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BILL ANALYSIS

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Senate Bills 722, 723, and 724 (as introduced 9-6-05)
Sponsor: Senator Jim Barcia (S.B. 722)
Senator Michael D. Bishop (S.B. 723 & 724)
Committee: Banking and Financial Institutions

Date Completed: 10-6-05

CONTENT

Senate Bills 722, 723, and 724 would amend, 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" in the State Treasury 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 is scheduled to receive an appropriate bachelor's degree within 30 days after the exam.
- Specify that a provision of Article 7 prohibiting a CPA from disclosing certain information would not apply to disclosure to a law enforcement or governmental agency if the CPA had reason to believe a client had 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.

Senate Bill 722

Fees

The bill would delete and replace the current 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 current fees are 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 would be 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 would create the Accountancy Enforcement Fund in the State Treasury. The Fund would have to be administered by DLEG. Beginning October 1, 2005, the money representing the increase in fees under the bill and the peer review fee would have to be deposited into the Fund. The Department would have to 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 could be used for expenses regarding Board 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 would have to 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, would have to 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 would have to 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 would have to notify DLEG within 30 days after receiving an adverse report or second modified peer review report.

Educational Requirement

Article 7 provides that 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.

Article 7 also specifies that an individual is considered to have fulfilled the education requirement if he or she is 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 fails to fulfill the institution's educational requirements within 30 days of the examination, the Board may not credit the exam results to the applicant. The bill would delete 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. (In such cases, the information disclosed to another licensed CPA is confidential and privileged.)

Under the bill, the prohibition also would not apply to a licensee or a person employed by a licensee who disclosed information, that otherwise was privileged and confidential, to appropriate law enforcement or governmental agencies when the licensee or

person had knowledge that formed a reasonable basis to believe that a client had 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 would be exempt from disclosure under FOIA, unless the records or documents were 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 was 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 act prohibited by Article 7 is sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

A violation of Section 723 is a misdemeanor punishable by a maximum fine of \$5,000, up to one year's imprisonment, or both. Under the bill, a violation would be a felony, punishable by up to five years' imprisonment, a maximum fine of \$25,000, or both. In addition, the bill specifies that a person who violated this section, or a rule or order promulgated or issued under it, would be liable for a civil fine of up to \$25,000 per violation. The attorney representing a political subdivision or the prosecuting attorney of the county could bring an action to recover the fine.

Fraud, Dishonesty, Negligence. Section 734 specifies that a holder of a CPA certificate, a registration, or a license, is subject to penalties under Section 602 for actions involving fraud, dishonesty, negligence, violation of rules of professional conduct, certain convictions, license sanctions by another state, determination of mental incompetency, or a violation of professional standards. (Section 602 provides for the imposition of penalties against a person who violates the Code. The penalties include license sanctions, a fine, censure, probation, and restitution.) The bill specifies that a person who violated Section 734, or a rule or order promulgated or issued under it, would be liable for an administrative fine of up to \$25,000 per violation, notwithstanding Section 602(e). (That section provides for a maximum civil fine of \$10,000 payable to DLEG. The bill would refer to an "administrative" fine.)

The bill also would require 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 or state court regarding a violation in which dishonesty, fraud, or negligence was 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 would require 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 would include a licensee or registrant in the definition of "affected person".

Senate Bill 724

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

The bill is tie-barred to Senate Bill 723.

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

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 722 and 723

The bills would increase the current license and registration fees collected by the Board of Accountancy to regulate the occupation. This new revenue would be deposited into an enforcement fund that would be used to support the enforcement and peer review activities outlined in the bill. Based on FY 2005 licensee data, it is estimated that the fee increase could generate \$1.7 million on a biennial basis. Additionally, Senate Bill 722 would create a new fee to support the peer review activities; this fee could generate approximately \$334,200 for each triennial period if every firm participated. The amount would vary by participation level.

Finally, the amount of revenue generated by the fine would depend on the number of cases that resulted in a determination of a violation of the Code.

Senate Bill 724

There would be an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. Local governments would incur the cost of incarceration in local facilities, which varies by county. The State would 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.