SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1706

SPONSOR: Regulated Industries Committee and Senator Carlton

SUBJECT: Public Accountancy

DATE: February 20, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vaccaro	Caldwell	RI	Favorable/CS
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1706 does the following:

- Requires that the Board of Accountancy require, by rule, that licensees undergo periodic peer review as a condition of license renewal;
- Provides requirements for rules governing peer review;
- Provides for immunity from liability for certified public accountants acting in good faith as members of a review committee;
- Provides for immunity from liability for certified public accountants and other individuals who provide administrative services for a review committee in good faith;
- Authorizes the Board of Accountancy to take disciplinary action against licensees who fail to provide documentation of satisfactory peer review.

This bill creates section 473.3125 and substantially amends section 473.323 of the Florida Statutes.

II. Present Situation:

State Regulation of Public Accounting

The regulation of public accounting is established under ch. 473, F.S. Regulation is administered by the Board of Accountancy (board) within the Department of Business and Professional Regulation (department). Chapter 473, F.S., provides for examination and licensure of certified public accountants (CPAs) by the department. As a condition of license renewal, licensees are required to complete no less than 48 and no more than 80 classroom hours of continuing education in public accounting subjects approved by the board. *See* s. 473.312, F.S.

CPAs are required to meet certain technical standards. For example, s. 473.315, F.S., prohibits a CPA from expressing an opinion on a financial statement of an enterprise unless he or she, and his or her firm, are independent of such enterprise. A CPA is also prohibited from undertaking an engagement that he or she, or the firm, cannot expect to complete with professional competence. The board is required to adopt rules establishing the standards of practice for public accounting, including, but not limited to, independence, competence, and technical standards. *See* s. 473.315(3), F.S. Board rules require that CPAs follow generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS). GAAP is established by the Financial Accounting Standards Board (FASB). FASB is a private-sector organization that establishes standards of financial accounting and reporting. It is recognized as authoritative by the Securities and Exchange Commission. GAAS is established by the American Institute of Certified Public Accountants (AICPA), which is considered to be the premier national professional association for CPAs.

Pursuant to s. 473.323, F.S., the board may enter an order imposing disciplinary action against a licensee for a violation of ch. 473, F.S., for actions that include the following:

- Attempting to procure a license by bribery or fraud;
- Having a licensed revoked, suspended, or otherwise acted against in another state, territory, or country;
- Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime related to the practice of public accounting;
- Making or filing false reports, or failing to file reports required by law;
- Advertising goods or services in a fraudulent or misleading manner;
- Committing an act of fraud or deceit, or of negligence, incompetence, or misconduct in the practice of public accounting;
- Violating any rule adopted pursuant to ch. 473 or ch. 455, F.S.;
- Practicing with a revoked, suspended, inactive, or delinquent license;
- Having the right to practice before a state or federal agency suspended or revoked;
- Performing any fraudulent act while licensed to practice public accounting;
- Failing to maintain good moral character;
- Failing to provide any written disclosure to a client or the public, which is required by ch. 473, F.S., or board rule.

Board disciplinary action may include: denial of application for licensure; revocation or suspension of licensure; imposition of an administrative fine not to exceed $5,000; reprimand; probation; and restriction of the authorized scope of practice.

Peer Review

A peer review is a periodic outside review of an accounting firm that takes into account matters such as the firm's quality control system in accounting and auditing, and its compliance with professional standards. The AICPA requires that its member firms undergo peer review. The only exception to this requirement would be for firms that do not perform audits, reviews, and compilations and/or attest service engagements. In Florida, the Florida Institute of CPAs (FICPA) administers the AICPA Peer Review Program. Enrollment in the Peer Review Program is optional for firms that are not members of AICPA. According to the FICPA, the Peer Review Program is designed to be educational for public accounting firms to further enhance the quality in their performance of accounting an auditing work. The FICPA indicates that peer review allows firms to communicate with their fellow peers on the objectives of the accounting profession.

There are a number of methods by which a firm may obtain a peer review. Firms may choose a peer reviewer subject to FICPA approval or may request that the FICPA assign a reviewer. A firm that is a member of an association may choose to have its association perform the peer review if the AICPA Peer Review Board authorizes the association to assemble a review team. Firms undergoing peers review pay an hourly rate to the reviewer and an administrative fee to the FICPA.

Peer reviews cover a one-year term mutually agreed upon by the reviewer and the firm. The peer reviewer will study and evaluate a sampling of the firms work and issue a report on its findings. A technical reviewer is assigned by the FICPA to review the peer review report and work papers The technical reviewer determines if the peer reviewer's conclusions and findings are consistent with peer review standards. The technical reviewer may propose changes to the report. Upon completion of the technical review, peer reviews are presented to the FICPA's Peer Review Committee for action. The committee may issue a letter of acceptance for a positive review or may require follow-up action by the firm, such as continuing education.

Section 473.316(6), F.S., provides that the proceedings, records, and work papers of a review committee are privileged and are not subject to discovery, subpoena, or other means of legal process or to introduction into evidence in a civil action, arbitration, administrative proceeding, or state accountancy board proceeding. Likewise, committee members may not testify in those proceedings regarding any matter produced or disclosed during the review or as to any findings, recommendations, evaluations, opinions, or other actions of the review committee or its members. Section 473.302, F.S., provides that peer reviews do not come under the term "public accounting" or other related terms, as set forth under that section.

III. Effect of Proposed Changes:

Section 1 creates s. 473.3125, F.S. The bill requires the board to require, by rule, that each licensee undergo a peer review at least once every 3 years as a condition of license renewal. The peer review must be conducted in a manner prescribed by the board. A satisfactory review would mean that the firm has undergone the entire peer-review process and the report on peer review indicates that the firm maintains acceptable standards of performance as prescribed by the board. The bill requires that the review include verification that individuals in the firm responsible for supervising the attest and compilation services and who sign, or authorize another to sign, an accountant's report of a financial statement on behalf of the firm meet the required professional standards for such services.

The bill also requires the board to establish rules governing peer review that do the following:

- Include reasonable provisions for compliance by a firm that it has undergone a peer review that is a satisfactory equivalent to peer review required under this section within the preceding three years and has provided documentation that a satisfactory result was received;
- Require that peer review be subject to oversight by an oversight body established or sanctioned by board rule, which body shall report to the board on the effectiveness of the program and provide the board with a listing of firms that have participated in peer review;

- Require that the peer review process be operated and documents be maintained so as to preserve confidentiality and to assure that the board, or a third party other than the oversight body, does not have access to documents generated or furnished during the peer review process.

The bill further provides that a CPA who serves on a review committee is immune from liability to the extent that he or she has taken action in good faith. CPAs or other individuals who have performed administrative services for the review committee are immune from liability to the extent they have acted in good faith, without malice, and on the basis of facts reasonably known or believed to exist.

Section 2 amends subsection (1) of s. 473.323, F.S., to provide that the failure to provide to the board documentation of a satisfactory peer review is grounds for which disciplinary action can be taken by the board.

Section 3 provides that the bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.07(1), F.S., provides that every person who has custody of a public record must remit the record for inspection by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record. Section 24(a) of Article I of the State Constitution provides that every person has the right to inspect or copy any public record made or received in connection with the public business of any public body, officer or employee of the state. Section 119.011(1) defines the term "public record" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, made or received pursuant to law or ordinance or in the connection with the transaction of official business by any agency. The term "agency" is defined, in part, by s. 119.011(2), F.S., as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, including any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill provides for the creation of a peer-review oversight body to report to the board and requires that the board establish rules to ensure that the peer review process remains confidential and to assure that the board, or a third party other than the oversight body, does not have access to documents generated or furnished during the peer review process. Pursuant to section 24 (c) of Article I of the State Constitution, any exemption to s.119.07, F.S., must be enacted by the Legislature. A separate bill proposing such action would resolve this issue.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill does not specify whether or not the department may collect fees related to the peer-review program. The department estimates that it will require one peer-review program coordinator and will need to make a one-time expenditure for technical equipment to verify compliance.

B. Private Sector Impact:

Currently, all members of the AICPA are required to be enrolled in a peer review program. The only exception is for firms that do not perform audits, reviews, compilations and/or attest service engagements. According to the FICPA, approximately 43% of Florida's licensees are required by the AICPA to undergo peer review, which is administered by FICPA. The committee substitute would require that all licensees undergo, and therefore incur the cost of, a peer review.

C. Government Sector Impact:

The department estimates an annual salary of $44,000 for a review coordinator, and a one-time expenditure of $18,750 for technical equipment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.