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SFA**BILL ANALYSIS**

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Senate Bill 216 (as enrolled)
Sponsor: Senator Bill Bullard, Jr.
Committee: Financial Services

Date Completed: 4-19-01

RATIONALE

The Professional Service Corporation Act permits a person licensed to practice a profession to organize as a professional corporation in order to render a service, such as certified public accounting, chiropractic, dentistry, optometry, veterinary medicine, human medicine, and professional engineering. Section 13 of the Act specifies that the Business Corporation Act applies to a professional service corporation, unless there is a conflict between the two laws (in which case the Professional Service Corporation Act controls). In the past, some people questioned whether amendments made to the Business Corporation Act by Public Act 1 of 1987 (which generally involved limitations on the liability of directors, officers, and employees of business corporations) applied to professional service corporations. In a 1989 opinion, the Attorney General ruled that amendments to the Business Corporation Act made after the adoption of Section 13 did not apply to professional service corporations (as discussed in **BACKGROUND**, below). This opinion, however, is not consistent with a section of statute that governs the interpretation of references to "Michigan Compiled Laws", and apparently has led to some confusion among practitioners. Thus, some people believe that the Professional Service Corporation Act should be amended to include the latest amendments to the Business Corporation Act.

CONTENT

The bill would amend Section 13 of the Professional Service Corporation Act, which provides that the Business Corporation Act applies to a corporation organized under the Professional Service Corporation Act. The bill contains the following statement:

This amendatory act is remedial and curative and intended to eliminate any confusion with respect to the application of the business corporation act...to a corporation formed under the professional service corporation act... as a result of OAG [Opinion of the Attorney General], 1989-1990, No 6592, p 166 (July 10, 1989). As provided in section 8 of 1846 RS 1, MCL 8.8, the legislature declares that the reference to the business corporation act...in section 13 of the professional service corporation act...includes the latest amendments to the business corporation act...

(Under Section 8 of the Revised Statutes of 1846, a reference to "Michigan Compiled Laws" includes all sections of law, as last amended, that are assigned a compilation number by the Legislative Service Bureau and are not subsequently repealed. Unless otherwise specifically provided, a reference to all or part of a statute, regardless of whether the words "as amended" are used in the reference, includes the latest amendments to the statute or part. With respect to a section of the Michigan Compiled Laws that is added to a statute or amended subsequent to the most recent published compilation of the laws of the State in force, as certified by the Legislative Council, a reference within the title or an enacting section of a statute to the law that added or amended the section is not required, but a statute may include within the title and/or enacting section of the statute, a reference to the law that added or most recently amended the section subsequent to the most recent published compilation.)

BACKGROUND

Among the issues addressed by Opinion of the Attorney General No. 6592 of 1989-1990, was whether amendments made to the Business Corporation Act by Public Act 1 of 1987 applied to professional service corporations. The Attorney General stated that the answer to this question depended on "...whether amendments to the Business Corporation Act *subsequent* to its adoption in § 13 of the Professional Service Corporation Act are incorporated in the latter statute" (emphasis added).

The Attorney General based his opinion on language from 1929 and 1896 decisions of the Michigan Supreme Court, which stated, in part:

The general rule is, that an act, which adopts by reference the whole or a portion of another statute, means the law as existing at the time of the adoption, and does not include subsequent additions or modifications of the statute so adopted, unless it does so by express or strongly implied intent...

According to the Attorney General, "Section 13 of the Professional Service Corporation Act adopted by reference the whole of the Business Corporation Act, except to the extent that there may be conflicts between the two acts, in which case the former is controlling. There is no indication that the Legislature intended that subsequent additions to or modifications of the Business Corporation Act would be included in the Professional Service Corporation Act."

The Attorney General also pointed out that Section 13 "...does not refer to the general law regulating corporations, but rather, refers specifically to the Business Corporation Act by public act number and citation". The Attorney General concluded, "...the Professional Service Corporation Act adopted the Business Corporation Act as it existed on July 18, 1980, the effective date of the last amendment to §13 of the Professional Service Corporation Act making specific reference to the Business Corporation Act."

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

When the Professional Service Corporation Act is silent on matters affecting a professional service corporation, the Business Corporation Act applies to a professional service corporation. As a result of a 1989 Attorney General Opinion, however, it is not clear whether the latest amendments to the Business Corporation Act apply to professional service corporations. Consequently, some have questioned whether the Professional Service Corporation Act must be amended to reflect the changes in the Business Corporation Act. By including a statement in the Professional Service Corporation Act that reference in the Act to the Business Corporation Act "includes the latest amendments" to the Business Corporation Act, the bill would help eliminate confusion as to which version of the Business Corporation Act applies to a corporation organized under the Professional Service Corporation Act.

In addition to the 1987 amendments that the Attorney General discussed, significant changes to the Business Corporation Act were made in 1989, and additional amendments were adopted in 1997. Under the bill, it would be clear that these and other amendments to that Act applied to a professional service corporation, unless they conflicted with the Professional Service Corporation Act.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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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.