

By: Representative Weathersby

To: Public Utilities

HOUSE BILL NO. 1310

1 AN ACT TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE THE STATE AUDITOR TO AUDIT AND INVESTIGATE ANY  
3 NONPROFIT, NONSHARE CORPORATION, CHARTERED FOR THE PURPOSE OF  
4 OWNING AND OPERATING RURAL WATERWORKS, WHICH RECEIVES GRANT OR  
5 LOAN FUNDS FROM OR THROUGH THE STATE OF MISSISSIPPI OR ITS  
6 AGENCIES; 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;  
67 nonprofit, nonshare corporation chartered under the Mississippi  
68 Nonprofit Corporation Act for the purpose of owning and operating  
69 rural waterworks which receives grant or loan funds from or  
70 through the State of Mississippi or its agencies and all other  
71 public bodies supported by funds derived in part or wholly from  
72 public funds, except municipalities which annually submit an audit  
73 prepared by a qualified certified public accountant using methods  
74 and procedures prescribed by the department;

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

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

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

128 enforcement employees of the Department of Investigation of the  
129 State Department of Audit have the powers of a peace officer of  
130 this state only over those persons under indictment or at the  
131 direction of another duly authorized law enforcement agency having  
132 jurisdiction over the case. All enforcement employees of the  
133 Department of Investigation of the State Department of Audit hired  
134 on or after July 1, 1993, shall be required to complete the Law  
135 Enforcement Officers Training Program and shall meet the standards  
136 of the program.

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

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

audits shall conform to the format prescribed by the State Auditor. All files, working papers, notes, correspondence and all other data compiled during the course of the audit shall be available, without cost, to the State Auditor for examination and abstracting during the normal business hours of any business day. The expense of such certified reports shall be borne by the respective hospital, or any available school district funds other than minimum program funds, subject to examination or audit. The State Auditor shall not be bound by such certified reports and may, in his or their discretion, conduct such examination or audit from the books, ledgers, accounts or other records involved as may be appropriate and authorized by law.

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

(l) The State Auditor shall have the authority to establish training courses and programs for the personnel of the various state and local governmental entities under the jurisdiction of the office of the State Auditor. The training courses and programs shall include, but not be limited to, topics on internal control of funds, property and equipment control and inventory, governmental accounting and financial reporting, and

194 internal auditing. The State Auditor is authorized to charge a  
195 fee from the participants of these courses and programs, which fee  
196 shall be deposited into the Department of Audit Special Fund.  
197 State and local governmental entities are authorized to pay such  
198 fee and any travel expenses out of their general funds or any  
199 other available funds from which such payment is not prohibited by  
200 law.

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

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

209 SECTION 2. This act shall take effect and be in force from  
210 and after July 1, 1999.