

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 25, 1998 Revised: _____

Subject: Public Accountancy

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Masterton</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill amends provisions in ch. 473, F.S., relating to the licensure of certified public accountants (CPAs), to allow individuals to practice as CPAs while working for nonlicensed firms, except when providing assurances as to the reliability of financial statements. All CPAs providing services involving assurances of reliability must be licensed as CPA firms or working for licensed CPA firms. In addition, the bill exempts attorney/CPAs from accounting standards that conflict with Florida Bar rules. This bill also amends provisions in ch. 473, F.S., relating to probable cause panel membership, licensure by examination and endorsement, board advisory committees, and license reactivation.

This bill substantially amends the following sections of the Florida Statutes: 473.302, 473.303, 473.306, 473.308, 473.309, 473.3101, 473.312, 473.313, 473.315, 473.319, 473.3025, and 473.322.

II. Present Situation:

Chapter 473, F.S., provides for the regulation of CPAs by the Board of Accountancy within the Division of Certified Public Accounting of the Department of Business and Professional Regulation (DBPR). Section 473.302, F.S., provides definitions relevant to the chapter, including definitions of “practicing public accounting” and “holding out,” which have recently been subject to first amendment challenges in the federal courts.

Section 473.303, F.S., creates the Board of Accountancy. The section provides that the probable cause panel of the board, which reviews disciplinary cases to determine if sufficient evidence exists to pursue prosecution, must consist of at least one board member who is the panel chair,

plus additional board members or no more than one past board member who may serve a maximum of 2 years.

Section 473.306, F.S., sets forth the requirements for obtaining a CPA license by examination, including education and experience requirements. The board may adopt an alternative examination for Canadian chartered accountants who have completed the Canadian chartered accountant examination and who hold a chartered accountant license from a Canadian province.

Section 473.308, F.S., sets forth requirements for licensure, including pathways for licensure by endorsement, rather than examination. These pathways include: licensure in another state with substantially similar licensure requirements to Florida's; licensure in another state without substantially similar requirements when an individual otherwise meets the Florida requirements for licensure by examination and has passed a licensure examination similar to the one required in Florida; and no previous licensure but an individual meets Florida's licensure requirements and has passed a substantially similar examination. (Florida uses the national CPA exam.) In addition, s. 473.308, F.S., allows individuals from other states to be licensed in Florida without meeting the fifth year education requirement, if the individual applies before August 1, 2000, and has practiced for 5 years as a CPA in the United States or as a chartered public accountant in a Canadian province.

Section 473.309, F.S. sets forth the requirements for licensure of CPA business entities. Requirements include that at least 2/3 of the partners, shareholders, or members of a firm must be certified public accountants in some state, that at least one partner, officer, or member is a CPA in Florida, and that all non-CPA partners, shareholders, or members are engaged in the business of the firm as their principal occupation.

Section 473.315, F.S., provides requirements to ensure a CPA's independence and authorizes the board to establish accounting practice standards.

Section 473.319, F.S., prohibits licensees from accepting contingent fees for accounting services involving the preparation of financial statements. Section 473.3205, F.S., prohibits licensees from receiving commissions or referral fees related to these services.

III. Effect of Proposed Changes:

The bill amends various provisions relating to the regulation of CPAs, including definitions, requirements for licensure by examination and endorsement, reactivation of licenses, licensure of accounting firms, and the applicability of accounting standards.

Section 1 amends s. 473.302, F.S., to define the term "licensed audit firm," to revise the definition of "practicing public accounting" to eliminate references to "holding out," and to move the preparation of financial statements by a CPA, not accompanied by an assurance of reliability, to a new paragraph (c) in the definition. The board is required to establish standards of practice

for these financial statements. In addition, the separate definition of “holding out” is deleted from s. 473.302, F.S.

The effect of these changes is to allow individuals to use their CPA designation, and therefore be deemed to be practicing public accounting, even though they are working for a nonlicensed firm. The only accounting services which must be performed under the auspices of a licensed CPA firm (designated as a “licensed audit firm”) are services providing an assurance of the reliability and fairness of financial statements. CPAs working for non-CPA firms who perform services within the definition of public accounting are under the disciplinary jurisdiction of the board for their accounting activities.

Section 2 amends s. 473.303, F.S., to revise the composition of the probable cause panel to allow two members to be either current or past board members.

Section 3 amends s. 473.306, F.S., to expand the board’s ability to adopt an alternative examination to include public accountants licensed in other countries that have entered into reciprocal licensure agreements ratified by the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy. In addition, s. 473.306, F.S., is amended to authorize the board to appoint an Educational Advisory Committee composed of one board member, two licensees, and four academicians on faculties of Florida universities. (Section 455.207, F.S., requires board committees that include nonboard members to be authorized in statute.)

Section 4 amends s. 473.308, F.S., to require individuals who qualify for licensure by endorsement by virtue of having passed an equivalent examination, and who have not been licensed in another state, to complete appropriate continuing education requirements during the 2-year period prior to their applications for Florida licensure. In addition, s. 473.308, F.S., is amended to expand the grandfather provision for individuals with 5 years of experience, who have not had 5 years of accounting education, to include individuals engaged in the practice of public accounting in another country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined to have substantially equivalent licensure standards to those in the United States.

Section 5 amends s. 473.309, F.S., to amend the practice requirements for business entities practicing public accounting to require each partner, shareholder, or member who is a CPA in another state and who is domiciled in Florida to be licensed as a CPA in Florida. In addition, s. 473.309, F.S., is amended to clarify that partners, shareholders, or members who are not certified public accountants in any state must be engaged in the business of the firm as their principal occupation.

Section 6 amends s. 473.3101, F.S., to add sole proprietors to the types of business entities that must be licensed to practice public accountancy.

Section 7 amends s. 473.312, F.S., to authorize the board to appoint a Continuing Professional Education Advisory Committee composed of one board member, one academician on the faculty of a state university, and six licensees.

Section 8 amends s. 473.313, F.S., to establish 120 hours as the continuing education requirement for reactivation of a license that is inactive on June 30, 1998, if a licensee notifies the board of the intent to reactivate by December 31, 1998, and completes the reactivation by June 30, 2000. Of the 120 hours, at least 30 must be in accounting-and auditing-related subjects and no more than 30 hours may be in behavioral subjects. Licensees may conditionally reactivate their licenses and must pay the required fee, pass an examination on the provisions of ch. 455, F.S., and 473, F.S., and complete the required continuing education to obtain unconditional, active status.

Section 9 amends s. 473.315, F.S., to provide an exemption from accounting practice standards for attorneys admitted to practice by the Florida Supreme Court, when these standards conflict with the Rules of The Florida Bar or orders of the Florida Supreme Court.

Section 10 amends s. 473.319, F.S., to correct a cross-reference related to the prohibition on contingency fees.

Section 11 amends s. 473.3205, F.S., to correct a cross-reference related to the prohibition on commissions and referral fees.

Section 12 amends s. 473.322, F.S., to require that a licensee who performs services that offer assurances as to the reliability or fairness of financial information must be licensed as an audit firm or employed by a licensed audit firm.

Section 13 provides an effective date of October 1 of the year in which the legislation is enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill makes changes to the definition of the practice of public accounting in response to a recent federal case involving American Express Tax and Business Services, Inc., against the DBPR, in which the court held that the current law violates the United States Constitution's First Amendment right to free speech. See *Miller v. Stuart*, 117 F.3d 1379 (11th Cir. 1997) *cert. denied* 118 S. Ct. 852 (1998). The current definition of the practice of public accounting includes "holding out" as a CPA within the definition and requires that the practice of public accounting must be in connection with a licensed CPA firm. At least 2/3 of the partners, shareholders, or members of a firm must be certified public accountants in some state, for the firm to be licensed. The district court held that it is unconstitutional to prevent licensed CPAs from truthfully informing the public of their licensure, regardless of whether they work for a licensed CPA firm.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Individual CPAs who want to continue to perform services providing assurances as to the reliability of financial statements will need to obtain additional licenses as sole proprietors. The current license fee is \$150 biennially.

B. Private Sector Impact:

Individual licensees who were previously prevented from advertising their CPA licenses if they did not work for licensed CPA firms, will benefit from being able to use the CPA designation.

C. Government Sector Impact:

According to the DBPR, workload for Board of Accountancy staff will increase in fiscal years 1998-1999 and 1999-2000 due to reactivation applications and firm license applications for sole proprietors. The board is requesting from DBPR an additional OPS allocation of \$18,500 to accommodate this workload increase. According to the DBPR, once initial applications are processed, workload should decrease after the year 2000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the Board of Accountancy to establish standards for certain financial statements and to perform administrative acts relating to approvals of licensure applications and reactivation

of licenses. The legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

VIII. Amendments:

None

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
