HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 867 Public Accountancy
SPONSOR(S): Business & Professions Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professions Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

In Florida, public accountancy is regulated by the Board of Accountancy under the Department of Business and Professional Regulation. The practice of public accountancy includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements. In order to practice public accountancy, a person must be licensed as a certified public accountant (CPA).

Every biennium, CPAs must complete 80 hours of continuing professional education (CPE), by board rule. At least 5 percent of the total hours required by the board must be in the subject of ethics as applicable to the practice of public accounting.

Applicants for CPA licensure by endorsement must be of good moral character; complete certain CPE requirements; and either not be licensed but have passed an equivalent examination in another state or territory, or hold a license from another state or territory if the criteria issuance is equivalent to that of Florida.

Inactive status for CPA licenses can be initiated voluntarily by the licensee, or for failure to meet the CPE license renewal requirements. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license. Currently, a retired status for CPA licensure does not exist.

Current law allows counties and school districts, through a referendum or a county commission vote, to levy a discretionary sales surtax. For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the program associated with the proposed surtax must be conducted by an independent CPA, who is selected and paid by the Office of Program Policy Analysis and Government Accountability.

The bill:

- Clarifies the licensure by endorsement provision for applicants that have passed an examination but do not hold a license in “another” state or territory, to instead not require a license in “any” state or territory;
- Allows nonresidents seeking CPA license renewal to satisfy the CPE requirements (except for the ethics component), with applicable CPE requirements in the state in which his or her office is located, or Florida CPE requirements, if the other state has no CPE license renewal requirements;
- Specifies that a “majority” of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., and ch. 473, F.S., and the related administrative rules; and
- Creates a “retired status” for active or inactive CPA licensees over 55 years old, including provisions governing application, good standing, volunteer work, competency, reactivation, reentry into active status, reimbursements, and the use of a title.
- Removes the requirement that performance audits for discretionary sales surtaxes must be performed by a CPA.

The bill does not have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Practice of Public Accountancy

Background

The Florida Board of Accounting (board) in the Department of Business and Professional Regulation (DBPR) is the agency responsible for regulating and licensing more than 35,000 active and inactive certified public accountants (CPA) and more than 5,400 accounting firms in Florida. The Division of Certified Public Accounting provides administrative support to the 9-member board, which consists of 7 CPAs and 2 laypersons.[1]

To engage in the practice of public accounting, an individual or firm must be licensed and business entities must meet certain formation requirements.[2]

The "practice of public accountancy" includes offering to the public the performance of services involving audits, reviews, compilations, tax preparation, management advisory or consulting services, or preparation of financial statements.[3]

A person may be charged with a first-degree misdemeanor if they are not a licensed CPA and they perform:[4]

- 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.

License by Endorsement

An applicant is eligible for licensure by endorsement if the applicant:[5]

- is of good moral character;
- has completed 80 hours of continuing professional education (CPE) if it has been at least 2 years since passing the licensing examination;[6] and either:
    - is not licensed, but has otherwise met the licensing requirements and has passed a licensing examination that is substantially equivalent to the Florida examination; or
    - holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license are substantially equivalent to a Florida license or is otherwise permitted.

[1] S. 473.303, F.S.
[2] S. 473.302, F.S.
[3] S. 473.302(8), F.S.
[4] S. 473.322(1)(c), F.S.
[5] S. 468.8414(3), (4), F.S.
[6] R. 61H1-29.003, F.A.C.

Continuing Education

CPAs are required to complete 80 hours[7] of CPE in public accounting subjects every 2 years to renew their license. The board has the authority to prescribe by rule additional CPE hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period.[8]

At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from other subjects that include federal and local taxation matters and management services.[9]

Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting. This requirement must be administered by providers approved by the board and include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules.[10]

Inactive Licenses

CPAs are authorized to request their license be placed on inactive status, or the licensee may be placed on inactive status for failing to meet the CPE requirements for license renewal. The board is authorized to adopt rules establishing the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.[11]

The maximum CPE requirements for reactivating an inactive or delinquent license are 120 hours, including:

- At least 30 hours in accounting-related and auditing-related subjects;
- Not more than 30 hours in behavioral subjects; and
- A minimum of 8 hours in ethics subjects approved by the board.

Retired Status

The American Institute of CPAs (AICPA) estimates that approximately 75 percent of its members will be eligible to retire by the year 2020. According to AICPA, "many of these retirees are well respected business leaders in their communities who would like to find ways to continue to be of service, without necessarily remaining an active CPA in practice."[12]

The AICPA provides a uniform retired CPA status in their model rules that states may adopt allowing retired CPAs to offer a limited array of volunteer, uncompensated services to the public. Inactive CPAs, of at least 55 years of age are allowed to refer to themselves as "Retired-CPAs" and register as such with their state board of accountancy. They are able to participate in activities such as volunteer tax preparation services, government-sponsored business mentoring programs, and on boards of nonprofit organizations.[13]

Effect of the Bill

The bill revises the CPA license by endorsement provision for applicants that have passed an examination but do not hold a license in "another" state or territory. The bill simply changes "another" state or territory to "any" state or territory.

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[7] S. 473.312(1)(a), F.S. allows the board to require between 48 and 80 hours of CPE every 2 years. The board requires 80 hours in r. 61H1-33.003, F.A.C.
[8] S. 473.312(1)(a), F.S.
[9] Id.
[10] S. 473.312(1)(b),(c), F.S.
[11] S. 473.313, F.S.
[12] American Institute of Certified Public Accountants, https://www.aicpa.org/advocacy/state/retiredcpastatusexposuredraft.html (last visited Jan. 10, 2020).
[13] *Id.*

The bill allows nonresident CPA licensees who are seeking renewal of a license in this state to satisfy the CPE requirements (except for the ethics component), if the nonresident licensee has complied with applicable CPE requirements in the state in which his or her office is located. If the state in which the nonresident licensee's office is located has no CPE license renewal requirements, the nonresident licensee must comply with Florida CPE requirements.

The bill specifies that a “majority” of the total CPE hours required for ethics training must include a review of the provisions of ch. 455, F.S., ch. 473, F.S., and the related administrative rules. Currently, no amount is specified.

The bill creates a “retired status” for CPA licensees. The bill defines a "retired licensee" as a licensee whose license has been placed in retired status by the department.

Retired status license applicants are required to:

- Be at least 55 years old;
- Hold a current active or inactive CPA license;
- Apply for the status to DBPR; and
- Be in good standing and not the subject of any sanction or disciplinary action.

Applications must be prescribed by the board and the applicant must attest that they have no association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S.

Licensees granted retired status who reenter the workforce in a position that has an association with accounting or any of the services described in s. 473.302(8)(a), (c), or (d), F.S., automatically lose the retired status except for the uncompensated volunteer services that retirees are allowed to participate in.

Licensees granted retired status are allowed to:

- Serve without compensation on a board of directors or board of trustees;
- Provide volunteer tax preparation services;
- Participate in a government-sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance program or the Small Business Administration's SCORE program; and
- Participate in an advisory role for a similar charitable, civic, or other nonprofit organization.

The board must require retired licensees to affirm in writing their understanding of the limited types of activities allowed while in retired status and their professional duty to ensure competency to participate in the activities.

Retired licensees are authorized to:

- Accept routine reimbursement for actual costs of travel and meals associated with volunteer services or de minimis per diem amounts paid to the licensee to cover such expenses as allowed by law;
- Use the title of "retired CPA" on business cards, letterhead or other printed or electronic documents as long as it is used in a manner that is not confusing to the public; and
- Reactivate the license in a conditional manner determined by the board. The conditions of reactivation must require the payment of fees and the completion of any CPE requirements.

Retired licensees are not required to:

- Have a certificate issued with the word "retired" on the certificate; or
- Maintain the CPE requirements under s. 473.312, F.S.

Retired licensees are prohibited from offering or rendering professional services that require:

- The licensee’s signature; and
- Use of the CPA title, regardless of whether the word "retired" is attached to such title.

Performance Audits for Discretionary Sales Surtaxes

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.[14] Current law provides counties and school districts with limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.[15] These purposes include:

- Operating a transportation system in a charter county;[16]
- Financing local government infrastructure projects;[17]
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;[18]
- Providing medical care for indigent persons;[19]
- Funding trauma centers;[20]
- Operating, maintaining, and administering a county public general hospital;[21]
- Constructing and renovating schools;[22]
- Providing emergency fire rescue services and facilities; and[23]
- Funding pension liability shortfalls.[24]

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.[25]

A "performance audit" means an examination of the program conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies, including the effectiveness of the program, the structure and design of the program, alternative methods of achieving the goals of the program, performance measures that may be used to track program accomplishments, the accuracy and adequacy of public documents, and reports related to the program, and compliance of the program with applicable policies, rules, and laws.[26]

For all discretionary sales surtax referendum held on or after March 23, 2018, a performance audit of the government program associated with the proposed surtax must be conducted by an independent, licensed CPA.[27] The Office of Program Policy Analysis and Government Accountability (OPPAGA) is responsible for both selecting the CPA and paying for the CPA's services. OPPAGA must procure the CPA to conduct the performance audit within 60 days of receiving the final resolution or ordinance.[28] The results of the performance audit, including any findings, recommendations, or other accompanying documents, must be made available on the website of the county or school district at least 60 days prior to the referendum and must be maintained on the website for at least 2 years.[29]

Effect of the Bill

[14] Art. VII, s. 1(a), Fla. Const.
[15] Ss. 212.054 and 212.055, F.S.
[16] S. 212.055(1), F.S.
[17] S. 212.055(2), F.S.
[18] S. 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.
[19] S. 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).
[20] S. 212.055(4)(b), F.S.
[21] S. 212.055(5), F.S.
[22] S. 212.055(6), F.S.
[23] S. 212.055(8), F.S.
[24] S. 212.055(9), F.S.
[25] *See generally* s. 212.055, F.S.; *but see* s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).
[26] S. 212.055(10)(c), F.S.
[27] S. 212.055(10)(a), F.S.
[28] S. 212.055(11)(b)3., F.S.
[29] S. 212.055(10)(b), F.S.

The bill removes the requirement that performance audits for discretionary sales surtaxes must be performed by an independent CPA. Instead, such performance audits must be performed by a vendor experienced in performance audits and reviews.

B. SECTION DIRECTORY:

Section 1 Amends s. 212.055, F.S., removing the requirement that performance audits for discretionary sales surtaxes be performed by a CPA.

Section 2 Amends s. 473.308, F.S., revising a requirement for obtaining a license by endorsement.

Section 3 Amends s. 473.311, F.S., providing license renewal requirements for nonresident licensees.

Section 4 Amends s. 473.312, F.S., providing requirements for continuing education content.

Section 5 Amends s. 473.313, F.S., providing requirements for retired status licenses.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow retired CPAs to serve their community in certain areas of public accountancy without maintaining a license with DBPR. Some out-of-state CPAs may need to complete less CPE in order to maintain a Florida CPA license.

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.

B. RULE-MAKING AUTHORITY:

The board will need to update rules regarding CPE and generate rules for retired status licenses. There is sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES