



Ohio Legislative Service Commission

122nd Senate Bill Analysis

Am. Sub. S.B. 200
122nd General Assembly
(As Passed by the Senate)

Sens. Cupp, Watts, Herington, Hottinger, Mumper, Carnes, Blessing, Finan, Suhadolnik

- Statutorily defines the "practice of public accounting" and makes other definitional revisions in the Accountancy Board Law.
- Allows nonaccountants to own a minority equity interest in a public accounting firm.
- Reduces the experience requirement for becoming a CPA.
- Allows CPAs from other states to practice accounting in Ohio without the need to obtain an Ohio CPA certificate or practice permit, but subjects persons who exercise this privilege to the jurisdiction and discipline of the Accountancy Board.
- Expands the registration requirements for a public accounting firm and modifies the disciplinary sanctions for violating those requirements and certain other provisions of the Accountancy Board Law.
- Authorizes the Accountancy Board to investigate violations of the Accountancy Board Law or Board rules before commencing disciplinary proceedings against an accountant or an accounting firm or before taking legal action against a person for the unauthorized practice of public accountancy.

CONTENT AND OPERATION

Definition of public accounting

Background "administrative" law

At present, the "practice of public accounting" is not defined in the Revised Code but is defined in Rule 4701-1-09 of the Accountancy Board as follows:

"Practice of (or practicing) public accountancy" means the performance or the offering to perform by a person or firm, holding itself out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

Changes proposed by the bill

Definition of the practice. The bill enacts the following *statutory* definition of the "practice of public accounting" in the Accountancy Board Law (sec. 4701.01(A)):

"Practice of public accounting" means performing or offering to perform any engagement that will result in the issuance of an attest report, and, with respect to a person who holds a CPA certificate, PA registration, foreign certificate, or firm registration, any other services involving the use of accounting or auditing skills as established by rules adopted by the accountancy board.

According to the statutory definition, there are two ways to engage in the practice of public accounting. The first is to perform or offer to perform any engagement that will result in the issuance of an *attest report*--which the bill defines as an opinion report, review report, compilation report, examination report, agreed-upon procedures report, or any similar report prepared in accordance with standards established by the American Institute of Certified Public Accountants with

respect to a financial statement or other financial information (sec. 4701.01(T)). The most important attest report is the *opinion report* in which the accountant essentially attests to (that is, provides assurance concerning) the fairness and dependability of the balance sheet, income statement, and other financial statements of the entity that the accountant has audited and whether the statements conform with generally accepted accounting principles. Generally similar to existing law, the bill prohibits any individual from issuing an opinion report or other type of attest report indicating that the individual is an accountant or auditor, has expert knowledge in accounting or auditing, or has expert knowledge regarding compliance with conditions established by law or contract unless the individual holds an Ohio permit issued by the Accountancy Board (see below), but excludes from the prohibition an officer, employee, partner, or principal of an organization who signs in a specified manner any statement or report referring to the financial affairs of that organization or a public official or employee who performs his or her duties (sec. 4701.14(D)).

The second way to engage in the practice of public accounting under the statutory definition is for a person who holds a CPA certificate, PA registration, foreign certificate, or firm registration to perform or offer to perform any services (other than the attest function) that involve the use of accounting or auditing skills as established by rules adopted by the Accountancy Board. PAs (public accountants) are a dying class since, under existing law, (1) a person cannot be registered as a PA unless the person applied on or before April 16, 1993, to be registered as a PA, and (2) any PA is eligible to receive a CPA certificate if the accountant has had a PA practice permit under Ohio law for at least ten years and has completed and reported to the Accountancy Board the requisite continuing education hours, and if the firm that employs the accountant or in which the accountant has an interest is registered and meets the quality review (that is, peer review) requirements of the Accountancy Board. Candidates for PA registration had to meet requirements similar to those that applied to candidates for CPA certification, except that PA candidates had to pass (1) only the accounting practice and auditing sections of the uniform CPA examination (rather than all four sections of the examination, as CPAs were and are required to do), (2) the uniform National Society of Public Accountants examination, or (3) a comparable examination approved by the public accountant members of the Accountancy Board. (Secs. 4701.061 and 4701.07.) As of April 16, 1993, CPAs are the only accountants who can be appointed to the Accountancy Board (sec. 4701.02, not in the bill).

Definitions of "permits" and "registrations." A PA or CPA needs more than registration as a PA or certification as a CPA *to practice public accounting*. The accountant also needs a practice permit, currently referred to as a "live permit," that is not suspended or revoked. The bill replaces the term "live permit" with two other terms: (1) an "Ohio permit," a permit to practice public accounting that is available to Ohio PAs and CPAs and that is not revoked or suspended and (2) a "foreign permit," a permit to practice public accounting that is issued under the laws of a foreign jurisdiction or of a state of the United States other than Ohio. A PA or CPA who is *not in the practice of public accounting* in Ohio is required by existing law (continued by the bill) to register with the Accountancy Board, and under the bill, an accountant of that nature is said to have an "Ohio registration" rather than an "Ohio permit." (Sec. 4701.01(A), (M), (N), and (O); secs. 1111.01(G) (2), 2925.01(W)(2), 4701.04, 4701.06, 4701.061, 4701.07, 4701.10, 4701.11, 4701.12, 4701.13, 4701.14, and 4701.16.)

Discipline. The bill authorizes the Accountancy Board, after notice and hearing, to discipline in specified manners any person whose activities are regulated by the Board in the same ways that it can discipline a person holding an Ohio permit, Ohio registration, firm registration, CPA certificate, or PA registration (sec. 4701.16(A)).

Requirements to become a CPA

Under existing law (continued by the bill), two of the requirements for becoming a CPA are (1) being of good moral character and (2) meeting the education and experience qualifications prescribed by law (sec. 4701.06(C) and (D)).

Good moral character: definition

The bill adds a definition of "good moral character" to the Accountancy Board Law. The phrase means the combination of personal traits of honesty, integrity, attention to duty, forthrightness, and self-restraint that enables a person to discharge the duties of the accounting profession fully and faithfully. Under the bill, a history of dishonest acts or *felonious acts or convictions* is sufficient to prove a lack of good moral character where that history demonstrates, by a preponderance of the evidence, that the person lacks one or more of the personal traits listed above. A person who has a *felony conviction* related to one or more of those personal traits bears the burden of establishing the person's present good moral character, including the person's full and complete rehabilitation subsequent to the conviction. The bill permits the Accountancy Board to delay a determination of the good moral character of a person of that nature until one year after completion of the person's sentence on the felony conviction, including any probationary term. The bill contains a list of factors that the Accountancy Board *apparently* may consider in determining whether a person of that nature has met the burden of proving "good moral character." (Sec. 4701.01(W).)

Experience qualification

Under existing law, the experience qualification for becoming a CPA is (1) two years of public accounting experience that is satisfactory to the Accountancy Board (one year if the person has a master's degree in accounting or business

administration and certain educational requirements are satisfied) in any state *in practice* as a PA or CPA or in any state *in employment* as a staff accountant practicing public accounting, (2) two-years (one year under the described exception) experience in private or governmental accounting that is, in the opinion of the Accountancy Board, the equivalent of the public accounting practice described in (1), above, or (3) any combination of the types of experience described in (1) and (2), above. The bill substitutes for this requirement one year of experience, satisfactory to the Accountancy Board, in (1) a public accounting firm, (2) government, (3) business, or (4) academia. (Sec. 4701.06(D)(2)(a).) The experience requirement of existing law remains unchanged for persons who, on or after January 1, 2000, do not graduate with a B.A. or higher degree that includes the successful completion of 150 semester hours of undergraduate or graduate education and subjects that the Accountancy Board considers appropriate (sec. 4701.06(D)(1)(b) and (2)(b)).

Substantial equivalency of CPA certificates and practice permits among the states

The bill *deems* any individual whose principal place of business is not in Ohio and who has a valid CPA certification and license or permit that has been issued by another United States jurisdiction to have qualifications substantially equivalent to Ohio's CPA requirements. The bill grants an individual of that nature all the privileges of Ohio certificate holders and licensees--namely, the right to practice public accounting in Ohio--without the need to obtain an Ohio permit and CPA certificate. Under the bill, any individual exercising this privilege consents and is subject to the following (sec. 4701.14(I)(1) and (2)):

- (1) The personal and subject matter jurisdiction of the Accountancy Board;
- (2) All practice and disciplinary provisions of the Accountancy Board Law and the Board's rules;
- (3) The appointment of the board that issued the individual's CPA certificate or permit as the individual's agent upon whom process (for example, a summons) may be served in any action or proceeding by the Accountancy Board against the licensee.

In addition, the bill makes any holder of an Ohio permit or CPA certificate who offers or renders attest services or uses the person's CPA title in another United States jurisdiction subject to disciplinary action in Ohio for acts that the person commits in the other jurisdiction for which the holder of a permit or CPA certificate issued in that jurisdiction would be subject to discipline in that jurisdiction (sec. 4701.14(I)(3)). Similarly, the bill makes any holder of a CPA certificate or permit issued in another United States jurisdiction who performs attest services or uses the person's CPA title or designation in Ohio pursuant to the privilege described above subject to disciplinary action in Ohio for any action committed in this state that would subject the holder of an Ohio permit or CPA certificate to disciplinary action (sec. 4701.14(I)(4)).

Public accounting firms: business organization forms and "equity interests"

Existing law

Under existing law, a partnership may not indicate that it is composed of CPAs unless (1) at least one general partner, and every partner who is personally engaged in Ohio in the practice of public accounting as a member of the partnership, is *an Ohio CPA* in good standing, (2) each partner is a CPA of *some state* in good standing, *and* (3) each resident manager in charge of an office of the firm in Ohio is an *Ohio CPA* in good standing. Likewise, a partnership may not indicate that it is composed of PAs unless it has PAs or CPAs in good standing in these three respects. (Existing sec. 4701.14(B) and (D).)

Similarly, a professional association or corporation-for-profit for the practice of public accounting may not assume or use the title "certified public accountant" unless all of its shareholders are CPAs in good standing under the laws of Ohio or another state. Additionally, the professional association or corporation may not assume or use the title "public accountant" unless all of its shareholders are PAs or CPAs in good standing under the Accountancy Board Law. (Existing sec. 4701.14(F).)

Finally, a limited liability company formed in Ohio to render public accounting services may not assume and use (1) the title "certified public accountant" unless each member of the company and, if the management of the company is not reserved to its members, each manager of the company is a CPA in good standing under the laws of Ohio or some other state or (2) the title "public accountant" unless each member of the company and, if the management of the company is not reserved to its members, each manager of the company is a PA or CPA in good standing under the Accountancy Board Law. (Existing sec. 4701.14(F).)

Changes proposed by the bill

The bill generally repeals the restrictions described under "Existing law," above, substitutes new restrictions, and permits a person who has neither an Ohio permit nor a foreign permit to directly or indirectly own an *equity interest* in an Ohio public accounting firm. The bill specifically provides in these respects as follows (secs. 4701.04(D) and (E) and 4701.14(C)):

(1) Generally, no partnership, professional association, corporation-for-profit, limited liability company, or other business organization that is practicing public accounting in Ohio may assume or use the title or designation "certified public accountant," "public accountant," or a related title or designation except as specified in this paragraph. A partnership that is a *registered firm* may assume or use the title or designation "certified public accountant" or a related title or designation if a majority of its partners who are individuals hold a *CPA certificate* or a *foreign certificate* and if a majority of the owners of any *qualified firm* that is a partner hold a CPA certificate or a foreign certificate. (The bill defines a "qualified firm" as a partnership, professional association, corporation-for-profit, limited liability company, or other business organization in which the individuals who own a majority of the business organization interests in the business organization and *control* it hold an Ohio permit or a foreign permit.) Similar requirements apply with respect to a partnership that is a registered firm and that assumes or uses the title or designation "public accountant" (PAs or CPAs must constitute the required majorities). In addition, similar requirements are set forth for professional associations, corporations-for-profit, and limited liability companies that are registered firms, except that for them the requirements apply to a majority of the shareholders or owners of a shareholder-qualified firm (in the case of professional associations and corporations-for-profit) and to a majority of the members or owners of a member-qualified firm (in the case of limited liability companies). (Secs. 4701.01(I) and 4701.14(C)(1) to (4).)

(2) A person who does not hold an Ohio permit or a foreign permit may own an equity interest in an Ohio public accounting firm if all of the following are satisfied (sec. 4701.04(D)):

(a) All individuals *who have an Ohio permit or a foreign permit* and who own equity interests in the public accounting firm, and all qualified firms that own equity interests in the firm, must directly or indirectly own, in the aggregate, a majority of the equity interests in the firm and must control it. (A person who owns a *voting equity interest* in the firm may not delegate by proxy or otherwise the duty to exercise any voting rights to a person that does not hold an Ohio permit or a foreign permit or that is not a qualified firm (sec. 4701.04(E)).)

(b) The person does not assume or use any title or designation that tends to indicate or is likely to be confused with "certified public accountant" or "CPA."

(c) The person is not in violation of any character or conduct standard that the Accountancy Board has established by rule.

(d) The person does not participate in the business of the public accounting firm solely or predominantly as a passive investor. Rather, the person's participation is the person's principal occupation and consists of providing services to or on behalf of the firm.

(e) The person has at least a bachelor's degree from a college or university approved by the Accountancy Board.

(f) The person meets or exceeds the continuing education requirements established by rule of the Accountancy Board.

(g) The person complies with the requirements of any professional license, registration, or certification that the person holds.

(h) The person abides by the Code of Conduct of the American Institute of Certified Public Accountants or a comparable code of professional conduct that the Accountancy Board adopts.

(i) The person complies with all applicable provisions of the Accountancy Board Law and rules adopted by the Board.

Registration of public accounting firms

When

Existing law requires a *new* public accounting firm to apply for initial registration within 90 days of formation and *all* public accounting firms to renew their registration triennially. The bill does not affect the triennial "firm registration" renewals but requires public accounting firms to apply for *initial registration* within 90 days after formation or within 90 days of the commencement of practicing public accounting in Ohio. (Sec. 4701.04(B).)

Information and reviews

Under existing law, to register, a public accounting firm must submit to the Accountancy Board information on all license holders employed by it and generally must undergo a *quality review* (renamed *peer review* in the bill) to determine the firm's degree of compliance with generally accepted accounting principles, generally accepted auditing standards, and other generally accepted technical standards. The Accountancy Board designates the quality review committees (renamed peer review committees in the bill) that advise it on whether the Board's guidelines are being followed and is required to establish fair and reasonable compensation for the committee members.

The bill expands the types of information that a firm must submit to the Accountancy Board with its initial and renewal

registration applications, partly to take note of persons who might own equity interests in the firm but who do not hold an Ohio permit or a foreign permit. The bill also authorizes, rather than requires as under existing law, the Accountancy Board to establish compensation for members of the renamed "peer review" committees. (Secs. 4701.01(D) and 4701.04(B) and (G)(1).)

Other "new" registration requirements

The bill also requires a public accounting firm to satisfy the following requirements in order to register (sec. 4701.04(C)):

- (1) Each partner, shareholder, member, or other person owning an equity interest in a public accounting firm must hold an Ohio permit or a foreign permit or satisfy the conditions set forth in the bill for those persons.
- (2) The chief executive of any office of a public accounting firm located in or doing business in Ohio must hold an Ohio permit or a foreign permit.
- (3) The holder of an Ohio permit or a foreign permit who owns an equity interest in or is employed by a public accounting firm, or a qualified firm that owns an equity interest in the public accounting firm, must assume *ultimate responsibility* for any attest report issued from an office of the firm located in Ohio. Relatedly, each individual in a public accounting firm who *signs* any attest report issued from that type of office must hold an Ohio permit.
- (4) A public accounting firm must provide for the *transfer* (that is, purchase) of the equity interest of a person who does *not hold* an Ohio permit or a foreign permit to either the firm itself or to a person who owns an equity interest in the firm if the person who does not hold an Ohio permit or a foreign permit withdraws from or ceases to be employed by the firm.

Noncompliance sanctions

The bill makes a failure of a public accounting firm or other person to comply with the firm registration requirements, with Accountancy Board standards and practices guidelines as shown by a peer review committee report, or with the conditions under which a person who does not hold an Ohio permit or a foreign permit may own an equity interest in a public accounting firm subject to the same *disciplinary sanctions* as apply under existing law to the failure of a PA, CPA, or public accounting firm to obtain a live permit from or to register with the Accountancy Board (secs. 4701.04(H)(1)(a) (iv) and 4701.16(A)(9) and (11)). These disciplinary sanctions currently include the following sanctions generally continued by the bill (sec. 4701.16(B)(1) to (6)):

- (1) Revocation or suspension of a CPA certificate or of a PA or public accounting firm registration;
- (2) Revocation, suspension, or refusal to renew a permit to practice public accounting;
- (3) Public censure of a registrant or certificate holder;
- (4) Levying of a reasonable fine (as a penalty) not to exceed \$1,000 for each offense;
- (5) In the case of dishonesty, fraud, or gross negligence in the practice of public accounting or in the case of a violation of an Accountancy Board rule of professional conduct, either or both (a) completion of remedial continuing education programs or (b) submission to quality ("peer") review by a professional committee designated by the Accountancy Board.

The bill also enacts two other sanctions that the Accountancy Board may impose as a disciplinary sanction (sec. 4701.16(B)(1) and (2)):

- (1) *Refusal to renew* a CPA certificate, a PA registration, an Ohio permit, an Ohio registration, or a firm registration;
- (2) Disqualification of a person who is not a holder of an Ohio permit or a foreign permit from owning an equity interest in a public accounting firm or qualified firm.

Accountancy Board investigations

The bill authorizes the Accountancy Board to investigate whether a person has violated any provision of the Accountancy Board Law, or any rule the Board has adopted under it, before commencing a disciplinary proceeding against an accountant or an accounting firm for an infraction of the law or rules or before taking legal action against a person for the unauthorized practice of public accountancy. An investigation of that nature is not subject to the Administrative Procedure Act. The Board may appoint a committee of its members or staff employees to conduct an investigation, and any Board member who participates in an investigation may participate actively in any hearing or proceeding to the same extent as a Board member who did not participate in the investigation. (Sec. 4701.29(A).)

During an investigation, the Board may administer oaths, order the taking of depositions, issue subpoenas, compel the attendance and testimony of a person at a deposition, and compel the production of any form of documentary evidence or

record. Subpoenas and orders to compel issued by the Board during an investigation may be served by a Board designee or by certified mail to the residence or place of business of the person, firm, corporation, partnership, sole proprietorship, limited liability company, or other business organization named in the subpoena or order. If a person fails to comply with a subpoena or order issued by the Board in connection with an investigation, the Board may petition the Franklin County Court of Common Pleas for an order compelling compliance. Upon the application of the Board and upon evidence of the person's failure to comply, the Court of Common Pleas must compel compliance and may issue any contempt citation and sanction that it considers appropriate. (Sec. 4701.29(B) and (C)(2).)

The bill declares these investigative proceedings of the Board to be confidential, not a public record, and not subject to discovery in a civil or administrative action. Any witness who appears in response to a Board subpoena may request and is entitled to receive within a reasonable time after making a request the same fees and mileage as a witness receives in a civil case in a court of common pleas. (Sec. 4701.29(C)(1) and (D).)

Definitions

The bill defines the following additional terms for use in the Accountancy Board Law (sec. 4701.01(J), (K), (L), (P), (Q), (R), and (S)):

- (1) "Own" means any direct or indirect ownership of an equity interest in a public accounting firm or qualified firm.
- (2) "Control" or "controlled" means the right to exercise the majority of the voting equity interests in a public accounting firm with respect to any matter.
- (3) "Equity interest" means any capital interest or profit interest in a partnership, professional association, corporation-for-profit, limited liability company, or other business organization.
- (4) "Firm registration" or "registered firm" means registration as a public accounting firm under section 4701.04 of the Revised Code.
- (5) "PA registration" means registration as a public accountant under section 4701.07 of the Revised Code that is not revoked or suspended.
- (6) "CPA certificate" means a certificate issued under section 4701.06 or 4701.061 of the Revised Code that is not revoked or suspended.
- (7) "Foreign certificate" means a certificate of certified public accountant issued under the laws of a state other than Ohio or under the laws of a foreign jurisdiction.

HISTORY

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[Top of Page](#)

[Home](#) | [Ohio General Assembly](#)
[LSC 122nd GA Status Sheet](#) | [LSC 122nd GA Bill Analyses](#)
[Senate Analyses](#) | [Final Analyses](#) | [Digest](#)

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