2007, each licensed firm and sole practitioner performing attest services, including audits, reviews, and compilations relied upon by third parties, must participate in a peer review program established by DLEG rule and approved by the State Board of Accountancy. At the time of renewal or relicensure, an applicant must submit to DLEG proof of peer review obtained within the three years immediately preceding the application. A firm or sole practitioner required to participate in a peer review program must notify DLEG within 30 days after receiving an adverse report or second modified peer review report. Verbal testimony or documents, or both, pertaining to a peer review must be considered confidential and are exempt from disclosure to DLEG, except in the case of an adverse or second consecutive modified opinion.

Educational Requirement

Under Article 7, an individual who has completed a curriculum required for a baccalaureate degree with a concentration in accounting at an educational institution approved by the Board may sit for an examination in accounting, auditing, and other related subjects required for a person to apply for a certificate as a CPA.

Previously, an individual was considered to have fulfilled this education requirement if he or she was scheduled to receive his or her baccalaureate degree within 30 days after the date of the examination, as certified by the chief academic officer of the educational institution. If an individual failed to fulfill the institution's educational requirements within 30 days of the examination, the Board could not credit the exam results to the applicant. The bill deleted these provisions.

Disclosure of Information

Article 7 prohibits a licensee, or a person employed by a licensee, from disclosing or divulging, or being required to disclose or divulge, information relative to and in connection with an examination or audit of, or report on, books, records, or accounts that he or she was employed to make, except by written permission of the client or the client's heir, successor, or personal representative. That prohibition, however, does not prohibit either of the following:

-- A CPA, whose professional competence has been challenged in a court of law or before an administrative agency, from disclosing information otherwise confidential and privileged as part of a defense in the court action or administrative hearing.
-- The disclosure of information required to be disclosed in the course of practice monitoring programs and ethical investigations conducted by a licensed CPA.

Under the bill, the prohibition also does not prohibit a licensee or a person employed by a licensee from disclosing information otherwise privileged and confidential, to appropriate law enforcement or governmental agencies when the licensee or employee has knowledge that forms a reasonable basis to believe that a client has committed a violation of Federal or State law or a local governmental ordinance.

The bill also specifies that documents or records in DLEG's possession pertaining to a review, an investigation, or disciplinary actions under Article 7 are exempt from disclosure under FOIA, unless the records or documents are used for either or both of the following purposes:

-- As evidence in a contested case held by DLEG.
-- As a basis for formal action by DLEG and until the action is resolved by a final order issued by the Board.

Penalties

Misuse of CPA Title & Unauthorized Practice. Under Section 723 of the Code, each licensed or registered individual holder of a certificate as a certified public accountant is known as "certified public accountant", and a person may not use that title or the abbreviation "CPA" or any other word, words, letters, or figures to indicate the he or she is a certified public accountant unless the use is specifically approved by the Board. Use of the terms "certified accountant", "chartered accountant", "public accountant", and "registered accountant" and the abbreviations "C.A.", "P.A.", and "R.A." are specifically prohibited as being misleading to the public. Similar provisions regarding the use of those titles and abbreviations apply to firms.

Except as otherwise allowed, a person may not engage in the practice of public accounting unless he or she holds a certificate as a CPA and a license as a CPA.

Unless use of a term is specifically approved by the Board, the display or uttering by a person of a card, sign, advertisement, directory listing, or other printed, engraved, or written instrument or device bearing a person's name in conjunction with a title or abbreviation reserved for CPAs is prima facie evidence that the person caused or procured the display or uttering. Evidence of the commission of a single prohibited act is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

A violation of Section 723 previously was a misdemeanor punishable by a maximum fine of $5,000, up to one year's imprisonment, or both. Under the bill, a violation is a felony, punishable by up to five years' imprisonment, a maximum fine of $25,000, or both, and the Attorney General or the prosecuting attorney of a county may bring an action in a court of competent jurisdiction to enforce this provision.

In addition, the bill specifies that a person who violates this section, or a rule or order promulgated or issued under or related to it, is liable for an administrative fine payable to DLEG of up to $25,000 per violation. The Department may conduct an investigation and proceed under Article 5 (Complaints, Hearings, Petitions) to enforce this provision.

Other Article 7 Violations. The bill specifies that a person who violates Article 7, or a rule or order promulgated or issued under or related to Article 7, is liable for an administrative fine payable to DLEG of up to $25,000 per violation, notwithstanding Section 602(e). (That section provides for a maximum fine of $10,000 payable to DLEG for violations of the Code. The bill refers to an "administrative" fine, rather than a "civil" fine.)

The bill also requires a licensee or registrant to report to DLEG in writing or electronically within 30 days after a final determination rendered by a Federal or state administrative agency or a judgment or conviction issued by a Federal court, a state court, or any other court of record regarding a violation in which dishonesty, fraud, or negligence is an element of that determination, order, judgment, or conviction.

State Board of Accountancy

Article 7 creates the State Board of Accountancy. Six members of the Board must be CPAs who hold a certificate as a CPA, who are licensed under the Code, and who have practiced in Michigan as CPAs for at least five years. Three members must represent the general public; one of those individuals must be an attorney who is a member in good standing of the State Bar. The bill requires that one of the nine Board members be a full-time instructor of accounting above the elementary level at an accredited college or university.

"Affected Person"

Article 6 (Violations and Penalties) prohibits a person from engaging in or attempting to engage in the practice of an occupation regulated under the Code or using a title designated in the Code, unless the person possesses a license or registration issued by DLEG for that occupation. It also prohibits a school, institution, or person from operating or attempting to operate a barber college, school of cosmetology, or real estate school unless the school, institution, or person is licensed or approved by DLEG. Article 6 provides that an "affected person" may maintain injunctive action to restrain or prevent a person from violating those prohibitions. If successful in obtaining injunctive relief, the affected person is entitled to actual costs and attorney fees.

"Affected person" means a person directly affected by the actions of a person suspected of violating the prohibitions described above and includes a board established pursuant to the Code, a person who has used the services of the person committing the violation, or a private association composed primarily of members of the occupation in which the violator is engaging or attempting to engage or using a restricted title. The bill includes a licensee or registrant in the definition of "affected person".

Senate Bill 724 (S-1)

The bill includes the unauthorized practice of public accounting in the sentencing guidelines. The offense is a Class E felony against the public trust, with a statutory maximum sentence of five years' imprisonment.

The bill was tie-barred to Senate Bill 723.

MCL 338.2211 (S.B. 722)
339.601 et al. (S.B. 723)
777.13p (S.B. 724)

BACKGROUND

The Federal Sarbanes-Oxley Act of 2002 requires each accountancy licensing entity to review state laws and rules regulating public accountants to determine if they properly protect individuals and companies who use the services of public accountants. The Michigan State Board of Accountancy (MSBA) spent 18 months reviewing Articles 1 through 7 of the Occupational Code and the DLEG administrative rules relating to public accountancy.

The MSBA review resulted in recommended changes to Michigan law, including requiring peer review for licensure of any firm performing attest services; adding an exception to confidentiality provisions enabling CPAs or individuals employed by licensees to disclose information to law enforcement or government agencies if the individual knows of a violation of law; recommending increased enforcement of licensing laws, including enhanced penalties for violations; mandating that a member of the MSBA be an accounting educator; requiring self-reporting of certain crimes by licensees; and increasing licensing and associated fees.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 722 increases the license and registration fees collected by the Board of Accountancy to regulate the occupation. This new revenue will be deposited into an enforcement fund that will be used to support the enforcement and peer review activities outlined in Senate Bill 722 and 723. Based on FY 2004-05 licensee data, it is estimated that the fee increase will generate $1.7 million on a biennial basis. Additionally, Senate Bill 722 creates a new fee to support the peer review activities; this fee will generate approximately $334,200 for each triennial period if every firm participates. The amount will vary by participation level.

The amount of revenue generated by the administrative fine under Senate Bill 723 will depend on the number of cases that result in a determination of a violation of the Code.

The criminal penalties in Senate Bills 723 and 724 will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of the unauthorized practice of public accounting. Local governments will incur the cost of incarceration in local facilities, which varies by county. The State will incur the cost of felony probation at an annual average cost of $2,000, as well as the cost of incarceration in a State facility at an average annual cost of $30,000.

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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.