

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 987 Public Accountancy  
**SPONSOR(S):** Careers and Competition Subcommittee, Gruters and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1348

| REFERENCE  | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Careers & Competition Subcommittee                                | 12 Y, 0 N, As<br>CS | Wright  | Anstead                                  |
| 2) Government Operations & Technology<br>Appropriations Subcommittee | 11 Y, 0 N           | Topp    | Topp                                     |
| 3) Commerce Committee  |                     |         |  |

### SUMMARY ANALYSIS

The Board of Accountancy (Board) within the Department of Business and Professional Regulation (DBPR) regulates the practice of public accountancy in the state. In order to practice public accountancy in Florida, individuals and firms must be licensed. An individual licensee is called a certified public accountant, or "CPA." Currently, there is an exemption to licensure available to certain out-of-state CPAs.

The bill will allow out-of-state CPA firms that do not have a Florida license to practice public accounting in Florida without a license if the firm:

- Complies with the requirements for business entities practicing public accounting,
- Is enrolled in a peer review program,
- Performs services through an individual with practice privileges under an exception to Florida licensing requirements, and
- Lawfully performs services in a state where the Board has determined that the licensing standards of that state are substantially equivalent to the requirements of the Uniform Accountancy Act (UAA).

The bill will allow the Board to discipline CPAs or firms if their right to practice public accounting has been suspended or revoked by the Public Company Accounting Oversight Board, a nonprofit corporation established by the United States Congress to oversee the audits of public companies.

The bill updates the statutory reference to the UAA to the most current edition and clarifies the definition of "client" to align with the definition in the UAA.

The bill is expected to have a minimal negative fiscal impact on state government.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### *Board of Accountancy*

The Board of Accountancy within DBPR is the agency charged with regulating the practice of public accountancy in Florida.<sup>1</sup> The Division of Certified Public Accounting (Division) performs for the Board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, investigative services, and those services in ch. 455, F.S., necessary to perform the Board's duties.<sup>2</sup>

###### *Practice of Public Accountancy in Florida*

To perform public accounting in Florida, a person must be licensed by the Board as a certified public accountant (CPA) or a firm. The practice of public accounting means:

Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;<sup>3</sup>

"Client" means any person, public officer, corporation, association, or other organization or entity, either public or private, who consults a CPA with the purpose of obtaining accounting services.<sup>4</sup>

Each licensed CPA or firm is subject to discipline by the Board for committing violations of the practice act. This includes having CPA practice privileges suspended or revoked by any state or federal agency.<sup>5</sup>

Licensed firms performing public accounting work must conform to the following practice requirements for business entities:

- If a firm is a partnership:
  - It must be a form of partnership recognized under Florida law;
  - Partners owning at least 51 percent of the financial interest and voting rights of the partnership are CPAs in some state and any partner CPAs residing in Florida must be actively licensed in Florida;
  - At least one partner must be actively licensed in Florida or qualify for a licensing exemption;
  - All partners who are not CPAs in any state are engaged in the business of the partnership as their principal occupation;

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<sup>1</sup> s. 20.165(4)(c), F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, *Division of Certified Public Accounting*, <http://www.myfloridalicense.com/dbpr/cpa/index.html> (last visited March 11, 2017).

<sup>3</sup> s. 473.302(8)(a), F.S.

<sup>4</sup> s. 473.316, F.S.

<sup>5</sup> s. 473.323(1)(j), F.S.

- It is in compliance with rules adopted by the Board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance; and
- It is currently licensed pursuant to s. 473.3101, F.S.
- If a firm is a corporation:
  - It must be duly organized in Florida or some other state;
  - Shareholders of the corporation owning at least 51 percent of the financial interest and voting rights of the corporation are CPAs in some state and are principally engaged in the business of the corporation. Each shareholder CPA who is domiciled in Florida is actively licensed in Florida;
  - The principal officer of the corporation is a CPA in some state;
  - At least one shareholder must be actively licensed in Florida or qualify for a licensing exemption;
  - All shareholders who are not CPAs in any state are engaged in the business of the corporation as their principal occupation;
  - It is in compliance with rules adopted by the Board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance; and
  - It is currently licensed pursuant to s. 473.3101, F.S.
- If a firm is a limited liability company:
  - It must be duly organized in Florida or some other state;
  - Members of the limited liability company owning at least 51 percent of the financial interest and voting rights of the company are CPAs in some state and any member CPAs who are domiciled in Florida must be actively licensed in Florida;
  - At least one member must be actively licensed in Florida or qualify for a licensing exemption;
  - All members who are not CPAs in any state are engaged in the business of the company as their principal occupation;
  - It is in compliance with rules adopted by the Board pertaining to minimum capitalization, letters of credit, and adequate public liability insurance; and
  - It is currently licensed pursuant to s. 473.3101, F.S.

Generally, licensed firms must be enrolled in a peer review program to practice public accountancy in Florida. A “peer review program” is a program in which one or more independent CPAs study, appraise, or review one or more aspects of the professional work of the licensee.<sup>6</sup>

#### *Exceptions to Licensing Requirements*

Pursuant to s. 473.3141, F.S., an individual may provide public accounting services in this state without obtaining a license under the Board or notifying or registering with the Board or paying a fee if he or she:

- holds a valid license as a CPA from a state that the Board or its designee has determined by rule to have adopted standards that are substantially equivalent to the certificate requirements in s. 5 of the Uniform Accountancy Act (UAA) in the issuance of licenses; or
- holds a valid license as a CPA from a state that has not been approved by the Board as having adopted standards in substantial equivalence with s. 5 of the UAA, but obtains verification from the Board, or its designee, as determined by rule, that the individual’s certified public accountant qualifications are substantially equivalent to the certificate requirements in s. 5 of the UAA.

The Board may issue temporary licenses to CPAs or firms that do not qualify for the exception for the purpose of enabling them or their employees to perform specific engagements involving the practice of public accountancy in this state. No temporary license shall be valid for more than 90 days after its issuance, and no license shall cover more than one engagement. After the expiration of 90 days, a new

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<sup>6</sup> s. 473.3125, F.S.

license shall be required. Generally, a temporary license shall not be required of CPAs or firms entering this state solely for the purpose of preparing federal tax returns or advising as to federal tax matters.<sup>7</sup>

Those CPAs and firms practicing under the exception or a temporary license must follow Florida accountancy laws and rules and are subject to discipline by the Board.<sup>8</sup>

### *Uniform Accountancy Act*

The UAA is a model law developed to provide a uniform approach to regulation of the accounting profession. The UAA outlines generally acceptable standards to license CPAs nationwide,<sup>9</sup> which the Board uses as a guide to determine if a CPA from another jurisdiction possesses the qualifications for practice in Florida for the licensing exception.

### *Public Company Accounting Oversight Board*

The Public Company Accounting Oversight Board (PCAOB) is a nonprofit corporation established by the United States Congress to oversee the audits of public companies in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports.<sup>10</sup>

The PCAOB has authority to investigate and discipline registered public accounting firms and persons associated with those firms for noncompliance with the Sarbanes-Oxley Act of 2002, the rules of the PCAOB and the Securities and Exchange Commission, and other laws, rules, and professional standards governing the audits of public companies, brokers, and dealers. When violations are found, the PCAOB can impose appropriate sanctions, including a censure, monetary penalties, revocation of a firm's registration, and a bar on an individual's association with registered accounting firms.<sup>11</sup>

### **Effect of the Bill**

The bill will allow out-of-state firms that do not have a Florida license to practice public accounting in Florida if the firm:

- Complies with the practice requirements for business entities;
- Is enrolled in a peer review program;
- Performs services through an individual with practice privileges under an exception to Florida licensing requirements in accordance with s. 473.3141, F.S.; and
- Lawfully performs services in a state where the Board has determined that the licensing standards of that state are substantially equivalent to the requirements of the UAA.

The bill will allow the Board to discipline a licensee if that licensee's right to practice public accounting has been suspended or revoked by PCAOB.

The bill updates the statutory reference to the UAA to the most current edition.

The bill clarifies the definition of "client" to include someone who consults with a CPA and agrees to receive their services. This change aligns with the definition in the UAA.

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<sup>7</sup> s. 473.314, F.S.

<sup>8</sup> ss. 473.3141(5) and 473.323, F.S.

<sup>9</sup> Unif. Accty. Act § 5 (2014).

<sup>10</sup> Public Company Accounting Oversight Board, *About the PCAOB*, <https://pcaobus.org/About/Pages/default.aspx> (last visited March 11, 2017).

<sup>11</sup> Public Company Accounting Oversight Board, *Enforcement*, <https://pcaobus.org/enforcement/Pages/default.aspx> (last visited March 11, 2017).

**B. SECTION DIRECTORY:**

- Section 1 Amends s. 473.302, F.S., to update a reference.
- Section 2 Amends s. 473.3101, F.S., to give an exception to accountancy firm licensing requirements.
- Section 3 Amends s. 473.316, F.S., to update a definition.
- Section 4 Amends s. 473.323, F.S., to give an additional basis for disciplinary action.
- Section 5 Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

DBPR expects that revenue loss from licensing fees collected from out-of-state firms will be minimal.<sup>12</sup>

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may allow more interstate business entities to practice in Florida and for Florida residents to have more choice in which firms to hire.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

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<sup>12</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2017 House Bill 473, p. 5 (March 10, 2017).

**B. RULE-MAKING AUTHORITY:**

The bill will necessitate that DBPR amend the following rules:

- 61H1-20.001, F.A.C.;
- 61H1-20.003, F.A.C.;
- 61H1-26.001, F.A.C.;
- 61H1-26.003, F.A.C.;
- 61H1-26.004, F.A.C.; and
- 61H1-36.004, F.A.C.

Authority to do so is granted by s. 473.304, F.S.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 14, 2017, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a subcommittee substitute. The amendment replaces the requirement that out-of-state accounting firms must practice through a Florida-licensed CPA with a requirement that those firms must practice through an individual with practice privileges under an exception to Florida licensing requirements in accordance with s. 473.3141, F.S.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.