

STORAGE NAME: h0947a.fs

DATE: April 3, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 947

RELATING TO: Public Accountancy

SPONSOR(S): Representatives Safley and Lippman

STATUTE(S) AFFECTED: ss. 473.309, 473.319, 473.3205, and 473.323, F.S.

COMPANION BILL(S): CS/SB 1726

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCIAL SERVICES YEAS 12 NAYS 0

(2)

(3)

(4)

(5)

I. SUMMARY:

This bill revises the practice requirements for partnerships, corporations and limited liability companies that provide public accountant services. Presently, all owners of a business entity providing these services must be licensed as a CPA, and every owner residing in Florida must be licensed in Florida. Any corporate officer who directs the practice of accounting must be licensed in some state. Certified public accountants generally are not allowed to accept contingent fees (with one narrow exception), to pay commissions for client referrals, or to accept referral fees related to products or services.

Under the bill, business entities may practice accounting if two-thirds of the controlling ownership is comprised of licensed CPAs. At least one owner of the public accounting entity must obtain a Florida license, though other owners may provide services in Florida. Noncertified accountants who work for the business entity as their full-time occupation may become owners and, as long as a corporation providing public accounting services has a CPA as its chief corporate officer, a subordinate officer or director may have authority over the firm's practice. Additionally, the authority of public accounting firms to use contingent fee arrangements, to use commissions for client development, and to accept referral fees is expanded, subject to disclosure to the client. The bill imposes sanctions for failure to comply with the disclosure requirement.

There is no fiscal impact on state or local government.

The Committee on Financial Services adopted four amendments which are explained more fully in Section VI below.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 473, F.S., governs the practice of public accounting in Florida, as administered by the Board of Accountancy of the Division of Certified Public Accounting within the Department of Business and Professional Regulation. Section 473.309, F.S., contains guidelines under which business entities (i.e., partnerships, professional service corporations, or limited liability companies) may engage in the practice of public accounting. Under current law, business entities are allowed to practice only when all owners in the organizational structure, be they partners, shareholders or members, are CPAs licensed in some state. Additionally, at least one of the owners, and any owner who resides in this state, must be a CPA licensed in Florida. If the particular entity is a corporation, then it must be a professional service corporation, organized in Florida, under Chapter 621, F.S., or in another state. Additionally, the principal corporate officer, and any director or officer that direct's the firm's public accounting practice must be a CPA licensed in some state.

Chapter 621 authorizes the creation of professional corporations or limited liability companies for the sole and specific purpose of rendering a professional service to the public. Authorized services include accountancy, medical and legal. The members of a limited liability company, or the shareholders of a professional corporation may be comprised of individuals duly authorized to offer the same professional service as the company or corporation with which they are affiliated, or, other professional corporations or limited liability companies licensed to provide the same professional service.

A difference of interpretation exists between the Board of Accountancy and the Joint Administrative Procedures Committee (JAPC) over which partnerships (general, limited and limited liability) are authorized to practice public accounting. The JAPC recommended the law be amended to specifically reference all partnerships recognized in Florida law, rather than a generic reference to "partnership," in order to clearly authorize rules extending licensure requirements of public accountants, including those for minimum capitalization and public liability insurance, to limited liability partnerships.

Public accounting services may not, as a rule, be offered on a contingent fee basis. The exception occurs when a federal, state or other taxing authority, or a legal authority, such as a court, establishes and imposes a tax obligation. In this case, a CPA may render services to the taxpayer on a contingent fee based upon a favorable disposition of the obligation.

Licensed CPAs may not pay commissions for client development, or accept compensation for the sale of products or services, except in the case where a CPA firm is purchased, where equity issues are resolved following the retirement of a member of the practice, or where one accountant takes over responsibility for a client from another accountant.

B. EFFECT OF PROPOSED CHANGES:

Partnerships, general corporations and limited liability companies would be licensed to provide public accounting services under the following criteria: (i) the controlling ownership of the entity is comprised of at least two-thirds CPAs licensed in some state; (ii) one owner is licensed in Florida; (iii) noncertified accountants, for whom the business entity is their principal occupation, may become owners; and (iv) the chief corporate officer is a CPA, while subordinates may direct the firm's practice of public accounting.

Public accounting firms would enjoy broader authority to use contingent fee arrangements when related to accounting services provided under management or consulting contracts. The bill would retain existing restrictions on contingent fee arrangements when a CPA renders services relating to preparation of financial statements and opinions relating thereto, or attestation to financial information. Public accounting firms also would enjoy broader authority to use commissions and accept referral fees, for a similar scope of services as authorized for contingent fee arrangements. In cases where commissions and referral fees are allowed, the licensee would have to first disclose receipt of such to the client. A licensee failing to make this disclosure could be sanctioned.

The bill further amends section 473.309, F.S., to specify that a business entity is engaged in the practice of public accounting if its employees are so engaged. The bill further authorizes the practice of public accounting in all forms of partnership recognized by Florida law, which addresses the different interpretations over the authority of limited liability partnerships to practice public accounting.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Board of Accountancy will be required to regulate business entities with more diverse organizational structures and operational practices.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

Not applicable.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. Business entities will face fewer restrictions and possess greater flexibility to practice public accounting.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

No.

- (4) Are families required to participate in a program?

No.

(5) Are families penalized for not participating in a program?

No.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

(1) parents and guardians?

(2) service providers?

(3) government employees/agencies?

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 473.309, F.S., to revise the practice requirements for partnerships, corporations and limited liability companies that provide public accountant services. Under the bill, a business entity is considered to be engaged in the practice of public accounting if its employees are engaged in the practice of public accounting. This means that any business entity whose employees are engaged in the practice of public accounting, as defined in s. 473.302, F.S., must be licensed as a public accounting entity.

Partnerships would have to meet the following requirements to practice public accounting: (1) the firm must be a form of partnership recognized in Florida law; (2) two-thirds of the partners must be CPAs licensed in some state, as opposed to present law, requiring that that every partner be a CPA in some state; (3) at least one partner is a licensed CPA in Florida, while other Florida-resident partners may practice. Present law requires every resident partner be licensed in Florida; (4) any noncertified public accountant partners must have the partnership's business as their principal occupation; and (5) the partnership is generally in compliance with minimum capitalization and liability insurance requirements.

Requirements for corporations are revised as follows: (1) the legal status can be as a general corporation rather than a professional service corporation; (2) the shareholders must consist of two-thirds CPAs licensed in some state, rather than every shareholder

as under present law; (3) the chief corporate officer must be a CPA licensed in some state, while a subordinate officer or director may direct the firm's practice of public accounting; (4) non-certified accountants may be shareholders, provided that the corporation's business is the principal occupation of the respective accountants; and (5) at least one shareholder must be licensed as a CPA in Florida, while other Florida-resident shareholders may work in the firm's practice in Florida.

Requirements for limited liability companies are revised in a manner similar to that of corporations, but relating to limited liability companies and members.

Section 2. Amends s. 473.319, F.S., to allow CPAs to accept contingent fees when rendering accounting expertise in consulting arrangements, but not when providing services relating to tax filings or services defined in s. 473.302(5)(a), F.S. (including the expression of an opinion on financial statements, the attestation or expression of an opinion as to the reliability or fairness of financial information, or the preparation of financial statements). Presently, contingent fee arrangements are allowed only in the narrow circumstance where the CPA assists a taxpayer in resolving a tax obligation imposed by a taxing or legal authority. The bill expands the authority for contingent fee arrangements to a class of services, without regard to the specific issue involved.

Section 3. Amends s. 473.3205, F.S., to allow CPAs to accept commissions or referral fees except when providing certain services defined in s. 473.302(5)(a), F.S. These include the expression of an opinion on financial statements, the attestation or expression of an opinion as to the reliability or fairness of financial information, or the preparation of financial statements. The bill requires a CPA who accepts such a commission or referral fee to disclose same to the client in writing, in accordance with rules adopted by the board.

Section 4. Amends s. 473.323, F.S., to add as an additional ground for disciplinary action by the board, the failure of a CPA to make written disclosures required by law or rule.

Section 5. The bill takes effect on October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Any limited liability partnership that chooses to practice public accounting as a result of this bill may incur expenses to meet existing capitalization and liability insurance requirements, which have not previously been required of partnerships.

2. Direct Private Sector Benefits:

Business entities may gain the opportunity to practice public accounting where they would have been unable to do so in the past.

3. Effects on Competition, Private Enterprise and Employment Markets:

The bill may create additional opportunities for the practice of public accounting through a wider variety of business entities, and should allow firms operating in that marketplace greater flexibility. The bill also will allow CPA firms greater expansion opportunities by developing clients through commissions, and referral fees for certain products or services.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

B. REDUCTION OF REVENUE RAISING AUTHORITY:

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Financial Services adopted four amendments at its meeting on April 3, 1997. The amendments revise the bill as follows:

<u>No.</u>	<u>Description</u>	<u>Page/Line</u>
1	inserts "at least." Clarifies that ownership requirement for all forms of entities must be comprised of at least two-thirds CPAs, rather than exactly two-thirds.	2-3/variou
2	Technical. Corrects reference from "partner" to "shareholder"	3/6
3	Technical. Corrects reference from "partner" to "member"	3/27
4	Conforming - clarifies that licensure waiver granted to CPAs as investment advisers applies only when the CPA services are provided incidental to the regular practice of public accounting.	5/20

STORAGE NAME: h0947a.fs

DATE: April 3, 1997

PAGE 10

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

E. LEON JACOBS, JR.

STEPHEN HOGGE