

By: Representative Bowles

To: Appropriations

HOUSE BILL NO. 1144

1
2 AN ACT TO AMEND SECTIONS 7-7-211 AND 29-9-1, MISSISSIPPI CODE
3 OF 1972, TO AUTHORIZE THE STATE AUDITOR TO IMPOSE A FINE AGAINST
4 THE HEAD OF A STATE INSTITUTION, DEPARTMENT OR AGENCY THAT FAILS
5 TO CONDUCT THE NECESSARY INVENTORY PROPERTY OWNED OR UNDER THE
6 CONTROL OF SUCH AGENCY; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 7-7-211, Mississippi Code of 1972, is
9 amended as follows:

10 7-7-211. The department shall have the power and it shall be
11 its duty:

12 (a) To identify and define for all public offices of
13 the state and its subdivisions generally accepted accounting
14 principles as promulgated by nationally recognized professional
15 organizations and to consult with the State Fiscal Officer in the
16 prescription and implementation of accounting rules and
17 regulations;

18 (b) To prescribe, for all public offices of regional
19 and local subdivisions of the state, systems of accounting,
20 budgeting and reporting financial facts relating to said offices
21 in conformity with legal requirements and with generally accepted
22 accounting principles as promulgated by nationally recognized
23 professional organizations; to assist such subdivisions in need of
24 assistance in the installation of such systems; to revise such
25 systems when deemed necessary, and to report to the Legislature at
26 periodic times the extent to which each office is maintaining such
27 systems, along with such recommendations to the Legislature for
28 improvement as seem desirable;

29 (c) To study and analyze existing managerial policies,
30 methods, procedures, duties and services of the various state
31 departments and institutions upon written request of the Governor,
32 the Legislature or any committee or other body empowered by the
33 Legislature to make such request to determine whether and where
34 operations can be eliminated, combined, simplified and improved;

35 (d) To postaudit each year and, when deemed necessary,
36 preaudit and investigate the financial affairs of the departments,
37 institutions, boards, commissions or other agencies of state
38 government, as part of the publication of a comprehensive annual
39 financial report for the State of Mississippi. In complying with
40 the requirements of this subsection, the department shall have the
41 authority to conduct all necessary audit procedures on an interim
42 and year-end basis;

43 (e) To postaudit and, when deemed necessary, preaudit
44 and investigate separately the financial affairs of (i) the
45 offices, boards and commissions of county governments and any
46 departments and institutions thereof and therein; (ii) public
47 school districts, departments of education and junior college
48 districts; and (iii) any other local offices or agencies which
49 share revenues derived from taxes or fees imposed by the state
50 Legislature or receive grants from revenues collected by
51 governmental divisions of the state; the cost of such audits,
52 investigations or other services to be paid as follows: Such part
53 shall be paid by the state from appropriations made by the
54 Legislature for the operation of the State Department of Audit as
55 may exceed the sum of One Hundred Dollars (\$100.00) per day for
56 the services of each staff person engaged in performing the audit
57 or other service, which sum shall be paid by the county, district,
58 department, institution or other agency audited out of its general
59 fund or any other available funds from which such payment is not
60 prohibited by law;

61 (f) To postaudit and, when deemed necessary, preaudit

62 and investigate the financial affairs of the levee boards;
63 agencies created by the Legislature or by executive order of the
64 Governor; profit or nonprofit business entities administering
65 programs financed by funds flowing through the State Treasury or
66 through any of the agencies of the state, or its subdivisions; and
67 all other public bodies supported by funds derived in part or
68 wholly from public funds, except municipalities which annually
69 submit an audit prepared by a qualified certified public
70 accountant using methods and procedures prescribed by the
71 department;

72 (g) To make written demand, when necessary, for the
73 recovery of any amounts representing public funds improperly
74 withheld, misappropriated and/or otherwise illegally expended by
75 an officer, employee or administrative body of any state, county
76 or other public office, and/or for the recovery of the value of
77 any public property disposed of in an unlawful manner by a public
78 officer, employee or administrative body, such demands to be made
79 (i) upon the person or persons liable for such amounts and upon
80 the surety on official bond thereof, and/or (ii) upon any
81 individual, partnership, corporation or association to whom the
82 illegal expenditure was made or with whom the unlawful disposition
83 of public property was made, if such individual, partnership,
84 corporation or association knew or had reason to know through the
85 exercising of reasonable diligence that the expenditure was
86 illegal or the disposition unlawful. Such demand shall be
87 premised on competent evidence, which shall include at least one
88 (1) of the following: (i) sworn statements, (ii) written
89 documentation, (iii) physical evidence, or (iv) reports and
90 findings of government or other law enforcement agencies. Other
91 provisions notwithstanding, a demand letter issued pursuant to
92 this subsection shall remain confidential by the State Auditor
93 until the individual against whom the demand letter is being filed
94 has been served with a copy of such demand letter. If, however,

95 such individual cannot be notified within fifteen (15) days using
96 reasonable means and due diligence, such notification shall be
97 made to the individual's bonding company, if he or she is bonded.
98 Each such demand shall be paid into the proper treasury of the
99 state, county or other public body through the office of the
100 department in the amount demanded within thirty (30) days from the
101 date thereof, together with interest thereon in the sum of one
102 percent (1%) per month from the date such amount or amounts were
103 improperly withheld, misappropriated and/or otherwise illegally
104 expended. In the event, however, such person or persons shall
105 refuse, neglect or otherwise fail to pay the amount demanded and
106 the interest due thereon within the allotted thirty (30) days, the
107 State Auditor shall have the authority and it shall be his duty to
108 institute suit, and the Attorney General shall prosecute the same
109 in any court of the state to the end that there shall be recovered
110 the total of such amounts from the person or persons and surety on
111 official bond named therein; and the amounts so recovered shall be
112 paid into the proper treasury of the state, county or other public
113 body through the State Auditor;

114 (h) To investigate any alleged or suspected violation
115 of the laws of the state by any officer or employee of the state,
116 county or other public office in the purchase, sale or the use of
117 any supplies, services, equipment or other property belonging
118 thereto; and in such investigation to do any and all things
119 necessary to procure evidence sufficient either to prove or
120 disprove the existence of such alleged or suspected violations.
121 The Department of Investigation of the State Department of Audit
122 may investigate, for the purpose of prosecution, any suspected
123 criminal violation of the provisions of this chapter. For the
124 purpose of administration and enforcement of this chapter, the
125 enforcement employees of the Department of Investigation of the
126 State Department of Audit have the powers of a peace officer of
127 this state only over those persons under indictment or at the

128 direction of another duly authorized law enforcement agency having
129 jurisdiction over the case. All enforcement employees of the
130 Department of Investigation of the State Department of Audit hired
131 on or after July 1, 1993, shall be required to complete the Law
132 Enforcement Officers Training Program and shall meet the standards
133 of the program.

134 (i) To issue subpoenas, with the approval of, and
135 returnable to, a judge of a chancery or circuit court, in termtime
136 or in vacation, to examine the records, documents or other
137 evidence of persons, firms, corporations or any other entities
138 insofar as such records, documents or other evidence relate to
139 dealings with any state, county or other public entity. The
140 circuit or chancery judge must serve the county in which the
141 records, documents or other evidence is located; or where all or
142 part of the transaction or transactions occurred which are the
143 subject of the subpoena;

144 (j) In any instances in which the State Auditor is or
145 shall be authorized or required to examine or audit, whether
146 preaudit or postaudit, any books, ledgers, accounts or other
147 records of the affairs of any public hospital owned or owned and
148 operated by one or more political subdivisions or parts thereof or
149 any combination thereof, or any school district, including
150 activity funds thereof, it shall be sufficient compliance
151 therewith, in the discretion of the State Auditor, that such
152 examination or audit be made from the report of any audit or other
153 examination certified by a certified public accountant and
154 prepared by or under the supervision of such certified public
155 accountant. Such audits shall be made in accordance with
156 generally accepted standards of auditing, with the use of an audit
157 program prepared by the State Auditor, and final reports of such
158 audits shall conform to the format prescribed by the State
159 Auditor. All files, working papers, notes, correspondence and all
160 other data compiled during the course of the audit shall be

161 available, without cost, to the State Auditor for examination and
162 abstracting during the normal business hours of any business day.
163 The expense of such certified reports shall be borne by the
164 respective hospital, or any available school district funds other
165 than minimum program funds, subject to examination or audit. The
166 State Auditor shall not be bound by such certified reports and
167 may, in his or their discretion, conduct such examination or audit
168 from the books, ledgers, accounts or other records involved as may
169 be appropriate and authorized by law.

170 (k) The State Auditor shall have the authority to
171 contract with qualified public accounting firms to perform
172 selected audits required in subsections (d), (e) and (f) of this
173 section, if funds are made available for such contracts by the
174 Legislature, or if funds are available from the governmental
175 entity covered by subsections (d), (e) and (f). Such audits shall
176 be made in accordance with generally accepted standards of
177 auditing, with the use of an audit program prepared by the State
178 Auditor, and final reports of such audits shall conform to the
179 format prescribed by the State Auditor. All files, working
180 papers, notes, correspondence and all other data compiled during
181 the course of the audit shall be available, without cost, to the
182 State Auditor for examination and abstracting during the normal
183 business hours of any business day.

184 (l) The State Auditor shall have the authority to
185 establish training courses and programs for the personnel of the
186 various state and local governmental entities under the
187 jurisdiction of the office of the State Auditor. The training
188 courses and programs shall include, but not be limited to, topics
189 on internal control of funds, property and equipment control and
190 inventory, governmental accounting and financial reporting, and
191 internal auditing. The State Auditor is authorized to charge a
192 fee from the participants of these courses and programs, which fee
193 shall be deposited into the Department of Audit Special Fund.

194 State and local governmental entities are authorized to pay such
195 fee and any travel expenses out of their general funds or any
196 other available funds from which such payment is not prohibited by
197 law.

198 (m) Upon written request by the Governor or any member
199 of the state Legislature, the State Auditor may audit any state
200 funds and/or state and federal funds received by any nonprofit
201 corporation incorporated under the laws of this state.

202 (n) To conduct performance audits of personal or
203 professional service contracts by state agencies on a random
204 sampling basis, or upon request of the State Personal Service
205 Contract Review Board under Section 25-9-120(3).

206 (o) To impose any fine authorized under Section 29-9-1.

207 SECTION 2. Section 29-9-1, Mississippi Code of 1972, is
208 amended as follows:

209 29-9-1. (1) The State Auditor of Public Accounts shall
210 require the heads of all state agencies to make an inventory of
211 all lands, buildings, equipment, furniture, and other personal
212 property owned by or under the control of the respective agencies,
213 except highway rights of way owned or acquired by the Mississippi
214 State Highway Commission. The inventories shall be made on forms
215 to be prescribed and furnished by said State Auditor. Agencies,
216 including the Legislature, which have on file proper inventories
217 on August 8, 1968, shall not be required to make new inventories,
218 but the remaining provisions of this chapter respecting
219 inventories shall be applicable thereto.

220 (2) In addition to any other penalty provided by law, the
221 head of any state institution, department or agency who violates
222 any provision of this chapter or any rule promulgated under this
223 chapter, shall be fined by the State Auditor in an amount of Fifty
224 Dollars (\$50.00) for each violation. Each violation of this
225 chapter or any rule promulgated under this chapter shall
226 constitute a separate punishable violation.

227 SECTION 3. This act shall take effect and be in force from
228 and after July 1, 1999.